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Memorandum submitted by The Public and Commercial Services Union (PCS) (CF 01)

1. The Public and Commercial Services Union (PCS) is one of the largest trade unions in the UK, with over 260,000 members. We are organised throughout the civil service and government agencies, making us the UK’s largest civil service trade union. We also organise widely in the private sector, usually in areas that have been privatised.

2. PCS represents around 14,000 members working in the Ministry of Justice, including those employed in the family courts system. Our submission focuses specifically to the changes relating to family justice in part 2 of the Children and Families Bill. We would be happy to provide the Bill Committee with further written or oral evidence on request.

PART 2 FAMILY JUSTICE

Clause 10 Family mediation information and assessment meetings

3. The bill will make attendance at a family mediation information assessment meeting (MIAM) compulsory before making a relevant family application. At present, solicitors make a referral to a mediator, allowing clients to receive legal advice before going into the mediation process.

4. As MIAMs will be compulsory, mediators will be tasked with screening for domestic abuse and safeguarding issues in relation to children. Many mediators will not have the necessary training and experience that CAFCASS officers already possess, particularly for mediation relating to children matters.

5. At the very least, there needs to be accreditation and regulation of mediators. We propose that the minimum requirement currently set by the Legal Services Commission is utilised.

6. We are concerned that compulsory attendance at MIAMs may be used to further domestic abuse that happened in the past or does not meet the required standards.

7. The vast majority of parents settle arrangements for children themselves. Those that come to court are by their nature the most acrimonious, complex or have welfare concerns. It is therefore unlikely that mediation will be suitable or successful and will not reduce court applications.

Clause 12 Child arrangement orders

8. The Children Act 1989 is to be amended to abolish residence and contact orders and introduce a presumption of shared parenting provided this would not harm the child.

9. A statutory change to the idea of shared parenting will risk a public perception of an entitlement to both parents having 50/50 time with the children.

10. The changes will shift the emphasis from the child’s welfare to the parents’ rights.

11. We are concerned that an unfamiliar order is being introduced at a time when legal aid will have been largely removed. Legal aid needs to be available for an initial advice meeting and support during the mediation process, if not for the proceedings. More information needs to be publicly promoted and available—not simply accessible from the internet—at courts offices and other public buildings. Legal aid should also meet the costs of the regular appointment of a guardian for the children with legal representation in more complex cases where the parents are unrepresented.

12. They could also undermine the prospect of parents being able to reach an agreement themselves. This might result in further court applications, particularly where counters in the Family Court offices (from which most family work is administered) now have very restricted opening hours due to cuts in staff. There needs to be an assessment made of the likely number of court applications made as a result of the changes.

Clause 14 Care, supervision and other family proceedings: time limits and timetables

13. The government is seeking to implement a statutory 26 week time limit for the conclusion of care cases. Currently the average time for care cases is 60 weeks. The numbers of care proceedings issued continue to increase post the baby Peter case. Case applications in 2012 were up 10% on the previous year. This rise in applications is taking place while courts closures and staff numbers have been significantly reduced.

14. The cuts have led to delays in getting hearings listed and a lack of resources for children’s guardians and for social workers. The impact of an inadequate activity based costing model, to determine resources and staffing, has been to put pressure on family proceedings courts and reduce the number of hours they sit for. This has reduced the flexibility of the courts and is not compatible with completing care proceedings in a shorter time.
15. Cuts to legal aid and the tendering processes have resulted in a reduction in the number of firms being able to offer legal aid for care cases, meaning there are a lack of lawyers for multiple party complex cases in some areas.

16. While we would like to see average times reduced, the changes risk artificially forcing cases through by preventing children’s guardians from properly investigating issues.

17. Currently, the issuing of pre-care proceedings cause the worst delay and this problem will be unaffected by the 26 week timescale.

18. We recommend the following:
   — Secondary legislation with a clear right of the Judge to extend the timetable beyond 26 weeks if that is felt to be in the best interests of the children;
   — Children’s guardians should be appointed pre-proceedings and be fully supported throughout the process to investigate and bring all relevant issues to the attention of the court;
   — Better training for social workers;
   — Greater use of family group conferencing pre-proceedings; and
   — Assessment of the impact of cuts in public funding on the availability of specialist lawyers.

Clause 15 Care plans

19. We are concerned that existing court powers to investigate all aspects of the arrangements for the children are to be removed. The bill amends the Children Act 1989 so that courts focus on the central issue of whether a child should be removed from their parent/s, and local authorities are left to scrutinise the detail of care plans.

20. Court scrutiny of care plans is essential to ensure the local authority assessment and planning is found. We believe that children will suffer miscarriages of justice if their cases receive only a cursory glance.

21. The judgement as to whether a child is less damaged by remaining with inadequate parents (with appropriate support) or by being removed to a different home, can depend on the details of the plan. There is a danger that the interests of children could often be at odds with the financial considerations of a local authority charged with scrutinising the details of their care plan.

Clause 17 Repeal of restrictions on divorce and dissolution etc where there are children

22. We do not support this clause which will repeal restrictions on divorce where there are children. Currently the court must be satisfied of the arrangements of children before granting a divorce. We believe that these restrictions should be retained. Arrangements for children may be unclear. Where more parties are self represented as a result of the withdrawal of legal aid for divorce and related matters, an important safeguard will be missed in the vast majority of cases.

February 2013

Memorandum submitted by the British Humanist Association (CF 02)

ABOUT THE BRITISH HUMANIST ASSOCIATION

1. The British Humanist Association (BHA) is the national charity working on behalf of non-religious people who seek to live ethical and fulfilling lives on the basis of reason and humanity. It is the largest organisation in the UK campaigning for an end to religious privilege and to discrimination based on religion or belief, and for a secular state.

2. The BHA has a long history of contributing towards and improving state education. We provide materials and advice to parents, governors, students, teachers and academics. We also work closely with others on wider equalities issues in a range of forums. The BHA is a member of the National Children’s Bureau Sex Education Forum (SEF), the Children’s Rights Alliance for England (CRAE), Rights of the Child UK (ROCK) and the Religious Education Council for England and Wales.

SUMMARY OF RESPONSE

3. We welcome the proposed changes around the Children’s Commissioner, in particular its proposed role in ‘monitor[ing] the implementation in England of the United Nations Convention on the Rights of the Child’. However, we believe the changes need to go further, and that the Convention should be incorporated directly into UK law.

4. We have particular concern around opt-out rights for young people in RE, sex education and Collective Worship. Currently, parents have opt out rights over their children in these areas of school up to either sixth form age or the end of school, which we believe is likely to constitute a breach of the European Convention on Human Rights. We think this Bill represents a suitable opportunity for a change in the law to rectify this.
PART 5: THE CHILDREN’S COMMISSIONER

5. We welcome part 5 of the Bill, and its proposals to both strengthen the role of the Children’s Commissioner, and increase its independence from the Government. In particular, we are very pleased to see the Children’s Commissioner’s role refocused to be about ‘promoting and protecting the rights of children in England’, and the fact that this role includes ‘monitor[ing] the implementation in England of the United Nations Convention on the Rights of the Child’. We also agree with the Joint Committee on Human Rights’ (JCHR’s) conclusion that ‘the proposed reforms constitute a very significant development with the potential to transform the Office of Children’s Commissioner into a national human rights institution capable of becoming an international example of best practice if sufficiently well-resourced.’

6. However, we believe the changes need to go further. We are strong supporters of children’s rights, and believe that the UN Convention on the Rights of the Child should be incorporated directly into UK statute, in the same way that the UK Government and other bodies begin to take children’s rights as seriously as we hope the Children’s Commissioner now will. We endorse ROCK’s response on this and related matters to the JCHR’s pre-legislative scrutiny of the relevant clauses of the Bill.

7. We also regret the exclusion from the Bill of any reference to the Commissioner having to ‘have regard to any other relevant international standards concerning the rights of children which have been accepted by the UK Government, whether legally binding or not’—as was recommended by the JCHR.

8. We also have a number of areas of particular concern where we do believe current UK legislation may clash with the UNCRC. We set many of these out in some detail in our 2010 contribution to CRAE’s State of children’s rights in England. We have particular concern around opt-out rights for young people which we will now discuss in more depth.

OPT OUT RIGHTS FOR YOUNG PEOPLE FROM RE, SEX EDUCATION AND COLLECTIVE WORSHIP

9. The BHA is concerned that parents have opt out rights over mature young people at school in Religious Education (RE), Collective Worship and sex education. We believe that the current system is incompatible with the European Convention on Human Rights and related case law, which we think has established that such rights should transfer to young people once they are intelligent enough to make their own decisions on the matter. This is particularly important, given that surveys show that between half and two-thirds of young people are not religious—a higher proportion than in the population as a whole.

10. UK law currently allows parents whose children attend state-funded schools to opt their children out of RE, sex education (provided outside of Science) and Collective Worship up until the child leaves school, in the case of RE and sex education, or the end of compulsory school age, in the case of Collective Worship. Pupils of sixth-form age are allowed to opt themselves out of Collective Worship.

11. Parents and pupils have no rights of withdrawal from any aspect of school life at private schools. For parents, this is because they can withdraw their children from the school entirely. Pupils, however, have no such option, so an 18 year old at a private school could be compelled to attend Collective Worship, in addition to confessional Religious Education, and be punished if they refuse.

12. These statutory arrangements seem to the BHA to represent a collection of breaches of young people’s legal right to freedom of thought, conscience and religion, as established under article 9 of the European Convention on Human Rights.

13. Parents have a competing right to have their children educated in line with their own religious or philosophical convictions, established through article 2 of protocol 1 of the Convention. However, following the Gillick competence principles, a child’s right to determine their own religion or belief (and hence whether or not they wish to be opted out) overides their parents’ rights over them (and hence the same) once the child obtains sufficient understanding and intelligence to be mature enough to make up their own mind on the matter.

6 With regards to RE and Collective Worship: For community, foundation and voluntary schools, see section 71(1) of the School Standards and Framework Act 1998, as amended by section 55(2) of the Education and Inspections Act 2006. For community special and foundation special schools, see section 55(8) of the Education and Inspections Act 2006. For non-maintained special schools, see section 143(2) of the Education and Skills Act 2008. For Academies and Free Schools, see the model funding agreements. With regards to sex education: For maintained schools, see section 405 of the Education Act 1996. For non-maintained special schools, see paragraph 25 of the schedule of The Education (Non-Maintained Special Schools) (England) Regulations 2011. For Academies and Free Schools, see the model funding agreements.
14. The age at which a child will reach such maturity will vary from child to child; however, it is certain that almost all have done so long before the age of 16. Therefore, the age of opt out needs to be lowered—if there is to be a firm age at all, which the BHA does not believe there should be.

15. This argument has been repeatedly endorsed by the Joint Committee on Human Rights (JCHR), for example in reports in 2006, 2008 and 2010.9

16. The previous Government also recognised this argument in 2006 and 2007 when it gave sixth form pupils the power to opt themselves out of Collective Worship. It said that ‘there is a duty rather than power’ to give pupils this right.10 However, it seemingly contradicted itself when it refused to give similar rights to pupils in other subjects, or consider pupils under the age of sixteen.

17. In 2010 as part of the Children, Schools and Families Bill the Government went further and proposed to give pupils opt out rights in sex education from the age of 15. When the JCHR asked why this firm age limit was decided upon, the Government replied that it considered using Gillick criteria ‘not … in practice, particularly workable.’ The JCHR did not agree with this, noting in its report that ‘In practice, teachers and schools frequently have to make individualised assessments about the children in their care, including about their capacity’, before recommending ‘that clause 14 of the Bill be amended in a way which leaves 15 as the presumptive age of Gillick or Fraser competence for these purposes but which provides for an exception from the parental right to withdraw where a child under the age of 15 is of sufficient maturity and understanding to reach their own decisions on sex and relationships education.’

18. However, the reforms to Personal, Social, Health and Economic (PSHE) education in that Bill were ultimately scrapped, because the Bill was not passed before the 2010 wash-up, and then-Shadow Secretary of State for Children, Schools and Families Michael Gove wanted the opt-out age to be 15 and not 16. Secretary of State Ed Balls wrote to Mr Gove, saying:

As I explained yesterday, your insistence that parents should have a right to withdraw their children until they reach the age of 16—the age at which they are in many respects considered adults—makes it impossible for us to proceed. Both British and European case law do not support an opt-out up to the age of 16. As I explained when we discussed yesterday, that amendment would have meant that the bill would not have been compliant with the ECHR. Your insistence that the age limit must be increased to 16 would have made the entire bill non-compliant with UK and European law and, therefore, our lawyers advised me that, as Secretary of State, I had no choice but to remove all the PSHE provisions.11

19. We think the JCHR, in its 2010 report, got the balance right and that young people in all schools should have the right to self determination of withdrawal in RE, Collective Worship and sex education from the age of 15, with Gillick competences being applied to younger pupils.16 is too old to presume that pupils are not competent in these matters, but at the same time, there does need to be scope for younger (potentially much younger) pupils being able to make their own minds up, if they are of sufficient maturity, or else the legislation would not be compatible with case law.

20. At the same time, we recognise the fact that the previous Government’s 2010 legal advice was that pupils should gain withdrawal rights at 15, and therefore it was compelled to legislate to this effect. We are confused that the current Government does not consider itself to be under the same compulsion.

21. We believe that the Children and Families Bill, looking as it is at children’s rights, represents a suitable opportunity for the law to be amended in these areas to recognise young people’s rights to freedom of conscience, religion or belief in being able to determine whether to withdraw themselves from Collective Worship, RE and sex education.

February 2013

SUMMARY OF COMMENTS

BACKGROUND

Under the auspices of the Chairman of Ways and Means, the House of Commons Scrutiny Unit administered a “Public Reading” of the Children and Families Bill, undertaken as a pilot. Members of the public were invited to comment on the Bill via a web forum hosted on the Parliament website. Forum users were encouraged to comment on specific Clauses or Schedules of the Bill but this was not mandatory. The forum ran from Wednesday 13 February to Tuesday 26 February and received 1402 comments, of which 1099 were published.12

The web forum has now closed but comments can be viewed at http://www.parliament.uk/business/bills-and-legislation/public-reading/children-and-families-bill/

The Scrutiny Unit will be carrying out an evaluation of the pilot and would welcome feedback from Committee members, which can be sent to scrutiny@parliament.uk

Departmental officials will also be invited to participate in the evaluation.

ABOUT THIS SUMMARY

This summary is intended to assist MPs on the Bill Committee by condensing the points raised by forum users into key themes and providing illustrative quotations. Only those Clauses which attracted significant comment have been included in the summary.

This summary follows the interim summary which was circulated to Members on Thursday 28 February and has been expanded to provide a fuller breakdown of the number of comments addressing particular issues. Owing to the diverse nature of comments and the fact that forum users were not required to stipulate which Clause they were commenting on, these figures should be used only as a guide. A more detailed commentary and analysis has also been provided.

Forum users were encouraged to read the Bill and the Explanatory Notes before commenting but there is no guarantee that they did so. The summary is intended to objectively reflect the comments made on the web forum and inclusion of a particular comment or viewpoint should not be taken to be an endorsement of its accuracy or validity.

PART 1: ADOPTION AND CHILDREN LOOKED AFTER BY LOCAL AUTHORITIES

OVERVIEW

Total published comments on this Part of the Bill: 116 (includes comments on this Part of the Bill which were made in the “Additional comments” section of the forum).

The majority of comments in this section related to Clause 2 and objected to the removal of the explicit legal wording requiring an adoption agency to give due consideration to religious persuasion, racial origin and cultural and linguistic background.

Clause 1: Placement of looked after children with prospective adopters

(15 comments) This Clause received a mixed response, with some users opposed to the principle of fostering for adoption, some supportive, and others questioning how it would work in practice.

SD: “I don’t believe that children should be placed with prospective adoptive parents when there is still a possibility they might be going home. I think this is totally and utterly wrong.”

Catherine W-M: “As an approved prospective adopter this clause gives me a lot of concern. If I also have to be an approved foster carer to be considered for this will I have to go through another approval process or will the approval process take longer? Currently, children who are being fostered usually have regular direct contact with their birth parents as there is still a chance that they may be able to return to them on a permanent basis. This arrangement would be very uncomfortable for both birth parents and prospective adoptive parents.”

Cat S: “Fostering for adoption is an excellent idea, it could help prevent breakdown later on.”

Particular concerns were raised about the implications of this Clause for kinship carers (eg grandparents)

Michael: “There is a serious risk that the primacy of ‘fostering for adoption’ may unintentionally exclude the possibility of kinship placements; these are often not available at the start of proceedings but emerge later, so may, in effect, be ruled out by this proposal.”

12 The forum was pre-moderated and comments were read by House of Commons staff before being approved for publication. Comments which did not comply with the forum discussion rules were not published; the majority of these rejected comments were duplicate identical comments submitted by multiple users.
MJ: “My concern is that kinship placements are not even mentioned in the bill and I feel it should be clarified in the bill that kinship options are to be thoroughly explored and that wherever possible prospective family and friends carers should be assessed BEFORE adoption is at all considered, the child’s name is entered on the adoption register, and is removed hundreds of miles from its birth family so making contact difficult if not impossible, especially in the case of small babies. Please give all members of the birth family a fair chance and enough time to be assessed before stranger adoption is seen as inevitable for a child.”

Clause 2: Repeal of requirement to give due consideration to ethnicity: England

(71 comments) Most of the comments on this Part of the Bill related to this Clause, with the vast majority opposing the change. It is not clear whether they all understood that the intention of the Bill (as set out in the Explanatory Notes) is not to see a child’s race, religion and culture totally disregarded, but to remove any suggestion that these factors should be placed above the other factors that adoption agencies must take into account when reaching a placement decision.

H: “If no consideration is given to race, religion or culture then children will lose everything of their heritage...The clause is ill-thought through and shows no understanding of these children’s needs. It flies in the face of all research and takes us back 30 years in terms of our thinking and understanding of the needs of ethnic minority children.”

Lawei B: “Being an adopted black child myself, living in England I feel it is imperative to place children within their cultural and ethnic setting! I feel this way because if a child is withdrawn from their culture or prevented from being raised without it, they become exposed to a high risk of not knowing or understanding where they actually come from, yes love and care can still be provided, however an authentic representation of original culture is key.”

Enoch: “Cultural heritage and traditions are important educational systems or tools used by Africans and Asians to bring up and nurture their children... These all contribute to a child developing holistically, with a sense of belonging...These unique practices can never be replicated by people of different cultures.”

Abdurrahman: “It is important for a child to be placed in a household that understands their cultural lifestyle and allows them to focus on stabilising their life instead of spending it explaining themselves to carers who may not have the same understanding as culturally/religiously matched carers.”

Cat S: “I believe that children should be placed in a family regardless of ethnic background and religion... In my opinion it is far more important that a child is placed in a family rather than languishing in care.”

SMR: “It might still not be appropriate to place a black child with white parents in a rural village but this should be decided on a case by case basis and not covered by a blanket policy.”

Mumdrah: “I think differences in cultural heritage should certainly not be a barrier to adoption, but should simply be a consideration in the matching process just like any other factor of need.”

Clauses 7 & 8: Contact: children in care of local authorities and Contact: post-adoption

(13 comments) There was no clear consensus on this Clause.

Xyz: “It is of the utmost importance that the healthy pre-adoption relationships of adoptees are given concrete and enforceable protection in law. Foster children often love people, and are loved; to pretend a child is a ‘blank slate’ and to fail to give their relationships protection in law is to say that everything they were and everything they had and everyone they loved is worthless.”

Jayne S: “Having worked in child care for over 13 years, I see family breakdown in adoptive families, due to the children still having indirect or direct contact with the natural parents... I find people do not want to adopt due to not having control and having to interact with the natural parents.”

Amanda B: “I feel it is very important to allow adoptive parents to make decisions alongside their adopted child and wider family about important family matters. This should include whether they wish to meet with their child’s birth family.”

Michelle W: “The emotional and physical impact of contact with abusive or neglectful parents to children should be closely monitored. Contact should not be seen as a right of the parent but as the right of the child.”

PART 2: FAMILY JUSTICE

Overview

Total published comments on this Part of the Bill: 121 (includes comments on this Part of the Bill which were made in the “Additional comments” section of the forum).
Most of the comments in this section related, either explicitly or implicitly, to Clause 11 regarding parental involvement. Many comments made broader observations about parental involvement following family breakdown.

Clause 10: Family mediation information and assessment meetings
(19 comments) Comments on this Clause were fairly diverse, with little in the way of themes emerging.

Margaret P: “Mediation and assessment between parents before court proceedings should be made obligatory—would save a lot of court time”.

Sue W: “I see, on the surface, no reason why there should be an opt out clause of a mediation information and assessment meeting. As I understand it, if DV is alleged, then this requirement is discarded. There is no threat to safety of any party as far as I am aware, as I understand the mediation information and assessment meeting can be attended individually if needs be.”

Paul M: “The mediation process should be much more extensive. It should be a fact gathering exercise as well as an opportunity to provide information. It should be a two way process. The enormous benefits of mediation will be missed.”

Ian: “Adding the MIAM course may avoid unnecessary court room pressures but in doing so without the control and sufficient funding, abundance of trained mediators, it would no doubt mean huge delays outside of the court.”

Maureen M: “Where is the right of the child to participate in the process that makes decisions about him/her. Parties in this context means the adult parties; provision must be made for the child to participate—mediation is not currently set up to include children—it is an adult centred process and therefore will lead in my view to the child’s right being infringed. This is all meant to be about children and families but at times this is lost on process.”

Clause 11: Welfare of the child: parental involvement
(74 comments) The majority of comments on Family Justice related to this Clause. Many of them made wider points about parental involvement following family breakdown; these have been included in the tally above where they related specifically to shared parenting even if they did not comment specifically on the Clause itself. A significant number felt that the Clause did not go far enough in promoting the involvement of both parents in a child’s life.

Craig P: “The shared parenting clauses are a significant step forward in ensuring that most children whose parents divorce continue to have the support of both parents... the Minister needs to clearly set out what involvement is and when it will be restricted; and whether regulations or guidance will be used to give guidance to the courts.”

Brian H: “The Children and Families Bill represents a wasted opportunity to introduce a shared parenting culture into the UK.”

Anthony: “The bill talks about the importance of both Parents SUBSTANTIAL involvement- but unless that is quantified, I believe very little will change, or there is certainly the scope for the Judiciary to ‘change very little’ if they don’t wish to. It does NOT want to be quantified in time, but it needs to be quantified in terms of the activities that a Parent can do with a child, which will be impossible if the time is not substantial.”

Jonny: “As long as both parents are dedicated, caring and capable, I do not believe that any one parent is more important in a child’s life which is why I think the amendments to clause 11 would be so important.”

David M: “The current proposals are the sole custody model of family law dressed up to look like something different.”

Susan J: “There is a significant danger that shared parenting will be interpreted as 50:50 contact. A child could end up living in two houses and in two separate “worlds”. A child needs one home, but with regular and frequent contact with the non-resident parent.”

Bernie D: “I am a family mediator and I am worried about the message that the proposed legislative change re parental involvement sends out to parents in dispute. The risk is that parents’ needs become more important than the child.”

Clause 14: Care, supervision and other family proceedings: time limits and timetables
(6 comments) Comments expressed reservations about the introduction of a 26 week limit for proceedings. Some comments relevant to this Clause were made in the Adoption section of the forum.

Linda T: “I am concerned that the proposed 26 week timescale will result in decisions being made quickly that are not necessarily in the best interests of children. In my experience quick decisions in public law are likely to be cautious ones ie permanent removal of a child from their birth family. The
courts rarely see the difficulties that follow the conclusion of proceedings, how long children wait for adopters, children drifting in long term foster care, the abuse children can suffer in adoptive and foster families.”

CE Family Rights Group: “Whilst supporting the need for decisions to be taken within the child’s timescales and to avoid unnecessary delay, we are concerned that the proposed 26 week time limit on care proceedings cases will severely reduce the time available for parents to demonstrate their parenting abilities and will squeeze out potential family carers from being considered by the court because there will simply not be enough time to consider their application (and support needs) before the proceedings are concluded.”

Dr B M: “The 26 week time limit is unrealistic, especially when the difficulties affecting the child/family, who may have been known to the local authority for many years, may be compounded by the failure of services. The court process may be the first time professional agencies are under as much scrutiny as the family are—and must live up to their promises.”

OTHER COMMENTS

6 comments related to the role of grandparents:

Anon Grandparents: “It matters for every child, where it is safe to do so, to have a loving relationship with their grandparents and extended family regardless of whether or not the grown ups around them, with the family have fallen out.”

PART 3: SPECIAL EDUCATIONAL NEEDS

Total published comments on this Part of the Bill: 407 (includes comments on this Part of the Bill which were made in the “Additional comments” section of the forum).

This Part of the Bill attracted the highest number of comments. Many of these related to the Bill’s perceived limitations of scope and concerns about its implications for children with particular needs. A significant number of responses made detailed comments about specific Clauses.

Comments on this Part of the Bill were particularly difficult to categorise accurately as they often made general points cutting across a number of Clauses, or it was unclear exactly which Clause was being referred to. For this reason no statistical breakdown of comments has been provided for this Part of the Bill.

General comments on Part 3

Many contributors felt that this Part of the Bill should encompass all children with disabilities and not just those with SEN:

Ron O: “I am especially concerned that the EHC Plans do not apply to children and young people who do not currently have an SEN statement. This misses a real opportunity for a more integrated approach across all disabilities.”

Antony M: “I believe all young people with disabilities should be supported, and find it difficult to understand why only those with Educational needs are offered the facilities on offer.”

Alan C: “I am deeply saddened to read that the Bill appears to indicate that only children with special educational needs, will be eligible to have an assessment and plan. This will miss out a very important group whom I met every day who have major health and social care needs but not major educational needs. This appears to be a step backwards, is unjustifyably “educationcentric”, and should be rectified if the Bill is to do what it claims.”

There were also concerns about the implications of the Bill for children who had been identified as having SEN but who did not qualify for an EHC Plan. Many of these comments related to children who currently receive support via School Action or School Action Plus, and a large number specifically mentioned provisions for children with dyslexia.

British Academy of Childhood Disability: “There is no detail as to how this group of children who are currently supported on School Action or School Action Plus stages will have their individual needs met or progress monitored. These children and young people are the overwhelming majority of those who have SEN and disabilities and this legislation must take them into account.”

Mary M: “It is unclear what support will be available for the very many children currently on School Action and School Action Plus. Whatever replaces this should be available to children in early years settings too. Early intervention makes a huge difference to educational and social outcomes.”

Claire D: The bill also ignores what will be done to identify and care for children who do not qualify for a EHC plan (similar to statements now). Most dyslexic children will not qualify for an EHC plan (ie. those on School Action and School Action Plus). It is very important to ensure that teachers are trained appropriately to help these children.
For more comments on the Bill’s approach to children with health or social needs please see the “Additional Comments” section on page p20 of this summary.

Clauses 25–26: Education, health and care provision: integration and joint commissioning

There was support for the principle of integration and joint commissioning but some doubt about how effective it would be in practice. In particular, a common refrain was that joint commissioning arrangements would be undermined by the lack of a statutory requirement for Health bodies to provide the support identified (this point was also raised in connection with the Clauses on Education, Health and Care Plans).

Kathryn M: “I am sure joint commissioning of services is likely to have a positive effect.”
Ron O: “I welcome the emphasis on a more consultative and joined up approach to provision but feel too much of this is aspirational and requires more accountability.”
Alex S: “There may be a new statutory duty on joint commissioning... However there is no legally enforceable way for any of the health and social care provision so commissioned to be provided under the EHC plans. Therefore it is a burden without benefit.”
Mary M: “I welcome more joined up working but am concerned that the Bill is weakly drafted. To be effective Health and Social Care should have a statutory duty to deliver the support mentioned in a child’s EHC plan, in the same way as education is.”

Clauses 30–32: Information and advice

This section, and in particular Clause 30 relating to the Local Offer, attracted a great deal of comment. The main issue raised was the requirement for a local authority to publish information about what services they “expect” to be available for children and young people with special needs, which was considered to be insufficiently robust.

Ms B and Mr D: “We believe that there needs to be a DUTY TO PROVIDE what is set out in the local offer. This will allow parents and young people to challenge local authorities if the local offer is not delivered.”
Andrew K: “The provisions on the Local Offer need to be strengthened as suggested by the Education Select Committee in December 2012. Merely requiring local authorities to set out what they “expect” to be available hardly amounts to a revolution in parental choice and control.”
Ramandaeep K: “My biggest concern is the use of the word “expect” with regards to the LA publishing a “local offer”... I’m afraid that we all have expectations but they are very rarely met in terms of SEN provision.”
Nesty B: “The Local Offer given by the LA does not appear to be enforceable but only needs to publish what it expects to be available. What if this is not sufficient for the child’s needs? Will the LA be able to say they cannot support a child.”
Ian N: “There should be a national offer, setting out basic minimum requirements that every child can expect to get. This is particularly important for deaf children where there is currently a massive postcode lottery.”

Clause 36: Assessment

This Clause was criticised for failing to set out minimum timescales for assessments to be carried out, with many feeling that it was a step back from the existing statutory timescales. Contributors also questioned whether assessments would be carried out with appropriate expertise. Some comments recognised that further details could be provided in Regulations.

Lesley H: “My worry is that Clause 36(3) will mean there is no time limit to assess a child’s needs meaning that there is a huge delay in receiving any help they are entitled to.”
Ian F: “I hope the Minister can provide reassurances that the Bill and Regulations would include: (a) clear timescales for local authorities to respond to requests for an assessment and (b) clear information on how EHC assessments should be conducted and how EHC plans should be set out.”
Linda P: “Parents respond very positively to the knowledge of the timelines for statutory assessment. It helps them to manage often very challenging circumstances at home. Parents’ anxiety could be increased if they do not know how long the assessment process will take. The impact of these anxieties will be felt by the child and could have an adverse effect on the child.”
Nesty B: “Loss of requirement for minimum level of professional evidence to be collected during the assessment process could make it very easy for LA’s not to ask for evidence from more expensive professionals such as Educational Psychologists.”
Dr Jill H: “The Bill removes: the requirement for LEAs to stick to time limits in which they must act; the requirement to follow a prescribed form of assessment ;and the requirement to collect a minimum
level of professional evidence. These changes to the current situation mean that LEAs will be able to delay making decisions about SEN for as long as they want and set their own agenda as to what provision they will make; this can only disadvantage children with special educational needs.”

**Clauses 37–49: Education, health and care plans**

A significant proportion of comments on Part 3 of the Bill related to the introduction of Education, Health and Care Plans.

Many users commented on the scope and application of EHCPs—these comments often reflected broader points about the scope and application of the Bill which have been covered under the “Additional Comments” section of this summary on p20).

The extent to which health and social care would be under a duty to make the provision set out in an EHCP was a key concern:

Louise C: “I am completely frustrated that yet again Education will be seen as the big brother and healthcare/social care will be the poor relation—why can we not have accountability from these two sectors? What is the point of an EHCP if we cannot enforce provision???”

Jonathon S: “I welcome more joined up working but am concerned that the Bill is weakly drafted. To be effective Health and Social Care should have a statutory duty to deliver the support mentioned in a child’s EHC plan, in the same way as education is. Our experience is that where there is no statutory duty it doesn’t happen.”

Ken: “There is a real risk the EHCP will simply become statements but known by another name. Why is there no legislation to ensure health and social care provision is provided the same way education provisions is... A real opportunity lost here.”

There was praise for the EHCP’s comprehensive 0–25 approach, but also some questions about what this would mean in practice:

Wendy M: “Does this apply to all ages? My son is in special school until 19, what happens after he reaches 19?”

J A: “Although the intention of the legislation is to support young people from the age of 0 to 25, there is some ambiguous language in the Bill which could give LAs the opportunity to avoid planning educational outcomes for the over 18s. Many of our younger learners desperately need those extra years to achieve. The language must be tightened up to ensure that the Bill’s aims are met and that those aged 18–25 are not let down.”

Libby H: “Clause 36: There is some mention here of young people over the age of 18, but I don’t think it’s entirely clear—and I hope it will be made absolutely clear—that local authorities should, in special circumstance, provide for people up to the age of 25.”

Several forum users commented on Clause 48 (Personal budgets):

Miss S: “Personal budgets are a good idea but depend upon an accurate assessment of need by the LEA in the first place.”

Jonathon: “We participated with our young child who has Down Syndrome in a pilot Personal budgets scheme with our LA. It was very good. They gave us the money and we spent it wisely and we accounted in detail for all expenditure. Then they took it away again and now we have to fill in endless forms, on a fortnightly basis to get respite.”

phil: “I remain unclear to what extent personal budgets would be used in securing educational provision... is it envisaged that a budget could be allocated eg for a family to employ a teaching assistant directly?”

Ian N: “Personal budgets come with a range of risks. I am most worried about the risk that a personal budget for some parents risks draining funding away from existing services. This would end up reducing choice for some. Clause 48 needs some safeguards on the face of the Bill to protect against this.”

Clive I: “I would want a lot more work to be done on personal budgets before implementing for two reasons—firstly some parents whilst wanting this provision may not be able successfully to broker in all the services needed—secondly personal budgets may mean that specialisms in place locally may no longer be viable if not used by all.”

Nicola G: “I am extremely concerned too about proposed personal budgets/direct payments... There would appear to be nowhere near enough evidence from the Pathfinders as to how they will work in practice. How will the bill ensure that a direct payment is sufficient to pay for provision?”
Children and Families Bill

Clauses 61—64: Special educational provision: functions of governing bodies and others

Most of the comments on this section related to the requirement in Clause 61 for governing bodies and others to use “best endeavours” to secure special educational provision, particularly in the context of dyslexia.

David B: “It was hard enough to get help for all of my dyslexic children under the current regime making it so that this is now a best endeavours requirement, seems like a completely backwards step.”

Inge H: “I believe that it should be the duty of the school and the local council to secure special educational provision for their students rather than simply use “best endeavours” which permits the school to sidestep its responsibilities to dyslexic students. Schools must provide—rather than simply try to provide—services for dyslexic children.”

PART 4: CHILDMINDER AGENCIES ETC

Overview

Total published comments on this Part of the Bill: 285 (includes comments on this Part of the Bill which were made in the “Additional comments” section of the forum).

Almost all of the comments in this section were from childminders who opposed the introduction of agencies. Some comments suggested that the contributor thought that childminders would be forced to register with an agency. Others recognised that registration with an agency would be optional under the Bill’s provisions, but were nonetheless opposed to the proposed changes.

Clause 73 and Schedule 4: Childminder Agencies

Independence

(71 comments) A recurring theme throughout the comments received was that childminders feared that agencies would lead to a loss of their independence. Comments emphasised that the flexibility, individuality, and control afforded by the existing model of self-employment was highly valued.

Sandra S: “I have worked really hard to become established with a brilliant ofsted grade... I am proud of my business and what it represents there is no way I will give all of this to an agency—an agency who will tell me, a self-employed person—how to run my business and in turn take all of the credit for my hard work.”

C M: “I certainly do not want to be told how to run my business by an agency and have to adopt their documentation. I am self employed because I can run my own business successfully and because I want to set my own terms and conditions.”

Daisy: “I have been a childminder for many years. I do not want to be part of an agency, I offer a tailored service to all my parents, I value my independence, being able to run my business for to best suit my parents and myself.”

Marie L: “Childminders build a very close personal relationship with the families they work with. The essence of making a child fell safe and secure (an essential basis for future learning) depends on this close bond forming—how will this be possible if the arrangements are carried out by a third party?”

Two-tier system

(19 comments) Some comments expressed concern about the introduction of a “two tier” system:

Tim H: “Childminder Agencies... will bring in a two tier system where low quality minders are stuffed to the rafters with children that are placed with them by a money grabbing agency, while high quality independent miders struggle to attract clients.”

Jackie N: “As an independent childminder, I am worried about the risk of a two tier system where the independent childminders are unable to access affordable training that is required by Ofsted.”

Duplication

(29 comments) Comments questioned whether agencies would duplicate, or replace, the role currently played by local authorities and other organisations. Most of these comments expressed satisfaction with the existing system and did not support change:

Kerry W: “What is it that an agency can offer that the local authority can’t?...perhaps it would be more practical to offer more support to the local authorities where they are struggling to support their Early Years workers”.

Karen P: “There are plenty of support networks currently in operation across the country notably through Local Authorities—these should be utilised properly and uniformly without the need to create an expensive and bureaucratic agency system.”
Rebecca M: “Most of the operations proposed for agencies are already adequately fulfilled by local authorities, the Family Information Service, Local cm groups, NCMA Local etc. Although support may be patchy and inconsistent in some areas I do not see how the creation of agencies would resolve this issue...Surely Government would be better looking at ways to strengthen existing services rather than demolishing them and starting again”.

Nikki R: “As far as I can see they [agencies] are replacing the role of the former Early Years teams...but instead of being free they are charging a fee.”

 Costs
(42 comments) Many contributors argued that the introduction of agencies would lead to increased costs:

Julia: “I feel that the introduction of childminder agencies would reduce parental choice and would make for a system of higher childcare fees for the parents as both they and the childminder would almost certainly be expected to pay for the running of these self-funded organisations.”

John E: “I and many other childminders are concerned that if we are to register with an agency and they take our fees for providing such services that costs to both ourselves and parents will be increased considerably.”

Margaret: “Using agencies to run childminders is just going to add a middle man to the process, how can that possibly reduce costs?”

 Ofsted grading process
(37 comments) Comments queried how inspections would work under the agency model and what implications there would be for the grading of childminders:

Tersia B: “I do not like the idea of being inspected as a group by an agency, this would mean that “lower” graded childminders could be graded higher than they really are and “Outstanding” childminders being downgraded due to other childminders.”

Gillian T: “I feel it is in the best interests of children for the actual provider to be inspected. Agencies will just dilute this process and there is a danger that less satisfactory providers will fall through the net.”

Carol: “I’m not going to risk my outstanding grade by joining an agency that will be graded on a few who could be only satisfactory and I’m not letting all my hard work give someone a grade they don’t deserve.”

Clause 74: Inspection of providers of childcare to young children
(18 comments) There appeared to be some confusion about this Clause, with some forum users appearing to believe that a fee would be charged for all inspections. Those comments which addressed charging a fee for inspections or re-inspections carried out at the provider’s request were generally supportive of the Bill’s approach:

Laura H: “I agree with this and it will help to improve quality, many providers want to make improvements and are capable of doing this, rather than waiting four/five years to be re-inspected.”

Neil B: “I agree with clause 74 around re-inspection fees and see this as a potential improvement to the current system.”

OVERVIEW

Very few comments were received on these Parts of the Bill. They have been briefly summarised below.

PART 5: THE CHILDREN’S COMMISSIONER

5 comments

Three of the five comments on this part of the Bill were from organisations (Save the Children, the British Humanist Organisation, and the Alliance for Reform of the Children’s Commissioner) and set out their detailed response to this Part of the Bill. The two comments from individuals related to the importance of promoting the existence of the Commissioner amongst children, and concerns about the victimisation of children whose parents make complaints to schools.
PART 6: STATUTORY RIGHTS TO LEAVE AND PAY

9 comments

Three of the comments in this section were strongly in support of the measures proposed in this Part of the Bill. Other comments raised concerns about the requirement for leave to be taken in blocks of one week and the perception that fathers could not take leave until six weeks after the baby’s birth.

PART 7: TIME OFF WORK: ANTE-NATAL CARE ETC

2 comments

Both comments in this section argued that the right to take unpaid time off to attend ante-natal appointments should not be limited to two appointments.

PART 8: RIGHT TO REQUEST FLEXIBLE WORKING

2 comments

Both of the comments in this section felt that the Bill would reduce the right to flexible working and were critical of this.

ADDITIONAL COMMENTS

OVERVIEW

Total published comments in this section (excludes those relating to specific Parts of the Bill which have been included elsewhere in this summary): 152

The web forum also invited forum users to submit additional comments on any Part of the Bill which was not covered elsewhere in the forum (in practice this was only Part 9: General Provisions), or on anything that they felt should have been included in the Bill, but had not been.

Many of the comments in this section did in fact relate to specific Parts of the Bill and have been taken into account when compiling the appropriate section of this summary. The majority of the remaining comments related to perceived omissions from the Bill, in particular the lack of provision made for children with health conditions which affected their schooling. A number of these related to specific health conditions such as allergies (44 comments) and diabetes (39 comments), and a further 51 comments made more general points about schools’ responsibilities for children with health conditions.

PROVISION FOR CHILDREN WITH HEALTH CONDITIONS

Kay R: “Most schools produce a health care plan but these are not rigorous enough. In my school, there is dispute over whose responsibility it is to complete the plan (GPs, nurses, teachers) resulting in a delay of action.

— School inspectors should look at how a school supports children with health conditions and what outcomes those children have, as part of well-being indicators. Health and safety for these children should be addressed by Ofsted.

— All school staff, even in high schools where numbers are high, are enabled to support children with health conditions through appropriate training and support. All staff should be made aware of who these vulnerable children are.

— NHS bodies and local authorities have a statutory requirement to help schools fulfil their responsibilities to keep these children safe, acting in loco parentis.”

(The comment above is representative of many others in setting out the specific requirements that it was argued should be included in the Bill)

Allergies

Maxine Z: “As a parent of a child with a nut allergy, it is essential that schools are required to have policies in place to care for children with allergies, the number of which are increasing each year. Staff need to be properly trained to deal with allergic children, not only with regard to handling medical emergencies but also to prevent allergic reactions occurring. In this regard, local authorities/ofsted should be placed under a legal obligation to advise schools as to the best practice for handling allergies and to monitoring that schools are adhering to these policies. Every child, whatever their state of health, is entitled to feel safe at school.”

Perry W: “My daughter has life threatening allergies. She has this school year started pre-school which has caused my wife and I untold anxiety as there is no standardised policies around allergies. We have visited local schools and their allergy policies are dependent on the individual beliefs and knowledge of the headteacher, which range from well informed to completely ignorant. The school she now attends
is supposedly ‘nut free’, however, staff are undereducated about allergy issues. School nut policy is not adhered to consistently. National policies are needed to keep allergy suffering children safe.”

**Diabetes**

Rebecca: “The Bill needs to be more inclusive of children with medical conditions in schools—particularly children with type 1 diabetes. Children are still being discriminated against; excluded from school and school trips; not being supervised with a potential lethal medicine because nobody wants the responsibility; care plans not being adhered too and the list goes on...More needs to be done regarding awareness for teaching staff and SEN to fully incorporate type 1 diabetes as an educational need as well”.

**Young Carers**

11 contributors commented on the lack of provisions in the Bill to support young carers:

Nikki P: “Where is the support for children who are caring for a parent or sibling with health problems? They miss out on education and social opportunities and can be adversely affected for life.”

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**Memorandum submitted by National Union of Teachers (CF 06)**

**Introduction**

1. The purpose of this memorandum is to provide a commentary from the National Union of Teachers (NUT) on the Children and Families Bill. The NUT is the largest teachers’ union representing over 300,000 members, including special educational needs co-ordinators (SENCOs), educational psychologists, inspectors and advisers. The experiences of these members inform the Union’s positions on the Children and Families Bill.

2. The NUT is part of the Special Education Consortium which is also providing evidence to the Bill Committee. Rather than replicate the arguments made by other organisations in its memorandum the NUT will set out some additional concerns and identify to members of the Bill Committee four key areas about the proposals relating to provision for children with special educational needs where we believe clarification or amendments would be useful.

**Overall view**

3. In the Next Steps ‘Green Paper’, the Government said that it wanted to remove the bias towards inclusion. In fact it has not done this in the Bill. The presumption in favour of a mainstream education is retained, and extended to academies and further education. This is welcomed by the NUT.

4. The Union believes the Bill preserves the right balance between making reasonable adjustments for individual students and allowing consideration of what school is the most appropriate educational setting for each student. It is right that there is a presumption that children will attend maintained nurseries and mainstream schools, including academies. It is right also that there is acknowledgment that local authorities need to maintain a continuum of provision to meet the full spectrum of need, including specialist provision, special schools and pupil referral units.

5. In practice, the focus should be on learning from the evidence about how to develop inclusive schools and how to deliver maximum co-operation between mainstream schools, special schools and alternative provision. The Department for Education (DfE) should consider outcomes and support for pupils with SEN and for disabled learners in all education policies, such as policies on class size, teacher training, curriculum and school infrastructure. The current proposed curriculum reforms appear to ignore the needs of children and young people with learning and emotional and behavioural difficulties.

6. The NUT is concerned, however, that the key background factors which undermine SEN provision are outside the scope of the Bill. In addition to the severe cuts to Local Authority services, there are other strategic issues which have, and will continue to have, a far greater impact on outcomes of children with SEN within the education system, such as:

- The funding reforms which will take effect in April 2013 will have an impact on funding for pupils with SEN. This impact is as yet untested and hard to predict;
- The high stakes nature of accountability measures which do not reward the contribution of schools to developing inclusive practice and penalise schools which have inclusive admissions policies; and
- The fragmentation of the education system and the focus on free schools and academies has replaced a partnership and collaborative approach with a focus on competition and independence; and

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13 The Special Educational Consortium came together in 1992 to protect and promote the interests of disabled children and children with special educational needs. SEC is a broad consortium of 33 professional, voluntary sector and provider organisations.

14 The Costs of Inclusion, a report by the University of Cambridge in 2006 on inclusion in schools.
— The impact of the inappropriate use of support staff on teaching of pupils with special educational needs—the increase in the number of teaching assistants and the inappropriate expansion of their roles has a negative effect on pupils' academic progress.

**Importance of School Action Plus**

7. School Action Plus gives schools the option to seek support from outside the school when they decide that agreed teaching strategies for an individual child are not working, or where the child is not making progress or the parent has identified issues. This is how the SEN Code of Practice explains what School Action Plus actually means:

“Outside specialists can play an important part in the very early identification of special needs and in advising schools on effective provision designed to prevent the development of more significant needs. They can act as consultants and be a source for in-service advice on learning and behaviour management strategies for all teachers.

At School Action Plus, external support services, both those provided by the LA and by outside agencies, will usually see the child, in school if that is appropriate and practicable, so that they can advise teachers on new Individual Education Plans with fresh targets and accompanying strategies, provide more specialist assessment that can inform planning and the measurement of a pupil’s progress, give advice on the use of new or specialist strategies or materials, and in some cases provide support for particular activities.”

8. This is an exposition of what good practice should look like. The DfE has not explained how it believes reducing co-operation between schools and LAs in meeting the needs of pupils with additional and often complex needs will improve outcomes.

9. The Second Reading debate revealed that Members of Parliament realise only too well the value placed by their constituents on access to speech and language therapists, educational psychologists and other specialist services. Access to these SEN specialist services is an essential plank of support to ensure early intervention, sharing of best practice and access to cutting edge research and knowledge.

**Personal budgets and direct payments**

10. The Bill at Clause 48 requires local authorities to prepare a personal budget in relation to an Education, Health and Care (EHC) plan where a request has been made by the parent, or the young person. This may include, in some circumstances, the making of a direct payment.

11. The NUT is concerned about the lack of evidence to support the introduction of direct payments. These proposals pose significant risks, which outweigh the potential benefits and may well not have the intended result of improving outcomes for children and young people.

12. Rather than increasing choice for parents, services may disappear because the funding will not be secure as it will not be possible to predict which services parents will buy into. The options which parents have will reduce because a lack of financial viability will mean the range of services will decrease. Services for low incidence SEN will particularly be put at risk. Rather than raise parental expectations, the Government should focus on the actual barriers which parents face and the factors identified by the Lamb Review into parental confidence which have not been addressed.

13. Clause 48, as presently drafted, gives the parent a statutory right to require the local authority to prepare a personal budget and make direct payments even in circumstances where the school does not want this or where it would not be justified in terms of efficiency or economy. It is not to disparage the contribution that parents make to recognise that their wishes may not necessarily be the best for their own children or reasonable in the context of an efficient and cost effective system for all children.

14. The concept of direct payments has been trialled under the SEN Green Paper Pathfinders. In the statutory regulations which enabled this, head teachers were given the ability to exercise professional judgement over whether students or parents could use personal budgets in relation to their school. This was sensible and demonstrated respect for professional expertise and judgement.

15. This requirement to seek agreement from the school/college to the use of a direct payment, referred to during the pathfinders as a ‘veto’ for schools, has not been carried forward into this Bill. The NUT believes that, at the very least, a school should have some say where they believe a direct payment may be used for provision which is inappropriate for a child’s needs. The Bill should also allow a Local Authority discretion to weigh up whether making a payment to one parent or child would threaten or jeopardise existing provision for that child or other children and parents because of economies of scale or other local factors.

16. In order to avoid exacerbating the existing postcode lottery and to help ensure greater consistency and transparency of provision across the country the NUT believes any regulations should set out clearly the criteria a local authority uses for deciding whether or not to make a personal budget.

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15 The impact of support staff on teachers, teaching and pupils, Institute of Education, P Blatchford and P Bassett, February 2013
17. Teachers are concerned that these proposals seem to question their professional judgement and the value of their many years of education and training. In evidence to the NUT\textsuperscript{16}, 65% of SENCOs were concerned about allowing parents to control funding for SEN provision.

“Parents’ views are crucial and should be heard but parents of pupils do not often fully understand the needs of their child within a school environment or know enough about teaching and learning strategies to make informed decisions.”

“I support parental choice and agree there should be some flexibility in the use of funding, but I am concerned about the quality and appropriateness of many alternative educational provisions which parents might buy and what systems would be in place to audit the use of delegated funding.”

\textbf{Special educational needs co-ordinators}

18. Clause 62 refers to a ‘member of staff’ rather than to a qualified teacher. Currently a SENCO is required to have qualified teacher status. Ensuring that SENCOs are teachers signals high expectations for pupils with SEN. It sends the vital message that SEN provision within schools should be co-ordinated by qualified teachers.

19. The DfE has indicated to the teacher and governor organisations that that the regulations will specify the prescribed qualifications for SENCOs and that the draft regulations will be made available for the scrutiny of the Bill Committee. A similarly welcome assurance has been given to the Education Select Committee. The Chair of the Committee, Graham Stuart MP said at Second Reading: “The Minister shares the Committee’s view that special educational needs co-ordinators should be required to be qualified teachers, and he has expressed his intention that regulations should make that a requirement in future”\textsuperscript{17}.

\textbf{Local Offer}

20. The DfE has given assurances that the entitlements of children and young people with SEN and their families will not be weakened by the passage of the Children and Families Bill or by the revision of the statutory SEN Code of Practice. The Minister, Edward Timpson, gave this assurance once again during the Second Reading debate on 25th February 2013.

21. Yet the Local Offer, as described in Clause 30 of the Bill, as drafted, will potentially be a significantly weaker and more narrowly defined duty on Local Authorities than the equivalent provision in the Special Educational Needs (Provision of Information by Local Education Authorities) (England) Regulations 2001.

22. The current 2001 Regulations set out what information Local Authorities must provide. This includes (among other things) a requirement to provide information about:

- the action the LA is taking to promote high standards of education for children with SEN;
- what action the LA is taking to encourage schools in their area to share their practice in making special educational needs provision for children with SEN;
- the general arrangements including any plans, objectives and timescales for monitoring the admission of children with SEN (whether or not they have a statement) to schools in their area.
- the general arrangements including any plans, objectives and timescales for providing support to schools in the area with regard to making special educational provision for children with SEN
- the general arrangements including any plans, objectives and timescales for auditing, planning, monitoring and reviewing provision for children with SEN in their area.
- the general arrangements including any plans, objectives and timescales for securing training, advice and support for staff working in their area with children with special educational needs.

23. The information listed in these bullet points is important for parents but it also enshrines a set of important principles in relation to education for pupils with SEN. It recognises that teachers need training, advice and support and that schools should work together and collaborate to share good practice.

24. Clause 30 of the Bill provides that regulations “may make provision about the information to be included in an authority’s local offer”. The NUT believes that the information listed in the 2001 Regulations needs to be collected and publicised by LAs. The Local Offer should carry this forward into the new framework.

25. The NUT shares the concern of the Special Educational Consortium that the Government needs to ensure that the framework created by the Bill will support and not in fact undermine consistency. The current statutory duties to publish information are essential and the Bill is an opportunity to raise awareness of them, not to replace them with a weaker ‘Local Offer’. The Local Offer should build on these statutory information duties and the principles which underpin them.

\textsuperscript{16} NUT survey of 187 special educational needs co-ordinators, 2011
\textsuperscript{17} Graham Stuart MP during Second Reading debate [Official Report: 25\textsuperscript{th} Feb 2013: Col 84]
CONCLUDING COMMENTS

26. It is hoped that Ministers will not attempt to rush decisions on reforms as significant as these. Any evaluation of the pathfinders must be independent, thorough and transparent, and properly involve parents, local authorities, teachers and other special needs professionals. There is a danger that if the pathfinders see the ‘writing on the wall’ and believe that the Government is going to go down this road regardless, then this is not a genuine pathfinder process—the pathfinders will not take risks or feel able to report where things have not worked or suggest that there is not a strong enough case to bring in some elements of these extensive reforms.

27. It is also vital that there is widespread and comprehensive scrutiny of the revised SEN Code of Practice because it is on the efficacy of this document that the new framework will succeed or flounder.

March 2013

Memorandum submitted Magistrates’ Association (MA) (CF 07)

The Magistrates’ Association represents the views and experiences of family magistrates sitting in Family Proceedings Courts (FPCs) in England and Wales. There are over 5–6,000 family magistrates selected from all backgrounds, age groups and ethnic groups. They are unpaid but receive special training for family court work. Sitting as a bench of three, family magistrates—with their legal adviser—make final decisions and orders for both public and private law applications.

The MA would like to present our views on how aspects of this Bill below will affect family courts in practice. Our views have been formulated from our specialist Family Committee, which contains representatives of family magistrates drawn from all over England and Wales.

CHILDREN AND FAMILIES BILL—SUMMARY

— Adoption—we feel there should be a provision in the Bill to have the child’s voice heard during the adoption process.
— Ethnicity—whilst ethnicity should not necessarily be an overriding consideration in a child’s adoption it is important that this should be given due regard.
— Contact—the court should continue to be able to consider contact arrangements on application from parties if they disagree with the LA position to ensure that the child’s best interests are protected and there should be a greater range of sanctions for parties who breach contact arrangements.
— Mediation—it is not clear in what circumstances the requirement for a mediation, information and assessment meeting would not apply and we feel the situation where domestic violence is involved should be specified within this Bill.
— Parental involvement—we support the principle of cooperative parenting but we believes that the current amendment is potentially damaging to children’s best interests as it appears to compromise the welfare principle by elevating the rights of parents.
— Timescales—we believe that 26 weeks for care cases should provide a reasonable target that does not tie the court’s hands. Based on the individual case, it is the responsibility of the court to decide length. We are also concerned that the proposal for specific extensions to this timescale for 8 weeks could create delays.
— Care plan—we feel the court should retain the ability to consider other aspects of the care plan than just permanence considerations where it is necessary in the interests of the child.

More detail on these and other points is below.

PART 1

Adoption

General comment:

1. There appears to be no provision for the rights of children in the adoption process to have their voices heard. This is especially relevant if adoption processes are being accelerated, which is generally in children’s best interests.

Clause 2: Repeal of requirement to give due consideration to ethnicity: England

2. The MA is concerned that while ethnicity should not necessarily be an overriding consideration, the repeal of this section would have the effect of prohibiting local authorities from giving proper consideration to ethnicity where appropriate as one of a number of considerations. Encouraging adoption from all sections of the community requires as much flexibility as possible in the context of the needs of each child and the ability of prospective adopters to meet those needs, but to exclude consideration of ethnicity could act against a child’s best interests.
2.1 We note that Section 46 says adoption agencies need to have regard to background relevant characteristics including racial origin.

2.2 We would like to see clearer guidance on the consideration of ethnicity as one of several factors in the process of adoption.

**Clause 4: Adoption support services: personal budgets**

3. Although it is not strictly for us to comment, the MA supports the insertion of a clause that enables LAs to prepare personal budgets. Agreed costs should be adequate in all cases.

**Clause 7: Contact: children in care of local authorities**

4. Ref (3)—amendment to 6A—

Section 34 of the Act refers to contact arrangements of a child in care. The court usually agrees the contact arrangements and indeed is required to consider the issue of contact.

4.1 Under 34.4 the Local Authority can refuse contact for up to 7 days, but thereafter it is a court order. The court should continue to be able to consider contact arrangements on application from parties if they disagree with the LA position to ensure that the child’s best interests are protected.

4.2 Consideration should be given to having a greater range of sanctions for parties who breach contact arrangements in these circumstances.

**Clause 8: Contact: post-adoption**

5. This reflects an increase in various types of post-adoption contact with birth families but consideration should be given to the consequences and sanctions for parties breaching post-adoption contact arrangements as this can have serious adverse consequences for children concerned.

5.1 We would suggest attaching a written warning, similar to that which already applies to private law orders under s8.

**PART 2**

**Family Justice**

**Clause 10: Family mediation information and assessment meetings**

Requirement to attend family mediation information and assessment meeting

6. Ref (1): The MA supports the overall objective of promoting the resolution of disputes away from court wherever possible. We therefore support the provision requiring the person who proposes to make the application to first attend a meeting to receive information about mediation and other means of resolving a dispute without going to court.

6.1 We believe this compulsory attendance should apply to all family cases including those that are not funded by legal aid.

6.2 We suggest that this proposal be evaluated by the Ministry of Justice in the light of the impact of the new restrictions on legal aid in private law cases that come into effect in April 2013. The evaluation should take place after the changes have been in effect for at least 6 months.

6.3 Some parties may have difficulties in meeting the cost of the MIAM and this may affect the requirement for them to attend so the impact of this should be reviewed after an appropriate period.

6.4 Ref (2) (a): It is not clear in what circumstances the requirement for a mediation, information and assessment meeting would not apply. This appears to be subject to the consequent Family Procedure Rules, but it is important to clarify these exceptions.

We feel the situation where there is evidence of domestic violence is so serious that this should be a specific exemption within the legislation.

6.5 It is important to be clear who has the power to decide whether the requirements have been met before a court application can proceed. The MA believes that this is a judicial rather than an administrative decision.

**WELFARE OF THE CHILD: PARENTAL INVOLVEMENT**

**Clause 11: Welfare of the Child: Parental Involvement**

7. Ref (2) proposed 2A: The MA believes that this amendment is unnecessary and potentially damaging to children’s best interests as it appears to compromise the welfare principle by elevating the rights of parents.

7.1 The proposed amendment about the presumption for involvement of each parent unless the child is at risk of suffering significant harm is unnecessary. There is already a general presumption that both parents should be
involved in a child’s upbringing. But there is a danger that the new provision could be interpreted as requiring some form of shared parenting in terms of residence.

7.2 Any shift in emphasis away from the paramountcy principle could cause problems for the court over the degree and amount of involvement. Representations could become very complex and could lead to an increase in contested applications.

7.3 In addition the amendments do not take into account parents who have not had a meaningful relationship with the other parent or the child. Under current legislation all circumstances are considered and a structured decision is reached in the best interests of the child—not the parent(s).

7.4 There is no need to change this current position. The MA therefore proposes that this amendment is deleted.

Clause 12: Child arrangements orders

8. The MA supports the replacement of residence and contact orders by the Child Arrangements Order to help focus attention on children’s needs and reflect the paramountcy principle and lessens the perception of ‘winners and losers’ in court cases.

Clause 13: Control of expert evidence, and of assessments, in child proceedings

9. The MA supports the principle in this provision that the use of expert witnesses has to be necessary to assist the court in resolving the proceedings and the provisions contained in Clause 13 which enable this. If the local authority pre-proceedings work and its application are well prepared the need for expert evidence is clearer.

9.1 We support the principle that the court should be in full control of the admissibility of expert evidence.

9.2 However, regarding the factors mentioned in Subsection 7 (g), including cost, the MA is concerned that placing too much emphasis on the cost of expert evidence could create difficulties and risk compromising the welfare principle.

9.3 While costs are an inevitable consideration, if the court deems that certain expert evidence is necessary to assist in its decision making, cost alone should not be sufficient to exclude that evidence and we feel that guidance to this effect should be made clear in the Family Procedure Rules.

9.4 (11) The MA supports the changes in relation to Section 38(6) assessments, with a similar requirement to be ‘necessary’.

Clause 14: Care, supervision and other family proceedings: time limits and Timetables

10. The MA supports the principle of the 26 weeks time limit for the majority of public law cases. However, there will inevitably be some cases where the best interests of children require that this time limit is extended.

10.1 We believe that 26 weeks should provide a reasonable target that does not tie the court’s hands. Based on the individual case, it is the responsibility of the court to decide length. We support a practice direction being issued with guidance for cases that would require completion in over 26 weeks.

10.2 (3) (7) We have no objection to the need for specific justification for any extensions beyond 26 weeks, but such justifications should not be prescriptive or exclusive, and allow courts sufficient flexibility in the circumstance of each case.

10.3 The parameters for deciding whether cases are exceptional and require extension beyond 26 weeks need to be set out in a practice direction to enable case management decisions to be made justly.

10.4 (3) (8) We believe that this provision should be amended to delete the specific time period for extensions, but to substitute a requirement that the court when granting an extension beyond 26 weeks does so only for a specific reason that is in the best interests of the child concerned, and that a timetable is set out accordingly, with a clear expectation of how long that extension is likely to be. Our reasoning and additional points on this are below:

10.5 The MA is concerned that the proposal for specific extensions for 8 weeks (or any other specified period) could create problems. In particular there is a risk of delay for possible contested hearings over such extensions focusing on the process rather than the substance of the care application. Any decisions on extensions should be firmly for the court to decide with the best interests of the child remaining paramount.

10.6 If applications are properly brought by the Local Authority with pre-proceedings work carried out and assessments done, it should be possible for the timetable for the child to be agreed so that exceptional and complex cases requiring longer than 26 weeks can be identified early on, if this is in the best interests of the children and would not be detrimental to their wellbeing. In such cases it would still be necessary to set an end date for the conclusion of the case based on the timetable for the child.

10.7 Hearings to assess any extension to the 26 weeks should be time limited to focus on essential matters only.

10.8 It is not clear whether there is a limit on the number of such successive extensions that can be granted.
10.9 It is unclear whether there will be a right of appeal against refusal and if so what would be the route of such appeals.

10.10 (4) The MA supports the proposal to end the 8 weeks limit on Interim Care and Supervision Orders in the context of the other new provisions. However, we are concerned that the inability of parties to challenge ICOs once they are made could lead to more contested ICO hearings.

Clause 15: Care Plans

11. Ref (1) (3A) (a) The MA agrees that the court is required to consider the permanence provisions of the care plan.

11.1 (b) However the MA is clear that the court should retain the ability to consider other aspects of the care plan where it is necessary in the interests of the child.

11.2 We therefore propose that this wording is amended to say that courts should consider the remainder of the care plan, where such consideration is necessary in the best interests of the child.

11.3 The provision that the court is ‘not required’ to consider other aspects of the care plan is too vague and could be interpreted to mean that the court should not do so.

11.4 In many cases the care plan, or one or more aspects of it, are crucial issues as to whether parents will agree (or at least not oppose) orders or fully contest them. If the court is excluded from any significant consideration of care plans, it could actually end up with more cases being fully contested and therefore add to delay rather than shortening proceedings.

11.5 Therefore, there needs to be a balance between courts not trying to micro-manage care plans, whilst taking into consideration aspects that go to the heart of the local authority application. Every case is different and should be treated on its merits with full regard to the paramountcy principle.

11.6 The MA supports the proposal with regard to the court’s consideration of contact arrangements.

March 2013

Memorandum submitted by Pete Bentley (CF 08)

OVERVIEW OF THE PURPOSE OF MY SUGGESTED AMENDMENTS

To ensure there is no ambiguity between that part of the CA 1989 which requires a LA to assist parents in parenting their children and the part which essentially requires a LA to consider permanency via adoption amongst other legal options.

To suggest that once a Court has made an Adoption Order no one should be able to apply to a Court subsequently for a contact order without the explicit written consent of the adopters of the child. This would protect adopters from the anxiety that a birth parent may apply to the Court for leave to apply for a contact order.

Note: The changes being proposed appear to some extent to be ‘rushed’. The adoption process is I suggest more complex than sometimes acknowledged by Michael Gove and Martin Narey. At this present time there are cuts in LA services (including services to assist birth parents including Sure-Start provision (see for example the speech by Lisa Nandy at second reading)). At the very least I suggest the Committee should obtain a view from an independent QC in respect of the wording of Clause 1 as to whether it is likely to be successfully challenged under Article 6/8 of the ECHR.

I have been professionally involved in adoption work for over 30 years, as practitioner, consultant, and Independent Chair of Adoption Panels.

The reference to clauses, pages and lines are to the clause, page and line numbers of the Bill as tabled at second reading.

SUGGESTED AMENDMENTS TO THE BILL

Clause 1

Page 1 Line 9: After ‘adoption for C’ insert ‘and have decided that a placement falling within paragraph (a) of subsection (6) would not be consistent with C’s welfare.’

Note: It is vitally important in my view to ensure there is a clear separation by the LA between their ‘helping parents’ function and ‘considering a child for adoption’—The Adoption and Children Act 2002 deals with this fundamental issue (because Adoption, without the agreement of the birth parent, is in the words of at least one member of the judiciary a ‘draconian’ step) by the need for the LA to obtain a Placement Order from a Court. The birth parents are entitled to ‘due process’ which in my submission cannot be achieved in an administrative way by a LA—it requires a Court Order and as presently worded I believe that clause 1 will fall foul to Article 6 and 8 challenges.
[The Minister at second reading said (Col 50): The fostering for adoption clause will require local authorities to consider a fostering for adoption placement as soon as they are considering adoption for a child, but local authorities must make the most appropriate placement available, which may well be a kinship care placement.

The Government recognise the importance of family members in taking care of children who cannot live with their parents, and we are aware that a child brought up by a family member benefits from living with someone they already know and trust, rather than a stranger. We stand by the measures in the existing legislation: the Children Act 1989 requires local authorities to seek first to place children with their wider family, and the Children and Young Persons Act 2008 strengthened that requirement. That is why section 17 was amended in April 2011 to make it easier for local authorities to provide regular and long-term financial payments to families caring for children, where they assess that to be appropriate. That is also why the Department has funded the Family Rights Group by £93,000 a year since 2011 and why it will award it two further years of funding in our voluntary and community sector grants in April to help further the role of family group conferences.]

Note: I don’t believe Clause 1 as currently drafted reflects the intention of the Minister as quoted above.

Page 1 line 12: delete ‘subsections (7) to (9) do not apply to the authority ‘and replace with ‘subsections 7(b),7(c),8(a), 8(b) and 9 do not apply to the authority’

I suggest 8(c) is reworded in relation to its effect in respect of Clause 1 to allow for ‘regard to be given to C being placed for adoption with a sibling if in C’s welfare’ (rather than 8(c) not applying at all).

Note: The following quote from the Guardian summary of on-line comments (in relation to adoption reforms, published on March 1st) at http://www.guardian.co.uk/social-care-network/2013/mar/01/adoption-reforms-discussion-roundup caught my eye as I was writing this submission:

“It was far better for me to wait in a loving, stable foster placement for that bit longer and to be placed with at least one of my siblings, than for me to have been adopted more swiftly but have lost absolutely everything but my first name.”

I suggest 8(d) should not be dis-applied (dealing as it does with the needs of a child with a disability).

Clause 2

I suggest adopting the solution advocated by the House of Lords Select Committee on adoption legislation for the reasons they give, ie deleting Section 1(5) of the Adoption Act 2002 but including the words ‘religious persuasion, racial origin and cultural and linguistic background’ as part of section 1(4)(d) of the 2002 Act.

If clause 2 remains as printed then I would suggest there may be a contravention of the UN Convention on the Rights of the Child, Article 20(3) of which states: . . . ‘due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background’ and in addition article 30, I suggest, has relevance.

Clause 3

Serious consideration should also be given to deleting the whole of Clause 3 for the reason given by the Ex Minster Tim Loughton at second reading (Col 115):

Where I take issue with the Government is on recruitment. We desperately need to recruit more prospective adopters. We desperately need voluntary agencies to recruit more adopters, but it is too early to compel local authorities to take away the responsibility for recruiting adopters. It has been only a year since the adoption scorecard came out. They are three-year track records, and they are always retrospective. We need to give local authorities a greater chance to show that they can recruit more adopters and work in partnership with voluntary agencies.

If the clause is retained then I suggest:

Page 2 lines 30 to 32: Delete references to 3(b) and 3(c).

Note: [I hope I’m wrong but I believe 3(b) and 3(c) give rise to a suspicion that attempts will be made to privatise some aspects of adoption by subsequent secondary legislation ie avoiding the full scrutiny of parliament. The message 3(c) sends to LA’s I suggest could also mean the loss of a great deal of morale amongst many many social workers who are giving an excellent service to potential and future adopters at the present. Great care must be taken not to castigate LA’s just because there is a deficiency of adopters without detailed evidence based research on their overall ability, under the legislation, to fulfil the totality of their adoption functions.]

Clause 4

Page 3 line 1 to 3: Delete the words ’if asked to do so’ and the rest of lines 2 and 3.

Note: [There is at present frequent omission of, and sometimes inaccurate, information given to adopters. The LA will in any case only have to prepare a personal budget if they decide to provide post adoption support services—I suggest if they do decide to provide then preparing a personal budget should be mandatory. I regret that the Bill does not provide a duty on LA’s to provide post adoption services if they have assessed the need for those services.]
Clause 6

I suggest an amendment requiring the maintaining of two parts of the Adoption and Children Act Register. One relating to children subject to a Placement Order (ie that a Court has directed that the child be placed for adoption) and a second part relating to children where the LA are ‘considering Adoption’ for the child under clause 1 of the Act. This would lessen the risk of potential adopters being confused about the exact legal status of a child, in particular as to his or hers ‘legal availability’ for adoption without risk of a legal challenge.

Page 5 line 6: delete the whole of (5).

Note: If the Government is intent of making available as fully as possible details of children waiting to be adopted I consider that the payment of a fee can only reduce the usefulness of the Register and may mean that those who can afford the fee will have access to more information about waiting children than those who can not afford the fee, which I assume is not the intention.

Clause 8

Suggest the whole of this Clause be reconsidered to reflect that after making of an adoption order the Adopters have sole responsibility for decisions about who the child has contact with without any form of court oversight or interference. After all if the adopters are not capable of doing this then the adoption order would not have been made in the first place and maybe a Special Guardianship or Residence Order would have been more appropriate. This would align the legal status of adopters to be the same as other parents in the community and not mean that they see themselves as in any way inferior to other parents.

Page 6 line 31: Delete ‘one year’ and insert ‘four months’

Note: [to allow for cases where eg a foster carer has cared for the child during their very early years]

Page 6 line 40: delete the whole of the wording of (a) and replace with ‘any risk there might be of the proposed application disrupting the child’s life in the view of the person who has applied for the adoption order or whose favour the adoption order has been made and for whatever reason they believe it to be true.’

Page 7 line 5: delete ‘one year’ and replace with ‘four months’

March 2013

Memorandum submitted by Fatherhood Institute (CF 09)

BRIEFING RELATING TO PARENTING LEAVE PROPOSALS WITH SPECIAL REFERENCE TO FATHERS IN THE CHILDREN AND FAMILIES BILL

A. BACKGROUND

Why parenting leave design matters

Paternity and parental leave are central to involved fatherhood and involved fatherhood is central to gender equity and family stability. Without fathers’ full participation as caring parents, women will remain financially and socially disadvantaged. Parenting leave design signals our expectations about ‘who does what’ at home and at work. Researchers in Sweden have shown that for every additional month of leave taken by a father, his partner’s annual income increases by 7%.

The first 2–3 months of fatherhood can affect the way that a father relates to his child for the rest of their lives and the taking of parenting leave by fathers is good for the whole family. UK fathers who take paternity leave are 25% more likely to change nappies and 19% more likely to get up to babies at night than those who do not; and an EHRC survey in 2009 found that 69% of fathers who took paternity leave said it improved the quality of family life. Among cohabiting couples with newborns, both parents’ beliefs that father-involvement is important plus fathers’ actual involvement predict relationship stability. Conversely, low father involvement is associated with high levels of women’s anger at their partners and low satisfaction among fathers. All of this, as well as low father-involvement, is damaging to children.

The UK’s leave arrangements (52 weeks maternity leave reserved for mothers, 2 weeks paternity leave reserved for fathers) are among the most unequal in the world. A recent review of leave in 33 countries found the average length of post-natal maternity leave to be between 3 and 4 months; only four countries (including Ireland and the UK) have maternity leave of 6 months or more. Progressive countries, as in Scandinavia, tend to have very short maternity and paternity leave (two weeks in Iceland and Sweden) and long parental leave (divided into quotas for dads, mums and ‘shared’). The UK’s leave is unusually poorly paid, well below the national minimum wage at a ‘flat’ rate (currently £135.45 per week), except for the first six weeks of maternity leave which are paid at 90% of earnings. The UK spends far less on parenting leave than comparable countries: (UK: 0.15% of GDP; Germany: 0.32%; Norway: 0.47%; Sweden: 0.67%).

Even the ability of parents to share leave is severely constrained in the UK: currently, a mother who had decided not to use all her maternity leave may transfer a maximum of 26 weeks (13 paid at the low rate, 13 unpaid) to her partner from the 20th week after the birth, provided she has begun work. This leave is known
as Additional Paternity Leave (although, in fact, it is a form of transferable maternity leave). This system was instituted almost two years ago. Likely take-up was originally estimated by the government at 10,000–20,000 fathers per year (around 2%). Exact figures are not known but are likely to be much lower than even this low estimate, due partly to current financial pressures on families, partly to widespread ignorance about the scheme (it was never widely publicised) and partly to the fact that eligibility for this leave relies on both parents having particular work records. This rules out more than 50% of new-parent-couples.

Parental leave in Modern Workplaces

Almost two years ago (16 May 2011) the Government published a radical document—the Modern Workplaces consultation—https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31549/11–699-consultation-modern-workplaces.pdf. This proposed that from the 18th week after the birth maternity leave was to become flexible parental leave. Central to the European definition of flexible parental leave is that it is an ‘individual’ right: that is, a parent’s eligibility to take it depends only on their own work record and not, as in Additional Paternity Leave (described above), on their joint work records.

As with flexible parental leave, both maternity leave and maternity leave are ‘individual’ rights: a father or mother is eligible for that leave, whatever their partner’s work status. This means that most working mothers and fathers are eligible. This would also be the case with flexible parental leave: as an ‘individual right’ it would be available to the great majority of new mothers and fathers.

One of the key elements of flexible parental leave as set out in Modern Workplaces was that it was to truly flexible: the leave was to be able to be taken part time, offering mothers the possibility of a phased return to work and couples the possibility of a father and mother each caring for their baby part-time in a week and working at normal salary the rest of the week. This could give employers the flexible workforce they need and families the employment flexibility they need. It could also have reduced the time that mothers were fully absent from the workplace (which has such a devastating impact on their later earning power) and encouraged fathers to take ‘sole charge’ of their infants (the best way of developing self-confidence and skills). Furthermore, because the ‘working’ part of any week would be paid at normal wage level, it is likely that more fathers would feel able to afford to take leave—and therefore would take it. This would have ushered in the longed-for cultural change of re-defining early parenting as a joint, rather than a maternal, responsibility.

To further encourage take-up by fathers, Modern Workplaces proposed an additional paid month’s leave within flexible parental leave which was to be reserved for father’s own use: if the father didn’t use this reserved ‘daddy-quota’ the family would lose it. In other countries a ‘daddy-quota’ has been found to be an important element in encouraging dads to take leave. So that mothers would not lose any of their entitlement, Modern Workplaces proposed the addition of this paid quota to the existing 41 weeks of paid leave in the first year, giving families an entitlement of 45 paid weeks over that period: 20 (maternity leave) reserved for mothers alone and 6 (paternity leave plus the parental leave ‘daddy quota’) for fathers alone. The remainder was to be available to either parent to take alone, or to divide between them.

As the consultation continued . . .

All this was not to be. As the consultation continued, there was strong opposition to the Government’s proposals from employers, trades unions and, bizarrely, from some ‘women’s’ organisations. These last, funded by trades unions and employers, mounted a campaign to keep all the leave as maternity leave. Sharing (ie transferring maternity leave) was to remain in the mother’s gift, although she, too, would not have a free hand: she would be forbidden from transferring the first six months of her leave. In essence, what these organisations argued for was to keep the existing Additional Paternity Leave system. Other than their two weeks paternity leave, there was to be no individual entitlement to parenting leave for fathers, whose eligibility to take such leave would continue to depend on both their own and their partner’s work records. The Fatherhood Institute, together with academics and other concerned individuals, including some active feminists, argued against this, saying that mothers had nothing to fear and everything to gain from the Modern Workplaces proposals: under these, mothers would retain the right to take the full 52 weeks’ leave if they so wished, while benefiting from the ability to share with their partner and the flexibility that flexible parental leave would offer. However, this perspective was overwhelmed by the well-funded campaign against the changes—and the Government capitulated.

B. THE REVISED PROPOSALS

The Government’s compromise proposals have now been published as part of the Children and Families Bill, currently receiving its second reading in the Commons, due next in the Lords and expected to be law by the New Year with introduction of most of the legislative changes from 2015. The proposals relating to fathers are:

Shared Parental Leave: Clauses 87 & 89 of the Bill introduce what is to be known as Shared Parental Leave and Pay. This is not the same as flexible parental leave because fathers and mothers will not have an individual
entitlement to it based purely on their own work record. The parents eligible to take Shared Parental Leave and Pay will be couples where both partners are economically active, meet an earnings requirement and are employees with 26 week’s service prior to childbirth. At a stroke, this rules out more than half of new parents, with fathers even more excluded than mothers since self-employed/casually employed dads are to be left out and the leave is not a ‘Day One’ right for them as it is for mothers. The proposed new scheme remains essentially the same as the existing Additional Paternity Leave system, with a few positive ‘tweaks’:

- The ‘transfer’ of leave from mother to father can happen from 2 weeks after the birth instead of 20 weeks
- Mother and father can take the leave at the same time
- There is a tiny bit of flexibility: unlike Maternity Leave, which has to be taken in one continuous ‘block’, Shared Parental Leave can be taken in blocks of one week (so a parent could be off on parental leave one week, work the next, then take another week on parental leave, and so on. Even this bizarre working pattern (which has been described as ‘disruptive’ rather than ‘flexible’ working!) would not be a ‘right’: it can only happen if the employer agrees.

Furthermore, the revised scheme does not allow for parents to take their leave part-time. This rules out the possibility of a phased return to work for mothers. It also stops eligible fathers and mothers using parental leave to ‘box and cox’ work/daycare over a working week, while receiving parental leave and pay on their ‘at home’ days. The inability of the new proposed system to deliver a parenting leave that can be taken part-time by either or both parents is puzzling. This would not be opposed by any of the stakeholders. Allegedly, it is HMRC that is making this impossible, with their system of ‘statutory benefits’ only able to be taken by the week, not by the day. If this is the case, it is extraordinary that Modern Workplaces made so much of the possibility of parents’ sharing leave by the day rather than the week. That document would surely have been checked by HMRC before publication.

We want the bulk of leave in the first year to be able to be taken by either parent, irrespective of their partner’s employment record. Eligibility should rest on each parent’s work record alone and HMRC should be challenged to find a way of making possible part-time working plus part-time use of parental leave.

Independent rights for fathers

Under the new proposals, there is to be no additional ‘daddy quota’ leave. Fathers’ only reserved ‘daddy quota’ remains their existing two weeks paternity leave. This leaves the UK in the position it was in before Modern Workplaces was mooted, with one of the most unequal leave entitlements in a modern jurisdiction: 52 weeks for mothers, 2 weeks for fathers.

The government has indicated that it will seek to bring in a period of reserved paid leave for fathers when the economy has ‘properly recovered’. They plan to do this by extending paternity leave (ie leave taken near the birth, generally while the mother is still at home) rather than by reserving for fathers any element in paid parental leave (which could be taken later in the year when the mother is far more likely to have returned to work). Because paternity leave is a father’s individual right (and is not dependent on the mother’s work record), far more fathers would qualify if an additional ‘daddy quota’ were part of paternity leave rather than of shared parental leave, in which—as already pointed out—fewer than 50% of fathers will be entitled to participate. However, if the ‘daddy quota’ can only be taken within the first twelve weeks (which will be the case if paternity leave is extended), most mothers will still be at home and it will not make financial sense for most fathers to take it. This means uptake will be minimal and cultural change slow. Within a system of flexible parental leave in the first year, with each parent’s eligibility based solely on their own work record, we want—one of the arguments against restricting child benefit to less-well-off couples was that HMRC would find it difficult to administer. They have managed.

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21 Acutely aware of this limitation, the Government is struggling to allow some kind of flexibility through providing KIT (‘Keeping in Touch’) days which would enable parents, if their employer agreed, to work part time for a short period while still receiving their parental leave payment. However, that payment could not be taken part-time and the burden on both employers and parents of trying to understand the system let alone administer it would be enormous.

22 Where there is a will, there is a way: one of the arguments against restricting child benefit to less-well-off couples was that HMRC would find it difficult to administer. They have managed.
Ante-natal appointments: Clause 97 introduces a right for fathers and partners (including some intended parents in surrogacy situations) to take two unpaid half days of leave to attend ante-natal appointments with their pregnant partner, with the ability to complain to an employment tribunal if leave is refused. This small step is welcome. However, for this leave to be paid would be preferred (the ‘burden’ on employers would be miniscule) while the proposed time frame (6-and-a-half-hours per appointment) seems unduly restrictive and will require primary legislation to amend. In some circumstances it would be unreasonable to take six and a half hours for a local appointment; in others where, for instance additional scans or specialist appointments far from home are required, the six and a half hours may be insufficient. We would prefer to see this leave paid, and fathers given access to “reasonable” time off (which Regulations could describe in more detail) with the restriction on the amount of time per appointment removed.

Modern Workplaces states that ‘the NHS encourages mothers to invite their partner to attend appointments if they would like support.’ We are not aware of any guidance to that effect and are all too well aware of variability in practice, including active exclusion of fathers in some settings for no good reason. GPs should be required to include the father’s name on the referral form, where this is safe; and maternity services required to invite fathers to at least one ante-natal appointment, provided the mother wishes this. Maternity services should also be required to record the father’s name and contact details, where these are known, on the mother’s care plan and look at offering appointments at times when employed fathers and mothers will find it easier to attend.

Time off for adoption appointments: Clause 98 introduces this to enable adopters to meet with the child before placement. But this system, too, is highly gendered, with no justification: neither parent is giving birth. The legislation allows for the ‘primary’ adopter to take paid time off for up to five adoption appointments. The ‘joint’ (ie secondary) adopter will only be able to unpaid take time off to attend two appointments. Weirdly, in surrogacy, the primary/joint status of the parents disappears: both women and men using a surrogate will only be entitled to unpaid time off to attend two ante-natal appointments with the mother who is carrying their child. The same time-restrictions for the ‘secondary’ adopter’s attendance apply and may be particularly problematic: six and a half hours may not be enough to travel across the country to meet and bond with a child or to visit a surrogate mother, and these issues would be better set out in regulations than on the face of the Bill, so that they can be amended as needs are identified and as employment practices change. Adoption and surrogacy require particularly high levels of parent-cooperation and it is ludicrous to treat one adopter as primary and the other as secondary when neither is giving birth. We would like to see adopters able to share all leave and to have equal entitlements to substantial, paid pre-birth connections with the child they are adopting or with the pregnant surrogate.

Remuneration: The current flat rate of pay for parenting leave in the UK (well below the National Minimum Wage, as already pointed out) will only be up-rated in line with other benefits by 1% until 2016, meaning a fall in value in real terms. Demos has found that half of the 27% of eligible fathers who do not take paternity leave let it slide because they cannot afford to take it; many more will feel unable to take longer leave (whether as Shared Parental Leave or extended paternity leave) if this continues to be paid at such a low rate. It is in fact scandalous that only the first six weeks of maternity leave are paid at above this rate, undoubtedly forcing some mothers to return to work before they are even physically ready. High take up of parenting leave by fathers will only happen if remuneration makes this viable. Fathers who take leave should be paid at 90% of wages for the first six weeks and statutory pay levels for maternity, paternity and parental leave should be at least the National Minimum Wage.

C. The Future

It is difficult to know how to proceed. The minor changes which are proposed in the legislation under review move more or less in a positive direction; and substantive modifications to this legislation are unlikely to be made during its progress through parliament. It is in fact possible that, in continuing with 52 weeks’ maternity leave and 2 weeks’ paternity leave, the UK is in breach of equalities legislation in Europe. It may well be that a Judicial Review should be sought.

March 2013

Memorandum submitted by the British Association for Adoption & Fostering (CF 10)

Introduction—Best Practice in Promoting the Development of the Child

Clause 1—Fostering For Adoption

Child development is deeply embedded in the relationships that the child establishes with their parents. These relationships quickly become highly selective over the first 6 months of the child’s life. The continuity of those relationships should only be disrupted in the most extreme of circumstances although that is precisely what happens when a child is placed in local authority care. It must be a driving principle to minimize the time it takes to re-establish a parenting relationship for the child whether that is with the birth parents, other family members or alternative non-related carers. Ensuring the framework for doing so is timely and on the side of the child is the focus for many aspects of the Bill.
Currently many children wait too long in temporary care where they develop significant parenting relationships with their temporary carers only for these to be disrupted sometimes after many months or years and sometimes where a number of these relationships have been disrupted. The consequences for the child and for their new carers are profound. The reasons for this are usually a combination of complexity of the issues to be resolved by the local authority and the court in respect of the originating reasons the child became looked after—abuse and/or neglect.

Where adoption is the proposed plan for the child, there are particular issues where the issues centre on the legal severance of the child from their birth family—a state act of major significance. It is a central principle of the current law that only the court can authorise the action of a local authority to place a child for adoption without parental consent and that the local authority should not take any action that might anticipate the judgment of the court. This usually results in lengthy sequential planning for the child—temporary foster care placement(s), court decision, family finding, placement and then adoption order.

Reconciling the need for the child to be placed in a timely way and the resolution of the complex issues by the local authority and the court is challenging and it is the latter that has been given priority with the child being expected to carry the developmental burden this imposes.

One solution to this complex issue has been the use of concurrent planning. Here the child is placed with foster carers who are also approved as suitable to adopt. The plan is to pursue the rehabilitation of the child back to the parents, with the foster carers fully supporting that plan. If that plan does not succeed and the court agrees the adoption plan, then the foster carers become the child’s adopters without any disruption to the child. Concurrent planning has been in operation on a very small scale since the late 1990’s. Its potential has been recognised again more recently with a renewed interest in introducing it into common practice. However, it is important not to underestimate the expertise it takes to implement concurrent planning properly.

A second solution has been explored where, because the circumstances of the birth parents are such that the local authority does not have an active rehabilitation plan, the child is placed with foster carers who are also approved as suitable to adopt. Where the court authorises the placement for adoption, the foster carers become the child’s adopters. There are individual examples of such practice especially where the child is the second, third or more of the birth parents and their circumstances evidence no change. As with concurrent planning, it is important not to underestimate the expertise it takes on a system wide basis to implement foster for adoption properly.

The British Association for Adoption and Fostering have supported the government’s proposals to develop both concurrent planning and foster for adoption as it is a strong and appropriate re-alignment of a system that has not sufficiently been on the side of the child. However, BAAF is concerned that clause 1 is not ‘fit for purpose’ as currently drafted. In particular BAAF is concerned that the clause is confusing, if not misleading, in seeming to privilege fostering for adoption placements over all other placements options. It is not necessary for this to be so and our proposed amendments suggest a solution that would retain the proper exploration of all placement options and support the lawful and the effective development of foster for adoption placements.

**Option 1—Delete the clause**

The law as currently drafted supports the use of concurrent planning and foster for adopt type placements. As such it could be argued that primary legislation does not need any further amendment. However, there is no doubt that there are continuing issues about whether such placements breach Article 6 and 8 rights and whether they create a *fait accompli* where the court is faced with a placement that has already become established and indeed decided by the local authority in breach of the principles of the Adoption and Children Act 2002. The resolution of these difficulties rests more in the lawful and proper introduction of these placement options into local practice where stakeholders understand the objectives and principles of the scheme. The clause as proposed in the published Bill does not resolve these issues by itself and as noted above creates other serious problems.

However we believe the proposed clause as written is not fit for purpose and an amendment that establishes an appropriate framework for foster to adopt type placements is necessary. Below we have suggested two possible options which would either replace or amend the clause.

**Option 2—Delete the clause and replace with the following clause**

‘The local authority has a duty to consider as a part of the permanency plan for C, placement with carers who could become the child’s permanent carers where this is in C’s best interests.’

This clause has the advantage of giving a specific direction of travel for the local authority in keeping the child’s needs for a permanent placement firmly on the agenda. It also has the advantage of supporting all placement options as set out in Section 22C of the Children act 1989 and the legal options of Special Guardianship, Residence Orders, long term foster care and adoption. Indeed in Special Guardianship, it is the case that such carers may be approved under existing specific regulations as foster carers prior to the making of the Special Guardianship Order.

It may be argued that ‘a duty to consider’ is an option that may be too readily ignored in practice. However, secondary legislation and guidance can specify how this duty must be demonstrated even if the option is discounted as not in C’s best interests.
**Option 3—Amendment to the clause as published**

Page 1, line 9

After ‘adoption for C’ insert ‘and are satisfied that a placement falling within paragraph (a) of subsection (6) would not be consistent with C’s welfare’

Page 1, line 12

Delete ‘(7) to (9)’ and insert ‘(7)(c), (8)(a) and (9)’.

At second reading the Minister indicated that the Government does not intend to alter the local authority’s duty to give priority to a kinship placement for a child just because it is considering adoption. Clause 1 as currently drafted, however, disapplies subsections (7) to (9) of s 22C of the Children Act 1989 when a local authority ‘are considering adoption’ for a child. Subsection (7) (a) is the section which requires a local authority to give preference to ‘a placement falling within paragraph (a) of subsection (6)’—ie with a person who is a relative, friend or other person connected with the child, and approved as a local authority foster carer. If this is disapplied, the local authority will no longer be required to regard such a placement as a priority, even at the point where adoption is only being ‘considered’—ie possibly long before the time when a decision is made that adoption is the best outcome for a child.

This suggested amendment would clarify that kinship placements should be looked at first, but would still ensure that local authorities considered the possibility of a ‘fostering for adoption’ placement where appropriate. It would also require the local authority still to try to place the child with his or her sibling, if the local authority is looking after the sibling, (by leaving section 22C(8)(c) still effective) and it would remove the very puzzling provision inserted by the Bill by which s22C(8)(d) is negated when the local authority considers a fostering for adoption placement. S22C(8)(d) requires the local authority to ensure that, if the child is disabled, the accommodation they choose is suitable for the child’s particular needs; it is not easy to understand why this requirement should not apply to a fostering for adoption placement as much as to any other.

**SUMMARY**

The British Association for Adoption and Fostering fully support the further development of placement practice to ensure that in appropriate cases children are placed in a timely way with carers who are or could become their parents. The system as a whole needs to move more firmly towards recognising the position of the child and the fact that he or she must not carry the burden of adult or system inertia or hesitancy. But it must do so in a way that is fair and just and retains the confidence of society as a whole. The currently published clause does not do this but we believe that the three options proposed could in slightly different ways do exactly that.

March 2013

**Memorandum submitted by The Fostering Network (CF 12)**

1. The Fostering Network is a charity and a membership organisation which brings together individuals and organisations involved in providing foster care across the UK. We have approximately 57,000 individual members and nearly 400 organisational members—both local authorities and independent fostering providers. Our views are informed by our members, as well as by research. In this way, we aim to be the voice of foster care. Our core purpose is to ensure that the best possible care is delivered to children who are fostered; this means that legislation and policy, and relevant practice within the system, must meet the best interests of the individual child. We advocate for a system which works well for children in care and for foster carers and fostering services.

2. The Fostering Network is convinced that improving arrangements that lead to the best long-term future for children in care is of the utmost importance. We therefore welcome the Government’s intentions to make improvements to the adoption system. However, we believe that the range of permanence options needs to be strengthened as part of this reform; to prioritise adoption above the other options can have unintended consequences which can undermine the other options. Securing a permanent placement for every child in care that meets their unique needs should be our ambition, regardless of whether this is secured through a return home, a special guardianship order with a relative or foster carer, or a long term permanent foster care placement. It is from this perspective that we offer a number of observations on the bill.

3. **Fostering for adoption** addressed in clauses 1 and 6 of the bill. The Fostering Network has no objection to the basic principle of fostering by prospective adopters in those cases where this is best for the child, and we share the concern that it is undesirable for children to experience unnecessary moves prior to forming attachments with a long-term carer. Indeed many foster carers go on to adopt a child in their care, and we believe they should be supported to do so—where this is consistent with the child’s welfare. However the proposal does carry the risk of subverting the role of the foster carer before a decision is made by the court, which is to support the child to make the transition to whatever long-term plan is decided for the child by the local authority and the courts, and to facilitate contact with family, and continuity of schooling and community contact where this is deemed to be consistent with the welfare of the child.
4. The Fostering Network has serious concerns about the provisions of the bill as currently drafted. We strongly oppose the proposals to introduce fostering for adoption before the local authority has decided that adoption should be the plan, and whilst adoption is merely being considered alongside other care options such as return to the birth family or placement within the wider family, or indeed long-term foster care. If the Government is minded to reinforce fostering for adoption in law this should only apply after the decision has been taken by the local authority that the child should be adopted (whilst a court decision is awaited). The Government’s proposal issued in March 2012, on which public consultation was based, was that fostering for adoption placements would take place after the local authority has decided that adoption is the right course for the child, but before the court has confirmed the decision (Department for Education, Action Plan for Adoption: Tackling Delay, paragraph 59, page 25). We note that as recently as 4 December 2012 Edward Timpson MP, Under-Secretary of State, told the Select Committee on Adoption Legislation that this was the Government’s position (See Select Committee on Adoption Legislation, Oral and Written Evidence, p.516).

5. However, we would have concerns even if fostering for adoption were available at this later stage of decision making. Members of the extended family who could potentially act as carers are frequently not identified until care proceedings are already underway. This means that a prospective adopter would be identified from the new register before a prospective family member adopter or carer. The issue may well be aggravated if care proceedings are reduced to 26 weeks, as proposed in Clause 14. This could, and should, be partially addressed by introducing a requirement that a family group conference should be held prior to commencement of court proceedings. Once a child has been placed in a “fostering for adoption” placement, there may be a reluctance to move the child both by local authorities and by the courts, even though in the absence of such an attachment a different long-term option may have been in the best interests of the child. In particular, this will be at the expense of the child’s rights to remain in his/her family, and with his/her siblings, where it is in his/her best interests to do so.

6. Above all, we have concerns about the proposal as drafted because it undermines some fundamental principles of the Children Act 1989 in the way that it amends Clause 22 of that Act. Where adoption is just one of the options under consideration, and a fostering for adoption placement is made, the bill removes the presumption in the Children Act that placement with the birth family or wider family should be given priority and it does not even replace it with a requirement that family placement should be considered. It should be remembered that the proposals will apply to children placed in care on a voluntary basis, as well as to those who have been removed from their parents. In addition, even where adoption is just one of the options under consideration, a fostering for adoption placement will remove the requirement on local authorities to endeavour to place a child with his/her siblings, to place a child as near as possible to his/her home or school, and, if the child is disabled, to place the child in a situation adapted to his/her particular requirements.

7. Special Guardianship

Like adoption, special guardianship is a permanent arrangement, and the child is no longer in care. It has proved particularly popular in situations where a relative steps in and offers a home to a child who would otherwise be adopted or fostered. The research evidence shows that children being made subject to special guardianship orders have substantially the same needs as children who are adopted. We support the proposals to strengthen adoption support and can see absolutely no reason at all to similarly strengthen support for special guardians. To this end we fully support the proposals drafted by Family Rights Group to strengthen special guardianship support.

It was envisaged that many foster carers would apply for special guardianship orders for older children in their care. Whilst we know that there have been cases of successful orders in such situations, we also know that many foster carers are reluctant to apply for such orders because they fear that the support they would receive would be inadequate. Indeed it is a requirement of the regulations that financial support is reviewed annually and that it would be exceptional for any fee payment to continue for more than a year. We believe that more foster carers would apply for special guardianship orders if they could be guaranteed continued financial support at the same level and that the regulations should be amended to indicate this is allowed. Even when foster carers continued to receive financial support at the same level, there would nonetheless be a financial gain to local authorities from special guardianship, since the same level of social work support would not be required.

8. Young People remaining with their foster carer until the age of 21

For many young people in foster care, their foster carer may well be the most significant adult in their life. Many will form bonds which endure into adulthood. Yet in law, this relationship ceases to be supported at age 18. In the view of the Fostering Network, more should be done to ensure that foster carers can assist the young people they have fostered into adulthood, where there is a mutual desire on the part of the young person and the foster carer that this should happen.

9. Local authority care ceases for almost all children at the age of 18. What happens next is at the local authority’s discretion. For many young people, funding for foster care stops on their 18th birthday and they are required to move unless the foster carer continues to offer them a home for free. The vulnerability of young people leaving care is well documented.

10. In 2008, the Government set up the Staying Put pilot to assess the benefits of allowing children to stay in care and with foster carers past the age of 18. The £4.5 million pilot scheme enabled people in 11 areas of
England to stay with their foster carers until they turned 21. The Staying Put pilots reported in February 2012 and showed that there were significant benefits to young people who chose to stay on. It demonstrated that having established family relationships and stability make a positive difference to young people in care as they become adults. However, there have been no moves to roll out the scheme nationally. This means young people are missing out on the opportunity to stay on in a supportive family environment. It has been left to councils to decide what level of provision to fund. This means that it is still only a power the local authority can choose to exercise, rather than a duty to provide a service that has been proved to be beneficial.

11. The Fostering Network would like to see an amendment to the bill to create a duty on local authorities to provide Staying Put provision for young people up to the age of 21 where this is mutually agreed by the young person and the foster carer. Children’s services departments should not be asked to bear the extra costs—rather all the costs borne by other services for less satisfactory arrangements should be considered and funding diverted to such schemes.

12. **Strengthening support for care leavers until they are 25.** The Bill proposes to strengthen the requirements on local authorities to promote the educational attainment of looked after children. We support these proposals but believe that the duty on local authorities should be extended to cover care leavers up to the age of 25.

13. In addition, the current guidance places a duty on local authorities to continue support for care leavers only as long as they are in education or training. This excludes the most vulnerable, who are less likely to remain in education or training. We want to see this duty of support extended to all care leavers.

14. **Contact.** Contact with family (birth parents, siblings, and wider family members) is one of the most important issues affecting the welfare of the child. There are rare exceptions when contact with some or all of these is not in the best interests of the child, but we support the principles of the Children Act 1989 that contact should be promoted unless it is damaging. Currently contact with parents is given particular priority, but we believe that consideration of contact with siblings, in particular, should be strengthened, and could be reflected in the bill. Managing contact arrangements is one of the key roles of foster carers.

15. Prohibiting contact is far more draconian than restricting it, and demands a far higher threshold of justification in terms of the welfare of the child (Children Act 1989) and in relation to proportionality under the European Convention on Human Rights. This is how it should be. Clause 7 of the bill strengthens the wording of the Children Act so that in the exceptional cases where contact is refused following authorisation by the court, the local authority need no longer strive to promote contact between the child and the birth family. The Fostering Network is clear that contact has to be refused in specific circumstances. S34(4) of the Children Act already allows a local authority to refuse contact, and in our view no new legislation is needed on this point.

16. Clause 7(4) empowers the Secretary of State to lay down in regulations the issues to which a local authority must have regard when deciding whether contact is consistent with safeguarding and the child’s welfare. It is our view that additional regulations are unnecessary and will fetter the discretion and judgement of the local authority whose decision can rightly be challenged in court.

*March 2013*

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**Memorandum submitted by Jane Fortin and Joan Hunt (CF 14)**

**SUBMISSION OF VIEWS TO THE HOUSE OF COMMONS PUBLIC BILLS COMMITTEE ON CLAUSE 11 OF THE CHILDREN AND FAMILIES BILL**

1. We are submitting our views on clause 11 to the Committee in our capacity as authors of a recent study (Fortin, J. Hunt, J. and Scanlan, L. (2012) Taking a Longer View of Contact, Sussex Law School). Professor Fortin is an academic lawyer at the University of Sussex who specialises in Child and Family Law and Joan Hunt is a Senior Research Fellow at the University of Oxford who specialises in issues of social policy.

2. Our report produced independent empirical evidence on how a large, representative sample of young adults who experienced parental separation as children viewed the contact they had at the time, and what they now believe made that contact a more or less successful experience. It is based on the recollections of a random sample of just under 400 young adults (aged between 18 and 35) who took part in a telephone survey and in-depth interviews with 50 of them. This retrospective approach enabled us to tap into the considered and dispassionate reflections of those most directly affected by contact, adding an important dimension to our knowledge of what makes contact arrangements work and not work.

3. Our report was referred to by the Justice Select Committee in its pre-legislative scrutiny of clause 11 (House of Commons Justice Committee, *Pre-legislative scrutiny of the Children and Families Bill, Fourth
4. We strongly oppose what is intended to become a new s1 (2A) of the Children Act 1989. While superficially innocuous, the amendment is potentially damaging both to children and to the public perception of the courts.

5. We fully support the principle that children are likely to benefit from good relationships with both parents after separation. However, any amendment which undermines the paramountcy principle of the Children Act, as this does, should be evidence-based, rather than ideologically driven. The findings of our research study have a particular relevance to this issue.

6. Amongst our findings (a summary of which has been sent to all MPs) were two particularly important ones:
   a) The child’s pre-separation relationship with the non-resident parent was statistically very significant—both as a predictor of the success/failure of future contact and of the quality of the child-non-resident parent’s subsequent relationship. This was more significant than the frequency of contact.
   b) The frequency and format of contact, for example whether there were overnight stays, were statistically less important than the continuity of contact.

7. We found that other ingredients of successful contact were:
   a) Involvement of the children in decision making
   b) Little post-separation conflict between the parents
   c) No domestic violence or other abuse concerns
   d) Support for contact by the resident parent
   e) The child feeling equally at home in both homes
   f) Contact being child-focused, enjoyable and committed, rather than complying with the non-resident parent’s own interests.

8. Overall, our findings indicate that contact works best when it is tailored to the needs, wishes and circumstances of the individual child. Section 1 of the Children Act currently requires the courts to do precisely that. Introducing a presumption of shared parenting, even under its now more neutral label of “parental involvement,” would remove this essential safeguard and risk the courts adopting a more simplistic, broad brush approach to complex and usually highly conflicted family relationships. Indeed, it will undoubtedly make it more difficult for children, who have good reasons for opposing contact, to have their voices heard and taken seriously.

9. The Justice Select Committee, in its pre-legislative scrutiny of the draft clause, concluded that the government’s intention was not to change radically the way the courts handled contact cases but to tackle perceptions of bias in the population and to encourage parents to resolve their disputes without coming to court. In our view the amendment is not likely to achieve either objective. There is a real risk that non-resident parents will mistakenly think that the changed legislation gives them a right to very substantial parenting time. In consequence more may seek to use the courts to obtain their rights and will feel let down when and if they do not achieve them, exacerbatating, rather than reducing, perceptions of bias in the court system. It should be noted, moreover, that research commissioned by the Ministry of Justice found no evidence that the courts were, in reality, biased against non-resident parents (Hunt, J. and Macleod, A. (2008) Outcomes of applications to court for contact orders after parental separation or divorce, Ministry of Justice). Indeed, as other researchers have concluded, it found that the courts already operated on the assumption that contact was usually in the interests of children and made considerable efforts to bring this about.

10. Finally, there is a risk that the clause will have a damaging effect on children where parents make arrangements without involving the courts, in the mistaken belief that equal parenting time is now the law. This is particularly likely where the parental relationship is highly conflicted and/or has involved domestic abuse. Indeed, our findings suggest that in some cases, no contact may be better for the child than poor contact. Again, the change in the law may make it more difficult for children’s wishes about contact to be taken into account.

11. For all these reasons we hope that Clause 11 will not be enacted. If Parliament decides that some change to the Children Act is required then we would urge this to be done by means of an addition to the ‘welfare checklist’ (section 1 (3)). If the clause is retained, then we consider it imperative that it includes a rider, as recommended by the Select Committee, which sets out that ‘involvement’ does not mean or imply the right to any specific quantity of time. It is not sufficient for this to be stated in an Explanatory note, particularly since the majority of parents will not have the benefit of legal advice which might make this clear to them.

SUBMISSION SUMMARY

As authors of a recently published research study (Fortin, J. Hunt, J. and Scanlan, L. (2012) Taking a Longer View of Contact, Sussex Law School) we oppose the introduction of Clause 11 of the Children and Families Bill. Our findings suggest that the aims of the clause are not evidence based and may achieve more harm than good.
Memorandum submitted by ISCG (CF 15)

1. Clause 26: Joint Commissioning Arrangements

There should be some specification of national basic requirements to meet children and young people’s special educational, health and social needs under EHCPs. Schools, health and local authorities must be required to provide certain levels of provision for pupils with EHCPs and other children and young people with specific needs. (There must be some basic level playing field!)

The requirements to review and publish local provision will also be severely constrained if there is not a basic national requirement specified by law.

2. Clause 30: Local Offer

Parents, schools and other agencies should have a right of appeal if they consider that their local offer does not meet local needs. Having a EHCP stating special needs will be of no use to them if there is not access to the appropriate specialist support where required.

3. Clause 34: Children and Young People With SEN but No EHCP Plan

It is inconsistent and inappropriate for Special Academies to offer pupils without a EHCP a place, whilst mainstream special schools may only admit pupils with a plan.

4. Assessment, Preparation and Implementation of EHCP Plans (Clauses 36–44)

This Bill omits all time limits or requirements for professional advice on the above. This means that parents and young people could be left in a “limbo land” of waiting for notification without any right to challenge the delays and/or the quality of the assessment. In effect at present LA have no mandatory duty to deliver and unless a parent appeals does not have to justify its view. This seems particularly peculiar as the original Green Paper expressed concern about such bureaucratic delays.

It also does not give children and young people the same education rights of assessment and provision for health and social care. This is still legally an “education only” plan even though it is being renamed EHCP. It is likely in these difficult funding constrained times that therapies such as speech and language are moved under health provision allowing the LA to require families to seek them under health provision and weakening their legal right of access. There is no legal obligation on health to make these provisions and there is no single place of appeal to all contents of an EHCP. The first tier tribunal will only be able to rule on education needs.

5. Clause 48: Personal Budgets

We are concerned that personal budgets will mitigate against the establishment of a wide range of specialist provision as individual parents may not wish to access available provision or may find that there is not sufficient funding to cover the costs of the provision they want. There is no requirement for a LA to secure any particular provision, as pointed out previously. Also, many voluntary organisations providing good local specialist support will not be able to survive such an idiosyncratic, market orientated climate, thereby reducing choice rather than increasing it.

The experience of the pilot authorities suggests that allowing parents personal budgets discriminates against poor and ethnic minority families who do not have the time or “know-how to work the system.

6. Clause 66: Code of Practice

“Take account of” should be deleted and replaced by “act in accordance with” (see, subsections 4 and 6). This will be a much stronger legal duty on First Tier Tribunals and other people and bodies mentioned to carry out their function according to the requirements stated in the Code of Practice. It is a necessary protection for children and families.

March 2013
SUMMARY

The National Deaf Children’s Society (NDCS) is the leading charity dedicated to creating a world without barriers for every deaf child. There are over 35,000 deaf children in England. We have a particular interest and expertise in issues facing children with special educational needs (SEN). Our response to this call for written evidence has been informed by extensive consultation with parents of deaf children and focuses on part 3 of the Bill.

Clause 24: duty of health bodies to bring certain children to local authority’s attention

1. This clause only applies to pre-school deaf children. Many deaf children become deaf later in life. To ensure that none fall through the net and to promote greater collaboration between health and education for children with SEN across all ages, NDCS recommends this duty on health bodies applies to all children who may potentially have SEN.

Clause 27: Duty to keep education and care provision under review

2. We believe that the Bill will be fatally undermined by local authority spending cuts and that it would be dangerous to implement these reforms without ensuring there is sufficient funding in place. We therefore believe clause 27 should be amended to place a duty on the local authority to consider if there is sufficient funding in place to deliver the provision required to meet the needs of children with SEN.

3. NDCS has established through Freedom of Information requests to all 152 local authorities, in the 2 years leading up April 2013, 1 in 3 local authorities will have cut the vital services that deaf children rely on, including Teachers of the Deaf and speech and language therapists. We also know that in 2012, government figures show that 63% of deaf children failed to achieve 5 GCSEs (including English and Maths) at grades A* to C compared to just 31% of children with no identified SEN.

3. Anecdotal evidence from the SEN pathfinders also suggests that the proposals are not cost-neutral:

   — The use of key workers in supporting families with their Education, Health and Care Plan (EHCP) and personal budgets presents significant resource implications for local authorities and it is unclear how this additional role will be funded without drawing funding away from existing services. One Teacher of the Deaf has told us that her work to support families with the new EHCPs is extremely time-intensive and not sustainable without additional capacity.

   — Unless safeguards are put into place (see comments on clause 48), personal budgets may lead to reduced funding for existing services. This may need to be offset by increased funding to make sure that existing services and other parents do not suffer as a result.

   — Increased duties to provide EHCPs to young people aged 16 to 25, as well as to assess young people in this age group for EHCPs, will place additional pressure on local authority budgets. In addition, the raising of the participation age and impending funding changes mean that local authorities will have increased funding responsibility for young people aged 16–25 with SEN. NDCS is not convinced that the Government has budgeted adequately for these increased responsibilities.

4. Parents have expressed considerable anxiety about these changes. In a NDCS online survey, only 6% believed that the proposed changes would mean that deaf children in their area would get better support. 72% felt that the real aim was to reduce spending.

Clause 30: Local offer—improving transparency

6. In our focus group work with parents of deaf children, parents supported proposals to improve transparency. They also highlighted the difficulties they had experienced in accessing relevant information about support specifically for deaf children to date.

   “We have fallen across possible choices and information quite often by chance.”

   “I got an information pack when my child was diagnosed, but half of it wasn’t relevant to deaf children and it didn’t include information on the local deaf school.”

7. To ensure the local offer provides parents of deaf children with more information about local provision and empowers them to hold services to account for what is not available, we believe that clause 30 of the Bill should require local authorities to:

   — Show information by type of SEN and disability, so that parents of deaf children can find information relevant to them.

   — Must be of a set format across England so that parents can easily compare across different local authorities.
8. We also believe that local authorities should first conduct a “gap analysis” of their provision when developing a local offer. This is to identify where provision is needed to meet the needs of deaf children and other children with SEN. This could be achieved by explicitly linking the duty to create a local offer with the existing duty in clause 27 to keep SEN provision under review so that any review precedes any development of the local offer.

Clause 30: Local offer—developing a ‘national offer’

9. Whilst parents welcome greater transparency, they also want to be confident that their child will get the basic support that any deaf child needs. Too many deaf children are being denied this support, at considerable cost to families. NDCS believes this is unacceptable. We therefore believe that the local offer needs to be underpinned by a national offer for all deaf children, setting out basic minimum requirements that each local authority should ensure is provided. This might include:

— Access to a specialist education service for deaf children that is adequately staffed to meet the needs of all deaf children in each area and meets quality standards
— All specialist units/resource provisions for deaf children to be headed by a qualified Teacher of the Deaf
— Specialist equipment, including radio aids, to be provided, as required in each local authority
— Spectrum of provision or appropriate pathways to nearby provision available to meet the needs of all deaf children in each area
— Access to communication courses, including sign language, for all parents of deaf children
— Publication of data on outcomes.

10. We believe these are the basic essentials and it’s of deep concern that in many areas, this is simply not available. In our online survey, over 1 in 10 families said they had already moved to access better services for their deaf child. One family told us how their deaf son had moved between 4 different schools, involving the whole family moving from Hampshire to Lincolnshire, before they could be confident their deaf child was getting a good education. The son’s father told us:

“All of the delays my son has had to endure have had a cumulative effect on his life and where he is today. It is immeasurable how much damage has been done to his potential.”

11. In their pre-legislative scrutiny report on SEN and the Bill, the Education Select Committee said:

“The importance of getting the local offer right cannot be overstated... The weight of evidence received by our Committee clearly supported minimums standards and we recommend that the Pathfinders be used to inform what should constitute minimum standards for local offers, particularly to address the provision that will need to be able available in schools to support pupils with low to moderate SEN without EHCPs.”

12. We do not believe that the Minister’s response to the report adequately addresses this point and we would like to ask the Committee to further raise this issue.

Clauses 36 to 49: Education, Health and Care Plans (EHCPs)

13. NDCS welcomes the reassurance from the Department for Education that it intends to preserve existing statutory protections. However, there are a number of areas where further detail is needed, particularly in relation to clause 36 and duties on local authorities to respond to parents within certain timescales. NDCS supports the suggested amendments put forward by IPSEA in this area.

14. Having this detail in the Bill will be essential to ensure that EHCPs are as robust as a statement of SEN. NDCS continues to be alarmed and concerned by examples coming out from SEN pathfinders. In one area, a parent provided us with a copy of their statement and a first draft of their EHCP, allowing us to compare between the two. This comparison has confirmed some of our worst fears; that many EHCPs are being produced which are lightweight, unsubstantive and a clear downgrade next to the statement. Key concerns include:

— Compared to the statement, very basic and unspecific information about the child provided in EHCP. For example, no information about child’s placement or current levels of attainment was shown. Contained vague statements like “child is happy... and progressing at school” with no detail to support this.
— Driven almost entirely by parent and child without real professional input. Appeared that only the mother and the child’s Teacher of the Deaf is involved so far. No apparent contribution from health or social care professionals.
— EHCP failed to adequately describe the child’s SEN and then to identify the educational provision needed. Only two actions were listed and were not particularly in-depth or well-founded. For example, it noted that child sometimes experiences frustration but did not explore whether this is, as likely, due to communication barriers, and how these barriers could be resolved. No actions listed relating to improving educational outcomes, even though this was identified as a priority by parents.
Clause 45: Ceasing to maintain an Education, Health and Care Plan

15. This clause indicates that a EHCP will cease if a child or young person has achieved the outcomes set for them. NDCS believes this is a flawed approach; for many deaf children, it is only through ongoing support that they will continue to achieve the outcomes set for them.

16. Parents often express frustration that their child often has to fall behind before they can get the support they need:

“Although our son made extremely good progress in his first year in his new school, this seemed to be a trigger to reduce the levels of assistance from all other departments. His speech and language therapy stopped, everything stopped. It was as if he no longer needed it and he just dropped, his development went completely backwards.”

17. NDCS also believes the wording could also introduce perverse incentives for local authorities to set ‘easy’ outcomes for children to achieve in order to end the EHCP quickly. We recommend that the clause be amended to make it clear that a local authority can only cease a Plan on this basis if ongoing support is not needed to maintain those objectives.

18. Separately, clause 45 allows local authorities to 'have regard to age' when deciding whether to re-assess or grant plans for young people over the age of 18. This risks local authorities denying plans to 18–25 year olds who require continuous and coordinated support to access educational opportunities and achieve the outcomes their Plans were designed to support them to achieve.

19. NDCS therefore believes the Bill needs to be stronger in ensuring the Department’s original vision of a 0 to 25 EHCP is realised. We believe that a local authority should only be able to cease a Plan for someone over 19 if:

(a) the authority has completed a transition review meeting with the young person and their family, at which there is agreement from all that the specified outcomes in the plan have been achieved, and

(b) a transition plan has been completed in partnership with the young person and their family and other agencies, which supports their progression into the next phase, including Higher Education or employment.

Clause 48: Personal budgets

20. NDCS believes that the proposals around personal budgets in the draft Bill could risk undermining existing provision and will result in unintended consequences, unless carefully implemented. NDCS is concerned that small services for children with low incidence needs could be disproportionally hit if their funding is reduced as a result of delegation of funding to parents. This would, in effect, reduce choice to other parents of deaf children.

21. The SEN (Direct Payments) (Pilot Scheme) Order 2011 for SEN pathfinders set out a number of important safeguards around personal budgets, including a requirement that there be no negative impact on existing services. These safeguards do not currently appear on the face of the draft Bill.

22. Given that we still know relatively little about the impact of personal budgets in the SEN pathfinders, NDCS believes it would be prudent to amend clause 48 to replicate these safeguards.

Clause 50: Education, Health and Care Plans: appeals

23. Many deaf children and young people rely on health services such as speech and language therapy or audiology services to achieve their educational potential. We welcome the recent announcement that Clinical Commissioning Groups (CCGs) will be subject to a duty to provide support set out in a child’s EHCP. However, we still need to hear more about how this will be enforced and the accountability framework.

24. Feedback from the SEN pathfinders confirms that a specific and strong bite against health services to provide what is set out in a Plan is needed. A number of parents and professionals have told us of their difficulties across several pathfinders in securing meaningful engagement from health professionals. For example, in one area, a child’s lead paediatric consultant had been invited to contribute to a child’s assessment for an EHCP as well as representatives from audiology, speech and language therapy and CAMHS. None did.

25. We strongly believe that a single Plan needs a single means of redress. Parents want to be able to resolve any issues quickly and simply. We therefore believe that clause 50 of the Bill should be amended to give parents the right to hold health services to account via a SEN and Disability Tribunal in the same way as against education services.

What's missing from the Bill?

26. The Department has argued that the local offer will improve transparency. However, in one area, there is virtually no information available to parents: information on the quality of specialist SEN support services. We believe the Bill misses an important opportunity to improve outcomes for children with SEN by requiring Ofsted to inspect specialist SEN support services.

27. In the SEN Green Paper, the Department for Education recognised the vital role that specialist SEN services have to play. This is particularly the case for the 80% of deaf children who are taught in mainstream
schools where head teachers and SENCOs are unlikely to have the experience or expertise necessary to judge what constitutes effective support for deaf children. Parents are therefore often surprised that these same SEN educational services are subject to no real formal scrutiny in the same way that schools are.

28. We believe that many Heads of Services will support this proposal. One Head of a service for deaf children told us:

“I wholeheartedly agree that specialist services should be inspected by Ofsted. All teaching should be inspected to ensure high quality, rigour and recognition of the specialist nature of the work that specialist teachers do as well as raising the profile of deaf education and provision. This would also contribute to narrowing the gap between deaf children and mainstream children’s attainment.”

29. NDCS therefore argues that the Bill could be substantially improved by the inclusion of new clauses that would require Ofsted to inspect specialist SEN support services.

March 2013

Memorandum submitted by Professor Hamilton (CF 17)

OPENING STATEMENT OF PROFESSOR HAMILTON

Professor Hamilton strongly supports measures that promote meaningful relationships between children and their parents, both before and after parental separation. However, it is her view that introducing a legislative presumption to this effect is not the way to achieve this, and is likely to lead to the undermining of the ‘welfare paramountcy’ principle and to harmful unintended consequences for children. It is noted that the clause benefits from use of the word ‘involvement’ rather than ‘shared parenting’ or ‘shared time’, and from allowing courts to exclude the presumption where ‘some evidence’ suggests that involvement of a parent would put the child at risk of harm. These changes are welcomed from the original provision set out in the government’s consultation document, as they go some way to minimising the potential risk of the provision leading to harmful outcomes for children.

It is Professor Hamilton’s position that a statutory presumption of shared care (in any form) is the wrong approach to promoting cooperative parenting after separation. It is important to emphasise that the Children Act 1989 already successfully achieves this promotes cooperative parenting where this is in the best interests of the child. The concern is that amending the Act to include a statutory presumption will undermine the principle that “the child’s welfare is the court’s paramount consideration.” It is critical that this determination occurs on a case-by-case basis according to each individual child’s circumstances and needs, guided by the child’s best interests and welfare above all other factors. As the law stands, in cases where involvement with both parents is consistent with the child’s best interests and welfare, the court will order arrangements to promote involvement.

It is Professor Hamilton’s view that introducing a separate statutory presumption would undermine the welfare principle, standardise decision-making, create a perception that parents have ‘a right’ to involvement with children and that their preferences ought to play into the court’s determination. However carefully drafted, it may shift the focus from quality parenting towards predetermined amounts of time.

It is concerning that the Government is considering changing legislation based on perceptions of a systemic bias in the family justice system where there is no evidence to support this. Robust research over the last 20 years has found no evidence of bias.

While Professor Hamilton would like to reiterate the view that the Children Act 1989 sufficiently supports measures that promote meaningful relationships between children and their parents, in line with their best interests more broadly, and that a legislative amendment could lead to potentially dangerous unintended consequences, if the Government is determined to make a change, it is her view that the most appropriate way to do so is through an additional paragraph to the welfare checklist in section 1(3) of the Children Act 1989.

Inclusion of any potential legislative statement into the welfare checklist (s 1(3)) is a more appropriate way of pursuing HMG’s aim than introducing a free-standing provision. The case law is already well settled about how and when the checklist must be used. Judges, lawyers, Cafcass officers and others who use the Children Act regularly are experienced in using it: the addition of a further factor on the list would be easily accommodated by these professionals who will bear the responsibility for implementing any legal change. Conversely, the addition of a separate provision is likely to be complicated and unclear in its effects. It would not be clear how such a provision would interact with other existing sections of the Act, and it would require considerable amounts of litigation to reach a settled and widely understood interpretation.

If the government decides to retain clause 11, the term ‘involvement’ must be defined. The Justice Select Committee found that the word ‘involvement’, without definition, could contribute to misconception. Media coverage of the proposal that there be a statutory presumption in favour of shared parenting has already deluded many parents into thinking that they had a ‘right’ to a 50% share of their child’s time or, at the very least,
Clause 11 is also likely to have a negative impact in the 90% of cases decided out of court in ‘the shadow of the law’. There is a real risk that parents coming to their own arrangements will misunderstand clause 11, regardless of how carefully it is drafted, to mean a ‘right’ to shared parenting or equal time, which may cause parents to come to arrangements that are not in the best interests of the child. This will be more likely where there is an imbalance of power between the parents. The problem will be compounded by changes to legal aid this year, which will result in lack of access to independent legal advice and assistance for parents in these cases. The definition must include a stipulation that ‘involvement’ does not mean shared parenting and should not be defined as a measurement of time.

March 2013

Memorandum submitted by the Association of School and College Leaders (ASCL) (CF 18)

1. The Association of School and College Leaders (ASCL) represents over 17,000 head teachers, principals, deputies, vice-principals, assistant heads, business managers and other senior staff of maintained and independent schools and colleges throughout the UK. ASCL has members in more than 90% of secondary schools and colleges of all types, responsible for the education of more than four million young people. This places the association in a unique position to consider the bill from the viewpoint of the leaders of secondary schools and colleges.

Overview

2. There is much in the bill that we welcome. On Part 3 ASCL’s main areas of concern are; what will happen to the children and young people with low level SEN who do not qualify for Education Care and Health Plans, particularly in light of the loss of School Action and School Action + (paragraphs 8—14), the lack of duties on the NHS (paragraph 15), the lack of clarity around the operation of Personal Budgets (paragraph 16–22), the definition of SEN (paragraph 23—25), the duty to ‘consult’ the head teacher when naming a particular school in an ECHP does not go far enough (paragraph 29) and the overall capacity of schools to make excellent provision in a time of squeezed budgets and reduced funding for schools and colleges.

3. It is important that the debate about accountability, the curriculum and the qualifications system is not seen in isolations from SEN. All children and young people need an appropriate and engaging curriculum, opportunities to work towards qualifications that will help them to find work or move on into further or higher education or training that may lead to work. Schools and colleges need a method of intelligent accountability that takes into account the work they do for some of our most vulnerable children and young people. This needs funding that is fit for purpose.

4. On the role of the Children’s Commissioner while we support the changes brought about in Part 5 we would like to see the Commissioner’s remit widened to include regard to children’s need for protection and guidance to encouraging a culture of responsibility (paragraph 53).

Part 3; Children and young People in england With special educational needs

5. ASCL broadly welcomes Part 3 including the new single assessment process, Education, Health and Care Plans (hereinafter referred to as ECHPs or ‘plans’) and raising the age that a plan can last for those in further education or training up to the age of 25. ASCL is concerned that most of the detail and practicalities of how the SEN provisions will work will be contained the new Code of Practice and Regulations. Whether the new provisions and duties on local authorities and education are sufficiently coherent to protect provision for children and young people with SEN will depend on the Code of Practice and regulations.

Low level SEN, loss of School Action and School Action +

6. We remain very concerned about who will qualify for an ECHP. All children and young people who currently hold statements should be those covered by an ECHP in the future. If there are fewer ECHPs than the present number of statements there will be a net decrease in funding for SEN in mainstream schools and colleges, which as well as impacting on individuals will have a knock on effect of downgrading SEN expertise in mainstream schools and colleges.

7. SEN is defined in Clause 20(2) (a) as ‘a significantly greater difficulty in learning than the majority of others of the same age’. How will significant be defined? Under the current system each local authority applies its own criteria in assessing SEN and awarding statements, which means that some local authorities have a much greater proportion of children and young people qualifying for statements than others. We understand that more detail on the criteria and levels of assessment for ECHPs will be contained in regulations. We seek detail on how this will be moderated throughout the country?

24 ‘How a change in the law could give divorced fathers the same rights as mothers’ BBC One Breakfast, 26th February 2013. Available at: http://www.bbc.co.uk/programmes/p015lp1j
8. Further, how is it proposed to respond to disabilities such as dyslexia or Asperger’s which are on a continuum? In such diagnoses the level of support needed by different children varies greatly. The definition in Clause 20 gives no indication as to where to draw the line and makes no reference to how classroom differentiation and the least well performing 20% of children relate to the definition of SEN.

**WHAT FUNDING AND SUPPORT FOR THOSE WHO DO NOT QUALIFY FOR ECHPs**

9. ASCL members are extremely concerned that there could be a serious reduction in net SEN funding for mainstream schools.

10. How will schools and colleges support children with SEN who have mild or moderate levels of special needs, and who currently receive extra support in schools? There is great concern that in the future children currently covered by schemes such as school action or school action plus may fall through the net. Will mainstream schools be expected to meet the needs of children with mild or moderate levels of SEN and who do not qualify for ECHPs without dedicated funding to do so? How will schools fund extra support for those children who do not qualify for an ECHP?

11. With regard to the loss of ‘school action’ and ‘school action plus’ school leaders have made the point that teachers and other professionals working with children and young people will in all likelihood still keep a register of children and young people with SEN within their institutions which will be greater than the number of children with an ECHP; they warn against the loss of a common language and consistency of approach that is understood across the profession and from one institution to another.

12. The government is hoping that one of the ways that the increased costs will be offset is by children and young people securing paid employment in adult life and we commend this aim, but some of the anticipated savings made from reduced lifetime support need to be brought down to school level now.

**DUTIES ON HEALTH NEED STRENGTHENING**

13. ASCL is concerned about the lack of specific duties on health and potential difficulty in securing services such as speech therapy, which could be defined as supporting educational or health needs. We note the Minister’s promise that “Government is doing all it can to make sure that the health service contributes fully” and we await further detail of this. We will be pushing for stronger requirements on health and social care throughout the passage of the bill.

**CAPACITY AND FUNDING OF LOCAL AUTHORITIES AND LOCAL AUTHORITY SPECIALISTS AND THERAPISTS**

14. With regard to getting the best early specialist support for individual children and young people, schools are concerned that as the functions and capacity of local authorities are being diminished there may be less expertise and fewer expert professionals to call upon. For example some have concerns about the reduced number of local authority child psychologists and the potential for this gap to be filled by private child psychologists who are only an option for wealthier families.

15. The American experience suggests that there is a danger of over-diagnosis of disorders such as autism, especially when the observational analysis is carried out by people who are not always fully qualified or who have a particular focus in their work. We need experts such as educational psychologists to have a practical understanding of what is possible within a standard mainstream educational setting and who direct their proposals to that. The danger of, for example, private educational psychologists, is that they are not regularly engaged in educational work and may make recommendations that are achievable in ideal circumstances but not in the real world.

**CONCERNS ABOUT PERSONAL BUDGETS**

16. We support the Education Committee’s recommendation that lessons from pathfinders are taken fully into account when regulations are formulated on personal budgets and direct payments. We understand that the Minister has given a ‘firm assurance that this will be done’ but we are concerned that the bill has been written before sufficient time has elapsed for the experiences of the pathfinders to be properly felt, analysed, or understood. We would like to see some evidence of how personal budgets are working.

17. School leaders are concerned about the implications on personal budgets for school budgets, it is important that schools do not lose funding to help target the special support they have identified as necessary for their students because that child’s parents have decided the funding for their child would be better spent other than through the school.

18. We seek clarification as to how local authorities will deal with situations where the parents’ views regarding the funding of parts or all of the needs identified in their child’s ECHP do not concur with the opinion of the best use of resources by teachers and other professionals?

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26 Current edition of ‘Diagnostic and Statistical Manual of Mental Disorders’, American Psychiatric Association
19. We seek greater clarity on the operation of the education element of personal budgets. The SEND Pathfinder Programme Report for March 2013 has a profound lack of case studies about the operation of the educational offer. Will educational elements of the personal budgets within the school day be limited to notional budgets? Who will be responsible for staff such as teaching assistants paid for by personal budgets to support individual children in within school time? Who will line manage them? What will happen if there is a safeguarding issue or if there is a disagreement between the teaching assistant or the parents and the school/college?

20. It is hard to see how budgets will be sufficiently flexible to enable parents or young people to make real decisions when there are specific needs identified in the ECHP which require funding. How this will work in practice needs clarification.

21. The quality assurance of the different options of support that will be open to parents is also of concern, especially when the consequences for children’s learning and future development are so high. If, for example, several different providers say that they can provide the support needed at varying costs how will parents decide which option provides the right support and best value for money?

22. Many parents will be vulnerable themselves (and some may also have special needs), and may not always have the skills and experience to make the best decisions for their child. Many parents will not have the financial experience or skills to make complex decisions about spending funds they are allocated. How will local authorities ensure that parents are well equipped and able to make these complex and sophisticated decisions?

23. We also seek clarification on the position of children and young people educated other than at school including those who are home educated. What are the plans to monitor this kind of provision and how will this be affected by the introduction of personal budgets?

**Definition of SEN and Behavioural, Emotional and Social Difficulties**

24. ASCL is pleased to see that the ‘term special educational needs’ (SEN) has been retained. SEN is a generic term that encompasses all sorts of different conditions and needs and sits well with more tailored and personalised learning.

25. There are children whose behaviour makes them unsuitable for mainstream schooling and a large number of behavioural, emotional and social conditions have in recent years been identified by health professionals. It is questionable whether the definition of SEN in Clause 20 may be applied to these children and young people. There needs to be explicit recognition of these children. These are the children and young people who are probably most at risk of becoming NEET and for whom short-term funding savings would be most greatly outweighed by long term, possibly lifelong, benefit costs.

26. The Warnock Report suggested that nationally there would be 20% of children with SEN. Only 2% would have SEN throughout their school days. The latter group would have ‘long-term’ (more than twelve months) impairment (disability), as defined by the Equality Act 2010. In recent years the only children with statements are those with such long-term impairments. It would be possible to cease to use the term SEN for these children and to use it only for those children whose difficulties are transient and for whom schools must make provision. However, there is a cost implication since this is likely to include more children than at present have statements.

**Individual School/College Named in the ECHP**

27. We support the ambition for parental preference to name a school in an ECHP and we support the change in Clause 41 but we are aware that some local authorities no longer have special schools or units available and also that parental preference can be extremely expensive.

28. Residential provision has been a major area of litigation in recent years. Some parents have sought a comprehensive care package for their child provided in a residential setting. This sort of provision is costly and local authorities resist it on the grounds of ‘inefficient use of educational resources’; Clause 39 (4) (b). Recent judgements conflict over whether, in calculating the cost, the cost of the maintained school should be the whole cost of a pupil (the total running costs of the school divided by the number of pupils) or the marginal cost of one extra pupil (albeit with special needs). The latter means that residential care is ruled out in most cases. We seek clarification as to how this issue will be resolved in the future?

29. Members tell us that in some cases the education budget has been used to pay for residential provision elements that should have come out of health or social care budgets, for example the residential element of a school place. Only the daytime education provision equivalent should be funded by the education budget. School leaders are also concerned that in some cases the quality of placement is not very high. Schools must not pay for expensive residential placements without the opportunity for review or to insist on high quality educational outcomes.

30. Although local authorities would be required to ‘consult’ the head teacher when naming a particular school in an ECHP this does not go far enough and could give rise to occasions when the local authority names a particular school against the better judgement of the head teacher. There needs to be a clear duty on the

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27 SEND Pathfinder Programme Report co-written by the DfE and DH, can be found at www.education.gov.uk/childrenandyoungpeople/send
local authority (through regulation or within the body of the bill) to give reasons if it decides to disregard the judgement of the school.

INTEGRATION AND JOINT COMMISSIONING, COOPERATION AND ASSISTANCE

31. ASCL strongly supports collaborative working across educational institutions and with other agencies. We seek clarification on the funding that will be available to make a success of integrated planning and assessment. Increased joint working and collaboration generally means an increase in cost for all involved, although most of this extra cost will need to be borne by local authorities.

32. Regarding the joint commissioning arrangements and cooperation Clause 31(2) says bodies must comply with requests made by local authorities unless doing so would be ‘incompatible with its own duties’ or ‘otherwise have an adverse effect on the exercise of its functions’. Clause 31 (3) says the agency concerned must give reasons within a prescribed period. This must not be used as a get out clause for non-cooperation; the Code of Practice and regulations should specify the situations that may fall within Clause 31(2) if the cooperation requirements are to have teeth.

33. Assessment and planning processes must be best utilised to achieve the aim of integrated support, and local authorities must be made accountable for outcomes of young people. We would like to see clear processes to track destination of young people. Are some local authorities more successful in getting potential NEETs into training and eventually into work? We would like to see research into what good practice looks like.

34. ASCL strongly supports joint working but there is a danger that schools may be constrained by health and social care priorities, we are pleased to see concerns about health taken on board, see paragraph 13. Clause 59 will assist schools in dealing with the ‘ancillary aids’ provision under the Equality Act 2010 but it is not sufficiently clear in its wording; the local authority ‘may’ supply goods and services but will not have a duty to do so. We think that the clause should create a duty on the local authority. In a period of scarce resources this provision is otherwise likely to be ignored.

35. We also seek confirmation that children with no health or care component to their special educational needs will not lose out and will be eligible for an ECHP.

36. Joint working and in particular joint decision making is by its nature a slower process than unilateral decision making. The Common Assessment Framework (CAF) has provided much evidence that working together requires careful and efficient organisation. School and college leaders’ experience of the CAF is that they are very often expected to lead the process, even when the main issues are social or medical. This has placed a huge burden on educational resources and personnel which is not sustainable in a time of diminishing budgets. The CAF experience also shows that the role of a key worker is crucial.

TRANSITION FROM STATEMENTS TO ECHPs

37. Transition must be on a child to child basis and we anticipate that for many children and young people transition will be for the lifetime within a particular institution (at least five years) and in some cases longer. The new plans will need to be phased in gradually and schools and colleges will have to run both ECHPs and statements concurrently during the transition period. Our members point out that the statement review process is already a huge amount of work and anticipate that the EHCp reviews are likely to be even more time consuming. We await the regulations which will contain the detail on this.

SENCOs AND FUTURE SENCOs NEED QUALITY FUNDED TRAINING BUT DO NOT NEED TO BE QUALIFIED TEACHERS

38. We understand that regulations will set out the requirements of those who hold the role in schools and will maintain the current requirement for the SENCO to be a qualified teacher. We see this as a missed opportunity. SENCO is the only post in schools now which has a mandatory qualification beyond first training. ASCL would prefer more flexibility. Many non-teachers are now on senior leadership teams in schools and colleges including high level pastoral staff, the idea that without a teacher qualification they will not have high enough status is no longer true. Specialised SENCO training is however absolutely vital. We would like to see the funded training currently available to already appointed SENCOs extended to those who aspire to take up a SENCO post in the near future as there is a real succession problem with this role.

REVIEW AT TRANSITION TO SECONDARY SCHOOL

39. We are pleased to see that Clause 27(1) puts a duty on local authorities to ‘keep under review’ its special education and social care provision for the children and young people with SEN to whom it has a duty. Too often our members find that a child arrives in secondary school or college with incomplete records, and identification and assessment process has to start from the beginning; we hope that ECHPs will address this problem. Some young people however develop special needs later in their childhood or during teenage and early adulthood, particularly with issues such as mental health, and some children arrive at secondary school with special educational needs that have not been picked up by their primary school. While essential that the identification process can commence at any age and should be kept under review, it would be useful to create the opportunity for review at transition stages in education such as the start of secondary school.
40. There should be particular consideration of the assessment of children arriving from outside the UK, particularly in light of Clause 20(4); while we agree with the wording of that clause there should be a caveat for vigilance for those children, as poor language skills may mask SEN.

41. Transition arrangements between school, college and employment need to be carefully managed. Young people generally benefit from being gradually introduced to a new environment through two-way visits, followed by part-time attendance and eventually full-time transfer. At present it is difficult to organise this because of funding and related attendance requirements, and such arrangements are often undertaken too short a time. Flexibility and patience is required alongside a less rigid approach to funding. If possible, a staff member should be appointed as a link contact for the young person during and after their transfer. If feasible, a person who is disabled or has SEN themselves and who is already employed at the new place of work should be appointed as a workplace mentor and receive training to carry out this job. This would be advantageous to new and established employees.

42. The appointment of a key worker with particular responsibility for maintaining records and contact with the young person as they approach adulthood would assist continuity and provide an automatic single access point for enquiries.

43. The provisions in this bill relating to portability of social care support should reflect those for adults contained in the Care and Support Bill.

44. ASCL welcomes Part 5. We believe it will improve the credibility of the Commissioner’s role and hope that it will strengthen the impact on the lives of children and young people.

45. We believe that the Children’s Commissioner will be most effective when it has a strengthened and independent remit with a clear emphasis on balancing children and young people’s rights with responsibilities. For example, in schools the rights of individual children who frequently or seriously misbehave must be balanced against the rights of all the other children in the school who have a right to a peaceful life and an effective education. We think that as well as children’s rights the Commissioner should have regard to their need for protection and guidance. We would therefore like to see the Children’s Commissioner’s remit widened to include a function of encouraging a culture of responsibility as a counter balance to rights. We believe this will promote a greater understanding of the true value of the UNCRC to which the UK is rightly a signatory.

March 2013

Memorandum submitted by the Local Government Association (CF 19)

The Local Government Association (LGA) is the national voice of local government. We work with councils to support, promote and improve local government. We are a politically-led, cross party organisation which works on behalf of councils to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems. The LGA covers every part of England and Wales, supporting local government as the most efficient and accountable part of the public sector.

SUMMARY

1. Councils want the very best for children and young people and will have a central role to play in implementing many of the provisions in the Bill. We therefore want to make sure the Bill gets it right and secures the best outcomes for all our children and young people. Whilst the LGA welcomes many of the provisions in the Bill, we still have a number of concerns about measures in the legislation. In particular:

1.1 We think that the provisions in clause 3 which could allow the Secretary of State for Education to remove councils from the recruitment and assessment of adopters are unnecessary, heavy-handed and risky. It is the wrong solution and risks making things worse for children and adopters.

1.2 We are also concerned that the Bill may not maximise the opportunity to reform the Special Educational Needs (SEN) system because it does not put measures for sufficient accountability in place. As it stands, the Bill means that local authorities will be held to account for organisations over which they have no control, particularly health bodies.

2. Adoption: The central consideration in any adoption decision must always be what is in the best interests of each individual child.

2.1 We are particularly concerned by the Government’s solution to the adopter shortage outlined in clause 3 because it will not actually solve wider problem. Removing 80% of the capacity in the system to recruit and approve adopters when we have a massive shortage is illogical and dangerous. Voluntary Adoption Agencies
(VAAs) themselves say they cannot make up the capacity and this approach risks more harm than good. In addition:

2.1.1 The clause does not provide any criteria for use of this sweeping power, nor requires its use to be justified.

2.1.2 It ignores that where there are problems in the system, the sector is already addressing it and is contrary to the Government’s own localism argument.

2.2 The Government has not produced robust evidence that delay caused by the search for a “perfect ethnic match” is a widespread problem for which legislative change is required. We do believe that ethnicity should be one issue balanced amongst all considerations, not an overriding factor. Both the Government’s and the House of Lords Committee’s draft clauses would support this approach as the best interests of the child will remain at the heart of decisions about adoption. Both retain the requirement in the Adoption Act 2002 for the court or adoption agency to have regard to, inter alia, “the child’s particular needs” and “the child’s age, sex, background and any of the child’s characteristics which the court or agency considers relevant”.

2.3 Clause 4 provides for the use of personal budgets for adoption support services. Councils already promote personal budgets widely for use by many service users in other areas of social care, but with the pilots not having been completed, we believe there needs to be time taken to evaluate the impact around adoption. We seek reassurance that a decision on commencing these clauses will not be taken until the findings from the pilots are available and able to inform implementation.

2.4 Councils take their responsibilities towards looked after children very seriously. Every local authority in England already has arrangements in place to deliver the function of a Virtual School Head: to fulfil their duty to promote the educational achievement of looked after children. The provisions in clause 9 are therefore unnecessary. A duty on schools to co-operate is vital for the promotion of educational achievement of looked after children. Therefore, we want to see the Bill strengthen requirements on schools, as the direct providers of education, to cooperate with councils on the delivery of this duty. This approach would have greater impact by strengthening the partnership needed to improve educational outcomes for children.

2.5 The adoption provisions apply to England only. The LGA seeks clarity from the Government about the impact on adoptions across the England and Wales border.

3. Family Justice Review: Councils are dedicated to putting children first and those in care need to be saved from the years of uncertainty created by the current court system. The LGA supported the Family Justice Review and welcomes Government measures to speed up the system.

4. Special Educational Needs: Councils want the very best for children and young people and are pleased to have responsibility for all young people with special needs and welcome the central role they will play. However, if outcomes are to improve, it is vital that councils have the legal, administrative and financial means to carry out their new duties.

4.1 We also think that the provisions for Education, Health and Care (EHC) Plans should be extended to children and young people with disabilities that fall within the definition of ‘children in need’ under the Children Act 1989 but who do not have a special educational need or those who are aged 18 or have their needs met by adult social care services who will have a statutory Care Plan under the draft Care and Support Bill. Councils already have a duty to carry out care assessments. We do not think two entirely separate systems and different timetables for health and care provision for children do not have SEN is helpful.

4.2 Local authorities will be held to account for organisations over which they have no control and are currently the only organisations included in the Bill that can end up in court. There is currently no right of appeal in the Bill against decisions made by Clinical Commissioning Groups (CCGs), or other NHS bodies even though they have a duty to make healthcare provision for children and young people with special educational needs. This means that a child’s parent or young person may appeal against decisions made by local authorities about the special educational provision in an EHC Plan, but not about the healthcare provision the Plan. Healthcare provision which is made ‘wholly or mainly for the purposes of education’ is, according to the Bill, to be treated as special educational provision, so councils can be taken to court for something over which they have little or no control.

4.3 We welcome the Government’s announcement, made in a Department for Education Press Release, dated 5 March 2013, that it will place a legal duty on Clinical Commissioning Groups that will mean they will by law have to secure services in EHC plans. We look forward to seeing further detail on this announcement and hope that it will alleviate some of our wider concerns related to the legislation. As drafted, the Bill contains duties placed on local authorities that are not mirrored with health provision, which ties in with our concerns about accountability. It is not clear how the NHS Commissioning Board and Clinical Commissioning Groups can be held to account and challenged if they do not deliver the provision set out in an EHC Plan. There is no mechanism for local authorities to enforce health bodies’ compliance.

4.4 It is very important that the requirements for the Local SEN Offer are flexible enough to take account of parent and young people’s choice so that they can understand their entitlements and allow for them to express a preference for specific provision. Local authorities are already required to publish information about a range of services that they provide or secure, including the SEN provision made from school and local authority
bans and information about parent partnership services. The work underway by the SEN Pathfinders and other agencies should be used to inform any common framework for the Local SEN Offer which may be set out in Regulations, particularly to address the provision that will need to be made available in schools and colleges to support pupils with low to moderate SEN without EHC Plans. It is vital that local authorities should have the freedom to respond to local circumstances to meet the needs of children and young people in their area.

4.5 We are concerned that the Bill creates expectations that it may not be possible to meet. Parents of children with SEN and young people with SEN need to understand their entitlement to services across the age range of 0–25 years old. The provisions currently lack clarity, particularly in relation to the 19–25 year old offer. This risks creating a more adversarial system if parents pursue entitlement to education up to the age of 25 when in many cases an EHC Plan will end sooner than that as young people will be ready to make the transition to adult life at differing ages.

4.6 Any changes to SEN provision needs to be seen in the context of a time when councils are facing cuts of 33% over the Spending Review period and there are changes to High Needs funding. The LGA is discussing this with the Department for Education and wants to make sure that budgets match projected demand.

Adoption and Children Looked after by Local Authorities (Clauses 1–9)

5. Local government is committed to the children in its care and to making improvements to the adoption system. The LGA is already working closely with the sector and the Children’s Improvement Board (CIB), on improving the adoption system and local performance.

6. Clause 1: Fostering for adoption

6.1 Councils already make use of this practice. The proposed clause should lead to greater uptake, though the central consideration in any adoption decision must always be what is in the best interests of each individual child.

6.2 Prospective adopters that choose to take this route will also need to be fully aware of the implications and supported throughout.

6.2 Fostering for adoption increases stability for children; however it remains essential to progress measures to reduce the significant delay in the courts, to reduce uncertainty for the child (and birth parents and prospective adopters) and for those who are not being fostered for adoption.

7. Clause 2: Ethnicity and Matching

7.1 The Government has failed to present robust evidence that delay caused by the search for a “perfect ethnic match” is a widespread problem for which legislative change is required. The House of Lords Select Committee on Adoption Legislation found that overall, the evidence it received did not suggest that this is such a significant problem that legislative change is necessary.

7.2 Anecdotal examples indicate that where problems may have occurred, it is an issue of practice, rather than legislation. We do believe that ethnicity should be one issue balanced amongst all considerations, not an overriding factor. Both the Government’s and the House of Lords Committee’s draft clauses would support this approach as the best interests of the child will remain at the heart of decisions about adoption. Both retain the requirement in the Adoption Act 2002 for the court or adoption agency to have regard to, inter alia, “the child’s particular needs” and “the child’s age, sex, background and any of the child’s characteristics which the court or agency considers relevant”.

8. Clause 3: Recruitment, assessment and approval of prospective adopters

8.1 We would strongly encourage the Committee to support amendments which would delete this Clause from the face of the Bill. Giving the Secretary of State power to remove local authorities from the adopter assessment and approval process is unnecessary, heavy-handed and risky. This is because:

— It is the wrong solution for the adopter shortage problem and risks making the system worse for children and adoptive parents. VAs only provide around 20% of adopter recruitment currently. To seek to remove the other 80% of capacity in the system would be counter-productive, running serious risks of creating more delay for children in finding an adoptive home. It also risks fragmenting the system as councils remain responsible for placing children for adoption and matching them with families. Adoptive families say they like the consistency of support from a social worker through the whole process.

— The Government has recognised that many adoption services provide an excellent service and are very effective at recruiting sufficient adopters to meet local need. The problems lie mainly in the disincentives in the system, which deter councils from recruiting more adopters than they need in their local area. The LGA is already working with SOLACE and ADCS on sector-led plans to overcome these systemic barriers and improve performance where necessary.

— The clause does not provide any criteria for use of this sweeping power, nor requires its use to be justified.
— The Secretary of State already has sweeping intervention powers, making this power unnecessary.

8.2 Our concerns are shared by Barnado’s: writing in the Independent, Janet Grauberg, their UK Director of Strategy, said that "the solution does not fit the problem, and in fact risks causing more harm than good. An indiscriminate approach to ‘compulsory contracting out’ of adoption services by government could potentially create more instability and delay in the system, not less."²⁸

9. Adoption support services: Personal budgets

9.1 Councils already promote personal budgets widely for use by many service users in other areas of social care, but with the pilots not having been completed, we believe there needs to be time taken to evaluate the impact around adoption. We are concerned that putting this into legislation is premature, given that pilots have not yet started and the impact is unknown. We seek reassurance that a decision on commencing these clauses will not be taken until the findings from the pilots are available and able to inform implementation.

10. Adoption Register

10.1 The impact of giving greater access to prospective adopters needs further consideration. We are concerned that it has the potential to be counter-productive if people become disappointed and disillusioned with the system, due to very high numbers of adopters wanting to adopt one particular child.

11. Wales

11.1 The adoption reforms apply to England only. The LGA seeks clarity from the Government about the impact on adoptions across the England and Wales border.

12. Virtual School Heads

12.1 The Bill enacts a previously announced policy of requiring all councils to have a VSH in order to promote the educational achievement of looked after children. As corporate parents, councils recognise the importance of helping children to overcome the trauma experienced before they came into the care system and supporting them to achieve good educational outcomes. Every local authority in England already has arrangements in place to deliver the function of a Virtual School Head and fulfil their duty to promote the educational achievement of looked after children. A duty on schools to co-operate is vital for the promotion of educational achievement of looked after children. Therefore, we want to see the Bill strengthen requirements on schools, as the direct providers of education, to cooperate with councils on the delivery of this duty. This approach would have greater impact by strengthening the partnership needed to improve educational outcomes for children.

FAMILY JUSTICE PROVISIONS (CLAUSES 10–18)

13. Expert Evidence

13.1 The LGA welcomes provisions in clause 13 for limiting the use of expert evidence and recognises the importance of social work reform in improving skills of professionals and courts’ confidence in them.

14. Limiting the length of proceedings

14.1 The focus on limiting the length of proceedings via the 26 week timescale in clause 14 will be important in reducing delay for children. Changes to culture and working practices must of course also sit alongside structural and legislative change. Councils, courts and other partners in some areas are already working together to improve local working.

15. Children’s Improvement Board

15.1 The LGA is a partner in the Children’s Improvement Board, which supports sector led improvement in children’s services, drawing on the expertise of political leaders and senior officers in councils. Supporting councils to implement the Family Justice Review forms part of this work. This includes a series of regional seminars for professionals to complement the publication of a new resource ‘Evidence matters in Family Justice’, designed to support professional, robust and credible assessments and court reports. The seminars are also supported by the Family Justice Board and local family justice boards.

SPECIAL EDUCATIONAL NEEDS (CLAUSES 19–32)

16. Protecting children and helping provide for their future is one of the most important things councils do and councils take their responsibilities very seriously. Children and young people have to be at the heart of this legislation and we welcome the opportunity to move away from a process-driven system to one that focuses on the outcomes for children and young people.

²⁸ http://www.independent.co.uk/voices/comment/adoption-giving-children-the-chance-of-a-better-life-is-the-sole-priority-8465830.html
17. **Children with Disabilities**

17.1 We also think that the provisions for Education, Health and Care Plans should be extended to children and young people with disabilities that fall within the definition of ‘children in need’ under the Children Act 1989 but who do not have a special educational need or those who are aged 18 or have their needs met by adult social care services who will have a statutory Care Plan under the draft Care and Support Bill.

17.2 If one of the key aims is to have a more co-ordinated and more efficient system in place for children and young people, which gives councils a duty to promote integration, it would not be helpful to have entirely separate systems, and different timetables operating for health and care provision for the minority of children and young people with disabilities who do not have SEN. It could potentially lead to more disputes about provision leaving parents and young people to pursue claims and work through the complexity of different legislation in order to have their needs met. However, it is vital that any additional costs that may result from this are fully funded under the New Burdens Doctrine.

18. **Duties on Health Bodies**

18.1 We welcome the Government’s announcement, made in a Department for Education Press Release, dated 5 March 2013, that it will place a legal duty on Clinical Commissioning Groups that will mean they will by law have to secure services in EHC plans. We look forward to seeing further detail on this announcement and hope that it will alleviate some of our wider concerns related to the legislation. For specific health provision identified in an EHC Plan, we would expect that health bodies would have a duty not only to provide the healthcare but to fund it. For example, if a child with diabetes needed regular insulin injections during the school day, that would be health provision that should be funded by the health service.

18.2 As drafted, the clauses do not go far enough in respect to health bodies and equivalent duties are not placed on Clinical Commissioning Groups (CCGs). Clause 25 does not include a duty on CCGs to promote integration and we would therefore support an amendment that would achieve this. Clause 27 places a duty on councils to keep education and care provision under review and consider the extent to which it is sufficient to meet the special educational needs and social care needs of the children and young people concerned. There is no mirror provision for health bodies to keep health provision under review. This raises the key issue of accountability because it is not clear how the integration of education, health and social care can be achieved if the Bill does not require the NHS Commissioning Board and Clinical Commissioning Groups to have the same duties for health provision as councils have for education and care provision. We would welcome a new clause that would provide mirror duties for health bodies.

19. **Duties and Cooperation**

19.1 The Bill creates a duty on local authorities and their local partners to collaborate. As drafted, clauses 28 and 29 are intended to create a reciprocal duty of co-operation. However, whilst the Bill gives the administrative means to carry out these duties, these clauses do not give councils the means to hold organisations to account, for example, local authorities should be able to exercise their scrutiny role.

20. **Local SEN Offer**

20.1 Clauses 30–32 outline the duty on local authorities to provide information on the service they expect to be available for children and young people with SEN.

20.2 As champions for children and parents whose lives do not revolve around administrative boundaries we are concerned about the level of bureaucracy required to fulfil the local SEN offer. Each council’s local SEN offer will be expected to take account of the offers made in other areas and represents a significant cost to administer. The new duty on councils to publish a local SEN offer also needs to be seen alongside the proposal to provide the option for a personal budget where parents may be able choose what services they want for their children from elsewhere.

20.3 The focus of the local authority must remain on the needs of the individual child or young person. The LGA is therefore concerned that the Bill and Regulations should not be over-prescriptive about the Local SEN Offer or it will limit local freedoms and flexibilities to take account of parental choice and preferences and the ability of local authorities to respond to local priorities.

20.4 At the core of our concerns is the issue of expectations and that the Local SEN Offer should not create a significant and costly bureaucratic burden.

20.5 It is critical to get the Local SEN Offer right and that the Pathfinders should be used to inform Regulations on what should constitute minimum standards, particularly to address the provision that will need to be made available in schools and colleges to support pupils with low to moderate SEN without EHC Plans.

21. **19–25 year old offer**

21.1 Although it is not intended that the new system should give an entitlement to education up to the age of 25, there is already anecdotal evidence that parents are assuming that it will. This could result in a significant increase in the number of young people with complex needs staying on in education at significant extra cost when it may not be in their best interests to do so.
21.2 It is therefore vital that the responsibility, funding and, where appropriate, access to advocacy for young people aged 19–25 is clarified so that all those involved know what they can expect from the new provisions and who is accountable for providing it. We agree with the view, expressed by the Education Select Committee following pre-legislative scrutiny, that if the purpose of the legislation is to extend education as a right to 25, then the Government needs to make that clear and fund that; if not, then that should also be made clear.

22. Appeals and tribunals

22.1 Clause 50, as drafted, would mean that it is only decisions by local authorities, rather than other organisation, that parents of a young person may appeal against to the First-Tier Tribunal in relation to named matters. There is currently no right of appeal in the Bill against decisions made by Clinical Commissioning Groups (CCGs), or other NHS bodies even though they have a duty to make healthcare provision for children and young people with special educational needs. This means that a parent or young person may appeal against decisions made by local authorities and about the special educational provision in an Education, Health and Care Plan, but not about the health and care provision the Plan. Health provision which is made ‘wholly or mainly for the purposes of education’ is, according to the Bill, to be treated as special educational provision, so councils can be taken to court for something over which they have little or no control.

22.2 The issue of accountability is also related to the Local SEN Offer. This will provide information about the provision expected to be available in all types of schools, including Academies and colleges but only local authorities will be held accountable through the appeals process to the tribunal. This means we could see a situation where a school, college or another institution is named in an EHC Plan but does not deliver, for whatever reason, the special educational provision, the local authority is held to account. It would help local authorities if tribunals were able to direct schools and colleges to provide what they say will and this would help provide more influence over all types of schools and colleges.

23. Mediation

23.1 Clauses 51 and 52 make provisions for local authorities to appoint an independent person to help resolve disagreements between parents and schools. We would like the Government to clarify what process should follow if disputes cannot be resolved.

24. Territorial extent

24.1 Clause 57 refers to making arrangements for a child or young person to attend an institution outside England and Wales, including contributing to or paying fees and travelling expenses but does not specify where. This could see local authorities facing a significant cost burden if they have to fund arrangements to other countries. We would therefore want to see the clause specify where exactly such arrangements may be made and supported by local authorities.

25. Duties on schools

25.1 The LGA is pleased that the clauses in the Bill will apply directly to academies and Further Education colleges, rather than through centralised contracts held by the Secretaries of State for Education and Business, Innovation and Skills. For children and their parents, schools and colleges are their main day-to-day contact so their role will be significant in making the new system a success.

25.2 A number of provisions apply to schools but not colleges, for example the duties listed in clause 63 & 64 on a school to inform parents about special educational provision do not apply to colleges. The responsibilities of post 16 institutions should be spelled out more clearly in the legislation. The duties that apply to schools to provide an SEN information report in clause 64 should also apply to colleges and all types of alternative provision and pupil referral units.

26. Code of Practice

26.1 Clauses 66 and 67 provide for a new code of practice for SEN. It is important that draft regulations and the new code of practice are available as the legislation proceeds through Parliament as much of the detail of the new systems will not be in the Bill. The new Code of Practice needs to start afresh to reflect the shift from process to achieving better outcomes for children and young people. We would also like to see the learning from the Pathfinders referenced in any code to ensure that best practice is shared.

26.2 Clause 67 sets out the procedure for making and approving the Code of Practice. Given the significance of the Code of Practice, we would like to see it subject to affirmative resolution rather than negative resolution so that proper debate takes place.

27. Pathfinder Projects

27.1 20 pathfinders, covering 31 local authorities are currently testing the main proposals in the SEN Green Paper. It was announced recently by Minister Edward Timpson MP that the current pathfinder programme would be extended for a further 18 months beyond March 2013 through to September 2014 and the Department is examining the best ways of spreading best practice from the pathfinders to remaining local authorities.
27.2 As the Bill progresses through Parliament it is vital that learning from the Pathfinder and other projects is incorporated. We would also like to see the Bill amended to provide for local councils to develop and introduce new ways of working in partnership and at a speed that sustains existing good practice.

CHILDREN

28. Child-minder hubs

28.1 The Bill introduces changes to childcare in clauses 73 to 76. Clause 73 amends the Childcare Act 2006 to allow for a new model of child-minder agencies, or ‘child-minder hubs’ which child-minders register direct with for a cost for their services. Many local authorities are already providing a similar service to child-minders by providing training and support as part of their childcare sufficiency duties. With the creation of this new model, many local authorities may choose to set up child-minder agencies to continue to offer their experience in this area whilst keeping the costs to child-minders at a minimum.

29. Sufficiency duty

29.1 Clause 75 repeals the duty for local authorities contained in schedule 11 of the Childcare Act 2006 to publish a formal assessment of the sufficiency of childcare at least every three years. The LGA is broadly supportive of removal of a duty on local authorities. However, we want to be sure that central government does not expect cost-savings from removing this duty. It is important that councils retain the option to use the tools they need to exercise their duties in providing sufficient childcare.

30. School facilities

30.1 Clause 76 removes requirements on school governing bodies to consult if they want to open up their facilities for the wider community, including for childcare provision. The LGA is supportive of encouraging schools to open up their facilities for local provision of childcare, as well as reducing bureaucracy upon schools. Therefore we welcome this clause as a first step towards achieving this ambition.

March 2013

Memorandum submitted by Fiona Nicholson (CF 20)

PART 3 CHILDREN AND FAMILIES BILL: SEN AND ELECTIVE HOME EDUCATION

1. This memorandum addresses itself to Part 3 of the Bill which deals with SEN and it focuses specifically on elective home education where children are educated at home by parental choice. For some children with SEN, home education is not just a lifestyle choice, it may be a lifeline.

2. I gave oral evidence on home education to a previous Public Bill Committee in 2010 and have also given oral evidence to Select Committees in 2009 and 2012.

3. At the end of 2012 I assisted the Home Education Advisory Service to organise a meeting of the All Party Parliamentary Group for Home Education chaired by Lord Lucas and attended by DfE and Ipsea specifically to discuss the impact of changes to SEN for children who are home educated.

4. In the SEN clauses of the Bill there is no acknowledgement that children may be educated otherwise than in a school, nursery or post-16 institution and this has not been corrected despite exhaustive pre-legislative scrutiny. A similar mistake was initially made in drafting the legislation on raising the participation age.

5. Local authorities may interpret clauses 22 and 23 in the Bill as a duty to ascertain whether any children in their area may have special needs, which in turn would require them to screen home educated children whose additional needs or learning difficulties would not be picked up by schools.

6. Regulations should specify there will no routine screening for SEN in home educated children and that while the parent may of course request an assessment, the authority should not seek to impose the assessment without reasonable grounds for believing that the child does in fact have additional needs.

7. The duty to secure the special educational provision in accordance with the EHC plan falls on the LA. What impact does this have on the parents’ responsibility for the child where the authority and the family may disagree? EHC plans should echo the directive from Baroness Ashton during the drafting of the current SEN Code of Practice, namely that “we do not suggest that parents must carry out exactly what is written within the statement”. Will this be included in regulations?

8. Education has to be suitable to the child’s age ability aptitude and SEN. Could it be clarified whether there is a new requirement for the parents to satisfy the authority that their arrangements are “suitable” before being allowed to begin home education or being allowed to continue home educating?

9. Where services are delivered through schools—or on school premises—could home educated children be denied those services? Will provision be made for services to be accessed other than in a school?
10. Will local authorities be able to refuse home education because services or support may be inaccessible to children with SEN who are not on roll at a school?

11. Clause 35 seems to be saying that children with SEN can be excluded from any school activities if the school decides that inclusion isn’t reasonably practicable or if the school believes that inclusion might have some effect on other pupils.

12. Does clause 36 mean that local authorities have a new ongoing duty to monitor all children with special needs every six months?

13. Clause 42 says that the authority has no duty to secure the educational provision specified in the plan “if the child’s parents or the young person has made suitable arrangements.” This could be interpreted to mean that home educated children with SEN are entitled to nothing. However, the SEN Green Paper said “in some cases, parents on their own may not be able to make suitable provision for their children but could do so with some support from the local authority. We expect that when local authorities are considering whether parents are making suitable provision that they also consider whether to use their power under the Education Act 1996 to make special educational provision out of school to help the parents make their provision suitable for their child’s SEN.” This has been dropped from the Bill.

14. Clause 45 says that the EHC plan may be ceased “where the child or young person no longer requires the special educational provision specified in the plan.”

15. The combined effect of clauses 42 and 45 could be that the LA has no duty to secure provision when children are home educated and that therefore the plan will be ceased.

16. Will parents may have to prove that mainstream is “inappropriate” before being allowed to home educate? (Clause 56)

17. When will the Minister’s amendment covering the new duty on health be published, since the concern is that under current case law, health needs which impact on education come under “education” and are enforceable by tribunal. If health is now to be kept separate from education, then the proposed new measures may make things worse for families rather than better.

March 2013

Memorandum submitted by The Association of National Specialist Colleges (CF 21)

NATSPEC EVIDENCE RELATING TO PART 3 CHILDREN AND YOUNG PEOPLE IN ENGLAND WITH SPECIAL EDUCATIONAL NEEDS

INFORMATION ABOUT THE ASSOCIATION OF NATIONAL SPECIALIST COLLEGES: NATSPEC

— Natspec is the membership association for over 60 specialist colleges in England.
— Natspec colleges provide high quality, tailored education and skills development courses for up to 3,500 students with complex learning difficulties or disabilities.
— Students follow personalised courses that help them to achieve their goals and aspirations, for example to start work or to live independently in the community.
— Natspec colleges employ skilled staff teams, whose expertise and knowledge enable them to provide individualised learning and support.
— Colleges use assistive and cutting edge technologies to promote independence and autonomy.
— Natspec colleges offer a well-rounded education and encourage students to become involved in additional activities like sport, drama, arts and crafts and volunteering opportunities.
— Student’s opinions and feedback are important, and a range of approaches are used to ensure that students have their say, including a Natspec learner survey.
— Natspec is a member of the Special Education Consortium (SEC) and works closely with the Association of Colleges (AoC) on matters of shared interest.

THE BILL

1. Natspec broadly welcomes part 3 of this bill and supports its intentions. We note the positive changes that have been made through the consultation process and the pre-legislative scrutiny. However, some concerns remain, in particular about the support that will be available to ensure genuine participation by young people, and about continuing access to education up to the age of 25 for those who require it in order to optimise their opportunities and improve their life chances as they move into adulthood.

2. Natspec also remains concerned about the impact of the funding reforms for high needs students which will be introduced in September 2013, a year ahead of the bill’s reforms. Currently these funding reforms are creating a good deal of confusion for young people and their families, and are overly bureaucratic and problematic for providers, local authorities and the EFA, with many uncertainties remaining just a few months ahead of implementation.
INVOlVING YOUNG PEOPLE

3. Clause 19: Natspec welcomes new clause 19, with its focus on involving and including young people. However, it is important to understand that doing this effectively requires skills, time and resources, so we want to ensure that young people are given appropriate support to participate. They should not be put under undue pressure to understand complex documents or procedures without such support, nor should they be expected to take on responsibilities that their non-disabled peers would not be expected to undertake.

4. We would therefore wish to see some form of monitoring of the involvement of young people and the support provided to enable this.

5. Clause 22: We agree that LAs should be able to identify children and young people with learning difficulties or disabilities in their area. The significant problems in implementing the funding reforms for high needs students have shown how poor the data is currently. LAs fulfilling their duties under this clause will be essential in ensuring the effective implementation of the funding reforms and this legislation.

EDUCATION, HEALTH AND CARE PROVISION; JOINT COMMISSIONING AND CO-OPERATION

6. Clause 28: Natspec welcomes and supports the duty to co-operate with LAs. However, when colleges work with large number of local authorities, there may be additional administrative burdens imposed through this clause. We would therefore wish to see the development of consistent approaches and practices across local authorities, which will not only reduce such burdens for partners but will provide greater clarity for those using services.

THE LOCAL OFFER

7. Clause 30: Natspec welcomes clarification that the ‘local offer’ must also include information about provision beyond local authority boundaries. It is important that young people and parents are made aware of the full range of options that are available to them, including specialist provision that can meet the learning and support needs of those with more complex or low incidence disabilities. It neither makes sense nor offers value for money to replicate such provision in every local area. It is also part of the post-16 travel o learn patterns that support needs of those with more complex or low incidence disabilities. It neither makes sense nor offers value for money to replicate such provision in every local area. It is also part of the post-16 travel o learn patterns that support needs of those with more complex or low incidence disabilities.

8. We continue to support the need for a national framework for the local offer, without which young people and parents cannot compare local offers and the range of provision and services available. We support the inclusion in such a framework of clear principles, the scope of the offer, how it is to be reviewed, the formats for publication, and how authorities will be held to account for its delivery.

9. We welcome the fact that regulations will indicate how young people are to be involved in preparing the local offer, and will comment further once these regulations are published.

10. Clause 32: Young people, and their parents, must receive impartial advice and accessible information if they are to be able to make choices that will be in their best interests.

EDUCATION, HEALTH AND CARE PLANS

11. Clause 36 (also clauses 37 EHC plan, 44 reviews and re-assessments and 45 ceasing to maintain an EHC plan): Natspec has concerns about the wording of (10), which states that with regard to EHC plans, a local authority ‘must have regard to’ the age of someone over 18. We have concerns that this could be used to reduce access to learning for those over 18 and may result in a perverse incentive to set educational outcomes that can be achieved by 18, in order to cease the plan at that point. Natspec’s view is that many young people with an EHC plan benefit from continuing access to education to give them sufficient time to learn, practice and retain new skills, and to become more autonomous learners. We would therefore wish to see this duty to ‘have regard to’ age deleted and for there to be a positive assumption that a plan would be continued to the age of 25 for all those who need it.

12. We note that regulations will include information about how assessments are conducted and how views can be expressed and submitted. If young people are to be effectively engaged in this, then those who undertake assessments must be suitably skilled, trained and qualified to use person centred approaches. Regulations will also include provisions about advice, guidance and support. Those providing this must be well informed, suitably qualified and above all impartial.

THE INCLUSION OF SPECIALIST COLLEGES

13. Clause 41: Natspec warmly welcomes the inclusion of specialist colleges in this clause, thereby improving choice and enabling young people to name these colleges in their EHC plan. We look forward to further discussions about the specific content of the regulations. Natspec member colleges are clear about and accept the duties to admit and to co-operate that this inclusion brings with it. It will be important to ensure that these section 41 colleges are included in the local offer as local, regional or national options for young people.
CODE OF PRACTICE

14. Clause 66: Natspec notes that the new code will apply from 0–25, and will apply to specialist colleges, and welcomes both developments. The Learning Difficulty Assessment (LDA) guidance which this new code will replace included clear guidance on matters such as the engagement with young people, responsibilities within the system, the training required for those who undertake assessments, monitoring, transition planning and timescales. **We would wish to see these aspects of the LDA guidance included in the revised Code of Practice.**

15. Clause 67: Natspec welcomes the decision that the Code of Practice will be laid before parliament. However, we would wish to see the code put before Parliament under a positive resolution to ensure comprehensive scrutiny and debate.

March 2013

Memorandum submitted by TCCR and One Plus One (CF 22)

TCCR and One Plus One have concerns about the proposed legislation on parental involvement. We believe that the current proposals do not adequately take into account the psychological impact on infants and young children of arrangements where substantial amounts of time are spent away from the primary attachment figure (usually, but not always, the mother). We feel that where the court deems there to be no risk of harm to a child from the involvement of the non-resident parent, the presumption introduced under this legislation will make it more likely than is currently the case that the court will grant an order whereby care is shared more equally in terms of time.

It is imperative that any change in the law should put the needs of infants above those of parents, and we feel that the current proposals regarding parental involvement have the potential to run counter to this basic premise.

We understand that care being shared more equally in terms of time is not the intention behind the proposed legislation and that the Government has taken steps to ensure that the changes are not interpreted in this way. In practice, however, we feel there to be a significant risk that the law will be interpreted thus. Research shows—and our clinical experience confirms this—that arrangements whereby a very young child spends significant amounts of time away from their primary caregiver are likely to be extremely distressing and disruptive for those infants and young children, and most definitely not in their best interests given the impact which they might have on that child’s attachment system and emotional development.

Research from Australia published in 2010 gives a stark warning about the dangers which we feel such proposals could lead to:

‘Consistent with the findings of Solomon and George (1999), young infants under two years of age living with a non-resident parent for only one or more nights a week were more irritable, and were more watchful and wary of separation from their primary caregiver than young children primarily in the care of one parent. Children aged 2–3 years in shared care (at the policy definition of 3 nights or more per fortnight) showed significantly lower levels of persistence with routine tasks, learning and play than children in the other two groups. Of concern but as predicted by attachment theory, they also showed severely distressed behaviours in their relationship with the primary parent (often very upset, crying or hanging on to the parent, and hitting, biting, or kicking), feeding related problems (gagging on food or refusing to eat) and not reacting when hurt. Such behaviours are consistent with high levels of attachment distress, and the second report details this body of work as an important context for understanding the pathways of disruption indicated by these findings. Thus, regardless of socio-economic background, parenting or inter-parental cooperation, shared overnight care of children under four years of age had an independent and deleterious impact on several emotional and behavioral regulation outcomes’. (McIntosh, J et al. Post-separation parenting arrangements and developmental outcomes for infants and children. Collected reports. 2010)

One Plus One and TCCR believe that—if this proposal is to go through—there must be explicit guidance to judges, and also to parents, about the degree to which care could be shared in relation to the child’s age. In response to a letter TCCR sent to Edward Timpson, the Minister categorically ruled this out however: ‘There are no plans to introduce guidelines to courts or parents on how care can be shared according to a child’s age’.

The Australian research cited above shows negative impacts on infant and young child develop where parenting is shared in a ratio of 35:65 and above (ie 5 nights or more per fortnight). We believe that it is wholly inadequate to dismiss our call for guidance for judges and parents using the argument that the Bill will not result in 50:50 shared care arrangements—since at ratios of care which are weighted heavily in favour of the primary caregiver there nevertheless remains potential for significant harm to the emotional development of infants and young children.

March 2013
Memorandum submitted by the Independent Parental Special Education Advice (IPSEA) (CF 23)

PART 3 OF THE CHILDREN AND FAMILIES BILL ON SPECIAL EDUCATIONAL NEEDS

INTRODUCTION

IPSEA (Independent Parental Special Educational Advice) is a charity providing free legally based advice and support to parents in England and Wales who have children with special educational needs (SEN) and/or a disability. We have been advising parents for over 28 years, and therefore have a wealth of experience gathered over time and under changing legislation. We are recognised experts in SEN and disability discrimination law, providing independent services to thousands of parents each year. We are the largest single provider of advice and advocacy to parents taking a case to the SEND Tribunal.

We welcome the invitation from the Public Bill Committee to submit our evidence and views on the SEN provisions in the Bill to inform its scrutiny of the clauses.

After scrutinising the legislation, we remain concerned that as they stand the provisions do not fully retain the current legal entitlement of children with special educational needs to have their needs assessed and then met.

We are also unsure that the Regulations, as much a part of the SEN framework of protections and rights as the Act itself, will be maintained in their current detailed and comprehensive form. If not, the assurances that parents have relied on from the Green Paper on that their protections will not be diminished will not be fulfilled.

The current framework is regarded as unfit for purpose, too slow and bureaucratic. However, much of this perception stems from abuse of the system rather than the system itself, and from inadequate policing of the performance of duties under it. Our evidence is drawn from our direct knowledge of many parents and families, some over years, and from our experience of using the levers in the system to make it work for those families’ children and young people, so as to provide good long-term outcomes.

POSITIVE ADDITIONS TO THE LEGAL FRAMEWORK

— Extension of system to those aged up to 25 years.
— Extension of direct legal duties to cover academies.
— Pilot of appeal right for the child.
— Extension to non-maintained special schools of the duty to admit a child where they are named in the EHC plan.

WHERE THE BILL MAY ERODE CURRENT RIGHTS

1. Health care provision and social care provision

Clause 21(5) says that health care provision and social care provision can be special educational provision if ‘made wholly or mainly for the purposes of … education or training’. This is important because in the Bill at the moment only the education section, containing what is defined as special educational provision, of the Education, Health and Care Plan is enforceable.

Clause 21(5) represents a step towards retaining the current case law definition of therapies as special educational provision but ‘wholly or mainly’ is too high a threshold and too rigid a barrier: Case law does not use ‘wholly or mainly’ but talks of a ‘spectrum’ or range of provision from the purely medical to the purely educational, with a determination being made on individual facts, London Borough of Bromley and Special Educational Needs Tribunal and Others, [1999] EWCA Civ 3038, (1999) ELR 260.

We therefore suggest this amendment:

In 21(5), omit the words “wholly or mainly”

2. Triggering duty to assess

Clause 22 of the Bill imposes a new duty on LAs to identify children and young people who have or may have SEN. If all children with SEN are identified as now, this means the duty applies to the 17% of children who currently have SEN but no statements as well as to the 2.8% who have statements, 19.8% in all (DfE statistical release, SFR 14/2012 12 July 2012).

However, the duty to identify the children and young people is only that—it is not a duty to identify their needs via assessment.

This duty will also not act, as Education Act 1996 section 321 does, as the first link in the chain towards obtaining a statement/plan, ie ensure a duty to identify in particular those children and young people for whom the LA must determine provision, currently 2.8%.

We therefore suggest the following amendment:

Number existing clause 22(1).
Add new 22(2):

“In particular, a local authority must identify and assess a child or young person who has, or probably has, special educational needs that require the authority to determine the special educational provision which any learning difficulty he or she may have calls for.”

It also does not include all children and young people in need of health and social services if they do not have SEN.

IPSEA supports any amendment extending the duty to children and young people with medical and/or care needs but without special educational needs.

3. Requirement for time limits for assessment and advice during assessment

Currently the Education Act 1996 requires Regulations to prescribe time limits for the different stages of the process of assessment and statementing, ie the Act sets out these actions and requires Regulations to prescribe limits for local authorities (LAs) in:

- serving notices to do with assessment and the making and maintenance of a statement;
- making a decision whether or not to make an assessment of the child’s educational needs;
- informing the parent or young person of the decision and right of appeal;
- where they are carrying out a statutory assessment the performance of that duty;
- deciding whether to make a statement; issuing the draft statement; and issuing the final statement.

These requirements are omitted from the Bill. In particular, Clause 36 of the Bill requires the LA to decide whether to assess and to inform the parent/young person of that decision, but there is no explicit requirement for that decision to be made and communicated within a prescribed time period. Clause 36(11) sets out what Regulations may prescribe, such as the period during which the parent/young person is ‘consulted’ before the decision is made, but does not include the bullet points above. We therefore think that the following amendment is needed to clearly restore these rights where assessment is concerned, otherwise delay could be indefinite.

Insert new 36(11) and (12):

“(11) Regulations must prescribe time periods for:

(a) serving notices to do with assessment;
(b) making a determination under subsection (3);
(c) where a local authority have served a notice under subsection (7) on a child’s parent or young person, making a decision whether or not to make an assessment of the child’s educational needs,
(d) informing the parent or young person of determinations in (b) and (c) above and of their right of appeal against a refusal to assess;
(e) and that where a local authority are under a duty to make an assessment, the performance of that duty.

(12) Provision made under subsection (11)—

(a) may be subject to prescribed exceptions, and
(b) does not relieve the authority of the duty to serve a notice, or make a decision or assessment, which has not been served or made within the prescribed period.

In addition, the current Act requires a minimum standard of professional advice to be sought during assessment. Again this is a right not carried forward into the Bill. We therefore suggest a new Clause 36(13):

(13) Regulations must require the authority, except in such circumstances as may be prescribed, to seek medical, psychological and educational advice and such other advice as may be prescribed.

4. The form and content of the Plan

The current Act requires statements to be ‘in such form and contain such information as may be prescribed’. Clause 37(4) of the Bill allows for (but does not require) regulations about ‘preparation, content and maintenance’ of Plans. Not form. The current Act’s Regulations are detailed and comprehensive, containing a model statement demonstrating the form and the content to be ‘specified’. We believe that the Bill must retain this requirement so that children’s and young people’s right to an adequate and nationally defined Plan is as strong as it is currently. We therefore suggest a new subsection 37(3):

EHC plans must be in the form and contain the information prescribed.

We hope that the new Regulations will be at least as detailed in their prescriptions as the current ones on which our families and we rely.

5. Parental/young person’s involvement during the Plan’s preparation: maintain current requirements

LA prepares and sends the draft Plan to the parent/young person
Clause 38(1) requires LA to ‘consult’ parent/young person during the preparation of the Plan. The manner of the ‘consultation’ is not defined. In any case, consultation at this stage (between the decision to make the Plan and the formal issue of a draft Plan) may lead to iterations of informal drafts and delay of the formal stage. This compares to the current obligation in the Act’s Schedule 27 to prepare and issue the draft statement within two weeks from the decision to make the statement. The current eight weeks from issue of draft to issue of final statement allows for parental representations, meetings, etc., and we believe works well when done properly. We suggest the following amendment:

Delete 38(1) and renumber subsections accordingly.

In 38(2) replace

“The local authority must then –”

by

“Where a local authority is required to secure that an EHC plan is prepared for a child or young person it must –”

After the draft is issued: period for parent’s/young person’s representations and request

The current Act defines the time period for making representations about the draft statement in Schedule 27(3) (2). Parents have 15 days from service of the proposed statement to make their representations and express a preference, or, if they have a meeting with the LA (again allowed for on the face of the Act), 15 days from that meeting or the last of more than one meetings. The Bill in Clause 38(4) merely requires LAs to specify a period within which parents/young people make their representations/requests. This period seems to be at the discretion of an LA in each case.

The Bill does not repeat the current law’s provision of the parent’s right to meet the LA and does not extend it to young people.

We suggest the following amendment:

Replace Clause 38(4) with:

“must be expressed or made within the period of 15 days beginning—

(a) with the date on which the written notice mentioned in subsection 2(b) was received by the parent,

or

(b) if a meeting has (or meetings have) been arranged under subsection (5), with the date fixed for that meeting (or the last of those meetings).”

Insert new 38(5) and renumber accordingly:

(5) A parent or young person who has received a copy of a draft plan under subsection (2) may—

(a) make representations (or further representations) to the local authority about the content of the draft plan, and

(b) require the authority to arrange a meeting between him or her and an officer of the authority at which the draft plan can be discussed.

(c) Where a parent or young person, having attended a such a meeting, disagrees with any part of the assessment in question, he or she may require the authority to arrange such meeting or meetings as they consider will enable him or her to discuss the relevant advice with the appropriate person or persons.

(d) In this subsection—

“relevant advice” means such of the advice given to the authority in connection with the assessment as they consider to be relevant to that part of the assessment with which the parent or young person disagrees, and

“appropriate person” means the person who gave the relevant advice or any other person who, in the opinion of the authority, is the appropriate person to discuss it with the parent or young person.

(e) Any representations under subsection (5)(a) must be made within the period of 15 days beginning—

(f) with the date on which the written notice mentioned in subsection (2) was received by the parent or young person, or

(g) if a meeting has (or meetings have) been arranged (b) or (c), with the date fixed for that meeting (or the last of those meetings).

(h) A requirement under (b) must be made within the period of 15 days beginning with the date on which the written notice mentioned in subsection (2) was received by the parent or young person.

(i) A requirement under (c) must be made within the period of 15 days beginning with the date fixed for the meeting arranged under(b).

6. Finalising the Plan

Current law is again very detailed and the Bill is very sparse.
**Children and Families Bill**

**Time period:** The current Act’s Schedule 27(5)(1) prohibits the LA from making the statement until after the period prescribed for the parent to make representations/prefer a school. The Bill is ambiguous. The LA must secure any changes at the ‘end of the period specified in the notice under section 38(2)(b)’, i.e., the period specified by the LA in their notice with the draft Plan sent to the parent/young person, which is the period in which the parent/young person makes their representations about the Plan and requests a specific school. That does not allow time for dealing with any changes as a result of the representations which the current law allows for.

**No time limit in which to finalise a EHC plan.** The current Act requires Regulations to prescribe time periods for issuing the final statement and current regulations (Regulation 17(3)) require the LA to finalise the statement within 8 weeks of the date on which the proposed statement or proposed amended statement was served. No limit is indicated for finalising the Plan in the Bill other than the period in which the parent makes their views known (which, it appears, is up to the LA to specify).

**What can be changed between draft Plan and final.** The current Act’s Schedule 27(5)(2), (2A) and (2B) allow only changes resulting from representations by the parent or, in the case of a statement being amended, by the LA. The draft provisions allow the LA a free hand to make ‘any changes it thinks necessary’.

We therefore suggest the following amendments:

Replace 39(7) with:

“(7) The final plan must be issued within the time period prescribed, subject to any exceptions specified, and –

(a) Where representations are made to a local authority under section 38([new]5), the authority shall not finalise or amend the plan until they have considered the representations and the period or the last of the periods allowed by section 38([new]5) for making requirements or further representations has expired.

(b) When a local authority finalises the plan, it may be in the form originally proposed (except for the matters required to be excluded from the copy of the draft plan) or in a form modified in the light of the representations.”

7. Education otherwise

The Bill does not reflect the current Act on what the LA must do in specifying placement if school is not appropriate: Currently under section 324(4) of the Act the LA must ‘specify any provision for the child for which they make arrangements under section 319 [where school is inappropriate] and which they consider should be specified in the statement.’

The Bill omits this.

The current SEN Regulations repeat this requirement in the model statement in Schedule 2: the LA must specify ‘any provision for his education otherwise than at a school which the authority make under section 319 of the Act and consider it appropriate to specify’.

We therefore suggest this amendment:

In both 39(5) and 40(2), add:

“(c) specify any provision for the child or young person for which they make arrangements under section 56 and which they consider should be specified in the plan.”

8. Reviews and reassessments

The Bill omits the current requirement on the LA to inform parents of rights of appeal etc. (‘as prescribed’) in a notice to be served within a prescribed period.

The current Regulations contain essential protections for parents on behalf of children and must be retained.

Clause 44(6) requires LAs to ‘consult’ parents/young people during reviews and re-assessments, whereas current law requires LAs to enable full participation.

We therefore suggest the following amendments:

Add to 44(1)

“(c) where the authority has conducted a review of a plan and has determined not to amend the plan, the authority shall give written notice of the determination and of their reasons for making it to the child’s parent or the young person.

(d) The parent or young person may appeal to the Tribunal.

(e) A notice under subsection 44(1)(c) must inform the parent or young person of the right of appeal and of the period within which the right may be exercised.

(f) A notice under subsection 44(1)(c) must be given to the parent or young person within the period of seven days beginning with the day on which the determination is made.”

Amendment to find out what the intention is behind 44(2) and 44(4):

Insert new 44(3) and renumber:
“(3) If in any case where subsection (2) applies the authority decides not to comply with the request—
(a) they shall give notice in writing of that fact to the child’s parent or young person, and
(b) the parent or young person may appeal to the Tribunal against the determination.
(c) the notice under subsection(3)(b) must inform the parent or young person of the right of appeal under subsection (3)(b) and contain such other information as may be prescribed.”

Add to 44(7):
“(d) that where a local authority are under a duty under this section to serve any notice, the duty must be performed within the prescribed period.
(e) as to the manner in which reviews of plans are to be conducted,
(f) as to the participation in such reviews of such persons as may be prescribed.”

9. Ceasing to maintain a Plan

The Bill does not contain the current Act’s requirements that LAs serve notices informing parents of rights of appeal etc. (‘as prescribed’) within a prescribed period. We suggest the following amendment:

Insert new 45(5) and renumber:
“(5) Where the local authority determine to cease to maintain a plan—
(a) they shall give notice in writing of that fact to the child’s parent or young person, and
(b) the parent or the young person may appeal to the Tribunal against the determination.
(c) A notice under subsection 45(5)(a) must inform the parent of the right of appeal under section 50 and contain such other information as may be prescribed.”

10. Appeals

Overall the powers of the Tribunal in each type of appeal, currently specified on the face of the Act, are omitted, but ‘regulations may make provision’ about them. We ask that these are restored to the Bill by amending Clause 50:

Add new (4) to (8), and renumber:
“(4) On an appeal under subsection 2(a), the Tribunal may –
(a) dismiss the appeal, or
(b) order the authority to arrange for an assessment to be made in respect of the child or young person under section 36.

(5) On an appeal under subsection 2(b), the Tribunal may –
(a) dismiss the appeal,
(b) order the local authority to make and maintain such a plan, or
(c) remit the case to the authority for them to reconsider whether, having regard to any observations made by the Tribunal, it is necessary for the authority to determine the special educational provision which any learning difficulty the child or young person may have calls for.

(6) On an appeal under subsection 2(c), the Tribunal may –
(a) dismiss the appeal,
(b) order the authority to amend the plan, so far as it describes the authority’s assessment of the child’s or young person’s special educational needs or specifies the special educational provision, and make such other consequential amendments to the statement as the Tribunal think fit, or
(c) order the authority to cease to maintain the statement.

(4) On an appeal under subsection 2(c), the Tribunal shall not order the local authority to specify the name of any school or further education institution, or any provision under to be made under section 56 in the statement (either in substitution for an existing name or in a case where no school or further education institution is named) unless—
(a) the parent or young person has expressed a preference for the school or further education institution under section 39(1),
(b) in the proceedings the parent or the young person, the local authority, or both have proposed the school.

(5) Before determining any appeal under sub section 2(c), the Tribunal may, with the agreement of the parties, correct any deficiency in the statement.

(6) On an appeal under subsection 50(2)(d) the Tribunal may—
(a) dismiss the appeal, or
(b) order the authority to arrange for an re-assessment to be made in respect of the child or young person under section 44.
(7) On an appeal under subsection 50(2)(e) the Tribunal may—
   (a) dismiss the appeal,
   (b) order the authority to amend the plan, so far as it describes the authority’s assessment of the child’s or young person’s special educational needs or specifies the special educational provision, and make such other consequential amendments to the statement as the Tribunal think fit, or
   (c) order the authority to cease to maintain the statement.

(8) On an appeal under subsection 50(2)(f) the Tribunal may—
   (a) dismiss the appeal, or
   (b) order the local authority to continue to maintain the plan in its existing form or with such amendments of—
      (i) the description in the plan of the child’s or young person’s special educational needs, or
      (ii) the special educational provision specified in the plan,
   and such other consequential amendments, as the Tribunal may determine.”

11. Admission to special academies without a Plan

Clause 34(9) allows special academies to admit children or young people permanently without their having had their special educational needs properly assessed or an EHC plan put in place for them.

Currently any child that is placed in a special school can only be so placed by an LA following statutory assessment of their needs and the issuing of a statement of SEN naming that school. It cannot be right to allow a regression to pre-Warnock Report days, when children were found to have had difficulties wrongly identified and were placed in inappropriate institutions. In addition this breaches the right to an inclusive education set out in section 316 of the current Act, and reinforced by the statutory guidance Inclusive Schooling. The principle is surely right that all children should have, as far as possible, the right to an education in an ordinary school with their friends and family, in their community and culture. The current Act allows exceptions to that for statemented children where parents wish otherwise or the child’s presence in an ordinary school is incompatible with the education of other children, but insists that non-statemented children attend ordinary schools.

A practical unintended consequence of this measure may be that ordinary schools will feel relieved of their duties to engage properly with a child’s difficulties when that child or young person is a problem to them, and shuffle them into such special academies via ‘managed moves’. Special academies do not have to offer the national curriculum, may not offer what the child or young person would have received in educational opportunities in a maintained mainstream school, and may not (because the child or young person has not been assessed) be able to adequately provide for their SEN.

We therefore ask that Clause 34(9) is deleted.

12. Young person vs parent as responsible person

The Bill introduces a potential problem via its definition of young person in Clause 72, Interpretation: “‘young person’ means a person over compulsory school age but under 25”. That means anyone over the age of 16 at the lower limit.

The current Act defines child for the purposes of the SEN framework in section 312(5):

“In this Part—‘child’ includes any person who has not attained the age of 19 and is a registered pupil at a school.”

Throughout Part 3 of the Bill there is a problem in the switch of the parent’s rights to initiate and respond in all the processes to do with assessment and statementing (including appeals) to a ‘young person’ immediately the young person reaches end of compulsory school age (16). At the same time, parents remain legally responsible for a “child” under the Children Act until that young person reaches the age of 18.

We think that the Bill should reinstate the parent’s right in current SEN law to act on behalf of a young person who has not attained the age of 19, especially given that these young people by definition have learning difficulties. We note the age of majority is 18.

We do not see in the Bill how a young person who does not officially lack capacity (see Clause 68) but cannot or does not want to manage this process assigns their responsibilities to their parent or representative.

We believe it would be better to ensure that both parent and young person 16–19 years old receive all documents etc., and the parent can respond/appeal, go to annual review meetings, maintain a file of correspondence, etc., by providing an overlapping definition of the ‘child’s parent’ (‘parent’ is not defined in Clause 72). We therefore suggest the following addition to the clause:

“In this part, ‘parent’ has the meaning given by s576. References to the ‘child’s parent’ shall include parents of those young people over compulsory school age but below the age of 19.”

March 2013
INFORMATION
UNICEF UK is an integral part of the United Nations Children’s Fund. UNICEF is mandated by the UN General Assembly to advocate for the protection of children’s rights, to help meet their basic needs and to expand their opportunities to reach their full potential. UNICEF is guided by the UN Convention on the Rights of the Child (UNCRC) and strives to establish children’s rights as enduring ethical principles and international standards of behaviour towards children.

1. Summary

1.1 Independence is the defining feature of human rights institutions for children. It is their main strength and source of legitimacy and authority. International standards, known as The Paris Principles, are standards that all National Human Rights Institutions, including the Children’s Commissioner for England, should meet as they provide benchmarks against which the independence of the proposed Children’s Commissioner for England should be assessed. Gaps or shortcomings identified during the previous accreditation process for the Office of the Children’s Commissioner for England (OCCE) as established under the Children Act 2004 can serve as a road map or template to strengthen the status of the reformed Children’s Commissioner for England in order to ensure full membership of the European Network of Ombudspersons for Children (ENOC). This submission argues that the following improvements should be introduced:

— Involvement of Parliament in the selection, appointment and dismissal of the Children’s Commissioner;
— Financial autonomy by involving a committee of Parliament.

2. International standards for independent human rights institutions

2.1 As United Nations Member States built the international human rights framework after the Second World War, they early on identified independent national human rights institutions (NHRI) as important mechanisms for the realisation of rights. The concept of such institutions therefore evolved in the context of human rights and culminated with the adoption of the Principles relating to the Status of National Human Rights Institutions—commonly called the Paris Principles—by the United Nations General Assembly in 1993. The UN Committee on the Rights of the Child then embraced this model to fit child-specific institutions.

2.2 The Paris Principles29 are an international set of standards for the mandate, functions, composition, methods of operation and quasi-jurisdictional competence of national human rights institutions. They are an authoritative instrument for establishing independent institutions and assessing their conformity to international human rights law. They draw their status from their endorsement by the United Nations General Assembly, but also from their explicit recognition in more recent human rights treaties. They constitute the standards against which the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights and the European Network of Ombudspersons for Children (ENOC)30 rank and accredit institutions. Official recognition of compliance with the Paris Principles enables national institutions to participate fully in international and regional associations.

2.3 The Paris Principles set out what a fully functioning NHRI is and identify six main criteria that these institutions should meet to be compliant:

— Mandate and competence: a broad mandate based on universal human rights standards;
— Autonomy from Government;
— Independence guaranteed by statute or constitution;
— Pluralism, including through membership and/or effective cooperation;
— Adequate resources; and
— Adequate powers of investigation.

2.4 The establishment of a mechanism for monitoring the status of children’s rights was foreseen from the outset as an implementation tool for the Convention on the Rights of the Child (CRC). Although the CRC does not explicitly refer to independent human rights institutions, General Comment No. 231 identifies their establishment as a component of the general obligation on State Parties to implement Article 4 of the CRC.32 According to the Committee, every state needs an independent institution able to independently and effectively monitor, promote and protect children’s rights.33

29 Adopted by the UN General Assembly in its Resolution 48/134 of 1993
30 ENOC an association of 41 independent children’s rights institutions in 32 countries, and includes in its membership the Northern Ireland Commissioner for Children and Young People (NICCY), the Scottish Commissioner for Children and Young People (SCCYP), and the Children’s Commissioner for Wales http://www.crin.org/enoc
31 http://www2.ohchr.org/english/bodies/crc/docs/GC2_en_doc.doc
33 Committee on the Rights of the Child (2002). General Comment No. 2., op. cit., para. 7.
3. An independent Children’s Commissioner for England

3.1 UNICEF UK warmly welcomes the reforms to the role of the OCCE introduced in the Children and Families Bill, Part 5, and the proposed legislation’s close adherence to the recommendations in the Dunford Review. The Bill takes forward a number of recommendations dealing with the question of mandate and competence, pluralism and adequate powers of investigation. However, the legislation should be further strengthened to ensure that the status of the OCCE meets international standards on independence (appointment and dismissal) and funding (adequate resources and financial autonomy).

3.2 The current version of the OCCE is not a full member of the ENOC due to its lack of independence. The OCCE is one of only seven children’s rights institutions given associate membership status and therefore excluded from the General Assembly of ENOC. The children’s commissioners from Northern Ireland, Scotland and Wales are full members of ENOC.

3.3 The Children and Families Bill does not change the existing arrangements from Children Act 2004, which are as follows:

CHILDREN ACT 2004,
2004 C. 31, Schedule 1, Section 1

3 (1) Appointment
“The Children’s Commissioner is to be appointed by the Secretary of State”

3 (7) Dismissal
“The Secretary of State may remove the Children’s Commissioner from office if he is satisfied that he has—
(a) become unfit or unable properly to discharge his functions; or
(b) behaved in a way that is not compatible with his continuing in office.”

7 Funding
“The Secretary of State may make payments to the Children’s Commissioner of such amounts, at such times and on such conditions (if any) as the Secretary of State considers appropriate”

4. Appointment and dismissal of the Children’s Commissioner

4.1 The appointment and dismissal processes play a critical role in defining the independence of the institution and its ability to influence policies and practices. In order to meet the international standards and best practice the legislation must provide for greater Parliamentary involvement in the appointment and removal of a Commissioner.

— The legislation should set out broad criteria to which the Secretary of State should have regard in making an appointment and should require the Secretary of State to have due regard to the views of Parliament in relation to candidates.
— The Commissioner should only be removed from office for limited reasons prescribed by law, and Parliament should be involved in any decision to dismiss a Children’s Commissioner.

4.2 In the Children and Families Bill, the Commissioner is appointed by the Secretary of State and can be removed by the Secretary of State in an almost arbitrary way. Although in practice there may be a pre-appointment hearing of the Secretary of State’s chosen candidate (which is not a matter for statutory regulation), the draft clauses make no provision for any parliamentary involvement in the Commissioner’s appointment or removal. Such an arrangement clearly has the potential to undermine the independence of the Office.

4.3 Although the model followed in this Bill—appointment by the executive branch — is a practice in some countries, it raises challenges as the Children’s Commissioner monitors the body that has appointed him. Appointment by Parliament is considered a better guarantee of independence as the process is more transparent. In many countries the process involves a combination of Parliament and the executive branch, and that is the model we are proposing to be applied here. UNICEF UK sees no reason why the OCCE should not be reformed along the lines of best international practice (e.g. Belgium, Ireland, Poland, or Croatia).

4.4 The UK Government has accepted Parliament’s involvement in agreeing the job description/person specification for the post and holding a pre-appointment hearing with the preferred candidate prior to their formal appointment, but this too falls below the best international standards. The involvement of Parliament should be enshrined in statute, and there is an example of this in the UK. In Scotland, both the Commissioner for Children and Young People and the Scottish Human Rights Commissioner are appointed by the Scottish Parliament and can only be removed by the Scottish Parliament.

4.5 Clause 7 of the Children and Families Bill gives the Secretary of State exclusive authority to dismiss the Children’s Commissioner on widely defined grounds. UNICEF UK believes that protection from arbitrary dismissal is crucial to independence. The United Nations have affirmed that the founding legislation should
specify, in detail, the circumstances under which a commissioner may be dismissed and that the mechanism for
dischARGE should be independent of the executive. The UN Sub-Commitee on Accreditation has further noted
that “Discharge should not be allowed based on solely the discretion of appointing authorities”. 36

4.6 Parliament should help ensure the Children’s Commissioner has sufficient and secure funds to carry out
his or her functions.

5. **Budget allocation for the Children’s Commissioner**

5.1 The legislation should contain a provision requiring the Secretary of State to provide the OCCE with such
sums as appear reasonably sufficient for the purpose of enabling it to perform its functions. In order to secure
stability and autonomy, Parliament should be involved in determining the OCCE’s funding for a minimum three-
year period, and ideally for a parliamentary term.

5.2 The Non-Departmental Body (NDPB) model being used by the Government, which entails a Framework
Agreement between the Department and the Commissioner, is not an appropriate model for national human
rights institutions. The degree of financial control exerted by the Government through the Framework Agreement
can give rise in practice to real inconsistencies with the requirement in the Paris Principles that National Human
Rights Institutions should not be subject to financial control which might affect their independence. This is not to
say that there should be no accountability for spending public money. As a publicly-funded body the OCCE must
be accountable for how they spend their funds. The difficulty lies in devising satisfactory arrangements for such
accountability which do not destroy the independence of the OCCE by making the Children’s Commissioner
effectively subject to the control of the Government which provides the funding.

5.3 The Paris Principles set out what a fully functioning NHRI is and identify six main criteria that these
institutions should meet to be successful, including adequate resources. The UN monitoring body specifies
that: “Adequate funding should, to a reasonable degree, ensure the gradual and progressive realization of the
improvement of the institution’s operations and the fulfilment of its mandate.” 37

5.4 The Paris Principles and the best international practice suggest the following model:
— The source and nature of funding for the OCCE should be identified in the law
— Parliament should be involved
— The funding should be secure, that is, protected against arbitrary reduction for the period it covers.

5.5 General Comment No. 2 states in addition that the IHRIC has to have adequate infrastructure, funding
staff, premises and “freedom from forms of financial control that might affect their independence.” 38 A large
number of the Committee on the Rights of the Child’s concluding observations over the years point to the lack
of adequate funding of IHRICs, hampering the effective functioning of the institution as such. The funding of
the office should be removed from political control and be guaranteed over a given period.

*March 2013*

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**Memorandum submitted by the Association of Directors of Children’s Services (ADCS) (CF 25)**

During the session there was one question surrounding the duty to assess childcare sufficiency that I committed
to sending in writing.

Section 11 of the Childcare Act 2006 makes prescriptive requirements for LAs to develop and publish a
sufficiency assessment according to specific conditions. The opinion of the Association is that this is largely a
bureaucratic exercise, in the terms prescribed, that does not allow for local decision making on the best way
to monitor the quality and provision of childcare in the area. It is particularly unhelpful to have a nationally
prescribed process given that once published there is little done by central government with or about the
sufficiency statements.

Local Government retains the duty to ensure sufficient, high quality, appropriate childcare for their local
populations and this remains a key priority for local leadership to monitor in an appropriate way. This is an
ongoing process which will include consultation with families and maintaining positive relationships with local
providers from all sectors.

The production of a 3 yearly statement does not take into account the fluid nature of childcare. Once a statement
is produced it is immediately out of date and the report serves as a costly data collection exercise.

35 National Human Rights Institutions, UN, OHCHR, 2010
36 Ibid., page 42
37 The Sub-Committee on Accreditation, General Observations, para 2.6, June 2009
38 Committee on the Rights of the Child, General Comment No. 2, 15 November 2002, CRC/GC/2002/2, par. 10.
It is for these reasons that the ADCS does not oppose the repeal of this specific duty. This would relieve Local Authorities from unnecessary centrally prescribed bureaucracy, whilst allowing those Local Authorities who wish to continue to produce statements to do so in a way that meets local need.

I trust this answers the question as set by the committee.

March 2013

Memorandum submitted by Health Conditions in Schools Alliance (CF 26)

1. At least a million children of school age in England have a health condition. Many of them are struggling to achieve their full potential at school because they do not receive the right health support in school.

2. The current scope of the Children and Families Bill excludes these children with health conditions and we would like to see this amended so that they do not get left behind.

3. We welcome the Government’s aim to support families in balancing home and work life and ensure that all children and young people can succeed. Key to this is the support of children in schools.

4. Putting appropriate health support in educational settings will give children with health conditions an equal opportunity to achieve alongside their peers. It will also enable them to participate fully in lessons and school life and achieve the best possible physical, mental and economic well-being later in life.

5. We are concerned that the Bill undermines this aim by omitting any consideration of support for children with health conditions.

6. The Bill should be strengthened to ensure support for children and young people with specified health conditions who are not classified as having Special Educational Needs or disability.

7. Evidence from families collected by members of the Health Conditions in Schools Alliance shows that the current voluntary approach does not go far enough. While some schools provide good support for children and young people with health conditions, many do not, and the end result is a lottery of support for children with health conditions.

8. As a result of this lottery, many parents are forced to give up work, or reduce their hours, in order to support their child at school. This can then have a detrimental effect on the socio-economic wellbeing of the entire family.

Why change is needed

9. Many children with health conditions experience barriers to academic achievement and social isolation because their needs are not properly addressed or understood:

9.1 Excluded from lessons such as PE, or left out of school trips, extra-curricular activities and social events.

9.2 Denied support and help to catch up with lessons they have missed because of ill health.

9.3 Sent home unnecessarily after a brief health event (for example a seizure, faint, blackout or fall).

9.4 Made to eat alone if their food needs are different.

9.5 Denied access to their medicines when they may need them because the drugs are ‘safely locked away’.

9.6 Experience bullying as a direct result of their health condition.

10. Diabetes:

There are 29,000 children with diabetes in the UK39. A Diabetes UK survey found40:

— In only 29% of cases do school staff help with insulin injections, with 66% of help coming from parents and a further 3% from relatives.

— In 47% of cases, someone other than a member of school staff helped young people with blood glucose testing, including parents in 42% of these cases.

— 35% of young people responding said their parents either had to give up work or reduce their hours to support them with their diabetes.

— 46% of young people do not have a healthcare plan for managing diabetes at school. Of those with a healthcare plan, 17% did not feel confident that it was implemented.

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40 Diabetes UK, survey of the views and experiences of children and young people – Diabetes UK members (2009)
11. **Asthma**

1.1 million children are currently receiving treatment for Asthma\(^1\). Asthma UK has found that\(^2\):

— Only 24% of teachers would be completely confident they knew what to do if a child in their class experienced an asthma attack.
— 87% of children and young people with asthma had missed at least one day of school because of their asthma.
— 49% had problems joining in with general lessons.
— 48% had problems going on school trips.

12. **Epilepsy**

Epilepsy affects an estimated 63,400 children and young people aged under 18 in the UK\(^3\). On average, there will be one child with epilepsy in every primary school and five in every secondary school.

12.1 A survey, by Epilepsy Action (May 2012) revealed\(^4\):

— Less than 40% of schools have a written epilepsy policy.
— A quarter of teachers had not had epilepsy training in the last three years.
— Almost a third of teachers were not aware that pupils with epilepsy may be entitled to receive extra time in exams.

12.2 A survey of 214 parents of children with epilepsy revealed\(^5\):

— Two thirds don’t think their child’s school is doing everything it can to understand epilepsy and support their child.

13. **Migraine**

Children with migraine take on average between 32 days and three months off school in a school year due to their migraine, in comparison with the general population who take between 3 and 13 days. The difficulties children with migraine face include:

— Lack of support to catch up on work missed due to migraine.
— Being denied access to medication by school staff at the onset of a migraine.
— Exclusion from trips and activities due to poor attendance.

14. **Heart Conditions**

Congenital heart disease affects about one in every 145 babies born in the UK. In 2011 there was between 4000 and 5000 babies born with heart conditions.\(^6\) Through advancements in medical science 85% of those born with congenital heart disease now survive long into adulthood\(^7\) and as a result will move through the school and education system.

Children and young people with heart disease have varying needs depending on the type and seriousness of their specific heart defect. Many will have learning difficulties and delays and those who do not may often have varying levels of ongoing health needs related to their condition.

15. **Providing the necessary support to children with health conditions in education settings will have both immediate and long term benefits. These include:**

15.1 Improved health and education outcomes for the million children with health conditions.
15.2 Reduction in the financial burden on the NHS through improved health.
15.3 Children who are able to participate fully in learning.
15.4 Children who are helped to achieve the best possible physical, mental and economic well-being later in life and realise their full potential.
15.5 Removal or reduction of the socio-economic burden on the state, and on parents who have to give up their jobs or reduce their working hours in order to care for children at school.

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\(^{1}\) Asthma UK, Missing Out p1, (2009)  
\(^{2}\) Asthma UK, Missing Out p4 (2009)  
\(^{4}\) Ibid  
\(^{5}\) Ibid  
\(^{6}\) British Heart Foundation, 50 Years at the Heart of Health, pg124-125  
\(^{7}\) NHS figures, http://www.nhs.uk/conditions/Congenital-heart-disease/Pages/Introduction.aspx
16. To ensure all children with health conditions get the right support at school, the Children and Families Bill should make provision for this and prevent them from falling again through the gaps in legislation. This would include the following requirements:

16.1 Schools should produce and implement medical conditions policies. Such policies should specify aims, objectives, actions and outcomes.

16.2 Appropriate school staff should receive training to enable them to support children with health conditions.

16.3 The school health workforce should be supported so that they can effectively and safely support children and schools.

16.4 NHS bodies and local authorities should have a statutory requirement to help schools fulfil their responsibilities.

16.5 School inspections should look at how a school supports children with health conditions and what outcomes those children have, as part of well-being indicators.

17. The Health Conditions in Schools Alliance are calling for the following new clause to be added to the Children and Families Bill to ensure children with health conditions are not forgotten:

Standards for support of children and young people with specified health conditions, not classified as having special educational needs or disability:

The governing body must produce and implement a medical conditions policy that defines how it plans to support the needs of children with specified health conditions.

The medical conditions policy must include provision about:

a. The means by which records of the specified health conditions of children at the school are to be recorded and maintained; and

b. The preparation of an individual healthcare plan for each child with a specified health condition which sets out the needs of that child arising from that condition.

The medical conditions policy must include requirements relating to the provision of appropriate training for school staff to support the implementation of individual healthcare plans.

In preparing an individual healthcare plan the governing body must—

Consult the parents of the child concerned and, where appropriate, the child about the contents of the plan; and there shall be a duty on NHS bodies to co-operate with the governing body in its preparation and implementation of individual healthcare plans.

Local authorities and clinical commissioning groups must co-operate with governing bodies in fulfilling their functions under this Act.

The Secretary of State may by regulations define ‘specified health conditions’ for the purposes of this section.

For the purposes of this section ‘NHS bodies’ has the same meaning as in the Health and Social Care Act 2012

The Children and Families Bill provides an opportunity to give children with health conditions essential support in school. The Bill should be strengthened by the addition of this clause to give parents the certainty that their children will receive at school the support and protection they need.

For further information, please contact Diabetes UK’s Public Affairs Team by emailing helen.pyper@diabetes.org.uk or luke.thorne@diabetes.org.uk or calling 020 7424 1151 or 020 7424 1858.

The Health Conditions in Schools Alliance is a rapidly growing alliance of over 30 organisations working on behalf of these children.

| Members of the Health Conditions in Schools Alliance supporting this briefing |
|---------------------------------|-----------------|
| Anaphylaxis Campaign            | Migraine Trust  |
| Association of Young People with ME | MS Society     |
| Asthma UK                       | National Blind Children's Society |
| British Heart Foundation        | National Centre for Young People with Epilepsy |
| British Pain Society            | National Society for Epilepsy |
| Cardiac Risk in the Young       | National Voices |
| CF Trust                        | NBCS            |
| National Children's Bureau      | Family Lives    |
| Children's Heart Federation     | RNIB            |
| Coeliac UK                      | SAPHNA          |
Memorandum submitted by British Academy of Childhood Disability (BACD) (CF 27)

1. The British Academy of Childhood Disability (BACD) membership is comprised of professionals working in the field of childhood disability, including consultant neurodisability paediatrics, specialist nursing, speech and language therapy, physiotherapy, occupational therapy, psychology and education. The comments below were drawn up with input from BACD members across all constituent disciplines.

2. BACD members consider the Bill replicates the faults in the current SEN system. Social care and health still do not have a statutory duty to either assess or make provision for children with SEN and neither to parents and children have a right to redress for lack of health or social care provision through the Tribunal system.

3. The proposed amendment to provide a new legal duty on clinical commissioning groups to secure services in EHC plans for children and young adults is welcomed but there are clear cost implications for health, so we hope government will provide additional funds. BACD wait to see the detailed amendment. Indeed the promised amendment on duties for clinical commissioning groups should be widened at Clause 26 to also set out clear statutory links between Children’s Trust arrangements, Health and Wellbeing Board duties, clinical commissioning groups and joint commissioning arrangements.

4. BACD members involved in the SEN Pathfinders agree that parents are positive about the new approach but it has had negative implications for health professionals. BACD note that although the March 2013 Programme Report confirms that 65 families with completed EHC plans were positive about the process and the end result but there is no mention of the time taken to produce EHC plans.

5. Paediatricians report that team around child meetings may take up to a whole morning to discuss one child. The new system is inefficient taking excessive efforts to produce EHC plans for the small number of children in the pilot. When the system is scaled up to all those requiring EHC plans the time requirement for health will become impossible within reasonable timescales.

6. From a SEN paediatrician’s point of view, the time cannot be provided within current staffing structures and regimes, the assessment process will therefore need to be recommissioned, hopefully jointly.

7. Clause 21(5) appears to imply that therapies are likely to be special educational provision. The clause goes further than current case law which does not use ‘wholly or mainly’ but sets out a ‘spectrum’ or range of provision from the purely medical to the purely educational, with a determination being made on individual facts.

8. BACD specialist therapists advise that speech and language therapy can never be wholly or even mainly an educational need, it can never be just concerned with accessing the curriculum as communication is part of life and cannot be compartmentalised in that way!

9. In some cases where children are non-verbal, augmentative systems such as signs, symbols or even technology may be very important for accessing the curriculum, especially for children who are deaf or have a physical problem such as cerebral palsy. However they would also need to use these systems for daily living and not just at school.

10. The only example which might be considered ‘mainly educational’ would be a child with a specific language disorder where the teachers or TAs need to be ‘taught’ to speak in very simple sentence structures without using ambiguous or abstract language so that the child understands what he needs to do. However it would not just be therapy for the child but also training school staff in communication techniques.

11. Similarly children requiring specialist equipment such as standing frames, walking aids and wheelchairs will need such equipment in order to access curriculum, but also require the same equipment for all movement and functional daily living skills. Thus physiotherapy and occupational therapy for such children is neither ‘wholly or mainly educational but could be considered ‘partly’ educational.
12. Currently management of NHS therapists always lies within health. BACD therapists state that many local teams are struggling to provide therapy and therefore contribute advice for statements in vague terms not specifying exactly the amount of time using terms such as ‘access to regular physiotherapy review’, ‘will need to review therapy needs as child moves up the school’ and so on, although they are pressed for more specific guidance. Despite being mentioned on the statement the therapy teams can agree that the child needs therapy but still not provide it due to lack of resources. This leads to confusion from parents and the education authority and often results in litigation or a Tribunal. Whether in future such provision is considered ‘wholly’ ‘mainly’ or ‘partly’ educational there will continue to be a lack of specialist therapists.

13. Clause 22 needs to be amplified. Ensuring timely and appropriate identification requires robust data systems. With the fragmentation of the education system through the increase of independent Academies it may become impossible for LAs to implement this clause. This fragmentation of information will be mirrored by health information being held by GPs.

14. Clause 30—If the provision outlined in a local authority “Local Offer” is not delivered it appears it is not enforceable against the LA or a school though it appears that there may now be statutory duty on clinical commissioning groups. The clause needs to be amended so that all parties are legally required to deliver.

15. Clause 31 only requires inter-agency co-operation where a child has, or is in the process of assessment for, an EHC plan. There appears to be no duty to co-operate for children with less severe or complex ‘school-based’ SEN. Health professionals are needed to work with and support children with such ‘lesser’ needs, this must be recognised in the Bill.

16. The proposed Clause 33 means that children only receive the protection of an EHC Plan if they have education, health and social care needs, (a triple lock) meaning only those with the most severe and complex needs will have guaranteed provision; this is a retrograde step and most unwelcome. There must be a lower entry ‘threshold’ to access a statutory plan. BACD back the ‘theory’ of statutory joint commissioning of assessment and provision of services, including shared plans, skills transfer and equipment for all those with disability (still defined as in 1996) between Education, Health and Social Care with the child and family at the centre. But this Bill does less for such children than the existing arrangements because it appears that so few -comparatively- will reach EHC plan status.

17. Those children requiring equipment, emergency health care plans without SEN, as well as all those with SEN (some without health needs) all have a need for joint working and a joint plan. BACD believe that ‘silo’ considerations will continue; whilst what is really required is making and delivering the plan at home as well as school and for the wider range of children with SEN and/or disabilities.

18. We are concerned that there is a complete lack of information about timetables for assessment or production of the EHC Plan or about those professionals who will need to contribute to the assessment. There is also no information about the structure and content of EHC Plans. Without details it is difficult to make any constructive critique of the legislative proposals. It is therefore regrettable that Regulations will not be available for public comment during the Commons Committee Stage.

19. BACD welcome the extension of statutory provision up to 25 years but are concerned that there are often no specialist services within adult services to transition young people with SEN and disabilities on to at age 16. Where specialist adult health services do exist, they are likely to be sparse compared to services within paediatrics.

20. A further concern is at 19 years plus. Many special schools and academies plan to extend their remit to cater for older young people. BACD believe that where there are not robust health care arrangements for this group of older young people, there will be pressure on paediatricians, therapists and specialist children’s nurses to retain the older young people on until they are 25. BACD recommend that appropriate age-related health provision must be commissioned.

21. The Health and Social Care Act (2012) sets out a new responsibility for NICE to develop quality standards and guidance for the social care sector, including adults and children. One of the first topics for this new work programme is the Transition between child and adult services. BACD believe that this work needs to extend to health commissioners and providers.

22. BACD members cannot yet see how the removal of the distinction between School Action and School Action Plus and the creation of a single school based category of SEN will help children and young people. Unless parents and professionals are convinced that the single school based category delivers successfully for the individual child, they will be concerned that children who require additional or different provision may fail to get it. Such concerns could lead to pressure for greater numbers of the ‘EHC’ Plan than Government anticipate; and indeed therefore for greater numbers of EHC plans than the current number of statements.

23. BACD are pleased that Clause 66 now requires the Code of Practice to be laid before Parliament; however this should not be amended to allow for the affirmative resolution procedure thus allowing debate in both Houses. Parents and professionals rely on the current Code’s guidance and hence changes to the Code must improve outcomes, provide a clear way forward and be set out with clarity and transparency.

24. The Bill is going forward against a backdrop of deep cuts to the all budgets and services required by children and young people with SEN and disabilities at the same time as schools and colleges adapt to a totally
new funding system and the NHS changes radically. Without adequate resourcing this Bill will not improve outcomes for SEN and disabled young people.

March 2013

Memorandum submitted by CLIC Sargent (CF 28)

Introduction

CLIC Sargent is the UK’s leading cancer charity for children and young people. We welcome this opportunity to provide written evidence to the Children & Families Public Bill Committee. The Bill seeks to make important changes to the framework for the provision of special educational support; we want to ensure that these changes meet the needs of children and young people with cancer, the majority of whom will have learning and other difficulties as a direct result of their cancer and its aggressive treatment.

Summary of key points

— Children and young people with serious and complex long-term health conditions, including cancer, which directly impact on their learning are a small but unfortunately hidden part of the current debate around special educational provision.

— Some children and young people with cancer go through treatment with only minor disruption to their education; others find themselves disadvantaged for years, as a result of aggressive and debilitating treatment and huge gaps in their education. Clearly their needs are very different and the new SEN framework must be flexible enough to provide effective support in all cases.

— The potential impact of cancer on a child or young person’s education is complex and multi-faceted. On the one hand, they will be disadvantaged as a result of missing school whilst they are on active treatment which can last up to three years. On the other hand, they are likely to have learning needs as a direct result of their cancer and its treatment. Whilst the impact of absence from school is often recognised, there is much less awareness of the impact of learning that cancer and its treatment can have.

— The Government has made clear its belief that “pupils with cancer deserve as good an education as any other pupil and poor health should never mean poor education”. A key part of this is ensuring that the provision of special educational support is responsive to the diverse range of needs of children with cancer and other serious health conditions.

— Further clarity is needed on the Government’s proposals for a new single school-based category of SEN and the rationale for moving away from School Action/School Action plus, particularly as the majority of children and young people with cancer will fit into this category.

— We will therefore be seeking to table the following amendments to the Bill:

— Clause 20—to ensure the definition of when a child or young person has special educational needs explicitly includes those who have learning needs as a result of a chronic illness or long-term health condition.

— Clause 36—to ensure that providers of alternative provision, including hospital schools and medical pupil referral units (PRUs), would be able to request a local authority to undertake an EHC needs assessment for their pupils.

1. Background

1.1. CLIC Sargent is the UK’s leading cancer charity for children and young people, and their families. We provide clinical, practical and emotional support to help them cope with cancer and get the most out of life. Approximately 1,600 children aged up to 15 years and 2,000 young people aged 16 to 24 are diagnosed with cancer each year in the UK. Fundamental to CLIC Sargent’s work is the belief that children and young people with cancer should be enabled to achieve their potential and that quality support in education is a crucial element to achieving this.

1.2. Unfortunately a cancer diagnosis means that these children and young people often experience significant disruption to their family life and learning with treatment sometimes lasting as long as two to three years. Even if a pupil has been successfully treated for cancer and has gone into remission, there are several reasons why there may still be genuine and long lasting late effects. Nine in ten children have told CLIC Sargent that their cancer diagnosis and treatment has made a difference to their school life, demonstrating that cancer can significantly disrupt a child’s education.

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48 HC Deb, 10 January 2013, c576
50 CLIC Sargent (2012) No child with cancer left out http://www.clicsargent.org.uk/content/no-child-cancer-left-out
1.3. Children with cancer can face a number of barriers and challenges in keeping up with school work, maintaining friendships and feeling included in school life. Some children who return to school will need significant or permanent additional support and may not be able to return to previous attainment levels. CLIC Sargent wants to see an education system that enables children diagnosed with cancer to receive the support they need quickly, and for as long as they need it, so that cancer does not unnecessarily impact on their education or their social and personal development. Unfortunately our research has shown that this support is not always put in place at present—one in three CLIC Sargent nurses told us they do not think that there is sufficient educational support for primary school aged children with cancer when returning to school.51

1.4. We will therefore be seeking to table the following amendments to the Bill:

— Clause 20—to ensure the definition of when a child or young person has special educational needs explicitly includes those who have learning needs as a result of a chronic illness or long-term health condition.

— Clause 36—to ensure that providers of alternative provision, including hospital schools and medical PRUs, would be able to request a local authority to undertake an EHC needs assessment for their pupils.

2. The impact of cancer on learning

2.1. The vast majority of children and young people with cancer do eventually return to school, however, they might find it difficult to reintegrate back into school life after their cancer treatment. Our 2012 research, No child with cancer left out, found that 56% of parents said their child found it difficult to readjust to school work and activities after returning to their primary school.52

2.2. Even if a learner has been successfully treated for cancer and has gone into remission, there are several reasons why there may still be genuine and long lasting late effects. Research has confirms that overall survivors of childhood cancer experience a deficit in educational attainment compared with the general public, although this lower attainment is disproportionately found among survivors of particular cancers—in particular central nervous system neoplasm (including brain tumours) and those receiving radiation treatment.53 Additionally some education providers struggle to accommodate the individual needs of children or young people with cancer who have returned after a period of absence and this can contribute to them achieving less than their peers in education.

2.3. CLIC Sargent’s 2010 report, The impact of cancer on a child’s world, found that children recognise that their absence from school has an impact on their level of academic achievement and their potential future career prospects, putting them at a disadvantage compared to their peers. Children told us that their skill levels had regressed since their treatment, and that they found core subjects like Maths and English far more difficult than they had previously. Likewise in 2011, 64% of 16 to 18 year-olds with cancer told us that they fell behind with studies or did not do as well as they thought they could have and 29% of all young people surveyed had to leave education altogether.54

2.4. Certainly the impact of long absences from school as a result of undergoing treatment is an important factor in considering the needs of children and young people with cancer; CLIC Sargent was therefore pleased to feed into recently published guidance setting out local authorities’ duties towards those children who cannot attend school because of their health.55 However, it is much less well recognised that children and young people can have significant impacts on their learning as a direct result of the cancer itself, as well as the aggressive treatment, which should be defined as special educational needs. For example, the intellectual development of those children and young people who have had radiotherapy treatment or have been treated with certain chemotherapy drugs is likely to be affected. They will probably need a statement of SEN and additional support with their education. The effects on intellect are not necessarily static but may gradually become more noticeable over time.56

2.5. Some children and young people with cancer go through treatment with only minor disruption to their education; others find themselves disadvantaged for years, as a result of aggressive and debilitating treatment and huge gaps in their education. Clearly their needs are very different. Some will be able to return to school with minimal extra provision; some will require significant additional support for a period of time to enable them to catch up with their peers and to achieve their potential. Others will need formalised special educational needs (SEN) support for a long time, perhaps for their entire school career.

51 ibid, p36
52 ibid
55 Department for Education (January 2013) Ensuring a good education for children who cannot attend school because of health needs – statutory guidance for local authorities http://www.education.gov.uk/aboutdfe/statutory/g00219676/health-needs-education
CASE STUDY—JOSH’S STORY

Josh, 13, was diagnosed with acute lymphoblastic leukaemia in September 2004. His mum, Lynda, told us: “Josh was diagnosed a week into Year 1 at primary school, and missed half of his first year, which meant he had gaps in his learning of basic reading and writing. I noticed that he was gradually finding things more difficult and he was falling behind on things. Josh received extra support in primary school and they developed an Individual Education Plan for him, but this wasn’t enough for him to catch up sufficiently. I felt like I was always asking for work from the school. There just wasn’t the extra specific support there for him. Josh did receive ‘in house’ individual support from the school, but it just wasn’t targeted enough for his individual needs. So we pushed for individual pupil funding (IPF) because he was so behind. It took over a year to secure this funding. I just can’t understand why the IPF wasn’t given to us at an earlier stage. Josh had physical and psychological impacts from his cancer diagnosis and he obviously needed individual help tailored for him.”

2.6. CLIC Sargent’s 2012 research, No child with cancer left out, which explored the impact of cancer on children’s primary education, found that only 56% of parents of children who had returned to school felt that their child had received sufficient support to enable them to resume as normal an education as possible57. One in five parents thought their child would benefit from more individual support.

2.7. Few young cancer patients will have a statement of SEN, particularly whilst they are on treatment, as the long-term impact of their cancer or the treatment of it will be uncertain. In 2012 16% of parents surveyed told us that their child had a statutory statement of SEN as a direct consequence of their diagnosis and treatment. In addition, 25% of parents reported that their child has an Individual Education Plan and 31% reported that their child receives additional support from a SEN coordinator or a learning support assistant. How effectively children and young people’s needs are assessed on their return to school, and particularly whether they should receive the extra support they need, can be critical to the success of their reintegration.

3. The Children and Families Bill

3.1. The Children and Families Bill proposes a number of significant changes to provision for children and young people with SEN and disabilities. CLIC Sargent welcomes the ambitions of the Bill and we recognise that the reforms could provide opportunities for more integrated support and better information for parents. However, we believe that some areas of the Bill do not go far enough to support children and young people with complex long-term health conditions such as cancer.

Ensuring children and young people with cancer are supported

3.2. Despite the considerable impact that cancer can have on children and young people’s learning and educational attainment, the profile of children and young people with medical needs in education is at present very understated. We worry that the low profile of home and hospital education and of children and young people with medical needs in education contributes to a lack of continuity between the strands of work on-going within different Government policy teams. The Bill therefore presents an important opportunity to take a more joined-up approach to providing additional support as well as simplifying the system for parents and children and young people themselves.

3.3. The Government has made clear its belief that “pupils with cancer deserve as good an education as any other pupil and poor health should never mean poor education”.58 A key part of this is ensuring that the provision of special educational support is responsive to the diverse range of needs of children with cancer and other serious health conditions. At present, we know that this support is not always put in place and many of these children fall through the net.

3.4. The potential impact of cancer on a child or young person’s education is complex and multi-faceted. On the one hand, they will be disadvantaged as a result of missing school whilst they are on active treatment which can last up to three years. On the other hand, they are likely to have learning needs as a direct result of their cancer and its treatment. Whilst the impact of absence from school is often recognised, there is much less awareness of the impact of learning that cancer can have.

3.5. A key part of the problem is awareness; thankfully childhood cancer is rare, with only 3,600 new diagnoses per year, but this means that most teachers and schools will have little experience in supporting a child with cancer. This issue is exacerbated by the fact that often the child’s needs will not be immediately apparent, but learning can still be affected in the longer term as a result of chronic fatigue, attention and concentration difficulties and even psychological and emotional problems—all issues which can directly impact on their ability to learn. Many of these factors can result from the often aggressive treatment as well as the cancer itself.

3.6. Without better accountability and a joined up approach, we fear that children and young people with cancer could fall through the gaps and miss out on crucial support. A more coordinated approach to policy affecting children and young people with medical needs in education and the Children and Families Bill needs to be taken and the Government must better recognise this cohort of children and young people.

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57 CLIC Sargent (2012) No child with cancer left out http://www.clicsargent.org.uk/content/no-child-cancer-left-out
58 HC Deb, 10 January 2013, c576
Supporting those with mild and moderate needs

3.7. A significant focus of Part 3 of the Bill, which outlines the changes to the SEN framework, focuses on the needs of those who will require statutory SEN provision through the new Education, Health and Care (EHC) plans. Whilst the Bill establishes clear duties on schools and other bodies for those children and young people with SEN but without an EHC plan, much of this will be set out in a new SEN Code of Practice which will be defined through secondary legislation.

3.8. We therefore welcome the commitment from the Government to publish a draft of the Code of Practice during the Commons committee stage of the Bill. We hope this will provide an opportunity to better scrutinise the potential impact of a move away from School Action/School Action plus towards a single school-based category of SEN. To date, there has been little detail from the Government on this important proposal and how this new category will interact both with local authority duties including the local offer. Given that the majority of children and young people with cancer are likely to have mild or moderate SEN, we are keen to ensure this new category enables appropriate support to be put in place. It is worth noting that at present best practice guidance recommends that children and young people with cancer are placed on school action as a matter of course.59

3.9. CLIC Sargent is an active member of the Special Educational Consortium (SEC) and we support the work they are taking forward on the Bill. In particular, we agree with SEC that local authorities’ local offers should be subject to minimum standards and that a national framework should be established so that no child or young person misses out on the crucial support they need. In addition, parents should be able to hold local authorities to account if the local offer is not delivered.

March 2013

Memorandum submitted by Jane Raca (CF 29)

PUBLIC BILL COMMITTEE RE CLAUSE 50, CHILDREN AND FAMILIES BILL.

1. INTRODUCTION

I am a former litigation solicitor, and have a profoundly disabled son, James, who is 13. He has cerebral palsy, epilepsy, learning disabilities, challenging behaviour and is severely autistic. I have extensive personal experience of the education, health and care systems for disabled children. What my family went through over a decade, shocked me so much I wrote and published a book about it: Standing up for James. The book has had national press coverage, as has my story.60 I am now working with Scope, Mencap, the National Autistic Society, and Dame Hannah Rogers Trust to raise awareness about the reality of living with severe disability.

2. SUMMARY

My submission today relates to the right of parents to appeal the social and health care provision received by their disabled children. Whilst the Children and Families Bill introduces joint EHC plans, it does not extend the right of appeal from those plans beyond the education content. I believe this must change, as the failure of local authorities in particular to provide adequate social care for severely disabled children, is leading to great suffering, for which there is no realistic redress.

3. WHY IS THERE SUFFERING AT PRESENT AND NO REDRESS?

If a child needs 24 care from birth and his/her parents are refused respite or home help provision, then they are at grave risk of personal and family breakdown.

They only have two options:

— They can apply for Judicial Review
— They can appeal to the Local Government Ombudsman.

Judicial Review is an expensive, lengthy and technical option. It is also unsatisfactory. The High Court can’t order the provision it thinks necessary, but only rule on the local authority’s initial decision.

As for the Ombudsman, if parents are even aware of their right to complain, they have to start by exhausting the council’s internal complaints procedure first. The whole process takes months, even years.

By comparison, if they wish to appeal the educational provision for their child, they can appeal to the First Tier HESC Tribunal, be unrepresented and be heard by independent specialist judges within 4 months. This Tribunal often hears issues of social care and health and is ideally placed to rule on the complex intertwined needs of a severely disabled child.

60 www.standingupforjames.co.uk
I accept that there are statutory duties on local authorities to provide support for disabled children, who are defined as ‘children in need’ from birth. However, for budgetary reasons local authorities may try to avoid being caught by these statutory duties.

In my experience unless a parent has a realistic method of challenging the local authority, then even new statutory duties will not go far enough and there will be no change.

4. MY EVIDENCE

Despite being a partner in a national law firm before James was born, I found myself unable to see beyond getting through each day in a haze of exhaustion and depression. James required one to one care for all waking hours. He wouldn’t leave the house except to go to school, and attacked us if we tried. We were prisoners in our home.

He woke for hours each night, would eat his own faeces and smear it around the room. Sometimes he had a seizure in the night and nearly died, as he was unattended.

It was only when James was 5 years old and my husband and I broke down in front of his consultant that we found out that we were entitled to respite. We were then turned down by the council, and it took 12 months of writing letters before we got just 24 nights a year with James in a respite centre. We had no help at home.

I gradually became suicidally depressed and my marriage began to break down. Both our children were on waiting lists to see clinical psychologists for behavioural problems.

Despite independent reviewing officers repeatedly recording their decision that social workers should assess our family for home support as a matter of urgency, we had no funding for help at home until four years after social care first became involved with us.

I eventually found out that if I challenged James’s statement of special educational needs, I might get him in a residential school. It took a long time to get to this point, as despite having been a partner in a national law firm, I didn’t know that the ‘disabled children’s team’ at the council was in fact a social care team. I had to go to the education team to appeal James’s statement and this department seemed totally unconnected with social care.

I was then in the highly artificial situation of having to prove that James’s ‘educational needs’ could only be met by a waking curriculum: ie that he needed ‘education’ outside school hours. If I couldn’t prove this I would fail. So I hired lots of experts to show that for James, learning to communicate with picture cards was education, as was doing therapy stretches to help him walk. I argued that neither of these things could just stop at 4pm.

I was very fortunate in understanding this and James got his placement. He has developed as a much more mature, tolerant and empowered individual as a result of the intensive and consistent support provided by Dame Hannah Rogers Trust. However 5 years later I am still battling with social care over his holiday provision. I have been asking for it to be increased since April 2009, to no avail. After complaining to my councillor and MP twice I discovered in 2010 about the Ombudsman and went through the council’s complaints procedure. An independent investigating officer produced an 80 page report vindicating me on all counts and asking the council to consider a full time placement for James. They did as he asked and still rejected it. Because they had done as he asked, I then couldn’t complain to the Ombudsman. I have now started all over again, asking for a full time placement. Six months have elapsed with no answer. The internal complaints procedure is not concluded so I can’t yet go to the Ombudsman.

We cannot cope with James at home now; there are safety issues for him, his siblings and us. He requires 2:1 care most of the time which we can’t provide. If the council do not approve his full time placement soon, I will have to ask for him to be taken into care in the holidays, and pray they leave him at Dame Hannah’s.

5. CONCLUSION

Even with a legal background and supportive family I have struggled with this system. I have proved in Tribunal that James needs extensive care including at least 1:1 supervision during all waking hours. Yet I have had to continue arguing the case for his holiday cover for 5 years without resolution, repeating the same evidence in one report after another.

If the Committee wish to see any of the written evidence which I have carefully collated over the years (and which is reproduced in my book) then I can produce a schedule for them. At present I am anxious to submit this memorandum as I believe members will be considering clause 50 of the Bill imminently.

March 2013

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61 Children Act 1989 s(17)(1)(a)

62 ‘The Council does not have the resources to fulfil all of its statutory obligations and so may avoid identifying a need which it cannot meet. Like other Councils across the country, it plays for time and space to protect its budgets. It relies on applicants’ lack of knowledge about their rights, to achieve this. When it meets a strong applicant, it adopts the historic Russian military strategy of retreating, while it strengthens its position and weakens that of its opponent.’ Honorary Alderman Len Clark, chair of Birmingham City Council’s inquiry: ‘Protecting Children and Improving Social Care’ 2009.
Memorandum submitted by the Law Society of England and Wales (CF 30)

SUMMARY

1. The Law Society welcomes the Children and Families Bill. The Bill represents the culmination of a great deal of work by everyone with a part to play in delivering family justice, and the Society supports and welcomes most of its provisions. This briefing has been prepared by the Society’s Family and Employment Law Committees, whose comments are made based on experience and expertise in these fields of law.

2. Part 1: Adoption and children looked after by local authorities—The Society supports the clauses taking forward the recommendations outlined in ‘Fostering for Adoption’, but is unconvinced that the removal of the requirement to give due consideration to ethnicity etc. will have any real impact on delays or rates of adoption.

3. Part 2: Family justice—The Society welcomes much of the family justice provisions in the Bill, which represent the culmination of a substantial period of work by all involved in the system. There are a number of improvements to the drafting which should be made, which are elaborated on below.


5. Part 6: Statutory rights to leave and pay—Shared parental leave is a step in the right direction, but pay inequality remains a major obstacle to women achieving equality in the workforce.

6. Part 7: Time off work: ante-natal care etc—The proposed new right for fathers and partners to time off to attend ante-natal clauses is welcome. However, placing such strict requirements in primary legislation risks creating unnecessary inflexibility. The Bill should state that ‘reasonable time off’ is permitted, leaving detail to regulations.

7. Part 8: Right to request flexible working—The extension of the right to request flexible working is welcome, but the Society has concerns about plans for its practical operation.

PART 1: ADOPTION AND CHILDREN LOOKED AFTER BY LOCAL AUTHORITIES

Clause 1: Placement of looked after children with prospective adopters

8. The Society believes that the paramountcy principle must guide decision-making in all respects when it comes to placement and adoption.

9. The Society supports the Government’s intention to place children with prospective permanent carers as soon as possible, where adoption is the best outcome for the individual child. These children are among the most vulnerable members of society, and measures to minimise disruption to young lives by reducing the number of placements that children experience while in care are to be supported. Evidence from Coram and the British Adoption and Fostering Agency estimates that the new duty will reduce the time children have to wait for an adoptive placement by approximately two months. The Society therefore supports the clauses taking forward the recommendations outlined in ‘Fostering for Adoption’.

10. Whilst speed of process and continuity are important aims, contact with the birth family should be facilitated whenever it is in the best interest of the child. The duty to consider family placements in s22C(7) (a)- (9), and the duty to place close to home, school and siblings and within the local authority’s area will not apply under clause 1 (3) in the Bill. This is problematic, as dual-approved foster carers/adopters could live some distance away from the birth family, and outside the local authority’s area. In such a case, contact is likely to be much less frequent and often impractical.

11. The Society therefore urges MPs to support the following amendment, drafted by the Association of Lawyers for Children:

That clause 1 be amended to insert in Clause 1 (3) amending Subsection 9 and deleting the proposed sub paragraph (b) and inserting

“(a) they must consider along side other placement alternatives defined in sub-paragraph (6) placing C with a local authority foster parent who has been approved as a prospective adopter, and “

(b) subparagraph (9) shall not prevent such placement outside the local authority area, if such placement is in the child’s best interests.

Clause 2: Repeal of requirement to give due consideration to ethnicity

12. The Society is not convinced that the repeal of the requirement to give due consideration to ethnicity will reduce delays in practice, or improve adoption rates. Guidance has already been amended to make it clear that children should not be denied adoption because a precise ethnic match cannot be found.

13. The Society recognises that section 1(5) of the Adoption and Children Act 2002 gives issues of race, religion, culture and language a greater degree of prominence than the factors listed in section 1(4) of the Act. A more balanced approach needs to be achieved, but the Society is not convinced that repealing the requirement to give these factors ‘due consideration’ is the right way to achieve this. An alternative approach would be to
explicitly introduce regard to race, religion, culture and language into the welfare checklist in section 1(4) of the Act, rather than a simple reference to ‘background’, which exists in section 1(4)(d) at present.

14. To achieve this, the Society urges MPs to support the following amendment proposed by the Association of Lawyers for Children:

That clause 2 be deleted from the Bill

That Section 1 (3) Welfare Checklist in CA 1989 be amended by inserting ‘1 (3) (d) ‘his age, sex, background, religious persuasion, racial origin, cultural and linguistic origin, and any characteristics of his which the court considers relevant’

That Section 1 (4) (d) of the Adoption and Children Act 2002 be amended by inserting ‘his age, sex, background, religious persuasion, racial origin, cultural and linguistic origin, and any characteristics of his which the court considers relevant’

PART 2: FAMILY JUSTICE

Clause 10: Family mediation information and assessment meetings

15. The change in terminology from a weak ‘expects’ of the Pre-Application Protocol into a firm ‘must’ as regards attendance at a family mediation information and assessment meeting (MIAM) is welcome.

16. For the sake of clarity, and with the rise of self-representing parties in mind, the Society would support a change in terminology. Assessment meetings should not be limited to, or perceived to be only about, mediation as an alternative to court. There are other forms of dispute resolution available, and there is a need to raise public awareness of the options: one-size does not fit all.

17. The Society therefore supports the following amendment, put forward by Resolution:

Part 2, Clause 10, page 8
Leave out line 18 and insert “Assessment and information meetings”
Clause 10, page 8, line 19
Leave out “a family mediation information and assessment meeting.” and insert “an assessment and information meeting.”

Clause 11: Welfare of the child: parental involvement

18. The Society welcomes the removal of the term ‘shared parenting’ from the proposed legislation and the Government’s confirmation that the purpose is not to promote the equal division of a child’s time between separated parents. Nevertheless, there are risks with introducing a legislative presumption of ‘parental involvement’ into legislation.

19. There is no evidence that current legislation favours one type of parenting arrangement over another or one parent over another. The primary focus must remain the rights and welfare of the child.

20. The Society supports the following amendment, put forward by Coram Children Legal Centre:

Clause 11, after subsection (2), insert –
‘(2B) ‘involvement’ is any kind of direct or indirect involvement that promotes the welfare of the child. It shall not be taken to mean any particular division of a child’s time.’

Clause 12: Child arrangements orders

21. The Society supports the introduction of child arrangements orders, and the removal of the emotive labels of ‘contact’ and ‘residence’. Although there are limits to what changes in nomenclature can achieve—most people will still refer to ‘custody’—at least the new terminology makes it clear that the focus is the child.

22. For those parents who go to court, child arrangements orders could help them to agree practical arrangements for the child.

23. The new orders will need to be sufficiently robust and precise to ensure that they are enforceable, including within foreign jurisdictions.

Clause 13: Control of expert evidence, and of assessments, in children proceedings

24. The Society agrees with the formulation that expert evidence should be ‘necessary’ to assist the court.

25. The Law Society would support the creation of a positive duty for the court to consider at an early stage whether expert evidence is necessary to assist it in considering and making final decisions in relation to the child’s welfare. This would avoid the risk of a party producing expert evidence at a late stage and without permission; or parties realising at a late stage that expert evidence is required, both of which can cause delays.

26. The Society therefore supports the following amendment, put forward by Resolution:
At end insert

"( ) The court shall raise with the parties at the first hearing the issue of whether the use of expert evidence is likely to be necessary in the proceedings and have particular regard to setting a timetable for consideration of applications for permission to put expert evidence before the court."

Clause 14: Care, supervision and other family proceedings: time limits and timetables

27. The Society supports the aim of reducing the length of care cases. There is a balance struck between investigating every available option for the care of a child, proportionality and the damage that is caused by delay.

28. For the courts to effectively decide which cases should fall outside the 26 week limit there needs to be a shared understanding about the exceptional and specific circumstances in which extensions can be granted by the court. Judges, practitioners, local authorities and parents will all need guidance on this.

29. In some, if not many cases it will be clear from the very outset that the case will not be capable of being resolved in the child’s best interests within 26 weeks. The proposed approach envisages applications for extensions to be made at the end of the 26 week period for eight weeks at a time. Unless there is some flexibility for a judge to case-manage predictably complex and lengthy cases from the outset there will be unnecessary hearings and avoidable expense as parties return to courts to apply for an extension.

30. The Society supports the following amendment, put forward by the Family Law Bar Association:

(1) The Children Act 1989 is amended as follows.

(2) In section 32(1)(a) (timetable for dealing with application for care or supervision order) for “disposing of the application without delay; and” substitute “disposing of the application –

(i) without delay, and, provided subsection (5) below does not apply,

(ii) within twenty-six weeks beginning with the day on which the application was issued; and”.

(3) In section 32 (care and supervision orders) after subsection (2) insert –

“(3) A court, when drawing up a timetable under subsection (1)(a), must in particular have regard to –

(a) the impact which the timetable would have on the welfare of the child to whom the application relates;

(b) the impact which the timetable would have on the conduct of the proceedings.

(4) A court, when revising a timetable drawn up under subsection (1)(a) or when making any decision which may give rise to a need to revise such a timetable (which does not include a decision under subsection 25(5)), must in particular have regard to –

(a) the impact which any revision would have on the welfare of the child to whom the application relates;

(b) the impact which any revision would have on the duration and conduct of the proceedings.

(5) A court in which an application under this Part is proceeding may

(a) timetable the case beyond twenty-six weeks from the day on which the application was issued, or

(b) extend the period that is for the time being allowed under subsection (1)(a)(ii) in the case of the application, but may do so only if the court considers that the extension is necessary in the interests of the child’s welfare or otherwise to enable the court to resolve the proceedings justly.

(6) When deciding whether to grant an extension under subsection (5), a court must in particular have regard to –

(a) the impact which any ensuing timetable revision would have on the welfare of the child to whom the application relates, and

(b) the impact which any ensuing timetable revision would have on the duration and conduct of the proceedings;

and here “ensuing timetable revision” means any revision, of the timetable under subsection (1)(a) for the proceedings, which the court considers may ensue from the extension.

(7) When deciding whether to grant an extension under subsection (5), a court is to take account of the following guidance: extensions are not to be granted routinely and are to be seen as requiring specific justification.

(8) (i) unless subsection (8)(ii) below applies, each separate extension under subsection (5) is to end no more than eight weeks after the later of –

(a) the end of the period being extended; and

(b) the end of the day on which the extension is granted.

(ii) the court may grant an extension which is longer than 8 weeks where this is necessary in the interests of the child’s welfare or otherwise to enable the court to resolve the proceedings justly.
Clause 15: Care plans

31. The Society agrees with the policy intention to focus judicial scrutiny upon the key components of a care plan, but in common with many other commentators the Society believes that it is a mistake under clause 15 to limit the court’s consideration of the care plan to ‘permanency’. On the face of it, this would be contrary to the welfare principle and specifically the court’s duty to consider the welfare checklist in section 1(3) of the Children Act.

32. The Society believes that the key issues for the court to consider are those identified in the Family Justice Review final report (paragraph 62) as:

32.1. planned return of the child to their family
32.2. a plan to place (or explore placing) a child with family or friends
32.3. alternative care arrangements; and
32.4. contact with birth family to the extent of deciding whether it should be regular, limited or none.

33. As a matter of principle, and in the best interests of the children whose future is to be decided by the court, judges should not have their hands tied when it comes to the consideration of care plans. If the court takes the view that it requires more information or clarity about any element of a care plan which does not come within the core elements identified in legislation, it must be able to seek that information or to ask for (and manage) a discussion with the parties at the hearing.


34. The Society has no objection to repealing provisions of Part 2 of the Family Law Act 1996.

35. Repealing these provisions, however, does not provide any clarification on how ‘fault’ fits in with a simplified divorce system. It appears that the government’s proposals for an online divorce portal will be based on fault-based divorce. It is not clear who will explain to the parties, many of whom will be self-representing, the relevance of fault in the divorce petition, which may result in increased hostility and have a negative impact on the family as a whole in comparison to the no-fault divorce process which was envisaged by Part 2.

36. Fault-based divorce forces the parties to apportion blame for the breakdown of the relationship, and contributes to conflict and distress. In the wake of legal aid cuts, the risk is that, without the benefit of legal advice, separating couples will litigate over issues which should not need to go to court.

Part 3: Children and young people in England with special educational needs

37. Part 3 of the Bill makes new provision for identifying children and young people with special educational needs (SEN), assessing their needs and making provision for them. The Society welcomes many of the provisions in the Bill, in particular:

37.1. The greater specificity of Education, Health and Care Plans (EHCPs) and their extension to young people undertaking apprenticeships;
37.2. Proposals for the code of practice to be subject to parliamentary scrutiny; and
37.3. The removal of the requirement for compulsory mediation.

38. However, the Society is disappointed that the Government has not followed the recommendation of the Education Select Committee that EHCPs should be extended to disabled children and young people who do not have SEN. It is also a matter of concern that the ‘local offer’ (local authorities’ published details of support available to children and young people.

Part 6: Statutory rights to leave and pay

Clause 87: Shared parental leave

39. Part 6 implements a system of flexible parental leave. Specifically, Clause 87 would allow for parents to share parental leave when their baby is born. The proposals are welcome, but the Society cautions that these measures alone are not sufficient to achieve a culture of shared parenting that is readily taken up by employees and supported by employers. Unless there is greater parental pay it is unlikely that families will be able to afford to take their full entitlement to leave, whether shared or not. Furthermore, disparities in pay between mothers and fathers may make it more difficult for couples to share parental leave.

40. The Society is also concerned that the Clause does not provide for a father or partner of a mother who is not in employment, and therefore not taking maternity leave, to take additional time off work. As a principle,
entitlement to parental leave should not be co-dependent on each other’s rights and entitlements. The right to shared parental leave should be a stand alone right.

PART 7: TIME OFF WORK: ANTE-NATAL CARE ETC

Clause 97: Time off work to accompany to ante-natal appointments

41. Clause 97 introduces a right for fathers and partners to take 2.5 days unpaid leave in order to attend ante-natal appointments with their pregnant partner. However, as drafted the provision is unnecessarily complex and bureaucratic as it sets on the face of the Bill that the right can only be exercised on two occasions and for a maximum of six and a half hours on each occasion. This is highly restrictive and, by being on the face of the Bill, can only be altered via further primary legislation.

42. The Society therefore urges MPs to amend the Bill so that fathers and partners are able to take ‘reasonable’ time-off, with no set restriction on the amount of time—precise details could then be established in regulations, adding additional flexibility. Individual circumstances, eg proximity of the appointment to the workplace, or the complexity of the birth may mean that less or more time is required. The legislation should be flexible enough to deal with differing individual circumstances.

PART 8: RIGHT TO REQUEST FLEXIBLE WORKING

Clause 101: Removal of requirement to be a carer

43. Clause 101 extends the right to request flexible working hours, currently only available to parents with a child under 17 (or 18 if the child is disabled), to all employees. The Society welcomes this extension, which reflects a generational shift towards a better work/life balance for both genders, recognises the caring responsibilities and physical constraints that many people have to deal with and facilitates religious observance.

44. However, it is unclear why the qualifying period of 26-weeks has been retained before the right to request flexible working applies. The Society would urge MPs to take this opportunity to amend the Employment Rights Act 1996, so that such a right is available for all employees from day one.

Clause 102: Dealing with applications

45. Clause 102 would remove the current statutory procedure employers must follow when dealing with a request for flexible working and replaces it with a duty that employers consider such requests ‘in a reasonable manner’. The Society does not support this proposal. Fostering the flexible working culture envisaged by the Bill requires certainty as to rights and obligations. This is best achieved by retaining the formality of the present approach, which creates the opportunity and sets the agenda for a discussion on the ways in which flexible working could be mutually advantageous.

46. Since the existing procedure is perfectly adequate, Clause 102 should be removed from the Bill.

March 2013

Memorandum submitted by the Association of Professors of Social Work (APSW) (CF 31)

1. The purpose of the Association of Professors of Social Work (APSW) is the promotion and development of the discipline of social work through education, research and training for social work and related-matters in the UK.

Membership of the Association of Professors of Social Work includes current and retired professors in departments/schools of social work in HEIs across the UK and professors in other departments or schools whose research is primarily concerned with social work issues.

This response has been collated from the views of a number of members, but should not be taken as the collective view of all members.

INTRODUCTION

2. This statement concerns Part 1 of the Children and Families Bill—the clauses that will make changes to the legislation on children looked after and adoption. Specifically, it focuses on Clauses 1, 2, (indirectly 3), 7 and 8. We are broadly in agreement with the aims of clauses 4 and 5 (on post-adoption support and access to information) but greatly regret that the funding for these necessary services is to be taken from the already stretched early intervention budget. Clause 9 (which strengthens legislation with respect to the education of children looked after and adopted) is also to be welcomed. The clauses in Part 2 (changing the way in which care cases are disposed of by the Courts) are also relevant to the issues we raise in this response, but are not specifically addressed.

3. Our summary response is that Clauses 1,2, 7 and 8 are:

— Wholly unnecessary, as existing legislation allows their intent to be met under present legislation.
In reality, very few children accepted by the agencies that have been using the ‘Concurrent Planning’ agencies and in more general local authority adoption practice based around the need to achieve the appropriate permanent placement for all care entrants as quickly as possible. ‘Parallel’ planning in these senses are essential aspects of care and adoption planning and are central to current legislation both through the specialist ‘Concurrent Planning’ agencies and in more general local authority adoption practice.

In so far as evidence and serious professional analysis can predict the results of these clauses they are likely to be ineffective and detrimental to the welfare of specific children, and reduce the overall welfare of all children coming into contact with children’s social care services. More broadly, we regret that the redirecting of resources towards a target-driven adoption service will be at the expense of appropriate services to vulnerable children living in the community their birth parents or members of their extended families.

We would therefore be in support of amendments to delete clauses 1, 2, 7, and 8.

4. Clause 1 – the proposal to require local authorities to consider placing all looked after children ‘for whom they are considering adoption’ with prospective parents who are approved as adopters and also as foster carers (the foster-adopt clause)

We concur with the central aim of Clause 1- to achieve the placement of looked after children with the permanent families most able to meet their needs, and to do so within a timescale appropriate to their needs, wishes, and family circumstances. However, this can and should be achieved under present legislation by the strengthening of regulations and practice guidance, including facilitating, where appropriate the placement of children with dually approved foster-carer/adopters.

Our view is therefore that this clause is unnecessary.

Additionally, we consider that negative consequences for individual children may follow from the way in which the proposed clause is implemented.

Early foster-adopt placements when parents are not seeking or are actively opposing adoption for their child, before a Court has adjudicated on whether the child’s welfare ‘requires’ this major step of severing all links with the family of origin, will in some circumstances be highly detrimental to the child’s welfare and in some cases would also result in a breach of the child’s rights under international and national primary legislation.

These points are expanded on below based on evidence drawn from research on current practice.

5. ‘Concurrent planning’ as currently practiced and the foster-adopt proposal

There is much confusion about the term ‘concurrent planning’. In its ‘common sense’ usage, it means following an agreed plan, but also undertaking some work on an alternative plan, to speed up the achievement of the next best alternative if the agreed plan does not work out (sometimes referred to as ‘contingency’ planning). ‘Parallel planning’ is a similar term referring to looking simultaneously for either an adoptive or a permanent foster family for children with complex needs with respect to whom an adoption placement order has been made, or a care order with a plan for permanent placement away from a birth parent. ‘Concurrent’/‘contingency’/‘parallel’ planning in these senses are essential aspects of care and adoption planning and are central to current practice based around the need to achieve the appropriate permanent placement for all care entrants as quickly as possible.

6. ‘Concurrent Planning’ is also used in a specific sense to refer to a particular model of adoption placement work that originated in the USA and has been incorporated into the practice of a small number of UK adoption agencies. It has three components: 1. speed up the court process; 2. work intensively with birth parents, especially around supervised contact and assessment about whether the child’s welfare requires adoption; and 3. (the only one of the three elements that is specific to the ‘Concurrent Planning’ model) placement shortly after the child starts to be looked after (usually the first or second placement move after the child enters care) with approved adopters who are specifically approved as pre-adoption foster carers. If the Court decides that the child should be placed for adoption, they become the prospective adoptive parents.

In our view, the term ‘Concurrent Planning’ for this specialist model of adoption work is misleading and it would be more appropriate to refer to it as ‘Concurrent Placement’ ie the child is placed with foster carers who are concurrently also the child’s prospective adoptive parents if the Court makes an adoption placement order. It is this aspect of the present ‘Concurrent Planning’ adoption practice that the Bill seeks to apply to a wider, and a more varied, group of children.

7. We see some value in a concurrent placement approach (with adopters approved as foster carers) for infants who have not lived for any length of time with a birth parent and in respect of whom professional opinion is overwhelmingly in favour of adoption as the only available alternative. This can and does happen under present legislation both through the specialist ‘Concurrent Planning’ agencies and in more general local authority adoption practice. In reality, very few children accepted by the agencies that have been using the ‘Concurrent Planning’ model for adoption will be placed in this way.

8. We would therefore be in support of amendments to delete clauses 1, 2, 7, and 8.
Planning’ model (now available for around 10 years) have in fact returned to birth parents so ‘Concurrent Planning’ is really a misnomer. Prospective adopters, on the basis of information that adoption is highly likely to become the child’s plan, take the risk of having a child placed with them before the plan is confirmed by the Court. This appears to be what Clause 1 seeks to achieve, but it can and is being achieved under present legislation in appropriate circumstances.

8. Whilst the first two aspects of ‘concurrent planning’—strict adherence to time-tabling to avoid unnecessary delay in court proceedings and appropriate services to birth parents—are essential aspects of a sound permanent placement service for all ages, we consider that the ‘foster-adopt’ ‘concurrent placement’ model of adoption is inappropriate for children where there are complex issues (eg the possibility of a kinship placement; an overseas element, sibling relationships to be considered or any uncertainty about whether there is a viable possibility that the child can return to a parent or be successfully placed with a relative). One or more of these circumstances are relevant to the majority of children who start to be looked after, including the majority who need a permanent placement away from their parents.

9. The majority of children who need permanency away from their birth parents or extended family should (as now) be placed with an experienced foster family, trained to work collaboratively with professionals and birth relatives, whilst their needs are carefully assessed and concerted attempts are made to achieve a safe return to parents or placement with relatives. When this cannot be achieved, the foster carers are skilled in helping them to move to an alternative permanent foster or adoptive family. In many cases (exact percentages unclear) the foster carers become the ‘family for life’ carers, sometimes adopting the child, becoming the Special Guardians or becoming long term foster carers, with the child being fully a part of the family throughout childhood and beyond. Some of the most successful outcomes are achieved when children originally placed temporarily with foster carers whilst further assessments take place remain there on a permanent basis. In many cases they maintain the positive birth parent and sibling links established in the early stages of the placement. This is a very different arrangement from the proposed foster-adopt plan where the carers’ aim from the start is to become adoptive parents and are not recruited as, trained and experienced foster carers.

10. Despite some government statements that, beyond return to a parent or a kinship placement, there is no prioritisation amongst other placement options, the Bill appears to be based on the premise that adoption is the preferred legal status. This may or may not be the case, but the evidence is weak to support this emphasis on adoption, and the heavy investment of financial and skilled professional resources. Ian Sinclair and his colleagues concluded from the large scale University of York research study on adoption, and the heavy investment of financial and skilled professional resources. Ian Sinclair and his colleagues concluded from the large scale University of York research study that there was limited scope to increase the numbers adopted from care. There is a risk that the increased emphasis on adoption will undermine the progress that has been made in recent years in providing stability and a sense of belonging in foster families. This will especially be the case if, at a time of reduced resources (including a shortage of experienced social workers) these are diverted towards adoption which will always be the placement of choice for only a minority of care entrants. A very small number of children may benefit, but the welfare of a larger number of children may suffer.

11. When similar children are compared, there is no evidence that children placed for adoption have better outcomes (whether in terms of disruption rates or welfare outcomes) than those placed with special guardians or ‘permanent’ foster carers. This is because the children placed for adoption are different in many respects to those placed in long-term foster care—and in ways that predict that those placed for adoption have a greater likelihood of successful outcomes.

12. Most who enter care in England when under three years of age are placed for adoption, and there is not a large enough cohort of children placed in permanent foster care when under the age of three for reliable comparisons to be made. When children placed for adoption when over the age of three or four are compared with children with similar characteristics placed with kin or non-kin foster carers with the intention that this will be their home till adulthood and beyond, there is no significant difference in the likelihood of emotional and behavioural problems or problems with schooling.

Clause 2 Repeal of requirement to give due consideration to ethnicity;

13. Our summary response is that this is not necessary. No robust evidence has been produced that it is necessary to remove this requirement for children who may be adopted when it remains (appropriately) in place for all other children who are looked after. In all decisions the child’s welfare has to be the paramount consideration. The evidence from research is that ethnicity, culture and religion are important considerations. A repeal of this requirement risks giving a message to adoption agencies and professionals working with looked after children (and to the children themselves) that their ethnic and cultural heritage is not seen as an important part of their identity. It also risks weakening attempts to recruit families of the different ethnic and

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faith backgrounds that make up the population in England. It may also be in breach of the UN Convention on the Rights of the Child.

14. ‘Matching’ or ‘fit’ is essential in all permanent placements. If the ‘match’ (the ‘chemistry’) is wrong, even very effective professional practice can only ‘paper over the cracks’. Sufficient resources must be given to this aspect of the service. With respect to ethnicity, there are sufficient numbers of single adults or couples (some with infertility issues, some interested in growing their family) in the main UK ethnic groups for infants and young children entering care to be placed with ethnically and culturally matched families. Some of the delay in the placement of African Caribbean children results from more of them being over 12 months of age when they enter care and therefore having more complex needs and pre-existing relationships.

15. The need for non-ethnically matched placements is usually with respect to children whose parents are of different ethnicity/religion or country of origin. There is growing evidence that most in these groups who start to be looked after in infancy are placed fairly speedily, some with matched and some with non-matched families.

16. Research on long term outcomes for minority ethnic children, some placed trans-racially and some with ethnically similar families is that both same race and different race adopters can successfully parent children whom they adopt from care. However, (all things being equal in terms of skilled and loving parenting) families of the same ethnic and cultural heritage as the child have an advantage over trans-racial adopters, since trans-racial adopters have additional challenges to overcome. Although the majority, especially of children placed when young, do well whether adopted by families of the same or a different heritage, an important minority of those placed transracially report difficulties and unhappiness as they grow up and some attribute this to the different ethnicity of their adoptive family65.

17. Amongst some ethnic minority communities (especially those of Caribbean heritage), there is a preference to foster on a permanent basis rather than to adopt. This is linked with cultural and sometime religious beliefs, and does mean that African Caribbean children especially are more likely to be in permanent foster families than with adoptive parents66.

18. Permanent foster placement with families of a similar heritage also has the advantage that the high value ascribed in some cultures to family connectedness means that black children placed with black families are more likely to be placed with their siblings and to have better continuing links with birth parents or siblings living elsewhere. This is important as, although statistics show that black children are more likely than white British children to remain in care and less likely to be adopted, a proportion of those in long term care will be having their needs to be ‘part of a family’ into adult life met even though they remain in care. More research is needed to ascertain whether the black children in care are permanently placed with foster families or are living in unplanned temporary care.

Clause 8 Contact for looked after children and children adopted from care

19. Our summary response is that this change is not necessary, and could be harmful to an important minority of children in care who will have their links with family members who are important to them unnecessarily ended. The proposed change seems to put the wishes of the adopters above the wishes and needs of the children. It may appear to encourage the recruitment of adopters who lack the will and ability to facilitate appropriate links between children and their families. Research indicates that ‘communicative openness’ is a characteristic of adopters that is associated with more successful outcomes.

20. A specific point refers to Clause 51A (6) empowering the Court to make a ‘no contact order’ on its own initiative. This will be appropriate in some cases, but, given that the child’s needs and wishes should be paramount, the Clause should also empower the Court to make a (positive) contact order on its own initiative if, on hearing the evidence (including the wishes of the child) it concludes that such an order is in the interest of the child.

If this clause remains in the bill, we would support an amendment to this effect.

21. Research studies across time, continents and research methodologies have consistently concluded that, for the majority of children placed from care with permanent substitute families the continuation of carefully planned and facilitated meaningful links with birth parents, other adult birth family members and siblings is either associated with better long-term outcomes for children placed from care or is a ‘neutral’ factor. Sibling links are best maintained by placement in the same family or (if ‘splitting’ or ‘splintering’ of sibling groups is unavoidable) placement with substitute parents who value the sibling relationships and are assiduous in their efforts to maintain links through meaningful contact arrangements.

22. This applies with respect to placement disruption or other wellbeing outcomes, including the child’s/young adult’s satisfaction with the placement experience. Perhaps most importantly, qualitative studies of children placed from care with permanent substitute families for adoption of fostering indicate that the majority want to be placed with a sibling and to maintain appropriate links (the nature of which change over time) with


one (not necessarily both) birth parent and relatives with whom they have prior relationships. Studies of adoption reunions in adult life confirm that birth identity and relationships continue to be important for many adopted adults (the exact proportions are unknown because of secrecy surrounding adoption), whether or not they had contact as they grew up.

23. There is no evidence that, for the majority of adopted children or children placed with long-term foster families, continuing links with birth family members impede the growth of attachments in the substitute family. Research also points to the circumstances (and the characteristics of individual birth parents or siblings) when face to face contact (and very occasionally all birth family links) are not in a child’s interest.

24. In broad terms, appropriate and meaningful links can most easily be achieved for the youngest placed children (although for them it has less significance until they reach adult life, when it helps them in deciding how to regulate any contact they may wish to have).

25. For children placed in care who have already formed a relationship (however ambivalent) with birth parents, siblings and other relatives, the wish to retain meaningful links is more important, although achieving successful contact is often more complex. The majority of children placed from care have suffered neglect rather than physical or a sexual assault, and are most likely to have complex relationships with their parents, which will have included affection as well as poor parenting (this applies especially with respect to learning disabled parents, those with mental health problems, addictions and whose children enter care because of domestic violence). These children especially need and benefit from being placed as sibling groups and retaining contact with birth parent/s and concerned relatives who will often have played a part in their care.

26. The conclusion has to be that the child’s (sibling group’s) contact needs must be carefully assessed. Families must then be recruited and matched in terms of their ability to meet the contact needs of the child/family group. The question of legal status must be considered alongside that of meeting other needs.

Professors Brigid Daniel, Aidan Worsley (Co-Chairs), Brigid Featherstone, Peter Marsh, Kate Morris, June Thoburn, Hilary Tompsett, June Thoburn, Jane Tunstill, Susan White

March 2013

Memorandum submitted by the Home Education Advisory Service (CF 32)

Home Education Advisory Service (HEAS) was founded in 1995 and was registered as a charity and as a company limited by guarantee in 1997. It exists to provide information, advice and support to families and also to local authority staff, other professionals, academic researchers, voluntary agencies and the media. HEAS gives practical advice on educational materials and resources, GCSE, special educational needs issues, information technology, legal matters, social life and curriculum design. Information is available in a range of publications and also through subscription to HEAS.

SUMMARY:

HEAS would like to comment on Part 3 of the Children and Families Bill and its implications for children and young people with SEN who are educated at home. Home education is a small but vital aspect of parental choice in education which is often overlooked when legislation is drafted. We wish to draw attention to the fact that the provisions in Part 3 might cause difficulties for home educating families.

1. It has been our experience in the past that legislation which is not aimed at home educators has had unintended consequences for them. In the legislation which is currently under scrutiny Clause 22 requires the local authority ‘to exercise its functions with a view to securing that it identifies all the children and young people in its area who have or may have special educational needs.’ This duty, without any further clarification, could cause local authorities to insist on screening all home educated children in order to ensure that they do not have special educational needs. Such procedures would be intrusive, costly and unjustified and they would cause distress and inconvenience to many families.

2. Clause 23 replaces and condenses section 321 of Part IV of the Education Act 1996 but in its simplified form it introduces a conflict with the principle of parental responsibility which is derived from Section 7 of the

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same Act. HEAS believes that the new legislation might result in families being denied the freedom to make their own educational choices. The legislation suggests that the parent might have to prove to a third party that the home education is suitable before being permitted to undertake it. This would constitute an unacceptable reversal of the respective roles of parents and the local authority.

3. HEAS is concerned about the fact that as the local offer will be devised on the basis of children in school, home educators might be forced to choose between receiving no help at all and receiving help which is centred upon school.

4. If home educated children are not receiving support once they are out of school it appears that the EHC plan would be discontinued. This could have a long term impact on the child’s future.

5. During the phase of pre-legislative scrutiny, HEAS instructed barrister Ian Dowty to give an Opinion on the SEN Clauses in the draft Bill. We expressed our concerns to DfE via emails and meetings, but we regret to say that nothing has changed, save the new clause 19 regarding parents’ wishes.

6. HEAS was told that changes to the face of the Bill would not be necessary because concerns could be addressed in guidance. After being given the opportunity to meet with DfE representatives to discuss the revised draft Code of Practice, we have heard nothing further and fear that—just as with the Bill itself—our grave concerns will be ignored simply because these matters affect a relatively small number of children.

March 2013

Memorandum submitted by NAGALRO (CF 33)

Nagalro’s overarching concerns centre on the implications of the Bill for safeguarding the rights and welfare of the children involved. It is from this perspective that we make our response. Taking the Bill as a whole we are disappointed by the absence of accessible legislative safeguards for children in both public and private law proceedings. We are also concerned that some changes designed to facilitate adoption have been drafted in a way that will damage the interests of the large number of older children who are looked after by local authorities for whom adoption is not an appropriate care plan. A more careful balance is needed to recognise the breadth of situations in which children come in to the care of the local authority.

Clause 1 Placement of looked after children with potential adopters

1. Essentially this clause introduces concurrent planning but we are concerned that there are insufficient safeguards to ensure that local authorities continue to consider placement with family members where these have not yet been ruled out. The logistical and resource limitations mean that local authorities will be under fewer obligations to ensure that kinship care is properly considered or that contact with birth families is maintained in a way that is meaningful enough for the child to ensure that a proper choice of options is available to the child and the courts. The risk could be reduced by requiring the Local Authority to consider concurrent planning but retain a requirement to consider placement with family members when these have not been ruled out. Otherwise there is a risk that cases will be decided through passage of time rather than on the original facts of the case.

2. Dual-approved foster carers need specific assessment and skilful support: not all adopters would wish or be able to take on this task with the associated uncertainty. The model is mainly appropriate for younger children and infants. The majority of children needing permanence cover a wider age range.

3. Immediate placement in foster-to-adopt homes will not be appropriate even for all babies and young children. Confidentiality of placement may be more difficult to maintain, especially when children are having regular contact with parents before an adoption care plan decision has been made. In addition some Voluntary Adoption Agencies may not consider children without a Placement Order.

Clause 2 Repeal of requirement to give due consideration to ethnicity.

4. Removing the requirement to ‘give due consideration to the child’s religious, racial origin and cultural and linguistic background’ when placing a child for adoption is a retrograde and counterproductive step. This risks putting the UK in breach of Articles 20(3) and 30 of the United Nations Convention on the Rights of the Child (UNCRC), which was ratified by the UK in 1991. The guidance already requires that children should not be denied an adoption because a precise ethnic match cannot be found.

5. The removal of the requirement to consider religious and cultural issues is also problematic and may mean that birth parents of a particular religious persuasion may refuse their consent on that basis alone. In particular, knowledge of one’s religious and cultural heritage is an important part of identity.

6. We agree with the House of Lords Select Committee on Adoption’s proposal that religious and cultural issues should be included.

7. Otherwise we are in danger of swinging from one extreme to another and establishing an inappropriate balance between over consideration of race and culture to no consideration at all.
8. Experience from those counselling adult adopted people in successful transracial placements usually showed adopters sought to help the child form a secure identity. If no consideration is given to these issues when considering a match, it could be extremely detrimental to the child’s long term welfare as they may feel that they have been deprived of part of their cultural inheritance.

Clause 4 and 5 Adoption Support Services: personal budgets and duty to provide information.

9. Many adopters are unaware of support services which might be available to them. Provision is very patchy and varies considerably across the country and it may not be possible for adoptive parents to travel long distances to receive the support they need. Children’s needs change as they develop. Support plans and resources identified at the time of placement may prove to be inadequate as the full scale of difficulties may only become apparent later. We are concerned that adopters may find that as their child enters adolescence they need different and more substantial help from that initially identified. Adoptive parents may not know what services exist, which they have a right to access or where to go to find out.

10. There is also a danger that the range of privatised support services may not fit the complex needs of children and families have. Service provision is likely to be fragmented and some services may be fragile and may not survive.

Clause 6 The Adoption and Children Act Register.

11. We understand that the government’s intention is to fast track adoption and achieve permanence for children as soon as possible. This is clearly desirable provided that the necessary background assessment work has been thoroughly carried out by the local authorities who must be mindful of the parent’s and child’s rights to family life under Article 8 UNCRC.

Clause 7 Contact: children in the care of local authorities.

12. Nagalro is extremely concerned about how clause 7(3) will be interpreted and used by local authorities as it effectively dilutes the presumption in favour of contact. It is already the case that if contact is not conducive to the child’s welfare then it falls outside the scope of reasonable contact.

13. We are particularly concerned about this provision in relation to the whole range of children who find themselves in local authority care, especially older children. Research and experience show that this clause may backfire as insufficient time and resources will be devoted to maintaining contacts with connected people who are important to children and who have something to offer them, to the long term detriment of the wider population of older and difficult to place children looked after by local authorities, many of whom will not be adopted. This is particularly true in relation to the separation of siblings. This clause takes too narrow a view in focusing on the needs of only a small percentage of children in public care. Children frequently return to their families when they leave care and it is vital that healthy links are fostered before this point.

14. Contact should be child centred and the child will have their own view. It is in this area that the Children’s Guardian role is so important in ascertaining the wishes and feelings of the child and representing them accurately to the court. We suggest that a relaxation of the leave requirement in s10 CA 1989 would go some way to providing a legislative safeguard provision for children. (In this context see also our response to Clause 12)

Clause 8 Contact post adoption

15. Following on from the above, adopted adults often feel most aggrieved about separation from siblings: not all contact is just with parents. The wider extended family is important too.

16. Indirect contact via letter box needs skilled support particularly with parents with learning difficulties or mental health conditions.

17. The court has an existing duty to consider contact when making an adoption order. We are concerned that the importance of this is not diminished to the detriment of the child and their long term relationships. How will the voice of the children involved be heard as they are not routinely represented in adoption proceedings? Clause 8(4) gives the child the right to apply for contact but how will they know about this, how will they exercise their right and how will it be funded?

18. Further, parents may perceive this clause as prejudging the outcome of the court proceedings. The danger is that in the present situation where services are under increasing time and resource pressures, this clause could act as a perverse incentive for local authorities to undertake limited or inadequate assessment and support work.

19. The continuing increase in care proceedings has combined with financial restraints to put local authorities under great pressure. Local authority performance is extremely variable. The reality is that whilst some practice is of a very high standard, some is not. There are authorities across the country with high staff turnover and difficulties in retaining experienced workers leading to over-use of agency and inexperienced practitioners. Research studies have found that about 40% of care proceedings cases come to court without an up-to-date core
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20. Social work assessment must be front-loaded. This means that for robust, accurate decisions about children at risk of abuse and neglect to be made in a timely way the most skilled, specialist-trained social workers need to be involved early in the process. Courts need high quality social work assessments about complex issues of risk, parenting and capacity to change at the start of a case. These need to assess not just parents but also any potential kinship carers. Only when the full assessment is complete are courts able to resolve cases without delay.

Clause 10 Family Mediation: Information and assessment meetings.

21. We are far from convinced that the safeguards in place to ensure that domestic violence or other welfare issues cases are filtered out from the Mediation Information and Assessment meeting (MIAM) system’ As private law cases are diverted away from the courts and legal aid in private law cases is largely withdrawn, mediation services will assume a frontline role in screening for domestic violence and child abuse. The majority of mediators, however, have very limited, if any, child protection background or experience and moreover they are not officers of the court.

22. The primary purpose of the MIAM is to assess separating couples’ suitability for mediation and to encourage separating partners to reach agreements through mediation rather than court based processes. Part of the task is to identify and screen out of the system those cases which are unsuitable for mediation because of issues of domestic violence or child protection. This places a considerable reliance on the skills and experience of the mediator carrying out the MIAM.

23. The role of officers of the court is not sufficiently clear and the links between mediation and Cafcass services are not clearly articulated. There is no integrated national scheme of child protection linkage between mediation Cafcass and social services and in its absence there is ample scope for vulnerable children and adults at risk to slip through the wide cracks in the system.

24. Effective mediation services are an essential element in delivering faster family justice in private law cases but we concur with the warning notes sounded by Professor John McEldowney speaking at the Family Mediation Association’s (FMA) annual conference in September 2012 that we must recognise the boundaries of the role mediation plays in the justice system as a whole. As he said bad mediation is expensive to resolve and restoring bad mediation to justice is hard to do. As yet there is no umbrella training and regulatory body for mediators and inevitably this leads to wide variations in practice skills and experience. Screening by mediators for risks of violence or abuse to children and adults is not a substitute for safety checks or for judicial findings of fact.

25. Children are likely to have suffered physical abuse themselves in as many as 40-60% of domestic violence cases. Domestic violence features in the lives of 37% of children who are receiving social work interventions and 60% of those are on the child protection register.

26. The Family Justice Review expressed substantive concerns about how the voice of the child is to be heard in private law proceedings but the government has failed to explore options for progress in this area.

27. There is evidence from research and from professionals involved in courts proceedings that vulnerable children in private law proceedings are not protected by the same risk-assessment procedures or indeed basic screening mechanisms that protect their counterparts in public law proceedings.

Clause 11 Welfare of child-parental involvement.

28. Within the existing law and court rules there is already a well-established presumption that the child’s best interests will be best served by maintaining a relationship with both parents following separation unless there are reasons to the contrary.

29. The impetus for change appears to be being driven by a focus on parental rights rather than children’s welfare. Research from other jurisdictions has consistently indicated that legislation which leads to an assumption of shared parental time is not in the interests of the children involved. Moreover it may lead to conflict between two potentially conflicting statutory imperatives-namely the paramountcy of the child’s welfare and the presumption in clause 11(2) which will lead to a perception of entitlement to equal parenting time (Denmark has recently repealed such legislation).

30. Mothers have felt discouraged from disclosing family violence and child abuse concerns because of their belief that there is a legal starting point for shared time, so there is no point in disclosing violence. The two legislative objectives often compete for priority in litigated cases. Moreover, for those cases which go to court, we do not consider that the Cafcass private law s 16 CA 1989 risk screening processes are sufficiently robust

73 As 5 above.
74 Hernstein ‘Women and mediation: a chance to speak ad to be heard’ (1996) 13(3) Mediation Quarterly 229-241
75 Children in Need Census 2001
to be effective. Children are not routinely seen and the screening is carried out at arm’s length via a prescribed telephone script on the basis of the necessarily subjective information supplied by the two adult partners.

LEGISLATIVE SAFEGUARDS NEEDED FOR CHILDREN

31. In view of all of the above, we would ask that much greater consideration be given to the specific procedural safeguards necessary to ensure the safety and well-being of children whose parents are separating. If the Government is minded to make legislative changes, then we would urge them not to do so without also putting in place the two key legislative safeguards for children below.

32. The implementation of s122 Adoption and Children Act 2002—using the President’s Direction of 2004 as guidance—would add s8 residence and contact proceedings (or the new Child Arrangements order) to the list of specified proceedings in which a child may have party status and separate representation by a children’s guardian and a children panel solicitor as in the tandem model in public law proceedings.

33. Relaxation of the leave requirement s10 CA 1989 leave requirement for competent children. The Family Justice Review considered removing the requirement for grandparents to apply for the leave of the court under s10 CA 1989 before making a s8 CA 1989 contact application. It did not, however, consider removing the same leave requirement for competent children. The CA 1989 envisaged that in certain situations children and young people would need to seek leave to make their own applications to the court. Theoretically, this provides a route for children to bring cases back to court if necessary and this was intended to constitute a safeguard provision.

34. In practice, the process presents children with a virtually impassable obstacle course of procedures, which includes testing the competence of the solicitor who is testing the competence of the child and the requirement to obtain permission from a high court judge. This means that what should be a potential safety net route to review for children is effectively blocked. In practice it happens so rarely that the LSC do not keep any statistics. A provision to relax the leave requirements as originally recommended by Dame Margaret Booth when Chair of the Children Act Advisory Committee, would be a positive backstop safeguarding provision.

Clause 12 Child Arrangements Order

35. We remain concerned that the substitution of child arrangements orders instead of residence and contact orders will be a largely cosmetic change which is unlikely to solve the problems of perceived winners and losers. In reality, arrangements for residence and contact will be different and would have to be considered separately within the proceedings. Of greater concern is the earlier proposal in the draft legislation that would repeal provisions requiring the court in divorce proceedings to consider arrangements made for children in the family. Such a provision would considerably weaken one of the few remaining safeguards for children in private law proceedings as it would mean that there would be no possibility of any objective judicial scrutiny of the arrangements for children as even the present paper scrutiny of the proposed arrangements would go. There is ample evidence from research and practice that illustrates how powerless and bereft children feel in the face of the new and disturbing events triggered by their parent’s separation. Once their residence and contact arrangements have been agreed, children can be effectively locked into arrangements which may be unsafe, inappropriate or which no longer meet their developing needs. The historic differentiation of children in public and private law proceedings has not served children well, as it has masked the harm arising from exposure to domestic violence and abuse. The links are now much more clearly understood but the paucity of direct support services leaves many children extremely vulnerable. We are concerned that too little consideration has been given to taking the opportunity offered by the Bill to put in place the necessary safeguards for children at risk.

36. The comments about legislative safeguards made above at paragraphs 31–34 apply equally here. Research indicates that children are not aware of anything they themselves can do to initiate a change or review of their situation. We believe this requires specific amendment to provide an accessible route for children.

Clause 13 Control of expert evidence and of assessments in children proceedings.

37. We are concerned that the new proposals will lead to miscarriages of justice through the pressure on courts not to use expert evidence. This is for two main reasons: because it is often inaccurately seen as a cause of delay and because curtailed timescales will militate against the court obtaining good enough information on which to base its decisions. As the Family Justice Review said: “Expert evidence can often be necessary to a fair and complete court process.” Without suitable expert evidence there are likely to be more wrong decisions for children, more appeals and more delay.

38. The FJR’s conclusions on expert evidence appear to lack a sound evidence base. Two recent pieces of research support this view: the report by Oxford University into the contribution that independent social work

74 Timms Bailey and Thoburn. Your Shout Too! A survey of the views of children and young people involved in court proceedings when their parents’ divorce or separate.

75 para 3.120, Family Justice Review Final Report (November 2011), MoJ, DfE, Welsh Government
ISW expert reports make to family proceedings and a survey by Cafcass of care proceedings during three weeks in November 2011.

Dr Brophy and her team found that ISW assessments provided new evidence about parents or others who had not been assessed by local authorities, or where there was significant dispute about a local authority assessment. There was no evidence of routine duplication with a current local authority core assessment. There was no evidence that ISW reports cause delay to court hearings. This was evidence that courts needed in order to make their decisions.

In contrast to concerns about the local authority workforce Brophy et al found that ISWs are independent, highly skilled and experienced with a median 24 years in child protection work. They were child-focussed and had ‘added value’ because of their high quality, timely, forensic work.

Cafcass Children’s Guardians, surveyed in 2011, reported that the biggest reason for delay, in two-thirds of cases with delay, was local authority practice and resources. Issues relating to experts affected 10% of cases with delay. Robust case management and availability of expert witnesses were factors associated with no delay. Factors related to delay in the provision of expert evidence included delay in the letters of instruction being sent out, the lack of availability of suitable experts, and appointment of the Official Solicitor for parents who lack capacity.

The whole system by which expert evidence is commissioned at present is, in Nagalro’s view, dysfunctional and works against the interests of the vulnerable children involved. Cases where the court considers it does need to instruct an expert have experienced lengthy delays while exchanges take place between the Legal Services Commission (LSC), courts, solicitors and experts about costs and hours for the work. Nagalro members report numerous examples where a court has ordered an assessment but LSC refuse to fund it in whole or in part. In some cases LSC has made arbitrary cuts in how many hours it will fund after an expert has set out their professional estimate of what is required for the task, causing an expert to withdraw. This results in further unjustified delay for the child.

In addition the removal of the appeal mechanism will result in some children not having their needs identified.

Clause 14 Care supervision and other family proceedings: time limits and time tables.

We are disappointed that the Bill has not taken account of the Justice Committee’s recommendation that there be greater flexibility over granting extensions to the 26 week limit for good child centred reasons.

For example in one case a young girl was willing to give evidence and requested this took place after her GCSEs she was a very able student. In this case the time required would have gone beyond the 8 week extension.

The plan to limit time taken by care proceedings will only be effective for children if decisions are based on proper assessment and care planning. Wherever possible it will assist if this work is done by local authorities before proceedings start. This is not possible in emergency cases. In cases already known to local authorities there are two problems with work undertaken pre-proceedings:

Firstly parents’ legal representation is limited in the pre-proceedings stage, placing parents at a disadvantage. The child lacks any independent representation at this stage.

Secondly the problem is compounded by the fact that without a court and a guardian to monitor timetables, these steps are likely to take longer. This will prolong the child’s journey to a final decision.

Nagalro is committed to reduce delay for children, and recommends maintaining full judicial discretion over the length of care proceedings. Simply instituting a rigid 26 week time limit when it is clear that cases cannot be resolved satisfactorily within this timeframe at present will be a recipe for unjust and arbitrary decisions. If courts do not have sufficient time to obtain suitable evidence they will have to guess at what is the right decision for a child. Such a guillotine will be a violation of the child’s rights to fair justice, as well as their parents’.

Clause 15 Care Plans.

We believe strongly that the best interests of the child will not be served by limiting judicial scrutiny of the care plan. The distinction between what is ‘core’ and what is ‘detail’ in a care plan is not easily defined, as the Family Justice Review report itself acknowledged. This needs to remain within the court’s discretion and Nagalro sees the House of Lords judgment in Re S; Re W as setting out what is still the correct approach:

79 Cafcass Care Application Study 2012 http://www.cafcass.gov.uk/publications/reports_and_strategies.aspx
80 MacAlister, J et al, Frontline: Improving the children’s social work profession 2012 IPPR
51. “…when deciding to make a care order the court should normally have before it a care plan which is sufficiently firm and particularised for all concerned to have a reasonably clear picture of the likely way ahead for the child for the foreseeable future.”

52. The experience of our members is that decisions about whether siblings are placed together or separately, what therapeutic, health and educational provision they need, the particular type of placement, and the other matters indicated in the Family Justice Review can be crucial issues for children’s welfare, and not neatly separated off from permanence options.

53. These matters cannot always be safely delegated to local authorities. It is already too easy for local authorities to make decisions about children for administrative or other reasons that are not child-centred.

54. A reduction in the scope of courts to consider the local authority care plan for a child will also serve to limit the Children’s Guardian’s ability to address these issues in their investigation in tandem with the solicitor as part of their role to safeguard the welfare and best interests of the child.

55. There has already been a reduction in the amount of time and quality of work that Cafcass permits guardians to undertake and the Cafcass Operating Framework introduced on 1 April 2012 legitimises a restricted model of proportionate working which is at odds with the legislative framework. This is leading to a loss of quality in the ability of children’s guardians to scrutinise local authority care plans in court proceedings.

56. The provisions for the representation of children by children’s guardians are legislatively sound but as the Chief Executive of Cafcass said in his oral evidence to the Justice Select Committee on 17 July 2012, although cases may be nominally allocated, the time that guardians can spend on each case is limited and the quality of the Cafcass case analysis needs to be improved.

57. It is very important that children have the opportunity, through their representatives, to interrogate the plans for their lives at a stage where they can still be changed. We would be alarmed if such a fundamental change in children’s rights was put in place as it would have the capacity to undermine the principles of the Children Act 1989 as well as the rights of children embodied in the UN Convention for the Rights of the Child and the European Human Rights Convention. We fear that this proposal will constitute a significant weakening of another core safeguard for children and that the provision is unrealistic in its lack of allowance for what may be poor or inadequate local authority practice. There are also continuing concerns about the ineffectiveness of the Independent Reviewing Officer (IRO) service in holding local authorities to account. A reduction in the level of court scrutiny of care plans will place an additional burden of responsibility on the Independent Reviewing Officer service at a time when there are serious questions about its functioning and the conflicts of interest involved in the employment of IROs by the same local authority that has parental responsibility for the child. Many IROs carry unacceptably large caseloads - often in excess of 100. The problems were starkly illustrated by the case of A and S v Lancs CC [2012] EWHC 1689 (Fam). In this case the IRO had a caseload of over 200. It is very worrying that the National Association of Independent Reviewing Officers (NAIRO) had to write to the Minister for Children on 14 May 2012 to complain that a significant number of their members were being threatened and intimidated by local authority managers to prevent them from making challenges to care plans for children.

58. We are deeply concerned that such a change will be counterproductive in leading to poorer long term outcomes for the children involved.

ABOUT NAGALRO

Nagalro is the professional association for Children’s Guardians, Family Court Advisers, and Independent Social Workers.

It has approximately 700 full members in England and Wales who represent the interests of children in a range of public and private law proceedings. Members undertake work in a variety of roles: some work for the Children and Family Courts Advisory and Support Service (Cafcass). Many act as Independent Social Workers providing expert witness reports in a wide range of complex cases coming before the courts.

Members also work for fostering and adoption agencies, as trainers and educators, and in clinical practice as therapists. Many have significant experience as managers, chairs of Adoption Panels and other specialist social work practitioner roles.

March 2013

83 O guardian, where art thou? Martha Cover, article in Seen & Heard, Vol 22 Issue 2
84 http://www.bailii.org/ew/cases/EWHC/Fam/2012/1689.html
Memorandum submitted by Mencap (CF 34)

CHILDREN AND FAMILIES BILL: PART 3—CHILDREN AND YOUNG PEOPLE IN ENGLAND WITH SPECIAL EDUCATIONAL NEEDS

ABOUT MENCAP

1. Mencap supports the 1.5 million people with a learning disability in the UK and their families and carers. Mencap fights to change laws and improve services and access to education, employment and leisure facilities, supporting thousands of people with a learning disability to live their lives the way they want. See www.mencap.org.uk for more information.

2. We are also one of the largest providers of services, information and advice for people with a learning disability across England, Northern Ireland and Wales. These include the Mencap National Colleges (on three campuses in Somerset, Northumberland and North Wales) and Segal House Nursery in Northern Ireland.

3. Mencap is a member of both the Special Educational Consortium (SEC) and Every Disabled Child Matters (EDCM) and supports their joint submission to the Education Select Committee.

ABOUT LEARNING DISABILITY

4. A learning disability is caused by the way the brain develops before, during or shortly after birth. It is always lifelong and affects someone’s intellectual and social development. It used to be called mental handicap but this term is outdated and offensive. Learning disability is NOT a mental illness. The term learning difficulty is often incorrectly used interchangeably with learning disability.

EXECUTIVE SUMMARY

5. Mencap is grateful for the opportunity to feed into the development of the Children and Families Bill.

6. Mencap is supportive of many of the principles of the Bill, particularly the focus on holistic 0–25 support for those with an Education, Health and Care Plan (EHCP) and proposals to provide an outline of local SEN services—including provision to help prepare children and young people for adulthood—for all children with SEN as part of the local offer.

7. Mencap is also pleased to learn of the government’s intention to place a duty on Clinical Commissioning Groups (CCGs) to secure services in EHCPs for children and young adults. We look forward to the committee analysing the clause when published to ensure that this proposal is as robust as possible.

8. However, Mencap does have a number concerns about how these provisions will operate in practice and how it can be ensured that those services which are planned for are actually delivered by all agencies. We believe that EHCPs can only succeed if they help children and young people to develop in all aspects of their lives and until the age of 25.

9. We also call for clarification about how these proposals tie in with the measures set out in the Draft Care and Support Bill, currently being examined by a Joint Committee, to ease the transition between children’s and adult social care provision.

10. Mencap is working in coalition with the Special Educational Consortium and Every Disabled Child Matters and endorses the views they have advanced. As such, Mencap will be supporting the key asks of both consortia, as well as raising a number of additional points:

   — Mencap urges the government to include, within the scope of the bill, disabled children who do not have additional educational needs but who, nevertheless, have health and care needs which might affect their development.

   — There is currently no duty to provide what is set out in the local offer. There should be a legal duty on local authorities to deliver what is set out. Mencap believes that local offers should also be subject to some form of national framework in terms of their development, scope and content.

   — We believe that the EHCP should be accessed via other routes than just education.

   — We urge the Government to commit to supporting young people on an EHCP up to 25, in whatever setting and whether or not they are in education or training. This should include employment support schemes—in addition to apprenticeships—and eligibility for EHCPs under these schemes should be set out in a transparent way.

   — Outcomes in the EHCP should be educational, health and care-related and should be based on the notion of ‘wellbeing’ as set out in the draft Care and Support Bill.

11. The main body of this response provides an overview of the key points, which Mencap would like to draw to the Committee’s attention. However, in addition, Mencap has provided a detailed overview of each clause of Part 3 of the Bill. This is included as an appendix and provides a more detailed analysis of the proposals, as well as drawing out a number of additional points.
**KEY POINTS**

**Children and Families Bill—SEN reform**

12. Mencap welcomes the ambitions of the Bill to provide a more integrated and holistic approach to meeting the needs of children and young people. However, in some areas we believe that the provisions do not go far enough. This submission sets out our views on how the provisions could be improved in order to better realise the Government’s ambitions for disabled children and young people and those with special educational needs (SEN).

**Involving children and young people with SEN (clause 19)**

13. Mencap welcomes the inclusion of clause 19 as it rightly seeks to place children, young people and their families at the heart of the system. However, Mencap does not believe that this clause goes far enough to ensure that full participation is ensured for people with a learning disability. While a local authority must have “regard to” the importance of someone participating in decisions, unless those efforts to involve someone are done in a way that is accessible and appropriate for their age and development, the good intentions behind the clause may be undermined (please see appendix 1, paragraphs 1–5 for more details).

Mencap calls on the government to explicitly lay out the need for information and engagement to be carried out in an accessible way, such as producing documents in easy read. There should also be an acknowledgement of the need for advocacy to support some children and young people to participate fully and meaningfully.

**Definitions and scope (Clause 20)**

14. Mencap supports the view of SEC and EDCM that “these clauses only require services to put in place joint arrangements for children with special educational needs. This means disabled children who do not have SEN will not be included in the joint planning and commissioning. We believe this is a major and unnecessary omission”.

**Joint commissioning arrangements (Clause 26)**

15. Clause 26 requires local authorities and clinical commissioning groups (CCGs) to make arrangements for joint commissioning. This includes arrangements for considering and agreeing reasonable provision to meet the needs of all children with SEN in the area, and specifically for children with education, health and care plans. Local authorities and CCGs have to have regard to these agreements, and to the joint health and wellbeing strategy, when undertaking their functions. Schools, Academies, colleges and a range of other education providers, are required to co-operate with the local authority in these and other functions set out in the provisions.

Mencap welcomes the joint commissioning requirements on local authorities and clinical commissioning groups as we believe effective health provision can be as important to someone’s educational attainment as those more direct educational support arrangements (see appendix 1, paragraph 9).

16. Mencap is concerned about the lack of a duty to ensure that these commissioning arrangements are actually provided and secured in the agreed way. Mencap is concerned that this could undermine the intentions of the proposal (please see appendix 1, paragraph 16).

Mencap calls for the Bill to place more robust duty on CCGs to ensure that the agreed commissioning arrangements are secured and delivered.

**Duties on health services**

17. Mencap welcomes the government’s recent announcement that CCGs will be under a duty to secure services in education, health and care plans for children and young adults. This is essential to ensuring that an EHCP is as holistic as possible and that all of someone’s assessed needs are met. It also has the potential to provide a basis for redress if these needs are not being provided for.

18. However, Mencap is unsure that this provision will cover all of a child or young person’s health-service-provided support as set out in an EHCP. CCG commissioning arrangements are more likely to focus more on therapies than the integral clinical needs that some children and young people with SEN may have. These specialist services are commissioned by the NHS Commissioning Board under provisions in the Health and Social Care Act 2012 which stipulate that specialist services require the commissioning oversight of the national board rather than of local CCGs. Mencap therefore argues that a similar duty to that which has been imposed on CCGs is extended to apply top the NHS Commissioning Board to ensure all health needs listed in an EHCP are delivered (see appendix 1, paragraph 34).

Mencap welcomes the principle behind the duty on health services in an EHCP and looks forward to publication of the Government’s amendment so that it may be analysed. However, Mencap calls for a similar duty to be placed on the NHS Commissioning Board—due to its remit to commission specialist services—in order to ensure more specialist support in an EHCP is similarly able to be met.
Children and Families Bill

The local offer (Clause 30)

19. Clause 30 requires local authorities to produce information on the education, health and care services it ‘expects’ to be available locally, the ‘local offer’. This includes information on provision available outside its area. The details of what the local offer should include and who should be consulted will be set out in regulations.

20. Mencap welcomes the principle of a local offer. Respondents to a Mencap survey\(^{85}\) said it could provide much greater clarity, for parents, children and young people about what is available locally so that they can ensure their support needs are available in their area\(^{86}\) (please see appendix 1, paragraph 22). We particularly welcome the amendment to the draft Bill to include provision to assist children and young people to prepare for adulthood and independent living within the ‘local offer’.

21. Children and young people who do not qualify for an education, health and care plan will be reliant on the local offer, so there needs to be a legal duty to provide what is set out in the local offer. Without this, there is no accountability and no route for challenge by parents and young people if the local offer is not delivered (please see appendix 1, paragraph 23).

Mencap welcomes the principle of a local offer. However, there needs to be an underpinning duty to provide what is set out in the offer.

22. Mencap is concerned that the regional variations in local offer quality will have a negative impact on the equity of SEN provision, something which should not be determined by something as arbitrary as area of residence (please see appendix 1, paragraph 21).

To address the postcode lottery of support, Mencap believes some form of national framework should inform the development of the local offer. This should be set out on the face of the Bill in order to offer a clear and long-lasting impression of what a local offer should contain.

Information and advice (Clause 32)

23. Clause 32 requires local authorities to ensure there is information and advice available locally for parents and for young people. Parent partnership services provide information and advice for parents.

24. Mencap welcomes the extension of the information duty to include young people with SEN. We believe this is essential to helping young people to take control over their lives and increase their independence. We also call for this information duty to include children as well in order to prepare them for future decision they might make with regard to their provision. Mencap calls on provisions in the Bill to ensure that this information is in an accessible format (please see appendix 1, paragraphs 28–29).

Mencap welcomes the extension of the information duty to include young people and calls for it to be further extended to include children. Meaningful participation should be promoted through provision of accessible information and advocacy.

Education, health and care needs assessment and EHCPs (Clauses 36–49)

25. Statements of SEN will be replaced by education, health and care plans (EHCPs). However, the majority of the provisions in relation to EHCPs remain the same as for statements. The threshold for an EHCP is the same as for a statement—effectively that a school is unable to meet a child or young person’s special educational needs. The plan ceases when a young person is no longer in education or training.

26. Mencap welcomes the concept of a multi-agency plan covering children and young people from birth to 25. We believe it is the right approach to see a child’s SEN support in a holistic way. This idea was supported with caution by many parents who completed Mencap’s survey\(^{87}\) who stated that it “would need regular reviews depending on the changes in their condition and certain transition times eg between key stages, primary to secondary and into college or work” (please see appendix 1, paragraph 31 for a more detailed response to this point).

27. Mencap also acknowledges changes from the draft clauses that align EHCP rights with current statementing rights. Specifically, this is that an EHCP should “specify” rather than “set out” a child or young person’s provision, and that parents, young people and other people acting on behalf of a school or post-16 institution are able to request an EHC needs assessment as opposed to this identification lying solely with the local authority.

28. However, Mencap is concerned that the eligibility for an EHCP is only via an educational trigger. This means that children and young people with primary health and care needs might not be identified as having SEN

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\(^{86}\) Mencap survey, p.12

\(^{87}\) Mencap survey, p.9
until they reach an educational setting. This seems opposed to the government’s aspirations to achieve early intervention (please see appendix 1, paragraphs 13–14).

**Mencap welcomes the concept of a single assessment and a multiagency plan covering children and young people from birth to 25. Children and young people with health and care needs should be able to access an assessment and a plan where necessary.**

29. Mencap welcomes that EHCPs extend current rights associated with a statement into further education and training for the first time.

30. Mencap also supports proposals in Clause 45 to maintain a plan for young people of compulsory participation age who become NEET. However, local authorities can review whether to maintain a plan for someone aged 19–25 if they drop out of education and training. Mencap is disappointed that the plans have a narrow focus in terms of its potential function of aiding someone’s development. We believe development goes beyond education and training. We therefore urge the Government to go further and commit to supporting young people up to the age of 25, in any setting and whether or not they are in education or training. Specifically, we call for the fact that children and young people undertaking supported employment programmes—such as supported internships, and the Department for Work and Pensions’ Work Choice and Work Programme schemes—should be able to maintain an EHCP (please see appendix 1, paragraphs 38–39).

**Mencap welcomes the extension of the statutory entitlements into further education and training. We believe these rights should go further to support all EHCP recipients until they are 25 in any setting, including supported employment.**

31. Mencap seeks clarification about how these provisions complement the adult social care reforms as they are set out in the draft Care and Support Bill. In particular we are unclear as to how an EHCP might integrate with a Care and Support Plan (please see appendix 1, paragraphs 61–68).

32. Mencap believes the references to outcomes in an EHCP in Clause 37 provide an opportunity to align these two pieces of legislation. The outcomes sought in the draft Care and Support provisions are based on someone’s wellbeing across physical, mental and emotional measures as well as control over day-to-day lives, social and economic wellbeing and other criteria. If outcomes could be aligned across education and social care, this could encourage better integration. Equally, if outcomes are only measured on an educational basis, Mencap believes that this does not give enough focus to a child progressing across all aspects of their life (please see appendix 1, paragraph 42).

**Mencap believes that outcomes should be measured in terms of someone’s overall wellbeing to align education and social care better and to encourage progress across someone’s whole life.**

**Mediation**

33. Mencap welcomes the changes from the draft clauses to make mediation a voluntary undertaking before going to the SEN tribunal.

**SEN Code of Practice**

34. Mencap also welcomes the fact that the new 0–25 SEN Code of Practice will be laid before Parliament. We do, however, believe that it should be subject to affirmative resolution to ensure the best possible opportunity for this important document to be properly scrutinised.

**Mencap believes the draft Code of Practice should be subject to the affirmative resolution.**

**APPENDIX 1**

**Clause by clause analysis**

**Involving children and young people with SEN (Clause 19)**

1. Mencap welcomes the inclusion of this clause, particularly the intention that children, young people and families are central to the SEN system. The Lamb Review highlighted the adversarial nature of the current system for families and Mencap believes this is a step in the right direction in seeking to overcome these identified failures.

2. A key element of Mencap’s previous submission to the Education Select Committee was the need to fully empower children in the decisions being made about their lives. Mencap understands the government’s logic of applying the cut off age of 16, but believes it is important to establish a firm basis for children to be able to participate in decisions about their life before their 16th birthday to ensure that they are properly equipped to make decisions on their own when they pass that threshold. Mencap believes this clause has the potential to ensure this is the case, by promoting the value of involving children from an early stage of their development.

88 Please note that these points both complement the earlier summary and highlight some of the other issues with regard to the draft provisions.

3. However, Mencap would like to see this principle go further. Currently, a local authority must only “have regard” to involving a child, young person or a parent. This is particularly the case with 19 (b) in which consideration only needs to be made about the “importance of the child and his or her parent, or the young person, participating as fully as possible” in decisions about them. Mencap argues that it is one thing to appreciate that participation is important and is another thing to actually practice it. Mencap acknowledges that many local authorities will pursue this as a matter of routine, but we believe that—if involvement is the golden thread running through these reforms—this can only be realised when there is an implicit requirement for this to happen. Mencap therefore calls for the Bill to set out that local authorities are under a duty to ensure meaningful participation of children, young people and parents is secured when carrying out their functions.

4. In order to ensure that children and young people with SEN are able to be involved in the system properly, Mencap believes that information and engagement should be fully accessible. Many people with a learning disability would struggle with the complex nature of the SEN system and this has often been a requisite factor behind the exclusion of many of these individuals from decisions about their own provision. Mencap therefore calls for an explicit mention of the need for information to be provided in accessible formats such as in easy read or Braille. In addition, Mencap would also welcome references to the need for advocacy to be provided to help ensure that the views of a child can be taken into account at key moments when planning for their future support. In a school setting, a SENCO could receive extra training to ensure that children are able to participate meaningfully in school-related decisions. By setting out this abiding duty, Mencap believes it can help to ensure that the involvement of children, young people and parents is an underpinning principle of the reforms.

5. Mencap also stresses the need to ensure that decisions are taken in the best interests of the child. While parents have a vital role to play in securing the best education for their child, it is important that their views do not supersede those of the child. Mencap believes there is scope for arrangements to be made to encourage a two-way dialogue between a parent and their child so that decisions can be explained to, and in some instances informed by, the child. This could involve a key worker being under a duty to ensure that this interface occurs.

   — **Local authorities should be under a strengthened duty to ensure meaningful participation of children, young people and parents is secured when carrying out their functions.**

   — **There should be an explicit mention of the need for information to be provided in an accessible format and for an advocate to be made available to assist in meaningful participation.**

Special educational provision, health provision and social care provision (Clause 21)

6. Mencap welcomes the extension of the definition of special education provision to include “health provision or social care provision which is made wholly or mainly for the purposes of the education training of a child or young person”. By attempting to enshrine established case law into primary legislation, Mencap believes this will help to ensure current statementing rights are maintained within the new reforms.

7. Mencap is, however, slightly concerned that special educational provision is restricted to being “wholly or mainly” in relation to education or training. This would appear to preclude those other provisions which, while still pertaining to education or training, fall below the high threshold that is set out in the Bill.

   — **The threshold for special educational provision should be lowered from wholly or mainly to include all provision that pertains to education or training.**

Identifying children and young people with special educational needs (Clause 23)

8. Mencap welcomes the fact that the Bill has been amended from the draft SEN clauses so that “any person” may bring a child or young person to a local authority’s attention. This helps to ensure that current statementing rights are not eroded in the Bill.

9. Local Authorities are under a duty to identify all children or young people in its area who may have SEN. This places the necessary onus on local authorities to support children with SEN and takes this additional responsibility away from parents. In carrying out this function, Mencap hopes that local authorities will be subject to substantive guidance so that they take the necessary proactive measures to identify children and young people and that all children with SEN are prioritised.

10. Mencap is concerned that the government’s approach to SEN reform will not be conducive to ensuring early and effective identification. It is encouraging that the government has focused on the importance of health visitors, who can provide routine practical and emotional support to parents in vulnerable positions. However, the educational focus of the reforms risk precluding those children with primary social care or health needs from holistic support until educational needs can be identified. For more detail about this, please see paragraph 29. Mencap does not understand how local authorities—even if they have the best of intentions—and other individuals can be expected to identify all children with SEN at an early age if the only triggers for identification are education-focussed.

11. Mencap believes that early identification could also be aided by adopting the ‘Early Support’ model\(^6\) in which a child qualifies for such services if they use multiple universal services. This could help to safeguard the government’s early intervention priorities.

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\(^6\) [https://www.education.gov.uk/publications/orderingdownload/ESPP33-PDF1.pdf](https://www.education.gov.uk/publications/orderingdownload/ESPP33-PDF1.pdf)
Joint commissioning arrangements (Clause 26)

12. Mencap supports the proposals to place a duty on CCGs and local authorities to make arrangements to jointly commission services for children and young people with SEN. Currently, there is a disconnect in the way in which health agencies and local authorities interact in the making of special educational provision. This is often because the two are seen as separate elements of a child’s life, but Mencap believes that effective health provision can be as important to someone’s educational attainment as those more direct educational support arrangements. Consequently, the potential for this proposal to help identify local need across education, health and social care provides an ideal opportunity to rectify this issue.

13. However, Mencap notes that the terminology in clause 6 states that there must be “arrangements for considering and agreeing” joint commissioning. Mencap is concerned that this does not establish an actual duty to ensure that these commissioning arrangements are secured—the only duty is to agree what provision is to be secured and who should secure it. The explanatory notes state that this duty could be fulfilled through developing Joint Strategic Needs Assessments (JSNAs) and Joint Health and Wellbeing Strategies (JHWSs). We are therefore concerned that these arrangements might not be implemented and the joint commissioning obligations might merely be used to establish local need and not delivery of it. Mencap therefore calls for a duty to be placed on CCGs to commission the support that is jointly arranged with the local authorities.

14. For these arrangements to work—particularly through using JSNAs and JHWSs—there needs to be effective co-ordination with Health and Wellbeing Boards. Mencap understands the complications involved with placing a duty on officers of local authority to co-operate with other officers in the same authority, but it is in everyone’s best interests to avoid duplication of effort. Therefore, Mencap believes these internal networks should be established and clarified by the local authority itself. For example, Mencap would advocate the value of HWBs having an education representative on them to advocate for the holistic planning of local strategy to benefit local need.

— There should be a duty on CCGs to ensure that commissioning arrangements are secured and delivered.

— There should be strong internal guidance about the links that must be established between Health and Wellbeing Boards and legally established co-ordination bodies such as Children’s Trusts.

— There should be an education representative on HWBs.

Duty to keep education and care provision under review (Clause 27)

15. Mencap is supportive of the continual duty on local authorities to review their education and care provision and to ensure that it is “sufficient to meet the educational needs and social care needs of the children and young people concerned”. This is a welcome acknowledgement that need evolves over the course of time and provision for it should move with changes in demographics.

16. Also welcome is the extension of the duty to consult to children, young people and parents. As this was previously only education institutions, it provides a positive refocus on the needs and views of families.

17. In the interests of ensuring that services are sufficiently meeting local need, Mencap believes the proposals could be informed by Clause 3 of the Care and Support Bill which makes provision for care market development with a specific view to help shape the market in future in order to be able to cater for future care needs. In light of these provisions, the sufficiency of provision duty seems somewhat short-sighted and reactive in its nature. Mencap would recommend a similar duty on local authorities to do what is outlined in the Care and Support Bill—to ensure that, in addition to their duty to ensure sufficiency of provision, local authorities must address future market need by using EHCPs as an accurate indicator of both what is currently needed and what will be needed. As well as specific service provision, this should also incorporate professional development so that there are enough professionals to help deliver future levels of need.

— Subsection 2 should include a duty for a local authority to address future market need by using the provision information contained in EHCPs as an indicator of future demand.

Co-operating generally (Clauses 28–29)

18. Mencap welcomes the scope of co-operative functions by which local authorities must abide. However, Mencap notes that there is currently no duty for local authorities to co-operate with personal budget holders. Given that personal budget holders will play a big part in arranging the specifics of how provision is ultimately delivered, it will be essential for local authorities to co-operate with them. We therefore call for personal budget holders to be added to the list of providers which a local authority must consult in exercising its functions (subsection 3).

— Add personal budget holders into the list of providers which a local authority must consult in exercising its functions (subsection 3).
Local offer for children and young people with special educational needs (Clause 30)

19. Mencap welcomes the principle of the local offer as it is intended to provide parents with the tools to request the appropriate services for their children and ensure their right to education are being met within their area. The lack of available and accessible information currently on offer for parents often prevents them from accessing all the support to which they are entitled. 8 out of 10 of parents of children with a learning disability who completed Mencap’s Green Paper survey said that a ‘Local Offer’ set out by Local Authorities would increase their confidence to ask for support for their child.91

20. However, Mencap is concerned that there is currently no duty to provide what is set out in the local offer. We appreciate that local authorities will primarily have the best of intentions when outlining local provision. However, the wording in subsection 1 that the published information is of provision which a local authorities “expects to be available in its area at the time of publication” relates to anticipated provision rather than actual provision. This could result in local offers outlining a statement of aspiration rather than of actual provision and that this would distort what provision is currently available. Given that the government have stated their intention that local offers will help local authorities to identify gaps in local services, any inaccuracies in the offer will have repercussions for a council’s perception of where improvements can be made. Without an explicit requirement for local authorities to provide what is actually set out in the local offer, there is a danger that these issues will arise.

21. Mencap also welcomes the enhanced scope of the local offer that the Bill promotes compared to the draft SEN clauses. By including “provision to assist in preparing children and young people for adulthood and independent living”, the government appears to be acknowledging the fact that a child or young person’s development covers areas beyond education and training. Particularly welcome is the inclusion of employment development covers areas beyond education and training. Particularly welcome is the inclusion of employment provision—Mencap believes that there is huge scope in this Bill to increase the employment potential for young people with SEN (please see paragraph 39 for more details).

22. Furthermore, the Minister has set out that “each service will be accountable for delivering what is set out in the local offer and if families are unhappy with what they receive or what is available they will be able to take this up with those eservices”. Mencap believes that local services cannot provide the regional oversight that a council can. Therefore, we believe that this does not place the necessary accountability on the local authority itself to ensure that local SEN provision is accurate or sufficient or even that a local offer accurately reflects local provision.

23. As was mentioned in paragraph 4, Mencap also stresses that information—such as that in the local offer—should be readily available to everyone. This helps to ensure that everyone can benefit from them and that children and young people with learning disability, for example, can be informed about the local provision that is available to them so they are empowered to make choices about their own lives. Therefore, Mencap calls for the proposals to stipulate that regulations should include details about how the local offer will be publicised, on what platforms and in which formats. For example, information should be provided in accessible formats such as easy read and Braille.

24. There is also a danger that there will be regional variations in the quality and scope of the local offer creating a postcode lottery of support. Mencap understands that local offers will be reflective of local need and resources, but contends that, in order for it to be in the best interests of children, young people and their parents, there should be a minimum level of provision which should be reached in terms of service numbers, diversity and quality. As many children with SEN move to new authorities with specialist educational and residential settings, there is also the danger that some areas with less provision will be unable to provide the support required by a child. This will either result in insufficient support or could prevent them from accessing the education they desire. Mencap acknowledges the government’s rhetoric that regulations will provide a “common framework” for local offers, but we believes that this will mean that this principle is not as integral a part of the legislation as it would be if it was on the face of the Bill. Even when the regulations are published, they will also be easier to change that primary legislation, so there is less of a guarantee that local offers will continue to be subject to a national framework. Consequently, Mencap calls for the availability of a national framework on the face of the Bill to inform the development of a local offer and ensure that there is a minimum threshold of provision which should be reached. In order for this to meet the needs of all disabled children and those with SEN, the minimum standard must meet the needs of children with the highest level of need.

— There should be a legal duty on local authorities to deliver what is set out in the local offer.
— Local offers should include, in subsection (1), further information about provision for advocacy and employment.
— Local offers should be subject to some form of national standard in terms of their development, scope and content.
— Regulations should include details about how the local offer will be publicised, on what platforms and in which formats. These expectations of the regulations should appear on the face of the Bill.

91 Mencap survey, p.12
Advice and information for parents and young people (Clause 32)

25. Mencap welcomes the extension of the duty on local authorities to provide advice and information for children and young people as well as for parents. We would, however, like to see this extended to ensure that children are made aware of services in their area. Mencap believes there is great value in promoting the involvement of children in decisions about their own lives before the designated age of 16 so that they are more able to understand their support needs in the future. Please see paragraphs 52–56 for further comments on this theme.

26. Mencap also stresses the importance of ensuring that this information is accessible for children and young people who might receive it, as well as for parents with a learning disability. As mentioned in the previous section, Mencap calls for the proposals to impose a duty on local authorities to ensure that the advice and information provided is in an accessible format such as easy read and is available in a variety of formats to increase reader numbers.

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Extend the provision of advice and information to children as well as parents and young people.

There should be a duty on the local authority to ensure that the information provided is suitable for all audiences eg accessible formats, age appropriate, etc.

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Education Health and Care Plans (Clauses 36–47)

27. Mencap welcomes the concept of a single assessment and EHCP. In theory, this could help to make the SEN process less burdensome for families and children and young people and marks a move towards seeing a child or young person’s development as a holistic process in which a number of elements of their life affect their ability to learn. This idea was supported with caution by many parents who completed our survey92, commenting that:

28. “[This is] one good idea as there would hopefully be a better transition into later life/adult services but would need regular reviews depending on the changes in their condition and certain transition times eg between key stages, primary to secondary and into college or work”.

29. Mencap also welcomes the amendment from the draft SEN clauses to maintain the right for parents, young people and others to request an assessment. This should help to identify more children and young people who have SEN and takes the emphasis away from a local authority solely determining who it decides to assess.

30. However, Mencap seeks clarification as to how the proposed framework differs and improves upon the current ‘Common Assessment Framework’ (CAF). The CAF has been well employed nationally by child services and has often succeeded in bringing professionals together. With its aim of supporting practitioners ‘to assess children and young people’s additional needs for earlier, and more effective services, and develop a common understanding of those needs and how to work together to meet them’,93 the CAF should achieve the aims identified in the proposed EHCP. Mencap would urge the government to give greater consideration to the future of the CAF within the new assessment framework so that effort is not wasted in developing something which could be equally applied by an existing framework. By upgrading the legal status of the CAF from being voluntary, there could be the potential to integrate the CAF and EHCP. This may increase the opportunity for a single multi-agency approach to holistically assess a child’s needs and would also help to ensure that the assessment framework can be nationally standardised in order to improve quality and equality of assessments across the country.

31. It is because of the potential benefits of the single assessment and EHCP that Mencap warmly welcomes the recent announcement from the government that CCGs will be under a duty to “secure services in education, health and care plans for children and young adults”. Mencap believes that the principle of giving families a right to receive the support they are assessed for, rather than having their support determined by who provides it is a very positive step in the right direction. However, Mencap is unsure that this provision will cover all of a child or young person’s health-service-provided support as set out in an EHCP. CCG commissioning arrangements are more likely to focus more on therapies than the integral clinical needs that some children and young people with SEN may have. For example, individuals with profound and multiple learning disabilities (PMLD) have particularly complex health conditions that require specialist health interventions in order to help their education. As such, these needs are more likely to be met by the commissioning arrangements of the NHS Commissioning Board due to the provisions in the Health and Social Care Act 2012 which stipulate that specialist services require the commissioning oversight of the national board rather than of local CCGs. Mencap therefore argues that a similar duty to that which has been imposed on CCGs is extended to apply top the NHS Commissioning Board to ensure all health needs listed in an EHCP are delivered.

32. Mencap does, however, note that there is no parallel duty on social care agencies to deliver what is set out in the plan. Mencap believes that, unless education, health and social care services are all equally involved in SEN provision, the positive developments with regard to health could be undermined. Mencap would call for health and care agencies to be under an equivalent duty to the one education agencies are under in order to ensure that a child receives what they need. This also helps to encourage accountability for parents, children and young people would have recourse to appeal to someone if their needs were not being met. Mencap would also

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92 Mencap survey, p.9

93 Common Assessment Framework: www.education.gov.uk/publications/eOrderingDownload/CAF.pdf
encourage the use of shared budgets when agreeing an EHCP—this would help to ensure that there was an equal stake across all agencies when planning someone’s provision and would avoid any potential negotiation over who pays what which can lead to unnecessary and unhelpful delays.

33. Mencap recognises and welcomes the new duty on health services—such as Clinical Commissioning Groups (CCGs), NHS Trusts or Foundation Trusts—to bring children under compulsory school age to a local authority’s attention if the health they think the child may have SEN. However, Mencap still has concerns about the trigger points for an EHCP. Because the route into an EHCP is via an educational referral, those disabled children with primary health and social care needs would miss out on receiving the holistic support provided in the plan. As has been mentioned earlier, this includes 25% of disabled children and Mencap believes it is not acceptable that this group should not receive this form of support. It also risks discriminating against a certain group of children who might be denied the early interventions that the plan could provide due to a lack of early identification. For example, some children with a learning disability are not diagnosed as having one until they are in an educational setting when it becomes more noticeable that their development and ability to learn is slower than their peers. Research has shown the value of providing appropriate early interventions both financially and—more importantly—for the child’s ability to develop and reach their potential. If children with a learning disability miss out on this early education because they require an educational need to trigger a plan, their future development could be hampered.

34. Given the importance of timely provision being made for a child or young person, Mencap calls for clearer time frames for conducting assessments and putting them in place. Mencap appreciates the extra pressures that are currently being placed on local authorities means that capacity to complete assessments will vary, particularly in those areas with higher numbers of children and young people with SEN. However, as mentioned earlier, Mencap believes it might be reasonable for a local authority to detail its internal time frames for completion of assessments, particularly as time frames currently exist in the statementing process.

35. Mencap welcomes the extension of entitlements into further education and training, particularly the move for further education institutions to be named on an EHCP alongside the notable addition of Academies. Mencap notes the government’s stance that those of compulsory school age who become NEET will be able to maintain an plan whereas those aged 19–25 who become NEET will have a review to determine whether they wish to go reengage in education or training. However, Mencap would advocate for the continuation of an EHCP until 25 for everyone receiving it, otherwise it could create a perverse incentive for parents or young people to remain in education when it might not be the best course for their development. This would also help to negate the negative impact that could result from someone moving in and out of employment and training—namely multiple reassessments which would undermine the purpose or a single assessment process and unnecessary upheaval for the young person and their parents.

36. Mencap urges the importance of a plan in helping someone to further their skills and help them to enter employment or live more independently. We believe development goes beyond education and training and is something which every young person is subject to. Mencap therefore urges the importance of a plan in helping someone to further their skills and help them to enter employment or live more independently. With levels of employment for people with a learning disability known by social services as low as 7%, and many young people with a learning disability not in education, employment or training (NEETs), transitional arrangements from children to adult services need to be improved significantly if this part of the vision is to be achieved. Mencap therefore believes it is imperative that young people are able to continue to receive an EHCP if they undertake employment support. The government announced the welcome inclusion of Apprenticeships as a programme under which someone’s support would remain, but Mencap is surprised that other forms of employment support were omitted. We see no reason why, given the inclusion of apprenticeships, people on other programmes such as supported internships, the work programmes and work choice would not also be eligible for continued support.

37. On this subject, Mencap also has concerns about the provision in Clause 47 regarding the release of someone from an EHCP if they are subject to a custodial sentence. Mencap believes this is at odds with the recently published Youth Justice Green Paper which proposes to put “education at the heart of detention”. As an EHCP exists specifically to aid some young people’s educational attainment, Mencap believes an individual’s education in custody would therefore be compromised and the aims of the Youth Justice Green Paper would be undermined. Mencap accepts that certain provision set out in an EHCP might not apply while someone is in custody, but that this could be easily overcome by conducting a reassessment of a plan when someone enters custody so that the plan best reflects their change in circumstances.

38. That Academies could be used to run youth detention centres. If education institutions are used for young people in custody, Mencap believes that the loss of an EHCP could compromise the educational benefits that these types of Academies could offer. We therefore call for EHCPs to be maintained for young people in custody.

39. Mencap is also concerned about the potential for a period of time to lapse between a child or young person being released from custody and the resumption of their EHCP, if they have previously received one. Unless there is a duty on the local authority to make contact with the individual when they leave custody, the child could miss out on valuable support for a period of time which might affect their development and could increase the likelihood them to re-offend.

40. Mencap notes the reference to ‘outcomes’ in Clause 37 and believes that this could provide an opportunity for an EHCP to promote a child or young person’s overall development. The development of outcomes is a very
delicate issue and should be looked at in more detail. Mencap would advocate for them to be educational, health
and social care outcomes so that achievement can be sought across all aspects of a child’s development and that
these outcomes should be agreed by all agencies and the parents and child/young person concerned. As a result,
Mencap believes that the principles of wellbeing which are set out in Clauses 25 and 65 and also in the draft Care
and Support Bill provide a way of uniting all the different aspects of someone’s development. It also means that
a child or young person’s life is seen as a whole so that it is possible to measure the combined impact which all
different elements of their life—including the cumulative impact of all their support provisions—have on their
ability to be happy and more conducive to fulfilling their potential. It is also necessary to consider the changing
nature of outcomes as someone develops, their needs change and their ambitions may alter. Again, the wellbeing
corect is a more constant measure throughout the changing stages of someone’s life. That is not to say that
specific outcomes might be sought in the EHCP as well, but that these specifics should be seen in the context of
someone’s wellbeing.

41. In relation to this, Mencap is unclear about the overall outcomes which might be sought a local level to
determine the success measures of its special educational provision. Whilst there are indicators and measures
of progress built into an individual’s EHCP, these only show individual successes. Mencap is not aware of any
overarching indicators which show that the change in provision that will occur as a result of these reforms has
had a positive impact on special educational provision. Without these, it could prove difficult to identify what
improvements still need to be made and in which areas. As a result, local authorities should be under a duty to
create a set out of outcomes at a local level which allows for comparable data so that improvements, or otherwise,
can be shown and measured. We do not believe that the new duty to report provision is sufficient to gather the
necessary level of detail and call for a mechanism which is similar to the previous national disabled children’s
services parental survey which we know was valued by local authorities. Mencap would again advocate for this
to be done using the wellbeing principles so that change is shown in terms of its overall impact on a child or
young person’s quality of life.

42. Mencap supports the measures to conduct reassessments of someone’s EHCP to ensure that it is
always appropriate for their needs. However, Mencap would call for the Bill to place more of an emphasis on
reassessments of an EHCP to happen in anticipation of such key phases. In addition to this, Mencap would call
for these reassessment processes to be done in tandem with key phases in other areas of someone’s life such as
in their social care provision. The Care and Support Bill proposes for a child’s needs assessment to take place
before someone’s 18th birthday to ensure that adult social care provision is planned for in advance. Mencap
would therefore call for an explicit requirement for a reassessment of an EHCP to take place in tandem with this
child’s needs assessment to ensure that the child/young person does not have to undergo multiple assessments
and, more importantly, to ensure that their education and social care provision is properly aligned and mutually
informed when someone progresses into adulthood. It is essential that any reassessments are done in a highly
personalised way to ensure that they reflect the changing needs of a child. When asked, parents who responded
to Mencap’s survey stated that they want a combination of monthly, per term and annual reviews according to
individual need and on the identification of new needs:

43. “[The Education, Health and Care Plan] needs to be flexible to allow for changes in the child’s needs. It
should contain everything about my child’s health and education. It would need to be very specific for the time
it was written but fluid enough to change as the child develops”.

44. Once an EHCP finishes, Mencap has concerns that there is not enough clarity about the procedure that
should take place to transition someone out of education. At present, there seem to be no measures in place to
ensure that this process is planned for in advance so that the individual can be prepared for the next phase of
their life. Unless this issue is tackled, there is a risk that the transition period out of education is merely pushed
back a few years. Mencap would advocate an entitlement to be built in for someone at this stage of an EHCP
to have a Care and Support Assessment to help plan for their needs and to account for the change in provision
which will occur.

—— There should be equivalent duties on social care and the NHS Commissioning Board as there are to
education and CCGs to deliver what is set out in an EHCP. This includes facilitating arrangements
for shared budgets between all agencies.

—— Health and social care needs should also be considered as triggers for an EHCP.

—— Support employment programmes should be included in the definition of education health and care.

—— EHCPs should continue to the age of 25 for everyone on one, regardless of whether they are in
education, training or custody.

—— Local authorities should be under a duty to contact a child or young person after they leave custody
in order to arrange for the resumption of an EHCP.

—— EHCPs should have education, health and care outcomes and that these should be based on the
wellbeing principle outlined in Clauses 25 and 65 of the Bill and Clause 1 of the Care and Support
Bill. When these outcomes are reached it should trigger a reassessment of someone’s EHCP.

Mencap survey, p.9
— There should be an overall national framework of outcomes to help measure the success of reforms on a local and national level.

— Reassessments of someone’s EHCP should take place in advance of key phases in a child or young person’s life. They should also happen at the same time as a child’s needs assessment takes place and should include an entitlement for a care and support assessment when the plan ends.

Personal budgets (Clause 48)

45. Mencap is worried that personal budgets in education have not be adequately and thoroughly tested by the pathfinders. Consequently, there is little available evidence about how they might work in practice to be able to enable a fully informed debate on this issue.

46. Mencap has concerns that personal budgets could be given to people without the knowledge of how to use them or of the available support which can be bought with one. The majority of participants in our parent survey, when asked to describe the benefits and drawbacks of having a personal budget, commented that the increased level of responsibilities attached to finding, costing and commissioning support for their child would outweigh the potential benefits of individualised support packages. We would therefore advocate the inclusion of a specific reference to brokerage support as part of personal budget provisions.

— 3 (j) should specify brokerage support as an example of the information, advice and support with regard to personal budgets.

Mediation and resolution of disagreements (Clauses 51–54)

47. Mencap welcomes the amendment in the Bill from the draft SEN clauses so that mediation is no longer compulsory before someone can go to the 1st Tier Tribunal. We believe that mediation has a role to play where a family believes it to be necessary, but requiring it is not a substitute for a continuing dialogue between parents and the local authority.

48. Mencap welcomes the move in clauses 53–54 to ensure that children are able to be involved in the appeals process. However, again, there needs to be a safeguard in place to ensure that any information given to the children is in an accessible format and is age appropriate.

— Subsection (2) of Clause 53 should ensure that the order by the Secretary of State on the pilot schemes makes explicit reference to the need for the form of the advice mentioned in subsection (f) to be in an accessible and age appropriate format.

— Subsection (3) of Clause 54 should ensure that the order by the Secretary of State on the pilot schemes makes explicit reference to the need for the form of the advice mentioned in subsection (f) to be in an accessible and age appropriate format.

Provision and publication of special needs information (Clause 65)

49. Mencap again welcomes the inclusion of wellbeing as a measure of the effective provision for someone’s special educational needs and that this is similar to the draft Care and Support Bill. Mencap would support this measure being applied to anyone’s special educational provision outcomes as has already been mentioned.

50. Mencap also believes that the information-gathering exercise to be undertaken as part of this clause could give a good opportunity to collate more detailed information on special educational needs in order to better understand the variations of need within the SEN spectrum. Mencap believes that the broad definition of SEN often means that the differing impairment types of children and young people are hard to identify on regional and national level and this means that educational inequalities for particular groups can be hidden and not addressed properly. Mencap therefore calls for this information gathering exercise to be the vehicle through which to finally address this issue and collect data on specific groups within the SEN spectrum. It could also be used to address the existing variations in definitions which exist between education and health settings. Especially as the wellbeing measures of the information gathering exercise replicate the wellbeing clause of the Care and Support Bill, Mencap believes that there should be a uniform definition for impairment types which transcends both health and education.

51. Mencap notes that the information on SEN only goes up to young people aged under 19. Mencap believes that, in order to get a better picture of how to improve the wellbeing of all young people with SEN, this information should relate to the wellbeing of individuals across the full spectrum of the EHCP.

— The wellbeing concept should be used at the heart of any outcomes sought as part of someone’s special educational provision.

— The information gathered on SEN to inform the Secretary of State’s report should seek to disaggregate those within the SEN spectrum by impairment type.

— The information gathering process should also trigger the development of a uniform definition of impairment types across both health and education settings to remove the existing variations.

— The information published by the Secretary of State should seek to improve the wellbeing of all children and young people with SEN up to the age of 25.
52. Mencap is concerned that the Code of Practice will not be laid before Parliament and this means that it will not be viewed by both Houses before the final Code is laid in regulations. The net result is that there will only be 40 days’ worth of scrutiny of it. It should therefore be subject to more scrutiny than is currently intended.

53. Mencap also notes that early years’ providers are omitted from the list of institutions to which the Code applies and this should be rectified. It is, of course, essential that the Code is adhered to throughout a child or young person’s education and by omitting early years’ providers from this list, the government risks undermining its aims of engendering greater early intervention and identification in the SEN system. Mencap therefore calls for their inclusion in the list of institutions to which the Code applies.

54. Mencap believes the proposal to reduce the guidance in the SEN Code of Practice on Individual Education Plans (as set out in the SEN Green Paper) undermines the philosophy of EHCPs being focused on ensuring high outcomes for disabled children. Whilst acknowledging there are inconsistencies in the delivery of IEP, their aim recognises that children’s achievement can vary term to term. These could be used effectively to inform the direction of EHCPs. This would represent a willingness to involve children in their support.

— The Code of Practice should be laid before Parliament for proper and full scrutiny.
— The reference to revision of the Code should be more prescriptive in order to avoid constant change to it.
— Early years providers should be included in the list of institutions to which the Code applies.
— Maintain the current level of guidance on IEPs within the revised Code of Practice.

School Action/School Action Plus

55. Mencap is concerned about the plans to merge School Action and School Action Plus into one category. Mencap understands that there is an intention to ensure that children with SEN receive support as quickly as possible and that, by reducing the number of categories through which a child should go, this proposal may help to achieve this. Mencap also believes that this could chime with the opinion of some schools who say that they are unable to access outside support and so are assisted by the conditions of School Action Plus which enables the outside support to be accessed quicker and more easily.

56. However, Mencap urges caution about the unintended consequences that might result from endorsing moves for schools not to provide in-school support for pupils with SEN as they currently do through School Action. Whilst some schools would support this move, others claim that School Action is a useful stage in order to draw down support and help within the school in order to develop a more inclusive practice. If this stage is removed, there may be less incentive for some schools to develop SEN provision in-house whereas some will keep on doing so. This will widen the gap between those which are SEN-friendly and those which are not and could create a situation in which SEN students are ‘ghettoised’ in some schools and omitted from others. Mencap believes this is not in the best interests of the push towards an inclusive education and, more widely, an inclusive society.

57. Equally, where the previous system of School Action and School Action Plus identified differing levels of need, a single category could tighten eligibility in an effort to reduce the number of pupils identified with SEN. This could further diminish the quality of support given to and outcomes of children ‘not identified’ as being in the SEN category. Mencap would urge that any definition that is developed in conjunction with the SEN Category is encapsulating of the needs of children currently identified under the School Action and School Action Plus and must not limit the requirement on schools to adequately assess and subsequently provided support for children with any level of educational need.

Interplay with the Care and Support Bill

58. Mencap is also unclear as to how EHCPs will interplay with the Care and Support Plans (CSPs). Mencap notes that early years’ providers are omitted from the list of institutions to which the Code applies and this should be rectified. It is, of course, essential that the Code is adhered to throughout a child or young person’s education and by omitting early years’ providers from this list, the government risks undermining its aims of engendering greater early intervention and identification in the SEN system. Mencap therefore calls for their inclusion in the list of institutions to which the Code applies.

59. Mencap believes the proposal to reduce the guidance in the SEN Code of Practice on Individual Education Plans (as set out in the SEN Green Paper) undermines the philosophy of EHCPs being focused on ensuring high outcomes for disabled children. Whilst acknowledging there are inconsistencies in the delivery of IEP, their aim recognises that children’s achievement can vary term to term. These could be used effectively to inform the direction of EHCPs. This would represent a willingness to involve children in their support.

— The Code of Practice should be laid before Parliament for proper and full scrutiny.
— The reference to revision of the Code should be more prescriptive in order to avoid constant change to it.
— Early years providers should be included in the list of institutions to which the Code applies.
— Maintain the current level of guidance on IEPs within the revised Code of Practice.
Children and Families Bill

Concerned that, with a duty to provide social care support as part of the Care and Support Bill provisions and no duty to provide social care support as part of the Children and Families Bill provisions, this could create a divide in someone’s social care support based on whether there is a statutory responsibility to provide it or not. This has implications for the ability of a CSP to be integrated into an EHCP. It might also lead some cash-strapped authorities to use this anomaly to justify a refusal to provide a certain service on the basis that it comes under an EHCP.

61. Mencap is concerned about the current disconnect between eligibility for children’s and adult’s social care support. The two systems currently operate under different eligibility thresholds, with a number of the children receiving social care support not qualifying for adult social care support when they reach 18. As EHCPs span both children and adult care support systems, there might be a situation in which someone on an EHCP from a young age might not be eligible for a CSP. As CSPs are anticipated to constitute the Care element of an EHCP, this could mean that their social care support could alter substantially as they pass 18, and with it the support they receive as part of their EHCP. Given the role given to education, health and care in order to aid a child or young person’s development, if their social care support is seen in isolation from the other two areas of the plan then there is a risk that this holistic approach to someone’s development could be undermined. For this reason, Mencap would call for any assessment for a CSP for young people on EHCPs to be based on what is set out in their EHCP.

62. Mencap notes that the Care and Support Bill includes provision to develop a new national eligibility and assessment framework and that this is still in development. We therefore appreciate that it is not possible to determine the likely numbers of children and young people who will be eligible for both children’s and adult’s services. However, this means that decisions about matters which affect EHCP provision will be made after the Bill Committee has considered the SEN provisions. Mencap does not, therefore, believe that it is possible to consider the full ramifications of the various components of an EHCP at this stage and urges caution about proceeding without the availability of such information.

63. Mencap also notes that the provisions in the draft Care and Support Bill to provide information and advice around social care directly mirrors the framework set out in the local offer clauses on the SEN proposals. Mencap recommends that these two sources of information and advice are merged.

64. Mencap also calls for the inclusion of trigger points along the lifespan of someone’s EHCP for an assessment of someone’s CSP so that they are able to prepare for the loss of their educational support. Mencap envisages this provision replicating Clause 39 of the draft Care and Support Bill in which an assessment of someone’s adult social care needs is made to help ensure that changes in someone’s educational circumstances are mirrored by a simultaneous change to the social care element of their EHCP. Mencap believes this provision should sit in the SEN clauses as the key trigger points are related to someone’s educational progress.

65. Mencap is concerned about the measures in Clause 49 of the Bill to cease the interim provision of child social care support beyond the age of 18 (as set out in the draft Care and Support Bill) if an EHCP ceases to be maintained. Mencap believes that this measure does not take account of an individual’s additional health and social care needs which would also be compromised in this event as they would lose all social care support until adult social services picks up the tab. This could have a serious impact on an individual’s development at such a crucial time in their life. Mencap believes this gives an extra incentive for EHCPs to be maintained until the age of 25 regardless of whether someone is in education or training.

66. In light of the considerable areas of crossover between the Children and Families Bill SEN proposals and the draft Care and Support Bill, Mencap suggests that the Education Select Committee should include in its recommendations that the Joint Committee considering the draft Care and Support Bill should consider how the two Bills cross over.

March 2013

Memorandum submitted by Hilary Terry (MB 35)

1. My name is Hilary Terry. I have been a registered childminder since 1995, and have twice now been awarded the top Ofsted grade of Outstanding (2007/2008 and 2011/12 inspection years). I have a great desire to promote top quality childcare for the early years children in my care, and am totally committed to running my own self-employed business. I have grave reservations about the “More Great Childcare” plan which I believe will have long-term detrimental effects on the well-being of both the early years children in childcare and childminding in general.

2. The areas of the Children and Families Bill which I am most worried about are childminder agencies and qualifications for early years workers.

3. AGENCIES FOR CHILDMINDERS

3.1 Childminders do not seem to have been consulted in depth concerning this proposal. Last year childminders tried to present their doubts about the wisdom of agencies, trying also to make it clear to Ms Truss and the
Department of Education that they did not want agencies. There were several well supported petitions and representations.

3.2 I believe that agencies will do exactly the opposite of what they are supposed to be doing, i.e., I believe that agencies will put people off becoming childminders as well as forcing already-established childminders to leave their profession.

3.3 This is because agencies are unlikely to be popular with parents, who like to choose their own childminders after meeting them in their own homes and following up personal references, not those produced by some outside institution.

3.4 Children cannot be passed around childminders when occasion demands; if a childminder is ill, you can’t just send a baby or toddler to someone they don’t know, they have to be left with a known person they love and trust.

3.5 Agencies are highly likely to be run by local schools and nurseries, who will then control and choose which childminders to send the children too, possibly encouraging favouritism to particular childminders. How do they choose who to give the new business to? And if the nurseries are running the agency, then they will promote their own nursery business before the interest of childminders.

3.6 Local authority networks are currently at threat because of a lack of funding, so that will impact on training opportunities for childminders.

3.7 Childminding agencies will encourage a 2-tier childminding system, with confusion and uncertainty for both childminders and parents. Parents recognise the authority and national significance of Ofsted, and if this is withdrawn, there will be a backwards step with a downturn in standards and professionalism.

3.8 Childminders already struggle to compete with nurseries; if they are downgraded and removed from the umbrella of Ofsted, then in the eyes of parents they will be considered as second rate childcarers.

3.9 Ofsted inspections, together with the introduction of the EYFS, have improved the standards of childminders and the professional way in which they run their businesses. Taking childminders away from Ofsted will not only demoralise existing childminders, but will also take away the incentive for personal and professional improvement. Why should a childminder aim to be outstanding, if the agency grading is actually lower?

3.10 It is highly patronising to suggest that people can’t run their own business, and that this puts people off from being a childminder. It is quite the reverse—people become childminders because they want to be self-employed and independent workers.

4. QUALIFICATIONS FOR EARLY YEARS WORKERS

4.1 You do not need to have English and Maths GCSEs to be an outstanding childcarer. Such qualifications do not prove that somebody will make a good childcarer and it is a very misguided conclusion. The qualities needed for good early years workers are far more vocational and inspirational, based on a desire to bring out the best in the children in their care. Good training and support is far more important to encourage people into the early years sector.

4.2 Enforcing these qualifications will actually lead to fewer workers becoming childcare workers, while the Government says it wants to encourage people to become early years workers!

Memorandum submitted by Dominique Brockhaus-Grand (CF 36)

Dear Madam/Sir,

I would like to add my comments to the consultation on the Children and Families Bill.

1. I am an Ofsted registered childminder and a parent. I was previously a teacher and feel very passionately about childcare and children’s wellbeing. I am very concerned about the “More Great Childcare” plan as I feel it will be detrimental to children and have an adverse effect on the business of childminders.

2. The areas of the Children and Families Bill about which I have most concerns are—ratios for early years children, childminder agencies and qualifications for early years workers.

3. RATIOS FOR EARLY YEARS CHILDREN

3.1 The proposal lists ratios which are very detrimental to the wellbeing and healthy development of children. A person cannot possibly respond well and sufficiently to the personal needs of 4 babies or 6 children (in a nursery setting). Children need the physical presence and attention of their carer, time spent with them and plenty of personal attention.

3.2 I, as a childminder, will certainly not be increasing the number of children I will look after as their wellbeing is paramount and would be compromised by having too many little ones in my care.
4. AGENCIES FOR CHILDMINDERS

Agencies are likely to increase the costs incurred by childminders who are already extremely poorly paid. This will have a negative impact on their income.

Agencies are not wanted and not needed.

5. QUALIFICATIONS FOR EARLY YEARS WORKERS

Qualifications will not enable people to look after more children. A person will still only have 2 hands and 2 eyes to look after the children, keep them safe and emotionally secure. Qualifications will make no difference at all and is it very disingenuous or at least very naïve to claim that it will.

Claiming that it is being done in other countries is irrelevant. We should aim to copy the best international examples, not blindly follow irrespective of whether the examples are good or bad. In this case, the UK has got the best practice. We should be proud of that and not tinker with it.

I hope you take my comments into consideration and help me protect outcomes for the next generation of our children.

March 2013

Memorandum submitted by Stacey Green (CF 37)

Dear Sir,

I would like to add my comments to the consultation on the Children and Families Bill.

1. I am an Ofsted registered Childminder with 2 years of experience caring for young children. I have a NVQ Level 3 in Children and Young People’s Workforce. I am passionate about my role, and enjoy the freedom of being self-employed. I have read the More Great Childcare Document and have also watched with interest the readings of the Children and Family Bill in parliament, as well as the committee meetings. I believe that the aim of the new legislation is to cut childcare costs to parents and bring more Childminders to the sector, however I feel that what is being proposed will in actual fact decrease the numbers of Childminders, bring uncertainty for parents over the type of care that Childminders provide and will ultimately increase costs for parents.

2. The area of the Children and Families Bill about which I have most concerns is Childminder agencies.

3.1 Childminder agencies will not fix the problem of high childcare costs for parents. The Department of Education has made it clear there will be no funding for agencies. However they want agencies to deliver a service that is costly. This means that either parents will have to pay for the privilege of using one, which increases costs, or Childminders will be charged a fee, which will be reflected in the charges they pass onto parents, which increases costs.

3.2 Childminder agencies will cause confusion for parents when choosing childcare, as they will have to decide whether to go with an individually inspected Childminder or an Agency Childminder. Right now there are 61% of Childminders with Ofsted grades of Good or Outstanding. I am one of these. I got my grade without being part of a network, and I only have peer support from one other local Childminder. My LA up until now has not been to my setting since I registered 2 years ago, and has offered me no one to one support, other than putting on LA courses which they have to run. The only difference between me and an agency Childminder would be that they would supposedly have more support. As a parent how would I know which is the better option. As a parent why would I want to choose a Childminder who has never been inspected by Ofsted, over one who has?

3.3 The government does not want to prescribe how an agency runs, and that it to be left up to the individual agency/company to decide. How will this create a system which drives up Children’s Outcomes and reduces costs for parents? The only way for agencies to be effective is that they have to have strict guidelines on the exact amount of support they must offer, strict guidelines on the amount and quality of training the put on, precise guidelines on how they do Ofsted’s role, strict guidelines on how they get all of their Childminders to be good/outstanding in the eyes of Ofsted, set standards for which parents to look at which shows how they monitor and make sure that each of their Childminders meets a certain standard, the list goes on. If the government does not prescribe how an agency runs they are in grave danger of creating a complicated system with different agencies offering different levels of support, standards and most importantly different levels of outcomes for children.

3.4 Another idea behind Childminder Agencies is to bring more Childminders to the market. Why? Have you done research that shows that there is a need for more? There is plenty of areas throughout the country were there is an abundance of childcare provision and Childminders are having to shut down as they cannot be sustainable. The same can be true for many Nurseries, they are not full to capacity. Add this to the planned increases in ratios and the childcare market could become saturated. I believe that before an Agency opens it should be proven that in that local area there is a very high demand for Childminders. Is the idea of more Childminders coming to the market will be so that it forces Childminders to have to decrease their costs in order to stay open as a business?
If so, I believe that the opposite effect will happen. Childminders already as an average earn £11K per annum, there is no room for many of us to decrease our costs. If this becomes the case experiences Childminders will leave the market in their 1000’s.

3.5 Childminder Agencies are supposed to help with the paperwork side of the business, which apparently so many of us find burdensome. However has anyone really thought on how this will work. My main paperwork is writing up observations and making individual plans for children. This can only be done by the person working closely with the children, so this paperwork would not be taken away. Other paperwork is sharing with other settings, sharing information with parents, and my self-evaluation. Again all of this can only be done by the person working with the child. Paperwork that can be done by an agency is Policies and Procedures, which are done once and updated very infrequently, contracts, which are done once, Invoices, which are done monthly however most of the time the figure is the same month in month out. As you can see I am not really sure how a agency will lessen paperwork for me.

3.6 A Childminder in an agency might never been seen by Ofsted, so how can Ofsted have any assurance that all the Childminders within an agency’s book is following the EYFS and all statutory guidance and is improving outcomes for children? Will they just take the agency’s word for it? There is no way that an Ofsted inspection of the agency itself has any bearing or reflection of the Childminders on its books.

3.7 Childminder Agencies are supposed to drive up quality in the Childminding sector. However if it is voluntary for a Childminder to join an agency then I cannot see how the 2 correlate. For example lets say I am a satisfactory Childminder who doesn’t wish to be graded higher and is happy with the way I run my business, than I would not join a agency. How is the quality of my setting going to be improved?

3.8 Sue Gregory from Ofsted is concerned with the amount of children not ready for school, and this was given as part of the reason for needing to drive up improvement in the childcare sector, and a good reason for Childminder Agencies so that Childminders are supported to make improvements and improve outcomes for children. This will hopefully impact the 250,000 children who are in childminding settings. How then does she propose to help the 1.2 million children who are in non-domestic settings such as nurseries and pre-schools? They do not have to join agency’s.

I hope you take my comments into consideration and help me protect outcomes for the next generation of our children and my livelihood.

March 2013

Memorandum submitted by Mrs Suzanne Aldridge (CF 38)

Dear Sir,

I would like to add my comments to the consultation on the Children and Families Bill.

1. I am an Ofsted registered childminder with 3 years of experience caring for young children. I have level 3 qualifications in childcare and attend training every term to remain professional in what I do. I have a degree in Human Resources and pride myself in the way I run my childcare setting. I am continuously seeking ways to improve what I provide so the outcomes for children are the best possible. I was rated outstanding in all areas of practice by Ofsted in my inspection and am working very hard to keep this status.

2. The areas of the Children and Families Bill about which I have most concerns are—ratios for early years children, childminder agencies and qualifications for early years workers.

3. Ratios for Early Years Children

3.1 I am passionate about keeping children safe and feel that having had experience of looking after children with variations from Ofsted that the current ratios are an absolute safe maximum. Children under 2 who need help to sleep/ toileting / feeding would not be looked after appropriately in my professional opinion if ratios increase—care for basic needs would take over and therefore development needs in areas like communication will suffer—e.g. key worker would constantly be taken up with practical needs and not have time to communicate with other children regularly.

4. Agencies for Childminders

4.1 I am probably most devastated about this proposal—having worked so hard to safeguard my rating with Ofsted—the thought of being forced to join an agency to gain local authority funding for preschool sessions upsets me beyond belief. I understand that less qualified or reputable childcare providers could join an agency if I were in one and this could instantly lower the ‘rating’ Ofsted would have given me if I continued to operate alone. This is unfair and provides parents with a false picture of the quality of childcare in an agency as some will be higher in quality than others. We are all private businesses and so to join an agency and operate as one business is not what we desire and would lead to agencies falling apart and good quality providers leaving the profession. It would be good if high quality providers could remain alone and still gain local authority funding.
and be reviewed by Ofsted alone for a fee. Or why not reduce inspections for Outstanding practitioners to once every ten years unless complaints are received or the local authority flags a provider as reducing in quality?

5. Qualifications for Early Years Workers

5.1 I think to increase the desire for good qualifications is a good thing but am concerned that older qualifications are still recognised and accepted as equivalents. I'm also concerned that good qualified practitioners are being prevented from entering into the profession if they obtained their experience within a business rather than via a degree—making it harder for them to bring their business experience to the right level within a childcare setting without spending another 4 years doing an early years degree. There needs to be more flexibility in looking at business experience from the past and business qualifications and accrediting childcare professionals with 'degree equivalents' and allowing them to then fast track their training—e.g. I have business equivalents of A level and Post Graduate Qualifications—I believe I can easily run a setting and apply best practice in childcare – but at present without an early years degree I can’t access the training to manage a setting other than childminding.

You seem to forget that pay for childcare professionals cannot increase as parents and the media want to keep childcare costs down—how can you demand higher qualifications from people who will be paid little more than the minimum wage? If you want to push for higher qualified people then the government needs to give more funding to pay higher wages.

I hope you take my comments into consideration and help me protect outcomes for the next generation of our children and my livelihood.

March 2013

Memorandum submitted by the British Association for Adoption & Fostering (CF 39)

CLAUSE 5—ADOPTION SUPPORT SERVICES: DUTY TO PROVIDE INFORMATION

Introduction

There has been long standing recognition that the placement for adoption and the making of an Adoption Order do not conclude adoption and resolve once and for all the issues that led up to adoption becoming the plan. Adoption is a lifelong issue that impacts on the child, the child as an adult, the adoptive parents, adopted and non-adopted siblings and other birth family members. This is acknowledged in the Adoption and Children Act 2002 where the range of services the local authority is responsible for providing is specified in section 2(6) and then in Regulation 3 of the Adoption Support Agencies Regulations of 2005. Entitlement to an assessment for whom and for what service is detailed in the Adoption Statutory Guidance, Chapter 9, paragraph 7 and the framework set out in that paragraph is detailed and comprehensive. The prescribed services are identified as:

1. Services to enable discussion of matters relating to adoption
2. Assistance in relation to arrangements for contact
3. Therapeutic services
4. Services to ensure the continuation of adoptive relationship
5. Services to assist in cases of disruption
6. Counselling, advice and information
7. Financial support

The assessment for adoption support services is set out in section 4 of the Adoption and Children Act 2002. Subsection 1 sets out the duty to undertake that assessment. Subsection 4 identifies that having undertaken that assessment, the local authority must decide whether to provide the assessed service(s). Subsection 4 is identified as providing an opt out for local authorities and creating serious difficulties for those assessed in getting the support they need. It must be noted that while this gap between assessment and provision is enshrined in primary legislation, secondary legislation does not accept or envisage such a simple 'opt out'.

The process for assessment for adoption support is detailed and set out in in the Adoption Support Regulations, 2005. The procedure to be followed is identified in Regulation 14 and this includes those issues that need to be taken into consideration, a requirement to interview the person being assessed and the requirement to prepare a written assessment detailing the issues and conclusions. The statutory guidance identifies that that report should be made available to the person being assessed. Where required, consultation must take place with health or education services and coordinated with the local authority assessment. The process is expected to be transparent and participative and a detailed flow diagram is available in the adoption statutory guidance on page 200.

The breakdown in the link between assessment and provision does not appear at this point however. Regulation 17 requires that the local authority prepare a statutory notice before it makes its decision as to whether to provide a service and allow to a specified timescale the opportunity for the assessed person to make representations. The notice must contain—
1. A statement as to the person’s needs for adoption support services;
2. Where the assessment relates to his need for financial support, the basis upon which financial support is determined;
3. Whether the local authority propose to provide him with adoption support services;
4. The services (if any) that are proposed to be provided to him;
5. If financial support is to be paid to him, the proposed amount that would be payable.

Where the local authority propose to provide adoption support services and are required to prepare a plan under section 4(5) of the Adoption and Children Act 2002, the notice must be accompanied by a draft of that plan.

The local authority is not allowed to make its decision as to whether to provide a service until the person assessed has made representations or the period in which they can do so has expired. When the local authority makes that decision, they are required under Regulation 18 to give notice to the person assessed including the reasons for their decision. Where the decision is to provide services, that notice must be accompanied by a plan and nominate the person who will monitor the effectiveness of that plan.

While therefore the gap between duty to assess and provide is significant, the gap is not uncharted territory with a significant map of both principle and process. What is not known is why that statutory map does not seem to guide provision in a more effective manner. There may be a number of answers to that.

1. The map is not well understood or implemented by local authorities, social workers or other professionals responsible for implementing the framework.
2. Those who are eligible for an assessment do not understand their rights or how to use them, their right to participate and make representations, or have an explanation about the local authority decision-making process.
3. The need for support presents itself at a time of family crisis where attention is on the immediacy of the crisis rather than attention to engaging with a complex regulatory process. This may explain the absence of judicial reviews of compliance with the statutory framework.
4. Resources are under such strain that gate keeping and thresholds are set at a very high level and very few assessments reach that threshold.
5. There is limited understanding about how to undertake a professional assessment of support needs.
6. The framework for understanding the needs of those affected by adoption is poorly developed, subject to dispute, fashion and lack of an evidence base.
7. The availability of support services is subject to a significant postcode lottery.
8. Poor coordination with and access to other significant services such as health and education where other thresholds and processes apply.
9. The difficulties that arise with placements out of the local authority area both before and after the 3 year rule.

CURRENT REQUIREMENTS TO MAKE INFORMATION AVAILABLE TO SERVICE USERS

Regulation 5 of the Adoption Support Agencies Regulations 2005 currently sets out the requirement that the agency provides a written statement of purpose which includes as specified in Schedule 1:

1. The aims and objectives of the agency.
2. The name and address of the registered provider and, where applicable, the registered manager and the responsible individual.
3. Any conditions for the time being in force in relation to the registration under Part 2 of the 2000 Act of the registered provider and, if applicable, the registered manager.
4. The relevant qualifications and experience of the registered provider and, if applicable, the registered manager.
5. The number, relevant qualifications and experience of the staff working for the purposes of the agency.
6. A description of the organisational structure of the agency.
7. A description of the services offered by the agency.
8. The procedures for assessing the needs of those requesting adoption support services from the agency.
9. The system in place to monitor and evaluate the provision of services to ensure that the services provided by the agency are effective and the quality of those services is of an appropriate standard.
10. A summary of the complaints procedure.
11. The name, address and telephone number of the registration authority.

Regulation 5(4), (5), (6) require the agency to prepare and make available an appropriate children’s guide drawing on the specified issues in the Schedule. It is important to note that compliance with these regulations is subject to inspection by OFSTED.

In addition to these requirements, adoption support is required to be coordinated in each local authority by an Adoption Support Services Advisor. The role is set out in Regulation 6 of the Adoption Support Regulations, 2005. The Adoption Statutory Guidance specifies the duties of this role in Chapter 9, paragraph 9 to:

1. Give advice and information to people affected by adoption—a single point of contact to provide information, signpost appropriate services and to advise on how those services may be accessed
2. Give advice, information and assistance to other staff in the local authority on assessments of need for adoption support services, the availability of services locally and effective planning for service delivery—in particular, supporting and facilitating intra- and inter-agency joint working where needed
3. Give advice on good practice in adoption where needed
4. Consult with, and give advice, information and assistance to other local authorities as appropriate, for example, liaising between authorities where a family is moving between areas to try to ensure a smooth transition in the provision of support services.

This role is key in ensuring the effective and coordinated provision of adoption support services.

Clause 5

In the light of the current framework of the Adoption and Children Act, 2002 set out above, it is difficult to see that elevating the duty to provide information to primary legislation provides a significant advantage and will be transformative when it has not had that effect since the implementation of the 2002 Act. On the other hand, it is difficult to argue that it may not have some advantage to it. But the issue will be how those affected by adoption will get to know how to use that information in an effective way when there is currently poor understanding about why the existing detailed framework has been found not to bridge the gap between duty to assess and then provide. A list of possible reasons have been identified above and these need to be explored and understood for their respective contribution to the current problem. It is important not to rely on this clause as providing more than a very limited answer indeed to a serious problem when it is an answer that has been available since implementation of the current law from the end of 2005.

Special Guardianship

Children who are made subject to Special Guardianship are exactly the same group of children who have adoption as the plan. The development of special guardianship as family placement policy has always recognised that. The Adoption and Children Act 2002 amended the Children Act 1989 to introduce section 14F which sets out a parallel duty on local authorities to assess for special guardianship support. A parallel set of regulations and statutory guidance means that all the issues identified above can be found in relation to special guardianship support with appropriate modifications given the specific differences. It is not acceptable, as the Bill does in this clause, to introduce a difference that separates adoption from special guardianship when the children are the same children.

Amendment

To introduce a clause into the Children and Families Bill that amends section 14 of the Children Act to include a duty to provide information on special guardianship support and its statutory framework in exactly the same way as the clause does for adoption.

This document was prepared by:
John Simmonds, Director of Policy, Research and Development at the British Association for Adoption and Fostering.

March 2013

Memorandum submitted by Professor Liz Trinder, Alison McLeod, Julia Pearce and Hilary Woodward (Exeter University) and Joan Hunt (Oxford University) (CF 40)

THE ENFORCEMENT OF COURT ORDERS FOR CHILD CONTACT: INTERIM RESEARCH FINDINGS

PROFESSOR LIZ TRINDER, ALISON McLEOD, JULIA PEARCE AND HILARY WOODWARD (EXETER UNIVERSITY) AND JOAN HUNT (OXFORD UNIVERSITY)

1. This submission is designed to share early findings from a Nuffield Foundation funded study of applications to enforce contact orders in private family law cases. The study is due for completion in the summer but the Committee may well find it useful to see early findings from analysis of 81 recent enforcement cases.

Law School, Exeter University, Exeter EX4 4RJ. Tel: 01392 723375. Email: E.j.trinder@exeter.ac.uk.
2. Enforcement is a highly salient issue given recent statements from the government\textsuperscript{96} and the Justice Select Committee\textsuperscript{97}. It is a policy area with no previous research. Understanding of the issue has been shaped by personal testimonies. Whilst powerful, like any individual accounts or other anecdotal evidence, these are not necessarily representative or complete. The current study was designed to address the evidence gap by providing a profile of enforcement cases and evaluating how courts respond to applications.

3. The research is being conducted by a team of socio-legal researchers with many years of experience of family law research. The Nuffield Foundation has funded the research, but the views expressed are those of the authors and not necessarily those of the Foundation. The research team would like to thank both Cafcass for enabling access to their electronic records and the President of the Family Division for granting permission for the study.

INTRODUCTION

The policy context

4. It is well known that most parents decide their own parenting arrangements after family breakdown. Only about 10\% of separated parents have court-determined contact arrangements. A fraction of those 10\% seek enforcement of the court order. In 2011/12 there were just 1,383 applications for enforcement in England\textsuperscript{98}. To put that in context, 38,405 children were involved in contact applications in England and Wales in 2011\textsuperscript{99}.

5. Although numbers are small, any non-implementation of a court order is serious and risks damaging public confidence in the family justice system. The challenge for legislators and judges has been to find appropriate interventions for non-compliance. Courts can impose fines, imprisonment or transfer a child’s residence but these may be impractical, counter-productive or harmful to a child. The Children and Adoption Act 2006 made new sanctions—community service and financial compensation—available, but these have been little used.

6. Following a consultation, the government has decided against curfew orders or the withholding of passports and driving licences as further sanctions\textsuperscript{100}. Policy will focus instead on returning cases swiftly to court. Consideration is being given to extend powers of committal to Magistrates and District Judges. A new enforcement-specific Contact Activity (or parent education programme) is also mooted.

The study

7. The study is based on analysis of a national sample of enforcement applications. The final sample will be every C79 application made in England in March and April 2012, a total of 215 applications. This submission is based on initial analysis of 81 C79\textsuperscript{101} applications. The research team has been examining the cases in date order, starting from March 1st 2012. There is no reason to suggest that this initial sample of 81 early-mid March applications differ in any way from late March/April applications.

8. The cases are being accessed through electronic case records held by the Children and Family Courts Advisory and Support Service (Cafcass). The records typically include court application forms, Cafcass reports and court orders made in the case. The information available therefore includes the perspectives of both parents, the children (if interviewed), safeguarding information (including police and local authority checks), numbers and types of hearings and the outcome of the application.

9. The data reported here are interim findings. The final report in mid 2013 will provide a more comprehensive analysis of the larger final sample. Focus groups with judges will also provide further understanding of how courts approach these cases.

KEY MESSAGES FROM THE INTERIM FINDINGS

— Few cases come back to court for enforcement activity
— Those that do are complex cases involving high levels of parental conflict and/or allegations of child welfare or safety concerns. Very few are ‘stereotypical cases’ of a single implacably hostile parent
— Courts seldom use punitive measures to enforce orders. Instead they focus on problem-solving, usually seeking to restore contact using further contact orders
— The findings support greater attention to risk assessment and management in contact cases and the development of psycho-therapeutic interventions for high conflict cases.


\textsuperscript{97} Justice Select Committee Pre-legislative scrutiny of the Children and Families Bill, HC 739, December 2012, especially paras 40, 55, 154 and 188.


\textsuperscript{99} Judicial and Court Statistics 2011, London: Ministry of Justice, table 2.3.

\textsuperscript{100} Ministry of Justice Co-operative parenting following family separation: proposals on enforcing court-ordered child arrangements: Summary of consultation responses and the Government’s response. February 2013.

\textsuperscript{101} The C79 is the form used to apply for enforcement of a contact order.
FINDINGS

Who applies for enforcement?

10. As might be expected, most (85%) enforcement applications in the sample of 81 cases were from non-resident fathers. In 60% of cases, contact had broken down, half of these within the last three months. A quarter of enforcement applicants also sought compensation for financial loss following alleged breach of an order. Most claims were for the £200 court fee.

11. Over half (59%) of applications were brought within 52 weeks of the index order, including 18% within the first three months. Another fifth (22%) were late applicants, applying two to eight years after the index order.

12. Only five cases could be characterised as chronic litigants with 3-6 previous applications for a court order prior to the enforcement application.

What is the cause of the dispute?

13. The debate on enforcement has focused on cases where resident parents, typically mothers, are said to repeatedly and unreasonably defy court orders. In our sample of the 81 cases, the resident parent was said to be blocking all or some contact in 67% and 29% of cases respectively.

14. Respondents presented a range of counter-arguments to justify their actions, including the behaviour of the applicant and the wishes of the children. Concerns about child or adult safety were present in 75% of the 75 cases where information was available. In 51.9% of cases concerns were raised at the index stage, 53.3% at enforcement stages and 41.3% at both stages. Concerns at the enforcement stage were about child physical or sexual abuse and neglect (31% of cases), domestic violence (21%), alcohol abuse (22%), drug abuse (13%), mental health (11%) and abduction (7%).

15. The children were alleged to be refusing all contact in 31% of cases or some contact in 38%.

The main types of enforcement case

16. It is difficult to gain a sense of individual cases from aggregate statistical data. For each case the research team is drawing up a case profile to be used to develop a typology of case types.

17. At the interim stage the great majority of cases fall fairly evenly into two main types of case—conflicted or risk/safety.

18. Conflicted: Cases where poor parental relationships and chronic mistrust resulted in an inability to negotiate the everyday challenges/changes in circumstances necessary for contact to occur reliably. Safety issues, often mutual allegations of poor parenting, may be in the background. Parents require external assistance to work out solutions to contact problems. Case example: Detailed index order setting out arrangements for father’s contact with pre-school child. Contact continues but with handover problems prompting enforcement application. Cafcass reports that the parents are in intense competition for the child, expressed in clothing (mummy’s or daddy’s clothes) and bedroom decorations (Hello Kitty vs Peppa Pig). The child is developing a stammer, attributed by Cafcass to an acute awareness of the conflict. The father is seen as focused on his rights, the mother as distrustful and anxious. The case concludes with a two page consent order specifying in even greater detail how handovers will occur and the precise seating arrangements for future school functions (I-65).

19. Risk/safety: Cases where one or both parents raise, or continue to raise, significant adult and/or child safeguarding issues. Contact in these cases may be intermittent or have stopped. Case example: History of DV including father’s threats to kill the mother. The index contact order allows direct contact. Father is then convicted of battery against the mother and subject to a non-molestation order. Mother stops contact after father breaches this. Father then applies for enforcement. Cafcass recommend DV Perpetrators Programme and Fact Finding hearing followed by gradual reintroduction of direct contact at a contact centre. Instead the enforcement case ends in a consent order with unsupervised contact. Cafcass notifies the local authority (I-59).

20. Implacably hostile: In a small number of cases the primary problem appeared not to be mutual conflict or safety issues but the resistance of the resident parent. These cases figure large in public debate but were rare within the sample of 81 cases. Case example: The index order specifies staying contact with a 6 year old. The unrepresented mother does not cooperate fully with the court process. Contact broke down immediately triggering an immediate enforcement application. The same judge threatens a transfer of residence if the mother does not comply. Further contact was agreed. The father later contacts Cafcass to say that contact is being undermined. Note—the mother had raised concerns about domestic violence issues at index stage but none in the enforcement proceedings(I-68).

The problem-solving approach of the court

21. One of the most powerful themes emerging from the analysis of the 81 cases was that courts overwhelmingly adopted a problem-solving approach to case, the problem framed typically as about restoration of contact. Courts did not usually adopt an investigative or punitive approach and seldom commented explicitly on whether a breach had occurred. The focus was on moving the case forward. Case example: Teenage son with severe autism living with mother. Long history of repeated litigation, most recently with contact ceasing
following an unspecified incident at father’s home. The Cafcass report was very critical of both parents for putting inappropriate pressure on the son. He had said how much he hated his parents arguing and would rather be adopted. Eventually it was agreed that the boy would continue to see his father and once he was ready stay overnight again. Until then there were very detailed arrangements in the order with regard to venue, transport costs and arrangements and other contingencies (I-22).

22. The outcome of applications exemplify this approach. The court ordered punitive sanctions (unpaid work) in only four cases, two of which were suspended. In contrast, in 62% of cases the court amended or made a new contact order. In most cases the new order was similar or identical to the index order. The same amount of contact was ordered in 50% of these cases, more contact in 24% and less contact in 26%. In six cases (16%) the court ordered (more) supervision, in 4 cases (10%) less supervision and in 74% there was no change. Follow up orders contained a higher level of specificity in 30% of cases, the same level of detail in 60% and less detail in 9%.

23. Planned focus groups with judges will explore how courts approach cases, especially why punitive sanctions were not considered more often. The case data, strongly suggest two possible explanations.

24. First, the problem-solving approach to enforcement is very similar to how courts approach contact cases in general—with a pro-contact, pro-agreement and orientation to the future not the past.

25. Second, although courts clearly acknowledged when there was a problem with contact, they did not necessarily or typically accept the applicant’s view of the cause or the solution. The Cafcass reporter, for example, had access to all perspectives in the case as well as external data such as police checks. Our ratings indicated that the Cafcass report was supportive of the applicant’s case in only a minority (24%) of applications. More commonly the Cafcass report supported neither parent’s case (29%), the respondent’s case (24%) or was partially supportive of both parent’s case (23%).

26. The court’s approach therefore often involved measures that would address the behavior of both parents, including agreements or orders including provisions relating to how parents behave with each other or referral to parent education. Case example: Young parents of a toddler. Father subject to a non-molestation order regarding the mother. The index contact order was followed quickly by each parent making allegations against the other of physical abuse of the child (a slap, a bite mark). The father applied for enforcement after mother stopped contact. After local authority investigations proved negative, the court declined to impose sanctions, reaffirmed the index order and referred both parents to a Parenting Information Programme (PIP). (I-31).

27. Children were consulted for their wishes and feelings, usually by Cafcass, in just 31 cases. Their views were similarly mixed. We assessed their reported views as more aligned with the applicant’s position in 21% of cases, with the respondent’s position in 36% and partially aligned with both parents in 32% of cases.

The limits of rapid case processing

28. Most enforcement cases were dealt with fairly rapidly. The median wait from application to the first hearing was four weeks. As of February 2013, 86% of these proceedings initiated in March 2012 had concluded. The average case duration was 14.5 weeks from application to final hearing. A third (35%) of the completed cases were disposed of in a single hearing and 26% in two hearings.

29. The courts relied heavily on relatively brief Cafcass Schedule 2 reports to understand the issues in the case. These were filed in 91% of cases but varied in the level of detail. Other more in-depth Cafcass reports—on single or multiple issues or on children’s wishes and feelings—were filed in 36% of cases. Only three cases included reports from experts such as psychiatrists. There were no Finding of Fact hearings into abuse allegations at enforcement stage.

30. The fairly swift timetable for most cases did have some drawbacks. In some cases with safety allegations the court proceeded with what appeared to be insufficient information. In one case, concerns about sexual abuse continued to undermine contact but the court declined to undertake a Fact Finding hearing that would allow the court to move forward assertively, in either direction. In another case, a resident mother was ordered to undertake community service for non-compliance. Afterwards she applied to vary contact following further incidents. The subsequent and far more thorough risk assessment identified significant longstanding safeguarding concerns resulting in an order for indirect contact only (I-11).

31. There were some safety cases where there was a clear understanding of the problem but limited follow through. In one case a father seeking enforcement of a supervised contact index order was required to attend a Domestic Violence Perpetrator Programme as a condition of contact. He dropped out of the programme but the

102 In 12% of cases the application was withdrawn. In five cases the case for enforcement was dismissed, in two cases no order was made and there were other outcomes in four cases.

103 We will present the full methodology in the final report.

104 These are 2-4 page reports prepared prior to the first hearing. They set out a summary of safeguarding issues based on police and local authority checks and, where possible, phone calls with the parties.

105 Only two FoF Hearings were held at index stage, both upholding the allegations fully or in part.
court still made a final order for unsupervised staying contact in the absence of the (unrepresented) parties and against the advice of the Cafcass officer (I-8).

32. Given the numbers of high conflict cases it was surprising that little use was made of more intensive or therapeutic interventions. A therapeutic approach could work. In one case the court found a creative way for parents to pay for family counseling. The result was that contact was restored in a case where the teenage children had been refusing all contact (I-71).

**How effective is the courts’ approach in securing compliance?**

33. The courts have made very little use of powers to order the monitoring of contact orders. Thus little information is available on the outcomes of orders, beyond rates of relitigation.

34. Given the level of case difficulty, the relitigation rate was relatively low. There have been seven new applications. In a further two cases, the former applicant contacted Cafcass to allege non-compliance. Three of these nine ‘further activity’ cases were chronic litigation cases.

35. The limited further activity rates suggest that the approach of the courts may work in reducing immediate relitigation for many cases. However, the likelihood is that not all non-compliance is reported.

36. The punitive approach had mixed results in securing positive outcomes. Three of the unpaid work requirement cases (including the two suspended orders) remain closed. As noted above, the fourth completed UWR case was unsuccessful and it became apparent, was an entirely inappropriate order.

**Summary and Implications for Policy**

37. Three principal findings are evident at this interim stage of the research. First, very few enforcement cases fit the popular media image of the implacably hostile resident parent. This stereotype does not capture the full picture available to the courts where most enforcement cases involve troubled or conflicted sets of parents or significant safety issues.

38. Second, courts focus on problem-solving and getting contact restarted rather than identifying whether or not a breach has occurred and sanctions needed. This orientation reflects the default approach of the family justice system that is pro-contact, pro-settlement and future-oriented.

39. Third, the problem-solving approach can default to over-rapid, “cookie-cutter” case processing. In some cases, risk was inadequately assessed and/or managed. Some of the high conflict repeat litigation cases returned to court quickly after very limited input.

40. There are a number of implications for policy. The government’s decision not to introduce further new sanctions is consistent with these interim research findings. It is unlikely that new punitive sanctions would be used when existing sanctions are not. Nor is there evidence, at least at this interim stage, that greater use of sanctions would be particularly helpful given that very few cases are about the stereotypical implacably hostile parent where a punitive approach might be appropriate.

41. We would have concerns about extending powers of committal to all tiers of the judiciary. Cases where committal would be under active consideration would be the most difficult and probably should be reserved for the most experienced judges.

42. Our interim findings suggest courts do a reasonable job at handling cases quickly. But dealing effectively with enforcement cases is difficult. They are tough and complex cases. The government’s proposal to develop an enforcement-specific case assessment and intervention pathway is a positive step forward. If any further tools are needed, however, they are not additional penalties but the time and resource for effective risk assessment and management in safety cases and therapeutic interventions for the high conflict cases.

March 2013

Memorandum submitted by Sir Martin Narey, Government Advisor on Adoption (CF 41)

ADOPTION REFORMS IN THE CHILDREN AND FAMILIES BILL 2012-2013

1. I believe this Bill delivers on this government’s determination radically and permanently to reform adoption so that neglected and abused children get the stable and loving homes they need and as soon as practically possible. I’m very pleased that much of the Bill flows from recommendations I have made. Those recommendations have emerged following a period of almost two years during which I have explored policy and practice around adoption in some detail. I have visited almost every major voluntary adoption agency, more than twenty five local authorities and spent a great deal of time examining research around child neglect, care and adoption.

2. I hope that this Committee will feel able to support the Government reforms—I believe that some of them are considered to be controversial only because they are tackling genuinely sensitive issues such as: contact between children and birth relatives; placing children with their would-be adopters but in a fostering capacity
while the legal processes unfold; and reducing the emphasis given to ethnicity, culture, linguistic background and religion when matching a child to adopters. I want to draw the attention of the Committee briefly to some of the reasons behind my support for those clauses of the Bill with which I’ve been most closely involved.

**Fostering for Adoption**

3. The first clause of the Bill allows likely future adopters of a child to foster that child in anticipation of the placement order. I first saw this operating some 12 months ago in East Sussex where an excellent and imaginative adoption team have been quietly using this route for some time to give earlier stability for children (the legislation simply clarifies the legality of the practice). The reform had already been put to me by John Simmonds at The British Association for Adoption and Fostering (BAAF) who—without much success—had been urging this reform on DfE for some years.

4. Not all adopters will want to foster before adoption. They will fear the pain of a fostering placement not proceeding to adoption. That can and will happen. But overwhelmingly these placements will become permanent adoptions and the benefits of earlier placement for the children involved are not in dispute.

5. I know there has been some anxiety about whether or not the clause will lead to local authorities abandoning their duty to explore kinship care as the first option for a child who cannot return to his or her birth parents. Some of the concern around that issue is genuine. Some, quite simply, betrays a failure to understand the drafting of the clause. For my part I am clear that this clause does not relegate kinship care. If that were the case I would not have urged Ministers to pursue this initiative and would not now recommend it to the Committee. Kinship care must be considered first. But when a kinship placement is not appropriate for a child, and when adoption is seen as the likely and best option, then the new clause requires local authorities to prioritise fostering with the child’s likely future adopters where they are identified.

6. We know that it is vital for a child to achieve permanence as soon as possible. But we also know that even where adoption appears inevitable, the legal processes can mean that the length of time between coming into care and a placement order being granted is more often measured in years rather than months. And when a child is eventually placed with adopters it can involve a traumatic separation from long-term foster carers. Clause 1 will make such traumas—about which so many adopters have written to me—much less frequent.

**Ethnicity and Delay**

7. It is frequently—often mischievously—suggested that in changing the law on ethnicity and adoption, the government is suggesting that ethnicity doesn’t matter. That is simply not true. What the government is doing – and partly as a result of my urging—is ensuring that ethnicity and cultural considerations do not unnecessarily veto an otherwise satisfactory adoption. In the United States and through President Clinton’s Multi-Ethnic Placement Act of 1994 the consideration of ethnicity in arranging an adoption has indeed been outlawed. I welcome the fact that this government are not proposing such a drastic change here. Ethnicity, culture, religion and linguistic background should and will continue to be factors to be considered during adoption. But the Bill will remove the express emphasis given to those factors which, in my view, has led to ethnicity, in particular, having a disproportionate priority in matching adopters to children. I can point the Committee in the direction of research which supports that view.

8. Guidance issued since the Labour Government’s 2002 Adoption and Children Act has continued to emphasise the intention of that Act which was to establish the priority which must be given to avoiding delay in adoption at the expense of matching children’s ethnicity, culture, religion or linguistic background to adopters. But local authorities have been slow to change practice established in the seventies and eighties which was utterly inflexible on issues of race. Some, at last, have begun to adjust their policies and to be much more flexible in what is known as ethnic matching. Others appear unmoved and continue to emphasise race above other considerations. I could direct the Committee toward local authorities whose adoption websites continue to emphasise the priority which is to be given to ethnicity despite research which demonstrates that transracial adoptions are no more vulnerable to disruption.

9. I believe that if there are two sets of adopters interested in adopting a black child, black adopters have an advantage. But when, as is so often the case, there are not enough black adopters available, then to continue to emphasise race is cruelly disadvantageous to black children. Moreover, at the moment there are cases where an emphasis is given to ethnicity or culture when, by any measure, such things should be of secondary consideration. I would wish to refer the Committee to Be My Parent magazine, published by BAAF and which essentially advertises children waiting for adoption. In a recent issue a little boy, T, who has significant developmental delay, is described as being “born with spina bifida ... and will need continued [medical] support, including from a neurosurgeon for hydrocephalus. Professionals monitor his kidney function, orthopaedic needs and developmental progress. It is not known how much mobility he will have in the future.” Remarkably, there are adopters willing to meet the challenge of bringing up children with complex needs. But the advertisement goes on to say that the family needed for T must be able to develop a sense of T’s ethnic and cultural identity.

10. And this is not simply about black children. In the same magazine white brother and sister H and G are featured. But in this case, potential adopters should not offer themselves unless they can “reflect or actively develop the ethnic and cultural identity” of these two siblings, both of whom are Downs children. That’s what I mean when I talk sometimes about an obsession with ethnicity.
11. Local authorities have been commendably brave in supporting the adoption of children by gay parents. And they are right to do so because the evidence is clear that the disadvantage of a child growing up in a home where they are unlikely to share the sexuality of either of their parents is easily overcome. The evidence that white parents can, with sensitivity and support, similarly compensate for a difference in ethnicity between themselves and an adopted child is just as compelling. This Bill, will, I hope, ensure that social work practice responds to that reality.

MATCHING AND THE REGISTER

12. Clause 6 takes a welcome step in the direction of opening up the closely protected process of matching to prospective adopters. The matching of children to adopters has become a quasi science but not one which has an evidential base which can stand up to too much scrutiny. Some local authorities use complex matrices to try and match the apparent skills of some adopters with the identified needs of children waiting for adoption.

13. The effort and time, which goes into matching, is well intentioned and many practitioners believe in it passionately. But the truth is that there is very little evidence to support the belief that matching specific adopters to specific children can be done with any real confidence. As Professors Julie Selwyn and David Quinton from the University of Bristol’s Hadley centre for adoption and foster care studies have concluded:

> Given the effort that goes into matching, it might be thought that there is good evidence that we know how often matching is achieved and that a good match makes a difference. Such research evidence is lacking: not just sparse, but virtually absent.

14. Meanwhile, children wait unnecessarily long for adoption because available adopters do not fit social workers’ sometimes idealistic view of the type of family a particular child needs. Despite recent improvements, approved adopters who may have already waited for many months before being admitted to the Adoption Register, wait on average, a further nine and a half months before being matched with a child.

15. If we are to find the adopters we need to give homes to the 7,000 children with placement orders who are waiting for adoption, we need to be much more open-minded about those we approve and then give the adopters themselves a much greater role in finding the right child for them. Matching works best not when it is something done to the adopters but involves them and trusts some of the chemistry involved in relationships. This is why I support clause 6 which would open up the adoption Register to prospective adopters (as well as the increased use of adoption parties which bring adopters and children awaiting adoption together).

March 2013

Memorandum submitted by the Down’s Syndrome Association (CF 42)

CHILDREN AND FAMILIES BILL PART 3 – SPECIAL EDUCATIONAL NEEDS

ABOUT THE DOWN’S SYNDROME ASSOCIATION

1. The Down’s Syndrome Association (DSA) provides information and advice on all aspects of Down’s syndrome to people with Down’s syndrome (DS), their families and professionals. It is a Registered Charity established in 1970 and has a membership of over 20,000.

Down’s syndrome is the most common form of learning disability caused by a chromosome abnormality. About 1 in every 1000 babies born each year has the condition. All of these children will have some degree of learning difficulty ranging from mild to severe. Each will vary as widely in their development and progress as other children. Generally speaking, children with DS develop more slowly than their peers and the developmental gap between DS children and their peers widens with age. Research has identified characteristic strengths and weaknesses. Being aware of how these factors facilitate and inhibit learning will inform the provision of appropriate support. Some factors have physical implications; others have cognitive ones. Many have both.

GENERAL

2. As an organisation supporting people with Down’s syndrome and their families across the lifespan, the DSA welcomes the creation of a single system for children and young people up to age 25. We also welcome the fact that the legislation will apply directly to Academies and Free schools.

Clause 25 Promoting integration and Clause 26 Joint Commissioning arrangements

3. The DSA does not believe the provisions in these clauses will ensure the ‘joined up’ system between education, health and social care promised by the 2011 Green Paper ‘Support and aspiration’. The Bill still gives us an education driven system as evidenced by clause 26(3) Joint commissioning arrangements must include arrangements for considering and agreeing (a) the education, health and care provision reasonably required by the special educational needs of the child.

4. Whereas all children with Down’s syndrome will have special educational needs as defined by the Bill, a considerable number will also have significant health issues and a requirement for social care provision to support them and their families. Particularly in the early years, health provision may be of primary importance
to children with Down’s syndrome independent of any educational need. We suggest amending the above clause to read reasonably required by the child omitting the words special educational needs.

 Clause 27 Duty to keep education and care provision under review

 5. The DSA considers this clause will not ensure sufficient and appropriate education and social care provision is available to meet future needs.

 We want to see this clause expanded to contain a specific advance planning duty for local authorities to develop provision for future SEN requirements. This should include a requirement to gather evidence on projected population changes and the incidence of particular types of SEN. May authorities currently do this but the approach is not consistent across the country.

 Clause 29 Co-operating generally: governing body functions

 6. This clause requires governing bodies and proprietors of schools to co-operate with the local authority. The list of schools in subsection (2) does not include maintained special schools or special Academies. This omission should be rectified as special schools must be involved in local planning for children with SEN and disabilities.

 Clause 30 The local offer

 7. The DSA considers the provisions for the local offer need to be more specific. In their present form they will not give the necessary guarantees to parents or young people. For example subsection (1) states that a local authority must publish information about the provision […] it expects to be available. ‘Expects’ does not provide any guarantee of entitlement for families and should be changed to ‘will be available’. The local offer must contain more than a statement of good intent. It is essential for parents to understand what their child is entitled to and the type and standard of service that will be available. Clear and defined requirements on the local offer will also identify gaps in services thereby assisting local authorities with the clause 27 duty to keep education and care provision under review.

 8. Subsection (6) will require local authorities to publish comments on the local offer by parents and young people as well as the local authority’s response. We do not believe that this provides sufficient accountability. We would like to see a body with responsibility for ‘policing’ the local offer and dealing with complaints. This role could be undertaken by Ofsted and / or the Local Government Ombudsman.

 9. Subsections (8) states that regulations may make provision and (9) that regulations may require. Parents already report a wide difference in provision from one local authority to another, the so-called ‘postcode lottery’. In order to avoid this situation the local offer must contain clear national minimum standards. May should be changed to must in subsections (8) and (9).

 Clause 32 Advice and information for parents and young people

 10. We welcome the inclusion in the Bill of Advice and information for parents and young people. This should be extended to include the requirement for an independent advocacy service for young people. All young people with Down’s syndrome will have at least some degree of learning disability and will need support in making decisions. Young people’s experience will be limited; they will require someone to support them in finding out about available options and to coordinate support.

 Clause 34 Children and young people with special educational needs but no EHC plan – power of special Academies to admit

 11. The DSA does not agree with the provision in subsection (9) that special Academies and Free Schools should be able to admit children without an EHCP. This runs counter to the intention of the Bill to put Academies and Free Schools on the same legal footing as maintained schools with regard to SEN legislation. We are concerned that children may be placed in special academies without the protection of a plan or the concomitant reviews.

 Clause 35 Children with SEN in maintained nurseries and mainstream schools

 12. This clause places a duty upon maintained nurseries and maintained schools to see that a child with SEN engages in the activities of the school along with children who do not have SEN. This should be extended both to providers of relevant early years education, i.e. publicly funded under the early years entitlement, and also to institutions in the further education sector.

 13. The vast majority of children with Down’s Syndrome are in mainstream early years provision, so we believe that the inclusion duty on early years providers should be the same as that on schools. At Key Stage 3 and 4 there is a growing number of young people with Down’s syndrome included in mainstream secondary school. On progression to college they may find themselves on discrete courses for students with LDD without the opportunity to be included in a wider group as they were at school.

 Clause 36 Assessment of education, health and care needs

 14. The current system of assessments under the 1996 Education Act has strict time limits attached. The Children and Families Bill does not contain sufficient safeguards to ensure that there will be legally binding national time limits. The Bill should be amended to replicate provision in the 1996 Act. If time limits are to
be contained in regulations, an additional subsection should be included to state that regulations must make provision for prescribed time limits.

15. We do not feel that there is sufficient clarity about who will be eligible for an assessment or the form the assessment will take and there does not yet appear to be a clear view emerging from Pathfinders about this. We would like to see greater clarity about how health and social care will be involved in the assessment. A minimum level of involvement of health and social care should be prescribed in regulations.

16. The DSA is concerned that the assessment remains an education driven process. Under subsection (3) the local authority must determine whether it may be necessary for special educational provision to be made for a child or young person in accordance with an EHC Plan. Children with Down’s Syndrome are identified at birth or before so will initially come to the attention of health services. A proportion of them will have complex health needs particularly in the early years. Provision should be made for an assessment to be triggered at a point where health is the only or main presenting need.

Clause 37 Education, health and care plans

17. As for assessments, it is still difficult to get a feel for what a plan might look like. The recent SEND Pathfinder Programme Report\(^ {106}\) merely describes the processes used by some of the pathfinders and does not include any specific details about EHCPs.

18. We would like to see a requirement for the format for the EHC Plan to be included in regulations, as is currently the situation for statements. A standardised plan is essential to ensure consistency across the country and portability of assessments and plans between local authorities.

19. Subsection (2)(b) states that the plan must include the outcomes sought for him or her. These outcomes require further definition, as it is not clear whether they are educational outcomes only or relate to wider health and wellbeing. Clause 45 (3) on ceasing plans only refers to LAs having regard to whether the educational outcomes on the plan have been achieved. This would allow a plan to be discontinued when a child or young person still has significant health or social care needs which could continue to impact upon their educational development.

Clause 38 Preparation of EHC plan: draft plan

20. We welcome the addition of non-maintained and approved independent special schools and special post 16 institutions in subsection (3). This will extend parental choice.

21. This clause does not contain any time limits for considering representations or any right for the parent to request a meeting with the local authority. The Bill should be amended to reflect the current entitlements in sch 27 of the 1996 Act.

Clause 42 Duty to secure special educational provision

22. It is of concern that in the Bill as published the duty extends only to educational provision. The DSA welcomes the recent announcement by the minister to impose a statutory duty on CCGs to provide health services specified in EHC Plans for children and young people with SEN.

23. However, we would welcome clarification over the effect of any new clause on clause 21(5) (health and social care as educational provision). The current proposals for Tribunal appeals cover educational provision only. Therefore despite the new duty on CCGs clause 21 (5) should remain in order to give parents and young people the right of appeal over educationally necessary health and social care provision.

Clause 61ff Functions of governing bodies

24. We note that the majority of the current requirements of s317 of the 1996 Act are replicated. There is however no equivalent to EA1996 s317 (1)(b) and (c).

\[(1)\] The governing body […] shall […]

\[(b)\] secure that, where the responsible person has been informed by the local education authority that a registered pupil has special educational needs, those needs are made known to all who are likely to teach him, and

\[(c)\] secure that the teachers in the school are aware of the importance of identifying, and providing for, those registered pupils who have special educational needs.

25. The DSA believes that although this may been seen as standard good practice in schools, it is important that it be restated in the legislation. We are aware through parents ringing our helpline that inclusive practice in mainstream schools and the extent to which individual teachers take responsibility for children with SEN varies enormously. This is borne out by a recent study carried out by the Institute of Education\(^ {107}\).

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\(^{107}\) The Making a Statement project final report—Rob Webster and Peter Blatchford February 2013 http://www.schoolsupportstaff.net/mastreport.pdf
Clause 72 Interpretation of part 3—Definition of young person

26. For the purposes of part 3 of the Bill, a young person is defined as: a person over compulsory school age but under 25

The provisions in the Bill apply to parents of children and to young people. This is a change from part 4 of the 1996 Act which applied to parents of children under 19.

27. While we welcome giving a voice to young people, we are concerned about the wholesale transfer of rights from parents to young people at age 16. Young people aged 16 with Down’s syndrome will have limited life experience and will need considerable extra support to explore different options. We would like to see a statutory requirement for an independent advocate for young people aged 16-15.

28. We also suggest that for the 16 to 18 age group, rights should apply in parallel both to parents and young people. This situation already exists in the area of school admissions and appeals.

March 2013

Memorandum submitted by Angela Davies (CF 43)

Dear Sir/Madam,

I would like to add my comments to the consultation on the Children and Families Bill.

I am an Ofsted registered childminder with 13 years of experience caring for young children. I hold an NVQ level 3 in Childcare Learning and Development and have attended many childcare courses including: Paediatric first aid; Safeguarding; Food hygiene; Equality and diversity; Managing behaviour; Language and communication. In addition I have an HNC in Business and Finance, an HFC in English Language, an A level in English Language and six GCSEs.

I have been following the coverage of the Children and Families Bill with growing alarm particularly in the areas involving ratios for early years children, childminder agencies and qualifications for early years workers. My concerns are as follows:

— Ratios for early years children: The proposals are to increase childminder’s ratios to four children under five years—two of which may be under twelve months. I currently care for two fifteen month old little girls. This is challenging enough, they are still teething, one is not terribly confident when at playgroups so likes to come and sit on my knee a lot and requires lots of reassurance, they have both recently started walking but stumble often requiring me to watch them and be ready to steer them from potential bumps or to be on hand for cuddles following a tumble. Neither are entirely self-feeding so meal-times have to be planned carefully to ensure both are fed at the same time. Obviously both are in nappies too so when out or even at home I have to ensure I can keep an eye on one while changing the other. All this is manageable but the thought of adding another child or even two to the situation is horrifying. I simply could not guarantee the safety of so many children or feel I could meet their physical or emotional needs. I have looked after three, at the same time, in the past but only when the ages and personalities of the children were absolutely suitable to be able to do so. At present I would not even entertain the prospect of a third child until the girls have reached the age of two. Rather worryingly, under the new proposals it would be perfectly acceptable for me to take on two tiny babies though and although I would not do this there are likely to be some childminders who need the money (particularly if being forced to lower fees) who would do this and this is a truly frightening prospect.

The reason parents choose childminders over nurseries is that they would prefer their children to be raised in a family environment rather than an institutionalised one. They want them to do things they would be doing if they were at home with Mum, like going to the park, shopping, having picnics, going to soft-play. All these activities are incredibly valuable to children in helping them to understand their community and make sense of words, numbers and communication in real-life situations. I take the children out to different activities every day. I can manage this because I can get two in a double buggy and I can take two car seats in my car. If I had two babies plus two toddlers just leaving the house would be a struggle and getting anywhere on foot would be potentially life-threatening. The thought of having four little ones running around a park in four different directions is terrifying. As well as the children I look after I also have my own family’s needs to consider. I live in a normal three bed semi—at nap-time I have a child in each downstairs room. It would be massively unfair to my children if I was having to fill their bedrooms up with sleeping babies. I am lucky enough to have a downstairs lavatory but even so the prospect of toilet training a toddler (and clearing up the inevitable accidents) whilst caring for a teething baby, comforting a one year old with separation anxiety and keeping an eye on a child prone to biting his peers (basically four typical children) is exhausting and worrying. None of these children would be getting enough individual care and I wouldn’t have a clue where to start risk assessing the situation. I appreciate that the message is that we don’t have to take on more children but the worry is that if the nurseries start reducing their prices then childminders may be forced to do the same to avoid being priced out of the market so increasing our numbers, therefore, would be the only way to survive.
This proposal flies in the face of all the safeguarding training we have undertaken and I can only foresee detrimental effects to both the children and the childminder.

— Agencies for Childminders: I have tried to understand what the benefits of childminder agencies would be but am totally at a loss. Other than saving money on Ofsted inspections (again flying in the face of all the safeguarding priorities) I can see no reason to introduce these whatsoever. Choosing a childminder is such an instinctive decision. In the real world parents really don’t care about what qualifications the childminder hold they go off personal recommendations and their own gut feeling. It’s vital that the parents meet different childminders and visit their homes before making their decision and this works both ways too: We as childminders are letting strangers into our homes, we also need to feel comfortable with the family that we agree to take on. There is no way that I would want to be told by an agency who I am going to be allocated—I want to make my own decision who is coming into my home and being around my family. I do not need any help running my business I am perfectly capable of doing that myself and I have never had any problem collecting payment from families. Childminders are not like nurseries, you often become involved in the whole family’s life. I have been invited to weddings, christenings, birthday parties, we get postcards from holidays and updates from children who left years ago. When a parent tells me that they feel like their child has a second family I feel that I have done exactly what I set out to do. That is what childminding is all about. To introduce agencies which are neither needed nor wanted, by anyone involved in the process, would be just ripping the heart out of the profession and would change the nature of childminding entirely. So I am beginning to wonder if this is the intention: is childminding too much of a financial burden on government resources? Is this basically a way of making it such an unattractive option that childminders will eventually just cease to exist?

— Qualifications for Early Years Workers: Having attended a secondary school where girls who were unlikely to achieve any qualifications were encouraged to go on to study childcare I admit to having mixed feelings on this one. Personally I do believe that childcare practitioners should have a minimum of grade A-C in maths and English GCSE. Recently a child I had looked after for a long time began to do a couple of days at a local nursery. I wrote to his new carer, in accordance with EYFS, to introduce myself and suggest methods of sharing information about his development. I was stunned to receive back a barely literate note from her in response, needless to say the communication swiftly ceased on her part and I was left with no idea how he was getting on or what he was doing while at the setting. As a parent I would have been pretty unimpressed. I also believe that it’s probably a good idea for practitioners to have at least a level 3 NVQ in childcare (or equivalent). I do not agree, however, with the belief that these qualifications somehow enable the holder to manage more children or should overrule the most important quality that someone who works with children should possess: that is a nurturing and caring personality. Childcare is an extremely intuitive business and you can have all the qualifications in the world but if you lack that basic ability to bond with a child you are never going to be any good at working with them and aiding their development and I fear that when so much emphasis is being placed on qualifications that this may be overlooked. This is one reason why it is so important for parents to meet childminders and make up their own minds about who they choose because when they see the childminder in their home environment with other minded children they will see the bond they have with the children and it is that alone which will determine their decision not the pile of certificates in their file. I may have not been impressed by the barely literate response from the nursery worker but I know that the little boy adored her and is now doing extremely well at school so was it really so important after all?

I am very concerned about the future of childminding and I hope my comments are taken into consideration. Since I began this work I have seen fantastic childminders become disenchanted with the constant changes being made to the profession and given up which is a dreadful shame as we can offer families and children such a wonderful alternative to being cooped up in a nursery all day. Becoming a childminder is also a great opportunity for women to be able to raise their own families while not giving up work and becoming a burden on the state. This I believe is the real tragedy: that women who raise their own children are beginning to see themselves as a oddity. Elizabeth Truss has mentioned the childcare system in France as being an influence on her proposals but a French family who I work with tell me that in France mothers are expected back at work before the child is four months old and describe a strict childcare ethos, massively subsidised by the French government, very much based on punishing bad behaviour in complete contrast to ours of praising and rewarding the good behaviour. I for one would not want to emulate this model and find it deeply worrying that we have a government who do.

I consider myself incredibly lucky to have been able to be at home with my children. They did not suffer from not having ‘early educators’ they do extremely well at school and most importantly they had a carefree ‘toddlerhood’ with none of the stresses and anxiety that I often see with those who are separated from their mothers. Our children start school so young as it is, I find it staggering that at four years old they are at school for the same amount of time as they are at sixteen, it is a great sadness that so many of them start this institutionalisation even earlier. Although it would not be good for my business I would prefer to see the government do more to support mothers who wish to stay at home which in turn would be a lot more beneficial for children’s emotional wellbeing and society as a whole. No-one can replace Mum but childminders, providing they have manageable ratios, are often the next best thing.

March 2013
Memorandum submitted by Sue Gerrard (CF 44)

SUMMARY
An analysis of the education system over time suggests that persistent poor outcomes for children with SEND[1] have been due to the content rather than the form of the system, in particular;
— inaccurate assumptions about SEND, and
— lack of access to relevant expertise.
Expertise could be improved through the reallocation of existing resources and would address inaccurate assumptions.

INACCURATE ASSUMPTIONS
Two inaccurate assumptions emerge;
— that learning difficulties can be remediated by teaching per se
— that learning difficulties are biologically determined so there’s no point trying to remediate them.
The evidence suggests that both assumptions are currently implicit in educational thinking due to a widespread misunderstanding of the social model of disability.

LACK OF EXPERTISE
Since education became compulsory in 1870 around 99% of children have attended mainstream schools, and a consistent 20% or so have had SEND. Despite this;
— the mainstream teaching workforce has always lacked expertise in SEND
— access to specialist support services has always been limited
— intervention has often been too little, too late.
Currently, many children with SEND are taught by teachers without relevant training and supported by untrained teaching assistants. Unsurprisingly, many children do not experience the best outcomes.

RECOMMENDATIONS
Because inadequate access to expertise is a core problem, I recommend that;
— all teaching staff should be trained to teach children with special educational needs,
— children and teachers should have good access to specialist services
— LAs should issue EHC plans as early as possible.
These recommendations could be implemented by reallocating some funding from one-to-one support to access to specialist services. If they are not implemented, the education system will continue to fail to achieve the best outcomes for all children.

Sue Gerrard I am the parent of two teenagers, one with a chronic medical condition and another with a diagnosis of ASD and a statement, who attends an independent specialist school. In the 1970s I taught in the equivalent of a parent-controlled Free School. Since then I’ve worked in a range of sectors and have a Master’s degree in occupational psychology. I’m a director of Gerrard Rugg Associates, a consultancy working in knowledge modelling and involved in the development of knowledge representation software. My research interests are in theoretical models of child development, developmental disorders and special education. I’m author of several articles and journal papers and I run blogs on systems, autism and child development[2]. I’m also a part-time carer. This submission is made in a private capacity.

INTRODUCTION
1. The stated intention of the Children and Families Bill is to “improve the outcomes of all children and families in our society, whatever their start in life.”[3] Part 3 of the Bill proposes changing parts of the SEND system found by previous inquiries [4,5] to be problematic. However, previous inquiries have made recommendations for system-wide changes that are not part of the proposed legislation. Because the components of a system are by definition interconnected, attempting to change some parts in isolation can result in unintended and unwanted outcomes - the focus of this submission. My submission is in three parts;

I. The education system as a system
II. The perennial ‘problem’ of special educational needs
III. The underlying principles of existing legislation
I have commented in the Public Reading on possible unintended and unwanted outcomes of specific clauses in the Bill.
I. THE EDUCATION SYSTEM AS A SYSTEM

2. In practice the education system is complex, but in principle involves children undergoing a process of teaching and learning and emerging (hopefully) as well-educated young people. To be effective, teaching and learning must be closely aligned with the educational needs of children.

CHILDREN

The proportion of children with special educational needs

3. Children vary widely. Collectively, their general educational ability forms a normal (Gaussian) distribution; the abilities of around 16% of children will fall below the normal range (categorised as SEND) and around 2.2% will need significant support (statements/EHCs).

4. Previous research led the Warnock committee[6] to estimate that up to 20% of children would at some point need additional educational support and that up to 3% would need support of equivalent to that provided by a special school. A recent analysis[7] shows that these proportions have remained constant for almost half a century.

5. It’s important to note that the proportions are relative, not absolute. Even with the best teaching the percentages of children below the normal range would remain constant, because of the natural variation amongst human beings. The figures are not cause for complacency, because there’s scope for improving the quality of education generally. Nor are they a cause for concern, because they reflect natural variation, not necessarily poor teaching or low aspirations.

Types of special educational needs

6. Classification of special educational needs has varied over time, but it’s clear from the Warnock report that the types of learning difficulties have changed little. Thus we have reasonably reliable data regarding the number of children likely to need additional support and what types of support they will need.

TEACHING AND LEARNING

Teaching

7. Teaching needs to be tailored to learning, and the Warnock report devoted an entire chapter to the training and support of teachers in relation to SEND. Similar recommendations have been made in recent reports[4,5].

8. Funding for specialist teacher training has been increased recently[3]. Although this initiative is welcome, if the number of teachers involved is added to the number of teaching and support staff in special schools (as an approximation for the number of teaching staff with SEND training and/or experience), the total amounts to only 7% of the teaching workforce, and that proportion is concentrated in special schools[8].

9. The Warnock recommendations in relation to teacher training have yet to be fully implemented, which might explain why so many children with SEND, forty years on, are still falling through the net. As the Lamb Inquiry emphasized “All teachers are teachers of children with special educational needs.”

Specialist support

10. The Warnock committee also recognised that access to specialist expertise and support was essential. Recent reviews by Lamb (SEND), Bercow (speech, language and communication), Kennedy (children’s services) and Munro (child protection), have highlighted problems with capacity and/or expertise in relation to children in the education, health and social care sectors.

WELL-EDUCATED YOUNG PEOPLE

Educational outcomes

11. Over the last 20 years, successive governments have sought to improve educational outcomes by setting performance targets using pupil attainment in tests as a proxy for school performance. Although targets such as 5 A*-C grades at GCSE provide a convenient measure of overall educational attainment, they are not necessarily an attainable or appropriate target for every pupil. It is not in the interest of schools to allocate scarce resources to children unlikely to meet performance targets. Performance targets have introduced perverse incentives into the education system in relation to SEND.

12. Section 7 of the Education Act 1996 is quite clear that an education should be suitable for the age, ability, aptitude and any special educational needs of the individual, not of some hypothetical average young person. Research into long-term outcomes suggests that an education not suited to the individual can be counterproductive.
Long-term outcomes

13. Waber[9] for example, shows that economic, social and health outcomes for people with learning difficulties tends to improve in adulthood and schooldays are reported as being the most difficult and stressful period of their lives. Education should help but not hinder children and young people with SEND.

II. THE PERENNIAL ‘PROBLEM’ OF SPECIAL EDUCATIONAL NEEDS

14. The evidence[6,7] suggests that educational outcomes for children with SEND have always tended to be poor for reasons that have changed over time;

— between 1870[10] and 1898[11], education per se did not address the needs of the unexpectedly large numbers of children with learning difficulties coming into schools when education became compulsory,
— between 1898 and 1978[6], expectations about the educability of children with SEND were low,
— between 1978 and 2009[7], local authorities have prioritised the needs of children with severe difficulties at the expense of preventative early intervention.

The last point requires further explanation.

PRIORITISING COMPLEX DIFFICULTIES AT THE EXPENSE OF EARLY INTERVENTION

15. Data from 2009/10[7] indicate that the proportion of children identified as having SEND increases slightly between the ages of 5 and 10, but the proportion of children with statements doubles—from 1.1% to 2.2%. Statistically, we know that around 16% of children starting school will have SEND, around 2.2% will need a statement, and these prevalence data have remained stable over time. It appears that schools are slightly over-identifying children with SEND (23.5%), but local authorities are significantly under-identifying younger children who at some point will need statements. This implies reluctance on the part of LAIs to issue statements, and suggests that one in 100 children must encounter problems before they access appropriate support. This tallies with accounts from parents of long waiting lists for specialist services and difficulty getting statutory assessments.

16. Taken together, the statistical and anecdotal evidence suggest that current problems with the SEND system are due to the way resources are allocated rather than the structure of the system itself. The evidence suggests that the Warnock framework is still fit for purpose; the problem is not with its form, but its content.

FORM vs CONTENT

17. Children’s learning difficulties are often very specific, even when ‘complex’. Some difficulties are encountered frequently across a range of disorders and include impairments in;

— sensory perception
— speech and language
— working memory
— attention
— impulse control
— gross and fine motor function.

Despite the specific nature of the learning difficulties, since 1898 public inquiries have repeatedly reported low levels of specialist expertise in mainstream classrooms and specialist services unable to meet demand.

18. Currently, support for children with statements frequently takes the form of a specified number of hours working one-to-one with a teaching assistant, often untrained. Recent research[12] has shown that children supported by TAs tend to make poor progress, and that many teachers have not been trained to work with TAs, who report having to operate ‘on the hoof’ for much of the time.

19. Although children with statements might need one-to-one support, outcomes are likely to improve if appropriate specialist support is provided as soon as learning difficulties are identified. It isn’t difficult to detect speech or language delays in children starting school, for example, and prompt remediation can make a significant difference to literacy skills. But if no one in the classroom has appropriate expertise and specialist services have waiting lists of months or even years, a minor speech or language impairment can rapidly develop into complex educational and behavioural difficulties.

20. In 2008/2009 the cost of support staff in schools totaled £4.1 billion[12]. Much of that support involved untrained teaching assistants and was far less effective than hoped. It might be time to re-allocate some of that resource to specialist early intervention and training for teaching staff, as recommended by previous inquiries.

It’s worth considering why that hasn’t happened.

Why is early specialist intervention not prioritized?

21. One plausible explanation is insufficient investment per se in the SEND system, but that’s unlikely as significant sums have been spent on one-to-one support.
22. A second possibility is insufficient investment in specialist services after the Education Act 1981, resulting in ‘failure demand’. But contemporary accounts suggest that access to specialist assessment and support was comparatively easy at that time.

23. A third, more likely explanation that also accounts for intervention consisting largely of one-to-one support from untrained TAs, has its origins I suggest, in a widespread misunderstanding of the social model of disability.

**The social model of disability**

24. The social model of disability began to gain popularity in the period following the Education Act 1981. It draws a distinction between:

- **limitations** experienced by someone as the result of a biological impairment[13], and
- **disability** experienced as the result of failure by society to accommodate or accept those impairments.

The social model of disability differentiates itself from the medical model of disability that locates disability in the limitations or impairments themselves – implying that someone is disabled because there is something ‘wrong’ with them.

25. These distinctions are subtle and easily misunderstood. The DfE training materials for severe, profound and complex learning difficulties[14] for example, appear to see a disjunct between children’s impairments and their needs, and to disparage attempts to address impairments;

“The individual (or medical) model of disability focuses on the nature and severity of a child’s impairment rather than on their needs, and the extent to which difficulties can be overcome or militated against. The power to ‘change’ [sic] such children is often seen to lie with medical, educational or other professionals.” (Slide 2)

26. The British Red Cross teacher briefing on disability[15] goes even further. After explaining the social and medical models it says:

“So the impairments themselves don’t matter?

Obviously, they still matter. Not being able to see, hear, walk, has an important effect on people. But generally speaking people find ways to cope – they get used to living with the impairment. And in any case what someone with an impairment cannot do is always much less than what they can do – if they are given the chance. The idea of the social model of disability is to give them a chance, remove the barrier that society places.”

27. In fact, many people with impairments do not ‘get used’ to living with them. What people with impairments can’t do is not always less than they can do. The social model of disability is not about giving people ‘a chance’, it’s about people with impairments being enabled to lead the sort of life they want to lead—which might involve remediating the impairments.

28. The suggestion that impairments can and should be treated where appropriate often results in accusations of ‘medicalising’ the child. Children can of course be ‘medicalised’—the outcomes of poor teaching can be attributed to something being ‘wrong’ with the child. That doesn’t negate the fact that children vary biologically and those biological variations can often be ameliorated.

29. The pendulum appears to have swung so far from the medical model of disability that it’s now seen as inappropriate to treat or even investigate biological variations that might be causing a child’s learning difficulties. Many common minor impairments involving, for example, sensory processing, working memory or motor control can be effectively treated in a variety of ways, thus reducing limitations and the risk of ‘disability’, but these services are often inaccessible or non-existent.

**Black boxes**

30. The intention of the Bill is clearly to improve outcomes for children with SEND. However, a focus on structural changes risks the system being seen as a series of ‘black boxes’, and an assumption that if statutory duties, teacher training, classroom support and specialist services are nominally in place, they must be fulfilling the function for which they are intended. What the evidence shows is that the form of these provisions doesn’t guarantee their content, and it’s the quality of content that explains why the SEND system has repeatedly been found not fit for purpose.

**Recommendations**

An analysis of the system as a system suggests that some relatively simple and inexpensive steps could bring about significant improvement.

*Train teachers and teaching assistants in SEND*

Special school placements and Master’s degrees[3] might be desirable, but in the short-term, classroom expertise could be improved by in-service training, using for example, the DfE’s advanced SEND training materials[16].
**Reallocate resources to early intervention from specialist support services**

Currently, children often have to fail at school before they can access the support they need. The data suggest that schools are accurately identifying children with SEND, but that children do not get appropriate or timely support. Some TA support could be replaced with speech and language therapy, occupational therapy, cognitive skill development and behavior management training.

**Issue EHC plans as early as possible, not as late as possible**

We know what proportion of children are likely to need EHC plans. Local authorities should consider issuing EHC plans as early as possible rather than as late as possible, and plans should focus on remediating the causes of learning difficulties, as well as one-to-one support.

**III. The Existing Legislative Framework**

In recent years the general responsibilities of central and local government towards children have increased, resulting in a frequent lack of clarity about where parents’ responsibilities end and LAs’ responsibilities start. If the clauses in Part 3 of the Bill are not read in the context of previous legislation, some of them are likely to be misunderstood. The existing legislative framework makes clear that:

- Parents are responsible for their children’s education and welfare.

Parents have:

- an explicit duty to cause their children to have a suitable education [17] and
- an implicit duty to avoid putting them at risk of significant harm [18].

There are only two sets of circumstances in which LAs should intervene in relation to parental responsibility for children;

- if the parent is unable to educate or look after the child and asks the local authority to take over these duties

or

- if there is reason to believe the parent is breaking, or likely to break the law by not ensuring the child has a suitable education or by putting the child at risk of significant harm.

Local authorities should also have regard to;

- the general principle that children should be educated in accordance with the parent’s wishes [19].

This framework has implications for unwanted and unintended outcomes if Part 3 of the Bill is implemented as it stands. I have commented on the wording of specific clauses in the Public Reading of the Bill.

**Endnotes**

[1] I use the abbreviation SEND (special educational needs and/or disabilities) to refer to children who need additional support with education for whatever reason.


[10] Elementary Education Act, 1870


[13] The term ‘impairment’ is itself questionable, but I have used it because it’s commonly employed in relation to the social model of disability.

PART 3: CHILDREN AND YOUNG PEOPLE IN ENGLAND WITH SPECIAL EDUCATIONAL NEEDS

Summary

1. The Law Society of England and Wales is the independent professional body, established for solicitors in 1825, that works globally to support and represent its 166,000 members, promoting the highest professional standards and the rule of law. This evidence has been prepared by members of the Society’s Mental Health and Disability Committee.

2. The Society is pleased to note that the Children and Families Bill has amended parts of the draft SEN legislation published in September 2012 following scrutiny by the Education Select Committee. In particular, the requirement for Education, Health and Care Plans (‘EHCPs’) to ‘specify’ rather than simply ‘set out’ provision in an EHCP, the extension of an EHCP to young people undertaking apprenticeships, the code of practice being subject to parliamentary scrutiny and the removal of the requirement for mediation to be compulsory are all to be welcomed.

3. However, the Government has not followed many of the Education Select Committee’s recommendations such as that EHCPs should be extended to disabled children and young people who do not have special educational needs. Other significant concerns include that while there is a duty on education, social care and health to cooperate, only the education part of the EHCP is enforceable and only Local Authorities are respondents to tribunal proceedings; the local offer being neither enforceable nor measurable against a national standard; the lack of timetables in relation to statutory assessments and associated issues concerning rights of appeal and a weakening of various current provisions.

4. Furthermore, the Society questions how these new duties (which can extend to young people up to the end of the academic year in which they turn 25) can be delivered without a commitment for specific ring-fenced new money. This issue does not appear to have been addressed in the school funding reforms being introduced in April of this year.

5. The Society supports the amendments proposed by IPSEA (Independent Parental Special Education Advice) in its March 2013 written submission to the Public Bill Committee.

6. The Law Society has the following additional comments and proposed additional amendments:

The Local Offer

7. The local offer provisions are set out in Clause 30 but the detail of these provisions ‘may’ rather than ‘will’ be set out in regulations. The local offer will only be meaningful if it is up to date, meets a national standard and can be enforced if it does not comply with this standard or the primary or secondary legislation associated with it.

7.1. Clause 30(5) replace ‘may from time to time revise it’ with ‘must revise it by 31 January every year before decisions about phase or other transfers are made or more frequently, if the information contained therein is no longer accurate’.

7.2. Clause 30(8) replace ‘may make’ with ‘must make’

7.3. Clause 30(8)(a) add on ‘which will be subject to a national standard set out in the regulations’

7.4. Insert a new Clause 30(8)(f):

‘how to ensure a local offer is put in place and the content of that offer’.

7.5. Clause 30(9) replace ‘may’ with ‘must’

8. Further, even though the Bill as currently drafted does not make the health and care parts of an EHCP enforceable, much of the provision set out in the local offer is of course also relevant for children and young
people who have health or social care needs but who do not have SEN. This highlights the unfairness and inconsistencies which are the result of not extending EHCPs to these children and young people.

**EDUCATION AS THE ONLY ENFORCEABLE COMPONENT**

9. The fact that special educational provision is the only enforceable component before the Tribunal, rather than all three parts of an EHCP, is a significant flaw in the Bill and a missed opportunity for streamlining processes for children, young people and parents.

10. The Society understands that in order to make the health and care parts of an EHCP enforceable, the duties under the NHS and Children’s legislation would need to change from target duties to individual duties. However, it urges the Government to consider further how this could be achievable so that all the component parts of the Plan are equally enforceable and so that children and young people with health and care needs but without SEN or without an EHCP would have a right of appeal to the Tribunal in the same way as those with EHCPs. The duty to cooperate falls far short of achieving this or bringing about meaningful change to the current system.

11. A consequence of education being the only enforceable component is that the welcomed concept of single assessments appears to have been lost other than for those children and young people for whom it may be necessary to put in place special educational provision; other children and young people will continue to face multiple assessments.

**NATIONWIDE THERAPY SERVICE FOR CHILDREN AND YOUNG PEOPLE**

12. If the Government is not minded to make the health and social care parts of the EHCP enforceable, the Society recommends that consideration be given to establishing greater and properly integrated provision of, for example, occupational health, physiotherapy, speech and language therapy, sensory services, CAMHS and AMHS. This could be achieved via a national appropriately funded multi-disciplinary assessment service for children and young people available at the point of need, which would be accessible locally and included in the local offer. This should be available to all children, not just those with SEN. This is imperative if anything positive is to change for the future as a consequence of not making the other parts of the EHCP enforceable. Experience has shown that an absence of these services at the appropriate time leads understandably to parental requests for Statements, (soon to be EHCPs), and that trend is likely to continue in the future under this Bill. Such a service may minimise the current difficulties faced by children and young people in accessing provision whilst not requiring changes to the legal framework of the NHS.

**DETAINED CHILDREN AND YOUNG PEOPLE**

13. The overrepresentation of children and young people with SEN in the justice system has been well documented by, for example the Prison Reform Trust in publications such as Punishing Disadvantage: A profile of Children in Custody.109

14. The Society considers that detained children and young people should be allowed access to the support available to children and young people with or without an EHCP. It proposes that Clause 69 be deleted and a new clause inserted which clarifies that responsibility for Part 3 provision for detained children and young people passes from a local authority to the Youth Justice Board or HM Prison Service as appropriate whilst they are detained.

**THE BALANCING EXERCISE**

15. Special educational needs case law since the Special Educational Needs Tribunal (now the First-Tier Tribunal (Special Educational Needs and Disability)) was established, demonstrates ongoing universal confusion about the balancing exercises involved in placement decisions.110 The Society is concerned that as currently drafted, the Bill will perpetuate these balancing exercise issues and unnecessary challenges will continue to be made as a result, to the detriment of all concerned but particularly children and young people.

March 2013

Supplementary evidence submitted by Nagalro (CF 46)

CLAUSE 13 CONTROL OF EXPERT EVIDENCE, AND OF ASSESSMENTS, IN CHILDREN PROCEEDINGS

PROPOSED AMENDMENT

The negative tenor of this clause risks raising issues of cost above considerations of the welfare of children. Expert evidence can be essential to secure the welfare of children. Without it there will be more wrong decisions.

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110 Recent case examples include Dudley MBC v Shurvinton &Ocs [2012] EWCA Civ 346; EH v Kent CC [2011] EWCA Civ 709; Essex County Council v SENDIST (1) & S (2) [2006] EWHC 1105 (Admin).
for children, more appeals and more delay leading, perversely, to higher costs. We propose paragraph 7 is amended to clarify that the welfare of the child remains the court’s paramount consideration when taking account of the other factors mentioned in this section.

At page 10, line 20 after regard insert ‘in particular to the child’s welfare as its paramount consideration and then’.

(7) When deciding whether to give permission as mentioned in subsection (1), (3) or (5) the court is to have regard in particular to the child’s welfare as its paramount consideration and then to—

RATIONALE

Courts need expert evidence when they lack sufficient evidence from other sources on which to base a just decision, particularly when expert evidence will prevent delay and enable the court to meet the child’s timetable. The Family Justice Review said: “Expert evidence can often be necessary to a fair and complete court process.”\(^{111}\) Nagalro supports the proposed test that any expert evidence must be “necessary to assist the court to resolve the proceedings justly” (s.13 (6)). Courts can ensure unnecessary instructions are not allowed through robust case management, focussed letters of instruction and tight timetables.

Clause 13 aims to reduce the use and cost of expert evidence, based on the belief, largely accepted by the Family Justice Review, that over-use of experts adds to costs and delay in court proceedings. Recent research findings suggest this belief is not supported by the evidence.

Cafcass Children’s Guardians, surveyed November 2011\(^{112}\), reported that the biggest reason for delay, in two-thirds of cases with delay, was local authority practice and resources. Issues relating to experts affected 10% of cases with delay. The major factors were not about experts themselves, but related to blocks in the system e.g. delay in letters of instruction being sent, the lack of availability of suitable experts, and delay in the appointment of the Official Solicitor for parents who lack capacity. There was no delay in cases where there was robust case management by courts and ready availability of expert witnesses.

Research by Dr Brophy at Oxford University into the contribution that independent social work (ISW) expert reports make to family proceedings\(^{113}\) found that ISW assessments provided new evidence about parents or others who had not been assessed by local authorities, and in cases where there was significant dispute about a local authority assessment. There was no evidence of routine duplication with a current local authority core assessment. There was no evidence that ISW reports cause delay to court hearings. ISWs filled gaps in the evidence needed by courts to make their decisions.

This clause will not address the significant delay that is caused by Legal Services Commission and its arbitrary decisions about funding expert reports. The LSC can thwart the court obtaining the expert evidence that it requires by imposing an arbitrary cap on the hours it will fund, leading to appeals and considerable further delays for children.

Clause 14 – Care, supervision and other family proceedings: time limits and timetables

PROPOSED AMENDMENT

We are concerned by the lack of flexibility in the time limit proposals, which will unhelpfully constrain courts. We share the desire to reduce delay for children, but we are also aware that children’s cases are very varied. In Nagalro’s view the courts require the discretion to set a timetable that accords with the welfare of each individual child. We propose the following amendment to clarify this point:

insert ‘and in accordance with the provisions of section 1 of the Children Act 1989.’ at page 12, line 35.

(5) A court in which an application under this Part is proceeding may extend the period that is for the time being allowed under subsection (1)(a)(ii) in the case of the application, but may do so only if the court considers that the extension is necessary to enable the court to resolve the proceedings justly and in accordance with the provisions of section 1 of the Children Act 1989.

RATIONALE

We are disappointed that the Bill has not taken account of the Justice Committee’s recommendation that there be greater flexibility over granting extensions to the 26 week limit for good child centred reasons. For example in one case a young girl, a very able student, was willing to give evidence and requested this took place after her GCSEs. In this case the time required would have gone beyond the 8 week extension.

The plan to limit time taken by care proceedings will only be effective for children if decisions are based on proper assessment and care planning. It assists when this work is done by local authorities before proceedings start. There is also substantial research evidence that many cases come to court lacking any assessment. Studies

\(^{111}\) para 3.120, Family Justice Review Final Report (November 2011), MoJ, DfE, Welsh Government

\(^{112}\) Cafcass Care Application Study 2012 http://www.cafcass.gov.uk/publications/reports_and_strategies.aspx

have found that about 40% of care proceedings cases come to court without an up-to-date core assessment. Cafcass’ 2012 research also found that the local authority only provided all the information that it is required to supply to the court in 42% of cases.

In emergency cases assessment only starts at the initiation of proceedings. In cases already known to local authorities there are two problems with work undertaken pre-proceedings. Firstly, parents’ legal representation is limited in that stage, placing parents at a disadvantage. The child lacks any independent representation at this stage. Secondly, the problem is compounded by the fact that without a court and a Children’s Guardian to monitor timetables, these steps are likely to take longer. This will prolong the child’s journey to a final decision.

Simply instituting a rigid 26 week time limit when it is clear that cases cannot be resolved satisfactorily within this timeframe at present will be a recipe for unjust and arbitrary decisions. If courts do not have sufficient time to obtain suitable evidence they will have to guess at what is the right decision for a child. Such a guillotine will be a violation of the child’s rights to fair justice, as well as their parents’.

**Clause 15 – Court scrutiny of care plans**

**Proposed amendment**

This is arguably one of the most important clauses in the bill. It has the capacity to significantly change the nature of care proceedings. Rigorous testing of evidence in court when the state is intervening in family life has been a key principle of family justice. This clause will shift power for many crucial decisions back to local authorities.

Strong disquiet about the power of local authorities to end parental responsibilities and contact through entire administrative processes was a key driver behind the creation of the Children Act 1989. There should be a formal, judicial process to consider the paramount interests of the child in relation to all key areas of the local authority’s plans. In this context implementation of Clause 15 will be a retrograde step.

After careful thought it is our view that this clause should be deleted in its entirety.

**Rationale**

Care plans are central to ensuring that state intervention in the life of vulnerable children is exercised in a purposeful way and is likely to ensure children’s needs, which are all too often complex, will be provided for in a coherent way.

A reduction in the scope of courts to consider the local authority care plan for a child will also serve to limit the Children’s Guardian’s ability to address these issues in their investigation as part of their tandem role with the solicitor to safeguard the welfare and best interests of the child.

Nagalro strongly believes that the best interests of the child will not be served by limiting judicial scrutiny of the care plan. The distinction between what is ‘core’ and what is ‘detail’ in a care plan is not easily defined, as the Family Justice Review report itself acknowledged. This needs to remain within the court’s discretion and Nagalro sees the House of Lords judgment in Re S; Re W as setting out what is still the correct approach:

“…when deciding to make a care order the court should normally have before it a care plan which is sufficiently firm and particularised for all concerned to have a reasonably clear picture of the likely way ahead for the child for the foreseeable future.”

The experience of our members is that decisions about whether siblings are placed together or separately, what therapeutic, health and educational provision they need, the particular type of placement, and the other matters indicated in the Family Justice Review can be crucial issues for children’s welfare, and not capable of being neatly separated off from permanence options.

**A significant weakening in a core safeguard for children**

These matters cannot always be safely delegated to local authorities. It is already too easy for local authorities to make decisions about children for administrative or other reasons that are not child-centred.

There has already been a reduction in the amount of time and quality of work that Cafcass permits guardians to undertake and the Cafcass Operating Framework introduced on 1 April 2012 legitimises a restricted model of proportionate working which is at odds with the legislative framework. This is leading to a loss of quality in the ability of children’s guardians to scrutinise local authority care plans in court proceedings. Limiting the court’s ability to scrutinise care plans will constitute a further reduction in the ability of Children’s Guardians to

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116 As 2 above.
safeguard children’s interests when decisions are being made about them that will radically affect their whole lives.

The provisions for the representation of children by children’s guardians are legislatively sound but as the Chief Executive of Cafcass said in his oral evidence to the Justice Select Committee on 17 July 2012, although cases may be nominally allocated, the time that guardians can spend on each case is limited and the quality of the Cafcass case analysis needs to be improved.119

It is very important that children have the opportunity, through their representatives, to interrogate the plans for their lives at a stage where they can still be changed. We would be alarmed if such a fundamental change in children’s rights was put in place as it would have the capacity to undermine the principles of the Children Act 1989 as well as the rights of children embodied in the UN Convention for the Rights of the Child and the European Human Rights Convention. We fear that this proposal will constitute a significant weakening of another core safeguard for children and that the provision is unrealistic in its lack of allowance for what may be poor or inadequate local authority practice.

There are also continuing concerns about the ineffectiveness of the Independent Reviewing Officer (IRO) service in holding local authorities to account. A reduction in the level of court scrutiny of care plans will place an additional burden of responsibility on the Independent Reviewing Officer service at a time when there are serious questions about its functioning and the conflicts of interest involved in the employment of IROs by the same local authority that has parental responsibility for the child. Many IROs carry unacceptably large caseloads—often in excess of 100. The problems were starkly illustrated by the case of A and S v Lancs CC [2012] EWHC 1689 (Fam)120. In this case the IRO had a caseload of over 200.

It is very worrying that the National Association of Independent Reviewing Officers (NAIRO) had to write to the Minister for Children on 14 May 2012 to complain that a significant number of their members were being threatened and intimidatated by local authority managers to prevent them from making challenges to care plans for children. In its recent Report the House of Lords Committee on Adoption Legislation121 was sufficiently concerned about the lack of effectiveness with the IRO current service to recommend that it needs to be relocated outside local authority employment by implementing section 11 of CYP Act 2008.

We are deeply concerned that such a change would be counterproductive and lead to poorer long-term outcomes for the children involved.

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Memorandum submitted by the National Association of Independent Schools and Non-Maintained Special Schools (NASS) (CF 47)

**NASS and the Children and Families Bill**

1. NASS, the only national umbrella body for special schools outside Local Authority control, is delighted to provide this briefing for members of the Children and Families Bill Public Bill Committee. NASS welcomes the proposals in the Bill which extend parent choice and give help to some of the most vulnerable children and young people, many of whom have very complex needs.

2. However, we would like to focus our comments on a couple areas of the Bill which we feel could be improved. NASS feels that the impact of proposals to increase parental choice could be limited because of the procurement obligations which local authorities currently perceive they face. We would also like to outline some concerns around the impact of the SEN Provisions on young people with complex needs who are aged between 19 and 25, particularly supported in the non-maintained and independent special schools sector.

**Parental Choice and Procurement**

3. NASS is delighted that the Government have updated the SEN Clauses so that Independent Special Schools are included in the list of schools parents can express a preference for, alongside Independent Specialist Colleges. The initial draft SEN Clauses of the Bill confirmed that the law would be changed to give parents of children with statements of SEN (and in future Education, Health and Care (EHC) Plans) identical rights to express a preference for any state-funded school, including Non-Maintained Special Schools. However, this was not extended to Independent Special Schools, making it harder for parents to send their children to get the support they require.

4. NASS is grateful that that the Government has listened to significant concern from the sector and will now allow schools to self-select as “Approved Independent Special Schools”. We understand that schools will be approved by the Secretary of State in a “light touch” process and are looking forward to feeding into the development of this process.

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119 O guardian, where art thou? Martha Cover, article in Seen & Heard, Vol 22 Issue 2
120 http://www.bailii.org/ew/cases/EWHC/Fam/2012/1689.html
121 Published on 6 March 2013
5. However, NASS would like to alert members of the Public Bill Committee to concerns we have around conflicts between the perceived procurement obligations of local authorities and the need to provide pupil and parental choice in SEN provision. We fear that the proposals to increase parental choice will be limited because of the way that local authorities currently approach procurement of school places for children and young people with complex SEN.

6. Our members have found that because of the current trend in Local Authority procurement to place all non-maintained and independent special schools within framework agreements they need to comply with numerous bureaucratic procedures which take up a considerable amount of time. This is in contrast to maintained special schools and academies who are not asked to comply with such procedures.

7. Local authorities have argued that procuring via a framework agreement gives them the cheapest deals with a quality assurance and that this allows placements of children and young people with SEN to be placed in non-maintained (including independent) schools with least impact on resources all round. However, it is clear to NASS that block purchasing and framework procurements involve administrative burdens which maintained schools do not have to go through. This is discriminatory, and, reduces choice for SEN pupils meaning that children and young people are often excluded from the personalised teaching and learning that non-maintained and independent special schools can bring. NASS fully recognises that procurement law has to be followed but how it is applied can be relatively flexible in relation to SEN provision so we can see no reason why local authorities are making it harder for children and young people to attend non-maintained and independent special schools.

8. Last year NASS worked with the Nationwide Association of Fostering Providers (NAFP) and the Independent Children’s Home Association (ICHA) to undertake a survey on the impact of local authority procurement on voluntary and independent children’s services providers. This survey found that providers are spending increasing time on procurement-related activity and that some local authorities are more focused on costs than the needs of the child when making placements. Although for education and care placements authorities are not required to do more than have regard to EU procurement law when considering placements, many authorities are running full procurement activities, most usually seen when procuring Type A services under EU Procurement rules.

9. NASS is concerned that because of the existing procedures in place there will be significant challenges in future for a local authority to properly consider efficiency when considering the attendance of a child or young person at its requested school if such a placement is from the non-maintained and independent special schools sector.

10. In order to tackle this problem NASS would like to see some minor changes made to Clauses 26 (Joint Commissioning Arrangements) and 39 (Finalising EHC plans) to ensure that local authorities do not discriminate between maintained schools and non-maintained schools. We will be seeking to table amendments to the Bill and would be grateful for any support you can offer.

Education, Health and Care Plans—Post-16

11. NASS supports plans to replace SEN statements with a single plan from birth to 25 years and hope this will result in a stronger focus on preparing young people for adulthood. In recent years an increasing number of NASS members have developed services to young people with complex needs. This support is sometimes delivered through Independent Specialist College Provision but many of our members deliver adult social care plus a variety of health, social enterprise and employment services. Often, this provision has no formally recognised education component and is funded through adult social services or continuing care support.

12. NASS has concerns about the potential impact of the Children and Families Bill on young people with complex needs who are aged between 19 and 25. We support the proposal to provide an EHC plan to young people but are concerned that we are yet receive clarification that those with profound and complex needs aged 19-25 would be eligible for continuation of their plans. This is concerning for our members because, for many of the young people we support, there are few clear cut educational opportunities and they are the ones who are most likely to benefit from the continued protection of the plan. Development for these young people is not about being educated in a (more expensive) provision but is about targeted transitional activities which can be delivered as part of their day to day programmes. As you might be aware, many of the young people in our sector have profound and multiple learning difficulties and benefit from continued learning past the age of 19, especially as they generally learn much more slowly than their mainstream peers.

13. NASS believes that many young adults with complex needs require a period of time, after their formal schooling, in a transition service. For example some of our young adults may have very limited life experiences and might need to continue to experience such things as going to the supermarket, choosing which film to watch at the cinema, going to local restaurants etc. The period of time they spend in such a service will mark the transition from childhood to adulthood and be a type of “social apprenticeship”—a period in life which helps them develop as an adult and prepare for a more independent life.

14. NASS believes that young adults with complex needs cannot navigate these transition years as other young adults can. The years between 19 and 25 are socially accepted as a time of experimentation and of finding limits and boundaries; we do not expect non-disabled young adults at the age of 19 to settle down in to adult life or go into an adult home environment where they stay for the rest of their life. Young adults with complex
needs require support to make sense of the transition years and to develop a sense of themselves as adults and what it means to be an adult. It is not possible to train young adults with complex needs (who may well find it very hard to generalise) to be adults until they are actually old enough to take part in adult activities. Creating the right environment to achieve an understanding of adult life is an important part of supporting development.

15. Children with complex needs have an entitlement to education and this entitlement should be extended to them when they become young adults and not stop at this crucial stage in their lives. A considerable time and effort has been put into their education as children but in order to ensure that the social and financial investment that has been made during these school years is protected we feel that the Government must guarantee that young people with complex needs have continued support past the age of 19.

16. NASS is encouraged by the Edward Timpson MP’s commitment that the Government will shortly table an amendment to the Bill which will result in a duty being placed on Clinical Commissioning Groups to secure the provision of health services as agreed under the EHC plans. We will wait to see if this duty will support the children who are currently being supported in our sector.

17. NASS recognises that regulations will make clear proposals around maintaining an EHC Plan, however, we would like clarification that under proposals children and young people with complex needs will have the same transition opportunities as their mainstream peers and that help them find suitable longer term adult placements.

ABOUT NASS

18. The National Association of Independent Schools and Non-Maintained Special Schools is a membership organisation catering for approximately 10000 very vulnerable children and young people. It provides information, support and training to its members in order to benefit and advance the education of children and young people with SEN.

19. NASS is the only national organisation representing special schools in the voluntary and private sectors. NASS works in partnership with key national and regional organisations and acts as the voice for Non Maintained and Independent Special Schools (NMISS). NASS has 215 members, spread over the whole of England and Wales. Non-maintained and Independent Special Schools cater for around 13000 of the most vulnerable children in the country with very wide ranging, but complex, needs. Over 99 per cent of places in NMISS are funded indirectly by the public purse, through Local Authorities making placements.

March 2013

Memorandum submitted by Nasen (CF 48)

NASEN

Nasen is the leading UK professional association embracing all special and additional educational needs and disabilities. The organisation promotes the education, training, development and support of all those working within the special and additional educational needs and disabilities sector. Nasen contributes greatly and has a strong influence on policy and practice in the area of special educational needs through consultation and joint projects with other professional bodies.

As a membership organisation Nasen is able to consult with its members as well as gaining relevant information from the increasing number of practitioners it works with. In the last two years Nasen has training 5000 SENCOs and has gained a great deal of knowledge and insight into the challenges that schools are facing in regard to the more complex needs that many children and young people are now exhibiting.

NASEN AND THE CHILDREN AND FAMILIES BILL

Nasen welcomes the government’s commitment to supporting vulnerable and disadvantaged children and young people and are hopeful that this Bill will offer an opportunity for a more steam-lined, transparent system that schools can manage and that children and families have confidence in.

We were very pleased with the changes that were introduced to the Bill from the recommendations from the Education Select Committee Pre-Legislative Scrutiny.

We were also delighted with Edward Timpson’s announcement on the first day of the Bill Committee sessions where he outlined a new duty which would mean that clinical commissioning groups would by law have to secure services in education, health and care plans for children and young adults. We look forward to seeing the finer detail of this duty and the implications for children, young people and their families.

Nasen’s members feel that there are a great many questions still to be answered in terms of the processes that will support many of the policy objectives. It also needs to be acknowledged that this Bill is being introduced alongside the most radical reform of the education system that many have seen. The Academy and Free School agenda, national funding reform, national curriculum and assessment changes including the introduction of the phonics check, distribution of Pupil Premium, significant changes to the Early Years Foundation Stage and the
Introduction of two Ofsted frameworks in one year all need to be considered alongside these SEND legislative changes.

Consideration also needs to be taken in regard to the lack of central services at local authority level as well as the major, radical changes currently being undertaken across the health service.

NASEN would like to see the following addressed by the Children and Families Public Bill Committee

1. Clearer guidance on the processes that will need to be in place so that schools can implement the legislative changes especially in regard to the move to a single assessment process (removal of school action and school action plus) that ensures that all children and young people continue to get the support they need.

2. The regulations in the Code of Practice being robust enough to ensure that schools carry out the necessary processes using a staged approach with expectation of identify, intervene, monitor, evaluate and measure progress.

3. We would like to see a National Framework for the Local Offer which would underpin the expectation that every local authority must include certain criteria in their offer—this can then be localized and be clear and transparent for parents and families.

4. We also believe that there should be a school offer. What does this school offer every child, every-day. This would include a commitment to NASEN’s Every Teacher Campaign—Every teacher is responsible and accountable for all pupils in their class wherever or with whoever the pupils are working.

   This would ensure a whole school understanding of Quality First Teaching.

5. We would also like to see a National Framework for an Education, Health and Care Plan again containing set criteria that are common across every local authority—localized information can be added to the framework. This will help reduce the current “postcode lottery” that exists.

6. We would wish to see the removal of “hours of support” and the introduction of outcomes for children and young people. There is a culture of expectation about 1-1 hours of support that may not bring about the best outcome for the young people. Parents and families expect hours and teachers expect hours and therefore the person providing the hours is left teaching the young person. This may be the least qualified person in a school.

7. We are still very concerned about the legal duties on health and social care and their participation in both assessments and the delivery of services. The aspiration of the Green Paper was that this would be an integrated plan but it is still very much an Education plan with health and social care opting in where necessary. There are concerns about those young people who currently do not have educational needs because they are receiving input from health/social care but without this may have educational needs.

8. We would ask the committee to re-consider the inclusion of disabled children with health and social care needs, but no significant educational needs within this Bill as currently it is highly unlikely that they will be able to access an Education, Health and Care Plan in the future.

9. Consideration needs to be given to the radical changes that are currently taking place within the health service and although the new duties to plan and commission services jointly are welcomed there are a number of discrepancies between current Children’s Trusts and Health and Well Being Boards.

10. We were delighted with the extension of entitlements to young people up to the age of 25. There needs to be assurances that all young people up to 25 who need the support given from an EHC plan are able to access one and that the provision to enable them to be in education, employment and/or training is available to them and funded appropriately.

11. It is a concern that universities have been left out of the Bill.

12. We welcome the emphasis on the engagement of parents and young people but would seek further clarification on how local authorities are going to engage with those families and young people who may be difficult to engage with when they are looking at their review of the local offer and the services they are providing.

13. The role of the SENCO is going to be crucial in ensuring that all of the new legislation is embedded in school practice, especially with the reduced support from local authorities. How can we ensure that all schools have appointed a qualified teacher to the role of SENCO and that they are undertaking the NASENCo Award? It would be helpful if we knew if there was continued funding for this and that a review of current providers takes place before September 2013.

14. NASEN would also advocate that the SENCO should be a member of the Senior Leadership Team and be given the time and resource to undertake the role effectively.

15. We have welcomed the SEND Pathfinder Programme Report and congratulate the Pathfinders on the progress they have achieved so far. However, we are concerned about the small numbers of children, young people and their families who are actually benefiting from this excellent work. For example—Is it going to be possible to replicate some of the Personal Budget initiatives when rolled out across thousands of families?

16. There needs to be greater clarity in regard to the transition at 25 from being a young person to an adult and the support and services they can expect from adult services.
In conclusion, nasen welcomed the opportunity to give oral evidence on 5th March and supply this written evidence with our further comments. The key message from us as we move forward is that no matter what the final Bill includes we need to ensure that there is very clear communication to Early Years Providers, schools and colleges about the implementation and impact of the Bill. This needs to be part of all initial educational training whether for Early Years staff, teachers, non-teaching staff, health and social care professionals and equally there needs to be a clear message to schools about the importance of continuing to ensure that all educational practitioners have a comprehensive understanding of the new legislation and the requirements on them to deliver and enable them to identify and intervene quickly when difficulties occur.

Edward Timpson during the Children and Families Bill session on March 5th stated

...the Bill has to help create the framework for the culture change needed on the ground – to recalibrate the way that professionals work and their behavior around each other, so it is much more co-ordinated and parents are much more involved in the process from the start.

This will demand a significant amount of effort in bringing education, health and care professionals together to ensure each has a complete understanding of the others roles and responsibilities to deliver the very best outcomes for our most vulnerable children, young people and their families.

March 2013

Memorandum submitted by the Communication Trust (CF 49)

This submission sets out the collective view of The Communication Trust, a coalition of 47 voluntary organisations with expertise in speech, language and communication, on the Children and Families Bill. The Communication Trust is committed to working collaboratively and is a member of the Every Disabled Child Matters Campaign (EDCM); we endorse their briefing and through this paper add specific issues for speech, language and communication.

The Trust welcomes the Government’s overall vision to improve outcomes for children with SEN and we broadly support the intention of the clauses in Part 3 of the Bill. However, the Trust has specific concerns about the effect of some of the changes on the one million children and young people in the UK with speech, language and communication needs (SLCN), the most prevalent special educational need in primary-aged children.

Our overarching concerns are that:

1. The majority of children with SLCN do not currently have a statement for SEN and so would not receive an Education, Health and Care (EHC) plan\(^{122}\); these children must not be disadvantaged by a ‘Local Offer’ which does not meet their needs.

2. The clauses on the Local Offer are too weak to provide adequate reassurance that children with SLCN who do not qualify for an EHC plan will have their needs met. There is a lack of clarity on channels of accountability for the quality and delivery of the Local Offer. The absence of a statutory framework could result in geographical inequality.

3. Early Identification is the key to improving the education outcomes for children and young people with SLCN; the Trust has concerns over how the Bill will ensure that the mechanisms for identification will work in practice across all educational phases\(^{123}\) and also on local authorities’ ability to identify needs as early as possible.

4. There is a lack of detail on how joint commissioning arrangements will work in practice, especially over how health services will be held accountable within these structures.

5. The Minister has not adequately addressed the issue raised by the Select committee for greater clarity on what provision will be made for pupils who currently receive support under the School Action and School Action plus categories.

6. We welcome the inclusion of Youth Offending Teams in the clauses around cooperation but we are extremely concerned that detained children and young people will not be covered despite the high incidence of SLCN in young people in the youth justice system.

7. With the creation of childminder agencies in Part 4, we are concerned how all children, including those in early years non-maintained settings are identified and receive the support they need.

\(^{122}\) 86% of all children with SEN do not have a statement.

\(^{123}\) SLCN is often under-identified; a recent Trust project, Talk of the Town, evidenced that across a Federation of Schools, children and young people’s SLCN were under-identified by an average of 40%. The Better Communication Research Programme backs up the huge challenges that remain for universal staff in identifying SLCN, with a mismatch in research derived prevalence and identification in schools.
OUR SOLUTIONS TO THESE ISSUES ARE:

— **Local Offer:** we support the Education Select Committee’s call for minimum standards for Local Offers, particularly to support pupils with low to moderate SEN without EHCPs. We agree with the Education Committee that standards should be set out in a common framework to ensure consistency and accountability. The Trust is working with partners to develop a framework on the key principles for the Local Offer to both inform the development of a framework and compare against any principles set out in the regulations.

— We were encouraged that the Children’s Minister promised that a ‘common framework’ for Local Offers will be set out in the regulations. This needs to be published before the Bill reaches the House of Lords so it is given sufficient scrutiny and can inform the debate about the Bill itself. We would also like to see a principle in place for Local Offers to regulated, so that these minimum standards may be assured.

— **Identification:** there should be stronger duties on local authorities to identify all the children and young people in its area who have or may have special educational need124 and clarity on how they will work with other services to do so.

— The Green Paper clearer stated aspirations to address workforce development. These should be reflected in the Bill so that all members of the workforce have the skills and knowledge to identify pupils across all phases of education.

— All early years settings (including Private, Voluntary and Independent childcare settings) should be included in the scope of the Bill and Code of Practice.

— **Joint-commissioning:** we would like to see more detail on how these arrangements will work in practice, especially how health services will be held accountable. We welcome health authorities being given greater responsibility in early years settings, but we want this to be extended throughout the age range.

— The list of organisations that are stipulated to be part of joint commissioning arrangements should include Health and Wellbeing Boards; joint planning and commissioning must be joined up with further accountability and clarity over the structural links between the existing legally established coordination bodies.

— **School Action/Action plus:** Recent landmark research shows that a graduated approach to supporting children with SLCN is by far the most effective and must be based on a solid, universal, whole-school approach. We would like this evidence to be used to develop the Code of Practice and ensure that in losing School Action/Action plus, we do not lose the opportunity to meet the needs of children in the most effective and cost-efficient way.

— **Youth Justice:** we would like clarification on how detained children and young people will be supported as the scope of the legislation will not apply to them. This is of great concern considering the prevalence of SLCN amongst those in the youth justice system.

The Trust is committed to providing evidence-based, practical solutions and is working with our partners to develop a detailed response to the Local Offer, an area we are particularly keen to input into to ensure the best possible outcomes for children with SLCN.

The following pages contain detailed analysis on the likely impact of each clause on children and young people with SLCN and our suggestions for changes that would improve outcomes for these young people.

**Detail on specific clauses**

**Definitions and scope (clauses 19-24)**

1. The Trust is concerned that the provisions do not apply to disabled children or children with a specific need unless they require special educational provision. We believe that clause should be changed to include this wider group.

2. We are concerned that non-maintained early years provision (Private, Voluntary and Independent childcare settings) are not referenced throughout the document, which could lead to inconsistent duties on maintained and non-maintained providers.

3. We welcome the application of the draft legalisation to academies and free schools.

4. **Identification:** Early Identification is the key to improving the education outcomes for children and young people with SLCN, but the Trust has concerns over how the Bill will ensure that the mechanisms for identification will work in practice across all educational phases and we would like this clarified in the legislation. The Trust is especially concerned with how local authorities are going to identify SEN in non-maintained early years settings, especially giving these settings are educating an increasing proportion of children.

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124 For instance, Clause 22 stipulates that local authorities must exercise its functions ‘with a view to securing that it identifies all the children and young people in its area who have or may have SEN’. The Trust calls for the wording of this clause to be strengthened so that Local Authorities ‘must identify all the children and young people in its area who have or may have SEN’.
5. Research shows that early identification of SLCN across all educational phases provides the best opportunity to provide effective, cost-efficient interventions for children with SLCN, in some instances reducing the need for more costly, specialist support. In addition, research also shows that children with SLCN are often under-identified\textsuperscript{125} and parents must have confidence that their children will not fall through gaps in the system. The Trust welcomes Clause 19, which ensures that local authorities must consider parents wishes. However, we have concerns over Clause 22, which stipulates that local authorities must exercise its functions ‘with a view to securing that it identifies all the children and young people in its area who have or may have SEN’. As this is such a crucial area of the journey for children with SLCN and their families, the Trust calls for the wording of this clause to be strengthened so that Local Authorities ‘must identify all the children and young people in its area who have or may have SEN’.

6. The Trust pressed strongly during the pre-legislative scrutiny phase of the legislation for the NHS to be given greater responsibility in identifying and supporting SEN. We therefore welcome new clause 24 which introduces a duty on CCGs and acute providers of care to inform the parent and Local Authority where they believe that a child below the age of five may have some form of SEN and to draw on the resources of the VCS to provide support and advice. We would however like to see this duty extended throughout the age range. This is particularly pertinent given that the Better Research Communication Programme (BCRP) stressed the importance of identification at different educational stages, given that SLCN often develops in later childhood or adolescence.

7. While recognising the importance of early identification in the early years, we are keen that this concept is applied across the age range. SLCN in children and young people is often not identified until their primary school, or even secondary school years when some difficulties may only just become apparent. It is essential to profile and monitor progress of children with SLCN in order to ensure needs are met\textsuperscript{126}. Academies and free schools must also work pro-actively with local authorities to identify children with SEN. We are also concerned that the Bill does not fully address the issue of support for children 0–3 and their families, which is essential to prevent the language development of deaf children’s and those children with complex needs’ from being severely delayed.

LOCAL INTEGRATION AND INFORMATION (CLASSES 25-29)

8. Promoting integration: We consider that clause 25(1) should be strengthened to require local authorities not only to exercise its functions ‘with a view to’ ensuring the integration of special education provision with health provision and social care provision, but to review and improve that process, should it be found wanting.

9. With reference to clause 25(2), communication is fundamental to a child’s development, relationships, learning, attainment and future employability. Every child has a basic right to be understood and should be supported to do so\textsuperscript{127}. Communication is crucial for well-being; we would therefore like to see ‘speech, language and communication needs’ added to the factors of well-being listed as additional sub-paragraph (h).

10. Joint commissioning: The Trust welcomes the requirement to introduce joint commissioning arrangements. The criteria for integrating services, however, need to be detailed and accurate. Jean Gross, whilst Communication Champion for Children and Young People, undertook extensive consultation work with local authorities, health trusts and government in order to provide detailed guidance on joint commissioning arrangements for SLCN. This process still found that, particularly for those children with mild and moderate SLCN, joint commissioning happened only in three out of 10 Local Authority areas.

11. It is essential that joint commissioning arrangements apply for all children with SEN and not just those with EHC plans. We would like to see further clarity on the duties for health providers over joint commissioning for those without EHC Plans.

12. Under clause 26.5, we would like to see ‘other provision’ to specify that joint commissioning arrangements ‘have regard to ensuring that the children and young people’s workforce have the appropriate knowledge, skills and understanding to support CYP with SEN and disabilities.’ This is particularly pertinent for the workforce supporting children with SLCN. Staff knowledge of SLCN is seen as crucial for parents and young people with SLCN.\textsuperscript{128} Furthermore, it is an essential part of identification and currently the universal workforce has

\textsuperscript{125}Mesi, E., Micklewright J., Vigmoles, Aand Lindsay, G. (2012) The transitions between categories of special educational needs of pupils with Speech, Language and Communication Needs (SLCN) and Autism Spectrum Disorder (ASD) as they progress through the education system. Better Communication Research Programme.


\textsuperscript{127}Roulstone, S., and Lindsay, G. (2010) The perspectives of children and young people who have speech, language and communication needs, and their parents. Department for Education
limited knowledge of SLCN and low confidence in identifying difficulties, particularly ‘hidden’ SLCN. Additionally, assessment of some children with SLCN may need detailed multidisciplinary assessment.

13. We would also like teachers that support pupils with SEN/SLCN to have specific training so they have the skills able to support their needs. We believe that it is important that specialists are involved in the support of children and schools for low incidence needs.

14. We would also call for the list of organisations that need to be part of the joint commissioning arrangements to be extended to include Health and Wellbeing Boards; joint planning and commissioning must be joined up with commissioning arrangements undertaken by Health and Wellbeing Boards with further accountability and clarity over the structural links between the existing legally established coordination bodies.

15. Duty to review: We would also like to see a requirement to involve parents and, where appropriate, young people in the duty set out in clause 27. One of the key findings of the Better Research Communication Programme was that the SLCN category should be reviewed as it is problematic in terms of reliably identifying groups of pupils with language learning needs and establishing their profile of difficulties.

16. Cooperating generally: The Trust has undertaken pioneering work with young people with communication needs in this sector. Research shows how young people with communication needs are disproportionately represented in the youth justice system, often due to the fact that their needs have not been identified or met.

We therefore welcome the change made by the Department for Education to include Youth Offending Teams under this clause.

17. Health services as well as education services must be accountable within these structures. We are concerned that the local authority does not have to make arrangements for ensuring cooperation with health services and would like to see this included in clauses 27 and 28(3).

18. We welcome the inclusion of the National Health Service Commissioning Board in 28(2), a vital cooperation if the needs of children and young people who use augmentative and alternative communication (AAC) are to be met.

19. Local offer: The Trust welcomes the principle of a Local Offer and is also pleased to see that the Government has moved to strengthen provisions after the Education Select Committee recommended the introduction of a National Framework underpinned by accountability measures. However, in welcoming the Government’s shift towards a Common Framework for the Local Offer, we believe that Parliament should be encouraged to scrutinise the detail of this very closely and in particular check to see whether the provisions currently set out under 30(8) and 30(9) that ‘may become part of regulations’ should instead form part of the clauses within the Bill.

20. The Trust has done further detailed work with its members on the Local Offer as we believe this to be an essential part of the legislation. We are also working with other partner organisations to develop generic principles that could support local authorities and give parents confidence in the process.

21. We want a stipulation in the Common Framework that Local Offers do not only set out low level services but also provide specialist services.

22. Many children with SLCN will not be eligible for an Education, Health and Care Plan and therefore will be reliant on the services set out in local authorities’ local offers. We want assurance in the Common Framework that the services available to those on the School Action and School Action Plus system, which is due to be abolished by the Bill, are set out in Local Offers.

23. As already shown, a significant number of children with SLCN do not currently have a statement for SEN and therefore would not receive an EHC plan. We need to ensure that they receive the support they need which in many cases would have high efficacy and is very cost-effective. As the local authority is responsible for meeting these needs through the local offer, this part of the legislation needs to be strengthened with clear lines of accountability so that parents can be confident that they know who to turn to if they feel their children are not having their needs met.

24. The Local Offer must clearly indicate that it will support and dovetail with, any provision made from regional specialist commissioning, for example where a child or young person without an EHC plan requires a

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120 The BCRP in 2012 found despite internationally accepted prevalence figures of 7%, only 3% of the school population is ever identified as having SLCN and very few schools purchased targeted interventions for SLCN.

121 For example, a 2007 YouGov survey commissioned by I CAN has shown that over a third of teachers had received no preparation for meeting the needs of children with SEN during ITT, and 73% had no SEN training that covered speech, language and communication. A 2006 Childcare and Early Years Providers Survey showed that training in speech and language was often given very low priority in early years settings, with some practitioners such as child minders, having no additional training in speech and language.

122 At least 60% of young people who enter the youth justice system have communication needs. Bryan, K and Mackenzie J (2008), Meeting the Speech, Language and Communication Needs of Vulnerable Young People.

123 SEN Information Act’s 2011 analysis shows that of all children with School Action Plus/statements in primary, 18.9% are at School Action, 13.3% have a statement. There is no data for School Action however, and many children with SLCN will not have that listed as their primary type of need, including many who may not have a statement (e.g. those with Autism Spectrum Disorder, Specific Learning Difficulties, Moderate Learning Difficulties, Hearing Impairment).
cleft lip and palate service that is provided regionally but also needs to access on-going local support through the Local Offer.

25. We are also concerned that the Local Offer may also disadvantage children with more severe or complex, low-incidence, high-cost needs (which include SLCN) since their needs are unlikely to be covered by the Local Offer.

26. Parents must also be made aware of the availability of provision outside their area (many maintained and non-maintained special schools whose catchment areas are very wide—in some cases national).

27. We also have specific concerns that there is no need to record the offer of previous years, which service providers will be part of the offer, the frequency with which the offer needs to be updated and the outcomes expected.

28. The Trust welcomes the requirement in clause 32 for a local authority to provide information and advice to parents and children about matters relating to SEN provision and believes that the VCS is part of this solution, through national and local signposting.

29. We would also call for 32 (2) to include providers of training and employment services and early years providers. The crucial importance of language and communication for children in the early years is well evidenced. Language development at age 2 has been shown to strongly predict children’s performance on entry to primary school and is also linked to outcomes into adulthood. Children with poor language skills in their early years are 6 times more likely to have reading difficulties. Speech, language and communication needs impact on attainment, behaviour, social and emotional development.

30. Education, health and care plans: The Trust welcomes the concept of multi-agency plans from birth to 25. However, we would like to see a new statutory duty to monitor for outcomes, involve schools more in their construction and ensure that health and social care services are accountable in the plans. The plans must also clearly specify how local provision will support, and dovetail with, any provision made from regional specialist commissioning, for example where a child or young person requires a communication aid.

31. We have particular concerns around EHC plans with regards to early years. There are currently only 250 children in maintained nurseries England with a statement of education need (0.6%); a small number compared to those in the first years of primary school, indicating under-identification or lack of places suitable for children with SEN. Research shows that early identification and support lead to the most effective and cost-efficient interventions. Language development starts from birth and some communication difficulties including deafness will either be picked up at birth or emerge in early years; we are concerned that the focus on EHC plans might reduce the specialist early years provision across all settings to ensure identification and intervention for any child that is struggling.

32. We are also concerned that the draft legislation gives licence to a local authority to remove an EHC Plan when they so choose but does not give parents a clear right to appeal if health and social care services do not deliver on what has been promised. Parents should be integral to the decision making process.

33. We were pleased to see the Government listen to the concerns of the sector and put the right for parents to request an assessment on the face of the Bill in clause 36. This has reassured many who felt that this right was not there in the draft legislation despite it still existing in the 1996 Education Act. We are also pleased to see the Government change the legislation so an EHC Plan could be maintained for those young people not in education or training and those on Apprenticeships. We also want to ensure that the ‘local offer’ covers this important group of young people as well however.

34. Non maintained special schools: We welcome the provision to enable parents to name non maintained special schools on the EHC Plan.

35. Personal budgets: Our concern for support for SLCN is that what works best for many children is a graduated approach—individual budgets might pay for a speech and language therapist to work directly with

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139 For example in the case of AAC, equipment will come from specialist regional commissioning, but the local authority may provide the essential and ongoing support and ancillary services, which are essential to ensure that a child can actually learn how to use the equipment and be taught appropriately. It is essential that the ongoing local support must dovetail with regional specialist provision.
140 SEN Information Act’s 2011 analysis, published January 2012.
141 We welcome the extension of statutory provision to birth, in some instances such as with deafness, this may require specialist support in the home as well as early years settings.
142 Lindsay, G., Dockrell, J., Law, J., and Roulstone, S (2012) The Better Communication Research Programme: Improving provision for children and young people with speech, language and communication needs.
the child, but the wider package is dependent on a strategic holistic joined up approach which may be difficult to maintain with individual budgets.

36. This is an extremely complex area and we are concerned that if this is addressed through secondary legislation it will not have the appropriate scrutiny to ensure it best meets the needs of parents and families.

37. Regulations should be extended to include reference to the provision of key working support in the management of personal budgets.

Mediation (clauses 51–54)

38. The Trust is encouraged by that the Government has made mediation an option rather than compulsory. The Trust felt that, whilst mediation can obviously be a very useful solution, it was not right in all circumstances and we were pleased to see this changed in the Bill when presented at 1st Reading. We would however call for a quality standard for training for the ‘mediation advisor’ listed in clause 51 considering the significant powers they will have to determine the outcome of the mediation or to dictate how the appeal is made.

39. We also have concerns over how the requirement for parents to produce a certificate to prove they waived mediation may add to the bureaucratic burden on both parents and local authorities.

40. It is vital that there is also support for parents in terms of advocacy and to meet access needs as well as consideration of where there is conflict between parent and child.

SENCOS (Clause 62)

41. We are concerned by the omission of duties by local authorities relating to the designation, provision and functions of SEN coordinators in non-maintained early years settings. This is particularly important considering the importance of early-identification and intervention and the issue of under-identification raised earlier under provisions 16-28, supporting work-force development.

SEN Code of Practice (Clause 66)

42. The Trust welcomes the Government’s shift on this issue and their intention to lay the draft SEN Code of Practice before Parliament under the Negative Resolution procedure. However considering the importance of the SEN Code of Practice, which will contain the details of the legislation that are instrumental to addressing many of our concerns, we want to see the Code debated in Parliament.

Detained Children and Young People (Clause 69)

43. We are extremely concerned that detained children and young people will not be covered despite the incidence of SLCN in those in the young justice system. We would like clarification on how young offenders will be supported should the scope of the legislation not apply to them, considering the prevalence of young offenders with SLCN141.

Creation of Childminder Agencies and the Registration of Childminders (Part 4)

44. The creation of childminder agencies links back to our first point on early identification, as it will lead to more children in early years non-maintained settings. We are concerned over how local authorities are going to identify SEN/SLCN in these settings. The duty on identification needs to be clarified.

45. There also needs to be assurance from the Government that childminder agencies will ensure staff are qualified to support children’s speech, language and communication development. Evidence shows that many early years staff feel inadequately equipped to help children with language delay with over 60% of teachers lack confidence in their ability to meet children’s language needs so a focus on a qualified workforce in SLC is vital.

Appendix

Background Information on Speech, Language and Communication Needs and the Work of the Communication Trust

Background to SLCN

— As many as 10% of children in the UK—over 1 million—have speech, language and communication needs, which are not caused by language neglect, or by having English as an additional language or other external factors142. This means that in the average classroom, there are two or three children with such communication difficulties, which can be severe and long term.

141 At least 60% of young people who enter the youth justice system have communication needs. Bryan, K and Mackenzie J (2008), Meeting the Speech, Language and Communication Needs of Vulnerable Young People.

— Of this group, a large cohort—between 5-7% of the child population—have specific language impairment (SLI), meaning that they have difficulties with acquiring, learning and using language that are not associated with factors such as general learning difficulties, or other conditions, such as cerebral palsy, hearing impairment or autistic spectrum disorders. A child with SLI might be bright, but struggle to hear, listen to and understand the language used in the classroom or use language to express themselves effectively, and thus struggle to attain and achieve. There is also impact on wider development through difficulties with interaction and social and emotional development.

— DfE annual SEN statistics demonstrate that SLCN is the most common type of primary need for pupils with SEN statements in maintained primary schools. In January 2011, 27.9% of pupils in maintained primary schools had SLCN registered as their primary need.143

— A further issue is that in areas of social deprivation upwards of 50% of children—equivalent to as many as 17 per classroom—are starting school with language delay. This delay can be significant and impactful. And while their general cognitive abilities are in the average range for their age, their language skills are delayed. Evidence suggests these delays do not catch up and conversely can remain so into secondary school, impacting on literacy and more general attainment.

— At the end of primary school, although nearly 80% of all children achieve the expected level in English, just 25% of children with SLCN reach that level—a gap of almost 55%. The gap in Maths is 46% and in science it is 41%. At the end of Key Stage 4, the ‘attainment gap’ between children with SLCN and their peers is marked. Just 15% of children with SLCN achieve 5 GCSE A*-C or equivalent compared to 57% of all young people. Many of these children are cognitively as able as their peers.

— SLCN can easily be missed or misinterpreted; almost 90% of all children with SLCN will have some degree of literacy difficulty; a high proportion of children either excluded from school or at risk of exclusion have unidentified SLCN and more than 65% of young people in youth justice sector have communication needs, many of which have previously gone unidentified.

— Communication is an issue for all our young people; a skills survey from the Institute of Directors, reveals that businesses suffering skills shortages named communication skills as one of the most difficult skills to obtain, with 22% and 18% of businesses experiencing difficulties in recruiting people with oral and written communication skills respectively.

BACKGROUND TO THE COMMUNICATION TRUST

The Communication Trust is a coalition of 47 voluntary and community organisations with expertise in speech, language and communication. We harness our collective expertise to support the children’s workforce and commissioners to meet the speech, language and communication needs (SLCN) of all children and young people, particularly those with SLCN. We do this by raising awareness, providing information and workforce development opportunities, influencing policy, promoting best practice among the children’s workforce and commissioning work from our members. The Trust is advised by specialist advisors and works with a broader network of partners.

The Trust was founded in 2007 by children’s charities Afasic and I CAN together with BT and the Council for Disabled Children, to ensure that professionals can access the training and advice that they need to support the children they work with. We have developed a number of resources to support practitioners who work with children and young people and provide advice on speech, language and communication needs.

Speech language and communication skills are the foundation for other key life skills: learning, literacy, positive relationships and regulation of behaviour and emotions. Speaking and listening skills underpin pupil outcomes; young people with good communication skills have a wider range of life chances.

March 2013

Memorandum submitted by Together for Short Lives (CF 50)

ABOUT TOGETHER FOR SHORT LIVES

1. Together for Short Lives is the leading charity for UK children’s palliative care. We support everyone who loves and cares for children with life-limiting and life-threatening conditions—families, professionals and services, including all of the UK’s children’s hospices. Our work helps to ensure that children can get the best possible care, wherever they are, and whenever they need it.

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143 DfE SEN Information Act, 2011 Analysis
146 Improving Achievement in English Language in Primary and Secondary Schools (2003) HMIE.
2. There are around 39,000 children and young people in England with life-limiting and life-threatening conditions, which mean they may require palliative care. Between them, they have a several hundred different conditions—some are well known, such as Duchenne Muscular Dystrophy and cancer; others are rarer and have no name until recognised in an individual child. Many children have a range of different needs and require complex, individualised health interventions to manage their conditions. Many also need additional social care and education support.

3. Together for Short Lives is a member of the Every Disabled Child Matters (EDCM) and Special Educational Consortium (SEC) Parliamentary Group.

**SUMMARY**

4. This memorandum relates to part 3 of the Bill: ‘Children and Young People in England with Special Educational Needs’.

5. We know from evidence that a disjointed system of care presents many challenges for families of children with life-limiting conditions. These families routinely deal with over 30 professionals from education, social care, health and other services. Communication between agencies is generally inadequate, leaving families burdened with the stress of navigating their way through an uncoordinated system.

6. This experience is common among families of disabled children. However, for families whose children’s lives are likely to be short, time wasted navigating through the system in this way can be particularly distressing. As one parent said at a recent event: “It’s a minefield and you get frightened going through it. Services don’t join up and people don’t explain things to you. They don’t tell you what all the services actually do. By the time I had made it all fit together my child had passed away—that makes me sad that he could have had so much more out of life”.

7. All the evidence suggests that the best outcomes for children with life-limiting conditions and families are achieved when there is effective partnership working between parents and services and care is co-ordinated around the needs of the family.

8. The original policy proposals included in the 2011 Green Paper Support and aspiration: A new approach to special educational needs and disability—A consultation set out a vision of improved outcomes for children and young people who are disabled or have SEN in which the “adversarial nature of the system for families” would be minimised—potentially addressing many of the concerns we regularly hear about from parents and families of disabled children.

9. Together for Short Lives strongly supports the aspirations of the Bill, particularly those aimed at better integrating health, education and social care assessment; better integrating delivery for disabled children; and improving joint commissioning between local agencies. We also welcome the Government’s decision to act on some of our recommendations for realising these aspirations following their publication of draft SEND clauses in 2012.

10. We do, however, retain reservations about some important aspects of the Bill. The Green Paper offered a once-in-a-generation opportunity to join-up assessments and services for all disabled children. However, the draft SEND clauses which followed focused too heavily on education related services and did not provide an adequate framework to draw health and social care services into the system of support for children with SEN. The House of Commons Education Select Committee recommended that the Government broaden the scope of the clauses to reflect the original aspirations of the Green Paper. Ministers have not taken the committee’s advice—as a result, it is unlikely that the Bill will bring about the integrated assessments and care that the Government has promised.

11. Unless this is addressed, the Bill will simply replicate and reinforce the fragmentation in the current system. Research cited by EDCM and SEC has estimated that in the region of 25% of disabled children may not have SEN. Similarly, there are children who have specific health conditions, such as cancer, who would significantly benefit from a single plan and jointly commissioned services, but who would not meet the requirements of an SEN statement.

12. At a time when local authority budgets are under increasing pressure, we seek assurance from the Government that they recognise the impact of local cuts on SEND services. Local authorities will need considerable support and resources to ensure these reforms can make a practical difference at a local level.

13. To ensure that the Bill realises the aims of the Government’s original Green Paper, the Bill’s focus should be widened to include all disabled children, including those without a statement of SEN; the Bill should make clear what disabled children can expect from local services through a ‘duty to provide’ and a national framework for local offers; the entitlement to Education, Health and Care Plans (EHCPs) should extend to all disabled 18 to 25 year olds, including those no longer in education; and the duties on health services to contribute to integrated assessment and delivery need to be clearer and more explicit in the Bill.

14. We provide more detail about these key points below:
**The Bill’s Focus Should Be Widened to Include All Disabled Children**

15. The SEND Green paper set out plans for “a new single assessment process and EHCP by 2014 to replace the statutory SEN assessment and statement, bringing together the support on which children and their families rely across education, health and social care”. Clauses 36-45 of the Bill replace statements of SEN with EHCPs.

16. Following its pre-legislative scrutiny of the Bill, the Education Select Committee recommended that the scope of entitlement to integrated EHC provision and assessments should be extended to disabled children, with or without a statement of SEN.

17. Despite the committee’s recommendation, the Government has chosen not to include disabled children without SEN within the scope of the Bill. This means that disabled children and families who do not require support in school or are not in education or training will not benefit from more integrated services—despite the significant amounts of time and effort that many have to commit to secure the care and support they need.

**The Local Offer**

18. Clause 30 requires local authorities to produce information on the EHC services ‘it expects’ to be available locally—this will be known as the ‘local offer’. The intention is to give parents and young people clear information about local services and how they can access them. Together for Short Lives supports this aspiration, which should speed up access to those services and increase confidence in the system.

19. For young people transitioning from children’s to adult’s services, the Government has added “provision to assist in preparing children and young people for adulthood and independent living” into the list of information which needs to be provided in the local offer (clause 30(2)(e)). Provision to support children and young people for adulthood and independent living is defined as relating to housing, employment and participation in society (clause 30(3)).

20. In order for the local offer to be effective, we believe clause 30 needs to strengthened in two ways:

21. Currently a local authority will only have to set out the provision ‘it expects’ to be available in their local offer. This wording is not strong enough to provide redress for parents or young people if those services are not made available. We believe that there needs to be a legal duty to provide what is set out in the local offer. This will allow parents and young people and young people to challenge local authorities if the local offer is not delivered.

22. To address the current variation in support, a national framework should inform the development of each local offer.

23. The Bill should include a ‘duty to provide’ and a national framework to create much needed accountability for and consistency in local provision.

**The Entitlement to EHCPs Should Extend to All Disabled 18 to 25 Year Olds, Including Those No Longer in Education**

24. We support clause 45, which states that a young person who still requires educational support while completing an apprenticeship could still be entitled to an EHCP.

25. We also welcome the fact that this clause states that EHCPs will not automatically cease when a young person leaves education or training. Local authorities must consider whether “the educational outcomes set out in the plan have been achieved” before ceasing the plan (45(3)). This could also mean that if a young person becomes NEET (not in education, employment or training) before completing their educational objectives (e.g. to go to college), the local authority might be required to maintain the EHCP.

26. We are concerned, however, that young people between the ages of 18 and 25 who may move in and out of education, or leave education altogether will not have access to a single plan and may lose access to support; this would include many young people who need palliative care who, owing to the complexity of their conditions, do not continue in education.

27. We are also concerned that, as they stand, the Children and Families Bill and the draft Care and Support Bill bring about two different systems for young disabled people who transition from children’s to adult services in England: if a young person is deemed to have an SEN, their EHCP could continue until their educational outcomes have been achieved up to the age of 25; however, if they do not have SEN, their local authority will have a duty to assess a disabled child’s probable adult care needs before they reach 18, should they be requested to do so.

28. To resolve these issues, both Bills should be amended to ensure that young people up to the age of 25 continue to have access to an EHCP, regardless of their educational circumstances.

**The Duties on Health Services Need to Be Clearer**

29. Clauses 25-29 require local services to co-operate, to jointly review services, and to put in place arrangements for joint commissioning. Clause 31 lists the bodies which are required to co-operate with Local Authorities in providing single assessments and EHCPs. Together for Short Lives does not believe that the duties on the NHS are strong enough in the Bill as introduced—a position shared by the Education Select Committee and a number of other organisations representing disabled children.
30. To this effect, we support the Government’s proposed amendments to clauses 21, 26, 28, 37, 41 and 42 which strengthen duties on the NHS to co-operate with local authorities. Co-operation between the NHS Commissioning Board and local authorities with regard to children and young people who require specialised health services commissioned by the former is particularly important. To this end, we welcome the proposed amendment to clause 26, page 19, line 38 which replaces “clinical commissioning groups” with “commissioning bodies”.

31. While there are encouraging new duties on local authorities contained in the Bill, it is still not clear how local health authorities will be accountable for delivering the complex health interventions that many children with life-limiting conditions need. The Bill should be strengthened to make this clearer and aligned to duties on local authorities and health services set out in the Health and Social Care Act 2012.

THE INDIVIDUAL RESPOSIBLE FOR THIS SUBMISSION


March 2013

Memorandum submitted by the Department for Education (CF 51)

I am pleased to be able to send to the Committee initial drafts of both the regulations and Code of Practice to be made under Part 3 of the Bill.

During the second reading debate, a number of honourable members stressed the importance of the regulations and the Code in providing the detail of how the SEN clauses would be implemented. I undertook to provide drafts in time for the Committee consideration of Part 3 of the Bill to aid consideration of the clauses. I know that, like me, honourable members found the pre-legislative scrutiny process a positive and helpful one; and one that helped improve the legislation we have brought before Parliament. I hope that what is included here will help to reassure the committee about the coverage and strength of the primary legislative provisions.

In November I announced that we were extending our pathfinder programme so that we could maximise the learning from the programme to develop the regulations and the Code. The initial draft regulations and the initial draft of the Code I am providing today are, therefore, necessarily indicative. They show the broad content we expect them to cover but they will be developed considerably further before they are finalised in light of the experience of the pathfinders and the debates we have in Committee.

Of course, as with pre-legislative scrutiny, the process does not replace formal scrutiny. The final Code and regulations will be published in draft and subject to a formal consultation process before they are laid before Parliament. Subject to the passage of the Bill, I would expect this consultation to begin in the latter part of this year, and the regulations and Code to be laid in early 2014.

Publishing the indicative drafts of the regulations and Code in this early form also allows a focus on reforms that necessarily lie outside of the legislation, including maintaining protections and provision for those without an Education, Health and Care Plan.

I hope that the Committee will find further reassurance on those issues, both in terms of what we have set out and in the opportunity we have to continue to explore the issues.

Edward Timpson MP
Parliamentary Under Secretary of State for Children and Families

INDICATIVE DRAFT: THE (0–25) SPECIAL EDUCATIONAL NEEDS CODE OF PRACTICE

This indicative Code of Practice is provided to Parliament to aid consideration of the SEN Clauses in Part 3 of the Children and Families Bill and the related draft indicative regulations. It is work in progress.

Officials in the Department for Education are leading the process of drafting the Code of Practice. They will be producing a subsequent draft for formal consultation later in 2013 prior to a final draft being placed before Parliament for approval in time for it to come into force alongside the Children and Families legislation.

This draft takes account of the widespread consultation that took place to develop the package of reforms included in the Children and Families Bill and the pre-legislative scrutiny of the reforms. It also reflects the provisions in the related draft indicative regulations. The draft Code and regulations are necessarily indicative and will be developed considerably further to reflect the passage of the Bill through Parliament as well as the emerging evidence from the pathfinder programme testing the SEN reforms in 20 pathfinders across England.

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The draft indicative regulations/policy statements for Committee relevant to this indicative draft SEN Code of Practice are:

In Chapter 4—The Local Offer

In Chapter 5—Early Years, Schools, Colleges and Other Providers
— The Special Educational Needs (SEN co-ordinators) Regulations, Clause 62;
— Remaining in special school or post-16 institution without an EHC plan Regulations, Clause 34;
— The Special Educational Needs (Information) Regulations, Clause 64.

In Chapter 6—Assessments and Education, Health and Care Plans
— The Approval of Independent Educational Institutions and Special Post-16 Institutions Regulations, Clause 41;
— Remaining in special school or post-16 institution without an EHC plan Regulations, Clause 34;
— Education (Special Educational Needs) (Assessment and plan), Clauses 36, 37, 44 and 45;
— Policy statement on regulations (Personal Budgets), Clause 48;
— Policy statement on regulations (Parents and young people lacking capacity), Clause 68;
— Policy statement on regulations (Transitional arrangements), Clause 107.

In Chapter 7—Resolving Disputes
— The Special Educational Needs (Appeal) Regulations, Clause 50;
— The Special Education Needs (Mediation) Regulations, Clause 51;
— Policy statement on regulations (Children’s Right to Appeal Pilots), Clause 53 and 54.

1. Introduction

1.1 A new system for special educational needs

Our vision

Every child should be given the best chance to succeed in life.

Professionals who work with the fifth of children and young people who have a special educational need (SEN) should strive to enable them to achieve at school and college, and make a successful transition to adulthood, including finding paid work, living independently and participating in their community.
A new system for special educational needs

The Children and Families Bill and associated regulations take forward wide-ranging reform of the system for identifying, assessing and supporting children and young people with special educational needs and their families. Those reforms make provision for:

— Children, and young people to be at the heart of the system.
— Close cooperation between all the services that support children and their families through the joint planning and commissioning of services.
— Early identification of children and young people with SEN.
— A clear and easy to understand ‘local offer’ of education, health and social care services to support children and young people with SEN and their families.
— For children and young people with more complex needs, a coordinated assessment of needs and a new 0 to 25 Education, Health and Care plan (EHC plan), for the first time giving new rights and protections to 16–25 year olds in further education and training comparable to those in school.
— A clear focus on outcomes for children and young people with Education, Health and Care Plans, anticipating the education, health and care support they will need and planning for a clear pathway through education into adulthood, including finding paid employment, living independently and participating in their community.
— Increased choice, opportunity and control for parents and young people including a greater range of schools and colleges for which they can express a preference and the offer of a personal budget for those with an EHC plan.

1.2 The SEN Code of Practice

This 0–25 Code of Practice sets out guidance on policies and procedures aimed at enabling children and young people with SEN to reach their full potential and support families to do the best for their children.

It reflects the provisions of Part 3 of the Children and Families Bill and associated regulations (indicative drafts of which have been published to help Parliament consider the Bill) and explains and provides guidance on carrying out the duties in the legislation.

1.3 The Purpose of the Code and who it applies to

The purpose of the Code

The SEN Code of Practice is statutory guidance that provides practical advice on how to carry out statutory duties to identify, assess and make provision for children and young people’s SEN as set out in the Children and Families Bill (currently before Parliament).

The Code also sets out how legislation and regulations concerning children and young people with disabilities works alongside this.

Whilst this document aims to support effective decisions it cannot provide detailed advice for every individual case. The Code of Practice is framed so that it is easy for all interested parties to navigate to understand the statutory duties and provides guidance on how to fulfil those statutory duties.

References to statutory duties

In this Code of Practice where the text uses the word MUST this refers to a statutory requirement.

In this Code of Practice where the text uses the word SHOULD this refers to guidance which is a non-statutory requirement.

Definitions of special educational needs (SEN) and disability

Definition of special educational needs (SEN)

A child or young person has SEN if they have a learning difficulty or disability which calls for special educational provision to be made for them. A child of compulsory school age or a young person has a learning difficulty or disability if they:

(a) have a significantly greater difficulty in learning than the majority of others of the same age; or
(b) have a disability which prevents or hinders them from making use of educational facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions.

(c) a child under compulsory school age has special educational needs if they fall within the definition at (a) or (b) above or would so do if special educational provision was not made for them. Clause 20 Children and Families Bill
**Definition of disability**

A child is disabled if he is blind, deaf or dumb or suffers from a mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed. Section 17 (11) Children Act 1989.

A person has a disability for the purposes of this Act if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. (Section 6), Equality Act 2010.

**Who the Code applies to**

This Code of Practice is statutory guidance for organisations who work with and support children and young people with SEN and their parents, such as:

- local authorities (education, social care and relevant housing and employment services)
- early years providers
- schools
- further education colleges
- sixth form colleges
- Academies
- independent special schools and independent specialist providers
- pupil referral units
- the NHS Commissioning Board
- clinical commissioning groups
- NHS trusts
- NHS foundation trusts
- Local Health Boards
- SEN Tribunal (see 7.7)

[Note: Further information to follow on how the document is structured, how to use the executive summary as a high-level guide, how statutory duties are highlighted for ease of reference and how best practice case studies can be found].

1.4 **Roles and responsibilities**

The new SEN system will mean new ways of working and a strong focus on improving outcomes for children, young people and support for them and their families.

- Good quality teaching at every stage in a child and young person’s journey through early education, school, further education and training is vital.
- Health bodies have a vital role to play in collaborating with, and supporting, education and care providers in meeting the needs of children with SEN, as well as their general responsibility for ensuring the health and wellbeing of children and young people. The reforms of the NHS introduced by the Health and Social Care Act 2012 have enhanced the potential for the NHS to exercise these roles; the reforms of SEN commissioning introduced by the Children and Families Bill build on these to strengthen the role of the health sector in meeting the needs of this group.
- Clinical Commissioning Groups (CCGs) and, where responsible for children and young people with SEN, the NHS Commissioning Board, will be full partners in the new arrangements for securing the provision to meet these needs.

[Note: This section and those that follow will be developed to include more on the respective roles of professionals in education, health and social care towards children and young people with SEN including a table on roles and responsibilities]

1.5 **Related legislation, regulations and guidance**

**Legislation and regulations**

The SEN provisions in the Children and Families Bill are supported by the [xxxx] regulations covering the key areas of reform [See indicative regulations published alongside this draft of the Code of Practice.]

Evidence suggests that approximately 75% of disabled children have a special educational need. There are further duties on schools and colleges in relation to children and young people with disabilities under the Equality Act 2010 and duties on health and social care providers under the Health and Social Care Act 2012 and the draft Care and Support Bill. This Code should be used in conjunction with guidance relating to [Equality Act 2010 and xxxx regulations] to help ensure that all organisations meet their responsibilities for disabled children and young people.
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The Health and Social Care legislation and current Adult Social Care legislation

[Note: Further information to follow on what this legislation means for organisations in the context of the Code of Practice.]

Related guidance

This Code is complemented by a number of other guidance documents. This is not an exhaustive list, but organisations will find it particularly helpful to consider:

— Working Together to Safeguard Children, is statutory guidance which sets out what is expected of organisations, individually and jointly, to safeguard and promote the welfare of children. This includes a detailed section on the process for assessment including how assessments for children and young people’s social care needs can be best coordinated with the other elements of their education and health assessments and describes best practice in local protocols for assessment.

— Equality Act 2010 advice for school leaders, is non-statutory advice from the Department for Education. It has been produced to help schools to understand how the Equality Act affects them and how to fulfil their duties under the Act (including the reasonable adjustments to make for disabled pupils set out in detail in Chapter 5).

[Note: Further information to follow on other guidance that is relevant to matters covered in the Code, including key guidance on support for disabled children.]

1.6 Principles underpinning the Code and the new system

The legislative framework for the new SEN system and the detailed guidance in this 0–25 Code of Practice are underpinned by a number of principles:

— Early identification of needs so that professionals can intervene early with the most appropriate support for a child and their family.

— High expectations and aspirations for what children and young people with SEN and disabilities can achieve, including paid employment, living independently with choice and control over their lives and support and participating in society.

— Focus on the outcomes that children and young people and their families want to achieve, so that all decisions are informed by these aspirations.

— The views and participation of children and their parent/carer and young people are central and supported throughout the system, and person-centred planning is used to place children and young people at the heart of the system.

— Choice and control for young people and parents over the support they or their children receive, including greater choice of schools and colleges and personal budgets to tailor services.

— Education, health and social care partners collaborate so that a coordinated and tailored support can be provided to children, young people and families.

— Clarity of roles and responsibilities to ensure that collaboration goes hand in hand with accountability to fulfil duties.

— High quality provision to meet the needs of most children and young people, alongside rights for those with EHC plans to say where they wish to be educated.

— The skills, knowledge and attitude of those working with children and young people are central to achieving excellent outcomes.

This Code explains how all the organisations on which children and young people with SEN rely can bring these principles to life in fulfilling their statutory duties.

1.7 Implementation of the new Code of Practice

From xxxx date all those organisations listed at 1.3 must have regard to this Code of Practice. This means that whenever decisions are taken relating to children with SEN, consideration must be given to what the Code says. Bodies must fulfil their statutory duties towards children with SEN in the light of the guidance set out in this Code of Practice (and the duty to have regard to this Code will continue for its lifetime).

All those organisations listed at 1.3 need to be able to demonstrate in their arrangements for children and young people with SEN, that they are fulfilling their statutory duty to have regard to this Code.

2. A Family Centred System

2.1 Introduction

Parents know their child best. Equally, children and young people are well placed to reflect on their experiences, their needs and their aspirations. For these reasons, at the core of the Children and Families Bill is the expectation that local authorities and educational settings place parents and young people at the heart of the processes and decisions that will affect the lives of children and young people with SEN.
Local authorities must ensure that parents and young people are involved when they are:

- planning and reviewing the local offer;
- reviewing special educational and social care provision;
- drawing up individual EHC plans, and in reviews and reassessments.

Schools and colleges need to ensure that they fully engage parents and young people with SEN when drawing up policies that affect them. Pupil forums should always ensure that there is representation from pupils with SEN. Schools and colleges should also take steps to ensure that parents and young people are actively supported in contributing to assessment, planning and review processes.

The knowledge and understanding that parents have about their child is key information that can help teachers and others to meet their child’s needs. Enabling parents to share their knowledge and engage in positive discussion instils confidence that their contribution is valued and acknowledged. At times, parents, teachers and others may have differing expectations of how a child’s needs are best met to enable them to progress and achieve. Sometimes these discussions can be challenging but it is in the child’s best interests for a positive dialogue between parents, teachers and others to be maintained to work through points of difference and agree outcomes. It is important to engage directly with young people to discuss their needs, and plan how they can achieve the best outcomes.

2.2 Person-centred planning

A key approach that ensures that parents and carers, children and young people are actively placed at the heart of the system is person-centred planning. A person-centred approach to planning means that planning should start with the individual (not with services), and take account of their wishes and aspirations, and the support they need to be included and involved in their community. It aims to empower parents, children and young people so that they have more control over assessment and decision-making processes. It enables continual listening and learning, focusing on what is important to someone now and in the future, and acting on this in partnership with their family and their friends.

Family or person-centred planning uses a number of techniques, all of which aim to reflect how the person communicates and help them to outline their needs, wishes and goals. Some of the central features of person-centred methods and approaches are:

- focusing on the child or young person, not their needs or diagnostic label;
- using ordinary language and images, rather than professional jargon;
- actively highlighting a person’s strengths and capacities;
- strengthening the voice of the person, and those who know the person best to say what they have done, what they are interested in and what outcomes they are seeking in the future;
- tailoring support and personal budgets around the person’s plan.

Using these approaches, educational settings, professionals and local authorities need to ensure that parents, children and young people are genuinely involved in planning, review and decision-making processes. This should then inform commissioning decisions for both support and opportunities; deliver a responsive local offer and for those that need them ensure that EHC Plans are co-produced and reflect aspirational and achievable outcomes for the individual.

A useful resource for that provides advice for using person-centred thinking, planning and reviews in schools and transition is available at: http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/documents/digitalasset/dh_115246.pdf.

2.3 Parent Partnership Services

Parent partnership services provide impartial information, advice and support to parents of children and young people with SEN so they can make appropriate, informed choices. These services should be available to all parents of children and young people with SEN. Parent partnership services provide information to parents about the law on SEN and local policy and practice and are well placed to provide information and support to parents about the assessment process for an EHC Plan. They also work with schools in promoting positive engagement with parents of children and young people with SEN and disabilities.

Each local authority commissions a parent partnership service. Many services are delivered at arms-length from the local authority, with some being delivered by another provider, often from the voluntary sector.

Effective parent partnership services have the following features:

- a confidential service for parents providing impartial advice and guidance;
- staff trained in the legal framework who inform and advise parents and also provide information in leaflets, on their website and in other languages;
— providing access to additional trained support, such as volunteers, for all parents who request it, including support about appeals to the SEN Tribunal;
— clear terms of reference and a development plan setting out needs and priorities for the service and its staff;
— providing support and training for parents to (actively) participate in local strategic groups and develop and review local children’s services and SEND policy;
— located in easily accessible premises that are perceived by parents as independent of the local authority.
Local authorities must ensure that advice and information is offered to young people with SEN directly. Some local authorities already commission services which work directly with young people.
Details of local parent partnership services can be found at www.parentpartnership.org.uk and information about standards for parent partnership services are set out in http://www.parentpartnership.org.uk/documents/parent-partnership-services.

Parents serving in HM Armed Forces have access to an information advice and support service through the MoD’s Directorate Children and Young People Children’s Education Advisory Service (DCYP (CEAS)): https://www.gov.uk/childrens-education-advisory-service.

2.4 Parent Carer Forums
It is important to look at information about all children collectively at a strategic level.

Parent carer forums have been established in most areas and work with local authorities. Parent carer forums are local groups made up of parents and carers of disabled children who work alongside local authorities, education, health services and other providers to make sure the services they plan and deliver meet the needs of disabled children and families. There should be a steering group of parent carers who help to lead the forum and listen to the views of other parent carers in the local area to make sure they know what is important to them.

Effective parent participation happens when parents are enabled to work alongside professionals to ensure that:

— the engagement of parent carers in the authority is valued, planned and resourced;
— the parent carer forum offers proactive and on-going leadership;
— the participation of parent carers is evident at all stages in the planning, delivery and monitoring of services;
— the function of the parent carer forum to parents and providers;
— there is genuine partnerships working, and user/provider experiences are co-presented;
— the contribution of parents is professionally valued through, for example, policies of reward, recognition and remuneration;
— there are clearly described roles for parent representatives and
— plans are in place for on-going recruitment and training.

There should be co-ownership of these aims between local authorities and parents to mark progress and build trust. Effective parent participation can lead to a better fit between families’ needs and service provision, higher satisfaction with service delivery, reduced service costs (as long term benefits emerge), better value for money decisions and less conflict between providers and those dependent upon services.

Local authorities and other service providers should work in partnership with parent carer forums in:

— preparing and reviewing their local offer;
— reviewing and planning SEN provision;
— the joint commissioning of services.

Schools and colleges may also find their local parent carer forum a helpful resource in contributing to the development of their policies and practices for supporting children and young people with SEN and involving families.

[Note: Further information to follow on support provided for families from Health and Social Care]

3. Education, Health and Care: Integration, Joint Commissioning and Co-operation

3.1 Education, Health and Social Care—working together for positive outcomes

Children and young people with SEN need integrated, family focused support from a range of agencies. The Children and Families Bill places duties on local authorities and Clinical Commissioning Groups (CCGs) to support this.

Integrated services

Local authorities are required by clause 25 of the Children and Families Bill to exercise their duties and powers under the Bill with a view to ensuring the integration of special educational provision with health and
social care provision where they think this would promote the wellbeing of children or young people in their area who have SEN or improve the quality of special educational provision. The wellbeing of children and young people includes:

— their physical and mental health and emotional wellbeing;
— protection from abuse and neglect;
— control by them over their day to day lives;
— participation in education, training or recreation;
— social and economic wellbeing; domestic, family and personal relationships; and
— their contribution to society.

**Joint commissioning**

Clause 26 of the Children and Families Bill requires local authorities and their partners CCG to commission services jointly for children and young people with SEN, both those with and without EHC plans. Those arrangements could involve joint funding agreements or pooled budgets. The details are decided locally but all local authorities and their partner clinical commissioning groups must make arrangements for considering and agreeing:

— The education, health and care provision reasonably required by children and young people with SEN;
— What education, health and care provision is to be secured and by whom;
— What advice and information is to be provided about education, health and care provision and by whom and to whom it is to be provided;
— How complaints about education, health and care provision may be made and are dealt with; and
— Procedures for ensuring that disputes between local authorities and clinical commissioning groups are resolved as quickly as possible.

The joint commissioning arrangements must include arrangements for:

— securing Education, Health and Care assessments;
— securing the education, health and care provision specified in EHC plans; and
— agreeing personal budgets.

Local authorities will provide Information about the services that result from joint commissioning arrangements in their local offer.

Children, young people and their families should be at heart of this process. The joint commissioning duty will help ensure that local councils, health professionals and volunteers come together to organise services, and set out a clear expectation of what parents, children and young adults with SEN can expect.

[Note: When the duty on health commissioners to ensure provision of healthcare services specified in Education, Health and Care Plans has been cleared by the Committee considering the Children and Families Bill it will be referenced here]

**Co-operation**

A local authority in England and its partner clinical commissioning groups must make arrangements to deliver the education, health and social care provision for 0–25 year old children and young people that the LA is responsible for who have SEN. To do that, the local authority must work with:

— children and young people with SEN, and the parents of children with SEN, in its area;
— the governing bodies of maintained schools and maintained nursery schools in its area;
— the proprietors of Academies in its area;
— the governing bodies, proprietors or principals of post-16 institutions in its area;
— the governing bodies of non-maintained special schools in its area;
— the advisory boards of children’s centres in its area;
— the providers of relevant early years education in its area;
— the governing bodies, proprietors or principals of other schools and post-16 institutions in England and Wales that the authority thinks are or are likely to be attended by children or young people for whom it is responsible;
— a youth offending team that the authority thinks has functions in relation to children or young people for whom it is responsible;
— such other persons as the authority thinks appropriate.

Local authorities also have a duty to ensure that there is suitable education and training for young people in their areas, including for those children and young people who are unable to attend school, for example, due to health needs.

The arrangements for joint commissioning for children and young people with SEN will draw on:
— the local needs identified by Health and Wellbeing Boards in their Joint Strategic Needs Assessments,
and
— the agreed priorities of the Joint Health and Wellbeing Strategy.

Each CCG will determine what services must be provided to meet the reasonable health needs of the children and young people for whom they are responsible. At a population level, these services will be reflected in the local offer of services published by the local authority. However, a CCG may also commission a specific service to meet the needs of a child or young person, based on the assessment of the child or young person’s needs and consideration of their individual case.

The local authority and the partner CCG(s) have a statutory duty to consider the extent to which children and young people’s needs could be more effectively met through partnership arrangements under section 75 of the NHS Act 2006. They must also have regard to the NHS mandate published by the Secretary of State (and any guidance issued by the Secretary of State) and, must involve the Local Healthwatch organisation for the area of the local authority, and the people who live or work in the area.

The objectives in the NHS Mandate include:

— improving partnership across different services for children and young people with SEN or disabilities. The Board has a responsibility to ensure that they have access to the services identified in their agreed care plan;
— giving parents of children who could benefit from it the option of a personal budget based on a single assessment across health, social care and education;
— improving integration across health services, including the transition between children and adults services;
— health services working with wider stakeholders, such as schools, to improve health outcomes;
— mental health having the same importance as physical health throughout the NHS, and an emphasis on increasing young people’s access to mental health services.

Involving children, young people and their families

Both clinical commissioning groups and the NHS Commissioning Board must develop effective ways of harnessing the views of patients and the public so that commissioning decisions on services for children and young people with SEN are shaped by people’s experiences and aspirations and focused on helping achieve agreed outcomes.

The integrated arrangements for commissioning services for children and young people with SEN must promote the involvement of children and young people, and their parents, carers and representatives in decisions which relate to their care, and in the development and review of a local offer of services, derived from commissioning plans which reflect the strategic participation of local young people and their families. CCGs will want to engage with Healthwatch organisations, patient representative groups, Parent-Carer forums and other local voluntary organisations and community groups to do this.

3.2 Keeping provision under review

Joint commissioning is an on-going process and local authorities and their partner CCGs must keep the arrangements under review.

Local authorities also have a duty to keep under review the special educational provision and social care provision in their areas for children and young people who have SEN and the provision made for children and young people from their areas that are educated out of the area. The local authority will do this by working with the partners to their joint commissioning arrangements.

3.3 Working in partnership

Health services

Local authorities and CCGs will want to consider how best to integrate the commissioning of services for children and young people with SEN with the CCG’s broad responsibility for commissioning health services for other groups, and the local authority’s responsibility for health protection and health improvement for the local population. The local authority in particular has responsibility for securing a range of public health services which may be relevant for children and young people, and will want to consider how their commissioning and provision can be aligned with the arrangements for commissioning services for children with SEN: for example, the Healthy Child Programme for pre-school and school-age children, including school nursing.

Note that the NHS Commissioning Board may also have commissioning responsibility for some children and young people (for example in some secure children’s homes), and therefore a similar duty to meet their reasonable health needs. See the National Health Services Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012: http://www.legislation.gov.uk/uksi/2012/2996/contents/made

A factsheet has been produced on the public health responsibilities of local authorities: http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_131901.pdf
Designated Medical Officer

The designated medical officer for SEN (who might be an employee of an organisation such as a CCG or NHS Trust), has responsibility for co-ordinating the role of the health body in statutory assessment. The officer must work strategically across health, social care and local government, and have good relations with local commissioners who are partners in the joint arrangements for SEN, working to ensure effectiveness in co-operation, and encouraging and supporting the optimum use of flexibilities for joint working (eg through partnership arrangements and pooled budgets).

They must provide a means for the local authority to access expert medical advice—for example, on whether or not a child can attend school, or on medical evidence provided in support of a school application—but may also be required to provide or facilitate access to, advice or support for the health community on SEN, particularly when health services are preparing reports on children. Whilst the advice and support may be provided by a number of health and care professionals as appropriate, the designated medical officer must be an identified, qualified and registered medical practitioner, with the appropriate training and/or experience to exercise this role in relation to children and young people with SEN.

The designated medical officer should ensure all early years providers, schools and colleges in the local authority have a contact for seeking medical advice on children who may have SEN, and should ensure other agencies are fully engaged with arrangements for ensuring appropriate statutory notifications are made. For example, the designated medical officer must ensure that there are arrangements in place to ensure local health services (including primary medical services and secondary care) are able to inform the local authority of children who they think may have SEN.

Social Care Services

Social care teams have a range of duties and responsibilities towards children and young people with SEN. In particular, they should:

— Provide early years providers and schools with a contact for the provision of social care advice on children and young people with SEN;
— Co-operate (with the local authority) in drawing up its local offer;
— Undertake their duties to identify children and young people with SEN;
— Respond to requests for advice for an EHC plan within required time limits;
— Make available social care provision specified in the plan;
— Undertake reviews of children and young people with plans where there are social care needs.

Social care departments may find it useful to designate an officer or officers to support their social care teams in undertaking these duties and to act as the central point of reference for the local authority’s SEN teams on matters related to social care.

[Note: This chapter will be developed to include more information on the roles of health and social care professionals in integrating, commissioning and reviewing services. Further information to be provided here in relation to duties of Adult Social Care services towards 18–25 year olds with SEN and EHC plans who are entitled to adult care]

4. THE LOCAL OFFER

[Draft indicative regulations for Committee relevant to this chapter are:
— The Special Educational Needs (Local Offer) (England) Regulations, Clause 30.]

4.1 WHAT IS THE LOCAL OFFER?

Local authorities must publish, in one place, information about provision they expect to be available in their area for children and young people from 0 to 25 who have SEN.

The local offer must include both local provision and provision outside the local area that the local authority expects is likely to be used by children and young people with SEN for whom they are responsible, including relevant national specialist provision. For example, if an FE college in a neighbouring authority takes students from the “home” local authority then it should be included.

The local offer has two key purposes:

— To provide clear, comprehensive and accessible information about the support and opportunities that are available; and
— To make provision more responsive to local needs and aspirations by directly involving children and young people with SEN, parents and carers, and service providers in its development and review.

The process of developing the local offer is intended to help local authorities to improve provision. The local offer should not simply be a directory of existing services.

The local offer should be:
— Engaging: local authorities must involve parents, children and young people in developing and reviewing the local offer and should cooperate with those providing services and education. Effective parent participation happens when parents have conversations with and work alongside professionals in order to design, develop and improve services.

— Accessible: the local offer should be easy to understand, factual and jargon-free. It should be structured in such a way that relates to young people’s and parent’s needs (for example by broad age category or by type of provision). This should be developed with local families.

— Transparent and comprehensive: parents and young people should know what support is available across education, health and social care from 0 to 25, how to access it (including eligibility criteria where relevant), how decisions are made and who is accountable. The local offer should include details of where to go for information, advice and support, as well as how to make a complaint about support, or appeal against decisions.

The [xxx] Regulations provide a common framework for the local offer. They specify the requirements that all local authorities must meet in developing, publishing and reviewing their local offer:

— The information to be included
— How the local offer is to be published
— Who is to be consulted about the local offer
— How children and young people with SEN and parents will be involved in the preparation and review of the local offer
— The publication of comments on the local offer and the local authority’s response.

4.2 What must be included in the local offer?

Local authorities must include information about all the areas specified in the Regulations. Local authorities are also encouraged to include wider information, particularly in light of their discussions with children and young people with SEN and parents.

The local offer must include information about:

— Education, health and care provision for children and young people with SEN (which should include information about its quality and the destinations/outcomes achieved by those who use it);
— Arrangements for identifying and assessing children and young people’s SEN, including arrangements for requesting an EHC needs assessment;
— Other education provision (educational provision outside of schools or colleges such as sports or arts provision);
— Training provision, including Apprenticeships;
— Arrangements for travel to and from schools, post-16 institutions and early years providers;
— Support to help children and young people in moving between phases of education (for example from early years to school, from primary to secondary) and to prepare for adulthood;
— Sources of information, advice and support in the local authority’s area relating to SEN including information provided under clause 32 of the Children and Families Bill, forums for parents and carers, support groups, childcare and leisure activities, and
— Arrangements for making complaints, for the resolution of disagreements, mediation and parents’ and young people’s right to appeal a decision of the local authority to the Tribunal.

Arrangements for Identification and Assessment

Local authorities should make clear in the local offer the arrangements in schools, post-16 institutions and early years providers for:

— Identifying the particular learning needs of any child or young person, modifications to teaching approaches and provision of ancillary aids;
— Arrangements for involving the child’s parents or the young person in decisions about their provision;
— Securing additional services, expertise, equipment and facilities required by children and young people with SEN.

Mainstream educational settings must use their best endeavours to secure the special educational provision called for by the child’s or young person’s needs.

As well as setting out the provision the local authority expects to be available in early years providers, schools and post-16 institutions, the local offer should make clear where information provided by schools [under clause 64 of the Children and Families Bill] about their arrangements for identifying, assessing and making provision for children and young people can be found. It will also need to make clear how young people and parents can find information published by post-16 institutions.

The local authority must include details of how to request an Education, Health and Care needs assessment.
Education, Health and Care Provision

Education Provision should include provision available in both mainstream and specialist educational settings, including details of provision available in the independent and non-maintained sectors that are attended or likely to be attended by children or young people in its area. It also includes:

- The special educational provision (such as SEN support or learning support services, sensory support services or specialist teachers) made available to mainstream schools, early years providers, special units, alternative provision and other settings (including home visits), whether provided by the local authority or others;
- Local arrangements for collaboration between institutions to support those with SEN (for example, partnership working between further education colleges or shared services between schools); and
- The local authority’s arrangements for providing additional funding for children and young people with high needs in mainstream and specialist settings.

The local offer must include information about health care provision for children and young people with SEN, including speech and language and other therapies, services relating to mental health and services assisting relevant early years providers, schools and post-16 institutions to support children and young people with medical conditions.

It should include health and care provision commonly accessed by children and young people with SEN such as wheelchair services and community equipment, children’s community nursing, Portage, continence services, physiotherapy and other relevant therapy services, palliative and respite care and other provision for children with complex health needs.

The emphasis should be on ensuring all relevant information can be easily accessed by children, young people and their families. A CCG should ensure families can easily access information on other services, such as local urgent and emergency care provision. Local authorities and their partner CCGs should ensure that this information is accessible through the local offer. They should particularly include provision for children and young people’s continuing care arrangements, with information on how these are aligned with the Education Health and Care planning process locally, described in Chapter 3.

The local offer must include information about social care services provided in accordance with section 17 of the Children Act 1989 for children and young people with SEN. It must include support for young people when moving between social care services for children to social care services for adults, and support for young people in finding appropriate accommodation and assistance to support independent living and should include details of the short breaks for disabled children, young people and their families.

[Note: Further information on adult social care. The draft Care & Support Bill contains requirements for publishing information on adult social care. We will cross-reference that here]

Since April 2011, local authorities have been under a duty to provide a range of short breaks services for disabled children, young people and their families. A key part of that duty is the requirement for all local authorities to prepare a short breaks duty statement, providing details of the local range of services; how services are responding to the needs of local carers; and how services can be accessed, including any eligibility criteria. 149

Local authorities are required to publish statements on their websites and to review them on a regular basis. They must also consider the needs of local parents and carers when preparing and revising their statements. The short breaks duty statement will form a core part of the social care strand of the local offer.

This range of education, health and care provision is likely to be funded by a number of sources, including schools or colleges through their delegated resources, the local authority high needs funding block and other funding (for health and social care provision for example) from the local authority and partner clinical commissioning groups.

The local offer should provide information that is accessible to young people and parents on what provision is available and how it can be accessed, irrespective of the funding source involved.

In setting out the special educational provision the local authority expects to be available in early years providers, schools, post-16 and other institutions from their own budgets in their local offer must include information about the arrangements in place for:

- Identifying children and young people’s SEN.
- Assessing and reviewing children and young people’s progress towards outcomes, including the opportunities available to work with parents and young people as part of this assessment and review.
- Supporting children and young people in moving between phases of education and in preparing for adulthood. As young people prepare for adulthood outcomes should reflect their ambitions for employment, independent living and participation in society.
- The availability of specialist expertise among teachers, lecturers or other professionals to support children and young people with SEN.

149 The Breaks for Carers of Disabled Children Regulations 2011
— Assessment and evaluation of the effectiveness of SEN provision.
— Access to facilities and extra-curricular activity used by all children and young people at the educational setting.
— Extra pastoral support including practices for listening to the views of children and young people with SEN and measures to prevent bullying.

**Provision available in training settings**

The local offer must identify training opportunities, including Apprenticeships, Traineeships and Supported Internships, available to local young people. Training is an important option for young people from age 16. Local authorities must therefore ensure they identify training providers who can serve young people with SEN in their area, and engage with those providers to ensure the local offer provides good quality information about that provision.

**Transport arrangements to and from educational provision**

Transport is often a critical factor in the support for children and young people with SEN. The local offer must make clear:

— any support available from the local authority with transport costs and the local authority’s policy on transport support
— any specific arrangements for specialised transport (e.g., specially fitted buses)
— any arrangements for free or subsidised transport
— where support might be obtained from other sources to help with transport costs.

This must include transport arrangements for young people in relation to post-16 provision as set out in the section 509AA of the Education Act 1996. It must include any arrangements for transport provision for young people up to age 25 with an EHC plan, including independent travel training.

Local authorities will wish to include in this section any support that is offered to children and young people to help them use transport, including public transport, and what training is given to help independent travel.

**Support available to children and young people to help them prepare for adulthood**

The local authority must set out in the local offer what support is available to children and young people with SEN to enable them to move into adulthood with choice and control over their lives. This should include evidence of what works in achieving good outcomes.

**Preparing for adulthood support** must include provision relating to finding paid employment, housing and accommodation and participation in society:

— Preparing for and finding employment, including supported employment: this must include Supported Internships and how to apply for them, and Apprenticeships and Traineeships, support available from job coaches and how to obtain that support, support available from employment agencies, and support available from Year 9 to help children and young people plan their careers. It should also include some signposting on where young people could obtain advice about setting up their own enterprise. It should also include signposting on where young people can obtain advice and information about financial support available for them when they are looking for work, or once they are employed.
— Preparing for independent living—enabling young people with SEN to have informed choice and control over their lives, and finding accommodation: this must include information about different housing options such as social housing, housing association accommodation, private renting, shared housing and shared ownership, how to apply for accommodation, and where to get financial and other support (such as a personal assistant, assistive technology or modifications to a home) and more detailed advice on accommodation. For people eligible for social care or health support, it should include support to develop choice and control over who supports them and how they are supported, including managing their personal budget or recruiting a personal assistant.
— Community participation: for instance leisure and social activities so that young people with SEN are able to develop relationships and contribute to their community, including influencing local decision making. This must include information about how young people can access mainstream community facilities and local youth services, and volunteering opportunities. Access in this context does not simply mean wheelchair access: it means support to enable young people to participate in local society (for example, this could mean training staff at leisure facilities to better understand different needs). It should include information on how care support can enable young people to access social opportunities (e.g., a personal assistant or assistive technology) and develop friendships, and how to apply for that support.

**Information about how to seek an Education, Health and Care assessment**

In addition to providing information about the support that is available from the delegated budgets of schools, colleges and early years providers and, where appropriate, from the local authority through its high needs budget, it is important that parents and young people have information about how to seek an assessment for an EHC plan when support is not helping the child or young person to make progress.
The local offer should include information about:

- how an assessment can be requested
- how the local authority will consider a request for an assessment and inform parents and young people of their decision
- how parents and young people will be involved in the assessment process
- any support to help families during the assessment and planning process (such as key working or family support services)
- any timescales involved in the assessment process
- the process for making an EHC plan and how parents and young people will be involved
- the option of a personal budget, who is eligible, how to ask for one and what information, advice and support is available for one
- arrangements for mediation, disagreement resolution and appeals.

**Information about where to get advice and support**

It is vital that parents and young people know where to get advice, information and support. Parents of children with SEN have benefited from the information, advice and support provided by local Parent Partnership Services for many years.

With the extension of protections enjoyed by young people in schools to those in colleges and much closer integration of education, health and social care services there is a need for parents and young people to have access to coordinated advice and information.

This information and advice should be accessible through a single service or place, and direct parents, carers and young people, as well as those who support them, to the appropriate local authority voluntary and community sector SEN support services, factual information, advice on rights, legal requirements and what to do if things go wrong.

Local authorities must also publish information on how young people with SEN can access impartial advice and guidance on education, health and social care provision and ensure that this advice is tailored appropriately for them.

The information and advice should include arrangements for additional individual support for those families who find it particularly difficult to engage with services. This may be through the offer of an independent “key working” role or coordination role to deliver practical support to families going through the assessment process.

Local authorities have responsibilities to support young people into education or training and to secure sufficient suitable education and training provision for all young people aged 13–19 and for those aged 20–24 with an EHC plan [currently applies to those with a Learning Difficult Assessment] and make available to those young people support that will encourage, enable or assist them to participate in education or training. Tracking young people’s participation and outcomes/destinations is a key element of this duty.

**4.3 How the local offer should be published**

Local authorities should make their local offer widely accessible by making it available as a web-based resource and publishing their arrangements for enabling those without access to the web to get the information. It should also enable access for different groups, including disabled people and those with different SEN.

**4.4 Who should be consulted by a local authority in preparing its local offer**

Children and young people with SEN and parents should be at the heart of the local offer and should co-produce it with the local authority. Local authorities are best placed to decide how to do this but it needs to go beyond a simple sign off process. Children, young people and families can influence usefully both the type of provision and how it is made accessible. The [xxxx] Regulations make clear that local authorities should involve them in:

- planning the content of the local offer—to find out what services children and young people need
- deciding how to publish the local offer—so it is easily accessible and easy to navigate reviewing the local offer
- providing feedback on services in the local offer.

Local authorities should publicise in the local offer the ways in which they will involve children, young people and parents. This should include any support available to enable them to contribute.

The success of the local offer rests on cooperation between the local authority and the range of bodies and organisations set out in the Children and Families Bill including schools, colleges and health services. Clause 28 of the Bill places a reciprocal duty to cooperate on those bodies and organisations and the local authority.

Local authorities and their partners will need to develop the local offer in the context of their local Health and Wellbeing Strategy, joint commissioning arrangements and agreements about the delegation of SEN funding.
with local partners. The local offer is the key vehicle for communicating the effects of these strategic discussions to local families affected by SEN.

More broadly, local authorities should consult with children and young people with SEN and parents and those bodies in keeping their special educational provision and social care provision under review, including the sufficiency of that provision (clause 27 of the Children and Families Bill). This will help local authorities to identify gaps in their provision.

Local authorities must seek and publish comments about their local offer, including those received from or on behalf of children and young people with SEN and their parents. Comments must be published if they relate to:

— the content of the local offer, which includes the quality of existing content and any gaps in the content
— the accessibility of information in the local offer
— how the local offer has been developed or reviewed.

Local authorities must publish their response to those comments in the local offer alongside an explanation of what action they are taking to respond. They are not required to publish abusive or vexatious comments and must ensure that comments must be published in a form that does not enable any individual to be identified.

4.5 The local offer: links to joint commissioning, co-operation and health and social care

The local offer will be underpinned by joint commissioning arrangements made by local authorities and clinical commissioning groups agreeing what education, health and care provision is needed locally and who will provide and pay for that provision. Those joint commissioning arrangements will be informed by:

— the local needs identified by Health and Wellbeing Boards in their Joint Strategic Needs Assessments, and
— the agreed priorities of the Joint Health and Wellbeing Strategy.

Each CCG will determine what services must be provided to meet the reasonable health needs of the children and young people for whom they are responsible. At a population level, these services will be reflected in the local offer of services published by the local authority.150

Joint commissioning arrangements must include details of how advice and information will be provided to parents and young people, including details of how they should raise complaints about education, health and care. They must also have procedures to resolve disputes between local partners quickly.

Local authorities and their partners, including clinical commissioning groups will have a duty to co-operate with each other to assess children and young people, prepare EHC plans and to commission and provide services. This means the local authority must ensure that all its officers co-operate with each other to ensure a seamless and consistent service for children, young people and families. This must include those officers whose roles will contribute to helping young people make a successful transition to adulthood—for example housing, economic regeneration.

Co-operation between the local authority, its partner clinical commissioning groups and other local partners, including early years providers, schools and post-16 institutions [provided for in clauses 28, 29 and 31 of the Children and Families Bill] is essential so that the local offer provides a transparent and accessible picture of the range of services available locally.

4.6 How the local offer links to other duties

[Note: This section will be developed to include references to other relevant statutory duties including The Equality Act (2010); Raising the Participation Age; providing suitable education and training for young people over compulsory school age and those 19-25 with EHC plans; provision of Information, Advice and Guidance, publishing information on positive activities for young people, Care and Support Bill duties to publish information on adult care services, children of service personnel; and the duty to keep a register of disabled people]

5. Early Years, Schools, Colleges and Other Providers

[Draft indicative regulations for Committee relevant to this chapter are:
— The Special Educational Needs (SEN co-ordinators) Regulations, Clause 62;
— Remaining in special school or post-16 institution without an EHC plan Regulations, Clause 34;
— The Special Educational Needs (Information) Regulations, Clause 64.]

150 The NHS Commissioning Board may also have commissioning responsibility for some children and young people (for example in some secure children’s homes), and therefore a similar duty to meet their reasonable health needs. See the National Health Services Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012: http://www.legislation.gov.uk/uksi/2012/2996/contents/made
5.1 *Improving outcomes for all—high expectations for children and young people with SEN*

All children and young people should have an appropriate education with opportunities to achieve their goals and aspirations and where their voice is heard. Education should always build on what has gone before; ensuring a child or young person continues to make progress and ultimately preparing them to make a successful transition to adulthood.

All education settings, including nurseries, early years providers, schools, colleges and other providers, should have high aspirations for all children and young people, including those with SEN. Improving outcomes for all children and young people involves early years providers, schools, colleges and local authorities in actively engendering a sense of community and belonging and seeking to remove barriers to learning and participation that can hold back or exclude children and young people with SEN. This is supported by the duties that local authorities, early years providers, schools and colleges have towards disabled people under the Equality Act 2010.

It is vital to identify quickly and accurately where children and young people have SEN that requires additional support so that this can be put in place. All teachers need to be equipped to teach children and young people with a diverse range of need. Early years providers, schools and colleges should plan their staff training, development and support to ensure all teachers are able to do this. Taking this approach should ensure a focus on the quality of teaching for all children and young people and on the development and evaluation of different approaches to meet the needs of individual children and young people within the early years provision, school or college.

Section 5.4 below provides guidance on identifying children and young people with SEN and providing Additional SEN Support. It emphasises the importance of teaching and learning strategies in meeting the needs of most children and young people and gives advice on providing additional or different support for those who cannot be supported effectively in this way.

5.2 “*All teachers are teachers of children with special educational needs*”

**Good practice on quality provision**

— Good quality teaching

**Requirements for what all early years providers, schools, colleges and other providers should be providing to all children and young people**

— The integrated review at age 2/2.5
— The Early Years Foundation Stage and its importance for early teaching, learning and identification of SEN
— Phonics Check

**Requirements from the National Curriculum—details**

— The National Curriculum—including P Scales
— Programmes of study
— For 14–16 year olds enrolled in college, the core KS4 curriculum

**Principles of 16–19 Study Programmes (16–25 for young people with SEN) [Note: from September 2013]**

— All students should follow a coherent programme that supports progression to work or further study.
— For some students, study at Level One or Entry level may be appropriate; for others, where the student has profound and/or complex learning difficulties, it may be appropriate for the Study Programme to concentrate on work experience or other non-qualification activities that will prepare them for adult life.
— In all cases, Study Programmes should include English and maths at an appropriate level.

5.3 *Inclusion and choice*

With the right training, strategies and support in place the majority of children and young people with SEN are already successfully included in mainstream education. This is reflected in the general principle in law that children and young people with SEN should be educated in mainstream settings. That principle is supported by provisions safeguarding the interests of all children and young people and ensuring that the preferences of the child’s parents or the young person for where they should be educated are met wherever possible.

Special schools (in the maintained, non-maintained and independent sectors), special post-16 institutions and specialist colleges all have an important role in providing for children and young people with SEN and in developing and working collaboratively with mainstream and special settings to develop and share expertise and approaches.

All children and young people have different needs and children and young people can be educated effectively in a range of settings, including mainstream and special schools and colleges. Alongside the general principle of inclusion parents of children with an EHCP plan and young people with such a plan have the right to seek a place at a special school, special post-16 institution or specialist college.
Children and Families Bill

Children and young people with SEN but without Education, Health and Care Plans

Most children and young people with SEN have always been taught in mainstream settings. Where a child or young person has SEN but does not have an EHC plan they must be taught in a mainstream setting except in specific circumstances (see below).

The School Admissions Code of Practice requires children and young people with SEN to be treated as fairly as others. Admissions authorities:

— must consider applications from parents of children who have SEN who do not have an EHC plan on the basis of the school’s published admissions criteria as part of normal admissions procedures
— must not refuse to admit a child who has SEN but does not have an EHC plan because they do not feel able to cater for those needs
— cannot refuse to admit a child on the grounds that they do not have an Education, Health and Plan.

FE colleges manage their own admissions policies. They will do so in line with the requirements of the Equalities Act. Students will need to meet the entry requirements for courses as set out by the college, but should not be refused access to opportunities based solely on whether or not they have SEN.

Children and young people without an EHC plan can be placed in special schools and special post-16 institutions in the following specific circumstances:

— where they are admitted to a special school or special post-16 institution to be assessed for an EHC plan with the agreement of their parent, the local authority, the head teacher or principal of the special school or special post-16 institution and anyone providing advice for the assessment;
— where they are admitted to a special school or special post-16 institution following a change in their circumstances with the agreement of their parent, the local authority and the head teacher or principal of the special school or special post-16 institution;
— where they are in hospital and admitted to a special school which is established in a hospital; or
— where they are admitted to a Special Academy (including a Special Free School) whose Academy arrangements allow it to admit children or young people with SEN who do not have an EHC plan.

The last of these provisions enables the Secretary of State to approve Academy arrangements for individual Special Academies or Special Free Schools that are innovative and increase access to specialist provision for children and young people for children and young people without EHC plans.

The Academy arrangements in such cases would make clear that a child or young person would only be placed in such a Special Academy or Special Free School at the request of their parents or at their own request and with the support of professional advice. A special Academy which has these arrangements can only admit children who have a type of SEN for which they are designated and the special Academy will have adopted fair practices and arrangements that are in accordance with the Schools Admission Code for the admission of children without an EHC plan.

Children and young people with Education, Health and Care Plans

Details of the arrangements relating to children and young people with Education, Health and Care Plans (EHC plans) are set out in Chapter 6, Assessments and Education, Health and Care Plans.

Parents of children with an EHC plan and young people with such a plan have the right to express a preference for a particular maintained mainstream or special school, Academy or Special Academy, non-maintained special school, Further Education College, or independent school or special post-16 institution approved by the Secretary of State under clause 41 of the Children and Families Bill. The local authority must comply with their preference unless it would:

— be unsuitable to the age, ability, aptitude or SEN of the child or young person; or
— the attendance of the child or young person there would be incompatible with the efficient education of others; or the efficient use of resources.

Where a parent or young person does not express a preference for a particular school or further education college or special post-16 institution, or they do so and their preference is not met, the local authority has a duty to provide for a mainstream setting in the child or young person’s EHC plan unless it would be:

— against the wishes of the parent or young person; or
— incompatible with the efficient education of others.

Where the local authority considers a mainstream place to be incompatible with the efficient education of others it must demonstrate that there are no reasonable steps that it, or the school or college, could take to prevent that incompatibility by the school or college or local authority.

Children with EHC plans can also attend more than one school under dual placements. Dual placements can allow children time away from their mainstream school for specialist support. This can help to prepare children for mainstream education and prepare schools for meeting children’s needs. In order for a child with SEN who is being supported by a dual placement to be deemed as being educated at a mainstream school they must spend the majority of their time (at least 51%) there.
Where appropriate, a young person with an EHC plan can also attend a dual placement at an institution within the further education sector and a special post-16 institution. The local authority should work with the young person, post-16 providers and independent specialist colleges to commission such placements where that will achieve the best possible outcome for the young person. To be deemed as being educated in a mainstream further education institution, young people should spend the majority of their time there.

**Disability and the Equality Act**

Many disabled children also have a special educational need. Schools, early years providers, post-16 institutions and local authorities have duties under the Equality Act 2010 towards disabled children and adults and children and adults with other “protected characteristics”. The Department publishes guidance for schools on their duties under the Equality Act 2010 [http://www.education.gov.uk/aboutdfc/advice/f00215460/equality-act-2010-departmental-advice]

School and local authority duties towards disabled pupils are as follows:

- They must not discriminate against or harass disabled children;
- They must make reasonable adjustments for individual pupils and disabled pupils more generally to help alleviate any disadvantage they suffer;
- They must (under public sector equality duties) have regard to the need to eliminate discrimination of, and promote equality of opportunity for, disabled pupils and foster good relations between disabled and non-disabled pupils;
- Schools must publish accessibility plans and local authorities’ accessibility strategies setting out how they propose to increase the access of disabled pupils to premises, the curriculum and information. These plans and strategies must be published every three years;
- Schools must publish specified information about their provision, policies, plans and practices in relation to disabled pupils;
- Under schools’, local authorities’ and early years providers’ reasonable adjustments duty they must make reasonable adjustments to their policies, procedures and practices to prevent disabled children being put at a substantial disadvantage. They must also provide auxiliary aids and services for disabled pupils where reasonable and where failure to do so would put pupils at a substantial disadvantage;
- Early years providers have the same duties as schools under the Equality Act not to discriminate against or harass a disabled child and to make reasonable adjustments. Also, if they are public authorities, the same public sector equality duty requirements apply.

Further Education Institutions within the Post-16 sector have duties under the Equality Act 2010. These include:

- They must not discriminate against or victimise disabled students or applicants to the institution;
- They must not discriminate in their admission policies;
- They must not discriminate in the education, course or qualification they offer students;
- They must make reasonable adjustments in all the above for individual students to prevent discrimination (schedule 13);
- They must not discriminate in terms of who may access recreational or training facilities and the responsible body should make reasonable adjustments.

5.4 Identifying needs

**The importance of early identification**

The benefits of early identification are widely recognised; identifying need at the earliest point that a physical, sensory, learning or mental health need presents itself, and then providing good interventions, improves long-term outcomes for the child.

Whilst for many children and young people, their needs can be identified at birth or at an early age, some difficulties only become evident as children grow and develop. It is therefore important that all those who work with children and young people are alert to emerging difficulties and respond early. In particular, parents know their children best, and it is important that all professionals listen and understand when parents express concerns about their child’s development.

**Key points at which SEN may be identified**

*From birth to two*—Many of the more complex needs, developmental and sensory, are identified at birth. Early health assessments, such as the hearing screening test which is used to check the hearing of all new-born babies, enable the very early identification of a range of medical and physical difficulties such as spina bifida and cerebral palsy, and sensory impairments, such as vision and hearing and deaf-blindness. Health services, including paediatricians, the family’s general practitioner, and health visitors, work with these families, and support them in understanding their child’s needs and working on their behalf to ensure they can access early support. Where the health services anticipate that the child will have SEN when they start school, they can refer early to education services, so that families can start receiving educational advice, guidance and intervention.
There are several forms of support and provision for this age group. Examples are:

— Early Support is a programme underpinned by a set of principles that aim to improve the delivery of services for disabled children, young people and their families. It enables services to coordinate their activity better and provide families with a single point of contact and continuity through key working.

— Portage is a home-visiting educational service for pre-school children with additional support needs and their families. It is based on the principle that parents are the key figures in the care and development of their children and offers a carefully structured system to help parents become effective teachers of their own children. Parents and children receive regular home visits from their Portage visitor.

— Educational psychologists or specialist teachers such as a teacher of the deaf or visual impairment, or an early years support worker. These specialists may visit families at home, their role being to support parents and the child, answering questions, discussing communication, clarifying needs, and offering practical support.

Through early years providers—As part of their practice, providers will plan and offer activities which help the child reach their full potential. While children develop at their own pace, if a child’s progress in any prime area (personal social emotional development, communication and language, physical development) gives cause for concern, practitioners must discuss this with the child’s parents and/or carers and agree how to support the child. Practitioners must consider whether a child may have an SEN or disability which requires specialist support. They should link with, and help families to access, relevant services from other agencies as appropriate.

Progress check at age two—Practitioners must review the progress of 2 year olds and provide parents and/or carers with a written summary of their child’s development in the prime areas. The summary must identify strengths and where there is a concern that a child may have a developmental delay (an indication of SEN or disability). If there are concerns, or an identified SEN, practitioners should develop a targeted plan to support the child’s learning and development. Professionals should be involved as necessary. If a child moves settings between the ages of two and three, the progress check must be undertaken where the child spends most time.

5.5 The four primary areas of special educational need

Areas of Special Educational Need

There is a wide spectrum of difficulties that can lead to a child experiencing problems in learning and being assessed as having a special educational need. However, the spectrum can be narrowed into four areas of SEN, which helps schools and others to plan their provision, and to focus on interventions that are relevant and of good quality.

Although four areas of primary need are identified here, it is recognised that many children and young people experience difficulties that do not fit easily into one area, and may have needs which span two or more areas. It is important to carry out a detailed assessment of individual children and young people and their situations to make accurate judgements of their needs and provide appropriate interventions.

Schools and other providers should also ensure that they regularly review the appropriateness of their provision, including their behaviour policies as behavioural difficulties do not necessarily mean that a child has a special educational need.

The four primary areas of need are:

1. Communication and interaction;
2. Cognition and learning;
3. Emotional, social and behavioural development;
4. Sensory and/or physical.

Communication and interaction;
[Note: Further information to follow]

Cognition and learning;
[Note: Further information to follow]
**Emotional, social and behavioural development;**
[Note: Further information to follow]

**Sensory and/or physical needs**
[Note: Further information to follow]

5.6  Additional SEN Support in schools, early years and colleges

**The operation of Additional SEN Support**

It is the responsibility of educational settings in consultation with parents, and, where appropriate, the young person, to decide whether a child or young person requires Additional SEN Support. They must ensure that children and young people who receive Additional SEN Support have an identified SEN and that their progress has not been hampered by weak teaching or poor attendance.

All mainstream educational settings, alternative provision Academies and Pupil Referral Units have a legal duty (in the Children and Families Bill), to use their best endeavours to secure that children and young people with SEN get the special educational provision they need. Schools should ensure that all those who teach or support children and young people with SEN are aware of their needs. This information is helpful in planning provision effectively to meet the needs of all children and young people with SEN. Educational settings are also expected to account to Ofsted for the progress of all children and young people with SEN or who are disabled.

Many of the children who are not progressing as expected, or are falling behind their peers can be supported, and have their needs met, through normal teaching and learning strategies, modification to teaching approaches and to classroom organisation, or through provision of ancillary equipment and aids.

However, for those who have SEN and who require support and/or interventions that are additional to or different from those normally provided as part of the differentiated curriculum offer and strategies, will need Additional SEN Support. A child or young person should be provided with such support following discussion with parents about the identified needs, the support to be provided, and how improved outcomes can be achieved.

**Identification and Assessment**

The educational setting should have a clear approach to assessing SEN which is known by all staff. This should include the use of effective tools and early assessment materials, as well as arrangements to draw on more specialised assessments from external agencies and professionals. These should be agreed and set out as part of the local offer.

Before providing a child or young person with the Additional SEN Support, a rigorous assessment of SEN should be undertaken by the institution using all available evidence/data sources, such as attainment and historical data, the child or young person’s development in comparison to their peers, information from parents and, if relevant, advice from external support services. The main areas of need that characterise pupils with SEN are set out in section 5.4.

**Features of Additional SEN Support**

**Initial identification**

All educational settings should accurately identify children or young people with SEN and should consider which children and young people have particular needs which might need additional or different provision in order to achieve their outcomes. As part of a graduated approach to tackling need they should first:

- consider their core teaching and adapt that to meet needs of the cohort as a whole;
- ensure that parents of children are fully engaged, consulted and informed and agreement is reached on how the child’s needs will be met;
- ensure that the child or young person is fully engaged, consulted and informed and agreement is reached on how their needs will be met.

Where this identifies that a child or young person requires additional educational provision, from the school or from others:

- there should be a plan that focuses on what outcomes are expected and the support that the school, college and any relevant agencies will provide;
- reviews of progress should be held at least once a term;
- where relevant, external services and providers should work with settings to meet the needs of children and young people with SEN; and
- settings should review the effectiveness of what is happening and consider the need for a further assessment and any whether there should be changes to the support provided. Consideration should be given to requesting an assessment for an EHC plan if progress is not being made and outcomes are not improving.

**Additional SEN Support in Early Years Providers**

Early education practitioners working with children should monitor and review the progress and development of all children to differentiate between children who need support to catch up with their peers and those who need Additional SEN Support involving a more tailored approach to address a specific SEN, which is impacting on their ability to learn and develop.
Additional SEN Support in Schools and Colleges

Schools and colleges should plan, monitor and review their support arrangements for children and young people with SEN.

They should ensure they accurately identify children and young people with SEN who require additional or different levels of support from that which is normally provided. In particular, schools should take account of the support provided by early years providers, building on this and to ensure that momentum is maintained with a child’s progress. Likewise, post-16 institutions should take into account the support provided within school settings, where it is known to them. They should ensure that opportunities in further education enable young people to build on previous achievements and maintain their progress towards a successful transition to adulthood.

To ensure children and young people with SEN receive the right levels of support and intervention to help them to achieve good outcomes, schools and colleges should create a sharper focus on helping teachers to differentiate between:

— Those children and young people who need support to catch up with their peers; and
— Those children and young people who need a more tailored approach to address a specific SEN that is impacting on their ability to learn.

Monitoring Progress

All settings should monitor the impact of their interventions and whether adequate progress has been made. Where sufficient progress has not been made, settings should consider increasing the intensity and the frequency of the support and review the need for increased expertise.

Where sufficient progress has been made they should consider tailoring support to reflect the progress made and review whether Additional SEN support for the child or young person should be continued.

Reviewing progress [Note: replacement to current Individual Education Plans]

Funding to support children and young people who require Additional SEN Support

All schools are provided with resources in their delegated budget that they can use to support those with additional needs, including children and young people with SEN. This is determined by a local formula discussed with the Schools Forum. Similarly, colleges receive an allocation for both low level and high level needs of Additional Learning Support calculated on the basis of a 16–19 formula.

In addition, local authorities receive funding within their Dedicated Schools Grant which can be used to provide additional funds to early years providers, schools and colleges for children and young people with high needs and to provide support services such as for those with sensory impairment.

Funding arrangements for Additional SEN Support will be agreed locally.

5.7 The Special Educational Needs Co-ordinator (SENCO)

Governing bodies of maintained mainstream schools, maintained nursery schools and the proprietors of Academy schools (including free schools) must ensure that there is a qualified teacher designated as Special Educational Needs (SEN) co-ordinator (SENCO) for the school.

The SENCO must be a qualified teacher working at the school. A newly appointed SENCO must be a qualified teacher and where they have not previously been the SENCO at that or any other relevant school for a total period of more than twelve months, they must achieve the National Award in Special Educational Needs Coordination within 3 years of appointment.

The role of the SENCO in schools

The SENCO has an important role to play with the head teacher and governing body, in determining the strategic development of the SEN policy and provision in the school. The SENCO will have day-to-day responsibility for the operation of SEN policy and coordination of specific provision made to support individual children with SEN and those who have EHC plans. The SENCO provides professional guidance to colleagues and will work closely with staff, parents and carers, and other agencies. The SENCO should be aware of the services provided under the Local Offer and be able to work with professionals providing an independent support role to the family to ensure that children with SEN receive appropriate support and high quality teaching.

The key responsibilities of the SENCO may include:

— Overseeing the day-to-day operation of the school’s SEN policy;
— Coordinating provision for children with SEN;
— Liaising with, advising and contributing to the in-service training of fellow teachers and other staff;
— Liaising with the relevant designated teacher where a looked after pupil has SEN;
— Advising on a graduated approach to providing Additional SEN Support;
— Ensuring that the records of all children with SEN are kept up to date;
— Liaising with parents of children with SEN;
— Liaising with early years providers and secondary schools, educational psychologists, health, social care, and independent or voluntary bodies who may be providing SEN support and advice to a child and their family;
— Being a key point of contact with external agencies, especially the LA and LA support services;
— Liaising with potential next providers of education to ensure a young person and their parents are informed about options and a smooth transition is planned;
— Collaborating with curriculum coordinators so that the learning for all children is given equal priority;
— Ensuring with the head teacher and school governors that the school meets its responsibilities under the Equality Act (2010) with regard to reasonable adjustments and access arrangements.

The SENCO is responsible for ensuring that the school can track and record support plans and decisions for all the children with SEN in the school. SENCOs can be particularly effective when part of the leadership team.

The role of the SENCO in early years provision

[Note: Further information to follow]

The SENCO’s role in supporting transition arrangements

The SENCO will play an important part in planning for children with SEN transferring between schools and phases of their education including entry to a college or a provider in the further education sector. Early planning is essential. The SENCO will need to liaise with those responsible for admissions, curriculum and support for young people with SEN, and ensure that the receiving school, college or other institution has all the relevant information including the strengths, capability, progress and aspirations of the young person.

Transition between early years and school
[Note: Further information to follow]

Transition school and post-16
[Note: Further information to follow]

Further Education—workforce skills
[Note: Further information to follow]

5.8 Further information

Best Endeavours

The governing bodies, proprietors and management committees of mainstream schools, maintained nursery schools, pupil referral units and institutions within the further education sector must use their “best endeavours” to make the special educational provision called for by a child or young person’s SEN. Using their “best endeavours” means that within the resources available to them these bodies must do their best to meet a child or young person’s SEN.

Informing parents and young people

Where a school, maintained nursery school, Academy or PRU begins to make special educational provision for a child or young person without an EHC plan they must tell the child’s parent or the young person that special educational provision is being made. This is to ensure that parents and young people are in a position to play an informed role in decisions about their child’s or their own provision.

SEN information report

The governing bodies of maintained schools and maintained nursery schools and the proprietors of Academy schools have a legal duty to publish information on their websites about the implementation of the governing body’s or the proprietor’s policy for pupils with SEN. Governing bodies and proprietors must also publish information about the arrangements for the admission of disabled pupils, the steps taken to prevent disabled pupils being treated less favourably than others, the facilities provided to assist access of disabled pupils and their accessibility plans. The information published must be updated annually and any changes to the information occurring during the year must be updated as soon as possible. The information should relate to provision set out in the local offer.

Colleges should build a relationship with all students with learning difficulties and disabilities without a plan and will wish to ensure the young person is aware of support they are receiving.

Early education for two-year-olds from lower income families

There is a legal duty on local authorities to, from September 2013, secure funded early education places for two-year-olds who are either looked after by the local authority or from lower income families. Around 20% of two-year-olds (some 130,000 children) will be eligible for 570 hours of funded early education, which may be taken as 15 hours per week, for example [Note: The Government has also made a commitment to extend the duty to cover more children from September 2014, to around 40% of two-year-olds (some 260,000 children)].
5.9 External Support and Wider Support for Education Settings

The Educational Psychologist

One source of external support that schools and colleges can seek is from the local educational psychology service. These specialists provide on-going advice about children and young people with EHC Plans to education settings and to parents, as well as contributing to school and college understanding of practical interventions that will support progress and well-being. Educational psychologists also contribute to staff training and development.

Child and Adolescent Mental Health Services (CAMHS)

CAMHS can provide advice, support and consultation to family members, carers and workers from health, social care, educational and voluntary agencies. Some children and young people identified as having SEN may benefit from referral to specialist CAMHS for the assessment and treatment of their mental health problems. A variety of working arrangements exist between schools and local health partner organisations to facilitate co-operative partnerships and clear joined up care pathways to support individual children, young people and their families.

Specialist support teachers or support services

There is a range of specialist teachers who provide advice, direct support and guidance consultation to children and young people with a range of SEN. In particular, specialist teachers for children with hearing and visual impairment, including deafblindness, and those with physical impairment, support schools in modifying their curriculum and environment to ensure needs can be met. SEN support services may be commissioned by local authorities and delivered in a range of ways, including through schools.

Behaviour support teams

Behaviour support teams work to support children and young people with emotional and social difficulties in school. They provide early intervention and preventative work at whole school, group and individual level, and support schools in meeting the needs of those with more complex needs.

Youth Offending Teams

Youth Offending Teams (YOTS) work with young offenders (under 18) and those at risk of offending. YOTs are responsible for a range of youth justice services, including compiling pre-sentence reports, supervision of young offenders serving sentences in the community and supervision of those released from custody. Local authorities must ensure that Youth Offending Teams are involved in local commissioning arrangements. It is good practice to involve should involve the relevant probation services for young offenders who are aged 18 or over.

Other roles which support children and young people with SEN

— Speech and language therapists
— Occupational therapists
— Physiotherapists

[Note: Further information to follow]

5.10 Transitions points and preparing for adulthood

Discussions focusing on the wider aspirations of a child or young person should take place at an early stage with the child or young person and their parents/carers. They should consider progression, wherever possible encouraging education and training that will lead to greater independence and, where appropriate, employment. Person-centred planning should be at the heart of the discussion, which should include an in depth analysis of appropriate education and training provision for the young person, and promote where appropriate, independence and a future career.

Person-centred transition planning should begin as early as possible. The transition review should be a seamless transition from previous reviews and must allow time for the commissioning of any necessary provision and support to take place. It should build on existing plans which will have already been agreed with the child or young person and be integral to their learning and career guidance.

The role of Impartial Information, Advice and Guidance and transparent decision making for children and young people

Schools have a duty to secure independent, impartial careers guidance for pupils in years 9–11. [Note: This duty will be extended to years 8–13 from September 2013 and an equivalent requirement extended to 16–18
year olds in colleges through funding agreements.] Guidance secured under the duty must include information on the full range of 16–18 education or training options, including further education and Apprenticeships.

The Department for Education has issued statutory guidance which includes a clear requirement for schools to secure access to independent face-to-face support where this is the most suitable support for young people to make successful transitions—particularly children from disadvantaged backgrounds, or those who have SEN, learning difficulties or disabilities. A practical guide includes further information and models of good practice to help schools meet their requirements under the duty.

Local authorities also have a duty to support all vulnerable young people aged up to 19 (and up to the age of 25 if they have an EHC plan) to participate in education, employment or training. Local authorities should have a relationship with schools and colleges in their area in order to support the joint delivery of an offer of a place in education or training.

**Information Sharing**

It is important that information about the young person’s previous education and training is shared with the further education provider. Schools, colleges and local authorities should work together to ensure that all appropriate information is passed onto the new provider before the student begins the programme of learning.

5.11 *Children and young people in specific circumstances*

**Children with health needs**

Alternative provision is education arranged by local authorities or schools for children and young people who, because of behaviour, illness or other reasons, would not otherwise receive suitable education. It should provide education on par with that of mainstream, along with appropriate support to meet the needs of individual children and young people. Children unable to attend school because of health needs should be able to access suitable and flexible education appropriate to their needs. The nature of the provision must be responsive to the demands of what may be a changing health status.

Local authorities must:

— Arrange suitable full-time education (or as much education as the child’s health condition allows) for children of compulsory school age who, because of illness, would otherwise not receive suitable education.

Local authorities should:

— Provide such education as soon as it is clear that the child will be away from school for 15 days or more, whether consecutive or cumulative. They should liaise with appropriate medical professionals to ensure minimal delay in arranging appropriate provision for the child.

— Ensure that the education children receive is of good quality, as defined in the statutory guidance Alternative Provision (2013), allows them to take appropriate qualifications, prevents them from slipping behind their peers in school and allows them to reintegrate successfully back into school as soon as possible.

— Address the needs of individual children in arranging provision. ‘Hard and fast’ rules are inappropriate: they may limit the offer of education to children with a given condition and prevent their access to the right level of educational support which they are well enough to receive. Strict rules that limit the offer of education a child receives may also breach statutory requirements.

Local authorities should not:

— Have processes or policies in place which prevent a child from getting the right type of provision and a good education.

— Withhold or reduce the provision, or type of provision, for a child because of how much it will cost (meeting the child’s needs and providing a good education must be the determining factors).

— Have policies based upon the percentage of time a child is able to attend school rather than whether the child is receiving a suitable education during that attendance.

— Have lists of health conditions which dictate whether or not they will arrange education for children or inflexible policies which result in children going without suitable full-time education (or as much education as their health condition allows them to participate in).


**Young Offenders**

Where children and young people have identified needs it is important that information about those needs is shared with those who are responsible for education in custody. This will enable the right support to be put into place as soon as possible.

Local authorities should put appropriate arrangements in place to ensure that this information can be provided without delay to ensure that education providers in detention have access to all relevant information and can
arrange appropriate provision for the young person from the start of their detention. The Youth Offending Team (YOT) will notify a young person's local authority about their detention, transfer or release and will facilitate the transfer of information. The Skills Funding Agency requires its providers who deliver education and training in the adult secure estate (“OLASS providers”) to exchange information as prisoners move around the system.

**Identifying SEN in custody**

A significant proportion of young offenders have some level of SEN, which might only be identified once they have entered custody. If a local authority in which a young offenders’ institution is located thinks a child or young person under the age of 18 has special educational needs, they must notify the young person’s home local authority on release (in accordance with section 562H of the Education Act 1996) and, if necessary, a full assessment will be carried out on release. Similarly, an education provider in an adult prison who identifies SEN in a young person aged 18–25 should notify the young person’s home local authority on release so that, if necessary, a full assessment can be carried out.

**Education in Custody for young people under 18**

Youth Offending Teams (YOTs) must notify the local authority in which the child or young person is detained (host) and the local authority in which the young person normally resides, (home) when a child or young person (under 18) has become subject to a detention order or if they are being transferred between relevant youth accommodation (Section 39A of the Crime and Disorder Act 1998).

The home local authority is under a duty to monitor the education and training of all children or young persons (under 18) in detention and to take such steps as they consider appropriate to promote the fulfilment of his or her learning potential while they are detained and on their release (Section 562B of the 1996 Education Act). Where the local authority was maintaining an EHC plan for a child or young person detained in a young offender institution, the home local authority may supply appropriate goods and services to the local authority where the young person is detained or to the actual person providing the special educational provision [Section 562D of the 1996 Education Act].

If the young person had an EHC plan immediately before custody the local authority maintaining the plan must inform the host local authority. This information should also be shared with the YOT and the young offenders’ institution (YOI). The host local authority should work with the YOI to ensure that appropriate special educational provision is in place for the young person as soon as possible. Appropriate provision is the provision that was in place immediately before custody and set out in the EHC plan or provision that is as close as possible to that set out in the EHC plan.

If the host local authority, working with the home local authority, the Youth Offending Team, and the young offenders’ institution decide that the provision set out in the EHC plan is no longer appropriate the host local authority should put in place special educational provision that it considers to be appropriate for the young person. This might be the case, where for example a young person has had a plan for a number of years and has recently been re-assessed—indicating that their needs have changed, but where the plan has not yet been amended before the person entered custody.

**Education on release from custody for young people under 18**

The YOT must notify the host and home local authority when it becomes aware that someone is due to be released from relevant youth accommodation. If the young person had an Education Health and Care Plan before custody the responsible LA has a duty to maintain and review the Plan. Local authorities must work with the Youth Offending Team when undertaking this duty to decide whether the EHC plan still accurately reflects the young person’s needs. Where possible this review should take place as early as possible when planning for release and in any event within a month of release from custody.

**On transition from youth justice to adult secure estate**

A young person still in custody after their eighteenth birthday can be transferred into the adult estate. In line with the National Offender Management Service (NOMS) Transitions Protocol on managing transitions in custody, the youth justice establishment should ensure that all relevant SEN information is passed to the young adult YOI prior to transfer taking place.

**Education in custody for young people aged 18 and over**

There is no requirement for people to stay in education or training after the age of 18. Where young people with SEN opt to continue their education in custody it is important that they have access to appropriate special educational provision. The Chief Executive of Skills Funding has a duty to encourage those in adult detention to participate in education and training and to have regard to the needs of those with learning difficulties. If the young person had an EHC plan immediately before custody the LA should pass the information to those providing education in prison and work with them to ensure that appropriate special educational provision is in place for them as soon as possible.

**Education on release from custody for young people aged 18 and over**

If young people with an EHC plan immediately before custody plan to continue their education on release, the OLASS provider and the National Careers Service provider should liaise to ensure the responsible local
authority is aware so that they can review the EHC plan. Where appropriate those reviews can take place before release.

Not all young people engage in education in custody. Local authorities should therefore consider provision for children young people with SEN in custody, or who are just coming out of custody.

[Note: Sections to be included on the following]
Children of Service Personnel
Mobility and movement for children of Service personnel
Home education
Looked after Children
Information on the Virtual School Head
Children in Need (with a section 17 assessment)

6. Assessments and Education, Health and Care Plans

[Draft indicative regulations/policy statements for Committee relevant to this chapter are:

— The Approval of Independent Educational Institutions and Special Post-16 Institutions Regulations, Clause 41;
— Remaining in special school or post-16 institution without an EHC plan Regulations, Clause 34;
— Education (Special Educational Needs) (Assessment and plan), Clauses 36, 37, 44 and 45;
— Policy statement on regulations (Personal Budgets), Clause 48;
— Policy statement on parents and young people lacking capacity, Clause 68;
— Policy statement on transitional arrangements, Clause 107.]

6.1 Introduction

The great majority of children and young people with SEN will have their needs met within their local mainstream school or college (as set out in the information on identification and support in Chapter 5).

Local authorities should work closely with children, young people and their parents to plan for their future, as part of an on-going process, which continues to identify and meet the needs of children and young people as they develop and grow.

In a small number of cases, planning will identify a need to conduct formal assessments of education, health and care needs, leading to an Education Health and Care (EHC) plan. A statutory assessment should not be the first step in the planning process; rather it should flow from planning undertaken with parents and young people. The statutory assessment process must be co-ordinated across education, health and care to ensure a cohesive experience for children, parents and young people. Information from existing relevant assessments should be used and professionals should share information so that families do not have to keep giving the same information to different professionals.

EHC plans are integrated support plans for children and young people with SEN from 0 to 25. They are focused on achieving outcomes and helping children and young people make a positive transition to adulthood, including into paid employment and independent living. They will be produced in partnership with parents, children and young people and will be based on a coordinated approach to the delivery of services across education, health and care.

Statutory assessment itself will not always lead to an EHC plan. The information gathered during an assessment may indicate ways in which the school, college or other provider can meet the child or young person’s needs without the need for any special educational provision to be made by the local authority in accordance with an EHC plan. This section includes information on determining whether an EHC assessment and EHC plan is required.

6.2 Timescales

The EHC planning and assessment process should be carried out in a timely manner. The time limits set out here (and in associated regulations) represent the maximum time that should be taken; wherever possible, steps should be completed more quickly.

The whole assessment and planning process, from the point an assessment is requested or that a child or young person comes to the local authority’s notice to the completion of an EHC plan, should take no more than 20 working weeks (subject to exemptions set out below).

Specific requirements

a. Local authorities must respond to any requests for a statutory EHC assessment within a maximum of 6 working weeks, during which time they must seek the views of the parents or young person and
offer them the opportunity to submit any evidence relating to the decision. They must then inform the parents or young person, the educational provider and the relevant health commissioner—usually the clinical commissioning group of whom the patient’s GP is a member—of their decision as to whether to undertake an education, health and care assessment.

b. When local authorities request advice as part of the assessment process, those giving the advice must reply within a maximum of 6 weeks.

c. Children, young people and their parents must be involved and consulted throughout the assessment and planning process; they must be given at least 15 days to consider and provide views on the final draft of the EHC plan and to request that a particular school or other institution be named in it.

Exemptions

Local authorities do not need to comply with the time limits above in circumstances in which it is not reasonable to expect the bodies concerned to meet those time scales.

The local authority need not respond to any requests for a statutory EHC assessment within a maximum of 6 working weeks if it is impractical to do so because:

a. the authority has requested advice from the head teacher or principal of a school or post-16 institution during a period beginning 1 week before any date on which that school or institution was closed for a continuous period of not less than 4 weeks from that date and ending 1 week before the date on which it re-opens;

b. the authority has requested advice from the head of SEN in relation to, or other person responsible for, a child’s education at a provider of relevant early years education during a period beginning 1 week before any date on which that provider was closed for a continuous period of not less than 4 weeks from that date and ending 1 week before the date on which it re-opens;

c. exceptional personal circumstances affect the child or his parent, or the young person; or

d. the child or his parent, or the young person, are absent from the area of the authority for a continuous period of not less than 4 weeks during the 6 week period.

The local authority need not complete the whole assessment and planning process within a maximum of 20 working weeks if it is impractical to do so because:

a. the authority has requested advice from the head teacher or principal of a school or post-16 institution during a period beginning 1 week before any date on which that school or institution was closed for a continuous period of not less than 4 weeks from that date and ending 1 week before the date on which it re-opens;

b. the authority has requested advice from the head of SEN in relation to, or other person responsible for, a child’s education at a provider of relevant early years education during a period beginning 1 week before any date on which that provider was closed for a continuous period of not less than 4 weeks from that date and ending 1 week before the date on which it re-opens;

c. exceptional personal circumstances affect the child or his parent, or the young person; or

d. the child or young person, are absent from the area of the authority for a continuous period of not less than 4 weeks during 20 week period.

Bodies providing advice as part of the assessment process need not comply with the time limit if it is impractical to do so because:

a. exceptional circumstances affect the child, the young person or the child’s parent during that 6 week period;

b. the child, the child’s parent or the young person are absent from the area of the authority for a continuous period of not less than 4 weeks during the 6 week assessment window; or

c. the child or young person fails to keep an appointment for an examination or a test made by the body during the 6 week assessment window.

Parents or the young person should be told if any of these exemptions apply, so that they understand the reason for any delays. Local authorities should aim to keep delays to a minimum and as soon as the conditions that led to an exemption no longer apply the local authority should endeavour to complete the process as quickly as possible. Any remaining components of the process must be completed within their prescribed periods, regardless of whether exemptions have delayed earlier components.

6.3 Requesting an assessment

A child’s parent, a young person or a person acting on behalf of a school or post-16 institution may request that a local authority conduct an education, health and care needs assessment.

In addition, anybody can bring a child or young person who has (or may have) SEN to the attention of their local authority, and the local authority must consider whether an assessment is required. This might include, for example, health and social care professionals, youth offending teams or probation trusts and those responsible for education in custody.
All requests and referrals for assessment must be considered as quickly as possible by the local authority, regardless of their source.

6.4 Considering whether an assessment is necessary

Following a request, the local authority must determine whether an assessment is necessary. In doing so, they must ensure parents and young people are fully consulted and given the opportunity to share their views and submit evidence.

In considering whether a statutory assessment is necessary, local authorities should pay particular attention to:

a. The views, wishes and feelings of the child and parents or young person
b. Evidence of the child or young person’s academic attainment and their rate of progress
c. Evidence provided by the school, post-16 institution or others involved with the young person as to the nature, extent and cause of the child or young person’s learning difficulties (for example communication and interaction difficulties, behaviour emotional and social development, and sensory or physical needs)
d. Evidence of action already taken by the school or post-16 institution to meet and overcome those difficulties, and provision made
e. Evidence that where some progress has been made, it has only been as the result of much additional effort and instruction at a sustained level over and above that which is usually provided through Additional SEN Support
f. Evidence of the child or young person’s physical, emotional and social development and health needs
g. Where a young person is aged over 18, their age and whether remaining in education or training would help them to progress, building on what they have learned before and helping them to make a successful transition to adult life.

The local authority must inform the child’s parent or young person of their decision within a maximum of 6 weeks of receiving a request for an assessment (or otherwise becoming responsible for the child or young person under Clause 23 of the Children and Families Bill). The local authority must give its reasons for this decision. If the local authority intends to conduct an assessment, it must also ensure the child’s parent or the young person are aware of how they will be involved. If the local authority decides not to conduct an assessment it must inform the parents or young person of their right to appeal that decision and of the requirement for them to consider mediation.

6.5 Conducting co-ordinated assessments and planning

It is important that children, young people and families experience a straightforward and joined-up process which leads to timely, well-informed decisions. The following principles should be taken into account when conducting co-ordinated planning and assessments:

[Note: Further information to be added to this section on how professionals from education, health and social care should work together to ensure a fully co-ordinated assessment process]

a. Children, young people and their parents should be at the centre of the process, and their views on how, when and to what extent they would like to engage are important and should be taken into account;
b. The assessment and planning process should be as streamlined as possible;
c. There should be a ‘tell us once’ approach to sharing information, so families and young people do not have to repeat the same information to different agencies. Local authorities should be pro-active in ensuring that where there is existing, relevant information about the child or young person, within the local authority or different agencies, they use this rather than requesting further information or assessment. Local authorities should minimise unnecessary disruption and take account of the needs of the child, young person and their family. For example: where families are required to attend multiple appointments with different professionals, these should be co-ordinated or combined where possible; and children and young people with challenging behaviour may need special arrangements for appointment times or venues;
d. Local authorities and clinical commissioning groups are required (under the Children and Families Bill) to work together to arrange local services to meet the education, health and care needs of children and young people with SEN. They must ensure the integration of education, health and care provision where this would improve the well-being of children and young people with SEN. Joint commissioning arrangements must include arrangements to secure education, health and care needs assessments. Local education, health and care services must work together effectively to reach agreement on key outcomes with families and to agree the appropriate joint provision across services to deliver the agreed outcomes. Approaches to integrated working may range from single planning meetings to development of shared services to ensure effective co-ordination of assessment and support;
e. Although assessments should be co-ordinated across agencies, provision of individual services should not be delayed when completing an EHC assessment. The EHC assessment and planning process may take up to 20 weeks from initial request/referral to issuing a completed EHC plan. Where particular
services are assessed as being needed, such as those resulting from statutory social care assessments under the Children Act, 1989 or adult social care legislation, their provision should be delivered in line with the relevant statutory guidance and should not be delayed until the EHC plan is complete;

f. Practitioners in all services, including education, health and social care, should be engaged and committed to the assessment and planning process and, where necessary, trained to support families and young people themselves to make informed decisions. In particular the LA should consider the support that parents and young people need in order to take part effectively in the assessment process. Families who have particularly complex needs, requiring the involvement of many different agencies may need support in understanding and contributing to the assessment process. Local authorities must consider providing additional practical support, such as keyworking support, to families who might not be able to take part in the process without such support;

g. Assessment and planning should be an on-going process, which continues to identify and meet the needs of children, young people and families as they develop, ensuring support and provision is planned and delivered in a way that enables children and young people to progress and achieve agreed outcomes.

Whilst many people will contribute to the planning and assessment process, one person should work closely with the young person and their parent/carer and be responsible for co-ordinating the information and the process. The process should actively be supported by senior leadership teams monitoring the quality and sufficiently of the assessments produced through robust quality assurance systems. Young people and their parents should have confidence that those overseeing the assessment process will be impartial and act in their best interests. [Note: This section will be developed further]

6.6 Sharing information

Agencies must share information to facilitate joined up working. The principles of information sharing between agencies around children and young people with SEN are:

Principles of information sharing
[Note: Further information to follow]

Local authorities
— Sharing of individual data
— Sharing of strategic data
[Note: Further information to follow]

Information sharing between Education, Health and Social Care and other agencies and settings
— Between early years, schools, colleges and other providers in advance of transition
— Health and Social Care
— Youth Offending Teams
[Note: Further information to follow]

Information sharing across borders

Children and young people with SEN may move across local authority or country borders during the assessment process and when they have an EHC plan. It is important that information on their assessment and plan is shared appropriately by the relevant agencies.

The local authority the child or young person is moving from should share the information and advice they have already gathered with the local authority the child or young person is moving to. This authority must take account of and use this information.

The movement of children and young people may include:
— across local authority borders
— between England and the devolved administrations
— children of service personnel moving between areas

Responsibilities for children and young people educated out of area
[Note: Further information to follow]

6.7 Advice for education, health and care assessments

When conducting an education, health and care assessment for the first time, local authorities must seek advice from relevant professionals:

a. Educational advice from the head teacher or principal of the early years provider, school or post-16 or other institution attended by the child or young person. Where this is not available, the authority should seek advice from a person it is satisfied has experience of teaching children or young people with special educational needs.
b. If the child or young person is either visually or hearing impaired, or both, the educational advice must be given after consultation with a person who is qualified to teach pupils with these impairments, if the person giving the educational advice is not qualified to do this.

c. Medical advice from a person nominated by the Clinical Commissioning Group which exercises functions in relation to the child or young person, or from health care professionals where relevant.

d. Psychological advice from an educational psychologist.

e. Advice from social care professionals within the local authority.

f. Any other advice which the local authority considers appropriate for the purpose of arriving at a satisfactory assessment, for example from a youth offending team or probation service, or in the case of Service children, the Children’s Education Advisory Service; and

g. Advice from anybody else the parent or young person thinks the local authority should consult, for example a lead support worker.

The local authority should consider with the parent, young person and the parties listed above the level of advice needed in order to enable a satisfactory assessment of needs to take place. For example where a child or young person with SEN does not appear to have significant health or social care needs, a full health and social care assessment may not be necessary.

6.8 Determining whether an EHC plan is necessary

The local authority should prepare an EHC plan when it considers that the special educational provision needed to meet the child or young person’s needs cannot reasonably be provided within the resources normally available to mainstream early years providers, schools and post-16 institutions.

In determining whether a plan is necessary, the local authority should consider all the information gathered during the EHC assessment and relate it to any evidence presented by the school, other educational institution or others at the time of any request or referral for assessment.

If the local authority decides that a statutory EHC plan is not necessary, it must notify the parents or young person and the early years provider, school or post-16 institution, and give the reasons for its decision. The local authority must also tell the parents or young person of their right to appeal to the SEN Tribunal against the decision and set out the time limits for appeal, the availability of parent partnership and disagreement resolution services, and the fact that the parent or young person must be offered mediation. The local authority should ensure that the parents or young person are aware of the resources available to meet SEN within mainstream provision and other support set out in the local offer.

The local authority should consider providing feedback collected during the assessment process, such as evidence from professionals, which the parents, young person, early years provider, school or post-16 institution may find useful. This information can then inform how the outcomes for the child or young person can be achieved through special educational provision already made by the early years provider, school or college and co-ordinated support from other agencies. It may be appropriate for the format of the summary to broadly follow the statutory format of the EHC plan, although it will be essential to make clear the different legal status of the two documents.

Children and young people without a statutory EHC plan remain entitled to services to meet their reasonable health or care needs under other legislation, including section 3 of the NHS Act 2006, which places CCGs under a statutory duty to provide the health services to meet the reasonable needs of a child with a complex health need, and the Equality Act, which requires schools, colleges and local authorities to make reasonable adjustments to policy and practice, including providing auxiliary aids and services such as specialised computer programmes, hoists and sign language interpreters.

Young people aged 19–25

Where a young person is aged over 18, local authorities must take their age into account when deciding whether special education and an EHC plan is necessary.

Support can continue up to age 25 for those young people who need to take longer to complete or consolidate their education or training. This includes the right to request an assessment of SEN and the provision that might result from that assessment. However, it may not be in the best interests of every young person to stay in education until they are 25. Many young people will want to complete their education and progress into adult life and work much sooner than this. Local authorities will need to make a judgement, in close consultation with parents and the young person, about whether or not agreed outcomes have been met, and the young person has been prepared and enabled to make a successful transition to adulthood.

Some young people with complex needs will primarily require on-going health and/or care support. In such circumstances it is right that these young people receive the support and care that they need via Health Services and/or Adult Care and Support. For others, following time on an Apprenticeship or a Supported Internship the best option may be to leave formal education and access the support and training available to help them to secure a job through the welfare system. Some young people may want to enter Higher Education where local authorities’ general duties with regard to securing educational provision no longer apply. In these cases, maintaining an EHC plan would not be appropriate.
6.9 Preparing an Education, Health and Care Plan

Local authorities should have regard to the following principles when preparing an EHC plan:

[Note: Further information to be added to this section on how professionals from education, health and social care should work together to ensure a fully co-ordinated planning process]

a. Decisions about the content of EHC plans should be transparent and involve parents and young people themselves.
b. EHC plans should be clear, concise, readable and accessible to parents, children, young people and providers/practitioners.
c. EHC plans should be person-centred, evidence-based and focussed on outcomes (both short term outcomes and longer term aspirations for children and young people). An outcome is not the delivery of support or a service; it is what that support or service is trying to help the child or young person achieve. Outcomes need to be specific, measurable, achievable and time-bound.
d. EHC plans should be specific about the interventions that will make a difference towards securing the agreed outcomes, and the provision needed to support this. They should not simply be a list of services. This can only be done by a careful assessment of the child or young person’s needs and the setting in which they may be educated. Provision should be detailed and specific and should normally be quantified (for example, in terms of the level of support and who will provide it) but it must be clear how the type and level of provision will support the agreed outcomes. There will be cases where some flexibility will be required to meet the changing needs of the child or young person.
e. EHC plans should be written in a way that means they could be used in any local area, particularly the assessment information and agreed outcomes.
f. EHC plans should support preparation for key transition points, including from early years providers to primary school, primary to secondary school, school to college or training and from education into the adult world. Plans must be “forward looking”—eg anticipating, planning and commissioning for important transition points in a child or young person’s life. This is vital to ensure children, parents and young people know which educational institution they are going to next, what they are going to study—and why that will help them achieve their longer term outcomes—and that relevant services, equipment and other support are identified, commissioned and in place by the time the transition takes place.
g. The content of EHC plans should be used by local authorities and their partners to inform commissioning of future individual strategic support and provision in their area.
h. EHC plans should explore how informal (family and community) support as well as formal support from statutory agencies can be used to achieve agreed outcomes.

Content of EHC plans

The exact format of an EHC plan will be determined locally, so that plans can best meet the needs of children, young people and their families. To ensure that all plans are as clear as possible, and to make things easier for families who move between local areas, there are some distinct sections that must be in all plans. They are:

a. The views, interests and aspirations of the child and their parents or young person.
b. The child or young person’s SEN.
c. The outcomes sought for him or her.
d. The special educational provision required by him or her. Where provision is to be delivered through a direct payment the plan should set the needs and outcomes to be met by the direct payment and how this will be done under the arrangements for the direct payment.
e. Any health and social care provision [of a prescribed description] required by him or her. [Note: Health and social care provision to be defined when new duty on health to ensure provision of services in EHC plan has been cleared by Bill committee]
f. Any additional provision, eg support for finding employment, housing or for participation in society.
g. The name of the school, maintained nursery school, post-16 institution or other institution or the type of school or other institution to be attended by the child or young person.

Exemplars of EHC plans developed by the SEN pathfinders will be made available to support local authorities in considering the best format for EHC plans locally.

Local authorities should agree a process for how different agencies input into draft EHC plans, and how information about the content of plans collectively in a local area can inform the commissioning of education, health, care and other services (eg housing and employment support).

[Note: When the new duty on health commissioners to ensure provision of healthcare services specified in EHC plans has been cleared by the bill committee, it will be referenced here]

[Note: Information on the interface with statutory adult social care plans set out in the draft Care and Support Bill will be referenced here]
Speech and Language Therapy

Case law has established that speech and language therapy can be regarded as either educational or non-educational provision, or both, depending upon the health or developmental history of each child. It could therefore be included in the Plan as either educational or health provision or both.

However, since communication is so fundamental in learning and progression, addressing speech and language impairment should normally be recorded as educational provision unless there are exceptional reasons for not doing so. The Children and Families Bill, clause 21 (5) makes clear that where health provision is wholly or mainly for the purposes of education and training it is to be treated as education provision.

Local authorities and their partner clinical commissioning groups must make arrangements to secure education, health and care provision for children and young people with SEN.

Power to continue children’s social care services to those aged 18–24

Where a local authority has been providing children’s social care services to a young person under the age of 18, and they have an EHC plan in place, local authorities can continue to provide these services on the same basis after the age of 18.

The local authority retains discretion over how long it chooses to provide these services, so long as an EHC plan remains in place. Where the young person no longer has an EHC plan, the local authority no longer has the power to extend the provision of these services to young people over 18.

This will enable local authorities to agree with young people when the most appropriate time for transition to adult services will be, avoiding key pressure points such as exams or a move from school to college. Poorly timed and planned transition to adult services will have a detrimental effect on achievement of outcomes and may result in young people requiring far longer to complete their education or dropping out altogether. This can have a negative impact on their health and care needs and it is in the vested interests of both local authorities and young people that the transition between children’s and adult’s services is managed and planned carefully.

6.10 Expressing a preference for a particular school, college or other institution

Parents of children with an EHC plan and young people with such a Plan have a right to express a preference that they attend a particular school, college or other institution of the following type:

- a. maintained school (mainstream or special), Academy, Free School;
- b. Special Academy or Special Free School;
- c. non-maintained special school;
- d. further education or sixth form college
- e. independent school or independent specialist colleges (where they have been approved for this purpose by the Secretary of State and published on a list available to all parents and young people).

If a parent or young person expresses a preference for a particular school or college in these groups the local authority must comply with that preference and name the school or college on the EHC plan unless it would:

- a. be unsuitable for the age, ability, aptitude or SEN of the child or young person; or
- b. the attendance of the child or young person there would be incompatible with the efficient education of others; or the efficient use of resources.

The local authority must consult the governing body, principal or proprietor of school or college concerned and consider their comments very carefully before deciding whether to name them on the child or young person’s Education, Health and Care Plan, sending them a copy of the draft Plan. If another local authority maintains the school, they too should be consulted.

The local authority should expect the school or college, and where relevant the other local authority, to respond in 15 working days unless the period falls within a school or college holiday that is longer than 2 weeks. Where a school or college is named on an EHC plan they must admit the child or young person.

Parents and young people may make representations to the governing body of schools at independent schools or Independent Specialist Providers that are not on the list mentioned above and the local authority must consider their request. The local authority is not under the same conditional duty to name the independent school or independent specialist provider but must have regard to the general principle in section 9 of the Education Act 1996 that children should be educated in accordance with their parents’ wishes so long as this is compatible with the provision of efficient instruction and training and does not mean unreasonable public expenditure. If a local authority is minded to name the independent school or independent specialist provider on the child or young person’s EHC plan it must make sure that they will admit them before it can name them on the Plan.

Where no preference is expressed for a particular school or college

Where a parent or young person does not express a preference for a particular school or college, or they do so and their preference is not met, the local authority has a duty to provide for a mainstream setting in the child or young person’s EHC plan unless it would be:
a. against the wishes of the parent or young person; or
b. incompatible with the efficient education of others.

Where the local authority considers a mainstream place to be incompatible with the efficient education of others it must demonstrate that there are no reasonable steps that it, or the school or college, could take to prevent that incompatibility by the school or college or local authority. What constitutes a reasonable step will depend on all the circumstances of the individual case. The following are some of the factors that may be taken into account:

a. whether taking the step would be effective in removing the incompatibility;
b. the extent to which it is practical for the school, college or local authority to take the step;
c. the extent to which steps have already been taken in relation to a particular child or young person and their effectiveness;
d. the financial and other resource implications of taking the step; and
e. the extent of any disruption that taking the step would cause.

[Note: This section to be developed further]

Transport costs for children and young people with EHC plans

The parents or young person’s preferred school or college might be further away from their home than the nearest school or college that can meet the child or young person’s SEN. In such a case, the LA can name the nearer school or college if that would be deemed appropriate by the LA. The LA could name the school or college preferred by the parents or the young person on condition that the parents or young person agreed to meet all or part of the transport costs.

The school or college named in a child or young person’s EHC plan must be capable of meeting the child or young person’s SEN. LAs should not, therefore, promulgate general transport policies that seek to limit the schools or colleges for which parents of children, or young people, with EHC plans may express a preference if free transport is to be provided.

Transport should only be recorded in the EHC plan in exceptional cases where the child has particular transport needs. In most cases LAs will have clear general policies relating to transport for children and young people with SEN that should be made available to parents and young people, and should be included in the local offer. Such policies would need to set out those transport arrangements which are over and above those required by section 508B of the 2006 Education and Inspections Act.

Where the LA names a residential provision at some distance from the family’s home, the LA should provide transport or travel assistance; the latter might be reimbursement of public transport costs, petrol costs or provision of a travel pass.

Transport costs may be provided as part of a personal budget arrangement as agreed.

Building full time programmes

In agreeing the content of an EHC plan, local authorities should consider the need to provide a full package of provision and support—including for independent study—that covers five days a week where that is appropriate to meet the young person’s needs. This provision and support does not all have to be at one provider and could be a combination of time at different providers and periods outside education institutions with appropriate support.

When commissioning provision, local authorities should have regard to how young people learn and the additional time and support they may need to undertake coursework and homework as well as time to socialise with their college peers within the college environment. In some cases, courses normally offered over three days may need to be spread over four to five days to enable the young person to maximise their learning outcomes. Local authorities will need to work with providers and young people to ensure there is a range of quality opportunities that can be tailored to individual needs.

Children educated at parents’ expense

Parents may choose to place a child with an EHC plan in an independent school or a non-maintained special school at their own expense. If parents choose to make such provision for their child, the LA must be satisfied that the school is able to make special educational provision for the child that meets their SEN before it is relieved of its duty to arrange provision in an appropriate school.

The LA is not required to specify the name of a school in the child’s EHC plan where they are satisfied that the child’s parents have made suitable arrangements but they must, in those circumstances, state the type of provision. The LA is, whether or not a school is named in the EHC plan, still under a duty to maintain the child’s EHC plan and to review it annually.

6.11 Personal Budgets in EHC plans

A personal budget is an amount of money identified by the local authority to deliver all or some of the provisions set out in an EHC plan. By having a say in the way this budget is used, a parent or young person can control elements of their support. Personal budgets should reflect the holistic nature of an EHC plan, covering
education, health and care services as appropriate, where additional and individual support is agreed through the planning process.

Personal budgets should be based on clear, agreed outcomes. The decision making process to establish and agree a budget should be transparent and challengeable.

Parents and young people can request a personal budget once the authority has confirmed an EHC plan is necessary, or when the authority is undertaking a statutory review of an existing EHC plan. Local authorities must consider this request, and offer information to parents to help them to decide whether they wish to make such a request.

What can be included in a personal budget?

The personal budget can include funding from education, health and social care sources. Local authorities and their partners must set out arrangements for the local agreement of personal budgets in their joint commissioning arrangements. Where local governance or pooling arrangements exist, funding in a personal budget can be used to commission joint provision across all three services.

Personal budgets in education should relate to needs that are significant enough to need additional and individual support above and beyond that which is normally available and funding to meet these needs, from the high needs block (element 3), should be considered for inclusion in a personal budget. Funds that are delegated to schools and colleges will not normally be in scope for inclusion in a personal budget, unless the institution has previously agreed to this. Personal budgets must not be used to fund a school place.

Setting and agreeing the personal budget

Details of personal budgets should be set out clearly within an EHC plan, including the amount of the budget and what it will be used for. Funding for special educational provision must be set at a level that will deliver the specified provision. Local authorities should include details of any proposed personal budget in the draft plan that is shared with parents.

Mechanisms for delivery of a personal budget

Parents should be given three options for the control of their budget:

a. Notional arrangements—where the authority retains the funds but the parent/young person directs its usage;

b. Third party arrangements—where funds are paid to an individual or another organisation on behalf of the parent/young person and they manage the funds;

c. Direct Payments—where individuals receive the cash to purchase services themselves.

Direct Payments

Direct payments are cash payments made directly to parents, young people or their representatives, allowing them to arrange their own provision. Regulations governing the use of direct payments for special educational provision place a number of requirements on both local authorities and parents before a direct payment can be agreed. These include requirements:

a. To consider the impact on other service users and value for money;

b. To seek agreement of educational establishments where a service funded by a direct payment is delivered on their premises;

c. To make arrangements to monitor and review the payment;

d. For direct payments to be paid into a separate bank account unless the payment is a one off.

The regulations also prohibit certain people from receiving cash payments (such as those subject to Drug or Alcohol rehabilitation orders).

Information advice and support

Information on how to request a personal budget and eligibility criteria must be provided as part of the local offer. Local authorities should provide information, advice and support for parents and young people themselves in understanding what a personal budget entails and how it can be used. Information should include sources of independent advice available to families and should provide support on both the take-up and management of a personal budget (especially when this is delivered through a direct payment).

6.12 Children and young people in specific circumstances

Young Offenders

Youth Offending Teams (YOTs) work with young offenders (under 18) and those at risk of offending. YOTs are responsible for a range of youth justice services, including compiling pre-sentence reports, supervision of young offenders serving sentences in the community and supervision of those released from custody. Local authorities must ensure that Youth Offending Teams are involved in supporting assessments and the development of EHC plans for a child or young person who has been in custody, is serving a sentence in the community or if
they have been identified as being at risk of offending. If the young person is aged 18 or over Local Authorities should involve the relevant probation services.

**Children of Service Personnel**

At each key transition or decision-making point, local authorities and professionals need to consider whether mobility or deployment issues around the family are likely to affect the outcomes for the service child or young person.

For service children with EHC plans, or those undergoing EHC assessments, where mobility is an issue, local authorities should work with each other and with the family and the MoD’s Directorate Children & Young People (DCYP) Children’s Education Advisory Service (CEAS). This is to ensure good advance planning and a smooth transition to appropriate educational provision.

[Note: Further information to follow including information in the sections below]

**Looked after Children**

**Children in Need (with a section 17 assessment)**

**Children and YP in Pupil Referral Units or Home Tuition**

**Home education**

6.13 Finalising an EHC plan

The local authority must send a draft EHC plan to the child’s parents or the young person and give them at least 15 days to give views on the content and to request that a particular school or other institution be named in the plan.

When changes are suggested to the proposed plan and agreed by the local authority and the parents or young person, the final plan should be amended and issued immediately. Every effort should be made to ensure that parents or young person understand the significance of any changes and the nature of the provision that is proposed to meet the child or young person’s SEN. When the plan is issued parents and young people must be given notice of their rights of appeal to the Tribunal and the time limits for lodging an appeal, the availability of mediation, parent partnership and disagreement resolution services, and the fact that the parents’ or young person’s right of appeal cannot be affected by any disagreement resolution procedure. Parents or the young person may appeal against the description in the EHC plan of SEN, the special educational provision, and the school or other provider named, or if no school or other provider is named, that fact.

Where parents or young people are unwilling to agree changes to the proposed plan, or where the local authority refuses changes proposed by parents of young people, the authority may nonetheless proceed to issue the final EHC plan. It must, however, inform the parents or young person of the option to access mediation and to appeal to the SEN Tribunal with respect to the provision specified in the Plan, including the school that has been named, and of the procedures to be followed if they wish to do so. The final plan should also be issued to the governing body, proprietor or principal of any school or other institution named in the EHC plan, and to the clinical commissioning group that exercises functions in relation to the child or young person.

6.14 Maintaining an EHC plan

When an EHC plan has been made for a child or young person, the local authority must inform the head teacher or principal of the educational institution that they will attend. The head teacher or principal should ensure that those teaching or working with the child or young person are aware of their additional needs and have arrangements in place to meet them. Institutions should also ensure that teachers/lecturers monitor and informally review the child or young person’s progress during the course of a year.

Local authorities must arrange the special educational provision and may arrange the social care provision specified in the plan, from the date on which the plan is made. Clinical commissioning groups must arrange the health services specified in the plan, from the date on which the plan is made.

If a child or young person’s SEN change, a review must be held as soon as possible to ensure that the provision specified in the EHC plan is still appropriate.

6.15 Reviewing an EHC plan

EHC plans can be used as effective tools for on-going monitoring of progress and can be reviewed regularly in whole or in part—particularly where agreed dates for specific outcomes to be achieved have been reached before an annual review is due.

Local authorities must arrange for a review of a child or young person’s EHC plan at least annually, and beginning within 12 months of the date it commenced. Professionals across education, health and care must cooperate with local authorities during review processes.

Where a young person is aged over 18, local authorities must take their age into account when reviewing their support and deciding whether a Plan should continue to be maintained.

As part of the review, local authorities and the relevant educational institution must cooperate to ensure a review meeting takes place. The local authority can require the relevant educational institution to convene the
meeting on the local authority’s behalf where appropriate, and provide a report on the child or young person. The following requirements apply:

- a. The child and child’s parents or young person must be invited and given at least two weeks’ notice of the date of the meeting. The meeting must take account of their views, wishes and feelings and children and young people should be supported to engage in the review.
- b. Representatives of education, health and care relevant to the child or young person’s plan must be invited, including youth offending teams where relevant, and given at least two weeks’ notice of the date of the meeting.
- c. The meeting must focus on the child or young person’s progress towards achieving the outcomes specified in the EHC plan, and on what changes might need to be made to these.

If following the review meeting the plan must be amended, there must be a clear process of consultation with the child, young person and their parents, as well as those professionals and others who fed into the plan. All parties must be given 2 weeks to consider and reply.

Local authorities must then provide the parent or young person, and the relevant educational institution, with a revised copy of the plan and give them 2 weeks to consider and comment on it.

**Transfer between phases of education**

A plan must be reviewed and amended in reasonable time prior to a child or young person moving between key phases of education, to allow for planning for and, where necessary, commissioning of support and provision at the new institution.

At the latest the review and amendment must be completed by 15 February in the calendar year of the transfer. The key transfers are:

- a. Early years providers to infant school;
- b. Infant school to junior school;
- c. Primary school to middle school;
- d. Primary school to secondary school;
- e. Middle school to secondary school; or
- f. Secondary school to a further education, specialist or sixth form college, or training provider (including onto an Apprenticeship)

A plan should also be reviewed prior to the final exit from formal education or training (ie when outcomes will have been achieved and the plan will cease). The plan should set out what will be happening as part of the transfer to adulthood

**Young people who move in and out of education, including those who are excluded or who become NEET**

Where a young person is of compulsory participation age, an EHC plan should be maintained for them if they are excluded from education or training or leave voluntarily. The focus of support should be to reengage that young person in full time educational participation.

Where a young person is aged 18 or over leaves education before the end of their course or before the outcomes in their EHC plan have been met, the local authority should review their EHC plan. If this review determines that the young person wants to complete their education and that re-engaging them in education or training is in their best interests, then support should be maintained to help them do so.

Where a young person who had an EHC plan before entering custody is released from custody the EHC plan must be maintained and reviewed. Local authorities should start the review when planning for the young person’s release and in all cases within a month of the young person leaving custody.

**6.16 Re-assessments**

When conducting a re-assessment of an EHC plan following a request for re-assessment by a parent, young person, school or post-16 institution, the local authority must:

- a. Take account of and use existing information where it is still relevant;
- b. Engage professionals across education, health and care;
- c. Fully engage the child and the child’s parents or the young person, taking account of their views, wishes and feelings;
- d. Where a young person is aged over 18, take their age into account when re-assessing their continued participation in education.

A local authority can refuse requests for re-assessments if less than 6 months have passed since the assessment was conducted, however they can re-assess sooner than this if they think it necessary.

Where a local authority instigates a re-assessment rather than by a parent, young person, school or post-16 institution, it must follow the same process as above, except that it only needs to consult those professionals
across education, health and care it considers appropriate, taking into consideration which of the educational, health care and social care provision is being re-assessed. It must still fully engage the child and the child’s parents or the young person, taking account of their views, wishes and feelings.

[Note: Information will be included here on the requirement for health professionals to be able to request a re-assessment following changes to the Bill to include a new duty on health to provide services in EHC plans and has been cleared by Committee]

6.17 Preparing for the transition to adulthood

Local authorities should ensure that early transition planning is in place for all young people with an EHC plan focusing on positive outcomes and how to achieve them. Person-centred planning should be at the heart of this discussion, focusing on an in-depth analysis of the appropriate learning provision for the young person to help them meet their outcomes. The planning process should raise young people’s and parent’s expectations reinforcing and promoting notions of work and independent living with clear and achievable outcomes.

EHC plans reviewed after the age of 19 should plan for phased transition into the key life outcomes listed, with a greater emphasis on pathways to independent living and links to job seeking, for example Job Centre Plus.

When the child or young person is expected to leave education or training within the next two years, the review meeting must consider what provision is required to assist in preparing the young person for adulthood and independent living. Local authorities and learning providers should support young people to a smooth transition to adulthood so they are prepared when their EHC plan ends. Both providers and local authorities should give advice to young people and help them to understand what support is available to them after they complete their education, including support to find work, housing support and on-going health and social care support. Good transition planning should plan clear hand-overs to new professionals and services so that young people and parents know and are confident in who they are dealing with and where they need to go for help.

When a young person takes up a place in higher education, their Education Health and Care Plan will cease. However transition planning should include how health and social care support will be maintained, where it is still required. For some young people, the same local authority will continue to provide their care and support others will be supported by the local authority they are moving to. This will depend on the circumstances of their case. The Ordinary Residence guidance published by the Department of Health provides a number of examples to help local authorities in making these decisions. http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_113627 Local authorities should also ensure that young people are aware of the support available to them through the Disabled Students Allowance and how they can claim it.

[Note: Further information on how this will work under the changes set out in the draft Care & Support Bill will be provided here].

6.18 Ceasing an EHC plan

A local authority may cease to maintain an EHC plan in the following circumstances:

— the local authority are no longer responsible for the child or young person, for example if they have moved to another local authority area;
— if they determine that special educational provision is no longer needed;
— a young person aged 16 or over takes up paid employment (including employment with training but excluding Apprenticeships);
— if the young person enters Higher Education; or
— a young person aged 18 or over leaves education and no longer wishes to engage in further learning.

In making this decision, the local authority must consult with child’s parent or the young person and take into account whether the educational outcomes specified in the EHC plan have been achieved. They must also, for a young person aged 18 or over, have regard to their age. Local authorities must not simply cease to maintain Plans once a young person reaches 18.

The local authority should continue to maintain their EHC plan where it is clear that:

— the young person wants to remain in education or training so they can complete or consolidate their learning—including accessing provision that will help them make a successful transition to adulthood;
— special educational provision is still needed;
— agreed outcomes set out in their EHC plan have not yet been achieved; and
— remaining in education or training would enable them to progress and achieve those outcomes—and others that may subsequently be agreed.

Where a young person aged 18 or over leaves education or training and does not enter employment, the local authority should review their EHC plan, applying the criteria listed above. Where these are applicable, the local authority should maintain the plan and seek to re-engage the young person in education or training as soon as possible.
A local authority may not cease to maintain an EHC plan for a young person still of compulsory participation age who leaves education but does not start paid employment. The Plan must be maintained and the local authority should take appropriate steps to re-engage the young person in education or training.

Where a local authority is considering ceasing to maintain a child or young person’s EHC plan it must:

a. inform the child’s parent or the young person that it is considering ceasing to maintain the child or young person’s EHC plan; and
b. consult the child’s parent or the young person;
c. consult the school or other institution that is named in the EHC plan.
d. where, following that consultation the local authority determines to cease to maintain the child or young person’s EHC plan, notify the child’s parent or the young person and the institution named in the child or young person’s EHC plan of that decision.

Where the child’s parent or young person disagrees with the local authority’s decision to cease their EHC plan, they may appeal to the Tribunal. Local authorities must continue to maintain the EHC plan until the time has passed for bringing an appeal or the appeal has been resolved.

7. Resolving disputes

[Draft indicative regulations/policy statement for Committee relevant to this chapter are:
— The Special Educational Needs (Appeal) Regulations, Clause 50;
— The Special Education Needs (Mediation) Regulations, Clause 51;
— Policy statement on Children’s Right to Appeal Pilots, Clause 53 and 54.]

7.1 Early resolution of disagreements

It is in the best interests of children and young people for decisions about what provision is right for them to be made as soon as possible. In most cases this is achieved through providers, local authorities and clinical commissioning groups working closely with parents and young people.

However, there will be occasions where agreement cannot be reached and it is always preferable for these situations to be resolved as soon as possible, for example through discussion between the parties, or school, college or local authority complaints procedures. Early resolution of disagreements benefits parents and young people by avoiding unnecessary stress, and providers and local authorities by avoiding potentially costly disputes.

Where agreement cannot be reached on education matters through these complaints procedures disagreement resolution services are available in each local authority area to deal with disagreements between parents and young people on the one hand and schools, post-16 institutions and local authorities on the other. Where parents or young people have received decisions from local authorities about assessments and Education, Health and Care plans and they do not agree with them, they can make an appeal to the First-tier Tribunal (SEND) and in most cases they will contacted by a mediation adviser who will provide them with information about mediation. If the parent or young person wants to go to mediation it will be arranged by the local authority, otherwise they can register an appeal with the Tribunal straightaway.

7.2 Local complaints procedures

Early education providers’ and schools’ complaints procedures
[to be developed]

Local authority complaints procedures
[to be developed]

Local Government Ombudsman
[To be developed]

7.3 Disagreement resolution arrangements

Disagreement resolution services

Local authorities must arrange for disagreement resolution services to be available to parents and young people. The service must be independent of the local authority and any local authority employees can’t be involved.

The service is to help avoid and resolve disagreements about two types of complaints. The first is between parents or young people and local authorities, the governing bodies of maintained schools and maintained nursery schools, further education institutions or the proprietors of Academies about how these authorities, bodies or proprietors are carrying out their education, health and care duties for children and young people with SEN. These duties include duties on the local authority to keep their education and care provision under review and the duty on governing bodies and proprietors to do their best to meet children and young people’s SEN.
The second is disagreements between parents or young people and early years providers, schools or post-16 institutions about the special educational provision made for a child or young person.

Local authorities must make the availability of disagreement resolution services known to parents, young people, heads, governing bodies proprietors and principals of schools and post-16 institutions in their areas. Use of the disagreement resolution services has to be with the agreement of both parties. Use can be made of the services at any time, including after an appeal has been registered with the Tribunal. Failure to use the disagreement resolution services has no effect on parents’ and young people’s right to appeal to the Tribunal and no inference will be drawn by the Tribunal if the parties to a dispute have not used the disagreement resolutions services.

**Effective disagreement resolution services**

In delivering an effective disagreement resolution service, local authorities:

- should take responsibility for the overall standard of the service;
- should have clear funding and budgeting plans for the service: parents and young people should not be charged for the use of this service;
- should ensure that the service is impartial and it must be independent of the local authority;
- should ensure that the service has a development plan which sets out clear targets and is regularly reviewed;
- must make the arrangements for disagreement resolution and how they will work known to parents and schools in their areas and should make the arrangements known to others they think appropriate;
- should ensure that the independent persons appointed as facilitators have the appropriate skills, knowledge and expertise in disagreement resolution; an understanding of SEN processes, procedures and legislation; have no role in the decisions taken about a particular case, nor any vested interest in the terms of the settlement; are unbiased; maintain confidentiality; carry out the process quickly and to the timetable decided by the parties;
- should establish protocols and mechanisms for referring parents to disagreement resolution;
- should ensure that those providing the service receive appropriate initial and on-going training and development to enable them to carry out their role effectively;
- should establish a service level agreement for delivering the service which ensures sufficient levels of resources and training, and sets out the appropriate standards expected of, and the responsibilities delegated to, the provider. There should be appropriate arrangements for overseeing, regularly monitoring and reviewing the performance of the service, taking account of local and national best practice; and
- should seek feedback from the service to inform and influence local authority and provider decisions on SEN policies, procedures and practices.

7.4 **Mediation**

**Mediation information and advice**

Parents and young people who wish to make an SEN appeal to the First-tier Tribunal (SEND) may only do so after they have contacted an independent mediator. The issues which may be appealed against to a Tribunal are set out under ‘appeals’ above. When the local authority sends the notice accompanying their decision in relation to a matter which can be appealed to the Tribunal to parents or young people, they have to include contact details for an independent mediator. The mediator will provide information on mediation. The information will normally be provided on the telephone, although information can be provided in written form, through face-to-face meetings or through other avenues if the parent or young person prefers that.

Where the parent or young person decides not to go to mediation following contact with the mediation adviser the adviser will issue a certificate, within three working days, saying that information has been provided. Parents and young people are not able to register an appeal at the Tribunal without a certificate.

**Exceptions to the requirement to contact a mediation adviser**

Parents and young people do not have to contact the mediation adviser if their appeal is solely about the name of the school or other institution named on the plan, the type of school or other institution specified in the plan or the fact that no school or other institution is named. Parents and young people will have had the opportunity to request a school or other institution and there would have been the opportunity to discuss this in detail with local authority. The mediation information and advice arrangements do not apply to disability discrimination claims.

**Going to mediation**

Once the information and advice has been provided it is for the parent or young person to decide whether they want to go to mediation. If they do then the mediation provider will contact the local authority and the local authority must arrange a mediation session within 30 calendar days. If the parent or young person wants to go to mediation then the local authority must also take part.
A mediation session or sessions which arise out of these arrangements must be conducted by independent mediators. In addition to the mediator, the parent or young person will attend and a representative or representatives of the local authority. The parent or young person will be able to be accompanied by friend, adviser or advocate and, in the case of parents, the child if that would be appropriate. In cases where parents are the party to the mediation and it is not appropriate for the child to attend in person the mediator must take reasonable steps to get the views of the child. Once mediation is completed the mediator must issue a certificate within three working days which says that this is the case. If the parent or young person still wants to appeal following the mediation they must send the certificate to the Tribunal when they register their appeal. The certificate will not set out any details about the mediation—simply stating it is completed and when.

**Effective services for mediation and mediation information and advice**

[Note: Further information to follow]

**Registering an appeal with the Tribunal**

Parents and young people have two months to register an SEN appeal with the Tribunal, from the date of receiving a notice from the local authority with a decision that can be appealed. In the great majority of cases where parents and young people have to contact a mediation adviser before registering an appeal there will be time for the appeal to be registered before the two month deadline, even in cases which go to mediation. In some cases parents and young people will not be in a position to register the appeal within the two month limit. The Tribunal has the power to accept appeals outside the two month time limit.

The Tribunal will not take account of the fact that mediation has taken place, or has not been taken up, nor will it take into account the outcomes of any mediation.

The local authority will pay reasonable travel expenses and other expenses to the parent or young person taking part in mediation. This will include phone call costs in excess of the local rate.

**7.5 Parents’ and young people’s right to appeal to the First-tier Tribunal (SEND) about EHC assessments and Education, Health and Care Plans**

**Who can appeal to the Tribunal about EHC assessments and plans**

Parents and young people (over compulsory school age until the end of the academic year in which they reach age 25), can appeal to the First-tier Tribunal (Special Educational Needs and Disability) about EHC assessments and EHC plans, following contact with a mediation adviser in most cases (see below).

**What parents and young people can appeal about**

Parents and young people can appeal to the Tribunal on:
- a decision by a local authority not to carry out an EHC needs assessment or re-assessment;
- a decision by a local authority that it is not necessary to make special educational provision in accordance with a plan following an EHC assessment;
- the description of a child or young person’s SEN specified in a plan, the special educational provision specified, the school or other institution or type of school or other institution specified in the plan or that no school or other institution is specified;
- a decision by a local authority not to amend or replace an EHC plan following a review or re-assessment;
- a decision by a local authority to cease to maintain a plan.

**Conditions related to appeals**

The following conditions apply to appeals:
- appeals have to be registered with the Tribunal within two months of the local authority sending a notice in connection with one of the matters that can be appealed to the Tribunal;
- the right to appeal a refusal of an assessment will only be triggered where the local authority has not carried out an assessment in the previous six months;
- when the parent or young person is appealing about a decision to cease to maintain the plan the local authority has to maintain the plan until the Tribunal’s decision is made;
- the parent or young person can appeal to the Tribunal when the EHC plan is first finalised or following an amendment or replacement of the plan.

**Decisions the Tribunal can make**

The Tribunal has prescribed powers under the Children and Families Bill to make certain decisions in relation to certain appeals. The Tribunal can dismiss the appeal, order the local authority to carry out an assessment, to make and maintain a plan or to maintain a plan with amendments. The Tribunal can also ask the LA to reconsider or correct a weakness in the plan. Local authorities have time limits within which to comply with decisions of the Tribunal.
7.6 Disability discrimination claims

**Venues for claims**

The parents of disabled children and disabled young people in school have the right to make disability discrimination claims to the First-tier Tribunal (SEND) if they feel their children or they themselves have been discriminated against by schools or local authorities when carrying out some of their education functions. Claims must be made within six months of the alleged instance of discrimination. The parents of disabled children, on behalf of their children, and disabled young people in school can make a claim against maintained, maintained nursery, non-maintained, independent and most Academy schools about alleged discrimination in the matters of exclusions, the provision of education and associated services and the making of reasonable adjustments, including the provision of auxiliary aids and services. They can also make claims to the Tribunal about admissions to independent and non-maintained special schools and most Academies. Claims about admissions to maintained schools are made to local admissions panels.

Disability discrimination claims by young people against post-16 institutions, by parents about early years provision and about treatment of them as a parent in respect of being provided with an education service for their child, are made to the county courts.

Guidance on how to make a disability discrimination claim to the Tribunal is available at [http://www.justice.gov.uk/forms/hmcts/send](http://www.justice.gov.uk/forms/hmcts/send).

**Exclusion**

The Government issues statutory guidance on school exclusion, which can be found on the Departmental website. The guidance sets out details of the permanent exclusion review panel process, including parents’ right to ask for an SEN expert to attend. In addition, claims for disability discrimination in relation to permanent and fixed-period exclusions may be made to the First-tier Tribunal (SEND).

Local authorities have a duty to arrange suitable, full time education for pupils of compulsory school age who would not otherwise receive such education, including from the sixth day of a permanent exclusion. Schools have a duty to arrange suitable, full time education from the sixth day of a fixed period exclusion. In carrying out their duties schools and local authorities must ensure that this education is in line with a pupil’s Education, Health and Care plan, if one is in place.

7.7 The First-tier Tribunal (SEND)

The Special Educational Needs and Disability Tribunal (the SEND Tribunal) forms part of the First-tier Tribunal (Health, Education and Social Care Chamber). Tribunals are overseen by Her Majesty’s Courts and Tribunals Service.

**The role and function of the tribunal**

The SEND Tribunal hears appeals against decisions made by the local authorities in England in relation to children’s and young people’s assessments and Education, Health and Care Plans. It also hears disability discrimination claims against schools.

The Tribunal seeks to ensure the process of appealing is as user-friendly as possible, and seeks to avoid hearings that are overly legalistic or technical. It has always been the Tribunal’s aim to ensure that a parent or young person should not have to engage legal representation when appealing a decision.

**How to appeal**

When appealing to the Tribunal parents and young people should identify the decision that they are appealing against and the date when the local authority’s decision was made. The parent or young person that is appealing (the appellant) will be required to give the reasons why they are appealing. The reasons do not have to be lengthy or written in legal language but should explain why the appellant disagrees with decision. If there is any information or evidence which supports the appeal, the appellant should include it when they submit their appeal form.

When the appeal is registered with the Tribunal a copy will be sent to the local authority. The local authority will also receive a copy of the directions that set out the time limits for sending documents or providing details of witnesses; these will apply to all parties. Once the appellant’s case is fully prepared they will receive a date for the hearing. Hearings are heard throughout the country at various Her Majesty’s Courts and Tribunals Service buildings. The Tribunal will try to hold hearings as close to where the appellant lives as possible. Appeals are heard by a panel of Tribunal members who have been appointed because of their knowledge and experience of children with SEN and disabilities.

A DVD is available from the Tribunal that gives appellants some guidance on what happens at a hearing.

**Timescales following the hearing**

Both the young person or parent making the appeal and the local authority should receive a copy of the Tribunal’s decision and reasons by post within 10 working days of the hearing. Along with the decision notice
the Tribunal will send a leaflet which will explain the application process for permission to appeal the Tribunal decision to the Upper Tribunal, if the appellant considers that the decision made was wrong in law.

Step by step guidance on the process of appealing to the Tribunal and what it involves can be found at http://www.justice.gov.uk/tribunals/send/appeals

7.8 Legal Aid

If a parent or young person has decided to appeal against a decision concerning SEN provision for their child, legal aid may be available to assist with that appeal. Before someone can be granted legal aid they must satisfy a financial means assessment. The case must also satisfy a merits test of whether it has a reasonable chance of succeeding.

Legal aid can provide advice and assistance in preparing an appeal to the First-tier Tribunal (SEN and Disability), but it does not cover having a lawyer act as a formal legal representative before the Tribunal (that is, advocacy).

If the parent or young person’s appeal to the Tribunal is unsuccessful, and they wish to mount a further appeal to the Upper Tribunal (or beyond to the Court of Appeal or Supreme Court), then legal aid can provide advice, assistance and having a lawyer act as their formal legal representative and speak for them.

A parent or young person seeking access to legal aid for a SEN case can go online via www.gov.uk/legal-aid to find out if they are eligible. Alternatively they can contact the Civil Legal Advice (CLA) service on 0845 345 4 345. If the CLA assesses a person as eligible, the legal advice will be provided by phone, online or by post, unless the specialist advice provider assesses them as unsuitable to have advice in this way.

The following groups will be exempt from having to apply via CLA: young people under 18 and those assessed by the gateway in the previous 12 months as requiring face-to-face advice and who have a further linked problem and are seeking further help from the same face-to-face provider.

7.9 NHS Complaints—Healthwatch

[Note: This section to be developed]

7.10 Complaints about social services provision

[Note: this section to be developed]
(h) the providers of relevant early years education;
(i) the youth offending teams that the authority thinks have functions in relation to children or young people for whom it is responsible;
(j) any other person that makes special educational provision for a child or young person for whom it is responsible and those who provide advice in relation to making that provision;
(k) persons who make provision to assist in preparing children and young people for adulthood and independent living;
(l) its officers who—
   (i) exercise the authority’s functions relating to education or training;
   (ii) exercise the authority’s social services functions for children or young people with special educational needs;
   (iii) so far as they are not officers within paragraph (i) or (ii), exercise the authority’s functions relating to provision to assist in preparing children and young people for adulthood and independent living; and
(m) such other persons as it thinks appropriate.

(2) When preparing and reviewing its local offer, a local authority must also consult—

(a) the National Health Service Commissioning Board;
(b) a clinical commissioning group—
   (i) whose area coincides with, or falls wholly or partly within, the local authority’s area, or
   (ii) which exercises functions in relation to children or young people for whom the authority is responsible;
(c) an NHS trust or NHS foundation trust which provides services in the authority’s area, or which exercises functions in relation to children or young people for whom the authority is responsible;
(d) a local Health Board which exercises functions in relation to children or young people for whom the authority is responsible;
(e) a health and wellbeing board which exercises functions in relation to children or young people for whom the authority is responsible.

(3) When preparing and reviewing its local offer, a local authority must also consult any bodies specified in paragraphs 1(b) to (k) and (m) that are not in the local authority’s area, but which the local authority thinks are or are likely to either—

(a) be attended by children or young people for whom it is responsible; or
(b) have functions in relation to children or young people for whom it is responsible.

Involvement of children, their parents and young people in preparation and review of local offer.

5. A local authority must consult children with special educational needs, their parents and young people with special educational needs in their area about—

(a) the services children and young people with special educational needs require;
(b) how the information in the local offer is to be set out when published;
(c) how the information in the local offer will be available for those people without access to the Internet;
(d) how the information in the local offer will be available to those with a disability which prevents them from accessing the information on the Internet;
(e) how they can provide comments on the local offer.

Publication of comments on the local offer

6.—(1) A local authority must seek from children with special educational needs, their parents and young people with special educational needs comments on—

(a) the content of its local offer, including the quality of the provision available and any provision that is not available;
(b) the accessibility of the information contained in its local offer; and
(c) how the local offer has been developed or reviewed, including how those children, parents and young people have been involved in the development and review of the local offer.

(2) A local authority must publish comments received by or on behalf of those people in accordance with paragraph (1), and its response to those comments on its website, with the local offer.

(3) Comments received and the local authority’s response must be published at least annually, and must be in a form that does not enable any individual to be identified.
Children and Families Bill

Manner of publication

7.—(1) A local authority must—
(a) publish its local offer by placing it on their website;
(b) publish its arrangements for enabling—
(i) people without access to the Internet; and
(ii) enabling different groups, including people with a disability,
to obtain a copy of the offer.

(2) In this regulation, “disability” has the meaning given by section 6 of the Equality Act 2010.

SCHEDULE 1

Regulation 3

INFORMATION TO BE PUBLISHED BY A LOCAL AUTHORITY IN THEIR LOCAL OFFER

1. Information about how to request an EHC needs assessment

2. The special educational provision which the local authority expects to be available in its area for children and young people for whom it is responsible by—
(a) providers of relevant early years education;
(b) maintained schools, including provision made available in any separate unit;
(c) Academies, including provision made available in any separate unit;
(d) non-maintained special schools;
(e) post-16 institutions;
(f) institutions approved under section 41 of the Act;
(g) pupil referral units; and
(h) persons commissioned by the local authority to support children and young people with special educational needs

3. The special educational provision the local authority expects to be made outside of its area by persons specified in sub-paragraphs (a) to (g) of paragraph 2 for children and young people with special educational needs for whom the local authority is responsible.

4. The information in paragraphs 1 and 2 must include information about—
(a) the special educational provision provided by mainstream schools and mainstream post-16 institutions including any support provided in relation to learning or the curriculum;
(b) the special educational provision provided by special schools, including those approved under section 41 of the Act;
(c) the special educational provision secured by the local authority in mainstream schools, mainstream post-16 institutions, pupil referral units and alternative provision Academies; and
(d) the arrangements the local authority has for funding children and young people with special educational needs.

5. The arrangements the persons specified in paragraphs 1 and 2 have for—
(a) identifying the particular special educational needs of a child or young person;
(b) consulting with the child’s parent or the young person;
(c) securing the services, provision and equipment required by children and young people with special educational needs; and
(d) supporting children and young people with special educational needs in moving between phases of education, and in preparing for adulthood.

6. Information, in relation to the bodies specified in paragraph 2, about—
(a) their approach to teaching of children and young people with special educational needs;
(b) how they adapt the curriculum and additional learning support available to children and young people with special educational needs;
(c) how the progress towards any the outcomes identified for children and young people with special educational needs will be assessed and reviewed, including information about how those children, their parents and young people will take part in any assessment and review;
(d) how the effectiveness of special educational provision will be assessed and evaluated, including information about how children, their parents and young people will take part in any assessment and evaluation;
(e) how facilities that are available can be accessed by children and young people with special educational needs;
(f) what activities are available for children and young people with special educational needs in addition to the curriculum; and
(g) what support is available for children and young people with special educational needs.

7. Where further information about the bodies specified in paragraphs 1 and 2, including the information required by section 64 of the Act, can be obtained.

8. Special educational provision the local authority expects to be made in relation to young people for whom it is responsible who have entered into an apprenticeship agreement within the meaning of section 32(1) of the Apprenticeships, Skills, Children and Learning Act 2009.

9. Special educational provision the local authority expects to be made by providers of training in its area, and outside its area for young people for whom it is responsible.

10. Provision available in the local authority’s area to assist in preparing children and young people for adulthood and independent living.

11. Health care provision for children and young people with special educational needs, including in particular—
   (a) speech and language and other therapies, including any criteria that must be satisfied before this provision can be provided,
   (b) services relating to mental health, including any criteria that must be satisfied before this provision can be provided, and
   (c) services for relevant early years providers, schools and post-16 institutions to assist them in supporting children and young people with medical conditions.

12. Social care provision for children and young people with special educational needs and their families including, in particular—
   (a) services provided in accordance with section 17 of the Children Act 1989;
   (b) the arrangements for supporting young people when moving from receiving services for children to receiving services for adults;
   (c) support for young people in planning and obtaining support to assist with independent living.

13. Transport arrangements for children and young people with special educational needs to get to and from school or post-16 institution, or other institution in which they are receiving special educational provision including in particular—
   (a) arrangements for specialist transport,
   (b) arrangements for free or subsidised transport,
   (c) support available in relation to the cost of transport, whether from the local authority or otherwise.

14. Sources of information, advice and support in the local authority’s area for children and young people with special educational needs and their families including information—
   (a) provided in accordance with section 32 of the Act,
   (b) about forums for parents and carers of children and young people with special educational needs,
   (c) about support groups for children and young people with special educational needs and their families,
   (d) about childcare for children with special educational needs,
   (e) about leisure activities for children and young people with special educational needs and their families.
   (f) about persons who can provide further support, information and advice for children and young people with special educational needs and their families.

15. The procedure for making a complaint about provision mentioned in section 30(2) of the Act.

16. The procedure for making a complaint about any provision or service set out in the local offer.

17. Arrangements for the resolution of disagreements made in accordance with section 52 of the Act.

18. Arrangements for mediation made in accordance with section 51 of the Act.

19. Arrangements for notifying parents and young people of their right to appeal a decision of the local authority to the Tribunal.

20. Information on where the list of institutions approved under section 41 of the Act is published.

21. Information about any criteria that must be satisfied before any provision or service set out in the local offer can be provided.
ILLUSTRATIVE REGULATIONS FOR COMMITTEE

REMAINING IN SPECIAL SCHOOL OR POST-16 INSTITUTION WITHOUT AN EHC PLAN

REGULATIONS

Clause 34

Interpretation

22. In these regulations “school or institution day” means a day on which the school or post-16 institution is open to admit students.

Remaining in a special school or special post-16 institution without an EHC plan

23.—(1) Where a child or young person has been admitted to a special school or special post-16 institution for the purposes of an EHC needs assessment, he or she may remain at that school or post-16 institution—

(a) for a period of ten school or college days after the local authority serves a notice under section 36(9) of the Act informing the child’s parent or the young person that it does not propose to make an EHC plan; or

(b) until an EHC plan is made.

(2) Where a child or young person has been admitted to a special school or special post-16 institution following a change in his or her circumstances, he or she may remain at that school or post-16 institution provided that his or her admission to the school or post-16 institution is reviewed by the local authority at the end of every term.

DRAFT ILLUSTRATIVE REGULATIONS

Clauses 36, 37, 44 and 45

EDUCATION (SPECIAL EDUCATIONAL NEEDS) (ASSESSMENT AND PLAN)

Citation and commencement

24. These Regulations may be cited as the Education (Special Educational Needs) (Assessment and Plan) Regulations 2014 and come into force on 1st February 2014.

Interpretation

25. In these Regulations—

“the Act” means the Children and Families Act 2014;

“relevant clinical commissioning group” means the clinical commissioning group that exercises functions in relation to the child or young person concerned.

EHC NEEDS ASSESSMENTS

Consideration

26. Here a local authority receives a request for an EHC needs assessment under section 36(1) of the Act or otherwise becomes responsible for a child or young person, before determining whether it may be necessary for special educational provision to be made for the child, it must consult the child’s parent or the young person as soon as practicable after the request being made, or of it becoming responsible for the child.

Determination whether or not special educational provision may be necessary

27.—(1) Where a local authority determines that it is not necessary for special educational provision it must notify the child’s parent or the young person in accordance with section 36(5) of the Act as soon as practicable, but in any event within 6 weeks of receiving a request for an EHC needs assessment under section 36(1) of the Act or of becoming responsible for the child or young person in accordance with section 23 of the Act.

(2) Where the local authority determines that it may be necessary for special educational provision to be made, it must notify the child’s parent or the young person that it is considering securing an EHC needs assessment in accordance with section 36(7) of the Act.

(3) Where the local authority determines that it is considering securing an EHC needs assessment it must also notify—

(a) the relevant clinical commissioning group;

(b) the officers of the authority who exercise the authority’s social services functions for children or young people with special educational needs;

(c) in relation to a child—

(i) if the child is a registered pupil at a school, to the head teacher (or equivalent position) of that school, or
(ii) if the child receives education from a provider of relevant early years education to the head of SEN in relation to that provider; and

(d) in relation to a young person—

(i) if the young person is a registered pupil at a school, to the head teacher (or equivalent position) of that school, or

(ii) if the young person is a student at a post-16 institution, to the principal of that institution, of its decision.

Decision whether or not to conduct an EHC needs assessment

28.—(1) The local authority must notify the child’s parent or the young person of its decision whether or not it is necessary to secure an EHC needs assessment for the child or young person as soon as practicable and in any event within 6 weeks of receiving a request for an assessment under section 36(1) of the Act or of becoming responsible for the child or young person in accordance with section 23 of the Act.

(2) The local authority must also notify the persons who were notified in accordance with regulation 4(3) of its decision.

(3) When notifying the child’s parent or the young person of its decision, it must also notify them of their right to appeal that decision, and of the requirement for them to consider mediation.

(4) The local authority need not comply with the time limit referred to in paragraph (1) if it is impractical to do so because—

(a) the authority has requested advice from the head teacher or principal of a school or post-16 institution during a period beginning 1 week before any date on which that school or institution was closed for a continuous period of not less than 4 weeks from that date and ending 1 week before the date on which it re-opens;

(b) the authority has requested advice from the head of special educational needs in relation to, or other person responsible for, a child’s education at a provider of relevant early years education during a period beginning 1 week before any date on which that provider was closed for a continuous period of not less than 4 weeks from that date and ending 1 week before the date on which it re-opens;

(c) exceptional personal circumstances affect the child or his parent, or the young person during the time period referred to in paragraph (1); or

(d) the child or his parent, or the young person, are absent from the area of the authority for a continuous period of not less than 4 weeks during the time period referred to in paragraph (1).

Conduct of EHC Needs Assessments

29.—(1) Where the local authority secures an EHC needs assessment for the first time for a child or young person, it must seek the following advice, where it considers it appropriate to do so—

(a) advice from the child’s parent or the young person;

(b) educational advice, from the head teacher or principal of the school or post-16 or other institution that the child or young person is attending, or where this is not available, from a person who the local authority is satisfied has experience of teaching children or young people with special educational needs, or knowledge of the differing provision which may be called for in different cases to meet those needs;

(c) medical advice from a medical practitioner identified by the relevant clinical commissioning group;

(d) psychological advice from an educational psychologist;

(e) advice in relation to social care; and

(f) advice from any other person the local authority thinks is appropriate;

(g) where the child or young person is in or beyond their tenth year of compulsory schooling, advice from an officer of the authority who exercises the local authority’s functions in relation to assisting in preparing children and young people for adulthood and independent living; and

(h) advice from any person the child’s parent or young person requests that the local authority seek advice from.

(2) Where it appears to the authority, in consequence of medical advice or otherwise, that the child in question is—

(a) hearing impaired;

(b) visually impaired; or

(c) both hearing and visually impaired,

and any such person from whom advice is sought as provided in paragraph (1)(b) is not qualified to teach pupils who are so impaired, then the advice sought shall be advice given after consultation with a person who is so qualified.
(3) Where the local authority secures a re-assessment for the child or young person on receipt of a request in accordance with section 44(2) of the Act it must seek advice from the persons specified in paragraph (1) where it thinks it is appropriate to do so.

(4) When seeking advice in accordance with paragraph (1)(b) to (g), the local authority must provide the person from whom advice is being sought with copies of—

(a) any representations made by the child’s parent or the young person, and
(b) any evidence submitted by or at the request of the child’s parent or the young person.

(5) The local authority must not seek the advice referred to in paragraphs (1)(b), (c), (d), (e), (f) or (g) if such advice has previously been provided (whether in relation to an EHC needs assessment or otherwise) and the person providing that advice, the local authority and the child’s parent or the young person are satisfied that it is sufficient for the purpose of arriving at a satisfactory assessment.

Duty to co-operate in EHC needs assessments

30.—(1) Where a local authority requests the co-operation of a body in securing an EHC needs assessment in accordance with section 31 of the Act, that body must comply with such a request within 6 weeks of the date on which they receive it.

(2) A body need not comply with the time limit referred to in paragraph (1) if it is impractical to do so because—

(a) exceptional circumstances affect the child, the young person or the child’s parent during that 6 week period;
(b) the child, the child’s parent or the young person are absent from the area of the authority for a continuous period of not less than 4 weeks during the 6 week period referred to in paragraph (1); or
(c) the child or young person fails to keep an appointment for an examination or a test made by the body during that 6 week period.

Provision of advice, information and support to parents and young people

31. When securing an EHC needs assessment the local authority must consider whether the child’s parent or the young person requires any information, advice and support in order to enable them to take part effectively in the EHC needs assessment, and if it considers that such information, advice or support is necessary, it must provide it.

Matters to be taken into account in securing an EHC needs assessment

32. When securing an EHC needs assessment a local authority must—

(a) consult the child and his or her parent, or the young person and take into account their views, wishes and feelings;
(b) consider any information provided to the local authority by or at the request of the child, his or her parent or the young person;
(c) consider the advice obtained in accordance with regulation 6(1);
(d) engage the child and his or her parent, or the young person and ensure they are able to participate in decisions; and
(e) minimise disruption for the child, the child’s parent, the young person and their family.

Decision not to secure an EHC plan

33.—(1) Where, following an EHC needs assessment, a local authority decides that it is not necessary for special educational provision to be made for a child or young person in accordance with an EHC plan, it must notify the child’s parent or the young person of its decision, giving the reasons for it.

(2) It must also notify the person notified in accordance with regulation 4(3)(c) or (d).

(3) When notifying a child’s parent or young person in accordance with paragraph (1) the local authority must also notify them of—

(a) their right to appeal that decision;
(b) the time limits for doing so;
(c) the need to consider mediation; and
(d) the availability of dispute resolution services.

Preparation of EHC plans

34. When preparing a child or young person’s EHC Plan a local authority must—

(a) take into account the evidence received when securing the EHC needs assessment; and
(b) consider how best to achieve the outcomes to be sought for the child or young person.
Form of EHC plan

35. When preparing an EHC plan a local authority must set out in separate sections—

(a) the information specified in section 37(2) of the Act;
(b) the name of the school, maintained nursery school, post-16 institution or other institution or the type of school or other institution to be attended by the child or young person;
(c) the views, interests and aspirations of the child and his parents or the young person; and
(d) where any special educational provision is to be secured by a direct payment, the special educational needs and outcomes to be met by the direct payment.

Timescales for EHC plans

36.—(1) When a local authority sends a draft plan to a child’s parent or young person it must give them at least 15 days in which to make representations about the content of the draft plan, and to request that a particular school or other institution be named in the plan.

(2) A local authority must send the finalised EHC plan to—

(a) the child’s parent or to the young person;
(b) the governing body, proprietor or principal of any school or other institution named in the EHC plan; and
(c) to the relevant clinical commissioning group,
as soon as practicable, and in any event within 20 weeks of the local authority receiving a request for an EHC needs assessment in accordance with section 36(1) of the Act, or of the local authority becoming responsible for the child in accordance with section 23 of the Act.

(3) The local authority need not comply with the time limit referred to in paragraph (2) if it is impractical to do so because—

(a) the authority has requested advice from the head teacher or principal of a school or post-16 institution during a period beginning 1 week before any date on which that school or institution was closed for a continuous period of not less than 4 weeks from that date and ending 1 week before the date on which it re-opens;
(b) the authority has requested advice from the head of special educational needs in relation to, or other person responsible for, a child’s education at a provider of relevant early years education during a period beginning 1 week before any date on which that provider was closed for a continuous period of not less than 4 weeks from that date and ending 1 week before the date on which it re-opens;
(c) exceptional personal circumstances affect the child or his parent, or the young person during the time period referred to in paragraph (1); or
(d) the child or his parent, or the young person, are absent from the area of the authority for a continuous period of not less than 4 weeks during the time period referred to in paragraph (1).

Sending the finalised EHC plan

37. When sending a copy of the finalised EHC plan to the child’s parent or the young person in accordance with section 39(8)(a) of the Act, the local authority must notify them of their right to appeal matters within the EHC plan in accordance with section 50(2)(c) of the Act, and of the need for them to consider mediation.

Transfer of EHC plans

38.—(1) This regulation applies where a child or young person in respect of whom an EHC plan is maintained moves from the area of the local authority which maintains the EHC plan (“the old authority”) into that of another local authority (“the new authority”).

(2) The old authority, within 15 working days beginning with the day on which it became aware of the move, shall transfer the EHC plan to the new authority.

(3) From the date of the transfer—

(a) the EHC plan shall be treated as if it had been made by the new authority on the date on which it was made by the old authority; and
(b) where the new authority makes an EHC needs assessment and the old authority has supplied the new authority with advice obtained in pursuance of the previous assessment the new authority must not seek further advice where the person providing that advice, the old authority and the child’s parent or the young person are satisfied that it is sufficient for the purpose of the new authority arriving at a satisfactory assessment.

(4) The new authority shall within 6 weeks of the date of the transfer notify the child’s parent or the young person informing him—

(a) that the EHC plan has been transferred;
(b) whether it proposes to make an EHC needs assessment; and
(c) when it proposes to review the statement in accordance with paragraph (5).

(5) The new authority shall review the EHC plan in accordance with section 44 of the Act before the expiry of the later of—

(a) the period of 12 months beginning with the making of the EHC plan, or as the case may be, with the previous review, or
(b) the period of 3 months beginning with the date of the transfer.

(6) Where, by virtue of the transfer, the new authority comes under a duty to arrange the child or young person’s attendance at a school or post-16 institution specified in the EHC plan but in the light of the child or young person’s move that attendance is no longer practicable, the new authority may arrange for the child or young person’s attendance at another school or post-16 institution appropriate for him or her until such time as it is possible to amend the EHC plan.

**Restriction on disclosure of EHC plans**

39.—(1) Subject to the provisions of the Act and of these Regulations, an EHC plan in respect of a child or young person shall not be disclosed without the child or young person’s consent except—

(a) to persons to whom, in the opinion of the local authority concerned, it is necessary to disclose the EHC plan in the interests of the child or young person;
(b) for the purposes of any appeal under the Act;
(c) for the purposes of educational research which, in the opinion of the local authority, may advance the education or training of children or young persons with special educational needs, if, but only if, the person engaged in that research undertakes not to publish anything contained in, or derived from, an EHC plan otherwise than in a form which does not identify any individual including, in particular, the child concerned and the child’s parent or the young person;
(d) on the order of any court or for the purposes of any criminal proceedings;
(e) for the purposes of any investigation under Part 3 of the Local Government Act 1974 (investigation of maladministration);
(f) to the Secretary of State when he requests such disclosure for the purposes of deciding whether to give directions or make an order under section 496, 497 or 497A of the Education Act 1996;
(g) for the purposes of an assessment of the needs of the child or young person with respect to the provision of any statutory services for him or her being carried out by officers of an authority by virtue of arrangements made under section 5(5) of the Disabled Persons (Services, Consultation and Representation) Act 1986;
(h) for the purposes of a local authority in the performance of its duties under sections 22(3)(a), 85(4)(a), 86(3)(a) and 87(3) of the Children Act 1989;
(i) to Her Majesty’s Chief Inspector of Education, Children’s Services and Skills, exercising the right to inspect and take copies of a statement in accordance with section 10(1)(e) of the Education Act 2005 and section 140(2)(a) of the Education and Inspections Act 2006;
(j) to a Young Offender Institution for the purposes of the performance of its duties under rule 38 of the Young Offender Institution Rules 2000;
(k) to a Secure Training Centre for the purposes of the performance of its duties under rule 28 of the Secure Training Centre Rules 1998.

(2) A child may consent to the disclosure of an EHC plan for the purposes of this regulation if his or her age and understanding are sufficient to allow him to understand the nature of that consent.

(3) If a child does not have sufficient age or understanding to allow him to consent to such disclosure, his parent may consent on his behalf.

(4) The arrangements for keeping a child or young person’s EHC plan must be such that the ensure, so far as is reasonably practicable, that unauthorised persons do not have access to them.

(5) In this regulation, any reference to an EHC plan includes a reference to any representations, evidence, advice or information obtained in relation to an EHC plan.

**REVIEWS AND RE-ASSESSMENTS**

**Circumstances in which a local authority must review an EHC plan**

40.—(1) Where a local authority becomes aware that a young person in respect of whom it is maintaining an EHC plan is no longer undertaking education or training, the local authority must review that young person’s EHC plan to ascertain whether it is possible for the young person to return to education or training.

(2) Where the local authority determines that amending the EHC plan would enable the young person to resume their education or training, the local authority shall amend the EHC plan in accordance with regulation 24.
(3) Where a child or young person is within 12 months of a transfer between phases of his or her education, the local authority must review and amend, where necessary, the child or young person’s EHC plan before 15 February in the calendar year of the child or young person’s transfer and amend the EHC plan so that it names the school, post-16 or other institution which the child or young person will attend following that transfer.

(4) For the purposes of paragraph (3) a transfer between phases of education means a transfer from—

(a) relevant early years education to school;
(b) infant school to junior school;
(c) primary school to middle school;
(d) primary school to secondary school;
(e) middle school to secondary school; or
(f) secondary school to a post-16 institution.

Conduct of reviews

41. When undertaking a review of an EHC plan, a local authority must—

(a) consult the child and the child’s parent or the young person, and take account of their views, wishes and feelings;
(b) consider the child or young person’s progress towards achieving the outcomes specified in the EHC plan and whether these outcomes remain appropriate for the child or young person;
(c) consult the school or other institution attended by the child or young person.

Review meeting

42.—(1) As part of the annual review of a child or young person’s EHC plan, the local authority must secure that a meeting to review that EHC plan is held.

(2) The following persons must be invited to attend that meeting—

(a) the child’s parent or the young person;
(b) provider of the relevant early years education or the head teacher or principal of the school, post-16 or other institution attended by the child or young person;
(c) a person nominated by the relevant clinical commissioning group to provide advice about health care provision to the child or young person;
(d) an officer of the authority who exercises the local authority’s social services functions in relation to children and young people with special educational needs.

(3) At least two weeks’ notice of the date of the meeting must be given.

(4) The meeting must consider the child or young person’s progress towards achieving the outcomes specified in the EHC plan.

(5) When the child or young person is expected to leave education or training within the next two years, the review meeting must consider what provision is required to assist in preparing the young person for adulthood and independent living.

(6) The local authority may ask the person identified in paragraph (2)(b) to provide a written report on the child or young person in advance of the meeting.

Review of EHC plan where the child or young person does not attend a school or other institution

43.—(1) This regulation applies where a local authority carry out a review of an EHC plan and the child or young person concerned does not attend a school or other institution.

(2) The local authority must prepare a report on the child.

(3) The local authority must invite the following persons to a meeting as part of the review of an EHC plan—

(a) the child’s parent or the young person;
(b) an officer of the authority who exercises the local authority’s education functions in relation to children and young people with special educational needs;
(c) a person nominated by the relevant clinical commissioning group to provide advice about health care provision to the child or young person;
(d) an officer of the authority who exercises the local authority’s social services functions in relation to children and young people with special educational needs;
(e) any other person whose attendance the local authority considers appropriate.

(4) At least two weeks’ notice of the date of the meeting must be given, and the report prepared in accordance with paragraph (2) must be sent to everyone invited to the meeting in advance of that meeting.
Circumstances in which a local authority must secure a re-assessment

44. A local authority must secure a re-assessment of a child or young person’s EHC Plan where it receives a request to do so from the relevant clinical commissioning group for that child or young person.

Securing a re-assessment of educational, health care and social care provision

45.—(1) When securing a re-assessment of educational, health care and social care provision in a child or young person’s EHC plan, where the local authority has received a request under section 44(2) of the Act or under regulation 21 it must—

(a) take account of—

(i) the views, wishes and feelings of the child and the child’s parent or the young person; and

(ii) any information it has obtained in previous assessments, reviews or re-assessments, where that information is still relevant;

(b) consult those people identified in regulation 6(2).

(2) When securing a re-assessment of any or all of the educational, health care and social care provisions in a child or young person’s EHC plan, in the absence of a request under section 44(2) of the Act the local authority must—

(a) take account of—

(i) the views, wishes and feelings of the child and the child’s parent or the young person; and

(ii) any information it has obtained in previous assessments, reviews or re-assessments, where that information is still relevant;

(b) consult whichever of those people identified in regulation 6(2) it considers appropriate, taking into consideration which of the educational, health care and social care provision is being re-assessed.

Circumstances in which it is not necessary to re-assess educational, health care and social care provision

46. Where a local authority receives a request to re-assess a child in accordance with section 44(2) of the Act it does not need to do so where it has carried out an assessment or re-assessment within the period of six months prior to that request.

Amending or replacing an EHC plan following a review or re-assessment

47.—(1) Where the local authority decides to amend or replace an EHC plan following a review or reassessment it must consult—

(a) the child’s parent or the young person;

(b) any person invited to attend the review meeting; or

(c) any person whose advice was sought during the reassessment.

(2) When amending the EHC plan following a review or reassessment the local authority must comply with the requirements of section 33 of the Act.

(3) Where the local authority proposes to amend the name of any school or other institution named in the EHC plan, it must consult the governing body, proprietor or principal of the school or other institution it proposes to name.

(4) The local authority must send a draft of the amended or replacement EHC plan to the child’s parent or to the young person and must give them at least two weeks to make their views on the EHC plan known to the local authority.

(5) The local authority must send a copy of the finalised EHC plan to—

(a) the child’s parent or the young person;

(b) the governing body, proprietor or principal of any school or other institution named in the plan; and

(c) the relevant clinical commissioning group.

CEASING TO MAINTAIN AN EHC PLAN

Circumstances in which it is no longer necessary to maintain EHC plan

48. It will no longer be necessary for a local authority to maintain a child or young person’s EHC plan—

(a) where the young person leaves education or training to take up employment for which he is paid, including where training is provided as part of that employment (other than where the young person is on an apprenticeship); and

(b) where the young person undertakes higher education.

Circumstances in which a local authority may not determine it is no longer necessary to maintain EHC plan where the person is under the age of 18

49. A local authority may not determine that it is no longer necessary to maintain an EHC plan for a child or young person under the age of 18 unless—
(a) the local authority determines that it is no longer necessary for special educational provision to be made for the child or young person in accordance with an EHC plan; or
(b) subject to regulation 27, the young person ceases to receive education or training, other than training provided in relation to paid employment with training (unless this is paid employment because the young person is on an apprenticeship).

**Action to be taken where a person under the age of 18 ceases to receive education or training**

50. Where a young person under the age of 18 ceases to receive education or training, the local authority must review the EHC plan in accordance with regulations 18 and 19 and amend it in accordance with regulation 24 where appropriate, to ensure that the young person continues to receive education or training.

**Circumstances in which a local authority may not determine it is no longer necessary to maintain EHC plan where the person is aged 18 or over**

51.—(1) When a young person aged 18 or over ceases to attend the post-16 institution specified in his or her EHC plan, so is no longer receiving education or training, a local authority may not determine that it is no longer necessary to maintain that EHC plan, unless it follows the procedure set out in this regulation.

(2) When a young person aged 18 or over ceases to receive education or training, the local authority must review the EHC plan in accordance with regulations 18 and 19 and determine whether the young person wishes to return to education or training, either at the post-16 institution specified in his or her EHC plan, or otherwise.

(3) Where the local authority determines that the young person wishes to return to education or training at the post-16 institution specified in his or her EHC plan, and that it is appropriate for the young person to do so, it must amend the young person’s EHC plan as it thinks necessary in accordance with regulation 24.

(4) Where the local authority determines that the young person wishes to return to education or training at somewhere other than the post-16 institution specified in his or her EHC plan, and that it is appropriate for the young person to do so, it must amend that EHC plan in accordance with regulation 24 following the review in accordance with paragraph (2).

(5) Where the local authority determines that the young person does not wish to return to education or training, or that returning to education or training would not be beneficial to the young person, it may cease to maintain that person’s EHC plan in accordance with regulation 29.

**Procedure for determining whether to cease to maintain EHC plan**

52.—(1) Where a local authority is considering ceasing to maintain a child or young person’s EHC plan it must—

(a) inform the child’s parent or the young person that it is considering ceasing to maintain the child or young person’s EHC plan; and
(b) consult the child’s parent or the young person;
(c) consult the school or other institution that is named in the EHC plan.

(2) Where, following that consultation the local authority determines to cease to maintain the child or young person’s EHC plan, it must notify the child’s parent or the young person, the institution named in the child or young person’s EHC plan and the relevant clinical commissioning group of that decision.

THE APPROVAL OF INDEPENDENT EDUCATIONAL INSTITUTIONS AND SPECIAL POST-16 INSTITUTIONS REGULATIONS

Clause 41

**Citation and interpretation**

53.—(1) These regulations may be cited as the Approval of Independent Educational Institutions and Special Post-16 Institutions Regulations.

(2) In these regulations—

“the Act” means the Children and Families Act 2014;
“Ofsted” means the Office for Standards in Education, Children’s Services and Skills.

**Types of special post-16 institution that may be approved**

54. The Secretary of State may approve a special post-16 institution under section 41 of the Act where it is—

(a) not an institution in the further education sector;
(b) not a 16–19 Academy;
(c) not maintained by a local authority.
Criteria a special post-16 institution must meet before being approved

55. Before a special post-16 institution can be approved by the Secretary of State under section 41 of the act, it must have been inspected Ofsted or by the Care Quality Commission, and found to be offering a satisfactory quality of education and care.

Matters to be taken into account in deciding to give approval

56. The Secretary of State may take into account the following matters when deciding whether to give approval—

(a) whether the institution is financially viable;
(b) the proportion of children and young people attending the institution who have an EHC plan (or a statement of special educational needs or learning difficulty assessment);
(c) the proportion of children and young people attending the institution for whom the cost of doing so is met by a local authority or by the Secretary of State; and
(d) reports relating to the institution by Ofsted and the Care Quality Commission.

Matters to be taken into account in deciding to withdraw approval

57. The Secretary of State may take into account the following matters when deciding whether to withdraw approval—

(a) whether the institution is financially viable;
(b) the proportion of children and young people attending the institution who have an EHC plan (or a statement of special educational needs or learning difficulty assessment);
(c) the proportion of children and young people attending the institution for whom the cost of doing so is met by a local authority or by the Secretary of State;
(d) reports relating to the institution by Ofsted and the Care Quality Commission; and
(e) any information received about the institution from a local authority or a young person attending the institution or from any other person.

Procedure when the Secretary of State decides to withdraw approval

58. —(1) When the Secretary of State decides to withdraw the approval of an institution, the Secretary of State must notify the proprietor of the institution of that decision.

(2) The Secretary of State must also notify all local authorities in England of that decision.

(3) The decision will take effect 28 days after that notification is given, and shall remove the institution from the list published in accordance with regulation 7 on the date that the decision takes effect.

Publication of list of approved institutions

59. The Secretary of State must publish a list of all institutions that have been approved on the Internet.

INITIATIVE REGULATIONS FOR COMMITTEE

THE SPECIAL EDUCATIONAL NEEDS (APPEAL) REGULATIONS

CLAUSE 50

Commencement and application

60.—(1) These Regulations may be cited as the Special Educational Needs (Appeals) Regulations.

(2) These Regulations apply in relation to England.

Notices

61.—(1) Where a local authority makes a decision which may be appealed to the First-tier Tribunal, it shall provide the child’s parents or the young person with a notice.

(2) The notice must be in writing and contain the following—

(a) The decision;
(b) The reasons for the decision;
(c) Information about the child’s parent or young person’s right to appeal to the First-tier Tribunal;
(d) The time limits within which any appeal must be submitted to the First-tier Tribunal;
(e) Details of the arrangements which the local authority has available for resolving disagreements under section 52.

(Cross reference to the indicative Mediation Regulation; in relevant cases:-]

(f) a notice must inform the child’s parent or young person that he or she may only make an appeal (other than an appeal falling within section 51 (2) of the Act) if a mediation adviser has issued a certificate under section 51(4) or (5) of the Act.
(g) inform the parent or young person of the timescales for mediation
(h) explain how the child’s parent or young person may contact a mediation adviser to receive information about mediation and the provision of advocacy services which are available in the area of the local authority; and
(i) give the telephone number, address and email address of at least one a mediation adviser.

62.—(1) The local authority must send the notice to the child’s parent or young person as soon as reasonably practicable but no later than 7 calendar days from the date on which the decision was taken.
(2) Where the decision concerns a request for an assessment under section 36 or a request for a reassessment under section 44(2), the notice must be sent to the child’s parent or young person within [6] weeks from the date which the original request was received.
(3) A local authority does not need to comply with the time limit in paragraph (2) where any of the circumstances listed in [Regulation 5(4) of the indicative Assessment and Plan Regulations] apply.

Powers of the First-tier Tribunal

63. Before determining any appeal the First-tier Tribunal may, with the agreement of the parties correct any deficiencies in the EHC Plan which relate to the special educational needs or special educational provision.

64.—(1) When determining an appeal the First-tier Tribunal will have the power to—
(a) dismiss the appeal;
(b) order the local authority to arrange an assessment of the child or young person under section 36 or a reassessment under section 44(2) where the local authority has refused to do so;
(c) order the local authority to make and maintain an EHC Plan where the local authority has refused to do so;
(d) refer the case back to the local authority for them to reconsider whether, having regard to any observations made by the First-tier Tribunal, it is necessary for the local authority to determine the special educational provision for the child or young person;
(e) order the local authority to continue to maintain the EHC Plan in its existing form where the local authority has refused to do so;
(f) order the local authority to continue to maintain the EHC Plan with amendments so far as that relates to either the assessment of special educational needs or the special educational provision [and make any other consequential amendments as the First-tier Tribunal thinks fit];
(g) where the appeal concerns the type of school or other institution, or the specific school or other institution, named in the EHC Plan, the First-tier Tribunal may order the local authority to substitute for the school or other institution that is preferred by the child’s parent or young person;
(h) where appropriate when making an order in accordance with paragraph (g) this may include naming—
(i) a special school or institution approved under section 41 where a mainstream school or mainstream post-16 institution is specified in the EHC Plan; or
(ii) a mainstream school or mainstream post-16 institution where a special school or institution approved under section 41 is specified in the EHC Plan.

Compliance with First-tier Tribunal Orders

65.—(1) Subject to paragraph (3), if the First-tier tribunal make an order following an appeal from a child’s parent or young person requiring a local authority to perform an action, the authority shall perform that action within the period specified in paragraph (2).
(2) In the case of an order—
(a) to dismiss an appeal against a determination to cease an EHC Plan, the local authority shall cease to maintain the EHC Plan immediately or on any date subsequent to preferred by the local authority;
(b) to make an assessment or reassessment, the local authority shall within [4] weeks notify the child’s parent or young person that they will make the assessment or reassessment;
(c) to make and maintain an EHC Plan, the local authority shall serve a proposed EHC Plan within [5] weeks;
(d) to refer the case back to the local authority for them to reconsider, the local authority shall take the action within [2] weeks to either serve a copy of the proposed EHC Plan [under Regulation 13 of the indicative Assessment and Plan regulations] or give notice [under Regulation 2 of the indicative Appeal Regulations] of their decision not to maintain an EHC Plan;
(e) to amend an EHC Plan, the local authority shall amend the EHC Plan within 5 weeks;
(f) to continue an EHC Plan in its existing form, the local authority shall continue to maintain the EHC Plan with immediate effect;
(g) to continue and amend an EHC Plan, the local authority shall continue to maintain the EHC Plan with immediate effect and amend the EHC Plan within [5] weeks; and,
(h) to substitute either the name of the school or other institution or the type of school or other institution, with either the name of the school or other institution or type of school or other institution preferred by the child’s parent or young person, the local authority shall make the specification in the EHC Plan within [2] weeks.

Unopposed Appeals

66.—(1) This regulation applies where the child’s parent or young person has appealed to the First-tier Tribunal and the local authority notifies the First-tier Tribunal that they will not oppose the appeal.

(2) The appeal is to be treated as determined in favour of the appellant.

(3) Where an appeal is treated as determined in favour of the appellant under paragraph (2) the First-tier Tribunal is not required to make any order.

(4) Where the appeal concerns a request for a local authority to make an assessment under clause 36 or a review or reassessment under clause 44, then the local authority shall make the assessment or review or reassessment within [4] weeks.

(5) Where the appeal concerns the contents of the EHC Plan, then the local authority shall amend the EHC Plan so far as that relates to either the assessment of special educational needs or the special educational provision within [4] weeks.

(6) Where the appeal concerns the refusal of the local authority to make an EHC Plan, then the local authority will arrange to make an EHC Plan within [5] weeks.

(7) For the purposes of paragraphs (4) to (6), the period shall begin on the day on which the local authority notifies the First-tier Tribunal that they have determined that they will not oppose the appeal.

(8) The local authority need not comply with the time limits specified in paragraphs (4) to (6) if it is impractical to do so because—

(a) exceptional personal circumstances affect the child or their parent or the young person during the relevant period;

(b) the child or his parent or the young person are absent from the area of the local authority for a continuous period of not less than 2 weeks during the relevant period;

any of the exceptions listed in [Regulation 13(3) of the indicative Assessment and Plan Regulations] apply.

DRAFT ILLUSTRATIVE REGULATIONS UNDER CLAUSE 51

DRAFT SPECIAL EDUCATION NEEDS (MEDIATION) REGULATIONS

Clause 51

Commencement and application

1. (1) These Regulations may be cited as the Special Education Needs (Mediation) Regulations.

(2) These Regulations apply in relation to England.

Interpretation

2. In these Regulations—

“the Act means the Children and Families Act 2014;

“Appeals Regulations” means the Special Education Needs (Appeals) Regulations;

“working day” means any other day than (a) a Saturday or Sunday, (b) Christmas Day or Good Friday or (c) a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

Giving notice

3. (1) A notice given to a parent of a child (“Parent”) or young person by the local authority under the Appeals Regulations must inform the parent or young person that he or she may only make an appeal (other than an appeal falling within section 51 (2) of the Act151) if a mediation adviser152 has issued a certificate under section 51(4) or (5) of the Act.

(2) The notice must also—

(a) inform the parent or young person of the timescales for mediation;

[151] An appeal falls within Section 51(2) of the Act where the appeal concerns only:-

[152] the school or other institution named in an EHC plan;

[152] the type of school or other institution specified in an EHC plan;

[152] the fact that an EHC plan does not name a school or other institution.

[152] Mediati on adviser is defined in Section 51(8) of the Act.
(b) explain how the parent or the young person may contact a mediation adviser to receive information about mediation and the provision of advocacy services which are available in the area of the local authority; and

(c) give the telephone number, address and email address of at least one a mediation adviser.

Certificate under section 51 (4) of the Act
4. The mediation adviser must issue the certificate to the parent or young person under section 51(4) of the Act within 3 working days of the date on which the parent or young person informed the mediation adviser that he or she does not wish to pursue mediation.

Certificate under section 51 (5) of the Act
5. The mediation adviser must issue the certificate under section 51 (5) of the Act within 3 working days of conclusion of the mediation.

Duty on local authority to make arrangements for mediation
6. (1) Where the parent or young person informs the mediation adviser that he or she wishes to pursue mediation, the mediation adviser must inform the local authority within 3 working days of receipt of notification.

— (2) The local authority must make arrangements for the appointment of a mediator and for the mediation to take place within 30 calendar days of being informed by the mediation adviser.

— (3) The local authority must inform the parent or young person of the date and place in which the mediation is to take place.

— (4) The information in (3) must be provided to the parent or young person at least [5] working days prior to the date of the mediation. Any shorter period of notice will only be permitted if this is agreed by the parent or young person prior to the mediation.

Mediation meeting
7. The following persons may attend a mediation meeting –

(a) the parent or young person and any advocate or other supporter he or she wishes attend the mediation;

(b) no more than two representatives from the local authority;

(c) where the child’s parent is a party to the mediation, the child may attend the mediation with the agreement of the child’s parent and the mediator.

8. Where the child’s parent is a party to mediation the mediator must take reasonable steps to ascertain the views of the child about issues raised by the appeal.

Travelling expenses etc.
9. Limits on travelling expenses and other expenses which may be prescribed for the purpose of section 51(7) will be subject to consultation.

Training etc.
10. The local authority must ensure that mediation advisers and mediators have appropriate knowledge of the legislative framework relating to special education needs and appropriate training and other qualifications and experience.

Steps to be taken by local authority after mediation meeting
9. The steps which should be taken by the local authority following the conclusion of mediation will reflect the agreement reached at mediation. These steps will be similar to those set out in regulation 25 of the Education (Special education Needs) (England) (Consolidation) Regulations 2001.

ILLUSTRATIVE REGULATIONS FOR COMMITTEE
SEN CO-ORDINATORS

Clause 62

Citation and commencement
67. These Regulations may be cited as the Education (Special Educational Needs Co-ordinator) (England) Regulations 2014 and come into force on 1st September 2014.

Interpretation
68. In these Regulations—

“the appropriate authority” means—

(a) in relation to a community, foundation or voluntary school or a maintained nursery school, the governing body of the school; and

(b) in relation to an Academy, the proprietor;
“relevant school” means a community, foundation, or voluntary school, a maintained nursery school or an academy school that is not a special school;

“relevant services” means—

(c) special educational provision, or advice or assistance in relation to such provision or its management;

(d) assessment of special educational needs, or advice or assistance in relation to such needs or in relation to the management of pupils with such needs.

“the SENCO”, in relation to a relevant school, means the person who has been designated to be the special educational needs co-ordinator for the school by the appropriate authority.

Prescribed qualifications and experience of SENCOs

69.—(1) The appropriate authority of a relevant school must ensure that the SENCO appointed under section 62(2) of the Children and Families Act 2014 meets all of the requirements in either paragraph (2) or (3).

(2) The requirements in this paragraph are that the SENCO—

(a) is a qualified teacher;

(b) if required to complete an induction period under regulations made under section 19 of the Teaching and Higher Education Act 1998(153), has satisfactorily completed such an induction period; and

(c) is working as a teacher at the school.

(3) The requirement in this paragraph is that the SENCO is the head teacher or acting head teacher (or equivalent in the case of an Academy school) of the school and meets the requirements of regulations made under section 135 of the Education Act 2002(154) if required to do so.

(4) Where a person becomes the SENCO at a relevant school after 1st September 2009, and has not previously been the SENCO at that or any other relevant school for a total period of more than twelve months, the appropriate authority of the school must ensure that, if the person is the SENCO at the school at any time after the third anniversary of the date on which that person becomes a SENCO, that person holds the qualification, mentioned in paragraph (5).

(5) The qualification referred to in paragraph (4) is the qualification for the time being known as “The National Award for Special Educational Needs Co-ordination”.

Appropriate authority functions relating to the leadership and management role of the SENCO

70. The appropriate authority of a relevant school must determine the role of the SENCO in relation to the leadership and management of the school.

Appropriate authority functions relating to the key responsibilities of the SENCO

71.—(1) The appropriate authority of a relevant school must determine the key responsibilities of the SENCO and monitor the effectiveness of the SENCO in undertaking those responsibilities.

(2) The key responsibilities referred to in paragraph (1) may include the carrying out, or arranging for the carrying out, of the following tasks—

(a) in relation to each of the registered pupils who the SENCO considers may have special educational needs, informing a parent of the pupil that this may be the case as soon as is reasonably practicable;

(b) in relation to each of the registered pupils who have special educational needs—

(i) identifying the pupil’s special educational needs,

(ii) co-ordinating the making of special educational provision for the pupil which meets those needs,

(iii) monitoring the effectiveness of any special educational provision made for the pupil,

(iv) securing relevant services for the pupil where necessary,

(v) ensuring that records of the pupil’s special educational needs and the special educational provision made to meet those needs are maintained and kept up to date,

(vi) liaising with and providing information to a parent of the pupil on a regular basis about that pupil’s special educational needs and the special educational provision being made for those needs,

(vii) ensuring that, where the pupil transfers to another school or educational institution, all relevant information about the pupil’s special educational needs and the special educational provision made to meet those needs is conveyed to the appropriate authority or (as the case may be) the proprietor of that school or institution, and

(viii) promoting the pupil’s inclusion in the school community and access to the school’s curriculum, facilities and extra-curricular activities;

(c) selecting, supervising and training learning support assistants who work with pupils with special educational needs;

153 (7)
154 (8)
(d) advising teachers at the school about differentiated teaching methods appropriate for individual pupils with special educational needs;
(e) contributing to in-service training for teachers at the school to assist them to carry out the tasks referred to in paragraph (b); and

preparing and reviewing the information required to be published by the appropriate authority pursuant to [the Education (Special Educational Needs)(Information)(England) Regulations 2014], the objectives of the appropriate authority in making provision for special educational needs, and the special educational needs policy referred to in [paragraph 1 of Schedule 1 to those Regulations].

ILLUSTRATIVE REGULATIONS FOR COMMITTEE
SPECIAL EDUCATIONAL NEEDS (INFORMATION) REGULATIONS

CLAUSE 64
Citation and commencement

72. These Regulations may be cited as the Special Educational Needs (Information) Regulations and come into force on [1st September 2014].

Interpretation

73. In these Regulations, “the Act” means the Children and Families Act 2014.

Prescribed information that must be included in SEN information report

74. For the purpose of section 64(3)(a) of the Act—

(a) the SEN information which the governing body or proprietor of every mainstream school and maintained nursery school must include in a report containing SEN information is set out in Schedule 1; and
(b) the SEN information which the governing body of every maintained special school and the proprietor of every Academy that is a special school (other than a special school that is established in a hospital) must include in a report containing SEN information is set out in Schedule 2.

Manner of publication of report

75. A school must publish its report containing SEN information available on its website.

SCHEDULE 1

Information from mainstream schools

76. Information about the school’s policies for the identification, assessment and provision for pupils with special educational needs, whether or not pupils have EHC Plans, including how the school evaluates the effectiveness of its provision for such pupils.

77. The school’s arrangements for assessing the progress of pupils with special educational needs.

78. The name and contact details of the SEN co-ordinator.

79. Information about the expertise and training of staff in relation to children and young people with special educational needs and about how specialist expertise will be secured.

80. Information about how equipment and facilities to support children and young people with special educational needs will be secured.

81. The role played by the parents of pupils with special educational needs.

82. Any arrangements made by the governing body or the proprietor relating to the treatment of complaints from parents of pupils with special educational needs concerning the provision made at the school.

83. The contact details of support services for the parents of pupils with special educational needs, including those for arrangements made in accordance with clause 32.

84. Information on where the local authority’s local offer is published.

SCHEDULE 2

Information from maintained special schools and Academies that are special schools

85. The kinds of special educational needs for which provision is made at the school.

86. Information about the school’s policy for making provision for pupils with special educational needs, including how the school evaluates the effectiveness of its provision for such pupils.

87. The school’s arrangements for assessing the progress of pupils with special educational needs.

88. The role played by the parents of pupils with special educational needs.
89. Any arrangements made by the governing body relating to the treatment of complaints from parents of pupils with special educational needs concerning the provision made at the school.

90. How the governing body involves other bodies, including health and social services bodies, local authority support services and voluntary organisations, in meeting the needs of pupils and in supporting the families of such pupils.

91. The contact details of support services for the parents of pupils with special educational needs, including those arrangements made in accordance with clause 32.

92. Information on where the local authority’s local offer is published.

DEPARTMENT FOR EDUCATION

CHILDREN AND FAMILIES BILL: NOTE FROM THE DEPARTMENT FOR EDUCATION TO THE PUBLIC BILL COMMITTEE ON CLAUSE 48.

1. This note provides information to aid the Committee’s considering of the Children and Families Bill. It provides further information on the delegated powers in clause 48 pending the publication of indicative regulations. The Department is currently considering how the regulations will need to reflect the proposed new duty on health commissioners, but expects to provide indicative regulations to the Committee in the week commencing 18 March 2013, before clause 48 is considered.

2. Clause 48 provides parents and young people with the right to request a personal budget when they have an Education, Health and Care Plan or where the authority is in the process of preparing a plan.

3. A personal budget is defined in the clause as an amount as available to secure particular provision in the plan with a view to the child’s parents or the young person being involved in securing the provision. This will include special educational, health and social care provision but regulations will make provision to exclude universal provision where this is included in the plan.

4. The regulations made under this clause will set out a number of important provisions that will offer protections for both the family and the public purse in relation to direct payments for special educational provision (payments for health and social care provision will be covered by their own regulations except where funds are pooled). A number of these will reflect the safeguards set out in The Special Educational Needs (Direct Payments)(Pilot Scheme) Order 2012 including requirements to:

   — Provide information, advice and support in relation to the take-up and management of a personal budget including information about independent organisations that may be able to provide advice and assistance;
   — Consider the impact of any individual agreement for direct payments on other service users and whether it represents value for money;
   — Gain written consent of the recipient in relation to the direct payment and the consent of the headteacher or principal of a school or FE institution where the provision will be used or provided on their premises;
   — Ensure the amount of the direct payment is sufficient to secure the full cost of the agreed provision;
   — Monitor and review the use of direct payments once established.

DEPARTMENT FOR EDUCATION

CHILDREN AND FAMILIES BILL: NOTE FROM THE DEPARTMENT FOR EDUCATION TO THE PUBLIC BILL COMMITTEE ON CLAUSES 53 AND 54

1. To aid the Committee’s consideration of the Children and Families Bill, this note provides further information on the delegated powers in clauses 53 and 54.

Policy background

2. Part 4 of the Education Act 1996 and the Equality Act 2010 give parents in England the right to appeal special educational needs (SEN) cases and make disability discrimination claims against schools in relation to admissions, exclusions, the provision of education and access to a benefit, facility or service to the First-tier Tribunal (SEN and Disability) (“FIT”). The Children and Families Bill maintains these rights for parents and also allows young people who are over compulsory school age to appeal and make disability discrimination claims.

3. Article 12 of the United Nations Convention on the Rights of the Child states:

   Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

   For this purpose the child shall in particular be provided with the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.
4. Briefly by way of background the UN Committee on the Rights of the Child (UNCRC) examined the UK on its progress in implementing the Convention in September 2008. One concern of the Committee was that children have no direct right to appeal a decision in relation to special educational needs to the FtT. The Committee was also concerned that the right to appeal is restricted to parents which represents a particular problem for looked after children and recommended “that children who are able to express their views have the right to appeal against their exclusion as well as the right, in particular for those in alternative care, to appeal to the special educational needs tribunals”.

5. The previous Government carried out a consultation between April and July 2009 on giving children a right to appeal in relation to decisions about special educational needs and to make disability discrimination claims. 86% of the 76 responses agreed that children should have the right to appeal in such cases and make such claims. A smaller majority agreed that the right should be from secondary school age, although 26% thought there should be no age limit. A small majority felt there should be no competency test for children to bring appeals against decisions in relation to special educational needs and make disability discrimination claims. Subsequently, the Parliamentary Joint Committee on Human Rights recommended that looked after children (LAC) with SEN should have an independent right to appeal against decisions made about them and the Lamb Inquiry into parental confidence in the SEN system (December 2009) recommended that the Government should implement the children’s right of appeal to the FtT.

6. In the SEN and Disability Green Paper Support and aspiration the Government said that it was important to open up the right to appeal to children and that the Department would work with the FtT to pilot giving children the right to appeal and claim in two or three local authorities with a view to extending the right to all children across England. The pilot would test whether the right to appeal is something that children would use, the best way to handle these appeals, and the cost implications of this change.

7. The Welsh Government has already amended the Education Act 1996 and the Equality Act 2010 to give children in Wales the right to appeal and make disability discrimination claims to the Welsh Tribunal. [Pilots are being carried out in Carmarthenshire and Wrexham prior to the right being given to all disabled children and those with SEN in Wales.]

8. In Scotland young people over the age of 16 have the right to appeal to the Additional Support Needs Tribunal over co-ordinated support plans and children of 12 and over have the right to make disability discrimination claims relating to discrimination in schools to the Tribunal.

Order-making powers in Clauses 53 and 54

9. Clause 53 provides that the Secretary of State may make by order pilot schemes enabling children in England to make appeals under clause 50 (“appeals”) and disability discrimination claims under Schedule 17 to the Equality Act 2010 (“claims”) to the FtT (SEND). We are proposing that pilots should be run in three local authority areas. The pilots will test the practicalities of giving children these rights and whether children will use the rights. In those areas children of compulsory school age and below will have the same rights to appeal and to make claims on the same grounds as parents and young people, the same access to advice from what are now called parent partnership services (under clause 32), the same access to disagreement resolution services (under clause 52) and be subject to the same mediation information and advice arrangements (under clause 51).

10. Clause 53 provides that the order may make provision about the following among other matters—

- about the age from which children can appeal or make a claim. The Department is proposing to trial three age ranges, 0 until the end of compulsory schooling (in relation to Wales there is no lower age limit at which children may appeal), 10 to the end of compulsory schooling (so that children may appeal about the secondary school named on their Education, Health and Care plan) and 11 to the end of compulsory schooling (to cover the secondary phase of education);

- about the bringing of appeals or making of claims by a child and by his or her parent concurrently. The Department is proposing that children and their parents will be able to make appeals or claims about the same matters concurrently. The FtT, under the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (5(3)(b)) has powers to order that appeals may be conjoined. If the appeals or claims are about different matters they can be taken separately;

- about determining whether a child is capable of bringing an appeal or making a claim, and the assistance and support a child may require to be able to do so. The Department does not want to routinely impose a competency test on all children who want to appeal or claim. There are children who would be capable of taking through an appeal or claim by themselves. However, other children who may want to take an appeal through by themselves may not be capable of doing so. We would like the pilot areas to test different ways of applying a “support test” where children are not taking through an appeal with the help of an adult;

- enabling a person to exercise a child’s rights on behalf of the child. The child will be a party to the appeal or claim. However, some children will not be capable of exercising their right properly and will need an adult to exercise the child’s rights. The Department proposes to make provision for ‘case friends’, who could be parents or people from voluntary organisations, for example, who can help the
child in his or her engagement with the whole process, including any contact with “parent partnership services”, disagreement resolution services, mediation and the FtT itself;

about the provision and other support services to children. The Department would also want to parallel the arrangements in Wales which require local authorities to make arrangements for the provision of independent advocacy services. Local authorities must refer any child or case friend who requests independent advocacy services to a service provider and the authorities must take such steps as are necessary to make the availability of the services known to children, parents, head teachers and other people as they consider appropriate;

about requiring notices and documents to be given and served on a child. Children in the pilot areas will receive the same notices, for example giving the local authority decision, and the same documents, such as finalised Education, Health and Care Plans, as their parents so that they have the same information on which to base appeals or claims.

11. Clause 53 will be repealed at the end of five years beginning with the day on which the Act is passed so that any pilots will have to be completed within that time period.

12. Clause 54 gives the power to the Secretary of State to make an order following the pilots to roll out the right of children to appeal and to make claims to other local authority areas in England. The order cannot be made until the end of two years beginning on the day on which the first order is made under clause 53. The order may make the same provision as the pilot scheme order under clause 53.

13. Unlike in Wales where the pilots are a preliminary to the right for children to appeal and claim being nationwide, in England an assessment will be made, depending on the success of the pilots, as to whether they will followed by nationwide roll out.

DEPARTMENT FOR EDUCATION

POLICY STATEMENT ON PARENTS AND YOUNG PEOPLE LACKING CAPACITY. CLAUSE 68

Children and Families Bill

Many provisions within the Children and Families Bill require the parents of children with special educational needs, and young people with special educational needs to take decisions. It is possible that some of those parents and young people will lack the capacity to make such decisions. However, it is important that someone represents the interests and views of the children and young people with special educational needs when those decisions are taken.

Therefore clause 68 enables regulations to be made which apply provisions in the Bill with modifications, to ensure that specified references to a child’s parent are to be read as references to a representative of the parent and specified references to a young person are to be read as a representative of the young person, the young person’s parent or a representative of the young person’s parent.

A representative is a deputy appointed under the Mental Capacity Act 2005, the donee of a lasting power of attorney appointed by the parent or young person, or an attorney in whom an enduring power of attorney has been vested and registered.

In relation to parents, we anticipate using the regulations to modify all references to a child’s parent to be read as references to the parent’s representative.

In relation to young people, it is more complicated, as some references will need to stay as those to the young person and others will need to be modified.

We anticipate modifying the provisions as follows—

a) in these clauses, references to a young person are to be read as references to both the young person and the relevant alternative person, where the young person lacks capacity at the relevant time:
   - section 19(a) and (d) (first reference)
   - section 27(3)(a)
   - section 30(8)(d)

b) in these clauses, references to a young person are to be read as references to the relevant alternative person instead of the young person, where the young person lacks capacity at the relevant time:
   - section 19(b) and (c)
   - section 32(1)(first reference) and (2)(b)
   - section 33(2)(a)
   - section 34(5)(c) and (7)(c)
   - section 36(1)(second reference), (4), (5) (second reference), (7) (opening words and paragraph(b)) and (9)(opening words)
   - section 38(1)(second reference), (2)(a) and (b), and (5)
   - section 39(8)(a)
   - section 40(5)(a)
section 42(2)
section 44(2)(a) and (6)
section 48(1) (second reference), (2) (second reference), (3)(d) and (4)(a)
section 50(1) and (3) (opening words)
section 51(1), (3), (4) (opening words and paragraph (b)), (5), (6) (opening words and paragraph (b), and (7)(g))
section 52(2)(b), (4)(a) and (6)(b)
section 56(3)
section 63(2)(first reference).

“The relevant alternative person” will be—

a) any representative of the young person,
b) the young person’s parent, where the young person does not have a representative,
c) any representative of the young person’s parent, where the young person’s parent also lacks capacity at the relevant time and the young person doesn’t have a representative.

DEPARTMENT FOR EDUCATION
CHILDREN AND FAMILIES BILL: NOTE FROM THE DEPARTMENT FOR EDUCATION TO THE PUBLIC BILL COMMITTEE ON TRANSITIONAL, TRANSITORY AND SAVING PROVISION (CLAUSE 107) RELATING TO PART 3 OF THE BILL (CHILDREN AND YOUNG PEOPLE IN ENGLAND WITH SPECIAL EDUCATIONAL NEEDS)

1. To aid the Committee’s consideration of the provisions relating to children and young people in England with special educational needs (part 3; clauses 19–72) in the Children and Families Bill, this note provides further information on how we intend to use the powers in clause 107 to support transition to the proposed special educational needs system.

Policy background

2. Support and aspiration: A new approach to special educational needs and disability, published in March 2011, set out the Government’s intention to introduce by 2014:

— an integrated assessment process, which is more streamlined, better involves children, young people and families and is completed quickly;
— Education, Health and Care (EHC) plans, which bring services together and are focused on improving outcomes; and
— the offer of a personal budget for families with an EHC plan who want one.

3. In 2011, 27,445 children were issued with a statement of special educational needs for the first time. Approximately a quarter of a million children and young people in England have statements of special educational needs or a Learning Difficulty Assessment (LDA) at any one time.

4. The Government wants all children and young people with special educational needs and their families to benefit from the new arrangements proposed in the bill as soon as possible. Elements of the new system are increasingly becoming available to children and young people in the 20 pathfinder areas (covering 31 local authorities) and it is our aspiration that this will begin to happen in non-pathfinder areas from September 2014.

5. It is the Government’s intention that, from the point at which legislation comes into force, no further assessments under the current provisions will be carried out by local authorities and new entrants to the system would be assessed for EHC plans rather than statements or LDAs.

6. We are committed to ensuring that the best service possible is maintained for children and young people with special educational needs and their families. For most local authorities, replacing children and young people’s statements and LDAs with EHC plans at the same time as introducing the new assessment process for new entrants to the system will be a significant undertaking. We want to be sure that the changeover to EHC plans happens at a pace that allows for a smooth transition whilst maintaining the quality of existing services. To achieve this, we believe it will be necessary to adopt a phased approach to the transfer.

7. We will identify and consult on an approach for the transition from statements and LDAs to EHC plans that minimises unnecessary burdens on families and which meets the key principles of being:

— responsive to the wishes of children, young people and their parents;
— as fair as possible to the children and young people involved;
— achievable for local authorities and others involved in the assessment while enabling children, young people and their families to benefit as quickly as possible from the reforms.

8. To design appropriate arrangements for transfer to EHC plans, we are gathering views from local authorities (pathfinders and non-pathfinders) and other interested parties. This will help inform our views on a feasible
timescale for transition and the support needed by local authorities and others to implement the changes within the identified timescale.

Order-making powers in Clauses 107

9. Clause 107 gives the Secretary of State the power to make by Order transitional, transitory or saving provision in connection with the coming into force of any provision in the Act.

10. The Secretary of State will use this power to make provision to set the parameters relating to the transfer of children and young people with statements and LDAs to EHC plans, and those who might be undergoing an assessment for a statement or a LDA when the legislation comes into effect. The Order will set out arrangements relating to:

— the sequence in which groups of children and young people with statements and LDAs will be transferred to EHC plans;
— the approach to assessment for the purposes of transfer to EHC plans;
— the duration of the transitional period, ie the date by when all statements and LDAs should be phased out;
— any elements of the current Code of Practice and LDA guidance that might remain in force during the transition;
— information and advice to support parents and young people through the process.

11. We expect consultation on a draft Order to begin in the latter part of this year.

EVIDENCE PACK

SPECIAL EDUCATIONAL NEEDS: CHILDREN AND FAMILIES BILL 2013

This evidence pack pulls together the information that has informed the Department's assessment of the impact of the provisions in Part 3 of the Children and Families Bill, including in relation to equalities. It is provided in support of Parliamentary scrutiny because formal regulatory impact assessments were not required in these areas of the Bill. Work continues to inform developing plans for implementation of the Bill provisions and the Department would be pleased to receive any additional relevant evidence.

Please contact: TheBillTeam.MAILBOX@education.gsi.gov.uk to make contact with the policy teams concerned.

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Section 2: Co-ordinated assessment and education, health and care plans
Section 3: Personal Budgets
Section 4: Appeals and mediation
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SECTION 1: LOCAL OFFER

SUMMARY OF THE MEASURES IN THE POLICY AREA

This assessment covers a single measure which requires local authorities to develop a local offer of services for children and young people with special educational needs, including those who are disabled.

What are the problems that the measures address?

There are currently over 17 different information documents which a local authority is required by law to publish, providing information about provision for children with SEN within the school setting. These 17 documents include for example: a policy statement by the authority on their general approach to SEN; details of funding for children with SEN; a document setting out transport services for children with SEN or disabilities; a document setting out guidance for parents who suspect their child may have special educational needs. There are no duties on local authorities specifically to provide information regarding services for young people, although local authorities are under a duty to encourage, enable or assist the effective participation of young people in education and training. In some cases, this may include providing young people and their parents with information as a means of supporting young people to participate.

Responses from Parents to the Green Paper 155 provided evidence that despite existing information on provision, parents and young people remain confused about what services are available and what criteria is applied in order to access them. They also felt that as parents they could not routinely engage in discussions with their

local authority about who was responsible for providing support and how to access services and this lack of engagement often led to mistrust in processes and professionals.

Some 28,325 statutory assessments were carried out in 2011. A key finding of the Ofsted review of Special Educational Needs in 2010, was that a lack of clearly defined information on services normally provided by schools and colleges for all SEN pupils, especially those without statements, increases the number and cost of assessments authorities need to make. This is because some parents and young people are unable to identify and access the services already provided by schools and colleges.

There are currently, according to data from MoJ, some 3,200 appeals to the First Tier Tribunal per annum, where parents are in dispute with an LA’s decision regarding a statutory assessment or their delivery of services. Parents and young people are faced with incomplete information when making decisions on appropriate support and this often leads to an adversarial situation, created, for example, where a family believes they should be able to access a particular service for which the local authority does not believe they meet the eligibility criteria.

What are the measures and what is the rationale for their introduction?

— The Department is seeking to ensure that parents and young people have access to a single source of coherent and complete information to manage their choices with regard to services which support children and young people with SEN and disabilities. This single source should also include information about family support services and guidance on dispute resolution. It should be published as a web-based document but should also be available in other accessible formats.

— The Department is seeking to ensure that parents and young people are directly involved in the development and review of the local offer with the local authority and that their feedback is published. This will enable local authorities to get a clear idea about gaps in provision. Experience in relation to parental engagement in developing local authority short break statements has shown that it can vastly improve relations and lead to more cost effective provision of services that better meet users’ needs. For example a local authority in the North East shifted from a block contract with a big short break provider for out of authority facilities to a more community-based solution, as a result of listening to what parents wanted and saved about £2 million.

— The Department intends to place a duty on local authorities in primary legislation to publish a local offer of services for children and young people with special educational needs and set out in regulations more detailed information about what should be included. We are currently using the on-going work of the pathfinders to inform this detail.

— This measure is intended to significantly reduce the information barriers currently faced by parents, by making information more accessible and enabling parents and young people to make informed decisions which are based on clear and consistent information. It will also give parents, children and young people a bigger say in what services are on offer. This will improve both efficiency within the market for services for children and young people with SEN and the increase of provision of services that best meet parents’ and children and young people’s needs. It will also improve the equity of access to services, where currently those parents and young people who are able to deploy considerable time in searching through the existing plethora of information published by a Local Authority have better access to services.

— This measure also supports other aspects of the SEN reforms. For example, it will provide parents, children and young people with information on assessment and developing Education Health and Care Plans . The select committee pre-legislative scrutiny report notes the extent to which good quality local offers are pivotal to the success of the Government’s proposals.

What are the impacts of the measures and which groups of people do they affect?

Who will this measure affect?

— Any changes to the nature and format of information provision, has the potential to affect all parents and carers of children with SEN and their children, many of whom will be disabled, as well as being a significant new benefit for young people with SEN who had very limited access to information under the current legislative framework. The department currently estimates that there are 1.78 million children and young people up to the age of 25 with special educational need which includes just over 261,000 with high level needs and approximately 1.5 million with lower level SEN needs.

— The requirement to publish a local offer of services for local children and young people with SEN will create a new area of responsibility for the 152 local authorities in England and also will affect children and young people with SEN and their parents through the opportunity to be involved in helping LAs develop and review their local offer.

— The measure will also require a number of bodies including health bodies, schools, (independent and state-funded) colleges (including Independent Specialist Colleges) and training providers to cooperate with the local authority in developing the local offer. The duty of co-operation will extend to some

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156 Department for Education 2012—Statistical First Release—Special educational needs in England: January 2012 - Date, Research and Statistics
state-funded schools, non-maintained special schools and health bodies in Wales where they have admitted children from English Authorities, or where an English Authority has responsibility for a looked after child.

What are the desired effects (benefits) of the measure?

— **Better outcomes for children and young people**—With a local offer in place, which parents and young people have been involved in developing and reviewing, parents and young people make better decisions about services which best meet their individual needs.

— **Improved satisfaction and trust**—increased transparency about entitlements and services and increased information at a local level should lead to greater equity in access to provision for parents and make it easier to benchmark local performance. Evidence submitted to the Disabled Children Review (2007)\(^{157}\) suggested the benefits of parents’ forums which are primarily about improved information, include an increased feeling of control for parents over their child’s wellbeing, leading to lower levels of stress for families, better use of services and increased parental understanding of how services work, which often leads to better working relationship with professionals. This benefit accrues to parents and young people.

— **Reduction in conflict and the number of appeals**—It is likely that the local offer will reduce the number of appeals made to the Tribunal. It costs a local authority approximately £5,000 to defend a case at the Tribunal, it costs the Tribunal itself approximately £1,600 to hold a hearing and the costs to the exchequer of supporting a family to prepare for a hearing are estimated to be around £1,800.\(^{158}\) Therefore, the benefits of avoided appeals accrue to parents and young people, local authorities and the exchequer. It is not possible to predict the total reduction in the number of appeals due to the production of the local offer, therefore the estimated total cost saving cannot be monetised. Furthermore, it would however be extremely challenging to isolate the downward effect on the number of appeals arising from this measure from the introduction of other measures in the Children and Families Bill in relation to SEN.

— **Improved transparency supports improved commissioning by LAs and acts to drive down costs**—A national set of local offers from local authorities will stimulate the market for services, revealing gaps in provision and enabling authorities to compare services in different geographic locations. This enhanced transparency will improve the local authority’s position as a commissioner of services. For example evidence from the NAO (2011) showed that there were very different levels of funding spent on children with very similar needs across different geographical areas and a local offer would enable the local authority to help reduce that variability of service provision through the mechanism of transparency. Transparency may also lead to greater collaboration between local authorities to offer shared provision for children and young people with low incidence needs.

The department has not quantified the benefits derived from the introduction of a local offer.

What are the resource implications (costs) of this measure?

— The Department has not finalised its assessment of the costs to local authorities of developing and publishing a local offer, but is testing this in the pathfinder project, where 31 local authorities alongside parents, carers and young people will develop and test a local offer.

— The Department expects there to be relatively modest one-off costs incurred by local authorities to develop their systems, design processes and establish protocols for parents and young people to be involved in the development of the local offer. Our best estimate of this currently, using initial findings from some of the pathfinders, is that this will require around £4.5m of additional support across all local authorities to enable them to develop processes which will lead to the publication of their first local offer. This will also include developing processes for gathering information across health and social care. We expect non pathfinder local authorities to benefit from the experience of pathfinder authorities through the work of pathfinder champions during 2013/14. Evidence from pathfinders regarding the likely net additional costs of maintaining and reviewing the local offer will be considered to inform an understanding of the recurring costs of this measure.

What other measures were considered and why were they not pursued?

The alternative options considered were:

**Encouraging local authorities to develop a Local Offer as best practice but not creating a specific duty in legislation**

— There would be no requirement for the rationalisation of existing information, the proliferation of which is one of the main causes of concerns for parents.

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\(^{158}\) Legal Services Commission internal statistical data pack 2010/11.
A voluntary approach would not help generate the benefits of national transparency and comparability, as without specifying the broad content of the local offer in regulations to ensure consistency, there is likely to be significant local variation.

A voluntary local offer would fail to provide a legal requirement to include information about provision for young people and would perpetuate the inequality of access to information between those children and young people in school settings and those in further education or training.

If local authorities opt not to develop a local offer under a voluntary system, this may have a detrimental effect for those parents and young people who wish to access a personal budget, as the local offer is an important means of accessing information as parents look to purchase a package of services.

**THE CURRENT LEGAL FRAMEWORK**

There would be no change in the availability of information about services for young people, and in a joined up system from birth to 25 years under the reforms this will create significant new inequalities between information available for services for children and those for young people.

Local authorities will continue to publish information in vastly variable ways which will perpetuate significant inefficiency as parents search for information required in order to make informed decisions.

*Are there any key assumptions or risks?*

The local offer is currently being tested in a pathfinder pilot project. By spring 2013, all pathfinders will have published their draft local offer. Therefore, the Department will be building on this assessment in light of this further evidence.

**SECTION 2: CO-ORDINATED ASSESSMENT AND EDUCATION, HEALTH AND CARE PLANS**

**SUMMARY OF THE MEASURES IN THE POLICY AREA**

To replace the current system of statementing and learning difficulty assessments with a co-ordinated 0–25 assessment process and an Education Health and Care Plan. Also, to enable all children and young people with an Education Health and Care Plan to express a preference for any state funded school, college or training provider or any approved independent provider where the provider is mainly or wholly catering for children and young people with SEN. The measures apply to children and young people who require educational provision which cannot reasonably be provided within the resources normally available to mainstream early years settings, schools and post 16 institutions in the area.

*What are the problems that the measures address?*

The Government’s 2011 Green Paper, Support and Aspiration: A new approach to Special Educational Needs and Disability, described parents’ views of the current system for SEN as bureaucratic, bewildering and adversarial. Responses to the consultation informing the Green Paper found that the legislative framework underpinning the system for the assessment of needs and provision of support has created a combative culture which is resource-driven rather than needs-led.

**Late Identification.** It was highlighted in Bercow (2008) that for many children their special educational needs are not identified early enough and the opportunities to benefit from early identification missed. Lewis et al (2010) also points out that there can be significant variation between authorities in terms of the speed of identification.

**Separation of education, health and social care.** Families often have to negotiate each element of their child’s statement separately, giving professionals the same information on multiple occasions. This means that the process of assessment and agreeing support is time consuming and onerous. Outcomes for children and young people whose parents are unable to navigate the complex, education, health and social care systems are disproportionately affected. Parents and young people are exposed to stress and increased tension as a result of disputes and delays. Professionals from education, health and social care can not readily collaborate due to separate commissioning and budget systems. The system lacks clear shared accountability, which increases the likelihood of disputes between services and the risk of needs going unmet. The onus often falls overly on local authorities as the only body with a statutory duty to deliver the services identified in the SEN statement.

**A separate system for young people.** At the point a young person leaves school for further education they face a different assessment process, leading to a Learning Difficulty Assessment. While this is meant to take place in the young person’s last year in school, too often it is done very late in the day. It often does not take into account progress young people have already made or their aspirations and the outcomes they want to achieve, such as independent living. It is not used in a strategic way for commissioning—well in advance—the support and provision that young people need. It also comes at a time when young people are facing re-assessment for

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161 Lewis et al (2010), ‘Special Educational Needs and Disability: understanding local variation in prevalence, service provision and support’, source Special Educational Needs and Disability: understanding local variation in prevalence, service provision and support.PDF
other services such as the transition from children’s to adult social care, which as the Law Commission found, can be a difficult experience for many.

There are fewer protections for young people (as compared to those under 16 or 18 years). They do not have the right to express a preference for a further education college they wish to attend, nor is there a requirement for the local authority to act on any preference that might be expressed. This creates inequality between those able to remain in school sixth forms—where the current SEN system still applies until 18, and those who access further education, where the SEN system does not apply. It leaves parents and young people unable to hold the system to account unless they are prepared and able to go to judicial review.

Limited choice of school types and post-16 provision. Parents reported as part of the Green Paper consultation, that in reality they have little choice of schools, as they are not clear about the options, their local mainstream school are not able to offer appropriate provision or there is a lack of special school places locally. In addition, there are different assessment criteria for assessing a parent’s preference for some independent schools. In the case of young people, currently they have no right to express a preference for a particular institution and there are no duties on FE Colleges and other post 16 institutions to admit young people. Ofsted reported that there is limited choice and opportunity for young people in post-16 education and what does exist is very rarely focused on preparing and enabling young people to make a successful transition to adulthood, including employment and independent living.162

What are the measures and what is the rationale for their introduction?

The measures include:

1. The introduction of a co-ordinated assessment process across education, health and social care.

2. The replacement of the current system of statements and learning difficulty assessments, with a single 0–25 Education Health and Care Plan, which retains all the protections of statements, places parents and young people at the heart of decision making and is clearly focused on both short and long term outcomes—including employment and independent living.

3. For those children and young people with an EHCP, enabling parents and young people to express a preference for any state funded school, college or training provider and some independent provision.

The rationale for Government intervention is based on equity arguments and the aim to address co-ordination failures and improve outcomes.

Equity Arguments. The Government wants to enable all children and young people with special educational needs to receive consistent support throughout school and further education and up to the age of 25 for those who need longer to complete their learning. Raising the participation age (RPA) implementation, where young people are required to stay in education or training until their 18th birthday, would expose further the inequalities of the current system. Enabling those who stay in schools to retain their rights while those accessing further education lose the protections secured by the statement can’t be right, if the Government is requiring them to stay in education.

The Government also wants to create equal rights for children and young people to express a preference for any state funded school or further education provision which will apply equally to academies, free schools, non-maintained special schools, independent schools catering mainly or wholly for children with special needs, all further education colleges and approved independent specialist colleges (ISCs).

Co-ordination Failure. The Government wants to address the co-ordination failure of the current system. For parents, their children and young people the low level of joint working across services in some areas leads to confusion and a sense of unfairness. For the exchequer, there are significant costs due to the late identification of needs, duplication of assessments and variation in provision of support. In the longer term, this system failure leads to these young people having high welfare dependency in adulthood, as shown by: significantly lower employment rates, poor health and often a higher than necessary dependency on parents and/or support services.

What are the impacts of the measures and which groups of people do they affect?

Who will the measures affect:

— Parents, children and young people. There are currently 261,835 children and young people with high level needs who would be likely to have an EHCP under the new system (including: those with a statement of educational needs, an LDA, participating post 16 without an LDA but had a statement at school and a proportion of young people who had a statement at school but are currently not participating but may do so in the future). The table below breaks this down by age with further details set out in annex 1.

162 Ofsted (Aug 2011) Progression post-16 for learners with learning difficulties and/or disabilities
The number of new statements issued in 2011 was 27,445. Over the past few years, this number has in general fluctuated around 25,000\(^\text{165}\). This is around 10% of the total number of statements/LDAs or expected EHC plans.

— **Local authorities and the health service.** The changes to the system will need to be implemented by local authorities (education and social care services for children and adults), clinical commissioning groups and health service providers.

— **The measures will affect maintained schools, non-maintained special schools, academies, free schools and independent schools, colleges and approved independent specialist colleges which mainly or wholly provide for children and young people with SEN.** These providers will have a duty to admit a child or young person whose EHCP names that provider.

**THE IMPACTS (BENEFITS) OF THE MEASURES ARE:**

**Improved wellbeing for children and young people.** The introduction of the EHCP aims to improve joined up working and could lead to a better experience for both children and young people with SEN and their families. An on-going support approach provides a better locus of control of their lives leading to an improved sense of wellbeing and potentially improved longer term outcomes. Evidence from the Department of Health (2008) suggests that treatment satisfaction can be improved following the introduction of care planning for treatment of long-term conditions. Similar health based evidence (see for example: Forman et al.\(^\text{164}\), Kinmonth et al.\(^\text{165}\) and Fuller et al.\(^\text{166}\)) provide further evidence of the benefits of care planning and self-management approach in terms of health outcomes.

**The benefits of reducing the number of full assessments.** Once EHCPs are in place for children, they will take their plans forward into further education if they continue to be needed, without the need for the development of a separate learning difficulty assessment. The Department estimates the average cost of statutory assessments to be around £3,200, and assume that the cost of an ECHP assessment will be similar.\(^\text{167}\) By 2015/16, the Department estimates that there could be just over 3,000 young people per year for whom no re-assessment will be required as they move into further education or training. This could rise to just over 8,000 by 2023/24, amounting to a maximum total saving in the region of £170m, in Net Present Value terms over the ten year appraisal period (from 2014/15 when EHCP is first implemented).\(^\text{168}\) It should be noted that these estimates are uncertain and represent an upper estimate—savings may be lower where young people need a re-assessment if their needs change. In addition, the projections also assume that raising the participation age (RPA) means all academic age 16 year olds are participating in education and training during the appraisal period.\(^\text{169}\)

**Benefits of improved support for young people who are NEET.** Maintaining an EHCP for a young person until they achieve their desired educational outcomes is likely to have an impact in terms of supporting young people into employment and semi-independent living. NAO evidence suggests that the costs of supporting a person with moderate learning difficulties through adult life (16–64) are £2.3m in today’s prices. Equipping a young person with the skills to live semi-independently rather than in fully supported housing could reduce these costs by up to £1m. Supporting one person with a learning difficulty into employment could reduce these costs by £170,000.\(^\text{170}\) Much of these cost savings would be realised by local health, housing and adult care services.

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\(^{165}\) DfE: Special Educational Needs in England, January 2012


\(^{169}\) Audit Commission (2002), “Statutory assessment and statements of SEN: in need of review?”, Statutory assessment and statements of SEN: in need of review? PDF (The Audit Commission reported that the average statutory assessment cost was around £2,500. Applying a price deflator, the estimated cost in 2011 would be £3,186.

\(^{170}\) Further assumptions are made about the number of reassessments that can be avoided in each year between 2014/14 and 2023/24. The HM Treasury ‘Green Book’ discount rate of 3.5% is applied to estimate the ‘present value’ of the benefits in 2013.

\(^{171}\) The Government is requiring them to continue until the end of the academic year in which they turn 17 from 2013 and until their 18th birthday from 2015.

\(^{172}\) NAO (Nov 2011) Oversight of special education for young people aged 16-25
Earlier identification of needs. The late identification of needs poses an opportunity cost as costly remedial interventions could according to Bercow (2008),\(^1\) be targeted at earlier identification and support. We expect that the introduction of the single assessment process may lead to an improvement in earlier identification of needs due to a more rigorous categorisation of needs, thus avoiding the need for very expensive and intensive remedial interventions and support. Goswami (2008) reports that early detection and intervention would alter development learning trajectories for children with SEN, with consequent benefits through the life courses. In particular, improvements in early capability makes later learning more efficient, and enhancing early capability at the outset of learning also increases the complexity of what can be learned. The Department has not been able to monetise these likely benefits.

Reduced number of appeals. The Department expects that the number of new appeals should decline in the medium to long term due to the new co-ordinated assessment process and the EHCP, which aim to better assess and cater for children and young people’s needs, involving the family in the decision making process and thus decreasing the likelihood of formal disputes. We have not monetised these benefits.

The impacts (costs) of these measures are:

The Department is testing approaches to the development of a co-ordinated assessment process and EHCP Plan through local authorities who are participating in a pathfinder programme. This will help inform an estimate of the likely resource requirements in terms of transition to a new system and on-going implementation. The next interim evaluation report, with quantitative analysis and an assessment of the costs of new approaches will be published in September 2013. These resource requirements relate to a step change in the current set-up of multi-agency working and will include changes in workforce deployment, development of systems, and improvements in advocacy and support in the assessment and planning process.

The Department expects that local authorities will require transitional support to develop the new approach and during a period where they are maintaining both statements and LDAs and converting these into education health and care plans. The Department has selected 20 ‘pathfinder champion’ LAs, covering all nine English regions, to support implementation in non-pathfinder areas on a regional and national basis, by sharing examples of effective approaches.

The Department expects the non-monetised benefits and monetised savings will significantly outweigh the costs of moving to the new system.

What other measures were considered and why were they not pursued?

The Department has considered the option of maintaining the current system. This would involve local authorities continuing to provide statutory assessment for children and young people and developing either a statement of special educational needs for those in a school setting or a learning difficulties assessment for those entering further education or training. The Department has heard representations over a long period which detail the problems that parents and young people have encountered in the current system, and also has observed the consistently high number of appeals in cases of dispute and the disproportionately high number of young people with LDD who are in the NEET group. Consultation responses received in advance of the publication of the Green Paper confirmed the problems families and young people were encountering in the current system.

An alternative option of promoting culture and practice change within the existing legislative framework, building on the findings of the pathfinder programme was considered. However, this was dismissed as among other issues, it would fundamentally not address the issue of the lack of parity pre and post 16, and therefore would not be effective in improving equity in the system.

Are there any key assumptions or risks?

Assumptions

The department assumes a flexible definition of the term “co-ordinated (or single) assessment process” acknowledging that local authorities are under statutory duties to complete statutory plans in certain circumstances (eg a care plan for a looked after child). We do not expect the co-ordinated assessment process to negate the need for other statutory processes. Pathfinder experience has shown that the EHCP can act as a ‘filing cabinet’— reducing the amount of duplication between statutory assessments and bringing together their results into a single, coherent family facing document.

Improved partnership working and information sharing between agencies will deliver cost savings and cost efficiencies in the longer term as well as improvements in the quality of support planning. The evaluation of the pathfinder programme will explore the cost of these reforms to the different agencies involved, and this information will help refine considerations about how best to support local authorities in implementing the legislation.

Further evaluation evidence from the pathfinder programme (in particular the findings from the formal evaluation) will help refine the estimates presented here.

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Risks

There are a number of important risks to delivery of the benefits set out here:

1. Working practices prove to be intractable and local areas are unable to achieve truly effective partnership working within the defined timescales, meaning that children, families and young people do not experience improved outcomes.

**Mitigations:** pathfinders will champion changes and sharing their experiences of effecting culture change across workforces with non-pathfinders, particularly through the work of the pathfinder champions; we will work to maximise the impact of the health system reforms in particular the new duties for joint planning and commissioning of services for children and young people with SEN.

2. Local authorities are unable to fund the cost of extending protections up the age range.

**Mitigations:** we are considering transitional arrangements for the new legislation, which will enable LAs to take a staged approach and plan and commission services accordingly over the longer term. The Department has also made clear that it will take action to support local authorities that are not fulfilling their duties to increase participation of young people. We are already providing improvement support for local areas with the most challenging data on NEET and participation.

3. Local authorities who choose to operate wider eligibility criteria for EHC Plans than they do currently for statements, going beyond their statutory requirements, risk additional costs in co-ordinating and preparing plans.

**Mitigation:** A number of pathfinders are taking this approach and implementing system wide reforms in order to reap longer term benefits. The evaluation will explore the cost of reform and the impact on improving outcomes at system and individual level. Non pathfinder areas will be able to build on the experience of findings of the pathfinder in order to inform their own approach to eligibility. The Children and Families Bill does not change the eligibility for a statutory EHC Plan compared with statements or Learning Difficulty Assessments.

Annex 1

What are the impacts of the measure and which groups of people does it affect?

Number of children/young people participating with statements/LDAs that would have an EHCP plan

<table>
<thead>
<tr>
<th>Age</th>
<th>Number</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–5</td>
<td>10,415</td>
<td></td>
</tr>
<tr>
<td>5–16</td>
<td>187,275</td>
<td></td>
</tr>
<tr>
<td>16/17</td>
<td>20,462</td>
<td></td>
</tr>
<tr>
<td>18–24</td>
<td>12,234</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>230,385</td>
<td></td>
</tr>
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</table>

Number of potential additional EHCP Plans

<table>
<thead>
<tr>
<th>Age</th>
<th>Number</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>16/17</td>
<td>15,918</td>
<td>Participating, low needs but had statements at school. However, this figure does not necessarily represent all new EHC Plans as students can be low needs and have an LDA now or an EHC Plan in future.</td>
</tr>
<tr>
<td>16/17</td>
<td>9,361</td>
<td>NET 16/17 year olds. We assume 100% participation under RPA then these would all be participating as a result of RPA and would all have LDAs.</td>
</tr>
<tr>
<td>18–24</td>
<td>6,171</td>
<td>It is estimated that 61,700 young people aged 18 to 24 with a statement of SEN will be NEET in 2014/15. This is based on combining numbers of young people who currently are or were in the school system with a statement of SEN with an estimate of their likelihood to be not in education, employment or training (NEET). It is then assumed that overall 10% of that 18–24 age NEET group will both choose to and be successful in applying to their Local Authority for an Education, Health and Care Plan (EHC Plan). For more details see Annex 2.</td>
</tr>
<tr>
<td>Total</td>
<td>31,450</td>
<td></td>
</tr>
</tbody>
</table>

So, as an expected upper limit, total additional numbers of EHC Plans is 31,450—ie 25,279 (NEET 16/17 year olds plus low needs 16/17 year olds who had statements at school) plus 6,171 NEET 18–24 year olds. This assumes RPA doesn’t have any impact. If this were to occur, the total number of EHC Plans would be 261,835. It
is possible that there may be an increase in the number of 0–5 children with an EHC Plan as the system becomes more integrated, with earlier identification and intervention. However, an expected number is not yet known and depends on local implementation of the reforms.

The lower limit of additional EHC Plans would be 6,171—ie those 18–24 year old NEETs that we think might re-enter the system. This assumes RPA is 100% effective for 16/17 year olds and that all those 16/17 year olds participating with low needs already have an LDA.

Annex 2

Estimating the number of 18 to 24 year olds who are not in education, employment or training (NEET) and have high special educational needs

It is estimated that 61,700 young people aged 18 to 24 who had a statement of SEN will be NEET in 2014/15. This is based on combining numbers of young people who currently are or were in the school system with a statement of SEN with an estimate of their likelihood to be not in education, employment or training (NEET).

There are no routine national statistics available that breakdown the number or proportion of young people NEET by whether they had or had a statement of SEN, and so the likelihood cannot be calculated directly. However, it can be estimated for 18 and 19 year olds based on data from the Longitudinal Study of Young People in England, and a combination of whole cohort and disability data from the Annual Population Survey (APS) to create a proxy group for young people with a SEN statement for 18–24 year olds [using the methodology underpinning the national statistics].

It is then assumed that overall 10% of that 18–24 age NEET group will both choose to and be successful in applying to their Local Authority for an Education, Health and Care Plan (EHC Plan), and that this proportion will vary with age (from 30% at age 18 to 4 % at age 24). It is unlikely that many people in this group would seek to re-enter the system. Many will be on active benefits—which they would lose if they returned to education—or will be firmly embedded within the adult care system and will not want to risk losing established support.

<table>
<thead>
<tr>
<th>Academic age</th>
<th>18</th>
<th>19</th>
<th>20</th>
<th>21</th>
<th>22</th>
<th>23</th>
<th>24</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statement at 15</td>
<td>21,300</td>
<td>21,900</td>
<td>22,000</td>
<td>22,700</td>
<td>23,400</td>
<td>23,400</td>
<td>23,400</td>
<td>158,200</td>
</tr>
<tr>
<td>Of which NEET</td>
<td>5,100</td>
<td>8,100</td>
<td>8,500</td>
<td>9,300</td>
<td>10,000</td>
<td>10,600</td>
<td>10,000</td>
<td>61,700</td>
</tr>
<tr>
<td>Of which receive EHCP</td>
<td>1,900</td>
<td>1,600</td>
<td>1,100</td>
<td>600</td>
<td>500</td>
<td>300</td>
<td>200</td>
<td>6,200</td>
</tr>
</tbody>
</table>

SECTION 3: PERSONAL BUDGETS

SUMMARY OF THE MEASURES IN THE POLICY AREA

Introduction of an option for a personal budget for parents of children and young people with an Education Health and Care Plan.

What are the problems that the measures address?

There are three main problems that this measure is seeking to address:

Lack of parental control—Local Authorities are currently responsible for arranging the delivery of services which are required for a child with a statement of special educational needs but are not similarly required to arrange delivery of services for young people with a learning difficulties assessment. In arranging services, families frequently report that this is characterised by often uniformly delivered services and many parents and young people share a concern that this does not provide services which meet their child’s/an individual’s needs. Parents have expressed a preference to have more choice and control over the services they receive.

Lack of transparency—There is currently no transparency about the funding committed across the different public services to support a child’s needs as identified in a statement/Education Health and Care Plan.

Limited market development of services—There is currently a very limited market in the provision of some services for children and young people with SEN, with local authorities both commissioning and delivering within rigid service structures, which limits innovation and could affect the price paid for services.

What are the measures and what is the rationale for their introduction?

The policy measure aims to provide parents and young people who have an EHC, the option to have a personal budget. For a child or a young person with an EHC, the Local Authority will identify an amount of money available to secure provision that is specified in the EHC with a view that the child’s parents or the young person is involved in securing the provision. The personal budget will cover the individualised support activity as set out in an EHC, but not the school or college/training provider place.

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172 Other measures within the Children and Families Bill will introduce a single 0-25 Education Health and Care plan to replace a child’s statement or a young person’s learning difficulties assessment. In doing so it will retain all the protections of statements for children and extend these to 16-25 year olds.
This policy measure seeks to improve access to services and support the effective use of public resources for special educational needs. It seeks to empower parents and their children by giving them choice and control over the services they access, thus improving transparency and encouraging a special educational needs service that is more responsive to families’ needs and preferences. This in turn could improve the quality and efficiency of service provision, satisfaction and lead to improved longer term outcomes for children and young people with SEN.

Evidence from the Individual Budget Pilot (2010) and from individual health budget pilots led by the Department of Health provides evidence regarding the extent to which personal budgets can improve outcomes and create wellbeing effects from greater choice and control and changes in the type of services families choose to access. Further evidence from the UK and internationally shows that where personal budgets work well they give families more flexibility and they feel empowered.

Efficiency arguments apply to the case for introducing personal budgets. Asymmetric information exists such that while parents in theory have better information on what services are most appropriate given their personal circumstances, local authorities currently arrange for services to be put in place on behalf of the family which are generally uniformly provided by local authorities. This means it is not specifically linked to an understanding of the child or their family circumstances. Families participating in the IB pilot benefited from the flexibilities afforded by an individual budget, including: changing the emphasis in the care package on respite and short breaks, having more family centred interventions and being able to innovate with new services that better suit their requirements.

**What are the impacts of the measures and which groups of people do they affect?**

The option for parents and young people to request a personal budget can benefit all parents and young people with an EHCP. However, we know that not all families will want the responsibility of managing their own budget which, in some cases, can include employing their own personal assistants. Based on the findings from the Individual Budget Pilot we estimate up to 13% of families will wish to take up the option of a personal budget. The Department estimates that this could mean between 31,000 and 34,000 families and young people taking up this option. This range is partly dependent on the number of young people for whom an EHCP continues to be maintained.

Local Authorities will be affected by this measure, as they will be expected to run systems in parallel. This will mean for parents and young people not requesting a personal budget they will continue to commission services which are required and detailed in a child/young person’s plan. For parents and young people who do request a personal budget, local authorities will need to make arrangements for a sum of money to be identified for the child or young person. Parents will be able to choose whether to direct where they wish this funding to be spent (with the local authority managing the funds on their behalf) or receive a direct payment in order that the family or young person holds the budget and directly commissions services.

**The main impacts (benefits) for parents and young people will be:**

**Choice and Control**—The Government wants to provide families with greater choice and control over the services they receive, allowing them to tailor provision to meet their own unique needs. A personal budget will enable parents or young people to have a much greater say in the way their child or they themselves are supported. This will provide a clear role for the service recipient in designing a package of support that is personalised. This can lead to welfare benefits for parents and young people, and longer term to improved outcomes for the child/young person. These benefits cannot be readily monetised however a recent NAO report highlighted that in special educational needs, focussed support over many years can bring high net returns. The public sector costs of supporting a person with a moderate learning disability through adult life (16–64) is £2–3 million, while the impact of supporting one person with a learning disability into employment could, in addition to improving their independence and self-esteem, reduce lifetime costs to the public purse by around £170,000 and significantly increase that person’s income by 55–95%.

**Transparency**—The Government wants to provide families with greater transparency. A personal budget will provide clear information about the funding committed across the different public services to support their child, according to the needs identified in the EHCP. This will provide both commissioners and families with better information about the costs of different options which may in turn, for some, enable savings to be made. This, in turn, should help to create a more competitive market in the provision of service, encourage market development, and potentially address post code variation in the cost of service provision and funding provided to support children young people with similar needs. These benefits cannot be readily monetised.

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175 Department for Education (2011), ‘individual budgets for families with disabled children’ source: individual budgets for families with disabled children’
177 National Audit Office (2011) – Oversight of special education for young people aged 16-25 source: Oversight of special education for young people aged 16-25
Innovation—The individual budgets pilots have shown shifts in the types of services families use and individual case studies have highlighted innovative approaches to meeting needs. This is to be expected and encouraged to ensure that the package of support is truly personalised to meet the unique needs and circumstances of any individual child with an EHCP. Families will be supported in this process and good providers that offer innovative and responsive services will be able to grow.

Preparing young people for adulthood—Young people will find that in the adult social care and health services there is increasing use being made of personal budgets and direct payments. Introducing young people or older children to personal budgets will assist with the transition to adult services.

The main impacts (costs) for local authorities will be:

The Department has been able to draw on independently evaluated evidence from the Individual Budget Pilot to assess the likely costs of implementing this measure. The IB pilots included 6 sites, where individual budgets for provision of social care services for disabled children were tested. The IB pilots were delivered through a common delivery framework, which was a model including activities for both the initial transitional set up and on-going delivery of the pilot. The Department has assessed the likely costs to Local Authorities for the implementation of the option for a personal budget using the qualitative analysis from the IB pilots, and those elements of the common delivery model, established as part of that pilot, which would be relevant to the roll out of SEN personal budgets. The Department is in discussions with the Department for Communities and Local Government regarding how this will be funded at implementation.

Transitional costs:

The Department estimates that it will cost all 152 local authorities in aggregate between £17.5m and £47m to implement the personal budgets measure (over a 2 to 3 year period). Within this range, our central case estimate is around £32.5m. From the common delivery model, this is made up of: staff costs (44%) change management costs (18%) awareness raising with families (18%), IT development (3%) developing a resource allocation system (5%), developing systems which to put in place a choice of services (5%) and market development activities (18%).

Recurring annual costs:

The Department estimates that it will cost all local authorities in aggregate between £11.5m and £35m per annum to sustain this measure. Within this range, our central case estimate is around £23m pa. This will be made up of staff costs (63%), awareness raising activities (1%), on-going IT development (2%) maintaining a resource allocation system (1%), maintaining systems which put in place a choice of services (4%) and on-going market development activities (22%).

The Department believes the benefits to parents and young people afforded through individualised support has the potential to significantly outweigh the costs of setting up and running a personal budget system. In addition, the market stimulation and transparency that this measure is likely to generate, may have a downward impact on the cost of services and stimulate more innovation in the market.

What other measures were considered and why were they not pursued?

There are two alternative options which the Department has considered:

Leave the current funding arrangements for SEN provision unaltered—In the absence of the opportunity to request a personal budget, parents would continue to experience a system where Local Authorities put in place the specific services to be delivered as part of a child or young person’s EHCP. There would continue to be a lack of transparency and empowerment for parents.

All parents and young people access personal budgets for children and young people with an EHCP—While this would create a single system for local authorities to manage, consultation responses to the SEN Green Paper indicated that around 60% of respondents felt some concern that managing a personal budget would be an unwelcome extra responsibility. The provision of an option for a personal budget means that parents can select to continue to have the Local Authority commission the services set out in a child’s plan. Parents who are concerned about the complexities of accessing a personal budget would be supported by the Local Authority to help them understand the system and navigate through it.

Are there any key assumptions or risks?

No evaluated evidence yet of SEN direct payments—While the evaluated Individual Budget Pilot has given the Department some good evidence to develop an understanding of likely take up and the costs of implementation, the IB pilots were not based on either personal budgets or direct payments in relation to educational services, which will be one core part of the EHCP. In mitigation of this risk, the Department is testing SEN personal budgets and direct payments as part of a pathfinder programme and further evidence from the evaluation of this programme will support the Department in refining our estimates of costs and benefits. A

qualitative evaluation of the pathfinder programme will be available in September 2013 as well as a number of case study examples of personal budgets in an SEN context. As part of this process the Department has put into place a number of safeguards to prevent the misuse of funds including conditions for receipt of direct payments and requirements for the monitoring and review of their use.

**Distribution of outcomes**—The Department is alert to risks around the distribution of outcomes ie that personal budgets may be more likely to be taken up by middle to upper income families as these families may be more equipped to understand the complexities of managing a personal budget/direct payments. However, analysis of the take up in the Individual Budget pilot suggested this was broadly in line with the population and around a quarter of families were categorised in social grade E (main earner in casual or lower grade employment or dependent on the welfare state).

**SECTION 4: APPEALS AND MEDIATION**

**SUMMARY OF THE MEASURES IN THE POLICY AREA**

This document appraises three complementary measures:

— Establishing a common right of appeal across the post compulsory school (16–25) age range.
— Establishing a small number of pilot schemes to enable children to make appeals in relation to their Special Educational Needs (SEN) and disability discrimination claims.
— Promoting use of mediation through a mandatory mediation information telephone call.

**What are the problems that the measures address?**

There are currently different redress arrangements between:

— children and young people with special educational needs of compulsory school age (and 16–19 year olds in schools); and
— young people over compulsory school age who are not in school.

Under current arrangements, young people outside of the school setting are in an inferior position relative to children of compulsory school age and 16–19 year olds still in school. They have no legal right to access a Tribunal directly, or through their parents. Currently, young people are only able to use Judicial Review or an Ombudsman for dispute resolution. As we seek to introduce Education, Health and Care Plans across the 0–25 age range regardless of educational setting, we want to ensure that equivalent access to redress is available.

The United Kingdom of Great Britain and Northern Ireland ratified the UN convention on the rights of the Child (UNCRC) in 1991 and the Government continues to make progress to ensure that every child and young person in England has all the rights laid down in the Convention. The UNCRC examined the UK on its progress in 2008. Among other concerns, the UN was concerned that children (with SEN or suspected SEN) have no rights to appeal a decision to the First-tier Tribunal. The rights are currently restricted to parents, which represents a particular problem for looked after children. They recommend that children who are able to express their views have the rights to appeal to the special educational needs tribunals.

To ensure children and young people with SEN have the right assessment so services can be put in place quickly, both users and providers of special educational needs and disability services have an interest in resolving disputes in a resource efficient way. The length of the statutory assessment process means that a child or young person with SEN may not be receiving the right support for six months or more, often at a crucial point in their development. This can increase to over a year once any appeals to the First-tier Tribunal (SEN and Disability) are taken into account. The current set of incentives for users may be distorting an optimal choice. It is possible that parents **exercise the right to appeal, instead of using alternative options such as independent dispute resolution services** which may have a lower overall cost and avoid the need for formal hearings.

**What are the measures and what is the rationale for their introduction?**

There are three measures proposed:

— **Establishing a common right of appeal across the post compulsory school (16–25) age range.** This includes extending the right of appeal to the First-tier Tribunal (SEND) by allowing young people in school and post-16 education over compulsory school age the right to appeal up to the end of the academic year in which they turn age 25. The rationale for this measure is based on equity arguments, to ensure that there are the same appeal rights across the 16–25 age range.

— **To enable children to make appeals in relation to their SEN assessments and statements/plans and to make disability discrimination claims.** Establishing a small number of pilot schemes for children of compulsory school age and below to make appeals in relation to their special educational needs and to bring disability discrimination claims. On completion of any pilots the Secretary of State would have the power to extend the right to all children in England. The rationale for this measure is based on equity arguments. The pilot and any subsequent move to give all children a right of appeal which will specifically help ensure that looked after children and older children have a right of appeal. This will also fulfil commitments made under the UNCRC. Government intervention is necessary to
amend the current legislation and thus to ensure children and young people’s interests are being treated and protected equally.

— **Promoting use of mediation/mandatory mediation information telephone call.** Introducing a mediation information call for parents and young people before appeal aims to improve the take-up of mediation services. This will reduce costs and the time and stress of resolving disagreements by avoiding the formal appeal process. If the parent or young person wished to appeal to the Tribunal they must first contact an independent mediator for advice and information on mediation with the local authority unless the case is an exception (eg only relates to the naming of a school or post-16 institution)\(^{178}\). The parent or young person will then decide whether to participate in mediation or go straight to appeal. Currently, only around 23% of SEN appeals registered with the Tribunal are heard. The rest are either withdrawn by parents or are conceded by the local authority.\(^{179}\) This is time consuming, expensive and stressful for the families involved. Voluntary mediation, which was supported by the responses to the Green Paper and the Education Select Committee during pre-legislative scrutiny, would provide an effective practical solution. Parents and young people will have the opportunity to discuss with an independent mediator how mediation may help them, before deciding whether to go to mediation with the aim of avoiding the delays/costs/stress which would be incurred through the Tribunal route.

**What are the impacts of the measures and which groups of people do they affect?**

Figures are based on the best estimates and assumptions we have currently but there will be some variation in reality.

**Who will these measures affect?**

**Establishing a common right of appeal across the post compulsory school (16–25) age range.** This measure is likely to benefit between 23,500 and 39,400 young people aged 16–25. This estimate does not include those 16, 17 and 18 year olds who are in a school setting, whose parents currently have a right of appeal. We estimate that there could be some 600 additional appeals per year from young people aged 16–25 (see annex A.2).

To enable children to make appeals in relation to their SEN assessments and statements/plans and to make disability discrimination claims. Initially this measure will only impact those children who are resident within the pilot site areas and these areas have not currently been selected. The pilot schemes may also test which age ranges such a measure would have greatest impact upon. However, on the assumption that the pilot demonstrates this is a beneficial approach and full roll-out is extended across England, this measure would potentially apply to around 200,000 children (0–16) with statements of SEN. The group which we expect to make greatest use of the right of appeal may be looked after children, where around 30% of all looked after children currently have statements of special educational needs. Some 6,780 looked after children have statements of SEN.\(^{180}\)

**Promoting use of mediation/mandatory mediation information telephone call.** This measure will impact on all local authorities in England. It will also impact on all parents and young people who find themselves in dispute with their local authority on matters relating to their EHC plan or a decision not to make or amend a Plan. We estimate that there will be over 250 additional calls per year from under 16 year olds and 16–19 year olds in school (see annex A.6) and 500 additional calls per year (see annex A.8) from young people outside of the school setting.

**What are the desired effects (benefits) of the measures?**

**Establishing a common right of appeal across the post compulsory school (16–25) age range.** The benefits relate to welfare improvements for young people outside the school setting, who are currently not able to appeal in the same way as the parents of those in school or early years settings.

To enable children to make appeals in relation to their SEN assessments and statements/plans and to make disability discrimination claims. The pilots will help the Department to make an assessment of the benefits of this measure. There are possible welfare benefits for children who are able to appeal in their own right, particularly those who are looked after by their local authority.

**Promoting use of mediation/mandatory mediation information telephone call.** The benefits of this measure include a range of welfare improvements, including the potential to avoid the time commitment, stress and anxiety caused by going through the appeals process. There are however, also savings which are likely to result in the event that participation in telephone mediation results in more cases being managed successfully through mediation and avoiding the need for an appeal to the Tribunal. The use of compulsory phone call should give users the opportunity to take more responsibility towards a settlement that avoids the courts or the Tribunal.

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178 Parents and young people will not have to contact a mediation adviser if the potential appeal is solely about the school or college named on the EHC plan, the type of school or college named or that no school or college or type of school or college is named. Parents and young people will not have to contact a mediation adviser if they want to make a disability discrimination claim.


180 See Outcomes for Children Looked After by Local Authorities in England, as at 31 March 2012
There is currently no large scale, robust research available showing to what extent current voluntary mediation sessions have been able to resolve disputes and thus lead to a reduction in court applications. Interviews between DfE officials and three mediation organisations (specifically providing dispute resolution services for SEN appeals), in July 2012 suggests that mediation could fully resolve between 60 and 80% of cases referred (see annex A.5). A reduction in appeals in the younger age group. Savings will be generated for the Exchequer and local authorities as a result of mediation reducing the number of appeals that go to Tribunal. We estimate that 10–20% of appeals would access mediation and where the mediation session successfully manages these cases there will be fewer cases reaching the Tribunal hearing stage. We estimate this would generate savings in relation to avoided appeals of approximately £300k pa for the Exchequer and £500k pa for local authorities (see annex A.10).

What are the desired effects (costs) of the measures?

Establishing a common right of appeal across the post compulsory school (16–25) age range. There are costs associated with an increased number of appeals from the older age group, who previously had no right of appeal to the First-tier Tribunal. This excludes those who avoid a Tribunal as a result of mediation. We estimate that there will be a total cost of £350k to the Exchequer and £600k for local authorities to defend these additional cases (see annex A.12) per annum. There will also be some information provision costs to local authorities in setting out the new process for parents and young people. This has been estimated based on administrative time drafting correspondence and guidance at approximately £20k across all LA areas (see annex A.14).

To enable children to make appeals in relation to their SEN. The Department will support the costs of establishing a pilot, which we have estimated at £150,000 pa over two years (see annex A.4). If this pilot is successful, the Department will make a further appraisal of the costs of implementing the findings of the pilot across all English local authority areas.

Promoting use of mediation/mandatory mediation information telephone call for the older age group and parents of the younger age group. There are a range of costs which this measure will create. First there will be costs in relation to providing the phone call. We estimate additional costs of £30k per annum to local authorities from parents of the younger group (see annex A.6) and £5k per annum to local authorities from the older age group (see annex A.8). It is also expected that the mediation information sessions will generate more referrals to mediation. This will require further costs to be met. Market evidence suggests that mediation in this area has a cost of between £520 and £840 per session. Assuming that 16% of cases result in mediation taking place, this has a cost of £350k for parents of the younger age group (see annex A.7) and £50k for the older age group (see annex A.9).

The total costs set out in this section are around £1.40m per annum (including pilot costs). While the monetised benefits of these three measures taken together create a small net additional annual cost, this does not include the significant welfare improvements for young people in being able to effectively appeal against decisions made in relation to their SEN by local authorities and to have this appeal heard in the same way which parents of children with SEN have had in place for some time. It also does not include the significant welfare improvements for parents who could benefit from avoiding Tribunal hearings and delays in resolving matters with the local authority. Taking into account these non-monetised benefits, the Department considers across these three measures that the benefits outweigh the likely costs.

What other measures were considered and why were they not pursued?

Not establishing a common right of appeal across the post compulsory school (16–25) age range. This do-nothing option was not pursued. With the implementation of a 0–25 year old single assessment process and plan, it would be inappropriate to consider maintaining the existing differentiated systems for redress across the two age ranges.

To enable children to make appeals in relation to their SEN. The Department considered an option of legislating to put in place the children’s right without the pilot occurring first. However, there is a need to test on a small scale to understand more about what age of children would be likely to take advantage of this right, and in what number children may come forward. A pilot would also enable the appeals system (mediators and the court system for example) to start to understand the implications of working directly with children and learn lessons for other sites.

Promoting use of compulsory mediation. The Green Paper, Support and Aspiration: a new Approach to Special Educational Needs set out the proposal that parents would be obliged to participate in mediation before they would be eligible to have their appeal registered with the First-tier Tribunal. This measure would have led to a net cost of £550,000 per annum, which slightly exceeds the net cost under the option set out above. In this scenario, significantly greater cost would have been incurred in providing mediation services, but this would have resulted in more mediation cases helping to reduce the number of cases heard at Tribunal.

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181 These estimates are taken from research by the National Centre for Social Research (2008) ‘Special Educational needs Disagreement Resolution Services National Evaluation’ Special Educational needs Disagreement Resolution Services National Evaluation PDF. However, the figures quoted in the research of between £500 and £800 have been expressed here in 2012 prices.

However, responses to consultation during PLS suggested that this option was deeply unpopular across a range of interested parties. Therefore the Department is proposing the alternative option which ensures that the benefits of mediation are discussed with all appellants.

**Are there any key assumptions or risks?**

**Key assumptions and risks:**

— The costs and benefits presented here assume that the new system generates the same volume of appeal cases as the current system. We have assumed that on average 3,600 appeal cases arise each year and have assessed the costs under the new system on this basis. There is a risk that the new system as it is implemented, creates a higher case load of appeals, as professional develop their understanding and expertise in working in the new system. There is also a likelihood that the reforms with their intended effects of giving parents more control, ensuring that professionals work together and providing more information to parents about the process and locally available services, will mean that there is a much less adversarial system which emerges. This may mean the costs are much lower as the number of cases reduces longer term.

— There is an assumption that there will be capacity amongst providers of mediation to meet the increased demand following on from this new duty or capacity can be quickly expanded.

— Mediation information sessions will not cover disability discrimination claims or cases where the appeal is only about the education provider to be named on a statement/Plan. These cases will be permitted to progress directly to the Tribunal, as it is likely that mediation would be ineffective where the matter only relates to the named establishment.

— Children and young people may need, due to the introduction of the right to appeal and compulsory mediation information call, additional help to understand the mediation process and the appeal process through advocacy support. We are unable to estimate how many children and young people may opt to take up advocacy support, so we have not monetised this cost.

**Annex**

**SUPPLEMENTARY EVIDENCE AND COST BENEFIT CALCULATIONS**

1. In this annex we lay out additional sources of information and narrative and the calculations behind the cost and benefit estimates reported above.

**A.1. Establishing a common right of appeal across the post compulsory school (16–25) age range.**

2. Under this option, legislation would be used to give young people aged 16–25 equal access to appeal in connection with their new Education, Health, and Care Plan, regardless of the young person’s age or education setting.

**A.2. Impact on the number of young people launching an appeal**

3. Beginning with under 16 year olds and 16–19 year olds in school, the parents of children who have either been denied assessments, statements or disagreed with the contents of the statements launched 3,600 appeals in 2011–12. We expect that there will be no, or near zero, additional on-flow from this group as their parents already have the right to appeal and we expect the additional numbers of children launching an appeal independently of their parents to be small.

4. Turning to the young people outside of the school setting, this group can currently only attempt to resolve disputes through either Judicial Review or the use of an Ombudsman, not through Tribunals, but through the widening of the right to appeal, we expect the number of formal appeals to rise. We estimate that between 23,500 and 39,400 young people could be additionally drawn into the Right to Appeal.

5. To obtain an estimate of the number of additional appeals launched from this age group in England, we have firstly taken the number of appeals launched by parents from the younger age group in 2011–12 (this is 3,600 in total) and have expressed this as a proportion of the population with statements (this is 197,675).\(^{183}\) Therefore, our central estimate is that 1.8% of young people currently outside of the school setting who could be drawn into the Right to Appeal will launch an appeal each year. In addition to this central estimate, we have also made two assumptions on what the higher and lower case could look like, assuming double the proportion for the higher case (3.6%) and half the proportion for the lower case (0.9%).

6. Given these assumptions, our high case estimate is that there are 1,418 additional appeals from this age group per annum (3.6% of 39,400 young people). Our central case scenario is 566 additional appeals per annum (1.8% of 31,450 young people). Our lower case scenario is 212 additional appeals per annum (0.9% of 23,500 young people).

**A.3. On-going cost of additional Tribunal cases to the older age group**

7. The increase in the number of appeals from the older age group will lead to an increase in the number of case heard per year. We can use data on the proportion of appeals launched by the parents of the younger age

The estimated number of appeals launched by parents from the younger age group was 3,600 in 2011–12. The number of cases heard in 2011–12 was 830. Therefore around a quarter (23%) of appeals go to Tribunal. Applying this proportion to the additional appeals coming from the older age group implies an increase of 130 cases going to Tribunal (eg 23% of the 566 additional appeals).

The cost to the Exchequer of a Tribunal case ranges between £2,067 and £3,909 (in 2012 prices). Therefore, the annual additional cost could range between £269k (130 Tribunal cases x lower cost estimate of £2,067) and £508k (130 Tribunal cases x higher cost estimate of £3,909). The cost to a Local Authority of defending a Tribunal case is estimated at £5,116 (in 2012 prices). Therefore, the annual additional cost for local authorities would be £665k (130 Tribunal cases x cost estimate of £5,116).

A.4. Establishing a small number of pilot schemes to enable children to make appeals in relation to their Special Educational Needs (SEN).

There are currently no pilots in England which could offer us an insight into the true magnitude of costs and benefits associated with the Right to Appeal. Thus we intend to establish a pilot in two or three local authority areas to test out children’s willingness to use their new right and its operation, working with the First-tier Tribunal (SEND). The proposed two year pilot could, based on estimates provided by the Welsh Government, cost around £130,000 (in 2010 prices) per annum. The equivalent in 2012 prices is £133,023.

A.5. Promoting use of mediation/mandatory mediation information telephone call

The use of compulsory phone call should give users the opportunity to take more responsibility towards a settlement that avoids the courts or the Tribunal. There is currently no large scale, robust research available showing to what extent current voluntary mediation sessions have been able to resolve disputes and thus lead to a reduction in court applications.

A.6. The cost of arranging a telephone call for parents of the younger age group to Local Authorities

As laid out above, there will be on average, 3,600 appeals each year from the younger age group who will require a phone call. However, as the legislation is to be set out, an estimated 10% of these appeals will not be subject to this, because the case would relate solely to the naming of a school or college within the EHCP and in this instance the call will not apply. Therefore, an estimate of 3,240 (3,600 x (1–0.10)) is provided for the purposes of estimating the costs and benefits of the compulsory phone call measure.

The estimated cost of a phone call, covering all required training and possible multiple attempts for 3,240 cases is estimated to be £30k. This is calculated from an estimated mediator’s fee of £9.38 for a 10 minute call. This estimate was gathered from mediation companies and is an indicative, upper bound estimate.

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186 Welsh Government, Department for Education and Skills (2010/11)
188 A mediation firm, providing services in the North West of England.
189 A mediation firm, providing services in the North East and West Midlands.
A.7. On-going cost of providing additional mediation sessions to the younger age group

16. The estimated unit cost of a mediation case can range, according to a 2008 evaluation from the National Centre for Social Research\textsuperscript{190}, from £500 (2008 prices) where the LA also paid a retainer fee (of an unknown amount), to £800 (2008 prices) where the LA paid no retainer fee and the cost of any associated administration was included in this per case figure. The adjusted figures in 2012 prices (using the GDP deflator) are £523 and £836.

17. From a mediation tribunal pilot, 67 parents were referred, with 11 parents calling opting for full mediation services. We therefore estimate that 16% of appeals will now go and use a mediation service. The true figure is likely to be slightly different, given the nature of the trial against the proposed measure. The expected on-going cost of mediation is therefore estimated to be £433k in the high case scenario [3,240 appeals x £836 x 0.16], and £271k in the lower case scenario [3,240 appeals x £523 x 0.16]. Our central estimate is £353k [3,240 appeals x £680 x 0.16].

A.8. The on-going of arranging a telephone call for the older age group to Local Authorities

18. Again, we assume that 10% of the additional appeals from the older age group (10% of 566) will not be subject to mediation because they relate solely to the naming of a school, so there will be 509 additional appeals subject to mediation. The estimated cost of a phone call, covering all required training and possible multiple attempts for these 509 cases is estimated to be £5k. This is calculated from a mediator’s fee of £9.38 for a 10 minute phone call.

A.9. On-going cost of providing additional mediation sessions to the older age group

19. We expect there to be an increase in the number of appeals due to the extension of the right to appeal to the older age group. These appeals will also be subject to a compulsory phone call and will thus require LAs to arrange some additional mediation sessions. We anticipate the overall number of cases to go through mediation to be 16%. Therefore, the on-going cost of mediation is estimated to range between £68k in the high case scenario [509 appeals x 16% x £836] and £43k in the lower case [509 appeals x 16% x £523]. Our central estimate is £55k [509 appeals x 16% x £680].

20. Regarding possible additional training costs of mediators, an indicative departmental allocation has been suggested that is understood to cover the additional costs involved. The allocation will be confirmed once development plans are further discussed in the autumn.

A.10. The benefit to the Exchequer and Local Authorities from a reduction in Tribunal cases for the younger age group

21. The number of avoided Tribunals in the younger age group is estimated to be 78 (16% x 59% x 830) in the lower case, 106 (16% x 80% x 830) in the higher case, and 93 (16% x 70% x 830) for the central estimate. Given this, the estimated savings to the Exchequer could range between £414k in the high case (106 avoided Tribunal cases x £3,909), £161k in the low case (78 avoided Tribunal cases x £5,116) and £271k in the central case (93 avoided Tribunal cases x £2,988). Similarly, the estimated savings to Local Authorities would be £542k in the high case (106 avoided Tribunal cases x £3,909), £161k in the low case (78 avoided Tribunal cases x £5,116), and £271k in the central case (93 avoided Tribunal cases x £5,116).

A.11. The benefit to parents of avoiding Tribunal cases

22. The primary non-monetisable benefit of the measure, is to improve the wellbeing of children and families through ensuring that fewer families go through the process of a Tribunal hearing, which involves a delay ensuring that the right services are in place for the child and young person, as well as the opportunity costs associated with the time and effort that both parties experience from having to go through an appeal hearing. This wellbeing improvement was a key rationale within the Green Paper.

23. Encouragingly, 70% of respondents to the consultation\textsuperscript{191} felt that there should be mediation before a parent registers an appeal with the Tribunal, although many of them said it should not be compulsory. A study by the Ministry of Justice (2010)\textsuperscript{192} on the use of mediation in employment tribunals states that some claimants felt a lessening of stress involved in mediation compared to a formal case. However, exploring how mediation could improve parents’ and carers’ experience of the system should be one of the elements which all the pathfinders will be making available to parents who are unhappy with their children’s assessments and Education, Health and Care Plans.

A.12. Net effect of the three changes: On-going cost of additional Tribunal cases to the older age group

24. When examining the extension of the right to appeal above, we estimated the cost to the Exchequer and Local Authorities of additional Tribunal cases for the new appeals coming from the older age group. We expect that the introduction of compulsory mediation alongside extending the right to appeal will reduce these costs as

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\textsuperscript{191} Department for Education (2012), “Support and Aspiration, A new approach to special educational needs and disability. Progress and next steps”, Link: Support and aspiration: A new approach to special educational needs and disability

\textsuperscript{192} Ministry of Justice (2010), “Evaluating the use of judicial mediation in Employment Tribunals”, Link: Evaluating the use of judicial mediation in Employment Tribunals PDF
a greater number of appeals will be resolved before going to Tribunal, although they will still be higher than the current Tribunal costs for this age group (which are zero).

25. As outlined above, we estimate that the proportion of disputes resolved by mediation to range from 59% to 80%. We expect a similar success rate for cases where parent and young people choose to go to mediation under the proposed arrangements as under the current dispute resolution arrangements. We estimated there would be an additional 130 Tribunal cases from the older age group from extending the right to appeal. Therefore the additional number of Tribunal cases per annum, taking into account both the introduction of compulsory mediation information call and extending the right to appeal is estimated to be 118 in the high case [130—(16% x 59% x 130)], 113 in the lower case [130—(16% x 80% x 130)], and 115 in the central case [130—(16% x 70% x 130)].

26. The cost to the Exchequer of a Tribunal case ranges between £2,067 and £3,909 (in 2012 prices), therefore, the annual additional cost could range between £461k in the higher case (118 cases x £3,909) and £234k in the lower case (113 cases x £2,067). The central case estimate is £345k. The cost to a Local Authority of defending a Tribunal case is estimated at £5,116 (in 2012 prices). Therefore the annual additional cost could range between £602k in the higher case (118 cases x £5,116) and £580k in the lower case (113 cases x £5,116). The central case estimate is £591k.

A.13. The cost to Local Authorities from communicating changes and providing advocacy support

27. It has not been possible to separate out the information and advocacy costs for local authorities for each of the specific policy measures. This is because we expect local authorities to provide information on the changes together, and children and young people may need additional help to understand the new process as a result of both changes.

A.14. Transitional Information cost

28. The primary responsibility for promotion lies with the Local Authorities, which can use a range of modes for promoting independent SEN mediation services to young people. It is likely that LAs will experience a cost for the dissemination of the new policy to children, young people and parents. This is the cost of producing a letter and guidance to parents to raise awareness. We are assuming (based on discussions with three Local Authorities) that producing and distributing the letter and guidance takes one day of clerical worker’s time, one hour for a junior manager to check the accuracy of the literature and half an hour for a senior manager to sign off. Taking into consideration the average wage costs, the hourly wage cost is estimated to be:

- £12.93 for a Clerical Worker (£10.18 per hour x 27% onset cost)
- £24.03 for a Junior Manager (£18.92 per hour x 27% onset cost)
- £25.03 for a Senior Manager (£19.70 per hour x 27% onset cost)

29. The total transitional information cost comes to [(£12.93 x 8 hours) + (£24.03 x 1 hour) + (£25.03 x 0.5 hours) x 174 Local Authorities in England and Wales] = £24,357.

A.15. Advocacy cost (on going)

30. Children and young people may need, due to the introduction of the right to appeal and compulsory mediation information call, additional help to understand the mediation process and the appeal process through advocacy support. We have been unable to obtain a unit cost for support for advocacy services, though a proportion of Local Authority social care expenditure is currently focussed on advocacy work. We thus have assumed (based on discussions with colleagues at the Ministry of Justice) that an advocacy service may require six hours (four hours preparation time and two hours to attend a mediation session) of a mediators time and we have assumed a median hourly earning of £16.10 for professional, scientific and technical activities, including uplift for onset cost of 27% the hourly cost is £20.45 (£16.10 x 27%). This gives us an approximate cost of £122.68 per case (£20.45 x 6 hours). However, we are not able to say how many children and young people may opt to take up advocacy support.

A.16 Summary of costs and benefits

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<thead>
<tr>
<th>Costs</th>
<th>Group</th>
<th>Best estimate</th>
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</thead>
<tbody>
<tr>
<td>Additional Tribunal cases from older age group (A.12)</td>
<td>Exchequer</td>
<td>£345k per annum</td>
</tr>
<tr>
<td>Establishing pilot schemes to enable children to make appeals (A.4)</td>
<td>Local Authority</td>
<td>£591k per annum</td>
</tr>
<tr>
<td></td>
<td>Exchequer</td>
<td>£133k per year of pilot</td>
</tr>
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194 Department for Education Appraisal and Evaluation Guidance 2012, unpublished

<table>
<thead>
<tr>
<th>Costs</th>
<th>Group</th>
<th>Best estimate</th>
</tr>
</thead>
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<tr>
<td>Cost of arranging a telephone call for the younger age group (A.6)</td>
<td>Local Authority</td>
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<td>Cost of providing additional mediation sessions to the younger age group (A.7)</td>
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<td>£353k per annum</td>
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<td>Cost of arranging a telephone call for the older age group (A.8)</td>
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<td>£5k per annum</td>
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<td>Cost of providing additional mediation sessions to the younger age group (A.9)</td>
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<td>£55k per annum</td>
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<td>Information costs (A.14)</td>
<td>Local Authority</td>
<td>£24k (one-off)</td>
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<tr>
<td>Advocacy cost (A.15)</td>
<td>Local Authority</td>
<td>un-monetised (on-going)</td>
</tr>
<tr>
<td>Benefits</td>
<td></td>
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<td>Reduction in tribunal cases for the younger age group (A.10)</td>
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SECTION 5: IMPACT ON THE NHS OF THE SPECIAL EDUCATIONAL NEEDS REFORMS

**Summary of the measures in the policy area**

*The Children and Families Bill will introduce from September 2014:*

1) New **joint-arrangements for assessing, planning and commissioning services for children and young people with special educational needs**, which make it clear what will be offered, and who will deliver and pay for it, underpinned by a process to swiftly resolve local disputes between partners.

2) A **new local offer**, so children, young people and their families are clear what is available locally, with a clear complaint process and redress system.

3) Introduction of local **Education, Health and Care (EHC) Plans from 0 to 25** which set out in one place the support from education, health and care services children and young people will receive; with a new focus on helping to improve outcomes, including future employment and independent living.

4) **Personal budgets** for those families who want to have them.

5) **A duty on clinical commissioning groups (CCGs) (and in some limited cases, the NHS Commissioning Board)** as health commissioners to secure the provision of health services which they have agreed in the **EHC plan**, similar to the duty on local authorities in respect of special educational services.

Overall, these reforms will deliver a new more child and family-centred system, which is quicker, more streamlined, less combative, and better able to identify need early (for example through the two year old progress check). The approach dovetails with the changes to NHS Commissioning made by the Health and Social Care Act 2012. This will enable professionals to work with families to start meeting children’s needs from a much earlier point and prevent some problems from escalating. Above all the new arrangements will provide a platform for integration. The EHC plan approach will bring services together, with a focus on personal outcomes for the child. The introduction of a clear local offer and personal budgets will put families of children and young people with SEN in control of their support.

**What are the problems that the measures address?**

The current system of SEN support tends to be system-focused rather than child-focused.

The Government wants to address the co-ordination failure of the current system. For parents, their children and young people the low level and inconsistency of joint working across services in some areas leads to confusion and a sense of unfairness. The late identification of needs, duplication of assessments and variation in provision of support has significant cost implications. In the longer term, this system failure can lead to young people with special educational needs having high welfare dependency in adulthood, with significantly lower employment rates, poor health (with its consequent impact on the NHS) and often a higher than necessary dependency on parents and/or support services.

Specifically:

- **Education, Health and Social Care are separate**: families of children with complex needs often have to negotiate each element of their child’s statement separately, giving professionals the same information on multiple occasions. This means that the process of assessment and agreeing support is time consuming, onerous and unnecessarily stressful.
— **Lack of accountability**: this increases the likelihood of disputes between services and the risk of needs going unmet. The onus often falls overly on local authorities as the only body with a statutory duty to deliver the services identified in the SEN statement.

— **Poor health and educational outcomes for children and young people with SEN**: outcomes for children and young people whose parents are unable to navigate the complex, education, health, and social care systems are disproportionately affected.

The Government’s 2011 Green Paper, *Support and Aspiration: A new approach to Special Educational Needs* and *Disability* summarised the evidence base for this position. It described parents’ views of the current system for SEN as bureaucratic, bewildering and adversarial. Responses to the consultation informing the Green Paper found that the legislative framework underpinning the system for the assessment of needs and provision of support has created a combative culture which is resource-driven rather than needs-led. This has resulted in late interventions for this very vulnerable group of children and young people, which ultimately results in increased costs, and poorer outcomes.

The number of these children expected to need an Education, Health and Care Plan is comparatively small (1.64% of the overall 0–24 population), their outcomes are markedly lower than the rest of the population. As adults, they are likely to have significantly lower employment rates, poor health and often a higher than necessary dependency on parents and/or support services than the wider population.

**What are the measures and what is the rationale for their introduction?**

1) New **joint-arrangements for assessing, planning and commissioning services for children and young people with special educational needs**, which make it clear what will be offered, and who will deliver and pay for it, underpinned by a process to swiftly resolve local disputes between partners.

Joint commissioning arrangements will ensure that assessments and arrangements for special education, health and care provision are agreed locally and meet the needs of the local population. The Bill requires local authorities and clinical commissioning groups to work together with their partners to make a strategic agreement over what provision is needed, how it will be funded and by who; arrangements in place to support a joined-up single assessment process, for developing EHC plans and for agreeing personal budgets; arrangements for providing information, advice and handling complaints about the EHC Needs Assessment and EHC plans.

By requiring partners to work together to agree these key areas in advance, funding agreements and strategic plans will be in place to make sure that families get access to the support they need. It should also ensure that all of the key agencies are involved in assessing and meeting children and young people’s needs from the start of the process.

2) A **new local offer**, so children, young people and their families are clear what is available locally, with a clear complaints process and redress system.

The local offer will enable families to see what support they should expect from mainstream services and how to access more specialist provision. This should make it easier for them to make informed choices about their health provision and care. Children, young people and families will be able to develop the local offer, underpinned by a process to swiftly resolve local disputes between partners. This will stimulate debate locally about what should be included and should also encourage local authorities to work more closely together to meet local needs. Local authorities will also have to involve children, young people and parents in reviewing local provision. 74% of respondents to the relevant question in the Green Paper supported the idea of a locally published offer which made clear what support was available for parents. They thought this would offer clarity around what could be accessed and expectations could be managed. Respondents stressed that the offer should be a comprehensive information service which set out a full directory of services, the criteria for accessing them and explanations of the different options open to parents to help with their decision-making. Information specific to each local authority was also proposed for publication, including its policy on SEND, disagreement resolution procedures and funding information. More detailed evidence is given in the accompanying IA of the local offer.

3) **Introduction of local Education, Health and Care Plans from 0 to 25.**

These plans will have all the statutory protections offered by a statement, but will set out the services children and young people will receive; with a new focus on helping to improve outcomes, including future employment and independent living. They will reflect the child or young person’s own aspirations and a child’s parents’ views.

The SEN Green Paper consultation showed 49% of respondents believed that a single EHC assessment and plan process would result in a more holistic approach to determining the support needed and quicker access to services. 41% of respondents stressed the success of the single assessment process and the EHC plan depended on agencies working together. They noted the present difficulties in getting busy professionals together, establishing accountability and maintaining effective communication. 23% felt that to have the confidence of
parents the EHC plan would need to have the same statutory basis as the statement of SEN and a comparable legal obligation on all agencies to provide the services in the plan. 42% respondents thought that a helpful outcome for families would be a reduction in the number of appointments they needed to attend and less delay in getting the help they needed. A single assessment process was envisaged to be quicker and less complex for parents, saving them time in having to repeat information to a succession of different professionals. Respondents considered that simplifying the process would give parents a better understanding of the system and that they would benefit from having agencies working together to put into effect one co-ordinated plan covering all their child’s needs.197

4) Personal budgets for those families who want to have them.

Every family with an EHC Plan will have the right to a personal budget. Personal budgets will enable parents and young people to have a much greater say in the way they get support, and give them a clear role in designing a personalised package of support. Evidence from the UK and internationally shows that where personal budgets work well they give families more flexibility, choice and control. We are not starting from scratch in this area. Our commitments around personal budgets are based on strong evidence from the three-year pilot of individual budgets for disabled children and the recent evaluation of the personal health budgets pilot. Pathfinder local authorities are building on the learning from these pilots to test out personal budget payments for children and young people with SEN—including how direct payments can be used for special educational provision. Early findings are very positive.198

5) A duty on CCGs (and in some cases, the NHS Commissioning Board) as health commissioners to secure the provision of health services agreed in the plan, similar to the duty on local authorities in respect of special educational services.

Securing strong commitment from the National Health Service for joined up working, has been a recurrent theme through every stage of the SEN reforms. During pre-legislative scrutiny, the Education Committee reported that “the active involvement of the NHS in commissioning, delivery and redress is critical to the success of the legislation.” Without health’s full engagement, the SEN reforms will fail. This duty will ensure health engagement in an integrated process, and delivery against agreed local plans.

Under the Duty, CCGs would retain their existing legal duties to determine what services would be commissioned to meet the reasonable needs of their population (under section 3 of the NHS Act 2006). They would retain their duty to lead and manage the local planning and allocation of resources, which will determine the health element of the local offer, which includes the services which might be included within a Plan. Clinicians would of course retain their discretion to determine a child or young person’s clinical needs. The NHS Commissioning Board has responsibility for commissioning health services for some groups of children (for example, the children of members of the armed forces), and commissioning specialised services.

The NHS Commissioning Board will have responsibility for holding CCGs to account for the exercise of their statutory functions, and this would include their duties in relation to meeting the needs of children with SEN. The Board will of course determine how it does this, and will itself be held to account by the Secretary of State for Health for its delivery of the Mandate, which includes a very clear expectation in relation to children with SEN and disabilities.

What are the impacts of the measures and which groups of people do they affect?

Who will the measures affect:

— Parents, children and young people. There are currently 261,835 children and young people with high level needs who would be likely to have an EHC Plan under the new system. This is 1.64% of the 15,954,962 0–24 year old population registered to a GP surgery in England (Annex 1 refers).

— Local authorities and the health service. The changes to the system will need to be implemented by all local authorities (education and social care services for children and adults) and clinical commissioning groups (and in some cases the NHS Commissioning Board).

The impacts (benefits) of these measures:

Improved wellbeing for children and young people. The introduction of the EHC plans aims to improve joined up working and could lead to a better experience for both children and young people with SEN and their families. An on-going support approach provides a better focus of their lives leading to an improved sense of wellbeing and potentially improved longer term outcomes. Evidence from the Department of Health (2008) suggests that treatment satisfaction can be improved following the introduction of care planning for treatment of long-term conditions. Similar health based evidence (see for example: Forman et al.199 Kinmonth et

197 Support and Aspiration: A new Approach to Special Educational Needs and Disability – Progress and Next steps (Department for Education, December 2012) A new Approach to Special Educational Needs and Disability – Progress and Next steps


al,200 and Fuller et al201 provide further evidence of the benefits of care planning and self-management approach in terms of health outcomes. Evidence from the Individual Budget Pilot (2010)202 and from individual health budget pilots led by the Department of Health203 provides evidence regarding the extent to which personal budgets can improve outcomes and create wellbeing effects from greater choice and control and changes in the type of services families choose to access. Further evidence from the UK and internationally shows that where personal budgets work well they give families more flexibility and they feel empowered.204

Reduced number of appeals. The Department expects that the number of new appeals should decline in the medium to long term due to the new co-ordinated assessment process and the EHC plan, which aim to better assess and cater for children and young people’s needs, involving the family in the decision making process and thus decreasing the likelihood of formal disputes. We have not monetised these benefits.

Integration and increased effectiveness of assessment, planning and provision

Requiring joined-up arrangements for commissioning of services across education, health and care, focused on the individual EHC plan, provides a far stronger basis for ensuring clarity of responsibility, and the relevant interdependencies of services, partnership working and agreements (eg under section 75 of the NHS Act 2006) between local authorities and CCGs, including pooling of budgets. The arrangements will result in fewer disagreements between the different commissioners, who will have a framework for collaboration. Heath commissioners have clear statutory responsibilities in relation to their contribution to the assessment and planning process, and for securing health services as planned. The SEN reforms have been trialled in a range of pathfinders across the country, and some have found that new approaches can be delivered from within existing resources through cutting out duplication.

Patient and parental satisfaction should also be greatly improved, as a result of the joined-up services and the joint arrangements for providing advice, liaison and mediation. The Green Paper consultation found that 74% of respondents to the question thought that arrangements for provision of health advice for existing statutory SEN assessments could be improved by agencies working together. 379 (62%) respondents thought that reducing the amount of paperwork generated would help to reduce the bureaucratic burdens on frontline professionals, schools and services. Many respondents highlighted the paper trail associated with the referral, assessment and statementing process. They also noted that the completion of paperwork impacted on the time professionals had to spend with children with SEND.

A mandated, joined up approach will ensure also that the needs of the child are considered across the different sectors, and the question of what to provide will not necessarily focus on educational or clinical need, but take into account the patient (and their family’s) preference for independent living, or mobility and wellbeing.

The impact (costs) of these measures:

We consider these reforms will be cost neutral. CCGs already have a statutory duty under section 3 of the NHS Act 2006 to commission services to meet the reasonable needs of their population; note too the existing requirement for co-operation with local authorities, for which this Bill provides a framework. CCGs will work with LAs and other agencies to agree a local offer of services available which will reflect their commissioning plans (and the identified local need). This will in turn have been informed by local health and wellbeing strategies (alongside the content of existing EHC Plans). EHC plans will then draw on this offer. Therefore the SEN reforms are entirely consistent with CCGs’ existing statutory duties and the NHS Mandate.

By working with LAs and other local agencies, CCGs will be able to make the most efficient use of funds that are locally available, and will keep their local offer under regular review to ensure it continues to reflect the needs of children or young people in their area, commissioning and decommissioning their support to ensure their provision meets the needs of local children and young people with SEN. The SEN reforms place greater emphasis on early intervention and support than the current system, which will in turn reduce costs over time.

The Department estimates the average cost of statutory assessments to be around £3,200, and assume that the cost of an ECHP assessment will be similar.205 The number of new statements issued in 2011 was 27,445. Over the past few years, this number has in general fluctuated around 25,000206. This is around 10% of the total number of statements/LDAs or expected EHC plans.

205 Audit Commission (2002), “Statutory assessment and statements of SEN: in need of review?”, Statutory assessment and statements of SEN: in need of review (The Audit Commission reported that the average statutory assessment cost was around £2,500. Applying a price deflator, the estimated cost in 2011 would be £3,186
Children and Families Bill

KEY RISKS

1. The capacity implications of a more sophisticated assessment and planning process.

Mitigation: the Pathfinder programme is testing new approaches to a co-ordinated assessment and planning approach—which will identify a body of learning which will inform local authorities and CCGs in moving to the new system; an interim evaluation report will be published in September 2013 with an indicative assessment of the costs of the reforms based on the Pathfinder experience. It is anticipated that the non-monetised benefits will significantly outweigh the costs of moving to the new system, which builds significantly on existing capacity requirements, and partnership working between health and social care whilst promising potential savings through partnership working (eg key-working across health and education, single planning process and document, etc.).

2. The duty on CCGs may force CCGs to commission additional services, placing pressure on CCG commissioning budgets.

Mitigation: The Children and Families Bill does not change the eligibility for a statutory EHC Plan compared with statements or Learning Difficulty Assessments. CCGs will retain their duty to determine the services to be commissioned to meet the reasonable needs of their population;207 this will ensure that the requirement to deliver on agreed EHC plans does not undermine the autonomy of commissioners and does not lead to CCGs having to commission services additional to those which their local health and wellbeing strategies recommend, or which they would have chosen to commission if the current system had been maintained.

There is a range of evidence on attitudes towards, and satisfaction with, the current process, some suggesting satisfaction once services are provided, others suggesting significant problems in the process for ensuring services are provided in a seamless and timely way without burdens falling on parents (which the reforms as a whole are intended to avoid).

The most recent survey of parental experience (with 31,466 respondents) suggests there is unlikely to be significant unmet need for health services: 80% of parents rated the health care received in the last twelve months as good or very good—the equivalent figure for education services, by way of comparison, was 73%, and for social care and family support 57%. Satisfaction with health assessments was very high. Only 4% of respondents said that health services were poor (the lowest rating for the three sectors).208

In terms of access, only 6% of parents felt that their child received little or none of the health services they required (with 80% of those who responded on these questions stating that their child had received all or most of the health services their child required). See Annex 1 for further information on satisfaction levels and access to health services.

3. The inclusion of health within a single assessment and plan framework for commissioning may lead to an increase in requests for assessment from the families of children and young people with disability or complex health needs, but which have no special educational needs (for example, a child confined to a wheelchair, who could attend a mainstream school).

Mitigation: there are clear criteria for determining whether or not a child has special educational needs and is eligible for an Education, Health and Care plan. Health commissioning plans will be informed by local joint strategic needs assessments and health and wellbeing strategies, which should identify the broader health needs across the population, and provide the basis for ensuring commissioning for complex care and disability is not neglected. The local health offer will provide far greater clarity for parents and patients, in the services available.

4. The duty on CCGs to secure the health services agreed in the plan may lead to CCGs significantly limiting their local offer for services in respect of children with special educational needs, to avoid over-commitment (as services cannot be reduced towards the end of the financial year in response to financial pressures), which could place pressure on the local authority to make up the deficiency.

Mitigation: CCGs will remain statutorily obliged to commission services to meet the reasonable health needs of their population and will be held to account for this by the NHS Commissioning Board. Joint Commissioning arrangements will be closely aligned with the local joint strategic needs assessment and health and wellbeing strategy. The NHS Commissioning Board will have a duty to perform an annual assessment of how well each CCG has fulfilled its duties in the previous financial year. This will include, in particular, an assessment of how well it has taken account of the Joint Strategic Needs Assessment, and the agreed Health and Wellbeing Strategy. It will also include an assessment as to how well the group has met its statutory functions such as delivering on the objectives set out in the Mandate (which includes a specific objective to ensure that children and young people with SEN can access the services set out in their agreed care plan). The local Health and Wellbeing Board (which must include the Director of Children’s Services and patient representatives through Healthwatch) can report to the NHS Commissioning Board on how well it feels the commissioning plans meet the agreed local

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287 Section 3 of the NHS Act 2006 as amended by section 13 of the Health and Social Care Act 2012 places a duty on each CCG - unless the NHS CB is under a duty to do so – to arrange for the provision of secondary care health services to such extent as it considers necessary to meet the reasonable requirements of the persons for whom it has responsibility.

288 Data is taken from the second – and most recent - parental experience survey conducted in 2009-10. Becky Hamlyn, Catherine Grant, Barry Fong, Jessica Moran, Parental experience of services for disabled children. Findings from the second national survey (March 2010), p. viii. Parental experience of services for disabled children. Findings from the second national survey PDF
Health and Wellbeing Strategy. The apparatus for involving patients and public in NHS commissioning will provide a significant means of assurance/challenge that services are being commissioned.

5. The duty on CCGs to secure the health services in an EHC plan will prevent CCGs from changing commissioning plans, or decommissioning/scaling back a service, if delivered to children or young people in fulfilment of an EHC plan, reducing their flexibility in managing cost pressures.

**Mitigation:** given the very small proportion of CCG health commissioning in respect of children with special educational needs (just 1.6% of 0–24 year olds are likely to be in receipt of an EHC plan—see Annex 1, Table 2), the marginal cost of any changes which CCGs would theoretically be inhibited from making by this statutory duty will be negligible. The average costs collated by the PSSRU provide a useful index to the potentially marginal nature of these costs.209  

Note also the ability for plans to be reviewed and revised to take account of changing needs. The emphasis on earlier identification means that many special educational needs will be less expensive to address. The introduction of personal budgets will also help reduce cost (evidence from the Pathfinders backs this suggestion).

**Annex 1**

**IMPACT OF THE DUTY ON CCGS TO SECURE PROVISION IN EHC PLANS.**

**Table 1**

<table>
<thead>
<tr>
<th>Age</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–under 5</td>
<td>10,415</td>
</tr>
<tr>
<td>5–16</td>
<td>187,275</td>
</tr>
<tr>
<td>16 and 17 year olds</td>
<td>45,740</td>
</tr>
<tr>
<td>18–24 year olds—participating or NEET and likely to participate</td>
<td>18,405</td>
</tr>
<tr>
<td><strong>EHCP total</strong></td>
<td><strong>261,835</strong></td>
</tr>
</tbody>
</table>

**Table 2**

<table>
<thead>
<tr>
<th>Age</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–24 total in population in England (based on GP practice registrations)211</td>
<td>15,954,692</td>
</tr>
<tr>
<td>0–24 year olds projected to be in receipt of an EHC plan.</td>
<td>261,835</td>
</tr>
<tr>
<td>% of total eligible population projected to be in receipt of an EHC plan.</td>
<td>1.64%</td>
</tr>
</tbody>
</table>

**Table 3**

**SATISFACTION WITH HEALTH SERVICES**

Extent to which parents felt their child had received the health care services required over last 12 months.212

<table>
<thead>
<tr>
<th>% (rounded)</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>All that he/she required</td>
<td>50</td>
</tr>
<tr>
<td>Most of what he/she required</td>
<td>27</td>
</tr>
<tr>
<td>Some of what he/she required</td>
<td>14</td>
</tr>
<tr>
<td>Little/none of what he/she required</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

209 For example, one-to-one speech and language therapy costs an average of £84 per session: Unit Costs of Health and Social Care 2011 (PSSRU, 2012), p. 73. Unit Costs of Health and Social Care 2011 PDF

210 Data taken from Children and Families Bill—Evidence of Impact.

211 Data as at 30 September 2011 (General and Personal Medical Services Statistics). The Health and Social Care Information Centre.

212 Becky Hamlyn, Catherine Grant, Barry Fong, Jessica Moran, op. cit. p. 18.
Table 4
HEALTH SERVICES USED.  Table 4
Health Care Services used in last 12 months

<table>
<thead>
<tr>
<th>Service</th>
<th>2008-09</th>
<th>2009-10</th>
</tr>
</thead>
<tbody>
<tr>
<td>GP</td>
<td>79</td>
<td>78</td>
</tr>
<tr>
<td>Dentist</td>
<td>68</td>
<td>68</td>
</tr>
<tr>
<td>Paediatrician or other specialist doctor</td>
<td>48</td>
<td>48</td>
</tr>
<tr>
<td>Optician or eye specialist</td>
<td>39</td>
<td>41</td>
</tr>
<tr>
<td>Practice nurse</td>
<td>28</td>
<td>30</td>
</tr>
<tr>
<td>Speech and language therapist</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Emergency health care/A&amp;E</td>
<td>16</td>
<td>17</td>
</tr>
<tr>
<td>Hospital in-patient</td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>Health visitor, district or community nurse</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Psychologist</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Occupational therapist</td>
<td>10</td>
<td>11</td>
</tr>
<tr>
<td>Psychiatrist/behavioural specialist</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Physiotherapist</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Dietician or nutritionist</td>
<td>8</td>
<td>9</td>
</tr>
<tr>
<td>Podiatrist or chiropodist</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Community equipment and wheelchair services</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Complementary/alternative medical practitioner</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Palliative care</td>
<td>*</td>
<td>*</td>
</tr>
<tr>
<td>Other health services</td>
<td>9</td>
<td>10</td>
</tr>
<tr>
<td>None used</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td><strong>Base (n): All children</strong></td>
<td>12,226</td>
<td>31,466</td>
</tr>
</tbody>
</table>

March 2013

Memorandum submitted by a Consortium of National Specialist Colleges (CF 52)

Evidence relating to Part 3 of the Children and Families Bill: Children and Young People in England with Special Educational Needs

About the Consortium

- The Consortium’s membership consists of:
  - Derwen College, Oswestry
  - Doncaster College for the Deaf, Doncaster
  - Hereward College, Coventry
  - National Star College, Cheltenham
  - Portland College, Mansfield
  - Queen Alexandra College, Birmingham
  - RNIB College, Loughborough
  - Royal National College for the Blind, Hereford

- We are an informal grouping of National Specialist Colleges who provide a wide range of specialist educational, training and residential care and support services for young people with special educational needs (SEN) up to the age of 25 at a local, regional and national level. Our decades of experience and expertise, built on foundations of highly skilled staff and first class resources and facilities, place us at the forefront of SEN provision for thousands of young people in the UK. As centres of excellence for

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213 Becky Hamlyn, Catherine Grant, Barry Fong, Jessica Moran, p. 11.
disabilities that require high levels of support and in many cases are low incidence, our services cannot be duplicated in every local area.

— Our ultimate ambition is to see young people with SEN given the greatest opportunity to design their education, chose their career path and achieve their ambitions. We want to enable them to live as independent and self-sustaining a life as possible.

— Members of the Consortium are also members of The Association of National Specialist Colleges (Natspec) and we endorse the evidence submitted by Natspec to the Public Bill Committee. Natspec is a member of the Special Education Consortium (SEC) and works closely with the Association of Colleges (AoC) on matters of shared interest. The Consortium also works closely with the AoC and SEC, whose interests in the Children and Families Bill are closely aligned.

**Summary**

1. Overall we welcome the Government’s intention to introduce substantial reform of the provision for children and young people with Special Educational Needs (SEN). We particularly support the broad ambitions of the Children and Families Bill to extend a greater level of choice, participation and long term integrated support for young people with SEN and their families. This will help to maximise their access to education and training up to the age of 25 and to give them enhanced opportunities to pursue fulfilling and independent lives.

2. We also appreciate positive changes to the Bill following the recommendations of the Education Select Committee published in December 2012. In particular, we welcome the new right for young people and their families to request that Independent Specialist Providers (ISPs), such as members of our consortium, are listed on their Education and Health Care Plans (EHC Plans), and the creation of the Secretary of State-approved Section 41 list of providers. We are also pleased to see a stronger focus on involving and including young people in decisions governing their future, greater recognition of the importance of joint commissioning and integrated services and the inclusion of information on independent living (such as finding employment and obtaining accommodation) in the Local Offer.

3. We find, however, that there are still several elements of the SEN reforms that would benefit from clarification and development before the Bill concludes its passage through Parliament. These are:

   — Greater clarity on the composition and functioning of the Section 41 list of providers that young people will be able to request for inclusion on their EHC Plan

   — Ensuring that those providers approved under Section 41 are strongly represented in the composition and review of the Local Offer

   — Establishing a common framework for the composition of Local Offers across the country

   — Ensuring the Code of Practice is regularly reviewed through consultation and approved via Parliament under the affirmative procedure

   — Ensuring there is a positive affirmation in the Bill that young people are entitled to an EHC Plan up to the age of 25 and ensuring that local authorities will not end plans too early.

4. Alongside these particular issues we also encourage the Government to closely consider the design and impact of the proposed SEN reforms alongside the major changes to education funding across the country. It is essential that both sets of reforms work in a complementary fashion and that one is not allowed to undermine the other. It must be ensured that expectations established by the Bill can be funded and delivered by local authorities. The Government is already aware of the serious difficulties that our members are facing in the transition to the new funding arrangements. Local authorities’ proposed processes are confusing and inconsistent, while projected student numbers are well below financially sustainable levels. We will continue to seek reassurances that through the overall process of reforms our sector’s essential skills base, services and expertise will remain secure.

**Section 41**

5. **Clause 41:** The proposed Section 41 list of Independent Specialist providers (ISPs), due to be compiled by the Secretary of State, is critical to our members’ future and to ensuring that young people can choose to access our outstanding services and facilities. To give confidence and clarity to these young people, and to ISPs, we would like to see greater detail on what timetable the Section 41 list will operate on, what criteria providers must meet for inclusion, what recourse they will have to review or appeal selection decisions and what relationship the list will have to the Local Offer and the regulations that will govern it.

**The Local Offer**

6. **Clauses 27–30:** We would like to see clarification on what central foundations the Government will provide for the provision of Local Offers across the country. A common framework would ensure that a strong basic level of information for young people and their families is made available in all local areas, and that local authorities can be held to account in relation to the services they outline. We seek to avoid regional inconsistencies and to ensure that young people and their families have access to the fullest range of information from which to make decisions about their future.
7. We would also like to ensure that there is specific reference to Section 41 providers in Clauses 27 and 30 requiring local authorities to both consult and list these providers as part of the composition and publication of their Local Offers. We are concerned that without specific reference to Section 41 providers local authorities may avoid presenting ISPs as an option on a wrongly informed basis of high costs, as well as failing to appreciate the strong range and extent of services and support ISPs provide beyond that available in mainstream college settings.

THE CODE OF PRACTICE

8. **Clauses 66 & 67:** We would like to ensure that the Bill makes provision for the Code of Practice to be regularly reviewed by the Secretary of State in full consultation with a wide range of stakeholders. Whilst we welcome the Code being ratified by Parliament, we believe it should be done so via the affirmative procedure, so that each new code or revision of a code is properly approved by Parliament, giving MPs the opportunity to ensure their constituents’ needs are properly represented and secured in relation to the provision for special educational needs.

9. In particular, the Code should ensure that it effectively meets the needs of young people aged 16–25, to whom it will apply for the first time. The current LDA guidance is very clear about the importance of person centred planning; it sets clear guidance about timescales and emphasises the need for those who undertake the assessment and planning to be suitably qualified and skilled. We trust the new Code will match these standards.

EHC PLANS FOR OVER 18 YEAR OLDS

10. **Clause 36, 37, 44 & 45:** The current draft of the Bill states that in reviewing EHC Plans for young people over 18 a local authority ‘must have regard to his or her age’. We have concerns as to whether this wording will unintentionally incentivise local authorities not to set educational outcomes for a young person beyond their 18th birthday. It is important that young people are given sufficient time to learn, develop skills and prepare for independent lives and careers. Our members support many older students who often need a longer period to complete their studies or training. Many ISPs have significant numbers of students who become disabled or experience a trauma as they near adulthood, thus delaying their educational progress. It is important that young people in this age group can undertake their studies in age appropriate settings, for example in specialist colleges, instead of being forced to continue in mainstream schools without the correct level of support.

11. We would like to see the ‘must have regard to his or her age’ wording replaced with a positive statement that affirms the right of young people to have an EHC plan maintained up until the age of 25, and confirmation that they will be allowed to continue their education or training courses or programmes in age-appropriate learning settings.

March 2013

Memorandum submitted by Disability Rights UK (CF 53)

EVIDENCE RELATING TO PART 3 CHILDREN AND YOUNG PEOPLE WITH SPECIAL EDUCATIONAL NEEDS AND DISABILITIES

1. **About Disability Rights UK**

1.1 Disability Rights UK is led, run and controlled by disabled people. We have particular expertise in the area of supporting young people with learning difficulties and disabilities into post 16 education and training gained from incorporating services previously delivered by Skill: National Bureau for Students with Disabilities. This includes providing the only dedicated pan-disability disabled students’ helpline covering all aspects of post-sixteen education and training. This gives us a distinct perspective on this legislation based on the experience of disabled learners 14–25.

1.2 Supporting disabled people to reach their potential in education, training, skills for independent living and employment underpins Disability Rights UK objectives.

1.3 Disability Rights UK works closely with SEC and other disability organisations that support young people and we endorse the amendments tabled by SEC, Ambitious about Autism, National Deaf Children’s Society and The Association of National Specialist Colleges (Natspec).

2. **The Bill**

2.1 Disability Rights UK welcomes in principle proposals to reform the current systems to support children and young people with learning difficulties and disabilities. The proposals have the potential to improve coordination between the multiple agencies involved in supporting people with learning difficulties or disabilities and to help
smooth transition from school into post-16 education and training. We also welcome the recent Select Committee scrutiny of the Government’s proposals which made some valuable recommendations for improvement. 214

2.2 We raised a concern that the discussions so far have focused on the existing processes and SEN Code of Practice and extending this to cover young people in post-16 education and training and up to age 25. The roles, expectations and aspirations of young people with learning difficulties and disabilities in further or higher education or training are very different from children in schools. This is recognised in the current differences between the statutory Learning Difficulty Assessment (LDA) Guidance and the SEN Code of Practice. We do not believe that simply extending the current SEN approach to those in post-16 education will do enough to recognise these differences.

2.3 There is a risk that if some of the key protections in the LDA guidance are not preserved young disabled people 16–25 will be worse off than they are now.

2.4 It is important to remember that this Bill is not just about extending the current SEN Code of Practice up to age 25. It is replacing the current protections offered to young disabled people by the Statutory LDA Guidance.

2.5 This age range is up to 9 years of a young person’s life and a crucial transition period. We want to see the Bill support young people with learning difficulties and disabilities achieve their potential in education and training and acquire the skills to compete in the employment market and to live independently.

2.6 The National Audit Office report 215 made clear the cost-benefits of disabled young people achieving their potential on leaving school compared with the potential costs to the public purse over a life time.

3. CLAUSE 19

3.1 Disability Rights UK welcomes the duties to involve and consult young people in decisions about their own plans and the local offer. This reflects the current statutory guidance on LDAs.

3.2 We would like to see Clause 19(d) strengthened to be clear what ‘other outcomes’ encompass and to link this to the wider definition of well-being. The LDA guidance refers specifically to the outcomes of independence and employment and these should both now be included in 19(d). Without being clear on this there is an incentive for Local Authorities (LAs) to focus on narrow, school-based educational outcomes rather than the wider aspirations of the young disabled person. This might have the perverse effect of encouraging local authorities to try to lower educational outcomes to end EHCPs as early as possible and to reduce costs.

3.3 Clause 25(1) (a) already identifies well-being as an outcome of the EHC provisions, so well-being should be included in clause 19(d). Clause 28 (3) (c) includes ‘provision to assist in preparing children and young people for adulthood and independent living’ while clause 30 (2) (e) states: ‘The local offer will cover…. provision to assist in preparing young people for adulthood and independent living’ and 30 (3) specifies (a) finding employment, (b) obtaining accommodation and (c) participation in society. These should be explicitly included in 19 to ensure rights and protections in the LDA guidance are not lost in the Bill.

4. CLAUSE 20

4.1 We want to see the provisions of the Bill extended to children and young people with disabilities whether or not they have special educational needs. Indeed the Green Paper : Support and Aspiration: A new approach to Special Educational Needs and Disability (2011) included disabled people, as do the current statutory guidance on LDAs, and current policies and practices in colleges and the post-16 sector, which uses the term learners with learning difficulties and/or disabilities, not SEN.

4.2 Disability Rights UK supports any amendment extending the duty to children and young people with disabilities, but without special educational needs.

5. CLAUSE 22

5.1 We welcome the duty on local authorities to identify all those children and young people in their area who have or may have special educational needs, but we want to see this extended to those with disabilities whether or not they have special educational needs.

5.2 We note that the NAO report 216 made clear that many local authorities did not have any or reliable data on the number or needs of young people in their area. In addition the current exercise to determine High Needs funding allocations have demonstrated local authorities still do not have the necessary data. The evidence shows the need for systems of accountability for local authorities.

5.3 A key element to ensuring the system is working for young disabled people is to make sure there is good data available both to local and national policy makers and to individuals. We fully endorse the recommendations

214 House of Commons Education Committee. 12/12/12 Pre-Legislative Scrutiny: Special Educational Needs
215 NAO 2011 Oversight of Special education for Young People Aged 16-25
216 NAO 2011 Oversight of Special education for Young People Aged 16-25
around data made by the National Audit Office and the need for good data that goes beyond destinations and looks at the degree of independence achieved.

5.4 The local offer will depend on accurate data on the number and needs of young people with learning difficulties and disabilities to assist the planning of suitable provision.

5.5 Clause 65 requirements to provide and publish special educational needs information is linked to clause 22.

6. Clause 30

6.1 This clause must be strengthened to require local authorities to publish information about services that will be available, not expect to be available. In addition local authorities and health providers should have a duty to ensure the services are actually available and provided.

6.2 We support the SEC amendment to clause 30 to secure these improvements.

6.3 We welcome clarification that the ‘local offer’ must also include information about provision beyond local authority boundaries and the transport arrangements for young people post-16.

6.4 We have already raised our concerns that there must be a national framework for the local offer to avoid a post-code lottery and we support the SEC amendment to secure this.

6.5 We want to see private and voluntary sector training providers included in the local offer, particularly as they deliver apprenticeship and other work-related training post-16.

6.6 We endorse the amendment tabled by Ambitious about Autism to include training providers in the local offer.

6.7 We welcome the inclusion of independent specialist post-16 providers in the local offer.

7. Clause 32 Advice and Information for Young People

7.1 Young people cannot make informed choices about education, training, progression to work and independence without impartial information and advice about the full range of options. Information for young people must be provided in suitable ways, and differently from the information prepared for parents and professionals.

7.2 The Bill should be aligned to school duties to provide careers guidance and to local authority duties to encourage participation and support vulnerable groups, as well as the National Careers Service provision.

7.3 It will be critical to ensure the qualification, timing and quality assurance measures for impartial careers guidance are all specified in the revised Code of Practice, as they currently are in the LDA Guidance.

8. Clauses 33 and 39—Mainstream Post-16 Settings

8.1 We are very concerned about Clause 33 that says that a person has the right to mainstream education unless that is incompatible with the ‘provision of efficient education for others’. This wording reflects the current SEN Code of Practice for schools but is not present in the current LDA Guidance and would seem to us to have the potential to undermine equality legislation if it is on the face of the bill. We are not clear why this is needed when the Equality Act is clear on the requirements around reasonable adjustments in FE and there is guidance on reasonableness.

8.2 Used in the context of post-16 settings this clause introduces a concept that could undermine students’ existing rights and protections under the Equality Act and provide an excuse for colleges to exclude learners with learning difficulties and disabilities on grounds of cost or inconvenience to other students.

9. Clause 36 Education, Health and Care Plans up to Age 25

9.1 We are concerned that clause 36 (10) states that where a young person is over the age of 18 the ‘local authority must have regard to his or her age’ before agreeing to assess a young person’s needs. The same caveat recurs in clauses 37, 44 and 45.

9.2 Many young people with learning difficulties or disabilities will have experienced disrupted education because of their impairment and so need longer to achieve their potential. Others may need to consolidate their learning to progress to their realistic outcome. Decisions whether to assess a young person’s needs, or to maintain their EHCP should be based on the young person’s progress in relation to their planned outcomes. Where a student is progressing as planned, the EHCP should be maintained, possibly through several stages. For example a young person may leave school at 18 with no work skills or accreditation, go to college to gain a Level 1, achieve well and progress to Level 2 to be able to apply for an apprenticeship or work.

9.3 Our experience over the last year is that local authorities are increasingly stopping funding for students post-19, regardless whether in fact the student has the potential to achieve their long-term outcome, and regardless of the LDA. Without the necessary qualifications and skills the student is likely to become NEET and will struggle to enter the labour market at great cost to the public purse. We anticipate that this clause on the face of the Bill will provide authority to cease all EHCPs at age 19. There is evidence already that some local authorities are basing their decisions purely on financial grounds, not the needs or potential of the young person.
9.4 We endorse the amendment proposed by Natspec and SEC to delete the words ‘have regard to age’ and to continue EHCPs for young people up to 25 for those who need it to achieve their agreed outcomes.

10. Clause 38 EHC Plans post-16 for young people intending to progress to university

10.1 We would also wish to see EHCPs provide support into Higher Education as LDAs currently do. This transition point is a critical stage for many young disabled learners and the support needs to be in place to achieve this.

10.2 Frequently the LDA and key-worker co-ordinates the social care arrangements allowing the student to attend a university in another area in term time and return to the home local authority during holiday periods. They also ensure the young person is aware of the support available in HE and how to apply for it.

10.3 Once at university the HE systems take over in providing funding and support from the disability advisory service. However, should the students not achieve the grades to take up their place, or find the course is not suitable and discontinues, then the LDA is in place to ensure prompt support is provided.

11. Clause 45 Ceasing to maintain an EHCP

11.1 It is important to recognise that disabled people may wish to re-enter education or training after having left it. Currently it is proposed that EHCPs will end when the young person has left education. There must be a way for ECHPs to be restarted quickly to prevent the young person becoming NEET. For those people who have acquired a disability later on (or whose disability has become an issue due to changes in the educational or training setting) a quick assessment needs to be available up to age 25.

11.2 We endorse the SEC amendment to maintain an EHCP to age 25, so that it can quickly be reviewed if circumstances change.

12. Clauses 69 and 47 Young people in custody

12.1 Young people in custody currently have a LDA and Clause 69 removes this assessment and support mechanism. The Bill seriously erodes the rights of young people with learning difficulties or disabilities in a custodial institution and makes no sense given the aim of reducing re-offending rates.

12.2 In addition Clause 47 should be amended to ensure that the responsible local authority reviews the EHCP before the young person leaves detention, and not afterwards. This is compatible with the local authority duty to encourage participation and prevent vulnerable young people becoming NEET.

13. Clause 50 Extending the right of access to tribunal

13.1 While in principle we support extending the right of access to First Tier Tribunal to students in FE colleges, we have serious concerns about some of the issues around this. Currently those who wish to challenge unlawful LDAs can seek Judicial Review, which has the power to order interim relief measures while the issue is considered; something tribunals cannot do. This might have an unintended consequence of increasing the number of people who become NEET due to resultant delays in securing adequate support through Tribunal.

13.2 We would support an amendment to give Tribunals the power to order interim relief measures while the issue is considered so that students post-16 do not lose existing rights.

14. Clause 66 Code of Practice

14.1 The Code of Practice will be an essential adjunct to this bill. There is a need for the Code to ensure that the current protections of LDA Guidance are preserved (especially the requirement for keyworkers, trained staff doing assessments, good transition planning, and the publication of a policy on providing assessments post 16 to those who did not previously have one). It will also be an opportunity to clarify how support will be provided for those who have a learning difficulty or disability but do not receive an EHCP.

14.2 Due to its importance in delivering so much of the aspirations of this legislation it should be approved by positive resolution rather than negative resolution.

March 2013

Memorandum submitted by The Federation of Small Businesses (CF 54)

Summary

1. The Federation of Small Businesses welcomes the opportunity to submit written evidence on the Children and Families Bill. The FSB gave evidence to the Public Bill Committee on Thursday 7 March 2013.

2. The FSB is the UK’s leading business organisation. It exists to protect and promote the interests of the self-employed and all those who run their own business. The FSB is non-party political, and with around 200,000 members, it is also the largest organisation representing small and medium sized businesses in the UK.

3. Our comments in this submission concentrate on three particular areas of the Bill and their implications for our members. Part 6 relating to Statutory Rights to Leave and Pay; Part 7 relating to time off work for ante-natal
There was an error in the document. The text is not natural and contains errors. Please provide a corrected version of the text.
required by the employer. In some circumstances, particularly minor change requests, employers will not need the full 8 weeks or any additional notice at all; however it should be up to the employer to decide this.

vii. However, the FSB believes that once both parents have decided on their respective SPL allocations, there should be a limit on the number of individual blocks of leave that can be requested separately\(^\text{219}\). Under the proposals outlined in the Administration Consultation document, an employer will seemingly be obliged to accept an employee’s requested leave pattern so long as each block within the pattern is requested separately (and the required notice is given). It is crucial that employers have confidence in the new system—however, as it stands, this proposal opens up the possibility of employees circumventing due process and effectively forcing employers to agree to leave patterns that they may not be able to accommodate.

viii. The FSB strongly believes that employers should not be placed in a position of having to liaise with one another over their respective employees’ leave arrangements, not least because of possible breaches of confidentiality this could entail. We are reassured that Government agrees, however this will depend entirely on the design and administration of the system and how it works in practice. We also understand that prospective parents will be required to complete a self-certification document to demonstrate that they are eligible for SPL. While the FSB supports an employee-led approach, Government will no doubt be alive to the potential risk of fraud from this process from an unscrupulous employee claiming money they are not entitled to from the state. We would question whether HMRC has the resources to monitor this fully.

ix. Greater consideration needs to be given to the impact of the proposals on a small business that employs both parents. The proposals will allow parents to take shared parental leave concurrently. This is unlikely to be practical for a micro firm consisting, for example, of 4 employees that employs both parents.

x. The FSB agrees with Government that there should be a time limit on the period in which parents can take shared parental leave. We feel this should be 12 months from the start of the mother’s maternity leave. Any extension of this period would go beyond the current entitlement of 52 weeks continuous leave available to mothers.

xi. Businesses need to be properly compensated for statutory payments. While we broadly support the current recovery arrangement for statutory maternity and paternity pay, it does not cover the costs of processing payments. The FSB will continue to call on HMRC to carry out an audit to find out the current costs to businesses of processing statutory payments and to ensure that small businesses are fully compensated.

8. While the FSB supports the broad principles behind Shared Parental Leave, we remain to be convinced that the new system will lead to a major step change in attitudes towards maternity and paternity leave and genuinely shared parenting. Take up of Shared Parental Leave will be heavily influenced by the families’ financial situation and the availability of adequate income replacement. The Government has conceded that in many cases mothers will choose to continue to use all or the vast majority of their 52 week entitlement. As a result, the FSB is concerned that employers will invest a lot of time and resource in understanding the new system and updating their policies and processes accordingly, for a system that could have very limited take-up. While the absence of concrete data on the likely uptake of Shared Parental Leave is understandable\(^\text{220}\), this will not instil businesses with confidence particularly if they suspect further changes will be made to this area of legislation in the near future.

9. The FSB therefore believes that if the Government is to achieve its aim of raising the female participation rate further still, alternative solutions will be required, such as more affordable high quality childcare to give parents greater choice as to how and when they return to work. This will be especially critical in families where the mother and/or father is self-employed. Government should take steps to address the high costs of childcare, including extending tax relief entitlements on childcare to the self-employed.

10. Lastly, with Shared Parental Leave due to come into force in 2015, the FSB notes that Government is introducing major legislative changes four years after Additional Paternity Leave came into force in April 2011 (and is now being abolished). This is a lot of change in a short space of time for small employers to digest, in an area of legislation they already find complicated\(^\text{221}\). As a result, Government will need to pay detailed consideration to how it is going to communicate these changes to employers once the legislation and necessary administrative arrangements are in place.

Other statutory rights

11. Purely from the perspective of ensuring maximum simplicity for employers in a complex area of legislation, the FSB broadly accepts the decision to bring adoption entitlements in line with statutory maternity leave and pay. However, as stated above, the employer cannot be held responsible for policing the system to ensure eligibility.

\(^{219}\) BIS terms these as ‘new notification requests’.

\(^{220}\) BIS concedes its estimates are approximations due to the inherent difficulty of predicting how families will respond.

\(^{221}\) The separate system of Unpaid parental leave is also changing: from March 2013 unpaid parental leave will increase from 13 to 18 weeks in order to comply with the EU Parental Leave Directive. The period for taking this leave will also be extended; parents will have until their child’s 19th birthday to use their leave (it currently needs to be used before the child’s 6th birthday).
12. Primary and secondary adopters should only be able to take time off to attend adoption appointments if the adoption process is sufficiently advanced and has gone beyond a mere expression of interest with social services or an adoption agency.

TIME OFF WORK: ANTE-NATAL CARE (PART 7)

13. The vast majority of small businesses allow fathers to attend ante-natal appointments, or take time off at short notice where family commitments arise unexpectedly, but they offer this on an informal basis. In the interests of making the process as flexible as possible, the FSB suggests that fathers should be able to take this time off as part of their annual leave entitlement if they prefer.

14. Fathers are currently entitled to two weeks of paid paternity leave. The Government has announced it may review the paid paternity leave entitlement in the future. The FSB does not think any changes are appropriate in the current economic climate. Given the wholesale changes being made to the system, including the recent introduction and (as a result of this Bill) abolition of Additional Paternity Leave, any further changes in the area of paternity leave and pay would add further confusion to small businesses.

15. On a separate note, the FSB agrees that paternity leave rights should not be automatically granted if a father changes employer during the pregnancy. We welcome the Government’s intention to retain the 26 week qualifying period for length of service by the 15th week before the baby’s due date.

EXTENSION OF THE RIGHT TO REQUEST FLEXIBLE WORKING (PART 8)

16. There is strong evidence to suggest that a majority and growing number of small firms already offer flexible working to their staff above and beyond the current statutory requirement. A 2008 FSB member survey found that two thirds of small businesses offered flexible working, of which only 4% restricted this to parents with small children. Similarly, the 2011 Workplace Employment Relations Survey has found that 84% of employers who offer flexitime make it available to all employees (with only 10% restricting flexitime to those employees with a statutory right to request flexible working). A 2009 poll of FSB members found that 47% of small businesses have staff who work part-time, 29% have staff that work flexible hours and 27% have staff who work from home.

17. Small businesses increasingly recognise the many business benefits of flexible working, such as the potential to boost productivity, staff morale and retention, and the reduction of office overheads. Small firms are competing for good employees just like any other business and they know that flexible working is increasingly commonplace and a benefit that is increasingly valued by employees.

18. Furthermore, the propensity of small firms to offer flexible working is characteristic of the nature of the relationships between small business owners and their staff, which tend to be far less formal in small firms. This has positive implications for employee relations. Statistics from the TUC and YouGov show that employees in small firms have among the highest levels of job satisfaction and sense of attachment to the business, while academic research finds significantly lower levels of work-related illness and sickness absence among staff in small firms.

19. The extension of the right to request is therefore, in our view, wholly unnecessary. It will increase the administrative burden and hence business costs for the smallest of firms, create confusion (the right to request is only a right to a process, not a right to work flexibly) and potentially undermine the cooperation and mutual benefits of current arrangements. Dealing with formal rights to requests may be relatively easily accommodated by public bodies and large firms, but it is manifestly more onerous and time-consuming on the smallest of firms who do not have HR departments to deal with such formal requests. Under the proposed legislation, appeals can be made if requests are turned down and this is likely to be particularly burdensome for small firms. Worse still, small businesses may end up finding themselves having to fight litigation claims as a result of inadvertently failing to follow a due procedure as set out in the proposed ACAS Code of Practice. This cannot be good for business or for their employees in any circumstances.

20. The Government’s Impact Assessment on extending the right to request showed that the majority of one-off implementation costs will fall on micro businesses, employing between 1 and 9 staff (the total cost on micros is estimated to be £13.2 million compared to just £0.4 million for firms with 250+ employees). There is reason to believe that these costs will be higher in reality. The IA assumes implementation costs on the basis of time being spent by a HR manager. As we have said previously, micro firms simply do not have in house HR managers—instead the task will fall on the business owner, whose costs will be higher not least because he or she will be spending time on implementation rather than on other business needs. The cited costs also exclude ongoing administration costs of dealing and processing with requests, and the costs of dealing with any subsequent appeals or litigation proceedings.

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222 The 2011 Workplace Employment Relations Survey, First Findings, January 2013, p.32
223 ‘What workers want’ YouGov and TUC poll of more than 2,500 people at work in Britain. 2nd September 2008 http://www.tuc.org.uk/extras/pollfigures.pdf
21. We therefore call on Government to conduct a thorough assessment of the costs of the proposed extension on small businesses (with up to 49 employees), encompassing both implementation and administration costs. Although we do not believe this legislation is necessary for employees in any business regardless of size, the FSB believes that Government should, at the very least, reconsider making micro businesses exempt from the extension of the right to request flexible working for the reasons stated above. We take into account, however, the European Parental Leave Directive requirements that parents returning from a period of parental leave must have the right to request flexible working regardless of the firm size.

22. Rather than proceed with this legislation, the FSB strongly believes that the Government should prioritise ‘softer’ approaches to further promote flexible working. The Government has previously acknowledged that legislation can only go so far and we thus feel that Government should further explore informal approaches before extending the statutory process. The FSB continues to believe that the public sector should lead the way in showcasing different types of flexible working. Furthermore, more needs to be done to clarify the different forms of flexible working and communicate the business benefits on offer—for instance, how job sharing can provide businesses with a greater range of skills at their disposal or how staggered hours can enable businesses to stay open for longer.

23. The Government could also do more to encourage employers to think about how they might design flexible jobs at the recruitment stage. The FSB has previously worked with Job Centre Plus to help small businesses design part time and flexible jobs. Advisors operating the Small Business Recruitment Service now talk to small businesses about the wide range of flexible working options and the benefits of offering such flexibilities when recruiting.

24. Nevertheless the ability of the employer to offer flexible working will always depend on circumstances unique to the business. In a busy high-street retailer for example, it is highly unlikely that the owner would be able to accommodate a request from a cashier to work from home. The proposals state that an employee exercising the right to request flexible working should identify how the business might be able to accommodate the flexible working request and how it will benefit the business. In reality, there will be many employees who are unable to provide this information, yet the business will nevertheless be required to respond to the request in a formal and prescribed manner, thus incurring cost and administrative time.

25. We are not convinced that legislation is necessary to embed flexible working and could in fact be counterproductive to the Government’s policy aim. The extension of the right to request to all employees could mean that small businesses treat all requests (informal and formal) the same and therefore will be less inclined to grant informal flexible working requests. Given that informal requests will be quicker and easier to agree (the right to request flexible working will need to be dealt with by employers within 3 months, whereas an informal request could be granted there and then), the employee will stand to lose out. In the smallest of firms where paperwork usually takes longer to complete, employees could in fact find it more difficult to get a timely agreement from their employer to work flexibly than if they merely made an informal request.

26. The Government suggests that replacing the existing procedure for dealing with rights to requests for flexible working with a duty to consider such requests ‘reasonably’ will result in ‘a shift towards more informal processes’225. We strongly doubt this to be the case. Employers will be mindful that any extension of the right to request will require them to follow a formalised process as set out in a Code of Practice. Hence, employers will be extremely cautious and follow the full procedure because they will not want to end up in a tribunal on procedural grounds. We therefore do not support the argument that the proposed procedure will be significantly less arduous on the employer.

27. Furthermore, the issue of how an employer will deal with multiple or conflicting requests without repercussions remains unclear. Turning one formal request down in favour of another may generate a negative atmosphere in the workplace and could potentially lead to claims of indirect discrimination. Clear communication will be needed from Government that this is only a right to request and not a given, and how businesses should deal with multiple requests. This will help businesses manage employees’ expectations.

28. The FSB remains opposed to this proposal for the reasons highlighted above. We do however support the Government’s decision to retain the requirement that employees can only make one formal request (using the right to request) within a 12-month period.

CHILDMINDER AGENCIES (PART 4)

29. Clause 75 repeals the duty of local authorities to assess the sufficiency of childcare provision. Child minders and nurseries currently register with, and are regulated, by Ofsted. The FSB believes that this amounts to a sensible streamlining measure and should help alleviate some of the costs of inspection and compliance incurred by small child minder businesses.

March 2013

Memorandum submitted by Sense (CF 55)

1. INTRODUCTION

1.1 Sense is a national charity that supports and campaigns for children and adults who are deafblind. Deafblind people have a combination of sight and hearing impairments which cause difficulties in a range of areas including communication, access to information and mobility.

1.2 There are a minimum of 4,000 children who are deafblind/multi-sensory-impaired (MSI) living in the UK.226 Deafblindness is therefore classified as a low incidence special educational need and disability (LISEND). Children with acquired or congenital (i.e. from birth) deafblindness face enormous challenges in finding out about the world around them, learning to communicate, achieving independent mobility, engaging in education, community and social settings and forming relationships. Many will also have additional difficulties, such as learning disabilities, medical conditions and physical disabilities.

1.3 Sense welcomes the opportunity to submit written evidence to the Children and Families Bill committee. The following evidence reflects Sense’s expertise in supporting children with LISEND. It also reflects the views of the parents of Sense service users about the proposed reforms to the system of Special Educational Needs (SEN).

1.4 Sense is a member of the Special Educational Consortium (SEC) and supports the positions that SEC has taken on the broader aspects of the Bill.

2. SUMMARY OF KEY POINTS:

2.1 Sense welcomes the overall aims of the Children and Families Bill. However, Sense considers that several clauses within the Bill should be strengthened to ensure that the provisions made will meet the specific needs of deafblind children and their families.

2.2 The Bill must be strengthened to promote more regular review and re-assessment of Education, Health and Care (EHC) Plans at key points of transition within the education, health and care systems.

2.3 Local Authorities should retain responsibility for the well-being of children and young people who receive services outside of their home Local Authority.

2.4 Early intervention is crucial for deafblind children and the legislation should allow full EHC plans to be available from 0-2 years old.

2.5 For children with complex needs, such as those with multi-sensory impairments, specialist assessment and service provision is extremely important and ensures that their specific needs are met.

2.6 Sense supports the creation of a Local Offer but considers that this should be underpinned by a national framework. It should also reflect that fact that provision can also be made on a regional or national basis.

2.7 For children with low incidence special educational needs, the bill should provide encouragement to Local Authorities to co-operate and jointly commission specialist services to meet need.

3. TRANSITION

3.1 Deafblind children and young people often receive services from several different agencies and face several points of transition as they move through the system. Many of the families who receive support from Sense have faced difficulties when supporting their child to move from one service provider to another.

3.2 Many MSI children also receive services from a range of education, health and care services based across several local authority areas and this can make managing transitions even more complex. If transition points are not planned and co-ordinated properly, children do not benefit from a continuity of care or on-going access to the types of support they need.

3.3 As deafblindness is a low incidence disability, few professionals will have direct experience of working with children with multi-sensory impairment. Even where professionals have worked with deafblind children before, every child with deafblindness will have a unique range of needs and so it can take time for professionals to get a good understanding of what is required. For this reason it is essential that adequate time is built in to allow practitioners to fully understand the specialist needs of deafblind children when planning the next stage of their education or care.

3.4 Sense therefore considers that the Bill should be strengthened to promote more regular review and re-assessment of Education, Health and Care (EHC) Plans at key points of transition within the education, health and care systems. For consistency also, it is important that the clauses related to transition in the Children and Families Bill are consistent with those in the forthcoming Care and Support bill.

4. Local Authority Responsibilities for Well-being

4.1 Sense is concerned that the Bill only requires a Local Authority to promote the well-being of a child or young person in its area and not when the child or young person is receiving services outside its area.

4.2 Due to the low incidence nature of deafblindness, specialist services are often based out of county and it is common for children to access services, such as specialist residential schools or expert centres for multi-sensory impairment, outside of their home local authority. Sense recently spoke to the parents of a twelve year old girl with CHARGE syndrome who spent two years searching for a suitable secondary school for their daughter. They had hoped to find a place for her close to their home in South East London to avoid her having to board, but there were no options available in their borough. The family eventually decided that the best place for their daughter was at a school in Buckinghamshire, where she now boards.

4.3 For parents who have to send their deafblind children to schools far from home, it is vitally important that clear lines of accountability remain for children’s safety, participation and physical and mental health, regardless of where they receive services.

5. Early Intervention

5.1 Sense also notes that the promised 0–25 system in effect appears to be focused on the 2–18 age range with entitlement to an Education, Health and Care (EHC) Plan being firmly attached to education.

5.2 Due to a lack of access to sensory information, deafblind children have a greater challenge to understand and learn about the world around them and can experience significant developmental delay from a very early age. The provision of early intervention, in the form of specialist communication and mobility support for congenitally deafblind/MSI children (from birth or onset of diagnosis), is vitally important to help children access future social and educational opportunities.

5.3 Sense considers that the bill should be place more emphasis on the need for early intervention. Specialist support should be made available from birth, rather than when the child begins school. We consider that as soon as a child receives a diagnosis this should be used to trigger the single plan process and an entitlement to specialist support services.

6. Specialist Assessment and Provision

6.1 Sense is concerned that the specific needs of children and young people with deafblindness may not be properly recognised and understood within the single assessment process. Sense practitioners on the frontline have found that there is often a lack of specialist expertise of deafblindness/MSI amongst practitioners in local authorities and that identification rates can be low. For this reason, local authorities often use generic assessment approaches which can fail to identify specific education, health and care needs and appropriate outcome measures for deafblind/MSI children.

6.2 Many parents who are in contact with Sense have struggled to access specialist support for their children’s highly complex needs. Many have experienced unsatisfactory assessments which have led to provision for their child which is inappropriate. For this reason, it is essential that professionals with recognised qualifications and experience in deafblindness are involved in the single assessment process if the child in question has multi-sensory impairment. This would mirror the current rules for assessment contained within the deafblind guidance.

6.3 Due to the low level of professional awareness about MSI and the fact that each deafblind child has unique needs, parents are often the ‘expert’ in their child’s case. Parents in contact with Sense have expressed the desire to be consulted as part of the assessment process but feel strongly that the process should be overseen by a key worker rather than expecting parents to take on the stress of becoming the main ‘advocate’ responsible for securing the right support for their child.

6.4 We support the creation of a statutory responsibility for a co-ordinating key-working role to be embedded as part of the assessment process. We consider that key workers should not be employed separately to the professionals who are supporting the child, young person or family, but should be integrated into the wider roles of professionals supporting children and young people and families.

7. The Local Offer

7.1 The majority of parents in contact with Sense are very supportive of plans to introduce a local offer. Parents tell us that it can be very difficult to find out about the specialist services available to them and welcome efforts to introduce greater transparency. Many are of the view that local authorities currently deliberately fail to publicise information about specialist services due to the high cost of provision, including specialist schools and

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227 CHARGE is a rare and challenging genetic condition that can affect the ears, eyes, heart and nose and is recognised as the leading cause of congenital deafblindness.

228 The guidance, Social Care for Deafblind Children and Adults, was issued by the Department of Health in 2009 and the Welsh Assembly Government in 2001. The guidance is to make sure deafblind people receive the support and services they require from their local authority. For more information see: http://www.sense.org.uk/content/deafblind-guidance
residential provision available out of borough. One parent told us, “I think it would help us a lot to have some clarity as to what services are going to be available to us for our child.”

7.2 Despite this however, parents also have some concerns about the possibility that the Local Offer may create a ‘postcode lottery’ between different local authorities. Parents have told Sense that they do not want to be the only source of accountability for the quality of the Local Offer and other accountability mechanisms should be put in place. Parents would also like assurances that the local offer will contain services which will meet the needs of children with multi-sensory impairments.

7.3 Children with LISEND often receive little or no services from their local authority except in areas of good practice or where external-provided specialist support has been commissioned or where authorities have made specific provision for children with low incidence need such as deafblindness. These services are also extremely vulnerable to downward financial pressures due to their low incidence nature. We believe that a national framework linked to a regional offer would facilitate access to good provision.

7.4 On a related point, many families have told us that they consider that term ‘Local Offer’ is unhelpful, as most access services from a range of regional or national providers, as well as locally.

8. REGIONAL COMMISSIONING

8.1 As part of the Local Offer of SEN services, Sense considers that the bill should promote a ‘regional offer’ of support services, which are co-funded by a number of local authorities across a geographical area. This is a cost effective approach and ensures that specialist provision is available to families across the region.

8.2 An example of successful collaborative can be seen in the West Midlands. The Victoria school provides specialist support for children with a range of SEN, including multi-sensory impairment. The school accepts children from across Birmingham but also serves as a regional facility for pupils with multi-sensory impairment, drawn from the five metropolitan authorities in the West Midlands.

8.3 Sense believes that a regional offer could be included to encourage local authorities to work together innovatively and make better use of resources thus creating provision for children and young people with a LISEND. This is not exclusive to deafblind children and would include children with single sensory impairments. Arranging services on a regional basis gives the service sustainability, stability and the flexibility to plan and develop service provision in the future.

March 2013

Memorandum submitted by London and Home Counties Regional Conference of Officers in Charge of SEN and Disability (CF 56)

INTRODUCTION

1.1 The Conference was established in 1974 and has been in continuous existence since that time and currently represents 55 Local Authorities (Education) in the Region.

1.2 The AIMS of the Conference include:—

— exchange of information and ideas, including sharing best practice
— consideration of legislation and DfE Circulars and responses to consultations, as appropriate
— contact with DfE, HMI (Special), OFSTED, SEND Tribunal and other relevant agencies/organisations
— commissioning and/or monitoring data on Special Educational Needs/Provision
— monitoring trends in Special Educational Needs/Provision in the Conference area
— co-ordination of matters relating to effective provision in the Conference area
— contributions to the development of good practice and best value
— other matters as Conference shall decide.

1.3. In that context Conference met on Wednesday March 13th and the comments below were drawn from discussion at Conference and agreed with all members.

2. SCOPE OF RESPONSE

This response will focus on Part 3 (Children and Young People with Special Educational Needs) of the Bill—Clauses 19 to 66.

3. SPECIFIC RESPONSES

3.1 Clause 19. LA functions: general principles.

Members were concerned that this level of prescription was both too exclusive and too weighty. They thought there should be regard to making the “right” provision. Sometimes professionals may actually have a ‘better’ or more appropriate view of what is is suitable for an individual child or young person. So it follows that Local
Authorities must also have regard to the professional advice they receive as well as the views of the child and family. They also have to have regard to making efficient and effective use of the resources available.

3.2 Clause 20. When a child ...

This Clause is fine as it stands. Conference does not support the suggestion that EHCs should extend to disabled children without any special educational needs. Other arrangements through the Equality Act 2010 and health exist for this.

3.3 Clause 21 SEN provision, health care provision

Conference members suggest that Clause 21 (5) is inappropriate. It could lead to health care provision only provided in school for feeding and other limited areas. 21(5) goes much further than the current case law. “Wholly” educational provision from health professionals could only be for a child with severe specific language impairment and no learning difficulties. Whilst input for mobility, for example, is “across life” and is not solely for education. Members suggest that this sub section is removed as it is contentious and confusing and could lead to litigation.

3.4 Clause 22 Identifying children with SEN

This duty would not seem to be possible to discharge with the fragmentation of education through Academies and Free Schools and the changes to health with GPs leading commissioning. The clause should either be removed or substantially re-drafted.

3.5 Clause 24 Duty of health bodies

With the re-organisation of health how will this duty be enforceable? Regulations or primary legislation need to set out requirements for Child Development Teams/Child Development Centres to provide this information.

3.6 Clause 26 Joint commissioning

It is difficult to comment on the proposed amendment to require CCGs to “secure services”. Members queried the role of HWBs, specialist commissioners and social care? Should these not also be included?

3.7 Clause 30 Local Offer

This clause appears, at present, merely a statement with the local offer not being enforced, should the delivery of the local offer be a statutory duty on all agencies? Will the promised indicative Draft Regulations provide for this duty?

3.8 Clause 31 Cooperating in specific cases: LA functions

There is great anxiety across professionals and parents that there appears to be no duty for anyone to help children at the less severe school-based stage except for ‘best endeavours’. The current Code sets out detailed requirements for provision and the responsibilities at School Action and School Action Plus. Without further primary legislation, the mere provision of £6000 for school-based SEN will not offer any protection or guarantee of quality provision. This lacuna may well lead to an increase in parental requests for assessments and EHC plans rather than the reverse which is surely the aim?

3.9 Clause 33 Children and young people with EHC Plans

There is a concern on the part of some members that new EHC plans will only be provided for children and young people requiring input from at least 2 of the agencies. Members are concerned about those children who currently have a Statement but where only special educational provision is an issue? There will be children with severe learning needs, perhaps dyslexia, who currently receive the protection of a Statement and Members thought this kind of protection should be replicated in the new system.

3.10 Post 16 requirements are unclear and only mentioned in passing in (5-7). Currently there is not enough provision in health and social care post 16 and even less post 19.

3.11 It seems surprising that young people in further education, apprenticeships and NEET will continue to have EHC plans, but those in Higher Education will not have Plans. Parliament should re-consider this lack of provision. Young people with SEN at University need continuing support also.

3.12 Clause 34 Children with SEN but no EHC plan

What will be the new Code cover? There is extensive Guidance in the old Code on pre-Statement provision. This new arrangement may encourage parents to request assessments. The only replacement for School Action and School Action Plus is in the area of funding (the current £6,000) which gives no protection at all.

3.13 Clause 66 Code of Practice

3.13.1 Members of Conference believe that the Code is extremely important and integral to the effective delivery of the SEN system. As such the Code must be placed before Parliament for positive resolution not negative because it should be considered in detail by both Houses. Parliamentary consideration will ensure that parents and professionals believe that parliament recognises the Code’s status and centrality to the new system.
3.13.2 A number of additions are needed to the list of those required to “have regard” to the Code. The list of bodies at Clause 66 (6) should be amended to include the First Tier Tribunal, Social Care, JHWBs non-maintained special schools and Universities, if higher education is included.

3.13.3 Clause 66 (6) should be deleted. The First Tier Tribunal must have regard to the whole of the Code. Without this requirement it will be impossible to know, or understand, the rationale if the Tribunal “pick and choose” on a ‘case by case’ basis which parts of the guidance to take into account. It would mean that presenting a case, either for the parent or the LA, would be guesswork as there would be no way to predict what issues the Tribunal would consider.

3.13.4. Members are aware that an indicative Code and some Regulations have been provided at Committee Stage, but how can Parliament consider all the implications of this Bill without seeing the new Code in full and the Regulations? When and how will Local Authorities and others have a formal opportunity to make constructive comment?

4. Conference is concerned that there does not seem to be recognition of how much more the consequences of the Bill will cost? In effect, with the new EHC Plans covering 0—25 years costs of provision are for at least 9 more years of a child’s life. Additional staff costs to ‘manage’ the system will also be required. With the current cuts and the government’s austerity budget this lack of recognition may lead to the new system failing before it even starts.

March 2013

Memorandum submitted by Sarah Neville (CF 57)

1. My name is Sarah Neville. I have been working as an Ofsted registered childminder for nearly 20 years and previously I was an early years teacher. I am extremely passionate about my role as a childminder, carer and educator of babies and young children and I am very concerned about the “More Great Childcare” plan which I believe is very badly thought out and worded. I believe it will put outcomes for the next generation of our children at risk and it will adversely affect the sustainability of my business and the businesses of thousands of childminders and other early years providers throughout England.

2. The areas of the Children and Families Bill about which I have most concerns are—ratios for early years children, childminder agencies and qualifications for early years workers.

3. RATIOS FOR EARLY YEARS CHILDREN

3.1 Babies and young children deserve to be cared for in settings which offer low ratios because low ratios will support their learning and development and enable them to grow and develop to their full potential. We are told by experts in early years that children need to develop strong bonds with the adults who care for them, have plenty of space to move around and develop physically and that their language and listening skills need to be supported by caring, sensitive adults who have time to give them one-to-one attention. I am very concerned that these essential outcomes for babies and young children will be adversely affected if ratios of adults per child are changed because adults will not have the time available to appropriately care for them, educate them or to spend time chatting and loving them.

3.2 Childminders throughout the country, like many nurseries and pre-schools, are struggling with sustainability because of the current economic crisis. I am very concerned that the future sustainability of my business will be adversely affected if all early years providers are allowed to increase the number of children for whom they care.

3.3 I am very worried about the health and safety of our youngest children if there is one adult to 6 x 2 year olds in nursery environments. Nappy changing alone for this type of ratio will take hours out of the adults’ day, notwithstanding the fact that some might be toilet training and others having strong emotional outbursts as they are prone to do at age 2—all this before the children are played with and their individual needs are met. It makes no difference whether the adult is a teacher or not—this does not give them more than 2 eyes or 2 hands—see paragraph 5.4 for more information.

3.4 At the moment, when childminders make changes to their early years ratios for continuity of care in exceptional circumstances there is an Ofsted procedure they need to follow to ensure children’s educational outcomes, health and safety are protected. This includes writing a risk assessment, considering the impact of the changes on all the children and consulting with parents.

I believe that this is a sensible and well considered procedure which allows childminders time for reflection before making changes which might adversely affect outcomes for the other children in their care. If the extra children per adult becomes the norm and these very sensible Ofsted procedures are no longer followed, I am very concerned that outcomes for children will suffer.

3.5 I believe that it is a mistake to say that laws can be dismantled just to push changing ratios through. For example, Ms Truss suggests that the ‘floor space per child’ law might simply be ignored in future. This law is in place for a very good reason—to ensure children have space to move around and places to go when they want
3.6 At the moment I care for 3 children under the age of 5 on some days. I take them on frequent outings to enhance their learning and development and to ensure they develop an awareness of the local community, have opportunities to make friends out of the provision, see the changing seasons first hand, go on listening walks and have adventures in the woods. I also have school drops and collections during the day for older children. I am able to keep children safe on outings because I have robust risk assessments in place and I know each child very well. I am very concerned that more children per adult will lead to greater risks on outings. This will either mean that children are not taken out of provisions or that their health and safety is put at risk during the outings. This will also lead to higher costs as childminders will need to buy bigger cars, larger buggies, more car seats etc which will not bring down costs to parents as suggested by Ms Truss as one of her reasons for writing the “More Great Childcare” plan—see paragraph 3.7 for more information.

3.7 Ms Truss is suggesting that costs for parents will be reduced if childminders are allowed to take on more children per adult. However, she is failing to see the bigger picture. Childminders already earn less than the minimum wage per child—in some areas of the country they earn as little as £2.00 per child per hour. In Cheshire East where I live I earn between £3.50 and £4 per child per hour. Out of this income I feed the children with nutritious, healthy, freshly prepared food; buy exciting and stimulating resources for the house and garden; update my childminding environment regularly to make sure it meets each child’s needs; take children on regular outings; ensure my training is updated; complete documentation for the children—at the last estimate this takes me around 3 hours per week extra which are unpaid; pay insurance, Ofsted and Information Commissioners Office fees; spend many hours of my own time preparing activities and speaking to parents—at the last estimate this takes me around 2–3 hours per week extra which are unpaid and much more.

I am very concerned about how much Ms Truss wants to reduce my income. By doing this she is further demoralising a sector which has spent the last two decades fighting to be viewed on an equal footing with other early years providers.

4. AGENCIES FOR CHILDMINDERS

4.1 Childminders made it very clear to Ms Truss and the Department for Education last year that they did not want agencies. There were a number of very strongly worded petitions and representations. For this reason, the “More Great Childcare” plan states that established childminders will be able to stay independent. I believe that this will create a 2 tier system which will be confusing for parents and which will cost more money than now for Ofsted to administer.

4.2 I do not believe that agencies offer any benefits to newly registering childminders which local authorities cannot offer if they are given the support and Government backing they need. Many local authority networks are currently being disbanded which leaves thousands of childminders throughout the country without help and advice networks. This is presumably in preparation for the agencies—which are neither wanted nor needed.

4.3 Consultation about agencies has not been thorough and Government has not listened to the responses. Ms Truss says that she has spoken to some organisations about agencies, but to date all those organisations to whom she says she has spoken—such as PLA and NCMA—have publicly stated that they have advised her against introducing agencies for childminders. Similarly 282 comments in just 12 days on the Government website—almost all negative—must show the strength of feeling against agencies—http://www.parliament.uk/business/bills-and-legislation/public-reading/children-and-families-bill/childcare/. How can a consultation be allowed to start from a fait accompli? I understand that Ms Truss is piloting agencies from September this year and yet there are currently at least 3 petitions which have raised over 60,000 signatures against childminder agencies.

4.4 Agencies are most likely to be private or local authority nurseries or schools, because it is highly unlikely that childminders will be able to raise the required funding if, as we are being told by the Department for Education, agencies are to be self funded. This means that nurseries will be in charge of childminder sustainability. It would be very naive to think that a nursery will pass work on to a childminder if they have spaces—all the newly created spaces if their ratios are changed—see paragraph 3.3.

4.5 Information I have read on the D of E website states that agencies will be in charge of local training for childminders who are part of the agencies and as I have already advised—see paragraph 4.2—many local authority networks are currently being disbanded and funding withdrawn in anticipation of agencies. This will lead to a 2 tier system whereby established childminders will either not receive training or will have to pay a premium to attend. This will mean that their Ofsted inspection outcomes will be adversely affected and eventually all childminders will be forced to either join the agencies or fail to gain the grades they gained previously. This will lead to a further 2 tier system of unsupported independent childminders who are unable to compete with supported agency childminders.

4.6 Childminders have managed their own successful small businesses for many years without the need for agencies. Agencies will cause confusion and resentment in the sector and will lead to many highly qualified and well respected childminders leaving the profession. This will have the effect of lowering outcomes for children because new childminders brought online by agencies are unlikely to have the skills, qualifications or many years of experience of those they are replacing.
4.7 Agencies will control the local economy because they will set prices for their agency childminders. This will create a 2 tier pricing system which will confuse parents and lead to independent childminders having to lower their already low prices—see paragraph 3.8. I believe that this will lead to reduced quality of care and education which will adversely affect outcomes for the children.

4.8 Childminders have adapted well to Ofsted control, however continuously changing requirements and Ofsted inspectors who do not fully understand how childminders operate or who tell childminders ‘I do not grade outstanding’ have caused issues. It will cause even more concerns when there is a 2 tier inspection system with agency childminders losing their right to an individual grading and non-agency childminders being unsupported and unable to gain the high grades their experience should allow them because they no longer receive training or guidance.

5. Qualifications for Early Years Workers

5.1 I do not believe that the early years qualifications structure set out in the ‘More Great Childcare’ document is anywhere near what Cathy Nutbrown suggested in her consultation. I believe that it will create a 2 tier system for early years workers which will further confuse parents.

5.2 I know a lot of childminders and early years workers in other settings who are wonderful with the children and parents but who do not have English and Maths GCSEs. I do not believe that such qualifications are necessarily an indicator of someone who can provide the highest quality care and learning for young children.

5.4 To suggest that someone with an early years qualification is better placed to care for more children is ridiculous. A teaching qualification does not give you an extra set of eyes to keep children safe or an extra pair of hands to change nappies. It does not give you extra hours in the day to read books, chat to children, sit with them on your knee and sing them songs. This change will further put children’s outcomes and health and safety at risk.

March 2013

Memorandum submitted by Carol Innes (CF 58)

The Children and Families Bill

1. I have been a Registered Childminder since 1994 (other than a short break when we moved house) and have Level 3 qualifications in Children’s Care, Learning and Development and also in Playwork and Beach School. I was graded outstanding at my most recent Ofsted inspection, in 2011. I have been approved as part of a Quality Assurance Childminding Network and am accredited to provide funded education for three- and four-year-olds and funded places for vulnerable two-year-olds. I undertake regular training to update skills and knowledge in areas such as First Aid and Safeguarding Children, and to develop my understanding of different methods of working which will enrich the children’s time with me and improve the way I help them to develop.

2. I am very concerned about Section 4 of the Children and Families Bill (and related schedules), in particular the proposed introduction of Childminder Agencies. I consider that Childminding Agencies are likely to be bad for children and bad for Childminders. There is very little information at present about how these agencies would work. However, the more I consider them the less it appears that this issue has been thought through.

3. Business Issues I understand that some Childminders registered with agencies may be employed, whilst others may be self-employed. Either option raises a number of business issues:

3.1 Tax, accounts, allowable expenses, minimum wage, payment for hours available but children not placed; holiday and sick pay, pensions; payment for time spent training (Childminders currently are mainly unpaid during training, but this could be an issue if they were employed by an agency).

3.2 Would training be free or could your agency charge what they like? This could be a particular issue in relation to mandatory training such as first aid?).

3.3 Would the agency act as Special Educational Needs co-ordinator and Safeguarding co-ordinator? Who would report concerns and make judgements regarding level of concern and any risk to child? What about self-evaluation forms; Criminal Records Bureau checks (children becoming 16, new people living in house)?

3.4 The Bill suggests that if an agency fails for any reason then the Childminders concerned would become registered directly with Ofsted as an interim measure. However, whilst this would allow continuity for the Childminder and children concerned, I understand that the Agency would have been providing insurance and training. What then happens regarding insurance for those Childminders and essential training such as First Aid? Also, would contracts with parents be with the Agency? In which case the Childminder could have difficulty getting payments—especially if parents paid by direct debit or vouchers etc.

3.5 “More Great Childcare” says that Childminder Agencies would take on administrative tasks such as arranging insurance and paying registration fees! Undertaking these small tasks once a year takes next to no time. The paperwork which takes the time are the children’s records (because unlike school staff we do not have paid non-contact time), but personally I enjoy doing these and agencies could not do them because they would have no knowledge of the children’s development. Other paperwork which has taken up a lot of time in the last
12 months has been due to commenting on proposed changes, eg to the EYFS and now this Bill, and getting used to new statutory requirements and developmental goals, having just become familiar with the original EYFS!

4. Costs, Fees and Quality “More Good Childcare” was supposed to be about raising quality and giving parents more choice! I do not see these proposals doing either, nor do I see them reducing costs.

4.1 Options for the agency to make their profits (other than charging for training/other ‘services provided’) would appear to be by charging parents, or by taking a slice of Childminders’ fees, neither of which would meet the government’s stated aim of reducing the cost of childcare.

4.2 Will the agencies perhaps insist on ‘their’ Childminders taking children up to the maximum ratios in order to maximise profits? (In company with many other experienced childcarers I strongly disagree with the changes to ratios proposed in “More Great Childcare” but appreciate that this is not part of the Children and Families Bill.)

4.3 Childhood is a precious time and young children need individual attention to allow them the best experiences. I will maintain my current ratios but have big concerns about some childcare settings/agencies who may be more interested in maximising profits.

4.4 Currently Childminders may be satisfactory, good or outstanding. If an agency requires all its Childminders to meet the kind of standards to be good or outstanding this could be good for quality. However, if they wanted more Childminders on their books they would no doubt relax their quality requirements and be happy with satisfactory. Would they pay all Childminders the same, regardless of standards? How would this affect provision of funded places? This could drive quality down.

4.5 If only the agency and a sample of Childminders are inspected this will not tell parents anything about the quality of care in each individual Childminder’s setting. It would presumably give some sort of ‘average’ grading. Personally I do not aim to provide an ‘average’ Childminding service; I aim to provide an outstanding service for the children I mind, and their parents, with high quality, individualised care.

4.6 The children in this country deserve the very best childcare and research shows that high quality care with an individual Childminder meets the needs of very young children better than group settings can hope to do. The government should be encouraging Childminders to continue to deliver this high quality care, not demoralising those who meet the highest standards or encouraging those who may have lower standards to care for too many children.

5. Other Effects on Children

Ms Truss suggests that when Childminders are ill/on holiday the agency would place the children with another Childminder. This may help the parents, if they are happy for their child to be cared for by someone they don’t know, possibly (in a rural area like ours) several miles away from usual. How would the individual needs of these children be understood and met on such an ad-hoc basis? When I take on a new child I arrange a gradual settling-in process to meet the needs and personality of each particular child. To dump a young child with a carer they do not know could cause horrendous trauma.

5.2 How much choice would parents have regarding which Childminder their child was placed with? Choosing who cares for your children is a very important and individual thing and it is vital that parents and Childminder, as well as the child, feel comfortable with each other.

5.3 As mentioned above, I currently offer the Early Years Entitlement of Funded Education and funded places for two-year-olds. It is unclear how these will be offered if Childminder agencies go ahead. Very young children are better off in small settings. High quality Childminders develop excellent relationships with the children and their parents and provide individualised care, with resources and activities in line with the children’s own interests and to encourage their development. Indeed a study (The early Education Pilot for Two Year Old Children: Age Five Follow-up) recently carried out for the Department for Education has apparently found that “comparing children in the pilot group who attended high quality settings with those who attended adequate or low quality settings found that the high quality group ‘scored significantly higher’ in the communication, language and literacy and creative development early learning goals,” and “the report says, ‘This provides some evidence that high quality settings made a positive difference to children who attended the pilot.’” [Gaunt, Nursery World, 7 March 2013]

6. I understand that, at present, the plan is to allow Childminders to choose to remain independent and this is the option I will definitely choose. However, there are still many concerns regarding this, eg will we still be able to access training from the local authority? Will we eventually be forced into agencies or out of the profession? Will Annual Registration Fees be increased and will there be any additional fees for individual inspections? I currently charge parents £3.20 per hour per child (inclusive of food, drinks, outings and all other resources) during term time; £3.50 per hour during school holidays. East Yorkshire is not a ‘high fee’ area for childcare, and I live in a very rural area. I do not make a large profit. My ‘outstanding’ Ofsted grading was the result of a great deal of hard work over the years to improve the Childminding service I offer to parents and to the children I care for. I am proud of my outstanding grade and of the quality of my Childminding provision. I have expended a great deal to achieve this: time, money, and effort, putting new resources into place and designing/writing all the paperwork, training, reflecting, planning and implementing changes to ensure I go beyond the minimum requirements of the Early Years Foundation Stage. I know a number of other Childminders in this area who have
similar standards and across the country there is a big proportion of high quality Childminders who are feeling very threatened by this issue. Please remove the ill-thought-out proposal of Childminder agencies from this Bill.

Thank you for taking the time to read my comments

Carol E Innes
Registered Childminder

Summary

1. I am an experienced, qualified Registered Childminder judged outstanding by Ofsted.

2. I have grave concerns about the proposal to introduce Childminder agencies.

3. The many business issues do not appear to have been thought through.

4. Costs, Fees and Quality: Proposed agencies seem unlikely to raise quality, give parents more choice or reduce costs. I am concerned that agencies may want childminders to work to maximum ratios in order to maximise profits. Agencies may have a detrimental effect on quality. Concerns regarding Ofsted inspection of the agency and not inspecting all the settings. Need for high quality care for our children.

5. Other Effects on Children: concerns about placing children with people they don’t know; parental choice and relationship of child with Childminder; need for individualised care. High quality settings (as opposed to adequate/satisfactory settings) make a difference to outcomes for children.

6. I am very concerned about my own business, which currently provides high quality childcare for young children. I request that the proposal for Childminder agencies be removed from the Bill.

March 2013

Memorandum submitted by Amy Boyd (CF 59)

1. I am an experienced nursery-based early years practitioner, qualified to level 4 (CERT EYP) and studying towards a degree in my spare time. I live in Bristol which offers employment opportunities in truly excellent nursery schools and children’s centres—including National Early Years Teaching Centres. However, in recent years much has been done to raise professionalism in childminding and accord it the same status as other early years provision, and thanks to this, last year I chose to become a childminder in order to provide the significant care, learning and development benefits that the scale, security and flexibility of the home environment offers babies and very young children. I am extremely concerned that the flawed proposals throughout More Great Childcare will undo advances in childminding provision and damage outcomes for children in all early years settings.

2. The areas of concern that relate directly to the Children and Families Bill are the proposals for childminder agencies and agency Ofsted inspections.

3. The stated aims of new childminder agencies are either unfeasible or duplicate work already done by local authorities. For example, the report intends that agencies will help childminders and parents by providing a matching service so that parents will not have to “to investigate prospective childminders to check they are happy to entrust their children to their care”. (p12) However, in my professional and personal experience parents will without fail want to meet with childcarers, as well as draw on individual Ofsted reports and references from other parents, before they feel comfortable with leaving their child in that person’s care.

4. Local authorities already help parents find potential childminders in their area by maintaining a list of childcare providers and providing parents with it on request. They also currently support childminders in other areas mentioned as a remit of the proposed agencies: When I went through the registration process I benefitted from information, support and training from local authority support workers every step of the way. I am now looking forward to developing my practice through five short courses between now and June, as well as a childminding conference with a keynote speech from experts on the characteristics of effective learning. In the near future I would like to enrol on my local authority’s well-respected quality assurance scheme—the Bristol Standard. All of this training is directly improving my practice as an educator of very young children, and I would not be able to access it if I had to pay for it through an agency.

5. There is a section of the report that asserts ‘Ofsted role duplicated by local authorities’ (p24), but the support that I described in the last paragraph is not within Ofsted’s remit. However all of it DOES directly drive up the quality of care and learning provided by childminders. The report also claims that local authority involvement in training etc “can also divert resources from where local authorities can add most value—ensuring that the most disadvantaged children receive early education and childcare that meets their needs.” Again, my local authority already does this very successfully and staff that understand the needs of the local community recruit childminders to the ‘Enhanced Provision’ scheme; assessing their suitability through their experience, qualifications and Ofsted grade before interviewing them, inducting them and then providing continued support once they begin to care for vulnerable children. The report asserts that local authorities retain money that could be spent on the “front line”. (p24) I would argue that money invested in childminders continuous professional development IS being spent on the front line, since children will take the benefit of high quality home-based
care and education with them to nursery and school. Rather than discarding these established systems and spending time and money rushing to introduce childminder agencies, then surely the most sensible approach—in terms of both financial and human resources—is to ask local authorities that are successfully supporting quality improvement to mentor any local authorities that need to develop their service?

6. The plans to end individual Ofsted inspections are also very concerning. The report states: “Each individual childminder is inspected every three or four years, usually for only around three to four hours. There is no question of the desirability of a thorough inspection regime for childminders, but it is less clear how far the current system drives quality.” (p24) When you consider that the inspector is just observing one practitioner, and the associated paperwork related to a handful of children, and then compare this to the inspections over one or two days of group settings with multiple staff and large numbers of children, then childminder inspections are at least as thorough. I cannot see how agency inspections will improve on this: If Ofsted only inspects the agency and a sample of childminders, then in order to maintain quality the agency will need to introduce its own supervision systems—thereby creating the second arbiter of quality that the report states it seeks to avoid. Furthermore, the report states that agencies must be ‘self-funding’—therefore either paid for by parents, in which case the proposals will not bring down costs to parents as they claim, or they will need to be funded by childminders—whose operating margins are already so tight that they will not be able to sustain this. Therefore this agency model involving ‘support at a price’ and less Ofsted involvement seems more likely to risk the quality of care rather than drive it upwards.

7. The report states that joining agencies will be optional, but childminders are concerned that once the agency inspection model becomes established, the costs of individual inspections will rise exponentially from the current level and become out of reach of individual childminders, thereby removing any practical choice from childminders, and by extension, from parents—who may prefer to have an individually inspected childminder care for their very young child.

8. There are many other concerning aspects of the report that suggest a misunderstanding or mis-reading of the evidence around the issue. For example, a footnote on page 7 states that: “there are two main types of childcare provider for young children in England: nurseries and childminders. Nurseries are organisations providing early education and childcare delivered by multiple members of staff. Childminders are self-employed individuals who provide childcare, usually in their own home.” Childminders do not just provide ‘childcare’ as the footnote claims, they provide ‘education and childcare’ through the EYFS just as staff in group settings do, and it is a fundamental principle of the framework that they should do so in order to provide parents with a wide choice of quality care. The report also describes childminders as ‘lagging behind’ other providers. Ofsted’s figures show 61% of childminders are graded good and 10% outstanding, just 3 three percentage points lower than group settings.229 Surely the passion and commitment and expertise delivered on behalf of children by childminders, working independently for modest financial reward, deserves to be recognised and applauded, rather than denigrated?

9. The only clear, consistent message of the proposals is one of driving down the costs to government, in which the good work of the EYFS in raising professionalism and equality across the early years sector is a casualty, and which risks outcomes for children as a result. I urge the committee to call for these proposals to be put on hold until any financial savings to government have been weighed against a thorough analysis of the social and financial cost to children, families, and those who work with them.

Amy Boyd
March 2013

Memorandum submitted by NASUWT (CF 60)

CHILDREN AND FAMILIES BILL COMMITTEE CHILDREN AND FAMILIES BILL PART 3: CHILDREN AND YOUNG PEOPLE WITH SPECIAL EDUCATIONAL NEEDS (SEN) MARCH 2013

NASUWT evidence to the Children and Families Bill Committee

The NASUWT’s submission sets out evidence that relates to Part 3 of the Children and Families Bill. This evidence draws on the findings of independent research commissioned by the Union and from representative committees and other structures, made up of practising teachers and lecturers working in all relevant sectors of the education system.

The NASUWT is the largest union representing teachers and headteachers in the UK, with other 280,000 serving teacher and school leader members.

Background and context

1. The NASUWT welcomes the opportunity to submit evidence to the Children and Families Bill Committee. This evidence relates to Part 3 of the Children and Families Bill: Children and young people with special

229 http://m.nurseryworld.co.uk/article/1162939/NCMA-takes-Ofsted-task-claims-childminders-not-job (Accessed 14.3.13)
educational needs (SEN). In particular, it addresses the following issues: the definition of SEN; the need for the special educational needs co-ordinator (SENCO) to hold qualified teacher status (QTS); inter-agency working, the duty to co-operate and the role and responsibilities of the local authority; the Education, Health and Care (EHC) Plan; the SEN Code of Practice; personal budgets; and the Local Offer.

**Definition of SEN**

2. The NASUWT has commissioned and published research that looks at interpretations of SEN and inclusion.30 This research highlights that SEN and inclusion can be defined in a number of ways. For example, inclusion may be seen as an ideology (usually linked to a human rights agenda), a place (usually a mainstream school versus a special school), a policy (normally from central or local government), a professional practice (such as inclusive teaching), or a personal experience (such as how the pupil experiences inclusion). The research also points to the confusion that can arise as a result of these interpretations and emphasises the need for teachers to have a workable version of the different terms and agendas. This indicates the need for a radical review of the definition of SEN.

3. The NASUWT believes that all children and young people should have their needs met so that they are able to achieve their potential. It is vital that a label of need does not prevent them from receiving the help that they need. Therefore, the definition of SEN should be linked to and located within a wider definition of ‘additional needs’. Defining SEN in this way would support a holistic approach to meeting needs. It would also provide the legal framework for ensuring that services such as the health service can be held to account for meeting needs of children and young people.

4. The definition of ‘need’ set out in the Bill should be amended to define SEN within the broader definition of ‘additional needs’.

5. One of the reasons for the proposal in the pre-legislative scrutiny that the term SEN should be changed to ‘learning difficulties and disabilities’ was that SEN is a term associated with school. It was suggested that the term SEN is not appropriate for young people between 16 and 25 years of age. The Bill does not address this concern. Locating the definition of SEN within a broader definition of additional needs would allow for other definitions of need to be added, including a definition that more accurately reflects the needs of young people between the ages of 16 and 25.

**Qualified Teacher Status and the Role of the SENCO**

6. Current legislation requires that the SENCO must be a qualified teacher. It is essential that this requirement is retained and set out in legislation. The Bill should be amended to make it clear that a SENCO working in any setting, including a maintained school, non-maintained school or academy, must be a qualified teacher.

7. SENCOs play a key role in supporting other teachers within the school or institution, including providing advice on pedagogy. These are responsibilities that can only be undertaken effectively by a qualified teacher.

8. The SENCO needs to hold a position of authority within the school. The SENCO needs to be able to influence decisions about teaching and learning made by individual teachers and by departments. Further, they need to be able advise on approaches to planning and assessment, and influence strategic decisions about planning and assessment, including the use of strategic approaches such as provision mapping. Large schools are likely to employ a team of SEN specialists, so SENCOs in these schools will manage a team. These are tasks that require the professional knowledge and expertise of a qualified teacher.

9. The term ‘member of staff’ used in the Bill should be replaced by ‘qualified teacher’.

10. It is essential that every SENCO is appropriately trained and that they have access to ongoing professional development. However, some SENCOs experience significant problems in accessing professional development and support, particularly specialist continuing professional development (CPD) and support outside of the school or institution. The NASUWT believes that this should be addressed through both legislation and regulations. Legislation and regulations need to make it clear that schools and other institutions must ensure that SENCOs are able to undertake CPD and access professional networks of support, and schools and other institutions provide time within the working day for SENCOs to undertake training and CPD and cover the costs of this training and development.

**The Role and Responsibilities of the Local Authority, Inter-Agency Working and the Duty to Co-Operate**

11. The Bill states that a local authority is responsible for a child or young person who is in the local authority area and has been identified by the local authority or somebody else as having SEN or possibly having SEN. However, there may be issues establishing who is responsible for some groups of children and young people. In particular, children and young people who are mobile, such as some Gypsy, Roma and Traveller (GRT) children, and children and young people who have recently arrived in the country, including refugees or asylum seekers, may be at risk of being overlooked or remaining outside the system. It will be important that the legislation

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makes specific reference to who is responsible for identifying and meeting the needs of such children and young people with SEN.

12. It is important to note that some of the children and young people with SEN from vulnerable groups may not have an Education Health and Care (EHC) Plan, meaning that individual schools and institutions will be expected to take responsibility for meeting their needs. This increases the risk that local authorities will not identify and take account of their needs. The issue is further compounded by the fact that many local authorities have cut services to these groups. For example, in the case of GRT children and young people, many of the specialist services that enable local authorities to provide support to children and young people who are mobile have closed.

13. It is vital that a local authority has a responsibility to identify all children and young people in its area who have or may have SEN as this is the means for ensuring that every child can access and receive an appropriate education. However, local authorities are likely to encounter serious difficulties in carrying out this function. The fragmentation of the education system, including the increasing number of free schools and academies that are independent of the local authority, changes to the funding arrangements, and the extent of cuts to local authority services increases the risk that local authorities will not be able to fulfil the responsibility.

14. Services must work together to ensure that provision is integrated and a child or young person can access the services that they need easily and promptly. The NASUWT is extremely concerned that the responsibility for promoting integration rests with the local authority. The legislation will require listed bodies (including clinical commissioning groups, an NHS Trust and youth offending teams) to co-operate with a local authority that has requested co-operation unless co-operating would be incompatible with its own duties or otherwise have an adverse effect on the exercise of its functions. However, cuts to budgets and services mean that organisations may not comply with the duty to co-operate. While the NASUWT notes that funding cannot be a primary reason for refusing to co-operate, it is likely to have a significant impact on practice and will be difficult to challenge. For example, many organisations have had to pare back services to an absolute minimum, meaning that any request for support is likely to have an impact on how other services are delivered. The NASUWT believes that the duty to co-operate needs to be strengthened and that the duty to promote integrated working should be a shared responsibility with health services and social care services having the same duty placed on them as that placed on the local authority.

15. Feedback from teachers and school leaders to the NASUWT indicates that many of the frameworks that supported inter-agency working under the Every Child Matters (ECM) agenda have disappeared, and that schools are encountering significant difficulties in identifying and accessing appropriate provision. Simply placing a duty to co-operate on the local authority and other listed bodies is not sufficient. Steps must be taken to ensure that services have the necessary funding and resources to establish and support integrated working. The task is immense. For example, feedback from SENCOs and other teachers and school leaders who were involved in inter-agency work as part of ECM indicates that difficulties arose because of differences in organisational/sector cultures, sector priorities, policies and procedures, and even in language and terminology.

16. The local authority and clinical commissioning groups will be required to work in partnerships and make arrangements for commissioning SEN provision, healthcare provision and social care provision for children and young people with SEN. This includes arrangements for considering and agreeing the ECM provision that is reasonably required. There is a danger that financial considerations will influence judgements about what is reasonably required. This could mean that a child or young person’s needs are not met, something that will impact adversely on the child/young person but also on the school/institution that they attend. This is likely to affect the education of other pupils/students at the school/institution and will almost certainly place considerable pressure on teachers and other staff. Therefore, it is vital that a child or young person’s needs are identified appropriately, appropriate provision is put in place to meet those needs, and provision is properly resourced. Regulations supporting the legislation and broader education policy will need to address these points.

17. The NASUWT believes that there is a particular risk for schools arising from joint commissioning and collaboration. Evidence from teachers and school leaders about reforms linked to the ECM agenda indicates that other agencies were placing clear expectations on schools and SENCOs, in particular, to co-ordinate meetings and to take on the role of lead professional. This placed considerable workload burdens on the teachers concerned and had significant cost implications for schools. However, in the absence of the clear framework for inter-agency working, established as part of the ECM agenda, there is a risk that the pressures on teachers and school leaders will deepen and become more widespread. It is essential that the Children and Families Bill does not exacerbate these concerns. Legislation and related regulations, along with guidance, must provide a clear message that schools, while working closely with other agencies, should focus on their core education responsibilities.

The Education, Health and Care Plan

18. The NASUWT has a number of significant concerns about EHC Plans and clauses in the Bill that relate to these plans.

19. The proposed legislation will allow the local authority to decide that an assessment is not necessary, even if a parent or a school requests an assessment. Feedback from schools in SEN pathfinder areas suggests that the EHC assessment process is complex and could only ever work if the number of children and young people
receiving an EHC Plan is smaller than the number that currently receive a Statement of SEN. Combined with substantial cuts to local authority budgets and services, there is a danger that local authorities will limit the number of children and young people who are assessed for an EHC Plan.

20. The NASUWT notes that a local authority may only stop maintaining an EHC Plan if they are no longer responsible for the child or young person, or if they consider it no longer necessary for the EHC Plan to be maintained. This gives the local authority a large degree of autonomy. Also, NASUWT-commissioned research into interpretations of SEN and inclusion highlights that local authorities have very different interpretations of inclusion and that this leads to very different policies and practices, including significant differences in how and where needs are met. There is a distinct danger that these factors, combined with the substantial financial pressures that local authorities face, will lead to some local authorities deciding that it is no longer necessary for some EHC Plans to be maintained. It should also be noted that, at present, the Government has no effective means of monitoring local authority practices in this regard.

21. The proposed legislation will allow a local authority to maintain an EHC Plan until the end of the academic year when the young person is 25. This is welcome as it will help to improve the coherence of provision, particularly coherence through transition to post-16. However, funding constraints and cuts to services may mean that local authorities will opt not to continue many EHC Plans for this age group.

22. It is vital that steps are taken to ensure that children and young people in the criminal justice system receive appropriate support while they are in custody. It is also essential that there is continuity of support. The NASUWT is extremely concerned that this does not happen at the moment. If a child or young person does not receive appropriate, consistent and coherent support when they are in custody, they are likely to regress and are more likely to drop out of education. The NASUWT believes that this is a moral issue that should be given much greater priority by government. However, not addressing the issue is also likely to cost society much more in the long term. While it may not be possible to address this issue through regulation and legislation, the Bill provides an opportunity to reflect on the sufficiency of current provision in this regard, and to consider ways in which provision in this critical area can be enhanced further.

23. The NASUWT welcomes the decision to require academies to admit a child or young person where the school is named in an EHC Plan. The recent legal case involving Mossbourne Academy illustrates how an academy may refuse to admit a child with SEN. It will be important to monitor the implementation of this clause to ensure that academies are fulfilling their responsibilities.

24. Linked to the previous point, it is important to be alert to the practice adopted by some schools of discouraging parents of a child who may be considered ‘undesirable’ from applying to a school. The NASUWT regularly receives feedback from teachers indicating that some schools tell prospective parents that they would be unable to meet the needs of their child and that the ‘school down the road’ would be far more suitable. This is not specifically an issue for pupils with SEN, but the practice appears to be having a disproportionate impact on this group.

25. The NASUWT has concerns about the proposal to allow independent special schools and institutions to be named in an EHC Plan. Some independent schools and institutions charge extremely large fees and this could encourage or increase the practice. At a time when local authority budgets are being slashed, local authorities cannot afford to meet these costs. Further, if local authorities are forced to cover the costs then other services are likely to be lost.

SEN Code of Practice

26. The SEN Code of Practice has a critical role to play in shaping SEN policy and practice in schools and other institutions. Therefore, it is vital that teachers, particularly SENCOs, are actively engaged in discussions about the content of the revised Code. The Code should draw on evidence about what works well and address the issues and challenges that schools and other institutions may face. It should also draw on evidence that emerges from the SEN Pathfinders. Therefore, the NASUWT is extremely concerned to learn that work to revise the Code of Practice is taking place without engaging teachers and before evidence from the SEN Pathfinders have concluded and their experiences properly evaluated. This suggests very strongly that the process is politically driven.

Personal Budgets

27. The NASUWT is opposed to the policy to allow parents and young people to have a personal budget if they want one. While the Union supports the wish to ensure that parents and young people have much greater involvement in discussions and decisions about their child or their child’s SEN provision, decisions about what provision and support is provided to individuals must form part of a planned, coherent range of provision. The introduction of personal budgets and the focus on individual choice will undermine local authorities’ ability to plan strategically and ensure a coherent range of provision to meet the needs of all children and young people with SEN. It will also lead to an increasingly fragmented system of provision.

28. The current wording of the clause in the Bill means that parents will have a statutory right to require a local authority to prepare a personal budget and make direct payments even where this would not be justified in terms of efficiency and economy of scale. There is also a possibility that the personal budget could be used to pay for provision which is inappropriate to a child’s needs or where the child’s needs might be better met in some other way.

29. The NASUWT is extremely concerned that the personal budget could be used to pay for a school or college place or to directly employ somebody to work with the child at school. This would create significant problems for schools, including issues about how that person is managed and how they work with the child in the classroom. For example, the parent may insist that the person only works with their child. The teacher may believe that it is more appropriate for the person to support other pupils so that they, as teacher, can spend time with the child in order to meet their particular learning needs.

30. Better-off parents may seek to supplement money in the Personal Budget with their own money in order to secure particular support or provision for their child. This would be extremely dangerous. It creates the possibility that some services will only be available to parents who have the means to pay for them. It could also mean that future policies start from the assumption that some parents will need to pay for services.

31. The NASUWT believes that the clause should be removed from the Bill.

**The Local Offer**

32. A local authority will be required to publish information about the SEN provision it expects to be available in its area and the Local Offer: the education, health and care provision, and the training provision that is available in the area. It will also be required to keep the Local Offer under review. Local authorities will be unable to fulfil this requirement unless they are adequately resourced. Further, the Coalition Government’s education policy reforms have created a fragmented education system which places responsibility for decisions about funding, for example, with individual academy schools and with parents. The Local Offer will only work if the various players within the local system co-operate and work to a common vision. This means that local authorities will need to invest a considerable amount of time and effort into encouraging schools and others to contribute to the development of the local vision and buy into that vision. This has massive implications for the allocation of already scarce local authority resources.

33. The Bill will allow for regulations to be introduced that set out the information to be included in a local authority’s Local Offer. The NASUWT believes that the clause should be strengthened to state that regulations shall be introduced that set out what information will be included in the Local Offer.

34. The current regulations, Special Educational Needs (Provision of Information by Local Education Authorities) (England) Regulations 2001, set out information that will be useful to include in regulations that relate to the Local Offer. The regulations also establish some important principles that underpin provision for pupils with SEN, including the need to identify and promote good practice, the importance of collaboration, the need for teachers and other staff in schools to access professional development and support, and the need for a strategic approach to SEN provision locally. The NASUWT believes that regulations relating to the Local Offer should build on these principles.

*March 2013*

Memorandum submitted by Newlife Foundation for Disabled Children (CF 61)

**About Newlife:** Newlife Foundation for Disabled Children is a charity which supports disabled and terminally ill children and their families across the UK through providing equipment grants to help individual children, though nurse-led support services, grants for medical research and raising awareness and campaigning on the issues which affect them.

**Introduction:** In 2007, Newlife published its report, *It’s Not Too Much To Ask*, which highlighted the failures of statutory services to meet the needs of disabled children and their families, focussing on their need for specialist equipment to improve their condition, alleviate their pain, improve their and their carers’ wellbeing, prevent future deterioration of their condition and enable them to take maximise their educational and social opportunities. Since then, we have welcomed a number of Government initiatives aiming to improve services for disabled children and the experiences of their families—Aiming High for Disabled Children, Transforming Community Equipment & Wheelchair Services, CSED (Care Services Efficiency Delivery, grants of £50,000 to each Strategic Health Authority to bring forward proposals to improve equipment services, NHS At Home: Children’s Community Nursing Services and, most recently, the Any Qualified Provider proposals for paediatric wheelchair and/or equipment services (now on hold again).

Sadly, none of these initiatives have significantly changed the experience of disabled children and their families who still have to struggle to get the services and equipment that their disabled children need. They continue to wait far too long for assessments, let alone for the proposed services or provision. The current cuts to local authority budgets coupled with both the reorganisation of and financial pressures within the NHS exacerbate an already intractable problem. Families themselves are under huge emotional and financial pressures too and the impact of welfare reforms is likely to add to these pressures. We believe that there is a
real opportunity as the Children & Families Bill passes through Parliament to ensure that disabled children’s equipment needs are met and would urge consideration of this important aspect of provision.

We therefore focus our comments on this central issue, the timely provision of appropriate specialist equipment to meet the educational, health, care and social needs of disabled children.

(i) **Funding:** We welcomed the Green Paper, **Support and Aspiration; A New Approach to Special Educational Needs and Disability**, as an indication of intent to improve services for disabled children across the board. We particularly welcomed the focus on a more joined-up approach to service provision for disabled children. However, we expressed our concern in our response to the Green Paper that a commitment to adequate funding across partner organisations was vital in ensuring appropriate provision. We do not feel that this is made clear or explicit enough in the draft Bill and that this may require a completely new funding system. In our Green Paper submission, we specifically said:

> “The partnership needs to be embedded in the culture of each service organisation with genuinely pooled budgets, joint ownership of service and accountability for its delivery and a joint commitment via JSNA for service planning/commissioning”

We are concerned that the provisions of the Bill are not robust or explicit enough to ensure this. Specifically, there little clarity at present of how specialist equipment is to be commissioned or the associated funding streams.

(ii) In this respect, we are very concerned that cuts to local authority budgets and pressures on NHS finances will work against truly joined-up services as families will continue to be passed around a system where no one organisation is given the lead responsibility for ensuring needs are met. Such cost-shunting causes great difficulty for families as they have to negotiate with numerous organisations in order to meet their children’s needs, often without satisfactory resolution. This also brings duplication, added (costly) bureaucracy and frustration. It can not be allowed to continue. We remain concerned that those families most in need will still not be reached, that funding streams will not be as transparent as they should be and that a “postcode lottery” may continue.

(iii) Moreover, we are concerned that disabled children may find themselves unable to attend a mainstream school because of funding issues, particularly relating to specialist equipment provision. Governing bodies have an obligation to use resources efficiently but we feel that a focus on “the provision of efficient education for others” (Part 3, 33 2b), on the “reasonably practical” (Part 3, 35 3) and on “the efficient use of resources” (Part 3, 35 3c) may well lead—however inadvertently—to educational and social exclusion for disabled children and will limit choice. There needs therefore to be a clear legal framework and robust appeals process.

(iv) **The Education, Health and Care Plan:** We have long expressed the view that disabled children wait far too long for assessments and that, when they are in place, they wait far too long for the provisions of the assessment and/or statement to be delivered. We were therefore delighted that the Government is proposing a single, comprehensive plan (EHCP). However, we are very concerned that children who are physically disabled but do not have educational difficulties are being excluded from such single plans. We believe this to be a very serious omission which will impact adversely on children with a wide range of physical disabilities. We also believe that this runs contrary to the direction of travel set by the Children & Young People’s Health Outcomes Forum which has been endorsed by the Government. We would therefore ask for consideration to be given to widening the term “special educational needs” to include those who need “special provision” (including specialist equipment) in order to enable them to be given full access to the widest possible educational opportunities.

(v) We also feel that the health and care needs of a disabled child—in particular, from our perspective and experience, the timely access to appropriate specialist equipment—are given inadequate prominence in the Bill compared to educational needs. We believe that there is an opportunity now to redress this balance in order to meet the holistic needs of the disabled child and maximise their future potential.

(vi) We would also welcome a much clearer indication of how care and health assessments will be dovetailed into what appears primarily to be an education plan (Part 3, 21 (5)). We would oppose any compartmentalisation of a child’s needs which may lead to ad hoc or differential provision depending on whether a child is in school, at home or elsewhere.

(vii) **The Local Offer:** We welcome the reiteration (in Part 3, 22) that

> “A local authority in England must exercise its functions with a view to securing that it identifies all the children in its area who may have special educational needs ...(and)…is responsible for a child or young person if he or she is in the authority’s area.”

We have serious reservations, however, about the possible exclusion from services of children who do not have specific educational difficulties but still need specialist provision for their education (see v, above). The information within the proposed Local Offer provides a basic building block to ensuring appropriate service provision is in place but too often statutory services have failed to accurately calculate and plan for the real number of disabled children in their area, in spite of the requirement to hold a disabled children’s register, to produce a robust and accurate Joint Strategic Needs Assessment and Health & Wellbeing Strategy. We are concerned that too many disabled children are still unknown to statutory services resulting in high levels of unmet need and that this direct responsibility referred to above for a disabled child will be diluted if the focus
is only on “someone who has or may have special educational needs” (23 1(a)) or “brought to the authority’s attention by any person” (23 1(b)) as such. We strongly believe therefore that the Local Offer should include information about provision for the whole range of disabilities.

(viii) We welcome the commitment to better and more accessible information but are concerned that a local authority will only be obliged to provide information about what “it expects” to be available. This may lead to the unintended consequence of either a “race to the bottom” with minimal provision being explicitly stated or an unrealistic raising of expectation which can not be met. We believe that the Local Offer must have some mandatory force for it to be of any value.

(ix) We strongly believe that the timely provision of appropriate specialist equipment is invaluable for a child’s health and wellbeing, as well as that of their carers. Yet, too often, disabled children and their families struggle to get the equipment they need. Charities and other organisations such as ours are regularly filling in the gaps between statutory services in providing what we believe is essential, as opposed to desirable, equipment. We therefore urge Government now to take this opportunity to put this right via the Local Offer.

(x) From our perspective, we would like to see the Local Offer include explicitly and unequivocally the timely access to appropriate specialist equipment (including what we believe to be essential items such as specialist car seats to ensure that children with disabilities and terminal illnesses have access to safe and reliable travel regardless of age, disability, postcode or ability to pay). As yet, in the context of NHS and care service reorganisation, the commissioning, assessment and provision pathways remain unclear. We feel that the provision of equipment should certainly be considered in terms of the widest context of a child’s life and not simply a health matter or education or social care. Now is an opportune moment for a clear and unequivocal statement on a child’s statutory right to appropriate equipment, and its provenance, to be included in the detailed plans produced by Government.

March 2013

Memorandum submitted by research in practice (CF 62)

Background to Research and Practice

1. research in practice is a not-for-profit organisation, part of the Dartington Hall Trust’s Social Justice programme. The focus of research in practice is to build capacity for evidence-informed practice across the children’s sector, working to improve the quality of social work practice and supporting local authorities’ children’s services. We work to identify and disseminate examples of good and innovative practice and, drawing also on up-to-date research evidence in the sector, create new knowledge and an evidence base for effective practice in the children’s sector. A big part of our work is to disseminate this information through network events, a wide range of research publications and products and a range of training for all levels of the system—from ASYE social workers to Lead Members.

2. At present we have 87 partner agencies in children’s services and national children’s charities and we support over two thirds of local authorities in the UK. This means our network covers a wide geographic area, encompassing different levels of resources, needs, practices and priorities. Our work themes are identified in consultation with our Partners.

3. Our work in improving the quality of practice we believe will improve the lives of children, young people and families.

Key Messages

4. We support the move to faster timetables in the family court that take account of the timeframes for the child. However, we would like to see parental substance misuse recognised, alongside mental illness and criminal proceedings, as reasons why family court proceedings may need to be delayed. Current evidence, from both research and practice, points to the effectiveness of intensive, evidence informed and multi-disciplinary approaches that address substance misuse and strengthen and keep families together. These approaches may take longer than the 26 time limit to take effect.

5. The spirit of the Bill limits the use of experts in the family court. This is, in our view, justified as the need to instruct experts is often a cause of delay. We would further emphasise that assessments by appropriately trained, skilled and supervised social workers during proceedings is a way to reduce delay and provide sound evidence for courts to base timely decisions. Research in practice’s work in this area suggests that social workers can provide a significant proportion of the evidence required and we would support further clarification on the Bill to that effect. The issue of social workers training becomes paramount and we would recommend further thought be given to these issues. The increasing role of social workers in the family court is in agreement with the recommendations of the Family Justice Modernisation Programme.

6. Contact with birth parents and/or other family members can be extremely important for the child, and can play a key role in supporting identity, but it must be purposeful, proportionate, and appropriately supported by skilled professionals. Messages from research are that that the levels of parental conflict, the quality of the child’s relationship with non-resident parent before separation, the views and wishes of the child, the wellbeing
of the resident parent and the quality of contact supervision and planning are determinants of whether contact is positive for children. We would support a clarification of the Bill to ensure that a decision around contact for each child takes into account the range of conditions affecting children outcomes and is fully based on the evidence available. We believe that the wording ‘child safeguarding and welfare’ is not sufficiently specific.

7. In addition, we would argue that the purpose of contact should be in the interest of the child not due to a perceived entitlement of the birth parent or wishes of adoptive parent. We propose that the Bill should clarify this and not appear to focus solely on adoption (see Explanatory notes in particular).

**Sources of the Evidence Submitted**

8. Our main source of evidence for this submission is our network of partners in local authorities, academia and other organisations in the sector. One of the more distinctive ways we collect evidence on a particular area of practice is through Change Projects—a method for collaborative working and co-production of resources through which we work with practitioners and academics. One of our projects ‘Evidence Matters in Family Justice’ was initiated as a response to the challenges social workers in our network faced in using research in their court reports.

9. Our submission regarding the Part 2 of the Bill—Family Justice—draws on this work which has developed significant learning around the social workers’ role in the family court. This knowledge has partly been published as one of our newer resources ‘Evidence Matters’.

10. In addition, research in practice, in partnership with the Children’s Improvement Board (CIB), is currently running a series of regional seminars focusing on the reforms to the family justice system, promoting evidence-informed practice, supporting social workers to use research to make well-informed decisions and increase their confidence and competence in the court process. These seminars are providing a forum for us to capture thoughts and concerns of social workers, local authority legal teams, heads of service and senior managers in this area of practice. Some of the knowledge gathered here has helped form the basis of our submission.

11. In terms of our submission on contact we based our comments on work we did for our partners recently pulling together messages from research. The current research provides an interesting picture of the conditions that determine whether contact is beneficial and we would encourage the Committee to further consider the evidence.

**Detailed Information**

**Part 2—Family Justice**

Clause 13: Control of expert evidence, and of assessments, in children proceedings

12. We welcome the attention given in the Bill to the use of experts on proceedings. There needs to be consideration given to the trade-off between the potential additional evidence provided by expert witnesses with the fact that their instruction may extend timescales and will mean another person will need to be involved with family and child. The use of expert witnesses appears at the moment to be widespread. Cassidy and Davey’s analysis of public law cases closing in 2009 found that expert reports were ordered by the court in 87 per cent of cases, and in 92 per cent of those involving care applications. We do not argue that there is no need for expert reports but there is widespread concern of over-use. In addition, if expert reports are going to be ordered during court proceedings there is a disincentive for local authorities to carry out rigorous assessments and use multidisciplinary experts in their pre-court preparation.

13. We support the shift in culture on how social workers are seen to be able to provide high quality assessment and evidence that the court needs to make decisions in the children’s best interest. We would advocate that better use needs to be made of social worker’s expertise and their in-depth knowledge of the families involved in proceedings, sometimes gained over years of interaction with the family.

14. Views gathered from our network have allowed us to get a good grasp of the areas where social workers have expertise and should be able to provide high-quality evidence. Practising social workers will have trained and practised within different specialisms. Nevertheless, core areas of social work expertise include: child development; parenting; the impact of abuse, neglect and adverse environments; risk and vulnerability; attachment, separation and loss; and capacity to change. Expertise could also be provided by other social workers in the local authority with different expertise and experiences.

15. In general, experts would still be required for injuries, suspected severe mental disorders, severe learning disabilities, potential to benefit from therapy, major disability, risk assessment in serious sexual abuse and violent adults. Recognition of the areas where social workers can provide all the necessary evidence will replace reliance on experts which should be limited to the discrete specialist areas that are truly outside the skills and expertise of the court.

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231 2011
16. However, this shift in working practices within the court is not without obstacles. It is evident that there has been a tendency to instruct experts rather than relying on social workers’ assessments. Anecdotal evidence points to a lack of confidence in social worker’s capabilities and expertise by some members of the judiciary and the quality of some social workers assessments presented to court has been found lacking, with insufficient information being collected or insufficiently analysed\textsuperscript{234}.

17. If this clause in the Bill is to be successfully implemented, it requires further workforce development, courageous leadership and properly supported practitioners. Organisational support for evidence-informed practice is essential. Managers and leaders play an important role by setting strategies and expectations, encouraging learning by staff, improving access to research and learning. This will encourage social workers to develop their critical thinking skills and increase their confidence in their own judgement.

18. Serious consideration is particularly needed around workforce development. Our work has found that the use of research, evidence-informed practice and analytical skills must be key elements of social work expertise and should be central to training of both the workforce and students. The first steps to address this have been taken, but much more work is needed. The needs of the sector in terms of training and development, and a focus on the quality of education are essential. This has implications for higher education institutions and training providers.

Clause 14: Care, supervision and other family proceedings: time limits and timetables

19. We strongly support the need to conclude care and supervision cases without delay and setting a time limit to which all parties should work to. There is evidence that very long cases can reduce the options available for the child: the chances of adoption reduce with age, and unreasonable delay reduces the chances of permanency\textsuperscript{235}. The importance of avoiding undue delay has rightly been identified as an area where all the professional groups and agencies involved need to improve practice.

20. Experience from practice demonstrates that it is possible for LAs to change procedures to attain the 26 week limit (Tri-borough experience). Further efforts to identify, describe and spread examples of good practice should ensure most local authorities are able to meet the new timetable.

21. However, there are cases where due to the characteristics of the families involved, it is unlikely that the 26 week limit can be adhered to. The Bill documents recognise, for example, a disability or other impairment or the involvement in criminal proceedings as obstacles to the timely completion of proceedings. However, we would argue that another factor that is relevant when the court is deciding to extend the time beyond 26 weeks, and which has not been mentioned in the Bill, is in the cases when parents are substance misusers. Addressing and potentially recovering from substance misuse is likely to take longer that the 26 week timetable.

22. Initiatives such as the Family Drug and Alcohol Court (FDAC)\textsuperscript{236} and others are beginning to demonstrate effectiveness in treating substance misuse, reducing costs and keeping families safely together. But such approaches may need more time to demonstrate effectiveness, through verifying engagement of parents with recovery services, all the way to full recovery. Even though the cases in the FDAC are not short, it does not immediately follow that the potentially extended completion time is detrimental to children timeframe or outcomes. Although it took longer for children to be reunited with their parents, it took less time for FDAC children to be placed in a permanent alternative home. On the delay to reunite children with their parents, the study’s authors state that ‘it could reasonably be argued that this is “purposeful delay”, to help consolidate children to be placed in a permanent alternative home. On the delay to reunite children with their parents, the study’s authors state that ‘it could reasonably be argued that this is “purposeful delay”, to help consolidate

23. On a final note, whilst in agreement with the principle of establishing timescales to reduce delay, we strongly caution against adopting a punitive approach to those areas not meeting the timescale. Approaches such as league tables are not proven to be an effective means of improving practice and sustaining high quality and may have a series of undesirable lateral effects—e.g. making wrong decisions regarding the removal of children from their families in the interest of sticking to timetables. It also undermines the principles of the Munro recommendations, whereby professional judgement and increased autonomy are sought. Generally we would support the reduction in timescales but not the increase in prescription, in line with the recommendations of Professor Munro, allowing the system the flexibility that sometimes is necessary to address different needs.

Part I—Adoption and children looked after by LA

Clause 7: Contact: children in care of local authorities

24. Contact with birth families (including siblings and extended family) is generally beneficial for children and young people. There is a wealth of research, guidelines and practice knowledge pointing out the benefits of contact, which include maintaining family links and promoting a healthy sense of identity, a sense of belonging

\textsuperscript{234} Brandon et al (2008)

\textsuperscript{235} Giovanni (2011); McSherry et al (2006); Selwyn et al (2006)

\textsuperscript{236} Harwin et al (2011)
and potentially providing a basis for support for care leavers. This has led to almost a presumption for contact by court and CAFCASS officers and local authorities.  

25. The general view that contact is universally beneficial is not fully supported in research and practice evidence. Contact does not always lead to improved outcomes in terms of placement stability and improvements in the child’s mental health. We would support the need to carefully consider whether contact is beneficial and believe should be promoted in all situations, though it will be important in most. The evidence base needs to be considered regarding not only child protection issues but also the benefits to the child and family.  

26. There is value in looking at contact on a case-by-case basis and there is unlikely to be a check-list or one solution to all cases. Messages from research point to a few factors that may affect decisions on contact, including the levels of parental conflict, the quality of the child’s relationship with the parent before separation and, in the cases of private law, the wellbeing of the resident parent. The importance of children’s views and wishes on contact has also been highlighted in several studies.

27. It is particularly important to consider the impact of contact for babies, as this is a crucial stage of development in a child’s life. A baby’s need for stability and routine needs to be weighed against the need for parents to maintain their relationship and demonstrate their capacity to parent their child. Kenrick pointed to the distress caused by contact in some children and Humphreys and Kiraly highlighted the potential negative effects on development from intensive travelling and multiple people involved to maintain contact.

28. Research findings have particularly highlighted the role of contact arrangements in undermining the safety of women and children when domestic violence is a factor in the family or where abuse has occurred. UK research provides evidence for the various ways in which contact can be the means by which abuse is perpetuated post-separation.

29. It should be noted that not only the characteristics of the child and family determine the success of contact, but also the way contact is managed and supported by professionals. Professionally supervised contact is a limited resource in England and Wales and a lot of contact is either unsupervised or poorly supervised by friends or family. This becomes particularly important in cases where domestic violence and abuse has been a factor.

Clause 8: Contact: post-adoption

30. As for the previous section, decisions around contact should be made on the child’s interests and on a case-by-case basis—not the needs of the adopters to have a clean break, or the rights of the birth parents. Where contact is happening, carers and adopters should be supported to understand the issues it can evoke and to develop strategies for supporting the child.

March 2013

Memorandum submitted by Local Government Ombudsman (CF 63)

About the LGO

1. The Local Government Ombudsman (LGO) provides an important independent course of redress for injustice to users of local authority services and those delivered on behalf of local authorities. Last year the LGO received over 11,000 complaints from service users from across England, over 4,000 were about the provision of education and children services. This includes complaints such as; local authority provision of special educational needs, complaints against school admission appeals and the transition from child care to adult social care.

2. Our submission is focused on part three of the bill, specifically complaint handling procedures of SEN provision.

Introduction

3. The LGO welcomes the emphasis the Government has placed on administrative justice contained in the Children and Families Bill. Powers for the Children’s Commissioner to investigate complaint procedures

237 Radford and Hester 2006; HMICA 2005
238 CRFR Briefing 42
239 Hunt (2003); Hunt and Roberts (2004); Pryor and Rodgers (2001)
240 2009
241 2011
242 Radford et al (1997); Humphreys and Thiara’s (2003); Stanley et al’s (2010)
243 Radford and Hester 2006
available to children and the extensive complaint and appeal mechanisms surrounding Educational and Health Care (EHC) plans demonstrate the important role administrative justice plays in developing good public service delivery.

4. The integration of education, health and social care should develop comprehensive SEN provision, however, it is important that this is supported by a single point of redress for complaints. This issue has been raised by members of public during Public Reading Stage of the Bill and during oral evidence sessions at Committee Stage. We further note that Robert Buckland MP has tabled an amendment to create a single point of redress for complaints through the LGO and Parliamentary and Health Service Ombudsman.

5. In our submission the LGO has outlined three areas of the Bill which can be developed further, based on our experience of investigating complaints in this area.

6. We would also like to note that appeal mechanisms in the Bill perform a different purpose than complaints redress processes. Complaint redress review the decision making process but does not retake the decision. Appeal and complaint redress should remain separate and must not be confused. It is important however that effective signposting works between the two systems so users are fully aware of their appropriate course of redress. Our comments below relate to complaint redress mechanisms rather than appeals.

Integration of Education and Health Care Plans

7. The integration of education, health and social care may provide more effective support for children with special educational needs and ensure that families receive consistent care and support across SEN provision. This integration needs to be reflected in the accompanying complaint procedures.

8. The LGO provides the single route of redress for the majority of EHC complaints. The LGO has jurisdiction over the actions of local authorities and all social care providers. Similarly, complaints to LGO that include health care provision can be considered through our statutory powers to conduct a single, joint investigation with the Parliamentary Health Service Ombudsman. The only gap that currently prevents us from providing a complete route of redress for EHC complaints is the lack of jurisdiction over education providers.

9. In the Bill’s current form, education aspects of EHC plans will be subject to different complaint procedures to wider provision, principally through their own internal complaint mechanisms. This separation of education complaints runs counter-intuitive to the Government’s integration agenda and will weaken user’s course of redress. In order to ensure that complaints regarding education are subject to the same mechanisms as the wider EHC plans, the LGO proposes to include all bodies within Part Three of the Bill within the LGO’s jurisdiction for the purposes of SEN provision.

10. As the LGO will already be able to operate as the single course of redress for the vast majority of complaints regarding EHC plans, we believe the Government’s aims of creating a more cohesive SEN system can be better delivered by including the SEN provision of education services within our jurisdiction. The LGO understands the Government’s commitment to maintaining the independence of schools and ensuring that they are accountable to parents and the wider local community. Providing a system which gives parents the right to bring their concerns to the LGO will strengthen their ability to hold schools to account rather than diminish it.

11. There would be a number of benefits to our involvement:
   — We have the knowledge and expertise to ensure that solutions can be found to individual problems. Our approach is to ensure that a ‘one size fits all’ approach is avoided and that the needs of the individual are met.
   — We can provide an overview of the entire system, ensuring that lessons from one complaint can be used to drive continuous improvements in service delivery.
   — From April we will publish all our complaint decisions. Regularly publishing such information will provide an important resource for parents to hold service providers to account.
   — We can take a holistic approach, taking into account not only complaints regarding the actions of individual schools but the child’s wider EHC plan.

Local Authority Independent disagreement officer

12. The Bill places a duty on each local authority to appoint an independent officer for the purposes of disagreement resolution (Clause 52(5)). This places an unnecessary administrative burden and will replicate the work of the LGO at an additional cost to public funds. An independent officer in each authority will have limited ability to provide shared learning across the sector. Complaints can be resolved by each local authority using existing complaint procedures. If they remain unresolved complainants then have access to the LGO which provides an independent dispute resolution service. The LGO has many years experience of supporting local complaints handling.

Use of term disagreement

13. We would suggest replacing the term “disagreement” with “complaint” in Section 52. There should be a clear distinction between disagreements contained in section 52, appeals in section 50 and mediation in section
51. As outlined above it is particularly important to ensure a clear understanding between the appeal and redress processes and the use of the term disagreement confuses this distinction.

Conclusion

14. It is important to ensure that families have an independent and effective course of redress. In the Bill’s current form, education aspects of SEN provision sit separately from wider EHC complaint procedures. Extending the jurisdiction of the LGO over bodies contained within section 52(8) for purposes of SEN provision will ensure that users have a single complaint mechanism for all elements of EHC provision and delivery.

March 2013

Memorandum submitted by Working Families (CF 64)

1 SUMMARY

1.1 Working Families is the UK’s leading work life balance charity. We provide a free legal helpline for parents and carers who need advice about their employment rights at work and receive approximately 3,000 calls a year, with most calls being about maternity and paternity rights and flexible working. We have a network of parents of disabled children who work or wish to work. We also work with employers to benchmark best practice and to create family friendly workplaces. Our evidence is based on our understanding of both employers and employees’ views. Our comments are limited to Parts 6 to 8 of the Bill and elaborate on evidence given orally to the Bill Scrutiny Committee on 7 March 2013.

1.2 We welcome the proposals in Part 6 to introduce shared parental leave and pay as this will provide more choice for some families about how they work and care for children in the first year of life. However, we recommend some changes to the Bill to increase the number of families who will benefit from the reforms, and, in particular, to ensure that all fathers have a right to time off when they have a baby.

1.3 We are pleased to see—in Part 7 of the Bill—the introduction of a right to time off for fathers and partners to attend antenatal appointments and for future adoptive parents to attend meetings with children prior to placements. However, we argue that it would be simpler to allow “reasonable” time off and the Bill is unnecessarily restrictive and bureaucratic in its approach.

1.4 Working Families has long campaigned for the extension of the right to request flexible working to all employees. We warmly welcome the extension which is achieved by changes in Part 8 of the Bill. We raise some concerns about the changes to how employers should deal with applications and suggest improvements to encourage more flexible working take up.

2 SHARED PARENTAL LEAVE

2.1 Working Families supports the introduction of a transferable system of shared parental leave which does not undermine women’s current rights to maternity leave and pay, but offers increased choice over today’s system of Additional Paternity Leave. In the long term, these changes will help to challenge employers’ assumptions about which parent is likely to be away from work to care for a new baby and may therefore reduce discrimination against pregnant women and those on maternity leave. However, the final proposals fall short of the original changes set out in the Modern Workplaces Consultation. Restrictive eligibility criteria mean that single mothers cannot take the shared parental leave in flexible blocks, self employed fathers will not be able to access any rights to leave or pay, and couples with only one economically active parent will not be able to opt into the system. We would like to see changes to the eligibility criteria—making shared parental leave a day one right (ie with no service requirement) would increase the number of families who can enjoy the new rights. Take-up of the new proposals would also be improved if all statutory leave payments—for maternity, paternity or shared parental leave—were paid at least the national minimum wage.

2.2 We are particularly concerned that the final proposals offer nothing new for fathers in their own right. International evidence suggests that high take-up of parental leave options by fathers requires that the leave is earmarked for them, rather than called “parental leave” and available to either parent. Leave also needs to be paid at a level which adequately compensates for the loss of wages (as shown by evidence in the impact assessment accompanying the Government’s response on Modern Workplaces). The new shared leave proposals do neither: there is no “father quota” nor extension of paternity leave (although we welcome the provisions in Clause 93 which will allow paternity pay to be extended by regulation in the future). Any leave that fathers take will be paid at the flat rate (currently £135.45 per week). Working Families’ research shows that the majority of eligible fathers who do not take their paternity leave now give the reason that they cannot afford to do so. In small private sector organisations 44% of fathers take no paternity leave now. The anticipated take up of shared parental leave by fathers is low—the impact assessment suggests between two and eight% of eligible fathers will take up leave. Although the take up rates of Additional Paternity Leave are not recorded, the number of men claiming Additional Statutory Paternity Pay in the financial year 2011–12 was only 1,650 (Hansard, 1 March 2013, c744W) compared with approximately 539,000 employed fathers with a partner (2010 figures in the impact assessment). This equates to 0.3% of employed fathers taking up today’s shared leave option.
2.3 Working Families receives a number of calls about paternity leave and pay on our free legal helpline. Paternity leave is currently restricted to fathers who have been employed for 26 weeks at the 15th week before their baby is due, and who meet an earnings requirement. Employed fathers need to give 15 weeks notice of their intention to take paternity leave, and 28 days notice of their intention to claim Statutory Paternity Pay. The service requirement and long notice period for leave means many fathers miss out and have no rights to take paternity leave; they must rely instead on unpaid, short term “time off for dependants” to accompany their partner at the birth. Working Families believes a significant improvement to the Bill would be to make paternity leave a day one right so that all fathers could take time off at the birth. It is inequitable that fathers have to earn a right to leave. We would also like to see paternity leave extended and made available on a more flexible basis, rather than the current one or two consecutive weeks soon after the birth.

2.4 The original Modern Workplaces consultation proposed that the new leave could be taken flexibly to allow part time work and part time pay. Working Families believes that this would be particularly beneficial to low income parents who want to phase a return to work after leave and would like to see this idea reinstated in the Bill. It would also be welcomed by employers who could allow a trial period of a different working pattern for parents who did not wish to return full time, or to smooth the transition back to work. However, the current proposals in the Bill—which only allow leave to be taken flexibly in blocks of at least a week—are unlikely to appeal to employers or employees. Parents will have to get consent from two sets of employers to implement an on-off leave rota, and providing cover for weekly blocks of leave may be difficult for employers to arrange.

2.5 Working Families seeks clarity on the right to return to the same job after shared parental leave. The Bill leaves the issue of the legal protections currently afforded women on maternity leave or fathers/partners on Additional Paternity Leave to regulations. We recognise that introducing flexible blocks of leave may introduce additional complexity to the right to return to the same job after leave. However, we seek assurances that the rights to return will be at least as favourable as current rights. Working Families records high levels of maternity discrimination on our free legal helpline and women being demoted or sidelined after a return from maternity leave is a common complaint. The current law distinguishes between the first six months of “ordinary maternity leave” where women have the right to return to the same job on the same terms and conditions and the second six months of “additional maternity leave” where a woman has the right to return to the same job unless it is “not reasonably practicable” in which case she must be offered a suitable alternative job on similar terms and conditions. In practice it is rare that it is not “reasonably practicable” unless there has been a significant reorganisation or restructuring. We also seek clarity that the special protection afforded women during redundancy situations while they are on maternity leave will be extended to all those on shared parental leave. At present a woman on maternity leave (or father/partner on APL) facing redundancy should be offered any suitable alternative vacancy in priority to their colleagues. We are concerned that the Bill only suggests that regulations “may” make provision about redundancy during shared parental leave—we suggest that regulations “shall” (on page 65 of the Bill) make provision would be stronger.

2.6 We would like to see exceptional circumstances catered for by the Bill. Currently there are no provisions for extended leave for parents of premature babies, nor extra provision for multiple pregnancies. There may also be circumstances when it would be appropriate for another member of the family to be able to access shared leave and pay (for example, if a single mother was unable to care for her child, a grandparent or kinship carer might benefit from entitlement to leave and pay).

3 Antenatal appointments

3.1 Working Families welcomes the provisions in Part 7 of the Bill to introduce a new right for fathers and partners (including intended parents in surrogacy cases) to take two unpaid half days of leave to attend antenatal appointments with their pregnant partner. We also welcome provisions for adoptive parents to take time off to meet with a child before placement. However, fathers/partners are restricted to only two antenatal appointments, irrespective of the complexity of the pregnancy, and to appointments which must not exceed six and a half hours in length. We would prefer to see “reasonable time off” rather than the restrictions currently placed on the Bill. In some cases it would be unreasonable to take six and a half hours’ leave for a short appointment, close to home, first thing in the morning. One of our employer members noted “everyone will take the maximum”. In other cases, for example if there is a complex pregnancy, specialist appointments may be far from home and most of the time could be used up in travelling to the hospital. Similar issues apply for adoptive parents or surrogate parents who may need to travel across the country to meet and bond with a child, or to visit a surrogate mother. We would also welcome provisions in the Bill to enable fathers and partners’ leave to be paid.

4 Flexible working

4.1 Extending flexible working rights to request to all employees (Clause 101) is very welcome. Many employers already offer flexible working to all their employees and reap the business benefits of increased productivity, reduced absenteeism and sickness rates, and talent retention. Our research suggests that parents will benefit if flexible working becomes culturally acceptable, rather than seen as a concession for particular groups (notably mothers of young children). The impact assessment accompanying the Government’s Modern Workplace response quantifies the net benefits as £116.66 m to employers over a ten year period.

4.2 We are not convinced that removing the procedures by which an employer should respond to a request from primary legislation and replacing them with a duty to respond “reasonably” and “within three months”
will be beneficial. The current system works well and provides a clear and simple timetable which prevents employers prevaricating when they receive a request. Some of our employer members have raised concerns about whether “reasonable” behaviour will be more contestable at tribunal. We seek assurances that the draft code of practice to guide employers—on which ACAS is currently consulting—will be a statutory code, and that an employment tribunal may penalise an employer who fails to take it into account. There is no reference to the code in this Bill.

4.3 We would like to see further amendments to the Bill to improve access to flexible jobs. The requirement that an employee must work for an employer for 26 weeks before they have the right to request flexible working remains unchanged. Many parents and carers—particularly parents of disabled children—cannot enter a full time job and then scale down later, but too few jobs are advertised on a flexible or part time basis. We are pleased that the Government has an aspiration that the Civil Service becomes an exemplar in flexible working. We applaud the practice (set out in the Government’s Modern Workplaces response) that Civil Service jobs should be advertised by default as available for full time, part time or flexible working and “Departments that wish to deviate from this have to complete a robust business case”. All public sector jobs should be advertised on a flexible, part time or job share basis unless there is a sound business reason why not.

4.4 Working Families would also like to see an amendment to the Bill to introduce adjustment leave to provide additional short term flexibility for families going through a crisis. Exercising a statutory right to request flexible working results in a permanent change to contract, and can only be exercised once every 12 months. It can also take up to three months for a request to be considered and agreed. In some circumstances, this may be too long to wait and can result in a parent or carer leaving their job, as they are unable to manage their immediate caring responsibilities. For example, parents of disabled children may need significant time off during the time that their child’s disability is being diagnosed, but it may not be appropriate to request flexible working until a clear pattern of their care needs has been determined. We recent survey of 1,000 parents of disabled children found that 27% were out of work, the majority having given up work to look after their disabled child. However, once out of work it was extremely difficult to get back in, particularly to a flexible job, and over 50% had been out of work for over six years. Adjustment leave would also help people who become carers overnight—perhaps a parent has a stroke, or a friend becomes ill—and provide time for them to sort out care arrangements and consider what form of flexible working they may need.

March 2013

Memorandum submitted by Twins and Multiple Births Association (Tamba) (CF 65)

Briefing on the need for additional maternity and paternity leave and pay for families with twins, triplets or more.

SUMMARY

1. Our families tend to have much more to contend with during pregnancy, birth and the first eighteen months of life than families only having one baby at a time. They are also more likely to experience real financial hardship during this time than other families.

2. The current level of maternity and paternity leave, and financial support provided by the state, which is the same as for other families only having one baby at a time, does not meet their needs. We welcome the proposals in the Bill for greater flexibility in leave, shared between partners, but it will not meet the fundamental needs of our families. Nor will the proposal to allow partners to attend up to two antenatal appointments.

3. As a result of the current provision, many multiple birth parents, may find the first eighteen months of their new babies lives unnecessarily difficult contributing to paternal ill health, financial hardship, relationship stress and mothers in particular appear to have less opportunity to return to work and consequently this reduces their ability to help their family work themselves out of poverty.

4. The Children and Families Bill should be amended to double the length of paid maternity and paternity leave for all multiple birth families. Or at the very least, maternity and paternity leave legislation for multiples should take prematurity into account, by using babies’ expected (not actual) due date when calculating maternity and paternity leave. It should also allow partners to attend six scans during pregnancy (according to NICE guidance, this is the minimum number of scans they will receive).

ABOUT TAMBA

5. Tamba is a registered charity that works throughout the UK. We have over 12,000 family members and 180 local clubs. Our aim is to improve the lives of multiple birth families and we achieve this by providing a number of support services including; professional help in the home to families in crisis; a telephone helpline; specialist support groups, free publications and resources; and undertake research and campaigning.
ABOUT MULTIPLE BIRTH FAMILIES

6. In the UK, about 1 in 65 pregnancies is a multiple pregnancy and 1 in 32 children is a multiple, which equates to just over 11,000 births a year (11,053 in 2010).

CHALLENGES OF MULTIPLE PREGNANCIES, BIRTHS AND THE FIRST EIGHTEEN MONTHS

Pregnancy

7. Multiple births are relatively high risk pregnancies and this is usually due to multiples being born prematurely or under weight.244

8. Expectant multiple birth mothers are nearly six times more likely to be hospitalized during pregnancy and more than twice as likely to be admitted to the intensive care compared to expectant mothers of singletons. Maternal length of stay during the birth admission is 60–70% higher for multiple versus singleton births.245 Mothers expecting twins have on average 8 scans and triplets 9 compared to an average of 3 scans for mothers with a singleton pregnancy.246

9. Whilst we welcome the proposal in the Bill to allow partners to attend up to two scans, the reality is many partners will have to take unpaid leave to find out how their partners high risk pregnancy is progressing. Some employers may be unwilling to allow partners time off for these appointments and for many, this leave needs to be saved for the postnatal period should their babies be born prematurely or underweight and require time in neonatal care. Furthermore, many partners may have to use their leave (paid or unpaid) to care for their other children should the mother be hospitalised during pregnancy.

10. Our online survey of over 1,000 multiple birth families in March 2013 looked at their experience of maternity and paternity leave and pay and found that this legal anomaly can be devastating. The report, "Multiple Births Parents' Experience of Maternity and Paternity Leave", discovered that:

   — Due to the increased likelihood of complications during pregnancy, 29% took more than a month off sick and nearly 25% of mothers were hospitalised.
   — Ill health necessitated many mothers to take early maternity leave. 29% of twin mothers took leave at 28–31 gestation (the average gestation for single birth is 40 weeks and for twins 37 weeks), 50% of triplet mothers started their leave at this time.
   — Over 10% of partners took holiday or unpaid leave to look after their other children, whilst their mother was poorly.
   — Several respondents said they needed weekly or fortnightly scans. Over half (58.8%) of partners took additional time off during pregnancy to attend antenatal appointments or scans. Of these, a third of partners (31.3%) took more than five days of unpaid leave.

Births

11. The average length of singleton pregnancies is 40 weeks and the average birth weight is 3.5kg. This compares to twin pregnancies which average 37 weeks and triplets which average 34 weeks and their average birth weights are 2.5kg and 1.8kg respectively.247 As a result, twins are also four times more likely to die during pregnancy when compared to singletons, seven times more likely to die shortly after pregnancy, ten times more likely to be admitted to a neonatal special care unit and have six times the risk of cerebral palsy.

First eighteen months of life

12. Around 44% of twins and 91% of triplets are born prematurely and spend time in neonatal care. 42% of all multiple-birth families had at least one baby requiring neonatal care for more than a week. One in five families (20%) had at least one baby needing special care for over a month.248

13. As a result, many mothers and partners spend a considerable proportion of their maternity or paternity leave on a neonatal unit wondering if their babies will survive or will be left with long term disability. This often leaves very little time to settle in when they return home, which is made especially acute when trying to bond with, develop a routine and care for more than one baby.

Postnatal depression

14. Our research found that a considerable proportion of mothers prove to be very isolated on return from hospital. A combination of the above factors coupled with the increased demands of caring for more than one baby appears to result in almost 20% of multiple birth mothers suffering from Postnatal Depression (compared to 10% of singletons). Independent research on mothers of twins over a 12 year period have found them to

244 HFEA Press release “HFEA calls for national strategy to reduce the biggest risk of fertility treatment—Multiple births” 4 December 2007.
246 Maternity care for women having a multiple birth, NPEU, 2011.
247 ONS, 2005.
248 Tamba, Multiple Failing Report, 2009.
be more anxious and more depressed than women with singletons. Mothers of twins tend to suffer more with fatigue, anxiety and emotional distress. Twin parents can show significantly higher parenting anxiety and this can have an impact on their overall well-being and mental function. 

15. 60% of our mothers reported in the first six months they struggled to leave the house and often only had 1–2 hours contact a day with another adult. This would obviously be eased if partners were given more paid paternity leave to help share the burdens of caring for babies during the early weeks of their lives.

**Challenges for mothers of returning to work**

16. The Millennium research data also shows that multiple birth mothers find it significantly more difficult to return to the work place then other mothers and often delay returning until their children start at primary school. This may have a detrimental effect on their career prospects but more fundamental on the financial wellbeing of the household.

17. The reasons for delaying return to work include: disproportionate cost of childcare, availability of childcare, developmental delays (speech and language delays are more common in multiple birth children), lack of mobility (unable to take them places), requirement to attend hospital appointments, continuation of breastfeeding (unable to afford formula milk for more than one baby), physical exhaustion (unable to balance work with caring for more than one baby).

18. The intensity of caring for more than one baby also restricts mother’s abilities to return to the workplace. Caring for twins and multiples can create additional stress and mood/emotional disturbance for some parents, especially in the first years of life. Taking care of multiples is more difficult and complicated than caring for a singleton due to the ‘interaction factor’ in addition to other factors (such as sleep deprivation, marital disharmony and the increased domestic workload for twins).

19. It is possible that a twin parent is more likely to experience mental health difficulties, mood disturbance and this can result in cognitive compromises. Therefore for those that do go back to work, mental health difficulties or mood disturbance may have an impact on working life function as executive functions can be essential to being an effective employee. The most notable areas of executive functions which could have an impact on working efficacy could be the ability to plan, use your working memory, problem solve, verbally reason, multi-task, initiate tasks and monitor your own actions. Deficits in any of these skills could lead to poorer performance on work-based activities.

**Financial pressures of multiple births**

20. An analysis by NPI of Family Resources Surveys found that around 20% of our families live in poverty. According to the American Society for Reproductive Medicine, “The total cost of raising multiples is likely higher than the cost of raising the same number of singletons.” Half of all multiple birth families do not already have children and therefore cannot benefit from reusing existing resources. The costs of having a child/children and then multiples is also greater—very few families will have multiple cots, pushchairs, highchairs, bottles, baby clothes. Our own membership surveys and independent research suggests balancing household finances is one of the biggest problems faced by multiple birth families.

21. The greatest period of financial strain occurs between the ages of 0–12 months. This is also confirmed by Professor Mckay’s examination of the millennium cohort data, which found multiple birth families reported higher levels of material deprivation, and lower well-being for their children. Nearly half (48%) of those raising twins or triplets had used up some or all of their savings, compared with 37% of all families. They were also more likely to be unable to afford key items for their children, and to have more arrears on their bills. Nine months after giving birth, mothers of multiple births were nearly 20% less likely to have returned to work than mothers of singletons. There was a greater expectation that paid work would have to wait until their children were aged five, ie at full-time primary school, due to the expense of childcare.

22. The report also revealed that parents of a multiple birth are more likely to separate or divorce—28% of the ever-married had divorced or separated among multiple birth families, compared with 24% for other families with children.

23. Although the Sure Start Maternity Grant and the Healthy Start scheme partially recognize the additional costs of raising a multiple birth family (they pay multiples of the grant depending on the number of children born), Child Benefit and Child Tax Credits do not. As a result, multiple birth families receive an estimated £55 million less per annum (based on the figures from 2007–8) from the Government towards the cost of living.

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242 Professor Steven McKay, ‘The Effects of Twins and Multiple Births Families and Their Living Standards’ 2010.


244 American Society for Reproductive Medicine, Challenges of Parenting Multiples (Patients’ Fact Sheet), Released January 2003, Available online: www.asrm.org/Patients/FactSheets/fact.html.

245 Tamba Members survey 2004.
than other families and we are concerned that without amendment the Children and Families Bill 2013 will exacerbate this existing inequality. This is contrary to the rulings of the European Court of Justice which recommended that Governments ensure their system of leave, support and benefits are structured to support the needs of multiple birth families.

Amendments to the Bill

24. The problems outlined above would be addressed by amending the bill to double paid ‘maternity’ leave for all multiple birth ‘mothers’.

25. The cost extending paid leave from 39 weeks to 78 weeks would be around £58.1 million. (£135.45 per week maternity allowance x additional 39 weeks x 11,000 multiple birth mothers) Although based on existing data around 40% of multiple birth mothers return within a year and therefore the true cost is likely to be nearer to £35 million. At this rate, it would generate 6,600 cases to deal with each year or around 127 per week.

26. Furthermore, these problems would also be best addressed by amending the bill to double the amount of paid paternity leave for all multiple birth ‘partners’.

27. The cost of extending this paid leave from 2 to 4 weeks would be around £2.97 million (£135.45 paternity pay x additional 2 weeks x 11,000 partners). Again, due to financial pressures not all partners would take this amount of leave and the eventual cost is likely to be considerably less.

28. Recognising the financial restraints of the time, at the very least, maternity and paternity leave legislation for multiples should take prematurity into account, by using babies’ expected (not actual) due date when calculating maternity and paternity leave. Although this would be a disappointing outcome for the majority of our families, the cost of implementing this would be considerably less and support would be targeted at those families who miss out on time at home with their babies after birth and are arguably in greatest need.

29. The Bill should also be amended to allow partners to attend six scans during pregnancy (according to NICE guidance, this is the minimum number of scans they will receive).

March 2013

Memorandum submitted by Equality and Human Rights Commission (CF 66)

Part 6: statutory rights to leave and pay

Introduction

Part 6 of the Children and Families Bill 2012–13 relates to:

— Clause 87: shared parental leave for qualifying parents, and
— Clause 89: provision to introduce statutory shared parental pay.

Commission’s analysis

The Commission has analysed the above clauses in light of the requirements of the Equality Act 2010 and the Human Rights Act 1998 and concludes that the changes are in accordance with these Acts.

In particular, our analysis suggests the proposals will not:

— reduce the legal protection from pregnancy and maternity discrimination,
— disproportionately impact on any protected groups, or
— make UK employment and equality law incompatible with EC law.

The Commission notes some important European case-law developments that mark a growing recognition of the importance of shared parental leave for the advancement of gender equality. The Court of Justice of the European Union has condemned the perpetuation of “a traditional distribution of the roles of men and women by keeping men in a role subsidiary to that of women in relation to the exercise of their parental duties.” The European Court of Human Rights has also found that denial of parental leave to a father on an equal basis to the mother is a violation of article 14 (equality), in conjunction with article 8 (private and family life) of the European Convention of Human Rights.

255 The cost of extending the Child Tax Credit so that parents receive a higher family element to reflect each child in a multiple birth would be approximately £5 million per year (HC Deb 13 June 2003 c 1089w). The annual extra cost in 2007-08 of paying the eldest child rate of child benefit in respect of multiple birth children is estimated to be approximately £50 million (HC Parliamentary Question [173124] 13 Dec 2007 c 810w).
256 Zoi Chatzi v Ipourgos Ikonomikon C-149/10, [2010] All ER (D) 84 (Sep).
257 ECJ case C-104/09 Roca-Alvarez v Sesa Start Espana ET SA (2010) para 36)
258 Konstantin Markin v Russia 30078/06, Strasbourg 7/10/2010; case referred to the Grand Chamber.
The Commission’s analysis suggests the intention to improve choice for parents is in accord with the requirements of the Equality Act 2010 and the Human Rights Act 1998. However, the Commission finds little evidence that in practice proposals will reduce inequalities linked to caring responsibilities for women at work, or support greater take up of caring opportunities for men as explained below.

Although the government’s proposals extend the existing system of transferable maternity leave (available currently after 20 weeks of maternity leave), an opportunity has been missed to progress towards:

— a system of flexible, as opposed to shared, parental leave, and
— pay in which mothers and fathers each have their own exclusive entitlement.

Evidence

The Commission’s first Working Better report in 2009, ‘Meeting the Changing Needs of families, workers and employers in the 21st century’[^259], found that the entitlement for women to a long period of leave was perpetuating inequality in the workplace. Women, as the main carers with rights to maternity leave and pay, were experiencing high levels of pregnancy and maternity discrimination.

The Equal Opportunities Commission’s 2005 investigation into pregnancy and maternity discrimination[^260] estimated that almost half the 440,000 pregnant women in Britain each year experience some form of disadvantage at work, simply for being pregnant or taking maternity leave. It also suggested 30,000 are forced out of their jobs[^261].

Our analysis suggests that with the 52 week entitlement remaining with mothers unless and until shared parental leave is triggered, there will be nothing to drive change in the negative attitudes of some employers to women of child-bearing age.

The Commission’s own evidence[^262] indicates that fathers want to spend more time with their children and are less focused on work than in past generations. For mothers, the motivation to work in order to sustain their career is as strong as it is for fathers.

When asked ‘what would help your family achieve a better balance between work and children?’, fathers’ top answer was ‘more financial support from government for paternity and parental leave’. The current proposal which retains the existing two weeks of paternity leave and allows a transferable period of parental leave at a flat rate is likely to be too low to be an incentive or to support sharing, because of the drop in pay most men will incur.

By the government’s own estimates, just 2–8% of fathers will take up the flexible parental leave option, which is identical to the estimated take-up of the current additional paternity leave provisions[^263].

The Working Better report[^264] set out proposals based on evidence of the best practice in Europe to encourage greater parental choice and particularly fathers’ involvement. International policies that achieve the greatest uptake combine:

— a non-transferable allocation of leave for fathers,
— an incentive to take it (for example, a ‘use it or lose it’ condition),
— at least 60–80% replacement of fathers’ lost income, and
— fathers’ leave as an add-on to mothers’ leave, providing additional support for the family, rather than eating into mothers’ entitlement.

This is acknowledged in the bill, with the economy and additional cost being cited as the barrier to greater change, and an intention to move to an improved offer in the future[^265]. It was the basis for the original proposals in May 2011 welcomed by the Commission, ‘to grant a period of leave for fathers, available only to them on a use it or lose it basis’. Under current proposals paternity leave and pay is to remain at only two weeks, paid at the flat rate, to qualifying fathers.

Recommendations

To ensure more equal access to and take up of parental leave, the Commission’s analysis suggests consideration should be given to the following proposals:

— Access to shared parental leave to become a day-one right with no service requirement, which would increase eligibility to share leave and reduce complexity for employers and employees

Proposals currently restrict shared parental leave and pay to families where both couples are economically active and where each qualifies in their own right for shared parental leave and pay, with 26 weeks’ service prior to childbirth. Access to shared parental leave and for fathers to take time off for the birth should be universal and not have an earnings or service requirement. This will remove uncertainties and reinforce the intention of the regulations to promote shared parental responsibility.

— New leave to be taken flexibly to enable part time work and part time parental pay

This was included in the original consultation. This would be particularly welcomed by low income parents to support a phased return to work after leave, and by employers who could allow a trial of different working patterns for parents who did not wish to return to work full time. The final proposals which allow leave to be taken in weekly blocks only are unlikely to appeal to many employees or employers.

— Effective employment protection for all workers taking maternity, paternity and parental leave

Despite the existing employment protection provisions for paternity and parental leave, there is evidence that men are deterred from taking leave because they fear adverse consequences at work. It is important, for the compliance with equality and human rights enactments, that there is no regression in standards of employment protection for pregnant women, new mothers and fathers if they take leave entitlement.

— More clarity on how enhanced maternity pay would dovetail with statutory sharing arrangements

Many employers provide enhanced contractual maternity pay, but it is often conditional on the mother returning to work for a certain time. No guidance has yet been issued by government on whether workplaces that provide enhanced contractual maternity pay will be obliged to match this with parental leave payments.

— Review the decision not to reserve rights for fathers, before the 2018 review date

The government intends to make arrangements for working parents who do not meet the qualifying requirements to receive statutory payments. However, this provision will not be introduced until 2018 at the earliest. The Commission’s analysis suggests this decision should be reviewed at the earliest opportunity and more parents are brought into the scope of the regulations.

PART 7: TIME OFF TO ATTEND ANTENATAL APPOINTMENTS

Part 7, clause 97 of the bill introduces unpaid time off for fathers (and partners) to attend two antenatal appointments with their pregnant partners.

Commission’s analysis

The Commission has analysed proposals in light of the requirements of the Equality Act 2010 and the Human Rights Act 1998 and concludes that the changes are in accordance with provisions within the legislation.

This is unpaid leave and it should be noted that many employers may already be offering leave with pay to attend appointments.

The Commission analysis shows it would be appropriate for fathers to have time off to attend whatever number of antenatal appointments are necessary particularly in cases where there are concerns for the health and wellbeing of mother and/or baby.

PART 8: RIGHT TO REQUEST FLEXIBLE WORKING

Part 8 of the bill includes:

— Clause 101 removing the requirement that an employee must have parental or caring responsibilities to be eligible for the statutory right to request flexible working.

— Clause 102 removing existing procedures by which employers should respond to a request for flexible working, with a duty to respond ‘reasonably’ to requests and within a three month timetable.

Commission’s analysis

The Commission has analysed proposals in light of the requirements of the Equality Act 2010 and the Human Rights Act 1998 and concludes that the changes are in accordance with provisions within the legislation. Our analysis supports the government’s intention to implement its commitment to extend the right to request flexible working to all employees.

The Commission notes that the requirement that an employee must work for an employer for 26 weeks before they have a right to request remains unchanged. Many people—for example some lone parents or carers—are unable to enter work on a full time basis and then ask to change to flexible or part time working hours. Too few jobs are advertised on a flexible or part time basis. This results in talent being wasted and employers not recruiting from the widest possible pool of candidates.\footnote{EHRC modern workplaces consultation response August 2011 http://www.equalityhumanrights.com/legal-and-policy/consultation-responses/response-to-consultation-modern-workplaces/}

**Recommendations**

To improve the flexible working arrangements proposed in the bill, the government may consider:

i. Introducing adequate protection for employees. In some circumstances, particularly for employers who lack formal system procedures to deal with requests to work flexibly, the statutory process provided a consistent framework for the making and handling of requests. This clearly had benefits for employees working for employers who lacked a formal system to deal with requests for flexible working.

ii. The duty to respond should be within a reasonable time period for both the individual and employer. The proposal to respond reasonably to requests ‘within three months’ may be too long a period for someone whose circumstances change suddenly beyond their control, for example they are required to look after an elderly parent.

iii. ACAS is drawing up a statutory Code of Practice for employers to identify what it means to act ‘reasonably’. The Code should continue to provide opportunities for both sides to meet and discuss a flexible working request, for the employee to be accompanied to any meeting, and for an internal appeal process to be established.

iv. The 26 week qualifying period for making a request should be removed. Those seeking flexible working should be able to make a request at the recruitment stage.

**Role of the Equality and Human Rights Commission**

The Equality and Human Rights Commission is a statutory body, established under the Equality Act 2006. It is the independent advocate for equality and human rights in Britain. It aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights.

The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and encourages compliance with the Human Rights Act. It also gives advice and guidance to businesses, the voluntary and public sectors, and to individuals.

The Commission has a power under section 11 of the Equality Act 2006 to advise government on the effectiveness of equality and human rights enactments and the likely effect of a proposed change of law. In addition, as a UN accredited National Human Rights Institution, the Commission is required to comply with the Paris Principles, which include: ‘Advising Government, the Parliament and any other competent body on specific violations, on issues related to legislation and general compliance and implementation with international human rights instruments’.

*March 2013*

**Supplementary evidence submitted by Equality and Human Rights Commission (CF 67)**

**PART 3: CHILDREN AND YOUNG PEOPLE IN ENGLAND WITH SPECIAL EDUCATIONAL NEEDS**

**Introduction**

Part 3 of the Children and Families Bill 2012–13 introduces provisions to:

— reform the statutory framework for identifying children and young people with special educational needs, assessing their needs and making provision for them;

— require local authorities to keep local provision under review, to co-operate with their partners to plan and commission provision and publish clear information on services available;

— replace statements with new Education, Health and Care Plans;

— set out in regulations the detailed requirements of particular provisions; and

develop a new statutory Code of Practice to provide guidance on the new framework for special educational needs, which requires the approval of Parliament.
The Commission’s analysis

The Equality and Human Rights Commission (the Commission) has analysed the above proposals in light of the requirements of the Equality Act 2010 and the Human Rights Act 1998. We have also assessed compliance with the obligations under the UN Convention on the Rights of Persons with Disabilities (UNCRPD), and in particular, the article 24 requirement that the education system is directed to the development by persons with disabilities ‘of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential.’ This is in line with our responsibilities as a National Human Rights Institution and our treaty monitoring powers.

In summary, the Commission’s analysis is that the following aims of this bill are in accordance with the requirements of the Equality Act 2010, the Human Rights Act 1998 and UNCRPD:

— the overall aims of the Children and Families Bill to reform Special Educational Needs (SEN);
— the intention to place children, young people and families at the centre of decision making, enable them to participate in a fully informed way, and with a focus on achieving the best possible outcomes; and
— the improvement in provision from the draft clauses, in particular the development of a statutory Code of Practice to provide guidance on the new framework for special educational needs, for the approval of Parliament.

The Commission is responsible for monitoring compliance with equality and human rights enactments. Our analysis suggests this bill provides an opportunity to strengthen compliance with the Equality Act 2010 in relation to duties on education providers to make reasonable adjustments for children with disabilities, and to set out how the new SEN arrangements and the Equality Act 2010 requirements can work together to make educational provision for disabled children fit for purpose, and in line with the requirements of the UNCRPD. This is explained further below.

In this respect, the Commission’s analysis supports the provision in the bill that furthers these aims by placing a duty on governing bodies of maintained schools and proprietors of Academies to prepare an information report on SEN and disability provision to include: arrangements both for the SEN policy and for the admission of disabled pupils; the steps taken to prevent less favourable treatment of disabled pupils; the facilities provided to assist access to the school by disabled pupils; and the accessibility plan which schools must publish under the Equality Act 2010.

However, the Commission finds that if implemented the proposals may lead to regression from the provisions already in place for disabled young people and young people with SEN. Under the bill, statements of SEN (SSEN) are to be replaced by new Education, Health and Care (EHC) Plans. There is lack of certainty in the bill, however, on provision for young people without an EHC plan, who currently receive support under School Action or School Action Plus.

The SEN process currently operates separately from the reasonable adjustments, auxiliary aids and services requirements placed on schools by the Equality Act 2010. Duties in the Equality Act apply to all schools, and confer a specific set of rights on disabled children and obligations on schools. Estimates of the proportion of children with a disability vary, with research indicating that around 6 to 7% of children are disabled.

The duty to make reasonable adjustments for disabled pupils is extremely important and has the advantage of being enforceable. It is nevertheless subject to the qualification of what is ‘reasonable’ and was not intended in policy terms to be a substitute for support for learning needs provided through School Action or School Action Plus.

There is a significant overlap between disabled children and those with SEN. Research suggests that around three-quarters of disabled children also have SEN and will be receiving support through the SEN system, either by being statemented or receiving support through School Action or School Action Plus.

According to the Department for Education Green Paper, Support and Aspiration, in January 2010 21% of the school population were identified as having SEN:

— 11.4% receiving School Action provision, approximately 916,000 pupils;
— 6.2% receiving School Action Plus provision, approximately 496,000 pupils; and
— 2.7% of the school population or 221,000 pupils had a statement of SEN.

Under current proposals to replace SSENs with EHC plans, it is not clear what support arrangements would be available for the approximately 18.3% of the school population with SEN, but without a SSEN.

268 Article 24, s1 (b) Convention on the Rights of Persons with Disabilities, United Nations 2006
269 ‘Support and aspiration: A new approach to special educational needs and disability—A consultation’, Department for Health 2011
270 DfE SEN SFR (2010). Note: the total proportion of children with SEN is higher than the sum of those at School Action level, School Action Plus level or with a statement of SEN, as some children are reported as having SEN (but not a statement), but whether they are at School Action or School Action Plus level is not reported.
The importance of maintaining levels of support for young people, including those with disabilities currently provided for by the SEN system, is evidenced by data showing that these groups of learners are less likely to have educational success. The percentage of pupils who achieved 5 or more GCSE grades between A-C or equivalent including English and mathematics was:

- 28% for pupils receiving School Action provision,
- 20% for pupils receiving School Action Plus provision, and
- 8% for pupils with a statement of SEN.

This compares with 69% of pupils with no identified SEN.

This difference in outcomes does not just apply to children with learning disabilities. 47% of children whose primary need related to visual impairment attained five good GCSEs including English and maths, and children whose primary need related to hearing impairment scored even lower at 37%.

The Commission’s analysis therefore suggests it is important that all young people are identified and provided with the additional specialist support that they require through the new framework.

Recommendations

It is important to prevent regression and ensure that the new provisions and Equality Act 2010 reasonable adjustments duties work together effectively to deliver the aims of the legislation in improving education outcomes for young people. To this end, the Commission would suggest consideration is given to the following matters during committee stage:

Clause 30: Local offer for children and young people with special educational needs

How schools cater for disabled children in their area could be included in local authorities’ published information about SEN provision. This would provide parents and young people with information about how local authorities are delivering statutory obligations and should not incur any extra costs. It would also be a means of raising awareness of the Equality Act 2010 in schools.

Clause 33: Children and young people with EHC plans

It should be made clear in this clause that disabled children are covered by the reasonable adjustment duty, as required by the Equality Act 2010, regardless of whether they have an EHC plan or not. This includes making adjustments to provisions, criteria or practices, and the provision of auxiliary aids and services.

Clause 34: Children and young people with SEN but no plan

Provision for those learners without EHC plans who currently receive support under School Action or School Action Plus categories could be included in primary legislation, rather than in regulations.

Clause 36: Assessment of education, health and care needs

The draft clauses of the Children and Families Bill, published in 2012 made no provision for a parent to request an assessment of special educational needs, as provided for in the Education Act 1996.

The Commission’s analysis is that this has been remedied by virtue of clause 36 in the bill, which provides that a request for a local authority in England to secure an EHC needs assessment may be made by the child’s parent, the young person or a person acting on behalf of a school or post-16 institution.

However, there is no time limit within which a local authority must respond to a request for an EHC needs assessment, as there is within section 329 of the Education Act 1996. The Commission’s analysis suggests that, to avoid regression, a time limit similar to section 329 of the Education Act 1996 could be introduced, and that consideration is given to including this in primary, rather than secondary legislation.

Clause 37: Education, Health and Care Plans

Where a child has a disability under the Equality Act 2010, and reasonable adjustments have been made for that child, there could also be a requirement for this to be recorded in the EHC plan or what might be defined as an ‘EHC (reasonable adjustments) plan’.

Clause 45: Ceasing to maintain an EHC Plan

Clause 24 of the draft bill provided for a local authority to cease to maintain an EHC plan with no notice of a right to appeal and without continuation of the provision until expiry of the appeal period (as is the situation now in relation to the cessation of a statement). The Commission’s analysis is that this has been remedied in clause 45 of the bill, whereby the plan continues until after the end of the period for bringing an appeal or after the appeal has been determined.

However, there is no provision regarding notice being provided to the parent, as currently is required under Schedule 27, paragraph 11(2) of the Education Act 1996. To ensure no regression, the Commission’s analysis suggests this should be included in the bill.

Clause 66: Code of Practice

The new Code of Practice could set out arrangements for pupils with educational needs not deemed severe enough to warrant a plan, who currently are dependent upon provisions in the statutory SEN code for identification of their needs and for provision of support.

Role of the Equality and Human Rights Commission

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The Commission has a power under section 11 of the Equality Act 2006 to advise government on the effectiveness of equality and human rights enactments and the likely effect of a proposed change of law. In addition, as a UN accredited National Human Rights Institution (NHRI), the Commission is required to comply with the Paris Principles, which include: ‘Advising Government, the Parliament and any other competent body on specific violations, on issues related to legislation and general compliance and implementation with international human rights instruments’.

March 2013

Memorandum submitted by Kay Britton (CF 68)

I would like to add my comments to the consultation on the Children and Families Bill.

1. I have been childminding for over 15 years and currently care for 12 children between the ages of 18 months and 7 years of age. I belong to my local authority childminding network and am an accredited provider of the Early Years Free Entitlement. At my last Ofsted inspection my provision was graded ‘outstanding’. I am fully committed to continued professional development and have held a level 3 qualification since 2003. I am currently part of the last cohort undertaking the Early Years Professional Status (graduate practitioner pathway).

2. The area of the Children and Families Bill about which I have most concern is the introduction of childminding agencies.

3. Agencies for Childminders

   3.1 As I have said, I have been childminding for over 15 years and, in that time, I have worked hard to build up my business and my reputation in the local area. At the moment, my success is down to me and me alone. I am greatly concerned at the prospect of handing over control of my destiny to an agency who, from what I have heard, could be a school or nursery who know nothing at all about childminding.

   3.2 The proposal that childminders can choose not to join an agency will, I believe, be confusing for parents and will lead to a two-tier system.

   3.3 It is not clear whether there will be one agency in each area or whether, as is now the case with nanny agencies, anyone will be able to set one up. If the latter is the case, surely this will make it harder for parents not easier—how will they know which agency to go to and who will provide impartial advice to them?

   3.4 I believe that the suggestion that introducing agencies will bring down costs for parents is flawed.

   3.5 At the end of the day, I believe that many very experienced childminders will walk away from the profession and that this will lead to fewer childcare places often being provided by new childminders with less experience and expertise.

   3.6 If childminders are to lose their individual inspections and gradings I believe that standards will fall because there will be no incentive for individual childminders to strive for excellence if they are to be graded along with the rest of their agency.

   3.7 We are very lucky in my area in that we have a very supportive local authority Early Years and Childcare team who provide us with lots of training opportunities and a thought-provoking quality improvement award which encourages us to reflect on and improve our practice. They also provide information on local childminding vacancies to parents. I cannot believe that the government would consider changing a system which works so well.
I very much hope that you will take my views into account when considering these proposals which I do not think will benefit childminders, parents or the children.

April 2013

Memorandum submitted by Elizabeth Manning (CF 69)

I would like to add my comments to the consultation on the Children and Families Bill.

1. My name is Elizabeth Manning I have been a registered Childminder for 20 years. I am passionate about my role, and enjoy the freedom of being self-employed. I have read the More Great Childcare Document. I believe that the aim of the new legislation is to cut childcare costs to parents and bring more Childminders to the sector, however I feel that what is being proposed will in actual fact decrease the numbers of Childminders, bring uncertainty for parents over the type of care that Childminders provide and will ultimately increase costs for parents.

2. The area of the Children and Families Bill about which I have most concerns is Childminder agencies.

AGENCIES FOR CHILDMINDERS

3.1 Childminders do not seem to have been consulted in depth concerning this proposal. Last year childminders tried to present their doubts about the wisdom of agencies, trying also to make it clear to Ms Truss and the Department of Education that they did not want agencies. There were several well supported petitions and representations.

3.2 I believe that agencies will do exactly the opposite of what they are supposed to be doing, ie, I believe that agencies will put people off becoming childminders as well as forcing many already-established childminders to leave their profession.

3.3 The government does not want to prescribe how an agency runs, and that it to be left up to the individual agency/company to decide. How will this create a system which drives up Children’s Outcomes and reduces costs for parents? The only way for agencies to be effective is that they have to have strict guidelines on the exact amount of support they must offer, strict guidelines on the amount and quality of training the put on, precise guidelines on how they do Ofsted’s role, strict guidelines on how they get all of their Childminders to be good/outstanding in the eyes of Ofsted, set standards for which parents to look at which shows how they monitor and make sure that each of their Childminders meets a certain standard, the list goes on. If the government does not prescribe how an agency runs they are in grave danger of creating a complicated system with different agencies offering different levels of support, standards and most importantly different levels of outcomes for children.

3.4 Children cannot be passed around childminders when occasion demands; if a childminder is ill, you can’t just send a baby or toddler to someone they don’t know, they have to be left with a known person they love and trust.

3.5 Childminder Agencies are supposed to help with the paperwork side of the business, which apparently so many of us find burdensome. However has anyone really thought on how this will work. My main paperwork is writing up observation and making individual plans for children. This can only be done by the person working closely with the children, so this paperwork would not be taken away. Other paperwork is sharing with other settings, sharing information with parents, and my self evaluation. Again all of this can only be done by the person working with the child. Paperwork that can be done by a agency is Policies and Procedures, which are done once and updated very infrequently, contract’s, which are done once, Invoices, which are done monthly however most of the time the figure is the same month in month out. As you can see I am not really sure how a agency will lessen paperwork for me.

3.6 Local authority networks are currently at threat because of a lack of funding, so that will impact on training opportunities for childminders.

3.7 Childminding agencies will encourage a 2-tier childminding system, with confusion and uncertainty for both childminders and parents. Parents recognise the authority and national significance of Ofsted, and if this is withdrawn, there will be a backwards step with a downturn in standards and professionalism.

3.8 Childminders already struggle to compete with nurseries; if they are downgraded and removed from the umbrella of Ofsted, then in the eyes of parents they will be considered as second rate childcarers.

3.9 Ofsted inspections, together with the introduction of the EYFS, have improved the standards of childminders and the professional way in which they run their businesses. Taking childminders away from Ofsted will not only demoralise existing childminders, but will also take away the incentive for personal and professional improvement. Why should a childminder aim to be outstanding, if the agency grading is actually lower?

3.10 It is highly patronising to suggest that people can’t run their own business, I have managed very well for 20 years. People become childminders because they care for children want to be self-employed and independent workers.
I am very concerned about my own business, which currently provides high quality childcare for young children. I request that the proposal for Childminder agencies be removed from the Bill.

March 2013

Memorandum submitted by Families Need Fathers (CF 70)

Written Evidence to the Public Bill Committee on the Children and Families Bill 2012–13: Welfare of the child:
Parental Involvement

Established in 1974, Families Need Fathers is a registered UK charity which provides information and support to parents of either sex, grandparents and wider family members following divorce and separation. We work to ensure that children are able to maintain a meaningful relationship with both parents and their wider family following family separation. We do this through the provision of information and support to families, whilst also working with the government, judiciary and legal professionals to raise awareness of the issues faced by separating families.

SUMMARY:

This submission:

— Demonstrates that Clause 11 of the Children and Families Bill (‘Welfare of the child: parental involvement’) works in the best interests of children by encouraging both parents to play a full role in their child’s life after separation or divorce, wherever appropriate;

— Makes clear that the Bill in no way compromises the paramountcy principle. In particular, the Bill in no way implies a right to contact or any specific division of time spent with each parent by the child;

— Explains why a presumption of parental involvement in legislation is a necessary step to better reflect the expectations the wider public has of the family justice system;

— Critiques the argument that misrepresentations of the Bill in the media justify inaction in legislative change.

1.  WELFARE OF THE CHILD: PARENTAL INVOLVEMENT

1.1. The purpose of this submission is to address misconceptions about the current legislation proposed in Clause 11 of the Children and Families Bill, and the case that has been made against it in the 2nd Reading and in some of the oral evidence the Committee has already received. Specifically, these are a) that the Bill would not meet the Government’s objectives with regard to parental involvement; b) that legislation on parental involvement would conflict with, or have a negative impact upon, the paramountcy principle, and; c) that the Bill will lead to a perception amongst parents that there is a requirement for courts to presume that there will be an equal, or near equal, division of time in all cases. The paper will conclude by briefly clarifying how the legislation in its proposed form is a necessary component of the wider suite of private law reforms intended to reduce conflict between separating parents, and, most importantly of all, improve welfare outcomes for children post-separation.

2.  OBJECTIVES OF LEGISLATION ON PARENTAL INVOLVEMENT—WILL THE GOVERNMENT’S OBJECTIVES BE MET?

2.1. The Government outlined its intentions in legislating for a presumption of parental involvement in the Co-operative Parenting Following Family Separation consultation document. These were that children will benefit from the continued involvement of both parents following separation wherever this will not compromise child welfare; to make it an explicit requirement for courts to consider the benefits of a continued relationship alongside other welfare factors; to remove the perception of bias in the family justice system, and thereby encourage greater use of out-of-court dispute resolution services; and to avoid the supposed pitfalls of similar legislative changes internationally, particularly Australia.

2.2. These objectives are, evidently, interlinked. It is widely accepted that children benefit from the continued involvement of both parents where to do so would not place the child or a parent at risk of harm. It is also accepted that it is generally better for children and families where parents are able to reach agreements outside of court regarding post-separation child arrangements. The Government’s intention is that by making explicit the importance of a continued relationship with both parents in law, perceptions of bias towards ‘resident’ parents in the family justice system will be reduced. In addition, the adversarial nature of proceedings, and the entrenchment of parental conflict within the process that can lead to parents losing sight of the best interests of their children, will be minimised. In turn, it is believed that this reduction in potential for conflict will encourage more positive engagement with out-of-court dispute resolution services such as mediation, and that the provision of improved information and support for parents to use these services will allow parents to reach private arrangements without recourse to litigation and a court-ordered outcome.
2.3. Key to ensuring the success of this legislation is that the wording of a presumption does not compromise the paramountcy principle; this issue will be taken up in greater detail in the following section of this paper. However, there is a strong case to be made that supports the Government’s logic of legislating for a presumption of parental involvement, and that the wording of Clause 11 in the Bill represents the correct course of action to achieve this.

2.4. An argument made against legislation in this area has been that there is no evidence of bias against ‘non-resident’ parents in the family justice system, and that judges already give great consideration to the continued involvement of both parents in a child’s life wherever possible. It is also very clear that this is not how parents and the wider public perceive the family justice system and their experiences. A recent survey for the Channel 4 Dispatches programme Sharing Mum and Dad found that 84% of respondents believed that the family justice system favours mothers over fathers, and 88% believed that the law needs updating with regards to parental separation. This reflects wider societal changes to the way society perceives the role of both parents; research carried out by YouGov in June 2012 found that 95% of Britons agree that both parents should share responsibility for bringing up children, and 86% agreed that the role of fathers has changed drastically over the past 50 years.

2.5. We believe that these survey results reflect reality, judging by our long experience as a charity. Since 1974, Families Need Fathers have been helping parents—usually fathers, but an increasing number of mothers and grandparents—who feel that the law has prevented the degree of involvement that is best for their children.

2.6. It is not enough for a justice system to be fair in the way it reaches decisions and outcomes; it is crucial that it is also seen to be fair by the public it serves. Regardless of whether or not courts currently give due consideration to the benefits of a continued relationship with both parents, the lack of transparency and clarity as to how this is considered or applied merely serves to breed discontent and erode confidence in the system as a whole. Our members report to us that it is all too common for a resident parent to threaten that the non-resident parent will have to take them to court, in the belief that a court-order will only provide for limited contact.

2.7. Making explicit the importance of both parents in legislation merely codifies what is currently implicit in the family justice system. It does not introduce a prescription to reach particular decisions on contact, but instead brings much needed transparency to a process that for too long has been unclear to the children and families the system is there to serve.

2.8. Although the legislation proposed in the Bill is considerably less far reaching than that implemented in Australia, an examination of rates of litigation following legislation in that jurisdiction is useful for interrogating the Government’s argument that removing perceptions of bias in the system can encourage greater use of out-of-court dispute resolution services. Research by the Australian Institute of Family Studies found that there was a sharp fall in litigation following the introduction of legislation, a decrease of 32% between 2005/6 and 2010/11. This was supported by investment in the network of Family Relationship Centres. We would expect the greater support for out-of-court dispute resolution services provided for in the Bill, such as compulsory mediation information and assessment meetings, to play a similar role in the UK context.

2.9. We therefore consider that Clause 11 of the Children and Families Bill, in conjunction with improved information and support services for parents to resolve their disputes without recourse to litigation, is sufficient to meet the Government’s objectives for legislation on the involvement of both parents.

3. Clause 11 and the Paramountcy Principle

3.1. Concerns have been raised by some stakeholders in the family justice system that any reference to the desirability of involvement from both parents in legislation risks diluting the paramountcy principle, and with it increasing potential risks to children’s welfare. It is right that any change to the law which could impact upon the welfare of children should be very carefully scrutinised before being implemented. However, claims that the provisions for a presumption of parental involvement as drafted in the Children and Families Bill would put children at risk are without foundation.

3.2. Equating the clause with a challenge to the paramountcy principle illustrates a number of misconceptions about the nature and purpose of this legislation. The first of these is to consider parental involvement as a parental rights issue, thereby creating a scenario where the rights of the parents are placed in competition with the welfare of the child. This is simply not the case, in either the wording or the spirit of the clause. It is explicit that the only purpose of a presumption of involvement is that within a strict set of circumstances where there is clearly no risk to the child’s welfare, it is presumed that the continued involvement of both parents “will further

the child’s welfare”. This is clearly a question of children’s rights and parents’ responsibilities to ensure the welfare of the children is protected, and not one of rights of parents to specific levels of time with them.

3.3. The second misconception, related to the first, is to confuse the clause with a prescription rather than a presumption. There is no way of interpreting the wording of the clause in its current form to imply that parents have an automatic right to contact, let alone set levels of time.

3.4. The two-stages of the presumption make this clear. Firstly, it would require a judge to consider whether a parent can be involved “in a way that does not put the child at risk of suffering harm”. This ensures that cases involving welfare concerns will not be covered within the clause. Even if a court considers that a parent meets this requirement, it is still for the court to decide whether its application can be done in a way that “will further the child’s welfare”. The discretion of the courts and their ability to make decisions based on the welfare of the child given their unique set of circumstances will not be compromised. This is made clear in the explanatory notes and process map published by the government as an accompaniment to the clause. It is difficult to see how, if judges already give strong consideration to the involvement of both parents in relation to the welfare of the children as has been suggested, the codification of this in legislation would suddenly require courts to operate a decision making process that no longer has the best interests of the child as its paramount consideration.

4. LEGISLATION ON PARENTAL INVOLVEMENT: PERCEPTIONS OF PARENTS

4.1. An argument against legislating for a presumption of parental involvement made by the Family Justice Review panel, and one that has been raised again with the introduction of the Children and Families Bill, is that the legislation would create the public perception that parents have a ‘right’ to equal or near equal time, thereby increasing rates of litigation in the courts. This is simply not supported by any available evidence.

4.2. The wording of the Bill and the explanatory notes of the presumption make it very clear that there would be no presumption of equal or near equal time. References to media reports framing the legislation as parents gaining ‘equal rights’ to children is very poor justification for inaction, as it diverts responsibility for the explanation of the relevant legislation and processes from the family justice system itself to the individuals and families it is there to serve. Many reports on private family law still make reference to ‘custody’ and ‘access’ rather than contact and residence. This is likely to remain the case, even if the terminology is again changed from contact and residence to child arrangement orders as currently proposed in the Bill. It is unfair and unrealistic to expect parents and the media to be experts on the interpretation of a system as complex as family law before they enter the family justice system. Just as concepts such as the paramountcy principle and terms such as contact and residence need to be explained to parents, both before a case by their legal representatives or other sources of advice such as third sector organisations, and during a case and in rulings by the Judge, parents will need to be directed as to the clause’s meaning and interpretation. The argument that parents will be unable to understand how such a clause can operate is hollow, and without foundation.

4.3. There is however a great deal of evidence that many parents do not have confidence in the current system, and that they do not believe that it is capable of delivering justice for their children and themselves. As the previous references to the YouGov and Channel 4 surveys demonstrate, there is a strong public perception that the law governing post-separation parenting arrangements is out of step with the lived realities of modern British families.

4.4. Whilst legislation continues not to clearly recognise the responsibility of both parents to contribute to their children’s continued wellbeing, this perception will be impossible to change. It will merely continue to encourage parents to play out their hostility through litigation in the hope of ‘getting one over’ their former partner, at the expense of the best interests of the children. This would inevitably limit the efficacy of dispute resolution services such as mediation, as there is otherwise little impetus for parents in intractable disputes, or a parent determined to force their former partner out of their child’s life, to engage constructively with these services.

4.5. Our service users often tell us that where the parent who is living with the children does not want the other parent to be involved following separation, they will either completely ignore requests to attend mediation, or refuse to engage constructively with the other parent when in attendance. When one considers that the delays involved in trying to arrange abandoned or unconstructive mediation sessions followed by a court hearing can result in months of estrangement between the child and one of their parents in highly conflicted cases, establishing the damaging ‘status quo’ of low or minimal involvement, it is easy to see how the current system can work against the continued meaningful involvement of both parents and work against the best interests of the child.

4.6. The importance of a legislative presumption of involvement is one which goes far beyond the cases which end up in the family justice system. Although the large majority of separating parents do not end up in court, it would be incorrect to presume that all of those are happy with the arrangements put in place. All parenting arrangements are made within ‘the shadow of the law’, and many of those who do not make a court application nevertheless engage with legal professionals to find out what their position in law may be. It is certainly not uncommon for potential applicant parents to be told that they are at a disadvantage in law if they were to make an application, and that their future involvement is likely to be limited.

4.7. It is the perception of whether the law is equitable that is of most importance when we consider whether reform is necessary or desirable. The success of the wider suite of reforms aimed at increasing out-of-court
resolutions to disputes will hinge on whether the foundations of the system are perceived to be fair. The parental involvement clause is a crucial first step in achieving this.

5. **The Need for Reform**

5.1. This submission has made clear that there is a very real need for a presumption of parental involvement, and that such legislation is necessary to achieve the Government’s objectives in relation to private family law. To do so would neither hinder nor compromise the paramountcy principle, and would not require courts to adhere to a ‘one size fits all’ approach to family law. It would however be a significant step in updating legislation to better fit the wishes and expectations of the public the family justice system is there to serve, whilst also addressing the perception that it does not offer a level playing field between parents. If this perception remains, it is likely that the wider suite of reforms intended to assist parents in reaching child-centred arrangements without recourse to litigation will ultimately prove unsuccessful. The importance of a presumption of parental involvement in primary legislation can therefore not be underestimated, and the current drafting of the Bill provides appropriate safeguards to ensure that the best interests of children remain the paramount consideration for courts in determining arrangements for children.

March 2013

Memorandum submitted by Shirley Jenkins (CF 71)

My name is Shirley Jenkins. I have been a Registered Childminder since 1998. I would like to comment on the More Great Childcare Plan. I have reservations about some of the issues.

1.1 **Ratios for Early Years children.** I think it is an excellent idea that Childminders like me are to be allowed to care for up to four children at any time. This allows for a much greater degree of flexibility. I regularly care for four pre-schoolers because of siblings and ‘continuity of care’ allowances. With four, I am able to give them a high level of individual care and support and they tend to make rapid progress in all areas as a result. Many children in settings such as mine and my fellow Childminders can be up to a year ahead of their peers academically by the time they start school. Quite frankly, if I was limited to three I would go out of business, financially. We don’t make a huge amount of money as Childminders, and having the potential to earn a higher income makes the Plan very attractive. Childminders who don’t like the idea would not be forced to take four children but it would give flexibility to those of us who want to offer our service to parents. Having said that, I think that increasing the ratios proposed for nurseries would be detrimental to the care of those children. Four is a good number for one person to care for, whether they are one, two, three or four years old. I would seriously doubt that one person looking after more than four pre-schoolers would be able to give them sufficient support. If the children are to be properly ‘school ready’, they need more one-to-one attention.

1.2 I know some Childminders are worried about sustainability, but we do offer something different to nurseries, and many families want more of a family-based setting, especially if the Childminder has a good reputation for providing a good level of care and education. We charge local market rates, and with more children in our care, of course we have the flexibility to reduce our fees. It is simple market forces in action.

2 Childminders do NOT want agencies. We are self-employed and would choose to stay independent. There is no benefit to us from joining an agency. Many of us already belong to specific Childminding networks anyway.

3 **Qualifications for Early Years workers** Requiring Childcare professionals to have a minimum of Grade C in English and Maths will lead to a lot of highly skilled practitioners being forced out of the sector. I cannot see that there is any correlation between academic qualifications and ability to provide a good level of care and support for young children.

March 2013

Memorandum submitted by the National Family Mediation (CF 72)

**Introduction to NFM**

National Family Mediation (NFM) is the only voluntary sector provider of family mediation.

NFM is the national body that supports 47 local family mediation providers in England and Wales.

NFM has been delivering family mediation services for 30 years. It is a founding member of the Family Mediation Council, the regulatory body for family mediators.

NFM is the lead training body of family mediators.

NFM services provide family mediation in all issues, child contact and residence disputes and all associated applications of Section 8 of Children Act 1989. NFM services provide all issues mediation in finance and property matters in accordance with ancillary relief in divorce or separation. NFM services provide other related
support services that enable parties to separate amicably including direct consultation with children and child and adult counselling support services.

SUMMARY

1. National Family Mediation (NFM) welcomes the Children and Families Bill. This Bill provides for significant developments and enhancements in the delivery of family justice that will benefit many more families.

2. This summary is concerned specifically with clause 10 the Mediation Information and Assessment Meeting and seeks to provide additional information about the training and qualification of family mediators.

Clause 10 Family Mediation Information and Assessment Meeting

3. NFM welcomes the strengthening of the requirement to attend a MIAM from “expects” in the Pre-Application Protocol to “must” as stated in the Bill. This will help to ensure that all parties subject to attendance and the family justice staff and services will no longer be confused about the status of this meeting.

4. We believe the strengthening of the requirement to attend the MIAM and the term MIAM itself will help to increase the awareness of family mediation services generally to the wider public but also the professionals working within family justice. To alter the title would at best dilute the MIAM process into a general assessment process with little purpose and at worst create extra confusion to an already confused and distressed public that is trying to find a way through a divorce or separation.

5. The training of family mediators in NFM is central to our reputation and our commitment to providing the highest quality services to the public. People experiencing relationship breakdown are in a state of high distress vulnerability and personal emotional and practical turmoil. It is essential that the services delivered to this section of society are of a high quality. NFM very much welcomes the move towards standardised accreditation and regulation of family mediators. In NFM we believe achieving accreditation is critical to the quality of provision. The public should be assured that any mediator who delivers services meets one recognised standard. For clarification and information the average length of time to achieving accreditation in an NFM service is in the region of two years. Family mediators come from a range of professional backgrounds and this is usually a second career choice. A team in an NFM service provides a rich set of skills with mediators bringing their past professional knowledge these can include social work, psychology, law, financial expertise. This is more than an average law firm providing family mediation. Selection on to an NFM foundation training course requires that candidates are educated to degree level and/or have related relevant professional experience. They must meet the essential criterion and aptitude requirements. Foundation training provides the core essential skills knowledge and practice skills for trainees to begin supervised practice. Before practising alone NFM mediators undergo a period of supervised practice working alongside experienced accredited mediators and supervisors. Trainees take an increasingly active role in managing the mediation process during this development phase. The cases can range from young parents in conflict about children arrangements to multimillionaires sorting out trust funds. Cases can be complex or straightforward they can be high conflict and have complex mental health issues and domestic violence and child protection elements. The mediator is learning to manage highly emotionally charged negotiations between two people who are trying to end a longstanding and/or very significant personal relationship. Mediators who undertake this training soon realise it is extremely difficult to move people who are fearful or downright hostile from their positions to one where co-operation or negotiation is possible. Cases that take up court time are not always in essence complex legal issues but fear, hostility and loss combined with the legal process serve to make relatively simple issues become highly conflicted and turn them in to intransigent legal disputes. Well trained mediators can manage the negotiations even in this environment to enable people to find constructive solutions.

6. In relation to concerns expressed regarding the safety of potential victims of domestic violence I confirm that NFM mediators have been subject to compulsory domestic violence training since 1996. A mediator has to be satisfied that both parties to the mediation can make an equal contribution to the negotiation, that they are not under duress or being coerced to participate. It is a key and fundamental part of the training of mediators to assess for suitability to mediate. All mediators must comply with local safeguarding procedures and are under a duty of care to assess vulnerable children and adults.

In this working environment it is in our view essential that all mediators achieve at least the FMC accreditation. We therefore urge the committee to ensure family mediators are properly trained and accredited and fit to undertake this new role being bestowed upon the mediation profession by the legislation.

March 2013

Memorandum submitted by the National Children’s Bureau (CF 73)

SUMMARY

1. This submission relates to Part 4 of the Children and Families Bill, and more specifically clause 73 (childminder agencies) and clause 75 (duty to assess the sufficiency of local childcare).
Clause 75—Duty to Assess Sufficiency of Local Childcare

2. Clause 75 of the Bill would remove the duty on local authorities to carry out childcare sufficiency assessments every three years (section 11 Childcare Act 2006).

3. Two duties relating to childcare sufficiency were placed on local authorities in the Childcare Act 2006:
   
   — Section 6: Duty to secure sufficient childcare for working parents
   — Section 11: Duty to assess childcare sufficiency

   It is the latter which is intended to be repealed through clause 75 of the Children and Families Bill.

4. NCB believes the data received from childcare sufficiency assessments is critical to understanding whether a local authority is meeting its duty to secure sufficient levels of childcare provision. Repealing section 11 would convey a message to local authorities that assessing and securing sufficient childcare is no longer a priority.

5. In March 2013 NCB carried out a survey to ascertain the views of its early years network members on childcare reforms proposed in More Great Childcare and the Children and Families Bill. In response to question 7 on childcare sufficiency, 60% of 205 respondents raised concerns about the removal of the Section 11 duty, with many rhetorically asking how local authorities would be expected to continue to secure sufficient childcare without it. Given that local authorities will still be obliged to provide an annual report to elected members on levels of local childcare, there will still be an expectation for sufficiency assessments to be prioritised. However, many respondents noted that without the duty in place, local authority funding and posts would be cut and there would be a greater reliance on second hand information to gauge sufficiency e.g., Ofsted inspection reports, Family Information Service data.

   Evidence tells us that local authorities are not always meeting their duty to secure sufficient childcare.

6. Several recent research studies have highlighted the lack of sufficient local childcare to meet the needs of children and families.

   — The evaluations of the pilot of free education for two year-olds and the provision of free education for three and four year-olds identified a chronic shortage of high quality places for children with special educational needs and disabilities.

   — Daycare Trust reviewed the 2011 childcare sufficiency assessments of local authorities in London. Its most recent London Childcare report identified that out of the 33 local authorities in London:

     — 13 lacked sufficient suitable childcare for disabled children.
     — 9 lacked sufficient suitable childcare for children aged 0–2.
     — 16 did not have sufficient holiday childcare to meet demand.

   — Percentage of Local Authorities in England and Wales reporting in 2012/13 that they have sufficient childcare in their local area:

<table>
<thead>
<tr>
<th></th>
<th>England</th>
<th>Wales</th>
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<tbody>
<tr>
<td>Under 2</td>
<td>20%</td>
<td>25%</td>
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<tr>
<td>3 and 4 year olds</td>
<td>53%</td>
<td>38%</td>
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<tr>
<td>5–11 year olds</td>
<td>31%</td>
<td>13%</td>
</tr>
<tr>
<td>12–14 year olds</td>
<td>16%</td>
<td>0%</td>
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<tr>
<td>Disabled children</td>
<td>14%</td>
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7. With local authorities having to secure free early education for disadvantaged two year-olds from September 2013, it is imperative that they continue to be subject to clear duties to assess the quality and availability of local provision. Otherwise an already challenging situation, exacerbated by funding cuts at local authority level, will deteriorate.

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Local authority early years teams are vital in securing sufficient, high quality childcare

8. Local authority early years development teams are key to effectively assessing and securing sufficient childcare. They provide an integral role in supporting nursery settings and childminders to improve the quality of their practice, and the experiences of young children in their care. Local authority early years development workers provide continuity and proximity at ground level; through regularly visiting nurseries and childminders they build extensive local knowledge about local provision, which can be used to support parents to make childcare decisions and to ascertain when gaps in the quality or quantity of places arise.

9. The Government’s ‘More Great Childcare’ report outlines proposals to make Ofsted the ‘sole arbiter of quality’. Government is yet to provide further details about its intentions around the respective roles of Ofsted and local authorities in early years quality improvement, and the implications of these plans. However, NCB is concerned that identifying Ofsted as the ‘sole arbiter of quality’ will lead to local authorities weakening many of their essential early years quality improvement functions. We recommend that any extension in Ofsted’s remit should complement the quality improvement role that local authorities are already undertaking, rather than trying to replace it.

10. If the duty to assess sufficient childcare is removed and local authority early years teams are reduced, it will undoubtedly impact on local authorities’ ability to meet their duty to secure sufficient childcare.

 Clause 73—Childminding agencies

11. Schedule 4 which sits behind clause 73 provides that childminders registered with agencies will no longer be subject to individual inspections by Ofsted. Instead, childminder agencies would be inspected by Ofsted, a process which could include inspection of a sample of an agency’s registered childminders.

12. To ensure that all children are provided with high quality home-based care, NCB believes it is vital that all childminders, irrespective of whether or not they are registered with a childminder agency, continue to be individually inspected by Ofsted.

Ofsted inspection process keeps children safe and promotes their well-being

13. Childminders have been regulated by Ofsted since 2001, and for the past eight years have been judged against the same Ofsted inspection criteria and standards required of all early years providers. Having a national inspection framework in place has ensured that a consistent approach to inspection is applied to all early years providers, including childminders. This has helped to professionalise and raise the status of childminding.

14. NCB is concerned that children’s welfare will be put at risk by removing the requirement for all individual childminders to be inspected by Ofsted. It has been proposed that each childminder agency will have its own system for assessing the quality of childminder provision; this will lead to variations in the quality of monitoring and may have a detrimental impact on childminder practice and the safety and well-being of children. NCB believes that proposals to stop the individual inspection of agency-registered childminders will lead to the quality of childminder provision becoming a post-code lottery.

15. Maintaining current inspection regimes would not be onerous; most childminders are only inspected every three years.

Judging all childminders against the same criteria helps parents choose high quality care

16. A Netmums/NCMA survey found that 75% of parents may not choose a childminder without the reassurance of individual inspections.

17. Parents use Ofsted inspection grades to help them choose childminders that will offer the highest quality care. When a childminder registers with an agency, they will be obliged to relinquish their registration certificate and latest Ofsted grading. In making important childcare decisions, all that parents will have to go on is the agency’s grading and recommendations for local childminders.

The proposals could create a conflict of interest for childminder agencies

18. The quality of childminder agencies, as assessed by Ofsted, will be based upon the agencies’ own evaluation of their registered childminders—creating a potential conflict of interest. The individual inspection of childminders should therefore be maintained to ensure this situation does not arise.

281 NCB hosts the National Quality Improvement Network, which supports the quality improvement of early years provision at a national, regional and local authority level. We would be able to brief further on the role of local authorities and Ofsted in improving quality of provision.


NCB/NCMA research on the value of childminding networks

19. In 2005, NCB in partnership with the National Childminding Association carried out a research study on childminding networks. The report highlighted what childminders identified as the factors that made networks successful in improving their practice such as a dedicated co-ordinator with childminding experience and the opportunity to take childminding specific training at times suitable for them.

20. Childminders that took part in the research study felt that being part of a network had raised their self-esteem, and increased parental confidence in them.

21. NCB believes that the expansion of childminding networks, through focused and systematic support from central and local government, would effect the same improvements as childminder agencies without adding an expensive extra layer of bureaucracy.

April 2013

The National Children’s Bureau (NCB)

The National Children’s Bureau (NCB) is a leading research and development charity that for 50 years has been working to improve the experiences and life chances of children and young people across England and Northern Ireland, especially the most vulnerable.

We play a strategic support and leadership role across the sector by:

— initiating partnerships and projects, for example, [children’s play, disability, life skills, and youth justice that aim to improve the lives of children and young people]
— sustaining the effectiveness and efficiency of over 30 key specialist networks, including the Council for Disabled Children, the Every Disabled Child Matters campaign, the Early Childhood Forum, Anti-Bullying Alliance, Play England and the Childhood Bereavement Network
— championing the use of evidence, and the involvement of children and young people, to shape and improve national policy and local services
— building the skills, knowledge and networks of front-line practitioners and voluntary groups working with children and young people.

Every year we reach more than 100,000 children and young people through our links with organizations including local authorities, children’s service providers, academic bodies, schools and voluntary organisations.

For more information visit www.ncb.org.uk

Memorandum submitted by Mr John Cahill (CF 74)

I would like to help the committee with details of my own experience as a member of the charity Families Need Fathers. If you allow me to contribute in some way then that would be appreciated.

It is clear to me that there are many flaws in the Family Justice System and in some respects I had hoped that legislation discussed during the consultation period would have been more far reaching.

The impact of any legislation and amendment to the Children’s Act will also need a culture change that enables all interested parties to see that the emphasis on both parents being involved with their children must be agreed without the need for litigation and adversarial proceedings in the Family Court.

I have seen hundreds of good people mothers, fathers and grandparents lose contact with their children. And the causes are common and directly related to a FJS that does not have a child’s best interest as being paramount to the child’s best interest.

Many members of the charity are faced with false allegations, delays, implacable hostility, poor judicial continuity.

Cafcass were mentioned as being inept and biased to the resident parent many times

An example of this bias.

Evidence of family holidays, birthdays, day trips and Christmas was available. The Cafcass did not want to see any of the video footage. When a report was entered by Cafcass into the court the officer stated that contact in the child’s formative years was based on chance meetings encouraged by the mother.

Wishes and feeling reports are also conducted by Cafcass on children as young as 6 7 and 8 years old, Cafcass are fully aware of the influences that are used on the young children but do nothing to identify and act on the problem.

Now in many cases if you also take on board that the resident parents have also made deliberate and false allegations and then include the fact that all this can be sponsored by a resident parent’s Legal Aid you will start to see why in proceedings the children’s interest are not paramount but a hostile resident parent will find it very easy to purposely manipulate Cafcass the Family Court and the FJS.

Cafcass and The Judges will continue turn a blind eye instead of facing up to the real issues and acting accordingly. They are afraid to upset the resident parent in case she/he gets stressed or takes flight.

Enforcement is not effective or working.

Delays give a hostile resident parent the time in public life to marginalize the non resident parent away from their own children. I have seen this evolve time and time again and it is scandalous and a total waste of everyone’s life at what should be the best time of a child’s development.

Once again it is imperative to stop parents entering the Family Court it is not in the child’s best interest and believe me all the parents I see only ever wanted was to continue being a proud and supportive parent and enjoy the normal things that families in general take for granted.

I have found that even if the applicant parent was neither hostile and co-operated fully with all the professionals they still felt helpless and at a disadvantage with the FJS. Week by week month by month year by year loosing contact under the noses of Cafcass and the Judges was always on the horizon from the day an application to the court is filed.

You only need ONE hostile resident parent to undermine the whole system.

So the emphasis to create a culture change will need a presumption of shared care and parental agreements should become the norm after Divorce or separation.

Many parents and children have been let down by the FJS.

This consultation is a once in a lifetime opportunity to make significant changes to the Children’s Act. The Family Justice System is flawed in so many ways, and it cost £50 billion tax payers pounds to keep it and all those that work for it oiled and the cogs turning.

The Judges need to make a clear unambiguous statement to any parent that Court is the last resort and contact arrangements need to be established and children must not be used as a weapon to beat the non resident parent, and leaving the public to foot the bill.

Mediation must be undertaken by both parents at the earliest opportunity and the culture change needs to start before families even consider mediation.

If families do need to go to court again there must be a 6month target completion agreement which place the emphasis on a feasible contact arrangement order.

Cafcass need to identify as early as possible, (1 month) any parent who is not set on reaching a contact agreement that is feasible. Cases only become complicated when Cafcass do not act and the resident parent is left to be the dominant force in proceedings.

April 2013

Memorandum submitted by Mrs Catherine Barrow (CF 75)

Re: Clause 11

‘A presumption that the involvement of both parents in a child’s life will further that child’s welfare unless the contrary is shown.’

I write to support Clause 11 of the Bill.

As a parent and grandparent, I support Clause 11.

The non resident parent is currently disadvantaged in matters of contact if the resident parent wishes to be difficult.

A legal recognition that regular access for the child to both parents will benefit the child during his or her upbringing, and enable the non resident parent to contribute fully to the child’s development, will benefit all parties, and most importantly will meet the child’s needs and best interests more effectively.

The ‘presumption’ of the validity of the involvement and influence of both parents is crucial.

In order for Clause 11 of the Children and Families Bill to be effective, I consider that the Court needs to recognise the following points:

— It is in the child’s best interests, unless proven to the contrary, to maintain a significant relationship with his or her non resident parent; this usually being the father.
— That parental alienation exists, and is understood as a form of child abuse, as perpetuated by the resident parent.
— That the resident parent’s influence on the child in this situation causes both short and long term damage to the child; both in her relationship with her father, and in her emotional/psychological development; both for childhood and adult life.
— Where the child’s stated wishes are in direct conflict with her best interests, his or her best interests should be given precedence; particularly where the stated wishes are a direct or indirect reflection of emotional abuse by the resident parent.
— A presumption that the father is able to act in the best interests of his child unless proven otherwise; and hence is given the sanction by the court to do so accordingly.
— That particular attention is given to the non resident parent’s case for his child’s wellbeing as presented to the court; as often being the trigger for Family Court involvement in the first place.
— For Court Process to move swiftly and decisively, to prevent a deepening of the alienation process being effected on the child by the resident parent.
— In working to reach solutions, where the resident parent is acting as a barrier to contact, the resident parent should be recognised as central to the problem; and action taken accordingly.
— An understanding of the importance of other family members on the wellbeing of the child. Where contact with the father is meagre or denied, the child in effect loses contact with the extended family on the father’s side.
— A recognition of the ‘cycle of abuse’ which is instigated by the resident parent
— The child may learn manipulative behaviours from the resident parent; and this influence, together with the loss of a relationship with the father, could feasibly pass to future generations, resulting in troubled and troubling adults ill equipped to raise their own children effectively.
— An understanding of the trauma and distress caused to the child, compounded where there is failure by the Court system to act in that child’s best interests.
— The Court needs to make wise decisions to resolve the difficulty and not perpetuate it.
— Often, the child needs to be freed from the burden of decision making in this situation.

The implementation of ‘Clause 11’ will, potentially, significantly improve the relationship between the child and his/her non resident parent; where the above points are understood, and where their implication is clearly evident in the resulting Court decisions.

April 2013

Memorandum submitted by His Honour John Platt (CF 76)

Comment on the Children and Families Bill currently in committee in the House of Commons.

SUMMARY

1. The present definition in section 13 of what constitutes a child arrangement order firstly deprives the court of an important element of the range of orders presently available to the court on contact applications and secondly may introduce an element of compulsion to what were previously called residence and contact orders, both of which run the risk of being positively harmful to the welfare of children.

SUBMISSION

2. I am His Honour John Platt. I retired as a Circuit Judge in May 2012 after thirty years’ experience of judging private law cases in the Family Courts. I have authored a book and numerous articles on Domestic Violence. As a serving judge I lectured regularly to judges and lawyers on Domestic Violence and I still lecture at International Conferences on this subject.

3. My principal concern is with the consequences in the bill as drafted which follow on from replacing residence and contact orders with an omnibus child arrangements order. This new order is defined in much wider terms than the definitions of the present residence and contact orders. The effect is in conflict with the entirely laudable aim of the Bill to reduce parental conflict over child arrangements and risks increasing rather than reducing such conflict. In order to understand how this will come about it is necessary to look at the present law in more detail.

ORDERS REGULATING CONTACT

4. The nature and extent of parental disagreement over post separation arrangements for their children is as diverse as human nature itself and it is important that the response of the court which makes the order is proportionate to the level of disagreement. An order expressed in too draconian terms may simply pour fuel on the flames of parental discord and end up actually harming the children it is supposed to help.
5. At the moment a judge dealing with a contact application has three choices. He may apply the no order principle. He may make a declaratory order (a subset of the no order principle) setting out the contact arrangements which he decides best meet the welfare needs of the parties. Finally he may make an order in mandatory terms.

6. The first order meets the case when, usually during the course of the proceedings, the parties have reached a compromise which the court approves and the parties can be trusted to work together in the interests of their children.

7. The second order is not a contact order as presently defined by section 8 but makes a declaration which the parties are expected to use as a basis for contact with the kind of adjustments which the accidents of daily life will inevitably produce. For example a child has the chance to spend a weekend he should be spending with his father with maternal relatives visiting from abroad or to attend a family celebration. Of course reasonable parents would not hesitate to swap weekends and the judge is best placed to decide whether the non-resident parent is likely to be reasonable in this way.

8. This order has the huge and important psychological advantage to the parties in that there is at this stage no element of compulsion but an independent judge has after listening to them resolved by decision a problem which they have been unable to solve.

9. The other very considerable advantage of the declaratory order is that it encourages the parents to compromise and co-operate in the future, which is the key to successful contact, and places the responsibility for making day to day decisions about children’s lives back where it should be, on the shoulders of their parents.

10. It is highly undesirable that minor disagreements over the quantum of contact should end up in court. It would also be preferable not to place further burdens on a family court system by having to resolve such disputes when it is already facing unprecedented strains on its resources.

11. Finally there is the court order in mandatory terms. At present this is and should be very much an order of last resort where one or other parent, and sometimes both parents cannot be trusted to co-operate in the task of ensuring their children build a loving relationship with both parents.

12. But this order carries a serious risk. A parent who is faced with a mandatory order for contact and does not comply can defend an enforcement order application by showing a reasonable excuse for non-compliance. The test is an objective one and depends on the view of the judge. Not every case will be clear cut. The changes in legal aid entitlement will make is practically impossible for many parents to take legal advice on what is or is not likely to be a reasonable excuse.

13. A significant number of contact applications are made by perpetrators of domestic abuse who have a dual purpose in making the application. The primary purpose may well be a genuine wish to play a positive part in the lives of his or her children and the perpetrator, although not perfect, may be reasonably capable of fulfilling that role to the long term emotional benefit of his children. However the second purpose is control.

14. The essence of domestic violence is control of the victim by the abusive partner. Even when the victim has escaped from the control of the relationship a contact order can offer the perpetrator an opportunity to re-assert his control over the life of the victim. A judge facing such an application has to balance the welfare needs of the children having a loving relationship with the non-resident parent, which may well be possible to achieve, against the danger of the resident parent being exposed to domestic violence by controlling behaviour of the perpetrator. In some cases the children’s welfare needs may outweigh the risk of any harm to them and lead to an order being made, but for some perpetrators the opportunity for control is irresistible and can lead to frightening results.

15. Under the new definition the declaratory order effectively disappears as a separate form of order and the court is reduced to a choice between making an order or making no order. It does not matter whether the new order is phrased in declaratory or mandatory terms, the amendments in Schedule 2 will require all child arrangements orders to carry a warning notice and to be enforceable by the enforcement order or compensation route.

16. But this produces a knock on and possibly unintended effect on enforcement by the alternative route of committal proceedings. At the moment if the order is broken, the person in whose favour the order is made has the option of applying for an enforcement order or applying for committal. But it is a fundamental principle of law that only orders made in mandatory or prohibitory terms are enforceable by committal. Unless all orders are now to be phrased in mandatory terms the present form of warning notice will need to be amended and two separate forms introduced in order to avoid giving incorrect information to the parties.

17. Orders made in declaratory terms may be enforceable by application for an enforcement or compensation order but there is certainly European Court jurisprudence to support the proposition that enforcement proceedings are governed by Article 6(2) of the convention and in consequence the order which lacked the precision of a mandatory order would fall foul of the rule laid down by the Court of Appeal in Manchester City Council v Lee.
with the applicant mother” offers any greater psychological comfort to the disappointed father. It is in truth a distinction without a difference. And an order in mandatory terms “The respondent father must permit the child X to live with the applicant mother” is likely to be very much less comforting to the disappointed father than the present wording. Indeed the various amendments set out in Schedule 2 which replace the words “the person in whose favour a residence order is made” with “the person who is named in the order as a person with whom the child concerned is to live,” would clearly point to an intention that the new orders will simply be declaratory and follow pretty much the existing wording.

19. The purpose of extending the warning notice and enforcement provisions in sections 11I to P to declaratory orders regulating with whom a child shall live is unclear and the difficulties set out at paragraphs 15 to 17 would equally apply. In any event the Family Law Act 1986 already provides a much swifter and more effective remedy for the unauthorised removal or detention of children in breach of a section 8 order.

20. The required amendments to resolve these issues are very simply shown in italics as follows.

Section 13. After “In this Act—” insert—

“child arrangements order” means an order either in declaratory or mandatory terms regulating arrangements relating to any of the following—

(a) with whom a child is to live, spend time or otherwise have contact, and
(b) when a child is to live, spend time or otherwise have contact with any person;”.

As a matter of pure drafting subparagraphs (a) and (b) above can be simplified and much improved by deleting and substituting

… relating to “when and with whom a child is to live, spend time or otherwise have contact with any person;”

Consequential amendments will then be needed in Schedule 2 to make clear that the warning notice and the procedures for applying for an enforcement order are only to be applied to orders in mandatory terms.

April 2013

Memorandum submitted by the Kinship Care Alliance (CF 77)

WHAT IS THE KINSHIP CARE ALLIANCE?

1. The Kinship Care Alliance is an informal network of organisations who have been meeting regularly since 2006 to develop a joint policy agenda and agree strategies:

— prevent children from being unnecessarily raised outside their family,
— enhance outcomes for children who cannot live with their parents and who are living with relatives and
— secure improved recognition and support for family and friends carers.

FOSTERING FOR ADOPTION (CLAUSE 1)

2. We recognise the importance of vulnerable children, especially babies, being able to form early attachments to their permanent carers and of them experiencing as little placement disruption as possible, for their long term well-being and development. However we are very concerned that the combined impact of Clauses 1 and 6 which promotes fostering for adoption and clause 14 which accelerates decision-making in care proceedings, will, in practice, potentially militate against children’s best interests and chances of the child being able to be cared for safely within their family network. We fear they constitute a fundamental shift in the State’s relationship with the family and will, in many cases breach the child and family’s rights to respect for family life and fair process.

3. Clause 1 states that, despite there not yet having been any court decision that the child should be placed for adoption, as soon as the local authority are considering adoption for a child in the care system, social workers must consider placing the child with a prospective adopter who is approved as a temporary foster carer. The Contextual Information285 (page 26) indicates that this could arise in the first week of the child being looked after or even in pre-birth planning discussions. The local authority will also be exempt from the requirement to give preference to suitable wider family members286 and will no longer be required to place the child within the local authority’s area. Clause 6 also allows them to place such children on the Adoption and Children Act Register to help find suitable adopters for them.

4. Once placed, the child will settle with, and form attachments to these prospective adopters and social workers will no longer be required to work with the family to identify suitable alternative long term care with relatives if the child cannot safely return to their parents. Moreover if the child is placed far away, contact between the child and the family may be very difficult to maintain.

286 S.22C CA 1989.
5. A court which later considers whether the threshold for removing the child from their family has been established and whether the child should be placed permanently away from the family, will be faced with the status quo argument that the child is now settled and thriving with the adopters and to move them would be potentially harmful, even if there was a suitable family placement available. Thus the court process will be pre-empted by a fostering for adoption placement; placement orders will effectively become redundant.

6. Clause 1 applies to children who are in care by agreement (s.20 voluntary accommodation) as well as those who are under a court order. The absence of court proceedings in accommodation and pre-birth cases means there will not have been any legal proceedings at all, hence the parents will not have had access to the free legal advice they would receive if an application is made for an emergency protection or care order. Without legal advice, vulnerable parents (many of whom are young, care leavers, have learning difficulties and/or have experienced domestic violence), are unlikely to fully understand their options and the implications of agreeing to their child being placed with ‘foster for adoption carers’, hence many will not be able to give informed consent to an arrangement which may remove their child from them forever.

**OUR PROPOSAL:**

7. We concur with BAAF’s view that clause 1 as drafted is unworkable. Family and friends care is a key resource for children who cannot live safely with their parents. Whilst not only promoting positive outcomes for children, it also has the same advantages for the child as fostering for adoption in terms of early attachment, stability and continuity which can continue long term if the child cannot return to their parents. We therefore recommend that any proposal for fostering for adoption should first involve a thorough exploration of safe family options before a fostering for adoption placement is made.

8. We recommend that Parliament:

— adopts similar wording to Clause 65 of the Social Services and Wellbeing (Wales) Bill currently before the Welsh Assembly which sets out a more balanced way of promoting fostering for adoption only after suitable family options have been explored first;
— places a new duty on local authorities to explore suitable wider family options, including offering a family group conference, before a child becomes looked after (unless there is an emergency) in order to maximise early work with families and ensure that systemic delay in planning for permanence is avoided; and
— ensures that parents have access to free legal advice and have their consent independently witnessed by CAFCASS before a fostering for adoption placement can be made unless a care order has been made.

**IMPROVED SUPPORT FOR FAMILY AND FRIENDS CARERS**

9. Family and friends care as a suitable option for children who cannot remain safely with their parents has increased dramatically in the last decade, resulting in huge savings to the state. An estimated 300,000 children are being raised by relatives and friends, who are typically grandparents, aunts, uncles, or siblings, who are raising the child because of parental mental or physical ill health, learning disabilities, domestic abuse, alcohol or substance misuse, imprisonment or bereavement. Only an estimated 6% of these children are looked after by the local authority; 94% are living with relatives and friends outside the care system, either with the parents’ agreement or under a residence order or special guardianship order which they are granted by the courts.

10. Despite these children suffering from similar adversities to children in the care system, their carers often having multiple problems of their own and support being inadequate or non-existent, research confirms that in terms of outcomes for children in family and friends care

— they are as safe, and doing as well if not better, in relation to their health, school attendance & performance, self-esteem, social & personal relationships and show a marked improvement to emotional/behavioural problems when compared with children in unconnected foster care;

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287 See for example the case of Re: P (Adoption: Care Plan) [2004] 2 FLR 1109.
289 The cost of an independent foster care place averages £40,000 a year; the average of state expenditure on care proceedings exceeds £25,000.
290 A child is looked after by the local authority if they are in care with the agreement of parents/others with parental responsibility or if they are under an Emergency Protection or Care Order. In these circumstances the carer must refer back to the social worker regarding all major decisions about the child.
291 These carers must be approved in accordance with Fostering Services Regulations 2011 and national Minimum Standards on Fostering, except in an emergency in which case they must be approved in accordance with Regulation 24 Care Planning, Placement and Case Review Regulations 2010.
292 3 out of 4 family and friends carers experience severe financial hardship; a third are lone carers and 1 in 3 live in overcrowded conditions; 3 out of 10 have a chronic illness or disability (Farmer and Moyers 2008, ibid).
293 The kind of support that is needed includes: a social worker being allocated, help to manage the complexities of the contact arrangements particularly with the parents, and counselling and specialist help for children with the most severe emotional and behavioural problems.
294 Farmer and Moyers 2008; Hunt et al 2 008, Ibid.
— Most family and friends provided excellent care for the children and put the children’s needs first above that of their parents. There is no significant difference between the rates of poor placements between family and friends carers and unrelated carers.

— Family and friends carers are more likely to match their ethnicity (88% v 78%) and to be highly committed to them (63%) than unrelated foster carers, leading to more stable placements.

11. These outcomes suggest that family and friends care may be the optimal arrangement for many children who cannot stay safely at home with their parents. Moreover, it is consistent with their rights under the European Convention to respect for family life. It is therefore an increasingly important practical option for such children, given the record numbers of children in care proceedings and the severe shortage of unrelated foster carers, which is resulting in many children in care experiencing temporary placements, being split up from their siblings and having to move away from their school and family support network.

12. However, the need for support for family and friends care arrangements is acute. Many of them face huge financial burden as a result of taking on the children: most have had to refurbish their homes, buy basic items such as beds, bedding and clothing, pay for child/after school care; and pay large legal bills to secure the child’s future with them. Yet the system for supporting family and friends care is inadequate and outdated, resulting in many such placements being put under huge strain and some even breaking down. It stands to reason that the outcomes for these children could be even better if their carers received adequate support to help them meet their needs.

13. Drawing on our collective experience of advising thousands of family and friends carers each year, we believe this lack of support is attributable to a number of factors:

a. The local authority is only required to provide financial and other support for the small minority of children in family and friends care who are looked after. The vast majority (94%) can only get such support at the local authority’s discretion hence there is considerable inequity and local variation in access to support for this group.

b. With a few notable exceptions, most local authorities are not structured in a way that actively promotes and supports family and friends care. Often, there is no dedicated family and friends care team, hence the needs of these children and their carers are dealt with by a range of teams in Children’s Services who may lack the necessary specialist knowledge and expertise.

c. There are no official published statistics on the numbers of children in family and friends care nationally or locally, making it difficult for local authorities to effectively design, develop, finance and deliver specialist family and friends care support.

14. Statutory guidance on family and friends care (April 2011), which aimed to promote more effective help irrespective of legal status, has not sufficiently redressed these shortcomings. Over a year after the deadline set in guidance, over 30% of English local authorities failed to publish the requisite family and friends care policy setting out local support available. Furthermore the guidance did not change the fundamental legal position that local authorities do not have to support the 94% of children in family and friends care who are not looked after. Thus in the current financial climate, non-statutory services are being cut, rather than developed, in many localities.

15. We therefore urge Parliament to maximise the use of family and friends care and outcomes for vulnerable children by:

295 Article 8(2) ECHR.
296 This is despite the parents rather than the carer being legally liable to support the children (s.1 Child Support Act 1991).
299 Hunt, J. and Waterhouse, S. (2012) Understanding family and friends care: the relationship between need, support and legal status London: Family Rights Group found that 95% of family and friends carers identified at least one unmet need for support; most mentioned several. Even more worrying, carers who were raising the most challenging children were the most likely to be receiving no support at all.
300 Their experience is likely to worsen once the Welfare Reform Act 2012 is implemented because of a) benefit cap: Many family and friends carers who large households, as a result of taking on a sibling group in addition to their own, will have their benefits restricted by the cap, irrespective of their needs; and b) conditionality requirement for job-seeker’s allowance: Those caring for a school age over 5 must be available for work once they have been caring for the child for 9 months, in order to get job seeker’s allowance. However, many are not working either because they were asked by Children’s Services to give up work in order to raise the child; or because the children have significant needs. Such carers need job seekers allowance, because they are not entitled to maternity or adoption paid leave.
301 Ibid n.7.
302 Shaileen Nandy, Julie Selwyn, Elaine Farmer and Paula Vaisey (2011) Spotlight on Kinship Care (University of Bristol) analysed 2001 census data, but this only relates to children living with family members i.e. excludes those living with friends.
a. Amending clauses 4, 5 to provide parity of support (in terms of personal budgets and access to information about support) and clause 91 (in terms of employment protection) between special guardians, many of whom are family and friends carers, and adopters;
b. Introducing a new duty on local authorities to establish a family and friends support service similar to that provided to adopters; and
c. Amending s.77 Social Security Contributions and Benefits Act 1992 to introduce a national financial allowance to support children in family and friends care who would otherwise be in the care system.

Court scrutiny of care plans

16. Clause 15 of the Bill only requires the court to consider the ‘permanence’ aspects of the care plan, and contact, before making a care order. This does not include arrangements for siblings to be placed together where possible. Sibling relationships are the longest and often the most enduring for children in care. They provide stability, continuity and can enhance outcomes[305, 306] for vulnerable children. Yet most siblings in care are split up and many are prevented from seeing each other as regularly as they would like.307

17. Independent reviewing officers (IROs) do not have the same authority as courts to scrutinise care plans, for example, they cannot bring the matter back to the court directly if they consider the care plan does not promote the child’s welfare. They can only refer the matter to a CAFCASS officer, who may then bring a claim on behalf of the child if they consider there are grounds for judicial review or a freestanding claim under the Human Rights Act 1998.308 In practice, this power is rarely used. Moreover, their caseloads (up to 120 for a full time worker) are such that many will not have the capacity to address this crucial issue when court scrutiny of care plans reduces. It is therefore an essential safeguard for children’s well-being that courts continue to scrutinise arrangements for siblings as part of the permanence provisions in clause 15.

Promoting effective support for looked after children returning home

18. The NSPCC’s 2012 report on children returning home from care[309] showed that:

   — Around half of the children who came into care because of abuse or neglect suffer further abuse when they return home, causing significant long-term harm.
   — Parents’ problems often remain unresolved. There is insufficient help for parental alcohol and drugs misuse, managing children’s behaviour, or from Child and Adolescent Mental Health Services and similar services. For example, Farmer et al. found that children returned to households where there was a high recurrence of drug (42%) and alcohol (51%) misuse, yet only five% of parents were provided with treatment to help them address their substance abuse.
   — Around a half of children who return home subsequently re-enter care or are accommodated, causing significant harm to the child and cost to the state.
   — Reunification practice, including the support available to children and families, varies significantly across different local authorities. The approach and attitude of the local authority has been shown to be a bigger factor in determining whether or not a child returns home than the needs of the child.

These findings are largely attributable to the lack of clear statutory framework underpinning reunification practice. We therefore recommend that the Bill should include a new duty on local authorities to assess, prepare, support and monitor the child’s welfare when they returning home from the care system.

April 2013

Memorandum submitted by Paula Jewes (CF 78)

1. Summary

To make this Bill effective, a Government-appointed body should identify and penalise abusers of the First Tier Tribunal System (SEN cases). Including such a mechanism in the Bill would show a real commitment to improving outcomes for children and young people with SEN and disabilities.

In other spheres, tribunals are good mechanisms for ensuring compliance with legislation (parties do not need legal counsel and the process is more informal than a County Court or High Court). However, in this case, the system is unbalanced. Families of disabled or SEN children are extremely vulnerable and are less able than average people to advocate for themselves. On the other hand, some Local Authorities are highly motivated to

308 Children and Family Court Advisory and Support Service (Reviewed Case Referral) Regulations 2004.
avoid their legal obligations. Special education is extremely expensive. Local Authorities often perceive SEN legislation to be unjust because it requires them to meet an individual’s assessed need without consideration of their own limited resources.

2. MY BACKGROUND AND EXPERTISE

— 15 year old daughter with Autistic Spectrum Disorder
— Trustee, Merton Mencap
— Lead Parent, Kids First (Merton’s Forum for Parents of Children and Young People with Disabilities and Special Needs) which has 330 members. In 2006, I gave oral evidence to the House of Commons Education Select Committee’s review of SEN on behalf of Kids First
— I speak to over 100 parents of children with disabilities every year and represent their views in London Borough of Merton and beyond. I have been doing this work on a voluntary basis since 2004. I engage regularly with Head Teachers, other school staff, voluntary sector providers, and Local Authority officers
— Occasionally, I lead small consultancy projects analysing services for disabled children (Short Breaks, SEN Transport, Post 16 Transition)

3. EXPLANATION

4. The current SEN system is often implemented poorly, in fact unlawfully, by Local Authorities. If you intend the Bill to help the most vulnerable families, then a practical means of ensuring general compliance should be sought and included in the Bill.

5. There is currently no effective means of addressing widespread abuse of the Tribunal System by Local Authorities. This is because the tribunal can only give directions on a case by case basis. Whilst their judgements set legal precedents and clarify general understanding of the law, widespread abuse of the system occurs prior to judicial decisions eg attempts to bully parents submission by taking cases to the tribunal door and then negotiating, talking hearings through to a second day (normally not timetabled and so heard some months later), and using poor evidence or “long shot” cases in order to delay delivery of an expensive provision.

6. There is a large amount of public money potentially wasted by LAs who recruit expensive barristers, prepare a case but later concede, or who employ “tribunal specialists” such as educational psychologists, whose only job is to fight difficult tribunal cases for their LA.

7. The First Tier Tribunal will acknowledge that they rarely award costs for vexatious behaviour despite having the power to do so, partly because this could affect parents who present a poorly prepared case driven by their desire to obtain the best provision for their disabled child.

8. Many Local Authorities lose cases regularly because of poor quality assessments, blanket refusal to state provision clearly in statements (EHC plans), or they regularly negotiate settlements at tribunal door. They are able to continue doing this week after week. The First Tier Tribunal has tried to change its procedures to tackle some of these problems, but with little effect.

9. The most recent published data (2009) shows that 32% of cases registered at the First Tier Tribunal were conceded by Local Authorities before the hearing. 76% of decisions made at hearings were in favour of parents and a further 11% were partially in favour of parents. Of the remaining 13%, some were referred back to LAs for more evidence. This data supports our observation that parents are often forced to appeal to tribunal even when the weight of evidence is heavily in their favour.

10. This Bill does not make mediation compulsory, and parents are not convinced that mediators will be professional or fair enough to create a level playing field, so it is likely that the First Tier Tribunal will continue to be the main mechanism for SEN dispute resolution.

11. If there were a requirement for an independent body to look at the patterns of behaviour exhibited by First Tier Tribunal parties and penalise repeat offenders, then this Bill would become significantly more effective.

12. Only a small number of families have the resources to use the First Tier Tribunal (the vast majority being White British), but policing the abusers would benefit all families by ensuring more consistent compliance with the law.

13. I propose that you place a requirement on the Department of Education or a nominated body to review First Tier Tribunal Statistics at certain intervals and look for repeat offenders. These would be Local Authorities who take a large number of cases to tribunal, lose a large majority of these due to poor quality evidence, consistently resolve disputes at tribunal door, and repeatedly violate the Code of Practice (eg refusal to quantify provision, refusal to update EHC Plans, refusal to assess despite overwhelming evidence and so on). If strong sanctions were applied, those LAs would have to comply with the law and perhaps would seek more positive, creative and longer-term solutions.
14. In general, the intent behind this Bill is excellent and the draft Code is good (although a few tricks have been missed). It will be a shame if the battle-ground culture continues unabated after this unique opportunity to improve the system, wasting private and public money in the process.

April 2013

Memorandum submitted by Derek Gould and John Devine (CF 79)

Memorandum to the House of Commons Bill Committee with reference to the proposed powers for the Children’s Commissioner

To the Clerks, Chairs and Members,

1. We write in regard of the proposals in the Bill to widen the scope and powers of the Children’s Commissioner. We are not professionals but are glad to have this opportunity to raise our concerns as Christians each having children and grandchildren. In particular the situation which has developed with the Charities Acts 2006/11 through lack of definition should not be perpetuated through this Bill.

2. The Charity Commission have found themselves in the public spotlight through attempted removal of charitable status from public schools and treatment of a religious charity. In our view this has been a matter of internal political bias. How will this be prevented in the office of Children’s Commissioner?

3. While we would be sympathetic with the need for wider powers and the looser wording employed to widen their application to suit the broadest range of possible circumstances, we are at the same time concerned that this could open the door for the Bill itself to become the subject of abuse and be used against certain groups which hopefully were never intended to be under scrutiny.

4. In this Bill before you under clause 77 the Commissioner’s primary function is enlarged with sweeping powers that could prove to be easily abused. He is able to challenge any policy or practice which he considers may lead or has led to an infringement or abuse of children’s rights. Our concern is that this concentration of personal power could lead to open conflicts by its use to challenge policies or practices in faith schools, teaching in churches and even parental rights. There should be in the Bill a specific reference limiting these powers where religious belief is involved. This and other clauses raise our concern that parental rights could be set aside in the Commissioner’s investigations and proceedings.

5. The powers of clause 77—3h are sweeping and include investigation of any other matter relating to the rights or interests of children. Does this power exceed the reference to and restriction to matters in the UN Convention of Children’s Rights?

6. In clause 79 section 2 E 3—an interview with the child may be conducted in private if the child consents. Should not the agreement of the parent also be required depending on the age and maturity of the child? In particular we make the point that anything said or done during such an interview should not in any way undermine the beliefs and conviction of the child being interviewed. Suggestive questioning can lead to a vulnerable situation where the trusting child is manipulated to suit the process already mapped out by professionals. For example “You don’t want to see your father for some time yet, do you?” The social workers report after the event merely says “he doesn’t want to see his father”.

7. In clause 81 section 1 the Advisory Board could well influence the Commissioner’s agenda throughout the term of office. The composition of the membership should be subject to challenge by Parliament as also should the person appointed as Commissioner.

8. In clause 82 section 7B—Paras 4a & 5—in drawing up a business plan the Commissioner is given powers to interview children not only as part of their investigation but also as a prelude to drawing up his annual business plan. This has to have particular regard to groups of children who the Commissioner considers do not have adequate means by which they can make their views. Cannot the Commissioner draw evidence without this detailed step?

9. We appreciate that the present bill has been developed from a background of considerations particularly from the Dunford report of December 2010. There have been merely five comments on Part 5 of the Bill during the “Public Reading”. All of these seem based on an unsaid premise that all children are victims in need protection and those caring for them—at home, school, youth centres, church) need to be under heavy surveillance. The comments from secular persons make it clear that their policy is that matters in regard children should be decided irrespective of the “beliefs of the parents”. Once the Bill has been passed this attitude in pressure groups could continue and actively influence the Advisory Board and the Commissioner. Will the reference to the United Nations Convention on the Rights of Children be sufficient to thwart these pressure groups?

10. We also appreciate that Clause 77–2A states that the Commissioner must have regard to the United Nations Convention on the Rights of the Child. We hope that this will be retained so that the Commissioner is restrained to a tested and balanced approach to these important matters before Parliament.
To summarise we are concerned about this Bill for the following reasons:

— The Bill deals with the nation’s most precious asset—our children—and the care of its potential.
— Religious faith should be respected as contributing to the wealth of the nation. Results from CAF’s 2011 Market Tracker Report indicate that the average amount given to charity by those who are religious was £576 over the previous twelve months, compared to the £235 contributed by those of no faith.
— Persons of faith are well rounded in their appreciation of and respect for life. Their views should be respected in this Bill.
— Families are mentioned in the title but overwhelmingly the stress is on children.
— Opportunities for progressive secular humanism exist. Nothing is said about staffing the Office of the Children’s Commissioner and restraint from pursuit of a secular agenda to the suppression of respect for faith.
— Article 30 of the UNCRC refers to the children of minorities or indigenous groups. They have the right to learn about and practice their own culture, language and religion. The right to practice one’s own culture, language and religion applies to everyone; it applies to instances where the practices are not shared by the majority of people in the country. It is our view that the value of this article underlines the need for the convention to be firmly embedded in English law.

April 2013

Memorandum submitted by TUC (CF 80)

TUC response to Children and Families Bill

SUMMARY

1. The TUC represents 53 affiliated unions who together represent some six million workers. The TUC broadly supports parts 6 to 8 of the Children and Families Bill which provide for: shared parental leave and pay; better rights for parents who have children via surrogacy or adopt; time off for fathers/partners to attend ante-natal or adoption appointments; and the extension of the right to request flexible working.

2. However, under the proposed Bill, the government estimates that only two to eight percent of eligible fathers/partners will take shared parental leave. To increase take-up of shared parental leave the Bill should provide for: a reserved period of leave for fathers/partners; eligibility for shared parental leave as a day one right, and improvements in the low flat rate of pay.

3. The eligibility criteria for shared parental leave are complex and risk creating confusion for employees and employers. Instead shared parental leave should be a day one right, there should be an allowance (equivalent to maternity allowance) for those who do not qualify for shared parental pay, and the removal of other criteria such as the requirement for the partner to be economically active.

4. The Bill proposes that shared parental leave can only be taken in weekly blocs. Instead parents should be able to take leave more flexibly eg on a part time basis, and that employers should consider shared parental leave requests in a reasonable manner.

5. To tackle the alarming levels of pregnancy discrimination and encourage fathers/partners to take shared parental leave, the TUC supports a clear right of return to the same job for those taking leave to look after a child irrespective of the length of that leave.

6. The right to unpaid time off to attend ante-natal or adoption appointments is welcome, but should be paid and be for a “reasonable” time off, rather than be limited to two blocks of not more than 6.5 hours. It should also apply to all agency workers as both prospective mothers and partners as a day one right.

7. The extension of the right to flexible working to all employees is welcome. However, the right to request should be available as a day one right and extended to all workers. Further, the TUC is concerned that the replacement of the statutory procedure with an ACAS Code of Practice will send the signal to employers that accommodating flexible working requests is less important.

8. The TUC also supports the introduction of breastfeeding rights at work as well as access to leave for other carers supporting a mother such as a grandparent.

PART 6—SHARED PARENTAL LEAVE AND PAY

9. Clauses 87 and 89 of the Bill enable regulations to establish shared parental leave and pay for parents. This will enable a mother to bring her entitlement of 52 weeks maternity leave and 39 weeks pay to an end and convert the remainder into shared parental leave and pay which she or the father/partner can take, provided both parents meet certain qualifying conditions.

10. The TUC recognises that shared parental leave and pay will increase choice for some parents and could encourage a fairer sharing of parenting responsibilities. We recognise the benefits this would bring in terms of greater gender equality, better relationships and improved child well-being. We also support the principle of
enabling leave to be taken on a more flexible basis, especially by allowing parents to take leave at the same time, unlike the current additional paternity leave entitlement.

11. However, there are a number of drawbacks to the shared parental leave and pay scheme set out in the Bill. Firstly, it will not lead to a substantial change in the number of fathers/partners taking time off work to care for children because it lacks sufficient incentives. On the government’s own figures, take-up is only expected to be two to eight percent of eligible fathers.310

12. There is no reserved period of leave for fathers—International evidence shows that fathers are most likely to take leave that is available solely to them on a ‘use it or lose it’ basis and shared entitlements are still most likely to be used by mothers.311 The government’s original proposals in its Modern Workplaces consultation had included an additional month’s reserved paid leave for fathers/partners which would have seen take-up rise to between 4 to 13 percent according to the government’s impact assessment. The TUC regrets that this reserved period of leave was dropped. The TUC calls for a reserved period of leave for fathers/partners, perhaps as an extension of the current paternity leave entitlement and in a way that does not reduce the entitlements of the mother. At a minimum, the government should commit to an early review of take-up rates of leave by fathers/partners with a view to introducing a reserved period of leave if predictions of poor take-up prove to be correct.

13. Shared parental leave will not be a day one right—The government had originally proposed that shared parental leave would be a day one right and that an equivalent benefit mirroring maternity allowance would be created for those who did not qualify for statutory pay. However, the government has indicated in its current ‘Shared parental leave and pay administrative consultation’ that only fathers/partners with 26 weeks’ service (by the end of the 15th week before the expected week of childbirth (EWC)) and earning more than the lower earnings limit of £109 per week will qualify. This will exclude the low paid, and those on short term contracts, who constitute a growing proportion of the workforce.

14. Continued low flat-rate of pay for fathers/partners—As the Impact Assessment shows in countries such as Sweden, Norway, Iceland and Denmark where leave is paid at a rate of 80% of normal earnings or higher, the majority of fathers take some extended leave from the workplace to care for children. In countries with low rates of pay or benefits, less than 10% of fathers take any extended leave. In the UK, qualifying fathers will only be entitled to the low flat-rate of statutory pay (£136.78 a week for 2013/14) which will only increase in line with other benefits by just 1 percent a year until 2016. By far the most common reason for fathers not taking paternity leave around the time of the birth is that they cannot afford to (cited by two-thirds of fathers) and only half of low income fathers took any paternity leave compared to four-fifths of higher paid fathers.312 The TUC believes that for there to be a significant change in parenting roles and more choice for low income families, the issue of very low pay for those taking time off work to care for children needs to be addressed.

15. Secondly, the eligibility criteria for shared parental leave and pay risks creating confusion for both employees and employers which will hinder take up and implementation (proposed ss.75E and 75G in ERA 1996 and proposed ss.171ZU and 171ZW in the SSCBA 1992). For example, a woman who is not employed by her employer for 26 weeks by the 15th week before the end of EWC will qualify for maternity leave and pay herself but her partner/the father of the child will be able to take it if she ends her maternity leave early and he met the service and income criteria. A woman with a self-employed partner may be able to end her maternity leave early and take shared parental leave and pay herself but her partner will not be eligible to take it. And a single mother will not be able to take any shared parental leave and pay despite potentially having another family member who intends to care for the child. The TUC believes the scheme could be made simpler and fairer by making shared parental leave and pay a day one right, creating an allowance equivalent to maternity allowance for those who do not qualify for statutory parental pay and removing other criteria like the requirement to have another person who is economically active with whom they intend to care for a child.

16. Thirdly, it is disappointing that shared parental leave and pay will not be as flexible as was first proposed. The leave will only be able to be taken in blocks of at least a week’s duration and only if the employer consents. It was envisaged that one of the real benefits of being able to take leave flexibly would be to enable a period of part-time work, for example, to enable a woman to have a phased return to work. The TUC believes that shared parental leave should be available on a more flexible basis eg part time, and that employers should consider requests to take shared parental leave in a reasonable manner (applying the same test as considering a flexible working request).

The right of return from leave

17. The right to return from a period of shared parental leave will be worked out in regulations. Currently a parent returning from less than 26 weeks leave has the right to return to the same job. If returning after 26 weeks

131 www.leavenetwork.org/fileadmin/Leavenetwork/Annual_reviews/2012_annual_review.pdf
leave then the parent has the right to return to a suitable alternative position if it is not reasonably practicable for the employer to return them to the same job. This is the so-called “weaker” right of return.

18. The TUC believes that the two options currently being considered by the government for the right to return to work following a period of shared parental leave are either too weak or too complicated. The first option provides parents with the right to return to the same job only after an initial period of 26 weeks or less. Any subsequent period of leave, regardless of duration, will attract the weaker right of return. This will be a strong disincentive for parents to take their leave in flexible blocks. The second option provides the right to return to the same job after leave totalling 26 weeks on aggregate. While this option is preferable to the first option, it will be complicated to administer in practice and is still potentially unfair.

19. Instead the TUC supports a right to return to the same job regardless of the length or periods of leave taken to care for a child being included in this Bill. This would be simple to administer, encourage fathers to take shared parental leave, and begin to tackle alarming levels of pregnancy discrimination. According to the then Equal Opportunities Commission, around 1 in 14 or 30,000 women lost their jobs as a result of pregnancy in 2005. A recent survey suggests that up to one in seven women do not have a job to return to after leave. Working Families also recently reported ‘high levels of maternity discrimination’ particularly related to losing jobs while on leave. Such a right would not remove the employer’s existing right to restructure the workforce in a redundancy situation, yet strengthen much needed protections for parents returning to work.

PART 6—IMPROVED ADOPTION RIGHTS AND RIGHTS FOR EMPLOYEES BECOMING PARENTS VIA SURROGACY

20. The TUC welcomes clauses 91 and 92 which amends ERA 1996 and SSCBA 1992 to provide: statutory rights to leave and pay for those who are prospective adopters through the ‘fostering to adopt’ and ‘concurrent planning’ placements; and to enable employees intending to become parents through surrogacy to access adoption leave and pay and ordinary paternity leave and pay for the first time. They will also be eligible for shared parental leave and pay.

21. The TUC also welcomes clause 94 which amends the SSCBA 1992 so that the first six weeks of Statutory Adoption Pay (SAP) are paid at 90% of a person’s normal weekly earnings, which makes SAP equivalent to Statutory Maternity Pay. At present, the whole SAP period is paid at the low flat-rate of £136.78 a week (2013/14).

PART 7—TIME OFF WORK FOR ANTE-NATAL AND ADOPTION APPOINTMENTS

22. Clause 97 introduces a new right for an employee or a qualifying agency worker who is the partner of a pregnant woman or someone intending to become a parent through surrogacy to unpaid time off to accompany the pregnant woman to ante-natal appointments. The time off is limited to two periods of not more than 6.5 hours each.

23. The TUC welcomes the new right to time off but is disappointed that the time off is unpaid and limited in length. Complications in pregnancy often require more than one scan and it is important that partners or intended parents are able to attend all of them in such situations. Also for intended parents of a surrogate child the pregnant woman may be some distance away requiring more than 6.5 hours for the appointment and travel to and from it. The TUC believes the right to time off should be paid and for a ‘reasonable’ period of time.

24. The TUC also believes that the right to time off should apply to all agency workers as a day one right. The Bill, as currently drafted, extends the right to time off to agency workers (new s.57ZE and s.57ZG). However, only agency workers who qualify as ‘employees’ will have the right to time from day one of an assignment. Agency workers who are ‘workers’ will only qualify for the right to time off if they have completed the 12 week qualifying period for equal treatment under the Agency Worker Regulations 2010 (see new s. 57ZG).

25. These provisions mirror the limited rights of pregnant agency workers to paid time off to attend ante natal appointments, introduced in the Agency Worker Regulations 2010. While pregnant agency workers who qualify as ‘employees’ have a right to time off for ante natal appointments from day one of any assignment, those classified as ‘workers’ only qualify for the right after completing the 12 week qualifying period (See s.57ZD of the ERA 2010).

26. Therefore the most vulnerable agency workers—ie those employed on zero hours contracts, who do not have any guaranteed hours and who can be fired at a moment’s notice, will lose out on the new right to time off to attend ante natal appointments if they have not completed the 12 week qualifying period. Pregnant agency workers in a similar situation already lose out on the right to time off to attend ante-natal appointments. The TUC believes that the basic right to time off to attend ante natal appointments should apply to all pregnant agency workers and partners who are agency workers from day one.

27. Clause 98 introduces a right to paid time off for an employee or a qualifying agency worker who is a single adopter or the primary adopter in a couple to attend up to five adoption appointments of no longer than 6.5 hours each. A partner would be entitled to unpaid time off to attend up to two adoption appointments of 6.5

313  www.slatergordon.co.uk/media-centre/press-releases/2013/03/no-mothers-day-celebration-for-women-returning-from-maternity-leave/
hours each. The TUC welcomes these new rights but again suggests that the limits imposed on them be addressed.

**PART 8—EXTENSION OF THE RIGHT TO REQUEST FLEXIBLE WORKING**

28. Part 8 of the Bill extends the right to request flexible working from parents and carers to all employees with more than 26 weeks’ service.

29. Clause 102 repeals the statutory procedure for dealing with a flexible working request and replaces it with a requirement that an employer must deal with a request in a ‘reasonable manner’ and within three months. A draft ACAS Code of Practice has also been published which includes many of the procedural elements of the statutory procedure but in general and arguably weaker terms.

30. The TUC is disappointed that the statutory procedure is being replaced by an ACAS Code of Practice. This will most likely be perceived by some employers as a down-grading of the significance of flexible working, particularly at a time when union officers and representatives are reporting that it is getting harder to access flexible working arrangements, particularly in the public sector, as a result of cuts and austerity.\(^{115}\)

31. The TUC is also disappointed that the 26-week qualifying period remains for the right to request. Many parents and carers, particularly lone parents, find it hard to gain employment because so few jobs are advertised on a part-time or flexible basis from day one. Those jobs that do tend to have much poorer terms and conditions—just 5% of part-time jobs in London and the South East were advertised on a full-time equivalent salary of more than £20,000.\(^{116}\)

32. Agency workers will continue to be excluded from the right to request flexible working (see s.80F(8) of the ERA). The TUC believes that this exemption should be repealed.

**RELATED ISSUES**

33. Breastfeeding rights at work—the Bill is a good opportunity to provide clear breastfeeding rights in the workplace. The Department of Health currently recommends exclusive breastfeeding for the first six months of a child’s life. The new shared parental leave scheme is intended to give women more choice but for many this choice will be constrained if they cannot continue breastfeeding after they return to work. The Bill should provide a right for women who are breastfeeding their babies with reasonable time off to express milk at work and a suitable place in which to do so.

34. Parental leave derived from EU law was increased from 13 weeks to 18 weeks with effect from March 2013. This is as a result of the Parental Leave (EU Directive) Regulations 2013 which implement the revised Parental Leave Directive 2010. This parental leave is currently available to parents of children up to the age of 5 (or 18 if a disabled child). Unless a workforce agreement provides otherwise, a maximum of 4 weeks a year can be taken and the leave may only be taken in blocks of one week. There is currently low take up of this leave and parents will not be able to take the full 18-week entitlement with the current age limit and the limit on how much leave can be taken a year. The government has committed to increase the upper age limit to 18 at the same time as the new shared parental leave scheme takes effect in 2015. The TUC believes this increase in the upper age limit could have happened sooner and as part of the 2013 Regulations. Take up for this leave would also be improved if the leave could be taken on a daily rather than weekly basis.

35. Access to leave for other carers supporting a mother—in some circumstances it will be beneficial for a mother to be able to transfer some of her maternity leave to someone other than a partner. This could be the case where a single mother is struggling to cope with a new child and a grandparent or other kinship carer could assist if they had access to some leave and pay.

April 2013

Memorandum submitted by Linkage Community Trust (CF 81)

**Type of organisation:** Linkage Community Trust is a national charity based in Lincolnshire, which delivers high-quality specialist education, care and employment support services to learning disabled people. Its 36-year history has established Linkage as a major provider in delivering flexible services, which promote personal autonomy, independence and achievement. The aim is to ensure that learning disabled people have the same rights and opportunities for inclusion, fulfilment and feeling valued in society as everyone else.

Linkage College is the longest-established specialist further education college in the country. It accommodates both residential and day students at our Lincolnshire campuses, aged primarily between 16 and 25. Linkage Care Services offer residential care, supported accommodation and respite care facilities in more than 70 properties.

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\(^{115}\) Three in 10 workplace representatives said getting access to or maintaining flexible working arrangements had become harder, while only one in ten said it had become easier. See TUC Equality Audit 2012, page 17.

across the county and beyond. Our Employment Services work in partnership with more than 140 employers to support learning disabled people into meaningful and sustainable work.

Linkage Community Trust is a registered charity no. 504913, Company Limited by Guarantee No. 01240377.

**Summary**

The developments to the Bill as it is passing through Parliament have, on the whole, been positive. However, more work still needs to be done to strengthen the accountabilities of key stakeholders, namely health, to ensure a holistic and joined-up approach is taken to support the child or young person in all aspects of their development.

The involvement of young people and their families, needs to be enshrined in the legislation to ensure that they remain at the heart of all decision making and are able to contribute fully to the process. If person-centred support is to become a reality rather than an aspiration, a similar stance as to the NHS concept of ‘no decision about me, without me’ needs to be adopted. There is need to retain the focus of keeping the young person at the heart of the process. This needs to be reflected in practice rather than being a theoretical objective. The only way this can be done is by including young people and their families from the very outset. Greater emphasis on advocacy, information and guidance is needed in order to facilitate this.

Young people and their families need to be supported to make informed choices about what support best meets their needs. The right to request a provider and the right to a personal budget will go some way to doing this, so long as it is accompanied by clear and useful information and guidance.

**Response**

1. **Choice and control**
   1.1. Clause 19
   
   Whilst clause 19 is a move forward it does not legally enshrine the right of choice.
   
   This clause should be strengthened to ensure that young people and their families’ choices are upheld unless there is valid reason for this not to be the case.
   
   1.2. Clause 36
   
   Although Local Authorities are obliged to decide whether to make an EHCP following a parent’s request, there is no specified time limit that the LA has to adhere to, in order to make that decision and inform the parent.

2. **Duty to admit**
   2.1. Clause 22
   
   The problem is that these changes to legislation will not be introduced until at least Spring 2014 which will lead to implementation issues for the September 2014 cohort.
   
   This clause does not include the S321 duty to identify all children and young people who need or may need a plan. The duty is only to identify the children and young people, it is not a duty to identify their needs through an assessment.
   
   This clause should be amended to make it a duty for all children and young people with health and social care needs to have their needs identified through an assessment.

3. **Cooperation**
   3.1. Clause 25
   
   There is no duty specifically on health and social care services to make provisions identified in the EHCP. This needs to be strengthened to ensure that young people have all their needs met.
   
   3.2. Clause 26
   
   The addition that clinical commissioning groups (CCGs) will be under a duty to secure the health services in the plan is a step in the right direction. However, more needs to be done to ensure that health agencies are more involved in the process on a whole.
   
   3.3. Clause 28 and Clause 41
   
   These clauses ensure that Independent Specialist Colleges can be named on the EHCP.

4. **Local offer**
   4.1. Clause 30
   
   It is important that there is a common framework for local authorities to use to avoid inconsistency between different areas. At present, there is no national standard for local offers.
In order for it to be truly effective and enable young people to achieve their desired outcomes, other agencies such as employment support providers and housing associations also need to be involved in the process, as well as education, health and the local authority.

5. Progression

5.1. Clause 35

This clause needs to extend the duty to further education providers. It is known that the inclusion of young people with learning disabilities on mainstream courses is a problem. It is important that these young people are fully integrated and are able to access suitable courses to meet their goals.

6. Personal budgets

6.1. Clause 48

Currently the personal budget process is very opaque and families are lacking the information, skills and guidance needed to use their budget to maximum effect. Clearer guidance and better support from local authorities are needed to get the best outcomes for families.

7. Information

7.1. Clause 63

Linkage would support the proposed additional amendments in relation to Clause 63—
to bring colleges into the scope of Clause 63 therefore placing a duty on you to inform a child (and their parents) or young person (who does not have an EHC Plan) that you are providing them with special educational provision.

This replicates a duty currently in place for schools in respect of children.

It is important to strengthen the rights of parents and young people to have access to information, advice and guidance across education, health and social care.

7.2. Clause 64

Linkage would support the proposed additional amendments in relation to Clause 64 which would bring colleges into the scope of Clause 64 therefore placing a duty on you to prepare an SEN report containing information about

— policy for students with SEN
— arrangements for admission of disabled students
— steps taken to ensure disabled students are treated no less favourably than others
— facilities provided to assist access for disabled students
— plan prepared under the Equality Act

This replicates the duty currently in place for schools in respect of children and which is published on schools’ websites.

This supports the response from the Select Committee for Education that Independent Specialist Colleges and Independent Schools for young people with SEN are added to the institutions for which young people and the parents of children with Education, Health and Care Plans can express a preference and for this to be specifically included in accompanying regulations setting out the types of institutions that may be approved, the criteria an institution must meet for approval, the matters the Secretary of State should take into account in deciding whether to give approval and the publication of a list of institutions approved.

We welcome the extended funding to pathfinders until September 2014 to ensure learning from pathfinders continues particularly in relation to developing the regulations and the SEN Code of Practice.

8. General Comments:

8.1. Maintaining an EHCP (clauses 37–49)

Reassurance from Edward Timpson, MP, that the EHC plan will now not automatically end when a young person secures an apprenticeship is important in ensuring continuity for young people. Young people with a learning disability often need maintained support whilst in education and employment and it is important that this continues should they enter the workplace. The learning journeys of young people with learning disabilities are not necessarily linear and often extend over a much longer time period, hence the requirement for continued and extended support.

There is further need to ensure that EHC plans are reviewed should a young person become NEET. People with a learning disability often need breaks in their education or employment for a number of reasons. It is
important that the plans are maintained and reviewed during this period to support the young person to move forward and meet their agreed outcomes rather than the plan ceasing.

April 2013

Memorandum submitted by the British Association for Adoption & Fostering (BAAF) (CF 82)

BAAF is the UK’s leading charity and membership organisation for both local authorities and the voluntary sector. In 2011/12 we helped find families for over 700 children through our family finding services, we dealt with many thousands of enquiries from professionals and the public through our UK-wide general enquiries service and we sold over 45,000 books on adoption and fostering. BAAF is a multi-disciplinary organisation for those working in social care, legal and the health professions.

Clause 2—Repeal of requirement to give due consideration to ethnicity: England

Introduction

The evidence and arguments for the repeal of section 1(5) of the Adoption and Children Act 2002 have been extensively addressed in the pre-legislative scrutiny Report of the House of Lords adoption legislation scrutiny committee. In that report the House of Lords rejected the proposal to delete section 1(5) and recommended that the duty to ‘giving due consideration to a child’s racial origin, culture, religion and language’ remained significant but that if the clause suggested undue balance is given to these four factors, then incorporating the duty into section 1(4) would address the problem. The government have ignored this recommendation despite the weight of the evidence considered by the House of Lords Committee.

The House of Lords report is comprehensive, detailed and proposes a workable solution; it is therefore with some reluctance that BAAF is presenting further written evidence in respect of clause 2. However, the proposed clause in the Bill as introduced is significant and does not provide any workable solution to the problems that do exist.

There are a number of issues:

1. The emphasis in the government’s argument is solely on ethnicity while the clause is concerned with racial origin, culture, religion and language. Ethnicity is not mentioned in the current clause and ethnicity is a concept that is different to the four that are identified. The proposal is therefore to delete something that is not in the current clause.

2. The current clause is expressed as the adoption agency having a duty to give ‘due consideration’ to the issues named. ‘Due consideration’ is an entirely proportionate phrase and cannot be construed as meaning overriding, exclusive or a determining consideration. There are no legal judgements handed down that clarify this phrase as it simply does not lend itself to complex interpretation in practice. The proposed deletion removes exactly what the status of these issues should be—‘due consideration’.

3. Giving due consideration a child’s racial origin, culture, religion and language is not exclusive to issues of matching but to every aspect of adoption. The current clause is focussed on the placement of the child for adoption but the point of matching is the start of a life-long process. Adoption agencies will be expected to specifically address those issues faced by the child and the adoptive family after placement as they establish various and unavoidable aspects of the child’s identity and history. Where adoption support services are provided at any point in the child’s life through to being an adult, due consideration will need to be given in a variety of ways to the child’s racial origin, culture, religion and language. It is not an issue that in any way is limited to the point of matching but the government’s explanatory notes do not acknowledge this at all. Racial origin, culture, religion and language become embedded into the fabric of adoptive family life whatever that might mean given the similarities and differences between the child and the adopters and how these change over time. It is widely recognised that adoptive families need to have the understanding and resources to manage these issues and insofar as it is possible, agencies must assure themselves at the point of matching that this is likely. The deletion of the clause signifies a deep misunderstanding of the nature of the issues to every adoptive family as they construct their lives together.

4. The evidence made available by the government to support the deletion of the clause is misleading. Children from minority ethnic groups who have adoption as the plan are typically children from mixed ethnicity backgrounds. This reflects the very significant growth in the minority ethnic population in the U.K. in general in recent years. These children defy any simple definition of their ethnicity, culture, religion and language and it is typically multi-dimensional. However, these children leave care through adoption at the same rate as do white children—over recent years at about 14%-15%. The numbers of white children over recent years is approximately 2,700 and mixed ethnicity children, 350–400 each year. While the specific arrangements for matching the mixed ethnicity children are not known, there is no clear evidence that the current clause prevented these children from being matched appropriately and in a timely way. When the figures for Black and Asian children are considered a different picture emerges. The rate of adoption is 3% for Asian children and 4% for Black children. In terms of timescales Black children take on average about one year longer to be adopted than children of other ethnic groups. In terms of number this approximates to about 50 Asian children and 100 Black
children per year. The government’s argument for deleting the clause is based on these two groups and Black children in particular. While there is an important and serious issue to be addressed about the position of Asian and Black children, changing the law is extremely unlikely to be a solution and the argument on which it is based is misleading. Even if the government’s expectation is that removing the clause would open the gates to Black and Asian children being more speedily placed with white adopters, for which the evidence does not exist, then the child’s racial origin, culture, religion and language will still need to be given due consideration.

5. The government does accept that racial origin, culture, religion and language will still play a part in placement planning and agencies are not being banned from considering it. But the message in the deletion of subsection 1(5) is confusing and misleading and is unlikely to produce a solution to the problems that do exist. A solution in primary legislation is proposed by the House of Lords scrutiny committee in making appropriate amendments to subsection 1(4). If that amendment was enacted, this should ensure that due consideration to a child’s racial origin, culture, religion and language continue to be recognised as playing a proportionate part in what are life-changing decisions for the child and their adopters.

Amendment

Adoption and Children Act 2002 Subsection 1(4) (d)

the child’s age, sex, background and any of the child’s characteristics including their racial origin, culture, religion or language which the court or agency considers relevant.

CLAUSE 3—RECRUITMENT, ASSESSMENT AND APPROVAL OF PROSPECTIVE ADOPTERS

Introduction

The proposal to give the Secretary of State reserve powers to require a single, group of or all local authorities to make arrangements for other adoption agencies to perform one or more of their duties to recruitment, assess or approve prospective adopters is a major and radical change to existing arrangements.

It is accepted that that there is a serious mismatch in the number of adopters recruited and approved as suitable and the number of children who have adoption as the plan. This problem exists both in terms of absolute numbers with a year by year shortfall of 500–600 adopters with a further 2,000 adopters required for children who are currently waiting to be placed. There is also a shortfall of adopters who are suitable to adopt children with disabilities, older children, children from minority ethnic backgrounds and children in sibling groups.

An analysis of current arrangements identifies a lack of incentive for local authorities to address a national recruitment crisis. Current structural arrangements plus economic factors tend to focus on each local authority addressing its own particular recruitment and assessment issues in relation to the children it has responsibility for or anticipates it will have responsibility for. This picture is mediated by long standing Consortia arrangements in most areas where issues of supply and demand are addressed across local authority boundaries and this often includes the voluntary adoption sector. However, these arrangements do vary and are variously effective.

There have been a number of initiatives over the last year to address these serious issues. These include the introduction of adoption scorecards, the commissioning of adoption diagnostics for local authorities with a poor level of performance, a review of and proposals to streamline the adopter approval process, the adoption improvement grant. The unexpected introduction of Clause 3 into the Bill has also resulted in an urgent review by the Association of Directors of Children’s Services, the Local Government Association and the Society of Local Authority Chief Executives (SOLACE) to explore the actions that must be taken to address this national crisis. The sector as a whole recognises the importance of this and the voluntary adoption sector has made a very significant contribution to this in committing itself to increasing the number of adopters approved by its members.

The clause itself has been experienced as a very big stick to wave over the sector, one that does not itself recognise the significant efforts and commitment of the sector to find urgent solutions. As a solution itself, it is extremely difficult to identify its positive contribution. At the core of recruitment, preparation, assessment and approval is a social work workforce with the commitment, knowledge, and expertise to undertake the challenges of adoption work. Other attempts to change the structural arrangements for delivering social work have had very mixed results—the piloting of independent social work practices is one example. The current arrangements embed one adoption function—adopter recruitment and approval—alongside other adoption functions—children’s care planning, matching and support and more generally other services for children such as foster care. High degrees of working together are essential to timely, effective and efficient service delivery. This is the challenge accepted by the sector as a whole. The wholesale disruption of this by inventing different organisational arrangements is an experiment that has a very weak evidence base as current crises in large public sector organisations demonstrate. Larger and different is not itself a self-evident solution. The de-moralising, confusing and disruptive effect along the way is only too clear to see. And ultimately this is an experiment with children’s lives.

BAAF believes solutions to the recruitment crisis is currently being actively pursued by the sector and Clause 3 is at best an irrelevant and at worst a damaging distraction.
Amendment
Delete Clause 3.

Clause 4—Adoption Support Services: Personal Budgets

Introduction—The core place of support in adoption

There has been long standing recognition that the placement for adoption and the making of an Adoption Order do not resolve once and for all the issues that led up to adoption becoming the plan. Adoption is a life long issue that impacts on the child, the child as an adult, the adoptive parents, adopted and non-adopted siblings and other birth family members. This is acknowledged in the Adoption and Children Act 2002 where the range of services the local authority is responsible for providing is specified in section 2(6) and then in Regulation 3 of the Adoption Support Agencies Regulations of 2005. Entitlement to an assessment for whom and for what service is detailed in the Adoption Statutory Guidance, Chapter 9, paragraph 7 and the framework set out in that paragraph is detailed and comprehensive. The prescribed services are identified as:

1. Services to enable discussion of matters relating to adoption
2. Assistance in relation to arrangements for contact
3. Therapeutic services
4. Services to ensure the continuation of adoptive relationship
5. Services to assist in cases of disruption
6. Counselling, advice and information
7. Financial support.

The assessment for adoption support services is set out in section 4 of the Adoption and Children Act 2002. Subsection 1 sets out the duty to undertake that assessment. Subsection 4 establishes that having undertaken that assessment, the local authority must decide whether to provide the assessed service(s). Subsection 4 is identified as providing an opt-out for local authorities and creating serious difficulties for those assessed in getting the support they need. It must be noted that while this gap between assessment and provision is enshrined in primary legislation, secondary legislation does not accept or envisage such a simple ‘opt out’. For more detailed exploration of this issue see BAAF’s written evidence set out in response to clause 5.

The evidence set out in the government’s policy analysis in support of this provision argues that ‘good quality support during and after adoption is valued by parents and can have a real impact’. It is difficult to argue with this although the evidence is rather thin. There are numerous issues in identifying what support is needed, when it is needed, what makes for good quality and what effectiveness might look like. Some of this results from the very large number of people who are affected by adoption at different points in their lives. This includes those immediately affected—the adopted child and the adoptive parents—and that is how the policy statement is framed. But there are others including the birth parents, siblings placed elsewhere, birth children in the adopted family etc. etc. And these change over time. The child will become an adult and may quickly want birth records counselling and all that may follow from this, or they may delay this until later in adulthood or indeed never. Adoption creates a immediate family network but that network extends and includes a large number of people who may need to access support in addressing important issues that result from adoption over the course of their lives. While it is understandable that there should be significant emphasis on ensuring the adoptive family has access to the resources and services it needs to ensure the stability and quality of the placement, any policy development and legislative change must ensure that it continues to be applicable and effective for all those who are already identified in the existing legislative framework as falling within its scope.

One of the key issues in the provision of effective support is the range of services that might be required. This includes the services provided to maintain contact whether this is intermediary services to support letterbox contact, services to maintain direct contact especially with siblings but that may include a range of other people, intermediary services for adopted adults and their birth parents, financial or practical support including housing, extensions and modifications, cars or respite care.

Lastly there are questions of effectiveness. Although there are often strongly held views about effectiveness of provision, the evidence base is thin. There are some results from the wide range of provision that falls within adoption support, some from limited understanding of the nature of the problems to be addressed and some from a limited understanding of what might help. There are rarely single causes to problems with a single solution but multiple causations that interact over time. Considerable investment has been made in recent years in the development of parenting programmes funded by government and these include those developed by the Oregon Social Learning Centre and implemented by the National Implementation Team at the Maudsley Hospital, Fostering Changes also developed at the Maudsley and Effective Adoptive Parenting at the Institute of Psychiatry. While the first two focussed initially on children in foster care, they have more recently been developed to include children in adoptive families. Effectiveness is core to each of these programmes. However, as substantial as the investment in these programmes have been, they are by no means the only available programmes and there are many others with a different emphasis and conceptual framework with comparable claims to effectiveness. Similar issues arise in relation to other forms of intervention whether it is therapy with children, therapy with the whole family or group work with adopted children or adoptive parents. There is not
a coherent, well-established, evidence base of interventions or the provision of services in adoption support. That is not to say such services are not available, indeed there is and has been a considerable investment in the provision of such services but it is widely recognised that it is not enough given the challenge of adoption. In further development of policy in adoption support, it is essential that this does not rely on an over-simplistic analysis of the current problems.

The government’s policy argument is that a significant part of the problem with adoption support is the lack of ‘choice and control over the provision of adoption support services’ and feelings of stigma that adoptive parents feel when asking for help. Personal budgets are identified as a solution with the policy document arguing that ‘Adding some control for adoptive parents, so that they feel less subject to decisions made by others, can only help to improve this situation’. This is a weak and poorly formulated argument.

In the written evidence submitted to clause 5, BAAF argues that the regulatory framework that determines how an assessment for adoption support is to be undertaken is based on individual interviews in most cases, a written report which is then subject to consultation with the person on whom the report was written including the right to make representations within specified timescales. It is difficult to see that this is envisaged as anything other than participatory and co-operative especially when it is supplemented by the professional framework of the person undertaking the assessment. It would be assumed that within this assessment process, significant consideration would be given by the assessor to any anxiety the person being assessed might have of being blamed or held to account for the problem being assessed. If the existing framework is seen to be ineffective, and there is nothing to suggest that in itself it should be, then nothing in this clause seeks to change or improve it. It would also continue to be the basis for any new system that would result from the passing of clause 4 into legislation.

It is commonly identified that the point at which the provision of support breaks down is following an assessment when there is no duty to provide the services identified in the assessment. There is a strong argument that the duty to assess must be accompanied by a duty to provide. That is certainly the case in relation to the provision of health services although that is usually subject to significant control by the assessing health professional and the controls that are exercised on them by their professional frameworks or commissioners of services or the National Institute of Health and Clinical Excellence. However, clause 4 does nothing to address the issue of the gap between assessment and provision as it will only come into force where the local authority had agreed to provide adoption support services following an assessment. The clause if anything is misleading in its attempt to address the most serious issue in adoption support—the provision of support as a statutory duty with the accompanying availability of the resources to enable this. The effect of the clause is likely to be minimal and should not be read as a reassuring positive development to the problems that currently exist.

**Personal Budgets**

The development of a framework of personal budgets may have some merit to it that should be explored. It may be that those affected by adoption and requiring support do have a view about service providers beyond those that local authorities typically access or have service contracts with. There may a benefit to them of being able to exercise that choice resulting from the application of the process as set out in Clause 4. However, there are a number of important questions that need to be addressed:

1. What kinds of adopted related issues lend themselves to the provision of personal budgets?
2. What happens to contact arrangements over time if the adopter decides to use an allocated budget for contact to effectively stop contact?
3. What happens to the agency budget to provide regular groups for adopted children if a small number of adopters decide to use their part of the budget for an alternative form of individual provision?
4. What happens to an independent adoption support service provider if the local authority that contracts with that provider finds that adopters that would typically be referred, use their personal budget to access alternative services? Would that service provider survive?
5. What happens in complex cases where a number of services are required to coordinate the provision—the local authority, the child’s school, child and adolescent mental health services?
6. What happens if adopters focus on the child’s difficulties in using their budget when it may be more effective for them to focus on their parenting skills?
7. What happens if adopter’s access services which are not evidence based, unsafe or inappropriate in relation to the needs of the child?
8. What happens if adopters’ commission services and find that these services have not met their needs?

These and other questions need to be answered. They are fundamental to the design of core and critical services on which the future of adopted children, adopters and others are highly dependant. Personal budgets are an untested experiment on those people. There are undoubtedly significant issues to be addressed in the further development of effective and timely adoption support services but an experiment needs to be carefully constructed and fully evaluated if significant damage is not be caused along the way.

If the clause is passed in its current form, it assumes the experiment has proved to be effective when it has not. It is therefore prosed that the powers to introduce personal budgets should only be come into law as a reserve power until the proposal has been fully evaluated.
Amendment

The Secretary of State may give directions requiring local authorities in England to make arrangements to implement personal budgets for the provision of adoption support as set out in Clause 4.

Special Guardianship

Children who are made subject to Special Guardianship are exactly the same group of children who have adoption as the plan. The development of special guardianship as family placement policy has always recognised that. The Adoption and Children Act 2002 amended the Children Act 1989 to introduce section 14F which sets out a parallel duty on local authorities to assess for special guardianship support. A parallel set of regulations and statutory guidance means that all the issues identified above can be found in relation to special guardianship support with appropriate modifications given the specific differences. It is not acceptable, as the Bill does in clause 4, to introduce a difference that separates adoption from special guardianship when the children are the same children.

Amendment

To introduce a clause into the Children and Families Bill that amends section 14 of the Children Act to include a reserve power for the Secretary of State requiring local authorities in England to make arrangements to implement personal budgets for the provision of special guardianship support in exactly the same way as the clause does for adoption.

April 2013

Memorandum submitted by Portsmouth Parent Voice (CF 83)

1. I am the co-ordinator for Portsmouth Parent Voice (www.portsmouthparentvoice.org) a local parents’ group for disabled children, young people and their families, and the Co-Chair of the Priority G Strategy Board Group for Portsmouth, which was set up to oversee and meet the needs of disabled and SEN children, which is a sub group of Portsmouth’s Children’s Trust Board, as well as a parent governor at the Mary Rose Special School in Portsmouth.

2. I am very aware that the Children and Families Bill is currently being scrutinised. However, I would very much like to take this opportunity to point out something that might have been missed.

3. As I am sure you are more than aware that schools are overseen by governing bodies. This is even more pertinent if the school where you are a governor changes to academy status. It is these governing bodies that take account of all the decision-making regarding the school. Many changes are taking place: in particular this year from April 2013, the changes to SEN funding for mainstream schools.

4. As the Co-Chair of the Priority G Strategy Board Group, I asked how many schools in Portsmouth have a dedicated SEN Governor. Only two thirds do, this is something we are trying to overcome with an active recruitment drive.

5. However, there is nothing in the Children & Families Bill that specifically mentions the importance of SEN Governance, with possibly an open encouragement from the Government to ensure that all schools actively recruit and adequately train their SEN Governors, particularly in line with all the changes that will be occurring. I feel that this is terribly important, for without this, the SEN children within that school will be failed, even with all the positive change that is happening, as there will be no one on their Governing Body standing up for their rights, scrutinising the school, asking pertinent questions about the budget and ensuring that the SEN children at their school are receiving the care and support that they need.

6. Having drawn your attention to this situation, would you please confirm whether this is something that needs to be addressed and has possibly been overlooked? I would also be grateful if you confirm what action you intend to take to rectify this situation.

I very much look forward to hearing your response.

April 2013

Memorandum submitted by British Lung Foundation (CF 84)

British Lung Foundation submission supporting proposed amendment NC1 (banning smoking in cars with children) to the Children and Families Bill.

About Us

One person in five in the UK is affected by lung disease with millions more at risk. The British Lung Foundation (BLF) is the UK’s lung charity and we are here for every one of them, whatever their condition. Lung disease can
be frightening and debilitating. We offer hope and support at every step so that no one has to face it alone. We promote greater understanding of lung disease and we campaign for positive change in the nation’s lung health. We fund vital research, so that new treatments and cures can help save lives.

BACKGROUND

The particular harm that passive smoke causes to children’s health is well documented. Although members of the public are protected by smokefree legislation in public transport and in work vehicles, large numbers of children remain exposed to high concentrations of second-hand smoke when confined in family cars. The BLF takes an evidence-based approach to its work and campaigns for the introduction of legislation making it illegal to smoke in cars with children present. We outline the reasons behind our position below.

1. MEDICAL EVIDENCE

i. Passive smoking and children

Smoking near children can cause a range of respiratory illnesses such as asthma, bronchitis and reduced lung function. Passive smoking results each year amongst children in more than 165,000 new episodes of disease of all types, 300,000 primary care consultations, 9,500 hospital admissions and around 40 sudden infant deaths. This comes at a total cost of more than £23 million per year in primary care visits, asthma treatment and hospital admissions in the UK.317

Children are particularly vulnerable to second-hand smoke, as they have smaller lungs, faster breathing and less developed immune systems, which make them more susceptible to respiratory and ear infections triggered by passive smoking.318

Children and young people are also affected by witnessing smoking as a normal adult behaviour. Evidence suggests that children exposed to second-hand smoke in places other than the home are more likely to start smoking than those not exposed,319 and children exposed to a high degree of second-hand smoke in vehicles have been found to exhibit symptoms of nicotine dependence.320 More generally, the RCP has found that children who grow up with smoking parents or siblings are around 90% more likely to become smokers themselves. 23,000 young people in England and Wales start smoking by the age of 15 each year as a result of domestic exposure to smoking.321

ii. Toxicity levels in cars

A number of studies have examined the effect of smoking on toxicity levels within cars in a variety of scenarios (eg windows open and shut, air conditioning on and off, vehicle stationary and in motion), with largely comparable results.

Research from the University of Waterloo found that a single cigarette smoked in a moving car with the window half open exposes a child in the centre of the back seat to around two thirds as much second-hand smoke as in an average smoke-filled pub. Levels increase to over eleven times those of a smoky pub when the cigarette is smoked in a stationary car with the windows closed.322

Meanwhile, research from the Chartered Institute of Environmental Health has found that smoking in cars continues to be dangerous even after the cigarette is extinguished.323

iii. Disease burden specifically associated with second-hand smoke in cars

The BLF is aware of two studies that have looked at this issue.

— One study found a tendency towards increased likelihood of both respiratory and allergic symptoms in Irish schoolchildren aged 13–14 who were exposed to cigarette smoke in cars. After adjustment for home smoking, those exposed in cars were found to have significantly increased wheeze and hay fever symptoms, and non-significantly increased risk of bronchitis and asthma.324

An Australian cohort study found that children who were exposed to second-hand smoke in cars at the age of 14 had increased risk of both current wheeze and persistent wheeze. Interestingly, the risks were found to be higher for those exposed in the car than for those exposed in the home.\(^{325}\)

2. **Opinion Evidence**

   i. **BLF and stakeholder opinion data and public compliance**

   Research conducted on the impact of smokefree public places legislation in the UK has found that strong public support and awareness is associated with compliance as soon as legislation has been implemented. Furthermore, public support as well as compliance increases further once legislation has been introduced and implemented.\(^{326}\)

   The BLF and other stakeholders have conducted a number of surveys in the UK to gauge public opinion on possible car smoking legislation outlined below—

   ii. **Survey data**

   Extent of children’s exposure to second-hand smoke in cars

   - 19\% of children aged 11 to 15 reported often being exposed to second-hand smoke in cars (survey of 6971 boys and girls aged 11 to 15, conducted in 2010 on behalf of the NHS Information Centre).\(^{327}\)
   - 51\% of children aged 8 to 15 reported that they had at some point been exposed to cigarette smoke in a car (BLF/TNS UK-wide omnibus survey of 1001 children aged 8 to 15, conducted in January 2011; full data available if required, including regional/national breakdown).\(^{328}\)

   Children’s attitudes to exposure to cigarette smoke in cars

   - BLF/TNS survey data suggests that many children feel unable to influence the smoking behaviours of adults around them. For example, 31\% of children aged 8 to 15 who had been exposed to second-hand smoke in the car reported having asked the smoker to stop, with 34\% not asking because they were either too frightened or embarrassed.

   - The same survey found alarming results when children were asked to describe how they felt when adults smoked around them with 58\% reporting that it made them smell of smoke, 49\% said it made them feel sick and 44\% said it made them cough. A mere 7\% of children surveyed said that it did not bother them when adults smoked around them.

   Opinion data on car smoking laws

   - In the 2011 BLF/TNS survey, 86\% of children aged 8 to 15 said that they want the Government to stop people smoking when children are in the car.

   - In a BLF-commissioned UK-wide survey of 1,020 parents using Mumsnet.com, 86\% of respondents said that they would support ban on smoking in private cars when minors are present—including 83\% of respondents who were themselves smokers. Substantially fewer—45\%—said that they would support a ban in all private vehicles.\(^{329}\)

   - In an ASH/YouGov survey of 10238 adults in March 2011, 78\% of respondents (62\% of respondents who were smokers) said they would support a ban on smoking in cars when children under 18 are present. This number fell to 43\% (17\% of respondents who were smokers) of respondents who would support a ban in all private vehicles.

   - Data from the International Tobacco Control Four Country Survey indicate that the level of support amongst UK smokers for legislation banning smoking in cars carrying children is on a par with countries in which state and local legislation has been introduced. Support was highest in Australia, with 83\% of smokers supporting legislation for cars carrying children, followed by the UK (75\% of smokers) and Canada (74\%). Support was slightly lower in the USA (60\%).\(^{330}\)

   iii. **BLF-stakeholder views on car smoking legislation with children present**

   The BLF launched its Children’s Charter in June 2010, setting out 12 key areas for improvement in children’s respiratory health. Foremost amongst these is reducing children’s exposure to second-hand smoke in cars. Since

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\(^{328}\) BLF/TNS survey of more than 1,000 children aged 8-15, conducted 20-27 January 2011.

\(^{329}\) BLF online survey of 1,020 people through Mumsnet, conducted 29 April-6 May 2010; 127 respondents reported to being current smokers. Variety of breakdowns available.

the launch of the Charter, the BLF has advocated legislation to ban smoking in cars when children are present, alongside educational campaigns to raise awareness of the health impact of passive smoking in the confines of the car. The BLF supports legislation alongside educational campaigns as the best possible means of making everyone aware of the health risks of smoking in cars with children present, and of urging responsible behaviour.

In May 2012, Lord Ribeiro introduced a Private Member’s Bill to prohibit smoking in private vehicles when children are present. The following health and third sector organisations have signed up to support BLF’s position statement:

- Action on Smoking and Health (ASH)
- Asthma UK
- British Heart Foundation
- British Thoracic Society
- Faculty of Public Health
- Family and Parenting Institute
- National Centre for Smoking Cessation and Training
- National Children’s Bureau
- Primary Care Respiratory Society
- Royal College of General Practitioners
- Royal College of Physicians
- Smokefree South West
- Tobacco Control Collaborating Centre
- Tobacco Free Futures

5. Why legislation?

Evidence suggests that educational campaigns in this area are most effective in changing behaviour when accompanied by legislation. A 2011 inquiry into smoking in private vehicles conducted by the All-Party Parliamentary Group on Smoking and Health concluded that legislation will also be needed to reduce exposure to cigarette smoke in cars. Their conclusions were based on existing evidence from previously passed smokefree public places legislation.

The best examples of changing behaviour through legislation in this context are the passing of car seat belt laws and banning smoking in public places.

i. Seat belts

- Efforts to encourage seat belt use in cars were most successful when legislation was introduced. Seat belt wearing rates increased in the UK from 25% to 91% after legislation was introduced alongside pre-existing awareness campaigns. Interests, many of the concerns raised in debates on seat belt wearing are also raised now in similar form in opposition to car smoking laws—notably those surrounding personal liberties and enforceability (c.f. Government response from the Earl of Avon: Official Report, Lords; col. 956.

There is a parallel with car smoking laws in respect of privacy and public interest. Drivers are required to ensure that minors in the car are wearing seat belts. This is an example of state regulation of behaviour within the car, with the primary purpose of guaranteeing the safety of those within the car—not of those outside the car. Another commonality is the need for opportunistic enforcement by police.

ii. Smokefree public places legislation

- Data from the ITC project indicate that prevalence of smoking in bars decreased very slowly, and remained high, before the introduction of smokefree legislation, at a time when mass media campaigns and other educational initiatives were being deployed to educate the public about the dangers of second-hand smoke. When smokefree legislation was implemented in April and July 2007, smoking prevalence in public places decreased dramatically, with public compliance as high as 98%.333

6. Developments beyond England

Action has been taken to protect children’s health in a number of jurisdictions. Domestically, the Welsh Assembly has committed to considering legislation if its educational campaign has not succeeded within three years, and the Northern Ireland Executive have consulted formally on options around banning smoking in private vehicles and Scotland has committed to supporting a ban on smoking in cars in their 2013 tobacco strategy. Smoking in cars carrying children is prohibited in 4 US states, 10 of 13 Canadian provinces, 7 of 8 Australian states, and in five countries, including South Africa (for children under 12) and Cyprus.

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CONCLUSIONS

It should be noted that smokefree legislation already prohibits smoking in public transport, including private rental vehicles, and in work vehicles, even if colleagues who use the vehicle are not present. It is acknowledged that there are concerns about enforcement and intrusion into one’s private doings but the BLF feels that these concerns whilst valid, have already been addressed at the time of the introduction of seat belt legislation in vehicles. It is important to recognise that the issue to be addressed here is one of child protection. It is extremely worrying to see the effects of smoking in cars on children as 49% of those surveyed reported feeling sick and 44% saying it made them cough. Furthermore, with 83% of smokers surveyed expressing their support for a ban on smoking in cars with children present, we see support for anti-smoking measures in cars rising which should be reflected in legislation that protects young people from the risks associated with passive smoking.

April 2013

Memorandum submitted by Celia Conrad (CF 85)

MY BACKGROUND

1. I qualified as a solicitor in October 1994 and practised exclusively as a family law practitioner until March 2001 when I left full-time private practice. I continued to work part–time in private practice until April 2003 while I researched and wrote the first edition of the legal handbook Fathers Matter—A guide to contact on separation and divorce (Creative Communications, October 2003). I no longer work in private practice but continue to research and write on family law matters. The second edition of Fathers Matter was published in March 2007 with the fully revised and expanded third edition recently published on 31 March 2013. I have appeared on BBC 1 and Channel 4 as a direct consequence of my work and my comments on family law reform have been quoted in the press. I am interested in all areas of family law reform, but have a particular interest in the field of child law.


BASIS OF MY SUBMISSIONS

3. I am making these submissions in my capacity as a former specialist family solicitor and from my experience of dealing with the family courts in the course of my work and from my research and writings on the subject. I have set out my comments on the latest ‘proposed’ reforms in Part III of the third edition of Fathers Matter.

4. In the course of my research I have studied the Final Report of the Family Justice Review (November 2011); the Government’s Response (February 2012); the Government’s Consultation Paper on Co-operative Parenting (referred to above) & the Summary of Consultation Responses and the Government’s Responses (November 2012); Draft Legislation on Family Justice (September 2012); and the Action Plan of the Family Justice Board (January 2013).

5. Although I have reviewed the whole of the Children and Families Bill, my submissions relate to Part 2: Family Justice—Clauses 10–12.

6. I have been following the progress of the Bill through Parliament and, in particular, the comments made by MPs on the 2nd Reading on 25 February 2013, at the Committee Debate 7th Sitting: House of Commons 14 March 2013 and the Committee Debate 8th Sitting: House of Commons 14 March 2013.

LENGI SLATING TO AMEND THE CHILDREN ACT 1989

7. The Children Act assumes that the parties will do their best to resolve differences by negotiation and co-operation. It introduced a non-intervention and no-order policy so that the court will only intervene and make an order where it would be better to make an order than no order at all. This is ironic. The fact is the law only works for parents who are able to act in the best interests of their children and reach an amicable agreement, because in that situation the law does not need to intervene at all. The problem arises where parents cannot agree and the law is used to try to resolve what they cannot. This problem is well-recognized hence the increased emphasis on diverting parties away from the court process by forms of Dispute Resolution Services and in encouraging and directing parents to work out their own agreements for the children.

8. The issue then is if the Children Act in its current form does not work will the proposed legislative changes make it work? There are arguments against making any legislative change on the basis that it is unnecessary because the Children Act does not require amendment; it is only the system that needs improving. And then there are the concerns of the Family Justice Review, particularly in light of the experience in Australia over the problems with shared parenting and the increase in litigation there, that despite what is said to the contrary,
parents will regard shared care as equal care. And what about the argument that with the increased emphasis now on diverting parties away from the court process by forms of ADR (or Dispute Resolution Services as proposed in the Family Justice Review (FLR) November 2011) and in encouraging and directing parents to work out their own agreements for the children more cases will settle, so why the need for change when only a very small proportion of cases will proceed to court anyway?

9. More specifically, what impact will the proposed legislative changes actually make to the courts duties or powers and on the conflicting parties themselves?

PROPOSED LEGISLATION ON THE INVOLVEMENT OF “FIT” PARENTS IN A CHILD’S LIFE

10. So what practical difference will this legislation make? Edward Timpson MP has stated that, “The proposed legislative change does not give or imply the creation of any rights of equal time, or that there is any prescribed notion of how much time is appropriate. Courts will continue to make decisions based on children’s best interests.”

11. Currently, when the court is faced with a decision as to what arrangements are to be made for a child where the parties cannot agree between themselves, the starting point will be that a continuing relationship with both parents is in the interests of the child unless that continuing relationship will put the child at risk of harm. The assumption that a child will benefit from an order being made under the Children Act can always be displaced if the child’s interests dictate otherwise, thus covering safety issues such as domestic violence and abuse. The welfare of the child will be the paramount consideration even though the court will have to weigh up the rights of the parents because of the right to family life under Article 8 of the European Convention on Human Rights.

12. Clause 11 of the Children and Families Bill will amend section 1 of the Children Act so that whenever a court is considering whether to make, vary or discharge an order under s 8 or an order in relation to parental responsibility, the court’s default position will be for both parents to be involved in the child’s upbringing. If however, there is any evidence before the court to suggest that the involvement of the child’s parent would put the child at risk of suffering harm and that cannot be overcome by involving the parent in the child’s life in a way that will not put the child at risk of harm, then the presumption will not apply. If there is no evidence before the court to suggest that the involvement of the child’s parent would put the child at risk of suffering harm then the next question is whether the involvement of that parent furthers the welfare of the child. If yes the presumption stands. If not the presumption is rebutted. The court will make its decision in accordance with section 1 (welfare of the child) of the Children Act. In practical terms I believe this legislation will make little difference.

13. It may well be that in the future directing a recalcitrant parent to the new legislation may have a positive effect and encourage settlement, but so much is down to the parties themselves and their ‘mindset’. Forms of early intervention to keep parties out of the court system are recommended, but much depends upon resources, and again the parties themselves. Since 6 April 2011 parties have been expected to explore the scope for resolving their dispute through mediation before embarking on the court process as part of the Pre-Action Protocol by attending Mediation Information Assessment Meetings (MIAMs). The inclusion of Clause 10 in the Children and Families Bill clearly reinforces the Government’s intentions for as many cases as possible to be resolved without resorting to court proceedings.

14. I am all in favour of putting a system in place which keeps as many cases out of court as possible because a court order imposed upon the parties can never be a substitute for a fair and agreed arrangement between two parents genuinely acting in their child’s interests. Parties need to remember that when they proceed to court they surrender their parental powers to the court when they ask the court to decide what is in the best interest of their child. But this means that any ‘out of court’ system must deliver a solution acceptable to both parents and in the best interests of the children otherwise it simply will not work. There is concern that the Government regards Dispute Resolution Services and particularly mediation as the ‘all cure’ for parties in dispute. While DRS will work in many cases it will not work for everyone.

15. The problem with introducing any form of reform is that it is unrealistic to expect that it will wipe away completely all the problems, and this is only too true when it comes to family law. There are just too many ‘what ifs?’ and ‘buts’ and nuances to every case to be able to achieve that. It would be naïve and unreasonable to expect that everything will be resolved simply by making these reforms to the family justice system. This is a highly emotive and contentious area and I do not believe that any Government would be able to introduce legislation which will deal with every single contentious point that could possibly arise.

16. The fact is that although cases have similar scenarios and characteristics, ultimately every case is different and although much can be achieved by way of reform, a good deal depends upon the parties themselves, their mindset and the circumstances of the case. How much do they want to resolve the issue? How far are they prepared to compromise their wishes for the sake of the children? What are the issues in the case? Has there been domestic violence or abuse? What is the background of the parties and the framework against which the case is set? And sadly there will always be those parents who, despite what measures are introduced, will do their utmost to flout court orders and attempts to enforce them.

17. It is to be hoped that with greater emphasis on out of court settlements more cases will settle. However, it is likely that the cases that do not settle will be the most intractable ones where there are high levels of conflict between the parties and which have little chance of resolution without court intervention. These parties will still be within the court system and they will need 'in-court' resources and access to specialist legal advice, but that will come down to how readily available those resources are and with cuts to legal aid for private Children Act cases that will be an added burden for many parties.

18. In the research report Taking a longer view of contact: The perspectives of young adults who experienced parental separation in their youth a joint research project between the Universities of Sussex and Oxford and founded by the Nuffield Foundation, it is stated that key ingredients in successful contact include the absence of parental conflict; a good pre-separation relationship between the child and the parent the child no longer lives with; that parent demonstrating his/her commitment to the child and the child being consulted about the arrangements. One of the biggest stumbling blocks to contact taking place is the relationship between the parents. The parental relationship is a determining factor. A highly conflicted relationship between the parents does not bode well for contact.

19. Whether this legislative reform makes any difference either in practice or for the better remains to be seen, but the Government’s position is very clear—it is trying to convey a strong message about a parent’s ongoing involvement with the children post-separation and divorce hence the following statement, “It is vital that both mothers and fathers feel confident that the court will consider fully the benefits of their involvement. We believe that the absence of an explicit reference to this consideration in the Children Act 1989 has contributed to a perception that the law does not fully recognise the important role that both parents can play in a child’s life. We remain convinced that a change to the law is needed to help restore confidence in the family court system.”

20. I note that in the course of the debate on the Bill MPs have raised the issue as to whether the term ‘involvement’ should be defined. Mr Llwyd on the Second Reading on 25 February 2013: Column 95 states that, ‘the Government did not accept the recommendation of the Justice Committee that the term “involvement” should be defined in the Bill to remove any implication that involvement equates to a parent’s right to a set amount of time with a child.’ We have never had a definition of reasonable contact in the Children Act 1989, nor anywhere else for that matter, the argument being that it cannot be defined since ‘every case is different’ and therefore there cannot be any legislation on it because we do not have a consensus on what it is. It would seem that the definition of involvement will now be approached in the same way and much will be down to the discretion of the court.

21. Changing a perception. Mr Llwyd makes the point 25 February 2013: Column 96 that, ‘…I simply do not understand why we are legislating to change a perception.’ I think this is a very relevant point.

**Clause 12: The Child Arrangements Order**

22. Again this is about perception as in practical terms I am not convinced this will make any difference. I am only too aware that the terms residence and contact have negative connotations and the idea is to make parties focus on the day to day care of the child. Replacing residence and contact orders with a child arrangements order would certainly remove the terms ‘resident’ and ‘non-resident’ parent, but children have to live somewhere and if that somewhere is with one parent then the effect on the other parent of not being labelled ‘a non-resident’ parent is going to be of very little practical significance. What difference will this really make to the parent with whom the child is not living?

**Summary**

These submissions relate to Part 2: Family Justice—Clauses 10–12 of the Children and Families Bill 2012–13. The comments made are based upon my practical experience as a family lawyer and from my research and writings on family law reform, particularly in the area of child law reform. They deal with the merits and practical implications of the Government’s proposed legislative changes.

April 2013

Memorandum submitted by Bernadette Dent (CF 86)

I would like to add my comments to the consultation on the Children and Families Bill.

1. I am an Ofsted registered childminder with 8 years of experience caring for young children. I have recently completed my Level 3 qualification. I am also a mother of four children, aged 5, 7, 9 and 11.

2. The areas of the Children and Families Bill about which I have most concerns are—ratios for early years children, childminder agencies and qualifications for early years workers.

335 Ibid.
3. **RATIOS FOR EARLY YEARS CHILDREN**

3.1 I find the whole idea of putting children at risk by increasing the ratios all in order to save money ludicrous and as a parent very very concerning.

4. **AGENCIES FOR CHILDMINDERS**

4.1 I had my children and chose to go into childminding so that I could still retain a family unit, to be there for them and other children, creating a family environment for them to grow and be nurtured into well rounded individuals, but also to try and share the burden of the increasing expenditure of family necessities (food and a roof over our heads). I welcomed the changes that ensured the safety and health of those young children and that there were checks in place to prevent harm coming to them. Enabling me to be recognised as a professional and not just a “minder of children”.

4.2 It is becoming increasingly difficult though to keep up with and justify the amount of time needed in order to be a consencious, professional childminder and all that entails. Each year there seems to be a further hurdle to jump. It seems to me that the Government doesn’t want a community or family unit anymore, just numbers for people and all contributing to the taxman, to be earning—part of the workforce. I don’t want to return to the Office and miss my children’s young developing lives in order to feed them. I believe it is important for them to have their mother or father with them to guide and nurture them. If not, then someone trustworthy and a surrogote “mother” / “father” figure in their absence.

4.3 Bringing in Agencies will not only create another unnecessary level of bureaucracy but another cause for confusion and a tier system. Making childminders’ lives even more stressful and harder than they already are. We have managed our own paperwork and recruitment of new mindees before, why do we need someone else to complicate the matter? That we will have to find further £’s for? Complicated and costly for us and that of the childcare seeking parent?

5. **QUALIFICATIONS FOR EARLY YEARS WORKERS**

5.1 So, if I am to continue with my chosen career as a childminder, which was so that I could be with and there for my children and others. I will also now have to re-sit Maths and English to be considered worthy of doing a job I have already been doing, rather successfully already? It seems to me to be a very narrow minded view point and one that is rather outdated. I love what I do. It is the hardest but most rewarding job I have ever had. This is just about saving money regardless of what is lost. And what will be lost is far more valuable if only you can remove the £’s from your eyes. This isn’t about what we have on paper. This is about being able to contribute and nurture lives in a safe environment. Where the parent is happy and the child is happy. And the Childminder or nursery worker is happy too. Whilst allowing each to earn a living.

I hope you take my comments into consideration and help me protect outcomes for the next generation of our children and my livelihood.

April 2013

**Memorandum submitted by Bristol Grandparents Support Group (CF 87)**

1. Legislation for Shared Parenting is imperative within the Bill.

2. Parents must understand that if they make the decision to separate that there is set down legislation with regard to Shared Parenting, although there is a presumption that is the case already, in reality thousands of children are being denied that right, to be part of a loving and meaningful relationship with both parents, unless proven to be unsafe for them to do so.

3. Legislation would not be about 50/50 shared parenting as that is unworkable.

4. If there is legislation then there is no doubt that the best interest of the child is being addressed.

5. There must be a consequence if a contact order is broken, at present resident parents know that the likelihood of repercussion’s is very remote indeed.

6. If there is legislation then they would be clearly breaking the law if they did not adhere.

April 2013

**Memorandum submitted by Rebecca Martland (CF 88)**

1. I am an Ofsted Registered Childminder, graded ‘Outstanding’ at my last two inspections. I hold qualified teacher status and am an accredited EYP, providing mentoring and coaching for colleagues in the Childminding community. I also supply training services and support as a freelance tutor. I previously spent 18 months as a Childminding Network Co-ordinator for a pilot Childminding network prior to their roll-out county wide. I
registered in 2000 through what was then the Social Services Registration and Inspection Unit, and I received annual inspections plus on-going support via this service. I have seen and embraced many changes since then, including: the advent of Ofsted; the introduction of quality assurance schemes such as NCMA Quality First & Children Come First Childminding Networks; increased LA support & training; the opportunity to become accredited to deliver funded EYE places; the introduction of various early years curriculums, including most recently the revised EYFS 2012. Change is not easy and not always for the better but having experienced major changes in the past 12 years I can honestly say that I believe these have driven the transformation of the Childminding sector into one which can now genuinely sit alongside other Registered Early Years & Childcare providers as equals in professionalism and quality. I say this as I want to make it clear that I am pro-change before I explain why I think Childminder agencies are a poor idea and will not provide the solutions to the issues they have been created to tackle.

2. I am unhappy that there has been no public consultation regarding the need or desire for Childminder Agencies and that they are being presented to us as a fait accompli. I believe that the way agencies are being introduced is undemocratic and underhand.

3. The Children and Families Bill 2013 introduces ‘enabling’ legislation that gives power for Childminding Agencies to be created, registered and inspected by Ofsted. It does not provide any reference or reassurance regarding the guarantee of the current system of registration and inspection continuing in a reasonable and realistic way for those Childminders who wish to remain independent. Although this is referred to in supporting documentation I am concerned that in the long term independent Childminders may be forced to join an agency through indirect consequences of their introduction such as unaffordable registration and inspection fees; Government marketing of the advantages of choosing agency Childminders and advertising these; loss of LA support through diminished funding; untenable increases in the cost of training as this is diverted to agencies and LAs lose funding or in-house training staff; etc. How will Government ensure that independent Childminders are not discriminated against or disadvantaged compared to agency Childminders and that they continue to be fully supported in terms of marketing & advertising; training and CPD; drop-ins; access to Toy Libraries and Children’s Centre services; access to business support services; access to quality improvement schemes and childcare support officers? Will Government commit to ensuring that the promotion and support of independent Childminders is given equal weight to that of agency Childminding and that Government marketing will be impartial?

4. I would like to see a clause inserted into the bill that will provide protection for the the equality of independent Childminders and ensures they will not be disadvantaged or discriminated against in comparison to agency Childminders or other childcare providers.

5. Agencies purport to address a number of perceived ‘problems’ in the Childminding sector but these so called ‘problems’ appear to have been misunderstood, misinterpreted or do not actually exist:

6. In terms of finding Childminders and information about Childminders, many of the issues quoted have been addressed and resolved already. The Family Information Service (FiS) has been overhauled and provides a comprehensive method of finding childcare, working alongside private services such as those offered by local Childminding Group Vacancy Co-ordinators, PACEY’s collaboration with i-Child, and websites such as Childcare.co.uk, not to mention the availability of Childminders’ own websites which is rapidly expanding. Information about the quality of Childminders has become more widely available, with many Childminders now giving permission for their names to be published on the Ofsted website with their reports in addition to the information provided by the FiS. I believe one of the biggest barriers to increasing the uptake of Childminder services is not lack of information regarding how to find a Childminder but rather the negative perception of Childminding in comparison to group care held by many parents, in particular regarding safeguarding issues. Rather than creating agencies the Government should focus on a campaign to raise awareness of using Childminders in terms of their quality; flexibility; and safety.

7. In terms of quality, there are numerous references to the long period between Ofsted inspections with no formal quality assurance taking place in between, and Ofsted’s work being duplicated by LAs. The proposal is that agencies will drive up quality by providing on-going monitoring, assessment, support and training and LA’s will be freed of their quality burdens. Firstly this is in direct conflict with the stated aim of Ofsted becoming the sole arbiter of quality, as agencies will then fulfil this role too. Secondly it is based on inaccurate information. LAs do NOT duplicate Ofsted’s role as Ofsted ONLY provide assessment of quality whilst the LA remit is far broader. Also, there IS quality assurance, support and training already in place, and provided very effectively in most areas by dedicated, expert Local Authority Early Years teams. Agencies will be duplicating what is currently available. Admittedly LA services are sketchy and not consistently good in all areas (though the majority offer excellent services and agency support would be equally patchy given they will be market driven so not universally available and accessible to all Childminders) but surely, rather than create a whole new middle man, to resolve this issue it would be more cost effective and practical to standardise clarify and enforce the LA role and responsibilities, so making good use of the infrastructure and expertise already in place? Existing Childminding Networks (which are a well-established, highly effective quality assurance scheme) could be expanded to encompass all Childminders in an LA area, providing access to information sessions and registration support; business support; early years education funding; training and development; mentoring, coaching and support; quality improvement and assessment; child-Childminder matching (complimenting existing services); etc. These are services already in place in most areas and therefore in my view negate the argument in favour
of agencies. In addition, the proposal for agency inspection is that Ofsted will inspect the quality of the services it provides not the quality of care and education delivered by its members. This will create inconsistencies as parents will not be able to make direct comparisons of quality using Ofsted reports for agency Childminders, independent Childminders and other providers, creating a confusing two-tier system.

8. Agencies are supposed to alleviate the costs and burdens of setting up & running a business as a Childminder which will then attract new Childminders into the profession. Having read the ‘Statement of Policy Intention’ and Evidence Pack I note that the process of registration and accompanying requirements for registering with an agency will be the same as for registering independently with the Chief Inspector therefore the paperwork and costs will be similar to now, and potentially increased as the Agency may have its own membership paperwork requirements. Other elements such as insurance take only minutes to arrange and are already available and competitively priced via major childcare representatives such as PACEY, Morton Michel and UKCMCA. Business accounts can be time consuming but there are a number of accountants now offering specialist services to Childminders at a reasonable cost, as well as dedicated accounting spread sheets that enable Childminders keep on top of their accounts with ease and the online annual Tax Return is very straightforward. Regarding other paperwork, policies are unique to each setting so again this is not paperwork which an agency could provide, nor is the main source of paperwork namely that associated with the EYFS (dramatically reduced already with the introduction of the revised EYFS 2012). Childminders fees and expenses vary depending upon the unique services they offer which again would make it difficult for an agency to manage. If an agency chose to employ a Childminder rather than the current self-employment practice there will be many complex issues to consider, in particular how a Childminder will be paid for expenses and wear and tear.

9. Other concerns include: how a Childminder might be recompensed if an Agency handled fees on the Childminder’s behalf but became bankrupt or acted fraudulently? How will a member be protected if their Agency closes for whatever reason? Will agencies will drive up the cost of Childminding services as Childminders will need to accommodate the cost of agency membership (I have heard suggestions of around £700 pa which is about £500 more than my current annual expenditure on registration requirements which include registration fee, First Aid, ICO registration, LA training subscription and insurance) in their fees? In who’s interest would an agency act in the event of a dispute or complaint, Childminder or parent, and who would mediate? Will agency Childminders have any protection against agencies setting unfair or restrictive terms of membership such as fee capping, requirement to fill all registered spaces, inability to choose clients? How will the Government ensure all Childminders have access to support services as agencies will only open in areas of demand and sustainability so will not be universally available and LA support will be scaled back due to reduced funding?

10. I am concerned about the potential organisations being suggested to run agencies. How can a Childminder expect an impartial service if the agency is run by a direct competitor such as a nursery? Surely this presents a conflict of interest as if the nursery has vacancies it will want to fill these rather than those of the Childminders. How can LAs, schools and Children’s Centres run agencies if agencies are being introduced as businesses?

11. I am concerned to note that in the Evidence Pack the only other measures considered to resolve the perceived problems around Childminding were ‘do nothing’ and ‘make agency membership compulsory’. I have already outlined above how the agency model duplicates that provided by LAs and other support networks such as local groups, FiS and private organisations. Why was a strengthening of the LA support and quality improvement role not considered? If LA services were clarified and a code of practice created determining a minimum level of service to be offered consistently throughout the country there would be no need for the introduction of a new middle man in the form of agencies. This would retain all the investment made to date in developing quality improvement schemes and staff expertise. I believe that agency legislation should be removed completely from this bill, pending a full consultation and investigation into alternative measures.

12. I believe, however, that this will not happen as I see the creation of agencies as not really being about increasing Childminder numbers and quality but about cost saving measures, in particular, Ofsted cost saving measures. Childminders are more expensive to register and inspect than group care (though how an annual invoice and a 3-hour inspection every four years can possibly cost Ofsted £350 a year I am at a loss to understand). If Ofsted only have to inspect an agency once every 3-4 years this will potentially be more cost effective. Having said that, as the inspection will involve sampling Childminder members it could potentially take all day and involve more complex paperwork and assessment than that of a group care inspection, so the possible savings may not be as much as suggested.

13. Whilst I can accept the potential benefits of Childminding agencies in terms of the services they will offer to Childminders (albeit duplicating existing services that can be easily accessed already, as described above), particularly to new Childminders and those who are wary of being self-employed, I remain fundamentally opposed to any agency model that does not allow for all Childminders to continue to be individually inspected by Ofsted. Whilst I do not claim to enjoy such inspections I appreciate their worth in reassuring parents that their children will be safe and receiving quality care. They also provide parents with a consistent method of judging the quality of providers across the sector. I believe it would be a huge, retrograde step to remove individual inspection from any Childminders, irrespective of what quality scheme they belong to.

14. In conclusion I believe that agencies are unnecessary. They will create an additional layer of bureaucracy and that they will be unsustainable in the long term. Agencies will duplicate existing services at higher cost with no guarantee of higher quality. They will drive up costs of childcare to parents and create a confusing two-tier system of registration and inspection. Given however, that I believe agencies will be implemented in spite of
this, I believe there needs to be a very thorough analysis of the implications of agencies to parents, children, existing and future Childminders (independent and agency), LA teams, other childcare providers, and Ofsted and the results of this should inform a public consultation. The introduction of agencies should be delayed until September 2015 at the earliest giving time for consultation and pilots to be effectively evaluated. I also believe that retaining individual Ofsted inspections for all Childminders is essential in order to maintain standards and ensure quality that can be judged consistently across the whole childcare sector.

April 2013

Memorandum submitted by Bliss (CF 89)

1. BACKGROUND

1.1 Bliss is the UK charity that for over 30 years has cared for premature and sick babies who require special care. We work to ensure that the best possible care and support is provided for all premature and sick babies as well as their families. We provide practical and emotional support for families during this extremely challenging time, as well as continued support when their babies leave special care. We support research to improve care and raise awareness of issues affecting special care babies and their families, highlighting essential changes necessary to improve outcomes for these babies.

1.2 One in nine babies in the UK is admitted to neonatal care because they are born either sick or premature which equates to over 80,000 each and every year. It is vital that every one of these babies receives the best possible care. Families are an essential component of care as well as high quality health services. Family-Centred Care has positive physical, physiological and social benefits for both baby and parent, as demonstrated in the POPPY research project. Having parents with their baby and involved in their care reduces the length of hospital stay for babies, reduces the need for re-hospitalisation and reduces long-term morbidity, as well as reducing maternal anxiety and improving family well-being.

2. THE GOVERNMENT’S PROPOSED CHANGES TO PARENTAL LEAVE

2.1 Bliss supports a number of aspects of the proposed changes to maternity, paternity and parental leave. We feel that the proposal to allow parents to share leave is very welcome and will allow families additional flexibility. This is a welcome development for the families Bliss supports, families whose babies are in hospital for many weeks or even months and require close parental support. This flexibility, will allow some mothers to take a large amount of leave or full maternity leave, as well as enabling others to divide the leave equally with their partner so they may take it either simultaneously or consecutively, is a positive step forward.

2.2 Bliss believes that the current system of parental leave lacks the necessary flexibility and recognition of the needs of parents with premature or sick babies. Along with the need for flexibility is the need to recognise the additional costs of having a baby which spends time in some form of special care. There are significant benefits in enabling parents to be with their babies at this crucial time while it is in hospital and when discharged home, not just to the family, but also for the health and well-being of the baby itself.

2.3 Despite a number of welcome improvements on the current system of leave, Bliss feels that the Government’s proposed measures outlined in the Children and Families Bill, do not go far enough and fail to address a number of key issues for many thousands of families who have a child born premature or sick.

3. THE NEED FOR ADDITIONAL LEAVE FOR PARENTS WHO HAVE A PREMATURE OR SICK BABY

3.1 Of the 80,000 babies admitted to neonatal care each year, around a quarter are admitted to intensive care and require life saving treatment. Treatment in intensive, high dependency and special care can last many weeks or even months, with babies usually staying in hospital until their original due date. ONS figures show that in 2005 in England and Wales 0.17% of births were extremely premature, with babies being born before 25 weeks, this equates to 1121 babies. The families affected experience long periods of time where their baby is cared for in hospital, uncertainty and a great deal of emotional stress.

3.2 The current parental leave system and the proposed changes do not provide the necessary support in maternity, paternity and now shared parental leave provision for these families. Bliss recommends that the system of leave is amended to recognise the specific challenges families of premature and sick babies face, taking into account the baby’s specific needs and circumstances at the start of their life.

3.3 For these families, Maternity Leave begins long before the family can take their baby home from hospital. Of course it is welcome that the mother can be with her child in those early stages of life when it requires often intensive medical treatment. However, those who thankfully have a baby who is well enough to go home, then unfortunately have a reduced period of time to bond with their baby in its early months. Due to their premature

130 Bliss, The chance of a lifetime? 2010
132 Moser, K et al. (2007) Introducing new data on gestation-specific infant mortality among babies born in 2005 in England and Wales Health Statistics Quarterly 35 Autumn
birth, the baby is less developed physically, emotionally and developmentally at the point when parents must return to work and their leave ends compared to other mothers whose child is born at or close to term.

3.4 As one mother stated, “Emotionally I found it very difficult to accept that my Maternity Leave started as soon as my daughter was born, with my daughter being in hospital for 120 days it didn’t feel like I was on Maternity Leave.”

3.5 Many parents of prematurely born children tell Bliss that their biggest concern with their leave entitlement is that there is no consideration for their baby’s development in the current or proposed system.

3.6 One mother stated “I fail to understand how there can be no alternative provision made for families who have to endure such catastrophic events. As far as I am concerned, I spent 4 months in hospital—all day, every day, seven days per week. Not to mention the complete psychological trauma of going home every day without your baby and wondering whether you’ll see them again in the morning.”

3.7 A potential solution would be to allow Maternity Leave to be extended, recognising the needs of the family and baby by extending the leave based on the period each baby must stay in neonatal care. This approach takes into account their individual health and developmental needs. An alternative approach would be to extend Maternity Leave by calculating it from the expected due date and adding any weeks the baby is born in advance of this.

3.8 It is without question that such families face specific challenges and different issues to babies born well and at or around their due date. As well as the babies’ health and development, studies have shown that having a baby in neonatal care puts the mother at higher risk of developing depression or anxiety. Having to return to work after having less time to bond with their baby when at home than other families, contributes to further ongoing difficulties and emotional trauma.

3.9 There is significant research pointing to the value of parental leave and the impact on infant health. One study found that the extension of paid leave has significant effects on decreasing infant mortality rates for both neonatal (up to 28 days old) and post-neonatal (28 days to 1 year) periods.

3.10 Such changes are not without precedent, a number of others countries provide welcome support to mothers and/or fathers of premature or sick babies recognising the additional needs these families face. In Croatia for example, leave is extended in the case of premature births. In Iceland too, if the child stays in hospital more than seven days after birth, additional leave is provided for the length of the stay, up to a maximum of four months. In Finland, if due to premature birth leave is started earlier than 30 working days before the expected date of delivery, parental leave is extended. These positive policies clearly indicate that such changes are possible both to implement and for employers to administer. Such a change here would be a significant recognition of the special circumstances and difficulties endured by the families of some of the most vulnerable and unwell babies.

4. The need to recognise the additional costs of having a premature or sick baby

4.1 The costs of having a baby in special care are significant, unavoidable and hard, if not impossible to plan for. Bliss conducted a survey of parents in 2010 with over 300 responding. This research indicated that the average cost of having a premature or sick baby in hospital was £2,800. This works out at £310 for every day, seven days per week. Not to mention the complete psychological trauma of going home every day without your baby and wondering whether you’ll see them again in the morning.”

4.2 These additional costs include travel to and from hospital, car parking charges, food, childcare for additional children at home, potential loss of earnings as well as accommodation costs. Forty per cent of parents did not receive any form of financial help meeting any of these additional costs and of those who did, it was mainly to meet simple car parking charges (35%). It is clear that parents rely on any support they receive through leave payments. It is therefore vital for these families that they receive significant levels of maternity, paternity and under the new system, shared parental leave pay to ensure they can meet these costs.

4.3 Unfortunately at present, families of premature and sick babies struggle to meet these additional financial demands. Often fathers in particular cannot afford to take their paternity leave. This again can be a heightened problem in instances where babies are in hospital and costs are higher. A Working Families survey of fathers in 2010 found that 72% of those responding who did not take entitled paternity leave did so as they felt they could not financially afford to take it. Such financial constraints on parents prevent them from spending crucial time with their babies whilst they are in special neonatal care.

4.4 When Bliss asked parents about the costs of having a premature or sick child, the largest costs were incurred from loss of earnings (£1,260), where the father could not work while their child was in neonatal care.

341 Bliss, (2010), The chance of a lifetime?
care. A number of respondents to the Bliss survey\textsuperscript{341} said that they did not have understanding employers and many responded saying their requests for leave were received unsympathetically. One father who responded to the survey informed Bliss that he had to give up work so that he could be with his baby who was in a critical condition in hospital.

4.5 Bliss supports calls for the initial 6 weeks of leave to be paid at 90% average earnings and thereafter shared leave should be paid at the national minimum wage level.

5. Eligibility for Leave

5.1 As stated previously in this submission, parents play a crucial role in the care of a premature or sick baby. If parents are able to be with their baby and involved with their care whilst in hospital, this has positive impacts on the baby’s health reducing hospital stays and re-admissions among other positive outcomes. As well as barriers due to the low remuneration of leave, there also exist other procedural barriers which prevent parents from taking leave. The Government’s own impact assessment\textsuperscript{344} on the current proposals indicates that in only 36 per cent of all maternities in 2010 would fathers have been eligible to take Shared Parental Leave. Some indications are also that take up will be considerably lower than this.

5.2 Currently, the dilemma for fathers of premature or sick babies is whether to take their two week paternity leave while their baby is in hospital, or to save it for when their baby returns to home. This is a heart-wrenching decision for many fathers. Whilst Shared Parental Leave offers the potential for longer leave for fathers, the qualifying rules and complexity mean that far too many families will be unable to access extended leave.

5.3 Complex rules mean that Shared Parental Leave is only available to couples who are both economically active, with both parents having to meet specific earnings and employment requirements. Couples will need to have at least 26 weeks’ continuous service with the same employer at the 15\textsuperscript{th} week before the baby is due to qualify for Shared Parental Leave. This reduces eligibility and so potential beneficiaries of the scheme. This is a problem particularly for fathers who play a very important role in the development of a baby. The importance is even greater in the case of parents who have premature or sick babies, studies show that skin-to-skin contact with parents in the early weeks and months of life has a positive effect on the health of the baby\textsuperscript{345}.

5.4 Ensuring ‘day one rights’ to Paternity Leave and Shared Parental Leave would be welcome for parents of sick or premature babies, as it would also remove some confusion and uncertainty about the calculation and eligibility for leave. It is not clear how requirements that parents must have worked 26 weeks by the 15\textsuperscript{th} week before the baby’s due date, will impact families whose babies are born extremely prematurely. Neither is it clear how they will be impacted by requirements to give 8 weeks’ notice of an intention to take the proposed Shared Parental Leave, where their child is born early and unexpectedly.

5.5 Whilst guidance from the Department for Work and Pensions makes provisions for mothers whose babies are born before the qualifying week, i.e. they must within 3 weeks of birth supply evidence of birth to their employer\textsuperscript{346}, there is seemingly no guidance about paternity leave and currently we are not aware of any plans to develop guidance of this nature for the proposed Shared Parental Leave either. In fact, it appears to be the case that a father’s ability to take Paternity Leave earlier than planned, or for families to access the new Shared Parental Leave earlier, would be down to the possible goodwill of their employer.

5.6 We would welcome a guarantee from the Government that all parents who have children born prematurely, significantly before the due-date and even before the 15 week before due-date calculation point for entitlement to leave, have guaranteed rights to take maternity, paternity and shared parental leave earlier as needed, and the 8 week requirement can in these circumstances be waived. We feel that it is important for a baby to have their family with them when in neonatal care and this has positive impacts on their development and health outcomes.

6. Other welcome improvements to the Bill

6.1 Bliss supports calls for changes to provisions for antenatal appointments to allow ‘reasonable time-off’ for antenatal appointments for mothers and fathers. A high number of premature and special care babies are twins and multiple births. Complex pregnancies and multiple births often require additional antenatal appointments, with an average of 8 for women expecting twins\textsuperscript{347}. Some, particularly in rural areas, have to travel large distances for antenatal appointments and the 6 and a half hour limit for each test may be a particular challenge. We believe that both mothers and fathers should be allowed to both attend the minimum numbers of

\textsuperscript{341} Bliss, (2010) The chance of a lifetime?


\textsuperscript{347} POPPY steering group. (2009), Family-centred care in neonatal units. A summary of research results and recommendations from the POPPY project. London: NCT.
seems they should receive, which NICE says is 6 appointments. Such appointments are vital for the health of the mother and child, with complex pregnancies it is vital that parents are able to attend them as needed.

6.2 Bliss welcomes the increase in flexibility promised by the Government’s proposals, however in Modern Workplaces, flexible parental leave as outlined was to be even more flexible than the now proposed Shared Parental Leave. Under this original proposal parents would be able to take their leave on a part-time basis. Part-time leave and pay would allow more flexible leave than the now proposed ‘week blocks’, and would be a welcome opportunity for many parents, particularly those with a sick baby in hospital, giving them greater opportunity to share leave and manage the need to work and spend time with their baby. Bliss supports calls for the Bill to be amended to allow for part-time leave allowing transition back to work.

7. Conclusion

7.1 The current arrangements and Government proposals under the Children and Families Bill fail to recognise the difficulties of parents of sick or premature babies. This small but significant group of families deserve consideration for their special circumstances. Relatively small changes and amendments to the Bill could give these babies a better start in life with the full support of their parents.

7.2 Firstly, this would be to ensure that parents of premature or sick babies could have extended leave for the number of weeks that their baby is premature or that they remain in neonatal care.

7.3 Secondly, greater remuneration for parents while on leave would be very welcome, and would particularly benefit families experiencing high financial pressures when their child is premature or unwell and in hospital for long periods.

7.4 Thirdly, we feel that the administration of leave and various eligibility requirements should be simplified allowing ‘day-one’ rights to leave, as well as providing guidance for parents of premature babies about notice requirements and calculation periods, ensuring more can be with their baby during this difficult and crucial period.

April 2013

Memorandum submitted by Abigail Pollard (CF 90)

I would like to add my comments to the consultation on the Children and Families Bill.

1. I am an Outstanding Ofsted registered childminder with 10 years of experience caring for young children as a childminder and a total of over 25 years experience as a nanny and nursery nurse as well. I hold the NNEB diploma, and am Montessori trained, and to refresh my qualifications and skills, I completed the NVQ 3, Diploma in Home-based Childcare, with an A grade. I attend regular training courses, and read up on latest thoughts and ideas in professional journals and websites.

2. The areas of the Children and Families Bill about which I have most concerns are—ratios for early years children, childcare agencies and qualifications for early years workers.

3. Ratios for Early Years Children

3.1 We are told by experts that children, and young children in particular need to develop strong bonds with the adults who care for them, as this supports their learning and development, and enables them to grow to fulfil their huge potential. They need space to move in, to ensure they develop physically. They need caring, supportive, loving adults with time to listen and talk, to encourage listening and language skills on a one-to-one basis. If ratios are increased, there will be less time, space and energy for an adult to devote to each individual child. Therefore the young children and babies will be adversely affected by this.

3.2 In the current economic situation, alot of childminders and nurseries throughout the country are struggling with sustainability as there are fewer children accessing paid for childcare. If settings can care for more children, that reduces the number of children ‘available’ and will threaten the viability of other settings. I am also concerned about WHERE all these children who need care are coming from! I am in a rural area—the demand is not high, and if a local preschool increased their numbers, I could quickly lose my business.

3.3 Another concern with an increased ratio is the safety and well being of all the children. The children’s toileting needs, emotional well being and individual needs must all be met, as well as playing with the children! One adult to six 2 year olds in a nursery setting is a scary thought. Even if there were two staff members to twelve 2 year olds, some children may not have any meaningful interaction during a session, as staff will be taken up with the caring routines. It does not matter HOW qualified a staff member is, no qualification gives you an extra pair of arms or eyes.

3.4 Childminders can already increase their ratios for continuity of care in exceptional circumstances, and there is a procedure to follow to ensure every child will be safe and that their educational outcomes will not be affected. We write a risk assessment, considering the impact of the changes for all the children and ensure it will not lessen the care, love and attention any child receives, or the outcomes for any child. If the ratios are increased, I am concerned that the outcomes for children will suffer.
3.5 In the same way, I am concerned about the removal of the ‘floor space’ allowance. Children need space to move around in, to play and to move away from a busy area for some quiet time, or time alone. More children in the same size rooms or smaller rooms will adversely affect their learning outcomes, as they will have less room in which to grow and develop.

3.6 As a childminder I currently care for 3 children under 5 years, in fact, generally I care for 3 children under the age of 3½ years. We go out and about in the community and local areas; we explore the villages, the woods, the parks, the beaches, museums & castles, experiencing the changing seasons, listening to nature and investigating everything and anything that catches our attention. We also take and collect children from school and visit local groups and children’s centres. We are well known and have made many friends on our travels. We use public transport, walk and use the car. I am able to keep the children safe on outings as I know each child well and have robust risk assessments in place. I am concerned that more children per adult will lead to greater risks whilst out and about, as it is hard enough to keep an eye on 3 children! There is also the cost implications of a childminder needing to buy bigger cars, bigger pushchairs, more car seats, which could mean that children are not taken out of the setting so often, or they are at risk. The increased cost to childminders having to buy these items may then get passed on the parents, which would not reduce the cost of childcare.

3.7 Ms Truss is suggesting that by caring for more children, settings will be able to reduce the cost of each child to care to parents. This will not be possible, as each child will still require time spent on individual learning plans and diaries, food and drinks, heating and lighting, water, toys, equipment, resources. The childminder will need to pay for Ofsted registration fees, public liability insurance, and registration with the information commissioner’s office. As well as the costs incurred by running a car. I also have the costs of outings and toddler groups and the time and money I spend researching, making and/or buying resources to suit my current minded childrens interests, to ensure that my home is an exciting, stimulating place to be. I also pay to keep my training current and to ensure that it is relevant. Childminders already earn less than the minimum wage per hour per child, and alot of childminders do only have one or two children per hour to care for, and not even all day every day, as the number of children requiring care in some areas is very low. Some childminders only earn £2.00/hour per child, and it is out of this income that everything else has to be paid. After all my expenses are taken off, I only earn a small amount above the personal tax allowance in the last tax year, this is despite working more than 40 hours a week. Ms Truss is trying to turn childminders into babysitters, not the early years and childcare professionals that we are, and have spent the last twenty years fighting to be recognised as.

4. AGENCIES FOR CHILDMINDERS

4.1 There are a number of strongly worded petitions and letters made to government and the Department of Education last year, making it very clear that childminders did NOT want agencies. I understand that it is because of this that ‘More Great Childcare’ says that established childminders will not have to register with an agency and may remain ‘independent’. This will, I believe, create a 2 tier system which will cost more to administrate and just cause confusion for parents.

4.2 I cannot see any benefit to a newly registering childminder that an agency can give, that a local authority, with adequate support and governmental backing cannot give. Many childminders are being left without support as local authority networks are being disbanded; this I presume to lead the way for agencies. But these, I don’t believe are required or wanted. Local Authorities CAN provide what is needed by childminders—I am very lucky. North Yorkshire County Council is very supportive of their childminders, offering superb support and training. Our Families information service is great as well, and really helps parents when looking for childcare.

4.3 I am very unhappy about this ‘consultation’. There has been no consultation and we are told that agencies will be piloted in September. We are told that Ms Truss consulted with early years professional, yet every day, we hear that another early years professional, such as NCMA & PLA, have publicly stated that they do not and did not agree with Ms Truss’s proposals and advised her against agencies. However, she has not taken any notice of them. Over 280 comments were left on the government website on the reading of the childcare and families bill in only 12 days, the majority of them were negative. There has been no consultation, despite over 60,000 signatures on petitions against childminder agencies. It has also become apparent that Ms Truss does not want to talk to anyone who is ‘anti’ agencies; in fact, childminders in Northampton were openly asked to only attend a meeting with Ms Truss, if they were in favour of agencies! That is NOT democratic. Letters that have been written to both Ms Truss and the Department of Education are replied to with standard letters, that do not answer any questions, just quote chunks of ‘more great childcare’, and suggest the person who sent the letter reads ‘more great childcare’!

4.4 Agencies are most likely to be run by private companies who will want to make money out of them, or schools/nurseries. Agencies are to be ‘self funding’, yet I have read that they do not expect them to charge parents... so childminders will be paying someone to do something that they have successfully been doing themselves! I very much doubt that an agency run by a nursery will pass much work onto a childminder—just the odd bits that don’t suit them or doesn’t fit into their increased spaces, such as the early hours or late nights that some parents require, and that we, as childminders are ‘meant’ to do, because we are ‘flexible’ and ‘at home anyway’.

4.5 Agencies will be in charge of local training for childminders who are part of the agency and as local authorities are disbanding networks/training/support etc (paragraph 4.2) this will also lead to a 2 tier system where established independent childminders have to pay to access training, which could mean that their Ofsted
grading is affected and eventually all childminders are forced to join an agency to access training to gain back their gradings. This could lead to unsupported independent childminders being unable to compete with agency childminders. My great concern here is the emphasis on needing childminders to provide the care required for the ‘disadvantaged 2 year olds’ scheme. Newly registered childminders are unlikely to have the experience and skills required to care for these children, as it is not easy, and as well as caring for, and educating the child, you also parent the parents and provide a good role model of care. Yet, a more experienced childminder is less likely to be part of agency, and therefore may not be asked to care for these children, when it is THESE childminders who are much better placed to care for them in their families.

4.6 Childminders have managed their own successful businesses for many years without the need for agencies. Agencies will lead to resentment and confusion within the profession and may lead to many highly qualified, experienced and respected childminders leaving their vocation. This will lower outcomes for children, as the newly registered childminders will not, as yet, have developed the skills, experience and qualifications of those they are replacing.

4.7 Agencies will control the local market, as if they set the fees for the agency childminders, this will create a 2 tier system, which will lead to independent childminders possibly having to lower their fees. These is then likely to lead to reduced quality of care and education as the childminder may not be able to offer all they wish to offer, or used to offer.

4.8 I have only been childminding since Ofsted have been ‘in charge’ of childminders, and I think childminders have adapted well to the demands made of us. However, constantly changing requirements and Ofsted inspectors who do not understand childminding and how childminders operate have caused difficulties. (childminders told by inspectors that they cannot be graded outstanding as they are not a nursery, childminders having to tick many more boxes than a nursery to be graded outstanding—childminders are often given the action of working with other professionals, especially local nurseries and preschools—I have NEVER heard of a nursery or preschool to be given the action of working with other professionals such as childminders!) A 2 tier system will evolve with agency childminders losing their right to an individual Ofsted inspection and having to take on whatever grade the agency is, and non-agency childminders being unsupported and unable to gain the higher grades their experience should allow them, because they no longer receive training or guidance.

5. QUALIFICATIONS FOR EARLY YEARS WORKERS

5.1 Having read Cathy Nutbrown’s consultation document, I do not think that the early years qualifications structure set out in ‘more great childcare’ is what was suggested. Again, this will create a 2 tier system to confuse parents and staff alike.

5.2 I know many childcare workers who do not have degrees, or even GCSE math or English, yet they are fantastic with the children. Such qualifications are not an indication of someone who can provide the best outcomes and highest quality of care for children. My highest qualification is the NVQ 3. Had I more time and could afford it, I would love to do my foundation degree in early years, and then a whole degree. This doesn’t make me less able to care for children, just because I don’t have it. In fact, I think I am more capable than some people with early years degrees.

5.3 To suggest that someone with an early years qualification in better placed to care for more children is daft. A degree does not enable you to grow an extra set of arms to cuddle and cherish a child, or to change 2 nappies at once, nor does it give you an extra pair of eyes and the ability to run like a cheetah as you spot child A about to launch himself into space. It does not give you extra hours in the day to read stories, play games and sing songs. This change will further put childrens outcomes and safety at risk.

5.4 We need people who love children and want the absolute best for them in everything they do; to care for and to nurture our future generation, as it is THESE children who will discover the cure for cancer, fly to mars and save the environment. But they won’t have the chance if their opportunities are curtailed by the ill considered proposals of ‘more great childcare’.

I hope you take my comments into consideration and help me protect outcomes for the next generation of our children and my livelihood.

April 2013

Memorandum submitted by CHILDREN 1st (CF 91)

INTRODUCTION

1. CHILDREN 1ST believes that when it is appropriate and safe to do so, children and young people should be supported to stay with their families. Our belief is informed by over 125 years’ experience of listening to, supporting and taking action for vulnerable children and young people in Scotland. Throughout our long history, first as RSSPCC, we have worked to create kinship care family arrangements for children who can no longer stay with their parents. Moreover, we have contributed our knowledge and expertise to the development of policy and law around kinship care and played a full role in contributing to the development of the Looked After Children
(Scotland) Regulations 2009 which, for the first time, created a statutory framework for assessment and support of children moving into kinship care.

2. Since 2011, we have been commissioned by the Scottish Government to develop and implement a national kinship care service providing advice, information, training and support for kinship care families. We have engaged with kinship carers with looked after and non looked after children across Scotland listening to their views and experiences and mapping what sort of support they currently receive and consider necessary to support their caring role. In Spring 2012, we facilitated the publication of a manifesto for change, the content of which was produced and agreed by kinship carers from eight local authority areas in Scotland and which was used by kinship carers and kinship care groups all over Scotland to influence the local government elections in their area.

3. There are approximately 3800 known kinship carers in Scotland and an estimated 17,000 additional hidden/informal arrangements. Research shows that when a child is unable to remain living with their parents their needs are best met within a kinship care arrangement with an extended family member or close family friend. Kinship carers play an important role in society both in providing a loving and stable environment for children as well as saving local authorities and the Government the costs of accommodating children in residential or foster care placements. CHILDREN 1ST believe that it is in the best interests of society as a whole to support kinship carers as much as possible.

4. CHILDREN 1ST welcomes the opportunity to submit evidence to the Children and Families Bill Committee. This evidence relates to Parts 6 and 7 of the Children and Families Bill: Statutory Rights to Leave and Pay and Time Off Work: Ante-Natal Care Etc. In particular, it addresses kinship carers in Scotland.

**PART 6: STATUTORY RIGHTS TO LEAVE AND PAY**

5. CHILDREN 1ST would like to see statutory rights to leave and pay extended to family or friends who assume the care of a child in a kinship care arrangement. The right to request up to 4 weeks paid leave with the option to request an additional 4 weeks unpaid leave would enable kinship care families time to adjust to the new arrangement and put in place the necessary provisions required to continue in employment. It would be reasonable to stipulate that a request for leave of this nature would have to be made within 1 week of the care arrangement being entered into.

6. Through the work undertaken by the National Service, CHILDREN 1ST is aware that many kinship carer arrangements occur at very short notice. Due to the often unforeseen nature of the situation kinship carers struggle to secure time off work resulting in many kinship carers giving up their employment. Affording new kinship carers 4 weeks paid leave with an option to request a further 4 weeks unpaid leave would give families the breathing space they need to settle the child/children into their new home and/or put a system in place which would enable them to continue working.

7. Employers could evidence the care arrangements by requesting written confirmation from the local authority.

8. The 4 week paid leave would also enable kinship carers to start the process of applying for flexible working if appropriate.

**PART 7: TIME OFF WORK: ANTE-NATAL CARE ETC.**

9. CHILDREN 1ST would again like to see the time off work provisions extended to kinship care families applying for a s.11 order under the Children (Scotland) Act 1995 (s.11 order). Kinship carers applying for a s.11 order are doing so to secure the child’s/children’s placement and provide stability and security for their future.

10. Through the engagement work undertaken by the National Service, we are aware that there is no consistency in the way such requests are dealt with by employers which again often results in kinship carers having to give up their employment. CHILDREN 1ST would like Part 7 of the Bill extended to provide kinship carers with the right to request time off to attend up to two appointments/court hearings in relation to a s.11 order application.

11. If you have any questions about this response or would like any further information please contact CHILDREN 1ST’s Kinship Care Policy and Outreach Officer.

*April 2013*

Memorandum submitted by the Charity Commission for England and Wales (CF 92)

1. **SUMMARY AND RECOMMENDATION**

1.1 Part 3 of the Children and Families Bill 2012–13 affects the rights and duties of independent charities, for example by imposing specific duties on them. There is no apparent recognition on the face of the Bill of charitable status issues or of the impact on charity law of imposing additional duties. This is of regulatory concern to the Charity Commission and other charity regulators.
1.2 We would ask the Public Bill Committee to ensure that charity law considerations and the existing duties of trustees are fully taken into account and where appropriate reflected in the Bill.

2. INTRODUCTION

2.1 The Charity Commission is the independent regulator and registrar for charities in England and Wales. We regulate 162,000 registered charities, and a similar number of ‘excepted’ and small charities that do not have to register, but are subject to our jurisdiction.

2.2 Some charities are exempt from registration and regulation by the Commission. The Charities Act 2006 (consolidated into the Charities Act 2011) reformed the regulatory framework for exempt charities. It provided for the appointment of principal regulators, responsible for overseeing exempt charities’ compliance with charity law. We can use our powers in consultation with the appropriate principal regulator. We therefore have some degree of regulatory oversight for these charities too. Exempt charities with no principal regulator will lose their exempt status.

2.3 On 1 August 2011, the Secretary of State for Education was appointed principal regulator for academy proprietors, sixth form college corporations and the governing bodies of foundation and voluntary schools in England, all of which are exempt charities. (Community schools are not charities.) An increasing proportion of maintained schools are becoming academies. As of 1 March 2013, there are 2724 academies open in England, and over 7,000 foundation and voluntary schools.

2.4 Other bodies mentioned in the Bill may also be charities, depending on how they are set up: nursery schools, non-maintained special schools, independent schools, further education colleges, and children’s centres (which may be, or may be run by, charities).

2.5 Charity trustees have a number of duties under charity law, but their overriding duty is to act only in the interests of the charity and its beneficiaries (i.e. all who currently or potentially may benefit from it). This requires the trustees to exercise independent and informed judgement, not simply comply with the wishes or policies of other bodies.

3. COMMENTS ON PART 3 OF THE BILL

3.1 Clauses 28 and 29 impose specific duties to co-operate on specified types of “local partners” and schools. These include governing bodies of maintained schools (including foundation and voluntary schools), academy proprietors, non-maintained special schools, further education bodies and independent special schools, all of which may be charities.

3.2 It is unclear how these duties will work in practice; how they will sit with the trustees’ overriding duty to act in the interests of the charity, who if anyone will independently assess whether it has been complied with or not (on either side), what are the consequences of non-compliance and what kind of process of appeal or arbitration there might be between a charity and a local authority.

3.3 Clause 33(2) requires that EHC plans must provide for education in a maintained or mainstream educational establishment unless this is incompatible with (a) the wishes of the child’s parents or the young person or (b) the provision of efficient education for others. Sub-clauses (3), (4) and (5) set out the respective responsibilities of the local authority and the governing body/proprietor in determining whether (2)(b) applies, but the local authority is ultimately responsible for securing the plan. Does this ensure an appropriate balance in decision making when the governing body or proprietor is a charity, particularly in view of clause 43 which would impose on the charity a duty to admit a child or young person where their school is named in the EHC.

3.4 Clause 33(6) allows a child or young person to be educated in an independent school, non-maintained special school or special post-16 institution if the cost is not met by the local authority. It is not completely clear to us how this sits with clauses 56–58 which provide for the local authority to pay for such provision.

3.5 Clause 34, in particular sub-clause (9), is likely to affect the terms of existing funding agreements between the Secretary of State and academy proprietors, which may need to be rewritten as a result. For example, charging for educational provision is generally prohibited (under DfE policy).

3.6 Clause 61 imposes an additional duty on governing bodies and proprietors (including charities) to use their “best endeavours” to secure appropriate special education provision. Clause 62 imposes a duty to appoint a SEN co-ordinator. Clause 63 imposes a duty to inform parents. Clause 64 imposes a duty to prepare a report on SEN information. All of these duties are in addition to charity trustees’ duties.

4. TERMINOLOGY USED IN PART 3 OF THE BILL

4.1 The Bill makes frequent reference to the child’s “parent”. The term does not appear to be defined. Does it include foster parents, other carers, or (where applicable) a children’s home (which may be a charity)?

4.2 The Bill uses the term “independent school” in certain contexts without definition. An academy, as a non-maintained school, is technically a type of independent school.

April 2013
Memorandum submitted by The Board of Deputies of British Jews (CF 93)

SUMMARY

The Board of Deputies of British Jews is the representative organisation for the British Jewish community, one of whose principal objectives is to protect and defend the rights of the Jewish community to carry out their religious customs and practices. In formulating this briefing the Board of Deputies and their Family Law Group have consulted within the community, across the religious spectrum, external key stakeholder organisations involved in the family justice system and throughout the UK.

This document details the Board of Deputies of British Jews’ response to The Children and Families Bill, focusing on Part I (Adoption and Children Looked After by Local Authorities), section 2, Repeal of requirement to give due consideration to ethnicity: England. The Board is concerned that the religious interests of the child and the parents should both be considered.

PROPOSED AMENDMENTS

In line with our concern that the religion of all parties in the adoption process ought to be considered, we suggest the following amendments, which we understand are also supported by The Law Society and the Association of Lawyers for Children (ALC), with whom we have liaised:

Clause 1

Be amended to insert in Clause 1 (3) amending Subsection 9 and deleting the proposed sub paragraph (b) and inserting

“(a) they must consider alongside other placement alternatives defined in sub-paragraph (6) placing C with a local authority foster parent who has been approved as a prospective adopter, and “

(b) sub-paragraph (9) shall not prevent such placement outside the local authority area, if such placement is in the child’s best interests.

We believe that this is probably what was intended, so that a concurrent planning placement is considered alongside all other alternatives for the placement of the child, but the current draft suggest a priority should be given to those placements, and as this section requires a Local Authority to consider this at an early stage of proceedings, it is important that all options for the child are given equal weight and consideration.

Clause 2

We believe this clause should be deleted, and the mischief it aims to address dealt with by an amendment to the Section 1 (3) Welfare Checklist in Section Children Act 1989 by inserting

1 (3) (d) his age, sex, background, religious persuasion, racial origin, cultural and linguistic origin, and any characteristics of his which the court considers relevant:

The same insertion should be made in Section 1 (4) (d) of the Adoption and Children Act 2002

This ensures that these issues are considered for the child, alongside other factors. No one having greater weight than the other and always being a matter of balance, but to deny the child consideration of these important aspects of identity and sense of self is not in the child’s interests. Young people who grow into adulthood, having been in care or adopted need to be able to make sense of the decisions made for them when they were young and know that all important factors were taken into account.

April 2013

Memorandum submitted by Anna Tylor and Dr Mark Owen (CF 94)

SUMMARY

We support the introduction of mediation as a mechanism for dispute resolution but suggest that the bill, nor the associated proposed delivery arrangement, reflect the power of this medium as an aid to maintaining good communication, avoiding dispute, developing SEN leadership in schools and changing the culture that currently exists within SEN provision, from one of an adversarial relationship between families and schools to one of collaboration. While we would assert that this is a principle that applies across the scope of the whole bill, our comments are confined to SEN in schools, where children are either without a statement, journeying towards a statement or already have a statement.

1. BACKGROUND

1.1 Mediation, as a means of resolving disputes, is now coming into it’s maturity, and the secretary of state for education sees the potential for the increased role of mediation in the settlement of SEN disputes. This
represents a moment of opportunity as well as threat to the delivery of SEN provision. It is vital that mediation is appropriately delivered if it is to add value to the piece. (Lamb B and Tylor A. 2012)

1.2 The Bill, as it is currently drafted accepts the position of the mediator as having no requirement for specialist understanding of educational practice or of SEN, only for the relevant legislation. This is at odds with other sensitive areas of dispute resolution.

1.3 The Bill, as it is currently drafted, places no emphasis on the use of mediation as a means of achieving outcomes for children who are not statemented, but who are experiencing learning difficulties and where the school and families are in dispute, or where there is a risk of relationship breakdown. It may well have a contribution to make in this regard.

1.4 The Bill, as it is currently drafted, recognises the role of mediation in disputes between families, schools and LEAs but it currently places no emphasis on the value of mediation as part of multi-agency working. The Bill currently offers no effective dispute resolution provision for service providers in what is likely to be a complex collaborative framework with many relationships with competing demands. It may also have a role to play here.

1.5 The bill has no provision to ensure that families and children know how to access mediation and are guided through the process. While the indicative code does deal with this, it is scant.

2. THE MEDIATOR

2.1 There is some concern that mediators without any training around SEN may come to this process at a disadvantage and this could, in turn, impact upon the outcome of a mediation and the particular experience of families and young people using mediation. (Kill or Cure? Tylor A. Davies J. Connected Spring 2012)

2.2 In our experience of working around disability and other sensitive areas such as cross cultural issues, and of having mediated complex disputes with many stakeholders where disability, or similarly sensitive, is a core issue, we consider that the mediator who mediates without understanding of some basic issues, will have their chances of brokering an agreement, considerably reduced because they may misinterpret behaviours, lack understanding of disability discourse and be at risk of perceiving certain behaviours (particularly for those families with communication and developmental issues) as bad behaviour rather than impaired behaviour.

2.3 In order to better appreciate this point, a comparison could be drawn with mediating across cultures. As with disability, certain culturally informed behaviours are open to misinterpretation and misunderstanding. Without an understanding of at least a minimum of the influencing issues it is all too easy for mediation to fail. It is an established principle when mediating between groups who emerge from different cultural and religious traditions that a mediator seeks at least a basic level of understanding of cultural nuances in order not to offend participants and aid communication.

2.4 Many mediators working around SEN already make it their business to seek training around key issues in order to avoid this happening, and this should be an established principle within the regulations. If it is not explicitly expressed there is a risk that it will be ignored by price conscious commissioning bodies.

2.5 There is no need for mediators to become experts on a particular disability or learning difficulty, as each individual experiences their disability differently, but a minimum level of knowledge and understanding should form part of a mediators professional resource, when working around such sensitive issues.

3. CHILDREN WITHOUT STATEMENTS

3.1 By far the largest group of children whose needs fall beyond current teaching provision, such as those facing speech, language, communication, literacy and dyslexia issues, will have to secure a solution within the school or between the school and the LEA. Most will not have statements and will be dependant upon their family’s powers of persuasion to secure the appropriate additional teaching input. This leaves tens of thousands of children exposed to inadequate or no additional resource and without a means of settling differences of opinion between school and family.

3.2 Mediation at school level could represent a significant move forward in helping schools and families to maintain open communication and working relationships, which often break down in the event of a SEN disagreement, thus compounding the problem.

3.3 It would also be a means of extending and embedding the co-operative principles of successful programmes such as Achievement for All.

3.4 Mediation at school level would also help governors to fulfil their SEN obligations through demonstrating a pro-active rather than a re-active approach, which is currently the prevailing culture.

3.5 Evidence suggests that mediation can be deployed at a range of stages to sustain, support, improve, resolve, damage limit and end relationships in a successful way. This is especially so around such emotive issues as a child struggling to learn and a school with limited resources. Effective mediation as part of a SENCO’s resource could reduce the burden upon them and be a significant help to them.
3.6. Mediation as part of a Head Teacher’s resource, could also help them to grow in confidence in giving leadership and delivering services in this area, by providing a safe route to understanding a family’s or individual pupil’s challenge. Currently, many report their lack of understanding around SEN. (A head teacher recently reported to one of the authors that SEN was a monumental expensive pain and not what he signed up for). Mediation would be one of the means at a Head’s disposal, of claiming leadership in this area.

3.7. Because of the gulf that can sometimes exist between school and families that we have touched upon here and are already well understood, it should be incumbent upon governors to establish a “light touch” mediation provision to resolve these issues.

3.8 Further, LEA’s who often deal with families by taking months to respond, or not responding at all, could also benefit from such a provision for children who are not statemented but in need of resource beyond available teaching within the school.

3.9 Too many children remain outside any effective means of resolving disputes. This in turn may compromise their educational outcomes.

4. Multi-Agency Working

4.1 The Bill makes heavy demands upon agencies involved in children’s lives across health, education and social care and so forth, to collaborate in the delivery of services, but it does not make provision for the breakdown of those critical relationships. In turn, there is no mechanism for restoration.

4.2 In our experience of working with many stakeholders, it is inevitable that competing views will emerge and these will not always be possible to resolve through normal working, particularly given the unseen influences that may be being exerted upon individual organisations.

4.3 Experience of working around disability suggests that variations in understanding between professional disciplines (professional cultures) can be quite destructive, particularly when competing views argue passionately. This can threaten trust and hobble a working relationship. Mediation can offer a remedy to this at the point it begins to emerge and thus go a considerable way to preserving the collaborative approach. It affords professionals a safe place to explore difference.

4.4 In turn, this can save a huge amount of resource for a small investment as a problem begins to emerge, and can help maintain focus on the interests of the client or individual at the centre of discussions.

4.5 The complexities of multi agency working are well understood and if this is to be the gold standard, it cannot rest upon the integrity of those charged with delivering it, but must have a dead man’s handle where discord emerges. Mediation offers this.

4.6 We do not believe that it need be a heavy formal process but one that agencies become used to using in helping them to broker solutions and that can enable them to deliver a more efficient service because a mediator can help manage the process around resolution.

5. Supporting Families Who Mediate

5.1 As has been pointed out by the APPG on disability, the bill lacks any demand to explain to families the points at which mediation can be accessed, how it works, checks and balances and so forth. It is crucial that this is prominent within the codes if mediation is to have credibility.

5.2 The indicative code does not do this and we are concerned that by failing to take on board widely voiced concerns about the way that mediation is administered, the benefits of mediation could be undermined.

6. Conclusion

6.1. Mediation has a valuable role to play in a reformed delivery of services and the move to a less litigious method of dispute resolution for families is to be welcomed. However mediation should not be seen just as a means of setting matters straight when they have all gone horribly wrong, but as a means of keeping a complex system well oiled.

6.2 In an increasingly demanding and complex landscape, mediation has a role to play in prevention as well as cure.

6.3 By it’s nature mediation is designed to be a flexible human process and so embedding it within the new proposed system need not be onerous nor administratively demanding, since the mediation sits outside of the formal process and is there to aid it rather than to replace it or be a parallel solution.

6.4 Finally, it is in keeping with the spirit of an early intervention ethos, where resource used now can prevent a problem escalating into poor outcomes for service users and providers alike; where a problem languishes as too difficult to tackle and the cost of remedy for service user and provider alike grows financially and in terms of wasted human potential.

April 2013
Memorandum submitted by the British Psychological Society (CF 95)

ABOUT THE SOCIETY

The British Psychological Society, incorporated by Royal Charter, is the learned and professional body for psychologists in the United Kingdom. We are a registered charity with a total membership of just over 50,000.

Under its Royal Charter, the objective of the British Psychological Society is “to promote the advancement and diffusion of the knowledge of psychology pure and applied and especially to promote the efficiency and usefulness of members by setting up a high standard of professional education and knowledge”. We are committed to providing and disseminating evidence-based expertise and advice, engaging with policy and decision makers, and promoting the highest standards in learning and teaching, professional practice and research.

The British Psychological Society is an examining body granting certificates and diplomas in specialist areas of professional applied psychology.

PUBLICATION AND QUERIES

We are content for the Education Select Committee to contact us in the future in relation to this Call for Evidence.

ABOUT THIS RESPONSE

This response was prepared for the British Psychological Society by Dr Jaime Craig, CPsychol AFBPsS, Division of Clinical Psychology and Faculty for Children and Young People.

Ms Jane Marriott, CPsychol AFBPsS, Division of Educational and Child Psychology.

We hope you find our comments useful.

British Psychological Society response to the House of Commons Public Bill Committee call for written evidence

The Children and Families Bill

The British Psychological Society (the Society) thanks the House of Commons Public Bill Committee for the opportunity to respond to this call for written evidence. The Society would welcome the opportunity to address the select committee on some or all of these issues.

11 Welfare of the child: parental involvement

(1) Section 1 of the Children Act 1989 (welfare of the child) is amended as follows.

(6) In subsection (2A) “parent” means parent of the child concerned; and, for the purposes of that subsection, a parent of the child concerned — (a) is within this paragraph if that parent can be involved in the child’s life in a way that does not put the child at risk of suffering harm; and (b) is to be treated as being within paragraph (a) unless there is some evidence before the court in the particular proceedings to suggest that involvement of that parent in the child’s life would put the child at risk of suffering harm whatever the form of the involvement.

Re 6 (a) We suggest that further clarity is needed in respect of what would constitute evidence in relation to emotional harm in particular as this is often highlighted as a concern but frequently disputed. It is important to understand that to make an effective assessment of such risk requires a systemic understanding of both the child’s psychological functioning and that of the adult(s) concerned. This is an area in which the skills of psychologist experts have been crucial within the family courts by providing an assessment of these interacting factors.

10 Family mediation information and assessment meetings

(1) Before making a relevant family application, a person must attend a family mediation information and assessment meeting.

In broad terms the provision of effective and early mediation in the context of family applications is welcomed. However, it is suggested that the term ‘Family mediation information and assessment meetings’ might inadvertently give the impression of an assessment broader than actually envisaged. The Bill describes this as an assessment of “the suitability of mediation, or of any such other way of resolving disputes, for trying to resolve any dispute to which the particular application relates.” Significant care will be needed to ensure that complexity of such situations are properly understood, particularly when there are issues of mental health, cognitive impairment etc. Ideally family mediators would have access to psychological supervision for this work to assist in highlighting when further assessment and or intervention is required. The assessment of treatability, and specifically capacity to change in relation to inter-personal functioning would be outside the scope of such meetings and would require expert psychological assessment.

We would wish to note a concern regarding the requirement for mediation and suggest that further clarity is given regarding the situations when such requirement is not assumed. In particular where there has been domestic violence or one partner has been controlling or emotionally abusive to the other.
13 Control of expert evidence, and of assessments, in children proceedings

“(7A) A direction under subsection (6) to the effect that there is to be a medical or psychiatric examination or other assessment of the child may be given only if the court is of the opinion that the examination or other assessment is necessary to assist the court to resolve the proceedings justly.

It is suggested that in each section it would be more accurate to include ‘psychological’ in this sentence—‘psychiatric’ could be subsumed under ‘medical’ but this would be distinct from ‘psychological’ assessments. The latter are a very large proportion of the expert reports within family proceedings. Typically within family court such psychological expert assessments are not just of the child but also parent/carers and combined assessments of families, it would be helpful to refer to this.

The Society is currently involved in a collaboration with the Family Justice Council developing standards and best practice guidelines for psychological expert witnesses in the Family Courts and recommendations for when psychological experts can appropriately be instructed. It is hoped that the conclusions and recommendations from this working group can be incorporated into these proposed changes.

The Society welcomes the removal of unnecessary delay being from family court proceedings and it is recognised that financial constraints require serious diligence. However, we are concerned that financial pressures may override what is best for children and families. If the court process becomes too rigid there is a risk that the need for every case to be treated according to its unique individual circumstances will be lost. For example, through the provision of high quality and timely expert psychological opinion and synthesising multi-factorial information, providing evidence-based intervention options at the individual, family and system level, alongside reliable information about treatability, likelihood of change and timescales. The provision of such information early in proceedings can assist to reduce delays in making appropriate decisions. We believe that it is important to consider other ways in which timescales can be reduced.

An additional concern is that removing the care plan from the scope of the hearing will leave very important details undefined and without sufficient scrutiny, such as the level and type of contact, and what services are needed to support the plan.

Children and Families Bill

Part 3 — Children and young people in England with special educational needs

Duty of health bodies to bring certain children to local authority’s attention

(1) This section applies where, in the course of exercising functions in relation to a child who is under compulsory school age, a clinical commissioning group, NHS trust or NHS foundation trust form the opinion that the child has (or probably has) special educational needs. (2) The group or trust must— (a) inform the child’s parent of their opinion and of their duty under subsection (3), and (b) give the child’s parent an opportunity to discuss their opinion with an officer of the group or trust. (3) The group or trust must then bring their opinion to the attention of the appropriate local authority in England.

This duty is welcomed and is entirely within the spirit of effective cooperation and integration, and reinforces what would be expected of good clinical practice for psychologists working in health to share assessments and concerns regarding a young person’s learning needs. It is suggested that there will be a need for information about this duty to be disseminated clearly across Health groups and trusts including information about procedures.

Children and Families Bill

Part 3 — Children and young people in England with special educational needs

27 Duty to keep education and care provision under review

(1) A local authority in England must keep under review— (a) the special educational provision and social care provision made in its area for children and young people who have special educational needs, and (b) the special educational provision and social care provision made outside its area for children and young people for whom it is responsible who have special educational needs.

(2) The authority must consider the extent to which the provision referred to in subsection (1)(a) and (b) is sufficient to meet the special educational needs and social care needs of the children and young people concerned.

Duty to keep education and care provision under review (3) In exercising its functions under this section, the authority must consult— (a) children and young people with special educational needs, and the parents of children with special educational needs, in its area; (b) the governing bodies of maintained schools and maintained nursery schools in its area; (c) the proprietors of Academies in its area; (d) the governing bodies, proprietors or principals of post-16 institutions in its area; (e) the governing bodies of non-maintained special schools in its area; (f) the advisory boards of children’s centres in its area; (g) the providers of relevant early years education in its area; (h) the governing bodies, proprietors or principals of other schools and post-16 institutions in England and Wales that the authority thinks are or are likely to be attended by children or young
people for whom it is responsible; (i) a youth offending team that the authority thinks has functions in relation to children or young people for whom it is responsible; (j) such other persons as the authority thinks appropriate.

It is suggested that the list of agencies the authority must also consult should also include local Specialist Child and Adolescent Mental Health Services (CAMHS), who are likely to have significant involvement with children with special education needs and/or children who are looked after, and their families/carers. Typically CAMHS Clinicians working with these young people and their families/carers will be able to offer a great deal of information around the extent to which their current provision is meeting their needs, in particular their mental health needs. It is consistent with the thrust of the Bill towards integration that this agency is consulted as part of these reviews.

The Society welcomes the focus in the Bill on greater integrated working across agencies and increased involvement of young people and parent-carers. The increased scope of the new EHC assessments and plans to encompass health and social care needs offers a chance to reduce the overlap and repetition within the system at the moment. This way, professionals can be freed up to work more closely with parents/carers as partners and in a joined up way around the family and young person. The single combined assessment enables a more holistic picture of the child or young person’s needs and how interacting factors across a number of systems impact on the child and young person’s education and wellbeing. Therefore, it enables the interventions and provisions necessary to achieve positive educational and wider life outcomes.

It should be noted however that a quality assessment for EHC, that truly integrates professional understanding with parental knowledge may take longer rather than less time so reducing timescales could carry risks that should be evaluated and monitored. It is our view that it is the quality of the assessment and the extent to which it leads to effective and appropriate interventions and provision which should be of key importance, rather than small changes in the speed of such plans being developed.

The joint commissioning duty offers more encouragement than current legislation to joint working, strategic planning and accountability in relation to the needs of pupils with SEND. This is welcomed.

Lastly the single EHC plan replacing LDAs for older pupils is a positive move as it should promote better integrated working across children’s and adult’s agencies to support the transition to adulthood and into employment.

April 2013

Memorandum submitted by the UK ADHD Partnership (CF 96)

Executive Summary

1. The UK ADHD Partnership (UKAP) is a group of medical and educational specialists with experience of working with children with Attention Deficit Hyperactivity Disorder (ADHD) and Special Educational Needs (SEN), committed to helping drive better access for children to the diagnosis, support and management of ADHD to build better futures for children with the condition.

2. UKAP welcomes the recent publication of the draft SEN Code of Practice alongside the Children and Families Bill and further welcomes the commitment that it should be scrutinised by Parliament.

3. ADHD is under-diagnosed and under-treated with severe consequences for children with the condition, their families and society as a whole
d. Detailed research demonstrates the significant risks that unidentified and poorly treated ADHD presents in compromising the opportunities children have to experience the benefits of a normal childhood. In such cases, children are at a heightened risk of mental health problems, social exclusion and anti-social and potentially criminal behaviour
d.

4. UKAP believe that improved diagnosis and access to appropriate support and treatment would be cost effective and could have a radical improvement on outcomes for children across education, criminal justice, family welfare, healthcare and antisocial behaviour.

5. UKAP believe that every school age child with ADHD should have the opportunity to fulfill their life potential through comprehensive assessments in schools, early intervention and appropriate support.

6. UKAP recommend that the SEN Code of Practice and relevant regulations and guidance issued to accompany the Children and Families Bill should include UKAP’s Call To Action: that all children who receive two fixed term exclusions from school are screened for ADHD and, if appropriate, an assessment process for ADHD initiated.

7. We hope that the Committee will take into account the evidence as set out in this submission, and recognise the importance of early screening and intervention for children with suspected ADHD to improve outcomes and help build better futures for children with ADHD.
ADHD is a common behavioural disorder affecting school age children: in the UK, the prevalence figure is 3.62% in boys and 0.85% in girls aged between 5 and 15 years. It is a clinically distinct neurobiological condition that is caused by an imbalance of chemicals affecting specific parts of the brain responsible for behaviour.

How undiagnosed and untreated ADHD has a negative effect on outcomes for children

8. ADHD is under-diagnosed in the UK and as set out above, the knock-on effects of poorly managed or unidentified ADHD demonstrate the need for early identification.

9. Exclusion from school is often the first event that can label a child a ‘problem’. However, whilst many children will be temporarily excluded from school once for poor behaviour, and will be suitably chastened by the experience, children with untreated developmental problems like ADHD cannot properly moderate their behaviour without the right support, so they are very likely to be excluded more than once.

10. If these behavioural problems can be identified before leading to permanent exclusion from school, it is possible for the child’s behaviour to be managed appropriately and the negative impact of permanent exclusion on the child’s education and future avoided.

11. UKAP recommend that all children who receive two fixed term exclusions from school are screened for ADHD and, if appropriate, an assessment process for ADHD is initiated.

12. Key behaviours related to ADHD are readily observable in children at school and, therefore, it would be advantageous for teachers to be able to recognise those pupils who may have ADHD.

13. Research in the UK has shown that two thirds of parents with children with ADHD had been in contact with teachers about their concerns. However, studies have shown that teachers’ perceived competence in the management of children with ADHD in the classroom is variable and is correlated with their professional knowledge and experience. In one report 43% of medical specialists felt that teachers were not aware of ADHD so they didn’t realise children should be referred.

14. By increasing teachers’ knowledge of ADHD alongside the provision of clear advice on how to work with children who might have ADHD, identification and therefore outcomes in the long term may be improved.

15. Teachers can play a crucial role in assisting with timely and accurate ADHD identification. More should be done in the normal classroom setting to raise awareness, reduce stigma and improve teachers’ knowledge of the symptoms of ADHD and resulting educational needs.

16. A screening programme at second fixed term exclusion for ADHD has several attractions: the early identification of problems; early intervention; and, if repeated regularly throughout primary and secondary school, recognising cases that ‘slip through the net’ or have a late onset. To the best of the knowledge of the NICE Guideline Development Group and the review team, no screening interventions for children with ADHD are carried out in schools in the UK.
21. The Bill presents an opportunity to make the necessary provisions to ensure that both teachers and school staff are more aware of ADHD and that the appropriate screening programmes are in place.

22. We recommend that regulations with regards to the assessment and planning process take account of the evidence set out above, and consider our call to action that all children who receive two fixed term exclusions from school are screened for ADHD and, if appropriate, an assessment process for ADHD is initiated.

The UK ADHD Partnership (UKAP) is a group of medical and educational specialists with experience of working with children with Attention Deficit Hyperactivity Disorder (ADHD) and Special Educational Needs (SEN), committed to helping drive better access for children to the diagnosis, support and management of ADHD to build better futures for children with the condition.

Members of the UK ADHD Partnership:

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REFERENCES:


2. ADHD Europe. Contribution to the TC Green Paper on improving the mental health of the population 2006.

3. NICE Full Clinical Guidance—Attention Deficit Hyperactivity Disorder: Diagnosis and management of ADHD in children, young people and adults 2009, London: NICE.


April 2013
Memorandum submitted by Dr Rona Tutt OBE (CF 97)

PART 3: CHILDREN AND YOUNG PEOPLE IN ENGLAND WITH SPECIAL EDUCATIONAL NEEDS

Individual Response by Dr Rona Tutt OBE, Past President of the National Association of Head Teachers (NAHT), former head teacher of a special school, currently working as an education consultant, speaker and writer.

Summary

This Bill provides an opportunity to overhaul the SEN Framework, in order to give families a more positive experience of the SEN system, and to improve outcomes for children and young people with SEN. Whether or not the Bill makes a significant difference will depend largely on: clarity around the terms ‘SEN’ and ‘Inclusion’; giving parents an equal right to express a preference for a mainstream or a special school place; ensuring that health and social care play a full part alongside education in making EHC Plans more effective than statements; and making early intervention a reality by a more flexible use of all types of provision and support.

In addition, the extension to 25 years of age needs to be accompanied by sufficient opportunities and resources for the post-16 age group. Some special schools, for instance, are having difficulty in extending their provision to post-16, meaning that students may have to leave a school environment sooner than their mainstream peers, despite needing longer to develop and to learn skills. With the Raising of the Participation Age, there should be an increased range of opportunities for this age group. Furthermore, throughout the Bill, there are references to further education, but some students with SEN, such as those with high-functioning autism or Asperger’s syndrome, are capable of making a success of higher education, but they need varying amounts of support to do so. In fact, it is the right support, which, in some cases is quite minimal, that will determine whether or not they complete their course and move into employment.

Detailed comments

Clause 19 Local Authority functions: supporting & involving young people

Having local authority functions set out at the start of Part 3 of the Bill, signifies from the outset a shift in culture, which recognises the importance of involving families and respecting the views, feelings and wishes of parents and young people. It is, therefore, very disappointing that this shift in approach, which was signalled very clearly in the SEN Green Paper, Support and aspiration: a new approach to meeting SEN and disability (March 2012), is not carried through in all subsequent clauses (see comments on Clause 33).

Clause 20 When a child or young person has SEN

While the extension of SEN to 25 years of age is to be very warmly welcomed, it is a pity that there has been no attempt to rethink the definition of SEN. While the Green Paper had in its title ‘SEN and disability’, Part 3 of the Bill is headed ‘Children and Young People in England with Special Educational Needs,’ with no separate mention of disability. More thought needs to be given, both to defining SEN more sharply than the current definition manages to do, and also to the extent of the overlap between SEN and Disability.

A further step might be to set SEN/SEND within the context of being a significant grouping within a range of vulnerable groups, on which there is an increasing focus in terms of the progress they are making. Taking this approach would help to recognise that many pupils will belong to more than one of the recognised groups, eg they might have SEN and be in care (looked after), or have a disability and have English as an additional language (EAL). Whether or not this might lead eventually to a more general description than SEN/SEND, such as Additional Needs, Additional Educational Needs or Additional Learning Needs, would need to be resolved through further discussions. But from the perspective of those teaching children and young people, there is a need to consider each pupil’s needs as a whole.

Clause 22 Identifying children and young people with SEN

While it would be very valuable for local authorities to have to identify all those who have, or might have, SEN, in order to aid early identification and the planning of provision, it is not clear how this will be achieved when numbers of staff in local authorities are continuing to decrease. It is unfortunate that the timing of the Bill means that changes are being brought in against a backdrop of severe financial restraint. This will need to be borne in mind, so that any strengthening of the SEN Framework is accompanied by identified sources of funding.

Clauses 25–28 Joint working between the services

A major factor in determining whether or not the Bill makes a real difference to children and young people with SEN and their families, will be determined by the extent to which there is a closer working relationship between education, health and social care, and a willingness to take joint responsibility for outcomes. Many children and young people with SEN will need the support of more than one service and some will need input from all three services if they are to thrive. This involves joint planning and commissioning, as well as securing the provision that is needed. It will be a major advance if there is an end to the arguments about who will provide
Clause 30 Local offer for children and young people with SEN

The local offer could be a significant step forward in giving parents and families the information they need to play their part in the decisions that are made. It should help to ensure that local authorities are more open about what is available in their area. If there are both national standards laid down and a common format for presenting the information, it will help to achieve a level playing field across different areas of the country, for comparisons to be made, and for local authorities to recognise what more needs to be provided. Again, though, there is concern about whether they will have sufficient staff to collate the information and whether there will be any sources of funding to fill identified gaps and ensure provision improves over time, including having enough specialist advisory and support services available to schools and to families.

Clause 33 Children and young people with an EHC Plan

The Green Paper and its successor, Support and aspiration: a new approach to meeting SEN—Progress and next steps (May 2012) held out the promise that the new SEN Framework would move on from the divisive debates of the 1980s and 1990s, by recognising that inclusion is not about a place, but about including every child in the environment that enables them to be most fully included in the life of their school. Although it was unfortunate that the Green Paper referred to 'removing a bias towards inclusion' rather than saying 'a bias towards inclusion in mainstream schools', it did make it clear that what was meant was that parents of children with statements of SEN/EHC Plans ‘will be able to express a preference for any state-funded school—including special schools.' (paragraph 20). The Progress and next steps document followed this up by saying that all those who responded to the Green Paper supported a change in the law, so that parents would have ‘identical rights to express a preference for any state-funded school, including mainstream or special schools’, (paragraph 2.17).

As there was 100% agreement to this proposal, it is difficult to understand why the Bill has reverted to the law as it stands, which means that the presumption of mainstream schooling is retained and the talk of giving more control to parents and ‘respecting the views, feelings and wishes of parents and young people’ (as laid out at the beginning of Part 3 of the Bill) is undermined.

Although there may have been a time in the last century, when some parents found it hard to get their child with SEN admitted to a mainstream school, the situation has changed so that now parents often talk of the fight to get their child into a special school. Giving parents an equal right to express a preference for either type of school not only fulfils the Bill’s aim of giving parents more control, but recognises that for a minority of children with SEN, a special school is not a second best option, but the place where they can be most fully included, because the environment and the curriculum can be adapted to their needs, rather than expecting them to fit in with what is provided for the majority. All the main political parties have recognised the need for a continuum of provision and it would set back the cause of special education if the promises made in the documents that preceded the Bill were watered down in this way. There has been much progress in creating a more inclusive education service, (which includes all pupils and all types of schools), with special schools embedded in the system alongside mainstream schools as academies, specialist schools and teaching schools, or as part of co-locations, partnerships and federations that run across previously separate sectors and phases of education.

It is extremely concerning, therefore, that the significant step forward heralded in the preceding documents has not been followed up in the Bill, which runs the risk of special schools being seen as a second best option, arguments about inclusion continuing and local authorities interpreting it in different ways. If parents are to be placed at the centre, their views should be listened to, whatever they want for their children and wherever they live. It is essential that this Bill eradicates the present situation where the views of local authority officers, who may not even have met the child, can determine the provision.

Clause 34 Children and young people with SEN but no EHC Plan

This clause is helpful in moving towards a more flexible use of special schools, as part of the continuum of provision. This was the original intention when the phrase ‘a broad range of flexible provision—including special schools’ was introduced (House of Commons Education and Skills Committee’s Report on Special Educational Needs 2005–06). While some local authorities do allow special schools to help with assessing the needs of children before they are statemented, other LAs will not allow this to happen, because of the expectation that children admitted to a special school will first have a statement. This clause and its subsections clarify that special schools do have a role to play in early intervention and in helping to ensure that the child’s needs are identified and met as soon as possible, whether or not that means a special school place. It also indicates that pupils without an EHC Plan may be placed in a special school for other reasons as well.

Subsection 9, however, takes this much further by recognising the benefits of using special schools more flexibly in other ways, but only if they are academies. Over time, it is likely that more and more special schools will become academies and there seems no point in limiting this more flexible role to special schools which happen to be academies when the Bill becomes law. If all special schools were able to offer part-time, short-term and dual roll provision, far better use would be made of a scarce resource and far more pupils would be able to have individualised packages of support that could be adapted as their needs change. Not only would this improve outcomes for pupils with SEN and reach far more of them by giving them access to more specialist
teaching, specialised equipment and resources, it would also raise standards in mainstream schools as well. By working together in a more flexible way, mainstream and special school staff would combine their knowledge and take shared responsibility for the education of pupils with more complex needs. In addition, it would give mainstream staff more time to focus on pupils without SEN as well.

Clauses 37–46 Education, health and care plans

The change to allowing young people to have a Plan up to the age of 25 is most welcome and will help to ensure that there is a more seamless transition to adult services, education beyond school, and employment. It is important that the upheaval caused by moving from statements to EHC Plans is worth the cost and effort of the changes and they do not become the same procedure under a different name. One of the key factors will be whether or not health and social care take joint responsibility with education for providing the services and support itemised in the Plan. The majority of children and young people whose needs are significant enough to require a Plan, will need the support of at least two services, and, in some cases, all three. Therefore, it is essential that the services work together and parents and families are fully involved and clear about where the responsibilities lie for the delivery of each element of the Plan.

It is assumed that the work of the Pathfinders will contribute to a national format for an EHC Plan and that there will not be variation by geographical area, but only, perhaps, adaptations for different age groups within the 0–25 age range.

Clause 48 Personal budgets

Although it is right to give families more control over what happens, and the Pathfinders may be able to clarify the parameters for using personal budgets, it will be very important for everyone to clear about how the money can be spent. For instance, difficulties could arise from parents deciding how they wanted additional support to be provided in a school context and who would carry it out, when head teachers need to be able to organise the work that goes on in their schools and have responsibility for the quality of what is delivered.

Clause 51 Mediation

Having mediation available should help to make the system less adversarial and to sort out some of the disagreements at an earlier stage. At present, a great deal of time is spent by all concerned preparing for tribunals that never take place, because the local authority, for instance, gives in just before the tribunal is due to take place.

Clause 62 SEN co-ordinators

It is essential that the current arrangements for ensuring that SENCos are i) qualified teachers and ii) undertake additional training for their role, are not watered down.

April 2013

Memorandum submitted by Nicola Herron (CF 98)

RE: CHILDREN AND FAMILIES BILL

I understand the deadline for any responses to the above is on 23/04/2013. I do not work for a company and am writing this response/recommendations as a parent and as a Probation Officer.

I will address the following sections of the proposed Bill:

— Adoption
— Children in Care
— Aspects of Family Justice System
— Young People with Special Educational Needs

1.1 ASPECTS OF FAMILY JUSTICE SYSTEM

I would recommend that the Family Courts should move towards becoming public Courts and operate in the same manner as in any Criminal Court. This would in turn allow media to be present within the Family Court, just as they are within the Criminal Courts. This would lead to transparent practices based on fact and not the balance of probability and would thus incorporate equality in a fair and open manner.

1.2 With regards to the ‘balance of probability’, I would wish to see more evidence based fact and regulations to ensure that any hearings within this arena are scrutinised by policies and new national guidelines, which should be based on factual evidence and not hearsay, as is the case today. Far too frequently, Judges appear to give credence to Social Workers who operate within a service, which does not appear to understand what evidence based practice is and indeed a service who can stand within a Family Court and use information, which has neither been substantiated or indeed frequently not previously discussed with the defendants.
1.3 I would also wish to see policies, which clearly demonstrate that children’s voices are heard and would recommend that Guardians of the Court should be completely independent of the Local Authority. Children should be allowed to choose their own Legal Representative, which should be entirely separate from the Local Authority.

1.4 In regards to any aspect of risk of serious harm—this criteria should be clearly evidenced with factual information to substantiate and corroborate any allegations of which the Local Authority may have made. Perhaps the most salient point of note would be to ensure that when Local Authorities are investigating allegations of abuse across whatever category, there should be more stringent guidelines for workers to abide by. For example, there should be similar standards to PACE when investigating child abuse. I state this with particular reference to allegations which are dealt with in isolation by the Local Authority and not allegations which are jointly investigated by Police and the Local Authority. If the Local Authority are to act as investigators, then there really should be improved standards within this area. This could be easily achieved by ensuring any investigation is undertaken in a fair and consistent manner by the use of taped interviews and or video evidence. This would ultimately ensure that workers are following guidelines and procedures as well as protecting defendants who are accused of abuse. I have a personal interest in this aspect, having been the accused party of malicious allegations on 15/2/2012. I was refused these allegations until 04/04/2012 and was sacked on the basis of hearsay on 15/02/2012. To date, no one from the Local Authority has spoken to me about the allegations. They have however used them in various reports and they have at no time ever been substantiated and they never will be. I would dearly love the opportunity of sharing this experience with anyone who could make positive changes in order to ensure this never happens to another human being again and feel very passionately about the injustice I was subjected to. I have worked as a Probation Officer since 2003 and always worked within policies and national guidelines. I more than anyone understand the difference between hearsay and factual evidence and what I have seen and witnessed at the hands of inexperienced workers within the Local Authorities truly saddens me. I now understand that I am not in a minority but something really needs to change here for the greater good.

1.5 In regards to what I have witnessed professionally, I have been astounded by some of the inter-agency meetings I have attended. What I have observed is an inconsistent approach to both high risk of harm cases and low risk of harm cases. For example, when managing a sex offender tier 4 case who was released on an extended licence for public protection, I challenged a Social Worker who had allowed this male to form a new relationship with a female with two children just 48 hours after his release. I was not satisfied that his risk had diminished and considered that he was grooming the two children. When I raised this formerly with the Social Worker she claimed that she was not concerned with any proposed risk and had undertaken an assessment on the children and considered that he was grooming the two children. When I raised this with the Social Worker she claimed that she was not concerned with any proposed risk and had undertaken an assessment on the children and was satisfied there was no risk. I asked how she came to this conclusion and she was not only reluctant to discuss this with me but then proceeded to inform me that the case was closed. The PPU officer was also somewhat astounded as there were clear risk indicators one of which was his request to take the young boy out of the country. He clearly could not do this whilst on licence but attempted to make various complaints suggesting he had previously been told otherwise. In my opinion, and it is just my opinion, the Local Authority have little concept of risk management and I believe that the risk assessment tools used to formulate their assessments are far outdated by tools such as EOASYs. One standard across the board assessment framework which simplifies their existing tools would do the job far better than the complex tools they use now. I understand there are different aspects for consideration when dealing with adults and children, but a more uniformed approach would resolve such issues. It would also ensure that when young adolescent offenders are transferred to Probation that risk assessments are more easily accessible. To me there seems to be a massive gap between the concept of risk assessment between the Local Authority and other agencies like Probation and Youth Offending Services. I think the key here is evidence based practice, factual information and sourcing and verifying that information. You cannot write in any Probation Report information which is false or indeed misleading. Furthermore, you state your sources and you identify what is fact and what is professional opinion. You do not ever make any diagnosis of any individual outside of your remit and should you place any bias in any report, you would be rightly hung out to dry by any Court of Law. Furthermore, it is an offence to do any such thing under the Criminal Justice Act 2003 and there are stringent guidelines which have to be adhered to. For the most part, this is monitored by the assessment tool used and then via robust line management. Probation policy therefore ensures accountability and offers a transparency which protects both the staff and the service user.

1.6 Finally, there should be adherence to the various principles of the Human Rights Act and no person should be deemed guilty until proven innocent, which is the case within this arena today. It should not be down to any individual to prove their innocence, it should be down to the Local Authority to provide substantial evidence and undertake a fair and proper investigation which does not breach the rights of individuals. It is simply not acceptable for any society to consider a person guilty until proven innocent and such practice breaches many statutes.

2.1 ADOPTION

Any child being adopted by the Local Authority should be adopted as a last resort. It is not the case today that children are adopted as a last resort, as there appears to be some push towards government targets, which generate vast profits when children are adopted. Far to frequently, children are adopted into families and separated from their siblings. This is not acceptable and traumatic for any child to experience. There will be cases whereby adoption and or removal from the family are a necessity, but should this be the case, then every effort should be made for siblings to remain together and or with other suitable family members. It should not
be the case that children are separated to meet the needs of prospective new parents. Moreover, adoptive parents should be more responsive towards the need of children to be placed together with siblings and if this is not the case, then perhaps adoptive parents should come under more scrutiny. Adoption should be centred specifically around the child’s individual needs and more stringent criteria is needed to ensure that children are removed with valid reasons and not reasons which have never been substantiated.

### 3.1 Children in Care

If children are placed into care by any Local Authority when there are sufficient grounds and evidence which substantiates abuse, great emphasis and consideration should be given to their individual needs. Residential Units should be run by qualified Social Workers and not agency staff who have no training or experience of dealing with challenging behaviour. More stringent regulations should ensure that any staff member is sufficiently qualified to manage challenging behaviour. Children’s homes should ensure that all staff are qualified workers and perhaps more stringent vetting needs to be in place to ensure the welfare of any child within the care setting.

### 4.1 Young People with Special Educational Needs

Every Local Authority should ensure that any child with special educational needs are addressed as a priority. For example, Dyslexia screening should be routinely offered at the onset of primary education. If any parent raises concern around any specific learning needs, Local Authorities should have provisions available to address and implement assessments. Parents on low income should be offered financial assistance with any such assessments. The individual needs of children with specific issues appear to have been lost in the ether with the formation of academies and have predominantly and frequently been refused when there are cost implications. It is important to address such issues at an early stage in order to ensure that all children receive additional support in order to facilitate a more positive learning experience for the child. This would also promote anti-discriminatory practice and would ensure that every child was treated fairly. This is not the case today and I have a child who was recently diagnosed with dyslexia. It took me just 8 years to get this assessment and this is far from satisfactory. My daughter is aged 14.

*April 2013*

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**Memorandum submitted by Thea Cable (CF 99)**

I have prepared this document as a grandmother of a child with a Statement of Special Education Needs, who is currently in mainstream school. I wish the committee to consider my views on this matter. Although I will refer to my grandson’s situation, my comments are intended to be general and not specific to his case.

Having looked at the section of this Bill concerning Special Educational Needs, I am very concerned that, in all of it, I haven’t been able to identify how children who currently have a Statement will be supported and funded when this new Bill comes into force. There seems to be no mention of specific hours of support being awarded to a child, as there is at present. There seems to be no mention of any support given being protected by a legal obligation. The overwhelming feeling I get from reading the proposals is that it proposes a much more complicated system which may not provide the level of support that children currently are entitled to and receive under their Statement of Special Educational Needs. I think it may be unwise to leave schools and institutions to decide how to deliver what a child needs in terms of support and by far the safest method, and one which reassures parents and carers, is a clearly defined system with measurable levels of support, legally enforceable, that is adequately funded.

I would like to make the following specific points:

1. Under the proposals for the new Children and Families Bill, the Statement process disappears and is replaced by an Education, Health and Care Plan. So far it has not been made clear if children who have an EHC will be protected by the same statutory obligations as under the current Statement process. It is also not clear how this support will be defined and whether it is to be a more vague ‘support as needed’ arrangement rather than the very clearly defined hours of support as under the current Statement arrangement.

2. The funding for SEN pupils has already been severely affected by the School Funding Reform which came into place on 1 April 2013. My grandson’s current school has been told that they now have to fund the first £6,000 of his support from their own budget. His school currently has approximately 25 Statemented pupils, so multiplying that number by £6,000 gives you a significant deficit in their annual budget. There are also numerous changes to the funding of SEN pupils in the proposed new Bill. Several proposals have been put forward, all of which seem very unsatisfactory to me and do not adequately replace the current way the support has been funded, ie direct from the LEAs. My local authority has told me that it no longer has a designated SEN budget and the money for support of SEN pupils in schools now comes from a variety of disjointed sources. It would seem from this that the 20 hours support my grandson now receives under the umbrella of his Statement is going to be in jeopardy and it will end up being down to the school deciding how best to support him rather than it being clearly defined by a Statement. Some schools may be very good at identifying need and responding appropriately to it, but others may not be so good and the SEN pupil may not receive the support they need.
3. I am deeply concerned that the combination of the new arrangements for support of SEN pupils set out in the proposed Bill and the new School Funding that came into place on 1 April 2013 will result in children not receiving a designated number of hours support and any support will end up being spread too thinly between too many SEN pupils. The reason I fear this is that the schools, having had their SEN budget taken away and having to now provide the first £6,000 of funding for each SEN pupil, will not have the resources to provide adequate support. Also, without the protection of many of the statutory obligations of the Statement system, it is not at all clear whether these children will receive the right level of support. To me, it all gets very woolly and undefined and parents will find it difficult to monitor if their SEN children are receiving the support they need.

4. It seems to me that the Statement system meant that children were clearly identified, their needs were assessed and appropriate levels of support were set out in black and white in terms of hours. There was an annual review when all these components could be assessed and updated if required. I know my grandson’s parents feel very confident in this system in that they knew exactly what the school was committed to provide and that the arrangements for their son would be kept up to date. They also knew exactly who was funding their son’s support and how this support was calculated and provided. Parents are lay people and systems should be simple to comprehend, equate and calculate and I fear that this Bill, in its present form, is going to prove to be too convoluted and complex for parents to understand.

5. Having spoken to my grandson’s LEA, it is clear that they are struggling to understand the new funding changes and will presumably struggle to understand the considerable complications of the proposed Children’s and Families Bill. The system regarding SEN pupils seems to be about to be complicated to the point that very few parents will be able to understand what is going on and this is a very uncomfortable feeling when you are just trying to ensure that your SEN child gets the best education and support.

6. There is another knock on effect of all these changes to SEN funding and how SEN children are supported. Having spoken to several SENCO’s in local secondary schools, it would seem that they are all beginning to feel that they must cut down on the number of SEN pupils their school admits. They feel that they no longer have the budget to provide the support these children are entitled to. Also, with all the proposed further changes in the new Bill in the way the support is defined and given and further changes in funding, I think it is very likely that we will see schools backing away from taking SEN pupils because of the hassle of dealing with the legislation and funding surrounding them.

7. Some of the SENCO’s I spoke to said that their school was in a better position because they had a higher than average number of children with free school meals, all of whom attract additional funding. Many of these children will not need the extra support that this extra funding is designed to provide, so the feeling was that some of this funding could be used to shore up their depleted SEN budget. I felt very concerned when I heard this as I feel it will distort admissions to schools with SEN children becoming the pariahs and the children entitled to free school meals being welcomed with open arms. Once again, it is a situation which could severely disadvantage pupils with a Statement of Special Educational Needs.

8. I would like the committee to consider seriously how the new Bill proposes to identify and support the needs of SEN children. Currently, the Statement gives clear guidance. Under the new Bill what happens to the children who currently have Statements? Will these be replaced by the new ECH plans and if so, what will these plans say? How will the new plans define exactly how much support a child needs and will it be legally enforceable? The Bill talks about a ‘high need’ band but fails to define exactly which children this affects? I believe that my grandson, with 20 hours support under the current Statement system, does not fall into this band. How will his support be defined?

9. My grandson is about to enter Year 10 and his two year GCSE course. Currently his level of support of 20 hours per week at school has meant that his target levels have risen to above average and he is on course to get really good grades in his exams. However, should his support be affected, disrupted or reduced, he could well fail his GCSE’s and that would be a tragedy given the amount of time and effort that has gone into to helping him get to the level he is as now. There are many parents out there who are not sending any evidence into this committee but who have exactly the same concerns as I have. Multiply my document by a few thousand and you may well get a truer picture of the level of dismay and worry that aspects of this new Bill are causing. It is hard enough having to steer a child with special education needs through the school system without having to deal with reduced funding and radical changes that affect the quality of the support they receive.

In conclusion, one can’t help feeling why these new changes are taking places as the vast majority of parents with children with Statements appear to be satisfied with the process. I, and my grandson’s parents, feel it is a case of ‘if it isn’t broken, then why fix it’.

April 2013
A. SUMMARY

The purpose of this submission is four-fold:

1. To provide social science data in support of shared parenting that was not considered in the one-sided analysis of the Norgrove Report,
2. To rebut recent studies sponsored by the Nuffield Foundation,
3. To provide a perspective on the international adoption of shared parenting,
4. To bring to the attention of the Committee that shared parenting is in fact not a drastic step as claimed by some, but was a routine consideration in the 1980’s and into the 1990’s without any problems being highlighted.

We strongly support shared parenting as being in the best interests of the child and the societal well-being of the UK.

B. NUFFIELD FOUNDATION STUDIES


2. This very recent research actually depends for its conclusions to a large extent on old research dating back to the 1980s and 1990s, for example: Emery (1982); Steinman (1983); Chambers (1984); Singer & Reynolds, (1987–88); Johnston et al (1989).

3. None of these studies statistically compared ‘outcomes’ for children from the families where children lived with their fathers for at least 30% time with sole physical residence.

4. A new Nuffield Foundation review of shared parenting is due to be published in 2014. With funding valued at £106,453 Dr Maebh Harding and Dr Annika Newnham, of the School of Law (Uni. of Portsmouth), hope to inform changes in government policy (and neither of whom are social scientists). They will examine how 5 courts over a 6 month period promote shared parenting to separating parents.

5. Shared parenting as an area of policy study has been shockingly ignored in Britain resulting in no previous research being available. Both those in favour and those opposed to shared parenting agree on this point.

6. However, shared parenting, or joint custody, is not new to Britain. It was a common custody award in the years prior to the Children Act 1989. In the mid-1980s the Law Commission realised it had no data on the types of custody awarded in England & Wales and set about collecting figures (see Appendix A). Details of this and of shared residence (specifically mentioned in the Children Act) will be dealt with later in this Memo together with the intriguing ‘geographical divide’ in shared parenting.

7. It is therefore perplexing that those opposed to shared parenting should fear it because of its newness and because it is allegedly “untried and untested.”

8. To date all of Nuffield’s studies into shared parenting have been strangely negative and one suspects this more reflects the authors own preferences then the objective science. Norgrove’s recent Report was heavily influenced by the same coterie of authors responsible for Nuffield’s studies.

9. In the words of Professor Parkinson, speaking of the Australian experience which Norgrove, Maclean, McIntosh, Hunt et al, all heavily relied upon to make their case against shared parenting:

“Almost none of the arguments made by the Norgrove Committee or the single parent organisations that oppose reform [in favour of shared parenting] can be supported by the available evidence”.

10. It is arguable whether this lack of knowledge in the UK is a product of grant making charities refusing to support this aspect of social policy or alternatively researchers obsessing to the exclusion of all other options on dissecting the pros and cons of ‘contact’ and its associated problems.

11. Accepting that Britain has neglected to keep abreast of shared parenting as parental custody models there are, fortunately, more relevant and far more recent datasets from overseas to make up the shortfall.

12. Several countries in the EU—Europe and Scandinavia—have adopted shared parenting with no apparent ill effects. In each country it appears to have been accepted by the general public, the radical feminist lobby and fathers groups. Yet it is only the Australia example that has attracted ‘flak’ in the British debate. Indeed, the
Australian government predicted the possibility of a feminist lobby reaction against the Act and initiated several statistical ‘firewalls’ in the hope of thwarting misinformation subsequent to its enactment.

C. Enforcement of Court Orders

13. Enforcement is a highly salient issue given recent statements from the government and the Justice Select Committee. However, enforcement only becomes a highly salient issue when the model in operation or adopted is a ‘winner takes all’ variety, as in the present ‘residence and contact’ model.

14. While the current regime promotes the idea that there is something to fight for then ‘fights’ will, not unnaturally, occur in a small percentage of cases. Reviews of recent research show that ‘shared parenting’ significantly reduces on-going conflict between the parents.

15. The UK Government’s view and preferred option is that:

Courts to be requires to work on the presumption that a child’s welfare is likely to be furthered through safe involvement with both parents—unless the evidence shows this not to be safe or in the child’s best interests.

16. Enforcement under the present regime has shaped personal experiences and testimonies. This can be expected to change radically once a fully developed ‘shared parenting’ regime together with a ‘parenting plan’ alternative is adopted. (N.B. Acceptable ‘parenting plans’ were in fact printed and stockpiled by the former Lord Chancellors’ Dept as far back as 2001 but never implemented/distributed).

17. Despite their initial impact and powerfulness, personal experiences and individual accounts like any other anecdotal evidence is limited in its use. They are, by definition, not representative, objective or complete.

1. The Policy Context

18. Many academic papers including those, for example by Trinder and Hunt, confidently assert that “... most parents decide their own parenting arrangements after family breakdown.”

19. “It is well known that most parents decide their own parenting arrangements after family breakdown. Only about 10% of separated parents have court-determined contact arrangements. A fraction of those 10% seek enforcement of the court order. In 2011/12 there were just 1,383 applications for enforcement in England. To put that in context, 38,405 children were involved in contact applications in England and Wales in 2011.”—Prof. Liz Trinder

20. However, this overlooks the fact that most parents are “bargaining in the shadow of the law”—meaning that they arrive at their Parenting Plan based on the existing custody laws and customs. As a consequence, when custody laws favour sole residential custody, parents are not freely and independently choosing their parenting plan.

21. Today’s academic papers never mention the pre-1989 custody arrangements when a decade of surveys found fully 30% of awards in some court were ‘joint’ (Appendix B). The growth in joint custody in the 1970s and 1980s is shown in Appendix C. It was to regularise this that the Law Commission instituted ‘shared residence’ orders in the 1989 Act.

22. Of necessity, therefore a clearer picture can often be obtained from statistical information. The table below is taken from Table ‘Judicial and Court Statistics 2010’ (pub’d by ONS). It contradicts several significant points often made by those opposed to shared parenting. It should be noted that there is no column or row for ‘shared residence’ orders for 2010. This is due to not one ‘shared residence’ order being made, indeed, no shared residence orders have been made since the 1989 Act, in defiance of parliament.

<table>
<thead>
<tr>
<th>Nature of application</th>
<th>2010—Disposal of selected applicants in private law in all tiers of court</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Applications withdrawn</td>
</tr>
<tr>
<td>Parental responsibility</td>
<td>350</td>
</tr>
<tr>
<td>Section 8</td>
<td>Residence</td>
</tr>
<tr>
<td></td>
<td>Contact</td>
</tr>
<tr>
<td></td>
<td>Prohibited steps</td>
</tr>
</tbody>
</table>

Report by Justice Ctee, chaired by Alan Beith MP, was unfavourable towards shared parenting (this is not the first time Alan Beith MP has expressed his dislike of the model).
2010—Disposal of selected applicants in private law in all tiers of court

<table>
<thead>
<tr>
<th>Specific issue</th>
<th>Applications withdrawn</th>
<th>Orders refused</th>
<th>No. of ‘No Order’ orders</th>
<th>Orders made</th>
<th>Total Orders made</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>250</td>
<td>20</td>
<td>80</td>
<td>5,640</td>
<td>5,990</td>
</tr>
<tr>
<td>Others—not included here</td>
<td>4,380</td>
<td>550</td>
<td>1,510</td>
<td>156,090</td>
<td>162,540</td>
</tr>
</tbody>
</table>

NB “others” include financial & special guardianship orders

Source: http://justice.gov.uk/downloads/statistics/courts-and-sentencing/judicial-court-stats.pdf Table 2.4

2. Examination of the 10% claim

23. Firstly, the claim that only 10% of separating couples seek the services of the court is undermined by a total of 156,090 orders being made in connection with ‘contact’ issues. This is not ‘a fraction’ but is in excess of the annual total number of divorces and must therefore include some re-applications—in itself an indication that the system is not working satisfactorily.

24. In regards the 10% claim found in much academic literature it has to be noted that in the 2007 Scottish survey (which is one source used), the figure was obtained by the sample of 500 being predominantly based on unmarried young couples who had separated.352 In the case of the ONS ‘Child Contact Survey the figure of 10% resulting from the Omnibus survey of 2004 (which is another source used), it has to be noted that it is based on a representative sample of adults of only 935 adults aged 16 or over (649 were resident parents 312 were non-resident parents and 26 respondents were both—and so are counted in both categories).353

25. Of the 92,130 contact orders granted (see Table above), only a further 300 were refused (equiv. to 0.3%). If compared with the total number of orders granted, 162,540, then the 300 ‘refusals’ of contact become a mere 0.18%. ‘Refusals’ we have to assume are based on either a perceived threat of violence or some unsavoury traits on behalf of the applicant.

26. The American state of Florida which passed equal time-sharing this year, 2013, has an interesting caveat that “clear and convincing evidence” must be shown if a departure from equal time-sharing is requested by any of the parties.

27. Secondly, ‘contact’ is claimed in 92,130 of instances annually which immediately burdens the court system. A glance at 2002 figures for Contact and Residence applications compared with those for 2010 above shows a figure of 61,356, so the situation is getting worse not better (see Appendix D).

28. In 1998 the “official” cost of divorce alone was put at £5 billion per annum The costs of legal aid has risen from £138 million in 1980 to £2.2 billion in 2005. Introducing shared parenting would dramatically reduce the burden of legal aid funded by the taxpayer.354

29. The cost of legal aid in England in 2007 was £34 per head while in other jurisdictions such as New Zealand it was £10 per head, Germany, £4, and France £3.355

30. Thirdly, if there are in the region of 132,430 (36,970 + 95,460) contested applications for residence or contact then ‘conflict’ is almost inevitable in a small percentage. Switching over to shared parenting which would be convened by third parties in the shadow of the court (ie outside the court), would result in the national caseload for family courts falling dramatically to somewhere in the regions of only 30,110 cases per annum.

31. Fourthly, switching over to shared parenting would also result in less opportunity for ‘conflict’ even among the minority of problem or ‘high conflict’ families. The reduction in the case load, possibly to as little as 31,000 cases per annum, would allow better scrutiny of those more intractable cases where conflict or violence is alleged. Not least because were shared parenting to be introduced parents attempt to deprive one another of legal custody or parenting time would disappear overnight. As Dr. Linda Nielsen points out:

“First, the term “high conflict” has not been and probably never will be operationalised by social scientists or by professionals involved in custody decisions.

The term covers too wide a range of behaviors to be of much practical significance in regard to legal custody or parenting time. The term is used in family court and by researchers to describe anything

352 “2007 Scottish Child Contact Survey” http://www.scotland.gov.uk/Publications/2008/03/12145638/4
354 “Barristers should charge fixed fees, says Bar chairman” The Times, October 2, 2007 http://business.timesonline.co.uk/tol/business/law/article2574274.ece. And “Straw: legal aid bill has to come down” , The Times, Sept 25, 2007 http://www.familylawweek.co.uk/library.asp?i=3185
355 The Times, Sept 30th 2007 http://business.timesonline.co.uk/tol/business/law/article2530554.ece
from intense anger and distrust, to ongoing problems with communication, to frequent disagreements about child-rearing, to verbal abuse, to injurious and life threatening physical violence.

Second, conflict is highest during the time when couples are separating—the time when custody decisions are being discussed or disputed.

Moreover, parents often disagree about how much conflict exists in their relationship. But regardless of how it is defined, “high” conflict almost always declines after the divorce is finalized, meaning that conflict during divorce proceedings is not a reliable predictor of future conflict.

Third, the term is used in overly broad, inconsistent and inappropriate ways by lawyers, judges and mental health professionals in the family justice system. That is, “conflict” becomes the weapon parents use in their attempt to deprive one another of legal custody or parenting time.”

32. Although numbers are small, any non-implementation of a court order is a serious matter and risks damaging public confidence in the family justice system. For those opposed to shared parenting this presents something of a problem. Under the existing sole-mother-custody regime it is claimed that it is challenging “…for legislators and judges has been to find appropriate interventions for non-compliance.”

33. However, ‘the problem’ of non-implementation recedes to the far horizon when shared parenting is introduced. By its introduction legislators and judges are relieved of the onerous decision of whether to reverse custody or not.

34. The truth of the matter is that during Whitehall committee sessions judges and the judiciary have made it plain in private that a), they already have enough powers to fine, imprisonment or transfer a child’s residence from the defaulting parent but had no intention of ever using such powers, and b), they do not seek additional powers that have been offered since 2002 and would, in any event, never use them. In these Whitehall meetings they have never once stated that it would be either ‘counter-productive or harmful to a child’ (because it has been done, in extremis) but rather they choose not to take such action. Therefore, it is not surprising to learn that new sanctions of a), community service and b). Financial compensation made possible by the Children and Adoption Act 2006 have been little used.

3. The studies

35. It is often claimed by opponents to shared parenting legislation that in academic literature very few surveys or studies exist that deal with shared parenting. In fact, however, there are now over a dozen (26 in fact) studies that have directly compared the outcomes for these children and at least another dozen studies that have compared the parents in these two types of families.356

36. The consensus from these studies is that the outcomes for children who live with both parents at least 35% of the time are generally better than those who do not. Moreover, none of the studies published in peer reviewed academic journals found worse outcomes for the children in shared parenting families. With increasing numbers of studies comes a clearer understanding of the dynamics—one which runs counter to a number of negative assumptions and misconceptions commonly held about these families.

37. When considering the data, we should keep in mind what the leading American researcher, Dr. Richard Gelles warned against many years ago, namely that of being “woozled.”357 Gelles coined the term to describe how the research on a subject (in his case domestic violence) was being misconstrued and manipulated by certain advocacy groups. The same might be said of the manipulation shared parenting is currently experiencing.

38. A few studies determine that ‘shared parenting’ exits when a child spends a weekday and a day or two at weekends with their father as shared parenting when, in fact, this is no more than sole-mother-custody with visitation or contact rights by the non-resident parent.

39. Gelles also referred to situations where only one or two studies were discussed or cited so frequently that they came to be held as “true”—even by people who had never even read the studies. In this ‘elevated’ state completely untrue or partially untrue studies can attain the status of “scientific evidence.” This commodity is then used to promote a particular agenda or to uphold a personal opinion.

40. Shared parenting and ‘sleepovers’ (as a measure of shared parenting) are the focus of this memorandum. By way of example, a recent article in a British law school journal entitled “Shared residence: a review of recent research evidence” only presents four research studies, two of which are based on samples with large numbers of never married couples (Trinder, 2010).358

41. A poll carried out by Mishcon de Reye in 2009 to mark the 20th anniversary of the Children Act lead its authors to conclude that the Children Act 1989 is “not working” despite its good intentions. The poll (of 4,000 parents and children) revealed that:

357 Wisconsin Journal of Family Law, “Custody and overnights for young children: Myths and Misconceptions” By Dr. Linda Nielsen, Professor of Adolescent & Educational Psychology, Education Department Wake Forest University, Winston Salem.
358 Child and Family Law Quarterly, Vol. 22, No 4, 2010
— 38% children never saw their father again once separated
— 49% admitted to deliberately protracting the legal process in order to secure their desired outcome
— 68% confessed to indiscriminately using their children as ‘bargaining tools’ when they separated
— 20% of separated parents admitted that they actively set out to make their partners experience ‘as unpleasant as possible’ regardless of the effect this had on their children’s feelings
— 19% of children said they felt used in the separation
— 50% of parents admitted putting their children through an intrusive court process over access issues and living arrangements.

42. The Mishcon de Reya survey, of 2009, replicated findings by Bradshaw & Stimson et al 12 years ago into how often did the non-resident father see his children. Some of their 1997 findings in the University of York interim reports are displayed in the Table shown below.

<table>
<thead>
<tr>
<th>Frequency</th>
<th>%</th>
<th>age Sub-total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regularly</td>
<td></td>
<td></td>
</tr>
<tr>
<td>at least once a week</td>
<td>47</td>
<td></td>
</tr>
<tr>
<td>at least once a fortnight</td>
<td>14</td>
<td>61</td>
</tr>
<tr>
<td>Less regularly</td>
<td></td>
<td></td>
</tr>
<tr>
<td>at least once a month</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Infreqently</td>
<td></td>
<td></td>
</tr>
<tr>
<td>once or twice a year</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>1–3 years</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>more than 3 years</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>not at all</td>
<td>3</td>
<td>31</td>
</tr>
<tr>
<td>Total %</td>
<td>99</td>
<td></td>
</tr>
</tbody>
</table>


Trinder relies heavily on conclusions from Australian Jennifer McIntosh and does not mention any of the other 26 studies included in the shared parenting papers by Dr. Linda Nielsen, Professor of Adolescent & Educational Psychology, Education Dept. (Wake Forest University). Disconnection, when a child fails to see its father often enough is shown to lead to a variety of social pathologies and behavioral deficits. Shared parenting would address many of these behavioral burdens. Ideally, shared parenting would see a marginal but measurable increase in sleepovers leading to a level of shared parenting comparable to ‘joint custody’ in the 1980s.

43. Many renown scholars have pointed out the serious methodological shortcomings in the McIntosh study and thus in Trinder’s submission. Those critical of McIntosh’s techniques include Michael Lamb, Richard Warshak, Marsha Pruett, Parkinson, Judy Cashmore and Dr. Linda Nielsen. All have written in the strongest possible terms of their profound disquiet with McIntosh’s techniques and hence her conclusions. In the opinion of this august role call she is not a social scientist and is clearly not familiar with the relevant research.

44. Judy Cashmore, in the Australian Journal of Family Law (2011), points out the obvious, namely, that:

“Professionals involved in the family law system rarely work with parents where there are optimal circumstances.”

45. Cashmore, then goes on to ask; ‘how then can this body of research be applied in circumstances that are rather less than optimal?’ And, indeed, the same question can be posed to researchers who are frequently totally disconnected from firsthand experience stemming from actually being a parent.

46. Cashmore also makes the point that if the parents have never lived together and shared life as a ‘family’, it may be harder for separating parents to co-operate in an aspect of family responsibilities than if they have at one stage made a commitment together to a shared life. In other words, if adults have never shared the parental role, and are more likely to be in conflict and yet it is this subset of separating parents that is the perennial focus of much post separation analysis. Ironically, those who contend that non-residential fathering time has little or no impact on children often cite the meta-analysis by Amato and Gilbreth—a study which did not come to that conclusion (Amato & Gilbreth, 1999). [This was an analysis of 63 studies].

47. Gordon Finley, Edward Kruk, Stephen Baskerville, Patricia Morgan, and Michael Rutter are just some of the academics who have also written powerfully on the topic of shared parenting, the marginalizing of fathers and the current misinterpretation of Bowlby’s attachment theory, which Bowlby himself had to accept as incorrect and revise showing that attachment was equal between fathers and mothers.

48. The debate in Britain has focused on two main aspects, that of the Australian experience and that of retaining the present regime and accepting its obvious flaws. Yet this ignores Britain’s earlier experience with

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shared parenting then called joint custody. Ignored too is the striking geographical divide in post-divorce parenting arrangements as the following diagram illustrates (below).

The darker toned portion of the map, roughly a line south from the Wash to the Bristol Channel, indicates areas where courts awards high levels of joint custody, ie averaging 20% to 25% (see Legend. To the north of that line ‘joint custody’ was found to represent only a small percentage of awards (less than 10%). Since the Children Act 1989 that small percentage has grown even smaller and has now engulfed all of England and Wales.

49. As Footnote #28 (in Part 4) helpfully points out: 360

“In the first half of 1986 the number of joint custody orders as a percentage of the total number of custody orders, increased by over 2% on the 1985 results, with several courts recording over 50% joint custody.”

The public and politicians are never informed that in 1986 courts in the Midlands, South West and South East were awarding joint custody in over 50% of cases that came before them, nor that the year on year trend was increasing throughout the 1980s. Studies dating back to the mid 1970s, eg Wolfson, Maidment, show a growing trend emerging in joint custody (up from 3% to 18%; see Appendices C, E and F).

50. By 1991 when the Children Act became enacted joint custody all but disappeared in England and Wales and in no region was it close to 10%. Indeed, after the Children Act 1989 it never exceeded 5% and sole father custody also collapsed from its pre-1987 levels.

4. Key Messages from around the World

51. Shared residential custody is becoming more prevalent worldwide. Other countries have, meanwhile, pressed ahead with reform and are at varying stages. In an international study of 14 countries, rates of shared parenting varied from 7% to 15% (Skinner, Bradshaw, & Davidson, 2000 & 2007).

(a) America

52. Until recently only 5% to 7% of American children lived at least one third of the time with each parent after their divorce. But change is underway in Arizona and in Washington state where 30% to 50% of the children of divorced parents are living at least one third of the time with each parent (George, 2008; Venohr & Kaunelis, 2008).

53. The same is true of Wisconsin where 30% of the children of divorced parents are living at least with each parent alternatively (Melli et al., 2008).

54. Florida is the latest state to adopt shared parenting (ref. in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act), Bill No. SB 718, effective from July 2013.

“It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. There is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child. Equal time-sharing with a minor child by both parents is presumed to be in the best interests of the child unless the court finds that . . . . emotional health of the child would be endangered by equal time sharing . . . . [ and there is ] Clear and convincing evidence of extenuating circumstances justify a departure from equal time-sharing . . . .”

(b) Holland
55. Approximately 20% of children whose parents have separated are in shared residential custody (Smyth, 2009; Spruijt & Duindam, 2010).

(c) Denmark
56. Approximately 20% of children (see above, Smyth, 2009; Spruijt & Duindam, 2010).

(d) Australia
57. Trinder, in the ‘Child and Family Law Quarterly’ (Vol 22, No 4, 2010) cites recent Australian studies suggesting that shared care occurs in somewhere between 8%—12% of separated families with the figure rising to 16%–17% in more recently separated families.

58. “In the AIFS evaluation, 49% of shared time arrangements were still in place after 4–5 years, compared to 87% of primary mother care arrangements. There was some evidence in this study that equal shared care arrangements are more durable than ‘unequal’ shared care but even so only 60% of the former were still in place 4–5 years on.”—Trinder

(e) Norway
59. 25% of children have parents who live apart, 8% of them live with their fathers and 10% live in shared residence (Skjorten & Barlindhaug, 2007).

(f) Sweden
60. Here, where the courts have the legal right to order alternating residence even when one parent is opposed, 20% of the children with separated parents live in two homes (Singer, 2008).

(g) France
61. 12% of the children whose parents live apart share their time between the two homes while an additional 12% live with their fathers and spend some time living with their mothers (Toulemon, 2008). And some commentators put the figure at 15%.

62. Since 2002 shared residence has been an explicit legal option in France for separating parents. (Indeed, it is listed as the first option of possible parenting plans, with both parents receiving health insurance benefits and the government allowance for dependent children (Masardo, 2009).

(h) Belgium
63. Since 2006 Belgium has had an ‘alternating shared residence’ format for custody arrangements.

(i) Germany
64. Reform is at last hitting Germany (Feb 2013) with the introduction of equality rights for fathers that cannot be vetoed by the mother. This follows a ruling by the European Court for Human Rights which had criticised archaic German laws.361

(j) Spain
65. All of the 15 semi-autonomous regions of Spain have some form of shared parenting, though it has to be conceded that the law is not fully implemented uniformly.

(k) Britain
66. Jointly/sharing custody was a routine award prior to the 1989 Act. Shared parenting, as it is nowadays termed, was common in the south of the country (see map above). Sole mother custody was awarded in 90% of cases only in the north of Britain (ref. Law Commission, “Supplement to Working Paper No 96”).

361 “Dads to get joint custody even if mum says no” http://germanherald.com/news/Germany_in_Focus/2013-02-05/2261/New_Dad_Law_Gives_Joint_Custody
67. Trinder, in her “Shared residence: a review of recent research evidence”, implies that financial gain is part of reason fathers what shared custody:

There are also suggestions that child support rules in some jurisdictions may offer an economic incentive to fathers to pursue shared care or at least to facilitate strategic bargaining, although disentangling financial and care motivations is fraught with difficulty.

This is untrue. It is not fraught with difficulties. The Trinder view overlooks the fact that almost all jurisdictions have made no provision for such claims by fathers. In the UK fathers have to have care for the child for 6 month in every 12 to qualify for a reduction in CSA payments. For instance, the test case of Hockenjos v Sec. of State (2000), pinpointed the government’s inability to pay Child Benefit due to computer programme limitations and also that Unemployment Benefit, which for mothers contained an element for child care, was absent in a father’s equivalent welfare benefit. Child Support payments occupy only a small part of the full welfare package available to separated mothers when taken together with alimony, maintenance, pension sharing and maintaining pre-existing payment commitments, eg mortgages, HP, college/schools fees.

68. There is no connivance or economic incentive. Twenty years ago Seltzer (1991) [a] in the US suggested that for fathers maintenance payments and contact are positively correlated, and Sutton in Australia has shown that after income there are two factors that are important—the relationship with the ex-partner, and the feeling of loss of control by him.

5. Co-parenting or parallel parenting?

69. With the removal by the 1989 Act of ‘Care and Control’ and its replacement with joint parental responsibility, ex-partners have to decide whether to co-parent or parallel parent.

70. Where parents can agree on parenting styles, routines, diet, religion, school, etc, they can practice ‘co-parenting’ or “cooperative parenting.” The parents may themselves have irreconcilable differences with respect to each other, but they are in agreement with regards to the parenting of their children. The children go easily from one parent’s home to the other. Rules and routines remain fairly consistent, eg clothing, schoolbooks, notices, etc., are easily shared.362

71. Parenting styles generally fall into three categories: cooperative, conflicted, or disengaged. Parents who argue a lot and who cannot gain control of their hostility need to learn to disengage. They can still parent together, in a form known as Parallel Parenting.

72. Parallel parenting is the opposite of cooperative parenting. As the name suggests, parallel parenting involves the parents moving in the same direction without coming close enough for their personal paths to intersect. Normally parents might be expected to sometimes attend functions together in an effort to cultivate a family relationship as best they can while not being a family unit. Since this method is not possible with some broken families, the next best step is parallel parenting.

73. With parallel parenting, each parent agrees to parent their child “next to” one another rather than “with” one another and may even include an agreed Parenting Plan. Minor issues concerning the children are not communicated to the other; however, each parent does provide the other parent with information when it is “important.”

74. In cases where one or both parents continue to undermine the parental authority of the other parent, cannot resist the lure of conflict, or engage in behavior that may be detrimental to the children. What must be keep in mind, however, is that these abusive parents comprise no more than 8% to 15% of divorced couples (Johnston, Roseby, & Kuehnle, 2009).

75. Counter intuitively Parallel Parenting may be the solution (Gary Direnfeld, MSW, RSW, Ontario, Canada). Recent case law in Ontario indicates that Parallel Parenting is being ordered in high-conflict cases where both parties are capable parents and ought to have an active role in their children’s upbringing.

76. In the UK debate so far, high-conflict cases have been used as a reason not to consider switching to shared parenting awards but as can be seen from the above this does not a preclude to its introduction. Another argument for not to having shared parenting is that is complicated to arrange—and in a tiny percentages of cases this will be true—but as the above passages demonstrate this is also true of single mother custody where parents are not on speaking terms and there is no parenting plan.363

D. Conclusion

77. Much that has been written about and debated rests on the assumption that the primary caregiver is, and must always be, the mother. In turn, this is based on the early work by John Bowlby on mother attachment which has now been shown to be poorly researched and wrong. Writing about McIntosh’s research Michael E. Lamb states: 364


363 ibid

364 A Wasted Opportunity to Engage with the Literature on the Implications of Attachment Research for Family Court Professionals
She thus represented Bowlby’s notion of monotropy as though it was an established and accepted fact … . Most children in two-parent families form attachments to both of their parents at the same stage in their development. … Relationships with both their mother and father profoundly affect children’s adjustment, whether or not they live together”

Thus, there is today no consensus among experts and no synthesis of recent research in regard to overnighting (sleepovers) for infants and young children with separated parents—though a growing and substantial body of research has found positive benefits correlated with shared parenting where the children live 35% to 50% of the time with both parents after their divorce (ref. Linda Nielsen, 2012).

78. The primary attachment theory is accepted by both supporters and detractors of sharing parenting/custody as wrong and having no value and cannot be used to justify custody or basing parenting plans solely on the assumption that the primary attachment is to the mother when it has been shown to include anyone who will meet the infants immediate needs and demands.

79. For these reasons custody, parenting plans, overnighting (ie sleepovers) and shared care for infants and preschoolers has grown into one of the most controversial and complex issues of our age. Some fall back on the Best Interests of the Child mantra—but exactly who’s best interests are we measuring? The child is never in court to state his/her preference. Scholars have branded the Best Interests of the Child mantra as indefinable and indeterminate. It is a measure that is subjective and not objective and is exercised by a third party after perfunctory conveyor belt explanations.

80. The body of research (26 studies) which has found positive benefits correlated with shared parenting where the children live 35% to 50% of the time with both parents after their divorce, were all published in peer reviewed journals and all analysed their data quantitatively and statistically.

81. These 26 studies compared

1.  children who lived with only one parent (defined as the “primary carer” or “sole residential custody”) and spent varying amounts of time with their non-residential parent (almost always their father) with

2.  children who lived in shared parenting families (“shared care” or “joint residential custody”).

Taken together, the studies involved approximately six thousand children from shared parenting families.

82. Trinder incorrectly states that “Studies have generally failed to distinguish between different types of shared care families and instead have ‘lumped’ together co-operative, litigating and all types of families in between into a single ‘shared care’ group.” This is not true. Co-operative parents who self-select into shared parenting arrangements are profoundly different to the tiny number of “Litigating and high conflict families who enter substantially shared care arrangements.” One also has to question the accuracy of Trinder’s and McIntosh et al definition of shared parenting.

83. The “single contemporary UK study” of shared residence Trinder refers to is that authored by Peacey and Hunt and is fundamentally flawed and is in the opinion of one American academic, slovenly and wholly unworthy of being included as evidence or taken seriously.

84. The Nuffield Foundation sponsored academics who have concluded—despite the Children Act 1989 existing to ensure children should spend a substantial amount of time with both parents—that:

“Introducing a default presumption that children should spend a substantial amount of time with both parents would overturn the provision in the Children Act 1989 that the welfare of the child should be paramount in deciding contact issues.”

85. This would overturn the provision in the Children Act 1989, namely, that the welfare of the child should be paramount and even included shared residence provisions. This is simply blind ideology overtaking reality and the written law. This delusional thinking then continues with this assertion:

“There is no empirical evidence that increasing the amount of time spent with a non-resident parent improves outcomes for children. It is the quality of the relationship between parents and between parents and children, as well as practical resources such as housing and income that are important for children’s well-being, not equal or near equal parenting time.”

86. The flaw in this argument is that if it is “the quality of the relationship” that matters then the present time allowance is insufficient to allow it to develop. Therefore, more time, ie quantity is required. With more quantity on offer the level of 40% of children losing contact with their fathers would most probably fall. Every Children Act, including that of 1989, has acknowledged the prime importance of both parents having an ongoing relationship with their child after separation.

87. Contradicting one Nuffield report is another Nuffield report, this time written by Drs. Harding and Newham. They correctly state that under the Children Act 1989, the children’s best interests are paramount; this welfare test is very flexible so that orders for residence (where does the child live?) and contact (when he/she sees the other parent?) can be tailored to individual children’s needs. The theoretical amount of time a child can spend with either parent has no bounds. Where they make a slight mistake is in stating that, “Shared residence,
which was seen as highly unusual in 1989.” The term shared residence was new in 1989 but the concept of sharing time and custody was not (see text above and Appendices).

88. Drs. Harding and Newnham note that there is increasing pressure towards adopting shared parenting. If mothers expect some dependability and consistency then it is not unreasonable for fathers’ groups to demand the same dependability and consistency. This can only be guaranteed by introducing shared parenting. The Government has recommended its introduction and it is only a rump of academics, many elderly, and the Family Justice Review who are still cautioning against the inevitable advent of this as the default position.

89. There exists a real danger verging on the probable, that the now shared parenting law will be circumvented in the same or similar way as the pioneering aspects of the Children Act 1989 were nullified. Andrina Hayden (Spain) in her thesis correctly cites the relevant provision dealing with shared residence orders (Section 11 (4)) which provides:

“Where a residence order is made in favour of two or more persons who do not themselves all live together, the order may specify the periods during which the child is to live in the different households concerned.”

Andria Hayden is not the only source for this view but is here cited as it is clear to any observer that she has no investment, either way, for pointing out the CA 1989 failings and shortcomings. Other sources include solicitors Charles Hale & Catherine Wood (“The Rise and Rise of the Shared Residence Order” http://www.4pb.com/uploads/files/dir32/dir1/6_0 ).

90. In other words it is expressly referencing shared residence orders and because the general presumption, under the Interpretation Act 1978 (c.30), that words appearing in a statute in the singular also include the plural. The clear implication for Section 11 (4) of this is that provision is made to provide for a child to live with both parents even though they do not share the same household (Lowe, 2009, p. 4), and coincidently it continues the pedigree and validity of joint custody awards.

91. Shared residence orders can therefore vary from one end of the spectrum (where the child spends half their time with each parent), to the other end of the spectrum (where the child spends weekdays with one parent and weekends) with adjustments for school holidays etc. Significantly, Andria Hayden writes that the Law Commission at the time believed residence orders should cover both parents:

“Rather than having to reflect these arrangements by making a residence order in favour of one parent and contact in favour of the other, the Law Commission believed that “it would be a far more realistic description of the responsibilities involved (…) to make a residence order covering both parents.”

92. There can be no doubt that the Law Commission had intended to permit the making of shared residence orders. In so doing they were recommending the reversal of a pre-children Act decision Riley v Riley, which held that courts could not as a matter of principle make what is now known as a shared residence order. In other words, the Children Act was deliberately enabled to facilitate shared residence orders, now known as shared parenting.

93. The reason why this never happened is at one and the same time straightforward but denied at every turn. The Department of Health’s Guidance and Regulations issued at the time stated they were not expected to become a common form of order, ie they were to be viewed as the ‘exception’ rather than the rule. The source for this is “Department for Children, Schools and Families, The Children Act Guidance and Regulations, Vol. 1, Court Orders, § 2.23.” Curiously, subsequent edition of the guidance that can be accessed on the Internet do not contain this provision. However, at the time the stated reason was:

“… Because most children still need the stability of a single home and partly because in the cases where shared care is appropriate there is less likely to be a need for the court to make any order at all”

This has since been shown to be untrue, eg Denmark and Sweden. Given these negative overtones issued shortly after the coming into force, it is unsurprising that the judiciary revealed an unwillingness to make shared residence orders.

94. Nonetheless, as late as 2001, specific approval had to be sought to obtain a shared residence order (see Court of Appeal D v D, FOR 495). This case held that it was no longer necessary to show that exceptional circumstances existed before a shared residence orders could be granted. But further shared residence orders were slow in coming (ref. Re F (Shared residence orders) [2003] FQR 397).

95. Inquiries over a 3 year period (2009–2011) to the Department of Health (Kevin Brennan) and to John Bowis MP, the Parliamentary under-Secretary of State at the Dept of Health at the time (1993–96) have resulted in stonewalling and claims of misplaced memories and paperwork

96. There is, therefore, a very real fear that the present legal reform will suffer the same blunting and inversion that befell its 1989 predecessor and still later, in 2003—2004, the Early Interventions Project (authored by Oliver Cyriax). In this later instance, first the DfES civil servant given charge of the project did not read the EIP papers and secondly the EIP papers were “mislaid.”. Dame Elizabeth Butler-Sloss, head of the Family Division, promised in an interviewed with Margarette Driscoll (Sunday Times, February 17, 2002) that:
“Too many fathers lose contact with their children after an acrimonious divorce. That is about to change.”

We are still waiting for this promise to be fulfilled.

97. Parliament originally intended, when passing the Children Act 1989, that shared residence orders should actually be preferred over sole residence orders (also referred to as ‘sole mother custody’). House of Commons reference sheet, 89/5.13, dated June 26th 1989 clearly states:

“It is intended that another difference between residence and custody orders is that the new order should be flexible enough to accommodate much wider range of situations.”

We are still waiting for that flexibility.

Reference sheet, 89/5.13 goes on to say:

“In some cases the order will provide that the child will live with both parents, even though they do not share the same household. If such an arrangement is practicable there is not reason to discourage it.”

But discouraging shared residence has been the order of the day every year since 1989.

98. How much longer must we wait before change finally kicks in?

APPENDIX A

Shared parenting, or joint custody, is nor new to Britain. It was a common custody award in the years prior to the Children Act 1989. In the mid-1980s the Law Commission realised it had no data on the types of custody awarded in England and Wales and set about collecting figures.

Table 7 below is taken from J. A. Priest and J. C. Whybrow’s paper for the Law Commission ‘Supplement to Working Paper No. 96’.

Table 7: Children subject to custody orders by age and sex (%) (n=2,927).

<table>
<thead>
<tr>
<th>Custody order</th>
<th>Boys</th>
<th>Girls</th>
<th>0–5</th>
<th>6–10</th>
<th>11–15</th>
<th>16+</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wife orders</td>
<td>71</td>
<td>73</td>
<td>80</td>
<td>72</td>
<td>67</td>
<td>61</td>
</tr>
<tr>
<td>Husband orders</td>
<td>8</td>
<td>6</td>
<td>3</td>
<td>6</td>
<td>12</td>
<td>16</td>
</tr>
<tr>
<td>Joint orders</td>
<td>21</td>
<td>21</td>
<td>16</td>
<td>23</td>
<td>21</td>
<td>22</td>
</tr>
<tr>
<td>Total No. (100%)</td>
<td>1,497</td>
<td>1,430</td>
<td>760</td>
<td>778</td>
<td>788</td>
<td>173</td>
</tr>
</tbody>
</table>

Source: Law Commission’s ‘Supplement to Working Paper No. 96’ by J. A. Priest and J. C. Whybrow. Note how many joint orders and father-only custody orders were historically granted.

APPENDIX B

The Law Commission in a survey of courts found that the highest proportion of joint custody orders were to be found in the South Eastern and Western Circuits and the Birmingham Group of the Midlands and Oxford Circuits (Table 8).

Table 8: Courts with the Highest Proportion of Joint Custody Orders—in the South Eastern and Western Circuits and the Birmingham Group of the Midlands and Oxford Circuits

<table>
<thead>
<tr>
<th>Court</th>
<th>% of Joint Custody Orders</th>
<th>Total No of Custody Orders</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oxford</td>
<td>43</td>
<td>1,247</td>
</tr>
<tr>
<td>Truro</td>
<td>42</td>
<td>79</td>
</tr>
<tr>
<td>Cambridge</td>
<td>40</td>
<td>804</td>
</tr>
<tr>
<td>Barnstable</td>
<td>38</td>
<td>34</td>
</tr>
<tr>
<td>Edmonton</td>
<td>36</td>
<td>702</td>
</tr>
<tr>
<td>Tunbridge Wells</td>
<td>36</td>
<td>601</td>
</tr>
<tr>
<td>Guildford</td>
<td>36</td>
<td>477</td>
</tr>
<tr>
<td>Aldershot* &amp; Farnham</td>
<td>33</td>
<td>424</td>
</tr>
<tr>
<td>Reigate</td>
<td>32</td>
<td>185</td>
</tr>
<tr>
<td>Maidstone</td>
<td>30</td>
<td>452</td>
</tr>
</tbody>
</table>

Source: Law Commission WP No 96

* It is perhaps surprising, given that Aldershot is a military town where divorce levels are higher than any other occupation class that Joint Custody orders should be among the highest nationally. This may be in part due to the countervailing effect of nearby towns such as Farnham.

APPENDIX C

The growth in joint custody indicated in surveys, dating from 1973 to 1985, is shown here in Appendix C. It was to regularise this growth in joint custody that the Law Commission instituted ‘shared residence’ orders as a nationwide option in the 1989 Act.

Table 6: Custody Orders in Divorce Proceedings (%ages)

<table>
<thead>
<tr>
<th>Study</th>
<th>Year of data</th>
<th>Custody to wife</th>
<th>Custody to husband</th>
<th>Joint custody</th>
<th>Others</th>
<th>Total number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maidment</td>
<td>1973</td>
<td>77.6</td>
<td>19.0</td>
<td>3.5</td>
<td>0.0</td>
<td>58</td>
</tr>
<tr>
<td>Wolfson</td>
<td>1974</td>
<td>81.4</td>
<td>13.2</td>
<td>5.2</td>
<td>0.2</td>
<td>424</td>
</tr>
<tr>
<td>Bristol</td>
<td>1979–80</td>
<td>81.4</td>
<td>11.6</td>
<td>7.0</td>
<td>0.0</td>
<td>1,290</td>
</tr>
<tr>
<td>National</td>
<td>1985</td>
<td>77.4</td>
<td>9.2</td>
<td>12.9</td>
<td>0.7</td>
<td>82,059</td>
</tr>
<tr>
<td>Bristol</td>
<td>1985</td>
<td>73.0</td>
<td>9.6</td>
<td>16.9</td>
<td>0.5</td>
<td>4,676</td>
</tr>
<tr>
<td>Wolfson</td>
<td>1985</td>
<td>72.2</td>
<td>9.2</td>
<td>18.1</td>
<td>0.5</td>
<td>12,771</td>
</tr>
</tbody>
</table>


APPENDIX D

Comparing 2002 figures for Contact and Residence applications with those for 2010 (in the text above) shows a figure of 61,356, so the situation is gradually getting worse, not better.

Table 2: Contact and Residence applications—2002 made under Sect 8 of the Children Act 1989.
(Hansard 24th May 2004: Column 1318W)

<table>
<thead>
<tr>
<th>Nature of application</th>
<th>Applications withdrawn</th>
<th>Orders refused</th>
<th>Number of ‘No Order’ orders</th>
<th>Orders made</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parental responsibility</td>
<td>773</td>
<td>290</td>
<td>132</td>
<td>8,240</td>
</tr>
<tr>
<td>Section 8</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Residence</td>
<td>1,536</td>
<td>158</td>
<td>431</td>
<td>30,006</td>
</tr>
<tr>
<td>Contact</td>
<td>2,373</td>
<td>518</td>
<td>945</td>
<td>61,335</td>
</tr>
<tr>
<td>Prohibited steps</td>
<td>300</td>
<td>40</td>
<td>77</td>
<td>8,889</td>
</tr>
<tr>
<td>Specific issue</td>
<td>207</td>
<td>33</td>
<td>67</td>
<td>2,940</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td>1,652</td>
</tr>
</tbody>
</table>

APPENDIX E

The public and politicians have never informed about the level of joint custody awarding through the 1980’s. Although courts in the Midlands, South West and South East have been highlighted as awarded joint custody at between 30% and 50% of cases that came before them other court—from Altrincham (Manchester), to Bow (London), and Exeter to Durham—were also routinely making joint custody (shared parenting) awards (see “Absolute numbers of joint orders” column below).

Table 10: Joint Custody orders made by the Ten Courts. (n=612)

<table>
<thead>
<tr>
<th>Court</th>
<th>Absolute Number of Joint Orders</th>
<th>The Awarding of Care and Control (Percentages)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Care and Control to Wife</td>
<td>Care and Control to Husband</td>
</tr>
<tr>
<td>Aldershot</td>
<td>24</td>
<td>83</td>
</tr>
<tr>
<td>Altrincham</td>
<td>17</td>
<td>53</td>
</tr>
<tr>
<td>Bow</td>
<td>22</td>
<td>55</td>
</tr>
<tr>
<td>Durham</td>
<td>5</td>
<td>60</td>
</tr>
<tr>
<td>Exeter</td>
<td>50</td>
<td>90</td>
</tr>
<tr>
<td>Guildford</td>
<td>72</td>
<td>81</td>
</tr>
<tr>
<td>Manchester</td>
<td>6</td>
<td>83</td>
</tr>
<tr>
<td>Middlesbrough</td>
<td>27</td>
<td>82</td>
</tr>
<tr>
<td>P.R.F.D.</td>
<td>344</td>
<td>83</td>
</tr>
<tr>
<td>Wandsworth</td>
<td>45</td>
<td>89</td>
</tr>
<tr>
<td>Total</td>
<td>612</td>
<td>81</td>
</tr>
</tbody>
</table>
APPENDIX F

The Law Commission’s Table 9, found in ‘Supplement to Working Paper No. 96’ (by J. A. Priest and J. C. Whybrow), shows joint custody awards at Guildford court as being 33.8% of all custody awards and at Exeter court as being 29.2% of all custody awards (n = 2,927).

Table 9: Custody Orders made by the Ten Courts (Percentages) n. 2,927

<table>
<thead>
<tr>
<th>Court</th>
<th>Circuit</th>
<th>Joint Custody</th>
<th>Husband only</th>
<th>Wife only</th>
<th>Total Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aldershot and Farnham</td>
<td>W</td>
<td>17.6</td>
<td>4.4</td>
<td>77.9</td>
<td>136</td>
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See also: ‘The enforcement of court orders for child contact: interim research findings’ http://www.publications.parliament.uk/pa/cm201213/cmpublic/childrenandfamilies/memo/cf40.htm


April 2013

Memorandum submitted by Ali Redford (CF 101)

SUMMARY

I am an adoptive parent; I have worked most of my life within education, in nursery, primary, secondary school and university settings, as a teacher, governor, marketing officer, learning activities coordinator and teaching assistant. In this submission, I am asking the Children and Families Bill committee to consider the need for legislation to improve post-adoption support so that children adopted from care can achieve their potential. The evidence to support this request comes from 6 years as an adoptive parent of two siblings, and knowledge gained from communications with specialist adoption organisations1, local authority adoption teams2, and other adoptive parents (personal friends and colleagues), at events and on training courses3, through adoption groups4, adoption charities5, website message boards6, adoption blogs7 and other adoption-related literature. I, and they, believe that children adopted through the care system should have the same right and opportunity to access specialist CAMHS (Child and Adolescent Mental Health Service) and other therapeutic expertise as looked-after children currently in the care system. This specialist support is necessary to attracting prospective adopters, retaining adoptive parents and, most importantly, giving children adopted from care the chance to achieve their full personal, academic and professional potential at home, through their education and in the workplace. We also believe that the offer of appropriate, ongoing support is a crucial factor in preventing adopted children from returning to the care system or progressing to youth offending institutions and prison.

1. The children

In spite of persistent myths around adoption, mainly perpetrated through stories of adopted adults who were relinquished as babies, most adopted children nowadays were not ‘left’ by their birth parents, they were removed by local authorities or the police for good reason. These children have come to their adoptive families through the care system and, as such, have often suffered abuse or neglect at the hands of birth parents who could not care properly for them, for a variety of reasons including drug and alcohol abuse, criminal activity and custody, mental health problems and learning disabilities. Once removed, these children become looked-after (LAC), and are further emotionally damaged by the insecure experience of moving into and around the care system. Once adopted, it is hoped (and indeed presumed) that these children will form strong, lasting, ‘happy-ever-after’ attachments with their new adoptive parents.

2. The path to adoptive parenthood

As well as meeting the need to house and care for a growing number of traumatised and other more fortunate children, adoption appears to be the 21st century’s answer to the prayers of a generation of often older (35+) couples who have not been able to conceive their own birth children. Adoptive parents (who do not already
have children) have often already had to deal with their own trauma and loss. After years trying to conceive, the monthly grief of failed conception, and sometimes several painful and disorienting attempts at IVF, many such people agree to become adoptive parents to children in care. When the decision has been made to adopt, for many the process of finding an agency prepared to take them at that time has also been long and difficult. Once accepted by an agency, adoption preparation courses (approximately 4 days spread over 2–4 weeks), an enormous amount of form filling and an adoption approval panel pave the way for prospective adopters to take on the most damaged children in the UK. There are sessions within the preparation courses on loss, children in the care system and the potential challenges ahead. Some trainees are advised to read yet more adoption literature and/or to volunteer in a childcare setting before facing a panel of professionals, parents, adopters and community leaders, to be approved as adopters.

3. The Optimism of Prospective Adopters

Following years of waiting, planning, reading adoption literature, meeting professionals, joining adoption groups, watching childcare videos, training and facing approval to become an adopter and any amount of experience in a childcare setting, approved adopters hope to be matched with a child. After this time, most prospective parents believe they will be able to offer the necessary support to a child who has experienced severe developmental trauma, neglect or abuse. Moreover, it should be acknowledged that, before placement, many prospective parents are so desperate to start a family, and hopeful that this is finally achievable through adoption, their natural optimism, aforementioned years of planning, education and the often considerable previous childcare experience that have led them to this point, further suggest that they will be able make a considerable positive difference to the life of any child they take on, however damaged. Unfortunately, the experience of adopting from care has proved to hundreds of adopters, and former adoptive parents whose families have disrupted, that this is often not the case.

4. All is not right

Some families who adopt from care have few or no post-adoption problems, and this would appear to be especially true where there has been little or no record of abuse or neglect in the child’s first 3 years. But many families who have adopted children from the care system experience a range of worrying and challenging behaviours, either very soon after placement or at some point in the following years. These behaviours appear to be consistent across a variety of different adoptive parents, from varying backgrounds, living in different areas of the country. They include persistent lying, stealing (especially food and money), soiling/wetting, self harm, defiance, sexualized behaviour, violence and aggression. Moreover, most of the adopted children who present with these behavioural issues, also demonstrate lack of trust, dissociation and low self esteem, which even the most positive parenting struggles to counter. Even more worrying, there is often an inability to learn from mistakes, a lack of connection between cause and effect and the ever-present perception of natural consequence as a threat. All these behaviours are consistent with attachment disorders and developmental trauma.

5. The Psychological and Neurological Evidence

According to psychological research, children who have suffered neglect or abuse in the first three years of life are much more likely than the generic (ie non looked-after) population to present with the range of behavioural problems described above. As their needs were ignored at a time when their brains should have been fast developing (between 0–3 years), the neuro-pathways necessary for healthy development were not properly forged, so the amygdulla which governs the ‘flight, fight or freeze’ mechanism in the brain does not learn to regulate itself and nor do the stressful hormonal surges of adrenalin and cortisol which accompany them.

As a result, these children are sent into a recurring state of ‘flight, fight or freeze’ at any hint of threat to their wellbeing, or whenever they perceive that their needs are not being met.

6. Attachment, Developmental Trauma and CAMHS

Although reactive attachment disorder is recognized as a psychiatric condition, developmental trauma is still not widely acknowledged as a diagnosis. In spite of the spate of new neurological research and evidence in the last 10 years, early abuse and neglect (or ‘developmental trauma’) is not fully validated (by the Diagnostic & Statistic Manual of Mental Disorders of the American Psychiatric Association) as a psychiatric condition or disorder in itself, for reasons as much to do with American health insurance and legal claims as psychology. As a consequence of this, the dysregulated behaviour of adopted children who have experienced trauma in their early years and who are later referred to generic CAMHS professionals in the UK is not always fully understood by those who should be helping them. Resulting from a combination of developmental trauma and attachment disorders, these behaviours do not fit easily into the psychiatric disorders of the general population, although they may accompany them. Dysregulation is often episodic by nature, triggered by unknown or unspecified actions and events, and can present in very particular situations and environments. The experience of many parents is that CAMHS generic psychiatry, on the other hand, assesses children by ‘condition’, tracking personality, family ‘traits’, and unusual behaviours, constant across a range of settings. This model does not always fit or suit the combined attachment issues, anxieties and dysregulation of a child adopted from care, particularly when these symptoms are accompanied and often masked by other more easily ‘diagnosable’ conditions such as ADHD, OCD and ASDs.
7. Post Adoption Support

Once they are adopted, looked-after children become ‘lost’ to the system that rescued them. While they are ‘looked-after’ (ie in care), they have access to almost unlimited amounts of local authority and CAMHS support which is rightly tailored to their looked-after status and its associated behaviours. Once adopted, the current legislation assumes that any dysregulated behaviour or past trauma has miraculously disappeared after 3 years, or, if not, that it should be dealt with by psychiatric professionals who do not acknowledge the condition. Post adoption support is not necessary for all adoptive families, but those who need it, are likely to need it more than once. The allotted ‘3 year’ period of guaranteed support often comes at the wrong time—ie the child does not display challenging behaviour in the first three years, either because they are too young to know what is happening or for fear of social workers returning into their lives and moving them on again. It is an accepted fact that once adopted children reach around 7 years old and are becoming more cognitively aware of what has happened to them, their behaviour will change accordingly as they start to process and understand their origins13. As things stand in the UK, if a child is adopted at 2 or 3, and starts to dysregulate at 7, they are not going to be helped by post adoption support. If they need any support at or after that time, their parents have to fight for it.

8. Placing Authority vs. Resident Authority

At present, children are entitled to 3 years post-adoption support, usually funded by the adoption team within the child’s placing local authority. After this time, any behavioural or psychological problems are referred (by school, GP, A&E or safeguarding teams) to the generic, non-LAC specialist, resident authority’s CAMHS. Most adopted children are not resident in the area in which they were taken into care. For example, my own adopted son was born in one city in NW England, taken into care in another, fostered in a rural third and adopted in a London borough. We were prepared as adopters by different London borough. There is nothing necessarily wrong with this multi-practitioner approach, if they are all able to join up and give/take as required. But because no LA wants to take responsibility for funding a child’s therapy, each will readily pass the blame onto the other. In the mean time, a needy child gets no help at all. Our resident borough told us that our son could have accessed a specialist CAMHS looked-after children’s team had he been taken into care in that borough, but he was not. It is not any child’s ‘fault’ that they are adopted (although many adopted children believe it is15); it is certainly not their fault that they are living in a different local authority than the one in which they were taken into care—indeed it is common practice to place adopted children outside their birth family’s authority—and it is almost criminal that they should be penalized by Children’s Services and CAMHS’ bureaucratic buck passing in place of appropriate treatment.

9. Access to Specialist Support

None of the onerous measures adopters are forced to take to find help for their children after the 3 year ‘guaranteed’ post adoption support has expired might be necessary if they were referred to a looked-after children’s CAMHS in the first instance. Even better, a referral to one of the excellent specialist therapeutic organizations for adopted and foster families, such as Family Futures or the PAC1, could be automatic, if such establishments were funded by CAMHS rather than relying on decreasing local authority referrals and private clients. The hundreds of battling emails, phonecalls, letters, reports and meetings many adopters are required to make because there is no obvious pathway for them to get the help and treatment their children need, puts adoptive families under terrible, and needless, additional strain at a time when they are already extremely stressed by the ongoing, dysregulated, abusive and sometimes suicidal behaviour of their children.

10. The Cost of No Support

The need to support a dysregulated child adopted from care without access to CAMHS LAC teams gives unnecessary extra work, puts pressure on and uses the resources of a huge (and almost incredible) number of public sector professionals. In my own family’s case, over 50 people, many of whom have dedicated weeks of their life to him alone. These have included the adoption teams of 3 local authorities, our local initial response/ safeguarding team, 2 x generic CAMHS teams, A&E staff, children’s ward staff, agency psychiatric nurses, specialist therapists and psychologists, GPs, consultant paediatrician, consultant psychiatrist, educational psychologist, adoption charities, school staff, as well as the ongoing support of our work colleagues, friends and families. In addition, my partner and I (who both work in the public sector) have had substantial time off work for various appointments as well as unprecedented stress-related absence. The need for tailored and responsive post adoption support is pressing—and becoming more so as LAC children are removed earlier and more prospective parents are encouraged to adopt them.

11. The Potential Cost

Adopted children’s needs are borne of their traumatic past, including their various moves in and out of care. Although they have moved to the nominal security of a new family, their experience, challenges and issues are those of the looked-after children they once were. The evidence of hundreds of adoptive families posting on the Adoption UK website is that they are experiencing similar misunderstandings and misdiagnoses by CAMHS teams. As a result, many adoptive parents feel totally unsupported, or that the CAMHS support they are given is not relevant to their child’s needs. At worst, this lack of support will lead to a decrease in the number of future adopters, more disrupted adoptions and children back in care or prison, their lives further ruined by the system that tried to save them.
12. **THE POTENTIAL GAINS**

Of all those who have been looked after, adopted children have the greatest opportunity to make something of their lives. They have parents who are well trained, well-read and often well educated, who understand their needs and are motivated to improve their children’s lot and help them make the most of their potential. The number of looked-after children achieving A level results or university places could be greatly increased if it included all children who had been looked-after and not just those currently in care. The numbers will be even higher if those adopted children who have experienced trauma are given access to the help they need. Adoptive parents are not likely to seek support unless they need it. Most have had quite enough of social services by the time their Adoption Order comes through. Logically, there can only be gains from offering tailored support to adoptive families.

13. **CONCLUSION**

Adoption is now almost exclusively due to removal rather than relinquishment and support for modern adoptive families should reflect this, to encourage future adopters, retain current adopters and acknowledge the needs of adoptees. Legislation, within the Children and Families Bill 2013, is vital to ensure that adopted children who have suffered trauma have the same opportunities for support, from CAMHS and other specialist therapeutic teams, as looked-after children currently in local authority care, so that both groups are able to make the most of their potential and become healthy, productive and economically-viable members of society.

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**Annex**

**REFERENCES**

1. **Specialist therapeutic organisations:**
   - Family Futures Consortium, a therapeutic service for children in adoptive and foster families; www.familyfutures.co.uk
   - PAC—advice, support, counselling and training for all involved in adoption and permanency; http://www.pac.org.uk
   - Tavistock & Portman NHS Trust—a major regional provider of clinical services for people of all ages dealing with mental health difficulties: http://www.tavistockandportman.nhs.uk

2. **Local authority adoption teams:**
   - Greenwich, Stockport and Bexley Adoption Teams:
     - http://www.royalgreenwich.gov.uk/adoption
     - http://www.stockport.gov.uk/services/education/cypd/childrenssocialcareandsafeguarding/childrenincare/adopt/

3. **Events & Training Courses**
   - Mary Corrigan ‘Helping Your Child Through Play’ (Greenwich Adoption Team) 2012
   - Non Violent Resistance (Greenwich Family Solutions Team/NHS Oxleas) Mar 2013 tbc
   - Greenwich Adoption Team Family Day, July 2012
   - Adoption UK Kent/SE London Family Day, August 2010
   - Bexley Preparation for Adoption Course, 2004

4. **Adoption Networks/Groups**
   - Adoption UK—Kent/SE London Group
   - Greenwich Adoption Team Network

5. **Adoption charities: general**
   - Adoption UK—a national charity run by and for adopters, providing self-help information, advice, support and training on all aspects of adoption and adoptive parenting. http://www.adoptionuk.org
   - BAAF—British Association for Adoption & Fostering; www.baaf.org.uk
   - Barnardos—leading children’s charity http://www.barnardos.org.uk/adoption/adopt-support/adopt-specialist-services.htm

6. **Adoption charities: Parent support website/message boards**
   - http://www.adoptionuk.org

7. **Adoptive parents’ blogs**
   - http://www.sallydonovan.net
   - http://www.mumdrah.co.uk
   - http://www.theboysbehaviour.co.uk
   - http://twoplusmunchies.wordpress.com/

11. *Attachment*, Trauma and Resilience—Therapeutic Caring for Children, Kate Cairns, 2002 BAAF


I myself was in care for seventeen years within Bradford’s Children’s Department from 1959 to 1976 initially in foster care that lived in Halifax and was white carers. These carers I met later on in life after seeing my file and the carers was really nice and showed me that they had put in to adopt me too. Due to being a very poorly baby with Meningitis and Encephalitis I was moved to Bradford children’s Hospital. For some reason I was then moved into a children’s home and remained in children’s homes until I left care. During this time I had eight moves which included two of these been Home on trial with Mother. My mother was Caucasian and Father from Barbados.

As a boy of Dual/Shared Heritage I believe there was a very important time in my childhood which had been missing and I had to see my file and talk to people to try place together the final jigsaw of my life. Because of
my experience in Foster Care with no positive black images this added to the fact of growing up with no positive
Identity and left me asking the question “Am I Black or am I White”?

When we set up the Black and in care a national organization I became more aware of issues around identity
and issues around being black. This awareness has prompted and encouraged some change, although I believe
not enough has been done to the extent where legislation has tended to let some Local Authorities interpret
their own practice through policies and procedures. Children’s Services and voluntary and private agencies
must be committed to the needs of minority ethnic including those of Egyptian, Malaysian, Chinese and eastern
European background etc. It is important to have an appropriate approach to in the recruitment within the
communities for adoption and fostering.

As a care leaver and my current work with care leavers and from research and work done with professor Mike
Stein and involvement I had with the National Foster Care Association and The National Association of Young
people in Care and Black and in Care and research I did with the Race Equality Unit (Home From Home) Linked
to the Lady Wagner Report, and the fact that some adopted children are equally in care but sometimes due to
issues arising and there is conflict to the extent the adoption breaks down .

With this in mind Every Child should matter and to remove the Section 22(5) e takes away the importance
of a child identity in terms of their Religion, race, culture and linguistic background.

I agree entirely with the following from Mary V Hayes who wrote in the Foster care magazine from December
1988 which I as well as many of the members of the Black and in care would say is relevant today and more so
with the Asylum seeking children and refugee families we have in this country. She starts off with how we come
to terms with the huge numbers of black and shared heritage young people who suffer from Identity confusion
and internalized racism.

“It is astounding that black children here in Britain an increasing number that come from unions of Shared
Heritage and are raised in white homes and communities that deny their Blackness.

Many meaningful but never the less ignorant white substitute parents are adding to this confusion by lying to
the child and telling them they can chose to be white if they wish.

Far too many tans racial placements break down unnecessarily, primarily because some white parents refuse
to accept a very significant feature of a child in his or her colour.

If you really care and love the child then accept him or her in total for what and who the child is and when this
is done be healthier for it.

If as carers you want sound and healthy and undisrupted placements for yourselves and truly want to have
proud healthy and stable children then you must be aware of this formula:

(a) Recognize the difference between yourself and the child.
(b) Accept the differences and acknowledge them.
(c) In some instances stress the difference.

If you recognize the differences but chose to reject or deny their existence that’s when the problems begin and
it is at this point of rejection that the placement begins to deteriorate.

As a care Leaver and like many others it is evident that those who have experienced care which include
Adopted are the ones who are the professionals of it. In the vast amount of work by The National Association
of Young people In Care and Black and In Care as well as who cares? Trust, Association of Black Social
workers and Allied professionals and Race Equality Unit (within NISW) who were able to articulately
contribute to various government reports Like the Short Report—Social Services Committee session 1983–
It was clear that the child’s identity is crucially important to where a child sees themselves when they become
Eighteen. Due to difficulty coping strategies and have tried to come to terms with who they are? What they are?
And where did they come from? Some children even like me wanted to scrub themselves White. Who takes
responsibility for those grown up without positive identity and develop distrust become angry and then end up
in the Youth Justice system or the Mental Health system.

Another option or added Amendment would be to have every local authority set up or develop a Black
cases panel similar to the one that’s been in existence at Leicestershire for many years and Bradford had one
too for a few years and currently re-looking to re-develops this. It is a panel of professionals from diverse
backgrounds and work disciplines within children’s services to advise as a panel resources available to
children of different ethnic background eg if a social worker refer a child from a particular Asian background
or African background that has to be adopted to a white family because no other family available then the
panel can assist with resources that are available to ensure the Child’s cultural and racial and religious
background are taken into account through ensuring they are aware of local resources to meet the child’s
needs and assists the adopting or fostering family. Advice on local resources could be specific foods or books
or clothing shops and where their local respective temples or mosques or churches etc are and information
about religious festivals and health support like sickle cell and Thalassaemia etc.
I appeal to the law changers even though the Children and Families Bill is in its final stages to include the above and to at least ensure there is some positive acknowledgement and taking into account of a Child's Race, Religion, Culture, and Linguistic needs.

April 2013

Memorandum submitted by The Richmond Parent Carers Action Group (RPCAG) (CF 103)

Introduction to RPCAG

The Richmond Parent Carers Action Group (RPCAG) is an independent forum, set up in the borough of Richmond-upon-Thames by parents of children with additional needs, in order to help influence the development of services provided by the Local Authority for their children.

This submission focuses on Part 3 of the Children and Families Bill and captures the opinions, views and concerns of members of the RPCAG.

Summary

1. RPCAG considers that the Bill does not promote a culture of collaboration between parents and the authorities in question and that the process it defines is still one which is done to the child and its family rather than one which involves the child and family. More collaborative language could assist in addressing this problem.

2. RPCAG calls for the establishment, by statute, of a defined person to manage the process of assessing and creating an EHC plan and managing annual reviews and reassessments. Without such a person, it is not conceivable that the immensely complex new framework can function properly. In addition, the law should state that this person must work in the best interests of the child.

3. RPCAG calls for measures to be included in the Bill to ensure proper collaboration and data-sharing between the separate Education, Health and Care pillars.

4. RPCAG calls for the position of children with special educational needs who are not eligible for an EHC Plan to be strengthened. In particular, schools should be required to provide the parents of such a child with a written report defining the provision made for that child. Furthermore, the money provided to schools for such children should be ring-fenced, by law, to ensure that it is spent on meeting the needs of those children.

5. RPCAG calls for minimum national standards to be defined in relation to the form and content of EHC Plans, to ensure that EHC Plans are recognised by local authorities other than the issuing local authority, avoiding the need for reassessment if a child moves from one local authority area to another.

6. RPCAG calls for time limits to be included in all stages of the process, including the assessment stage, the stage relating to the creation of an EHC Plan and reassessment following annual review, to mirror the time limits in the current law. These time limits are crucial to ensure an efficient and predictable process.

7. RPCAG calls for central government to fund the transition of Statements into EHC Plans, to ensure that this happens in a timely and orderly fashion.

Discussion

RPCAG requests that the Bill be enhanced to take account of the following:

1. Centring the Process on the Child

As a general comment, RPCAG does not consider that the language of the Bill promotes a child-centred approach and continues the tradition of something which is done to a child rather than a consultative and collaborative process. Examples of such language are contained in Sections 38(1) and 44(6) which specify that the local authority must “consult with the child’s parent or the young person about the content of the plan”, rather than, for example, “working” with parents/carers and their child, to demonstrate that all input or submissions would have similar weight in the development and finalising of the plan.

2. Procedural Efficiency

Currently, the process of obtaining a Statement of Special Educational Needs and reviewing Statements, annually or otherwise, can be inefficient for those involved and complex, confusing and time-consuming for parents. In particular, the following aspects can render the process ineffective:

— When parents deal with education, health and care professionals, the process can be repetitive, in that the same information has to be provided multiple times to different people.

— Some persons invited to appear at Statement meetings and reviews do not do so and/or they do not provide reports in a timely manner beforehand.
Currently, nobody has the authority to ensure that key education, health and care personnel appear at important meetings, such as annual review meetings.

Occasionally, some of those present at annual review meetings have not read the current Statement beforehand.

Some annual reviews do not make a clear recommendation for changes to the current Statement, rendering the purpose and outcome of the meeting unclear and necessitating significant additional work after the meeting.

RPCAG considers that the new legislation represents an opportunity to address these issues and improve the process for all concerned. A more efficient and tightly-run process could save money and resources, by removing repetition and inefficiency from the system. The RPCAG considers the following aspects to be essential to the proper functioning of the new system:

2.1 *The existence of a person to manage the process*

The process for assessing whether a person should have an EHC Plan and the creation and maintenance of an EHC Plan is a very complex one, which requires personnel from at least three separate agencies to work together. The complexity arises not just because the three pillars have three quite distinct management structures, but also because they all employ different methodologies and terminologies to categorise children. The education pillar proposes “Universal+”, “Targeted” and “Specialist” categories, for children with rising levels of special needs. The health pillar employs the same terminology, but the children covered by each category are different and, in addition, for a small number falls into an additional “continuing care” category. The social care pillar also has two categories of “child in need” and “child in need with family at breaking point”. Needless to say, the definitions of these social care categories are different from categories used for the education and health pillars.

In the light of this complexity, it is not conceivable that the process of assessing, obtaining and reviewing an EHC Plan could work properly in the absence of a person who interfaces with all three management structures and who has some understanding of the above-outlined categories. The existence of such a person is essential to own and manage the process.

To some degree, this fact appears to be recognised: the draft of the SEN Code of Practice refers to the existence of a person who is “responsible for co-ordinating the information and the process” (see the paragraph following 6.5g) and Pathfinders are creating management roles as well, but these do not amount to an obligation for someone to manage the process. Specifically, the role is referred to in the Code of Practice only, not in the law, and the status of the person in question is ambiguously defined in the draft Code of Practice. Confusingly, the current draft of the SEN Code of Practice says that this person should be “impartial”, but also “act in…best interests” of parents, which could give rise to varying expectations as to how this person will act.

RPCAG considers it to be essential that a manager role be created to ensure that the process works properly in every case. While the creation of such a role would need to be resourced, it should also reduce costs by removing repetition and inefficiency from the system.

RPCAG suggests that the law be amended and regulations be created to:

1. Define the role of a manager to manage the EHCP process
2. State that the manager should work with parents/carers to act in the best interests of the child
3. Provide the manager with powers to ensure that representatives from education, health and social care make written submissions in a timely manner prior to assessments, the preparation of an EHC Plan and annual reviews and that they appear in person at meetings deemed by the manager to be essential.

2.2 *Co-operation between different bodies*

RPCAG considers that effective communication, co-operation and collaboration between education, health and social care and other agencies are essential for the system foreseen by the new law to work properly. Practically speaking, however, RPCAG considers that the law as currently defined is insufficient to drive a change in culture towards such a collaborative process.

Sections 28 and 31 of the draft law require co-operation between education health and care, but no framework is defined to ensure that this occurs, no time limits apply and the sanctions for not doing so are trivial (the most that can happen is that a written justification can be demanded for non-compliance). Furthermore, the sections of the law relating to the assessment and creation of an EHC Plan and annual review (Sections 36, 38 and 44) do not require that the local authority always to consult education, health and social care representatives, nor that representatives from each pillar should be required to input or be present at important meetings. We assume that this is an over-sight, since it is essential to have representatives from education, health and social care involved at every stage for the process.

RPCAG therefore suggests that:

1. Regulations be created defining time limits, as foreseen by Section 31(4) and that these time limits be as short as practicable
(ii) Sections 36(4), 38(1) and 44(6) be amended to require that a representative from one each of education, health and care be consulted.

As discussed above, the manager should have the power to require education, health and social care representatives to input and attend meetings that the manager considers to be essential.

2.3 Data-sharing

RPCAG considers it essential that data-sharing between different agencies and even between personnel within a single agency needs to be improved, to drive out costs and inefficiencies for the agencies involved and to make the process less burdensome for parents. This is one of the most important practical challenges to effective implementation, yet the new law does provide any assistance with it.

During discussions within Richmond Borough, it was clear that agencies may share data about a child, if parents provide appropriate consents, but that this on its own would be insufficient to facilitate the smooth flow of data from agency-to-agency. A further problem is the multiplicity of different databases involved and cultures which militate against data-sharing. In particular, it appears to be extremely difficult to gain access to the NHS’s “RIO” database, even for persons outside the NHS who have valid reasons to do so and data sharing within the NHS itself also appears to be sub-optimal. This problem needs to be tackled for the new framework to work effectively.

RPCAG therefore suggests that:

(a) Section 31 be amended by addition of a new sub-section which requires agencies to share data with one another, subject to parental consent.

(b) Regulations be created requiring agencies to work together to create an appropriate IT infrastructure to store assessments and EHC Plans and to develop inter-agency information-sharing protocols.

RPCAG notes that it is intended to include guidance on data-sharing within the draft SEN Code of Practice and requests that the above aspects be taken into account in drafting that guidance as well, but submits that inclusion in the draft Code on its own would not create a strong enough duty to drive a culture change, especially within the NHS.

3. Children who have special educational needs but who do not have an EHC Plan

RPCAG is concerned about the fate of children who have special educational needs but who, in future, will not have an EHC Plan. This is because the funding provided to schools to cater for the needs of such children is not ring-fenced (unless a governing body decides itself to ring-fence it). Although well-run schools will doubtless use this money appropriately, it is possible that, in a minority of schools, the money could be spent on other things, if appropriate safeguards are not put in place to prevent that from happening and to require schools to provide some measure of accounting for how this money is spent.

Section 22 of the Bill requires that all children with special educational needs be identified, but not that their needs be assessed. If their needs are not assessed, however, then it will not be possible to know if those needs are being met, nor whether money provided to schools to meet those needs is being spent appropriately. Some form of needs assessment is therefore essential.

RPCAG strongly supports the IPSEA proposal to mitigate this problem and additionally requests that the law specify that a written report specifying the provision be made available to parents. In addition, RPCAG requests that funding for children with special educational needs, but no EHC Plan be ring-fenced to ensure that each such child’s allocation is spent on them.

4. Form and content of EHC Plans

RPCAG believes that minimum conditions for the form and content of EHC Plans should be specified by the statute, in order that the EHC Plan be recognised by all other local authorities, thereby avoiding the need for reassessment. This will save resources and reduce the burden for parents. However, outside of such a core form and content, RPCAG supports the idea that local templates should be permissible, to allow them to meet local needs.

RPCAG supports the IPSEA proposal for a new subsection 37(3) and for regulations to set minimum national standards for the form and content of an EHC Plan.

5. Time limits for assessment

RPCAG strongly supports the IPSEA proposals in relation to this matter and does not consider that the time limits in the draft SEN Code of Practice are sufficient. The time limits currently provided under the law are essential to ensure an efficient and predictable process. In addition, RPCAG considers that a time limit should be placed on any reassessment under Section 44.
RPCAG strongly supports the IPSEA proposal to include time limits and also suggests that a new subsection be added to Section 44 limiting the period for review to an appropriate period of time.

6. Transition of Statements into EHC Plans

EHC Plans are not the same as Statements, so it will not be possible simply to convert existing Statements into EHC Plans and a reassessment will be required in every case. Such reassessments will be time-consuming and costly and in times of shrinking local government budgets, it would not be reasonable to expect this cost to be met locally. It might be possible to draft transitional provisions allowing a phased transition to cushion the impact, although exactly how that could be done is not something that RPCAG members can envisage. In the absence of such cushioning transitional provisions, RPCAG requests that the cost of conversion of Statements to EHC Plans be funded by central government.

April 2013

Memorandum submitted by Clair Puschnik (CF 104)

RE: CHILDREN AND FAMILIES BILL

1. My name is Clair Puschnik and I work as a Registered Childminder in my home and governed by Ofsted. I registered in September 1999 and have built a reputable childcare business in the fact that I take my role as a Childminder extremely seriously. I achieved a 2:1 in completing a BA Hons in Education Studies in July 2011 and went on to achieve Early Years Professional Status Feb 2012. Therefore, I have worked to the highest standard and achieved a qualification to help me in my childminding career to ensure I provide the highest standard of childcare possible to every child in my home.

2. The areas of the Children and Families Bill that concerns me are: ratios for children in the early years category and childminder agencies.

3. Ratios for children in the early years category

3.1 I am deeply concerned about the Health and Safety of children if ratios were to be increased. From experience, childminding for 3 children under the age of 5 is an area that needs to be seriously thought through whenever you take on a new child. For instance, the early years practitioner would need to consider age of the child, special needs the child may have, family support and individual circumstances to name but a few. If a childminder looks after 3 children aged 1 year, 18 months and 2 years for around 8 hours a day, this would be extremely challenging when considering each child’s stage of development (see also 3.2, 3.3, and 3.6).

3.2 When considering providing the outdoor provision necessary for all children, I have deep concerns that children could be placed in danger. With children this young, you need ‘eyes in the back of your head’ so to speak and in order to allow each child to explore independently safely, the ratios need to be low, therefore should not be increased from the existing 1:3 ratio.

3.3 Children in the early years deserve the best start in life and this should be given by early years practitioners that support individual children’s care and development. This can be achieved when early years settings are providing high quality care and education. I feel that by increasing the ratios this could potentially put not only the welfare of children at risk but their development and education. Adults will struggle to perform their role to the utmost standard due to the lack of time they will have on their hands.

3.4 Another area that concerns me personally is that by increasing the ratios that will mean that more pre-schools, nurseries, etc can take on even more children. I worry that this could potentially place my childminding business in turmoil and that I will be forced to give up. This seems such a shame, since there are not many degree qualified childminders in my area. Although some may argue that a qualification is not always needed to provide quality care, I for one embarked on a degree to help me provide the best possible childminding environment for all of the children and families entering my home. However, if there is a decrease in families using childminders due to the fact that they can access care at other provisions with the increased ratios, I will be forced to leave my role as a Childminder.

3.5 An area that was debated about frequently when undertaking my degree studies was the importance of Key Person relationships with children and within that relationship the high quality care that can be provided when ratios are low. I certainly can vouch for this being a childminder and have practiced this in my home for years. Children are entitled to 1–1 care wherever possible, helping each individual build secure and trusting relationships with their Key Worker. In providing care/attention on a 1–1 basis at various times within the child’s individual session, this has a positive impact on their Personal, Social and Emotional Development (PSE) because children are helped to feel welcome, secure and safe. This in turn will positively impact all other areas of development which potentially will encourage the children to thrive and enjoy their lives. To increase the ratios will have a devastating effect on the children’s PSE development which will then impact all other areas of development because Key Workers will not have the time to provide for children’s unique needs on such a personal level.
3.6 I am also concerned about space for individual children in the fact that there will be less room per child if ratios are increased. Children need space indoors and outdoors and that space should be enough for children to feel ‘free’ not enclosed or made to feel ‘trapped’. If more children are placed so close together in settings, I strongly believe that this will have negative effects on the children. Please think about illnesses, relationships between adult-child, relationships between child-child and personal space between individuals.

3.7 The suggestion by Ms Truss for childminders to reduce costs for parents by increasing the ratios seems unjust and I believe that the bigger picture is being overlooked. I charge £4.00 per hour which is not only still below the minimum wage does not include all those extra hours per week in my own time but which is necessary for me in being an early years professional. To highlight some of these tasks: individual planning to consider the unique child, meetings with parents concerning the care and development of their children, training throughout the year including continuous professional development and reflection, writing assessment records for children, planning the home setting (clearing/setting up resources) just to name a few. All of these extra duties are to be undertaken in my own time. Therefore to reduce my hourly rate to coincide with increasing the ratios to make it more affordable for parents is of no benefit to childminders at all. I for one will not risk the care and development of a child being compromised in any way and will not reduce my hourly fee. This will make it more likely for me to leave the childminding profession altogether. I am worried that the highest qualified childminders will leave the childminding profession.

4. Ratios for children in the early years category

4.1 Previous petitions to Government from childminders stating that childminding agencies were not needed nor wanted should have highlighted the strong fact that they are completely unnecessary.

4.2 Although it seems that childminders will have a choice between remaining independent or signing to an agency, I have great concerns about this. I believe that it will create a 2-tier system which will confuse parents, possibly create animosity between individual childminders and make it more difficult for Ofsted and local authorities to manage. Most likely, this will cost more money to organise and sustain.

4.3 I have managed my childminding business for 14 years and have built a highly reputable name for myself, where children and families have had access to a very professional service but one which allows everyone to feel at home and be happy in their lives. There is no need to introduce an agency system to childminders that are already managing successful businesses. However, for those childminders seeking agency support, the 2-tier system this will create I feel will place the highly qualified, sustainable childminders in a situation where they may be forced to leave because families are being swayed by agencies to visit those childminders that opted to register with agencies.

4.4 Since agencies will determine the hourly rate for childminders, this means that those childminders who are not agency registered will be forced to lower their hourly rate to avoid there being a 2-tier-pricing system. This will not only confuse parents even further but will also place the non-agency registered childminders in unfortunate situations where they can not afford to keep their childminding business open.

4.5 All early years professionals should embark on continuous professional development (training updates) throughout their career. Creating this 2-tier-system could therefore affect the way training for childminders is managed, how training is accessed and the individual cost. For me and any other childminder refusing to enrol under an agency may be forced to pay extra for training, which may force a childminder to miss out on training opportunities, which will impact their sustainability anyway or they may be forced to join an agency to access the cheaper training. This is not fair on those that have chosen to remain independent and wish to progress in their early years career but are prevented from doing so.

Please consider my comments for the consultation on the Children and Families Bill, as I believe in doing so will help us all promote positive outcomes for our most precious beings in society (the early years) and in turn, this will help us all achieve economic well-being.

April 2013

Memorandum submitted by London Borough of Richmond upon Thames (CF 105)

INTRODUCTION

1. The London Borough of Richmond upon Thames set up a Special Educational Needs and Disability (SEND) Action Group in September 2012 following the publication of the draft Children and Families’ Bill. The group brings together local families, parent forums and key personnel in Health, Social Care and Education including early years, schools and colleges in the borough. Its remit is to make sure that Richmond is prepared and ready to implement the proposed changes when the Bill becomes law in 2014. The group’s function is strategic. It meets every three weeks to monitor and steer the activity of four operational sub-groups that have been established to achieve the outcomes set out in Richmond’s SEND project plan.

2. The Action Group welcomes the opportunity that the Bill offers of making children, young people and their parents/carers central to inclusive, person-centred and family-friendly processes and systems. In addition
the Group has found the reported experience of the Pathfinder programme extremely helpful and informative as it has carried out its preparatory work in Richmond.

**Summary**

3. This submission focuses on Part 3 of the Bill—Children and Young People with Special Educational Needs Clauses 19–72. It captures the opinions, views and concerns of members of Richmond’s SEND Action Group and local authority colleagues in Early Years.

4. In addition to concerns about the lack of detail in the Bill the Group has specific questions relating to the transition from the current SEN statement to the new EHC plan, the assessment process and how it will affect children and young people who will not meet the criteria for an EHC plan, the funding for EHC plans, support in mainstream secondary schools for children and young people with special educational needs and the role of Special Educational Needs Co-ordinators (SENCOs) in Early Years Private Voluntary and Independent (PVIs) settings.

**Transition Arrangements from SEN Statements to EHC Plans**

5. The Bill does not include detail about how the transition from SEN statements to EHC plans will be managed. As the new EHC plan will be significantly different from existing SEN statements it is assumed that whilst transition arrangements will take into account the difference they will not require the reassessment of all children and young people with existing statements. Without detailed guidance on transition arrangements it is difficult to envisage how Local Authorities will be able to plan effectively and act consistently.

**Assessment and EHC Plans Clauses (36–40)**

6. The clauses on the assessment of education, health and care needs (36) and on Education, Health and Care plans (clauses 37–40) do not explicitly state that there will be a requirement for mainstream schools to describe and publish how they assess and meet the needs of all children and young people with SEN needs regardless of whether or not they have an EHC plan. In addition, Clause 38 states that during the preparation of a draft of the EHC plan, the local authority must “consult with the child’s parent or the young person about the content of the plan”. As the idea of the EHC plan is that it is consultative and involves children and young people and parents/carers perhaps the focus should be more on local authorities “working” with parents/carers and their child thus all input or submissions would have equal weight in the development and finalising of the plan.

7. The extended age range for EHC plans to 25 years raises concerns about the funding that will be available to Local Authorities for a possible additional 6 years.

8. A proportion of children and young people who at present have statements of SEN may not necessarily be offered EHC plans especially those with ADHD, dyslexia or Asperger’s syndrome. In light of the present financial cutbacks, local authorities have very limited resources and will need central government funding to be able to maintain the number of EHC plans at the same level as statements.

**Support in Mainstream Schools for Pupils with SEND**

9. Historically, teaching assistants (TAs) have more responsibility for pupils with statements in a mainstream setting than teachers, including much of the planning for and teaching of these pupils. This observation is borne out by the report “The Making a Statement (MaSt) project—Final Report. A study of the teaching and support experienced by pupils with a statement of special educational needs in mainstream primary schools” by Rob Webster and Peter Blatchford from the Department of Psychology and Human Development, Institute of Education, University of London.

10. This report raises concerns about the appropriateness and quality of pedagogy for statemented pupils, which is unlikely to close the attainment gap between themselves and their peers. It also states that there are considerable gaps in both teachers’ and TAs’ knowledge concerning meeting the needs of pupils with statements and there are also concerns about the ways in which schools prioritise the needs of pupils with statements.

11. The report states “In terms of EHCPs, a clear message from the MaSt project and the preceding Deployment and Impact of Support Staff project is that the conversion of the hours specified on a statement into hours of TA support leads to practices that are both unlikely to close the attainment gap, and separates pupils from their teacher and peers.

12. On the basis of the evidence from their research, the report’s authors suggest that the new EHCPs avoid expressing support for pupils in terms of hours, and instead specify the pedagogical processes and strategies that will help meet carefully defined outcomes. In addition, they recommend that “setting personal budgets is dependent on the outcomes specified in the EHCP in order to avoid schools making decisions about support based predominantly on the resources available”.

13. The level of SEND training for staff working in mainstream settings needs to be substantially increased so that those staff have sufficient knowledge to work effectively with their pupils who have SEND. This has a cost implication for mainstream providers.
MEMORANDUM SUBMITTED BY THE MUSLIM COUNCIL OF BRITAIN (CF 106)

1. INTRODUCTION

The Muslim Council of Britain (the MCB) is a national representative body of over 500 Muslim organisations from across the UK. The MCB seeks to work for the common good of the wider society by providing a voice to the Muslim Community in Britain and raising their concerns and aspirations to inform national policy.

2. The MCB recognises that adoption is posing as a major challenge and appreciates the pressures on finding suitable homes for those children awaiting adoption. However, the MCB does not believe that the proposed changes are the way forward and has serious reservations presented below.

3. The MCB re-affirms its commitment that in this very sensitive issue, what must be given utmost priority is the best interest of the child(ren) in question and proposes that efforts be multiplied to encourage more people to come forward to foster and adopt from all faith and ethnic communities.

4. The MCB re-affirms from the outset its commitment to work with the Government and other agencies to raise profile of this very pertinent issue within the wider British Muslim Community to encourage more from this community to come forward to volunteer for fostering and adoption.

5. Notwithstanding the above, the MCB, representing the widely held views of the Muslim community, considers any attempt to remove the ethnicity clauses from adoption legislation is unacceptable to all faith and ethnic communities. In particular, we believe the bill’s proposal jeopardises the fundamental right of Muslim children to their religious identity and therefore the MCB considers such a change will be detrimental to the right of the child and the family.

6. The MCB therefore disagrees with the Government as it considers the proposal for changes is bound to have long term consequence on the fabric of the society itself therefore cannot be accepted.

7. With regard to the adoption provisions, the MCB is concerned that any significant growth in ‘Fostering for Adoption’, in the manner as envisaged by the proposed changes, risks undermining the child’s right to have a relationship with their birth parents where possible, and could be perceived as pre-empting the court process.

8. In respect of the changes to the consideration of ethnic background when placing children with adoptive parents, the MCB foresees a risk that the change will lead to some children being placed with families who do not and cannot meet their linguistic, cultural and identity needs, as the focus of practice and of efforts to recruit adopters from a wide range of backgrounds will be reduced.

9. Adult adoptees who were born to Muslim parents, and then adopted by non-Muslims, testify that though they were well loved and cared for, they felt that not being adopted into Muslim families had adverse effects on their identity, self-esteem and ability to connect with their birth families and community of origin as adults. They felt it is particularly important to place Muslim children with Muslim adopters because otherwise they face growing up in an environment where the media often portrays Muslims negatively, without having a Muslim role model as part of their day-to-day lived experience with whom they could form positive associations about

10. Notwithstanding the above, the MCB, representing the widely held views of the Muslim community, considers that in this very sensitive issue, what must be given utmost priority is the best interest of the child(ren) in question and proposes that efforts be multiplied to encourage more people to come forward to foster and adopt from all faith and ethnic communities.

11. The MCB therefore disagrees with the Government as it considers the proposal for changes is bound to have long term consequence on the fabric of the society itself therefore cannot be accepted.

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13. In respect of the changes to the consideration of ethnic background when placing children with adoptive parents, the MCB foresees a risk that the change will lead to some children being placed with families who do not and cannot meet their linguistic, cultural and identity needs, as the focus of practice and of efforts to recruit adopters from a wide range of backgrounds will be reduced.

14. Adult adoptees who were born to Muslim parents, and then adopted by non-Muslims, testify that though they were well loved and cared for, they felt that not being adopted into Muslim families had adverse effects on their identity, self-esteem and ability to connect with their birth families and community of origin as adults. They felt it is particularly important to place Muslim children with Muslim adopters because otherwise they face growing up in an environment where the media often portrays Muslims negatively, without having a Muslim role model as part of their day-to-day lived experience with whom they could form positive associations about

15. Key requirements in EYFS state that: Practitioners must consider the individual needs, interests, and stage of development of each child in their care, and must use this information to plan a challenging and enjoyable experience for each child in all of the areas of learning and development. Practitioners working with the youngest children are expected to focus strongly on the three prime areas, which are the basis for successful learning in the other four specific areas. The three prime areas reflect the key skills and capacities all children need to develop and learn effectively, and become ready for school. It is expected that the balance will shift towards a more equal focus on all areas of learning as children grow in confidence and ability within the three prime areas. But throughout the early years, if a child’s progress in any prime area gives cause for concern, practitioners must discuss this with the child’s parents and/or carers and agree how to support the child. Practitioners must consider whether a child may have a special educational need or disability which requires specialist support. They should link with, and help families to access, relevant services from other agencies as appropriate.”

16. Whilst the Draft SEN Code of Practice published on 15th March states that the Governing bodies of maintained mainstream schools, maintained nursery schools and the proprietors of Academy schools (including free schools) must ensure that there is a qualified teacher designated as Special Educational Needs (SEN) co-ordinator (SENCO) for the school it is unclear whether this applies to Private, Voluntary and Independent settings.

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their birth background. In their experience this had led to a form of racism towards oneself and self-hating, borne out of being different to their adoptive family members.

10. We strongly believe that the religion of all children, and in particular the Muslim children in the care system must be preserved. To remove the need to consider a child’s ethnicity and religion denies a human being the most fundamental right to identify with a particular group of people and to seek to promote and be informed about those aspects of their culture and heritage that will promote their social, emotional and intellectual development and will enhance their welfare.

11. The MCB is extremely concerned that the child’s ethnic, cultural and religious background will not merit specific consideration. It does matter, it must be a priority and be given due consideration. The result must not be less attention given to the child’s ethnic, cultural and religious background when making a placement.

12. The MCB is very concerned that in addition to the removal of race are the implications of the removal of religion and faith (within the definition of ethnicity) in adoption. We identify a risk in that the Adopter’s religion and faith will be imposed on the child, and their right to their birth family’s religion or faith will be negated. And the birth family’s expression of religion or faith will be ignored completely because the rights of the Adopters will supersede the rights of the child. This is not in line with the UNCRC Article 20: when considering solutions where a child is temporarily or permanently out of its family environment ‘due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background’.

13. The MCB agrees with the Office for Children’s Commissioner that adoptive placements must be placed near the same geographical area of birth families and communities so that they can retain contact with relatives and friends.

14. The MCB vehemently disagrees with The Secretary of State for Education, Michael Gove, who has proposed the amendment of section 1 (5) of the Adoption and Children Act 2002 within a draft ‘Children and Families Bill’ which is being scrutinized by the Bill Committee until 23rd April 2013. Mr. Gove, who although adopted, was not trans-racially or trans-religiously raised, calls for the removal of ‘due consideration’ of religion, race, culture and linguistic background, when placing a child for adoption.

15. Fears it will compound the bad practice by boroughs of avoiding using inter-agency adopters Dr Julie Selwyn’s research (‘Adoption & the Inter-Agency Fee) highlighted some bad practice which was acknowledged by the former Children’s Minister, Tim Loughton. It showed that some local authorities are guilty of not referring children to the adoption register or of ignoring matches that this generates, in an attempt to avoid paying the extra costs for inter-agency adopters. While this caused delays, Dr Julie Selwyn acknowledged that this has another consequence—if local authorities family finding for a Muslim child do not happen to have Muslim families approved in house, some may place children with in house, non-Muslim families, rather than look to inter agency adopters who are Muslim. This matches with findings of practice anecdotally that for years from social workers under pressure from managers to protect their budget—social workers have referred to it as ‘buying a form F’. Our concern is that despite the added funds given to local authorities by the current government, the repeal of the ethnicity clause sends out a message to social workers that they need not bother! What with speediness as a performance indicator, and religion etc no longer requiring due consideration, local authorities can just skip the need to look elsewhere for more appropriate adopters and simply go with a cheaper and quicker option in house.

16. **MCB recommends the following solution:** Abolishment of the inter-agency fee in favour of a ‘central money pot’ is the only way local authorities will prioritize the needs of children over and above their local interests. The needs of the child—in terms of finding the best match—would be best met if children are ‘opened up’ to approved adopters up and down the country, in such a way that the cost to LAs of using inter-agency adopters is the same as using in house adopters. This would be of benefit not only to Muslim children, but for harder to place children in general. This would serve in the interests of all parties concerned: allowing approved adopters from all over the country ‘access’ to consider children will increase the chances of harder to place children being enquired about and ultimately this will speed up adoptions, while—I might add—increasing the chances of finding the most appropriate adopters in terms of religion. This way, unlike with the bill’s proposals, speed and quality of match go hand in hand, rather than one at the expense of the other.

17. If this Bill is passed, we will see Muslim children being raised by Jewish families, Jewish children raised by families of other religions, Asian Hindu children placed with black Christian families and Black children placed with National Front families (families with fascist ideology) in adoption, as was recently reported in the papers. This is completely unacceptable and much consideration and thoughts must be given before the proposed changes are adopted.

_April 2013_

Memorandum submitted by the Lichfield Childminding Association (CF 107)

1. We are the Lichfield district childminding association and have been in existence for over twenty five years and we are collectively writing in response to the childminder agencies proposal in the children and families bill...
due to be heard at the end of April. We have a great many male and female members which we feel reflects the wide range of childminder’s in the UK. There are those that work around their own children, those who help out grand children and family members, those who work as couples with the capability to take on more children.

2. Upon first reading the bill, at our regular meeting, we were astonished that the first time childminders were mentioned it came in line that ended “in an area of the sector that has lagged behind”. In fact the impression that the document gives is that childminders are substandard, unable to follow the EYFS effectively and unable to run their own business. We feel that is the polar opposite of the truth! Due to being in small groups, individuals are able to receive more attention, their personal needs and development goals are met more readily and their social skills are greater than those who have been attending nurseries in the most formative of early years.

3. The overall numbers of childminders have dropped over the years, yes, but we feel it is those who did not have a professional approach and did not want the extra work and training that came with the EYFS. So, in fact the drop in numbers are only a temporary symptom of building a more professional and high standard of childcarers.

4. Childminders have chosen to set up their own business, and for decades have been able to operate effectively, even more so with the introduction of the EYFS, and to parents satisfaction. If agencies are brought in, as suggested CM’s are being asked to pay for the privilege of belonging to one, which, when the sector already has a low rate of pay, is going to have a huge detrimental effect on our income. Causing the need to increase our numbers and there for limiting our capacity to go out into the community doing the things that CM’s are renowned for—taking children shopping, going to the park attending social children’s activities such as visits to the library, singing groups and playgroup sessions, etc.

5. Our particular county—Staffordshire—has benefited from L.A support and training and there are hardly any satisfactory grades any more. Good and outstanding are the norm, with the latter grade very much on the increase. If agencies are introduced it won’t be long before the only way to access training and support will to be a member of an agency creating a two tier system of childminders, not exactly conforming to the idea of equality.

6. Vacancy filling: in the proposal, it reads that agencies will allocate parents to CM vacancies. How is this offering parental choice? This is one of the brilliant things about CM’s. A parent can either go on the gov website or call the family services and get a list of CM’s in their area; they can contact them and see who can help. Then comes the important part of visiting their homes and talking, meeting the little ones. It is this process, where parents can find a CM that they feel comfortable with and just as important a CM can choose families they are confident will fit in with the setting and can build a relationship with.

7. We would appreciate the government allowing us the choice of how to run our business lives. Involvement at this level is a massive intrusion. LA support and training clearly works. Please don’t take away parental choice and the ability to function autonomously instead of some cog in a wheel that looks pretty flat to us.

April 2013

Memorandum submitted by Dr Debbie Sayers and Bethlyn Killey (CF 108)

Summary

— These submissions result from discussions between parents who live in different parts of the country and whose children have special educational needs (“SEN”). Experiences have been shared in a variety of different ways: through meetings, through personal association, and through support or advice groups. The authors make no claim as to the statistical significance of these submissions but, from the feedback we have received, we believe it is possible to draw out some common themes.

— These submissions comment on:

(i) some ways in which this Bill fails to address the ‘struggle’ experienced by parents in securing provision for their children’s SEN;

(ii) the Bill’s failure to prioritise the rights of the child; and

(iii) the pilot scheme relating to direct payments for SEN.

— Suggestions are made for changes.

Introduction

1. The delivery of high-quality provision to children with SEN is fundamental to any concept of effective inclusivity in our mainstream schools. At January 2010, only 2.7% of school-aged children and young people had a statement of special educational needs. These children represent the most vulnerable in our school system. Yet, despite their extreme vulnerability, our clearly defined statutory framework and the risk of loss of opportunity associated with SEN not being met, SEN provision may depend on the tenacity, ability, and often the financial means of parents. A number of reports have evaluated aspects of the system, most notably

This includes all maintained, non-maintained and independent schools.
the 2006 report of the Education Select Committee, the Bercow report, the Lamb Inquiry and the Salt review. These reports highlighted common problems: for example, poor communication with parents and lack of parental confidence in the system. The Government has similarly acknowledged that parents too frequently see the current system as adversarial, unfairly requiring them to ‘fight’ for the rights of their children. The Bill was intended to reduce this struggle.

(I) Reducing the struggle

2. The need for parents to ‘fight’ for their children’s educational provision is a consequence of the enormous power imbalance between the parties. Local Authorities (LAs) may be underfunded but they have extensive resources in terms of decision-making powers, access to external agencies and to limitless legal advice and representation. Additionally, they both assess needs and fund provision, creating an obvious conflict of interest. This situation places the parent, and consequently their child, at a significant disadvantage. Parents often find themselves facing huge costs in relation to legal representation and obtaining independent evidence if cases go to SENDIST (often in excess of £10,000). This is a financial hurdle many parents simply cannot surmount. Further, an appeal to Tribunal may take 6-8 months and this delay may benefit LAs financially as it carries no cost penalties and they will not have to pay for a child’s provision throughout this time. Many parents say that LAs deliberately push them to a Tribunal appeal to save money. Thus, even those parents with the capacity to ‘fight’ for a statement and specific provision may encounter unacceptable challenges and practices. Back in 2006, the House of Commons Education and Skills Committee recognised that:

“there is an inbuilt conflict of interest in that it is the duty of the local authority both to assess the needs of the child and to arrange provision to meet those needs, and all within a limited resource. The link must be broken between assessment and funding of provision.”

This Bill does nothing to address this fundamental imbalance.

3. This power imbalance may lead to abuse. For example, in many cases, it is difficult to ascertain how and why decisions on SEN provision are made. Most LAs delegate this function to SEN Panels comprised entirely of LA employees. These ‘Panels’ have no legal status and frequently do not record their decisions, or fail to record them in detail. Thus, they lack the accountability and transparency usually required by law from public decision-makers. It has been suggested that Panels are purely an internal mechanism to delay decision-making and to save money by delaying putting provision in place. The Bill should address this.

4. It is also common practice for LAs to base their decisions on funding policies or other criteria which have no statutory basis. Such policies are frequently applied by these Panels and they may be unlawful if they preclude appropriate focus on a child’s individual needs. In evidence given to the House of Commons’ Education Committee’s recent pre-legislative scrutiny of the SEN reforms, one Director of Children and Young People’s Service, Dr Charles Palmer of Leicestershire County Council acknowledged this reality:

“Local authorities are having to restrict eligibility for statements now because of resource demands”

When asked by Mr Ian Mearns MP: “For the record, you are quite clear in your own mind that local authorities are restricting the number of children who are getting statements because of resourcing issues?” Dr Palmer confirmed:

“We have been explicit with families in my local authority that, in order to protect the needs of the most needy children…… we are having to restrict growth in the numbers of children being assessed”.

Such blanket policies are unlawful. The fact that a senior LA official felt comfortable to share such practices with a Parliamentary Select Committee may demonstrate how common they are. The Bill does nothing to address this.

5. Blanket policies cause intolerable stress because parents know that their children are not being viewed individually but against hidden policy criteria. Parents who battle tenaciously may be treated appallingly by LAs without effective oversight or sanction. From discussion with parents, leading education lawyers and charities,
it seems far from uncommon for parents to be subject to a variety of tactics to undermine them: e.g. use of vexatious procedures or even social services investigations. Yet, working with parents is supposed to be at the core of our system and parental involvement may save LAs time and money. Parents know their children best and they care enough to spend the time figuring out what works. Thus, parents may be able to offer cost-effective ways of implementing simple strategies that may even remove the need for additional, costly resources. All too often parents are not viewed as partners but are treated with hostility. The Bill does nothing to change cultural attitudes driven by resource shortages.

6. A further stress on the lives of families with a child with SEN is the bewildering patchwork of policies and approaches applied from LA to LA. LAs may also adopt very different positions on the efficacy of certain types of provision. This creates a postcode lottery. It also means that, having fought hard for provision, families can find it extremely difficult to move between one LA and another as this may prompt further assessments and perhaps fresh challenges to their child’s provision. This may severely restrict a family’s freedom of movement. The Bill does nothing to make provision transferable between counties.

7. Additionally, LAs routinely deliver SEN provision (such as speech and language therapy (SLT) and occupational therapy (OT)) via a variety of county specific Service Level Agreements and block contracts with the NHS. This means parents have no choice over the appointment of service provider. The NHS provider commissioned to deliver the service will usually be working under a contract which stipulates what work the service will undertake e.g. to work ‘consultatively’ which means working indirectly through a TA and not directly with a child. This may influence the type of provision a service will recommend for a child irrespective of the LA’s statutory commitments under the Education Act 1996 which are based solely on the educational needs of the child. Further, it may not be clear where the lines of responsibility and accountability lie with block contracted provision. It is not clear that joint health commissioning will improve this lack of accountability, transparency and personal autonomy, particularly if commitments to direct payments (DPs) are undermined by block contracted provision. Additionally, NHS therapy departments may have their own eligibility criteria, for example, to see children only in school settings or to limit therapy to specific groups of children. These ‘hidden’ criteria bear no relation to the statutory criteria for meeting SEN and may also create ‘Cinderella’ services for children as compared with adults.

8. Similarly, there is no requirement for LAs to have transparent methods of objectively and independently measuring the outcomes of commissioned provision. Ofsted has said that, even where SEN support is obtained, the evidence suggests that, too often, provision is not of good quality and does not lead to significantly better outcomes for the child or young person. The Bill should address this by requiring LAs to independently monitor the outcomes of all their provision and publish data on these outcomes.

9. Frequently, the only way school-age children can access some types of NHS treatment is if it is specified in their statement and delivered at school. Consequently, if a child is not in school, they are highly unlikely to get access to the therapies to meet their SEN as services are withdrawn even where a clinical need exists. This is not a model replicated in any other aspect of health care. The Bill should ensure that all children can legally enforce their access services to meet their SEN under their EHC Plan irrespective of whether they are at school.

10. There are no provisions to improve accountability or transparency or to permit challenges to decision-making save through Tribunal. The Bill proposes an obligation to confirm mediation has been considered before an appeal can be lodged. Mediation services will be contracted by the LAs and they will not be undertaken by lawyers. In whose interest is this provision? It is virtually never in the child’s interests to delay settlement if settlement is possible. Delay, however, invariably favours LAs, because the costs of provision between appeal and hearing are never recovered. The Bill fails to address the reality of the cause of delay in the system.

(II) The child’s voice

11. Education plays a critical role in relation to dismantling barriers, promoting a human rights culture and developing informed citizens who are able to participate in and build a more inclusive society. Within the microcosm of the education system, we should be able to construct and develop a paradigm of inclusion which connects and empowers all children and young and people.

12. It is vital, therefore, that all decisions about provision are driven by what is best for children in accordance with Article 3 of the Convention on the Rights of the Child. This should be an explicit requirement on the face of the Bill.

13. Children and their parents have rights under the ECHR which may be affected through the SEN Process: for example, the right to privacy and family life under Article 8. Children with SEN which are considered

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179 Direct payments for statementing provision are currently being trialled by Pathfinder authorities.
180 Kennedy, ‘Getting it right for children and young people: Overcoming cultural barriers in the NHS so as to meet their needs’, September 2010.
182 Ibid.
disabilities also have rights under the Equality Act. The Act should explicitly make reference to the connection between SEN, disability, human rights and the Equality Act.

14. There are other international conventions which offer protection to children generally, and more specifically, to children with disabilities. For example, Article 12 CRC requires that a child’s views are taken into account when decisions are made which affect them. Children also have rights to health care and to live a full and decent life under Article 23 and 24 CRC. Article 24 UNCRPD sets out the right of people with disabilities to be able to “access inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live”. The Bill should state that this human rights framework should inform and guide the actions and decisions of all public authorities wherever they are likely to impact on a child’s human rights.

(III) Direct Payments for Special Education Needs

15. Direct payments (DPs) for special educational needs provision could be an important way of reducing ‘struggle’ in the system by letting parents have control over who will support their child. Parents may feel more able to trust the views of someone they have instructed themselves and who is not tied to the LA. Further, independent practitioners may be more capable of responding flexibly to suit a child’s individual needs. More consistent and, perhaps, higher-quality and cost-effective provision may be offered through the use of a single, long-term provider who might be a specialist rather than a generalist and who may be willing to work directly with the child across settings unconstrained by local protocols. The experience of the parents we have spoken to is that LAs and their NHS providers have a tendency to monitor provision by inputs (how many visits, how often etc) rather than outcomes (what has been achieved). Parents want outcomes and DPs may be a way to help them secure this.

16. It is, therefore, helpful that Section 532A of the Education Act 1996 creates a power for local authorities to make a payment to a person with a SEN statement for the purpose of securing the special educational provision specified in the statement. Currently, LAs are only permitted to make such a payment in accordance with a pilot scheme made under section 532B. Section 532B enables the Secretary of State to make pilot schemes by order. The Special Educational Needs (Direct Payments) (Pilot Scheme) Order 2012 (SI 2012/206) (“the Order”) came into force on 30 January 2012. The pilot applies to the “pathfinder” local authorities listed in Schedule 2. Wiltshire Council is one of those pathfinder authorities.

17. The Order places a number of mandatory duties upon pathfinder authorities and the relevant paragraphs can be summarised as follows:

- The local authority must provide information and advice about direct payments under section 532A(1) of the 1996 Act to parents ….. whenever it serves a copy of a SEN statement or amended statement … (Schedule 1, paragraph 3 of the Order);

- The local authority must consider any requests for direct payments for SEN (Schedule 1, paragraph 3 of the Order) in accordance with Schedule 1, paragraphs 10-12 of the Order;

- Where a local authority decides not to make direct payments, it must inform the proposed recipient and parent ….. of the decision and its reasons. They have a right to request a review (Schedule 1, paragraph 13 of the Order).

18. However, LA Pathfinders seem, at best, ambivalent about direct payments for SEN provision despite the clear obligations under the Order which enables them to trial DPs and obliges them to consider any application from a parent in accordance with the Order. The Order does not give Pathfinders the discretion to choose whether they wish to abide by it and it provides no provision delaying its implementation to a later date. The mandatory elements of the Order fell to be complied with as soon as the Order came into force.

19. It is, therefore, deeply worrying from a parental and a legal perspective that LAs appear to be either confused or resistant to the terms of the law as it stands. This does not bode well for the wider introduction of the scheme and potentially undermines the reliability of this Pilot.

20. Dr Debbie Sayers’ experience of making applications for DPs is as follows:

“In February 2012, I made a request for direct payments for speech and language therapy provision so that I could instruct my son’s own speech and language therapist to deliver his provision. Lengthy correspondence ensued between myself and Wiltshire Council, now a Pathfinder ‘Champion’. The Council refused to allow me to make an application.

I contacted the Department of Education and the then Minister Ms Sarah Teather confirmed: “Local authorities named in the order are required to consider any such request [for a direct payment].”

Despite sight of this letter, the Council consistently refused to let me make an application. Additionally, it asserted by letter that “there is no requirement to issue information about our pilot scheme whenever a Statement of Special Educational Need is issued or amended.”

In August 2012, their Head of Commissioning and Joint Planning repeated the refusal to let me apply and stated in the publication ‘Children and Young People Now’: “I do not see what it is that Wiltshire is doing that is not in accordance with the legislation … Our approach has been seen by the Department
for Education (DfE) and no concerns have been raised, furthermore it is a similar approach to that being taken by many other pathfinders.\textsuperscript{383}

Wiltshire Council consistently refused to let me make an application irrespective of the clear terms of the Order. This position was clearly unlawful so I sought legal advice and legal aid was obtained in my son’s name to make a challenge by way of judicial review. Wiltshire Council then conceded that they would receive my application but still disputed the nature of their obligations under the Order. In December 2012, Wiltshire Council finally agreed to make DPs for our speech and language therapist. It took a further 4 months for direct payments to start after threat of further legal action.

Despite their previous position, Wiltshire Council has now issued a leaflet confirming that parents are entitled to apply for DPs for their children’s SEN provision in line with the terms of the Order. Thus, it is profoundly concerning that public money has been spent on legal aid to bring a challenge in the light of the very clear wording of the Order and despite the Council’s apparent consultation with the Department of Education. This is typical of the battles many families face when confronting the ‘reality gap’ between the law and LA practice and it is hard to see how the Pilot scheme is going to produce reliable evidence if other Local Authorities replicate this type of practice.

It is also worrying that LAs wish to apply separate practices for the evaluation and monitoring of SEN provision made under direct payments. Wiltshire Council have asked for my son’s provision, delivered by an experienced and qualified SLT, to be monitored and evaluated by another SLT working under their own block contract. This seems like an unnecessary cost in terms of duplication. However, if independent evaluation and monitoring is to be applied, it would clearly be in children’s interests for this to apply across the board and not just to DPs. A LA should apply the same standards to their own block contracted provision particularly in view of the significant sums of public money and numbers of children involved.

Another concern is that the existence of block funding is being used as a blanket reason to refuse applications without individual consideration. We made a further application for DPs for OT in February 2013 and despite the fact that our son was receiving no OT in contravention of the terms of his statement, our request was refused solely on the grounds that a block contract for OT existed. On review, the Council’s written position was “occupational therapy services are not cash releasable as they are currently provided under the terms of a block contract. To provide these services under any other form of contract would not be compatible with the authority’s efficient use of its resources.”

This is clearly a blanket use of the exemption under section 11(d) of the Order and suggests a real unwillingness on the part of the Council to trial direct payments. Where does this leave direct payments in reality? The Bill and associated Regulations must address this issue.”

21. It is also worrying that recent research has demonstrated that, by February 2013, more than half the councils meant to trial personal budgets had failed to produce plans to implement them.\textsuperscript{384}

22. We also have concerns that the Regulations setting up the pilot scheme to trial DPs have given head teachers a veto over whether students or parents could use personal budgets in relation to their school. If LAs do not wish to entertain DPs, they can clearly put unseen pressure on schools to allow them.

\textbf{RECOMMENDATIONS}

Recommendations in relation to amendments to the Bill include:

1. No progress in enhancing children’s rights can be made while the link between LA assessment and funding remains. The Government should radically alter the lives of children by establishing an alternative and wholly independent method of assessing children’s SEN.

2. If the status quo remains, the Bill should require LAs to issue decisions in relation to EHC Plans in a far more transparent and accountable way. For example, Panels, if used, should include parental representation and independent practitioners and parents should have the right to observe their operation. This may reduce unlawful policies based on resource allocation which continue to undermine children’s rights.

3. All LA decisions should be judicially reviewable to prevent the consistent use of delay tactics by diversion through SENDIST. Currently, if a decision is open to appeal in SENDIST, it is unlikely to be judicially reviewable causing inequitable delay to the child. This should be stopped.

4. The Bill should guarantee legal aid for Tribunals in the child’s name so that s/he may have their voice heard, through their parents if necessary. This would put families on a level playing field. The current system is reliant on the means, tenacity or financial ability (or all three) of parents to pay for independent evidence and representation. This is unacceptable and it means that many children are being failed under the current system.


\textsuperscript{384} Guardian, ‘Councils ‘failing special educational needs children’”, 25.2.13 http://www.guardian.co.uk/education/2013/feb/25/councils-failing-special-educational-needs-children
5. Cost penalties should be imposed on LAs who delay decision-making until Tribunals hearing and the cost of provision should be reimbursed to schools and through additional provision for the child.

6. The Bill should confirm that the use of DPs is a right granted to parents unless the LA can show that it would not be in the child’s best interests to obtain provision this way. DPs should not be tied to the LA’s efficient use of resources because the existence of block contracts will simply preclude access to these payments. DPs for social care are not currently limited in this way.

7. EHC Plans should be transferable between LA’s with no need for further re-assessment, save for the usual annual review.

8. The Bill should entitle children to continue to access services under their EHC Plan even if they are out of school.

9. The Bill should confirm that all decisions must be taken in the best interests of the child.

10. The Bill should demand an increase in partnership working with parents and should set out what that means in statutory terms.

11. The Bill should better articulate the right of the child to be heard.

April 2013

Memorandum submitted by the Alliance for Inclusive Education (ALLFIE) (CF 109)

The Children and Families Bill (CFB) states that children and young people with SEN must be educated in a mainstream school or college. This is because the Bill keeps the “presumption of mainstream education” for children and young people with special educational needs (SEN). It follows then that any accompanying guidance and code of practice should place emphasis on all agencies working together to promote and implement inclusive education practice.

It is the Government’s proposal to replace the existing SEN Code of Practice (SENCoP) with a new Code that reflects the Children and Families Bill SEN provisions. ALLFIE understands that the proposed SEN Code of Practice for children and young people aged from 0-25 years of age will replace the current Special Educational Needs Code of Practice for school pupils up to the age of 18 and the Inclusive Schooling statutory guidance. The 32 page Inclusive Schooling statutory guidance has been a particular useful guide for emphasising and promoting good inclusive education practice in schools. The Inclusive Schooling statutory guidance makes it clear that both schools and Local Authorities (LAs) must:

— adopt an inclusive ethos
— provide a broad and balanced curriculum for all pupils
— have systems in place for early identification of barriers to learning and participation of all pupils
— High expectations and suitable targets for all children.

THE NEW SEN CODE OF PRACTICE—indicative text

ALLFIE has now had the opportunity to read through the proposed SEN Code of Practice. Whilst we appreciate that the SENCoP is a working document, nevertheless, we are deeply concerned that all the useful guidance on inclusive education practice has been omitted from the draft SENCoP presented to the CFB Scrutiny committee. ALLFIE is also very concerned that the SENCoP indicative text does not reflect the spirit of the UN Convention for Persons with Disabilities Article 24 (Inclusive Education) and the Public Bodies Public Sector Equality duties. In fact the SENCoP indicative text gives specific advice which is not in the spirit of the Equality Act duties for education providers:

“FE colleges manage their own admissions policies. They will do so in line with the requirements of the Equality Act. Students will need to meet the entry requirements for courses as set out by the college, but should not be refused access to opportunities based solely on whether or not they have SEN.”

This guidance suggests that students will need to meet the entry requirements for courses which could be taken to mean that neither schools nor colleges are expected to make reasonable adjustments for disabled students—this clearly undermines their Equality Act duties.

ALLFIE has identified the following areas in the SENCoP indicative draft that we are particularly concerned about:

— Withdrawal of the inclusion principle
— Sole focus on reasonable adjustments for individual students
— Withdrawal of the ‘incompatibility of efficient education of other pupils’ guidance.

ALLFIE is calling for the SENCoP indicative text to be reconsidered, as its content does not reflect the Government’s obligations under Article 24 of the UN Convention for Persons with Disabilities to ‘build the
capacity of mainstream’, the education providers’ public sector equality duties or the ‘presumption of mainstream’ set out in the Children and Families Bill.

WITHDRAWAL OF THE INCLUSION PRINCIPLE

The current Inclusive Schooling statutory guidance highlights the expectation that on a strategic level, schools and college should develop their cultures, values, policies and practices to be inclusive of children and young people with SEN. The statutory guidance recognises the importance for mainstream schools and LAs to have a commitment to increase the inclusion of a wider range of children and young people with SEN. The ultimate goal of inclusion is that everyone, regardless of impairment, background and ability will be welcomed and be catered for in local mainstream schools. The inclusive approach promotes ‘aspiration’ and a culture of ‘thinking outside the box’ when considering how different areas of school and college life need to adapt to enable everyone, including disabled children and young people, to participate and contribute to their learning communities. The Inclusive Schooling guidance supports the Equality Act public sector equality duty on education providers and service providers to advance the equality of opportunity and promote good relations between disabled and non-disabled students at a strategic level. Ofsted, in its 2006 report on Inclusion highlighted how the adoption of an inclusive approach benefits both disabled and non-disabled people:

“Mainstream schools with additionally resourced provision are particularly successful in achieving high outcomes for pupils academically, socially and personally. In the best example, resourced mainstream provision was used as a vehicle for improvement throughout the school.”

OFSTED

The Inclusive Schooling statutory guidance makes it clear what the roles and responsibilities are for LAs and Schools, in terms of developing inclusive education practice. The guidance also includes helpful examples of what reasonable steps can be taken to include children and young people in their schools. Apart from making reasonable steps, LAs are expected to develop and build the capacity of mainstream schools to become more inclusive of pupils with a range of SEN, by providing training and additional resources as appropriate. The Inclusive Schooling statutory guidance is much clearly about what is required than the Equality Act 2010 ‘reasonable adjustments’, as it focuses on whole institution culture and policies, rather than individual ‘reasonable adjustments’ cases.

FOCUS ON REASONABLE ADJUSTMENTS FOR INDIVIDUAL STUDENTS

The need for schools to adopt an inclusive ethos has been removed from the indicative SENCoP. In the Indicative draft of the revised SENCoP, schools, colleges and local authorities (LAs) are, in the main, only required to consider children and young people with SEN in relation to accommodations under the Equality Act 2010 reasonable adjustments duties. Traditionally ‘reasonable adjustment’ approaches have sometimes limited the potential for schools and LAs to think strategically as the focus is on the individual changes required rather than giving consideration to the impact upon the education institution’s culture and practice upon disabled people.

Simply focusing on ‘reasonable’ adjustments without the broader aspiration for the development of inclusive practice encourages some education institutions to take a minimal checklist approach to how support for individual children and young people with SEN should be arranged. A major limitation of using reasonable adjustments in isolation of inclusion is that support arrangements such as purchasing a specific piece of equipment, arranging assistance or differentiating the curriculum is viewed, by education providers, as being of benefit to individual disabled students, rather than the learning community as a whole.

For example: Lesley is a young person with learning difficulties enrolled onto a NVQ level 1 Performing Arts course at a college that does not have an inclusive education policy. However the college does have a reasonable adjustments policy.

Lesley needs to film the dance performances so that s/he can review the performance and thereafter improve dance techniques. Filming has to be considered as a reasonable adjustment to the college’s normal cultural norms of learning ethos. The college decides that reasonable adjustments could not be made. However if visual learning is part of an inclusive learning policy then filming or any other visual medium that students need to use to aid their learning would not be subjected to the ‘reasonable’ adjustment test.

When students learn using different media from the norm, then this and other colleges will only consider whether the adjustment is reasonable for individual students on a case-by-case which ultimately involves extra costs in the long-term and an inconsistency of approach to providing support to disabled students. However, different colleges may consider filming as a reasonable adjustment or step that can be taken to include the student with SEN in their performing arts course. So what is or is not considered as ‘reasonable’ will vary between different educational institutions as illustrated by Jo’s case below:

Jo has significant learning difficulties and has a full statement. Ordinarily Jo would have made an automatic transition from a state funded mainstream nursery to mainstream primary school. However, in June 2012, Jo’s family moved to a London borough where they wanted a mainstream school

What SEN support or adjustments are considered as ‘reasonable’ will vary between different educational institutions depending on how they use their resources and their overall commitment to inclusion. ALLFIE have witnessed time and time again, LAs and schools and colleges stating that particular adjustments are considered as ‘unreasonable’ as a reason to justify segregated education placements for children and young people with SEN. It is completely unacceptable that there is such inconsistency in the assessment of what is reasonable and what is unreasonable. It is also completely unacceptable that the chances for children and young people with SEN of being included in mainstream with the right levels of support are based on a post code lottery of reasonableness definitions.

If education institutions were provided with statutory guidance stating that they must develop an inclusive ethos, then what adjustments are considered as ‘reasonable’ will become less of an issue as they would be incorporated into the range of provision needed to meet the needs of the learning community as a whole.

**LOCAL AUTHORITIES (LA) AND SCHOOLS GUIDANCE ON HOW ‘INCOMPATIBLE WITH THE EFFICIENT EDUCATION OF OTHER PUPILS’ SHOULD BE CONSIDERED**

When schools and LAs want to refuse a mainstream educational placement for a child or young person with SEND, the Inclusive Schooling guidance provides information on what should or should not be considered.

Inclusive Schooling statutory guidance makes it clear about how ‘incompatibility with the efficient education of other pupils’ should be interpreted by LAs when considering the appropriateness of placing children and young people with SEN into mainstream schools. The expectation is that children with ‘significant and challenging behaviour’ labels placement should be considered when LAs are determining whether or not their mainstream placement will affect the efficient education of other pupils.

The SENCOP indicative draft provides no guidance on how schools, colleges and LAs should interpret the ‘inefficient education of other pupils’ caveat (under CFB clauses 33 and 34) when refusing a mainstream placement for a child or young person with SEN. Without statutory guidance schools, colleges and LAs will have to decide for themselves both what types of pupils and students they are prepared to admit and what kind of SEN support might impact on the efficient education of other pupils.

ALLFIE is very concerned that with increasing pressure on budgets, resources and the drive to meet floor qualifications targets, education providers and LAs are more likely to mis-use the ‘incompatibility with the efficient education of other pupils’ caveat even more than they do now to prevent the admission of a child or student with SEN to a mainstream school or college. Below is a current example:

*Mossbourne Academy in London refused to admit an 11 year old boy with cerebral palsy (with an SEN statement), who simply required a bit of support during break times to make sure he was safe when moving about in the school. He needed no additional support. The school refused to offer him a place on the grounds that his admission "would be incompatible with the efficient education of other children in the school"*

This demonstrates how clauses 33 and 34 of the Children and Families Bill and associated caveats are open both to misinterpretation and to abuse.

ALLFIE anticipates that the number of schools, colleges and LAs using ‘incompatibility of efficient education’ caveat to deny admission to SEN and disabled students will also increase as a consequence of Government’s ‘standards’ agenda. Justifications will include: disruption due to differentiation of curriculum, disruptive behaviour from pupils with SEN, neither of which would be permissible under the existing Inclusive Schooling Statutory Guidance. When such cases come before SEN tribunals, it will be for the tribunal panel to consider what is deemed to be ‘incompatible with the efficient education of other pupils’ in absence of statutory guidance. This will lead to increasing numbers of tribunal cases being sent to the Court of Appeal in order to get definitive guidance on how ‘incompatibility with the efficient education of other pupils’ should be interpreted. To avoid expensive legal appeals, revised SENCoP must reinstate the advice and guidance to education providers, and LAs about developing an inclusive ethos and practice.

ALLFIE wants the revised SENCOP to reflect a broad, inclusive approach to accommodate children and young people’s SEN in mainstream schools and colleges. This would ensure that the Government isn’t in breach of its UN Convention for Persons with Disabilities Article 24 obligations, Public Bodies Public Sector Equality Duties and the CFB’s clauses 33 and 34 ‘presumption for mainstream’ principle.

*April 2013*

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Memorandum submitted by Interface Parent Carers (CF 110)

We strongly support the request for easily available Tribunal Statistics by Local Authority and by outcome. We are a Parent Forum like the Forum in Merton that has raised this issue with the Committee. We know this is an issue for some families.

As well as the stress involved, it is not right that families should have to spend money on assessments and lawyers (for example for a Statutory Assessment request) when the Local Authority gives in a week or a day before or on the day of the Tribunal. It is hugely stressful, scary and is a huge disincentive especially for families whose first language is not English or who are not confident dealing with bureaucracy.

It seems to reflect policies of the LA that they will not give in or consider certain issues. The same applies to Statement Language, access to schools and so on. The LA just draws a line and says take us to Tribunal. Against this background mediation is no good even it it was of good quality (which it does not seem to be).

Those families who have to go to Tribunal (which we do not want to have to do) find them wasteful of time and resources (as what we want is usually common sense). They also come at enormous cost (financial and our health).

Additionally in the past in our LA area (and we know others) no one got Speech and Language Therapy (SLT) into Part 3 without going to Tribunal (no matter how strong the case). The LA fought all cases until it became ridiculously embarrassing as they lost the lot. No SLT had been forthcoming from health (no early intervention) and the children needed it for their development/learning/outcomes. The children had already lost out on critical early intervention and time was of the essence. One would hope that the new duty on health (and EHC Plans) will prevent this happening in future, for SLT and for other critical therapies.

The requirement should also apply to Tribunal Disability Discrimination Cases looking at families who withdraw. In those cases the LAs appoint top barristers for the schools which means parent carers cannot afford financially or emotionally to continue. This is unfair and a lack of justice especially for BME families.

April 2013

Memorandum submitted by Adoption UK (CF 111)

Adoption UK is a national membership and support charity for adoptive and prospective adoptive parents. We provide parent-led support services to families and act as a source of advice for families who are trying to access other types of support, particularly in relation to therapeutic and educational support. Through our Helpline, support groups, training programmes and other support services, we are aware of the disparities and inconsistencies with adoption support around what is available, to whom, when and why.

Moreover, as an adopter-led charity, we are also aware of the importance of adoption support to adoptive families and its significance to the well-being of adoptive families and their children. For most children adopted from care, their child development will have been compromised by their experiences of abuse and neglect (70% of children adopted in the year ending March 2012 had been removed from their birth parents due to abuse and neglect), leaving them with a long-term legacy of emotional, behavioural and developmental difficulties. Those difficulties will, in turn, have an effect on their ability to build and maintain positive relationships, including with their new adoptive parents who will represent their best opportunity of overcoming the impact of their early trauma. While adoption offers a positive alternative to a childhood spent in the care system, it is not an easy option and it is our responsibility as a society to support these families.

In recent years, Adoption UK has actively campaigned to see changes made to the adoption system that will benefit adoptive families, many of whom will come to us for support in some form. During our 40th anniversary year in 2011, we called for adopted children to have the same rights as children in care in relation to their educational needs; parity between maternity and adoption pay and leave; adoptive families to have an entitlement to adoption support following an assessment of their needs; and the same priority for adopted children as for children in care to access specialist child mental health services. While the first two policy ‘asks’ were achieved, the issue of adoption support, which includes access to and quality of CAMHS services, remains problematic.

This submission concerns Part 1 of The Children and Families Bill, specifically Clause 4. Adoption UK has been instrumental in helping to create the adoption policies contained in the Children and Families Bill and which are currently under scrutiny. We continue, however, to urge that further thought be given to the area of adoption support. For adoptions to be successful, it is important that placements be supported by high quality and timely support services, including therapeutic support. Support means different things to different people; what works for one person or family will not work for another, all of which makes it paramount that families and adopted children undergo accurate and thorough assessments to ensure the appropriateness of the service then offered.

If the aims of reforming the adoption process and implementing the proposals outlined in the Bill include recruiting more adopters for the thousands of children waiting to be placed and for those adoptions to then be permanent and successful, it is reckless to think this can be achieved without providing appropriate adoption
support. As it stands, local authorities have a duty, upon request, to carry out an assessment of need for adoption support services, but if the result of the assessment confirms a need exists, there is not a duty to provide that service. In very simple terms, this can be likened to assessing a person’s hunger, determining that they are indeed hungry and then deciding not to feed them and instead, continue to let them suffer.

We would therefore be in support of an amendment to the Bill that would change Clause (4) to read:

4(a) “Where, as a result of an assessment, a local authority decide that a person has needs for adoption support services, it shall be the duty of the responsible local authority to provide any such services that safeguard and promote the health, development and welfare of the adopted child or parent(s) of an adopted person.

The local authority must prepare a plan in accordance with which adoption support services are to be provided and keep the plan under review.

Our view is that by ensuring that a duty is placed upon local authorities to provide adoption support services, the number of families struggling in isolation will drop, the number of adoptions that reach crisis point and result in disruption will be fewer and the number of children returning to the care system and re-entering the system will decline. Finding appropriate support can mean the difference between a child thriving in a secure and loving family and a child potentially living their childhood in the care system, which may be the best route of permanence for some children, but for many it will not offer the therapeutic family care offered by an adoptive placement.

While the Bill includes proposals for local authorities to provide personal budgets to those families deemed in need, following an assessment, this still only applies when the local authority decides to provide adoption support services. It still does not provide for any guaranteed access to support and is aimed at placing more control in the hands of the adopters. Some of the same questions remain, however: how hard will adopters have to fight to obtain a budget, especially when their support needs arise years after placement when the child has reached adolescence as is very common? Will local authorities refuse to provide budgets even when there is an obvious and clearly assessed need for support? For those with intensive, therapeutic needs, will the budget extend far enough to meet the cost of that service? In essence, how will these budgets be funded and will there be enough funding available to meet the needs of the existing adoptive families in addition to all those it is hoped the new recruitment drives will attract.

Adoptive parents, along with foster carers, special guardians and kinship carers are caring for and parenting some of the most traumatised children placed from the care system. They need all the support they can get.

April 2013

Memorandum from Fatherhood Institute (CF 112)

A. BACKGROUND

Why parenting leave design matters

The way leave for parenting—Maternity Leave (for mothers only), Paternity Leave (for fathers only) and Parental Leave (available to both mothers and fathers)—is designed signals a nation’s expectations about ‘who does what’ at home and at work. Paternity and Parental Leave are central to involved fatherhood and involved fatherhood is central to gender equality: only with fathers’ full participation as caring parents can women be equal players with men in the world of work. Researchers in Sweden have shown that for every additional month of parenting leave taken by a father, his partner’s annual income increases by 7%. In Iceland, a leave-design of well paid leave in the first year equally shared between parents (three months reserved for mother, three months reserved for father and three months for the parents to share as they wish) has been so successful in transforming gender relations that this is now being extended to five months (mother), five months (father) and two months (share-as-you-will).

A father taking leave for parenting is good for the whole family. The role he plays in the first weeks and months after the birth can affect the way he relates to his child for the rest of their lives. UK fathers who take Paternity Leave are 25% more likely to change nappies and 19% more likely to get up to babies at night than those who take no leave. High father-involvement benefits children and is also linked to greater family stability: a 2009 survey found that 69% of fathers who took Paternity Leave said it improved the quality of family life. By contrast, low father involvement is associated with high levels of women’s anger at their partners, low satisfaction among fathers, poorer outcomes for children and family breakdown.

The UK v. other countries

The UK’s leave design (52 weeks reserved for mothers, two weeks Paternity Leave reserved for fathers) is among the most unequal in the world. A recent review of leave in 33 countries found the average length of Maternity Leave to be between three and four months; only four countries (including Ireland and the UK) have Maternity Leave of six months or more. Progressive jurisdictions, as in Scandinavia, tend to have very short

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387 “development” means physical, intellectual, emotional, social or behavioural development; and “health” means physical or mental health.
Maternity and Paternity Leave (two weeks in Iceland and Sweden) and long Parental Leave (divided into quotas for dads, mums and ‘shared’), all of this well paid.

In the UK the leave is unusually poorly paid. Apart from the first six weeks of Maternity Leave which are fully paid, remuneration is less than the National Minimum Wage (currently £135.45 per week\(^{388}\)). The UK spends far less as a percentage of GDP on parenting leave than comparable countries: UK: 0.15% of GDP; Germany: 0.32%; Norway: 0.47%; Sweden: 0.67%.

The UK does not even permit all new parents to share leave. Since 2011 some new mothers have been allowed to transfer the second six months of their Maternity Leave (half of it unpaid) to their baby’s father. When introducing that scheme (known as ‘Additional Paternity Leave’), the Labour Government estimated that only between 10,000 and 20,000 new fathers per year (about 2%) would take it. The numbers who have actually done so are not known but are likely to be lower than even that low estimate, due partly to current financial pressures on families, partly to ignorance of the scheme (it was never widely publicised) and partly to the fact that for a man to take the leave, both he and his partner have to meet specific employment and/or earning requirements. Schemes that require both parents to qualify before one of them can take part inevitably reach only limited populations; and because they offer no ‘individual entitlement’ to leave such schemes have been called ‘parasitic’.

**Parental Leave in Modern Workplaces**

Almost two years ago (16 May 2011) the Government published a radical document—the *Modern Workplaces* consultation [https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31549/11-699-consultation-modern-workplaces.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31549/11-699-consultation-modern-workplaces.pdf) —which proposed a Parental Leave system that was not ‘parasitic’. Any individual mother or father who met the employment criteria would be eligible to take Parental Leave. To encourage take up by fathers *Modern Workplaces* proposed an additional paid month’s Parental Leave to be reserved for the father’s own use: if he didn’t take up this ‘daddy quota’ the family would lose it\(^{389}\).

This was not to be. There was strong opposition to the Government’s proposals from employers, trades unions and other organisations that wanted mothers to ‘own’ the whole of the first year’s leave. The Government capitulated and their proposals fell.

**B. The Revised Proposals**

The Government’s compromise proposals have now been published as part of the Children and Families Bill expected to become law by the New Year with introduction of most of the legislative changes from 2015. The proposals relating to fathers are:

**Shared Parental Leave and Pay:** Clauses 87 and 89 of the Bill introduce Shared Parental Leave and Pay. Effectively, this is a re-naming of the existing parasitic Additional Paternity Leave (i.e. transferable Maternity Leave) with a few ‘tweaks’:

- Some mothers (as well as some fathers) can take it, provided both parents meet earnings and employment criteria
- The transfer of leave from mother to father can happen from 2 weeks after the birth instead of, as currently, 20 weeks
- Mother and father can take leave at the same time
- There is a tiny bit of flexibility: unlike, which has to be taken in one continuous lump, Shared Parental Leave can be taken in blocks of one week (so, for instance, a parent could be off on Parental Leave one week, work the next, then take another week on Parental Leave, and so on). But even this bizarre working pattern (which has been described as ‘disruptive’ rather than ‘flexible’) would not be a ‘right’: it can only happen if both partners’ employers agree.

**Who qualifies?** A great limitation of the proposed scheme is its ‘parasitic’ design: only when both parents qualify can either one be in receipt of Shared Parental Leave and Pay. But even within that, eligibility is limited and government estimates that fewer than 50% of employed couples where both participate in the labour market will qualify for the scheme. Table 1 (below) sets out the qualifying conditions.

\(^{388}\) Or capped at 90% of salary if this is lower

\(^{389}\) In other countries a ‘daddy quota’ has been found to be an important element in encouraging fathers to take leave.
The government says it will ‘carefully consider’ what type of payment may be available for parents who are not eligible for statutory pay once Universal Credit has become fully operational and has had time to settle down. This will not be before 2018 and there is no guarantee that provision will be made.

We want Parental Leave and Pay to be an individual entitlement available to any eligible father or mother who meets the employment or self-employment qualifying conditions, provided their partner is in the paid workforce.

We want self-employed fathers, like self-employed mothers, to have access to payment for parenting (a ‘Paternity Allowance’).

Part-time receipt of parental pay: the ability to work some days in a week and receive parental pay to care for a child on other days in the same week—a feature of many Parental Leave payment schemes in Europe—is not to be permitted under the new scheme. This rules out the possibility of a phased return to work for mothers.

<table>
<thead>
<tr>
<th>MOTHER</th>
<th>Father</th>
<th>Shared parental leave and pay</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worked for the same employer for 26 weeks in the 66 weeks prior to the baby’s due date and earned a minimum amount in 13 of these weeks</td>
<td>Worked for the same employer for 26 weeks in the 66 weeks prior to the baby’s due date and earned a minimum amount in 13 of these weeks</td>
<td>BOTH QUALIFY for Shared Parental Leave and Pay</td>
<td></td>
</tr>
<tr>
<td>Self-employed or an agency worker and paid sufficient Class 2 NI contributions</td>
<td>Worked for the same employer for 26 weeks in the 66 weeks prior to the baby’s due date and earned a minimum amount in 13 of these weeks</td>
<td>FATHER QUALIFIES for Shared Parental Leave and Pay</td>
<td>MOTHER qualifies for Maternity Allowance (payment of £135.40 weekly for 39 weeks)</td>
</tr>
<tr>
<td>Worked for the same employer for 26 weeks in the 66 weeks prior to the baby’s due date and earned a minimum amount in 13 of these weeks</td>
<td>Self-employed or an agency worker and paid sufficient Class 2 NI contributions</td>
<td>MOTHER QUALIFIES for Shared Parental Leave and Pay</td>
<td></td>
</tr>
<tr>
<td>is self-employed and paid sufficient Class 2 NI contributions OR worked for the same employer for 26 weeks in the 66 weeks prior to the baby’s due date and earned a minimum amount in 13 of these weeks</td>
<td>did not meet employment qualifying conditions before the birth but works after the birth—employed, self-employed or a agency worker</td>
<td>MOTHER qualifies for Statutory Maternity Leave and Pay whether or not father works</td>
<td></td>
</tr>
<tr>
<td>did not meet employment qualifying conditions before the birth and begins work after the birth—employed, self-employed or a agency worker</td>
<td>is self-employed and paid sufficient Class 2 NI contributions OR worked for the same employer for 26 weeks in the 66 weeks prior to the baby’s due date and earned a minimum amount in 13 of these weeks</td>
<td>FATHER qualified for Paternity Leave but does not qualify for Shared Parental Leave and Pay or any other benefit when mother works</td>
<td></td>
</tr>
</tbody>
</table>
and the ‘boxing and coxing’ of leave by couples. That kind of true flexibility, which would be welcomed by all stakeholders, is allegedly made impossible by administration-based objections from HMRC and the Department of Work and Pensions (DWP) who, between them, operate a system widely recognised to be ‘creaking’.

The power of part-time working/part-time receipt of parenting leave to encourage take up of leave by fathers should not be underestimated. Because during a working week both parents would be working and earning their normal wage on work days while receiving parental pay on parental-leave days, it seems probable that more fathers would feel able to afford to take leave—and would take it. This would usher in the longed-for cultural change of re-defining early parenting as a joint, rather than a mother’s, responsibility. It would also give families the flexibility they want and employers the flexible workforce they need. It would reduce the period during which mothers were full-time absent from the workplace (which has such a devastating impact on their later earnings, employment prospects and pensions) and would enable fathers, when in ‘sole charge’ of their infants, to develop high levels of skill and confidence in caring for them.

We want the HMRC and DWP systems to find a way of making it possible for new fathers and mothers to work part-time while receiving parental pay or a parental allowance part-time.

Independent rights for fathers: Under the new proposals, there is to be no additional ‘daddy quota’ leave. Fathers’ existing two weeks’ Paternity Leave remains the only leave that is reserved exclusively for them. The government has indicated that it will seek to bring in an additional period of reserved paid leave for fathers when the economy has ‘properly recovered’. They plan to do this by extending Paternity Leave (i.e. leave taken near the birth, generally while the mother is still at home). Because Paternity Leave is a father’s individual right (and is not dependent on the mother’s work record), far more fathers would qualify for an additional ‘daddy quota’ if this were an extension to Paternity Leave rather than if it were an element in Shared Parental Leave and Pay to which, as already pointed out, fewer than 50% of fathers will be entitled. However, if the ‘daddy quota’ can only be taken within the first few months (which will be the case if Paternity Leave is extended), most mothers will still be at home and it will not make financial sense for most fathers to take it. This means uptake will be minimal and cultural change slow.

We want an additional ‘daddy quota’ of four weeks’ paid leave to be available to all working fathers and to be able to be taken flexibly at any point up to 56 weeks after the birth

A ‘Day One’ right: Mothers have a ‘Day One’ right to Maternity Leave (though not to Maternity Pay). However, in order to access even Paternity Leave, a father must be employed for 26 weeks by the end of the 15th week before the baby is due and give notice of his intention to take leave 15 weeks before his baby’s due-date.

Many do not realise this and so fail to qualify for their entitlement. This ‘service requirement’ is a substantial barrier to take-up of Paternity Leave by a substantial minority of working fathers who have to rely on ‘time off for dependants’ to be with their partner at the birth.

We want Paternity Leave to be a Day One right for fathers—as Maternity Leave already is mothers

Ante-natal appointments: Clause 97 introduces a right for fathers to take two unpaid half days of leave to attend antenatal appointments with their pregnant partner, with the ability to complain to an employment tribunal if leave is refused. However, we would hope this leave can be paid and the proposed time frame (six-and-a-half hours per appointment) reviewed. This seems unduly restrictive and will require primary legislation to amend. In some circumstances, such as for a local appointment, it would be unreasonable to take six-and-a-half hours off; in others where, for instance specialist appointments far from home are required, six-and-a-half hours may be insufficient.

We want to see leave for fathers to attend ante-natal appointments paid and fathers given access to ‘reasonable’ time off (which Regulations could describe in more detail) with the restriction on the amount of time per appointment removed.

380 Acutely aware of this limitation, the Government is struggling to allow some kind of flexibility through providing KIT (‘Keeping in Touch’) days which would enable parents, if their employers agreed, to work part-time for a short period while still receiving full weekly Parental Leave payment. This has been put out to consultation. However, that payment could not be taken part-time and the burden on both employers and parents of trying to understand the system let alone administer it would be enormous.

381 The issue about computer systems in complex: the Department of Work and Pensions (DWP) are the ‘owners’ of benefits, including Maternity Allowance. DWP also hold the budget for Statutory Maternity and Paternity Pay. These, however, are administered through HMRC computer systems because the way employers are reimbursed for their payout of paternity/maternity pay to fathers and mothers is through deduction of equivalent amounts from their National Insurance contributions. This money is then moved from DWP to HMRC budgets—and HMRC can only make the necessary deductions for National Insurance contributions in weeks, not in days. This is the way the system is set up in HMRC, employers and payroll providers.

382 Where there is a will, there is a way: one of the arguments against restricting child benefit to less-well-off couples was that HMRC would find it difficult to administer. They have managed.

383 Clause 93 of the new legislation provides for regulations to change the notice requirements and length of time for which Ordinary Paternity Pay (to be renamed “Statutory Paternity Pay”) is paid. Regulations may also allow SPP to be taken in non-consecutive periods of not less than one week. (There are already provisions to amend Paternity Leave by regulations).

384 This small step is welcome, although changes in Legal Aid make it unlikely that any father would complain: he would have to pay £1,200 up front to have his claim heard.
**Modern Workplaces** claims that ‘the NHS encourages mothers to invite their partner to attend appointments if they would like support.’ We are not aware of any guidance to that effect and are all too well aware of variability in practice with, in some settings, active exclusion of fathers for no good reason.

We want GPs to be required to include the father’s name on the referral form, where this is safe; and maternity services to be required to invite fathers to at least one antenatal appointment, provided the mother wishes this. Maternity services should also be required to record the father’s name and contact details, where these are known, on the mother’s care plan and to look at offering appointments at times when employed fathers and mothers will find it easier to attend.

**Time off for adoption/surrogacy appointments:** Clause 98 introduces leave for adopters to meet with the child before placement. Following the existing system, the proposed scheme is highly gendered, allowing for a so-called ‘primary’ adopter to take paid time off for up to five adoption appointments, while the ‘joint’ (i.e. secondary) adopter is only allowed to take (unpaid) time off to attend two. Adoption requires particularly high levels of parent-cooperation and it is ludicrous to treat one adopter as primary and the other as secondary when neither is giving birth. In surrogacy, the new proposals make no distinction between primary/secondary parents: both women and men using a surrogate will only be entitled to (unpaid) time off to attend just two appointments with their surrogate.

In adoption and surrogacy the time-restrictions on appointment attendance may be particularly problematic: six-and-a-half-hours may not be enough to travel across the country to meet and bond with a child or visit a surrogate mother living in a different city, and these issues would be better set out in regulations than on the face of the Bill, so that they can be amended as needs are identified and employment practices change.

We want adopters and couples using surrogates to be able to share this early leave as they see fit, in order to develop connections with the child they are adopting or with the pregnant surrogate. We want them all to be given access to ‘reasonable’ time off (which Regulations could describe in more detail) with restriction on the amount of time per appointment removed.

**Raising awareness:** as already pointed out, one of the reasons why the current system of transferable (known as Additional Paternity Leave) is so rarely used is that mothers and fathers are unaware of this right. Questioning of the Department for Business, Industry and Skills has not elicited information about a budget for substantial information dissemination about the new scheme.

We want the Government to commit sufficient resources to publicising the new scheme systematically and widely through government channels as well as commissioning third sector organisations to develop and disseminate information.

**The right to return to work after taking leave:** The ‘rights during and after shared Parental Leave’ will be determined by Regulation. It is important that all the legal protections currently afforded women on Maternity Leave (and men on Paternity Leave) are replicated when they take leave called ‘Parental Leave’. Although discrimination (demotion, side-lining or straight sacking) are common, parents who parent full-time for six months or less are, in law, entitled to return to the same job; after that, the employer must offer the same or an equivalent job. Again in law, though not necessarily in fact, women on Maternity Leave (and men on Paternity Leave) are afforded special protection during redundancy situations.

It is important to ensure that all the current legal protections afforded those taking maternity or Paternity Leave are replicated in the new legislation, and that employers receive a strong message that any parent on maternity, paternity or Parental Leave must be treated fairly.

**Remuneration:** The current flat rate of pay for parenting leave in the UK (well below the National Minimum Wage, as already pointed out) will only be up-rated in line with other benefits by 1% until 2016, meaning a fall in value in real terms over this period. Demos has found that half of the 27% of eligible fathers who do not take Paternity Leave let it slide because they cannot afford to take it; many more will feel unable to take Parental Leave if this, too, is paid at such a low rate. It is in fact scandalous that only the first six weeks of are paid at above this rate, undoubtedly forcing some mothers to return to work before they are even physically ready. High take up of parenting leave by fathers will only happen if remuneration makes this viable.

Parents who take parenting leave should be paid at 90% of wages for the first six weeks; and statutory pay levels for maternity, paternity and Parental Leave should be at least at the level of the National Minimum Wage.

C. **IMMEDIATE ACTIONS**

The minor changes to the current parenting leave regime proposed in the new legislation move more or less in a positive direction; substantive modifications are unlikely to be made in the short term; the system is difficult to understand; and trades unions, employers and some powerful third sector organisations are committed to retaining 52 weeks as Maternity Leave. All this makes the idea of campaigning negatively against the Government’s disappointing compromise proposals unattractive.

Despite the fact that substantive modifications are unlikely to be made, The Fatherhood Institute, Working Families, the Fawcett Society and the Federation of Small Businesses the Fatherhood Institute, together with Working Families and other organisations, has amendments to the Bill. Most of them tally with our proposals above.
If substantive changes are not made and the Act continues the current system of 52 weeks’ Maternity Leave and 2 weeks’ Paternity Leave (with only limited eligibility to Shared Parental Leave and Pay), the UK may be in breach of equalities legislation in Europe. It may well be that a Judicial Review should be sought.

D. LOOKING TO THE FUTURE

The current and proposed systems are not the end of the story. The Fatherhood Institute will continue to lobby for a parenting leave design relevant to modern workplaces and modern families, and that brings Britain into the frame with the best in Europe.

In any campaign, the first step is clarity about its main objective. We suggest that in parenting leave design this should be ‘gender equity’. And rather than focusing on ways to bring women back into the work force after having children, leave design in Britain should focus on providing incentives for men to step out of it.

The regime which has done this most successfully is undoubtedly Iceland which has developed well paid leave with no differential between mothers’ and fathers’ quotas (now, as already mentioned, to be 5 months mother, 5 months father) with minimum choice made available to families (2 months for parents to divide as they like). When Iceland began on this path there was some resistance; now support is substantial. However, while this might indeed move us more quickly towards a gender-equitable society, the challenges of moving to such a system from ‘where we are now’ in the UK seem overwhelming.

Our broad brush proposals for a ‘next step’ leave regime, for which we will campaign, will be to build on the Coalition’s system as follows:

- Paternity Leave of two weeks and Maternity Leave of two weeks (four where a woman is employed in manual labour) are retained.
- From that point, leave automatically becomes Flexible Parental Leave, whether taken by the mother or by the father.
- This Flexible Parental Leave is an individual entitlement—exercising the right to it does not depend on the employment record of the other parent, but only on one’s own employment record (and the partner’s contemporaneous participation in paid work).
- Flexible Parental Leave can be taken part-time: a mother or father can work for normal wages part of a week and receive Parental Pay during other times of the week when they are in sole charge of their child.
- Maternity, Paternity and Flexible Parental Leave are all paid at 75% of wage replacement with a ‘cap’ for higher earners (this is the amount employers can reclaim from the State. They can ‘top up’ the payment to 100% of earnings if they so wish).
- The amount of paid leave available to a two-parent family from one month before the birth to twelve months afterwards is 36 weeks: 10 weeks reserved for mothers, 10 weeks reserved for fathers, 16 weeks for families to divide as they wish. This is a shorter period of paid parenting leave than is currently available to families in the UK, but is much more highly paid.
- Each parent also has an entitlement to one month’s unpaid Flexible Parental Leave as an individual entitlement.
- A further 12 weeks unpaid leave are available to either parent, to be divided as they see fit.
- As part of this, we will campaign for a greater proportion of GDP to be spent on parenting leave, in line with other progressive European countries.

April 2013

Memorandum submitted by The British Association of Social Workers (CF 113)

BASW evidence to the Scrutiny Committee of the Children and Families Bill 2012–13

1. BASW is the UK professional association for social work, led by and accountable to a growing population of approximately 14,000 social worker members. Our members work in frontline, management, research and academic positions in all social work settings across the UK. BASW members share a collective commitment to those values and principles that will secure the best possible outcomes for children and young people, adults, families and communities.

2. There are several issues presented by this bill that are of concern to social workers in England but we will not be lobbying on all of them at this stage, as we are part of umbrella organisations and groups who are taking these issues forward and so we will be supporting their representations. However, there is one key aspect of the Bill that BASW has consistently spoken out on and would like to bring to the attention of the Scrutiny Committee. Essentially, BASW has grave concerns about the proposal to repeal the requirement to give due

395 Two weeks of this is, to be taken from the birth

396 Two weeks of this is Paternity Leave, to be taken from the birth

397 Mothers can take leave from shortly before the birth, fathers can only take it after the birth
3. It is very disappointing that the Government has chosen to ignore the findings contained in the report of its own inspectorate Ofsted (Right on time: exploring delays in adoption’, 2012) as well as the inquiry on adoption legislation conducted by the House of Lords (Adoption: Pre-Legislative Scrutiny Report, HL Paper 94, published 19 December 2012) which both could not find strong evidence to support the assertion that social workers hold out for the ‘perfect match’ when it comes to the placement of Black, Asian and Minority Ethnic children with adoptive families. Conversely, by removing this requirement from the statute book we risk turning the clock back to a bygone era when issues about the ethnicity, race, culture, faith and linguistic background of children placed in care were not always properly regarded by professionals and institutions which ended up being highly damaging to the development of some individuals.

4. BASW is a UK wide organisation and we do not understand why England would beg to differ in its adoption policy and practice on matters pertaining to a child’s identity from the other nations when the issues are universal. Moreover, given the rich and growing diversity that exists in England it begs belief that we dismiss such issues when considering the needs of children placed for adoption; we do not live in a monolithic society.

5. If this repeal has come about because of ‘alleged poor practice’ then surely it is the ‘alleged poor practice’ that needs to be dealt with i.e. making sure that professionals are clear about the guiding principles they need to work with rather than punishing children in the process by denying them their human rights.

6. Current statutory guidance makes it very clear that ‘The structure of white, black and minority ethnic groups is often complex and their heritage diverse, where the race, religion, language and culture of each community has varying degrees of importance in the daily lives of individuals. It is important that social workers avoid ‘labelling’ a child and ignoring some elements in their background, or placing the child’s ethnicity above all else when looking for an adoptive family for the child.’ (Chapter 4, para 6. P.92 Adoption Statutory Guidance. Adoption and Children Act 2002)

7. It is important to acknowledge that race and religion or belief are two of the ‘protected characteristics’ of the Equality Act 2010 alongside sex and disability and are there for good reason. Unfortunately, we do not yet live in a non racist society and so adopting a ‘colourblind’ approach is a denial of that reality. According to research from countries where such policies have been adopted such as the USA (Barn, Kirton Transracial Adoption in Britain Politics, ideology and reality Adoption & Fostering Volume 36 Number 3 2012) it has done little to advance the cause of greater numbers of minority ethnic children being adopted.

8. We also risk flaunting our international obligations to children given that UNCRC Article 20 (3) requires that due regard is paid to ‘the child’s ethnic, religious, cultural and linguistic background’ when a child is deprived of their family environment.

9. BASW is concerned that in an environment where resources are constantly being squeezed that this repeal could lead to expediency rather than ‘best interest’ decisions being made in relation to children being placed for adoption. A lot of our concerns have been highlighted by a recent APPG inquiry into the State of Social Work in the UK (final report due out this summer). Sadly, we have received numerous examples of a system that is moving further and further away from a child centred focus.

10. Current guidance is very explicit about the need to recruit adopters from Black, Asian and Minority Ethnic communities (of which there is a significant shortage) and how local authorities should go about this task. We are concerned that the proposed repeal will inevitably lead to a disincentive to close this gap given the current rationing of resources. Targeting adopters from Black, Asian and Minority Ethnic communities is not even a feature of the Adoption Action Plan (2011) which is ominous. Yet one of the key messages from a study conducted by the Adoption Research Initiative on behalf of the former DfES was ‘increase the national pool of minority ethnic adopters by encouraging the recruitment of all minority ethnic applicants who have the capacity to meet the needs of children waiting for adoption. If a local match cannot be found for particular applicants, it is possible that they could be successfully matched with a child from another area’. (Pathways to permanence for Black, Asian and Mixed Ethnicity children 2010)

11. If a child’s ethnicity is no longer given due consideration in placing children for adoption we risk seeing a higher number of disruption rates in placements which is devastating to both children and adopters.

12. It is important to remember that the Children Act 1989 was a seminal piece of legislation for a number of reasons including for the first time giving prominence to a child’s ethnicity i.e. Section 20 of the act stipulates that local authorities must give due consideration to the child’s religious persuasion, racial origin and cultural and linguistic background when placing children. This has made a tremendous difference to the identity needs of Black, Asian and Minority Ethnic children in care being recognised. To remove this consideration from one part of the system will create an imbalance with others and could distort practice.

13. Finally, BASW is disturbed by politicians blatantly using adoption policy to make political capital whilst misleading the public by pedalling ‘half truths’ about the current status of Black, Asian and Minority Ethnic children waiting to be placed for adoption. The data about these children is far more complex than the situation depicted by MPs. For example, not all BAME children are experiencing lower rates of adoption i.e. this is not the case for children of mixed parentage where rates are similar to, or slightly above the rest of the care population.
Where adoption rates are low amongst Asian children, on closer examination these are strikingly low amongst those from Pakistani and Bangladeshi backgrounds. With regards to Black African/African Caribbean children, the group who are tending to fare the worst are of Black African origin. Some of these children have been found to benefit from other types of permanence such as special guardianship or long term fostering.

14. It is therefore important that data is intelligently interrogated and disaggregated by those with the appropriate expertise in order that we can deploy the right solutions to problems. Not to do so, runs the risk of producing poorly informed and ‘one size fits all’ policy which is not underpinned evidentially.

April 2013

Memorandum from The National Association of Head Teachers (NAHT) (CF 114)

1. Established in 1897, NAHT is an independent trade union and professional association representing members in England, Wales and Northern Ireland. Members hold leadership positions in early years; primary; special and secondary schools; independent schools; sixth form and FE colleges; outdoor education centres; pupil referral units; social services establishments and other educational settings.

This document outlines the NAHT’s current position on the Children and Families Bill.

OVERVIEW:

2. Like many stakeholders, NAHT were comfortable with many of the aims and principles of the Children and Families Bill but has concerns with detail and implementation.

3. The changes in the Bill interact with a wide ranging reform of funding for both special needs and mainstream provisions. Our major concerns are that turmoil, opacity and shortfalls in funding will hamper schools from meeting the requirements of the legislation. This is particularly true of the top up funding between the core per pupil budget and the high needs component. Schools are finding it difficult to plan ahead at the moment and this is not helped by a lack of clarity on the part of local authorities and of course, no national consistency. Cuts to local authority services exacerbate this situation.

4. Although the bill imposes duties of co-operation, legislation has a poor track record of bringing forth meaningful integration between agencies with different priorities, boundaries and incentives. We see little in the bill that will overcome previous failures. It will remain difficult to get different agencies to agree on the type and severity of need or on the appropriate responses or on who takes responsibility for delivery. The power to engage health care remains weak. It is difficult to get expert medical diagnosis and it is particularly challenging where schools serving, for example, low incidence special needs must work with large numbers of different health authorities.

5. The default preference outlined in the bill is for inclusion in a mainstream setting. This does not reflect the modern and welcome trend to a flexible continuum of provision. Family preference and suitability of provision should be the sole arbiters of the appropriate placement.

6. It is a laudable aim to provide families more control over provision and personal budgets may promote this for those who want them. It will be vital to be clear about what is included and excluded in the funding and to ensure that families commit to a setting for an appropriate length of time to permit proper planning of resources, facilities and staffing. There is also an issue about who has responsibility for any staff employed through the personal budget element; the school or the parent?

7. Consideration should be given to co-ordinating local offers beyond local authority boundaries, particularly for low incidence provision and in dense urban areas.

1. SPECIFIC POINTS ON PART 1—ADOPTION AND CHILDREN LOOKED AFTER BY LOCAL AUTHORITIES

Clause 9 Promotion of educational achievement of children looked after by local authorities

8. We support measures to promote and improve the educational outcomes for looked after children. We believe that it is essential for the success of the proposed ‘virtual head teacher’ that the post holder not only has qualified teacher status, but is recognised within the School Teachers’ Pay and Conditions Document.

9. Furthermore, we are supportive of the suggestion that the role of the ‘virtual head teacher’ should be expanded to cover children in or leaving custody.

SPECIFIC POINTS ON PART 2—FAMILY JUSTICE

Clause 12 Child arrangement orders

10. Schools often find themselves in the middle of family disputes over parental contact and work hard to balance maintaining positive relationships with all parties, whilst ensuring that the best interests of the child are served.

11. Schools would appreciate revised guidance—both statutory and non-statutory (best practice) on how best to deal with contact issues directly affecting children at school.
Specific points on Part 3—Children and Young People in England with Special Educational Needs

Local authority functions

12. We welcome the focus on co-operation between agencies and local partners and are pleased that overall responsibility for the coordination and monitoring of services is to remain within the local authority. However, we have reservations about the capacity of local authorities to undertake and manage such an undertaking in light of significant cuts.

Information and advice: the local offer

13. The idea of a local offer is much needed, as it will help parents to be aware of what is available in terms of SEN provision in their area—or beyond, if their child has a low incidence need. It is to be hoped that the Regulations mentioned in (8), will be sufficiently prescriptive to ensure that there is a common format and that local authorities must give a comprehensive account of the provision that is available, so that parents are fully informed when participating in discussions on the best arrangements for their children. It is also important that the local offer is set out in a similar fashion, making it possible to compare provision in different authorities. All types of schools and specialist support services will need to be fully involved in helping local authorities to compile accurate and up to date information. Making local authorities responsible for stating the provision they have may also help to mitigate against the cuts specialist services are experiencing.

Mainstream education

14. NAHT was disappointed that the Children and Families Bill has moved away from the Green Paper’s commitment to providing parents with ‘identical rights’ to express a preference for mainstream or special schools and returned in clause 33 to a presumption of mainstream education.

15. There is a danger in this position of returning to the divisive debates of the 1980s and 1990s, when special schools were treated as a second best option. As it stands, the Bill will not have moved forward from the present position. Instead, the wording harks back to a time when children with physical disabilities in particular, were likely to be educated in special schools, simply because of their physical disability. The situation today is very different, and there are likely to be as many, if not more, parents trying to get their children into special schools as there are those wanting a mainstream place. The vast majority of pupils with SEN have always been educated in mainstream schools, but with more children being identified with complex needs (due to a number of factors, such as a rise in very premature babies surviving, newer conditions such as foetal alcohol spectrum disorder, and autism going from a low incidence need to one of the five most common conditions), the continuum of specialist provision that all the main political parties have supported, is likely to be needed for the foreseeable future. For that reason, NAHT hopes to see clause 33 amended as below:

16. Amendment to Clause 33 on Children and Young People with EHC plans

Delete 33 (2) and replace with:

(2) In a case within section 39(5) or 40(2), the local authority must secure that the plan provides for the child or young person to be educated in either:

(a) a maintained nursery school
(b) a mainstream school
(c) a mainstream post-16 institution
(d) a maintained special school

in accordance with the wishes of the child’s parent or the young person unless doing so is

(i) incompatible with the provision of efficient education for the young person
(ii) incompatible with the provision of efficient education for others.

Sub clause 33 (3) substitute ‘exception’ with ‘exceptions’

Sub clause 33 (4) substitute ‘exception’ with ‘exceptions’

Sub clause 33 (5) substitute ‘exception’ with ‘exceptions’

Children with SEN but no EHC Plan

17. We welcome the clarification that it is permissible for a special school placement to be used to help with the assessment of a child’s needs before having an EHC Plan. Currently, although this is happening in some authorities, many resist special schools fulfilling this role, because the children do not have statements. Enabling special schools to be part of the assessment process, would be a tremendous step forward in terms of early intervention and making sure the right provision and support was identified.

18. We recognise in 34(6) an opportunity to clarify a growing role for short-term, part-time and dual roll provision. Over the years, the continuum of provision has increased in scope, with more resourced mainstream schools, or ones with special units or bases for different types of need, and more special schools which have developed highly specialised provision within the special school for sub-sets of pupils with particular needs. What has not been as well developed is using that provision more flexibly, particularly in the case of special
schools, because of local authorities’ unwillingness to allow pupils without statements to attend them, even for a limited time. There is a growing role for the flexible use of all specialist provision, whether in mainstream, special schools, or both, not just to make it as cost effective as possible, but so that more pupils can benefit. A flexible continuum of provision should mean that short-term, part-time and dual role provision is accepted as a way of achieving early intervention, meeting individual children’s needs as they change over time, and providing individual packages of support to suit every child. Making it easier for children to move more freely between mainstream and special schools would be a very significant step forward in improving outcomes for children with and without an EHC Plan.

19. We are concerned that 34(9) appears to be giving Special Academies the opportunity to achieve this flexibility, including for students without an EHC Plan. There is no explanation as to why this would not be equally appropriate for pupils in special schools that do not happen to be Academies at the time. This right should be extended to ALL special schools, as argued above.

Code of practice

20. NAHT welcomed the publication of the draft code of conduct and is responding separately to its content.

Specific Comments on Part 5 The Children’s Commissioner

21. NAHT welcomes the strengthening of powers of the Children’s Commissioner, and hopes that sufficient funding will be made available for the post to deliver the best possible service for children.

Specific Comments on Part 8—Right to Request Flexible Working

22. Although we welcome the ability for all employees to be able to apply for flexible working, we are concerned that the requirement for employers to follow a formal procedure, including an appeals procedure, for considering each request may result in fewer successful applications. The employer has 3 months from the date of the application in which to give their decision and must deal with requests in a reasonable manner. The employer also has the discretion whether or not to allow an appeal.

April 2013

Memorandum submitted by the Royal College of Psychiatrists (CF 115)

This submission is from the Faculty of Psychiatry of Intellectual Disability at the Royal College of Psychiatrists.

1. Introduction

1.1 The Royal College of Psychiatrists (RCPsych) is the leading medical authority on mental health in the United Kingdom and is the professional and educational organisation for doctors specialising in psychiatry.

1.2 The Faculty of Psychiatry of Intellectual Disability aims to actively engage its nearly 2000 members in expanding knowledge about the psychiatry of intellectual disability and in the development of policy that promotes the well-being of people with intellectual disabilities.

2. Summary

2.1 The Faculty of Psychiatry of Intellectual Disability has concerns about the Children and Families Bill in relation to the lack of support for vulnerable adults who have had their children taken into care or adopted, and how people with learning disabilities or communication difficulties will be supported to access the family justice system and understand processes such as mediation.

2.2 We are also concerned that children with disabilities (particularly autism) are more likely to be excluded from school, and that children with special educational needs are being excluded from school for periods of time without going the engagement of a proper process or informing the local authority.

3. Part 1 of the Bill

3.1 We are concerned about how health and social care services will be encouraged to support vulnerable adults who have had their children taken into care or adopted.

3.2 There is a recognition across professional groups that there are vulnerable women, for example with learning disabilities and/or mental health needs who have a young child taken into care several times without having had support, for example being given contraceptive advice. (Ref. 3 Dec 2012 Family Justice Council Annual Debate “Women who have children removed to care, year after year, are being failed by a system unable to respond to them as vulnerable adults needing support in their own right.”)

4. Part 2 of the Bill

4.1 With regard to Part 2 of the Bill we are interested to know how people with learning disabilities or communication difficulties will be supported to access the family justice system and to understand processes such as mediation.
5. PART 3 OF THE BILL

5.1 We are concerned that there is nothing in the Bill that addresses the fact that children with disabilities (particularly autism) are more likely to be excluded from school.

5.2 There is also nothing in the Bill to address the concern that children with special educational needs are being excluded for periods of time without going through a proper process or informing the local authority.

5.3 We would refer the Committee to “Falling Through the Net,” the report of a survey by the charity Contact a Family carried out between November 2012 and January 2013. This found that 53% of families who responded had had to collect their child from school because the school did not have enough staff to support them, and that 22% of the responding families had a child illegally excluded from school every week, 15% on a daily basis.

5.4 It is also unclear what support will be provided to help children with learning disabilities, and parents with learning disabilities, to understand and take part in processes such as appeals and mediation.

6. The Faculty would be pleased to provide further evidence in relation to these issues should this be helpful to the Committee.

April 2013

Memorandum submitted by Action for Prisoners’ Families (CF 116)

ACTION FOR PRISONERS’ FAMILIES WRITTEN EVIDENCE FOR THE CHILDREN AND FAMILIES BILL

Action for Prisoners’ Families (APF) is a charity that works for the welfare of prisoners’ and offenders’ families across England and Wales. As a MoJ infrastructure organisation for all those interested in the wellbeing of prisoners’ families, with 1700 members, we represent family members, front line service providers, policy makers and others from the voluntary, statutory and private sectors. APF brings together experience and expertise from all specialisms so that lessons can be learned, gaps in services identified and good practice shared. APF facilitates partnership working, provides access to its network of members, disseminates information, publishes resources, pilot’s innovative services and offers training and quality assurance tools so that all sectors are supported to recognise and meet the needs of offenders’ families.

FOSTER FOR ADOPTION (CLAUSES 1&6)

Whilst we understand the Government’s intention to minimise disruption for children and babies, by enabling them to form secure attachments as early as possible we are concerned that clauses 1& 6 will have a negative impact on the children of prisoners.

Clause 1 states that as soon as a local authority is considering adoption as a possibility for a looked after child they must consider placing the child with a local authority foster carer and are no longer required to place the child within the local authority’s area. In addition to this local authorities are no longer required to give preference to placing the child with a suitable parent or family member over other potential placements with unrelated carers.

Prisoners’ children may have been well cared for until their local authorities have to make care arrangements on the incarceration of a parent who is the child’s sole or primary carer. On release these children should have the opportunity to return to their parents’ care but even where this is not possible, family care is the best alternative. APF are concerned that there will be a risk of an increase in children being unnecessarily caught up in the care system and urge that local authorities should retain a duty to place a looked after child with wider family members to avoid separation. Placing children with an imprisoned parent into foster care and outside their home locality may result in the severance of family ties. This separation is likely to reduce the children’s resilience. In contrast, retaining the duty for local authorities to give preference to placing prisoners’ children in the care of a suitable parent, family member or friend is likely to result in positive outcomes. There will also be the added advantage both long and short term, of stability, a positive sense of identity and attachment, particularly if a child cannot be returned to their parents.

Clause 6 allows the local authority to place a looked after child on the Adoption and Children Act Register to help find suitable adopters. With the shortage of foster carer and adopters and the 4,600 children currently authorised and waiting to be placed for adoption APF are concerned that a significant number of the 200,000 children in England and Wales affected by imprisonment in any one year will enter and become unnecessarily caught up in the care system, damaging their already compromised life chances. The clause may also result in potentially suitable family carers being squeezed out as option for care. A duty should be placed on local authorities to use early intervention methods to help these vulnerable children. Through the use of early

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399 Def., 24th January 2013 http://www.education.gov.uk/inthenews/inthenews/a00220511/adoption-wms

vulnerable families are able to get the guidance they need to address and overcome their problems; local authorities will also be able to ensure that suitable family placements are prioritised before foster for adoption placements are considered. Strong family ties also help to reduce re-offending by the parents.

Where there is no alternative and children are to be adopted, prisons should be required to make proper arrangements for parents to have a private farewell visit which is not always the case currently.

**Work with Families Pre-Proceedings**

Whilst we welcome this new clause it is important to offer support to prisoners’ families as early as possible. This will have the additional advantage of establishing safe care solutions for the child where necessary before they become looked after. Family support can prevent children, who are at risk, from entering the criminal justice system as well as reduces re-offending by the parent. Evidence shows that children with an imprisoned family member who remain within their family network, and who have faced similar experiences to those children who are ‘looked after’, tend to have little disruption to their lives, school attendance and performance, mental health and personal relationships. This approach not only protects the child’s welfare but also ensures that the child’s human rights to family life are respected.

We would also like to highlight the importance of multi-agency work, information sharing and early intervention across all agencies: local, statutory and voluntary. Information should be shared with family members as well as the agencies. Access to information allows families to provide the best possible support to children.

APF are concerned that there should be consistency across all aspects of work with families pre-proceedings. Work with families’ pre-proceedings should also include the imprisoned parent(s), who should also be kept-up-to-date with proceedings and be a part of decisions or solutions being made. With this in mind APF would like to highlight the need for specific provisions and mechanisms to be established in prisons for imprisoned parents to contribute to this process.

**Support for Family and Friends Care**

Whilst Action for Prisoners’ Families welcomes this clause we would like to reiterate the importance of multi-agency work and information sharing. Multi-agency work brings together practitioners from across sectors and professions, including those from relevant criminal justice agencies, to provide integrated support for children and families. The benefits of multi-agency deliver easier and quicker access to services (early intervention), better support for families, more appropriate assessment of needs and improved achievement and engagement.

APF would also like to highlight the importance of the child, where appropriate, to be involved in all aspects of decisions being made about their welfare and care arrangements. This is important for the child’s right to family life.

**Contact Arrangements for Children in Care**

Action for Prisoners’ Families is concerned that with the current pressure on local government, contact between children of prisoners and their families may not be prioritised despite children’s needs.

This section of the bill fails to address the situation of prisoners’ families who live with family and friends carers, where contact between parents and the carer(s) may be strained and have difficulties. Where there is a lack of social work support, contact arrangements can be difficult leading to tensions as the carer manages without any support or assistance.

There is also a failure to address the range of relationships, key to wellbeing, a child with an imprisoned parent may have with grandparents, siblings and friends and others relatives and close family friends. Action for Prisoners’ Families urge that children be consulted with about their wishes for contact, where appropriate, giving those whose welfare is being decided a voice to say who they wish to see and how often.

Contact can have many benefits for prisoners’ children where they have to be looked after outside the family: it can help them make sense of their experiences, ensure the continuity of important relationships and reduce feelings of isolation and anxiety. Multi-agency working and information sharing can play a key role in maintaining contacts for looked after prisoners’ children.

We recognise that some relationships between carers and parents may be strained; a contact arrangement and understanding should be drawn up and mediated between all parties (parents, foster carers and social workers) at the earliest possible point to ensure the child is not deprived to its right to family life.

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404 Roth, Tunnard, Lindley, DeGaye and Ashley (2011) Managing contact: Research findings on managing contact with parents and relatives for children living in family and friends care arrangement: Family Rights Group
At the time of the Children’s bill debate, prior to its enactment in 1989, research evidence on contact showed that children not only benefited from maintaining existing relationships but contact was key to children developing a sense of their own identity. The research also showed evidence that maintaining contact with their families was key to many children being discharged from care.

**Vulnerable Children**

APF are concerned that prisoners and offenders children are not included in the definition of vulnerable children and fear that they may be overlooked. Those families who have no special need for support before the incarceration of a parent may be precipitated into a range of problems including mental health, housing and income difficulties. Where families are already experiencing difficulties these are exacerbated on the incarceration of a parent. In addition, these families often face stigma and discrimination and are inclined to hide themselves. We urge that this definition is revisited to incorporate this particularly vulnerable group.

**Conclusion**

Parental imprisonment sentences cause negative changes on their children’s behavior and a disruptive impact on children and their families. Early intervention and multi-agency work in engaging with and supporting family and friends carers is key to protecting the wellbeing of prisoners’ children and ensuring that their right to family life is upheld. It is also important that the children of imprisoned parents are prevented from becoming unnecessarily caught up in the care and criminal justice system. Prisoners’ children are proven to benefit from maintaining important relationships. It is less beneficial for children and more costly for the state to involve the child in the care system before considering care by family members. Where children are looked after outside the family every effort should be made to maintain contacts. Children and their imprisoned parents should be informed and involved in decisions about care arrangements and all prisons must establish mechanisms to make this possible.

*April 2013*

**Memorandum submitted by Action for Children (CF 117)**

**Background**

Action for Children has supported numerous amendments that sought to strengthen the Governments objectives in this Bill, during Committee Stage. This submission brings together the amendments we have supported across several parts of the Bill.

**Part 1—Adoption and children looked after by local authorities**

We are supportive of the Governments aspiration of ensuring there are no unnecessary delays in the adoption system, as well as the intention in the Bill to promote fostering for adoption and improving support for adoptive families. To ensure we these reforms have the desired impact, we have supported the following amendments to the Bill:

**Promoting effective work with families’ pre-proceedings**

We support the Family Rights Group proposed amendment which aims to ensure effective work is undertaken to explore all safe family options for the child, to avert the need for them to become looked after in the care system and be raised by unrelated carers.

*Insert new clause into Children Act 1989: s.47(8A) Pre-proceedings work with families:*

Where, as a result of complying with this section, a local authority conclude that a child may need to become looked after in order to safeguard and promote their welfare, the local authority must, unless emergency action is required, first

1. Identify, and consider the willingness and suitability of any relative, friend or other person connected with the child, to care for them as an alternative to them becoming looked after by unrelated carers;
2. Offer the child’s parents or other person with parental responsibility a family group conference to develop a plan which will safeguard and promote the child’s welfare.

**Improving sibling contact**

We support the following amendment which would require local authorities to allow children in care contact with their siblings as well as their parents/others with parental responsibility.

*In clause 7 insert a new sub-clause (6) in s.34 (1) Children Act 1989 add after subparagraph (d) a new subparagraph*

’(e) his siblings (whether of the whole or half blood); and’

*In schedule 2 para 15 Children Act 1989, after subparagraph (c) insert a new subparagraph*

’(d) his siblings whether of the whole or half blood)’
Foster for adoption (Clauses 1)

We support the Family Rights Group’s proposed amendments for the foster for adoption clauses in their current form:

Clause 1 is not fit for purpose in its current form. We therefore recommend that parliament redrafts the Clause in accordance with one of the following options:

Option 1: That the Clause be deleted. It does not need to be replaced since it is possible to place children with permanent carers on a temporary foster care basis under current law, as Coram’s concurrent planning model demonstrates.

Option 2: That the Clause be deleted and replaced with the following new clause

‘The local authority has a duty to consider as a part of the permanency plan for C, placement with carers who could become the child’s permanent carers where this is in C’s best interests.’

This would focus the local authority on the importance of achieving a permanent placement according to the child’s needs and the placement criteria in Section 22 of the Children Act 1989. Legal permanence options include Special Guardianship, Residence Orders, long term foster care or adoption.

Option 3: That the clause be amended as follows:

(i) Page 1, line 9
After ‘adoption for C’ insert ‘and are satisfied that a placement falling within paragraph (a) of subsection (6) would not be consistent with C’s welfare’

(ii) Page 1, line 12
Delete ‘(7) to (9)’ and insert ‘(7)(c), (8)(a) and (9)’.

(iii) Page 1, line 13
Insert (4)

1. The child may not be placed under subsection 9A (a) unless both parents have been referred to legal advice and have consented witnessed by a Cafcass order or there is an interim or full care order in place.

2. As soon as the local authority are considering a foster for adoption placement, both parents (and anyone else with parental responsibility for the child) shall have access to free, non means and non merits tested legal advice.

Adoption and Ethnicity (Clause 2)

Alongside the NSPCC, Barnardo’s, Family Rights Group and Children’s Rights Alliance for England we are concerned about the removal of ‘due consideration’ to a child’s race and ethnicity within the Bill. Interracial adoption does add another specific dimension to the adoption experience which we believe should be considered by a court or adoption agency in coming to a decision relating to the adoption of a child, but not necessarily over and above other factors. We therefore support the Select Committee on Adoption Legislation’s alternative recommendation to refer to it within the welfare checklist and believe the Bill should be amended accordingly.

Clause 2, page 1, line 15, at end insert—

“(1A) In subsection (4), after paragraph (f) insert—

“(g) the child’s religious persuasion, racial origin and cultural and linguistic background, although this paragraph does not apply to an adoption agency in Wales, to which subsection (5) instead applies.”.

Part 2—Family Justice

Shared parental leave and flexible working (Clause 11)

Action for Children is a member of the Shared Parenting Consortium and shares the concerns about clause 11 of the Bill. We strongly support measures that promote meaningful relationships between children and their parents, both before and after parental separation. However, it is our view that introducing a legislative presumption to this effect is not the way to achieve this.

We do not agree that cooperative parenting should be enshrined in legislation in this way as the legislative change is likely to undermine the ‘welfare paramountcy’ principle and result in negative and unintended consequences. Our strongly preferred option is for clause 11 to be removed from the Bill entirely. However, if the government does decide to retain the clause, our second option would be to remove the ‘parental involvement’ presumption, and include ‘the quality of the relationship that the child has with each of his parents, both currently and in the foreseeable future’ as a factor in the ‘welfare checklist’ in s.1(3) of the Children Act 1989. If, however, the clause is retained in its current form, it is our view that a definition of the term ‘involvement’ should be added to clause 11.

It is also our view that a clause should be added to the Bill which requires the government to monitor and evaluate the aims, outcomes and impacts of the provisions contained in part 2 of the Bill.
Action for Children has welcomed the ambitions of the Children and Families Bill to provide a clearer focus on outcomes and a more coherent, joined up approach to meeting the needs of disabled children and young people. However, in some areas we believe that the provisions in the Bill do not go far enough.

Action for Children has supported amendments alongside EDCM (Every Disabled Child Matters Coalition) the Special Educational Consortium (SEC) and the Standing Committee for Youth Justice (SCYJ) that sought to ensure:

- all disabled children (not only those children with an identified SEN) are covered by the Bill.
- the benefits of integrating commissioning and planning between health, social and education provision are realised.
- children in custody are not excluded from the reforms.

We are in support of numerous amendments tabled, in particular in the following areas:

**Education, Health and Care Plans (EHC)**

Currently only children with significant educational needs will get EHC assessments, the following amendments were tabled in light of this:

An amendment to ascertain how assessments for EHC plans could be triggered when a disabled child has social care needs, but not significant special educational needs.

Clause 36, page 28, line 9, at end insert new sub-clause:–

'(...the child or young person may be a disabled child under Section 17 of the Children Act 1989 or the Chronically Sick and Disabled People’s Act 1970...')

An amendment to understand whether assessments for Education, Health and Care plans should be triggered when a disabled child may have health needs, but not significant special educational needs.

Clause 36, page 28, line 9, at end insert new sub-clause:—

'(...they are a disabled child or young person under the Equality Act 2010 who may need healthcare provision in order to manage their impairment...')

An amendment to explore whether a local authority could be put under a duty to provide eligible social care needs specified in EHC plans. This duty is already part of local authority statutory responsibilities under the Children’s Act. This amendment would simply bring together existing responsibilities.

Clause 42, page 31, line 38, at end insert new sub-clause:–

'(...A local authority that maintains an EHC plan for a child or young person must secure the social care provision identified through an assessment under Section 17 of the Children Act 1989 specified in the plan...')

An amendment to explore whether providers of relevant early years education can also request an assessment for an EHC plan, in the same way as schools and post-16 institutions can. As currently drafted, early years providers will not be able to do this.

Clause 36, page 27, line 18, after ‘post-16 institution’ insert:–

'or provider of relevant early years education'

An amendment to explore whether all relevant early years providers can be named in EHC plans. As currently drafted, this will not be the case.

Clause 38, page 29, line 27 at end insert new sub-clause:–

'(...a place at which relevant early years education is provided...')

**The local offer—duty to provide**

An amendment to explore whether services set out in the local offer should have to be provided.

Clause 30, page 23, line 22, at end insert new sub-clause:–

'(...where a service is set out in the local offer, the responsible agency has a duty to deliver that service...')

**The local offer—creating a national framework**

An amendment to seek clarity from the Government on whether it is willing to provide a national framework which will support the development of local offers.

Clause 30, page 24, line 2, at end insert new sub-clause:–

'(...regulations must make provision about a national framework, including...')
( ) the principles underpinning the local offer
( ) how services in the local offer are to be reviewed
( ) the scope of what should be covered by the local offer
( ) the format in which a local offer will be prepared and published
( ) how services can be held to account for failing to deliver what is set out in the local offer.

Young people in custody

As a member of the Standing Committee for Youth Justice (SCYJ) we are in support of their calls on Government to:
— explain why they intend to explicitly exclude children and young people in custody from the new SEN framework;
— provide evidence to Parliament of how this decision supports the Government’s broader ambition to put high quality education at the heart of the youth justice system; and
— carefully consider the deletion of Clause 69 of the Children and Families Bill and extending the new SEN framework to children and young people in the secure estate.

Part 6—Statutory rights to leave and pay

Support for family and friends carers when children are not looked after (Clause 91)

We support the Family Rights Groups proposed amendment that would place a duty on local authorities to provide support services to all family and friends carers raising children who can demonstrate the child cannot live with their parents.

The amendment, which mirrors the special guardianship support service required by s.14F CA, seeks to redress this shortcoming by requiring local authorities to provide support to meet identified needs of children being raised in family and friends care under a private arrangement or residence order.

S. 17C Support for family and friends carers when children are not looked after

(1) Each local authority must make arrangements for the provision within their area of family and friends care support services, including

(a) counselling, advice and information; and
(b) such other services as are prescribed, in relation to family and friends care.

(2) The power to make regulations under subsection (1)(b) is to be exercised so as to secure that local authorities provide financial support.

(3) At the request of any of the following persons—

(a) a relative, wider family member or friend caring for a child in any of the circumstances (hereinafter referred to as C) set out in subsection 4 below;
(b) a parent or other person with parental responsibility; or
(c) a child living with C in circumstances set out in subsection 4 below; or
(d) any other person who falls within a prescribed description, a local authority must carry out an assessment of that person’s needs for family and friends care support services.

(4) The circumstances referred to in subsection (3)(a)&(c) are:

(a) the child comes to live with C as a result of enquiries or plans made under s.47 of this Act; or
(b) the child comes to live with C following an investigation under s. 37 of this Act; or
(c) C has been granted a Residence Order/Child Arrangements Order to avoid the child being looked after, within care proceedings on the child or following the accommodation of a child; or
(d) there is professional evidence of the impairment of the parents’ ability to care for the child; or
(e) the parent is dead or in prison

(5) A local authority may, at the request of any other person, carry out an assessment of that person’s needs for family and friends care support services.

(6) Where, as a result of an assessment, a local authority decide that a person has needs for family and friends care support services, they must then decide whether to provide any such services to that person.

(7) If—

(a) a local authority decide to provide any family and friends care support services to a person, and
(b) the circumstances fall within a prescribed description, the local authority must prepare a plan in accordance with which family and friends care support services are to be provided to him, and keep the plan under review.

(8) The Secretary of State may by regulations make provision about assessments, preparing and reviewing plans, the provision of family and friends care support services in accordance with plans and reviewing the provision of family and friends care support services.

(9) The regulations may in particular make provision—

(a) about the type of assessment which is to be carried out, or the way in which an assessment is to be carried out;

(b) about the way in which a plan is to be prepared;

(c) about the way in which, and the time at which, a plan or the provision of family and friends care support services is to be reviewed;

(d) about the considerations to which a local authority are to have regard in carrying out an assessment or review or preparing a plan;

(e) as to the circumstances in which a local authority may provide family and friends care support services subject to conditions (including conditions as to payment for the support or the repayment of financial support);

(f) as to the consequences of conditions imposed by virtue of paragraph

(e) not being met (including the recovery of any financial support provided);

(g) as to the circumstances in which this section may apply to a local authority in respect of persons who are outside that local authority’s area;

(h) as to the circumstances in which a local authority may recover from another local authority the expenses of providing family and friends care support services to any person.

(10) A local authority may provide family and friends care support services (or any part of them) by securing their provision by—

(a) another local authority; or

(b) a person within a description prescribed in regulations of persons who may provide family and friends care support services, and may also arrange with any such authority or person for that other authority or that person to carry out the local authority’s functions in relation to assessments under this section.

(11) A local authority may carry out an assessment of the needs of any person for the purposes of this section at the same time as an assessment of his needs is made under any other provision of this Act or under any other enactment.

(12) Section 27 (co-operation between authorities) applies in relation to the exercise of functions of a local authority under this section as it applies in relation to the exercise of functions of a local authority under Part 3.

Part 5—The Children’s Commissioner

We believe, alongside others in the voluntary sector, that the legislation would be further strengthened if it included the following amendments:

To ensure that the OCCE is required by legislation to have regard to the views of children and to report back on how it has achieved this:

Amendments: 270, 271, 272 and 273—grouped together

Amendment 270
Clause 77 (2B) (1) page 50, line 43, after ‘function’ insert ‘and have due regard to their views’

Amendment 271
Clause 77 (2B) (2) (b) page 51 line 8 after ‘known’ insert ‘and have due regard to their views’

Amendment 272
Clause 82 (7B) (4) (a), page 53, line 5 after ‘children’ insert ‘and have due regard to their views’

Amendment 273
Clause 83, page 53, line 32, at end insert ‘and the extent to which the Commissioner has had due regard to their views’

To ensure that the status of the OCCE meets international standards. This would also ensure the Commissioner’s independence from political interference from deciding its activities, timetable and priorities. The Commissioner is funded by the government and this amendment would ensure that in spite of that relationship, the commissioner would remain independent from government:

Amendment NC37
“In Schedule 1 to the Children Act 2004, in paragraph 1 (status) after sub-paragraph (2) insert—
“(3) The Minister shall have due regard to the desirability of ensuring that the Children’s
Commissioner is under as few constraints as reasonably possible in determining—
(a) the Commissioner’s activities,
(b) the Commissioners’ timetables, and
(c) the Commissioner’s priorities.”.

To ensure that the OCCE has specific regard to children living in custody and separated children who are
seeking asylum or have been trafficked:

Amendment 274—definition of vulnerable children
Clause 84, page 54, line 16, at end insert—
(5A) A child is within this subsection if he or she is detained in pursuance of—
(a) an order made by a court, or
(b) an order of recall made by the Secretary of State.
(5B) A child is within this subsection if he or she has been identified by a professional as a potential
victim of trafficking.
(5C) A child is within this subsection if he or she is a separated migrant child.’

Young carers
As a member of the National Young Carers Coalition, we are in support of their proposals that seek to improve
the lives of young carers.

The introduction of the Children and Families Bill and the draft Care and Support Bill has presented a
significant opportunity to amend and clarify the legal framework for young carers. The Government has made
significant steps to strengthen the rights of adult carers under the recently published draft Care and Support Bill.
Despite the Government acknowledging that the intention is not to weaken young carers’ rights but to separate
them in law from adult carers, steps need to be taken to reform and consolidate the law for young carers so that
there is:
— Clarity in the law for both adults and children’s services for identifying, assessing and supporting
young carers and supporting the wellbeing of the whole family
— Young carers are not left with unequal rights compared with adult carers
— Clear interface between the proposed draft Care and Support Bill and children’s legislation.

Further points to be raised during the progression of the Bill
Reforming the leaving care system in England
A number of charities are working together to put the case that the whole system of leaving care needs to be
reassessed and requires urgent reform. We are in support of proposals that are to be brought forward at Report
Stage in the Commons, ahead of the Bill progressing into the Lords.

Neglect Law Change
The campaign to update the 80 year old law on child neglect has seen some real progress. Following thousands
of letters and emails from Action for Children supporters, Ministry of Justice Minister, Damien Green MP, asked
us to work with his staff to ensure the right evidence of the need to update the law is in place. We are doing this
now and may look at opportunities to update the law on child neglect during the later stages of the Children and
Families Bill.

April 2013

Memorandum submitted by Lucy Evans (CF 118)

1. I have been a registered childminder since 2002. I hold a 1st class Honours degree in Early Childhood
Studies and was graded Outstanding by Ofsted in my last 2 inspections. I am approved to provide funded
education for 2 and 3 year olds.

2. My objections relate to Schedule 4 of the Children and Families Bill, which calls for an amendment of the
Childcare Act 2006 in order that childminder agencies can be formed. My main concerns are:—
— I cannot see how childminder agencies will cut the childcare costs of parents. As the agencies will not
be government funded then there will need to be a charge to parents and childminders for the brokering
service that they will provide.
— The introduction of agencies will cause a two-tier system of regulation that will confuse parents looking for childcare, as they will have to first understand the options available and then choose between an agency monitored or an individually inspected childminder.
— Instead of creating agencies the government could increase the current registration fee to more closely meet the cost of individually inspecting childminders. Local authorities provide a childcare matching service, organise training and provide quality improvement guidance. Again, many minders would be willing to pay for this support rather than see the introduction of agencies.
— It has been suggested that childminder agencies will encourage more people to become childminders. However, many childminders are struggling to fill existing places and new minders often regret registering due to a lack of business in their area.
— The MGC report says that childminder agencies will reduce the paperwork that some find burdensome. The most time-consuming aspect of the paperwork is the completion of observation, planning and assessments needed to meet the requirements of the EYFS. Therefore, unless agency childminders are exempt from the EYFS then there will not be a significant reduction in paperwork. However, to isolate childminders from the EYFS would mean we would lose our professional status and the recognition that the care and education we offer is equal to that of other early years providers.
— Childminder agencies are intended to drive up quality standards. However, an agency childminder may only ever be monitored by their agency, so Ofsted cannot be sure that all the childminders registered with an agency are implementing the EYFS to a high standard. The information an agency make available to Ofsted could be fabricated to enhance their grading. This is a real possibility as agencies will not be government funded and therefore rely on their reputation to market their business.

April 2013

Memorandum submitted by Children’s Commissioner for Wales (CCfW) (CF 120)

1. Submission by the Children’s Commissioner for Wales (CCfW)

1.1 The Children’s Commissioner for Wales is an independent children’s rights institution established in 2001. The Commissioner’s principal aim is to safeguard and promote the rights and welfare of children. In exercising his functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner’s remit covers all areas of the devolved powers of the National Assembly for Wales insofar as they affect children’s rights and welfare and they may also make representations to the Welsh Ministers about any matter affecting the rights and welfare of children in Wales.

1.2 The UNCRC is an international human rights treaty that applies to all children and young people up to the age of 18. It is the most widely ratified international human rights instrument and gives children and young people a wide range of civil, political, economic, social and cultural rights which State Parties to the Convention are expected to implement. In 2004, the Welsh Assembly Government adopted the UNCRC as the basis of all policy making for children and young people and in 2011, Welsh Government passed the Rights of Children and Young Persons (Wales) Measure.

2. Summary:

2.1 Part 5 of the Children and Families Bill relates to the reform of the Children’s Commissioner (England) and has the potential to address a key issue for children and young people in Wales.

2.2 On the grounds of broad mandate and clarity, the current legislative framework in relation to UK Children’s Commissioners is deficient and does not serve well the children and young people across the UK in particular situations.

2.3 This submission seeks to inform Members of the current difficulties and suggests that addressing the inherent weaknesses of the status quo would not require an ‘opening up’ of the devolution settlement and needing to devolve more powers to Wales.

2.4 Section 1 of the submission deals with the issue of devolved and non-devolved matters, in particular the difficulty in determining whether a matter is within the remit of the CCfW or not.

2.5 Section 2 considers the definition of ‘children in England’ and the cross-border issues that arise, which are not clarified in the Children and Families Bill.

2.6 Section 3 looks at the inconsistencies between the protection offered to persons aged over 18 in Wales, depending upon whether those persons are being considered in relation to a devolved matter or a non-devolved matter.

405 Section 72A Care Standards Act 2000
406 Regulation 22 Children’s Commissioner for Wales Regulations 2001
407 Section 75A (1) Care Standards Act 2000
2.7 An additional point worthy of attention from the outset is the issue of changing the title of the post. The need for change from the title of the ‘Children’s Commissioner’ has not been sufficiently addressed within the Bill despite numerous representations. The title should be amended to the ‘Children’s Commissioner for England’. Not amending the title would perpetuate the confusion and misinformation caused to children and young people and the public at large.

3. Introduction and context:

3.1 The CCFW is looking to obtain the power to enable him to act on all matters which relate to or affect children in Wales.

3.2 We see no reason why the CCFW should not be given broad powers to deal with all matters relating to children in Wales. This would not necessarily involve devolving further legislative or executive powers to Wales. In fact it is difficult to understand why the CCFW’s functions need to be linked only to relevant devolved matters at all. The role of the CCFW is to serve the interests of children in Wales. This is separate from the issue of what legislative and executive powers are devolved to the National Assembly for Wales and Welsh Ministers.

3.3 The UK Commissioners made the following recommendation to the UN Committee on the Rights of the Child in 2008:

3.4 “The UK Government and devolved administrations should allow each of the Commissioners in the UK to exercise their functions with respect to the children in their own country, regardless of the subject matter. In this regard, the mandates of the Welsh and Northern Ireland Commissioner should be extended to cover all public authorities, including UK-wide public authorities.”

3.5 As part of the review, Professor Dunford recommended that:

“children’s commissioners should be responsible for the interests of children and young people who normally reside in their countries. If possible, this principle should be enshrined in law.”

3.6 The UK Government accepted the recommendation and stated that they understood “the difficulties that the current position presents for the Children’s Commissioners in the devolved administrations”.

3.7 The UK Government did seek to address the issue in the draft legislation but the suggested model of delegated power was opposed by all UK Children’s Commissioners.

3.8 The issue remains unresolved. It is important to stress that the advocating of the removal of provisions in relations to the other UK Commissioners in the original draft legislation was not an acceptance that the status quo is acceptable, rather that the proposal put forward by the UK Government was not acceptable.

3.9 The Welsh Affairs Committee was clear when it scrutinised the original legislations which established the Children’s Commissioner for England. The issues it raised in 2004 are relevant today. The Committee recommended that “the Government include in any Bill to establish a Children’s Commissioner for Wales, Clauses to extend the powers of the Children’s Commissioner for Wales to cover all non-devolved areas of policy for children and young people in Wales.”

4. Relevant devolved matters

4.1 The Children and Families Bill does not address a fundamental problem with the way that children’s rights are protected in Wales, namely that CCFW powers are linked and limited to certain matters only which reflect the responsibilities of Welsh Ministers and certain Welsh public bodies. This is an opportunity missed.

4.2 The way in which the CCFW’s functions are linked and limited to certain matters is complex. In brief, the CCFW’s authority is confined to:

— reviewing the functions of the Welsh Ministers and certain Welsh public bodies specified in Schedule 2A to the Care Standards Act 2000 (section 72B of the 2000 Act);
— reviewing and monitoring the arrangements which certain Welsh public bodies specified in Schedule 2B to the 2000 Act and providers of regulated children’s services in Wales have in place to do certain things (section 73 of the 2000 Act);
— examining cases of particular children: (i) receiving regulated children’s services; (ii) receiving services from Schedule 2B bodies; or (iii) who are ordinarily resident in Wales and affected by any function of the Welsh Ministers or a Schedule 2A body (Regulation 5 of the Children’s Commissioner for Wales Regulations 2001 (the Regulations));
— providing assistance in relation to proceedings concerned with a person specified in Schedule 2B (Regulation 10 of the Regulations).
— (In the context of this note we shall call these “relevant devolved matters”, and other matters “non-devolved matters”.

4.3 Under section 78 of the 2000 Act, the CCfW’s functions only apply to a child:
— who is ordinarily resident in Wales;
— to, or in respect of whom services are provided in Wales by, or on behalf of or under arrangements with, a person mentioned in Schedule 2B;
— to or in respect of whom regulated children’s services in Wales are provided.

4.4 Because the remit is so complex and detailed, this can cause confusion and uncertainty.

4.5 Example: the CCfW receives a complaint from a child in Wales relating to a broadcasting performance on television. It is widely assumed that broadcasting is a non-devolved matter and that the CCfW has no authority to act. However, under section 37 of the Children and Young Persons Act 1963, local authorities (including local authorities in Wales) have functions of granting licences for persons under 16 to take part in public performances. Therefore, if the child’s complaint related to such a licence the matter would be within the CCfW’s remit.

4.6 A further example can be seen in immigration, another field in which it is widely assumed that the CCfW has no authority to act. Under section 118 of the Immigration and Asylum Act 1999, housing authorities must ensure that tenancies of housing accommodation are not granted to persons (including children) subject to immigration controls unless those persons are of a class specified in an order made by the Secretary of State. However, in relation to Wales these powers have been exercised by the Welsh Ministers. Therefore, the CCfW does have some authority to act in relation to immigration matters, also.

4.7 These are just two examples chosen at random to demonstrate how difficult it is for the CCfW and the Children’s Commissioner (CC) to decide who has authority to act in relation to children in Wales. It will not always be clear from the original complaint where the problem lies—and the children making such complaints should not be expected to provide answers. In some cases, both relevant devolved matters and non-devolved matters will be engaged. Ultimately, the CCW is likely to need regular legal advice on a case by case basis in order to decide whether he has authority to act or not.

4.8 We see no reason why the CCfW should not be given broad powers to deal with all matters relating to children in Wales. This would not necessarily involve devolving further legislative or executive powers to Wales. In fact it is difficult to understand why the CCfW’s functions need to be linked only to relevant devolved matters at all. The role of the CCfW is to serve the interests of children in Wales. This is separate from the issue of what legislative and executive powers are devolved to the National Assembly for Wales and Welsh Ministers.

4.9 Giving the CCfW authority to deal with all matters relating to Wales would provide a single point of contact for children in Wales and a single commissioner to deal with safeguarding and promoting their rights and welfare. This would allow the CCfW to be more effective in promoting children’s rights and raising awareness of his office, thus helping the UK Government achieve its aim “to make the UK the most child-friendly country in Europe”.

4.10 As stated in the Dunford Report, “The issue of children’s rights is emotive and complex”. The multi-layered arrangement in place as well as the proposed arrangement of delegation (see paragraph 4 below) cannot be as effective a way of dealing with such emotive and complex issues as giving the CCfW a remit which covers all aspects of children’s rights. The current arrangement is also inconsistent with the Paris Principles, in particular the importance of having clarity regarding the remit of institutions.

4.11 We would recommend that the CCfW be given authority to act in relation to all matters affecting children in Wales (“plenary remit”). Further consideration would then need to be given to any additional reporting arrangements that may be required if the CCfW did have authority to act in non-devolved matters, though the CCfW already has some duties to send reports to the Houses of Parliament.

4.12 This presents an ideal opportunity to implement the recommendations of the Dunford Report which states that “…the commissioners for devolved administrations should have a comparable remit for children and young people who are residents of their countries, including non-devolved issues.”

5. Children in England

5.1 The CC has functions relating to ‘children in England’. There is no definition of ‘children in England’ but there is a conundrum as to whether, and to what extent, it can include children already within the remit of
the CCfW.\textsuperscript{419} Logic suggests that a child could not be both a child in England and a child within the CCfW’s remit, but that is not clear cut. For example, if a child living in England is receiving services from a Schedule 2B\textsuperscript{420} body (which by definition is a Welsh public body) then the legislation empowering the CCfW applies to that child. Is that child also to be regarded as a child in England? Similarly, is a child who resides in Wales, goes to school in Wales and who goes on a school trip to England a child in England to the extent that the child is receiving services from the school? If the child receives services from a non-Schedule 2B body while in England, then the child will be a child in England. So if something happens on the school trip which means that the child needs medical treatment in England, the child may be at the same time within the remit of both the CC and the CCfW.

5.2 There are other examples of potential confusion and regardless of whether there is a move to a plenary remit, such cross-border issues should be clarified. One way of doing this would be to include a simple definition of children in England, and that definition should not encroach upon children to the extent that they are within the remit of the CCfW. Even this, however, would not fully deal with the asymmetry inherent in the current system.

6. Persons aged 18—25

6.1 There are questions regarding inconsistency of definitions and the differing remit of the Commissioners in England and Wales in relation to those over the age of 18. This has the potential to cause yet another layer of uncertainty and could directly affect the outcome for persons over 18 in Wales.

6.2 We can envisage, for instance confusion as to whether or not the rights of a Welsh 18 year old with a learning disability may or may not be promoted / protected / safeguarded by either commissioner if the matter relates to a relevant devolved matter. This inconsistency should be addressed.

7. Conclusion

7.1 The current legislative regime governing the CCfW makes it very difficult for the CCfW to operate in a smooth and effective manner.

7.2 Giving the CCfW authority to deal with all matters, devolved or otherwise, that relate to children in Wales would remove that uncertainty and allow the CCW to safeguard and promote the rights and welfare of children in Wales in an effective manner.

April 2013

Memorandum submitted by Mr I Kala and Mrs A Kala (CF 121)

We are approved foster carers for an agency and both professionals as well (one being a qualified nurse and the other a local government officer).

As you are no doubt aware, there is a massive shortage of foster carers and people wishing to adopt, particularly people from minority groups and faiths. However, we are constantly being reminded at the time of referrals that there needs to be a cultural match. There are not many Muslim foster carers in our agency; this is by no means a criticism of the agency.

We have cared for muslim foster children and we are shocked that there are several other muslim foster children in non-muslim foster households. As muslims we have a duty to ask that children maintain their Islamic faith, or that matter for children of other faiths to hold on to their faiths.

At our annual review recently, the Independent Reviewing Officer said that she was ‘ignorant’ about our religion and our culture; she has recommended that our supervising social worker explores our culture and religion further with us, this was somewhat disconcerting as it is evident that the fostering agency that we are with has Muslim children placed in non-Muslim homes. If the professionals are ‘ignorant’ then are foster carers providing adequate holistically and culturally for the needs of these children. She has further recommended that culturally appropriate children should be placed in our care!

Rather than your proposed changes to legislation we would rather propose a drive to increase the number of prospective adopters and foster carers, which is representative of society as a whole. To build good social cohesion in the long term; children need to be placed with families who share their own language, culture and religion. This will ultimately allow children to flourish with self-worth, self-confidence and self-esteem. This will give the children their positive sense of identity.

By allowing children to be placed with matching parents they are both allowed to share experiences of racism, prejudice and discrimination is society. These issues are endemic and institutional in many structures.

\textsuperscript{419} As defined in section 78 of the 2000 Act

\textsuperscript{420} A Schedule 2B body under the 2000 Act
This proposal would ultimately discourage potential adopters and carers and would be detrimental in the long run.

April 2013

Memorandum submitted by The Hampshire Parent/Carer Network (CF 122)

1. The Hampshire Parent/Carer Network www.hpcn.org.uk is an independent parent/carer led parent carer forum, working with the Local Authority and Health to engage with parents/carers and to encourage effective parent participation.

2. We have been closely involved in Hampshire’s work as one of the SE7 pathfinder authorities which has been testing some of the proposed reforms. We have provided parent/carer representation on all Hampshire Pathfinder workstreams, and this response includes the thoughts and feedback from the parent representatives who have been involved, as well as other parents/carers from Hampshire. We are part of the South East Region of the National Network of Parent Carer Forums.

3. We were encouraged to see the new duty on Health which was announced recently, but remain concerned that the new Bill does not provide enough detail and reassurance to demonstrate how the government plans to support and protect the vast majority of children and young people with SEN and disabilities.

4. We continue to be concerned about the lack of statutory protection for children who are not eligible for EHC plans (ie those currently at School Action or School Action Plus) and strongly urge the Government again to reconsider their decision to exclude children with disabilities who do not have SEN.

5. Our particular concerns are as follows:

5.1 It would appear that there are no longer time limits within the legislation for the local authority to be required to make a decision about whether to issue an EHC plan following a statutory assessment of a child’s needs. Reducing the time taken to carry out an assessment will be meaningless if there is then no requirement to make a decision about whether to issue a plan. We can only assume this is an oversight, which we suggest needs to be urgently amended.

5.2 It appears there will be no standard form for an EHC plan as there is for a statutory assessment. This will make it more difficult for families moving between local authorities and will also mean that there is a potential for plans to be created which do not clearly set out legally enforceable provision.

5.3 We note that clause 2.4 of the Indicative Draft Code of Practice refers to local authorities and health working alongside Parent Carer Forums. It is disappointing that this section refers to what the statutory bodies should do to involve Parent Carer forums rather than that they must do so. We feel that this needs to be amended to ensure that all authorities work in partnership with parents on a strategic and individual level.

5.4 We are concerned that Section 6.9 d of the Indicative Draft Code of Practice does not state that interventions (such as therapies) must be specified and quantified. Edward Timpson has stated that it is not intended that any current protections won’t be weakened—if this is the case then this section needs to be amended to more closely reflect the current Code of Practice.

5.5 We would like the government to consider how the quality of EHC plans and statutory assessments will be monitored. Ideally, this would be through a body such as OFSTED, and would ensure that the assessments are thorough and comprehensive and the plans include provision which is specified and quantified adequately, which has been lacking in some areas for statements of SEN. They could also ensure that the provisions set out in the local offer are actually available to families of children with SEN.

5.6 We believe that there needs to be a mandatory requirement for meaningful IEPs and structured conversations as per Achievement for All guidelines, to protect those children with additional needs/disabilities who are not eligible for an EHC plan (those who will receive the EHC plan are a very small proportion of all children with additional needs).

5.7 We ask that transport to and from school is included in the Bill. For many children with SEN, the most appropriate school is some distance away from where they live and transport provision will be required.

5.8 Minimum national standards for the Local Offer need to be included within legislation—A specified minimum level of provision that Local Authorities will have a duty to provide to children with education, health and/or social care needs who are not eligible for an EHCP. This should avoid the “postcode lottery” which many families find themselves victims of. We would like to see these standards developed in conjunction with experts in particular disabilities and specific Special Educational Needs, to ensure that the Education, Care and Health standards meet with the latest recommendations and are needs led, not resource led.

5.9 There has been a shift in the legislation to issuing draft plans and inviting school choices from the parent or young person. As a parent is legally responsible for a child until they are 18, it would make sense for communications and consultation to be with both a parent and young person.
5.10 We note that the new Draft Care and Support Bill gives improved rights to carers, but not to young carers or carers of disabled children. The new Bill puts a duty on local authorities which will ensure that they look at a carer’s needs. Importantly the Bill makes several changes which will make it easier for carers to get this assessment from their local council;

It removes the requirement for carers to ask for an assessment, and

It removes the requirement for the carer to be providing regular and substantial care.

Instead, the only requirement is that the carer ‘may have needs for support—whether currently or in the future’—if this is the case then councils would be obliged to carry out an assessment without having to wait for the carer to request one. We feel the Children and Families Bill should be amended to give equal rights to young carers and carers of Disabled Children.

April 2013

Memorandum submitted by Nkechi Ode (CF 123)

CHILDREN AND FAMILIES BILL 2012–2013

1. I would like to submit a response with regards to Part 1 of the Bill which specifically relates to a child’s ethnicity no longer being of paramount importance for permanency, in order to reduce a child’s length of stay in the care system.

2. I qualified as a Social Worker in 1991 and since that time have practiced in various local authorities and my area of specialism has been within Children and Families. I am currently employed as an Advance Practitioner in a Family Centre in the London Borough of Enfield.

3. During the late 80s I was relatively young and had not yet entered the Social Care profession but worked as an Administrator in a Social Services team. I can recall at that time a vigorous debate and campaign about the concerns by Black professionals about the plight of Black children being placed outside of their cultural and racial identity and the psychological impact of their wellbeing as a result of being placed in long-term placements where their cultural heritage was not reflected or given due respect. This culminated in a number of Black children suffering an identity crisis about who they were and the internalisation of self hatred about themselves. It would appear that when placing a Black child in a White family little thought is given to their psychological well being and it was and still is the case that white practitioners and politicians are still making decisions without any form of understanding about the psychological needs of a Black child in a society that has been defined as Institutionally racist (McPherson report 1999).

4. Although we live in a multi cultural society, Britain still remains a divided society where we see that Black and minority groups (particularly Black people) are disproportionately represented in the criminal justice system, Mental Health, low educational attainment and so forth. How does a non white parent caring for a Black child help them to make sense of their experience in the society that we live in? How can a white parent teach a Black child to have a balance view of themselves when they can only teach from their own cultural frame of reference which is the complete opposite to a black child? We often hear that love is sufficient to meet the needs of a child but I would argue that love alone is not sufficient to raise a black child in a white family. How does a white parent help a child to deal with all the negative stereotypes that they are likely to encounter throughout their life? These issues are deep and go beyond just basic care needs. In actual fact I have observed that white carers’ are still ignorant around basic care needs and children especially girls can be seen with unkempt hair which is ironic.

5. I agree that children should not be allowed to drift in care but there needs to be a more robust approach to recruiting Black families to care for Black children. How is it in the best interest of a child to be placed with a family just because we consider love to be sufficient. It concerns me that the views of Black professionals are never given the credit that they deserve as if we do not know what is best for Black children. It would be useful to know how much research has been utilised when considering racial ethnic and identity development such as Parham 1993, Cross 1971.

April 2013

Memorandum submitted by False Allegation Support Organisation (UK) (CF 124)

CHILDREN AND FAMILIES BILL

Who we are

1. FASO (UK) is a voluntary group run by volunteers and has been supporting the public since Sep 2001. FASO is a refuge for the innocent not a safe house for abusers in denial.

Statement

2. FASO cannot provide written evidence, only our experiences taken form the helpline from the past 11.5 years, of what callers to our help line have told us.
3. Those accused maintaining factual innocence of child protection issues, unexplained damage to children, rape, indecent assault, and domestic violence for which the child is ostracised form the parent/carer by the LA are not being allowed a family life often because of verbal evidence, not factual evidence as in the case of unexplained damage to a child, and without medical evidence.

Assertions made to FASO (UK)

4. The base line is that there is not in place accountability for the LA to be judged by, with consequences when lack of high standards of investigation into all manners pertaining to each case.

5. Full medical reports are not obtained prior to the medical/related authority reporting cases to the LA for on-going child protection issues. Specialists in place looking after children and their illnesses are oft ignored, and Judges do not call foreward their expertise on children presented through the system.

6. Schools are immune to complaints on how child protection issues are reported.

7. Statemnting of children by bot education and LA is ignored, even when parents provide information on problems they perceive in their child. When asking for help of either Education or LA support they are ignored, despite the evidence of the child.

8. Vexatious parents are allowed to disrupt court procedures, along with social services in extending the court settings and not providing information on time.

9. Judges out of their field, way too heavily on the reports of the LA, CAFCAS or LA funded specialists, without allowing parents to too present their evidence.

10. The whole system needs to be examined for accountability and a balance in investigation procedures—so that children are given a fair chance to continue with their lives, at home with loving parents, having had a fair and just examination of their particular case. Something which does not happen now.

April 2013

Memorandum submitted by Rutland Parent Carer Voice (CF 125)

Rutland Parent Carer Voice is the official voice of Rutland parents and carers of children and young people from birth to the age of 25 with special and additional needs and we are recognised as the strategic partners working alongside the local authority to represent parents and carers.

We strongly support the request for easily available Tribunal Statistics by Local Authority and by outcome. At present parents are suffering undue stress and cost whilst the Local Authority’s case is extremely weak. The Tribunal Judges have expressly commented upon these themselves in a couple of recent cases.

Once these figures are openly and readily available the Local Authority themselves will realise that a lot of these cases are the same and therefore not worth taking to tribunal therefore not putting parents and carers under unnecessary stress as well as it will give the parents strength to fight for the best for their children and young people.

April 2013

Memorandum submitted by Syed Jung—Brighton & Hove Muslim Forum (BHMF) (CF 126)

There is no doubt in my mind that this issue is of paramount importance and if we do not now take all the necessary steps to make sure that the foundation, no matter how difficult to lay, must be laid with our best ability. For if we do not, we will be cheating our self, our children and their future and our nation.

We must make sure we deliver a platform from which the children feel this is their nation, they have a scene of belonging and a stake in it. No matter what colour, creed or culture, they must feel they have an equal opportunity to achieve their potential.

The recent census figures of 27th March 2011 show Britain is more ethnically diverse compared to the previous decade and we will continue to become more and more ethnically diverse in future decades. This means we must take steps now to safeguard a child’s ethnicity and religious persuasion and racial, cultural and linguistic heritage.

The Secretary of State for Education, Michael Gove, has proposed the amendment of section 1 (5) of the Adoption and Children Act 2002 within a draft ‘Children and Families Bill’ which is currently under the scrutiny of the Bill Committee until 23rd April 2013. Mr. Gove who although adopted, was not trans-racially or trans-religiously raised, calls for the removal of ‘due consideration’ of religion, race, culture and linguistic background, when placing a child for adoption.

What is wrong with what the Government is proposing?
UN’s Convention on the Rights of the Child (CRC) set minimum entitlements and freedoms that should be respected by all governments. It calls for every Government to pay due regard to children’s race, culture, language and religion as part of the basic needs that have to met for children, to expand their opportunities to reach their full potential.

**What is the Government’s reason for proposing change?**

The Government’s reason for proposing this Change is that, finding a ‘perfect’ match is causing unnecessary delays in placing children in permanent homes. There is no evidence to support this claim, which was further confirmed by the recent findings from Ofsted’s thorough research. They found the current court processes to be the key factor in causing delays to the permanent placement of looked after children and yet, the Government is still unjustifiably pushing ahead with the abolition of the legislation that protects same-ethnicity/religious placements.

**Why do you need to know this information?**

- The proposal presumes Trans-racial/ trans-ethnic placements (relating to religion, race, culture or linguistic background) to be Problem-Free and thereby, denies the real impact of discrimination in this society—no matter how loving the family. *This is not in line with the UNCRC Article 20: when considering solutions where a child is temporarily or permanently out of its family environment ‘due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background’.*
- It ignores important evidence of failed trans-racial placements and makes no real investment to find out more. The Government has never carried out substantial longitudinal studies concerning the long-term effects on trans-racial adults suffering from mental illness. *This is not in line with the UNCRC Article 19: the right of children to be protected from physical and mental violence.*
- The proposal ignores the high number of white children also languishing in the care system not because of their race but because of their age, sibling group size and disability which is exactly the same for the BME children.
- The proposal ignores the truth that most white prospective adopters want to adopt babies and in the absence of available white babies, they would adopt black babies without any real understanding of the importance of the Child’s background or the long term impact of trans-ethnic placements on the individual in their adult years because they believe that love is enough. The proposed change benefits the prospective adopters rather than focusing on the needs of the children into their adulthood. *This is not in line with the UNCRC Article 3: the best interests of the child must be a primary consideration.*
- For the sake of all racially isolated children (which is invariably the outcome of most trans-racial and trans-ethnic placements) who are voiceless, more champions are needed to speak up for them. Adoption is already very tough and layered with many issues. Trans-racial adoption is even harder because:
  - it adds another avoidable layer of irreparable difficulties and identity crisis that plague the lives of the adoptees in their adult years forcing many into the mental health system
  - It makes that journey back to self-belief, self-worth and self-esteem even longer
  - it makes minority children too visible as being ‘more different’
  - dilutes ones fundamental sense of belonging even further
  - undermines ones sense of identity and purpose.
  - Therefore to remove the necessary racial understanding and the skills to cope with, prejudice, discrimination and racism (which can only be learnt from people who have empirical knowledge of it) is a cruelty and deep pain we should not be allowing in 2013. *Article 12: the right of children to express their view and have their views appropriately considered.*
- It happened before (up to late 1980s) and destroyed many lives. Please don’t let this happen again! *Article 21: the best interests of the child shall be paramount in the system of adoption.*
- Crucial to the ultimate success adoption or permanent placement of any child, is the recognition that matching a child’s heritage, ethnicity and religion, (language, culture and race) a fundamental right to every human being, is what gives them the sense of belonging and identity they need to enable them to reach their full potential.
- Of great concern in addition to the removal of race are the implications of the removal of religion and faith (within the definition of ethnicity) in adoption. It basically means that, the Adopter’s religion and faith will be imposed on the child, and their right to their birth family’s religion or faith will be negated. And the birth family’s expression of religion or faith will be ignored completely because the rights of the Adopters will supersede the rights of the child. *This is not in line with the UNCRC Article 20: when considering solutions where a child is temporarily or permanently out of its family environment ‘due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background’.*
- If this Bill is passed, we will see Muslim children being raised by Jewish families, Jewish children raised by families of other religions, Asian Hindu children placed with black Christian families and Black children placed with National Front families (families with fascist ideology) in adoption as was
recently reported in the papers. This is completely unacceptable and more needs to be done to STOP the Government’s proposed changes.

— Once the Government succeed in passing this new law that will fundamentally remove the protection of Children’s rights to their Ethnicity and Religion in the area of Adoption, we know it will not stop there? History tells us that, it will be a slippery road downhill into other departments such as health, Education etc. Where next?

— Let us join together to stop this Proposal.

**QUESTIONS AND POINTS TO CONSIDER CONCERNING THE CHILDREN AND FAMILIES BILL AND TRANS-RACIAL ADOPTIONS:**

1. Since these reforms are aimed at Minority groups and religions, why has the Government not put it’s energy into reforms that will proactively increase the recruitment drive of people from all Minority ethnic groups, instead of going back to a place that has been tested in the past, failed and resulted in identity crises that ultimately cost the Government more money in therapeutic, Psychiatric care and counselling?

2. The thorough research carried out by Ofsted, resulted in findings that confirm that there is no evidence to support the Government’s claim that the delays in placing children permanently, is caused by social workers trying to find a ‘perfect’ match that positively reflects and promotes the child’s background and religion. In fact the evidence they found, points to the current court processes as the key factor in causing the delays. So with such clear evidence to contradict the Government’s claim, why is it still forging ahead with this bill?

3. Rather than quick fixes, should the Government not be looking at sustainable adoptive placements that do not breakdown? Surely it is the level of stability for Looked-after children that one should be focusing on? These quick fixes have already proven to be a disaster in the past, as many research findings have revealed.

4. Has the Government had any research done with a range of trans-racially, trans-religious and transculturally placed Minority ethnic adults to find out what their experiences were, the outcomes and their honest opinions about this new proposal?

5. What is the ethnic and religious mix of all the individuals, Advisory groups and organizations that have been consulted in the information gathering that has informed these changes. What efforts did the Government make in getting fair representation of a wide range of Minority Ethnic people and organizations to inform this decision?

6. Professor Ravinder Barn did some research in the US, which found that although the US legislated for trans-racial and trans-religious adoption, they now find that it has not made any improvement in reducing the disproportionately high number of Minority Ethnic children in care. This was the case in Britain before the 1989 Children’s Act when trans-racial placement was the norm and even then, Black children were still disproportionately represented in care. We must look for more innovative solutions within the Black and Minority Ethnic communities themselves. What measures has the Government taken in encouraging new ideas from the Minority Ethnic and religious communities to encourage them to help find best ways to reduce the high number of BME children in care, in the UK?

7. Looking after other people’s children permanently is common amongst people of African, Caribbean, Asian descent and is the case also among many other religious groups. The concept of adoption is therefore not alien to them. However, it is mainly the lack of understanding of the legalistic nature of adoption in the UK that often acts as a barrier to many Minority Ethnic families coming forward to adopt. Will the Government therefore, consider incentive schemes to encourage organizations to access those communities and set up special educational programmes to help break down the barriers and encourage more the Minority Ethnic and religious families to come forward?

8. If the Government removes absolute consideration of race, ethnicity, culture, linguistics and religion in adoption placements, what provision is the Minister going to put in place to protect children against poor trans-racial, trans-religious placements and the known mental health problems that plague many of the lives of those adoptees, as adults?

9. Does the Government acknowledge that as a multi-cultural society, we still live in a racial, religious and class divided society? And if it does, then does it not consider that the skills required to cope with such difficulties are better developed amongst those growing up with similar challenges? The whole concept of role modelling is predicated upon that.

10. Were the Government to make this disastrous mistake by implementing these amendments, what mechanisms would The Government put in place to monitor and measure the success or failure of their decision?

**CASE LAW re: RELIGION**

This is an important case that is worthy of note:

*Re B (An Adoption Order: Jurisdiction to Set Aside) [1995] 3 All ER 333.* The E & W Court of Appeal refused to set aside B’s adoption granted in 1959, where his birth parents were an English RC mother and an Arab Muslim father, and he had been placed with and adopted by a Jewish couple. The court held that it had no inherent power to set aside/revoke an adoption order where the procedures had been properly carried out. It is
a long time since I read this but my memory is that the placement of B with Jewish adopters was done with no knowledge of B’s full ethnic, religious or cultural background—it was the 1950s.

The decision in Re B was not about the principle of considering the child’s ethnicity and religious persuasion and racial, cultural and linguistic heritage, but was about the public policy view across the UK, that you cannot ‘divorce’ your adoptive parents (if the adoption is properly carried out in terms of the law and practice at the time) any more than you can divorce your birth parents. The leading UK case remains the Scottish one of J & J v C’s Tutor 1948 SC 636, referred to and followed in Re B. There is no UK statutory provision for revocation of adoption, although other jurisdictions do allow this, such as Australia.

On the other hand, courts will set aside adoptions, including old ones, if there are clear procedural irregularities and/or mistakes: see Re M (Minors) (Adoption) [1991] FLR 458 and F v M 1999 SLT 571, where late appeals were allowed and orders overturned; and Cameron v Gibson 2006 SC 283, where an adoption granted in the 1951 was reduced (a Scottish remedy) because evidence showed that a consent had been improperly given and the adopted person was actually over the age for adoption when the order was made.

If circumstances like those in Re B arose in an adoption granted recently, without proper consideration of the child’s ethnicity and religious persuasion and racial, cultural and linguistic heritage, a court might consider setting it aside because the order was not properly made, but it would not revoke it because the adopted person or the adopters wanted a ‘divorce’.

April 2013

Memorandum submitted by the Lancashire Council of Mosques (CF 127)

ADOPTION OF MUSLIM CHILDREN AND THE CHILDREN AND FAMILIES BILL

1. Introduction

I represent an organisation called the Lancashire Council of Mosques which is an umbrella organisation representing thousands of Muslims in the North West of England. I am also a member of the Adoption Panel in Blackburn and Darwen and work with Children’s Services in Lancashire. I have gained a broad overview of adoption through my work over the past two years.

2. A child has a right to a religious identity

It is my view and that of my organisation and that of the organisations we represent that the religion of Muslim children within our care system should be preserved and maintained. We feel that removing the importance of any consideration towards a child’s ethnicity/religion denies people the right to an identity i.e. in identifying with a particular group and being informed regarding one’s culture and heritage. A holistic approach that takes the above into due consideration will definitely enhance the social, emotional and intellectual welfare of people.

3. Adult adoptees born Muslim and adopted by non-Muslims.

Qualitatively, it is shown that adults whose birth parents were Muslim but then adopted by non-Muslim families testify to being well loved and cared for. However, they also testify that the process negatively affected their identities and ability to connect with their birth families and ethnic communities as adults. Such individuals feel it is important that Muslim children are placed with Muslim adopters. With Islam and Muslims often portrayed negatively within popular media, having suitable Muslim role models would allow such individuals to comfortably grow up and develop positive outlooks on life within 21st century Britain as proud British Muslims. Individuals who have been raised by non-Muslim adoptive parents often feel torn between two communities and could develop grievances. In their search for an identity and drive to connect with their birth religion, such people may resort to look for answers online and—without proper guidance from a Muslim role-model—be at risk of flirting with violent extremist ideologies.

4. Boroughs will stop using inter-agency adopters

Local authorities around the country are involved in the poor practice of not referring to the adoption register or ignoring matches to avoid paying extra costs for inter-agency adopters. This is apparently due to managers wishing to protect budgets. The repealing of this ethnicity clause (which is tantamount to advocating that the faith of a child should be overlooked) will ultimately mean local authorities that do not have Muslim adopters and are looking for adopters for Muslim children within their care will not look out-of-house but settle with in-house non-Muslim families. The repealing of this clause will consolidate this terrible practice that is, anecdotally, very common.

5. Last words

I would suggest ending the inter-agency fee will allow Local Authorities to place the needs to children above all other interests. I would also suggest children are opened up to approved adopters across the country in a way that Local Authorities do not generate additional costs. This would also benefit children who are harder to place and speed up the adoption process.

April 2013
Memorandum submitted by Anthony Powell (CF 128)

1. I wish to comment on the family justice system part of this Bill.

2. Summary of my written submission:
   — I think there are injustices with the current law
   — I hope that the law will be changed so that in future both parents will share the parenting—not equally, but fairly—so that the child/children is/are not the victim(s) of parental separation, and that he/she/they can continue to benefit from a loving relationship with both parents for the welfare of the child/children.

3. I have listed the following child-focused injustices/unfair issues in the current law from my personal experience:
   3.1 Where one partner reports the other to social services/police and no action is taken by them because they know the accuser has employed false memory syndrome, there should be a penalty for wasting everyone's time and for causing suffering to the defendant and lasting damage to the children
   3.2 False sexual allegations made by one partner against the other about a child should be treated as child abuse by the accuser
   3.3 Where one partner is locked out of the marital home, and out of the children’s lives, parental responsibility for the children should still be maintained by the court, so that the children don’t suffer from having only one parent
   3.4 Where one partner blames the other for the breakdown of marriage through imagined “violence”, defending the divorce petition should be made easier and cheaper, so that the children don’t suffer more
   3.5 The general wording of a decree nisi “the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.” Is unfair and unjust, and could be damaging to the children for ever
   3.6 Where one partner wishes for no mediation, this should be challenged by the court and both partners ordered to communicate, to benefit the children
   3.7 Where children are judged old enough to know that they don’t need one parent anymore, this should be balanced by the court with the longer-term view of that parent with parental responsibility and love for the children
   3.8 Finances should be agreed as at date of decree nisi, with no later claims being allowed for sharing of any later inheritances, to be fair to the children
   3.9 The views of the grandparents of the children should be sought to help the court decide if false memory syndrome of one of the partners has been employed, so that they still feel involved with their grandchildren’s welfare
   3.10 Medical notes and school reports should be sent to the absent parent who still has parental responsibility up to the age when maintenance payments stop

April 2013

Memorandum submitted by Foster Care Link (CF 129)

Statement in Opposition to Proposed Changes to the Children and Families Bill which will repeal the requirement to give due consideration to the race, heritage and religion of a child when making adoption placements.

Name and Position: Ismail Amaan, Director of Foster Care Link, specialist Independent Fostering Agency finding Muslim families for Muslim children.

1. Foster Care Link was established in 2002 and obtained Ofsted certification to operate in 2004. Since then it has worked with over 28 Local Authorities to place over 100 children with well matched fostering placements where the race, religion, culture and heritage of the child is matched as closely as possible. We have also provided consultancy advice to Local Authorities on understanding and addressing the needs of Muslim children in care.

2. We totally oppose the proposal to repeal the requirement to give ‘due consideration’ to race, religion, culture and linguistic background when placing a child for adoption (through amendment to Section 1 Part 2 of the Children and Families Bill), and fear that the same policy would most likely soon apply to foster children through additional amendments in future if this amendment is successful.
3. As an agency, we have dealt with the repercussions of adopting this policy in many of the cases we have handled. Children that have been placed with families where their racial, cultural and religious identity have not been preserved and respected have been moved from placement to placement until they have settled with one of our Muslim families where these needs have been met.

4. Case study 1: SS and CS were two Somalian young Muslim men placed with a White British family. The children were not happy in the placement and the carers found the behaviour of the young people strange and unfamiliar. During certain months they would wake-up in the early hours of the day and eat a meal, and they would avoid all contact with the family pet dogs. When our agency got involved we explained that the boys were waking up to eat the ‘Sahoor’ meals during Ramadhan so that they were ready for the fasts, and that they avoided the dogs as their spittle was considered unclean under Muslim culture. The children were thereafter moved to one of our Muslim families and quickly settled to live productive and happy lives until they left care.

5. Case study 2: AK was placed with a family where his desire to read Arabic materials was misunderstood, and his regular attendance of Mosques was seen as possibly extremist behaviour. Our social worker was consulted, and looked at the materials he was reading, which were simply books about how to practice the Muslim faith. He was thereafter moved to one of our families where his needs could be accommodated and better met. He settled in and was eventually adopted by the foster family where he became an avid footballer and secure part of the family.

6. There are numerous other examples of instances where children and the parents of children have been adamant that they want to be placed with families where the cultural and religious needs of children are matched. For Muslim families, people of the same faith where the religious identity of the child would be preserved is the foremost consideration. This would be echoed by any scholar of practising Muslim background across any racial or cultural origin.

7. As you will be aware, many studies and research over many years has evidenced that children in care are most successful when their identity is preserved through placement in well matched households. Most recently, the research of Professor Richard Barn in the US has proven that such legislation as proposed does not improve the number of minority ethnic children in care.

8. We consider the repeal to be non compliant with the UN’s Convention on the Rights of Children, which requires all Governments to give due consideration to children’s race, culture, language and religion as part of their basic needs and fundamental rights.

April 2013

Memorandum submitted by Shama Jung (CF 130)

Summary:

Plans to raise the inter-authority fee to the level of the inter-agency fee is a positive step but local authorities will only truly prioritize looking for the best match for a child from the entire pool if the cost of acquiring inter agency, inter authority AND INTRA-AUTHORITY approved adopters is the same.

1. For the last 5 years I have worked with BAAF to help raise the profile of adoption in the Muslim community. I’m a member of BAAF’s BME Perspectives Advisory Committee.

2. My cousin, Mr Jung, raised his concern with his local MP about how the inter agency fee deters local authorities from looking to inter-agency adopters for fear of incurring the inter-agency fee. Our concern being that local authorities are placing children in-house without referring them to the adoption register and that, in some cases, they are ignoring matches generated through the adoption register. Dr Julie Selwyn and Tim Loughton criticized this practice.

3. Putting budgetary concerns over the needs of the child like this represents missed opportunities to harness the best possible match from as wide a pool of adopters as possible. Our concern is that this perpetuates placement of Muslim children with families approved in house by the LA—families who may not be Muslim—without at least looking to inter agency approved adopters who could be Muslim. Indeed I have spoken with a former Head of Service for fostering and adoption, social workers and foster carers who all testify to this practice, even in the case of healthy babies for whom there would have been a long line of waiting adopters! Dr Julie Selwyn corroborates these findings, saying I’d hit the nail on the head—I have the email from her, which with her consent, I am happy to forward should you like to see it.

4. When my cousin wrote to his local MP with this concern, we were very pleased that Edward Timpson took the time to reply. He relied “I agree with Mr Jung that the inter agency fee is a major barrier to effective collaboration between local authorities in relation to recruiting suitable adopters. It creates unnecessary delays in placing vulnerable children with a loving family”. He wrote that there are plans to address the fee issue as part of the adopter recruitment and approval service. Mr Timpson added that “Representative bodies of the local government sector are working together to raise the level of the inter-authority fee to the level of the inter-agency fee, and they have submitted proposals for how they intend to achieve this.
5. To this I would like to raise an important point which I hope will be taken into account during the discussions on the fee. Raising the inter-authority fee to the same level as the inter-agency fee will mean that local authorities that are family finding for a child will give approved adopters through voluntary adoption agencies the same opportunities as those from OTHER local authorities (i.e. VAAs will no longer be victim to LAs not utilising them effectively). This is all the above suggestion solves. But what it does not deter is local authorities FAVOURING IN HOUSE ADOPTERS OVER INTER-AUTHORITY/INTER-AGENCY ADOPTERS. It will not encourage LAs who are trying to place a child to look outside of their own agency because it would still be cheaper to place in house! Again, the concern is that the in house approved adopters may not be the best match or a faith match, despite a better match being available elsewhere.

6. Also, the pressure to find a child to appease adopters approved by a local authority means that that local authority will place a child with them without placing for a best match from either inter-authority or inter agency approved adopters.

7. Should local authorities’ placement decisions be governed by differences in cost between using inter agency, inter-authority and intra-authority (in house) approved adopters, or should the needs of the child to be sought the best possible match from the choice of a nation be priority? Can the discussions on the fee issue consider some sort of ‘central money pot’ that LAs can draw from so that they address the needs holistically and nationally, rather than locally.

8. Unless this inequity of cost is remedied, the removal of the ethnicity clause will mean some LAs will not bother to look further afield for a faith match—some may feel that if it’s more expensive, why bother looking to adopters from elsewhere if religious persuasion no longer requires due consideration in any case!

April 2013

Memorandum submitted by FOREST
(Freedom Organisation for the Right to Enjoy Smoking Tobacco) (CF 131)

FOREST SUBMISSION OPPOSING PROPOSED AMENDMENT NC1 (BANNING SMOKING IN CARS WITH CHILDREN) TO THE CHILDREN AND FAMILIES BILL

About us
FOREST (Freedom Organisation for the Right to Enjoy Smoking Tobacco) was founded in 1979 to represent adults who choose to consume tobacco in full knowledge of the health risks associated with tobacco products. We also represent non-smoking adults who are tolerant of other people’s enjoyment of tobacco.

Forest’s mission is to protect the interests of adults who choose to smoke or consume tobacco and highlight the increasingly intrusive nature of government in the lives of private individuals.

Background
Smoking is banned in vehicles in England used for work as defined in the Smoke-free (Exemptions and Vehicles) Regulations 2007.

Similar regulations are in place in Scotland (The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006), Wales (The Smoke-free Premises etc (Wales) Regulations 2007), and Northern Ireland (Statutory Rule 2007 No 138 The Smoke-free (Exemptions, Vehicles, Penalties and Discounted Amounts) Regulations (Northern Ireland) 2007).

Now, having banned smoking in all enclosed workplaces, including every pub, club and bar in the country, the tobacco control industry wants to extend the ban to outdoor public areas (including parks and hospital grounds) and private spaces including private vehicles.

The proposed amendment to the Children and Families Bill (banning smoking in cars with children) follows the failure of the Smoke-free Private Vehicles Bill.

Our position
FOREST would encourage adults not to smoke in cars carrying children because, in our view, children should not be exposed to cigarette smoke in a small confined space like a car. It is inconsiderate, at best.

According to research, however, relatively few adults smoke in a car with children. Legislation would be yet another example of government interfering unnecessarily in people’s private lives. We therefore strongly oppose this amendment.

1. Why legislation is unnecessary
Even if one accepts that smoking in a car carrying children is at best inconsiderate (which we do), the idea that large numbers of children are exposed to tobacco smoke in cars is as outdated as black and white television.

Today, very few adults smoke in a car when children are present.
According to the results of a survey conducted in July 2011 using an online panel of 1000 adult (18+) smokers established by Holden Pearmain for the Tobacco Manufacturers’ Association:

- 45% of smokers never smoke in their cars
- 76% would never smoke if children were present (a further 11% would ask for permission)
- 51% thought that a ban would be ‘very difficult’ or ‘impossible’ to enforce
- only 13.6% of smokers would smoke as normal if children were present in a car [1]

A more recent study by the UCD School of Public Health, published in the Irish Medical Journal, found an even lower prevalence of smoking in cars carrying children in Dublin.

According to the Irish Independent (10 April 2013):

Plans to ban smoking in cars carrying children would be “labour intensive” and have little effect, according to a new study.

The study, which involved observing 2,230 drivers, found they were more likely to be using their mobile phones than smoking.

The study by the UCD School of Public Health, Physiotherapy and Population—which involved observing cars over three time periods in two Dublin locations—found the prevalence of mobile telephone use was 2.56pc while it was 1.39pc for smoking.

The more expensive the car the less likely the driver was to be smoking, according to the researchers.

“It was low for both. Eight adult passengers and just one child were observed as being exposed to a smoking adult driver,” the findings, published in the Irish Medical Journal, said.

It suggested that the “resources required for a ban in vehicles may be labour intensive for the yield in detection or prevention.” [2]

Responding to the report, Forest Éireann spokesman John Mallon said the study had vindicated his group’s stance that a ban on smoking in cars with children would prove difficult to enforce and unnecessary to introduce.

“Very few parents light up in a car carrying children. It’s inconsiderate and most adults recognise that,” Mallon said.

“We would encourage parents not to smoke in cars when children are present but so few people do it that legislation is clearly unnecessary.

“It would be a huge waste of taxpayers’ money and would be almost impossible enforce. Education has to be better than coercion.” [3]

Although the research took place in Dublin, the city and the culture is not unlike many cities in the United Kingdom and we believe that if the same research was carried out in the UK there would be a very similar result.

2. THE HEALTH ARGUMENT

Legislation is justified, we are told, because of the alleged harm caused by ‘passive smoking’. According to a paper by CR Consulting, commissioned in 2011 by the Tobacco Manufacturers Association [4]:

A number of studies have been undertaken especially in North America to identify the level of contamination in cars. These have typically involved a cigarette being consumed in the front of the car as it is driven at a variety of speeds with ventilation and windows at various settings—with usually a nicotine or particle monitor at breathing height on the back seat.

The issue here is the size of the space—clearly a small car has very little volume and so the concentration of contaminants is likely to be high. This especially so when a cigarette is smoked and the windows are shut and the vehicle is stationary.

This is the worst case from which these calculations arise. However car users can, and do, regulate the environment by opening windows and or using mechanical ventilation to create a comfortable environment.

To quote from the same studies that are used to highlight concerns:

- Even small adjustments make a considerable difference—‘Opening a single window by 3” increased the vehicle’s air change rate by about tenfold, ranging from 8 to 12 times for various speeds and ventilation settings’—this means that all of the air in the car is replaced every 5 to 7.5 minutes.
- These adjustments can be highly effective at reducing concentrations—in one study in two vehicles the nicotine levels were below the level of detection (one large SUV with ventilation and one driving with the window more than half open) although one driver had smoked 3 cigarettes in 40 minutes and the other 5 in 110 minutes.
- 79% of people who took part in the test and smoked in cars claimed to ban smoking when carrying passengers, or without ventilation, or both.
Specific claims based on the air quality research:

_Cigarette smoke particle exposure in a closed car is comparable to the exposure a firefighter might receive over four to eight hours fighting a California wildfire_

— This originally comes from the California Environmental Protection Agency and confuses peak levels when a cigarette is being smoked in a car, with sustained contamination averaged over 4 or 8 hours for the firefighters.

_One smoker emits five times more fine particles into a car than are emitted per-mile by the car’s exhaust pipe_

— This appears to be true for petrol engine cars—however the particulate from traffic comes from diesel and not petrol engines.

_Secondhand smoke in cars can be ten times more concentrated than the level considered “unhealthy” by the US Environmental Protection Agency_

— The EPA’s much-cited outdoor daily standard for small particle air pollution (PM2.5) is 35 μg/m³. This is an average over 24 hours. Even the (supportive) research for this claim it would require a person to smoke continuously for 2 hours in a car with the windows partially open to achieve a similar level of exposure as the EPA standard.

_Smoking in a car exposes children to the same levels of smoke in a busy smoke filled pub_

— This again confuses the momentary peak exposure to smoke in a sealed up car with continual exposure over a period in a bar.

_Opening a window does not reduce the levels of secondhand smoke in a car to a safe level as the smoke simply blows back into the vehicle, often lingering for hours_

— Ventilation is clearly effective at diluting the smoke, as every one of the studies cited (Ott, Klepeis et al 2007) shows. The ‘8-12 times’ noted above means that all of the air in the car is replaced every 5 to 7.5 minutes.

The health argument is based upon the most extreme instances—very heavy smoking in stationary cars with no natural or mechanical ventilation.

In reality many smokers choose NOT to smoke in cars and the considerable majority have rules about not smoking with passengers in the car and/or using ventilation.

Even opening the windows just 3” has a dramatic effect on the air quality in the car.

Unfortunately there is no arguing with anti-smoking campaigners who are determined to force more legislation on smokers.

Speaking at the BMA conference in Cardiff in 2011, Douglas Noble, a public health doctor, even argued: “It would be safer to have your exhaust pipe on the inside of your car.” [5]

Sadly, this is typical of the hyperbole we have come to expect from more militant tobacco control campaigners.

3. How reliable is the ‘evidence’ for a ban?

(a) A claim, often repeated, is that second-hand smoke is “23 times more toxic in a vehicle than in a home [or smoky bar]”. Yet according to Ross MacKenzie of the School of Public Health at Sydney University, writing in the Canadian Medical Association Journal:

“In [an] exhaustive search of the relevant literature, we failed to locate any scientific source for this comparison.” [6]

(b) On Wednesday 16 November 2011 it was very widely reported in the British media and around the world that the British Medical Association wanted to ban smoking in ALL cars, not just those with children present.

The BMA was keen to highlight the ‘fact’ that “studies demonstrate that the concentration of toxins in a smoke-filled vehicle is 23 times greater than that of a smoky bar”!

The following day the BMA was forced to issue another, less well-reported, press release:

CORRECTION TO BMA BRIEFING PAPER:
Smoking in vehicles—press release issued on Tuesday 15 November 2011 (publication date—16 November 2011)

Please note, there is an error in the BMA briefing paper: Smoking in vehicles. On page 4, in the 3rd paragraph, the following sentence is incorrect:
“Further studies demonstrate that the concentration of toxins in a smoke-filled vehicle is 23 times greater than that of a smoky bar, even under realistic ventilation conditions”. a, 17, 18, 19

This sentence was replaced with: “Further studies demonstrate that the concentration of toxins in a smoke-filled vehicle could be up to 11 times greater than that of a smoky bar”.

We apologise for this error. [7]

(c) In October 2012 it was reported that researchers from Aberdeen University “have backed a proposal to ban smoking in private cars after they found that the habit produces pollutants which could be harmful to passengers”.

In fact, researchers had examined just 17 drivers, 14 of them smokers. [8]

(d) According to the British Lung Foundation, in its submission supporting the amendment to the Children and Families Bill:
— 19% of children aged 11 to 15 reported often being exposed to second-hand smoke in cars (survey of 6971 boys and girls aged 11 to 15, conducted in 2010 on behalf of the NHS Information Centre) [9]

In addition:
— 51% of children aged 8 to 15 reported that they had at some point been exposed to cigarette smoke in a car [10]

The research also showed that 86 per cent of children across the UK want people to stop smoking when they are in the car.

How seriously should we take these results? Announcing its new tobacco control strategy in March 2013, the Scottish Government press release included a note about NHS Fife’s anti-smoking initiative. It featured the following statement:

The I-Don’t project surveyed 1500 students and showed that while students thought 75% of their peers smoked, in reality the number who smoked was less than 30%. [11]

In other words, surveys of students (and children) cannot be relied upon for accuracy. If a child says he (or she) has been in a car when someone has been smoking it doesn’t mean they have. The reality is probably very different and the true figure is very much lower.

4. OPINION EVIDENCE

FOREST is not alone in expressing concern at the prospect of a ban on smoking in cars, with or without children.

On 2 November 2012 the Press Association reported that:

David Cameron has distanced himself from plans to ban adults smoking in cars with children present. The Prime Minister, an ex-smoker, refused to support proposals which would outlaw lighting up in a vehicle containing youngsters.

Speaking at Prime Minister’s Questions in the Commons, Labour MP for Stockton North Alex Cunningham claimed the vast majority of people backed such a ban, and asked the Government to support his Bill criminalising it.

Mr Cameron said “as a former smoker and someone who believes strongly in liberties”, the ban on smoking in pubs “has worked”.

But he added: “I am much more nervous about going into what people do inside a vehicle. I will look carefully at what you say, but we have to have a serious think before we take that step.” [12]

Others who have expressed worries about a ban on smoking in cars include Matthew Wright, TV presenter and ex-smoker. Writing in the Daily Star Sunday (20 November 2011), Wright commented:

I used to enjoy driving and smoking ... The two went together like fags and beer. But my car never smelled of smoke because I’d only light up with the window open or the roof down.

People do say holding a ciggie impairs your driving. I’m sure it does…but it can’t be any worse than changing the CD or winding down the window, can it?

I’m told talking to a passenger is more dangerous still. Are we going to ban them from our cars too?

But what about those parents who smoke while their kids are in the back, Wrighty? We need laws to stop them poisoning their sprogs!

Well, I’ve spent the past few days wandering about London looking for them. I’ve seen them in the past. The sight of them feeding their kids second-hand smoke made me feel physically sick.

But after four days of searching I didn’t see one person smoking in a car with kids on board. Not one—and I live in the heart of the capital. [13]
Writing in the Sunday Times in the wake of the BMA’s call for a ban on smoking in all cars, columnist Rod Liddle, former editor of BBC Radio 4’s Today programme, described it as a “grotesque infringement of personal liberty”, adding:

The BMA was palpably wrong last week when it called for the ban on smoking in cars. I don’t mean simply that it was being fascistic and overstepping its remit; that, after all, is a given. I mean that it got all of its figures wrong and was forced to retract. But only after it had been on every news programme across the country, being self-righteous. [14]

Writing in the Observer Catherine Bennett observed:

Like the BMA’s initial figures on toxins, my anecdotal research must lack any credibility but, as hard as I peered into cars while driving around north London last week, I saw no one smoking in them at all. Of course, there were endless drivers doing the routine, homicidal things that cry out for cruel and unusual punishment—talking on mobiles, monstering cyclists, tailgating, driving at 40mph in 20mph zones, the scamps.

But not one smoker could be seen subjecting children to a toxic cloud of carcinogens that is either 23 times stronger than a smoky bar or 11 times stronger: the BMA offered both figures last week. [15]

Philip Hensher, writing in the Independent, commented:

The desire to protect children from smoke is laudable. But how many people, seriously, smoke in their cars with the windows shut with children in the back seat? [16]

For Graeme Archer, writing in the Daily Telegraph (17 November 2011), the smoking ban still rankled and the proposal for a ban on smoking in cars was the final straw:

Few political acts have made me so angry, since few others seemed so obviously driven by malice … And now, the campaigners are back: some people, they’ve noticed, have been smoking in their cars. And other people might be in the car with them! So we need a new law, and a new set of criminals to prosecute—because, honestly, there’s nothing more important for either the political class or the medical establishment to be thinking about just now, right? [17]

Strong words, too, from Dr Phil Hammond, GP, journalist, comedian and broadcaster, in The Times (17 November 2011):

It’s impossible to justify smoking with children in the car, home or womb. But that doesn’t mean a leap to legislation. We have to go through the traditional cycle of patronising health promotion campaigns and doctors with big livers telling us how to live our lives. Only when that fails should we send in the police. [18]

5. THE ROAD SAFETY ARGUMENT

Apart from the issue of health, the main argument for further legislation rests on the argument that smoking is a potential distraction to drivers and could cause accidents. In fact, smoking is an insignificant factor in car crashes.

Research in this area is limited but the few studies that exist show that smoking while driving is one of the least distracting activities for a driver.

Things that are considered more distracting include chatting with passengers, outside activity, changing a CD or tuning the radio. Should they be banned as well?

According to CR Consulting, the US research (on which the claim that smoking leads to more accidents was based) classed driver distractions as follows as factors in car crashes:

<table>
<thead>
<tr>
<th>Specific Distraction</th>
<th>% of drivers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outside person, object or event</td>
<td>29.4</td>
</tr>
<tr>
<td>Adjusting radio, cassette, CD</td>
<td>11.4</td>
</tr>
<tr>
<td>Other occupant in vehicle</td>
<td>10.9</td>
</tr>
<tr>
<td>Moving object in vehicle</td>
<td>4.3</td>
</tr>
<tr>
<td>Other device/object brought into vehicle</td>
<td>2.9</td>
</tr>
<tr>
<td>Adjusting vehicle/climate controls</td>
<td>2.8</td>
</tr>
<tr>
<td>Eating or drinking</td>
<td>1.7</td>
</tr>
<tr>
<td>Using/dialing cell phone</td>
<td>1.5</td>
</tr>
<tr>
<td>Smoking related</td>
<td>0.9</td>
</tr>
<tr>
<td>Other distraction</td>
<td>25.6</td>
</tr>
<tr>
<td>Unknown distraction</td>
<td>8.6</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
</tr>
</tbody>
</table>
In other words, the distraction from another person inside the car is over 30 times as likely to cause an accident as smoking a cigarette. [19]

6. Slippery slope—What next?

The slippery slope argument is a valid one. Significantly, many anti-smoking campaigners are not satisfied with banning smoking in cars with children. Just as smoking is banned in every pub and private members’ club in the country, the BMA wants a ban on smoking in ALL cars, including private vehicles, regardless of who’s in them.

If this were to happen adults would be prohibited from smoking in their own family cars even if they were the only person in the vehicle. How can that be justified, and is government really going to waste police time enforcing such an illiberal, spiteful law?

Others have described smoking in a car with children as child abuse. Entrepreneur Duncan Bannatyne wants children to be able to report parents who smoke in a car to the police. He also believes it should be illegal to smoke at home in front of children. [20]

The only way that this could be enforced is for neighbours, family members or even the children to go to the police or social services. Is that the type of over-regulated, curtain-twitching society we want Britain to become?

Enforcement

An important issue, easily overlooked, is one of enforcement. The police have enough on their hands already without having to investigate and possibly prosecute drivers who might be smoking in a car carrying children.

According to CR Consulting (November 2011):

The closest parallel to the issue of enforcement of smoking bans in private cars is perhaps the use of handheld mobile phones. There is a perceived threat to the occupants (in terms of safety) and yet self-enforcement is low and enforcement from external authorities is limited.

In the UK in December 2003 the law banned the use of hand-held mobile devices in or on vehicles. The penalties were strengthened in 2007 to a £1000 court fine for a private motorist and £2500 for a commercial vehicle or public service vehicle driver.

According to the Green Flag/Brake Report ‘Driven to Distraction’ (2006) awareness and understanding of the law was high:

- 64% of drivers were aware of the law and a further 25% thought all mobile phone usage was banned.
- 69% agreed that ‘it is dangerous to drive using any type of mobile phone’ despite this understanding of, and sympathy with, the law.
- 36% admitted illegally using a hand-held phone whilst driving (15% of these at least once a month) presumably as fears of effective detection or prosecution were low.
- 75% believe that there is either no chance (17%) or less than a one-in-four chance of being caught (8%).

The result has been a persistent level of offending throughout the country that dipped with the introduction of the initial law and again with the increase in penalties, but [by 2009 was] at a very similar level to the period before the ban was put in place. [21]

It is not unreasonable to think that legislation to ban smoking in cars with children would generate a similar reaction—a small initial drop in the number of people offending, followed by a gradual increase to pre-ban levels, as if the legislation had never happened.

The time and money required to achieve this non-result would be better spent, in our opinion, on education not coercion (ie legislation). How much better would it be if government worked with smokers not against them?

Summary

FOREST neither encourages nor condones smoking in cars carrying children, but a ban is out of all proportion to the problem.

In practice, as research shows, very few adults light up in a car with children present. The vast majority of adults don’t need to be threatened with fines or other penalties to behave in a considerate fashion.

The vast majority of smokers have clearly changed their behaviour voluntarily, without government intervention. So why do we need another law that even its supporters accept would be difficult to enforce? Education must be better than coercion.

Legislation is justified, or so we are told, because of the serious harm caused by ‘passive smoking’. Speaking at the British Medical Association conference in Cardiff in 2011, public health doctor Douglas Noble argued that “It would be safer to have your exhaust pipe on the inside of your car”. What nonsense.
Another claim, often repeated, is that second-hand smoke is “23 times more toxic in a vehicle than in a home [or smoky pub]”. Yet in 2010 an article by Australian researchers in the Canadian Medical Association Journal suggested there is no scientific evidence to support this argument.

Significantly, campaigners aren’t satisfied with banning smoking in cars with children. Just as smoking is banned in every pub and private members’ club, the BMA wants a ban on smoking in all cars, regardless of who is in them. If smoking is banned in cars carrying children expect a gradual but persistent clamour for smoking to be banned in all cars. In the world of tobacco control it’s called ‘the next logical step’.

Grasping at straws, campaigners argue that smoking while driving is a threat to other road users. Major international studies show that smoking while driving is one of the least distracting activities for a driver. Far more distracting are chatting with passengers, outside activity, changing a CD or retuning the radio. Should we ban those as well?

Banning smoking in a private vehicle, with or without children, is not only an unnecessary infringement of people’s civil liberties, as others have stated, it represents a serious invasion of a citizen’s private space. For many people this is a worryingly illiberal step. What next? A ban on smoking in the home if children are present?

Education, we believe, is better than legislation and we would welcome the opportunity to work with government to encourage the small number of adults who still smoke in a car carrying children to change their behaviour without the need for heavy-handed legislation that a hard-pressed police force would find it very difficult to enforce.

FOREST would be happy to work with government to achieve the desired outcome.

Finally, following the failure of the Smoke-free Private Vehicles Bill, we are concerned by what we believe to be an extremely misguided attempt to introduce a ban on smoking in private vehicles via the Children and Families Bill.

It is our understanding that the Bill is designed to help reform the adoption process with a view to reducing the number of children in care by increasing the number of children adopted.

If the amendment to ban smoking in cars with children is introduced it could have a devastating impact on a significant number of carers and potential carers.

Instead of freeing adoption from excessive bureaucracy, carers could find themselves criminalised for smoking on their own private property and excluded from the adoption process. That in turn could have terrible consequences for the children in care or in their care—especially if the legislation was extended, at some time in the future—to include private homes with children.

We believe that to pass this amendment would institutionalise discrimination against smokers in all walks of life. In a free, tolerant society that is simply unacceptable. Please vote against it.

REFERENCES

1. Smokers Panel, Holdern Pearmain, July 2011
2. Ban on smoking in cars would have little impact, says study (Irish Independent)
3. Smokers’ group welcomes study showing low level of smoking in cars (Journal.ie)
4. Smoking in cars briefing (CR Consulting)
5. Smoking in your car ‘more damaging to health than breathing in exhaust fumes’ (Daily Mail, 29 June 2011)
6. BMA’s ‘facts’ prove to be all smoke and mirrors (Scotsman)
7. BMA press releases archive (16 November 2011)
8. Should smoking in your own car be banned? (Huffington Post)
10. BLF/TNS survey of 1,000+ children aged 8-15, 20-27 January 2011
11. What children think is not reliable evidence (Taking Liberties)
12. PM ‘nervous’ about car smoking ban (Press Association)
13. I’m fumin’ at car cigs ‘ban’ (Daily Star Sunday, 20 November 2011)
14. Stand back, I’m going to send the BMA’s claims up in smoke (Sunday Times, 20 November 2011)
15. The ban that was guaranteed to have people fuming (Observer, 20 November 2011)
16. The state wants to know what you’re up to. But why do we let it? (Independent, 17 November 2011)
17. All these smoking bans have left me fuming (Daily Telegraph, 17 November 2011)
18. I wouldn’t get in a car with a smoker. But a ban is silly (The Times, 17 November 2011)
19. Smoking in cars briefing (CR Consulting)
20. Den star in car cig kids row (The Sun, 8 August 2010)
21. Smoking in cars briefing (CR Consulting)

ADDITIONAL READING Smoking Ban in Cars: How Dare the BMA Dictate How We Live Our Lives? (Huffington Post)

April 2013

Memorandum submitted by Coram (CF 132)

1. Clause 1—Fostering for Adoption

Coram supports the principle of Foster to Adopt in aiming to minimise disruption for babies, and children, and as a supplement to the existing evidenced (C4EO validated) practice of concurrent planning. The context is where the risk to the child is fully demonstrated and—based on history—where the chance of parental change is very unlikely in the timescale of the child.

Coram calls for clarification in guidance of the importance of dual assessment of adopters as foster carers to facilitate early placement options for children whilst recognising that legislation must take consideration of all options, not privileging any one in advance.

Coram also reaffirms the importance of effective support to either temporarily approved or dually assessed foster carers in managing contact, and in appreciating the fostering role and the potential that it may be decided to be in the best interests of the child to return to the parent or kinship carers.

Guidance will be needed to reinforce and support best practice approaches, and including the use of pre-birth assessments, effective family group conferences and pre-proceedings work in permanence planning to enable early identification of any potential kinship carers.

Through its centre for early permanence, Coram will continue to offer to local authorities its national subscription scheme to advance the programme efficacy and assurance of concurrent planning and will be pleased to contribute to the development of guidance.

2. Clause 2—Due consideration of child’s race, culture, language and religion when making adoption decisions

Whilst fully supporting the principle, Coram’s view is that there must be no undue delay caused by any factor or process, Coram advances that there is benefit to the explicit inclusion of a child’s race, culture, language and religion as part of the adoption welfare checklist to be taken into account in the decision making process. We support the Kinship Care Alliance in their suggestion that it is also not sufficient to assume that a child’s race, culture, language and religion will be considered as part of their ‘background characteristics’ in s.1 (4) ACA 2002 and its inclusion in the list provides the appropriate balance and weighting.

3. Clause 3—Power to remove recruitment from local authority agencies

Coram welcomes the commitment to support improvement in performance by all agencies to achieve the best outcomes for children and to reduce variation across the country. Coram has provided evidence on the achievements of its ground-breaking partnerships (now with four local authorities) as part of the cross-sectoral approach to implementation of the adoption reforms. It is noted that removal of any barriers to local authorities in advancing progressive development is in the interest of children and public benefit.

4. Clause 7—Contact

Contact with birth parents/siblings/grandparents must be arranged on an individual basis to meet children’s needs.

Coram advances that promoting the welfare of the child is a paramount consideration in both the frequency and arrangements for contact. Coram calls for detailed guidance to build on the learning from neurological science and both UK and Australian research which shows that whilst contact should protect any positive relationships/attachments which are important to a child, it needs to be reflective of the child’s needs, and be sensitive to the child’s vulnerability in its delivery, especially for infants. This includes establishing a routine in placement to facilitate a sense of security, and time for unhurried playful interaction between the main carer (i.e. the foster carer) and the baby. If the baby has high frequency contact, the recovery time between contact sessions can be significantly limited. Any ruling or requirement must surely aim to minimise this stress on young children.

Building on its practice standards and experience as the authoring organisation of ‘A Guide to Best Practice in Supervised Child Contact’ (Slade, 2004), Coram will be pleased to contribute to the development of such guidance as appropriate.

April 2013
RE: REPEAL OF ETHNICITY ClAUSE: SECTION 1 PART 2 OF THE ‘CHILDREN AND FAMILIES BILL’.

My name is Jackie Lewis and I have broad experiences of over seventeen years in working as a psychotherapist, although I have not practiced for the past year. It is in my professional capacity that I write to express grave concerns about your proposed amendment of section 1 (5) of the Adoption and Children Act 2002 within a draft Children and Families Bill. The government states the following:

1. An over-emphasis on ethnicity, race and religion results in the devaluing and/or demotion of other important areas of a child’s needs, such as the need for security and placement in a loving home environment.

2. As a consequence, the over-emphasis on ethnicity, race and religion directly leads to a disproportionate delay in the placement of Black and Minority Ethnic children (BME) in ‘loving homes’.

1. UN CONVENTION OF THE RIGHTS OF CHILDREN

1.1 The government’s position is a false one when considered against the Provisions and principles of the UN Convention on the Rights of the Child that set minimum entitlements and freedoms with regards to children’s race, culture, religion, language and religion that should be respected by all governments, especially one such as that of the UK which is widely believed to be supportive of key provisions on international human rights. The Government’s proposed action begins to destroy the basis of such belief.

1.2 The variables, of ethnicity, race and religion are inter-reliant and inseparable and are seamlessly linked to all the areas of a child’s needs. Therefore, the government cannot ensure some rights without, or at the expense of others, as this would compromise the child’s human rights. There can be no justification for the removal of “due consideration” to the Convention, as removal fails to protect all the rights and freedoms of the child, which are considered necessary in underpinnings for the children to reach their full potential.

2. TRANSRACIAL PLACEMENT IS NOT A PANACEA

2.1 No matter how loving a white family may be, transracial placement cannot validly be considered the panacea it is increasingly considered—perhaps as part of a move that has cost reduction as an underlying motivation. The proposal presumes ‘transracial placements’ to be problem-free when religion, race, culture or linguistic background is either taken out of the assessment process or down-graded. But the removal of these critical factors serves only to deny the real impact of racism in the society and how this could affect transracially adopted children. History has taught us that many children of African heritage transracially adopted, faced mental health challenges and confusions regarding their identity as adults. Removal of due consideration serves to discriminate against black and minority ethnic people. It is also worth recognizing that the policy and practice British Government’s is now seeking to overturn was put into place as a result of campaigning conducted decades ago by a well informed and informative black/Afrikan adoption and fostering campaign in which individuals like John Small (later of the University of the West Indies, Mona, Kingston, Jamaica) and David Akinsanya led. The campaign was in no small measure prompted by the knowledge of the experiences of a generation of young African-Caribbean and Afrikans who had experienced adoption by ‘colour-blind’ liberals and long-term residence in children’s homes.

3. THE IMPACT OF DISCRIMINATION

3.1 The history of transracial placements also needs to be assessed in consideration of important evidence of failed transracial placements. These placements greatly disadvantaged Black children, undermined their cultural and racial competence/confidence and contributed no lasting identity development of African children and children from other marginalised backgrounds.

3.2 How does the government ensure that the needs of all children are met in a society where there is a tendency to underestimate the effects of racial harassment and racial discrimination upon children, and in some instances claims that racism doesn’t exist. A true commitment to equality necessitates action to ensure that children are not neglected, harmed nor abused.

4. SUPPORTING BLACK FAMILIES TO FOSTER/ADOPT

4.1 The proposal give the firm impression of ignoring the truth that most white prospective adopters want to adopt babies and in the absence of available white babies, they would adopt black babies in the misguided belief that ‘love is enough’, but can love ever be enough in a society where racism and class-based approaches to life choices and life chances exists? In such a society the development of a positive self-identity and group-identity is crucial to their mental health and social adjustment. A child’s ethnicity, race and religion are essential constituents to their ‘positive’ developmental and adjustment process.

4.2 The over-representation of African heritage children within the care-system are replicated across mental-health services, penal institutions, school expulsions and other such institutions and the deep seated underlying issues of Institutional Racism need to be acknowledged and addressed. These cannot be wished away by the removal of hard fought for provisions to safeguard African heritage children.
4.3 Social service agencies have historically failed to encourage and secure the recruitment of Black foster/adoptive parents in adequate numbers which greatly limits the availability of Black families for adoption and fostering of BME children.

4.4 The overrepresentation of Blacks in unemployment statistics, Institutional Racism, the continuing poor performance within the economy and the growing number of African British graduates remain underemployed or grossly underemployed more than one year after leaving university are some of the crucial factors that influence the underrepresentation of same-race adoption/fostering within Black families the UK.

4.5 If the government is committed to equality and utilising its power to work towards changing inequalities in the area of fostering and adoption; if the Government seriously wishes to remove the placement waiting times for BME children then due regard should be given to addressing the factors inhibiting the recruitment of BME fostering and adoptive parents.

5. The Impact of Discrimination

5.1 The history of transracial placements also needs to be assessed in consideration of important evidence of failed transracial placements. These placements greatly disadvantaged Black children, undermined their cultural and racial competence/confidence and contributed no lasting identity development of African children and children from other marginalised backgrounds.

5.2 How does the government ensure that the needs of all children are met in a society where there is a tendency to underestimate the effects of racial harassment and racial discrimination upon children, and in some instances claims that racism doesn’t exist. A true commitment to equality necessitates action to ensure that children are not neglected, harmed nor abused.

Conclusion

Whilst the government does not advocate transracial adoption in instances when same-race adoptees are readily available, the underrepresentation of Black/African heritage adoptees and foster carers can be considered an attack against the Black child/family. Black children needs homes and equality necessitates that the government needs to be exhaustively supportive in placing African heritage children with loving, caring Afrikan families—these do exist.

Accounts of the transracial adoption experiences (African heritage children with white parents; I have not yet come across a white child that was adopted by Black parents) narrated by adults who were adopted as children must be given due consideration. I have heard accounts of not being supported to navigate through the cultural-political minefield with self-confidence and self-worth. The racial dynamics exist and cannot be skirted over nor should the government mitigate, minimize or underplay historical structures of white supremacy and the society’s euro-centric world view.

Removal of the safeguards might save the child from care homes but will almost certainly leave the child with either a confused and disjointed sense of belonging or at worst a lifelong feeling of self-hatred. We experience the world in racial terms and the perspectives of power, class are factors of influence. To be white in a society which values whiteness can and does place black children at a psychological disadvantage.

April 2013

Memorandum submitted by Dyslexia Action (CF 134)

INDICATIVE DRAFT: THE (0-25) SPECIAL EDUCATIONAL NEEDS CODE OF PRACTICE

SUMMARY

Dyslexia Action is pleased to see that the consultation process is working, resulting in some positive changes. However we are still concerned about:

— the lack of clarity concerning the procedures and provision that will be put in place for children that are currently in the School Action and School Action Plus categories
— a lack of clear statements and examples to make it clear that dyslexia is a learning disability and it therefore comes under the banner of SEN
— the responsibility to meet the needs of children with special needs falling on teachers who are not properly trained to identify dyslexia and can make adequate alternative provision.

Dyslexia Action therefore supports the recommendation for the following additions to Clause 62 of the Bill:

(i) that all authorities (governing body or proprietor) must ensure all new teachers have undertaken in their Teacher Training a mandatory module on special educational needs, including dyslexia.

(ii) The appropriate authority must designate a member of staff who shall be a qualified teacher and must have undertaken training to include a mandatory module on special educational needs, including dyslexia at the school (to be known as the SEN co-ordinator) as having responsibility for co-ordinating the provision for pupils with special educational needs.
We welcome the incorporation of a national framework to guide local offers. We would like this to be strengthened so that it includes a requirement to take account of evidence about effectiveness drawn from scientific studies, the experience of successful practitioners and guidance from recognised professional associations and authorities.

**Dyslexia Action’s response to the following paragraphs in the indicative draft**

**Chapter 1: Introduction**

1.3 Definitions of special educational needs (SEN) and disability.

The Draft states that a child of compulsory school age or a young person has a learning difficulty or disability if they:

*(a) have a significantly greater difficulty in learning than the majority of others of the same age: or…’*

We are content that this remains as the definition, but we know from experience that it can create problems when being applied. For example, what is meant by the words significantly and majority? We would like it to be made clear that this statement will often apply to children with dyslexia. We would also like it to be made clear that the definition should be based on the difficulty in learning and not on the severity of the failure that can result from this.

We are concerned that, in general, there is little guidance about the children whose difficulties are not so extreme that they fall in the most severe minority of 2%, but who nonetheless require additional input to make appropriate progress. No suggestions are offered in the draft about the definition of the needs of this larger group.

1.4 If it is to be argued that those with less severe needs can be catered for by good quality, inclusive teaching practice, then it is essential that ALL teachers are adequately trained as teachers of children with Special Educational Needs, including dyslexia. This is not the case at the moment.

**Chapter 2: Family centred systems**

A person-centred approach to planning means that planning should start with the individual (not with services) and take account of their wishes and aspirations, and the support they need to be included and involved in their community. This is when the needs of a family with dyslexia should be able to voice their concerns and be listened to. If it aims to empower parents, children and young people so that they have more control over assessment and decision-making processes then concerns over a child’s possible dyslexia need to be considered by the school on or before the child’s admission.

These parent/carer forums need to be filtered through to parents via early years settings so parents/carers of dyslexic children can engage with them to ensure the needs of dyslexic children are on the local agenda.

**Chapter 4: The Local offer**

4.1 We recognise the detail in the Local Offer is still to be included but we are concerned there is no guarantee that appropriate services will be provided. There are no minimum standards of what should be available. It is unclear what the right of appeal will be if services are not provided. The wording is not strong enough to provide redress for parents or young people if those services are simply not there. There must be a legal duty to provide what is set out in the Local Offer. The Local Offer must therefore include the following provisions:

*For Primary and Secondary Schools*

We expect the Local Offer to clearly state:

— what schools in the area are dyslexia-friendly schools (as judged by national standards);
— what schools have staff teachers specially trained in identifying and providing for children with dyslexia;
— what schools pay for a specialist teacher to come to the school;
— what support is available to help children and young people move between phases of education and prepare for adulthood.

*Further Education Establishments*

Local Offers should detail which providers assist young people with dyslexia into work;

Which ones provide sources of information such as Access to Work arrangements. The Local Offer should provide information to students on arrangements for making complaints in relation to the aforementioned.

Dyslexia Action welcomes the recommendation that schools should identify an individual’s needs and highlight the necessary modifications necessary to ensure learning can take place. This was recommended in Dyslexia Action’s Dyslexia Still Matters Report (DSM) report, published in June last year. The DSM Report states:
— Schools need to demonstrate, through the Local Offer and in other ways, what they are doing to support children with dyslexia and literacy difficulties.

It is also essential that the Local Offer states here that if a school is not a dyslexia-friendly school and does not have access to a specialist teacher then they must be able to recommend alternative provision elsewhere to ensure the required additional expertise can be accessed by the parent and that the Local Offer also details this information.

**CHAPTER 5 EARLY YEARS, SCHOOLS, COLLEGES AND OTHER PROVIDERS**

5.1 As part of its call for a National Literacy and Dyslexia Strategy, Dyslexia Action has been campaigning for all teachers to be sufficiently trained to enable them to identify all SEN including dyslexia as early as possible.

The fact it is now stating ALL teachers need to be equipped to teach children with a diverse range of need and that it is the responsibility of providers to ensure they plan staff training, development and support to ensure all teachers are able to meet the needs of individual children is very reassuring as far as children with hidden disabilities are concerned. Early years providers, school and colleges will thus need to be accountable to ensure all children with dyslexia are identified and catered for.

**WE PROPOSE:**

— The appropriate authority (governing body or proprietor) must ensure all new teachers have undertaken in their Teacher Training a mandatory module on special educational needs, including dyslexia.

5.2 We welcome the statement: ‘All teachers are teachers of children with special educational needs’ in this section as this means ALL teachers will now need to be trained in SEN—including dyslexia.

We believe children with dyslexia need to have access to good teaching in all lessons. A co-ordinated plan is needed to improve awareness and understanding of dyslexia for people in all roles of education. This should include:

— All trainee teachers should receive training on how to identify and support children with SEN and specific learning difficulties such as dyslexia. There are already government-sponsored resources which should be updated and disseminated.

— All teachers should receive INSET on dyslexia with regular updates. There are some good existing materials for this continual professional development, including the updated Inclusion Development Programme (IDP). National, regional and local leadership and co-ordination are required for effective, on-going roll out as recommended in the Warwick University (2011) study on the impact of Department for Education funded initiatives.

— All schools should have effective processes and skills in place to identify possible dyslexic pupils in Foundation as early identification remains the key to successful outcomes, as well as avoiding the stresses and frustrations (faced by children) that are still widely reported by parents today.

— Once assessment has been made by schools, specialist supervised intervention programmes should be implemented as required.

— Special needs should become a higher priority in the training and professional development for those in leadership and governance roles.

— A scheme is needed to enable more teaching assistants to receive training in specific interventions and methods of support.

— The requirement for SENCO training should be continued and should contain a consistent high level of dyslexia training input.

— The appropriate authority must designate a member of staff who shall be a qualified teacher and must have undertaken training to include a mandatory module on special educational needs, including dyslexia at the school (to be known as the “SEN co-ordinator”) as having responsibility for coordinating the provision for pupils with special educational needs.

— Early identification remains the key to successful outcomes as well as avoiding the stresses and frustrations (faced by children) that are still widely reported by parents today.

5.5 Dyslexia Action believes the following information should be included:

Information about ‘What Works’ (best practice intervention teaching tools) should be easily accessible (online) to schools and they should be aware of where to find this regularly updated information.

**Examples:**

— Dyslexia Action has expertise, knowledge of tried and tested methods, resources and a pool of specialist dyslexia teachers that could advise Government on what works.

— The Dyslexia SpLD Trust has developed a Literacy and Dyslexia/SpLD Professional Development Framework, sponsored by the Government, which is an on-line CPD tool for teachers and school staff to support them in teaching pupils with literacy difficulties, specific learning difficulties and dyslexia. This points them to what level of dyslexia knowledge and skills they should have for different roles.
and what CPD would be appropriate to build their skills. This can be used individually but also in the context of a school or group of schools to build an effective spread of skills within that setting.

— Schools should be required to evidence that they have the skills in their workforce necessary to meet the needs of dyslexic pupils.

— The education system requires teachers with appropriate training to carry out assessment for the purposes of recommending special arrangements for examinations. Schools should be required to fund the necessary training and provide space on the timetable for testing, to ensure that all eligible children get these provisions.

5.6 We are in total agreement that parents should be party to the decisions made about their child. Dyslexia Action believes a school should not be granted ‘outstanding’ status unless its SEN is classed as outstanding—criteria for which needs to be formulated.

We also recognise that not everybody falling behind will have SEN or require additional support and that it is important to differentiate those with SEN from those without. This is why it is so crucial that teachers are trained to identify dyslexia to ensure these children are not missed and they are aware of different interventions that can be utilised.

CONCLUSION

This Draft finally shows that Government is strongly recognising the need for ALL teachers in educational establishments including Early Years to be properly trained in identifying and appropriately assessing a diverse range of needs and that it is the responsibility of providers to ensure they plan staff training, development and support to ensure all teachers are able to meet the needs of individual children, make alternative, appropriate and adequate provision and be held accountable by Ofsted for such provision. Early years providers, school and colleges will thus need to ensure all children with dyslexia are identified and catered for.

The draft does not, as yet, give reassurance about the way that this will work, fairly, in practice through local offers, assessment procedures and criteria for establishing special needs, funding allocations, requirements to follow best practice and quality assurance standards.

April 2013

Memorandum submitted by Nattlyn Jeffers (CF 135)

As both an active campaigner, advocate, reflective practitioner and care-leaver; I feel that it is a draconic outcry that the law of protection of religion and ethnicity becomes repealed. In short I myself experienced over 12 years in a trans-racial foster care placement based in Leeds, West Yorkshire, as a West-Indian child I grew up with white foster carers who did not meet my cultural needs nor my Rastafarian faith and religion. In doing so at the tender age of 21 years and with the help and support of a positive advocacy service (Leeds Children’s Rights Service) and an expertise children’s law solicitor based in Huddersfield Ridley and Hall together we put a case against Leeds Local Authority for the failure of care under my emotional health and well-being and failure to maintain a care plan, social workers and most importantly my culture/heritage/religious needs and faith thus impacting upon my Identity,

Over the years there has been too little research in the full impact of trans-racial placements and the impact that has on many issues e.g. identity confusion; racism, indifference, culture and heritage and the impact it has on both the service user and service provider. I feel the issues stretch far beyond resources and placements it is more complex and lies at referring to each individual case. Recently I was approached to comment from Channel 5 about the recent UKIP case; it seems that the issue of race, identity and ethnicity do not come into light until a high media profile case. The law needs to be in place to offer other young people either in foster or adoptive care (looked after)/leaving care the opportunity to recognise the importance of identity, race and difference and provide a voice to have their say; surely this is their human right and under the 1989 UN Convention on the rights of the child.

As a professional in the field I have seen it too often where carers on both the adoptive and foster care side who are of different ethnicity than the child they look after, e.g. Asian Foster Carers, Black Foster Carers do not gain enough support from their local authorities or social workers on the grass roots level to provide the relevant support required to meet the often complex needs of this group in society. Where there are more complex placements e.g. shared/dual heritage backgrounds widening the contexts; where do we stop in terms of reference to adequate support and same ethnicity placement matches. Over the years social research and practice indicates young people just want to be loved and cared for; however this is not enough if they face oppression and discrimination and lack of equality of opportunity if they are denied their identity/race.

If the Law is repealed then I believe it gives way for poor practice, less social research in the field and more cases of isolated abuse, victimisation, poor mental health, identity confusion and more draconically being further marginalised from the mainstream big society agenda.
The current law as it states; some would argue is not enough as it is not being clearly implemented into practice. As a recent Master of Arts graduate in Youth and Community Development I would turn to the proverb “It takes a village to raise a child”. 

As a recent self employed cultural educator I have worked with Professor Mike Stein, Professor Bob Broad and social care sector organisations such as Save the Children Fund, Barnardos, NCAS, The care leavers foundation and the Care Leavers Association. The Who Cares Trust and most recently I was commissioned to draft and devise the care leavers charter launched in Oct 2012 at the Houses of Parliament with Edward Timpson, I was keen on underpinning the crucial need for the aspect of culture, heritage, identity and race to be included in the national charter.

April 2013

Memorandum submitted by Alice Jackman (CF 136)

1. Summary

To a member of the public, it would appear that Health, Education and Social Care Law are ‘second class’ pieces of law. If a local authority or PCT is not following the law, there is no policeman that one can phone up and nobody gets arrested and charged for breaking the law. Indeed, there is no censure and no cost to the government agencies for not following the law. Their constituents have little hope, not only are they looking after a disabled child, but they are then pitted against the professionals of the County Legal Team. This is at the very least un sporting—not in the Great British Tradition at all. More paper will not change policies, people will. Please give us policemen that we can go to, in Real Time, who will enforce the law for us and stop the endemic production of paperwork—we want outcomes.

The key problem of the old legislation, and the new, is one of Conflict of Interest. The same person/team that assess needs then has to decide how to meet those needs from a fixed budget.

2. My background and expertise

— 23 year old son on the autistic spectrum who also has a life-threatening condition
— 14 year old foster son on the autistic spectrum
— I run a small charity, Club Capernaum that runs a weekly integrated youth group and an annual residential camp for 14–30 year olds, with and without disabilities.

3. Explanation

4. There appear to be no legal levers available to enforce Health, Education or Social Care Law. My son asked to move out of a residential home 2 years ago, and all that has happened is that he has been assessed, reassessed, his assessments have been assessed, and for him, nothing has changed. The NHS will not meet with us or Social Services and nobody can make them do so.

We need a policeman versed in the above laws in each county hall, so that parents can alert him to individuals breaking the law, and then due process, evidence gathering and consequences of not obeying the law would follow.

5. The Complaints system is not fit for purpose.

We have 18 complaints in to the Local Council over the whole experience. They brought in an ‘external’ assessor, who decided that they could be seen as 14 complaints. She then made 10 recommendations for change, she could not decide what she thought about the last 4, and she upheld 0 of our complaints. Why did she not uphold 10 of our complaints if she was making 10 recommendations?

The complaints system takes too long and we have no confidence in its ability to redress wrongs and no evidence that it does so.

6. Areas of Conflict of Interest need to be identified and eliminated.

In other areas of local government, such as assessing houses for council tax, this conflict has been resolved by separating the assessors and the benefactors. So a house is assessed by the department of Inland Revenue, and then the Local Council collects the assessed tax.

There needs to be a break in the chain. The Single Assessment Process is a great idea, but those assessing need to be able to do so without having to also solve the problem of how to pay for the solutions to the challenges they identify. There needs to be a transparent tariff for assessed needs, not a set of hidden Panels. Otherwise we will continue to have the highly confrontational and litigious process that we have now. Currently, it appears that we take better care of our houses than we do of our children.

7. There is no benefit to Local Authorities to follow newer and more expensive legislation. Their budgets are smaller and yet some parents believe that their children need more help than is being offered. If the local authorities did what was required immediately, it would cost them more. If they delay, and are then told to do
what they should have done at first, there are no punitive damages, or costs awarded to the family for the distress caused by litigation, or the pain of their child’s life being put on hold while agencies argue about who will pay the bill. In fact, if the council delays, then they improve their cash flow and the family may not even be able to enforce the law and so the council will not incur any additional costs at all.

8. The expectation that disabled young people will be able to get work is misleading.

Current university graduates are struggling to get ordinary jobs in shops—why would an employer spend extra time and resources to enable a disabled person to do the same job? Disabled people can often only work part time, need support and longer training—all of which make them more complicated to employ. I applaud the aspirational thought that those who want to, should be able to work. However, society does not yet appear ready for this—and we are breaking another generation of hearts of young people who are desperate to work, who regularly get told that they ‘are brilliant, and should have no problem getting work’, who cannot find work. This is cruel. We need to change the curriculum so that these young people can leave school with a trade—they need an ‘edge’ in our competitive world.

April 2013