



BASW England written evidence to the Children and Social Work Public Bill Committee

Introduction

1. BASW (British Association of Social Workers) is the UK professional association for social work, led by and accountable to a growing population of approximately 22,000 social worker members. Our members work in frontline, management, research and academic positions in all social work settings across the UK. BASW members share a collective commitment to those values and principles that will secure the best possible outcomes for children and young people, adults, families and communities.
2. Despite the Government publishing new amendments to the Children and Social Work Bill on 8 December 2016, BASW England remains concerned about key elements of the Bill and does not accept that these amendments go far enough in safeguarding and upholding the rights of vulnerable children and families and preserving the independence of the profession particularly, in relation to regulation.

Summary of BASW England's Key Concerns

- i. **Powers to test new ways of working (formerly clauses 29-33)**
3. BASW England is disappointed that the Government has chosen to re-insert clause 29 into the Bill. Cross-party Peers raised very serious concerns about the clause in the House of Lords culminating in its removal at report stage. It is our contention that these proposals will pave the way for significant and serious changes to the provision of children's social care, overturning decades of carefully thought out statute to promote the best interests of children:
 - a. 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.
 - b. This widens the way that is already open for children's social care to be fragmented into multiple pathways and diverse provision. Rather than promoting 'innovation' this will lead to more confused and less consistent offers, an increase in outsourcing and the increased likelihood of a postcode lottery resulting in inequality of access to services.

- c. 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 and BASW England is extremely concerned that these proposals will further undermine children’s rights and compound fragmentation and segmentation of services to the most vulnerable children and families.
 - d. 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.
4. BASW England is therefore, once again, asking for what was clause 29 to be removed in its entirety.

ii. Unaccompanied asylum seeking children

5. Sadly, with increased global conflict, unaccompanied asylum seeking children are amongst some of the most vulnerable children for which the State is responsible. BASW England fully supports Stella Creasy MP in her efforts to continue the good work done by Lord Dubs in the House of Lords to ensure that the Bill contains provision for a robust and effective safeguarding strategy and permanence solutions for unaccompanied refugee children. These are children first and asylum seekers second, as full signatories to the UNCRC, BASW England believes that the Government should afford them their full rights and all provision for children in care and care leavers made in this Bill should also apply to them.

iii. Regulation (formerly part 2 of the Bill clauses 34-54)

6. The proposals to establish a new social work regulator in England for both children’s and adults’ social work have been developed without any prior consultation or dialogue with the social work profession. In spite of some early amendments being made as a response to opposition to the original plans for the bespoke regulator to be an ‘Executive Agency’ under the control of one government department (DfE), BASW England members have ongoing concerns about the independence and impact of the ‘Non-Department Public Body’ (NDPB) model now proposed. In a recent BASW survey the majority of respondents stated that they believe social work regulation should be bespoke and remain independent of Government:
- a. BASW England is still awaiting a satisfactory response to the question: “Why is social work being treated so differently to other health and care professions which have independent regulation that is accountable to the Privy Council and Professional Standards Authority not to government of the day?” Regulation of all professions should focus on assuring fitness to practice and public protection in diverse contexts. BASW England believes these proposals do not reflect independence from government influence and control.
 - b. While the amended proposals for a NDPB regulatory body suggest more independence than those first proposed, a NDPB can comprise a wide range of governance and independence options. We challenge the detail of the current proposals which enable direct government appointments to be made to the

leadership of the organisation. We expect the key roles of chair and CEO as well as the board to be appointed without political control of the process and decision-making. The current Government proposals mean control of these appointments by the Secretary of State for Education.

- c. We expect regulatory standards to be set through a profession-led process. The independent professional body (BASW) and its partners should drive this. BASW has always supported and campaigned for regulation to ensure high standards and protect the public. We believe if independence from governmental control is not instituted in new arrangements, it will detract from the profession developing its own standard setting capabilities and culture of responsibility for excellence at every level.

Main Evidence

i. Powers to test new ways of working (formerly clauses 29-33)

7. In spite of the Minister of State for Vulnerable Children and Families producing a letter and fact sheet on 7 December 2016 in respect of the exemption clauses, followed by new amendments to the Bill on the 08 December 2016, this has simply not been enough to quell the profound and widespread concerns held by the sector (BASW England is a member of Together for Children – a coalition of over 40 organisations and individuals opposed to clauses 29-33).
8. In essence, the new amendments have identified six ‘core legal duties’ for possible exclusion from the exemption clauses; sections 17, 20, 22 and 47 of the Children Act 1989 and sections 10 and 11 of the Children Act 2004. However, 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.
9. BASW England would like to make it clear that we are not opposed to innovative practice and indeed many of the powers and duties and supporting guidance that are under threat were introduced as a means of improving social work practice through making important changes. Our main problem with these proposals are that they have been presented to us without any credible research and evidence base to support them, and crucially without any prior consultation with the sector. Furthermore, the examples that have been shared demonstrate that either a change to legislation is not necessary or to do so would remove important rights to a defined quality of service.
10. BASW England would like to advocate that a more considered approach is taken to developing different ways of working with children and families which does not compromise their rights and entitlements. This needs to be done in conjunction with the sector and should address how guidance/regulations/professional practice can be

improved ideally across the piece, in all local authorities rather than a selection. The NAO report contained a caution for the DfE against the development of incoherent strategy, recommending that: “it should set out how it reconciles the variability introduced by local thresholds for help and protection with its goal of all children having equal access to high-quality services.” Finally, prior to proposals of this nature being committed to a Bill, there should be a Green and White paper.

- 11.** Inevitably, these proposals have raised a lot of disquiet amongst our members about what the real intention is – the wholesale privatisation of children’s social care and marketisation of services. The recent publication of the LaingBuisson report into children’s services has only led some to confirm this as their view. In the current climate, a move to more independent and private providers is worrying given the parallels that can be drawn from adult social care which has clearly reached crisis point where a number of providers have gone bankrupt. (The State of Health Care and Adult Social Care in England 2015/16). Equally, the reforms to the probation service have led to the Justice Secretary calling for an internal review. The MPs on the Justice Committee that had examined the proposals concluded that not enough preliminary work had been carried out and little of it had been tested. We urge the Government not to tread the same path with the lives of vulnerable children and families.
- 12.** The ‘Power to test different ways of working’ fact sheet alleges that local authorities have come up with some early ideas on how the power could be used. The areas that have been highlighted are the use of IROs (Independent Reviewing Officers, the planning process for disabled children using short breaks, more agile approaches to adoption and fostering assessments, looking at different approaches to assess family and friends carers and more flexible approaches to requirements for care leavers. We understand that these examples have come from only a handful of local authorities which underlines the case for why a proper process of consultation should first be established when considering policy development.
- 13.** It is important to note that IROs were first introduced and strengthened as a response to judicial concern that care plans agreed during proceedings should be followed unless there was a good reason to make changes which would be agreed by an IRO, who is independent from day to day decision making. The regulations themselves do allow for flexibility which was further increased by the The Children Act 1989 guidance and regulations Volume 2: care planning, placement and case review June 2015. BASW England does not accept the case for opting-out of the regulations that apply to IROs given that there is already considerable flexibility about how review meetings are conducted giving children and young people a considerable say in how the process is carried out. All key people must be consulted as part of the review process and the child can if he/she wishes chair the meeting, or not go to the meeting if they so chose, as long as they are central to the process. It may well be that some local authorities are not using the flexibilities that they have, but that is a practice issue which does not require a change in law.
- 14.** BASW England is concerned about proposals to vary the rights of disabled children given that we know from research that they are at higher risk of abuse. It is important

that disabled children, their parents, carers, professionals working with them and organisations representing their interests are fully consulted before making any such changes. The rationale for introducing regulations to support disabled children using short term breaks in the Children Act 1989 Act was predicated on disabled children in out-of-home placements having a lower level of service/scrutiny of their service and the need for them to have parity of service with all children formally living away from home. Section 20 accommodation remains an important part of family support and is used more for older children who are disabled or where there are relationship difficulties. If the regulations are regarded as being too rigid we agree this could be looked at; for example, if a child is being provided with respite care and it is not considered that whilst this is happening, the local authority providing the care should share corporate responsibility with the parents, the respite can be provided under section 17 of the Children Act (1989). Nevertheless, we would consider that for the periods described, parents would expect the local authority to exercise its corporate parenting role both scrupulously and with great sensitivity.

- 15.** The Family Justice Review (2010) also queried the role of adoption panels on the premise that they duplicated work. This was strongly contested by many including BASW England and they were retained. The view of our members is that both fostering and adoption panels provide an invaluable role in the approval process and dispensing with them runs the risk of unsuitable people being approved. This could also negatively impact on the quality of assessments – checks and balances exist in the system for good reason.
- 16.** The proposals to look at different approaches to assessing friends and family carers are concerning given that practice in this area is still highly variable even though since 2011 every local authority is required to have a local Family and Friends Care Policy – we know that implementation has been patchy. We are aware that the Family Rights Group is trialling forms for social workers to assess family and friends in 12 local authorities but this did not require any disapplication of legislation to our knowledge. Local authorities as the corporate parent must be confident that a kin foster placement meets the child's needs.
- 17.** We would like to know just how many care leavers were consulted in relation to the section on pathway plans. This proposal is extremely concerning and could leave care leavers with minimal support. Much of what we have already said about the review process is applicable here - there is no need to opt out of regulations to work in a more flexible way.
- 18.** Finally, BASW England carried out a survey of over 1,000 of its members: 76 per cent of respondents oppose what was formerly clause 29 of the Children and Social Work Bill; their main concerns are not having enough time to work with children and families, caseloads being too high, bureaucracy, the impact of cuts to services and scarcity of resources. They were also very clear that innovation should come from the profession rather than being done to the profession. It is important that Government listens to the voices of social workers.

ii. Unaccompanied Asylum Seeking Children

19. BASW England is extremely concerned that in spite of the Dubs amendment it is being reported that the Home Office has ended the emergency transfer scheme of unaccompanied asylum seeking children to the UK following the demolition of the Calais Jungle. We urge the Government to act urgently to ensure that all remaining children on mainland Europe are provided with safe transfer to the UK and are allocated to local authorities for their care.
20. We reiterate that the UK Government is a full signatory to the UNCRC and as such should recognise that unaccompanied asylum seeking children and young people should be treated as equal to all other children in the UK care and care leaving systems and provided with the same level of services.
21. BASW England remains concerned that services to unaccompanied asylum seeking children are not being adequately funded – according to ADCS (2016) ‘Safeguarding pressures phase 5: special thematic report on Unaccompanied asylum seeking children’ there is a shortfall of 50 per cent in terms of the real costs.
22. Social work has significant expertise in this area and BASW England believes that social work specialist provision for unaccompanied asylum seeking children should be resourced and standardised in accordance with promoting excellent social work practice.

ii. Regulation

23. As mentioned in paragraph 18, BASW England carried out a survey to elicit our members views on the Children and Social Work Bill to which we received 1,100 responses. Two of the questions concerned the new regulator and the results are as follows: **87 per cent** of respondents believe that social work regulation should remain independent of Government and **83 per cent** of respondents believe that the post-qualification framework should be led by the profession.
24. Whilst BASW England is pleased that the Government has revised its original plans to establish a bespoke regulator to be an ‘Executive Agency’ under the control of one Government department – the DfE, we remain concerned about the relationship between the new regulator and Government and how this significantly differs from the arrangements made for the regulation of other professions. This also will be the third regulator for social workers in England in just over a decade and there has been no prior consultation with the profession to establish firstly, if a change of regulator is needed and secondly, what form it should take. BASW England therefore, takes the view that these

clauses do not go far enough to establish a truly independent bespoke social work regulatory body. More preliminary work should be done with the sector before rushing to legislate for such profound changes. We cannot support these clauses unless the sector is consulted and engaged in the development of an independent regulatory body – BASW England would also welcome more detailed evidence about the funding of any proposed new regulatory body as we have significant concerns about the cost implications.

- 25.** BASW England wishes to make it clear that we are not opposed to exploring new social work regulation options and that we also support steps to improve accountability of social workers, enabling them to show increasing specialism and skill. However, we take issue with proposals that concentrate government control and stymie the profession in leading in setting its own standards and developing its self-governance. The recently inserted new clause 10 about Improvement standards has only resulted in heightening our members concerns that this is indeed the prevailing philosophy.

- 26.** Finally, the current improvement agenda is too narrow in its focus, failing to address the conditions which are putting social workers under tremendous pressure as a result of growing demand for services in a climate of severe cuts and increasing poverty and deprivation for the individuals, families and communities with whom we work. It is vital that we move away from a punitive culture and tackle how we can create a more balanced system that supports social workers to do some of the most challenging and important work on behalf of society.

- 27. BASW England and its members would be happy to provide the Bill Committee with more information if required.**