



House of Commons

Children, Schools and Families  
Committee

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# **Children and Young Persons Bill [Lords]**

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**First Report of Session 2007–08**





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**First Report of Session 2007–08**

*Report, together with formal minutes, oral and  
written evidence*

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## The Children, Schools and Families Committee

The Children, Schools and Families Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Department for Children, Schools and Families and its associated public bodies.

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### Committee staff

The current staff of the Committee are David Lloyd (Clerk), Sarah Thatcher, (Second Clerk), Emma Wisby (Committee Specialist), Judith Boyce (Committee Specialist), Katie Phelan (Committee Assistant), Susan Ramsay (Committee Secretary), and John Kittle (Senior Office Clerk).

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## Summary

The Government has been consulting over policy on the care of looked-after children since the publication of the *Care Matters* Green Paper in October 2006. As part of this process, the Children and Young Persons Bill [Lords] was introduced earlier this session to implement changes which required primary legislation. In many ways this is an exemplary way for policy to be developed and implemented, and the Government is to be congratulated for a thorough and serious consultative process.

### ***Social work services***

The Bill will allow local authorities to contract out responsibility for all or part of services for young people to “a provider of social work services”, which will be a body corporate, but which cannot be a local authority. The Minister told us that the provisions in the Bill were designed to allow arrangements to be piloted over the next five years, aiming to see if providers of social work services would introduce smaller flexible teams akin to GP practices bringing greater continuity of personnel in providing services to children. We welcome the provision in the Bill on piloting social work practices. Care needs to be taken, however, to ensure that the pilots provide sufficient information to enable the Department to judge whether this is an initiative that could be introduced more widely. Our main concern is that continuity and stability of service should be maintained regardless of who is the provider. The pilots need to fill the evidence gap on social work practices. It is vital that they are properly evaluated and that they are not rolled out unless there is clear evidence that they will provide the essential continuity and stability for looked-after children.

On a related issue, we do not see inspection as the answer to concerns about services being withdrawn at short notice by a private provider, as in the case of the Sedgemoor children’s homes. We note the Minister’s point about Ofsted being the registration authority for homes, but in that case and with the proposed social work practices, it seems to us that contract terms or some other form of regulation would be more appropriate ways of controlling these problems. Throughout our evidence, continuity and stability for looked-after children are emphasised as key, and therefore some sort of safety net is needed.

### ***Support for post-16 education and training***

The Government is to make a bursary of £2,000 payable to looked-after children who gain a place at university, but there is currently no similar provision for other forms of education and training. We welcome the Minister’s comments that he is giving consideration to increased support for those undertaking other education and training and not just those in higher education. We recommend that a broader bursary system is introduced for looked-after children in post-16 education and training.

### ***Designated staff member***

We consider that the requirement that all schools must have a designated staff member with responsibility for the educational achievement of looked-after children is an important statement of intent, and we support it. In particular, we welcome the

confirmation that the designated staff member must always be a teacher. Given the importance we place on this requirement, we consider that it is unfortunate that the Government has not taken the opportunity to apply the legislation to Academies as well as to maintained schools. We expect all existing Academies to designate a teacher to have responsibility for the educational achievement of looked-after children. If the Minister's voluntary approach does not result in every Academy making such an appointment we expect him to reconsider his decision to exclude Academies from the legislation.

### **Representation**

It is clear from all the evidence that a truly independent voice is needed for all looked-after children to ensure their needs and wishes are properly considered and acted upon in the care process. The Minister told us of his concern that the independent reviewing officer system was not yet working effectively, and the Government acknowledges this in the Bill by making provision for the Secretary of State to establish a body to be the employer of independent reviewing officers to provide greater independence if matters do not improve. The Government needs to be explicit about how it will judge if this change is needed, and how long it will allow present circumstances to continue without perceived improvement. There remains the question of whether formal advocacy arrangements should be put in place for looked-after children. If the new arrangements for independent reviewing officers do not improve the way the system works, then the Government should look again at independent advocacy and whether there is a need to replace the neutral independence of the IRO with active advocacy on behalf of the child or young person.

We welcome the extension of the provision of independent visitors to all looked-after children. We recognise the importance for looked-after children of stable relationships with adults, and we also recognise that the various members of the so-called 'team around the child' have different roles. However, as in all these issues, the welfare of the child or young person should be paramount. Every looked-after child should have one key individual to whom he or she can turn, and wherever possible the child should be entitled to say which individual should perform that role.

### **Placements**

The Minister explained what the Government is aiming to achieve with the amendments it has moved in the Lords concerning placements for looked-after children. We note the Minister's comments that placement with family and friends is the first option to be considered if a child cannot remain with his or her parents, but that there is no duty to place a child with family or friends. The welfare of a child and his or her ability to thrive must always be paramount, but, given that, we expect the benefits of a placement with family and friends to be considered seriously before other options are chosen.

Since our meeting with the Minister, the Government has proposed a further amendment, to be considered at Report stage in the Lords, to provide explicitly that local authorities must make available appropriate accommodation for the children they look after in their area. We understand this to mean that no child should be placed outside his or her home area without a positive decision that this is in the best interests of the child, but that equally a child should not be forced to remain in the local area if placement elsewhere is



considered more appropriate. We acknowledge the Government's attempts to address problems with the original text of the Bill. We recognise that the issue is likely to be a matter for debate once again when the Bill reaches the Commons. We hope that the Government will continue to take the constructive approach that it has done in the Lords when the debate continues in this House.

### ***Post-18 fostering***

We note the Minister's outline of what the Government is doing to pilot post-18 fostering arrangements, and we ask him to provide further information about the pilots, where they are being held and the issues that they are designed to clarify. We also note the Minister's comments about the possible ways of bringing forward legislation on this issue if it is required. Given that the opportunity for further legislation is likely to be limited in the near future, we recommend that the Government considers amending the Bill to provide for regulations in respect of post-18 fostering if the pilots require it, following the example of proposals for independent reviewing officers already in the Bill.

### ***Private fostering***

The Bill extends the time limit before provisions in the Children Act 2004 relating to the introduction of a registration scheme for private fostering arrangements cease to have effect. The Minister says that he wants more time for the voluntary notification system for private fostering to work effectively. Given the concerns about some of the children in this situation, we ask the Government to give its assessment of the numbers of children in private fostering arrangements, to set out how it intends to increase levels of notification, and to explain its criteria for assessing whether the voluntary system is working or not. The Bill would allow another three years for a registration system to come into being. If it becomes apparent before then that the voluntary notification system is not operating effectively, the Government should immediately bring forward a registration scheme, having put in place the necessary arrangements in advance.



# 1 Introduction

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1. The Government has been consulting over policy on the care of looked-after children since the publication of the *Care Matters* Green Paper in October 2006.<sup>1</sup> The consultation on the Green Paper led to the White Paper *Care Matters: Time for Change* in June 2007<sup>2</sup>, and various working groups were then established by the Government to shape proposals further. As part of this process, Children and Young Persons Bill [Lords] was introduced earlier this session to implement changes which required primary legislation.<sup>3</sup> In many ways this is an exemplary way for policy to be developed and implemented, and the Government is to be congratulated for a thorough and serious consultative process.

2. Following the creation of the Department for Children, Schools and Families in June 2007, this Committee came into being at the beginning of the current session. The focus of the new department is to secure “integrated children’s services and educational excellence”.<sup>4</sup> Following the example of our predecessors on the Education and Skills Committee, who did take a close interest in children’s services issues following the introduction of *Every Child Matters*, we felt that it was important from the outset for us as a Committee to look at the broad scope of children’s issues for which the new department has responsibility. We therefore decided that, as the Bill had begun its passage through Parliament in the House of Lords, it would be useful for us to examine the provisions of the Children and Young Persons Bill in advance of its consideration in the Commons. We also decided to hold a wider ranging inquiry into the care provided for looked-after children, and we will begin taking evidence in that inquiry shortly.

3. We are publishing this report and the associated evidence in large part to assist the House of Commons in its consideration of the Bill. In the following chapters we comment on a number of aspects of the Bill, but we do not comment on every issue that has been raised with us. We hope our colleagues will use both the report and the evidence that informs it in debates on the Bill in this House. References to clauses in the Bill are to the Bill as amended in Committee (on recommitment).<sup>5</sup>

4. We received 18 memoranda in this inquiry, and held one oral evidence session with Kevin Brennan MP, Parliamentary Under-Secretary of State for Children, Young People and Families at the Department for Children, Schools and Families. We are grateful to all those who contributed.

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1 *Care Matters: Transforming the lives of Children and Young People in Care*, Cm 6932, DfES, October 2006.

2 Cm 7137

3 Children and Young Persons Bill [HL], HL Bill 8 (2007-08), introduced on 14 November 2007.

4 <http://www.dcsf.gov.uk/aboutus/>

5 HL Bill 32.

## 2 Social work services

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5. The Bill will allow local authorities to contract out responsibility for all or part of services for young people to “a provider of social work services”, which will be a body corporate, but which cannot be a local authority.<sup>6</sup> On this proposal, NCH told the Committee:

“It is important to recognise that the proposal for independent Social Care Practices (SCP) stems from a desire to tackle many of the perceived weaknesses that the current social work system has when it comes to placing the needs of the child at the centre of all that it does [...]. While there may be potential benefits of SCPs, we need to acknowledge that change does not always bring better outcomes. We share many of the same concerns as the LGA regarding the development of SCPs. For example, SCPs will restrict a local authority’s flexibility in allocating resources and introduces yet another layer of bureaucracy to the system. Furthermore, there is no evidence that SCPs will resolve the issues of recruiting and retaining social workers, or why this model is better than empowering foster carers or key workers in children’s homes who are already much closer to the children and young people.”<sup>7</sup>

The London Borough of Sutton expressed views on similar lines.<sup>8</sup>

6. The Minister told us that the provisions in the Bill were designed to allow arrangements to be piloted over the next five years, aiming to see if providers of social work services would introduce smaller flexible teams akin to GP practices bringing greater continuity of personnel in providing services to children:<sup>9</sup>

“[...] we thought that it was right to allow in the pilot provision by private sector providers to see if that gave any new energy to the pilot scheme. There is £6 million over the next five years. The pilots will run for two years and then will continue to run while they are evaluated. The evaluation will look very much into the question of whether they have provided a better service and whether they are a sustainable model that could be more generally extended to other local authorities.”<sup>10</sup>

7. The Minister also mentioned that there were other pilots operating that did not need legislation:

“These involve local authorities looking at new ways of working and remodelling social work teams within the structure that is there at present. We are hoping to have a clearer picture in a few years’ time that may well mean that in 10 years we will have a much more diverse set of models of how social workers work with children and young people.”<sup>11</sup>

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6 Clauses 1 to 6.

7 Ev 59

8 Ev 50

9 Q 11

10 *ibid*

11 *ibid*

8. We asked him about whether small social care providers would have the capacity to work in an appropriately integrated way with criminal justice, health, social care and education services. He told us:

“I recognise the point, which has been made during the development of these proposals. That is the very reason for running a pilot in six local authorities [...] our hope is that if the pilots work, it will be overcome by a reduction in the complexity of the social care work force, by working within a small team with a bit more flexibility and independence, by the ability to do different, out-of-hours work, and by sharing practice among a small team. That may well overcome the problem, and that is why we are piloting the scheme.”<sup>12</sup>

9. A concern that was put to us in evidence was that the service from some private care providers might be less reliable for the long term than other provision. The Adolescent and Children’s Trust (TACT) told us:

“While TACT supports the general principle of commissioning social work practices, we have specific concerns over the role of Private Equity firms’ involvement in this sector. Unlike charities, social enterprises and companies limited under certain guarantees, private equity firms have a single overriding objective to maximise financial returns for their backers. As an ethos, we find this to be incongruous in the child social care sector, yet private equity firms have the resources to operate and grow in a market far more rapidly than their competitors. Last year saw the collapse of the private equity run children’s residential and educational provider, Sedgemoor, a situation that could be easily replicated in commissioned social work practices to the great detriment of the children and young people dependent on their care and professional diligence.”<sup>13</sup>

10. We asked the Minister whether the Bill provided safeguards against a private provider withdrawing provision at very short notice. He told us:

“[...] we are strengthening the inspection regime to make sure that there is a transition in relation to pulling the plug on a home in that way. Within the Bill itself, there is no particular clause in relation to that, but what we are broadly doing is strengthening the level of inspection for care homes that are either in the private sector or council care homes.”<sup>14</sup>

11. When challenged on whether it was the role of the inspection regime to guard against these problems, the Minister said that:

“Children’s homes are regulated by Her Majesty’s Chief Inspector. They are supposed to provide a written application for cancellation of their registration to the inspectorate, and they should give at least three months’ notice of the proposed date of closure. Obviously, that is a matter that we have to look at very closely now with

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12 Q 13

13 Ev 19, para 5

14 Q 9

Ofsted to see whether we can learn lessons to ensure that people are not left high and dry in the way they were in [the Sedgemoor] case. That work is in progress.”<sup>15</sup>

12. We welcome the provision in the Bill on piloting social work practices. Care needs to be taken, however, to ensure that the pilots provide sufficient information to enable the Department to judge whether this is an initiative that could be introduced more widely. Our main concern is that continuity and stability of service should be maintained regardless of who is the provider. The architect of the proposal, Professor Julian Le Grand of the LSE, acknowledges that it is breaking new ground:

“A lot of people object, some people approve, although there’s actually very little evidence either way [...]. But we felt there was enough theory and practice to suggest this was an experiment worth trying.”<sup>16</sup>

**The pilots need to fill the evidence gap on social work practices. It is vital that they are properly evaluated and that they are not rolled out unless there is clear evidence that they will provide the essential continuity and stability for looked-after children.**

13. On a related issue, **we do not see inspection as the answer to concerns about services being withdrawn at short notice by a private provider, as in the case of the Sedgemoor children’s homes. We note the Minister’s point about Ofsted being the registration authority for homes, but in that case and with the proposed social work practices, it seems to us that contract terms or some other form of regulation would be more appropriate ways of controlling these problems. Throughout our evidence, continuity and stability for looked-after children are emphasised as key, and therefore some sort of safety net is needed.**

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15 Q 10

16 *Children & Young People Now*, 5–11 March 2008, p 15, The grand agitator.

## 3 Education

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14. In *Care Matters: Time for Change*, the Government highlights the low average educational attainment of children in care, and emphasises its determination to provide improved opportunities and support. The Bill contains provision on a number of education issues.

### Higher Education bursaries

15. The White Paper proposed young people in care who go on to university should be provided with a bursary of “a minimum of £2,000” to tackle the financial constraints that students from care backgrounds face compared to other students.<sup>17</sup> The Minister explained that bursaries were being introduced specifically for HE as research showed looked-after children who do reach higher education incur higher debt than other students. This is £2,000 on average, and so the bursary will be £2,000, paid in instalments across the period of the course.<sup>18</sup> He added that “the assumption behind [the bursary] [...] is that it would lead to a 10% increase” in the number of young people in care who go on to university.<sup>19</sup>

16. A question that was raised with us was: why is there no similar provision of a bursary for those going into further education, vocational training or apprenticeships? The Foyer Federation expressed concern that the bursary was only for higher education “and does not apply to further education and non-academic choices such as A-levels, BTECS and NVQs.”<sup>20</sup> NCH said:

“NCH is of the view that such support should not be restricted to higher education and that financial support should also be made available for further education provision. This is of particular importance given that 30% of care leavers aged 19 were not in education, employment or training.”<sup>21</sup>

17. The Minister told us:

“[...] some of the debates and consultation that have gone on in the other place have led us to wanting to cogitate a bit further on what more we can do around training to ensure that that is not missed out in the equation here. Perhaps I will have an opportunity to say more about that at a later stage of the Bill. Certainly it is a pertinent point that has been raised, and one that we are looking further at as we speak.”<sup>22</sup>

**18. We welcome the Minister’s comments that he is giving consideration to increased support for those undertaking other education and training and not just those in**

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17 *Care Matters: Time for Change*, para 6.73; Clause 19 of the Bill.

18 QQ 25–26

19 Q 25

20 Ev 46, para 2.4

21 Ev 62, para 12.2

22 Q 27

**higher education. We recommend that a broader bursary system is introduced for looked-after children in post-16 education and training.**

### Designated staff member

19. The Bill puts on a statutory footing existing guidance that schools should designate a staff member to have responsibility for the educational achievement of looked-after children.<sup>23</sup> The Minister said that there were difficulties in putting it on the face of the Bill, but confirmed to us that the dedicated staff member must always be a teacher.<sup>24</sup>

20. This provision will apply to all maintained schools. The Minister confirmed that this does not include Academies, as they are classed as independent state-funded schools,<sup>25</sup> but that did not mean that they would not have to provide such a teacher:

“[...] we will make it a requirement in future [...] as part of an agreement for any future Academies that they will have a designated teacher for looked-after children. That will be written into every agreement with the Academies. The vast majority of the existing Academies [...] have a designated teacher. We are confident that, without having to legislate to force them to do that, we can persuade other Academies that the small number that do not—I believe it is a tiny minority—should have a designated teacher. My understanding, therefore, is that it should be possible to achieve that without having to put it on the face of the Bill.”<sup>26</sup>

**21. We consider that the requirement that all schools must have a designated staff member with responsibility for the educational achievement of looked-after children is an important statement of intent, and we support it. In particular, we welcome the confirmation that the designated staff member must always be a teacher.**

22. Given the importance we place on this requirement, we consider it unfortunate that the Government has not taken the opportunity to apply the legislation to Academies as well as to maintained schools. The Minister made clear the Government’s intention to apply it through other means to future Academies, but there remains the issue of existing Academies. **We expect all existing Academies to designate a teacher to have responsibility for the educational achievement of looked-after children. If the Minister’s voluntary approach does not result in every Academy making such an appointment we expect him to reconsider his decision to exclude Academies from the legislation.**

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23 Clause 18

24 Q 22

25 Q 19

26 Q 20



## 4 Representation

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23. The Bill amends the functions of independent reviewing officers (social workers who chair all looked-after children’s statutory review meetings, from which position they can identify any problems with the child’s care, or with the care plan).<sup>27</sup> The White Paper said that:

“As well as [...] reforms at the strategic level, it is equally important to ensure good quality and consistent individual needs assessment, care planning and service provision for each individual child [...] for children in care, all [...] support must be grounded in a high quality assessment of their needs and a care plan which is based on those needs.”<sup>28</sup>

Evidence to us from the CAF/CASS Young People’s Board indicated that young people in care thought that the role of the independent reviewing officer (IRO) was extremely important and felt that IROs should be committed to involving the young person and making the care plan work.<sup>29</sup>

24. The Minister told us that:

“There is a great deal of concern within the system that the independent reviewing officer function is not yet working properly and strongly enough. There is recognition within the system that we have to make sure that there is better care planning and that the voice of the child is more effectively represented within the system.”<sup>30</sup>

25. He also commented on the debate on whether IROs should remain within local authorities or should be made independent of them, saying that the evidence was mixed:

“We decided in the Bill to leave independent reviewing officers within the remit of the local authority, although they can swap. An independent reviewing officer could come from a neighbouring local authority. The provision could be swapped if we wanted to strengthen the Chinese wall and the role, which we encourage. We have done that because children and young people, independent reviewing officers and local authorities have told us that having someone within the structure and who is well connected with it can be more effective at good care planning for the individual child.”

He added that

“if that does not work and we do not have an improvement in care planning for young people or on the ground in the stability of care plans and listening to the voice of the child, there is power under the Bill in future to take independent reviewing

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27 Clauses 9 to 13

28 *Care Matters: Time for Change*, para 1.29

29 Ev 21, para 5

30 Q 36

officers out of local authorities completely and put them into a national body. That could come under the remit of the Children and Family Court Advisory and Support Service or a completely new body, but we thought that it was right to continue to make the system work by strengthening the role of the independent reviewing officer at this stage.”<sup>31</sup>

26. Amongst those submitting evidence on these issues of representation were those who were concerned that the Government had not taken sufficient account of submissions to the *Care Matters* consultation proposing independent advocacy on behalf of looked-after children.

27. The Children’s Advocacy Consortium argued this point, noting that it and others have sought an extension of independent advocacy in the Bill by “Extending the statutory right to advocacy to the care planning and review process; and requiring providers of residential care and fostering services to ensure that children are provided with an independent advocate”. It argues that the Government confuses informal advocacy (as provided by parents and social workers) with professional advocacy, defined as “about empowering children and young people to make sure that their rights are respected and their views and wishes heard at all times.” The Consortium adds that “It is our view that the *expression* of the child’s views in the decision making process by those who are responsible for the outcome of that process is quite distinct from the *representation* of the child’s wishes and their rights by a professional who is independent of the system.”<sup>32</sup> The group Every Disabled Child Matters made similar points.<sup>33</sup>

28. When asked why the Government had not adopted proposals on advocacy, the Minister answered:

“We wonder whether that would be the most effective way to improve the service to the child and to improve the way in which care planning takes place for that child... We have to empower the people who work around the child and ensure that they focus on the thoughts, wishes, feelings and the voice of the young person, rather than creating a national system of advocates, which some organisations who specialise in advocacy would like to see. We wonder whether that would really produce what we want: better outcomes for these young people. The right way to achieve that is to focus on strengthening the system.”<sup>34</sup>

29. We asked the Minister if advocacy might be required in cases where a child has difficulty in expressing themselves or has a serious disability. He told us:

“In a case like that, it seems to me that it would. I am unable to judge an individual case, but if a young person is unable to effectively express themselves without professional advocacy or assistance of some sort, it would quite clearly be good practice for an advocate to be brought in. There are many disabled children in care. I do not think that that point could be expressed within the Bill; but in guidance, it will

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31 *ibid*

32 Ev 24–25

33 Ev 38

34 Q 39

be clear that the thrust of the reform that we are introducing is that, if a child's voice cannot be heard because of some disability, there should be a process by which it can be."<sup>35</sup>

30. It is clear from all the evidence that a truly independent voice is needed for all looked-after children to ensure their needs and wishes are properly considered and acted upon in the care process. **The Minister told us of his concern that the independent reviewing officer system was not yet working effectively, and the Government acknowledges this in the Bill by making provision for the Secretary of State to establish a body to be the employer of independent reviewing officers to provide greater independence if matters do not improve. The Government needs to be explicit about how it will judge if this change is needed, and how long it will allow present circumstances to continue without perceived improvement.**

31. There remains the question of whether formal advocacy arrangements should be put in place for looked-after children. **If the new arrangements for independent reviewing officers do not improve the way the system works, the Government should look again at independent advocacy and whether there is a need to replace the neutral independence of the IRO with active advocacy on behalf of the child or young person.**

## Visitors

32. The Bill makes provision for looked-after children to be visited by a representative of the local authority who should ensure that they receive 'appropriate advice, support and assistance' if they request it, and by independent visitors whose duty it is to 'visit, befriend and advise the child'.<sup>36</sup> These roles already exist, but the Bill will extend availability of independent visitors from children in care who have no contact with their parents to all children in care who would benefit from such a relationship.<sup>37</sup> **We welcome the extension of the provision of independent visitors to all looked-after children.**

33. These two individuals together with others such as the IRO, social worker, designated teacher and possibly a personal advisor form part of a substantial group of adults designed to assist each child. The concern is that there are too many people involved, causing fragmentation of functions and causing confusion for the children affected. *What Makes The Difference?* and the National Leaving Care Advisory Service in their joint memorandum to the Committee said in relation to the local authority visitor:

"[...] we believe that, in order for this to be of maximum benefit, these visitors should be the child's lead professional, and must be known to the child [...]. Good relationships will provide the attachment that these young people need to succeed. However young people have told us how difficult they find it to form these relationships as a result of the large number and high turnover of professionals who deal with them [...]. We are concerned that local authorities may assign people as

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35 Q 41

36 Clauses 14 to 17

37 *Care Matters: Time for Change*, para 7.36

visitors who do not play any other role in the child's life which would both limit the value of these visits and introduce yet another professional into a child's life."<sup>38</sup>

34. We asked the Minister about the need for a child or young person in care to have one core relationship. He said:

"[...] a key relationship for most young people in care would be with their foster carer and for those in a children's home, with the manager or the people who work with them in the children's home. You are absolutely right that there are a number of relationships with adults, and the whole purpose of the Bill and of the Care Matters agenda is to try and stabilise that and to give more stability to those relationships".<sup>39</sup>

He added that provisions on independent visitors were being changed not "because we decided that it would be a good idea, but because children and young people themselves said that they welcomed it."<sup>40</sup>

35. We recognise the importance for looked-after children of stable relationships with adults, and we also recognise that the various people mentioned—the so-called 'team around the child'—have different roles. However, as in all these issues, the welfare of the child or young person should be paramount. **Every looked-after child should have one key individual to whom he or she can turn, and wherever possible the child should be entitled to say which individual should perform that role.**

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38 Ev 72

39 Q 43

40 Q 45

## 5 Placements

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36. Clauses 7 to 10 of the Bill as introduced made provision about supporting children placed with family and friends, requiring children to be placed in a local authority's own area wherever possible, for that accommodation to be near the child's school and for a child's case to be reviewed whenever the authority is considering a change in accommodation for a child who is fostered or who is in a children's home. The provisions gave rise to some concern, both in debate in the Lords and in evidence to us.

37. The Children's Services Development Group, a consortium of specialist children's services providers, told us that there was a possibility under the terms of the Bill that children with acute and complex needs would be placed in inappropriate provision near to their homes rather than more in suitable provision further away, and might also be unduly influenced by the costs involved.<sup>41</sup> On the other hand, the Fostering Network and the Every Disabled Child Matter group were concerned that the Bill did not impose a duty on local authorities to make sufficient and diverse quality placements available in their local areas, and that authorities might therefore continue to make out of authority placements routinely.<sup>42</sup>

38. At Committee stage in the Lords the Government came forward with a series of amendments to address these issues.<sup>43</sup> We asked the Minister to explain what the amendments were intended to achieve. He told us:

“The reason that those clauses have been withdrawn and replaced by a single new clause, as well as other changes to the schedule, is that it became apparent that the tensions between the different duties and factors that come into play when making a placement decision about a child may not have been clear enough in the previous clauses. We wanted to take the opportunity, having had the Bill scrutinised and given it some more thought, to be absolutely clear about that.

“Perhaps the easiest way for me to try to explain this [...] is that where the state is getting involved in family life in this way and decisions are being taken about whether to take a child away from their family and place them somewhere else, we must make it clear what the principles involved are. There are phrases in the Bill that have a technical meaning, which I will try to explain.

“The first phrase in the Bill is ‘consistent with the child's welfare’. When a local authority has to take the decision on whether it is safe to allow a child to remain with their parents—it must be our assumption that the starting point is that a child should live with their own parents—they have to decide whether it is consistent with the child's welfare to do so. What that means, technically, is whether it is safe for that child to stay with their parents. If it is safe, the child should continue to live with their parents. In layman's terms, that is what it means.

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41 Ev 33, para 24

42 Ev 42, para 12; Ev 38, para 26.

43 Principally what is now clause 8 of the Bill.

“However, if the local authority decides that it is not safe for the child to live with their parents, there is a different test when they decide where to place that child. The overarching structure of that test is the phrase stating that they need to place the child in order to ‘safeguard and promote the child’s welfare.’ That means, in law, something very different from ‘consistent with the child’s welfare.’ To ‘safeguard and promote the child’s welfare’ means that they should attempt to place the child where they will flourish—where is the best place for that child to flourish? That is a very different test. It is not up to the state to decide whether my child would be better off living with your family, because they would flourish there; it is up to the state to decide whether my child is safe remaining with my family.

“Once the state takes charge as the parent, it is the state’s responsibility and we are re-stating that. That is what we are doing by tabling this new clause; we are re-stating that, at that point, it is the job of the state to place the child where that child will flourish. Then we are underneath that overarching roof, putting in various rafters that hold that roof up [...]

“First and foremost, placing the child with family or friends should be taken into consideration, and relatives in particular, if possible, because we take the position that that is a responsibility that the state should take into account [...] but there is not an absolute duty to do so. Beyond that, you need to look at factors like whether they can be placed within the authority. In other words, can you place them within their area? Can you place them near their school? Can you place them in such a way that it will not be disruptive to them? [...]

“In considering whether the child should go back to their parents, the test is stronger and quite rightly so in relation to the state’s involvement in family life. That test is: is that child safe living with their parents? If the answer to that question is yes, they go back to their parents even if it is a dodgy area. The state does not have the right to pick and choose who the parents are.

“Having said that, if it is not safe and the local authority is considering a placement there is a duty to consider whether they can place the child with family and friends and that is a stronger duty than the other duties. However, it is entirely consistent that they might decide, given that the test in this case is to safeguard and promote the child’s welfare, that the aim would be better served by placing the child somewhere out of that area. It is completely open to the local authority, in exercising that judgment, to take that decision.”<sup>44</sup>

39. We note the Minister’s comments that placement with family and friends is the first option to be considered if a child cannot remain with his or her parents, but that there is no duty to place a child with family or friends. **The welfare of a child and his or her ability to thrive must always be paramount, but, given that, we expect the benefits of a placement with family and friends to be considered seriously before other options are chosen.**

40. Since our meeting with the Minister, the Government has proposed a further amendment, to be considered at Report stage in the Lords, to provide explicitly that local authorities make available appropriate accommodation for the children they look after in their area. In particular, the children that a local authority will be under a duty to accommodate within its area are those “whose circumstances are such that it would be consistent with their welfare for them to be provided with accommodation that is in the authority's area”.<sup>45</sup> We understand this to mean that no child should be placed outside his or her home area without a positive decision that this is in the best interests of the child, but that equally a child should not be forced to remain in the local area if placement elsewhere is considered more appropriate.

**41. We acknowledge the Government's attempts to address problems with the original text of the Bill. We recognise that the issue is likely to be a matter for debate once again when the Bill reaches the Commons. We hope that the Government will continue to take the constructive approach that it has done in the Lords when the debate continues in this House.**

### Post-18 fostering

42. The Howard League for Penal Reform<sup>46</sup> and the Fostering Network<sup>47</sup> both express disappointment that, despite its being discussed in the *Care Matters* process, there is no provision in the Bill on the issue of enabling young people to stay with former foster carers between the ages of 18 and 21. The Fostering Network told us that while authorities may make informal arrangements to continue fostering beyond 18 “there are no guarantees of any support for the foster carer or young person, there may be no training available, there are no agreed standards that govern the provision of this service, and often there will be a lack of clarity concerning financial support. In addition some local authorities do not even provide this option at present.”<sup>48</sup>

43. The Minister said that arrangements were being piloted to make it easier for young people to stay with their foster carers between 18 and 21, given that young people generally leave home at the age of 24:

“They are legally adults when they reach the age of 18. Clearly there are complexities around the financial implications for all concerned in doing that. It already happens, but it is reported back to us that it is very tricky. Sometimes local authorities wonder whether what they are doing is entirely legal. So we are piloting arrangements, because we want to be able to allow young people, who have been looked-after up to the age of 18, to have more permanency and stability and to stay with foster carers if they can up to the age of 21.”<sup>49</sup>

44. We asked if legislation would be required to implement changes. The Minister told us:

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45 New clause ‘General duty of local authority to secure sufficient accommodation’.

46 Ev 47

47 Ev 42

48 *ibid*, para 5

49 Q 54

“It may do, but that depends on what evidence comes out of the pilot. We need to understand more clearly the various implications of allowing young people to stay with their foster carers up to 21, in terms of benefits and taxation and the legal status of that relationship between the foster carer and the young person. We have powers to regulate the carers of 18 to 21-year-olds under existing legislation, or under the Health and Social Care Bill if it proves necessary. It may be possible to do it through secondary legislation.”<sup>50</sup>

**45. We note the Minister’s outline of what the Government is doing to pilot post-18 fostering arrangements, and we ask him to provide further information about the pilots, where they are being held and the issues that they are designed to clarify.**

46. We note the Minister’s comments about the possible ways of bringing forward legislation on this issue if it is required. **Given that the opportunity for further legislation is likely to be limited in the near future, we recommend that the Government considers amending the Bill to provide for regulations in respect of post-18 fostering if the pilots require it, following the example of proposals for independent reviewing officers already in the Bill.**

## Private fostering

47. The Bill extends the time limit before provisions in the Children Act 2004 relating to the introduction of a registration scheme for private fostering arrangements cease to have effect.<sup>51</sup> NCH told us:

“From our experience supporting private foster carers, many of the children being cared for are very vulnerable having limited or no contact with their parents. NCH is of the view that more needs to be done both at a central and local level to increase the number of registered private foster carers. This would help prevent these vulnerable children slipping through the net. There could be significant merits to introducing a more formal requirement to register private foster carers. This is an area that must be sufficiently addressed as part of the Care Matters reforms.”<sup>52</sup>

48. The Minister told us:

“The reason that we have not [introduced the registration system] is that we are convinced that we should give more time to allow the notification system to work. There are only two years of statistics so far available within the notification system, and to give it an opportunity to work, we think that it needs more time [...]. We want to ensure that we have enough evidence, because it is a significant area of regulation to get into, where you require prior registration of any private fostering arrangement.”<sup>53</sup>

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50 Q 55

51 Clause 32

52 Ev 63, para 16.2

53 Q 48



49. As the NCH told us, some children in private fostering arrangements are amongst the most vulnerable but may not be known to social or other services. The official figure for private fostering arrangements that have been notified is 1,250. BAAF says that some estimates suggest that there may be around 10,000 privately fostered children. **The Minister says that he wants more time for the voluntary notification system for private fostering to work effectively. Given the concerns about some of the children in this situation, we ask the Government to give its assessment of the numbers of children in private fostering arrangements, to set out how it intends to increase levels of notification, and to explain its criteria for assessing whether the voluntary system is working or not. The Bill would allow another three years for a registration system to come into being. If it becomes apparent before then that the voluntary notification system is not operating effectively, the Government should immediately bring forward a registration scheme, having put in place the necessary arrangements in advance.**

# Conclusions and recommendations

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## Social work services

1. The pilots need to fill the evidence gap on social work practices. It is vital that they are properly evaluated and that they are not rolled out unless there is clear evidence that they will provide the essential continuity and stability for looked-after children. (Paragraph 12)
2. We do not see inspection as the answer to concerns about services being withdrawn at short notice by a private provider, as in the case of the Sedgemoor children's homes. We note the Minister's point about Ofsted being the registration authority for homes, but in that case and with the proposed social work practices, it seems to us that contract terms or some other form of regulation would be more appropriate ways of controlling these problems. Throughout our evidence, continuity and stability for looked-after children are emphasised as key, and therefore some sort of safety net is needed. (Paragraph 13)

## Support for post-16 education and training

3. We welcome the Minister's comments that he is giving consideration to increased support for those undertaking other education and training and not just those in higher education. We recommend that a broader bursary system is introduced for looked-after children in post-16 education and training. (Paragraph 18)

## Designated staff member

4. We consider that the requirement that all schools must have a designated staff member with responsibility for the educational achievement of looked-after children is an important statement of intent, and we support it. In particular, we welcome the confirmation that the designated staff member must always be a teacher. (Paragraph 21)
5. We expect all existing Academies to designate a teacher to have responsibility for the educational achievement of looked-after children. If the Minister's voluntary approach does not result in every Academy making such an appointment we expect him to reconsider his decision to exclude Academies from the legislation. (Paragraph 22)

## Representation

6. The Minister told us of his concern that the independent reviewing officer system was not yet working effectively, and the Government acknowledges this in the Bill by making provision for the Secretary of State to establish a body to be the employer of independent reviewing officers to provide greater independence if matters do not improve. The Government needs to be explicit about how it will judge if this change is needed, and how long it will allow present circumstances to continue without perceived improvement. (Paragraph 30)

7. If the new arrangements for independent reviewing officers do not improve the way the system works, the Government should look again at independent advocacy and whether there is a need to replace the neutral independence of the IRO with active advocacy on behalf of the child or young person. (Paragraph 31)
8. We welcome the extension of the provision of independent visitors to all looked-after children. (Paragraph 32)
9. Every looked-after child should have one key individual to whom he or she can turn, and wherever possible the child should be entitled to say which individual should perform that role. (Paragraph 35)

### Placements

10. The welfare of a child and his or her ability to thrive must always be paramount, but, given that, we expect the benefits of a placement with family and friends to be considered seriously before other options are chosen. (Paragraph 39)
11. We acknowledge the Government's attempts to address problems with the original text of the Bill. We recognise that the issue is likely to be a matter for debate once again when the Bill reaches the Commons. We hope that the Government will continue to take the constructive approach that it has done in the Lords when the debate continues in this House. (Paragraph 41)

### Post-18 fostering

12. We note the Minister's outline of what the Government is doing to pilot post-18 fostering arrangements, and we ask him to provide further information about the pilots, where they are being held and the issues that they are designed to clarify. (Paragraph 45)
13. Given that the opportunity for further legislation is likely to be limited in the near future, we recommend that the Government considers amending the Bill to provide for regulations in respect of post-18 fostering if the pilots require it, following the example of proposals for independent reviewing officers already in the Bill. (Paragraph 46)

### Private fostering

14. The Minister says that he wants more time for the voluntary notification system for private fostering to work effectively. Given the concerns about some of the children in this situation, we ask the Government to give its assessment of the numbers of children in private fostering arrangements, to set out how it intends to increase levels of notification, and to explain its criteria for assessing whether the voluntary system is working or not. The Bill would allow another three years for a registration system to come into being. If it becomes apparent before then that the voluntary notification system is not operating effectively, the Government should immediately bring forward a registration scheme, having put in place the necessary arrangements in advance. (Paragraph 49)

# Formal Minutes

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**Monday 10th March 2008**

Members present:

Mr Barry Sheerman, in the Chair

Annette Brooke  
Mr David Chaytor  
Fiona Mactaggart

Andy Slaughter  
Mr Graham Stuart  
Lynda Waltho

***Children and Young Persons Bill [Lords]***

The Committee considered this matter.

Draft Report, proposed by the Chairman, brought up and read.

*Ordered*, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 49 read and agreed to.

Summary agreed to.

*Resolved*, That the Report be the First Report of the Committee to the House.

*Ordered*, That the Chairman do make the Report to the House.

*Ordered*, That embargoed copies of the report be made available, in accordance with the provisions of Standing Order No. 134.

*Ordered*, That memoranda be appended to the report.

*Ordered*, That the memoranda be reported to the House.

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[Adjourned till Wednesday 12 March at 9.15 am

# Witnesses

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**Wednesday 20 February 2008**

*Page*

**Kevin Brennan MP**, Parliamentary Under-Secretary of State for Children, Schools and Families, Department for Children, Schools and Families Ev 3

## List of written evidence

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1	Department for Children, Schools and Families (DCSF)	Ev 1: Ev 75
2	The Adolescent and Children's Trust (TACT)	Ev 19
3	Cafcass	Ev 21
4	The Children's Advocacy Consortium	Ev 24
5	The Children's Services Development Group (CSDG)	Ev 33: Ev 36
6	Christina Clarke	Ev 37
7	Every Disabled Child Matters (EDCM)	Ev 38
8	The Fostering Network	Ev 42
9	The Foyer Federation	Ev 46
10	The Howard League for Penal Reform	Ev 47
11	London Borough of Sutton	Ev 50
12	Dr Roger Morgan OBE, Children's Rights Director for England	Ev 51
13	National Children's Bureau (NCB)	Ev 56
14	NCH, the children's charity	Ev 58
15	Parents Against Injustice (PAIN)	Ev 63
16	Participation Works	Ev 64
17	Professor June Thoburn CBE, University of East Anglia	Ev 67
18	What Makes The Difference? (WMTD) and the National Leaving Care Advisory Service (NLCAS)	Ev 71

## List of Reports from the Committee during the current Parliament

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### Session 2007–08

First Special Report	Creative Partnerships and the Curriculum: Government Response to the Eleventh Report from the Education and Skills Committee, Session 2006–07	HC 266
Second Special Report	Special Educational Needs: Assessment and Funding: Government Response to the Tenth Report from the Education and Skills Committee, Session 2006–07	HC 298

# Oral evidence

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## Taken before the Children, Schools and Families Committee on Wednesday 20 February 2008

### Members present:

Mr Barry Sheerman, in the Chair

Annette Brooke  
Mr Douglas Carswell  
Mr David Chaytor

Mrs Sharon Hodgson  
Fiona Mactaggart

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### Memorandum submitted by the Department for Children, Schools and Families (DCSF)

1. Children should be supported in their families wherever possible, but a small number of children will need to be looked after by local authorities during their childhoods.

2. Programmes of work focusing on looked-after children have been in place for several years as a result of key reports such as the Utting Report (1997) and major initiatives such as *Quality Protects* (1998–2004). These initiatives focused on vulnerable children were developed further by the far reaching agenda for improving outcomes for all children first set out in the *Every Child Matters* Green Paper and developed further in the Children's Plan. Central to those programmes is the argument that better outcomes depend on the integration of universal services with targeted and more specialised help, and on bringing services together around the needs of the child and their family.

3. Most looked-after children spend short periods of time looked-after, so the care system should not be seen in isolation from wider children's services. The numbers of looked-after children have reduced in England in recent years, but rates of entry in care differ between localities, as does the quality of services. Of course, looked-after children access both specialist and mainstream services, so the challenge for reform is significant, and the wider changes mentioned above provide a strong basis for future improvement.

4. The *Care Matters* Green Paper provides a detailed analysis of the problems facing looked-after children and the service challenges ahead. While it would be simplistic to see the poor outcomes achieved by children in care simply as a failure of the care system, it is clear that children's experiences of care and of other services while they are in care do not always do enough to compensate for the harm they have previously suffered and, in some cases, compound it.

5. The *Care Matters* Green Paper can be accessed at:  
<http://www.dfes.gov.uk/consultations/downloadableDocs/6731-DfES-Care%20Matters.pdf>

6. A formal three month consultation followed publication on the Green Paper, including specific consultation events for children and young people. The Government published a summary of the consultation response in April 2007.  
<http://www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1406>

7. Four independent working groups were established to consider key questions posed in the Green Paper. Lord Herbert Laming, who led the Victoria Climbié enquiry, chaired a group looking at placement reform; Martin Narey, Chief Executive of Barnardos, chaired a group which explored the characteristics of the care population now and in the future; Dame Professor Pat Collarbone, of the Training and Development Agency, chaired a group looking at ways of ensuring that all looked-after children receive the best possible education in schools; and Professor Julian Le Grand, of the London School of Economics, chaired the fourth group, which explored the feasibility of the social work practice model. Reports from each of the working groups were published in June 2007, alongside the White Paper *Time For Change*.

8. The White Paper *Care Matters: Time for Change* was the culmination of this process, setting out the Government's firm proposals for future reform of the care system and services for children on the threshold of care, as well as the changes we wanted to introduce in other services in order to support improved outcomes for children in care. It is built on four central principles:

- uncompromisingly high ambitions for children in care;
- good parenting from everyone in the system;
- stability in every aspect of the child's experience; and
- the centrality of the voice of the child.

9. The White Paper can be accessed at: <http://www.dfes.gov.uk/publications/timeforchange/>

#### REFORMING THE LEGISLATION

10. The Children and Young Persons Bill is an essential part of the process of implementing Care Matters. It makes the necessary legislative changes to underpin implementation. It will:

- enable local authorities to test a different model of organising social care by delegating social work functions to “social work practices” and (following piloting) enable regulation of social work practices if pilots demonstrate success in improving outcomes;
- increase the focus on the transparency and quality of care planning and ensuring that the child’s voice is heard when important decisions that affect their future are taken, in particular by strengthening the role of the Independent Reviewing Officer (IRO);
- increase schools’ capacity to address the needs of children in care including placing the role of the designated teacher on a statutory footing and ensuring that children in care do not move schools, particularly in GCSE years, except in exceptional circumstances;
- ensure that young people (up to 18) are not forced out of care before they are ready by giving them a greater say over moves to independent living and ensuring they retain support and guidance as long as they need it; and
- improve the quality and stability of placements for children in care, limiting “out of authority” placements, securing higher placement standards and ensuring children in care in custody are visited regularly.

11. The Children and Young Persons Bill can be accessed at: [www.dcsf.gov.uk/publications/childrenandyoungpersonsbill](http://www.dcsf.gov.uk/publications/childrenandyoungpersonsbill)

12. Once regulations associated with the new legislation have been laid, we will also take the opportunity to update and consolidate the nine volumes of statutory guidance for local authorities covering their duties under the Children Act 1989, as amended by the current Bill and other legislation that has been passed since the guidance was issued in the early 1990s. Volume one has recently been revised and reissued, and the remaining volumes will be revised by the end of 2009. We are also reviewing the National Minimum Standards for children’s social services and will be bringing those into line with the new regulatory framework.

#### ACHIEVING CHANGE ON THE GROUND

13. Essential though this regulatory reform is to our programme, it is only part of the picture. The analysis in Care Matters is clear—while there are some excellent initiatives in some areas of the country, and many dedicated professionals working to improve services for children who are looked-after, nobody does everything well. The challenge is to achieve greater consistency of approach and of quality. Many challenges do not lend themselves to a legislative solution.

14. We are well aware of the workforce challenges in the children’s social care workforce and how damaging social worker turnover and ineffective basic practice can be for children. Our forthcoming children’s workforce strategy will include specific proposals to improve the retention and recruitment, as well as innovative approaches to improving the skills of the workforce.

15. Services for looked after children need to be planned as part of a wider strategy on children’s services, so that local authorities and their partners understand more fully the spectrum of needs of the population they serve, and commission the right services for them. The challenge of securing the right multi agency support for vulnerable children remains an issue in many areas, despite some really excellent working.

16. The main challenge now is therefore implementation. We have given local authorities their funding allocations for the next three years, which include the change fund to support Care Matters reforms. We are developing an implementation plan to be launched in March which will focus on developing a partnership approach to delivery of Care Matters, working with key partner organisations in local government and the NHS, as well as the voluntary sector. The implementation plan will be focused on the practicalities of ensuring that we work together to achieve noticeable and lasting change, learning from the areas that are doing things well, and ensuring that those who are struggling improve. Accompanying the plan will be a range of toolkits and other materials to support local areas in assessing their services against the approach set out in Care Matters and developing a local change programme which helps them to use their change fund to tackle the areas they identify as priorities for them. The implementation plan will also include an update on the various pilots that we are supporting following Care Matters, and further information about the planned national stocktake. Once the plan has been launched, we will run regional conferences for those responsible for delivery in local authorities and health bodies to disseminate the messages about delivery.



*Witness: Kevin Brennan MP*, Parliamentary Under-Secretary of State for Children, Schools and Families, Department for Children, Schools and Families, gave evidence.

**Chairman:** Good morning, Minister.

**Kevin Brennan:** Good morning, Chairman.

**Q1 Chairman:** I apologise for the delay caused by the late sitting last night, but we are quorate, we are here, and we are very keen to have this session. I welcome you, Minister, to what is, I think, your first appearance before a Select Committee. We are on a learning curve, as you are in your new Department, becoming familiar with the children and families part of our remit. You have come in with several advisers, so would you tell us who you have brought with you, just to give us a flavour of the range of responsibilities?

**Kevin Brennan:** Yes. Thank you, Chairman, for the opportunity to come along and give evidence to the new Select Committee. You are right: it is my first appearance before a Select Committee, having been on the other side of the table. With me today, although they are not appearing before you to give evidence but are here in support, are the Bill team behind the Children and Young Persons Bill, which, as you know, is currently on its travels through the House of Lords.

**Q2 Chairman:** Slightly delayed, we hear.

**Kevin Brennan:** Slightly delayed. Yesterday, the Bill went back into Committee, but the Lords have now completed their Committee Stage and it will now go on to Report Stage. As you know, Chairman, there is a separate Third Reading stage in the Lords. So it will be a little bit of time before it gets to us down this end of the building—probably after Easter now.

**Q3 Chairman:** In terms of who is sitting behind you in the Bill team, are they all from your Department?

**Kevin Brennan:** Yes. Everyone here is from my Department. We have representatives from communications, from the legal side, from the children-in-care side and from my private office.

**Q4 Chairman:** Right. Thank you.

Normally, we give a Minister the opportunity to say a few words to open the discussion. Can I preface that by saying that we particularly wanted to look at this Bill because this is a new Committee scrutinising the new Department, and we wanted to put down a marker that a Children Bill is coming through and we want to look at it seriously?

On the face of it, it looks like the perfect example of the way to handle a piece of legislation: a major consultation, a Green Paper, more consultation, a White Paper and then a Bill. Some of us believe that starting in the House of Lords gives an advantage, because there is some very broad experience on these issues. That is the point that we are at.

Now, it is over to you, if you do wish to say a few words. Some Ministers prefer to go straight into questions.

**Kevin Brennan:** I shall respond to what you said as though to a question. You are right that this kind of legislation in particular benefits from proper scrutiny, from having gone through that sort of process. The first Bill that I was a part of after the

2001 election became the Adoption and Children Act 2002, which partly feeds into the agenda around this Bill. That went through the process of a Special Standing Committee and very rigorous, cross-party scrutiny.

You are right that this Bill has been through the *Care Matters* Green Paper, which then informed the *Care Matters* White Paper and is now informing the Bill itself and the broader Care Matters implementation plan.

I would emphasise to the Committee that the Bill is the tip of the iceberg of the agenda around children and young people who are looked-after. It is only part of the implementation plan. There will come with it—as you know, Chairman, and I think you are planning to look at it in more detail later—a much broader Care Matters implementation plan, taking the issues from the White Paper that do not require legislation but will be part of the programme over the next few years.

To set the context for the Committee, there are some key statistics. There are 60,000 children and young people in care at any given time in England—the Bill extends to England and Wales, so you could add on roughly 5% if you wanted the figures for both. During any year, 85,000 children and young people pass through the care system, because the majority of youngsters are not in care for more than 12 months. In fact, 40% are only in care for less than six months. It is not a static population. Some 62% of those in care are there due to abuse or neglect; 45%—that is four times the average for the children's population as a whole—have some mental health issue; 71% are in foster care; and 13% in residential care. Some 12%—I know, Chairman, with your background you will be interested in this—get grades A to C at GCSE, compared to five times that number for the school population as a whole, and 6% end up in higher education at the age of 19. A quarter of adult prisoners have been in care, and girls are three times more likely than the general population to get pregnant if they have been in care between the ages of 15 and 17.

The Care Matters agenda is about trying to do something about those outcomes for these children and young people who become the responsibility of the state, when we take on the role of corporate parenting.

**Q5 Chairman:** Thank you, Minister. Given that background, a strong strand in the Bill is that it fits into other big changes in thinking across the piece in the Government approach. I am thinking here of the David Freud recommendations and their influence in terms of the unemployed and people with long-term unemployment and on sickness benefit and giving the private sector a role over a long time, perhaps up to three years, and paying it on the basis of how successful it is at keeping people off the unemployment register. Of course, that leads to a look at the full circumstances of why a person is long-term unemployed or on sickness benefit. People talk about the full package of housing, support,

20 February 2008 Kevin Brennan MP

skills and attention to addiction and so on. Do you see this as part of that change, giving the private sector much more potential to be active in this area?

**Kevin Brennan:** I think that it would be wrong to place too much emphasis on that. You were probably referring to the beginning of the Bill, where in the first few clauses there is legislation to set up a pilot in something more broadly known as social work practice, which may and can involve the private sector, particularly in the provision of children's social work—services to children and young people in care. That is an element of the Bill, but I would not want to allow the tail to wag the dog too much in respect of the broader agenda.

You might want to explore in more detail what we are proposing around social work practice; but generally, the intention of the Bill and the broader Care Matters implementation plan is very much about trying to get the system to work better across the piece. Largely that means trying to improve, if you like, the corporate parenting ability of the state, which is mainly administered through local authorities, and to improve the way that the state acts in the corporate parenting of these children and young people.

We are trying to make sure that, when the state acts as a parent to these young people, it has the same sort of ambition for them as any good parents would have for their children and that, when it does that, it improves opportunities for the young person's voice to be heard in the planning of what happens to them. If they come into the care of the state, we must try to give much greater stability to these young people, who have had a great deal of instability in their lives—that is why they have come into care. They often find themselves being moved around the system, without a lot of consultation or anyone listening to what they have to say about it. They come into contact with a bewildering array of different services and people, are moved from place to place and have their education disrupted and so on.

I would emphasise that the broad thrust is about trying to get a much better performance out of the system as it exists. However, in doing that, we are trying out some new ideas, which involve the private sector.

**Q6 Chairman:** But Minister, most members of the Committee would agree with you in thinking that the Bill was not only timely but necessary, because of the way in which we have, in a sense, failed these people in care. That is not a party political point, but one that applies under all Governments and all political parties. We have the responsibility for their development and happy childhood through to adulthood. Historically, we have let these young people down. The facts that you have given the Committee show that we have. They achieve poorly; they are more likely to end up in prison. It is a sad tale, is it not? It is true—is it not?—that the Bill is about trying to do much better than we have done in the past. In a sense, that is linked with the fact that the main delivery of this role in the past—the people

who have had this role—has been the responsibility of local authorities. Some of them have not done it very well, have they?

**Kevin Brennan:** I think that you are right, Chairman. As you said, it is not a party political issue but one that goes across the piece. It is absolutely the case that we are following the moral imperative to do better by these children and young people, because they become our responsibility when the state effectively becomes their parents. Although I would preface this by saying that the population of children and young people who come into care as a whole often come with problems that are very difficult to overcome. It may be unrealistic to expect to be able to have an exact match between the profile of education, for example, or other performance of children who have been through some very traumatic experiences and difficult times when they come into care.

Yes, this is about improving on a performance that, over the years, has failed these children and young people. We have as a state over many, many years not done well enough by these children and young people. There has been a whole raft of initiatives over the years going right back to the Children Act 1989 and through to more recent legislation since 1997, which has brought about improvements. The rate of five GCSE passes at A to C has gone up from 7 to 12% in recent years. However, that is not good enough. There has been a general improvement, as we know, in the rate of GCSE passes among the school population as a whole.

Yes, we have failed. Yes, very often, local authorities have been responsible for delivering a lot of the services. But there is some extremely good practice out there as well, which is having a great deal of success. As you go round the country, you can see some of the terrific initiatives that are going on. The key, as ever, in trying to reform the system is trying to reproduce the best practice right across the piece and making sure that we have a buy-in from those agencies that are responsible for delivering services to these young people to do the best by them. A key to that involves the changes that have been made to create children's services departments, rather than the old social services departments, and getting lead members in local authorities with responsibility for children's services to take a direct interest in these young people, to have those sorts of ambitions and to listen to their voices.

I could talk a little bit about the social work practice side if you want.

**Q7 Chairman:** Can we come to that a little bit later? But Minister, you seem to be slightly edging away from the question that I asked you quite directly. Will the Bill allow the private sector and the third sector to play a larger role? Is that true or not?

**Kevin Brennan:** It will allow the private sector to play a larger role, particularly in the clauses relating to the pilots and social work practice. There is already, quite rightly, a large engagement of the third sector in the delivery of services to children and young people who are in care. We very much welcome that

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and would like to continue to extend that wherever possible, where that is in the best interests of those children and young people.

**Q8 Chairman:** Will the Bill do anything about protecting children who are in private sector care. The private sector already plays a role here. Those of us who looked at the experience of the Sedgemoor private equity group, which was providing residential care, know that it suddenly pulled the plug on the finances and went out of that business. A lot of vulnerable young people were exposed to dramatic changes that we would not want. Would anything in the Bill protect against that kind of effect if the private sector is more heavily engaged in care?

**Kevin Brennan:** Well, we will increase the role of inspection and make sure that residential care homes for children and young people are much better and more closely inspected. As you know, in recent years the switchover towards Ofsted—

**Q9 Chairman:** The quality may be marvellous, but if a private equity group says, “Oh, we’re not making any money out of this and we’re pulling out tomorrow”, surely a different kind of inspection is needed.

**Kevin Brennan:** Yes, and it would be completely unacceptable if they just pulled the plug on those sorts of homes.

**Chairman:** But they did.

**Kevin Brennan:** And that is why we are strengthening the inspection regime to make sure that there is a transition in relation to pulling the plug on a home in that way. Within the Bill itself, there is no particular clause in relation to that, but what we are broadly doing is strengthening the level of inspection for care homes that are either in the private sector or council care homes.

**Chairman:** Minister, I am merely the warm-up act. Thank you very much for answering those introductory questions. As you will know, the Committee is now minded to go back and look at your early experience with the Children and Adoption Act 2006, to see how that is working. We will probably see you wearing that hat in the near future. Can I just reprimand you on an insufficient CV? When Ministers come here we do like to see a full CV, but there is no reference to your expertise as a rock and roll performer. Could you put that right next time you come in front of the Committee?

**Q10 Mr. Chaytor:** Minister, can I pursue the case of Sedgemoor? You said that the problem would be avoided in the future by strengthening the inspection regime, but how can strengthening the inspection regime reduce the risk of a major private sector provider deciding to pull out? Surely, it is the nature of the contract and the regulatory regime that is at issue.

**Kevin Brennan:** Inspection is important, because my understanding is that, with the Sedgemoor case, we are working closely now with Ofsted to try to learn lessons, so that we can ensure that that sort of incident cannot be repeated. Nevertheless, we also know that it is important to have a diversity of

provision for children’s homes, for some of the reasons that the Chairman talked about earlier, to ensure that we are providing enough quality places. In past years, there were not enough.

There are now enough places in the system, which is probably one of the reasons why the provider pulled out in that case. Children’s homes are regulated by Her Majesty’s Chief Inspector. They are supposed to provide a written application for cancellation of their registration to the inspectorate, and they should give at least three months’ notice of the proposed date of closure. Obviously, that is a matter that we have to look at very closely now with Ofsted to see whether we can learn lessons to ensure that people are not left high and dry in the way they were in that case. That work is in progress.

**Q11 Mr. Chaytor:** Looking, say, 10 years into the future, what percentage of the total volume of work with looked-after children would you expect to be taken on by independent social care providers? In your opening remarks to the Chairman’s question you downplayed the extent of that and said that it was just a pilot scheme. But realistically, 10 years on, what percentage of the total work would be with independent providers?

**Kevin Brennan:** The straightforward answer to that question is that it could be anywhere between 0% and 100%. I know that sounds like an evasive answer but it is not. This is a genuine pilot, which will extend to perhaps up to six local authorities and will run for five years from the commencement of the Act, when the Bill receives Royal Assent.

It is a genuine pilot, in the sense that we know that one of the big complaints made by children and young people is that they see lots of social workers; in some places they report having seen up to 30 social workers while they have been in care. They say that they never get to know their social worker or, as soon as they get to know and like one, they are gone. The idea behind the social work practice pilot is that if you were able to get smaller teams of social workers responsible for working with a case load of children, you might get more stability, more flexibility without working in a big bureaucracy, and more effective synergy and teamwork. The idea is very much modelled on the GP practice idea.

The provision therefore could come from a social enterprise social work practice or through a third sector provider, but we thought that it was right to allow in the pilot provision by private sector providers to see if that gave any new energy to the pilot scheme. There is £6 million over the next five years. The pilots will run for two years and then will continue to run while they are evaluated. The evaluation will look very much into the question of whether they have provided a better service and whether they are a sustainable model that could be more generally extended to other local authorities.

What is the impact on the rest of the system? We do not want to have a scheme that is all very wonderful because it is gilt edged and gold plated and in which the rest of the system is run down as a consequence. The reason we are doing this is to make sure that we fulfil the moral obligation to try anything that might

improve a service that, quite obviously—as both young people themselves and statistics have shown us—is not working.

But the reason I am slightly playing it down—and I am not playing it down because I do not think it is a good idea; I very much think it is a very good idea and we have a moral obligation to try it—is because there is not much attention focused on lots of the other pilots that we are funding and that do not require legislation. These involve local authorities looking at new ways of working and remodelling social work teams within the structure that is there at present. We are hoping to have a clearer picture in a few years' time that may well mean that in 10 years we will have a much more diverse set of models of how social workers work with children and young people.

**Q12 Mr. Chaytor:** That brings me to my next question, because earlier you listed a series of depressing statistics, but then acknowledged that there were significant variations between different local authorities. So I would be interested to know where you feel there are structural problems with local authorities delivering this service and where you feel it is simply an issue of poor management within individual local authorities. Or, to put it another way: could you tell us the characteristics of the way the service is provided in those local authorities that manage to deliver a better output for young people?

**Kevin Brennan:** I think that, in going around the country and looking at children's services, one thing that comes through is that where there is a significant—almost a political—commitment, or certainly a powerful leadership commitment in an authority towards these children and young people, it makes a huge difference to the quality of the service that is provided. This is a very difficult area to work in, as we all know; these young people can be challenging and often come from difficult backgrounds, although in many cases the assumptions people make about children and young people in care can be completely wrong.

What often can happen in poorly performing authorities is that, over the years, if there is not a good quality of leadership in a local authority, if there is not a political commitment in a local authority, and if attention is not paid to the people who work in the service, there can easily become an overwhelming sense of demoralisation among the staff and a feeling of being overwhelmed by their case loads. It is not all about resources, though resources are always important. When the leadership of the council—including the political leadership—take a real interest in the service, take a real interest in the people who work in the service, raise their status and give them opportunities for professional development and networking together to talk about their cases, improve the management and provide opportunities for the young people themselves, that is what makes all the difference.

Traditionally sometimes—in years gone past, though it is less true now—children in care were viewed as a bit of a problem and were shut away

somewhere within a local authority. They were not necessarily the things voters talked to their councillors about, unless there were problems with kids from the local children's home or something like that. So where there is an acceptance of the importance of focusing on this as an issue, it makes a big difference in terms of the outcomes for these children and young people.

Just to give an example, I visited Birmingham last week and I went to a half-term project being run by the local authority for children in care. It was a music project in which they got the opportunity to go into the symphony hall and participate on computers with some of the newest software and had the sort of opportunities that children in other families might get at home to learn how to use music software and to make their own music. Later, I went to another project at City Hall where young people had been brought together to help to write the kids' version of the local authority's children's policy. Leaflets were produced for the children, so that they could understand what is on offer for them and what the council's pledge will do for them. Later, I visited a local authority children's home where the children do lots of activities outside the home. There is a real commitment by the local authority and the people working there to do their best by those young people, and to listen to their voice.

**Chairman:** Minister, this is very interesting, but at some stage I must lean on you to make not quite such long answers; otherwise we shall run out of time.

**Kevin Brennan:** I apologise.

**Q13 Mr. Chaytor:** Can I move on to the size of local authorities, which was touched on earlier when referring to the problems of large and impersonal bureaucracies? In the context of Every Child Matters and the move to more integrated children's services, is not the contracting-out process likely to work in the opposite direction? Although I understand how the size of the bureaucracy might reduce the degree of personal attention given, at least the nature of the local authority is that it is a vehicle for delivering integrated services between both social care and education, and with the interface with health and the criminal justice system. Surely one problem for local authorities in increasing contracting out to independent social care providers is that it will be increasingly difficult for small independent social care providers to develop those integrated working practices with criminal justice, health, social care and education. How do you think that will play out?

**Kevin Brennan:** I recognise the point, which has been made during the development of these proposals. That is the very reason for running a pilot in six local authorities. It would be wrong not to test the proposition that was put to me, but it will result in more complexity and could make things more bureaucratic. Another thing that I am aware of is the size of the team of people around the child in care. When we meet a group of professionals from the local authority and other providers and from the health service, we realise just how many people are involved in the lives of the young person.

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The point is understandable, but our hope is that if the pilots work, it will be overcome by a reduction in the complexity of the social care work force, by working within a small team with a bit more flexibility and independence, by the ability to do different, out-of-hours work, and by sharing practice among a small team. That may well overcome the problem, and that is why we are piloting the scheme.

**Q14 Mr. Chaytor:** I have one more quick question. To what extent do you think there is spare capacity in the system, or will the contracting-out process simply shift the available staff around and transfer those who are already working in local authorities to independent providers? Do you think that there is spare capacity, and that large numbers of social workers are sitting around not working, and waiting to be recruited by private providers?

**Kevin Brennan:** Obviously, the answer to that is no. There is no spare capacity in the system and, in fact, we must do a great deal more to attract more people into the social work profession. As part of the broader measures that have been taken on remodelling the social care work force, we will announce later in the year a new children's work force action plan that will contain quite a few proposals for trying to improve the status, career and professional advantages of social workers, and particularly children's social workers—for example, by creating a newly qualified social work status, having more opportunities for mentoring of social workers to retain more of them in the profession, to improve their standard of qualifications, and also to offer greater opportunities to social workers who have been in the job for a long time to enable them to stay on the front line and still have professional development and a career path, in an analogous way to what is happening in education. A lot of work and substantial investment is going in over the next few years to try to attack the problem that we need to attract more people into the profession.

**Q15 Mr. Chaytor:** The Children's Workforce Action Plan should have been published in February. What is the latest estimated date of publication?

**Kevin Brennan:** I cannot give the Committee a date. I wish I could, Mr. Chairman, because it would be nice to share it with you first. There will shortly be announcements in relation to that, but I can tell the Committee that we want to explore further how we can attempt to integrate an idea—I call it "Team Every Child Matters"—regarding the fact that we are all becoming more and more aware that we need to have better integrated working across the children's workforce, on the education side as well as on the more traditional children's services side. Obviously, that is a very long-term ambition, but we want to make sure that when we issue an action plan, we are able to set out that vision in a coherent way, that we have consulted everybody about it and that people have had an opportunity to feed into it.

**Q16 Chairman:** That sounds very good, Minister, and we applaud it. The Committee believes that an education service and a children's service should be judged on how it deals with the most vulnerable members of our society. The priority is to get special educational needs right, to get looked-after children right, and then to get it right for everyone else.

One thing I thought you slightly stepped back on, in your answer to David Chaytor, was the part of the health professional. Many of us who visit children's centres, for example, are told that doctors will not even come to case conferences unless they are paid, and they do not have to come. I do not know why, because health professionals have the strongest trade unions known to this country. Is it the royal colleges, or whatever? How are we going to tackle the issue of looked-after children if health is a reluctant partner?

**Kevin Brennan:** Well, health cannot be a reluctant partner. You are absolutely right. It is a key part of the Care Matters agenda to try to make sure that we make a reality of integrating health care for children and young people. As we might expect from what we discussed earlier, health outcomes are poorer for children in care than for the general population of children, particularly in the area of mental health issues.

**Q17 Chairman:** But we are soft on health, are we not? It does not have to co-operate.

**Kevin Brennan:** It is interesting that you should put that point, because one of the things we are going to do for the first time in statutory guidance is require not just local authorities, but NHS bodies, PCTs and strategic health authorities to co-operate. That will be part of the statutory guidance for the first time.

**Q18 Chairman:** A duty to co-operate?

**Kevin Brennan:** They will have a duty to co-operate under the statutory guidance in this field. That is very much part of the Care Matters agenda. We have also introduced a new indicator on the emotional health of looked-after children in the new national indicators set, and local authorities and PCTs will have to co-operate in order to try to improve the health of looked-after children. As I said, the guidance under the Children Act 2004 will become statutory in relation to health bodies when we publish the new guidance, which will be towards the end of the year.

**Chairman:** That is good news. I hope you have not had to double doctors' pay to achieve it. We are going to move on to education.

**Q19 Fiona Mactaggart:** I am interested in the statutory framework, because one of the most potentially powerful changes that the Bill introduces, in clause 17, is a designated member of staff for looked-after pupils at a school. The problem with that is that the duty to designate a member of staff is only in maintained schools. I am perturbed that we have not found a way of putting that duty on every school, particularly if one of the things we are trying to do with looked-after children in order to improve their educational outcomes is to ensure that

they get access to Academies—to the schools that we think are transformative. How come they do not get that duty?

**Kevin Brennan:** The current way in which Academies are organised means that their duties in these areas tend to be set out in their agreements.

**Q20 Fiona Mactaggart:** So they will end up like those GPs who do not bother to turn up unless they are paid.

**Kevin Brennan:** What I was about to say is that we will make it a requirement in future—I will come back to the existing Academies in a moment—as part of an agreement for any future Academies that they will have a designated teacher for looked-after children. That will be written into every agreement with the Academies.

The vast majority of the existing Academies—we have already scoped this out—have a designated teacher. We are confident that, without having to legislate to force them to do that, we can persuade other Academies that the small number that do not—I believe it is a tiny minority—should have a designated teacher. My understanding, therefore, is that it should be possible to achieve that without having to put it on the face of the Bill.

**Q21 Fiona Mactaggart:** That is fine at the moment but one of the things we know about legislation in this field, such as the 1989 legislation which provided for advisers on education and training, is that we never bothered to implement it. When I say “we”, I mean consecutive Governments. One of the things I am uneasy about, therefore, is that if one sector of education gets a gentleman’s agreement and other sectors of education get legislation, are we confident that the provision for such children is going to persist? I am sure it will exist in the early years of the Academy movement; I have no doubt about this at all. I am quite certain that those people who are pioneering Academies are keen to provide for such children. We know, however, how schools evolve and they might become less keen in future. I am struck by the fact that this legislation provides no lever to the Government in that regard.

**Kevin Brennan:** I am receiving divine inspiration as we speak. First, the agreements by which Academies are set up are not gentleman’s agreements—they are legally enforceable agreements and therefore they cannot get out of them at a later date. All new Academies will fall into that category. Obviously, if it were the case that we found in practice that those existing Academies—83, I think—were not following the spirit of what we have done, there might be a case to look at this in future. We do not want to wade in and undermine the flexibility that is supposed to be part of the model for freedom to develop within the Academy system. If in practice they are doing what we want them to do, we will allow that to continue while making clear to any new Academies that it will be part of their binding agreement that they will have to have a designated teacher.

**Q22 Fiona Mactaggart:** Does this person have to be a teacher?

**Kevin Brennan:** Yes, although it does not say so in the clause on the face of the Bill, we will be making it clear in regulation that they will have to be a teacher. The reason for not putting it on the face of the Bill is in relation to—you will know a lot more about this, Chairman, than I do, even though I was once in the teaching profession—the complexity of qualified teacher status and others who are qualified teachers but may not have qualified teacher status in a technical sense. I want to make it absolutely clear that the intention is that we will provide in regulations that the person will be a teacher.

**Q23 Fiona Mactaggart:** At the moment there is guidance that suggests that every school should have a designated teacher. Are schools following that? What is the difference where they are?

**Kevin Brennan:** I think that in the vast majority of cases they are, Chairman, which might lead you to ask why you would bother to put it in the Bill and if it is a significant step forward. The reasons why we are doing so are, first, to make sure that everybody does, but, also to enable us through statutory guidance to be much clearer about the role of the designated teacher and what would be expected of them and, obviously, to enforce that in all cases. I think that it sends a powerful signal to the system as a whole of the importance of making sure that the interests of looked-after children are central to a school’s work. I can certainly say that in my time as a teacher, probably to my shame, the role of looked-after children was pretty low on my radar. I was not very aware of how many there were in the school, of who they were and they may have had significant special needs.

**Q24 Fiona Mactaggart:** My experience as a teacher was that I would be concerned about the fact that looked-after children often did not bring a very good lunch, but I was not sufficiently concerned about the fact that they were not succeeding in their learning. I think that that is quite common among the teaching profession; they are concerned about the welfare issues, and often those children do not have as nice packed lunches and so on as other children. I wonder how you are going to help these designated teachers to drive the achievement of children, because that has absolutely got to be their priority. One of the things that we fail as a state to do is to give these children the kind of qualifications that will enable them to make the most of their talents and abilities in the future.

**Kevin Brennan:** Yes, I think that that is absolutely right. Part of the £300 million, which will be spent over those four years in addition to previous expenditure on the Care Matters agenda, will be involved in offering further training for designated teachers in how to perform that role, which you quite rightly identified. In addition, there are going to be other provisions to try and help improve the educational outcomes of looked-after children in schools. They include having a £500 annual allowance that can be spent on “enrichment

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activities” for the education of looked-after children and for the sort of things that are not currently provided by local authorities as a matter of course as a corporate parent. They are the kind of extras that you would expect a parent to try to provide for their children. In addition, we are piloting virtual heads, and I think that one of those is being piloted in Gateshead. In the virtual head pilot, a designated person with the local authority will act as a kind of virtual head teacher for all of the looked-after children within that authority, to give that kind of leadership across the piece and not just within individual schools. So, it is very much the intention that that should be the role of designated teachers—to drive and improve performance and to use these levers to do so.

**Q25 Fiona Mactaggart:** And if that works and we get to a situation where looked-after children succeed in obtaining A-levels and so on, which at the moment they lamentably tend not to do, and we are going to offer a bursary into higher education? What about those who do not get to higher education but are going on to education beyond school? Are they going to get access to any extra resources?

**Kevin Brennan:** There is a particular reason for the bursary, which is the evidence that looked-after children who do get through to higher education face higher debt. The estimate of that it is that it is around £2,000 on average, which is what the bursary will cover when they come out of university. The purpose and idea behind the bursary is to give a level playing field, in terms of potential debt, to young people who go through higher education and have been in care, with the rest of the population. It serves a specific purpose. Obviously, in the case of young people in care who are in further education, there is already quite significant assistance available to them. We will also be providing things like a personal adviser up to the age of 25 to help them plan their education and training after the age of 18. So, there is a particular purpose to that £2,000 bursary, and a reason for it is based on the evidence that we have. The assumption behind it, by the way is that, that would lead to a 10% increase.

**Q26 Fiona Mactaggart:** You said that it is £2,000, so is it a one-off payment of £2,000?

**Kevin Brennan:** It will not be a one-off payment; it will be paid in instalments during the course. The assumption behind it, if you look at the impact assessment, is that it will lead to an increase of 10% in the numbers of young people in care who are able to take up the opportunity to go into higher education, as well as providing £2,000 to those who are already do.

**Q27 Chairman:** What about apprenticeships?

**Kevin Brennan:** That is a very pertinent point, and some of the debates and consultation that have gone on in the other place have led us to wanting to cogitate a bit further on what more we can do around training to ensure that that is not missed out in the equation here. Perhaps I will have an opportunity to say more about that at a later stage

of the Bill. Certainly it is a pertinent point that has been raised, and one that we are looking further at as we speak.

**Q28 Fiona Mactaggart:** I was going to go on to the training point, and that is very helpful, but one of the things that we know about young people in training and further education is the degree to which parental support is often key in sustaining attendance, getting people through sticky patches and so on. You are proposing a designated staff member in schools, a local authority personal adviser, and someone might be in touch with a foster parent, although they are going to be going past various barriers such as 18 during this period. I am wondering how all that is going to be co-ordinated. I have a feeling that the kind of stuff that an ordinary 17 or 18-year-old has, which is their mum digging them out of bed and making sure that they have got a clean hoodie and so on, is really critical to getting qualifications. That might not be so-called education stuff, but it is the platform out of which learning comes. How are we going to make sure that that happens, and that it is not just a bunch of people sending each other memos?

**Kevin Brennan:** I think that that is of crucial importance, and there is a big difference between local authorities and performance around these sorts of practical things. In some local authorities, the attendance of children in their care is pretty much the same as for the general population—well above 90%. That is done by doing exactly what you are suggesting should be done, which is having in place the very practical ways of making sure that young people attend school—namely, making sure that they get out of bed and get to school, making sure that it is noticed if they are not there, and making sure that it is followed up very quickly. There may have been in the past a culture within the system of not being surprised or not caring enough if the young person in a care home did not turn up for their course or was not in school. Yes, having a designated teacher is going to be key to that, because a designated teacher will very much be, and should be, looking at where that young person is if they have not turned up to school. Why have they not turned up for school, and is there a particular problem at home, with a foster carer, or in the children’s home? That is why having people whose direct responsibility it is to care about these young people—not just to say that they are in care, but that they are cared about—is key to the system working. If, with this great complexity that I have described that there is around children in care, people do not have those direct responsibilities to undertake that work, you will be correct in saying that we will get problems. It can be done, and it is being done, but it is a case of making sure that it is done more consistently and across the piece.

**Q29 Fiona Mactaggart:** Thank you for that: you focused more on school-age children, and I am particularly interested in the support for young people as they have left school. We know that this is a period in which this group of young people are

often not thriving. In the Bill, as I understand it, the provisions on personal advisers on education and training, which were in the 1989 Act and which have not been implemented, are going to be extended to provide personal advisers up to the age of 25. I welcome that, but as far as I can see, we do not have them—even though we have the legislation for that—for those up to the age of 21.

I hope that I have not misunderstood, but since we are extending the use of personal advisers—better support and so on—how do we make sure that they have the power and connectedness to do other things to help young people to do the stickability thing? I worry that we designate people, they tick boxes, they make the odd telephone call and so on, but they do not actually do the stuff which makes the difference to the young person at the time in their life when they are becoming an adult and when it is critical to their success as an adult that they get qualifications and training.

**Kevin Brennan:** Young people tell us that, where they do have this sort of support, it works. That is why we are extending it. On your earlier point about FE, we are running pilots to provide further support to people in FE. Having the extension to 25 is really important; we cannot expect children in care to hit educational milestones at the same time as other young people, because of the disruption there has been in their lives.

The clear evidence that came out of the Green Paper, the White Paper and the consultations with young people is that they welcome having had a personal adviser, when they have had one, but that the transition into adulthood is the big problem. Most young people do not leave home until they are 24, whereas in care—in the past, not now—they used to drop off the cliff edge at 16.

Now, we are doing more to extend that to 18, we are exploring ways to support young people up to the age of 21 in staying in their foster placements, if that is what both sides want, and we are recognising that they are unlikely to get qualifications as early as the general population. Young people tell us that, when they have a personal adviser and someone to assist them, it works, but it just runs out too quickly. So it can work—the young people tell us that it works—but we just have not been doing enough of it.

**Q30 Chairman:** When you talk to young people, how do you talk to them?

**Kevin Brennan:** When I talk to them?

**Q31 Chairman:** You said, “when we talk to”. Is it official; is it a survey; is it an annual talk?

**Kevin Brennan:** In terms of consultation on the Care Matters agenda, things are done in a variety of ways, both by undertaking surveys, but also by undertaking special activities where young people are brought in—

**Q32 Chairman:** It is systematically done by the Department?

**Kevin Brennan:** Indeed it is, Chairman, and part of these proposals is that the voice of the young person should be extended in local authorities as well, so

that they are listened to. As part of Care Matters agenda, we are asking local authorities to create children-in-care councils and to publish a pledge themselves on what they can expect.

**Q33 Chairman:** We have to move on, but before we leave all the talk of education, in the unlikely event that there was a looked-after child at the school that George Osborne sends his children to, in the independent sector, who looks after people in the independent sector? This does not apply, does it?

**Kevin Brennan:** In relation to the designated teacher, as you are probably aware, Chairman, we are keen to allow the individual child, where it is appropriate to that child’s needs, to make use of boarding provision in schools—and not just in the independent sector; there is state boarding provision as well. I think that I am right in saying that the designated status does not apply to the independent sector, but that the local authority would maintain its role as a corporate parent in that instance and would monitor whether appropriate arrangements were in place to look after that young person. Speaking to young people who have been through it, we know that, in some cases, but by no means a majority, that can be a very good, positive option for that child, for obvious reasons.

**Q34 Chairman:** I have always thought that the selective system, whether independent or grammar, tends to screen out looked-after children. Am I wrong? Is that prejudice? Are a number of looked-after children being educated in the independent sector?

**Kevin Brennan:** There is a small number within the independent sector. A pilot scheme is in place to make sure that there are more opportunities for young people in care to attend boarding school, whether or not in the independent sector.

**Q35 Chairman:** I am not just talking about boarding school, but across the piece.

**Kevin Brennan:** The particular reason for using boarding schools is that, obviously, the children are not living with their parents. It can often be a good option that provides more stability and permanency, as well as being a suitable option in relation to their relationship with foster carers and children’s homes. It is something on which further work is being undertaken to see whether we can make it more widely available. I see it very much not as an ideological matter, but simply one of what is in the individual interests of that young person. As you are undoubtedly aware, many young people in care are extremely talented and have great ability, but having been moved around schools too often within the system, they have not had enough permanency of placement. The process can provide them with stability and permanency that will allow them to fulfil their potential, which is what all of us want to see.

**Chairman:** Thank you for that. Annette, you will take us through the whole reviewing officers issue.



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**Q36 Annette Brooke:** Why have you thought it necessary to refine the appointment and remit of independent reviewing officers?

**Kevin Brennan:** There is a great deal of concern within the system that the independent reviewing officer function is not yet working properly and strongly enough. There is recognition within the system that we have to make sure that there is better care planning and that the voice of child is more effectively represented within the system.

What we chose to do in the Bill is quite unusual, but it is appropriate in this instance. There is mixed evidence about whether independent reviewing officers should be completely taken outside of local authorities or whether they should stay within local authorities but be given more strength and independence. We decided in the Bill to leave independent reviewing officers within the remit of the local authority, although they can swap. An independent reviewing officer could come from a neighbouring local authority. The provision could be swapped if we wanted to strengthen the Chinese wall and the role, which we encourage. We have done that because children and young people, independent reviewing officers and local authorities have told us that having someone within the structure and who is well connected with it can be more effective at good care planning for the individual child.

In many cases, local authorities would almost reconstruct that position if we took it out of their remit and put it into the remit of some other body, because they see the value of such a role within the system. However, we have also said that, if that does not work and we do not have an improvement in care planning for young people or on the ground in the stability of care plans and listening to the voice of the child, there is power under the Bill in future to take independent reviewing officers out of local authorities completely and put them into a national body. That could come under the remit of the Children and Family Court Advisory and Support Service or a completely new body, but we thought that it was right to continue to make the system work by strengthening the role of the independent reviewing officer at this stage.

**Q37 Annette Brooke:** It all sounds very theoretical, so can you get down to the individual child who is desperately unhappy and who probably has issues with expressing themselves? How will the new process under the Bill help looked-after children to raise concerns? I can see that you are tackling resolving them by deciding whether you want it to be done in-house or out of house. How will the process make the situation better?

**Kevin Brennan:** The role of the independent reviewing officer is not to have a vested interest in a particular child's case, but to co-ordinate and to monitor what the local authority is doing in relation to the child. You are quite right that they must have a personal relationship with the child to ascertain their thoughts and feelings and to feed that into the process. They must ensure that the local authority takes that into account in the care planning process

and that proper weight is given to the child's wishes and feelings. In addition, there is an existing right for a child to access an independent advocate service where they have a complaint about what has happened to them. We might come on to that point. The role of the independent reviewing officer is to represent the child's wishes and feelings within the care planning process and ensure that the local authorities reflect on them.

**Q38 Annette Brooke:** Do you think that there ought to be a right for a child to ask for an advocate or for that to be available at the stage of reviewing the care plans?

**Kevin Brennan:** There is an existing right to ask for an advocate when the child has a complaint about what has happened to them.

**Q39 Annette Brooke:** Yes, I understand that, but if we want to avoid getting to the complaints part of the system, would it not be better for the advocacy to be available at this point?

**Kevin Brennan:** We wonder whether that would be the most effective way to improve the service to the child and to improve the way in which care planning takes place for that child, in terms of using resources for that purpose. As I have already said, a huge number of people are involved in care planning and are around a child in care. Our view is that we need to strengthen and empower those people who are already working around the child and ensure that they take into account much more proactively the wishes and feelings of the young person in planning for them.

Some local authorities have experimented with having the children themselves chairing their own care planning meetings, which I think is a thoroughly good innovation. We have to empower the people who work around the child and ensure that they focus on the thoughts, wishes, feelings and the voice of the young person, rather than creating a national system of advocates, which some organisations who specialise in advocacy would like to see. We wonder whether that would really produce what we want: better outcomes for these young people. The right way to achieve that is to focus on strengthening the system.

**Q40 Annette Brooke:** Obviously, a number of organisations are trying to raise the profile of more formal advocacy. Is that being picked up in the Bill at all—in particular, for severely disabled children who are looked after? It seems to me that there is a case for advocacy for such children.

**Kevin Brennan:** As I said earlier in relation to the independent reviewing officer, we are creating a new duty for them to monitor the case as a whole. We are creating a new duty for them to ensure that the child's voice is heard in the process. We are also issuing new guidance about referrals to legal advice where that is appropriate.

**Q41 Annette Brooke:** The independent reviewing officer has a duty to ensure that the child's voice is heard. If the child has difficulty expressing themselves or is very disabled, will that duty trigger them to call in advocacy at some point?

**Kevin Brennan:** In a case like that, it seems to me that it would. I am unable to judge an individual case, but if a young person is unable to effectively express themselves without professional advocacy or assistance of some sort, it would quite clearly be good practice for an advocate to be brought in. There are many disabled children in care. I do not think that that point could be expressed within the Bill; but in guidance, it will be clear that the thrust of the reform that we are introducing is that, if a child's voice cannot be heard because of some disability, there should be a process by which it can be.

**Annette Brooke:** Not necessarily physical disability—it may be a mental disability, where the child has been damaged in some way that they cannot express.

**Kevin Brennan:** Indeed.

**Q42 Annette Brooke:** If I could just move on, I am interested in the whole idea of building up good relationships with an adult. In some ways, there are a lot of adults floating around now in the Bill: personal advisers, the designated teacher, the social worker with the £500, obviously the foster carer—of great importance—and the visitors as well. I wonder how you see this for the child? The child needs to form a core relationship with someone out of this. Should there not be a right for the child to choose which is going to be the core relationship?

**Kevin Brennan:** The core relationship for most children and young people in care will be with their foster carer.

**Q43 Annette Brooke:** So why does the social worker have the £500—why not the foster carer?

**Kevin Brennan:** The social worker does not have the £500 in their pocket as such. In fact, I can announce to the Committee today that we are launching a consultation on exactly how that £500 should be administered. That consultation will be going out to local authorities and is being issued today. It will include the possibility, provided that the child or the children in local authority care are consulted, to pool that money if they wish. Sometimes, it might be appropriate to do that. As I said, that consultation is being issued today.

Yes, a key relationship for most young people in care would be with their foster carer and for those in a children's home, with the manager or the people who work with them in the children's home. You are absolutely right that there are a number of relationships with adults, and the whole purpose of the Bill and of the Care Matters agenda is to try and stabilise that and to give more stability to those relationships, which includes the ones you mentioned.

**Q44 Annette Brooke:** Can you tell me whether the children would be able to make decisions about whether they have an independent visitor, or whether, in fact, they have any say in who the independent visitor is?

**Kevin Brennan:** Yes, the children have the right to refuse to have an independent visitor or to refuse a particular independent visitor if they wish. The idea of the independent visitor is not as an advocate, social worker or parent, but as someone to befriend them and to provide them with opportunities.

**Q45 Annette Brooke:** I just hope that they are not going to get bewildered with all these adults. I think that it is really important that the child should be empowered to choose these relationships.

**Kevin Brennan:** That is an extremely fair point, but we are not doing this because we decided that it would be a good idea, but because children and young people themselves said that they welcomed it.

**Q46 Annette Brooke:** Can I just ask you whether the situation relating to school trips has been sorted out? It has been my understanding that it is quite embarrassing for children in care, because special permission has to be obtained before they can undertake ordinary activities. Some of those issues have been sorted out, such as sleepovers and things like that, but I understand that school trips are still a bit of a problem.

**Kevin Brennan:** They can be. This is something that I am personally looking into, after finding two recent occasions when I went around visiting and speaking to young people in care about whether they have had problems over things like passports. For example, getting a passport renewed when it runs out, or getting a passport for the first time might be a problem. For some reason or another, being able to procure a passport seems to be an extraordinary challenge to the system. For a young person in school, when all their friends are going on the school visit, wherever it may be—in one case, the visit was to Lourdes, with a Catholic school—but they are not able to go, that completely isolates them.

Those are the sorts of practical things that we have to try to sort out. Yes, a lot has been done to try and clear the bureaucracy away from who can give permission—who can sign the form. What we want to achieve is a situation where, for a young person in care, it is no more difficult for them to be able to participate normally in all the other activities of a school or other educational activities than any other young person.

**Q47 Annette Brooke:** I am really pleased to hear that. I am sure that we will discuss it more during the Bill.

Finally, we are talking a lot about improving the situation for children we know about, yet the Bill has clause 31 or 32, whichever it is now, on private fostering. We were assured by Margaret Hodge, I think, that there would be great deal of work to increase the registration of situations where there is private fostering. The statistics show that there were 730 cases in 2005 and only 1,250 in 2007, yet the

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professionals in the area estimate that there are possibly 10,000 children in private fostering arrangements. We have had legislation safeguarding vulnerable people, but how can we safeguard, look after and promote the welfare of children who we know nothing about?

**Kevin Brennan:** As you rightly say, the current position is one of notification rather than registration. The Bill extends the sunset clause to allow the Government to bring in a scheme of registration.

**Q48 Annette Brooke:** Why do you not just get on and do it?

**Kevin Brennan:** The reason that we have not done it is that we are convinced that we should give more time to allow the notification system to work. There are only two years of statistics so far available within the notification system, and to give it an opportunity to work, we think that it needs more time. We have not ruled out a registration scheme. I accept that we are not doing it at this stage, and we think that the notification scheme needs more time to be effectively evaluated, but we have not ruled that out.

We want to ensure that we have enough evidence, because it is a significant area of regulation to get into, where you require prior registration of any private fostering arrangement. It is a significant step forward, and we do not want to do it without having properly evaluated all the evidence. As I said, there are only two clear years of operation so far of the notification scheme, and notification is building as people become more aware of the scheme. I accept that you would like us to go further at this stage—we are not planning to, but in the Bill, we leave that option open by extending the sunset clause.

**Annette Brooke:** I shall return to that.

**Q49 Chairman:** I am sure. Minister, you will know that, in the previous incarnation of the Committee, we were keen on the value of out-of-school education—despite the horrible tragedy yesterday. These things happen; we are all human beings. We very much recommended that out-of-school education, if done well, is a transformative part of education, and we would not want looked-after children to be excluded from that.

Something that Annette took up with you was the question of how many adults there are surrounding a child. I wonder whether you have had a conversation with the Children's Commissioner or anybody else about a mentoring scheme involving someone of the young person's age? Is there someone in school or some situation in which a person of their own age could be partly a mentor?

**Kevin Brennan:** Yes, that sounds like a good suggestion. It is not written in the Bill, but it is interesting what young people themselves tell you about how they react and relate to one another. One young person said to me last week, "I never tell anyone at first that I am in care, because people will make assumptions about me if I do." It is a good suggestion for us to try to build awareness more generally.

**Q50 Chairman:** In a separate inquiry that I am doing under the Skills Commission on information guidance and advice, we had an evidence session yesterday with young people. The young people told us very clearly that they would value advice from someone of their own age or slightly older on, for example, careers. That chimes with something that Annette said.

**Kevin Brennan:** Mentoring is a powerful area that we could do a lot more in. I echo your comments about learning outside the classroom and the importance of school visits and educational trips, and also your words of sympathy to the family of the young man who was unfortunately killed on a school trip. I was struck by the bravery of the parents and what they said in their reaction to that terrible tragedy.

Learning outside the classroom is so important, and we issued an extensive action plan recently, where we emphasised that we think that it is important and an integral part of children's education. For children in care, that is even more so. I have seen that transformational impact that you talked about on a group of young care leavers who were taken on outward bound trips to North Wales, taken by the fire service on a training course for a week and then taken out to Romania to clean up a children's orphanage. That had an enormous impact on those young people, to their benefit.

**Q51 Chairman:** When a tragedy like this occurs, the press tends to go into a national spasm, whereas the previous Committee found that the safest place possible for your child was on a school trip; indeed, a dangerous place was at home with the parents.

**Kevin Brennan:** It is the paradox of risk.

**Q52 Mr. Chaytor:** Minister, on Monday of this week, Lord Adonis announced that the Government were going to rip out clauses 7, 8, 9 and 10 of the Bill and replace them with a series of new clauses. He wrote to the Opposition spokesperson in the Lords. We have a copy of the letter, but it is a detailed and complex letter and I wonder whether you could simplify it for us?

**Chairman:** Only Lord Adonis could understand it.

**Kevin Brennan:** I will try my best, Chairman. The reason that those clauses have been withdrawn and replaced by a single new clause, as well as other changes to the schedule, is that it became apparent that the tensions between the different duties and factors that come into play when making a placement decision about a child may not have been clear enough in the previous clauses. We wanted to take the opportunity, having had the Bill scrutinised and given it some more thought, to be absolutely clear about that.

Perhaps the easiest way for me to try to explain this—I cannot quite do it in the way that Lord Adonis would, but I will do so in my own simple way—is that where the state is getting involved in family life in this way and decisions are being taken about whether to take a child away from their family and place them somewhere else, we must make it

clear what the principles involved are. There are phrases in the Bill that have a technical meaning, which I will try to explain.

The first phrase in the Bill is “consistent with the child’s welfare”. When a local authority has to take the decision on whether it is safe to allow a child to remain with their parents—it must be our assumption that the starting point is that a child should live with their own parents—they have to decide whether it is consistent with the child’s welfare to do so. What that means, technically, is whether it is safe for that child to stay with their parents. If it is safe, the child should continue to live with their parents. In layman’s terms, that is what it means.

However, if the local authority decides that it is not safe for the child to live with their parents, there is a different test when they decide where to place that child. The overarching structure of that test is the phrase stating that they need to place the child in order to “safeguard and promote the child’s welfare.” That means, in law, something very different from “consistent with the child’s welfare.” To “safeguard and promote the child’s welfare” means that they should attempt to place the child where they will flourish—where is the best place for that child to flourish? That is a very different test. It is not up to the state to decide whether my child would be better off living with your family, because they would flourish there; it is up to the state to decide whether my child is safe remaining with my family.

Once the state takes charge as the parent, it is the state’s responsibility and we are re-stating that. That is what we are doing by tabling this new clause; we are re-stating that, at that point, it is the job of the state to place the child where that child will flourish. Then we are underneath that overarching roof, putting in various rafters that hold that roof up. The factors that should be taken into account include things like placing the child near—well, actually, first of all, I should say that there is a hierarchy to this.

First and foremost, placing the child with family or friends should be taken into consideration, and relatives in particular, if possible, because we take the position that that is a responsibility that the state should take into account. If it is possible to place within the family, it should be the first consideration, but there is not an absolute duty to do so. Beyond that, you need to look at factors like whether they can be placed within the authority. In other words, can you place them within their area? Can you place them near their school? Can you place them in such a way that it will not be disruptive to them?

**Q53 Chairman:** One of the factors relates to prison education. If a young person comes out of young offenders institution and goes back to the community from which they came, you can guess that they will go back into their old circle with its drug addiction or whatever. Sometimes the best option for a young person who has perhaps been abused, physically or sexually, or has just been running with pretty wild kids, is to be away from

their environment. In some circumstances their best chance of thriving would be out of the community from which they came. Will the Bill inhibit that?

**Kevin Brennan:** That is a good example of the sort of factors that would have to be taken into account in making such a decision. In considering whether the child should go back to their parents, the test is stronger and quite rightly so in relation to the state’s involvement in family life. That test is: is that child safe living with their parents? If the answer to that question is yes, they go back to their parents even if it is a dodgy area. The state does not have the right to pick and choose who the parents are.

Having said that, if it is not safe and the local authority is considering a placement there is a duty to consider whether they can place the child with family and friends and that is a stronger duty than the other duties. However, it is entirely consistent that they might decide, given that the test in this case is to safeguard and promote the child’s welfare, that the aim would be better served by placing the child somewhere out of that area. It is completely open to the local authority, in exercising that judgment, to take that decision.

**Mr. Chaytor:** That was a helpful clarification of the distinction.

**Q54 Mrs. Hodgson:** I should like to ask about post-18 foster care. There seems to be no provision in the Bill for foster children to stay with their foster parents between 18 and 21. Do you consider the current arrangements for continuing care post-18 for children who are fostered to be adequate?

**Kevin Brennan:** In that area we are piloting arrangements to make it easier for young people to be able to stay with their foster carers up to the age of 21. They are legally adults when they reach the age of 18. Clearly there are complexities around the financial implications for all concerned in doing that. It already happens, but it is reported back to us that it is very tricky. Sometimes local authorities wonder whether what they are doing is entirely legal. So we are piloting arrangements, because we want to be able to allow young people, who have been looked-after up to the age of 18, to have more permanency and stability and to stay with foster carers if they can up to the age of 21. We are piloting arrangements with a view to getting the right structure in place so that we can do that more broadly across the piece. As I said earlier, on average young people leave home at the age of 24. In the past the assumption has been that you can drop the young person off that cliff edge at 16, and that even with all their other problems they will pick themselves up and be able to cope. Clearly this is something we are keen to develop.

**Q55 Mrs. Hodgson:** Will it require new primary legislation if you decide to do something? Should you not be looking to do that with this Bill?

**Kevin Brennan:** It may do, but that depends on what evidence comes out of the pilot. We need to understand more clearly the various implications of allowing young people to stay with their foster carers up to 21, in terms of benefits and taxation and the

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legal status of that relationship between the foster carer and the young person. We have powers to regulate the carers of 18 to 21-year-olds under existing legislation, or under the Health and Social Care Bill if it proves necessary. It may be possible to do it through secondary legislation.

**Chairman:** Let us go on to the last section, which is on youth justice and health issues. Fiona will lead us on that.

**Q56 Fiona Mactaggart:** Absolutely. We know that a lot of looked-after children unfortunately end up in the youth justice system. I am concerned about what happens when those children leave custody—often they are still children. Do they lose their looked-after status when they go to jail? Are they still looked-after children when they leave jail? What is going on? What are the proper arrangements for them?

**Kevin Brennan:** This is where the definition issue comes in regarding looked-after children and children in care. Looked-after children is a broader definition, and includes every child and young person who is in care, whether they are in care as a result of a care order, or voluntarily accommodated—in other words, “I have a teenager I cannot cope with any more, and the local authority is going to have to look after them.”

In the latter case, where a young person is voluntarily accommodated and they go into youth custody, they lose their looked-after status. We have been concerned about that, which is why we are making it a requirement in the Bill that they should be visited by the local authority. You are quite right that young people in those instances may be effectively forgotten. The institution where they are kept in custody is unaware of their history and previous status, and proper planning does not take place for when they come out. The Bill will make it a requirement that they be visited by the local authority by whom they were previously looked-after—although they have technically lost looked-after status—with a view to having proper plans in place for when they come out, whether that means going back and living with their parents, moving on to some sort of independent living or, as I think it will be in many cases, being looked-after again by the local authority when they come out of custody. That would be part of the planning process.

**Q57 Fiona Mactaggart:** Who will these visitors be, and what powers will they have?

**Kevin Brennan:** They will be visitors from the local authority children’s services department. They will have a duty to visit the young person in prison and then to collaborate with the youth justice authorities on planning for that person’s education while they are held in custody and, in particular, for what happens when they come out of custody.

**Q58 Fiona Mactaggart:** I wish them luck. As someone who, through a charity, has spent quite a lot of effort trying to collaborate with youth justice authorities to provide housing for young people leaving prison, I have to say that, because their

targets say that if they have given the young person advice or found them a place on a sofa for one night they think they have passed, it is often the case that young people leaving prison go into homelessness almost instantly and, therefore, into a great deal of vulnerability. Are there particular provisions in relation to the housing of these young people?

**Kevin Brennan:** I think what the provision does is to create a duty for there to be co-operation under section 10 of the Children Act 2004. Taking on board your point about that, you are quite right that there has in the past been too little planning for the housing of young people coming out of custody, who are often very vulnerable. We hope that this provision and the creation of this extra duty will very much improve that situation.

**Q59 Fiona Mactaggart:** So do I. How will we know if it does? How is this kind of thing going to be reported?

**Kevin Brennan:** Part of the Care Matters agenda is that there will be an annual ministerial stocktake of how implementation of the plan is developing. It may well be that you will want to play a role in having a look at that stocktake, and at how things are going.

**Q60 Fiona Mactaggart:** I think there would be much merit in that. We have a problem with ministerial stocktakes in various fields. I am not saying that is the case in your Department, but departments stocktake internally and do not necessarily tell the world the consequences of stocktakes sometimes. I am thinking of immigration policy, for example.

**Kevin Brennan:** It is absolutely vital that that stocktake is properly scrutinised and people have an opportunity to comment on it and hold us to account.

**Q61 Fiona Mactaggart:** Let us look at health. In your opening remarks, you were talking about the kind of fields in which looked-after children do not thrive as well as other children, and one of them was health. Do local authorities and primary care trusts work well enough together in dealing with the health of looked-after children?

**Kevin Brennan:** Probably not, historically. That is why we are introducing the statutory duty that I mentioned to require, for the first time, health authorities to work in partnership with local authorities to promote the health of looked-after children. The revised guidance, which is statutory guidance, will be published towards the end of this year. There has been improvement in recent years and there are lots of good signs that there is more signing-up to making sure that co-operation happens. It is very welcome that in the newly published operating framework for the health service, children’s health is more clearly indicated as important. As I said, there is already a duty whereby PCTs and strategic health authorities should co-operate in relation to promoting the well-being of children, but what we hope this duty will do is to make it clear that looked-after children should be a

priority within the duty to co-operate, particularly in relation to the duty to co-operate with local authorities. What has tended to happen is that where there is good practice across the country it works very well, but the reason we think we need the statutory duty is to make sure that it happens more universally.

**Q62 Fiona Mactaggart:** As Annette pointed out, one of the health issues for looked-after children is mental health. The Chair and I were both members of a panel on young runaways. We know that looked-after children are more likely to run away than other young people, and quite often some of these duties just mean that institutions report that they have run away, for example. That is one of the reasons why they are recorded as running away more often. Parents might intervene, rather than report to the police that a young person has run away, and recover the young person faster. I am wondering whether all the duties to co-operate and so on carry the risk that we might end up back in the situation where there is a slightly box-ticking—not particularly deliberately; not because people are bad—mentality of “Oh, we’ve co-operated,” and people have not actually used their nous to put young people in a better situation. What are you doing to avoid that?

**Kevin Brennan:** On the issue of runaways, as you know, we commissioned a report from the Children’s Society, and our response to it came out quite recently. We have set up a cross-departmental working group that is reporting by the summer on how we can improve performance across the country in relation to the response to young runaways, and in particular look at the sort of provision for emergency accommodation when young people run away from home. We recognise on that particular issue that there is more to be done to achieve it. You are right: it is no good just ticking boxes about co-operation between different institutions; it has to have a practical reality on the ground. This involves part of the new framework for local authorities and health in relation to local area agreement and joint commissioning. Everybody tells us when we go out and talk to people in the system that good relationships and proper joint commissioning between, for example, health and local authorities in relation to matters such as CAMHS—Child and Adolescent Mental Health Services—are vital.

Since 2000, the spending by local authorities on CAMHS has gone up from £10 million to £91 million. In the health service, it has gone up from £10 million to £50 million. There has been a huge investment in this area. One of the reasons why under the children’s plan we announced a review of CAMHS is that we have had that huge investment but are we really achieving the right sort of co-ordination that is needed? Are we looking properly at CAMHS as it relates to things that are happening in our schools, such as the social and emotional aspects of learning programme and the other investment we are making in mental health within schools?

There has been an increase in the number of child and adolescent mental health services specifically dedicated to looked-after children. This is clearly an area where there has been a lot of investment but where we have to look very carefully to make sure we are getting the impact that is required. Where you get it right it can have an immensely beneficial impact on young people. You can see that through the Social and Emotional Aspects of Learning programme in primary schools.

**Q63 Fiona Mactaggart:** I agree. I would ask you in this process to think very carefully not about what you can do after young people have run away but how you can prevent it.

The evidence we heard was compelling. Collaboration between police, health authorities, local authorities and voluntary organisations in particular, to find out why young people were unhappy and what they were running away from or to, and putting in place the kind of intervention that a parent would in these circumstances—it is not always easy for a parent to do so—seemed to make a massive difference.

One of the things we have to get out of this Bill is that the state when it is the parent should be like a parent. I can see that that is the ambition of this but there is always a risk that bureaucracy is stupid. It does not mean to be stupid but it is. It says, “Right, we have collaborated. That is what we are required to do by the Act.” It does not intervene and act and so on. I am sorry, Chairman, that this is not really a question. My real urge is to try to find ways of structuring guidance around the Bill and what happens as a result of the Bill to reduce that capacity for stupidity in the state when it is a parent. Otherwise we will carry on letting down young people even though our intentions are of the best.

**Kevin Brennan:** I agree entirely.

**Q64 Chairman:** It is interesting, though, Minister, listening to you today—and this is not a criticism—that when we are wearing our other hat on schools we are constantly talking about the quality, motivation and training of the work force, and the way in which we pay and provision it, because without a highly motivated, well-trained, good-quality teaching force you are on a loser in terms of providing good education. The work force issues here are very complex—having highly motivated, well-paid and well-trained people right across the piece. It is difficult and tough working with these children because the problems are complex and sometimes very hard work. Is the work force issue one that worries you?

**Kevin Brennan:** It is a key part of the reforms, Chairman. That is why there is a lot of work going on to develop an action plan to engage on that journey of improving the status, quality, recruitment and retention of the work force, opening it up to a broader range of people—perhaps with more mature people coming in—and opening up all those pathways. Eventually, that leads on to issues of reward and pay and so on. At this stage in the Comprehensive Spending Review settlement we

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have an allocation to take forward that remodelling of the children's work force and there will be significant announcements during the course of this year in relation to that.

**Q65 Chairman:** Given your responsibilities, in your view how long is a child a child?

**Kevin Brennan:** We as a Department have direct responsibility for children up to the age of 19. Legally, a child is no longer a child when they reach the age of 18, but the truth is that people develop at different rates. We have to have a legal age of majority, but when a child is no longer a child varies according to the individual. We now recognise more than ever, in relation to children and young people—as we refer to them—in care, that that responsibility does not stop at the age of 16 or 18, but continues into adulthood. We, as a state, have a continuing responsibility to those young people after they have left care, and we are extending that through the Bill.

**Q66 Chairman:** That is reassuring, because some worrying comments were made during the debate on the Education and Skills Bill about the age at which children cease to be children. I found that worrying because I value the protection that young people have, especially through to the age of 18. A recent campaign in my constituency has focused on some of the real problem cases: the vulnerable children—usually girls, but sometimes boys—who are sexually exploited, usually by ruthless men who get them into prostitution and drug addiction and so on. You often find that the social services and children's services are very active until such a child is 16, but they totally back off after that. The problem does not go away for a young girl who has been coaxed by a pimp into that kind of life, and that worries me both as a constituency MP and as Chairman of the Committee.

**Kevin Brennan:** That is exactly why we have taken powers in the Bill to promote the well-being of care leavers beyond the age of 16. I am keen to emphasise that the old idea, which, to be fair, the Children (Leaving Care) Act 2000 did some work on, that children drop off a cliff edge at the age of 16 is completely wrong, because the responsibility extends well beyond that.

**Q67 Chairman:** Will you take that message back to your colleagues and stand robustly against those people who say that it is otherwise? I spoke in a debate on that in the House, and it is an irony that the children of most of the people taking part will not go into paid employment until well into their 20s, although we expect children at 16 to go into work without any training or education. There are still two worlds for children, and I passionately believe that that is wrong.

**Kevin Brennan:** The Bill also contains a clause that will give the Secretary of State the duty to promote the welfare of children, which I think will be fairly broadly welcomed, and gives him the power to promote the welfare of young people beyond the age of 18, which dovetails with the point that you are making.

**Chairman:** I brought that point up because the best evidence about those things can be found in one's own constituency. I have talked to the police and children's services across Yorkshire and discovered that there are systematic and organised gangs preying on looked-after children, especially young females. They are absolutely organised, and I hope that the Bill will do something to redress that. Actually, it is the campaigns by Helen Southworth on runaway children and by Sharon Hodgson on dyslexia that highlight those issues, so we still have a role in our constituencies as well.

**Q68 Mr. Chaytor:** I have just a couple of quick points for clarification. Is there an existing duty of co-operation between primary care trusts and local authorities, or will there be such a duty in the Bill?

**Kevin Brennan:** There is an existing duty on local authorities, but it is not a statutory duty on PCTs and strategic health authorities. However, it will become a statutory duty as a result not of the Bill, but of the Government issuing new statutory guidance in relation to the Children Act 2004 by the end of the year.

**Chairman:** You have been handed an urgent piece of paper.

**Kevin Brennan:** I hope that it is telling me what I just said, Chairman.

**Mr. Chaytor:** Let us wait and see if it does say what you have just said.

**Kevin Brennan:** It concerns statutory guidance on how child and adolescent mental health services should provide dedicated provision. Suddenly, I have received further divine inspiration during the course of saying that. We intend to put guidance on promoting the health of looked-after children on a statutory footing for health services as well as for local authorities, which is the point I have just made. The detail that I did not give you was that we will do that under sections 10(8) and 11(8) of the Children Act 2004. That will cover strategic health authorities, primary care trusts, NHS trusts, NHS foundation trusts, and, as is already the case, local authorities.

**Q69 Mr. Chaytor:** That is even more useful, because my second question is whether this simply leads one to reiterate the concerns that Fiona Mactaggart expressed earlier about people in different organisations passing memos to each other? Surely, the service is going in a direction where front-line responsibility will not necessarily lie with the local authority if independent social care providers take on a larger share of the work. What duties will be placed on independent social care providers to co-operate?

Secondly, what are the implications of practice-based commissioning for PCTs? My concern is that it is all well and good to put the duty to co-operate between PCTs and local authorities in a particular subsection, but if, in reality, the front-line day to day responsibility lies with the GPs, and they are now commissioning the service at practice level, or with

independent social care providers, they are the people who ought to be co-operating, and yet no statutory duty covers that.

**Kevin Brennan:** We believe that it would be wrong to tinker too directly at that level within the health service. There needs to be sufficient flexibility for local commissioning. With regard to the relationships of social work practices, as I said earlier, the local authority remains the corporate parent in that sense, so that obligation is applicable to the social work practice. In designing the model contracts for these new relationships, with which our Department will be closely involved, those factors will be taken into account. If a social work practice was not following that sort of conduct, the council would want to terminate its contract with them.

**Q70 Mr. Chaytor:** Following on from your comments about GPs, is there not a risk that the Government could find themselves in the same position as they are with Academies? Because Academies are not defined as maintained schools and are therefore outside the legislation, you subsequently have to legislate to bring them in if the Academy or individual GP is not following good and reasonable practice. Is it not better to bring them in from the start so that the ground rules are clear from day one?

**Kevin Brennan:** We follow the general principle of not legislating unless we have to. There are probably good, long-established reasons for doing that. If your fears were realised, we would have to look at the matter in detail. Members of the Committee might be interested to know that, although I did not have the opportunity to use them, I have the statistics on looked-after children for each of their local authority areas. You may already have those, but if not, you may find them helpful.

**Chairman:** That would be most useful. Annette Brooke has a tail-end question.

**Q71 Annette Brooke:** I wanted to ask a little more about private providers, particularly when children's homes are located some way away from the area from which the young person comes. I appreciate that the Bill will try to overcome such placements, but it will not happen overnight. One problem that has been reported to me is that a local authority will not necessarily notify another local authority of a child who is moving into its area. Another is that Ofsted might do an inspection of a home but not communicate with the host local authority, and, of course, the local youth offending team might want to know more about the child. I am sure that I can throw health into the pot here as well. We have spoken a lot about making everything more joined up, but what about those children who are not

in their original area—are we convinced that we have enough measures in place now, while hopefully we move to a different situation over time? I can see that we must have at least 10 more years of this.

**Kevin Brennan:** We are doing more to try to join that up, in particular in relation to inspection. For example, if the inspection shows that there is a problem in a particular children's home it will become the duty of the inspector to inform every local authority in the country of that problem.

**Q72 Annette Brooke:** Did you say “become”? Is that not the case now?

**Kevin Brennan:** That is correct. I think that I am right in saying that we are creating a new duty in the inspection system to ensure that every local authority in the country is informed if there is a problem in a particular children's home. In addition, we are introducing new powers—inspectors will be able to put a freeze on new entries into a children's home, for example. If they think it would be wrong to close a home down, and create the kind of instability that we have talked about for those young people, they may issue a notice for improvement and give the home time in which to improve. In the meantime, if they have concerns they can impose a freeze on new entries, as an extra lever in relation to improving the quality of care in that home. That again would be notified to every local authority.

**Q73 Annette Brooke:** Is there a duty on the home, local authority, PCT, etc. to notify the host authorities?

**Kevin Brennan:** Of the presence of that child in their area?

**Annette Brooke:** Yes. Is there that duty now? It appears not to be happening—I have quite a few examples.

**Kevin Brennan:** I think that there is a duty and it would be a breach of the regulations if that did not happen. I am fairly sure that that is the case, Chairman; I will confirm to you if it is not. I think that a local authority already has a duty to inform the local authority in which the home is located. That is the point that I think is being made.

**Q74 Chairman:** How many homes are there roughly, around the country?

**Kevin Brennan:** I do not know the number. All I do know is that 13% of the 60,000 young people in care are in residential accommodation of that kind. I can certainly write to you with the exact figures.<sup>1</sup>

**Chairman:** Minister, it has been an informative session and an excellent start for our look at the Bill. Thank you for your attendance and for being on the ball after the very late night we all had.

**Kevin Brennan:** Thank you.

<sup>1</sup> Ev 76.



# Written evidence

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## Memorandum submitted by The Adolescent and Children's Trust (TACT)

### INTRODUCTION

The Children, Schools and Families Select Committee has invited evidence in relation to its inquiry into looked-after children, the first part of which relates to the Government's proposals in the Children and Young Person's Bill.

The Adolescent and Children's Trust (TACT) is a national charity operating in England, Wales & Scotland and has been working with children and young people, their families and foster carers for over a decade. We place more children in foster care than any other UK charity.

### SUMMARY

To assist the Committee in its inquiry, TACT's evidence:

- Reiterates the primacy of the best interests of the child or care leaver, which we believe to be paramount.
- Supports the commissioning of social work practices to encourage innovation and raise standards.

And we explore steps that could strengthen the Bill further in:

- The improved use of and support for foster carers.
- Transition to independence for children in foster care.
- Promoting good health.
- Preventing criminalisation.

### EVIDENCE

#### *Best Interests*

1. The core value of TACT is one that we share with the entire child care sector—that whatever decisions are made, they are taken in the best interests of the child and with their wishes having been fully considered. For this reason we welcome the steps this Bill takes in seeking to address the inequalities and hurdles that face young people in care and those reaching adulthood and independence. We see this Bill as a positive step towards improving dramatically outcomes for children in care.

#### *Commissioning of social work practices*

2. It is on the grounds of support for the best interests of children in care and care leavers that we support the proposals to pilot the commissioning of social work practices as a means of raising standards.

3. TACT is a founding member of the Fostering through Social Enterprise group, a consortium of voluntary and not for profit providers seeking to build capacity in the voluntary sector in terms of child care provision. It is our experience that fostering and adoption services can be more innovative, responsive and have competed to raise standards since local authorities have been able to commission these services. We believe the same benefits would accrue from commissioning social work practices.

4. As services are commissioned, there should be clarity with regard to the corporate parenting responsibilities. The implication is that the corporate parenting responsibility lies with the local authority and other statutory authorities. However, without diluting the statutory duty of care, there is an increasing proportion of residential and foster care provided by the independent sector, we would suggest that good corporate parenting should be an obligation of all partner organisations, including commissioned social work practices and schemes to promote best practice in corporate parenting in the independent sector.

5. While TACT supports the general principle of commissioning social work practices, we have specific concerns over the role of Private Equity firms involvement in this sector. Unlike charities, social enterprises and companies limited under certain guarantees, private equity firms have a single overriding objective to maximise financial returns for their backers. As an ethos, we find this to be incongruous in the child social care sector, yet private equity firms have the resources to operate and grow in a market far more rapidly than their competitors. Last year saw the collapse of the private equity run children's residential and educational provider, Sedgemoor, a situation that could be easily replicated in commissioned social work practices to the great detriment of the children and young people dependent on their care and professional diligence.

*Improving the use of and support for foster carers*

6. Foster carers are an underrated element within the social care arena and there are a number of areas in which we would seek a strengthening of their role.

7. We welcome the emphasis on reducing the numbers of children that need to be taken into care through family intervention settings, such as short breaks, support care and family group conferencing. However, we believe there is a role here for experienced foster carers in a preventative context.

8. We are concerned at the level of private fostering, with perhaps only one-fifth to one quarter of privately fostered children notified as such and visible to their local authorities. Local authorities have had variable success in identifying privately fostered children and we would seek measure to obligate or support local authorities in identifying these vulnerable children.

9. A number of children miss out on certain opportunities and benefits due to a lack of delegation of responsibility to foster carers. We seek the publication of further guidance that would allow authorities to include foster carers more closely in the relationship with a child's school for example or the power to sign consent forms for field trips etc. Where relevant, it may be appropriate for a school governing body to co-opt a foster carer as an additional governor.

10. We support the moves towards making it easier for carers to transfer their registration from one fostering service to another. This has the potential to raise the level of support provided to carers with an improved focus on carer retention.

11. We support the registration of foster carers with the General Social Care Council, which would raise their status to better reflect the role of foster carers in the social care sector. However, we believe this should be part of an accreditation process certified against the carer's skills and knowledge.

*Transition to independence*

12. We believe the transition to independence is a challenging time for those in care and that there must be a degree of flexibility. Currently, looked-after children must leave their foster homes at 17 years of age, yet it is unlikely they will be confident of their capacity for independence at this age. In the general population, the average age at which a child leaves the parental home is 24 years.

13. While the Government will be piloting arrangements for young people to stay with their carers until the age of 21, the Bill does not explicitly empower measures to be applied nationally. We seek reassurance that this is a major priority and a clear timetable outlining when this support will be available to people at this vulnerable stage.

14. Higher education support payment are welcome, however, it is unclear why this should be an opportunity that a care leaver loses at the age of 25. We feel this cut-off age fails to reflect the challenges a care leaver faces during the transition to independence and the time it can take to overcome those challenges. We seek reassurance that the requirement to comply with a local authority prepared pathway plan cannot become an avenue by which exemptions are imposed on this opportunity for support in higher education.

*Promoting good health*

15. Looked-after children are more likely to smoke, drink and suffer from mental illness than is proportionate for the general population of children and we are convinced that the healthcare outcomes for children in care are both as important to and related to the educational outcomes stressed by the Bill.

16. It is unclear why the obligation for schools to have a named member of staff responsible for the welfare of looked-after children is not replicated in healthcare settings. We seek a similar obligation of NHS Trusts and a requirement for PCTs to ensure annual health checks for relevant children.

*Preventing criminalisation*

17. A further arena not touched upon in the Bill is the relationship between care and criminalisation. The anecdotal and statistical evidence available suggests a complex relationship between care and crime and we believe it should be a priority to seek out and address the causal links.

18. We seek reassurance from the Secretary of State that researcher will be commissioned into the causal links between care and criminalisation and an undertaking to address these links.

19. As an interim measure, we seek a commitment that children in care will not be subjected to exposure to the criminal justice system in circumstances under which any other child would be spared that exposure.

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## RECOMMENDATIONS

1. Corporate parenting responsibilities should be applied to partner organisations of local authorities in care provision or social work practice.
2. The role of foster carers should be explored in a preventative context.
3. Greater efforts should be made to identify children in private care arrangements.
4. Guidance should be issues enhancing the range of powers that can be delegated to foster carers in the best interests of the child.
5. The General Social Care Council should be empowered to register foster carers after a form of accreditation.
6. Support in the foster home until the age of 21 should be enabled as a priority.
7. Higher education funding and support should be available beyond the age of 25.
8. Named members of staff responsible for the welfare of looked-after children should be appointed within NHS Trusts.
9. PCTs should be responsible for ensuring looked-after children receive annual health checks.
10. Research should be commissioned into the causal relationships between care and criminal behaviour.
11. Children in care should not be exposed to the criminal justice system in circumstances under which any other child would be spared that exposure.

February 2008

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## Memorandum submitted by Cafcass<sup>1</sup>

### INTRODUCTION

This paper covers issues raised by young people in care who have received a service from Cafcass. In response to this Bill young people from the Cafcass Young People's Board have agreed that I represent their views. This includes considerations which they feel should be supported through the proposed legislation, and guidance to ensure that emotional, physical and safety needs can always be prioritised in the services they receive.

### SUPPORT WITH KNOWLEDGE, LEARNING AND PERSONAL DEVELOPMENT

#### *Young Person in Care's Perspective*

"I got my laptop from a skip, and since I got it working with my mates it's given me access to friends, information and a chance to become interested in thinking about what I want to do. Now when people give me advice or I don't understand, I go on the Internet to find out more . . . all children in care should be given a working laptop as sharing or going to a library is never easy. Most other kids have one at home and can get to it more easily".

"If it is a choice between a Nintendo DS or a laptop, I'll choose a laptop any day".

Educational stability for children in care is to normalise their experience so that they can feel secure within their environment and be more able to contribute according to their potential.

As part of promoting young people's resilience, their analytical skills should be developed since they may be inhibited due to the emotional impact of their early life experiences.

Virtual student support, which includes online tuition in subjects that young people fall behind on, should become a standard input offered to every young person.

Support to progress their Maths, English and analytical skills should be a standard program of online and face-to-face support available to children in care.

Falling behind in developing these key elements of learning will reduce the potential of long-term educational success.

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<sup>1</sup> Children and Family Court Advisory and Support Service.

## THE NEW MODELS OF SUPPORTING CHILDREN IN CARE

### 1. *Virtual ongoing online support*

This can be accessed when young people in care are most receptive to advice. It has been evidenced that young people are more responsive and alert in the latter parts of the day and late evenings.

Access to an online advice service from their social worker who has access to their computerised record would be a means of meeting their needs.

“They give you appointments in the morning and I find it hard to get to them. I’ll end up going to the duty worker but wait ages, and when I get to speak to them they make promises which do not materialise. So I go again and get to my worker who says I have not heard about this and I start explaining my situation again. This can go on for weeks. This happened to me when I was homeless and stopping at different mates’ places”.

Young person in care (Cafcass Young People’s Board Member)

It is clearly evidenced that resilience can only be promoted if young people in care can:

- Feel good about themselves.
- Trust others, and believe they can be supported by them.
- Have a good support network.

### 2. *Promoting a positive identity and feel good factor of self*

Peer support through forums promoted by councils along with an online virtual peer service will enable young people in care to realise they are not alone.

These would also promote positive strategies for creating self directed support. Such a facility can be overseen by trained young people who have had past experience of being in care and are now social work practitioners.

Every young person in care should be offered independent support and counselling to promote recovery from adverse early experiences and to help children and young people feel emotionally strong enough to move on.

Empowerment sessions, self development programs, issues based group work and self-promoting skills training are all important in this regard.

### 3. *Access to up to date and accurate information about the young person*

In recognition of changes in social work personnel it is essential that greater focus and resources are prioritised to promoting computerised systems to access accurate and up-to-date information on the young person both by duty social workers and others who form the team around the child.

In residential care with changing shifts, staff often don’t have access to accurate up-to-date information about the children they care for. An integrated system of information that links in all those caring for a particular child is critical for the emotional and wellbeing of these children, including the proper focus of care in an emergency.

### 4. *Information to young people*

To ensure they know the roles and responsibility of their team who support and review their Care Plan.

“I never know who deals with what and you find someone who helps you get it together and explains those who can help you on specific things. Whilst another worker will tell you, you need to speak to so and so and they are at this place. So you go round and from place to place”.

Young person in care (Cafcass Young People’s Board Member)

A young person in care needs access to information about their rights and how to access the services promised to them.

### 5. *A right to have a meaningful say about the service they receive*

Consultations undertaken by the Children’s Rights Director for England, confirm that young people find it hard to complain. In recognition of this difficulty in securing regular feedback from young people, we should promote regular online forums so that issues of concern for themselves and for their peers can be shared, supported and followed up.

User forums should be widely available and accessible and seen as a priority. Evidenced based reports should be available, demonstrating that the young person’s views have been taken into consideration and have informed changes to practice.

## THE ROLE OF THE IRO

As a signifier that they are genuinely independent, IROs should be practitioners who endorse the UN Convention for the Rights of the Child, especially article 12.

IRO practitioners should be chosen for their skills for proactively championing the rights of a young person to achieve their best potential and outcome. The role should be offered to highly skilled practitioners who have demonstrated child centred practice in their work and are remunerated for the particular expertise of championing the rights of children. They should have a fundamental understanding that care planning cannot be complete without the ACTIVE INVOLVEMENT of the young person who chooses to do so.

*Young people in care from the Cafcass Young People's Board said:*

“It was important to know how to contact an IRO easily and those who take these roles on should be properly trained to understand the needs of young people and who can communicate with them well”.

“The IRO should be committed to making our plans work and helping others to stick to them as much as possible”.

“The IRO should be committed to ensure our involvement, as the main person affected, asking the young person their opinions regularly. Discuss the plan with the young person to make sure they understand”.

A code of professional practice for IROs should form the basis of the current service. This should be beyond mere GSCC registration confirming status as a social work professional.

A good complaints system should be available if young people are not happy with the service provided by their IRO. This information should be given to every young person and be available to be accessed in different formats.

*Young Person's Needs Wishes and Feelings Evidenced and Updated in Care Planning Processes and Reviews*

Young people should be supported and facilitated to express their needs, wishes and feelings in a meaningful way. The evidence of this should be recorded in their case file and a court life record should be made visible. Wishes and feelings do not go far enough. Young people wish that their views are considered alongside their analysis of their needs, in the context of the information they have about their social and emotional environment.

## TEAM AROUND THE YOUNG PERSON IN CARE

The befriending scheme, which helps young people build their personalised network of support, is a vital part of any child's resilience.

Befrienders, mentors, buddies, advocates or independent visitors should be available from all walks of life, but specific efforts should be made to link up with large multinational companies who have a very skilled workforce. Attracting people who have been successful in their careers could provide inspiration and promote creativity; which will promote the young person's perspective in life and better care planning. With an increasing awareness of various companies' commitment to corporate social responsibility and accountability, such individuals should be encouraged to contribute to a young person's care planning.

Children's services should dedicate some energy to harness contacts from the private sector.

Children's services should work to resourcing such a practitioner whose primary task would be to link the young person to strong personal mentors from the private sector to take on this role.

Young people should be a part of this process and in identifying who should be significant people to support them and form the team around them. This should be a range from professionals, friends and family members who they think could support them in moving forward.

## ACCESS TO LONGER-TERM SUPPORT UP TO THE AGE OF 21

All good parents are available to meet their growing and evolving young person's emotional and financial needs.

Many young people make mistakes in managing their finances and a young person in care does the same.

*As one young person in care from the Cafcass Young People's Board said:*

“I bought a fridge and a washing machine with my leaving care money, then I had to move, but could not afford to transport it to my mates, so had to leave my washing machine at the old place. Waiting for another place meant I had to start over again. This meant lots of long arguments with my worker that I needed the money to buy more things again. I have had to get furniture off mates to start again”.

This is not an unusual experience and it affects many of our young people. The difference is that a young person with family links will get the support to move on to where their new opportunity of employment or learning is. A young person who has left care needs to have a link to support them until they are confident to move onto fully independent living.

*Other young people in care from the Cafcass Young People's Board said:*

“Having this support will mean that they recognise that we all develop at different stages”.

“It will give me a chance to concentrate on building my skills for the future”.

“Have enough time to study, without the fear about being moved around”.

“It gives us a better start in life”.

“If change is needed, it should be a gradual process, at the young person's pace with support from their carers, rather than going from being looked-after to nothing”.

“When you leave care you are just pushed out with £45 a week. Imagine—we have lots of bills to pay out of that. My own family would not leave me in such a situation where I have to stress over how I am going to survive. It is so difficult for me and 99% of young people in care I know have the same problem”.

The support up to 21 is welcomed by young people in care, but specific practical programmes of support that can be harnessed by the young person should go with that.

The menu of support should be visible and well publicised. This support should be based around the needs of the individual and accessible from a range of providers that they can choose from. A self-directed approach like that in the adult social care sector should be a consideration. This maximises choice of services that they could purchase from the most appropriate provider. Cost, efficiency and timeliness could be a facility that young people can also be offered through this extension of choice.

“The new models of practice should include Social Workers being trained to budget our allocated funds and in discussion with us help to plan our future needs”.

Cafcass has been fully involved in discussions on various aspects of the Bill with civil servants and we would be happy to give more specific evidence if the Committee felt that would be helpful.

*Christine Smart*

*Children's Rights Director on behalf of The Cafcass Young People's Board*

*February 2008*

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## **Memorandum submitted by the Children's Advocacy Consortium**

### **EXECUTIVE SUMMARY**

#### *Introduction*

1. Voice and the Children's Society, on behalf of the Children's Advocacy Consortium, submit this memorandum specifically on independent advocacy for looked-after children as we do not accept that the Children and Young Persons Bill has reflected the outcome of the consultation process. There has been no clause on the face of the Bill concerning independent advocacy and the Government response to debate at both House of Lords Second Reading and the Committee Stage has not been sympathetic.

2. The Children's Advocacy Consortium, the Alliance for Child-centred Care and other children's organisations<sup>2</sup> have called for an extension of professional independent advocacy in the Children and Young Persons Bill by:

- extending the statutory right to advocacy to the care planning and review process; and
- requiring providers of residential care and fostering services to ensure that children are provided with an independent advocate.

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<sup>2</sup> See joint statement at: [http://www.childrensociety.org.uk/resources/documents/Policy/Children\\_and\\_Young\\_Persons\\_Bill\\_joint\\_statement\\_on\\_independent\\_advocacy\\_4876\\_full.pdf](http://www.childrensociety.org.uk/resources/documents/Policy/Children_and_Young_Persons_Bill_joint_statement_on_independent_advocacy_4876_full.pdf)

3. We believe that empowering young people to be able to participate in the decisions about their lives and seizing the opportunity that advocacy offers should be a central part of the strategy for improving the outcomes for children in the care system.

*What do we mean by professional independent advocacy?*

4. In our view the Government confuses the task of informal advocacy (as provided by parents and social workers) and the role of professional advocacy as set out in National Advocacy Standards. The latter defines advocacy as about empowering children and young people to make sure that their rights are respected and their views and wishes heard at all times.

5. It is our view that the expression of the child's views in the decision making process by those who are responsible for the outcome of that process is quite distinct from the representation of the child's wishes and their rights by a professional who is independent of the system. This is particularly important as looked-after children have little recourse to the courts when things go wrong in relation to their care plan except in cases where there are clear breaches of their human rights or can make an application in judicial review.

*Why is a strengthened statutory right to independent advocacy needed?*

6. Research studies provide evidence that whilst many more children in care are actively involved in reviews and planning meetings some professionals continue to make assumptions that children will not want to or would be unable to participate. Many children continue to be intimidated by the number of adults in meetings, find the language used difficult to understand and were not confident enough or given enough time to get their views across.

7. Looked-after young people themselves continue to tell us that their views are not being listened to and taken into account despite the existing responsibilities of Independent Reviewing Officers to facilitate the child speaking at their review meeting and ensure the child understands what is being discussed. This experience is borne out by research.

*The current situation: independent advocacy for complaints and representations*

8. Section 119 of the Adoption and Children Act 2002 imposed new duties on local authorities to provide advocacy for looked-after children, children in need and young people leaving care making or intending to make a Children Act 1989 complaint.

9. This new duty has had only limited impact. This is in part because the numbers of looked-after children making complaints remains very low. Many children simply do not understand that they have a right to complain or that they have a right to an advocate to support them through the process. Children and young people do not want to have to resort to a complaints system before they can get the support they need to get their views across; they would rather have support at an earlier stage and thus avoid problems escalating.

10. Furthermore, children in care have expressed concerns about using the complaints system for fear of reprisals; this can be all the more fearful for a disabled child who is dependent upon staff or foster carers for all their daily needs.

11. We believe that better outcomes and potentially long-term cost savings can be achieved if children are represented by independent advocates far earlier in the decision-making process. This not only contributes to fairer and better decision making but also is likely to avoid the need for a complaint subsequently to be made.

*Access to existing advocacy services*

12. Even where a child does indicate they wish to make a complaint or a representation the current availability of advocacy services is limited, and it is often those with additional needs, who are the most vulnerable who are being denied access.

13. As far back as 1997, Sir William Utting recognised the importance of advocacy as an important safeguarding measure for children living away from home. Visiting advocacy services to children's homes and fostering agencies enable the child to speak to a trusted professional advocate about safeguarding and other issues of concern to them. We consider that it would be a significant safeguard for children placed away from home if all agencies providing care were required to ensure that their children had access to independent advocacy.

14. Work carried out by the Children's Advocacy Consortium estimates that about 15% of the care population would take up the support of professional independent advocacy with an estimated cost of £3 million (excluding on-costs).

15. We are supporting an amendment at Report Stage in the House of Lords that the local authority ensures that there are sufficient independent advocacy services for those children for whom they are responsible, the later including those children who are placed outside the authority including an audit of such services. This amendment seeks to address the expectation by Lord Adonis that children have access to advocacy beyond the complaints procedure.

*Evidence of Government's existing commitment to independent advocacy*

16. Recent legislative changes in other arenas such as the Independent Mental Health Advocate (2007 Mental Health Act) and Independent Mental Capacity Advocate for over 16s (2005 Mental Incapacity Act) have extended the right to independent advocacy for children and young people. This demonstrates the Government's recognition of the value of advocacy for groups who are at risk of having significant decisions made about their lives without their views being independently represented.

*The proposals in the Bill are not sufficient to ensure that the wishes and feelings of children are represented independently of those who make decisions about their best interests*

17. We welcome the extension of the IRO role and hope that the changes (some of which are already in existing regulations) will lead to greater scrutiny of the child's care plan in the interests of the child and in compliance with their human rights. However, this does not replace the need for an extension of professional independent advocacy as the purpose of the IRO is fundamentally different from that of independent advocacy (see para 5).

18. IROs have significant responsibilities in relation to chairing review meetings which means that they do not have the capacity to give young people the dedicated support necessary to ensure that their views can be clearly represented.

19. The remit of the IRO is to act in the best interests of the child and at times they may conclude that what the child wants is contrary to what is in their best interests.

20. We have supported an amendment for debate at House of Lords Report Stage that the IRO must inform the child about independent advocacy, and if a need is identified, to require the local authority to provide it for the child.

## FULL MEMORANDUM

### 1. INTRODUCTION

1.1 Voice is a national charity committed to empowering children and young people in public care and campaigning for change to improve their lives. Amongst our other services, Voice provides community advocacy services on request to children and young people who are in need, looked-after and who have left care and employs specialist advocates in asylum seeking children, mental health, disability and care leavers. Voice also provides visiting advocacy services to children's homes, the vast majority of secure children's homes in England and five adolescent units in the North of England. At present we also provide visiting advocacy to young people sentenced to custody in three secure training centres and ten young offender institutions.

1.2 The Children's Society is a national children's charity concerned with the welfare of *all* children and young people, but especially those who are at risk of social exclusion and discrimination. We have a particular interest in disabled children, looked-after children, children in trouble with the law, young refugees, and children and young people at risk on the streets. Our organisation works across England and has a well-developed practice base working directly with children and young people in a range of social care, community based and specialist projects including the provision of advocacy and independent visiting services.

1.3 Voice and the Children's Society, on behalf of the Children's Advocacy Consortium, submit this memorandum specifically on independent advocacy for looked-after children as we believe that the Children and Young Person's Bill has not reflected the outcome of the consultation process. There has been no clause on the face of the Bill concerning independent advocacy and the Government response to debate at both Second Reading and the Committee Stage in the House of Lords has not been sympathetic.

1.4 The Children's Advocacy Consortium welcomes many of the proposals in the Government's White Paper, *Care Matters: Time for Change* as a major step in securing child centred care for looked-after children and improving their outcomes both during their childhood and in later life.

1.5 The Children's Advocacy Consortium, the Alliance for Child-centred Care and other children's organisations<sup>3</sup> have called for an extension of professional independent advocacy in the Children and Young Persons Bill in the following ways:

- extending the statutory right to advocacy to the care planning and review process; and
- 

<sup>3</sup> *Ibid.*



- requiring providers of residential care and fostering services to ensure that children are provided with an independent advocate.

1.6 Empowering young people to be able to participate in the decisions about their lives and seizing the opportunity that advocacy offers should be a central part of the strategy for improving the outcomes for children in the care system.

1.7 Contents of submission:

- Brief history of the consultation process.
- What do we mean by professional independent advocacy?
- Why is a strengthened right to advocacy needed?
- The current situation: complaints and representations.
- Access to advocacy.
- Evidence of Government’s existing commitment to independent advocacy.
- The proposals in the Bill are not sufficient to ensure that the wishes and feelings of children are represented independently of those who make decisions about their best interests.
- The way forward.

## 2. BRIEF HISTORY OF CONSULTATION PROCESS

2.1 The Green Paper proposed that all looked-after children should have three key individuals in their lives: the Social Worker, the Carer (whether in residential or foster care) and an Independent Advocate. It went on to suggest that the independent visitor role be revitalised and renamed as Independent Advocate in order to introduce advocacy as a key element of this role. While supporting the expansion of independent visitor scheme we argued strongly for an understanding of the crucial difference between the two roles, most significantly between the volunteer nature of a long term befriending role in the Independent Visitor and the task focused professional role of the independent advocate charged with advising and representing the child in accordance with the guidance in *National Advocacy Standards*<sup>4</sup> and *Get it Sorted*.<sup>5</sup>

2.2 The Care Matters: Consultations Response document<sup>6</sup> acknowledged there was a general consensus that the proposal to change the name of independent visitor to independent advocate was misguided and would confuse and dilute the two roles.<sup>7</sup> It also highlighted young peoples’ feelings that they should be entitled to an advocate not only during complaints processes but at other times throughout their time in care. Access to a champion or advocate was one of the things that children and young people felt should be included as part of the local authority pledge.<sup>8</sup>

2.3 There was no reference to professional independent advocacy in the White Paper except to restate the existing legal right to advocacy in making complaints. One small reference to advocacy was made in relation to testing the outcomes of a pilot project, *Right 2B Cared4* in which 16 and 17-year-olds moving on to independence will be offered support by an independent person to ensure they have the opportunity to express their wishes and feelings and fully understand the implications of any proposals. The pilots will explore whether or not young people express a preference in choosing independent advocates and how far this contributes to improved outcomes and the quality of young people’s engagement in their care.

## 3. WHAT DO WE MEAN BY PROFESSIONAL INDEPENDENT ADVOCACY?

3.1 Parents and others with responsibility for children advocate for children in helping them articulate their wishes and feelings: it is a part of what they do. Provisions of the 1989 Children Act<sup>9</sup> require the local authority to ascertain and take into account the wishes and feelings of the child in decision making. This is also reflected in guidance for other professionals.

3.2 There is a clear distinction between this general role and the specific role of professional independent advocacy. The National Standards for Children’s Advocacy Services states that:

“Advocacy is about speaking up for children and young people. Advocacy is about empowering children and young people to make sure that their rights are respected and their views and wishes heard at all times.”<sup>10</sup>

3.3 The National Standards further state that “advocacy is about representing the views, wishes and feelings of the children and young people to decision-makers and helping them navigate the system”. In our view the Government confuses the task of informal advocacy and the role of professional advocacy as set

<sup>4</sup> DoH (2002) National Standards for the Provision of Children’s Advocacy Services.

<sup>5</sup> DfES (2004) *Get it Sorted: Providing Effective Advocacy Services for Children and Young People making a Complaint under the Children Act 1989*.

<sup>6</sup> DfES (2007), para 3.29.

<sup>7</sup> DfES (2007) *Care Matters: Consultations Responses*, para 3.29.

<sup>8</sup> *Ibid*, para 3.30.

<sup>9</sup> Sections 22(4) and (5).

<sup>10</sup> Para 1, National Standards for the Provision of Children’s Advocacy Services, DoH, 2002.

out in National Standards. It is our view that the expression of the child's views in the decision making process by those who are responsible for the outcome of that process is quite distinct from the representation of the child's views and their rights by a professional advocate who is independent of the system.

3.4 This is particularly important as looked-after children have little recourse to the courts when things go wrong in relation to their care plan except in cases where there are clear breaches of their human rights or the decision making process has been faulty so that the courts exercise their discretion in judicial review.

3.5 There is a strong argument to say that under human rights law natural justice requires the child to be independently represented in decision making about their private and family life. In discussing the role of independent advocacy, Mr Justice Munby<sup>11</sup> has said:

“Article 8 imposes procedural safeguards which impose on administrative decision-makers whose decisions impinge on private or family life burdens significantly greater than I suspect many of them really appreciate. And the burden may extend in some circumstances not merely to permit representation but even to ensure that parents—and particularly children—are properly represented when decisions fundamental to the children's welfare are being taken.”

In other words, using the analogy of court proceedings, those who are making a judgment about the child's welfare cannot also argue their case.

#### 4. WHY IS A STRENGTHENED STATUTORY RIGHT TO INDEPENDENT ADVOCACY NEEDED?

4.1 Voice and The Children's Society are very concerned that looked-after children and young people continue not to be heard in decisions being made about their care, their protection and their lives despite successive legislation and guidance.<sup>12</sup>

4.2 Research studies provide evidence that in practice authorities are failing to meet their duties in this regard.<sup>13</sup> Whilst many more children in care are actively involved in reviews and planning meetings some professionals continue to make assumptions that children will not want to or would be unable to participate in reviews and planning meetings. A 2006 CSCI report on children's views found many continue to be intimidated by the number of adults in meetings, find the language used difficult to understand and were not confident enough or given enough time to get their views across.<sup>14</sup>

4.3 Looked-after young people continue to tell us that their views are not being listened to and taken into account despite the existing responsibilities of Independent Reviewing Officers to facilitate the child speaking at their review meeting and ensure the child understands what is being discussed. Exclusion from involvement in decision-making was a dominant theme in the experience of looked-after young people in the study by Boylan and Braye.<sup>15</sup> They found children were being talked about rather than being talked to and frequently had their views ignored:

“You ain't got a say in what's going off-everybody's talking about you and not to you.” (Paul)

“(It's) a place where your social worker and them bosses get to talk about you to see where you're going to end up in the future.” (Claire)

4.4 Chase *et al* [2006]<sup>16</sup> noted the following view from a young person using the Voice advocacy service:

“Before I had an advocate social services and I were talking at cross purposes and I wasn't getting proper help . . . the advocate improved the communication between all of us . . . she gave me some power back . . . all the others, teachers, social workers etc were talking amongst themselves but no one was talking to me, they were not involving me or explaining anything to me”.

#### 5. THE CURRENT SITUATION: INDEPENDENT ADVOCACY FOR COMPLAINTS AND REPRESENTATIONS

5.1 Section 119 of the Adoption and Children Act 2002 (inserting section 26A into the 1989 Children Act) imposed new duties on local authorities to provide advocacy for looked-after children, children in need and young people leaving care making or intending to make a complaint under section 24D or section 26 of the Children Act 1989. The associated *Get it Sorted* guidance seeks to provide all children's services staff with an understanding of these duties.<sup>17</sup>

<sup>11</sup> Family Law (2004) and see [www.voiceyp.org](http://www.voiceyp.org)

<sup>12</sup> Section 22[4] [a] and [5] of The Children Act 1989.

<sup>13</sup> Stuart and Baines JRF (2004) *Progress on Safeguards for children living away from home*.

<sup>14</sup> Morgan R CSCI (2006) *Placements, Decisions and Reviews—A children's views report*.

<sup>15</sup> Boylan and Braye (2006) *Paid, Professionalised and Proceduralised: Can Legal and Policy Frameworks for Child Advocacy Give Voice to Children and Young People?*, *Journal of Social Welfare and Family Law*, 28:3, 233–249.

<sup>16</sup> Chase *et al* [2006] *Findings from an Evaluation of the Voice Advocacy Service*. Thomas Coram Research Unit, Institute of Education.

<sup>17</sup> DFES (2004) *Get it Sorted: Providing Effective Advocacy Services for Children and Young People Making a Complaint under the Children Act 1989*.

5.2 This existing statutory right to advocacy in relation to complaints has had only limited impact. This is in part because the numbers of looked-after children making complaints remains very low.<sup>18</sup> Many children simply do not understand that they have a right to complain and do not know they have a right to an advocate to support them through the process. Children and young people do not want to have to resort to a complaints system before they can get the support they need to get their views across; they would rather have support at an earlier stage and thus avoid problems escalating.

5.3 Whilst the *Get it Sorted* guidance suggests the role of advocacy should not be limited to assisting children when they want to make a complaint, in reality some local authorities are only triggering advocacy services once a complaint has been registered.

5.4 Furthermore children in care have expressed concerns about using the complaints system for fear of reprisals; this can be all the more fearful for a disabled child who is dependent upon staff or foster carers for all their daily needs. Oliver *et al* confirm that the value of formal complaints procedures for children appears to be limited and complaints procedures are less accessible to disabled children.<sup>19</sup>

5.5 We believe that better outcomes and potentially long-term cost savings can be achieved if children are represented by independent advocates far earlier in the decision-making process. This not only contributes to fairer and better decision making but also is likely to avoid the need for a complaint subsequently to be made.

## 6. ACCESS TO EXISTING ADVOCACY SERVICES

6.1 Even where a child does indicate they wish to make a complaint or a representation the current availability of advocacy services is limited, and it is often those with additional needs, who are the most vulnerable who are being denied access. A survey of advocacy services across England carried out by The Children's Society between April and December 2006 found alarmingly that a quarter of advocacy providers surveyed reported that they had not been able to respond to a referral from a disabled child at all. Furthermore the most vulnerable children were even less likely to be able to access a service, for example over two fifths of those surveyed said that they could not provide advocacy for children who did not communicate verbally and over a third could not provide advocacy for autistic children and young people.<sup>20</sup>

6.2 Looked-after children are placed predominantly in foster care and with the majority of others in residential care. As far back as 1997, Sir William Utting recognised the importance of advocacy as an important safeguarding measure for children living away from home.<sup>21</sup> Members of the Children's Advocacy Consortium have a decade of experience in providing such services. Visiting advocacy services to children's homes and fostering agencies enable the child to speak to a trusted professional advocate about safeguarding and other issues of concern to them. If the Government wish to see a 'step-change' in the care system this would ensure that children in care had support when they needed it to raise concerns or to challenge decisions about their care.

6.3 We consider that it would be a significant safeguard for children placed away from home if all agencies providing care were required to ensure that their children had access to independent advocacy.

6.4 Work carried out by the Children's Advocacy Consortium estimates that about 15% of the care population would take up the support of professional independent advocacy with an estimated cost of £3 million (excluding on-costs). Further costs would be incurred for developing visiting advocacy services.

6.5 We are supporting an amendment at Report Stage in the House of Lords that the local authority ensures that there are sufficient independent advocacy services for those children for whom they are responsible, the later including those children who are placed outside the authority, and that the availability of such services should be regularly audited. This amendment seeks to address the expectation by Lord Adonis that children have access to advocacy beyond the complaints procedure.

## 7. EVIDENCE OF GOVERNMENT'S EXISTING COMMITMENT TO INDEPENDENT ADVOCACY

7.1 Recent legislative changes in other arenas have extended the right to independent advocacy for children and young people and demonstrate the Government's recognition of the value of advocacy for groups who are at risk of having significant decisions made about their lives without their views being independently represented.

<sup>18</sup> No national statistics are available about the number of looked-after children making complaints in their own right. Although local authorities are required to report annually on complaints and representations many do not identify numbers of complaints made by children in their own right. A scan of local authority annual reports for 2005–06 that do identify complaints made by children indicates the following numbers Hertfordshire two; North Tyneside three; Derby City Council 18; East Sussex 28. It is not clear how many of these children are looked-after.

<sup>19</sup> Oliver, C Knight, A, and Candappa, M [2006] *Advocacy for looked-after children and children in need: Achievements and Challenges*. Institute of Education, University of London.

<sup>20</sup> The Children's Society (2007) *When will we be heard?* Advocacy provision for disabled children and young people in England.

<sup>21</sup> Utting W [1997] *People Like Us: The Report of the Review of Safeguards for Children Living Away from Home*. London HMSO/Dept of Health/Welsh Office.

- The Mental Health Act 2007 places a new duty on the appropriate national authority to make arrangements for access to independent mental health advocates for a child who is liable to compulsory treatment, or for whom Electro-Convulsive Therapy (ECT) is being contemplated.
- The Mental Capacity Act 2005 established the Independent Mental Capacity Advocacy Service. This is the new statutory advocacy service that provides advocacy for those 16 years and over who lack capacity where important decisions are being made about serious medical treatment changes in placement; arranging care reviews or adult protection cases.

7.2 The Government clearly accepts that independent advocacy is a valuable service that gives people who might otherwise be denied it a voice in decision making about their lives. We believe that it must be extended to all looked children who face significant decisions as a matter of urgency.

## 8. THE PROPOSALS IN THE BILL ARE NOT SUFFICIENT TO ENSURE THAT THE WISHES AND FEELINGS OF CHILDREN ARE REPRESENTED INDEPENDENTLY OF THOSE WHO MAKE DECISIONS ABOUT THEIR BEST INTERESTS

8.1 In debate in the House of Lords Committee Stage, Lord Adonis, raised the importance of improving professional practice in order to take into account and express the views of the child. While we fully support this, it is our belief that this comment misunderstands the respective roles of social worker, independent reviewing officer (IRO) and independent advocate (see para 3.3).

8.1 In debate,<sup>22</sup> Lord Adonis said of the IRO:

“The Bill extends the responsibilities of IROs to monitor the performance of the local authority’s functions in relation to a child’s case, ensuring that they effectively oversee the care planning process so that it is fair and reasonable and gives proper weight to the child’s wishes and feelings. The IRO will support children’s active engagement with the care planning process, ensuring that there is greater scrutiny of the care plan for each child in care and making sure that children and young people are informed about their rights if they consider that they have been treated unfairly”.

8.2 We welcome the extension of the IRO role in the Bill [clauses 11 and 12] and hope that the changes (some of which are already in regulations) will lead to greater scrutiny of the child’s care plan in the interests of the child and in compliance with their human rights. However, this does not replace the need for the expansion of professional independent advocacy. As we have stated in paragraph 3.3 the purpose of independent advocacy is fundamentally different from that of the IRO.

8.3 The IRO cannot practically be expected to enable the necessary participation of the child in the review process. Despite the existing requirement, in regulations,<sup>23</sup> for the IRO to ensure that the voice of the child is conveyed to the review, children still tell us that they do not feel that they are listened to.

8.4 In response to this situation the Government has stated its intention to introduce a stronger requirement on the IRO to meet with the child before the meeting.<sup>24</sup> This is welcome but will not resolve the fundamental conflict in role that IROs have significant responsibilities in relation to chairing review meetings which means that they do not have the capacity to give young people the dedicated support necessary to ensure that their views can be clearly represented. Independent advocates are also able to ask challenging questions of the review participants in a way that the IRO cannot from the position of chair.

8.5 The remit of the IRO is to act in the best interests of the child and at times they may conclude that what the child wants is contrary to what is in their best interests. For this reason it is essential that in all planning and review meetings children are entitled to have the right to have the support of a professional advocate independent of the care authority who will listen to their views and represent them, irrespective of what they themselves think is in the best interests of the child. Oliver *et al* found that children appreciate being genuinely listened to even if their wishes are not fully met.<sup>25</sup> Children themselves tend to view the IRO as “officials” who are working on behalf of the system not for their own individual benefit.

## 9. THE WAY FORWARD

9.1 We have supported an amendment for debate at House of Lords Report Stage that the IRO must inform the child about independent advocacy and, if a need is identified, to require the local authority to provide it for the child.

9.2 In current guidance the IRO is required to inform the child of their right to make a complaint and in such circumstances the right to an advocate.<sup>26</sup> In our view this is too late and puts the onus on the child to take action after a decision is made about which they are unhappy rather than at the time when they may be able to influence the direction of that decision.

<sup>22</sup> *Hansard*, House of Lords Official Report, Vol 697, No 35, Thursday 17 January 2008, Column GC582.

<sup>23</sup> The Review of Children’s Cases (Amendment) (England) Regulations 2004.

<sup>24</sup> Policy Statements for the Children and Young Persons Bill, p 12 <http://www.dfes.gov.uk/publications/childrenandyoungpersonsbill/docs/Policy-Statements-for-the-CYP-Bill%20FINAL.pdf>

<sup>25</sup> Oliver, C Knight, A, and Candappa, M [2006] *Advocacy for looked-after children and children in need: Achievements and Challenges*. Institute of Education, University of London.

<sup>26</sup> Department for Education and Skills (2004) Independent Reviewing Officers Guidance.

9.3 We believe that the IRO should inform the child about independent advocacy, what it means, how it can help, and how it is different from the social work and IRO role before each review. Following discussion with the child and where, for example, the child is clear that they want an advocate or the IRO feels that the child should have an advocate as their views do not correspond with the care plan, the local authority should be required to provide advocacy services to that child.

9.4 Not all children will either need or want advocacy, but they must be given the opportunity to make an informed decision. At the same time, this would ensure human rights compliance.

9.5 We are also supporting an amendment at Report Stage in the House of Lords that the local authority ensures that there are sufficient independent advocacy services for those children for whom they are responsible, the later including those children who are placed outside the authority, and that the availability of such services should be regularly audited. This amendment seeks to address the expectation by Lord Adonis that children have access to advocacy beyond the complaints procedure.

*February 2008*

## Annex 1

### CASE STUDIES

#### *Tania and Susie's Story*

Tania and Susie, twins aged seven years, came into care due to concerns about their neglect at home. They have been in their current placement for a nearly a month. The foster carer asked the advocacy service to visit because the girls were very distressed. They didn't understand why they were in care; they were worried about their cat and other personal possessions and about where their mum was living and when they could see her. They want to know when they can go back to their old school. The advocate is liaising with the social worker and trying to arrange a visit for the girls to see their mum. She is struggling to get the social worker to understand the urgency of reassuring the girls. The advocate is helping the girls prepare what they want to say at their first review and has agreed to attend to support them in the meeting.

#### *Ahmed's story*

Ahmed is 14; he has been accommodated on a full care order since he was 10. He has had numerous placements within the local authority and a history of being missing for considerable periods. As a result he was found an out of authority placement where he spent about 18 months. Whilst there Ahmed sustained serious injuries to his face and eye during an incident involving an older young man. Soon after Ahmed was returned to the local authority. Due to many changes of social worker and periods when his case was unallocated Ahmed's claim for Criminal Injuries Compensation has been ongoing for several years. He is understandably anxious and distressed when required to go into the details of the incident repeatedly. Unfortunately Ahmed's disillusionment with Social Services manifests in ways, which do not always help his cause, resulting in him having a reputation as a difficult young person. He has now been allocated his sixth social worker and he has refused to meet her, as 'she'll only leave in a couple of months'. The deadline for the completion of the Criminal Injuries claim is getting close and the care home worker referred Ahmed to the advocacy service to help him progress the claim. He sees the advocate as different from 'the social', he is helping him progress the claim and working on encouraging him to trust the new social worker.

#### *Brendon's Story*

Brendon has a learning disability and very little speech. He spent five years with the same foster carers but due to a sudden change in their family circumstances he could no longer stay with them. Brendon was placed with a new foster family but with little time for introductions. He soon became distressed and his behaviour deteriorated. The new foster family couldn't cope and social workers couldn't find a new placement. In desperation he was moved to a mental health unit. An advocate was then introduced and over a period of time got to know Brendon and his way of communicating. The advocate was able to help Brendon keep in touch with the first foster carers and is working with the social worker to make sure Brendon is involved in planning a move to a more suitable placement.

#### *Frankie's Story*

Frankie is 14 and spends long periods of time hospital as a result of his complex health needs. Many different staff provide his daily care needs. Frankie uses the Picture Exchange Communication System when he is at home and when he is well enough to go to school. Frankie's advocate soon realised that he had no pictures in his PECS file that related to the environment in hospital and as a result was struggling to communicate his preferences to the hospital staff. Once this was rectified the nursing staff were able to use

the pictures to help explain to Frankie what was going to happen next in relation to his treatment. The advocate made sure Frankie had a transition review meeting even though he had not been in school for quite a while and helped Frankie prepare two important things that he wanted to say using pictures and symbols.

### *Jasmine's Story*

Jasmine is 15 and has been in care since she was very small. She has moved placements several times as staff have struggled to cope with her physical care needs. In her latest placement Jasmine seemed to be increasingly in conflict with the care staff. An advocate was introduced to Jasmine and having spent some time with her away from the unit, and building up her trust the advocate discovered Jasmine was feeling really constrained by the unit's rules and routine. She felt she wasn't being encouraged to make her own decisions or make friends away from the unit. She felt the staff were being too protective of her and wouldn't let her take any risks. Her advocate went along with Jasmine to her next review and supported her to be honest about how she was feeling. The review team arranged for the local person centred planning worker to get involved and with the support of her advocate Jasmine is preparing for her first person centred planning meeting.

### *Paul's story*

Paul, aged 13, contacted the advocacy service as he had been informed by children's services that they wanted to move him from his foster placement. Paul had visited the new placement but did not want to move as he was settled where he was and happy in his school. Children's services stated that the current placement has been made on a short-term basis and therefore they needed to move Paul. It was also their view that the carer was manipulating Paul to prevent the move.

An urgent complaint was submitted in which the advocacy service requested that the move be frozen. Although this was agreed, children's services re-iterated their intention to move Paul although they were reluctant to discuss their reasons with him. The advocacy service stressed how important it was for the social worker to engage in a more open and honest dialogue with Paul in order that he could understand the reasons why he was being moved and so that his wishes and feelings played a central role within the planning process.

A placement planning meeting was arranged in which Paul was able to contribute his views with the support of his advocate. In light of his wishes, it was agreed that the current carer should be re-assessed with regard to her ability to provide long term care. The assessment found no concerns and it was agreed that the young person could remain in his placement. Paul was pleased with the outcome but felt let down by children's services and angry that they had not listened to his views from the outset.

## **Annex 2**

This is the case of five children; a group of three siblings and a group of two siblings. They had come into care for some of the most serious reasons possible. With their foster carers life had become better for them. They had lived, according to their reviews, happily for the previous five years, in a large house, near the sea, far away from the inner London borough that was their corporate parent. They all thought that they would be living together until they were 18.

Things changed one Monday afternoon, Tommy (not real names) aged 12 rang *Voice* (the advocacy service) at 4 pm to say that their social worker had just visited and told them all that they were being moved the next day at 10.00 am to three separate homes.

The foster carers had been informed two weeks prior that the children were being moved, this was not because of the quality of their childcare, parenting practice or importantly child protection, but because the foster carers were not co-operating with the borough. They were told "don't tell the children it will upset them".

A complaint was sent and after negotiations with the authority they agreed that the three siblings could remain in their placement for a few more days, The two siblings had a guardian who had delayed the decision in moving them, but later did in fact countenance their move.

It then became clear that the authority were still going to move the children for the reasons previously outlined. A solicitor was retained for the children and a temporary injunction was gained on behalf of the children in the high court.

It was argued that the decision of the authority was unlawful for amongst other reasons:

- failure to consult the children as required the Children Act 1989;
- the views of children had not been taken into consideration;
- the authority had failed to involve the children in the whole process; and
- the judge commented on the importance of independent advocacy services like *Voice* and that without their involvement the case of these children would never have been brought before him.

It was finally agreed that:

1. The authority would not remove the children.
2. The decision to remove the children from the care of the foster carers was “procedurally unfair and perverse” because of failure to:
  - consult the children;
  - consider the harmful effect of removal from the placement; and
  - consider or evaluate the children’s security in the placement and the progress they had made.

This case highlights key observations:

1. The importance of independent advocates—they were able to advise the young people and challenge the authority’s decision in a way that the social worker (who did not agree with the decision to move them) and IRO had not been able to do.
2. They were able to ascertain the children’s wishes and feelings, which other professionals had failed to do.
3. Advocacy provides a procedural safeguard in relation to decisions being made that children and young people are unhappy with.

There has been a lasting impact on these children from the authority’s decision:

1. There was a breakdown in the relationship with the young people and professionals from the authority.
2. They remain frightened that when the SW comes for reviews that they will be taken away.
3. The foster siblings have no contact and believe that they are not together because of something that they have done.

Involving independent advocates in looked-after children’s reviews and care planning, would surely have resulted in a different outcome for these children.

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### **Memorandum submitted by the Children’s Services Development Group (CSDG)**

#### **SUMMARY**

- This submission introduces the members of the Children’s Services Development Group (CSDG).
- It explains our general support for the provisions of the Children and Young Persons Bill.
- It sets out our specific concerns about the effect of the Bill on placements for children with very complex and acute needs, and the amendments we proposed in the Lords Grand Committee.
- The submission sets out the assurances that have been provided by Ministers on this issue.
- It makes clear that CSDG is committed to continue working to ensure that children with very complex and acute needs can be provided with placements that are most appropriate for them.

#### **ABOUT THE CHILDREN’S SERVICES DEVELOPMENT GROUP**

1. The Children’s Services Development Group (CSDG) is a policy group of specialist children’s services providers. It consists of Cambian Group, Castlereare Group, Foster Care Associates, Hesley Group, Priory Education Services and SENAD Group.
2. CSDG was formed in January 2007 to constructively inform the development of policy around services for children with complex and challenging behavioural problems and special educational needs.
3. CSDG’s members provide a range of specialist education and care services to young people with Asperger’s Syndrome, Autistic Spectrum Disorders, Behavioural, Emotional and Social Difficulties, specific learning difficulties and complex needs, including a significant proportion of looked-after children.
4. All of the members are committed to providing dedicated specialist care and support services to the highest regulatory standards. They also set a leading example for the training and development of their staff.

#### **GENERAL POSITION ON THE BILL**

5. CSDG is fully supportive of the spirit and intention behind the Children and Young Person’s Bill. For too long outcomes for looked-after children have been unacceptably poor. This has been a major factor in wider societal problems, including increased rates of teenage pregnancy and youth offending. We believe that robust early interventions to prevent young people from entering care, as well as improvements to the care system, will result in better outcomes for families and children in care.

## CHILDREN IN CARE WITH COMPLEX AND ACUTE NEEDS

6. We are focussed on improving outcomes for looked-after children with acute and complex needs—a significant proportion of the looked-after children population. 27% of looked-after children have a statement of special educational needs, compared to only 3% of all children in the general population (Social Exclusion Unit, 2003). Many more children in care may not have received a SEN statement, but have experienced neglect and abuse (62% of all looked-after children, DCSF, March 2007) and may have developed Behavioural, Emotional and Social Difficulties as a result. Additionally, many others within the care system suffer from Autistic Spectrum Disorders and/or Severe Learning Difficulties.

7. Many children in care need highly specialised therapeutic support to enable them to achieve a successful transition into adulthood. It is imperative that, once in the care system, young people are provided with the most appropriate care placement to meet their individual needs.

8. As far as possible, children should be placed in accommodation near to their families and homes. For the majority of children, this would ideally be in a foster care setting that can provide a stable “family style” environment. However, this type of placement will not be appropriate for all looked-after children—those with the most acute needs will require individual packages of specialist support delivered in a specialist setting.

9. We believe that Government should establish a new duty on local authorities to prioritise the individual—and professionally assessed—needs of each child when making placement decisions, and choose placements in settings that are able to demonstrate their ability to improve outcomes for the children and young people in their care.

## KEY CLAUSES—NOTES AND SUGGESTED AMENDMENTS

*Clause 8: Provision of accommodation in its area for children looked-after by a local authority*

10. We have sought, and received, assurances from DCSF that the Bill’s restrictions on placing young people away from their local area will not be used to prevent children with complex and acute needs being placed in settings that are most appropriate to provide the high quality specialist services that they need.

11. Kevin Brennan MP, Parliamentary Under Secretary of State for Children and Families—speaking at a CSDG Reception (9 October 2007)—made clear that the Bill would not prevent access to specialist services for children with complex and acute needs: “. . . the needs of each individual child must come first. We will ensure that out of authority restriction is not absolute, as we recognise that some young people will have needs that require them to be placed at a distance”.

12. We welcome the Bill’s focus on ensuring local authorities provide placements for the young people in their care that are “consistent with the child’s welfare” and would like to seek more clarity on this point. In particular, we assert that in order for placements to be truly appropriate, the individual needs of each child must be paramount in the placement decision making process.

13. As stated above, our experience of working with young people with special educational needs—including those with severe learning difficulties and behavioural, emotional and social difficulties—has demonstrated that with the appropriate specialist provision, successful outcomes can be attained and the welfare of children can be prioritised. In these cases, out of authority placements may be the most appropriate to meet the child’s needs. Furthermore, in circumstances where young people have been the victims of abuse or sexual exploitation, or have been exposed to harmful influences from peer groups in their local areas—it is essential that appropriate therapeutic services can be provided in a setting away from the local area.

14. As currently drafted, the Bill states that the Secretary of State will define the requirements that local authorities must comply with before placing a child out of their area. We believe that further clarification is required in the Bill to ensure that local authorities understand that placements must be made on the basis of each child’s needs, including any specific requirements to address their special educational needs.

We proposed the following amendment is made to Clause 8:

Insert subsection (4);

“For the purposes of this section, the “child’s welfare” should be defined with regard to the following criteria:

- (i) appropriate educational outcomes (including those for children with special educational needs);
- (ii) support for the child’s social, emotional and behavioural needs;
- (iii) safeguarding requirements, whereby for reasons of safety it is appropriate for the child to be separated from their local environment; and
- (iv) the long term stability of the potential care placement”.



*Clause 9: Provision of accommodation which is near to looked-after child's school*

15. Our experience has shown that very often, children in care with complex and acute needs will not be attending their local school, either as a result of truancy or due to their having been excluded due to challenging behaviour. In such cases, the likelihood is that, if left to their own devices, children with behavioural problems will become involved in harmful and criminal activities.

16. We are concerned that a lack of flexibility and understanding of the circumstances of children with complex needs, may result in decisions to place a child in an inappropriate placement simply because it is near to the school where they are registered—regardless of whether or not they are actually attending, or whether the school is able to provide the specialist support they require.

17. Again, we assert that placement decisions must always be made on the basis of each child's needs. In some cases the requirement to place a child near to the school where they are registered will not be appropriate, and could be used by local authorities struggling with financial pressures, to avoid placing a child in a more costly specialist setting that would be better suited to address their complex needs.

18. We recognise that the Bill makes an exception for circumstances where it would not be “consistent with the child's welfare” for the child to live near the school at which they are registered, but we believe that further clarity is required on this point.

We proposed that the following amendment is made to Clause 9:

Insert subsection (5)

“For the purposes of this section, the “child's welfare” should be defined with regard to the following criteria:

- (i) appropriate educational outcomes (including those for children with special educational needs);
- (ii) support for the child's social, emotional and behavioural needs;
- (iii) safeguarding requirements, whereby for reasons of safety it is appropriate for the child to be separated from their local environment; and
- (iv) the long term stability of the potential care placement”.

## POSITION FOLLOWING LORD'S STAGES OF THE BILL

19. The suggested probing amendments—outlined above—were jointly tabled by Baroness Walmsley, Baroness Sharp, Lord Judd and the Earl of Listowel.

20. During the debate Lord Adonis stated that there will always be children for whom an out of area placement is the most appropriate, in particular “children with needs that can only be met in very specialist placements or those who may need to be moved away from their home area for their own protection”.

21. Responding to the suggestion of adding a definition of “welfare” into the text of the Bill, Lord Adonis said that the Government do not believe that it is necessary or desirable to specify a definition in primary legislation. He stated that the professionals involved in making decisions about looked-after children would already understand what it means—namely the “well-being, happiness, health and prosperity of a person”—and that putting a definition into the Bill may limit the choices that a local authority can make in a way that may be detrimental to a child's overall welfare. He also stated that the five Every Child Matters outcomes (set out in Section 10 of the Children Act 2004) already cover the aspects of welfare that the amendment suggests.

22. He reiterated that the Government would be issuing revised guidance to local authorities on compliance with the Children Act (1989) (which this Bill amends) which set out the key factors that a local authority must take into account when making care placement decisions. He confirmed that this guidance will cover the factors highlighted in the amendments. Baroness Walmsley then asked specifically whether the issues mentioned in her definition of “welfare” would be covered in the guidance, to which Lord Adonis answered “yes”.

## CONCLUSION

23. Our purpose in proposing amendments that set out a definition of the “welfare” of a child was to add clarity to the circumstances when it is right for a child to be placed out of their local area. Lord Adonis' statement acknowledging that in some cases it is right that children be provided with specialist care in out-of-area placements has, we believe, ensured that this position must be taken into account when the statutory guidance is produced after the Bill receives Royal Assent.

24. We would recommend therefore, that the Select Committee presses the Government to further clarify this situation through its evidence to this inquiry. Without a clear understanding of the correct circumstances where a child's “welfare” would be best served in an out-of-area placement, local authorities—struggling to deal with exceedingly tight financial resources—will make decisions on the basis of cost rather than the specific needs of individual children.

25. We believe that it is essential that a thorough assessment of each child's needs should be the driving force behind placing decisions for looked-after children. The state has a duty to ensure that the children and young people in its care—and particularly those with complex and acute needs (including SEN)—are provided with the best and most appropriate care placements for their needs.

26. The Children's Services Development Group would be happy to provide members of the Committee with further details on the role played by specialist settings for looked-after children with acute needs. We are also currently developing a case study library that could be useful to inform the Committee's inquiry.

February 2008

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### **Supplementary memorandum submitted by the Children's Services Development Group (CSDG)**

*Government amendments to Children and Young Persons Bill—"Provision of accommodation and maintenance for children who are looked-after by a local authority"*

#### **GOVERNMENT AMENDMENTS—THE "PLACEMENT DUTY"**

The Government have tabled a new amendment to replace clauses 7–10 of the Children and Young Persons Bill. This amendment sets out local authorities' duty to accommodate children in care. In summary, the new amendment states that:

1. A looked-after child should be placed either with a parent, someone who is not a parent but has parental responsibility, or someone who was awarded care of the child under a Residence Order prior to the Care Order being made.
2. This applies unless it is not "consistent with the child's welfare", or "reasonably practical".
3. If that is the case, the child should be accommodated in a placement which is "in their opinion, the most appropriate placement available".
4. Placements are defined as one of the following types of accommodation:
  - A relative, friend or other individual connected to the child (who has been approved as a local authority foster parent).
  - A local authority foster parent (ie one who is not known to the child).
  - A children's home (registered under Part 2 of Care Standards Act 2000).
  - Another arrangement made as a result of a review of the child's case.
5. Local authorities must balance a number of factors when deciding on a placement:
  - They must give preference to placements with family or friends.
  - The placement should be near their home.
  - It should not disrupt their education.
  - It should enable them to live with a sibling (if the sibling is also in care).
  - If the child is disabled, the accommodation provided must be suitable to the child's particular needs.
6. Local authorities are also expected to make a placement that is within their own area—unless this is not reasonably practical.
7. Underpinning the entire placing decision process—local authorities are bound by their duties under Section 22 of the Children Act (1989) to safeguard and promote the welfare of children in their care.

#### **MINISTERIAL COMMENTS ON OUT OF AUTHORITY PLACEMENTS**

CSDG has been reassured by statements from Ministers which emphasise the importance of specialist placements for children with complex needs. These have included:

- Kevin Brennan MP, Parliamentary Under Secretary of State for Children and Families—speaking at a CSDG Reception (9 October 2007)—responded to these concerns making clear that the Bill would not prevent access to specialist services for children with complex and acute needs: "I absolutely agree with you that the needs of each individual child must come first. We will ensure that out of authority restriction is not absolute, as we recognise that some young people will have needs that require them to be placed at a distance".
- During the Grand Committee (16 January 2008) Lord Adonis stated that there will always be children for whom an out of area placement is the most appropriate, in particular "children with needs that can only be met in very specialist placements or those who may need to be moved away from their home area for their own protection".

## OUR ANALYSIS

It is clear that the Government's intention has been to make the wording of the Bill more flexible and adaptable to the individual needs of each child, and to reflect the concerns raised by Peers during the Grand Committee. This is, of course, to be welcomed.

However, although the new wording is an improvement on the original text of the Bill, it is still open to variable interpretation at a local level. As such, the Bill still does not adequately protect the needs of children with complex and challenging behavioural problems. The "placemending duty" relies on the individual opinion of social workers to balance competing—and possibly contradictory factors—and to decide on a placement which they feel is "appropriate".

Ambiguity in the new wording of the Bill may cause tensions in the placemending process. For example, when placing a child who has complex needs social workers, and the Independent Reviewing Officer, will be expected to balance the individual needs of the child with the requirement to place within their local area, as far as is reasonably practical. This may mean that the individual needs of the child are not met because suitable services are not available within their local authority area and social workers have to balance conflicting factors when making a placemending decision.

CSDG is concerned that in difficult or complex cases—such as for children who have challenging behavioural problems—there is a risk that this ambiguity will result in local authorities placing children in local accommodation that can not meet their needs, rather specialist placements that could provide a more appropriate service.

As is always the case when trying to influence the behaviour of local authorities, central Government can only provide a framework for local decision making—rather than explicit and binding instructions. Therefore, much depends on the guidance that will follow the Bill, and we urge Government to be as rigorous as possible in ensuring that children with complex and challenging educational and care needs will be provided with placements that are able to meet those needs and help them to achieve the best possible outcomes in terms of both their education and wellbeing.

## CONCLUSION

We call on parliamentarians to ensure that the Children and Young Persons Bill includes a clear guarantee that children with acute and complex needs will be able to receive the most appropriate care placement—including in an out-of-area specialist setting where necessary.

February 2008

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### Memorandum submitted by Christina Clarke

- Bring harmony into a family unit.
- Obtain assistance to the family unit.
- Monitor/PCT surveillance.
- Preventative Targets.
- Identify and administer.
- Meetings.
- Outcome.

1. *Bring harmony into a family unit*—A Social Worker is a community adviser/administrator. They should be trained in how a family, no matter how big or small, should acceptably function. Bringing into a family unit suitable boundaries and discipline. A Social Worker should not be entering a family home to target and split up a family unit. Their initial contact is to be approachable and advise on ways to bring harmony to that family unit. They should be hands on—with methods—to turn around the dysfunctional family.

2. *Obtain assistance to the family unit*—Parents often see unusual behaviour in their children prior to the professionals, due to spending much of their time together. A Social Worker should be asking what help has been offered that family. Obtaining further assistance to that family. After all, a Social Worker is not a medically trained specialist. The Social Worker supports the family through any problems and befriends the family to again obtain a harmonious family unit.

3. *Monitor/PCT Surveillance*—The Social Worker, during contact with the family unit, logs all contact and help given. The Social Care Team send a request to the PCT to monitor only the family concerned and to all log all contact with that family. The health visitor would carry out weekly visits in order to ascertain no further problems arising. Should there be further developments the Social Worker is informed via the professional—for the Social Worker to re-visit the family unit and put right anything that has developed. The PCT and Social Care stop surveillance after two years have elapsed and family unit is functioning to a better level.

4. *Preventative Targets*—Help and assistance to a family unit that turns a family unit around for the better is a preventative process than removal of the child. By all professionals concerned their logs must show what help or guidance they have given that family unit. If a profession has not provided any help, then the system has let down that family. The family is therefore not at fault, but that of the system. All logs are important in order to make any further decisions. Help may be by means of employing a cleaner to training or do the housework (deducted from family unit income), the help may be from identifying a medical condition via a specialist and support given for the family unit with means of care and/or respite. The help may be from the Social Worker providing parental guidance. All of which is logged.

5. *Identify and Administer*—A qualified specialist having identified a concern of severe harm to a child or children has a direct line to the Social Worker on the case. The Social Worker firstly sees the child (therefore being protected). The Social Worker contacts the family. The Social Worker also calls the CPC for backup. The Social Worker logs the process and the CPC handles the case. The Social Worker through any court process asks all professionals for a copy of their logs on that family. This is for cases of severe abuse, where harm to a child would continue. If community professionals were doing their jobs correctly they would ascertain the severe case quite quickly. Schools play an important part in this, as they could use education to identify the cause and also ask children to say or write, if anything bad happens, who would they tell. From this they know that the person they would tell could be advised on highlighting areas of concern and directing such concerns to the system. As a first point of contact for an issue, the person a child is likely to tell needs to be prepped in their role to protect that child. As the Social Worker is not a trained expert in every area of life—it is important that they administer (correctly) the help and concerns of outside professionals. It is the Social Worker's job to collate all information to be presented to a Judge if necessary.

6. *Meetings*—Should only be required if the child is to be or has been removed from the family unit. The parent at this stage would have to be fully versed on the outcome of their actions. The meetings are to give the child or children protection against any more severe harm. The meetings can still incorporate a care plan for the foster carer, but also needs to take into count the long term future of that child.

7. *Outcome*—because of preventative targets, very few children, unless being severely harmed, would be left in foster care. At a saving of £400 per week per child the saving could go to assistance, holidays and specialist help for the birth family unit. Those unfortunately that with regret end up in foster care need twice weekly support from the Social Worker. To again provide help or assistance to that child and/or foster carer. Rewards for bad behaviour in care must stop. The child affected by circumstances at a young age still need to be guided on the rights and wrongs of their actions. A good response deserves a good treat. Children that have the fortune of being adopted from foster care are again monitored for two years via the PCT surveillance and Social Care. This is to ensure the new parents are not placing the child into further harm.

Overall, the Social Care system doesn't have to be a harsh one. Social Care needs to provide a positive outlook. The feedback in cases are from trained medical, educational professionals—the Social Worker is the community support worker that brings in any help or training needed into the family unit to put right any dysfunction. The protection and care of children is paramount to all professionals and lay persons, but the professionals need to be very hands on with the community in order to prevent any unnecessary suffering. However, if a child has had a traumatic upbringing, they should not be targeted by Social Care in their adult life. The Procedure stated in my bullet points would cover any new eventuality.

February 2008

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### Memorandum submitted by Every Disabled Child Matters (EDCM)

#### SUMMARY

- EDCM is the campaign to get rights and justice for every disabled child. The campaign has 28,000 individual supporters and a network of supporter organisations across the disability and children's sectors.
- While EDCM welcomes the intention of the Children and Young Persons Bill to improve outcomes for looked-after children, we have significant concerns that the Bill does not adequately address the specific needs of disabled children and young people placed away from home.
- EDCM strongly believes the Bill should include workable provisions to ensure looked-after status is given to disabled children in long-term residential placements who need it. Currently young disabled people can be in residential placements far from home for 52 weeks of the year, with little or no parental contact, without the protection that looked-after status offers.
- The Bill is a key opportunity to ensure families with disabled children get the right support to allow them to continue caring for their children at home, rather than reach a situation where their children are placed in unnecessary and expensive care placements far from home. Our proposal is that a right to short breaks for those families most in need would build upon the Government's recent investment in short break services, and keep more children with their families and out of the care system.

- EDCM is also calling for a progressive duty to plan local provision suitable for disabled children to be included within the Bill. This would ensure a shift in local planning, away from routinely placing disabled children far from home in expensive out-of-authority placements, towards developing local provision to meet local need.
- EDCM supports calls from The Children’s Society and Voice to ensure the provision of advocacy services to children in care, to ensure their views are heard in decisions about their lives. This is particularly crucial for young disabled people, who may face additional barriers to making their views known as a result of communication impairments.
- EDCM believes that access to essential communication aids should be a basic right for young disabled people who are looked-after. There is evidence that currently many disabled young people are missing out on these essential aids.<sup>27</sup> Our submission supports Scope’s calls for the Bill to secure this much-needed right.
- The Government has recognised the need to improve services and support for families with disabled children through investing £430 million through the *Aiming High for Disabled Children* review. However, more needs to be done to ensure that this investment delivers for young disabled people in, or on the edge of, care. Our submission encourages the Children and Young Persons Bill to dovetail with the *Aiming High* commitments, to ensure maximum benefit for all disabled children and young people wherever they live, and maximum returns on the Government’s investment.

## INTRODUCTION

1. Every Disabled Child Matters (EDCM) is the campaign to get rights and justice for every disabled child. We want all disabled children and their families to have the right to the services and support they need to live ordinary lives. The campaign has 28,000 individual supporters and a network of supporter organisations across the disability and children’s sectors, many of whom provide support to disabled young people in care.

2. The campaign is run by four leading organisations working with disabled children and their families—Contact a Family, Council for Disabled Children, Mencap and the Special Educational Consortium. We challenge politicians and policy-makers to make good on the Government’s commitment that every child matters.

3. EDCM is grateful for the opportunity to submit evidence to the Committee on the critical issue of looked-after children, particularly as disabled children make up a large proportion of the care population. We would further appreciate the opportunity to give oral evidence to the Committee, if this would be of assistance.

4. Research shows that disabled children are more vulnerable to abuse than other children,<sup>28</sup> and are more likely to be placed in care at crisis point, further away from home than other children.<sup>29</sup>

5. These factors all increase safeguarding concerns for disabled young people placed away from home. These concerns are heightened further by the difficulty that some young disabled people have in accessing the communication aids they need to make their wishes known.

6. This submission focuses on our proposals to ensure the Children and Young Persons Bill fulfils its potential to ensure better outcomes and increased safety for young disabled people in, or on the edge of, care.

## LOOKED-AFTER STATUS FOR YOUNG PEOPLE IN LONG-TERM PLACEMENTS

7. EDCM welcomes the improved framework that the Bill will create for those children that have looked-after children (LAC) status. However, we have serious concerns that this has the potential to further disadvantage disabled children and young people who are living a long way from home, but do not have the protection of LAC status.

8. Throughout the Care Matters consultation process, the Council for Disabled Children (one of the key partners in EDCM) has been raising serious concerns about young people in residential schools or long-term health placements, who may be placed far from home for up to 52 weeks of the year, without the protection of looked-after status. We believe these children need and deserve the protection and support of LAC status. The 2005 review of disabled children in residential placements recommended more consistent application of “looked-after status for disabled children spending long periods in residential placements, particularly where these are far from home”.<sup>30</sup>

9. We are pleased that the Bill recognises the vulnerability of these young people, but we have grave concerns that the measures outlined to address this vulnerability will not deliver on a practical level. Clause 16, which proposes a visit to young people in this situation from the home authority, depends on sections

<sup>27</sup> Scope, (2007) *No Voice, No Choice: disabled people’s experiences of accessing communication aids*.

<sup>28</sup> NSPCC (2003) *It doesn’t happen to disabled children: Report of a National Working Group on Child Protection and Disability*.

<sup>29</sup> Pinney (2005), *op cit*, p 50.

<sup>30</sup> Pinney (2005), *op cit*, p 50.

85/86 of the Children Act 1989, which require that the home authority is notified of children in long-term health or education placements. There is government research to suggest that many local authority officers are unaware of the existing provisions in section 85/86.<sup>31</sup> We welcome the attempt to provide a safety net for these children who are not currently offered any protection or support, but our concern is that whilst Sections 85/6 are not used, this attempt will have no effect.

10. More fundamentally still, EDCM believes that such a visit would provide insufficient protection and support for a disabled child placed a long way from home for 52 weeks of the year, with little or no contact from their family. The right approach is to ensure that these children are protected by looked-after children status.

11. We appreciate the assurances given by Lord Adonis at Committee stage in the House of Lords that most children in long-term placements should be looked-after. We agree that the best way to achieve this is to create a flexible framework that can respond to individual needs. However, it is crucial that this framework ensures that where a young disabled person is placed a long way from home, their safety and well-being are given full consideration by the placing local authority. In some good practice local authorities this is already being done, in partnership with parents, as part of a children in need assessment.

12. We propose an amendment to the Bill that seeks to ensure that disabled children in residential schools that do not have regular contact with their families receive the protection of LAC status. Our amendment provides the flexibility to ensure that where the young person enjoys ongoing contact with their family, the local authority is not required to consider the young person as looked-after.

13. EDCM would welcome any amendment to the Bill that would ensure local authorities consider whether the protection of looked-after status is necessary when disabled children are placed away from home.

#### CARE PREVENTION THROUGH SHORT BREAKS

14. Parents tell us that regular, reliable and appropriate short breaks help to keep disabled children with their families, and out of the care system. Families who get breaks describe them as essential in helping them to sustain their caring role:

*I am fortunate to finally receive respite. What a wonderful relief. One night a week we can be a normal family. Go to the cinema, pub or for a meal or just be. No strict routine, no bathtime, no struggle to medicate, no getting up four or five times in the night. Bliss.*

15. Breaks can be provided in a variety of ways: within the family home, through accessing community facilities or by the child staying overnight with another family or in a residential setting.

16. The Children and Young Persons Bill provides a critical opportunity to remedy the gap in the legal framework for families with disabled children, and keep more disabled children with their families, and out of the care system.

17. EDCM has proposed an amendment to the Bill that would give those families most in need a right to a short break. Following an assessment under the Carers and Disabled Children Act 2000, it would impose a specific duty on local authorities to provide short breaks for families whose caring role is, or is likely to become 'unsustainable'.

18. The amendment is proposed in the context of a new commitment to disabled children and their families by Government, following the publication of *Aiming High for Disabled Children: Better Support for Families*. This report, and subsequent announcements, has resulted in an additional £370 million to deliver a step change in the provision of short break services from 2008–11. EDCM welcomes this vitally important investment, but is clear that families also need and deserve a legal minimum entitlement to breaks, to prevent unacceptable local variations in service provision.

19. To address any concerns about inflating the population of looked-after children, EDCM wants to reduce the number of disabled children who are receiving short breaks but who remain resident with their families who are classed as looked-after. EDCM wants Government to clarify in guidance the distinction between short breaks as a regular, planned family support mechanism, where full parental responsibility is retained, and when short breaks are effectively a family placement mechanism in crisis or emergency situations where looked-after children status is needed.

20. Families reach crisis point not because they are carers, but because they are forced to care without any support. With the right kind of short breaks, the vast majority of families will be able to continue to support and care for their disabled children. Disabled children deserve—and get—as much love and affection from their families as other children. This amendment aims to create the legal right to support for families to sustain their caring role—support which makes sense both morally and financially.

21. We appreciated the detailed response from the Minister at Committee stage on this issue, and his assurances that he is “absolutely committed to seeing this huge investment of public funds lead to a transformation in short break services and to a consistency of provision between local authority areas”. (*Hansard*, 16 January 2008 : Column GC542)

<sup>31</sup> Pinney (2005), *op cit*.

22. However, EDCM believes that this transformation and consistency of provision can best be achieved through a minimum entitlement to short breaks for those families that need them most. In order for this transformation to last beyond the three years of funding, we must send a strong message to local authorities that providing short breaks to families on the edge of care is not negotiable. We must also ensure that families who are struggling to cope can feel confident that they will receive this crucial support before they reach breaking point.

23. We whole-heartedly agree with the Minister that what matters is the reality on the ground. That is certainly what matters to parents of severely disabled children who are at breaking point, and to those disabled children and young people that are now living in care because that low level support was not provided to their families at the critical time. The reality on the ground is that without a legal right to a break, the families that are most in need may continue to miss out on the services they need.

24. Therefore, EDCM would welcome any amendment to the Bill that would ensure the transformation of short break services anticipated in Aiming High for Disabled Children is embedded and sustained.

#### DEVELOPING LOCAL PROVISION FOR DISABLED CHILDREN IN CARE

25. EDCM welcomes provisions within the Bill to increase the number of looked-after children placed locally to their home authority. This has the potential to transform the experiences of disabled children and young people placed away from home, the majority of whom are currently placed a great distance from their families.

26. However, we are concerned that local authorities may rely on the provision in the Bill not to place a child locally if there is no accommodation consistent with their welfare. This would have the effect of continuing current trends where disabled children and young people are placed substantial distances from their family homes. This distance increases safeguarding concerns and makes it very difficult, if not impossible, for family and friends to stay in touch with the disabled child or young person, due to the higher cost implications of visiting them. It also adds to the sense of isolation felt by many young disabled people, particularly if their communication support needs mean that staff may struggle to communicate effectively with them.

27. EDCM have proposed an amendment which seeks to impose a progressive duty on local authorities to demonstrate that they are building capacity for future placements for children and young people, including those with disabilities, within the local authority area.

28. The Bill intends to improve outcomes for young people in care by minimising disruption and isolation, and keeping them in their home communities where that is consistent with their welfare. Our concern is that as the Bill currently stands, the most vulnerable looked-after children will continue to miss out on these improved outcomes for the foreseeable future, as they will continue to be placed a long way from home.

29. EDCM challenges the assumption that many disabled young people have needs that are too complex to be met locally. There are a number of good examples of innovative short break services that cater for young people with very complex health and behavioural needs within their local communities. We suggest that learning from these examples, and in particular from the short break pathfinder areas announced as part of the "Aiming High for Disabled Children" programme, can be used to support local authorities in increasing local provision for looked-after children with complex needs.

30. We propose that local and regional commissioners should monitor their out-of-authority placements for young disabled people, and be required to plan future services to meet that need within the local region wherever possible. Local authorities should move away from the automatic assumption that the majority of young disabled people need to be placed far from home, and look at innovative regional commissioning to ensure that they can stay in their communities where that is in the best interests of the young person.

31. The last 30 years have seen a cultural shift in our attitudes to residential provision for disabled adults who were considered to have needs too complex to be met in their local community. We want to see the same cultural shift in our attitudes to the placement of young disabled people in care.

#### THE NEED FOR INDEPENDENT ADVOCACY

32. EDCM supports the statement issued by The Children's Society and Voice on the need for advocacy at key points for all looked-after children and young people. The Bill's proposals on Independent Reviewing Officers and Independent Visitors, while welcome, do not replace the need for independent advocacy to help children represent their wishes and feelings effectively.

33. Independent advocacy is crucial to improving the well-being of disabled young people in the care system in particular. Disabled young people are more likely to have difficulty getting their views across, and are more vulnerable to abuse than their non-disabled peers. There is evidence that existing child protection procedures and processes do not effectively safeguard them.<sup>32</sup>

<sup>32</sup> NSPCC (2003) *It doesn't happen to disabled children: Report of a National Working Group on Child Protection and Disability*.

34. The Prime Minister's Strategy Unit report *Improving life chances of disabled people* recognises the particular importance of advocacy in ensuring that disabled young people have more choice and control in their lives (recommendation 6.2). If the intention of this Bill is to improve experiences and outcomes for young people in care, there can be no more powerful tool to achieve this than giving young people the support they need to get their views across and have their rights respected.

35. EDCM welcomes any amendment to the Bill which would give disabled young people access to an independent advocate at points where key decisions are being taken about their lives.

#### A RIGHT TO ASSISTIVE AND AUGMENTATIVE COMMUNICATION SUPPORT

36. EDCM supports Scope's position that access to essential communication aids should be a basic right for young disabled people who are looked-after. Without these aids, it becomes impossible for the local authority to fulfil its duty to seek the views of young people with communication support needs. As with advocacy, IROs and visitors will not be effective unless disabled children and young people have a right to the aids and equipment they need to communicate their wishes and feelings.

#### CONCLUSION

37. EDCM welcomes the measures within the Children and Young Persons Bill to improve outcomes for young people in care. We also welcome the new political priority given to disabled children, and the funding commitments made by government in *Aiming High for Disabled Children*. However, in order to maximize the beneficial impact of these new initiatives, we need to see a clear read-across between them. Disabled children and young people in, or on the edge of, care face profound and multiple social exclusion and increased safeguarding challenges. Action against our recommendations on looked-after status, short breaks, increasing local provision, access to advocacy, and rights to essential communication aids, will improve the safety and life chances of these young people, and help deliver on the Government's commitment that Every Child Matters.

February 2008

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### Memorandum submitted by The Fostering Network

#### EXECUTIVE SUMMARY

- The Children and Young Persons Bill needs to contain a provision that would enable the regulation of provision of placements by former foster carers to young people between the ages of 18 and 21, in order to ensure both foster carers and young people receive the support they need to provide the best possible platform for moving towards independence at a more suitable age.
- The Government should explicitly fulfil its White Paper pledge to create a statutory duty for local authorities to make sufficient and diverse provision of quality placements.
- The Bill can be used to address the anomaly that foster carers who are subject to an allegation are able to be, and regularly are, suspended without pay.

1. This submission is in response to the inquiry's initial examination of the provisions of the Children and Young Persons Bill. It will be followed by a more detailed paper that will examine the wider implications of the Care Matters process for looked-after children with particular reference to foster care.

2. The Fostering Network is the UK's leading charity for everyone involved in fostering. With a membership of over 50,000 foster carers, all local authorities, and many independent fostering providers, the Fostering Network is uniquely placed to bring people and organisations together to improve the lives of children in foster care.

#### ENABLING YOUNG PEOPLE TO STAY WITH THEIR FORMER FOSTER CARERS BETWEEN THE AGES OF 18 AND 21

3. One of the greatest disappointments of the Care Matters process, and the Children and Young Persons Bill in particular, has been the gap between expectations and delivery on the ability of young people to stay with their former foster carers between the ages of 18 and 21.

4. We believe that the ability to provide stable placements for young people making the transition into adult life, both for those going into higher education and for those needing more intensive support, can make a massive difference to their life chances. Many young people in care will have experienced significant disruption in their lives, and they are likely to need additional help and support to enable them to succeed educationally and make a successful transition to adulthood. Despite their vulnerability, children in care are being required to leave their foster carers before they are 18 (ie at 17)—a younger age than most young people have to leave their families. On average most young people now leave home at 24.



5. At present many local authorities operate an unregulated form of support, usually a “supported lodgings” arrangement, to enable foster carers to continue to provide a placement for that young person post-18. However, there are no guarantees of any support for the foster carer or young person, there may be no training available, there are no agreed standards that govern the provision of this service, and often there will be a lack of clarity concerning financial support. In addition some local authorities do not even provide this option at present.

6. The Government will be piloting arrangements for young people to remain with their foster carers up until they are 21; however unlike independent social work practices and other new measures being piloted, there is nothing in the Bill that will underpin them or enable the roll-out of this provision across the country.

7. We believe it will be necessary to introduce regulation, which can be informed by the pilots, that will guarantee minimum standards of service and entitlement and will ensure foster carers who agree to continue to care for a care leaver have access to legal insurance, training, annual reviews and a supervising social worker. Care leavers also require the protection that regulation can provide. Regulation may be needed to clarify the requirements for the provision of financial support for the placement and what standards govern the quality of provision. Regulation should also prevent myriad interpretations of the scheme across local authorities, avoiding a “postcode lottery” of support that may stop foster carers from being able to provide these placements to young people desperately in need of continued assistance.

8. The Fostering Network has heard of many cases where young people have been pushed out into independent living before they are ready due to lack of local authority support, but also from many foster carers who have made significant sacrifices to continue to provide care without any support. We list two examples below that help explain why greater support is necessary:

#### CASE STUDIES

##### *Sue*

Sue has fostered a young person who arrived as a young teenager suffering significant trauma, who with her support managed to settle and succeed. He became head boy of his school and is currently at college studying for his A-Levels with the plan of going onto University and a career in the RAF.

However, when he turns 18 during his A-Levels all support that had been given by the local authority will end, leaving him on his own. In order to continue to provide stability for this young person Sue is spending up to £20,000 in order to convert their loft so that he can continue to stay with them while Sue fosters other children. Sue is making huge financial sacrifice to ensure that this young person continues to have the stability he needs, but she should not have to, and most foster carers could never afford to do this.

##### *Pam and Dave*

Pam and Dave have been foster carers for over 14 years, fostering more than 600 children due to their taking a huge number of emergency placements. However, they have also provided long-term placements for a number of young people, and they have found themselves supporting their foster children who have turned 18 without help from the local authority.

Their first foster child, who is now in his 20s, left the foster home at 18 to move into his own flat, but he was unable to cope. They woke up one morning to find him sleeping in his car outside the house and he moved back in to their home temporarily without local authority support.

They recently had another foster child whom they continued to look after until she was nearly 20 and supported at their own expense for nearly two years. When she left their home they did not receive any significant help from their leaving care team. Pam says “she is struggling quite a lot. She has £42 a week to pay for bills/food/clothes and travel, she’s very lonely and finding things difficult so she is up here with us most of the time. We are in council accommodation so we can’t be paid to have a lodger. She had been part of our family for five years and we don’t know what we can do.”

9. At the Second Reading and Committee stage debates in the Lords the principle that young people should be able to stay with their former foster carers once they turned 18 received support across the house, echoing the support for such measures from across the children’s sector. The two amendments below were laid at committee, one that would enable the Secretary of State to regulate placements once more information had become available, and one to enable foster carers to retain their status as foster carers while only caring for young people over the age of 18.

*Clause 19*

BARONESS WALMSLEY, BARONESS SHARP OF GUILDFORD

84 Page 16, line 30, at end insert—

The appropriate national authority may by regulations, make provision about the arrangements for relevant children and former relevant children to live with a former foster parent.”

*Before Clause 29*

BARONESS MORRIS OF BOLTON, BARONESS WALMSLEY, EARL OF LISTOWEL

“Retention of foster parent status

93 Insert the following new Clause—

(1) This section applies in a case where a child (“C”) who is being looked-after by a foster parent or parents (“FP”) reaches the age of 18 and FP continues to provide care for C.

(2) FP shall retain their status as foster parent and, accordingly, shall continue to receive all applicable benefits and support from the local authority.”

10. We remain concerned that the Government is not clear about its long-term plans for this provision. Firstly it has argued that it does not yet know what regulation would be needed, which is why we believe the Bill should include an enabling power rather than specific regulation at this stage. Secondly it has argued regulation could be provided through the Health and Social Care Bill provisions for adult services, an approach that would be a bureaucratic nightmare. With the current transition between children’s and adult services for the relatively small number of disabled young people in the care system already fraught with difficulty there would be major problems in managing the transition for a much larger group who would only need continuing support for a shorter time. Re-approval of foster carers as adult placement carers to look after the same young person would be bureaucratic and would lead to the situation where support for a maximum of three years from 18 to 21 was being inspected by the new Care Commission rather than Ofsted. These young people are “former relevant children” and Children’s Services and Leaving Care teams have the ability to provide some support to them such as the personal advisors, being extended under this Bill. It would be far simpler to use this framework to regulate this new provision rather than adult services.

11. Again while we do not believe the Government is required to detail specific regulations at this point, we, and others such as the National Leaving Care Advisory Service and the British Association of Adoption and Fostering, strongly believe regulation will be required to make this important proposal work across the country. We are convinced the Bill should give the Secretary of State the power to introduce regulations to prevent delay in rolling this scheme out to the thousands of young people it could benefit.

PROVIDING CLARITY ON LOCAL AUTHORITY REQUIREMENTS FOR PLACEMENT PROVISION

12. The Care Matters White Paper stated that the Government would “impose a statutory duty on local authorities to secure a sufficient and diverse provision of quality placements within their local area.” Unfortunately the Children and Young Persons Bill currently does not contain an explicit requirement to achieve this. We believe that the creation of a clear statutory duty will focus the attention of local authorities on ensuring they have sufficient appropriate provision, delivered both in-house and through the independent sector, in their local area and help ensure children and young people are given placements appropriate to their needs. This would give local authorities a clear focus to the planning of placement provision.

13. The Government has argued that the Bill’s measures to restrict out-of-authority placements would create an implicit requirement on local authorities to provide sufficient local placements. We believe that the Government’s proposed mechanism lacks clarity and that an explicit provision is needed to ensure local government is clear of their responsibilities. We have also expressed some concerns that a rigid local authority boundary requirement may sometimes be a clumsy tool to ensure quality placement decision-making particularly when foster carers live close to local authority boundaries, although we approve of the overall principle of reducing unnecessary out-of-authority placements.

14. This issue was raised as an amendment (see below) at the Committee Stage of the Bill’s reading in the House of Lords by Earl of Listowel, Baroness Meacher, Lord Judd and Baroness Walmsley. We believe that the duty outlined in Care Matters needs an explicit requirement in the Bill, either similar or identical to the Lords amendment, so that local authorities have a clear duty to provide sufficient appropriate placements and would like to see this provision on the face of the Bill.

*Before Clause 7*

EARL OF LISTOWEL, BARONESS MEACHER, LORD JUDD, BARONESS WALMSLEY

19 Insert the following new Clause—

“Provision of appropriate placements

In section 23 of the 1989 Act (provision of accommodation and maintenance by local authority for children whom they are looking after), after subsection (2A) insert—

“(2B) A local authority must provide a sufficient and diverse provision of appropriate placements within their local area”.

## CONTINUATION OF FEE PAYMENT UNTIL AN ALLEGATION INVESTIGATION IS COMPLETE

15. The possibility of an allegation being made against them is a constant fear for foster carers. Due to the nature of the children and young people placed with them, the often fraught relationships between foster carers and birth parents, the tensions that can arise in any placement, the potential for misunderstandings of everyday behaviour that before they entered care had been a prelude to abuse, the reality is that many foster carers will face an allegation that is unfounded. Surveys have shown that around a third of all foster carers will face an allegation during their fostering career and the vast majority of these turn out to be unfounded.

16. Government timescales for the resolution of allegations, set out in its *Working Together to Safeguard Children* guidance, are routinely missed in allegations cases against foster carers. *Working Together* states that 80% of allegations should be resolved within a month, 90% within three months and all should be resolved within a year. Research<sup>33</sup> has shown that 50% of allegations cases against foster carers last longer than three months and one in 10 last longer than a year, in some incidences lasting several years. To compound matters in the third of all allegations cases where some or all children are removed—*de facto* suspension—almost all foster carers have their fostering income cut and 46% have their income stopped altogether. The research has also shown that 60% of foster carers facing allegations are not receiving the access to independent support that they desperately need and are required to receive under the current National Minimum Standards for Fostering Services.

17. We will return to this issue in our second submission to the inquiry on the wider Care Matters agenda focusing on timescales and independent support. However, while we welcome the Bill’s introduction of the independent review mechanism currently used by prospective adopters to act as a quasi-appeals mechanism for foster carers who have had their approval removed, we believe it should address the crucial issue of suspension without pay.

18. The emotional strain and the length of time taken to resolve some investigations have a huge impact on the foster carers and their children and when this is combined with the withdrawal of financial support it can force many good foster carers out of fostering. We believe that foster carers should continue, where paid, to receive their fee payment (the money given as remuneration for the foster carers’ work, skills and experience) and a portion of their allowance (the money paid to cover the cost of looking after children) that relates to ongoing fostering costs.

19. In the Lords the amendment below was submitted and received support from a wide range of peers. We believe an amendment along these lines would protect foster carers from the immense financial hardship that currently can accompany an allegations investigation, give local authorities greater incentive to resolve investigations within an acceptable timescale and reduce the number of foster carers who cease to foster as a result of failures in the allegation investigation system.

*After Clause 29*

BARONESS WALMSLEY, BARONESS SHARP OF GUILDFORD, LORD JUDD

98 Insert the following new Clause—

“Payment of fees

(1) Section 49 of the Children Act 2004 (c. 31) (payment to foster parents) is amended as follows.

(2) After subsection (4) insert—

“(5) Payment of the fee to a foster parent should continue until a qualifying determination has been reached”.

<sup>33</sup> Swain, *Allegations in Foster Care—A UK study of foster carers’ experiences of allegations* (The Fostering Network, 2006).

## CONCLUSION

20. The Fostering Network believes the three core issues outlined above are issues that should be addressed directly in the Children and Young Persons Bill, and would welcome the Committee's consideration of these areas for amendment. Our second submission on the wider Care Matters process will address the increasing professionalization of foster care, and a range of matters for foster carers and looked-after children that can be tackled by improvements to guidance, the new National Minimum Standards for fostering and improve inspection procedures.

February 2008

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## Memorandum submitted by The Foyer Federation

### EXECUTIVE SUMMARY

This response focuses on two aspects of the Children and Young Persons Bill: The Training and Education section of the Bill and the general lack of support arrangements in the Bill for young people leaving care. The Foyer Federation welcomes the bursary for children in care going on to higher education. However, we are concerned that this bursary does not apply to further education and non-academic choices. Furthermore, we are calling for a duty to be imposed on local authorities to equip children and young people in their care with the necessary life skills to succeed in independent living when leaving care.

### INTRODUCTION

1.1 The Foyer Federation develops and encourages new approaches to support young people as they make the transition to adulthood, particularly those who are at risk through homelessness, family breakdown or other factors. We work through a network of over 130 accredited Foyers providing holistic services to around 10,000 young people a year around the UK. At the heart of the Foyer approach is a formal commitment between the young person and the Foyer. For more than a decade, we have helped develop accredited learning programmes, initiatives in areas such as health and wellbeing and early intervention and quality assurance. Our campaigning and advocacy work draws directly on the experience of young people themselves.

1.2 The Foyer Federation is now attempting to apply the holistic Foyer approach more widely and develop new approaches that better meet the needs of those young people whose journey to adulthood is particularly difficult eg care leavers, young offenders and other vulnerable young people. As part of this the Foyer Federation has been awarded a development grant and working capital by Futurebuilders England to expand our programme of providing care leavers, young offenders and young people at risk with integrated services that support their housing, employment, education, and provide personal life choices.

1.3 The Foyer Federation and YMCA England jointly responded to the Green Paper *Care Matters: Transforming the Lives of Children and Young People in Care*, in consultation with young people living in Foyers and YMCAs.

1.4 In this response the Foyer Federation has chosen to focus on two aspects of the current Children and Young Persons Bill. The first aspect relates specifically to the Education and Training section of the Bill. The second part relates to the general lack of support arrangements in the Bill for young people leaving care.

### EDUCATION AND TRAINING

2.1 The Foyer Federation welcomes the decision to implement the bursary for children in care who is attending or wishes to attend higher education, and furthermore welcomes the decision that children in care will have a personal advisor up to the age of 25, who will be able to give advice of how to continue with further training or learning if so desired.

2.2 However, in its response to the Green Paper the Foyer Federation recommended that a package of support was made available alongside the bursary.

2.3 The Foyer Federation's Bursary Project provides Foyer residents with £1,000 per year from the HEFCE Access to Learning Fund. Since 2002, the Foyer University Bursary Project has supported over 600 Foyer residents to enter university. 40% of students who received the bursary said that knowledge of the scheme had influenced their decision to take up or apply for a place in higher education. However, our experience tells us that the additional support available to young people applying to university has been crucial in ensuring that their applications are successful.

2.4 Furthermore, the Foyer Federation is concerned that the bursary only applies to higher education and does not apply to further education and non-academic choices, such as A-Levels, BTECS and NVQs. As the Green Paper recognised, the educational achievements of many young people leaving care are lower

than the national average, mainly due to the disruption they have experienced in their lives. Young people who have experienced such disruption deserve a chance to catch up with their peers, and should therefore be supported to continue their education.

#### ARRANGEMENTS WHEN LEAVING CARE

3.1 The Foyer Federation is concerned with the lack of arrangements and duties in the Bill relating to young people leaving care. We believe that a duty should be placed on local authorities to equip young people in their care with the necessary life skills to succeed in independent living and plan for provisions when young people are leaving care.

3.2 The Foyer Federation believes that the transition young people make from care to independence should focus on the stage they've reached, rather than their age, and therefore recognises that the extension for young people to remain in care until the age of 21 is an acknowledgement of this. However, attention and resources should also be dedicated to supporting young people in making a positive transition beyond the care system. We feel that a comprehensive package of activities to prepare young people for this progression would be of wider benefit to all young people in care.

3.3 Learning and life skills are at the heart of the Foyer holistic ethos. These include activities that help build confidence, self esteem and motivation and enable young people to develop a sense of their own identity and build and sustain meaningful relationships.

3.4 Since 2003 the Foyer Federation has been a lead partner in the national Learning and Skills Council's Homelessness Sector Pilot, a key outcome of which has been the development of the *Certificate in Self-Development through Learning*, a learning programme accredited by City and Guilds and, importantly, recognised by the Qualification and Curriculum Authority on the National Qualifications Framework. This modular programme offers Foyer residents the opportunity to gain accreditation through the personal development work they undertake while resident in the Foyer.

3.5 The Foyer Federation believes that this programme can be delivered to young people in care preparing them for independent living, and could form part of a comprehensive package of support that local authorities should be under a duty to provide to young people in their care.

#### RECOMMENDATIONS FOR ACTION

4.1 That consideration is given to the fact that the bursary only applies to higher education, and excludes further education. The Foyer Federation recommend that the Children and Young Persons Bill is amended so that the bursary will also be applicable to young people in care undertaking or wishing to undertake further education or non-academic qualifications.

4.2 That a duty is placed on local authorities to equip young people in their care with the necessary life skills to succeed in independent living and plan for provisions when young people are leaving care.

January 2008

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### Memorandum submitted by The Howard League for Penal Reform

#### EXECUTIVE SUMMARY

- The Howard League for Penal Reform welcomes the Children and Young Persons Bill in so far as it appears to be well intentioned but we are concerned that meaningful assistance for children and young people both in and leaving custody appears to be absent.
- We recommend that to help our most vulnerable young people, those children who are already looked-after on entering custody should not cease to be looked-after. They should be entitled to all the benefits of being under section 20 of the Children Act 1989 bar the provision of accommodation by the local authority.
- In the case of those children who are not looked-after on entering custody, entry to custody (or even the criminal justice system) should be an opportunity to assist the home local authority in complying with their duties under section 17 of the Children Act 1989 to identify the most vulnerable children in their area. To do this, we recommend that the Asset form (a type of assessment made by youth offending teams) be modified to include an extra tick box indicating whether or not the child requires a child in need assessment and that a dedicated staff member is assigned within social services to receive YOT referrals.
- In relation to the leaving care framework, the Howard League for Penal Reform believes that proposals contained in both the *Care Matters* Green and White Papers allowing young people to live with foster families until the age of 21 should be reinstated in the Bill

## 1. INTRODUCTION

1.1 The Howard League is the oldest penal reform charity in the world and set up a legal department to represent children and young adults in the penal system in 2002, following a successful judicial review against the Home Office that forced it to recognise that the 1989 Children Act protects children in prison (“The Children Act case”). The Howard League legal team has represented hundreds of children and young people and has a track record of success in forcing improvement to prison conditions, parole procedures and support on release.

1.2 These brief comments are sent in advance of a fuller submission on the provision for looked-after children, as requested in the Children, Schools and Families Committee’s announcement of 18 December 2007.

1.3 The Howard League for Penal Reform welcomes the Children and Young Persons Bill in so far as it appears to be well intentioned and to improve the outcomes and support for one of the most vulnerable groups in society. We are however concerned that many of the valid concerns and issues explored in the Care Matters Green Paper appear to have been completely omitted from this Bill. Informed by the work of our legal team, we believe that it is absolutely crucial to have in place additional and meaningful assistance for children and young people in custody, which formally brings them within the care system where appropriate. This appears to be absent from the Bill, however.

1.4 Our concerns revolve around two key issues: care status of children in custody and the development of the leaving care framework.

## 2. CARE STATUS FOR CHILDREN IN CUSTODY

2.1 As noted in the *Care Matters* Green Paper at chapter 6, “research and data show that children in care enter custody at a far higher rate than other children” (p 82). Whatever the failings in the care system that this implies, custody remains the worst option available. The purpose of the care system is to safeguard children and promote their welfare. In contrast, custody is primarily about punishment. Evidence shows that custody is profoundly damaging for children and almost always leads to poor outcomes, as reoffending rates of 76.2% for under 18s demonstrates.<sup>34</sup> Many of the children who enter custody are among the most vulnerable and challenging, with chaotic family backgrounds and histories of neglect and abuse. Often, they have been ignored by the care system itself. These children have a right to be cared for properly and if they are not, they will continue to wreak mayhem in their communities and place themselves and others at risk. Local authorities must uphold their corporate parenting duties wherever appropriate.

2.2 Despite the manifest needs of this group, the *Care Matters* Green Paper also notes that the majority of children in care, ie those under section 20 of the Children Act 1989, lose their “looked-after” status on entering custody. As it stands, the only children with care status in custody are:

- those under a full care order (s31);
- those children who are classified as “in need” under section 17 of the Children Act 1989 by the local authority in which the establishment is based, during their time in custody; and
- or those 16 or 17-year-olds who have spent enough time in care to be “relevant” children.

It is worth noting here that, given the proposed plans to increase the local authority’s court fees for care proceedings from £150 to anything up to £4,000, it is possible that in the future there will be even more extremely vulnerable children who are classified as “looked-after” under section 20—as local authorities prefer not to pursue the more expensive option of care proceedings. The Green Paper did not go so far as to suggest that children entering custody should not lose their looked-after status. It did, however, suggest that children entering custody should be needs assessed and that individuals should continue to be supported as if they were termed a child in care. Any reference to children in custody was watered down in the *Care Matters: Time for change* White Paper to merely a requirement for social workers to visit previously looked-after children while in custody (see p 64).

2.3 There is nothing in the Bill to ensure that children in custody are properly looked-after. There is a reference to the extension of the duty to visit applying to children in custody in the explanatory notes (at p.2). Clause 13 of the Bill, however, does not explicitly extend the duty to children in custody. The Bill, as amended at 18th January 2008, refers to a duty to visit “a child who was looked-after by a local authority but who ceased to be looked-after by them as a result of **prescribed circumstances**” (our bold). Notes from the House of Lords’ grand committee reveal that it is intended that previously looked-after children in custody will fall into such prescribed circumstances. It is also noted, however, that the recent amendment is designed to restrict visits to children who were previously looked-after. As set out below, this is a matter of great concern given that many of the children who are imprisoned have “slipped through the net” and were not previously looked-after even though they should have been.

2.4 In any event, we believe that the visiting requirements fail to grapple with the key issues that affect children in custody who require care—both while in custody and on release.

<sup>34</sup> *Hansard*, House of Commons written answers, 25 October 2007.

2.5 If we are truly to help our most vulnerable young people, those children who are already looked-after on entering custody should not cease to be looked-after and should be entitled to all the benefits of being under section 20 of the Children Act 1989 bar the provision of accommodation by the local authority. This would comply with the aforementioned Children Act case taken up by the Howard League's legal team in 2002, which confirmed that the Act applies to children in custody *subject to the requirements of custody*. Arguably, entering custody requires as a matter of logic that a child ceases to require accommodation: however, there is no reason why the definition of section 20 cannot be extended to include children placed in hospital or detention under the law. This would mean that children in custody—sometimes the most vulnerable of all—do not become even more disadvantaged. It must be remembered that s20 remains a form of voluntary care: children cannot become looked-after without the consent of their parents while under the age of 16 or without their own consent above the age of 16. Any amendment to allow children placed in hospital or detention under the law to be looked-after under section 20 would not impose care status on children but would entitle them to assistance where required.

2.6 In the case of those children who are not looked-after on entering custody, entry to custody (or even the criminal justice system) should be an opportunity to assist the home local authority in complying with their duties under section 17 of the Children Act 1989 to identify the most vulnerable children in their area. It is the experience of the Howard League's legal team that many children in custody have not been assessed or assisted by social services despite having asked for help or being extremely vulnerable. When a child enters the criminal justice system their youth offending team (YOT) worker fills in a form called the Asset—this is an assessment of need or sorts which details the child's background, living arrangements, health, education and vulnerabilities: much of the information collected will be similar to that collected in a section 17 assessment of need and will reveal whether or not the child in fact requires assessment by social services. YOT workers, however, have no power to designate a child as in need under section 17 or provide that child with the welfare assistance she or he needs. Further, it is the experience of our legal team that many YOT workers find that their overburdened colleagues in the relevant social services department are not willing to accept section 17 referrals from YOTs. A simple solution would be for the Asset form to have extra tick box indicating whether or not the child requires a section 17 assessment and the assignment of a dedicated staff member within social services to receive YOT referrals.

### 3. THE DEVELOPMENT OF THE LEAVING CARE FRAMEWORK

3.1 The *Care Matters* Green Paper acknowledged research, which showed that outcomes for young people who stayed in care until the age of 21 were much better than for those leaving care earlier (p 86). The paper proposed allowing young people to live with foster families until the age of 21.

3.2 It is our experience that such measures could have been extremely beneficial. In particular, young adults leaving custody will often have come to custody from care and attained maturity in custody. They may be keen to make a fresh start but may often also be institutionalised. The lack of foster placements for vulnerable young adults is not helpful in assisting with their longer term rehabilitation. *The Care Matters: Time for Change* White Paper (p 107) also makes reference to the extension of foster placements until the age of 21 and the role of young people in deciding when to leave care. The Bill, however, appears to be silent on the issue.

3.3 We believe that this proposal should be reinstated in the Bill forthwith. Explicitly providing the option for young people to be placed in foster care would send out a very clear message to local authorities who often refuse to place 16-year-olds in such care.

### 4. CONCLUSIONS

4.1 In conclusion, the Howard League for Penal Reform believes that entry into custody should not see looked-after children lose that status. On the contrary, it is vital that these vulnerable children in conflict with the law are afforded all the support and protection available to vulnerable children in the community. For those children entering custody who do not have looked-after status, custody is effectively an alarm bell ringing that should trigger an assessment of the child's vulnerabilities, which the local authority can then act on.

4.2 We have attempted to address our key concerns that relate to the social welfare and care needs of children in the criminal justice system and hope that our observations are of assistance. We have restricted our observations and comments to areas in which we have a degree of expertise specific to our legal work. The Howard League for Penal Reform firmly believes that it is crucial that these points are considered by the Select Committee and we would be very happy to provide oral evidence if required.

**Memorandum submitted by the London Borough of Sutton**

1. SECTION 1

- The authority remains concerned about the introduction of independent social work practices. Other possible solutions to the problem of recruitment and retention of social workers, as well as ensuring that social workers can spend sufficient time with children, remain unexplored.
- There are issues of accountability that have not been addressed.
- There is a risk that such practices will add to bureaucracy rather than reduce it.
- There is no evidence that social care practices will solve the key issue of recruitment and retention of social workers.

2. SECTION 2

- The proposed separation of the functions of the child's social work practice and the adoption agency will add to the difficulties in co-ordination and planning.

3. SECTION 7

- We note the *Children and Young Persons Policy Bill Paper: Friends and Family Care*, which is associated with the Bill. We welcome efforts to support and clarify arrangements for friends and family care. However, we note the "current estimate is that there are approximately 200,000 grandparents raising grandchildren." It is noted in the Paper that there are no definitive figures for the numbers of friends and family carers in this country. The proposals for offering support, including financial support, are insufficiently clear. Proposals for amendments to Section 17 of the Children Act 1989 allowing ongoing financial support potentially expose local authorities to enormous cost and resource implications. If such children are to be Children in Need as defined by Section 17, then they will require ongoing social work support and review.

4. SECTION 8

- We support the proposal that children should be placed within their local area and community. It is not helpful to define this in terms of the local authority area. Many of this authority's children are placed very close to their home but outside the boundary of the authority. This is an arbitrary manner of defining local area and it is possible that this will produce negative impacts.

5. SECTION 9

- Please see comments regarding Section 8. Many children attend schools that are not within their own local authority. Therefore Sections 8 and 9 may be in direct contradiction. The best placement to access a local school may be in a neighbouring authority, depending on local transport links.

6. SECTION 29

- We would support measures for foster carers to have recourse to some method of scrutiny of decisions. The model proposed mirrors that for adoption as established by the Adoption and Children Act 2002. In our view, this is not the most helpful model. Fostering is more complex. Foster carers may apply to different schemes that may require specific skills. There are differing approvals, for example with regard to numbers of children or appropriate age. The model does not lend itself to speedy resolution, even with the small number of adoption referrals. The numbers of fostering referrals are likely to be far higher. This is likely to lead to considerable cost. Other models should be considered.

7. We note with disappointment that there are no specific provisions in the Act regarding the health of looked-after children. We would support the amendment to the Bill proposed by Baroness Massey of Darwen, which is supported by the NSPCC, British Association for Adoption and Fostering, National Children's Bureau and the Who Cares? Trust. This will make the requirements of PCTs towards this vulnerable group of children much clearer.

January 2008

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### Memorandum submitted by Dr Roger Morgan OBE, Children's Rights Director for England

This submission is made in my capacity as Children's Rights Director, representing the views ascertained from children and young people, and not on behalf of Ofsted. It does not necessarily represent the policy or views of Ofsted.

#### BACKGROUND DETAILS

1. The Children's Rights Director for England is a statutory post, previously hosted by the National Care Standards Commission then the Commission for Social Care Inspection, and since 1 April based in the new Ofsted. The post is required under section 120 of the Education and Inspections Act 2006, with functions determined by the Office for Standards in Education, Children's Services and Skills (Children's Rights Director) Regulations 2007.

2. The main statutory function of the Children's Rights Director is to ascertain the views of children (and where appropriate their parents) about services for children living away from home, receiving children's social care services, or leaving care. Consultation methods include randomly invited discussion groups in child-friendly venues and in children's establishments and services, national children's conferences, web surveys, written "question card" surveys, and a mobile phone texting panel.

3. Consultation topics are determined by the Children's Rights Director, from issues raised by children themselves, or raised through the inspection work of the current host inspectorate, and (increasingly) at the invitation of DCSF officials and Ministers to provide an independent children's voices input to policy developments. A recent, and most relevant, example has been consultation with children to feed into, and comment upon, the *Care Matters* Green Paper.

4. Consultation work has resulted in a series of "Children's Views" reports, written to be readable by both children and adults. 27 Children's Views reports were published during the three years the Office of the Children's Rights Director was hosted by the Commission for Social Care Inspection. Reports are circulated to the children involved, to councils with children's social care responsibilities, to Ministers and opposition spokespersons, to DCSF officials, to the UK Children's Commissioners, and to a list of children's organisations and interested individuals and policymakers.

5. The Children's Rights Director also has the function of giving statutory advice on children's rights and welfare. Within his remit, he acts as the statutory advisor to Her Majesty's Chief Inspector in relation to Ofsted carrying out its new statutory function to have particular regard to safeguarding and promoting the rights and welfare of children.

#### ABOUT THIS SUBMISSION

6. The purpose of this submission is to assess the extent to which the Children and Young Persons Bill, within the context of the White Paper, reflects the views and concerns of children and young people obtained through Children's Rights Director consultations with children and young people. The submission also refers to significant children's rights and welfare issues raised with the Children's Rights Director by individual children, and possible responses to those issues.

#### PROVISIONS OF THE BILL

7. There is much within the provisions of the Children and Young Persons Bill that responds directly to the views and concerns of children in public care. I will indicate where some of the measures could be strengthened further in the light of concerns raised by children, and identify areas where children's concerns suggest further measures.

8. Throughout, it is essential to children that their individual experience is what is intended by the legislation, and that the authorities and staff responsible for delivery of the relevant services to children are able to, and do, deliver intended improvements. Children have consistently told us that their experience of existing services is variable and not consistently what was intended by legislation (for example, in the field of care planning).

9. Children have consistently expressed their wish for increased access to their social workers, to be able to secure visits from their social workers when they need them, and for consistency rather than frequent turnover of social workers. The value for children of *Section 1* of the Bill is therefore dependent on whether such arrangements would meet these aspirations in practice.

10. Children have strongly supported the following provisions, now in the Bill:

- assessing in all cases whether placement with family and friends is practicable and consistent with the child's welfare (*Section 7*);

- local authorities providing accommodation in their own areas; accommodating children near to home; and, accommodating siblings together, provided that these are consistent with the child's welfare (*Section 8*). Children have stressed that these are appropriate objectives, but must in each case, as provided in the Bill, be subject to consistency with individual welfare at the time for each child concerned (eg each sibling of a sibling pair or group);
- provision of accommodation near to a looked-after child's school where this is consistent with the child's welfare (*Section 9*). However, this section is not as worded fully consistent with children's views as expressed to the Children's Rights Director. When asked to comment on the last time children had to change school because of a living placement change, approximately half the children stated that the new school was either educationally or socially better for them. This argues for a further exemption from the preservation of attendance at the same school or schools; where the authority considers, having where practicable taken the child's views into account, that a change of school is likely to benefit the child educationally, socially or with regard to welfare;
- additional safeguard of a required statutory child care review which must apply before a child can be placed outside the area (*Section 10*). The most frequent welfare issue raised by individual children with the Children's Rights Director is however of children already placed outside the area and told that they must return from that placement for policy or financial reasons rather than for their own best interests. It would respond to these children's concerns and experience if an additional provision were made in this section requiring that return from a placement made out of area should also be subject to a statutory child care review with the purpose of ensuring that the return is in the best interests of the child concerned, taking his or her views into account. Such a provision may of course also act as a further caution to making out of area placements;
- requirements for social workers to visit looked-after children (*Section 13*);
- entitlements for formerly looked-after children going on to university (*Section 18*); and
- providing further assistance and advice to formerly looked-after young people remaining in education or training (*Section 19*).

11. One issue raised by children themselves is that of the action they can take if their local authority is, in their view, failing to make an appropriate care plan, failing to keep to their agreed care plan, or failing to provide appropriately for them or to safeguard and promote their rights or welfare.

12. The Independent Reviewing Officer provision, and the facility for the Reviewing Officer to refer matters to CAFCASS, has long existed, but we have found that this is very little known amongst children, and it is hardly ever used, even though children often raise with us issues where they consider their authority is not in their view acting appropriately. Children also make little use of complaints procedures which take complaints back to their local authority. They tell us that they find such procedures inaccessible and unlikely to produce a timely rectification where their concerns relate to the actions of the authority considering the complaint.

13. The provisions of *Section 11* do not specifically resolve the lack of use of Independent Reviewing Officer and CAFCASS powers to intervene where children consider their rights or welfare are not being safeguarded and promoted. Additionally, *Section 11(25B)(3)* does not address what should happen for the child where the Independent Reviewing Officer declines to refer a case to CAFCASS.

14. From the children's perspective, it is essential that the provision in the Bill to enhance and further specify the role of the Independent Reviewing Officer, and the independence of that officer, does in practice result in children actually raising individual concerns about the way their authority is safeguarding and promoting their welfare with that officer, and that such referrals by children result in a satisfactory outcome for the children concerned. If they do not, this is one area of the Bill's intentions that may need to be revisited in the future.

15. Two key points arise from children's concern that they should be better able to raise (and have resolved) concerns about their own rights and welfare. The first is that the content of the Regulations provided for under *Section 11* will need to reflect the children's concerns about this provision, and to be effective in facilitating children's access to redress and the delivery of redress.

16. The second, arising from Children's Rights Director work on individual children's issues, is that looked-after children do not currently have access to all the court orders under *Section 8* of the Children Act 1989. It is opportune, within the passage of this Bill, to consider giving access to all *Section 8* orders to looked-after children, to allow them a further safeguard, through the courts, where they consider the actions of an authority to be contrary to their rights or welfare (for example, in relation to removal from a particular placement). Such provision, alongside an enhanced Independent Reviewing Officer role and existing complaints procedures, would significantly strengthen the opportunity to seek redress that children have sought where they consider their authority is not acting in their best interests. Importantly, it would also be external to the authority concerned, which is significant since children have discussed with us the issue of independence of any system for redress.

17. Under *Section 14(8)*, it is important to distinguish a child's objections to a particular Independent Visitor, as against objecting to having an Independent Visitor at all. The current wording of the section is not clear that if a child objects to a particular visitor, but still wishes to have such a visitor, there is a duty

to appoint a different visitor acceptable to the child wherever practicable. Children have strongly raised with us that it is important that persons appointed to work with them as individuals are people they find acceptable and can “get on with”. It might also be worth considering the need to specify that the person appointed to visit the child, under this part of the Bill, cannot be the same person appointed to visit the child under Section 13.

18. Young people have raised with us their concern at inconsistencies in provision of leaving care assistance to unaccompanied asylum seeking children. It would be helpful to clarify such assistance in *Section 20*.

#### PROVISION FOR LOOKED AFTER CHILDREN

19. It is particularly worth noting that the Government White Paper, *Care Matters: Time For Change* took our submitted children’s views into account in:

- opting to stress the need for proper individual decision-making, with assessment of reasons for different levels of reception into care between local authorities, rather than setting specific national targets for numbers of children in care;
- stressing the issue of “normalising” permissions for looked-after children to enjoy overnight stays with friends;
- enabling children to remain in placement until 18;
- retaining the distinctive role of independent advocates, as opposed to incorporating this into the role of the independent visitor;
- providing greater say and support to care leavers;
- encouraging looked-after children in education, and ensuring help for those going on to university; and
- emphasising the need for social workers to visit children looked-after, and other vulnerable groups of children living away from home, and being available at times when children need to contact them.

#### ORIGINAL PROPOSALS FOR CHANGE

20. The Government proposals most supported by children in our consultations on the Green and White Papers were:

- being able to contact a social worker 24 hours a day, 7 days a week;
- having a choice of when to leave care, up to age 18;
- social workers being required to check whether relatives can care for a child instead of receiving the child into care;
- having a Children’s Council in each area; and
- having social workers spend more time with children.

21. Conversely, the one proposal that produced strong objections from many children was to set targets for having fewer children in care. Whilst some thought this would help keep more children with their families, others expressed the strongest worries that: “Some children could be forced to stay at home when really care is best for them . . .” and “. . . the children you don’t take into care could be in danger”.

22. They said the right decision should be made for each child, and should not be influenced by how the council was doing on meeting its targets. It is welcomed that this issue is addressed in line with these children’s concerns in the White Paper.

#### AREAS OF SPECIFIC PROPOSAL FOR CHANGE

23. On the specific areas the Select Committee Inquiry has requested views, children and young people have in summary expressed the following views to the Children’s Rights Director:

##### *Corporate Parenting*

24. I reported in “*Care Matters: Children’s Views on the Government Green Paper* [February 2007] (156 children and young people) that a significant feature of corporate parenting, for children and young people, was the requirement for councils to make “pledges”.

25. The top ten promises children want their councils to make (in order of preference) were: (1) “a good home”; (2) “more help for children and young people”; (3) “more money”; (4) “for councils to listen to children and act more on what children say”; (5) “better help with education”; (6) “to keep children safe”; (7) “more activities to do”; (8) “to recognise that everyone’s needs are different”; (9) “to keep to promises that they make”; and, (10) “to have an effective social worker”.

26. Overall, children are concerned that “corporate parents” should act towards them in as similar a way as possible to what would be expected of a “good parent” in a family. While the Bill understandably speaks of corporate parenting structures and processes, the principle of acting proactively as closely as possible as a good parent would in a family is one that could usefully be incorporated in the general statutory duties of corporate parents.

27. An additional issue raised by many in care and by care leavers has been that of prejudice against those with a history in care. It would greatly promote opportunities and attainment for looked-after children if it were made unlawful for anyone to discriminate against a child or adult on the grounds of their present or past care status.

#### *Family and Parenting Support*

28. I reported in *About Social Workers: A Children’s Views Report* [July 2006] (593 children and young people) that just under half (46%) told us that they thought that their parents did get the help they need to keep children safe. One group said how important it is that professionals should always remember that parents want to keep their children, and should get help to do this—but not if the child is really unsafe staying with them. One quote summed this up: “Children should remain with their families if there are just difficulties, but if they are in danger then they should be taken away”.

29. The emphasis in the Bill on children being placed with relatives where feasible and in line with their welfare children with their families, and the emphasis in the White Paper on family support, are consistent with these views. It is also consistent with children’s views that any reductions in the care population are better achieved through the encouragement of positive interventions and support, as opposed to setting down artificial targets for councils to try to meet.

#### *Care Placements*

30. I reported in *Care Matters: Children’s Views on the Government Green Paper* [February 2007] (156 children and young people) that children said they wanted more choice of placement and fewer changes; more say in their care; more individual support when first entering care; more information; and not to be separated from brothers and sisters.

31. Children wanted always to know what was in their care plans; to have more say about their plans; and, to have explanations of what their plans actually meant in practice. I reported in *Placements, Decisions and Reviews: A Children’s Views Report* [September 2006] (86 children and young people) that some children commented that “huge changes to their lives happened suddenly without much warning or preparation”. “When I first went into foster care, I came home one time and was told I was going . . .”

32. The Bill’s provisions respond to these children’s aspirations to: (i) give looked-after children a greater say in decisions about their care; (ii) make more accommodation available in the local area; (iii) provide accommodation close to where children are attending school, and (iv) achieve greater stability in placements.

#### *Education*

33. I reported in *About Education: A Children’s Views Report* [March 2007] (77 children and young people) that children welcome the emphasis on more support with personal and educational problems. In addition, they would like to see encouragement to providing more school trips, better school meals, better behaviour in schools and teachers who do not make an issue of a child being in care. Nine out of ten children had someone they could turn to for help at school. Nearly two-thirds said that they got help from their carers with schoolwork, and foster carers were slightly more likely than children’s homes staff to attend parent’s evenings.

34. Children in care, but out of school, were usually either waiting for a school place or had been excluded. Many of these children spoke of missing their friends, but were also aware that they were missing out on their education. Their individual accounts revealed how different schools have very different levels of tolerance; and children in one part of the country could find themselves excluded for reasons that would have led to a very different outcome in another school. Over 70% of children had changed school on coming into care and a third as a consequence of subsequent placements.

35. Looked-after children tell us that they are particularly susceptible to missing out on their schooling. In part, this can be down to their behaviour or even assumptions being made about their behaviour because they are in care. It can also be attributable to frequency of changes of placement resulting in them either having to find a new school or one that will put up with the constant disruptions in the child’s life. Children are clear however that the issue is more complex than one of simply aiming to avoid each change of school placement; children have told us both that frequent change is disruptive to education, but that many individual changes can nevertheless be beneficial educationally, socially or in terms of welfare. The Bill builds on the White Paper’s strong emphasis on providing children in care with greater stability in their lives,

and recognises this as the key to any future educational attainment, but it is important that implementation does not create obstacles to particular changes in living or school placement where these are assessed as likely to benefit the child.

36. Given the concerns of children who have had disrupted education through being in care, consideration could valuably be given to establishing a right to compensatory educational provision for children looked-after or formerly looked-after, where educationally appropriate and consistent with the child's or young person's wishes.

### *Health and Well-Being*

37. I reported in *Looked-After in England: How children living away from home rate England's care* [March 2007] (303 children and young people) that children ranked 6th and 7th respectively amongst a list of children's rights that: "Children should be able to see a doctor or dentist whenever they need to" and that: "Children should be able to have healthy food and drink".

38. Children also strongly endorsed the White Paper proposals to provide more choice and opportunity to take part in activities. Availability of a range and choice of accessible activities for children and young people is also consistently put forward by children themselves as the major means of countering development of antisocial behaviour. It would be consistent with these views of children and young people for the Bill and its accompanying Regulations and guidance to emphasise such provision of activities.

### *Transition to Adulthood*

39. I reported in *Young People's Views on Leaving Care: What young people in, and formerly in, residential and foster care think about leaving care* [February 2006] (208 young people) that young people spoke of having to wait months or longer, in local bed and breakfast accommodation, before the promised flat became available. A number of young people raised concerns about whether accommodation arrangements for care leavers are always sufficient to keep them safe from harm. Many did not feel safe or secure. Other young people expressed concern at what they described as being forced to share residence with adults and other young people who they said they would never have been allowed to mix with whilst in care. Many young people complained that they had been given flats that are unclean and situated in what they saw as bad areas; "It is important where you get your flat—a safe area is needed".

40. Some councils, in how they were using bed and breakfast or hostel accommodation, appeared to the care leavers themselves to show insufficient regard for the future welfare and safety of some care leavers; "The places they put you are not any good—there are no positive role models. You are around people who have no jobs and sit around all day". One young person described how she was now; "Living in a hostel with fellas and drug addicts" whilst a group of three young women said how, when they left care, they had been put in a local hostel that "Was well known for its prostitution".

41. Clearly, young people in what they have reported to us, do not generally feel at present that corporate parents are providing for their care leavers the levels of security and support that would be expected of a good parent of a family. Again, the experience of young people as described to us is not consistent with the intentions of existing legislation, and there is thus a need for attention to deliverability and consistency of what is intended.

42. Nearly half of children and young people we consulted for my report *Care Matters: Children's Views on the Government Green Paper* [February 2007] (156 children and young people), thought that it would be a "brilliant idea" for children in care who go to university to get more help.

### *Role of Practitioner*

43. I reported in *Children on Care Standards: Children's Views on National Minimum Standards for Children's Social Care* [December 2007] (433 children and young people) that children and young people emphasised three important workforce issues for them. First, people working with them had to be the right people, properly recruited and checked. Second, where appropriate, children and young people should be involved in choosing staff and carers. And, third, stability should be promoted as a key outcome for children and young people to achieve their potential. Consequently, changes of staff should be kept to a minimum. To these, children have added in other consultations that practitioners working with them should be competent in a set of key areas, including handling children's crises, de-escalating situations that might otherwise lead to violence or the need for physical restraint, the proper use of non-painful and non-injurious restraint where this is necessary, and countering bullying. Staff turnover and training are clearly key concerns to be addressed.

## REGULATIONS

44. As there are many provisions within the Bill for making subsequent Regulations, it may be of assistance to the Select Committee to know that as Children's Rights Director, I am planning, in consultation with DCSF, to carry out specific consultations with children later in 2008 to provide children's views specifically on the areas to be included in Regulations.

February 2008

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**Memorandum submitted by the National Children's Bureau (NCB)**

## SUMMARY

NCB promotes the voices, interests and well-being of all children and young people across every aspect of their lives. As an umbrella body for the children's sector in England and Northern Ireland, we provide essential information on policy, research and best practice for our members and other partners. NCB has over 20 years of experience in research, policy and practice development relating to looked-after children and young people. We host the National Centre for Excellence in Residential Care, a two-year project, funded by the Department for Children, Schools and Families (DCSF), to improve standards of practice and outcomes for children and young people in residential child care in England. NCB also leads the Healthy Care Programme, another DCSF-funded project, which has developed tools to help local authorities and their partners to provide healthy environments for children and young people in care.

NCB welcomes the opportunity to provide our views on the Bill to the House of Commons Children, Schools and Families Select Committee. We welcome the Children and Young Persons Bill, which introduces some welcome measures for the children in care population. We were surprised, however, that measures in the Bill required legislation when many should be a matter of good practice—such as a local authority representative visiting a child looked-after by the authority (clause 13); or placing a child in authority where this is consistent with the child's needs (clause 8).

We are concerned, however, that some gaps in the legislative framework underpinning the delivery of services and support to these children do still remain. During the Bill's passage through the House of Lords, we have been briefing Peers on:

- Looked-after children in the youth justice system—seeking assurances that regulations under clause 13 will include specific requirements in relation to visits to looked-after children in custody to ensure continuity of support when these children enter custody, during their time in detention and during their resettlement into the community.
- The health of looked-after children—seeking amendments to strengthen the legislative framework underpinning the delivery of assessments and care to improve the physical, mental and emotional health outcomes of looked-after children.

NCB will be submitting a more detailed briefing on looked-after children and the youth justice system in the context of the wider *Care Matters* reforms. The Healthy Care Programme, funded by the Department for Children, Schools and Families and led by NCB, will also submit a more detailed briefing on improving health outcomes for looked-after children and young people.

*Looked-after children in the youth justice system*

Children in care are over represented in the secure estate population, approximately 40% to 49% of children and young people in custody have been in local authority care at some point and about 18% are still on statutory Care Orders.<sup>1</sup> These are a particularly vulnerable group of children and are those most likely to experience resettlement problems on their release. Through its work within the youth justice system, NCB has identified a welfare/justice divide, which creates barriers to the delivery of much-needed educational, health and welfare services to young people involved in the youth justice system, and especially to those who are looked-after by a local authority. Practitioners within the different services operate under separate pieces of legislation which can lead to young people falling through the gaps. They work within separate teams, to conflicting targets, using different databases, assessment systems and interventions. The links between Youth Offending Teams (YOTs)—which were initially established as multi-disciplinary teams containing staff from a number of sectors—and their staff members' "home" agencies are becoming blurred over time, with YOT members becoming specialist youth justice practitioners. In addition, it is unclear how the responsibilities of the YOT fit with those of other agencies.

Clause 13 of the Children and Young Persons Bill places a duty on local authorities to arrange for a representative of that local authority to visit a child it looks after. These provisions will apply to a looked-after child who enters custody—including a child voluntarily accommodated under section 20 of the Children Act 1989 who loses his or her "looked-after" status upon entering custody. However, unless it is specified who is to be this representative, it could be a YOT or other local authority worker and fail to ensure that social services continues to maintain its contact with the child for whom it is responsible. While we

welcome this provision, during Grand Committee NCB supported amendments which set out specific requirements relating to the qualifications and training of the local authority representative and requiring that (except in exceptional circumstances) he or she is known to the child.

While the Minister provided an assurance that guidance under clause 13 would state that in good practice the local authority visitor to any looked-after child would be known to him or her, NCB is still seeking further commitments relating to the qualifications and training that will be required of a local authority visitor, and in particular those visiting a looked-after child in custody. At Report Stage, we will therefore be supporting an amendment to require that the local authority visitor to a *detained* looked-after child is a registered children and families social worker. This should apply to: children who are subject to a care order under section 31 of the Children Act 1989; children who were accommodated under section 20 of that Act prior to entering custody; and children and young people who are eligible for care leaver support under the Children (Leaving Care) Act 2000. The purpose of the amendment is to seek assurances that:

- regulations under clause 13 will set out a number of requirements relating to the frequency and purpose of visits to looked-after children remanded or sentenced to a period in custody to ensure that they receive continued support from their social worker—including assessment and care planning—on entering custody, during their period in detention and when returning to the community; and
- this visiting requirement is over and above any statutory duties that the Youth Offending Team may have.

### *The health of looked-after children*

Looked-after children and young people are often disproportionately affected by physical and mental health problems when compared with their peers. National research has found that:

- Two thirds of all looked-after children were reported to have at least one physical health complaint—most commonly eye and/or sight problems, speech and language problems, difficulty in coordination and asthma.<sup>ii</sup>
- 45% of looked-after children and young people aged five to 17 were assessed as having at least one mental health disorder, compared to 10% of the general child and young person population.<sup>iii</sup>
- Looked-after children and young people exhibit high rates of self-harm and high-risk behaviour, particularly in secure accommodation.<sup>iv</sup>
- Some studies have shown higher levels of substance misuse, including smoking, among looked-after children and young people, when compared to the non-care population, however, research in this area is limited.<sup>v</sup>

In particular, these figures demonstrate the significant needs of looked-after children in terms of their mental health and emotional well-being—which may be rooted in experiences of trauma due to abuse or neglect, and/or feelings of bereavement or loss. Health problems may also be amplified for vulnerable groups who may have particularly complex health needs or who experience discrimination within the care system—such as children with disabilities or those from black and minority ethnic groups.

Since the Children Act 1989, a number of measures have been introduced that should provide the necessary legislative impetus for local authorities to work with health bodies to improve the health of looked-after children. Section 27 of the Children Act 1989 requires health bodies to comply with requests from local authorities to help it carry out its functions to support children and families, and section 10 of the Children Act 2004 provides the legislative framework for children’s trusts, where partners such as health bodies must cooperate with local authorities to promote the well-being of children in the area. Regulations under the Children Act 1989 provide for the provision of health assessments and services to looked-after children, placing explicit duties on the *local authority and social worker* to ensure that assessments take place and a health plan is prepared and reviewed for each child.<sup>vi</sup> *Promoting the Health of Looked After Children* guidance was published in 2002 on a statutory basis for local authorities but not for Primary Care Trusts (PCTs).

Despite these provisions to support partnership working, it is clear that more is clearly needed to improve the delivery of health assessments and care to looked-after children. Anecdotal evidence gathered through work carried out by both the NSPCC and NCB’s Healthy Care Programme<sup>vii</sup> suggests that barriers to the proactive engagement of health bodies, such as PCTs, in assessing and meeting the health needs of looked-after children significantly contribute to the current state of affairs. We therefore welcomed the Minister’s confirmation, during Committee, of the Government’s commitment to place guidance on the health of looked-after children on a statutory footing for Primary Care Trusts (PCTs), under sections 10 and 11 of the Children Act 1989. We are concerned however that guidance to which PCTs must “have regard” will not provide a sufficiently enforceable framework with which to ensure that PCTs and local authorities work in cooperation to meet looked-after children’s health needs. In addition, current regulations state only that the medical practitioner carrying out a health assessment must “have regard” to the child’s physical, mental and emotional health; there is no requirement that the latter two aspects—mental and emotional health—be addressed. Guidance states that practitioners who carry out health assessments should have training in

the early identification of mental health difficulties, and should link into CAMHS for advice and consultation. However, this guidance is not always followed through, and there is no corresponding requirement in regulations.

At Report Stage, NCB is therefore supporting an amendment to:

- place an explicit duty on PCTs to co-operate with local authorities in the provision of physical, mental and emotional health assessments and care to looked-after children; and
- introduce new regulations to make clear that both bodies are *jointly* responsible for improving health outcomes for children in care. Regulations must:
  - contain provisions that ensure that the healthcare professionals who assess looked-after children and young people have the relevant qualifications and experience to undertake that assessment. This could include a requirement that the professional has the necessary training to identify potential mental health or emotional issues and to refer the child to the appropriate specialist;
  - specify how soon an assessment must take place after a child enters care; and
  - provide for the inclusion in the child's care plan of joint arrangements made by the relevant local authority and PCT for the physical, mental and emotional health care of the child. There should be a clear expectation that appropriate support for children young people and carers—including therapeutic support or mental health services—will be provided for children who have experienced abuse and neglect and have been assessed as needing it.

It is evident that further research is needed to understand why there are challenges, and geographical differences, in terms of the levels of quality achieved in the delivery of health services to looked-after children. We will therefore be seeking assurance from Government that the implementation of the revised statutory guidance on the health of looked-after children will be rigorously monitored and its impact assessed. This should be for the purpose of identifying whether changes to the status and content of the guidance have had an impact and, if not, identifying other approaches in terms of both legislation and practice.

February 2008

#### REFERENCES

- <sup>i</sup> Youth Justice Board (2005) *Youth Resettlement: A Framework for action*. London YJB.
- <sup>ii</sup> Meltzer and others (2003) *The Mental Health of Young People Looked After by Local Authorities in England*. London: The Stationery Office.
- <sup>iii</sup> Department for Education and Skills (2007) *Care Matters: Time for Change*. Cm 7137.
- <sup>iv</sup> Richardson, J and Joughin, C (2000) *Mental Health Needs of Looked After Children*. London: Gaskell.
- <sup>v</sup> Meltzer and others 2003 op cit; Williams, J and others (2001) "Case-control study of the health of those looked-after by local authorities", *Archives of Disease in Childhood*, 85, 280–85; Department of Health (1997) *Substance Misuse and Young People*. London: Department of Health.
- <sup>vi</sup> *Arrangements for Placement of Children (General) Regulations 1991 and Review of Children's Cases Regulations 1991*, as amended by *Children Act (Miscellaneous Amendments) (England) Regulations 2002*.
- <sup>vii</sup> Funded by the DCSF, and developed by NCB, the Healthy Care programme aims to improve outcomes for children and young people in care through: the development of good practice in multi-agency partnership working; policy development; and the participation of looked-after children and young people themselves. There are currently about 90 local authorities delivering the programme via local multi-agency Healthy Care partnerships.

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#### Memorandum submitted by NCH, the children's charity

##### 1. EXECUTIVE SUMMARY

For too long children in care have been let down by the state. This legislation, along with the other measures set out in *Care Matters*, offers a real opportunity to deliver the much-needed changes to the care system. These reforms must improve the quality and experience of those who enter the care system. Both the legislation and the implementation plan must realise the radical reforms to the system set out in the *Care Matters Green Paper*.

NCH would like to see:

- greater support around the educational aspects of the Bill;
- an independent advocate for children in care;
- clarification about the responsibility and powers of the Independent Reviewing Officers; and



- greater support, both financial and otherwise, for those leaving care to pursue apprenticeships or training.

In particular, preventative services, while not requiring legislation, also have an important role to play. Intensive family support for families with children on the edge of care can, where appropriate, prevent the need for a child to be placed in care in the first place. NCH runs a number of these services in partnership with local authorities and this has resulted in, on average, four out of every five referrals being deemed successful. This kind of service can also be used to support children leaving care and returning home to live with their families, or to prevent the breakdown of a foster placement.

## 2. NCH, THE CHILDREN'S CHARITY, CAMPAIGNING AND LOBBYING FOR CHANGE

2.1 NCH is the UK's leading children's charity. We run nearly 500 services and work with more than 178,000 children, young people and their families across the UK,<sup>35</sup> some of the most vulnerable in our society.

2.2 We complement our role in promoting social justice through our services by lobbying and campaigning for change. NCH is one of the main providers of Children's Centres and we are the sector's leading provider of preventive and intensive support to families with vulnerable children, including those in care, in trouble with the law, who are disabled and who have mental health problems.

2.3 We work to promote the best interests of children and young people in care through providing a range of residential services for children, young people and families, including residential services for disabled children and those who are leaving care or homeless. NCH also has a long tradition of adoption work, and we were one of the first approved adoption agencies. These include addressing the specific needs of black and ethnic minority families. In addition NCH offers a variety of foster care placements, ranging from emergency and short term through to long term, remand and shared care.

2.4 NCH works with over 80% of local authorities in the UK and we are expert at working in partnership with a wide variety of organisations to deliver services. Our purpose is to help the most vulnerable children and young people break through injustice, deprivation and inequality, so they can achieve their full potential.

## 3. PART 1—DELIVERY OF SOCIAL WORK SERVICES FOR CHILDREN AND YOUNG PERSONS (CLAUSES 1–6)

3.1 This part of the Bill puts forward proposals for the provision of social work services for children and young people. It will enable the local authority to enter into an arrangement with a "provider of social work services" and enable the discharge of some or all of the local authority's social services responsibilities for individual children who are looked-after by the local authority or who are former relevant children (as defined in section 23C of the Children Act 1989).

3.2 Clause 2 sets out the restrictions on arrangements for the delivery of social work services for children and young people that cannot be discharged to an external provider. This includes the local authorities' function in relation to the appointment of independent reviewing officers and the functions as an adoption agency, unless the provider is a registered agency. There is also provision to ensure that the functions are discharged or under the supervision of registered social workers. The local authority must also abide by any guidance given from central government.

3.3 Clause 3 states that the responsibilities of omissions or acts to the social work provider are to be treated as the acts and omissions of the local authority. However, this does not apply to criminal offences or prevent any civil proceedings against the provider.

3.4 Clause 6 sets out the arrangement to pilot these proposals for up to five years in a number of local authorities. Following evaluation of the pilots, it may be extended to all local authorities.

### *NCH's view*

3.5 It is important to recognise that the proposal for independent Social Care Practices (SCP) stems from a desire to tackle many of the perceived weaknesses that the current social work system has when it comes to placing the needs of the child at the centre of all that it does.

3.6 While there may be potential benefits of SCPs, we need to acknowledge that change does not always bring better outcomes. We share many of the same concerns as the LGA regarding the development of SCPs. For example, SCPs will restrict a local authority's flexibility in allocating resources and introduces yet another layer of bureaucracy to the system. Furthermore, there is no evidence that SCPs will resolve the issues of recruiting and retaining social workers, or why this model is better than empowering foster carers or key workers in children's homes who are already much closer to the children and young people.

3.7 For now we would suggest that it is important for this idea to be closely tested and have its role and relationships clearly defined and boundaries and goals unambiguously outlined.

<sup>35</sup> As at 1 April 2007.

#### 4. PART 2—FUNCTIONS IN RELATION TO CHILDREN AND YOUNG PERSONS (CLAUSES 7–28)

4.1 This part of the Bill sets out that each local authority to have a care plan for each child in care that includes the kind of services that will be provided to meet the child's needs. Care plans must be reviewed within four weeks of a child becoming looked-after; the second review must be within three months after that date and subsequently not more than six-monthly intervals. These clauses make amendments to the various regulations that are currently in place for care planning and review.

##### 4.2 *NCH's view*

Children and young people enter the care system from various backgrounds and circumstances. The majority of children in care (62%) are there because they have suffered abuse or neglect and 42% of children in care return home within six months. The care plan and its implementation are crucial to meeting the individual needs of each child.

#### 5. SUPPORT FOR CHILDREN PLACED WITH FAMILY OR FRIENDS

5.1 Clause 7 makes provision for support for children placed with family or friends. It restates the duty on the local authority to place a child who is voluntarily accommodated with a relative or other person connected with them unless that would be inconsistent with the child's welfare. These placements will still mean that a child accommodated under section 20 of the 1989 Act still remains looked-after unless placement is with a parent (or another person who has parental responsibility).

##### 5.2 *NCH's view*

NCH agrees that children placed with suitable family and friends still remain looked-after, but there should also be safeguards in place to ensure that the child will be properly cared for and their needs fully met. This could be done by having a greater emphasis on identification and assessment of potential family and friends prior to the start of care proceedings.

#### 6. PROVISION OF ACCOMMODATION IN ITS AREA FOR CHILDREN LOOKED AFTER BY A LOCAL AUTHORITY

6.1 Clause 8 imposes a new duty on local authorities to place children in accommodation that is within their own local authority, except where accommodation cannot be provided with areas that is consistent with the child's welfare.

##### *NCH's view*

6.2 NCH believes that when deciding on placements, the welfare of the child should come first. We are pleased with the reassurances given by Government that this will be the case, however it is important that there is not a disincentive for local authorities to keep a child within their own local authority when their needs could be best met accessing provision (such as specialist education) in another authority.

6.3 In addition, Clause 8 (2) (7C) states that "Where a local authority provide within their area accommodation for a child whom they are looking after, they shall secure that (where he child is not accommodated in his home) the accommodation being provided is near is home". We would like further clarification about what is meant by "near".

#### 7. PROVISION OF ACCOMMODATION NEAR TO LOOKED-AFTER CHILD'S SCHOOL

7.1 Clause 9 builds on the requirement set out in the Children Act 2004 that places a duty on local authorities to "give particular attention to the educational implications of any decision about welfare of any child they are looking after". It expects that care placement decisions should not normally mean that the child has to change school (unless it is for the welfare of the child) and that any school change should normally come about due to educational needs.

7.2 In addition, this clause also puts a new requirement for children in school years 10 and 11—the circumstances must be exceptional to justify a care placement that is not near the child's school.

##### 7.3 *NCH's view*

NCH supports the strengthening of the duty on local authorities with regard placement stability when looked-after children are studying for their GCSEs or equivalent qualifications. However, we believe that this duty should be extended to cover other critical periods in a child's education, in particular the transition from primary to secondary school.

## 8. REVIEW OF CHILD'S CASE BEFORE MAKING CERTAIN ALTERNATIVE ARRANGEMENTS FOR ACCOMMODATION

8.1 Clause 10 introduces a statutory requirement in a case where the local authority is considering a particular change to the arrangements it has made for the accommodation of a looked-after child to undertake a review of the child's case.

### 8.2 *NCH's view*

NCH supports the strengthening of the statutory review processes, which should reduce the numbers of children moved between provider homes without adequate consultation and agreement and that the process would be overridden in order to safeguard the welfare of the child.

## 9. INDEPENDENT REVIEWING OFFICERS (IRO)

9.1 Clause 11 sets out the additional requirements regarding the appointment of independent reviewing officers. When a child is looked-after, an individual name must be appointed as the IRO for the child. The additional responsibilities of the IRO include ensuring the views of the child are taken into account in care planning, there is identification of persons responsible for implementing any decisions from the review and that any failure to implement the review recommendations are brought to the attention within the local authority at a senior level. The aim of these amendments is to ensure that the child's interests are best protected.

### *NCH's view*

9.2 NCH has, from the time of the Green Paper, welcomed proposals to strengthen the independence of the reviewing officer. In our view, the legislation improves existing arrangements but could go further in demanding that IRO services be provided by an independent organisation. It is incredibly important that the IRO be totally independent from the local authority so that the child and young person being represented can fully trust that the office has their best interests at heart. There should be no potential conflict of interest when it comes to an IRO being able to challenge an authority's conduct, policy or services where that is needed.

9.3 NCH supports the case for independent advocacy. Along with other organisations, we would like to see a statutory right to independent advocacy when significant decisions are being made concerning the lives of looked-after children and a legal requirement on all agencies providing care to ensure access to independent advocacy.

## 10. INDEPENDENT VISITORS FOR CHILDREN LOOKED AFTER BY THE LOCAL AUTHORITY

10.1 Clause 14 extends the group of looked-after children for whom an independent person must be appointed to visit befriend and advise the child.

### 10.2 *NCH's view*

NCH runs a number of Independent Visitor programmes, working with more than 20 local authorities. In our experience, independent visitors are a very good idea and we are keen to see them promoted and revitalised. Many young people do not want their independent visitor to be their advocate, not wanting them to know more information about them than they themselves are prepared to share. In addition, many independent visitors work full time and the extra responsibility could be enough to dissuade them from volunteering. The separation in role and function must remain in these reforms.

## 11. EDUCATION AND TRAINING

11.1 Clause 17 requires the governing body of a school to designate a member of staff as having responsibility for promoting the educational achievement of looked-after children who are registered pupils at the school.

### *NCH's view*

11.2 Having a designated member of staff in each school has the potential to ensure that children in care have access to the educational support they need. We would like the Government to clarify that the "designated member of staff" will be a teacher. In addition, for this position to make a difference, the member of staff must have the ability to ensure that any recommendations are implemented by the school.

11.3 Resources and training should be available to the designated member of staff so that they can effectively discharge their responsibilities. Contact and the exchange of information between social workers and the designated member of staff will also be required to ensure that support both in and out of the school setting complements the aim of improving the educational outcomes.

## 12. ENTITLEMENT TO PAYMENT IN RESPECT OF HIGHER EDUCATION

12.1 Clause 18 adds duties that local authorities to pay a fixed sum to “former relevant children” who go on to pursue a course of higher education. Regulations will set out the amount and how it will be paid and will be exempt from income tax.

### 12.2 *NCH's view*

This measure will help make a difference to “former relevant children” who enter higher education. NCH is of the view that such support should not be restricted to higher education and that financial support should also be made available for further education provision. This is of particular importance given that 30% of care leavers aged 19 were not in education, employment or training.

## 13. ASSISTANCE TO PURSUE EDUCATION AND TRAINING

13.1 Clause 19 extends the duties of the personal adviser to include a former relevant child who informs the responsible authority that he is pursuing or intends to pursue a programme of education or training, but who the authority would not have a duty because the young person is over 21 years of age. The young person must, however, be under 25 and the local authority must undertake an assessment of educational and training needs. If the education or training goes beyond a young person’s 25th birthday, the local authority must still provide assistance.

13.2 Clause 20 puts in place an extension of entitlements to a personal adviser and to assistance in connection with education or training.

### 13.3 *NCH's view*

NCH supports the extension of an appointed personal adviser and provision to undertake an assessment of education and training needs for children who have left care to age 25. Ways in which to promote the engagement of care leavers in education or training must feature if this measure is to make a difference. NCH is of the view that local authorities should also explore the possibility of offering care leavers access to apprenticeships.

## 14. EXTENSION OF POWER TO MAKE PAYMENTS IN CASH

14.1 Clause 21 removes the restriction on the making of cash payments “in exceptional circumstances” and gives local authorities wider discretion in giving cash payments to those caring for children in need. Local authorities may also decide that assistance could be repaid.

### 14.2 *NCH's view*

Removing the restrictions on the powers to make payments in cash to children in need will give greater flexibility to meet the needs those in and leaving care, such as disabled children and young people.

## 15. PART 3—FOSTERING AND ADOPTION

15.1 Clause 29 gives power for prospective or existing foster carers to apply to the Government for an independent review of the determination of a fostering service provider regarding a person’s suitability or continuing suitability to foster a child.

### 15.2 *NCH's view*

NCH supports the option of an independent review mechanism for foster carers.

## 16. PRIVATE FOSTERING—EXTENSION OF PERIOD ALLOWED FOR MAKING REGULATIONS UNDER SECTION 45 OR 46 OF THE CHILDREN ACT 2004

16.1 Clause 31 extends existing powers to establish a scheme for the registration of private foster carers, which will lapse in November 2008. This clause extends these powers until November 2011.

## 16.2 NCH's view

From our experience supporting private foster carers, many of the children being cared for are very vulnerable having limited or no contact with their parents. NCH is of the view that more needs to be done both at a central and local level to increase the number of registered private foster carers. This would help prevent these vulnerable children slipping through the net. There could be significant merits to introducing a more formal requirement to register private foster carers. This is an area that must be sufficiently addressed as part of the Care Matters reforms.

February 2008

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### **Memorandum submitted by Parents Against Injustice (PAIN)**

Please accept the following submission which is based on the experience gained in our work for PAIN—Parents Against Injustice ([www.parentsagainstinjustice.org.uk](http://www.parentsagainstinjustice.org.uk)) which for over 20 years has offered advice and support to parents and carers who have been falsely accused of abusing children in their care.

From our experience as advocates for families involved in public law proceedings and beyond, we agree that outcomes can be improved through the four main principles behind the Bill namely:

- Good corporate parenting.
- Improving stability.
- Listening to children in care.
- Change in culture.

We believe though that more emphasis needs to be placed on certain aspects of these principles to ensure that high quality care and support is given to children and young people in care.

#### GOOD CORPORATE PARENTING

1. For corporate parenting to work effectively there needs to be a substantial improvement in transparency within care planning and its operational base. Our feedback from many local councillors seeking to ensure quality care within corporate parenthood is that officials within social services can often be obstructive as well as patronising when asked questions or information is sought on behalf of birth families and friends of children in care. The prevalent attitude that they are the professionals and therefore know what is best for children in care is a barrier to effective and shared corporate parenting.

2. Scrutiny is crucial to the workings of corporate parenthood and complaints should be open to all and not restricted to the immediate parties involved and those that the local authority choose to allow to complain to them. Accountability is needed throughout so that a robust complaints procedure allows criticism to be noted and lessons learnt through the various stages. A migration therefore is needed away from “marking ones own homework” to a rigorous and critical investigation of all complaints by an independent body not associated in any form with local authorities.

#### IMPROVING STABILITY

3. Children in care need far more stability and a cap needs to be made on the number of placements a child goes through whilst in care. Stability would also improve if out of borough placements are reduced as this would not only assist children's ties with their families and friends but also free up social work resources. We are aware of round trips of eight hours or more being made by key social workers to carry out their statutory duties of meeting with children in their care. This also impinges on contact with family and friends where distance, time and costs negatively influence reasonable contact.

#### LISTENING TO THE CHILDREN

4. We are aware that children's views are not always sought and, if they are, they can be ignored if they are at variance to the current social work thinking on the child's future.

5. Independent advocacy is crucial at this point as we hear of many complaints that CAFCASS do not carry forward the views of children. However, more emphasis is needed on the advocate's “independence” particularly as regards the funding of that role and that person's life experience. We are conscious of the public's lack of trust in the notion of an independent person funded by the local authority looking after those children and where the background of that independent person very often has close ties with the local authority or with the social work profession. To work effectively, advocacy in this setting needs to broaden itself out to completely independent funding and the background of advocates should reflect less on professional care experience and reflect more on the experience of being in caring situations either as care leavers or foster carers.

## CHANGE IN CULTURE

6. There needs to be a substantial culture change for the outcomes of children in care to improve. These changes may also have a collateral effect in reducing the numbers of children entering care thus giving them the potential for better outcomes in their lives if the State continues to be a bad parent.

7. The culture change though needs to start earlier in the child protection process so that children only enter care as a last resort. Unfortunately our experience is that often children are wrongly removed from parents and carers where there is no evidence of abuse or where proper support to the family as a system would result in there being no need for the child to enter care. Family group conferences should be supported by all social workers and become the norm and not the result of a postcode lottery. We also find that grandparents are overlooked as carers in many cases and there is a suspicion of age discrimination creeping into assessments by social services.

8. The quality of social work needs substantial improvement as we constant encounter examples of a very poor standard of work, be it in assessments, investigations or court preparation. The proposed social work practices may offer the opportunity for a complete change in culture that will also lead the emphasis away from over management. To work effectively though they must be robustly scrutinised not by the usual professional peers but by “the community” either in a model similar to school governors or a completely new model that will help to improve public confidence in this area.

January 2008

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## Memorandum submitted by Participation Works

### EXECUTIVE SUMMARY

- Progressive improvements to participation and practice has improved the participation for children in care. However, many children in public care do not feel listened to by their social workers and corporate parent.
- The Children and Young Persons Bill is an ideal opportunity to strengthen the legal rights of children and young people in care to participate in decision affecting them.
- The proposed Children in Care Councils should be placed on a statutory basis.
- Social workers should have a new duty to record on an ongoing bases the wishes and feelings of children in care.

### ABOUT PARTICIPATION WORKS

This submission has been prepared by the Children’s Rights Alliance for England on behalf of Participation Works, a consortium of six national children and young people’s agencies whose members include the British Youth Council, the National Children’s Bureau, the National Council for Voluntary Youth Services, Save the Children and The National Youth Agency.

Participation Works has a comprehensive programme of activity and resources on participation which include workshops, training sessions and practitioner networks, designed to support organisations and practitioners who work with children and young people under 25-years-old.

### INTRODUCTION

1. It is more than 30 years since local authorities were first placed under a duty to give due consideration to the views of children in care.<sup>1</sup> The Children Act 1989 and subsequent amendments in 2004 places a duty on local authorities to ensure “so far as is reasonably practicable” that the wishes and feelings of a child at risk, in need and in care should be given due consideration in actions affecting them.<sup>2</sup>

2. However, whilst there have been considerable improvements in participation across the past 30 years, many children in care report being unheard:

- a major 2002 consultation with children in care found that approximately one third felt that they were not listened to;<sup>3</sup>
- a consultation with 300 children living away from home in 2007 by the Children’s Rights Director found that they thought that their right to be able to have their say about things that matter to them and for this to be taken seriously were being respected “just about OK” but not “well”;<sup>4</sup>
- an online survey of children conducted by the Department for Children, Schools and Families in autumn 2006 found that nearly a quarter (23%) of respondents that had a social worker (604 children) said they felt they “never” took their views into account;<sup>5</sup> and

- inspectors of foster care services have noted that children do not always feel confident that their views are listened to; they had concerns about the structure of meetings and found aspects of the documentation and recording unhelpful.<sup>6</sup>

3. Article 12 of the Convention on the Rights of the Child grants all children the right to express their opinions and to have their views given due weight in all matters concerning them. In 2002, the United Nations Committee on the Rights of the Child recommended that the Government takes “further steps to consistently reflect the obligations of both paragraphs of article 12 in legislation”.<sup>7</sup>

4. In this paper we outline two proposals to enshrine in legislation additional provisions which support participation. Current legislation relating to children in care obliges social workers to ensure that the wishes and feeling of the child are given due consideration through their care process.<sup>8</sup> It is now time to strengthen the legislation to support children’s influence in strategic decision-making and service delivery by placing the Children in Care Councils (or some other collective mechanism) on a statutory footing. We would also like to see a new duty on social workers to record the views and wishes of children in care.

5. The call for increased participation of children in care is not new. The review of safeguards for children living away from home (“Children’s Safeguards Review”) undertaken at the end of the 1990s recommended that local authorities “should make direct use of the experience of the young people they look after in developing policy, practice and training for services for children living away from home”.<sup>9</sup>

6. The following year, in 1998, the health select committee’s inquiry into children in care noted, “A great deal can be learned from children looked-after and from young adults who have had experience of public care; their experience can be drawn on to improve the care system for the future”.<sup>10</sup>

#### CHILDREN IN CARE COUNCILS AND OTHER COLLECTIVE MECHANISMS

7. We are very disappointed that the provision for Children in Care Councils has not been placed on the face of the Bill. This is in direct contrast to the views given by the Department for Children, Schools and Families in feedback to children on Government action following the Care Matters Green Paper consultation. The department promised that:

Every local authority will be expected to set up a “Children in Care Council” in their area. This is to make sure that every child gets a chance to have their say and put their experiences of the care system directly to those responsible for running it in their area.<sup>11</sup>

8. Children in care are a unique group for whom the local authority has distinct legal responsibilities. It is anathema that currently legislation provides that a 14-year-old in care can influence the design of local positive youth activities in his or her community but not influence the life changing strategic decision making of their corporate parent.<sup>12</sup>

9. Local authorities have specific responsibilities to consult with children and young people in the production and review of their Children and Young Person’s Plan (CYPP)<sup>13</sup> and the Government has suggested that this is sufficient safeguard for their participation in strategic decision making.<sup>14</sup> Whilst research from NFER shows that children in care have often been consulted as part of the production of the CYPP<sup>15</sup>, we do not believe this to be an adequate alternative to a Children in Care Council—see table below.

#### COMPARISON OF CYPP AND CHILDREN IN CARE COUNCIL

<i>Children and Young People’s Plan</i>	<i>Children in Care Councils</i>
An annual one-off event.	An embedded part of service improvement.
Often a consultation which asks specific questions decided by the local authority.	Led by children in care enabling them to discuss issues they believe to be important. They set the agenda.
Consultation results balanced against the views of others to influence final CYPP.	Views of children in care heard directly by the Director of Children’s Services and the Lead Member.
Involving all children, may include children in care.	Focused on children in care and their specific view and experiences.

10. A Children in Care Council would not be focused on consultation nor would it be solely an annual one off event. We would envisage these Councils to be proactive in shaping service improvements. They would have the opportunity to look at issues of concern to them rather than merely responding to the views of the local authority.

11. By placing collective mechanisms on a statutory footing we can ensure that fledgling groups will be embedded in the structures of a local authority and not vulnerable to changes in priorities or personnel. It would also ensure that all children in care have the opportunity to influence strategic decision making—not just in those with a local authority which supports an in care group.

12. Placing the council on a statutory footing would also strengthen the accountability of the corporate parent to children in care and ensure that the views of children are heard at the highest level. Not every wish or opinion of children in care will (or *necessarily* should) be acted upon. However, it is important that they are considered seriously and appropriate action taken—even if this is simply to engage in dialogue with children about the difficulties of carrying out a proposal.

13. Some local authorities have existing collective mechanisms for obtaining the views of children—these are models which should be built upon. However, initial findings from a Children’s Rights Alliance for England (CRAE) Freedom of Information survey of local authorities in England found that just 17 local authorities have some form of collective mechanism for children in care.<sup>36</sup> We believe that coverage is patchy and the functions, remit and status of the groups vary considerably. Many have no dedicated budget or office space; no guaranteed access to key decision-makers; and no obligations on senior managers or elected members to respond to their concerns.

#### RECORDING THE WISHES AND FEELINGS OF CHILDREN IN CARE

14. We believe that there should be a new legal requirement on social workers to record the wishes and feelings of every child as a matter of course. Recording the views of children would be clear evidence that the social worker involved has spoken to the individual child and specifically attempted to elicit their views. It would make it clear to children themselves that their views were being taken seriously and would be available to senior managers and inspectors.

15. The importance of a professional forming a relationship (however short) with a child for whom there are concerns, in order to build up a fuller picture of their life, their wishes and their feelings, is an essential part of keeping children safe and promoting their well-being.

16. Our proposal would significantly add to the protection of younger children who have been or are being abused. Too often young children are seen as being unable to contribute meaningfully to assessments of their welfare and safety. These children are less likely to directly or immediately disclose to a professional undertaking a children in need or child protection investigation. Further, there is a clear pattern in statutory case reviews of young children not expressing their opinions. Government statistics show that in the year ending 31 March 2006, there was a 10% gap between children aged 4-9-years-old and children aged 16 and over not expressing their views in their statutory review meeting—18% and 8% respectively.<sup>16</sup>

17. Of course some children may struggle or find it impossible to communicate their wishes and feelings—due to their age, maturity or circumstances. However, others may not have been asked for their views or if they did their views may have been recorded inadequately. Requiring social workers to record the wishes and feelings of children—or why it has not been reasonably practicable to ascertain the child’s wishes and feelings—would greatly help to address this situation.

18. Though not enough research has been carried out on disabled children’s experiences of child welfare and child protection, we know that abuse has been traditionally underestimated and underreported. These amendments would ensure that there is documentary evidence (or not) of the attempts made to ascertain the wishes and feelings of disabled children, many of whom live long distances away from home and have little family contact.

19. A statutory requirement to record the views of children would ensure that case notes present a fuller picture and commentary on the child’s life and progress. This is especially important for those children subject to regular changes in social work staff: the notes would help new staff to develop a better understanding of the child’s views and make them aware of any changes in those views. The notes would also provide a valuable source of information for individuals who return to read their case files in later life—giving them access to their thoughts and feelings as a child, and thus helping them make sense of their lives whilst providing insights and reflections that usually come with growing up in a stable family.

20. Case notes are an integral element of care arrangements for children and a key responsibility of the corporate parent. We note that many serious case reviews, carried out following the death or serious injury or neglect of a child, have reported poor recording of children’s wishes and feelings. Detailed and up-to-date case notes can help avoid “drift” or “missed signs” which have been the hallmark of inquiries into children’s deaths from Maria Colwell to Victoria Climbié.

#### STRENGTHEN INDEPENDENT ADVOCACY

21. We support the call to strengthen accesses to independent advocacy by legislating for a statutory right for children in care to access independent advocacy when significant decisions are being made concerning the lives of looked-after children and a legal requirement on all agencies providing care to ensure access to independent advocacy.

<sup>36</sup> The 2007 survey by the Children’s Rights Alliance for England (CRAE) received responses from 139 of 150 local authorities. The FOI request focussed on awareness and implementation of the Convention on the Rights of the Child. However, it also asked specific questions relating to participation.



22. There is evidence to suggest that professional advocacy input leads to better decision-making and that children's outcomes are improved as a result. The process of active engagement in making decisions about their lives is a very important element in promoting resilience and emotional well-being.

February 2008

#### REFERENCES

- <sup>1</sup> The Children Act 1975 which was later amended and included in the Children Act 1989 Section 22(4) and (5).
- <sup>2</sup> See: Section 17(4) and Section 47(4) Children Act 1989 (as amended by Children Act 2004) and Section 22(4) and Section 26 Children Act 1989.
- <sup>3</sup> Timms, J and Thoburn, J. (2002) *Your shout! A survey of the views of 706 children and young people in public care*. London: NSPCC. Pg 13.
- <sup>4</sup> Children's Rights Director (2007) *Looked-after in England. How children living away from home rate England's care. A Children's Views Report*.
- <sup>5</sup> Willow, C, Franklin, A & Shaw, C. (2007) *Meeting the obligations of the Convention on the Rights of the Child in England. Children and young people's messages to Government*.
- <sup>6</sup> Social Services Inspectorate (2002) *Fostering for the future: Inspection of Foster Care Services* Para 5.7.
- <sup>7</sup> United Nations Committee On The Rights Of The Child (2002) *Concluding observations: United Kingdom of Great Britain and Northern Ireland CRC/C/15/Add 188*.
- <sup>8</sup> Children Act 1989, Section 22(4).
- <sup>9</sup> Utting, W. (1997) *People like us. The report of the review of the safeguards for children living away from home*. Department of Health and Welsh Office.
- <sup>10</sup> House of Commons Health Select Committee (July 1998) *Children looked-after by Local Authorities*.
- <sup>11</sup> DCSF (2007) *Time for change. Young people's guide to the Care Matters White Paper*.
- <sup>12</sup> Education and Inspection Act 2006, Section 6 (9) (a) and (b).
- <sup>13</sup> Children and Young People's Plan (England) Regulations 2005 Section 7 (1) (a).
- <sup>14</sup> Lord Adonis, Hansard House of Lords, 14 Jan 2008 : Column GC392.
- <sup>15</sup> Lord, P, Wilkin, A, Kinder, K, Murfield, J, Jones, M, Chamberlain, T, Easton, C, Martin, K, Gulliver, C, Paterson, C, Ries, J, Moor, H, Stott, A, Wilkin, C and Stoney, S. (2006) *Analysis of Children and Young People's Plans, National Foundation for Educational Research*.
- <sup>16</sup> Figures calculated based on children who physically attend but does not speak for him or herself, does not convey his or her view symbolically (nonverbally) and does not ask an advocate to speak for him or her and also children who do not attend a review nor are his or her views conveyed to the review. See: National Statistics/Department for Education and Skills (2007) *Children Looked After In England (Including Adoptions And Care Leavers) 2005–06*.

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#### Memorandum submitted by Professor June Thoburn CBE, University of East Anglia

#### EXECUTIVE SUMMARY

In order to provide the best possible service to these most vulnerable children who need the state to become involved in providing out-of-home care, it is essential to learn what we can from best practice in other countries. But in the past in the UK we have been overly narrow in limiting our gaze to the USA and other English speaking countries and have missed out on learning from the more positive approaches to out-of-home care in other European countries, for example, the way in which France and Scandinavian countries seek to retain challenging adolescents (including those who commit offences) within their child welfare and out-of-home care systems. It is also important not to undervalue the progress that has been made in the UK—the policies that we can recommend to other countries. In particular, we have reason to be proud of the progress we have made in placing children for adoption and the steps we are taking towards finding a range of alternative routes to permanence and family membership without requiring children to give up links with their birth families.

In looking across national boundaries, it is essential to understand the context in which apparently successful policies and practices in other countries have been developed. Taking policies and interventions “off the peg” from other countries may result in costly mistakes, especially for the children involved.

Research from the UK and abroad supports the general direction in the Children and Young Persons Bill—to improve services for children on the thresholds of care, and at the same time to improve the service provided to children who are looked-after by the local authority.

“Success” should be measured not only in terms of numbers in or out of care, but in terms of ensuring that those children who can remain with their families are enabled to do so, and those who need out-of-home care come into care in a planned and timely way and remain for as long as is needed.

An approach to the place of the care system within child welfare services and to the evaluation of outcomes needs to be differentiated in terms of age, type of difficulty and type of care service.

Specific areas for further research and development are:

- support foster care for families under stress;
- more appropriate arrangements for the support of kinship carers;
- reducing the number of “predictable emergency” admissions to care;
- appropriate out-of-home care services for teenagers;
- reunification practice; and
- ensuring that more long term foster families become “families for life” for the children in their care.

## INTRODUCTION

1. I am an Emeritus Professor of Social Work at the University of East Anglia. This memorandum is based on over 40 years of experience as a child and family social worker and team leader in England and Canada, and as a social work academic. Since 1980 I have researched and published on most aspects of the social work service to vulnerable children and their families and carers, but have focused especially on children who may need out-of-home care, and on placements and outcomes for looked-after children. This memorandum particularly draws on a recent Leverhulme Foundation funded study of children in out-of-home care in 14 “first world” countries in Asia, Australasia, North America and Europe (including the four UK nations). I have continuing links with policy makers, researchers, data analysts and practitioners in these countries. My comments are of relevance to some of the clauses of the Children and Young Persons Bill and to the broader issues listed especially: corporate parenting, family and parenting support, care placements, transition to adulthood, the role of the practitioner. (I shall use the term “in care” alongside “looked-after” as this is the term in general use in the other countries to which my memorandum relates.)

## FACTUAL INFORMATION

2. The research on outcomes for young people in care is often over-simplified and gives a misleading impression of care outcomes. (See summary of international evidence on outcomes by Bullock *et al* which presents a more realistic overview of outcomes—this article has subsequently been published in refereed USA and UK journals.) Global statements about outcomes of care are unhelpful since they lump together different ages of children, entering care for different reasons, who stay for different lengths of time and exit care in different ways.

3. A valid authoritative research study on outcomes would need to have a longitudinal design, include all children entering care during a given period, and retain within the study those who return successfully home, those who are successfully placed for adoption and those who are successfully placed with long term foster families or relatives and are provided with stability and loving care well into adulthood. Such a study does not exist anywhere in the world, although there are some longitudinal studies of smaller samples in France, the UK, the USA and major population-based studies in Sweden. The UK birth cohort studies have some data but were not set up to provide large enough numbers or collect sufficiently robust data on the care experience. The England *Children Looked- After* (903) data set is the envy of many countries, and is beginning to provide robust data on those who stay long in the system, or re-enter (although it does not provide comprehensive data on children adopted from care who re-enter the care system since these have a different name and identifier).

4. Too much of the “evidence” of poor outcomes is based on what have come to be known as “care leavers”—young people moving into some form of hostel accommodation or “independent living” environment sometime between the ages of 15 and 18. Many of these entered care because they were already showing troublesome or troubling behaviour (including poor school performance) when over the age of 10. Many, as demonstrated by their evidence to the *Care Matters* consultation, the Children’s Rights Officer and our survey of the views of over 700 looked-after young people (Timms and Thoburn, *Your Shout* published by the NSPCC—available if it would be helpful), make progress in care and value the experience, even though on the outcome measures used such as GCSE results, they do not measure up well to the “average” child. For children who enter care with serious difficulties a “value added” measure of outcome is needed, alongside the standard measures, if we are to know whether being in care has resulted in gains to or deterioration in their wellbeing.

5. More, of course, must and can be done to improve outcomes for this group of young people, but outcomes for late entrants to care (eg educational attainment) should be measured when they are in their early 20s and have had time to benefit from what a good experience of being in care can offer them. They need time to recover from whatever trauma led to them entering care before they can really start to make substantial gains.

6. In contrast to the mixed evidence coming from the research on long-stayers, research on children who enter care for a shorter period of time (usually accommodated for a specific purpose) or provided with a support foster care service (at times of family stress as well as for disabled children) reports high parent and child satisfaction rates, some evidence of improved wellbeing, and few negatives.

7. The generally negative view held of out-of-home care as a child welfare intervention is a characteristic of English speaking countries, as is the drive, coming from this view, to keep the numbers entering or remaining in care down. Although there is no actual target to reduce rates of looked-after children, there is generally perceived to be one (keeping children out of care is often used as an outcome measure for pilot interventions and CSCI reports have tended to report positively on those authorities which reduce the rates of children looked-after).

8. In contrast, in most European countries and in New Zealand, there is a much more balanced view of the benefits as well as the negative consequences of out-of-home care, and greater differentiation about the types of children who may benefit from different sorts of out-of-home care experience. The result is that rates of children in out-of-home care are generally higher in the non Anglo-phone countries. Whilst the rate for England and for the USA state of Illinois is 55 per 10,000 children under 18, those for Denmark, France, Germany, Norway and Sweden are respectively 104, 102, 74, 68 and 63 (there are particular issues for Alberta around the high proportion in the child population of very vulnerable native Canadian children). The explanations for these differences are complex but confidence in the ability of the care system to have a positive impact on children's lives is an important part of the explanation.

9. In summary, all countries seek to put in place a range of services to prevent the need for out-of-home care, but some would argue, and I consider that the UK and international research supports this, that a "keep them out at all costs" interpretation of legislation and guidance results in some children who should be provided with an accommodation service, or have their need for care considered by the family courts, being left to suffer at home for too long. When they do enter care, (especially those who enter beyond infancy) their problems are more severe. The "goal-keeping" approach also results in too many "predictable emergency" admissions, ie admissions which could have been planned for to minimise trauma and avoid a quick change of placement because the first one was unplanned. (I could cite evidence to support these points.)

10. The least safe and the least stable "permanence" outcome in the UK is return to the birth parents, indicating that the lack of confidence in what a good care system can provide results in some children being returned home too quickly or inappropriately.

11. Higher rates in care in some European countries are also explained by children staying longer in care. In part this is because only the USA, UK and Canada use adoption without parental consent as a route out of care (except in a very narrow range of cases). This results in some young children who in England would exit care through adoption remaining in the care statistics (often in the same foster family) until adulthood.

12. The major explanation for better outcomes in some EU countries is lower thresholds for entering care, and therefore those in care having fewer problems at the time of entry. Greater stability in care is achieved because there is not the same drive to get children out of care when it is sometimes inappropriate (leading to repeat admissions). Much higher use is made of long term residential care or boarding education, with good family contact, which, for these less troubled children, provides more placement stability than foster care or residential care in the UK.

13. The other important factual point emerging from my international study is around age at entry and exit from care. Other EU countries make more use of their care system as part of their child welfare service to children aged 14 or 15 and over. In most, a young person may remain "in care" until the age of 21 or 22 and in some, eg Sweden and Denmark, a young person can actually enter care at the age of 20. (The over 18s have been left out of the above "care rates", but it should be noted that 11% of the official "in care" population in France and 28% in Germany is 18 or over).

14. Only 4% of those starting to be looked-after in England in 2005 were aged 16 or over compared with almost 50% in Sweden and Denmark. This is largely explained by the fact that the child welfare systems in these countries (including the out-of-home care service) plays a larger part in their services for children who offend than is the case in the UK.

15. The large drop after the 1989 Act in entry into care for those aged 15 plus is explained by the removal of offending and non-school attendance as reasons for the making of a care order. However, there is some (mainly anecdotal) evidence that an unintended consequence of the otherwise very positive Children Leaving Care Act was that local authorities sought to save resources by being very reluctant to accommodate or apply for a care order for a young person aged 15 or over. This may have had an impact on the increase in the numbers of homeless teenagers and those entering youth custody, and (again anecdotal evidence) entering private psychiatric establishments under a mental health section.

## RECOMMENDATIONS

16. The above facts support the general direction in the Children and Young Persons Bill—to improve services for children on the thresholds of care, and at the same time to improve the service provided to children who are looked-after by the local authority.

17. “Success” should be measured in terms of ensuring that those children who can be provided with loving, stable and safe care with family members should be enabled to remain with their families, and children who need out-of-home care should come into care in a planned and timely way and should remain for as long as is needed. Measuring whether these aims are achieved is difficult, but should be tried, eg through case audits, and should replace seeking to achieve an “optimum” rate in care, and keeping children out of care as a “stand alone” outcome measure.

18. An approach to the place of the care system in child welfare services needs to be differentiated in terms of age, type of difficulty and type of care service.

19. As part of the family support services, there should be an increase in support foster care (series of short term episodes) for children whose families are under stress, children who need therapeutic input because of their challenging behaviour as well as for disabled children. There is also still an important place for small specialist residential units to be available in such circumstances. For those emergency cases when the need for care can not be predicted and planned for, “crash pad”/emergency assessment facilities for the different age groups should be available to provide a “breathing/taking stock space”—sometimes for combinations of family members. This may involve a peripatetic team of foster carers, residential workers, social workers and a facility that can be brought into use when needed. There are examples in several countries (including the UK) of such services. If care then becomes necessary, there will have been time to plan the placement. Increased use of Family Group Conferences is also a positive step towards planning entry to care when this is needed as well as preventing it, so preventing entry to care should not be the major outcome measure used when FGC’s are evaluated.

20. The research evidence that return home for those who have been in care for more than a few weeks is the most risky and unstable permanence option should lead, as the *Care Matters* working papers suggest, to a better resourced and differentiated set of reunification services and support for families when children return home (including children who have been accommodated as well as those returned following a care order).

21. For children and young people who do need a long term care service and for whom adoption is inappropriate either because they do not want it or because of their range of needs, this should include being encouraged to remain part of their foster family (even though they may be helped to set up home elsewhere when they are over the age of 18). This is an area where we can learn from Europe and some USA states, although there are many examples in England of foster families becoming “families for life”. The term “leaving care” should be replaced by a different way of expressing the aim of providing continuity, family life and flexible continuing support to these vulnerable young people at this stage of transition into adulthood.

22. Similarly, if young people are well settled in a group care facility, they should not be moved on at the age of 16. There is (anecdotal but sound) evidence of this happening at the moment, demonstrating a need for better advocacy services to ensure that the young people can make strong representations if this is contrary to their own view of their best interests. For those who do not have “good enough” links with family members who can provide them with some emotional support (alongside that of their social worker and residential worker) as they move into adulthood, supported lodgings linked to the residential facility for them to move into around the age of 18 should be developed (eg “foyers” linked in with group care facilities).

23. The data on the comparatively small numbers of children aged 15 plus being provided with an out-of-home care service should be carefully looked at. There needs to be a consideration of why there are such big discrepancies between policy in England and in Europe. A rethink may be needed about the place of a child-welfare based out-of-home care service for some teenagers who are “unwelcome” in the family home, become homeless, or whose parents or schools are struggling to manage challenging behaviour, or who are starting to offend. It is possible that in such cases more use should be made of the provision of section 20 accommodation or consideration by the family courts as to whether a care order would be appropriate. At the time of the 1989 Children Act it was argued that a “cross-over” provision could be appropriate for a child or young person found guilty of an offence by the Youth Courts to be referred across to the family courts for consideration of whether a care order was needed. I understand that there is still support for such a move so that particularly vulnerable children could be considered in terms of whether a care order, or Section 20 accommodation might be more appropriate than a custodial sentence.

24. The education of children looked-after is not one where I claim detailed expertise, but, from my knowledge of the data on children entering care, the attention being given to ensuring that they have the highest quality education, specifically tailored to their needs, is greatly to be welcomed. However, there is an argument to be made for “measuring”; the educational outcomes of looked-after children in terms of the “value added” from when they entered care and to take the measure at around 20. Longitudinal research indicates that after a rocky period in their teens a proportion settle down to recoup lost time by taking GCSEs at FE colleges in their late teens or early 20s.

25. On workforce issues, the message from research in the UK and overseas is that successful child and family practice requires continuity of relationships with trustworthy, reliable, committed, skilled and knowledgeable social workers and carers, working in partnership with other professionals and the courts, as well as with the parents and children themselves. Exercising discretion and making or recommending decisions are central parts of the social work role, which require considerable knowledge about the context of a particular case and the likely outcomes of a range of placements.

26. Arrangements that maximise the availability of professionals with these characteristics are those which must be strenuously supported. I remain to be convinced that the proposed model of Social Work Practices is an answer to the need to increase the numbers of skilled social workers and increase continuity for young people in care. Certainly they will need to be very carefully evaluated.

27. Whilst it is important to learn from other countries (for example, about the role played by social pedagogues/éducateurs spécialisés) the different contexts in which they work and the different characteristics of the children in care should be carefully considered before interventions and practices from other countries are incorporated into UK workforce policy.

January 2008

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### **Memorandum submitted by What Makes The Difference? (WMTD) and the National Leaving Care Advisory Service (NLCAS)**

#### SUMMARY

What Makes The Difference? (WMTD) and the National Leaving Care Advisory Service (NCLAS) are strongly supportive of the majority of the provisions in the Children and Young Persons Bill. However we believe the provisions in the Bill can be strengthened in a number of ways to improve outcomes for young people in and leaving care.

We are proposing amendments to the Bill on the following issues:

- Stability in Visiting Arrangements.
- Extension of Visiting Provisions to Care Leavers.
- The Pledge.
- Extension of Entitlement of Payment in Respect of Higher Education.
- Publication of Entitlement of Payment in Respect of Higher Education.
- Transitional Status for Care Leavers.
- A Duty to provide sufficient accommodation.
- Regulation of supported accommodation and post-18 foster care placements.
- Independent Reviewing Officers.

We hope the Committee will support our suggestions.

#### 1. ABOUT US

1.1 The National Leaving Care Advisory Service has the single focus of policy and practice in relation to young people as they prepare to move on from care and have left care. It provides a range of information, advice and project services to policy makers and service providers.

1.2 What Makes The Difference? (WMTD) is a project that is working to identify ways to improve poor outcomes for older children in care and leaving care in England. WMTD is a large partnership involving 60 organisations from national and local government, voluntary and independent sectors and is partly funded by the European Social Fund EQUAL initiative. To facilitate success, young people from care are at the heart of every part of the project.

1.3 The National Leaving Care Advisory Service is part of Rainer, the young people's charity. Rainer is the lead partner in What Makes the Difference?

#### 2. OUR POSITION ON THE CHILDREN AND YOUNG PERSON'S BILL

2.1 The National Leaving Care Advisory Service supports the aims of Care Matters and the Children and Young Persons Bill. We believe that its provisions will bring positive benefits for children in care and young people moving on from care.

2.2 In particular we support:

- The right to be given to young people to stay in care to 18.
- The extension of placements with foster carers beyond 18.

- The right to a leaving care personal advisor to 25 for those care leavers in education.
- The entitlement of young people in higher education to a bursary.

However, we believe the provisions in the Bill can be strengthened in a number of ways to improve outcomes for young people in and leaving care. These are outlined below.

### 3. STABILITY IN VISITING ARRANGEMENTS

3.1 We strongly welcome the move to formalise the arrangements for visiting children and young people in care. However, we believe that, in order for this to be of maximum benefit, these visitors should be the child's lead professional, and must be known to the child.

3.2 Our research has highlighted the importance that relationships have in making the difference for young people in care. Good relationships will provide the attachment that these young people need to succeed. However, young people have told us how difficult they find it to form these relationships as a result of the large number and high turnover of professionals who deal with them.

3.3 As some of the young people we interviewed as part of our peer research project explained:

“There’s a huge network of people and you’re just confused. You don’t know who’s who”.

“You can’t keep up with all the changes. You can’t keep up with a support worker and a social worker and a PA and a foster carer”.

“I’ve had too many social workers to care”.

3.4 We are concerned that local authorities may assign people as visitors who do not play any other role in the child's life which would both limit the value of these visits and introduce yet another professional into a child's life.

3.5 An amendment designed to ensure that the worthy intentions behind the provisions on visiting actually benefit the child and do not result in another unstable and changing presence in their life could be:

Clause 13, amending the 1989 Act: in Clause 23ZA (5), page 11, line 14, after “must” insert:

“(a)”

Clause 13, amending the 1989 Act: in Clause 23ZA (5), page 11, line 16, at end insert:

“(b) ensure that, except in exceptional circumstances, the person chosen is the child's lead professional; and

(c) ensure that, except in exceptional circumstances, the person chosen is known by the child”.

### 4. EXTENSION OF VISITING PROVISIONS TO CARE LEAVERS

4.1 At present, local authorities have a large amount of discretion over their visitation policy for care leavers. We believe that, in order to secure their successful transition to adult life, local authorities should guarantee care leavers that they will have regular visits from their Personal Adviser.

4.2 While we are aware that some local authorities have such schemes in place, we also know that in some areas young care leavers are slipping through the net at a time when they are most vulnerable. One of the care leavers we worked with told us about his experience:

“Support from my leaving care worker was diabolical. The area I was living was half an hour's drive from the area where my leaving care worker was based. And I think in the two years I was there, she came to see me twice”.

“I didn't understand the point of her being my leaving care worker. She didn't help me. The simple things could have made all the difference. One phone call each week to say, How are you? How are things going? The leaving care worker is meant to be like a parent, kind of thing. And normal parents would care”.

4.3 This amendment is designed to formalise the visiting arrangements for care leavers in the same way as is proposed for children in care could be:

Clause 13, amending the 1989 Act: in Clause 23ZA (1), page 10, line 37, at end insert:

“(c) a young person aged 18 to 21 who is classified as relevant by their local authority”.

### 5. THE PLEDGE

5.1 The Pledge was introduced as a proposal in the Care Matters Green Paper in October 2006. It is a promise from a local authority to all of its children in care, including care leavers, detailing what it will provide for them in terms of its services and support. The proposal was overwhelmingly supported by young people during the consultation period for the Green Paper, although they had some strong caveats regarding how they should be involved in the process of developing it if it was to be effective.

5.2 We strongly believe that the process behind developing the pledge is as critical as the content. There is no “one size fits all” answer, and the success of the pledge will depend on whether local authorities take into account the particular issues in their area, listen to the needs of their children and take into account the things that matter to them.

5.3 In addition to ensuring that the pledge meets their needs, involving young people in its development could have significant additional benefits. All our research shows that children in and leaving care have better outcomes when they are empowered to act positively and effect change in their own lives. The process of involvement in the pledge sends a message to young people about their importance and the local authority’s determination to place them at the centre of their own care. It will also offer the children and young people the opportunity to develop new skills and establish strong self-esteem.

5.4 From November 2006 to January 2007, WMTD ran four regional consultation events with young people on the Green Paper. Young people shared their views on the Pledge proposal:

“If our corporate parents want us to feel special and cared for, they need to listen to us. The Pledge could help them to do this”.

“The current system is unfair. They always seem to think they know best”.

“The Pledge is a good idea, as long as it’s not a token gesture and local authorities actually stick to it”.

“It’s our Pledge too, so we should have a say on what’s in it”.

“Corporate parents spend too much time trying to provide services they think are good without asking us what we want. The Pledge is a chance to change this and let us have our say”.

5.5 We propose a probing amendment to establish the Government’s thinking on the guidance they will provide on the Pledge. It is intended to secure a commitment from the Government that local authorities will all be required to develop their own pledge, and that they will work with young people to do so. We suggest:

After Clause 16, page 13, line 38, insert NEW CLAUSE:

“The Pledge”

NEW CLAUSE: In developing their pledges, local authorities must:

- (a) Ensure that they consider and address the needs of children and young people in care in their authority area; and
- (b) Ensure that the children and young people in care in their authority area are actively consulted and involved.

## 6. EXTENSION OF ENTITLEMENT OF PAYMENT IN RESPECT OF HIGHER EDUCATION

6.1 WMTD and NLCAS strongly welcome the provisions to make payments to care leavers who are pursuing higher education. However, we believe that these provisions should be extended to include those care leavers who wish to pursue further education, apprenticeships and vocational training.

6.2 The poor statistics relating to the educational achievements of children and young people in care are well known. According to Government statistics:

- 66% of children in care did not gain a single GCSE or GNVQ.
- Only 7% obtained at least 5 GCSEs at grade A\* to C.
- At age 19, 26% of care leavers are in further education and only 6% are in higher education.
- 29% of care leavers are not in education, training or employment at age 19.

6.3 Care experience young people told us about some of the issues they faced at school:

“I had too many personal issues, so school was never a priority”.

“I got bullied at school, got told that ‘family don’t love you’”.

“I lived too far away from my school when I should have been taking my GCSEs”.

“When I went into care, I felt like no one cared anymore. So I became really bad at school, I got kicked out”.

6.4 Given the barriers that young people in care have to overcome to succeed, it is clear to us that the Government should be doing everything possible to encourage care leavers to pursue further education or training. While it is of course admirable to promote higher education it needs to be realised that, when 66% of care leavers do not gain a single GCSE, this is simply beyond the reach of many of these young people. In contrast, further education, apprenticeships and vocational training could make a real difference to improving the life chances of care leavers.

6.5 As a result we would propose that the payment proposed for those going on to higher education is extended to include all those care leavers who want to continue with their education, or develop their skills through apprenticeships and vocational training. This will allow care leavers the resources to invest in their future. An amendment could read:

Clause 18, page 14, line 42, at end insert:

“further education, apprenticeships and vocational training”.

Clause 18 (2), page 15, line 3, after “higher education” insert:

“further education, apprenticeships and vocational training”.

Clause 18 (2), page 15, line 8, after “higher education” insert:

“further education, apprenticeships and vocational training”.

## 7. PUBLICATION OF ENTITLEMENT OF PAYMENT

7.1 We believe that local authorities do their utmost to ensure that care leavers are aware of these new provisions in order that they can benefit fully from them. An amendment designed to ensure this could be:

Clause 18 (2), page 15, line 15, at end insert:

“(5D) It is the duty of the local authority to ensure that every reasonable effort is made to publicise this entitlement and ensure that care leavers are aware of its existence”.

## 8. TRANSITIONAL STATUS

8.1 We strongly support the proposals by Barnardo’s which recommend a transitional stage for young people leaving care.

8.2 The average young person does not leave home until 24, and will usually go safe in the knowledge that they can call on their parents for advice and support. Care leavers do not have this safety net and their outcomes in employment, education, housing and health indicate significant failings in their preparation and readiness for adult life. Indeed, WMTD’s peer research showed that 38% of young people with care experience believe they are simply left to “get on with it” without any input or preparation when the time came to live independently.

8.3 Young care leavers we spoke to expressed their concerns about the transition to independent living:

“You need to live your childhood rather than become an adult before you should”.

“I wasn’t prepared in any way for independent living. I knew there was so much I couldn’t do”.

“The biggest issue for me was the loneliness. You’re suddenly on your own”.

“It’s difficult when you stop getting any support. It took me a while to get sorted, and now I know where I want to be. But I went to my Housing Association and they said they can’t help me cos I’m over 21 so I’m not on the priority list”.

8.4 A new transitional status for care leavers would go some way to providing a much needed safety net for these young people and could do wonders in boosting their chances of developing a successful independent life.

8.5 It is proposed that this new approach has three main elements:

- (i) A new transitional status for young people leaving care between the age of 16–21 years that becomes relevant whenever they leave care and that provides the same degree of care and protection to them without labelling them as a young person “in care”.
- (ii) An Accommodation and Support Strategy for Care Leavers 16–25 years, including care and transitional accommodation up to age 21 and supported accommodation up to age 25.
- (iii) A guarantee of employment, education or training placement for all young people in transition of leaving care, up to age 21 years.

## 9. A DUTY TO PROVIDE SUFFICIENT ACCOMMODATION

9.1 Good suitable accommodation is still the foundation on which young people’s future stability their education success and participation in the job market depends. However young people who have been in care are still overrepresented in those young people who are homeless. In *Life After Care* (Joseph Rowntree 2005) 36% of young people reported being homeless at some time in the year after leaving care.

9.2 Though its work with local authorities around the country, the National Leaving Care Advisory Service knows that the availability of both supported accommodation and permanent accommodation varies greatly between local authorities. This can be explained in part by local housing shortages and the local market. However it is also caused by inconsistent planning and provision of accommodation with support and the quality of cooperation between children’s services and local housing authorities. Often it is simply a failure to plan for something that it is known that almost all young people will need.



9.3 In Care Matters the Government made a commitment to introducing a duty on local authorities to provide a sufficient and diverse provision of quality placements within their local area.

9.4 This duty is not in the Bill as published. We support the proposals of the Fostering Network and British Association of Adoption and Fostering to amend the Bill to include this provision but would wish to see the duty extended so that its remit includes in the definition of placement accommodation for young people moving on from care whilst they are receiving services under the Children (Leaving Care) Act.

## 10. REGULATION OF SUPPORTED ACCOMMODATION AND POST 18 FOSTER CARE PLACEMENTS

### 10.1 *Post-18 foster placements*

In many local authorities there is already the opportunity for young people to remain with foster carers beyond 18 and Care Matters proposes that eventually this will be available to many more young people. The arrangement however, is informal and unregulated. Many young people live in supported lodgings arrangements, but these are unregulated and their status for young people age 16 and 17 unclear.

### 10.2 *Supported accommodation*

Similarly, most supported accommodation for young people is not covered by Ofsted regulation and inspection. We would like to see an amendment to the Bill requiring the issuing of regulations covering all accommodation and placements used by young people as they move from care to independence.

## 11. INDEPENDENT REVIEWING OFFICERS

11.1 The Bill strengthens the role of Independent Reviewing Officers in relation to looked-after children. We believe that IRO's can provide an important safeguard against the neglect of children in care. Their responsibilities only extend to reviewing the treatment of children whilst they are still looked-after.

11.2 We would like to see an amendment to the Bill that would extend the responsibilities of IROs to participate in pathway plan reviews and monitor the implementation of plans in the same way they would for all children and young people in care.

February 2008

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### **Supplementary memorandum submitted by Kevin Brennan MP, Department for Children, Schools and Families**

Thank you for the opportunity to give evidence to the Children's, Schools and Families Select Committee inquiry into looked-after children. I promised to write on a number of points and I am also taking this opportunity to provide further information on some of the points the Committee was interested in.

#### HEALTH OF LOOKED-AFTER CHILDREN

Improving the health of looked-after children is vital to improving their life chances—we know that children in care suffer higher proportions of health difficulties than their peers. *Care Matters: Time for Change* set out a range of proposals to improve their health and well-being, including access to positive activities and a focus on improving their mental and emotional health—a key problem for looked-after children—through dedicated or targeted CAMHS provision.

Primary Care Trusts (PCTs), and other health bodies, are key partners in improving outcomes for looked-after children. They are required to act under section 10 of the Children Act 2004 to co-operate with the local authority to improve all five outcomes for children and young people. This duty was strengthened by the Local Government and Public Involvement in Health Act 2007, which placed a further duty on PCTs, as part of the Local Strategic Partnership, to cooperate to agree and have regard to shared improvement targets in their Local Area Agreement. We have made it clear that looked-after children should be a priority for local areas and their children's trust arrangements.

We made clear in the *Care Matters* White Paper the Government's view that PCTs and other health services have a key role in delivering effective services to looked-after children. To reinforce this:

- we have introduced a new measure in the local government National Indicator Set (NIS) on the emotional and behavioral health of looked-after children. The NIS provides local authorities, working with health and other partners, a framework for determining priorities for local action;

- we will place guidance on promoting the health of looked-after children on a statutory footing for health bodies as well as local authorities—helping to ensure that looked-after children receive the services that they need. We will do this under sections 10(8) and 11(4) of the Children Act 2004. Guidance issued in this way will cover Strategic Health Authorities, Primary Care Trusts, NHS Trusts, NHS Foundation Trusts and local authorities; and
- we will set out, in this statutory guidance, how Child and Adolescent Mental Health Services (CAMHS) should provide targeted or dedicated provision that appropriately prioritises looked-after children.

#### CHILDREN'S HOMES

You asked about the number of children's homes and I can confirm there are currently around 2000 in England.

We discussed in particular the homes managed by Sedgemoor and the potential impact on residents if private equity providers withdraw their provision. We have been working with Ofsted to make sure any lessons that can be learnt from the collapse of Sedgemoor. However, we do believe a diverse provider base is necessary to meet the needs of looked-after children and young people. Safeguards are in place: children's homes are regulated by HMCI; and before closure of a home the provider is required to apply to HMCI for cancellation of their registration in writing which must include reasons for the application. The provider is required to give notice of their intention to close the home three months in advance of the proposed date of closure and should also, at that time, notify the local authority for the area in which the home is situated. The responsibility for promoting the welfare and safeguarding children placed in children's homes rests both on the local authority that looks after the child and on the local authority for the area in which the home is situated.

There is a clear statutory framework that governs the local authority's approach to choosing a placement and also that sets out basic requirements with which it must comply when a placement is made. I was asked about the current notification requirements on local authorities placing a child in a home in another local authority: under regulation 5 of the Arrangements for Placement of Children (General) Regulations 1991 the placing authority must, before the placement is made (or as soon as reasonably practicable thereafter, in case of emergency) notify, amongst others, the local authority and Primary Care Trust both for the area in which the child is living and the area in which the child is to be placed.

#### CHILDREN IN CUSTODY

The Committee was interested in the provisions in clause 14 of the Bill and their impact on young people in custody. Clause 14 makes explicit the duty on local authorities to arrange for a representative (in most cases this will be a social worker who is involved in the child's case) to visit all looked-after children, wherever they may be living. This includes looked-after children who are the subject of care orders and who are taken into custody, as their sentence has no effect on their care status.

In addition, we will use the regulation making power in clause 14 to extend the local authority's duty to visit to those in custody who were "voluntary accommodated" children but who lose looked-after status because they are no longer accommodated by the local authority. This will ensure that the local authorities have a continuing role in monitoring the welfare of a child they formerly looked-after whilst the child is in custody, and in planning services that the child may need on release—which may include providing accommodation and therefore "looking after" the child again or providing support for the young person (as a child in need, under section 17 of the Children Act 1989) and their family in the community.

We intend to use the regulation-making power in clause 14 (4) to set out the minimum frequency of these visits, and to require, for example, that, where possible, the child is seen alone and that a written record of the visit is made. We will also set out in statutory guidance an expectation that the local authority should appoint a social worker, or at least by a person who is under the supervision of a qualified social worker, to be its representative. If the child is in custody, we would not expect the local authority to appoint a member of the Youth Offending Team as its representative for these purposes.

#### PRIVATE FOSTERING

The Government believes current arrangements offer an appropriate level of protection to privately fostered children. However, in the Children Act 2004 we took the precaution of providing for regulations to be made requiring the registration of anyone proposing to foster a child privately. This was done with the intention of using these powers if the evidence demonstrated that the current arrangements could not offer sufficient protection to privately fostered children. The powers will cease to have effect in November 2008, if they have not been exercised before then. We are proposing, through the Bill, to extend this period by a further three years to November 2011.

We believe, and I understand that organisations such as the British Association for Adoption and Fostering who work extensively on private fostering agree, that we should seek to ensure the current arrangements are operated effectively and evaluate them more fully before deciding whether to introduce a registration regime. It would not be in the interests either of children or of those who work with them to do otherwise. Our primary aim should be to ensure that there are fewer “hidden” or high risk private fostering arrangements. It is not clear at this point that registration would encourage more private foster carers to come forward than at present—and indeed there may be a risk that such a bureaucratic approach may be seen as heavy handed and deter those private foster carers who offer welcome help in some family situations.

#### RECENT GOVERNMENT AMENDMENTS

The Committee may wish to note that the Government tabled two significant amendments this week:

- *Breaks for parents of disabled children*: we are placing a new duty on local authorities to help parents caring for disabled children by giving them breaks from their caring responsibilities.
- *Securing sufficient accommodation for looked-after children*: we are introducing a new duty on local authorities to take steps to secure sufficient accommodation within their authority area that is appropriate for the needs of the children in their care.

I am enclosing with this letter the letter Lord Adonis has sent to Peers setting out the Government’s thinking on these amendments in addition to the letter Lord Adonis recently sent to Peers when the Government tabled the amendments relating to how children are accommodated.<sup>37</sup>

#### IMPLEMENTATION PLAN

Government will publish the implementation plan for Care Matters very soon. The plan is being developed in partnership with key delivery organisations including the Association of Directors of Children’s Services, the Local Government Association, the NHS Confederation and the voluntary sector. Its focus will be on the changes that are required at central, regional, and most importantly, local level to make a real difference in children’s lives. It will include further detail about our proposed national stocktake of progress as well as the planned targeted inspection of services by Ofsted. It will be accompanied by a range of good practice and training materials to help local areas begin the process of embedding lasting change on the ground. I will ensure members of the committee have copies of the plan when it is published to further inform the Committee’s inquiry.

Finally, I attach, as promised, local statistics on looked-after children, covering your constituency, and that of each committee member.<sup>38</sup>

I look forward to engaging further with you as your inquiry progress.

*Kevin Brennan MP*

*March 2008*

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<sup>37</sup> Not printed.

<sup>38</sup> Not printed.