Equal protection under the law for vulnerable children and young people

Evidence presented to the Public Bill Committee scrutinising the Children and Social Work Bill

February 2017

Together for Children

INTRODUCTION

Exemption clauses

The Children and Social Work Bill started its Parliamentary passage in the House of Lords in May 2016.[1] The Bill's most controversial clauses allow the removal or modification of local authority statutory duties in children's social care in England, for up to six years.

There was no Green or White Paper consultation on these or any other provisions in the Bill.

On 8 November 2016, the House of Lords voted to remove the exemption clauses in their entirety, by 245 votes to 213.

Call for evidence

On 6 December 2016, the Public Bill Committee assigned to the Children and Social Work Bill issued a call for evidence.

This was the first public consultation on the Bill's provisions.

With the Committee returning from recess on 9 January, it would be necessary to submit evidence within a four-week period – which coincided with the Christmas holidays.

The Committee's invitation read as follows:

> **06 December 2016**
>
> **Do you have relevant expertise and experience or a special interest in the Children and Social Work Bill [Lords], which is currently passing through Parliament?**
>
> **If so, you can submit your views in writing to the House of Commons Public Bill Committee which is going to consider this Bill.**
>
> **The Public Bill Committee is now able to receive written evidence. The sooner you send in your submission, the more time the Committee will have to take it into consideration. Once the Committee has dealt with an amendment it will not revisit it…** [Emphasis in original].

[1] This was First Reading (when a Bill is published).

Submissions dealing with the exemption clauses

By the time the Public Bill Committee debated the exemption clauses in the Children and Social Work Bill, on 10 January 2017, it had received 47 relevant submissions. The vast majority of these focused exclusively on the exemption clauses and:

- 44 submissions opposed the clauses
- 2 submissions expressed concerns about the clauses[2]
- 1 submission supported the clauses.

Public Bill Committee vote

The official record of the debate that took place on the exemption clauses shows only one Committee member directly quoted from the substantial evidence submitted to the Committee.[3]

The exemption clauses were reinstated after a vote, which was split 10-5.

None of the 10 Committee members who voted to reinstate the exemption clauses referred to any of the evidence against the clauses, which had been submitted to the Committee (and only two of them spoke in the debate[4]).

MPs who voted to reinstate the exemption clauses (10)	MPs who voted to keep the exemption clauses out of the Bill (5)
Maria Caulfield (Conservative MP, Lewes)	Stella Creasy (Labour MP, Walthamstow)
Suella Fernandes (Conservative MP, Fareham)	Thangam Debbonaire (Labour MP, Bristol West)
Simon Hoare (Conservative MP, North Dorset)	Kate Green (Labour MP, Stretford and Urmston)
Seema Kennedy (Conservative MP, South Ribble)	Mrs Emma Lewell-Buck (Labour MP, South Shields)
Huw Merriman (Conservative MP, Bexhill and Battle)	Steve McCabe (Labour MP, Birmingham, Selly Oak)
Amanda Milling (Conservative MP, Cannock Chase)	
Mr Robert Syms (Conservative MP, Poole)	
Edward Timpson (Conservative MP and Children's Minister, Crewe and Nantwich)	
Michael Tomlinson (Conservative MP, Mid Dorset and North Poole)	
Helen Whately (Conservative MP, Faversham and Mid Kent)	

[2] These were submitted by Coram Children's Legal Centre and the Royal College of Nursing.
[3] This was Emma Lewell-Buck MP, the Shadow Children's Minister.
[4] These were Edward Timpson MP, Minister for Vulnerable Children and Families, and Simon Hoare MP.

Function of Public Bill Committees

Public Bill Committees were established over a decade ago in order to enhance pre-legislative scrutiny. The Parliamentary report which led to their creation observed:

"There are several benefits that an evidence-taking stage could provide. It is first and foremost a mechanism for ***ensuring that Members are informed about the subject of the bill and that there is some evidential basis for the debate on the bill****. Evidence-gathering is also, by its nature, a more consensual and collective activity than debate, and there is evidence that those outside Parliament have a more positive view of select committee proceedings than of debate.* ***So there is a reputational benefit to Parliament in being seen to engage in a more open, questioning and consensual style of law-making, before moving on to the necessary partisan debate****."*[5] *[Emphasis added].*

It is customary for oral evidence to be heard only in respect of Bills which commence their Parliamentary passage in the House of Commons. The Public Bill Committee scrutinising the Children and Social Work Bill did not deviate from this, so there was no opportunity for oral evidence to be heard.

This synopsis

We provide a summary of each submission made to the Public Bill Committee, as it relates to the exemption clauses. Extracts are indicated with quotation marks. To ensure consistency of style, some very slight punctuation changes have been made. Information about expertise and experience is either drawn from the submissions or from organisations' websites.

All of the submissions are available on the official Parliament website (scroll down to written evidence):

http://services.parliament.uk/bills/2016-17/childrenandsocialwork/documents.html.

[5] House of Commons Select Committee on Modernisation of the House of Commons (September 2006) The legislative process, paragraph 53.

EVIDENCE IN SUPPORT OF EXEMPTION CLAUSES

1.	Local Government Association

1. Local Government Association

Expertise/experience:

The Local Government Association (LGA) is the national voice of local government. It works with councils to support, promote and improve local government. It is a politically led, cross-party organisation which works on behalf of councils to ensure local government has a strong, credible voice with national government.

Key points:

Since this was the only submission to the Public Bill Committee which supports the exemption clauses, we reproduce the LGA's evidence in full below[6]:

"Freedom to innovate can be a powerful tool in improving outcomes for children and young people, and we strongly support the principle of allowing councils to shape provision around the needs of children and young people rather than the constraints of inflexible legislation.

"The powers set out by the Government should only be used where this is clearly shown to be in best interests of children, and we are pleased that the Government has more clearly linked these to the corporate parenting principles outlined in clause one. We are also pleased that provisions have been removed that would have allowed the Secretary of State to make these decisions on behalf of a council in intervention. In light of this, and the additional safeguards introduced by the Government in earlier stages of the Bill, we welcome the ability for councils to test the new ways of working and we support its inclusion in the Bill.

"However, we remain concerned that there is currently no mention of local government representation on the expert panel that will oversee these applications. This is crucial to ensure that the process is informed by expertise from within the sector, which we feel is essential for the credibility of the process."

[6] The LGA's submission contains additional evidence in respect of other clauses and amendments to the Bill.

EVIDENCE AGAINST EXEMPTION CLAUSES

1.	Lisa Bailey	24.	Kirsty Walker
2.	Pete Bentley	25.	Jay Williams
3.	Jon Blend	26.	Dr Peter Whitaker
4.	John Dawson	27.	Action for Children
5.	Alderman Mark Fittock	28.	Alice Barker Trust
6.	Dr Anna Gupta	29.	Article 39
7.	Anne Jackson	30.	Association of Professors of Social Work
8.	Dr Ray Jones	31.	British Association of Social Workers England
9.	Bolanle Kayode	32.	Children England
10.	John Kemmis	33.	CoramBAAF
11.	Alan Kennelly	34.	Coram Children's Legal Centre
12.	Dr Judith King	35.	Independent Children's Homes Association
13.	Helen Macfarlane	36.	Legal Action for Women; Black Women's Rape Action Project; Global Women's Strike; Single Mothers' Self-Defence; Women Against Rape
14.	Sonia Mainstone-Cotton	37.	Liberty (The National Council for Civil Liberties)
15.	Oliver Mills	38.	London and South East Regional Independent Foster Panel Chairs Forum
16.	Louise O'Sullivan	39.	Nagalro
17.	John Plummer	40.	National Association of Independent Reviewing Officers
18.	Dr Steve Rogowski	41.	Royal College of Nursing
19.	Michael Shaw	42.	Royal College of Paediatrics and Child Health
20.	Maria Stanley B.A. (Hons), MPhil	43.	Women Against Rape
21.	Professor Mike Stein	44.	Women's Aid
22.	Roisin Sweeny	45.	Yorkshire and Humberside Independent Adoption and Foster Panel Chairs Forum
23.	Emeritus Professor June Thoburn CBE, LittD	46.	Young Futures

EVIDENCE SUBMITTED BY INDIVIDUALS

1. Lisa Bailey

Expertise/experience:

Lisa Bailey has worked with children and families for 16 years as a youth worker, education welfare officer, family support worker and as a support worker for young people subject to child sexual exploitation. She has extensive experience supporting vulnerable young people.

Key points:

Lisa Bailey is concerned about the fragmentation of services and responsibility:

"At present, there is a clear line of accountability and responsibly. When advocating for the needs of young people, I refer to this line of accountability and responsibility often to ensure that these young people are kept safe. We work with young people in crisis, and decisions often need to be made quickly to keep young people safe right now. We can only make these decisions quickly because as a professional network we are all clear about our individual responsibility to protect, and EVERY local authority's legal responsibility to protect. Opting out will create gaps. Every serious case review I have read highlights the danger of children falling through existing gaps in services – why would we actively create more?"

2. Pete Bentley

Expertise/experience:

Pete Bentley's social work career began in the 1970s. He has been involved professionally with fostering for many years. He initially became an adoption social worker for a local authority, and then a consultant employed by the British Association for Adoption and Fostering for a further 15 years. Pete Bentley has authored independent reports for courts where the possibility of adoption was involved, and is currently the independent chair of a local authority adoption panel.

Key points:

Pete Bentley made two submissions to the Public Bill Committee. In his first submission, Bentley refers to cross-party support for children's legislation throughout his career. He points out that exemptions from duties in other arenas are not permitted:

"I suggest, that in respect to any other aspects of life, (e.g. housing / transport / planning / environmental etc.) there is no existing provision that permits a person who is subject to either primary legislation or regulation to apply to the relevant Secretary of State for exemption from such statute or regulation."

On the proposal that exemptions could be applied to remove the duty to appoint adoption and fostering panels, Bentley refers to "a survey conducted by CoramBAAF published in July 2016 [which] found that the overwhelming majority … were of the view that:

a) the panel is an important part of the process particularly for the child and the adopters;

b) they value the independent scrutiny and quality assurance of the agency's planning, the contact and support arrangements, and the information assembled in the reports;

c) they welcomed the advice offered and its influence on agency practice".

In his second submission, Bentley references a letter about the family courts and adoption, written by Sir Martin Narey and published in *The Times* newspaper. Bentley questions whether this suggests exemptions may be used in the future to remove court scrutiny from proposed adoptions.

3. Jon Blend

Expertise/experience:

Jon Blend is a former social worker with 30 years' experience in the profession.

Key points:

Jon Blend says during a time "of ever more budgetary cuts to services, what is needed is realistic financial support for the maintenance of looked after children – not the scrapping of such resources". He states:

"These statutory duties imposed on local authorities … form the necessary safety net for young people when all attempts to achieve this informally have consistently failed. As a nation we bear a responsibility to treating vulnerable members of our society well and with dignity. This includes treating troubled children fairly and appropriately whilst also protecting the rights of mothers and others who have suffered at the hands of abusive male partners. The law as it stands remains a crucial bulwark: without its protection many children and young people will find themselves abandoned, destitute and at risk of further abuse. Such children will almost certainly be unable to function fully in society on reaching adulthood, should individual councils be allowed to opt-out their duties."

4. John Dawson

Expertise/experience:

John Dawson is a senior social work practitioner currently employed by a local authority. He has more than 30 years' experience in the profession.

Key points:
John Dawson distinguishes between innovative working that enables “flexible responsive social work” and redefining children’s rights to “certain safeguards and council support duties”. In response to the suggestion that looked after status for remanded children be removed, Dawson explains the innovation behind the duty, which “was fought for by the children's and youth justice voluntary sector as an important aspect of the state's corporate parent duty towards all children who are removed by the state from their family home for any significant period of time. It was a response to some of the best 'innovative' local practice”.

Dawson states being against the exemption clauses is not a rejection of innovation: “government ministers need to do a lot more than paint critics as luddites who don't understand innovation. They need to show they understand the real significance of the law itself, before putting it all up for grabs”.

5. Alderman Mark Fittock

Expertise/experience:
Alderman Mark Fittock has been a councillor for Kent County Council Social Services for over a decade. He has experience of serving on a Health Overview Committee, and has been a civil servant and an operations manager for a government agency with responsibility for single homeless people.

Key points:
Alderman Mark Fittock states: “In allowing local authorities to opt-out of their statutory responsibilities to support young people when leaving care a greater financial burden will be placed on other agencies. Any dilution of current services will come at a greater social cost with consequences that will be very challenging to address, if not resolved while clients are in adolescence”. His submission reviews the many reasons why care leavers require a high degree of support, including homelessness, mental health difficulties, crime and radicalisation. Alderman Fittock concludes: “To allow authorities to abandon care leavers would be to place a greater burden on all the other agencies. It is strongly recommended that the statutory provision remains in place”.

6. Dr Anna Gupta

Expertise/experience:
Dr Anna Gupta holds a social work qualification, an MA in Child Protection and a PhD in Social Work. She has 30 years’ experience in social work practice, education and research. Since 1999, Dr Anna Gupta has worked as a lecturer, and then a senior lecturer, in social work at Royal Holloway University of London. In this role she has taught on qualifying and post-qualifying social work programmes, and

undertaken child protection research with professionals and families.

Key points:
Dr Anna Gupta highlights the lack of research undertaken in support of the need for exemption clauses, both in this country and further afield, together with the absence of Green and White Paper consultation. She emphasises that innovation is already possible under the Localism Act 2011, and states the exemption clauses are therefore unnecessary.

Dr Gupta says the clauses "offer nothing to resolve the entrenched problems in children's social care provision in the context of cuts to welfare benefits, family support services and local authority budgets at a time when child protection referrals and care proceedings are continuing to rise. Social workers are struggling with too high caseloads within a risk averse, blame culture fostered by the ever present fear of Ofsted inspections, and media and political condemnation". She fears "local deregulation is part of a wider agenda of moving children's social care services from local authority control, and in the process lessening democratic accountability for the protection and promotion of the rights of our society's most vulnerable children". Dr Gupta ends her submission by asking the Committee "to preserve the universal basis of children's social care law".

7. Anne Jackson

Expertise/experience:
Anne Jackson has been a volunteer for a mentoring and advocacy scheme for eight years. Based in Somerset, the scheme supports vulnerable children.

Key points:
Anne Jackson believes the exemption clauses could potentially weaken statutory support, even on a trial basis, and that this would greatly reduce a child's safety and future opportunities.

Case study:
"I have supported as mentor a young woman from the age of 12 to, now, 20. I have witnessed the positive effects of, for example, the careful choice of foster homes including considerable expenditure on agency support as the best option for her, the regular meetings supporting and guiding her chaired by an independent expert, the guidance she has received post 16 with respect to housing, life skills. I have seen her, because of immaturity, making unsafe choices, but having the vital safety net of a social worker to help unravel problems. I am concerned that when she is 21, she will no longer have a right to that safety net. Thinking about her not having had the right to support both as a child and post 16, I can see that she may well have experienced even more trauma than she already has, may well have got into drugs

or on the wrong side of the law, ended up rough sleeping with all the dangers that brings and eventually ended up costing the public purse much more."

Jackson concludes with a call for more, not less, statutory requirements: "far from excusing local authorities from responsibility for such children and young people, more should be required of them to help even up their life chances".

8. Dr Ray Jones

Expertise/experience:

Dr Ray Jones is an Emeritus Professor of Social Work at Kingston University and St George's University of London. From 1992 to 2006, he was Director of Social Services in Wiltshire. He was the first Chief Executive of the Social Care Institute for Excellence, and has been Deputy Chair and Chair of the British Association of Social Workers. From 2008 to 2016, he was Professor of Social Work at Kingston University and St George's, University of London. He has led inquiries following the deaths of children and adults and was Chair of Bristol's Safeguarding Children Board from 2009 to 2013. Between 2010 and 2016, Dr Jones oversaw government child protection improvement in Salford, Torbay, the Isle of Wight, Sandwell and Devon.

Key points:

Dr Ray Jones highlights that this Bill was "introduced with no proper prior period of consultation. It might have been expected that it would have followed Green and White Papers as it seeks to amend and fundamentally change carefully drafted and considered statute, particularly the 1989 Children Act introduced following much research, legal consideration and the Cleveland Inquiry report, and the 2004 Children Act after Lord Laming's Inquiry following the death of Victoria Climbié". Dr Jones discusses the Bill's lack of coherence, as a direct result of a "patch work of government-introduced amendments and late submitted clauses", concluding: "It has the feel of draft legislation which was and is badly drafted".

He describes the practical implications of the exemption clauses:

"The 'innovation powers', if introduced, would mean that the Secretary of State could determine that different statute applied from one local authority to another. Children and families living close by but across a local council boundary would have different rights and the councils would have differing statutory responsibilities. Courts would cover local authority areas where the law, as amended by the Secretary of State, was not uniform and consistent. It would generate a patch work quilt of piece-meal legislation."

Case study:
Dr Jones provides a hypothetical case study – Billy and Jane – illustrating how statutory safeguards "might easily be unwound and eroded", as a result of this Bill. The example is based on actual proposals.

"Billy is 13 years old. His sister, Jane, is aged 10. Both are the subjects of care orders, which were made because of concerns about neglect and abuse. They are with foster carers but placed separately when initially there was no placement available that would keep them together. They would both like to be living together. Their local authority has asked that it no longer be required to have independent reviewing officers chairing their children in care reviews (indeed the requirement to have six monthly reviews for all children in care has been set aside by the Secretary of State for this local authority), listening to their views and, when necessary, speaking on their behalf and challenging the council.

For Billy, his social worker is employed by the private fostering agency. She is also the social worker for the foster carers.

Jane is placed with foster carers within a different agency and has no allocated social worker at all as the foster carers are seen as able and adequate alone to oversee Jane's care. The local authority asked that it not be required to allocate its own social workers to children in care of independent fostering agencies arguing that this would be less intrusive into the lives of the foster children and foster carers (and more efficient).

No one now gives much consideration to Billy and Jane being siblings who whilst being neglected and at risk of abuse in their family home looked out for each other. Billy feels that he cannot share his concerns with his social worker, who is employed by the private foster care agency and seen as more for the foster carers, and Jane is without a social worker and does not feel she has anyone with whom she can share her worries about her foster carers' behaviour.

The foster care agency has also through the application of local authorities with whom it works discarded its fostering panel. It was argued that this would speed up the recruitment of foster carers who were in short supply. Foster carers are now considered and approved by the agency manager without the assessment, scrutiny and advice of a fostering panel, and the manager is also accountable for the financial performance and turn-over of the agency with a target to expand its business.

None of this has been a concern for Billy and Jane's local authority. It has been given permission not to have a director of children's services and no longer has to have a named lead councillor for children's services, requirements which had been introduced by the 2004 Children Act following the Laming Inquiry's recommendation

that there should be clear local authority political and senior management accountability for children's social services.

As a part of reducing management costs the local authority's children' services are now integrated into a Department of Place and People led by a director with an occupational background in waste management. Waste management is outsourced from the council and managed through a contract for which the director has contract responsibility. Contracting out services, and contract management, has become his expertise, and this includes contracting out what were the council's foster care services. The council has also cut back on the number of children's social workers as it seeks to stay within a shrinking budget and it lacks the workforce capacity to allocate to its own social workers all children in its care. No councillor now has contact with – or much interest in or knowledge about - the children formally in the council's care."

9. Bolanle Kayode

Expertise/experience:
Bolanle Kayode is a qualified social work practitioner.

Key points:
Bolanle Kayode states that the potential removal of independent reviewing officers and adoption and fostering panels "would have profound negative impact on achieving better outcomes for children and young persons". Speaking from direct professional experience, Kayode praises adoption and fostering panels: "As a social worker who has attended this panel, I can confirm that their support is immense in terms of making life-changing decisions for children including whether a family should be approved as an adopter or foster carer. As well as advising around legal and regulatory framework regarding individual cases, they also address dilemmas/difficult issues which are usually not uncommon when agencies are processing family cases".

On the proposal to relax requirements associated with the assessment of family and friends carers, Kayode states: "Undermining the importance of robustly assessing the protective capacity of family/friends in terms of how they can meet the care needs of the child raises potential risks. The practice has potential to restrict children's right of access to support, thereby leaving them disadvantaged". The submission warns: "Children placed under such circumstance are unlikely to receive the support they require to stay safe and thrive well". A number of alternative proposals to improve children's social care services are offered.

10. John Kemmis

Expertise/experience:

John Kemmis is a former CEO of Voice, the charity established in 1975 to give a voice to children in care on an individual and policy level. While at Voice he enabled the development of children's advocacy in England resulting in some rights to an advocate being established in law. Voice also set up a pioneering project – 'The Blueprint Project for a Child-Centred Care System' – which achieved a number of positive outcomes for children's services. Prior to becoming CEO at Voice, from 1995 to 1997, John Kemmis undertook improvement projects for children in care with two local authorities. He worked within these local authorities for more than 25 years, and has been involved in many areas of improvement for children in care – first as a qualified social worker, then as a manager and subsequently as Head of Inspection and Quality Assurance. While at Voice he was asked to be a Patron of the National Association of Independent Reviewing Officers (NAIRO). Until recently he was also a Trustee of the Care Leavers Foundation. John Kemmis offers a lifetime of work experience of developing and improving services for children in care and care leavers, which has included innovation and the involvement of young people in achieving those improvements.

Key points:

John Kemmis draws on his substantial experience working with children and the projects he has been involved in to explain why the exemption clauses would have a detrimental effect on young people. He urges Committee members to see the exemption clauses from the perspective of children and young people:

"If you consider it from the young person's perspective, it is important that they have an understanding how their care should be and what they have a right to. Children in care are very disempowered compared to the local authority and the adult world and there is complicated legislation that sets the parameters of their care. It is important to empower them as far as possible and certainly not add to uncertainty. Understanding their rights wherever they are living is one way to empower them. Two children in the same home should have the same rights, not different rights because they come from two different local authorities."

On the proposal to remove universal entitlement to independent reviewing officers (IROs), Kemmis states: "If members of parliament are serious about raising standards for children in care they should be looking how to strengthen the role".

In response to the particular suggestion that young people could chair their own review meetings in the absence of IROs, Kemmis explains this was piloted "almost ten years ago and IROs continue to try this out where appropriate and therefore there is therefore no need for legislative change to test out this kind of 'innovation'.

This has been cited as an example of why this legislation is needed: it is not true".

Kemmis believes testing different ways of working is possible under current law, and changes to statutory requirements will cause "confusion and uncertainty" and "a worrying dilution of children's protection and rights that have been carefully developed". He concludes by advocating consultation as "a constructive way forward".

11. Alan Kennelly

Expertise/experience:
Alan Kennelly offers a wealth of professional knowledge, having been a qualified social worker for the past 35 years. He spent four years as Vice-Chair of the Plymouth City Council Adoption Panel.

Key points:
Alan Kennelly focuses on the value to children and young people of adoption panels. He states the removal of the requirement to have such a panel would be "a highly retrograde step", explaining: "Panels provide an independent and objective oversight of the practice and quality of work connected with adopter's approval and the matching process between children and their prospective adopters. Panels provide a quality assurance role to a standard that cannot be guaranteed against a background of ongoing budgetary cuts to local authorities".

Kennelly states:

"The system we have may not be perfect but it provides a consistent, universal set of protections for the most vulnerable children in society."

He argues that vulnerable children "deserve the best service available and should not be subject to a postcode lottery depending on which councils opt in or out. The law as it stands is crucial in offering optimum protection and I vehemently oppose the proposed changes".

12. Dr Judith King

Expertise/experience:
Dr Judith King is a retired Locum GP.

Key points:
Dr Judith King outlines the difficulties health professionals and vulnerable children would face if the exemption clauses were to be reinstated. She states:

"Children's protection is an area where extraordinarily difficult and complex decisions have to be made… Fragmenting the system by making regulations and processes different from area to area will unnecessarily increase the difficulties faced both by professionals and those who have to train them to navigate the system. I worked as a locum GP in many different practices and areas, but at least had the advantage that the fundamental child protection system was similar everywhere. I needed an afternoon in any practice before starting work to familiarise myself with the practice computer software and local hospitals and labs. However a different child protection system would have required a full child protection training session for safety. This would have been impractical…Differing systems from area to area will cause confusion among professionals and increase difficulties on the ground. Staff might require separate child protection training for each area…"

Dr King ends her submission by warning: "The duties of care have been imposed on local councils as a result of bitter experience over the years. We should not remove them".

13. Helen Macfarlane

Expertise/experience:
Retired head teacher, Helen Macfarlane is a volunteer advocate for children on behalf of children's charity Barnardo's.

Key points:
Helen Macfarlane explains: "My role was created as a result of serious case reviews where the common element was that no-one asked the child". She describes the power of advocacy:

"When I support a young person at a meeting, or present the child's words at the official meeting (which would often be too daunting for them to attend), it often has a dramatic impact. Professionals and family had often not fully realised how the child felt and what life was like for them. Having an advocate makes a real difference with a lasting impact."

Macfarlane "implore[s] parliament not to allow the exemption clauses to be re-instated. I believe it is vital that all local authorities have the same statutory duties in children's social care, ensuring appropriate support is in place for our young and vulnerable citizens".

14. Sonia Mainstone-Cotton

Expertise/experience:
Sonia Mainstone-Cotton is a freelance worker supporting vulnerable four-year-olds

who have been removed from their birth families. She has worked with vulnerable children for over 25 years and has experience working alongside families and children in foster care and those who are the subject of special guardianship. She has worked as a participation worker for a charity on behalf of a local authority, a role which involved her listening to and supporting the views of young people in care.

Key points:
Sonia Mainstone-Cotton speaks from the viewpoint of a young child in the care system. She notes the struggles young people face due to neglect and abuse, and the challenging behaviours they display as a result of troubling childhoods. She argues that it takes a long time for such children to feel safe and "I cannot begin to imagine what would happen to these children if the local authority no longer had a statutory duty of care to these children".

Mainstone-Cotton acknowledges "there are many problems with the current system". However, she stresses:

"the important factor has been that all local authorities have the same legal duty to protect and provide for vulnerable children and young people. I am very concerned that with the proposed changes some local authorities could step away from this responsibility. I have no doubt that there are some local authorities who would step away from this responsibility as it is so costly and so problematic. This is not acceptable to the children and young people or to the families."

15. Oliver Mills

Expertise/experience:
Oliver Mills is a registered social worker with over 40 years' experience. Between 1992 and 2006, Oliver Mills was Assistant Director, Director of Operations and then Strategic Director of social services in a large shire county in England. Between 2011 and 2014, he was the National Programme Director leading improvements in adult social care and, until 2013, he worked closely with the companion programme in children's social care, the Children's Improvement Board. He is one of a small number of registered social workers with an entry in *Who's Who*. He also Chairs the Trustees of Football Beyond Borders, a new charity which works with the most disadvantaged young people, including those at risk of becoming looked after, and another care and support charity, which supports adults with learning disabilities, autism and mental illness, including support for disabled young people in transition to adulthood. Since 2014, he has been the Care and Health Improvement Adviser, applying the model of sector-led improvement across 34 councils in the South East and South West, working closely with his opposite number, the Children's Improvement Adviser.

Key points:
Oliver Mills highlights the need for clearly set-out responsibilities for professionals and carers, whilst warning of the negative impact the exemption clauses will have on vulnerable children:

"Those responsible for [children's] welfare – families, elected members, social workers, other agencies, foster and adoptive carers must be crystal clear on their statutory responsibilities. Any local variation will introduce confusion and ambiguity. Families and professionals move from council area to council area, and will have to be briefed where there are local exemptions. Elected members in particular, who are not professionals but are held to account locally, will face an additional challenge in understanding their responsibilities where exempted from specific powers and duties. Current guidance, training and support provided by the LGA and others will have to be revised. All history and experience tells us that quality and performance in children's services can change quickly."

Mills explains that statutory requirements in adult social care are to remain universal:

"I strongly support enabling council's to use their resources to find innovative solutions in meeting children's needs. However no one would suggest exempting any council from their responsibilities under the Care Act, Mental Capacity Act or Mental Health Act in adult social care, because it is so important that all those responsible for vulnerable adults should be crystal clear on their responsibilities and start from a common platform. Varying it from place to place, and for varying times, would simply raise unnecessary risks to the welfare of the most vulnerable children and young people, because those responsible for statutory duties would be faced with unnecessary additional policies and procedures which they would have to revise, promulgate and monitor. From my direct experience from working I can say with certainty that any ambiguity in the use of statutory powers, however well intentioned, will create unnecessary risk, particularly at a time of growing demand and reducing resources. I hope the Government will reconsider putting back these exemptions."

16. Louise O'Sullivan

Expertise/experience:
Louise O'Sullivan has 17 years' experience as a qualified social worker, and 11 years' experience of being an independent reviewing officer.

Key points:
Louise O'Sullivan's highlights the importance of local authorities and other agencies working together. She observes the financial pressures organisations currently face, and states this is putting vulnerable young people at risk. Although services are

currently stretched, O'Sullivan believes legislation enables them to work more efficiently and reduces risk. Her submission ends with a plea for saving legal obligations towards children in care:

"Children on child protection plans are considered the most at risk children and are usually prioritised. But children in care are vulnerable, often have a high level of need and require permanency. The statutory requirements and guidance is what helps drives forward plans, reduces drift and delay for children and ensures some equity across the country in terms of services. Without it local authorities would not be so easily challenged and held accountable."

17. John Plummer

Expertise/experience:

John Plummer has spent his whole adult life working with children, from his student years working as a locum houseparent and summer camp manager, to secondary school teaching. He was then an LEA Advisor for Leeds and Cheshire councils, and managed colleagues working with children in care, those educated at home and children who have experienced trauma, as well as wider services. His submission further draws upon his experience of managing "survivors of the care systems who have built responsible careers working with children".

Key points:

John Plummer reflects on the crucial roles undertaken by local authorities, many of which he believes have already been lost. He sets out a list of necessary improvements around the themes of quality of staff, entitlements for children in care and costs and resources. Plummer describes the proposal to allow exemptions from statutory duties as "perverse" and states:

"Only a sense of public service, a spirit of generosity and commitment to children's well-being can give them their lives back. Only local authorities, working in harmony with the voluntary sector, can do this. A dogma that insists on profit motive as the only way to tackle this dreadful inheritance is both absurd and, frankly, obscene."

18. Dr Steve Rogowski

Expertise/experience:

Dr Steve Rogowski was a social worker, working mainly with children and families, across five decades (1970-2014).

Key points:

Dr Steve Rogowski states it is vital for all local authorities to have the same statutory duties in relation to children's social care, in order to avoid a "postcode lottery". He

is concerned about the safety and wellbeing of children, as well as the possibility of privatisation within the sector, arguing that profit making from vulnerable children and care leavers is surely "reprehensible".

19. Michael Shaw

Expertise/experience:

Michael Shaw is a trustee and volunteer for Destitute Asylum Seekers Huddersfield (DASH).

Key points:

Michael Shaw discusses impending changes to asylum support to make the case against the exemption clauses. He states that, although the exact details of the legislative changes are not yet public, the Home Office's new regime will fund even fewer asylum seekers than at present. These are asylum seekers whose first claim has been rejected. Many such asylum seekers make successful second (or subsequent) applications as evidence becomes available. Others are unable to return to their country of origin because their safety cannot be guaranteed. Shaw states that it is highly likely that families now receiving financial support (albeit limited) will not qualify for support in future. He concludes:

"If local authorities were exempted from carrying out assessments under Section 17 of the Children Act, children, with very supportive families, would be left homeless and without the minimum food and clothing" and states he is "horrified that the changes under consideration could result in children being left in destitution in one of the richest countries in the world."[7]

Case studies:

"One recent example is that of a single mother, a victim of domestic violence, with four children (aged 11, twins aged 10 and aged 4). We worked closely with our local authority (Kirklees) to secure support for the children under section 17 of the 1989 Children Act. This is only one of several similar cases this year. We can only conclude that without such support, the children in these cases would have been destitute. In all the cases known to us this destitution has not come about through any failing on behalf of the parent(s); indeed, in every case we would describe the relationship between parent(s) and child as being loving and healthy. Hence, an outcome of the children being taken into care would have been totally inappropriate."

[7] Section 17 of the Children Act 1989 is one of a small number of statutory requirements which the Department for Education announced in December would **not** be subject to threat of exemption or modification. However, the statutory support given to unaccompanied children was raised by one local authority as an area of responsibility in which it may seek an exemption, during a meeting with children's charities in October 2016.

20. Maria Stanley B.A. (Hons), MPhil

Expertise/experience:

Maria Stanley is a retired social worker holding the Home Office Letter of Recognition as a Child Care Officer as well as the Diploma in Social Administration (London School of Economics), a Certificate in Applied Social Studies (University of Bristol) and an MPhil for a research project about disability (University of Bath). She has 30 years' experience as a social worker, working in two different local authorities.

Key points:

Maria Stanley documents the often fragmented experiences of looked after children and highlights the importance of continuity for positive outcomes relating to mental and physical health. She states the exemption clauses would bring further fragmentation to children's lives, and they could also result in a breakdown of communication and co-operation between different agencies, which would exacerbate failings for children in care. Stanley reflects on her husband's very positive experience of a being a child in care, several decades ago (he was "born before the arrival of the Welfare State").

21. Professor Mike Stein

Expertise/experience:

Emeritus Professor Mike Stein has been researching the problems and challenges faced by looked after children and young people leaving care, including the development of law, policy and practice, since 1975. He was involved in the preparation of the leaving care statutory guidance for the Children Act 1989 and the Children (Leaving Care) Act 2000 as well as training materials for both Acts. He has been consulted by government, local authorities and voluntary organisations on the development of leaving care services.

Key points:

Professor Mike Stein describes the changes which have occurred in leaving care during his own career and since the Children Act 1948, and how legislation has led to the strengthening of these vital services:

"From the Children Act 1948 onwards, the legal and policy framework for young people leaving care has been strengthened by new duties, guidance and regulations. This process has involved: independent research; consultations with care leavers, policy makers, service providers, and practitioners in local authorities and the voluntary sector; inspections; and leadership from government departments. It has resulted in a comprehensive and universal legal framework providing: first, a consistent minimum level of service wherever young people are living; second, opportunities for innovation in the range of leaving care services, not inhibited but

supported by the current legal framework; and third, a very positive response from many young people. Evidence from Ofsted inspections also shows that 'poor' services can improve over time, underpinned by the current legal framework."

Professor Stein highlights the importance of "young people leaving care receiving appropriate support, care and services, and that they remain legally entitled to advice, assistance and support, an independent reviewing officer to ensure they are prepared and ready to leave care; the right to make a complaint; and opportunities for 'staying put' in foster care placements up to 21 years of age". He explains that:

"The development of this comprehensive legal framework for 'leaving care' during the last 40 years is result of a process which has included: independent research identifying the problems faced by care leavers (Stein 2010; 2012; 2015); discussions with policy makers, service providers and practitioners in local authorities and the voluntary sector; extensive consultations with young people living in and leaving care (Stein 2011); inspections of services, and; leadership from the Department of Health and the Department of Education."

Professor Stein concludes his submission by stating: "there is no evidence to support the need for exemption clauses to the Children and Social Work Bill" and stressing the "great importance that care leavers continue to receive services wherever they are living and that there are not exemptions from: being offered advice, assistance and support; having an independent reviewing officer to ensure they are prepared and ready to leave care; having the right to make a complaint and, and opportunities for 'staying put'". He warns of:

"great risks in fragmenting an established and comprehensive universal service, not least a return to the failures of a discretionary system which resulted in both territorial and service injustices."

22. Roisin Sweeny

Expertise/experience:

Roisin Sweeny has worked in the voluntary (supported housing) sector for eight years, providing services to vulnerable and homeless young people, including care leavers. The organisations she has worked for were St Christopher's Fellowship, Irish Centre Housing and St Martin of Tours. Prior to this, Sweeny worked for the housing and homelessness departments of local authorities (Manchester, Croydon, Islington and Camden).

Key points:

Roisin Sweeny states:

"My experience of working for voluntary sector support organisations for young people in Kensington and Chelsea, Ealing, Westminster and Hackney has left me under no illusions about how necessary it is for local authorities to be legally accountable for the care they provide to all the vulnerable members of their populations, and especially children. Simply put, there are councils which will use these clauses to avoid providing the care that children and young people need, in order to save money. The children and young people will suffer harm; I would not be at all surprised if these very clauses lead directly to the deaths of children. The law providing protection for children and care leavers must not be open for councils to circumvent, to save money or for any other reason."

Sweeny gives direct evidence of statutory requirements making the difference between young people receiving support, and not:

"The reality is that councils, especially those in and around London, are often looking for ways to cut corners on the duties they are supposed to provide . The way that they administer homelessness legislation is a good case in point. The Homelessness Act 2002, which made it obligatory for local authorities to assess 16 and 17 year-olds as being automatically in priority need, helped greatly to protect homeless children. Before this, London councils frequently turned away 16 and 17 year-olds who had run away from home due to abuse, or been thrown out by families and were sleeping rough. I worked with these young people and advocated for them, and the passing of the Act – even though many London councils still tried hard to wriggle out of their new statutory duty – became much easier once this law was enacted."

23. Emeritus Professor June Thoburn CBE, LittD

Expertise/experience:
Emeritus Professor June Thoburn holds a social work qualification, as well as a research doctorate. She has many years' experience of being involved in the education of social workers and research on services for vulnerable children, their families and carers. She has served as Vice Chair of the General Social Care Council and as an elected member of the Children and Families Faculty of The College of Social Work and has given evidence to the Education Select Committee on the relationship between professional bodies and the professional regulator. She is a Trustee of a voluntary organisation providing support services, residential care and post-care services and has produced research funded by government bodies, local authorities and voluntary bodies.

Key points:
Professor June Thoburn commends relatively recent policy revisions, such as updating permanence guidance on long-term foster care and the reunification of looked after children and their parents, by stressing these "have resulted from civil

servants, lawyers, specialist social work practitioners and managers, service user groups and researchers getting together to review current best practice and consider whether current flexibilities are insufficient and regulatory changes needed". She contrasts this with "'trials' by a small number of 'volunteer' local authorities" which will result in the "weakening of children's rights to service over a period of up to 6 years [and] unnecessary delay if departmental/ professional reviews conclude that adjustments are necessary".

Professor Thoburn notes that:

"None of the substantial body of research on the workings of the Children Act 1989 (as amended), some government-funded, some independently funded, points to the need for any specific sections of the legislation to be suspended on the grounds that they are impeding flexible and good quality practice."

24. Kirsty Walker

Expertise/experience:
Kirsty Walker has worked with looked after children and care leavers for over 10 years in a further education setting.

Key points:
Kirsty Walker highlights the risks for children moving between local authorities, which can be a common occurrence, advising: "If some [local authorities] were to be exempted from legislation while others were not, this could cause untold confusion and chaos for a young person unlucky enough to be placed in this situation".

Walker fears children and young people could become "collateral damage" and states:

"The risk is too great that a young person's life will be changed irrevocably by someone who has never met them. If new ways of working cannot be achieved whilst maintaining the legislation, which protects young people, then they are not good ways of working. There is too much room for nefarious undermining of a child's rights by those who seek to profit from the social care system."

25. Jay Williams

Expertise/experience:
Jay Williams has fostered children for 12 years. He has also been a qualified practitioner and manager in children's social care for the past 20 years, both in the independent and public sector.

Key points:
Jay Williams states he is not clear "what evidence suggests that legislation and regulation prevent innovation to improve the experiences of children". He refers to changes to regulations affecting children in long-term foster care, made in 2015, stating:

"This change came about by listening to the experiences of children and young people settled in long term foster placements, who wanted a more 'normal' experience. This innovative change did not need to be exempt from any Act or regulation."

Williams says the withdrawal of a small number of statutory requirements from the possibility of exemption "slightly reduces anxiety. However, continuing to offer exemptions to a raft of other relevant legislation still remains a dangerous and potentially divisive way to proceed". He concludes by stating "if this law directly impacted upon my child" he would choose evidence-based changes.

26. Dr Peter Whitaker

Expertise/experience:
Dr Peter Whitaker is a registered child and family psychologist, a family therapist and an honorary lecturer in the Research Department of Clinical Educational and Health Psychology at University College London. He is currently the Vice Chair of the Buckinghamshire Adoption and Permanency Panel. Dr Peter Whitaker has 27 years' professional experience as a child psychologist and 19 years' experience as an Expert Witness in the family court in Oxfordshire and Buckinghamshire. He has also been a long-standing member of two subcommittees of the Buckinghamshire Safeguarding Children Board (Strategic and Serious Case Review Group and Child Death Overview Panel), and has written management reviews on behalf of Buckinghamshire schools as part of serious case reviews. He trained in safeguarding as part of his initial professional training and has throughout his professional life taken an active role in casework, consultation and training to promote good practice in safeguarding. For many years, he has delivered a seminar in safeguarding for the postgraduate training course (DECPsy) in educational and child psychology at University College London, and was responsible as the designated person for safeguarding for similar training for his own and other services in his local authority.

Key points:
Dr Peter Whitaker fears financial constraints on children's services will lead to local authorities opting-out of certain duties in an effort to save money. He states: "If LAs, in the severe financial stress that now affects all of them, are relieved of a statutory duty, it is certain that they will be obliged to leave the associated powers unused,

simply to save money. This will have the effect of increasing risks to children and young people, a devastating enough consequence in its own terms: however, the 'downstream' effects are not restricted to one generation. Rather, abuse and neglect are transmitted to the descendants of those for whom safeguarding was inadequate, and whose parenting abilities are compromised. The answer to the deficiencies of LA services is not to dispense with such services (and to do so cannot be dignified with the label 'experiment': we are in Swiftian territory here!): it is to maintain, develop and improve them, an enterprise in which the previous administration has invested significant and productive effort".

Dr Whitaker asks whether MPs would be content to use their own children as part of a 'test' to remove, for instance, the duty on the NHS to provide the MMR vaccination. He concludes his submission by drawing attention to lessons still to be learnt about past failures to protect children:

"As the many recent scandals concerning historic child abuse make clear, we do not yet understand the extent of child maltreatment; but we are beginning to grasp its seriousness. This is not the time to indulge in dangerous 'testing' that can only amount to planned neglect. Please therefore in your deliberations think about the importance of doing the best we can to protect children from harm, and do not allow the reinstatement of the euphemistically labeled 'innovation' clauses."

EVIDENCE SUBMITTED BY ORGANISATIONS

27. Action for Children

Expertise/experience:
Action for Children provides more than 600 services across the UK and has worked with 390,000 children, young people and their carers within the last year.

Key points: Action for Children states it "strongly supports innovation to improve the lives of vulnerable children. We recognise the need for local authorities to work differently to improve their outcomes in the current context of increasing demand and decreasing resource, and we have participated in, and welcome, the Government's Innovation Programme".

However, the organisation is "concerned by the lack of supporting evidence presented by the Government, and that such a wide-ranging power was introduced without prior consultation". It states that, "unpicking primary legislation risks undermining a comprehensive legal framework that includes universal rights,

entitlements and protections covering interdependent parts of public and private law, and which have been thoroughly tested through Parliament and the courts".

Action for Children highlights the risk of fragmentation and ambiguity, which is likely to hinder effective multi-agency working. Further, Action for Children predicts a risk to children's safety and wellbeing:

"We have examined selected examples [of how exemptions may be applied] provided by the Government. Through this analysis we have identified potential for vulnerable children and young people to be at increased risk of experiencing abuse, neglect, being sexually exploited, going missing, reoffending, substance abuse and poorer life outcomes."

In relation to short breaks for disabled children and young people, the charity says it is concerned about making changes to statutory requirements "in an ad hoc manner, without evidence of the benefits and risks of this approach compared to alternatives". It describes the greater vulnerability and increased safeguarding risks of disabled children, and makes suggestions for how support may be improved to children and families.

The charity concludes its submission by stating:

"In Action for Children's view, there is no evidence to support primary legislation being within scope of the power to test different ways of working."

28. Alice Barker Trust

Expertise/experience:
The Alice Baker Trust offers advice and active support to those who are disabled, ill, dying or newly bereaved.

Key points:
The Alice Baker Trust identifies the long-term effects that may result from the exemption clauses: "the costs of perpetuating harm to children is more financially costly in the long term than providing them with essential support and encouragement when they are most vulnerable". The submission states:

"It is deeply disturbing that we have to ask the government to uphold the law. It is deeply disturbing that we have to ask the government to protect all children."

29. Article 39

Expertise/experience:

Article 39 is a charity established in 2015 to promote and protect the rights of children living in institutional settings. It has played an active role in lobbying on the Children and Social Work Bill. Its founder Director is a registered social worker (qualified in 1988).

Key points:

Article 39 provides a detailed account as to why the exemption clauses should not be re-instated:

- "The concept of testing different ways of working through deregulation in particular localities has not been subject to any Green or White Paper consultation"
- More than 107,500 members of the public have signed an online petition against the controversial clauses
- The Localism Act 2011 already permits innovation, and thus the exemption clauses are not needed
- Professor Eileen Munro investigated the effect of bureaucracy and regulation on social work services and none of her recommendations called for the removal of statutory requirements laid out in Acts of Parliament or subordinate legislation
- "The Government has offered no evidence to show that legislation hinders effective children's social care"
- "Removing legal protection from some children, on the basis of geography, has the potential to breach rights under the Human Rights Act 1998 and the Convention on the Rights of the Child, both of which require the enjoyment of rights without any form of discrimination. There is also the potential to breach the common law principle of equal treatment"
- No other European country has been identified as having permitted local authorities to opt-out of statutory duties.

The charity provides a "non-exhaustive list" of statutory requirements[8] which appear "to be outside the DfE's definition of core legal duties, and therefore could be exempted for up to six years as a test for national deregulation", including the duty to:

a. Prepare a care plan for every child who is the subject of care proceedings
b. Provide accommodation to children they are looking after
c. Provide welfare reports to the family courts
d. Maintain children whom they are looking after (besides providing them with accommodation)
e. Fulfil requirements pertaining to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption

[8] Full references are provided in the original submission.

f. Fulfil requirements as an adoption agency
g. Follow minimum weekly allowances set by the Government for foster carers
h. Attend youth courts in respect of children they are looking after who have been charged with an offence
i. Make direct payments to the parents of disabled children, and to 16 and 17-year-old disabled young people
j. Provide support to disabled children
k. Assess the support needs of disabled children as they approach adulthood
l. Assess the needs of young carers, and the needs of parents of disabled children (in order to provide services to which these families are entitled under s17 of the Children Act 1989, which has been saved from exemption)
m. Co-operate with housing authorities and bodies to support homeless families and homeless teenagers
n. Allow children in their care to have reasonable contact with their parents
o. Consider placing looked after children with their parents or family and friends carers who are approved foster carers (the assessment of such carers could also be relaxed)
p. Place looked after siblings together, so far as is reasonably practicable
q. Make placements for looked after children which do not disrupt their education or training, so far as is reasonably practicable
r. Ensure, as far as is reasonably practicable, that the accommodation a disabled child is placed in meets his or her needs
s. Provide accommodation for children in police protection
t. Arrange for the children they care for to have a medical assessment, and to ensure looked after children receive medical and dental care and treatment
u. Visit children they look after
v. Check the welfare of children accommodated in boarding schools, residential schools and colleges, private and state-run hospitals and care homes in their area
w. Appoint independent visitors to looked after children
x. Offer advice, assistance and support to care leavers
y. Have a ‘Staying Put’ arrangement, whereby young people in foster care can remain with their carers until the age of 21
z. Appoint an independent reviewing officer (IRO) to each child they look after to: monitor the performance by the local authority of their functions in relation to the child's case; participate in any review of the child's case; and ensure that any ascertained wishes and feelings of the child are given due consideration by the local authority
aa. Review the care and progress of looked after children, seeking the views of the child and their parents (among others) and considering a number of matters including the child’s contact with their family, their education, health and identity needs

bb. Review a looked after child's case before they move them to a different placement (unless the move is urgently required to safeguard the child's welfare)

cc. Have a complaints procedure with an independent element

dd. Appoint independent advocates so children can be heard and their rights protected

ee. Appoint at least one independent person to review the case of a looked after child held in secure accommodation

ff. Follow a wide range of requirements, including arrangements for the protection of children, when they are running fostering services

gg. Appoint a Director of Children's Services and a lead elected member for children's services

Article 39 states:

"These are vital protections. They were all crafted with the interests of children at heart. Parliamentarians are being asked by Ministers to agree a 'job lot' approach to children's law, whereby virtually every requirement made for all vulnerable children and young people can be axed for some at a future date."

Case studies:
Three case studies are included in Article 39's submission, showing how the law protects children's welfare. The first concerns a 17 year-old boy in long-term foster care (since the age of three), who became troubled in adolescence and died from hanging. The second concerns children detained in police custody and the former Home Secretary, Theresa May's letter to local authorities explaining the actions taken to ensure "that the law is operating as Parliament intended". The third case study tells of a care leaver who made a complaint to the Local Government Ombudsman and successfully defended his right to birthday and other allowances.

30. Association of Professors of Social Work

Expertise/experience:
The Association of Professors of Social Work (APSW) promotes and develops the discipline of social work through education, research and training in the UK. Membership of the APSW includes current and retired professors in departments and schools of social work in higher education institutions across the UK and Professors in other departments or schools whose research is primarily concerned with social work issues.

Key points:
APSW raises concern about the exemption clauses potentially resulting in a "postcode lottery for children and families". The organisation states "the revisions

do not address the objections to the original clauses raised by a very wide range of organisations and the concerns raised in the debate in the House of Lords. We have not seen any research evidence to support the need for exemptions of this nature and are not aware of comparable experiments in other countries. Moreover, the oft-repeated statement that they are necessary to encourage innovation is curious. Indeed, we are unclear how innovation is being stifled in the current landscape given the continuing investment the DfE has made in its innovation programme, at a time of considerable financial constraint, based in part it would appear upon its satisfaction with the results so far".

Research undertaken by APSW members consistently highlights the value of "developing risk sensible cultures and computer systems that are well designed and fit for purpose". APSW states:

"Our research experience suggests social workers do not want to be exempted from visiting looked after children for example. Indeed, their frequent complaint is that they do not do enough direct work with children because of the pressure exerted by relentless audit requirements."

31. British Association of Social Workers England

Expertise/experience:
BASW England is the UK professional association for social work, led by and accountable to a growing population of approximately 22,000 social worker members.

Key points:
BASW England states: "these clauses fundamentally undermine a rights-based approach to meeting children's needs. Removing the 'burden' of requirements to meet statutory obligations enshrined in children's social care legislation enables local authorities to incentivise private and not-for-profit providers to bid for parts or all of children's social care pathways". BASW gives a number of reasons as to why the exemption clauses should be removed from the Bill:

- "The National Audit Office has already cited concerns about there not being a credible whole system approach to the quality of children's social work across the country"; the clauses "will further undermine children's rights and compound fragmentation and segmentation of services to the most vulnerable children and families"
- The fact sheet produced by the Minister of State for Vulnerable Children and Families on 7th December 2016 "has simply not been enough to to quell the profound and widespread concerns held by the [children's] sector"

- The new clauses prohibit exemptions from six "core legal duties". BASW explains, "this still means that the vast array of Acts of Parliament and subordinate legislation concerned with children's social care from 1933 onwards can be disapplied, putting children and young people's rights and entitlements at significant risk by creating a postcode lottery of services open to varying interpretations, thresholds and entitlements. This is even more concerning given that we are hearing reports of some local authorities already struggling to meet their statutory obligations as a result of cuts and reduced resources"
- On the suggestion that independent reviewing officers (IROs) are not required as a universal safeguard for all looked after children, BASW point to the "judicial concern" which led to these roles being established. BASW highlights the "flexibilities" already allowed, by law, in how these roles operate
- On the proposal that short breaks regulations may be relaxed in one or more local authorities, BASW highlights that disabled children "are at higher risk of abuse". The organisation is not against reviewing the statutory framework for short breaks but stresses the importance of consultation with "disabled children, their parents, carers, professionals working with them and organisations representing their interests". BASW criticises other areas suggested for exemption, including leaving care duties – a proposal it describes as "extremely concerning [which] could leave care leavers with minimal support"
- BASW England undertook a survey of over 1,000 of its members and found 76% opposed the original power to exempt statutory requirements. Social workers' main concerns are not having enough time to work with children and families; high caseloads; bureaucracy; and cuts and limited resources. "They were also very clear that innovation should come from the profession rather than being done to the profession".

BASW argues that, "Innovation should be encouraged within a framework of fundamental rights and entitlements within law, and any changes to statutory frameworks should be properly put before Parliament".

32. Children England

Expertise/experience:

Children England is an independently funded national charity, which has been created, governed and inspired by other charities. Children England was founded in 1942 in the belief that the expertise, principles and voices of the children's services sector are stronger together.

Key points:
Children England believes the exemption clauses "are badly drafted legislation and are a dangerous way to test new legislation". It warns, "If implemented, exemptions would create a fragmented landscape of children's legal protections and social care practice in which it would be difficult for individual children to pursue their rights and entitlements". It describes how exemptions could impact on children and those seeking to assist them at a local level:

"Whilst it will be difficult for parliament to understand what is happening for children, it will be even more difficult for individual children themselves, who might be under the care of one local authority, be resident in a family or care setting in another local authority, and attend a school in yet another local authority. One vulnerable child could find themselves navigating three different sets of entitlements either sequentially or concurrently. While the government says a child will still be able to complain formally to the local authority, to the Department for Education or via judicial review, it's extremely unclear what support would be still available for them to do so, and how their advocates are to understand the effects of local variations on their legal rights and routes to complaint and redress."

The charity highlights the "unprecedented constitutional challenge to the principle of universal application of primary legislation everywhere and at all times throughout the land, and an equally fundamental challenge to the primacy of parliament in democratically debating and deciding upon it. At most, an exemption would require an affirmative resolution in Parliament, which is almost never opposed: historically parliament has passed 9,999 of 10,000 resolutions since 1965".

It questions whether, from the child's perspective, the introduction of exemptions can be genuinely called a 'test': "it may well be the defining law governing [the child's] entire experience in care and beyond". The charity further critiques the lack of a "vision" for how "lessons will be learned and shared", noting "there is no sunset clause, no stated timeframe or date by which all exemption trials will be concluded, and the 'single legislative framework' recreated as one consistent whole". It contrasts the widespread political and professional support for the Children Act 1989, with the resounding opposition to the exemption clauses in this Bill: "The strength of opposition among the sector of professionals who will be expected to work under exemptions should be a real cause for concern for its implementation, as should the level of public distrust expressed in campaign support".

As well as creating uncertainty for children and parents, and those working with them, Children England adds "the government's rationale for allowing exemptions is now focused expressly on high-performing, high Ofsted-rated local authorities. This essentially casts the ability to apply for the 'freedom' to seek exemptions as a privilege or reward for high professional performance – and one that can also lever access to additional 'Innovation' funding that poorer performing authorities cannot

get. Not only will a 'two-tier' approach to legal duties be at risk of emerging, but a nationwide two-tier system entirely – in which those authorities rated most poorly will have to continue to apply and comply with all the so-called 'burdensome and restrictive' regulations that better, wealthier councils can be freed from". It says this fails "to show leadership in reconciling local variations and their unequal impact for children", as recently recommended by both the National Audit Office and the Public Accounts Committee.

Children England warns that the 'academisation' of children's services "involves no acknowledgement or awareness of the risk of poor/corrupt financial management, nor the creation of any comparable body like the [Education Funding Agency] to scrutinise financial probity in the spending of taxpayers' money, and the upholding of the letter and spirit of the profit-ban".

33. CoramBAAF

Expertise/experience:
Formerly known as the British Association for Adoption and Fostering, the leading multi-professional membership organisation is dedicated to improving outcomes for children and young people in care by supporting the agencies and professionals who work with them. CoramBAAF is part of the Coram group of charities, which has been advancing the welfare, education and rights of children in the UK for over 275 years.

Key points:
CoramBAAF recognises the Government's amendments exclude sections of the current legislative framework from the possibility of exemption, and that they seek to enhance scrutiny. However, it states these safeguards are "fundamentally flawed", because the changes do not address:

"the fundamental constitutional principle that the law is the law…The law is upheld through the authority of the courts alone, not the discretionary decisions of managers in local authorities."

The charity explains the House of Lords rejected the clauses because of the *"threat to the rights, needs, entitlements and welfare of children" and states "We cannot see that anything of substance has changed since that vote".*

CoramBAAF considers each of the examples cited in the Department for Education's December 2016 fact sheet, as to how exemptions may be used.

Independent reviewing officers – the charity refers to the IRO Handbook and its advice on adapting reviewing arrangements in accordance with the needs and

wishes of each individual child. It quotes from the Handbook: “We have aimed to keep the voices of children and young people consistently in mind as we have drawn up this guidance”. The charity explains that the current legislative and policy framework allows wide discretion and concludes: “We could only plead with the Department for Education or any local authority to read the regulations and the guidance and to use the opportunities they provide. The DfE’s fact sheet misrepresents or misunderstand the current requirements placed on IROs or the opportunities they have to address any issues raised by the child or young person in relation to their role”. It also warns of the “fundamental protection” that could be removed from children, should they no longer have an IRO who can refer their case to CAFCASS.

Adoption and fostering assessments – CoramBAAF emphasises the “life changing decisions” made by adoption and fostering panels and the importance of uniformity of requirements across England, highlighting for example: “The placement of a child ‘out of area’ will draw on the confidence that comes from knowing that the fundamental quality assurance mechanism that operates through panels will have been applied in the area where the child is to be placed – whether for adoption or foster care”.

CoramBAAF refers to the removal of the legal requirement in 2012 for adoption panels to be involved in deciding whether an individual child should be recommended for adoption. Since this time, it states there has been a 50% reduction in children with adoption plans and the courts have been critical “about the robust nature (or lack) of local authority planning and decision making”. It suggests the “‘fall’ may have been an unintended consequence of that change but it was argued at that time that this would make planning and decision making ‘more agile’”.

Assessing family and friends carers – CoramBAAF states: “While the family ‘stepping in’ might be a common response, the analysis undertaken by Bristol University of the 2001 census data connected to the Buttle Trust project demonstrates that the stresses on many of those families – income, housing, health and well-being – are significant despite the commonly reported good outcomes for the children”. It says relaxing statutory requirements in this area of policy could be “extremely risky” and draws upon evidence from serious case reviews to warn that the “Department for Education’s fact sheet is naïve and dangerous in proposing that there should be local disapplication of the current framework of assessment in addressing these issues. It must be recognised that children have suffered the most tragic of consequences from poor assessments and the provision of support and the robustness of a national approach is needed not a local discretion to downgrade these assessments. That national responsibility is the responsibility of the Department for Education and one that it should not avoid by enabling this clause”.

34. Coram Children's Legal Centre

Expertise/experience:

Coram Children's Legal Centre is the UK's leading children's legal charity. Founded in 1981, it works to protect and promote the rights of children in line with the UN Convention on the Rights of the Child, through the provision of legal services, information, guides, research, law reform, training and policy work.

Key points:

Coram Children's Legal Centre focuses its submission on the substantial barriers children already face in accessing legal advice and challenging the decisions and actions of local authorities. Quoting the Department for Education's December 2016 fact sheet's assertion that "there will be several ways a child can complain", the charity provides evidence of: patchy availability of specialist legal advice (in some areas non-existent availability); lack of legal aid for damages claims; the difficulties for children who require a 'litigation friend'; and the legal uncertainty inherent in the exemption clauses:

"it is unclear what, if anything, children would be able to challenge. The aim of the innovative practice is to remove legal obligations from local authorities, therefore the only arena for challenge would be where this was done without following the procedure set out in statute and in secondary legislation. Without sight of the secondary legislation, it is difficult to anticipate whether challenges would be possible. This is a different form of redress than children who are currently able to challenge a local authority for failure to comply with their obligations under primary legislation because the legislation sets out the duties a local authority owes to children. This is therefore a clear ground of challenge where children are failed by those who are not adhering to the law. [A] challenge based on a removal of legal duties may be less clear, and this would directly impact on the availability of lawyers to assist a child."

35. Independent Children's Homes Association

Expertise/experience:

The Independent Children's Homes Association [ICHA] says its submission "can be considered to be most representative of the views of the residential child care sector", since the organisation "accounts for over eighty per cent of the independent sector and over half of the total provider sector. ICHA members operate in aggregate over 1,000 homes".

Key points:

The Independent Children's Homes Association states: "this Bill seeks to sweep away universal entitlement and replace it with vicarious contingency locally determined, severely affecting the most important factor in the upbringing of

vulnerable children, the secure emotional base". It asserts: "The Bill is founded on thin evidence and experience" and is "action against history". The "strong resistance" to the exemption clauses is "rooted in social work professionalism and evidence", says the organisation.

The Association reviews the development of children's social care law:

"It has taken decades to develop the statutory duties: the guidance, checks and balances that provide requirements for professionals and services to deliver the entitlements and rights of care for each young person. Reading through the legislation and the layering of experience and knowledge is powerfully obvious; each generation has learned something new and added to the universal safeguarding and wellbeing for children at the time and into the future."

It points to tragedies which have led to improved legislation: "The learning from each circumstance has been universally applied to be relevant to all young people. Both we, and the young people to whom they apply, know the entitlements and rights".

Citing the work of Become (formerly Who Cares? Trust), which led an 'Entitlements Enquiry', the Association says the "immense variations, [and] lamentable individual aberrations by local authorities" found by the charity would be "a lauded expectation" of the exemption clauses.

36. Legal Action for Women; Black Women's Rape Action Project; Global Women's Strike; Single Mothers' Self-Defence; and Women Against Rape

Expertise/experience:
The five organisations have several years' experience working with mothers whose children have been taken into care, are at risk of being taken into care, or are at risk of sexual and physical violence. They comprise lawyers, experienced lay workers and individuals who have regular contact with women needing support and children's services. LAW offer monthly self-help meetings with mothers "struggling to keep their children from social workers instructed to prioritise adoption and foster care".

Key points:
The organisations express huge concerns about the potential privatisation of children's services, heralded by the exemption clauses, stating: "the clauses to privatise child protection services were thrown out in the Lords and we are outraged that they are being re-presented".

37. Liberty (The National Council for Civil Liberties)

Expertise/experience:

Liberty is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research. The organisation provides policy responses to Government consultations on all issues, which have implications for human rights and civil liberties.

Key points:

Liberty says the new statutory purpose of exemptions is extremely problematic:

"These principles contain no objective means of measurement nor legal threshold for establishing whether or not the purpose is met, and provide no practical limit on the use of the power."

It explains the legal and practical implications for child protection of the exemption clauses:

"The [exemption process] would allow the subversion of the rule of law and proper parliamentary process. It is entirely inappropriate for primary legislation to be amended by regulations made by the Secretary of State at the request of a local authority. In constitutional terms this usurps the proper function of Parliament in making primary legislation. In its scrutiny of the Bill, the Select Committee on the Constitution noted that 'we regret that despite the concerns expressed in the past by this and other committees, the Government continues to introduce legislation that depends so heavily on an array of broad delegated powers'.

"It is also entirely wrong-headed for the Government to propose as a 'concession' six duties in primary legislation which will not be subject to the power. The proper process of legislation making requires that Government sets out to Parliament areas in which it wishes to make changes and its case for doing so. Instead, the Government has listed six areas to be protected but asks for a blank cheque to grant exemptions on all other aspects of eighty years' worth of primary legislation with absolutely no evidence as to the need for change or the likely impact on children and young people. This approach creates an entirely arbitrary and unjustified distinction between certain requirements in primary legislation which can be undone via secondary legislation and other requirements in primary legislation which cannot.

"In practical terms, bypassing the processes of primary legislation would significantly reduce the extent and intensity of scrutiny that will be applied to the changes. This means that amendments to statutory obligations concerning the treatment of vulnerable children and young people can be enacted in the absence of the highest possible level of diverse and informed debate about the merits and risks of the proposed approach. Education Minister Edward Timpson MP has sought to explain

the proposed changes on the grounds that they would "allow great social workers to try out new approaches and be freed from limiting bureaucracy". However what Mr. Timpson terms "bureaucracy" is in fact a body of law which has been put in place, on the basis of evidence and with the specific objective of protecting young people.

"Decisions to remove such a provision, even temporarily, risk reducing the rights, protections or other benefits that young people are entitled to receive, and will have real life consequences for the individuals involved. Further, there was absolutely no limitation within the clause to ensure that the power only be used by 'great' social workers, or even to ensure that it is used only at the request of social workers rather than accounting departments. Decisions to remove statutory protections should be made on a case-by-case basis by Parliament so that they can be subject to the most rigorous level of consideration and open to wide scrutiny."

Liberty warns of potential human rights breaches and the demolition of "centuries of progress":

"In the context of child protection, social care, and children with disabilities, the rights protected by the [Human Rights Act] include the right to life, the right to be free from torture and inhuman or degrading treatment, and the right to respect for private and family life. The HRA requires the State to take positive steps to protect these rights, and any exemptions issued by the Secretary of State which undermine these obligations risk violating the rights of vulnerable children and putting the Government in breach of the Act and the European Convention on Human Rights. Government's continued threat to repeal the HRA and recent announcement that it wishes to leave the European Convention on Human Rights raises the spectre that children will be left without both human rights and other legislative protections that are domestically enforceable through the courts. This jeopardises centuries of progress to ensure that children have their needs protected by the state in a consistent and rights-based manner rather than leaving them dependent on the goodwill or otherwise of local authorities or others."

The involvement of Ofsted's Chief Inspector and the Children's Commissioner in giving expert advice to the Secretary of State, prior to exemptions being made, risks interfering with their statutory roles: "an office which acquiesces to an exemption cannot then offer the public a truly independent assessment or critique of the opt-out in practice".

Liberty further warns that the revised clauses, do "not assuage concerns that the opt-out mechanism will facilitate the extension of the hugely damaging and costly experiment in allowing large companies such as G4S to deliver public services relating to children" and sets out the research flaws of the proposed trials:

"The running of pilots in favoured local authorities will not provide sufficiently robust

testing of the potential advantages and risks of a scheme – what works for a high-performing local authority cannot be assumed to work just as well elsewhere."

38. London and South East Regional Independent Foster Panel Chairs Forum

Expertise/experience:
London and South East Regional Foster Panel Chairs is a regional forum of independent adoption and fostering panel chairs.

Key points:
The London and South East Regional Foster Panel Chairs Forum focuses its submission on the proposal that exemptions could be used to test the removal of adoption and fostering panels. It warns this, "would have a serious and negative impact on children and families". The following reasons are given:

- Loss of independent scrutiny – "The importance of having careful and independent scrutiny should not be underestimated and to disband panels would be, in our view, a hazardous and unwise move. The scrutiny of panels helps to avoid mistakes"
- Threat to the maintenance of quality – "Hard-pressed agencies can cut corners and compromise on the quality and care taken with their fostering and adoption work"
- The voice of adopters, foster carers, former looked after children and adopted people – "Panel members are highly skilled, hardworking and committed and bring a range of perspectives to the process of decision-making in adoption and fostering"
- Expense and delay – "Panel members work for a small honorarium (only chairs usually receive a fee for their work) and provide a highly skilled, committed service for agencies"
- Safeguarding children and young people – Panels bring "a protective layer to the safeguarding of placements of some of the most vulnerable children in our society".

The submission concludes by warning, "it is short-sighted and potentially dangerous either to remove the independent oversight provided by panels or to relax the assessments requirements for connected friends and family foster carers".

39. Nagalro

Expertise/experience:
Nagalro is the professional association for children's guardians, family court advisors and independent social workers. Its members represent the interests of children in the full range of both public and private family court proceedings.

Key points: Nagalro states the Bill is of "serious constitutional significance. It proposes removing or putting in abeyance key child-protection legislation, set in place to protect the rights and welfare of vulnerable children, in the pursuit of what can only be described as untried experimentation". It sets out a number of very serious concerns:

- "The Bill introduces a fast track process for suspending the rights of and safeguards for vulnerable children which, as Lord Warner pointed out at the Bill's Second Reading in the House of Lords on 14 June, '*have been built up over many years - indeed over many decades*'. The majority of these provisions can trace their origin back to specific cases where children have suffered serious harm"
- The "fundamental flaw" in the power to exempt local authorities from statutory duties is that "it allows highly vulnerable children to have different legal protections on the arbitrary basis of where they happen to live. The House of Lords considered that this would be unacceptable. The new proposals do nothing to address this flaw"
- "The unavoidable conflict of interest for local authorities seeking exemptions has not been addressed"
- "There are considerable legal implications for the role of children's guardians, who are required to provide an independent appraisal of local authority care plans, in cases in which the relevant child care legislative provisions have been put into abeyance. These problems do not appear to have been taken into consideration and the Association was disappointed not to have been consulted before the Bill was drafted. The welfare of individual children would still be the guardian's and the court's paramount statutory consideration. Applying different rules for different children and criteria for local authority practice in different areas could potentially put Children's Guardians in breach of their statutory duties and would provide fertile grounds for multiple appeals."

Nagalro says the Government has not explained why it requires such "far-reaching powers" to remove "vast swathes of both primary and secondary legislation". It explains:

*"Those who propose the reinsertion of these provisions into the Bill, must surely explain, **in plain, practical terms**, why they might wish to have the power to suspend each of the provisions (and many more). If the Government seeks to suspend, for example, the 'staying put' arrangements, then they must explain why they seek the power to do this. If the response from the Government is that they would not wish to do such a thing, having only recently introduced this provision, then they must explain why they seek the power to do something which would be contrary to the best interests of the child. It is a position which seems to defy logic." [Emphasis in original].*

Nagalro sets out the legislation that could be subject to exemption:

"*From what legislation could a local authority be exempted? The new clause has exactly the same starting point as the old clause 29, namely, that it covers* ***'a requirement imposed by children's social care legislation'***. *There follows the self-same definition of* 'children's social care legislation' *that we found in the old version, namely:* ***'any legislation specified in Schedule 1 to the Local Authority Social Services Act 1970 so far as relating to those under the age of 18;'*** *together with ss23C-24D of the Children Act 1989, the Children Act 2004 and any secondary regulations made under any of those Acts.*

"The first task therefore, has to be to look at what is actually in Schedule 1. Here is the list as it currently stands, insofar as it relates to children:

a. Children and Young Persons Act 1933 Parts III and IV
b. Children and Young Persons Act 1963 Part I
c. Children and Young Persons Act 1969
d. Adoption Act 1976 (transitional and saving provisions only)
e. Children Act 1989
f. Adoption (Intercountry Aspects) Act 1999 sections 1 and 2(4)
g. Adoption and Children Act 2002
h. Children Act 2004 sections 9A and 13 to 16 [see above also]
i. Children and Young Persons Act 2008 Part 1
j. Legal Aid, Sentencing and Punishment of Offenders Act 2012 section 92 (functions in relation to a child remanded to local authority accommodation)

"The schedule contains many other pieces of legislation which are, at least primarily, concerned with the care of adults. Although Schedule 1 has only a small number of sections from the Children Act 2004 included, the proposed provisions of the Bill would bring the whole of the 2004 Act within the scope of the potential exemptions. On top of these, any statutory instruments, made under these pieces of legislation are susceptible to suspension." [Emphasis in original].

Nagalro considers the legal requirements the Government has decided should not be subject to exemption: "Those seven provisions are the 'comfort blanket' which is offered to those who oppose the legislation. Are they sufficient? The first test has to be to carry the proposal to its logical extreme. A 'stress test' if you will. What would the world of children's social care look like if that was all that was left?".

It continues:

"We would suggest that no list of safeguards about consultations, purposes and parliamentary approval can save this amendment from the fatal flaw which sits at its very heart; namely that it potentially authorises steps which could not, under any

conceivable circumstances, be in the interests of the child. Once it is accepted that there are provisions in the clause's net which should never *be suspended in this way, the whole provision becomes indefensible. It has every appearance of being budget-driven rather than child-welfare driven. We fear that* ***different*** *ways of working might, more honestly, be described as* ***cheaper*** *ways. If that is the case and there is a need for such steps then the promoters of the legislation should have the courage to say so." [Emphasis in original].*

On the lack of any required consultation with, and consent, of children, Nagalro states:

"The heading of the proposed new clause is significant, saying that it is the 'power to test *different ways of working'. Any test carries with it risks that it may not produce the desired outcome. If that were not the case, the test would not be needed. These tests however, will be carried out on real people; real parents and real children. If we were dealing with a trial of a new drug, this would be hedged about with provisions to ensure that only those who wished to be involved were subjected to the test and that their consent was fully informed, both as to benefits and risks. Local authorities 'must consider' but are not 'required' to consult children who might be affected by the legal exemptions. How is the seven-year-old child to give a valid consent to the risks of a test? If a local authority obtains an exemption then all the children in its jurisdiction will be the subjects, whether they agree or not. They will have no individual say in the matter."*

Case studies:
Nagalro offers anonymised case studies which "illustrate the pivotal role played by IROs and show how things can go badly wrong for the child when key safeguarding functions are not carried out".

"**A 4 year-old girl who has been in voluntary care since birth**. Her mother is an alcoholic who has not maintained contact with her child. The IRO raised concerns about the lack of long term planning for the child and her slow development. The local authority social services department then started making plans for Adoption and commenced care proceedings but still failed to address the little girl's developmental problems. A Children's Guardian was appointed in the care proceedings and the IRO raised her concerns with her and a pediatric assessment was ordered by the court in spite of the LA objecting on the basis that it was too early for developmental tests. The pediatric assessment showed that the little girl's problems were caused by foetal alcohol syndrome - a direct result of her mother's drinking during pregnancy. This had not been picked up by the local authority.

"**An eight year-old boy in long term foster care.** In this case the IRO raised significant concerns about the suitability of an established Foster carer to continue to foster after a foster child told him that he was having to provide meals for himself

and was being left in sole charge of a younger foster child. He was also upset that he hadn't been given allocated grant money to buy a bicycle and he felt neglected now that his foster mother had a new boyfriend who was regularly staying overnight. This turned out to be the foster mothers ex-partner who had just been released from prison where he had served an 18 month sentence for arson. Neighbours subsequently contacted the police with reports of excessive drinking and regular visitors who were allegedly involved in crime and drug dealing. On one occasion there was a drive by shooting at the house and the foster mother was eventually deregistered at the instigation of the IRO who had raised the alarm.

"**A five year-old girl of mixed heritage**. Independent Fostering and Adoption Panels can play an important role in questioning local authority care planning and opening up new possibilities for the child. In one example, the local authority social worker presented the case of a 5 year mixed heritage child to the Adoption Panel. Mother was unable to address her drug use problems and had no family to look after the child. The father was serving a long prison sentence and Adoption appeared to be the only option. The Panel Chair was not satisfied and asked the Social Worker to go back and explore the paternal family. An investigation revealed an extensive extended family and a paternal grandmother who was willing and able to look after her granddaughter with wider family support. Because of the Adoption Panels intervention the outcome for this child changed completely and she was able to remain with her birth family.

"**A 10 year-old boy in long term foster care**. One of the most common complaints from Looked After Children are that they are being moved from a settled foster placement against their will. The driving force for this is very often budgetary constraints as in this example, in which a child fostered through a more expensive Independent Fostering Agency, was suddenly told she was to be moved because a cheaper fostering placement had become available within the local authority. The child had been in the placement for four years. The IRO saw him as part of a regular independent review and supported him in opposing the planned move on the grounds that he was not being moved in her own best interests, but purely in the best interests of the local authority auditors. The IRO used the dispute resolution procedure to stand her ground and the child was able to stay where he was after the local authority and the Independent Fostering Agency came to a financial agreement.

"**Three siblings in long term foster care aged 10, 12 and 14**. Here is an example of how the lack of an IRO to attend a looked after child's care plan review meeting could impact negatively on their welfare. Briefly, the fostering team and the children's social workers disagreed about whether the children should be left with their current foster carers. They had been there for eight years and were very happy and settled. However there had been some vague allegations about the foster parents made by neighbours. The social workers were told by their managers to go

to see the children to tell them that they were going to be moved, even though the social workers themselves didn't agree with the decision and the children had made it clear to them that they were very anxious to stay and indeed very fearful of what a move would mean. Sibling groups risk separation because there are very few placements for three children together. The IRO went to see the children to ascertain their views as a normal part of the routine Review process. He supported the children in writing to the Children's Commissioner who intervened. The instruction to remove the children was put on hold pending a full fostering review assessment by an Independent Social Worker. The outcome was that all three children remained in the placement. Without the intervention of the IRO, the three children would have been moved after eight years of security. The children's social workers felt it was not in the best interests of the children to be moved, but had felt powerless in the face of the senior manager's instructions."

40. National Association of Reviewing Officers

Expertise/experience:

NAIRO was established in 2009 to improve the outcomes of looked after children by maximising the positive impact of the reviewing process. NAIRO seek to strengthen the understanding of the role of the independent reviewing officer (IRO), whilst influencing policy and developing a code of practice.

Key points:

NAIRO is concerned that "The role of the IRO has been the most frequently proposed target for exemptions to be used in order to reduce, restrict or abolish the role. Comments made in the Lords and elsewhere have raised concern that the government remains unclear as to the role of the IRO and the many options available to children and young people in choosing how they would like their care plan to be reviewed".

The charity states:

"Having different laws for children and young people in different parts of the country, possibly living next door to each other, has the potential to breach the Human Rights Act 1998 and the Convention on the Rights of the Child. This would create an extensive legal problem for local authorities exercising exemptions from their statutory duties."

It raises the prospect of *"children living in the same household or siblings living at different addresses having different legal rights as to, for example, access to an advocate or statutory rights to complain".*

NAIRO explains the discretion the law permits in arrangements for children's reviews

and how IROs undertake their role. It points to the "potentially life changing" impact of the exemption clauses and highlights the lack of duty on local authorities "to consult with safeguarding partners, relevant agencies or children and families who might be affected by an exemption before making an application to the Secretary of State".

NAIRO concludes its submission with a plea for the statutory requirements surrounding IROs to be withdrawn from the Bill, should Ministers decide to force through the exemptions:

"If, despite all the concerns that have been raised with the government, by a very broad combination of social workers, independent reviewing officers, care leavers, academics, lawyers for children, children's rights campaigners and charities working with children and young people, the [exemption clauses] remain in the Bill, the role of the IRO will be more important than ever in safeguarding looked after children and promoting their welfare. The explicit duty to challenge the local authority where it does not properly consider the best interests of looked after children or threatens to breach their human rights will be essential in the likely legal and practice confusion that these clauses will cause."

Case studies:
NAIRO provides anonymised case studies highlighting the importance of the IRO role.

"**Simon,** aged 8 and suffering from Post-Traumatic Stress Disorder, had 7 placement breakdowns within 9 months. His IRO used his role to challenge the local authority to undertake an assessment to match Simon's placement needs with the capacity of potential carers to meet those needs. Simon is now in a stable placement with experienced carers who are better able to meet his need and is starting to access therapeutic support.

"**Peter**, 13, made a number of serious complaints about the behaviour of his foster carers. No action was taken in respect of his allegations. He did not feel that he was believed and felt that he was seen as the cause of the problems. His IRO, who knew him well, drew up a chronology of events, which highlighted the times and circumstances in which he had alleged abuse. As a result, Peter was moved from the placement and the foster carers were investigated, eventually leading to them being deregistered as foster carers.

"**Ashley** is a 17 year-old boy who has been in care for 6 years on a care order with a foster family who has offered him excellent care and with whom he has made solid, secure and affectionate attachments. Ashley has mild learning difficulties. Ashley's plan was to join the army and with the help and support of his carers he had been offered a place on a course with a view to recruitment. The carers wanted to

continue offering a home base for Ashley and this is also what he wanted. If the army worked out it would be a base for him on leave from the army. If it didn't work out, he could return there and think about other options. The carers wanted to offer him a staying put arrangement. The local authority didn't think a staying put arrangement was suitable in these circumstances. . The local authority wanted to provide him with other supported lodgings for his periods out of the army. The IRO could see no sense in this at all and thought a staying put arrangement was certainly applicable and obviously in Ashley's interests. The IRO raised a dispute with the local authority about their decision that staying put was not suitable. The dispute failed at stage 1, but the service manager at stage 2 agreed that staying put was suitable and that it should go ahead. Without the IRO intervention, Ashley would have been forced to leave this placement against his will and the will of his carers, to his great detriment.

"**Linda,** is a 15 year-old girl who was placed at a residential children's home under s20. She had previously been in a foster placement that had ended as she was missing more often than there. Her Mother is an alcoholic and drug user and was unable to keep her safe or to meet her needs. Linda was often reported missing overnight at the new placement and would not say where she was. She insisted that she was with friends and was safe. At a LAC review the social worker announced that she would be moved to a placement 100 miles away as she would not conform with the rules of the placement. This would have meant leaving her education in year 10 and ending her weekly CAMHS sessions. This had not been discussed with her prior to the review. She attended and was engaged positively with school and CAMHS. The IRO challenged this and insisted that the social worker carry out a risk assessment and, more importantly, a plan to manage this risk. Linda stayed where she was and risks were addressed. She took GCSEs and went on to an apprenticeship, qualification as a full time pre-school worker and independent living. Without the IRO she would have been moved and disrupted her education, CAMHS support and local friendships.

"**Roy**, aged 16, was looked after under s20 after falling out with his Mother and Step Father. He was in a residential placement. One Friday it was decided that he should move home as senior managers were frustrated at the lack of progress toward a return home. The Team Manager told Roy's IRO that his mother had ended her agreement to S20 and agreed to his return. This turned out not to be the case, according to the Mother. It remained in dispute. Roy went to sofa surf at a friend's but this was a temporary solution. Mother said she would not have him back and Roy's college place was suffering. Roy's IRO challenged the authority and supported Roy to obtain independent legal advice. Roy did so, through Shelter, and he became looked after only after the LA were threatened with Judicial Review. Roy has been in his supported lodgings since then, is nearly 18 and in a full time apprenticeship. The IRO intervention was instrumental in enabling him to challenge the L.A. with his own legal support.

"**Sally** had been looked after under a care order for 6 years, she was 17 and settled with a long-term foster carer. Staying Put had been agreed and confirmed by the IRO at two LAC reviews. It was in the Care Plan and Pathway Plan. A decision was taken by senior management that staying put may not be appropriate and that there was 'not sufficient paperwork' to support it. Sally was very distressed and became very anxious when told this by her social worker. (This was her 6th SW in 2 years). The IRO challenged the local authority and encouraged Sally to seek support from an advocate and, if necessary, independent legal advice. Sally stayed put and is now working full time aged 18.

"**Mary** was 17 and had been looked after for 4 years under s20, having previously lived with her maternal grandparents under a residence order. She had been in 8 different placements, foster and residential and two mental health providers. She had self-harmed and was sectioned at one time. Her final residential placement, in an area 120 miles from her hometown, had been very successful and her self-harming had stopped and she was managing her anger and emotions. Mary wanted to stay in that area. She had a long-term boyfriend and did not wish to move back to her hometown, having been away for 4 years. A year before her 18th birthday there was no planning for her accommodation post 18. This had been addressed at more than one LAC review and the IRO was told that there was no funding for her to remain in the area and that, if she stayed there, she would have to go into a YMCA hostel. The IRO challenged this, asking why this could not be funded in the same way as Staying Put or Supported Lodgings. The LA then agreed to fund an independent flat through a local provider with support, she moved in 2 months before her 18th birthday. This was a really good outcome for Mary who is thriving.

41. Royal College of Nursing

Expertise/experience:
The Royal College of Nursing (RCN) is the world's largest nursing union and professional body, representing more than 435,000 nurses, student nurses, midwives and health care assistants.

Key points:
The RCN states:

"We remain concerned by the reintroduction of [the exemption clauses]. We believe there may be significant unintended consequences of the proposed new ways of working and we are calling for additional scrutiny of the clauses to fully understand how they will operate in practice."

42. Royal College of Paediatrics and Child Health

Expertise/experience:

The Royal College of Paediatrics and Child Health (RCPCH) works to transform child health through knowledge, innovation and expertise. The organisation has over 17,000 members internationally and is responsible for training and examining paediatricians, whilst playing a major role in advocacy, policy development and in supporting professional standards.

Key points:

RCPCH states it "greatly welcomed" the House of Lords vote to remove the exemption clauses. It continues: "Whilst we agree in principle with exploring innovative ways of working with children and young people – and we know that many areas already do – we do not believe that allowing local authorities to step outside a legislative framework is the best way of achieving this".

The organisation concludes:

"Although we note that these new clauses are more expansive in their proposals for what these powers would look like and what local authorities would be obliged to do, we continue to oppose for the reason stated above. Local authorities already explore innovative practices for working with looked-after children, and there is no need to introduce a legislative exemption – which could potentially result in unintended consequences detrimental to child protection – allowing them to do so."

43. Women Against Rape

Expertise/experience:

Women Against Rape (WAR) has been operating since 1976 and has offered support, advocacy and information to women and girls who have been sexually assaulted or raped. The organisation helped gain the recognition of rape in marriage as a crime in 1991, after a 15-year campaign.

Key points:

WAR states it is: "completely opposed to government amendments which seek to remove statutory protection in the name of 'innovation', effectively privatising children's services. Institutions are currently being investigated for the mass rape and other abuse of children in care – removing statutory protections and privatising children's services is a charter for rape".

44. Women's Aid

Expertise/experience:
Women's Aid provide decades of experience working with vulnerable women and girls.

Key points:
Women's Aid says it "share[s] widespread concerns that the Bill's reforms to social work risk fragmenting a sector already facing significant challenges. We join a wide range of children's organisations, experts, social work academics and professionals in the Together for Children campaign to oppose any exemptions for local authorities from legal child protection duties, and call on Members of Parliament to protect universal children's social care duties".

45. Yorkshire and Humberside Independent Adoption and Foster Panel Chairs Forum

Expertise/experience:
The organisation is a regional forum of independent adoption and fostering panel chairs.

Key points:
Yorkshire and Humberside Independent Adoption and Foster Panel Chairs Forum says it is "profoundly concerned about the negative effects for children and their families [and] urge the Committee to not allow the exemption clauses to be reinstated". It submits the same evidence as the London and South East Regional Independent Foster Panel Chairs Forum.

46. Young Futures

Expertise/experience:
Young Futures works with young people aged 16 to 25 years. It submitted evidence to the Public Bill Committee "on behalf of the young people, the staff and the board of the sister community interest companies, Young Futures and Yvonne House".

Key points:
Young Futures acknowledges changes to the support given to care leavers and others is required, but says exemption from statutory duties is not the answer:

"While we share with Parliament the recognition that things cannot continue as they are, the proposals to weaken or even abrogate the statutory duty to meet care leavers needs is the wrong change."

The organisation is concerned this could result "in further decline in both quantity

and quality of services". It says it finds, "the attempt to define the loss of statutory guarantee as somehow being in children's best interests unconvincing. A general best interest provision such as this lacks the force of the individual right of children to have their needs met, as guaranteed by existing legislation".

Case studies:
Young Futures provides case studies of young people who have left care and have enormous unmet needs, including:

"**SP** will be 21 in April and is very aware that, given that she isn't in education, employment or training], she will lose [her Personal Adviser] support imminently. This will coincide with the likelihood of her daughter being permanently taken into care [she was taken into care within days of her birth]. This is likely to have a devastating impact on SP who is not prepared at all for this eventuality. We feel the main driver for SP's support coming to an end is her age and the cost saving that comes with her support ending. Given her challenges and priorities, support should be extended for as long as she needs it."

"**SM** joined our service 1yr ago and after a few months was diagnosed with anxiety and depression. She disclosed having had feelings of suicidal ideation to her therapist and keyworker. A placement meeting was held during which the [Personal Adviser] glossed over the concerns we had about her well-being and asked that SM only use the [out-of-hours] service in emergencies, not just when she needed someone to talk to. [Support was reduced to a minimum]. The driver for these decisions was SM's age and the LA's desire for SM to transition to independence as quickly as possible."

"**LN** was not entitled to social housing when her 21st birthday was approaching due to her status and the length of time she had been in the UK. She was placed with [Young Futures] in London but Solihull, the placing authority, were pushing for her to find private rental accommodation or return to Solihull. [Eventually] LN was moved to a different borough where she now lives in a single room (herself and her 3 children, all under 3) and shares communal facilities with other families. She has no [Leaving Care Grant] and no continuing support [from either local authority]."

Together for Children

Together for Children is a network of 49 organisations and more than 150 individual experts, formed to campaign against the exemption clauses.

We are extremely grateful to Annika King for preparing this synopsis.

Contact us: https://togetherforchildren.wordpress.com