

The Children (Leaving Care) Bill

The following sections provide access to the discussions and evidence presented during the passage of the Bill, with particular reference to disabled young people.

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IMPORTANT NOTE: Implementation of the Children (Leaving Care) Act has now been postponed, and will affect those leaving care on or after 1 October 2001 (not 1 April). The detailed guidance and regulations are still under negotiation.

In its *Response to the Children's Safeguards Review* (Cm. 4105, November 1998) the Government had promised to develop new arrangements for care leavers, and in July 1999 the Social Services Inspectorate published its detailed proposals in a discussion document entitled [Me, Survive, Out There?](#). These proposals centred on the practical and financial support that might be made available to young people leaving care, and defined who those who might be eligible. The SSI discussion document provided the background for our initial thinking about the policy issues and, in November 1999, we published a short article in *Community Care* magazine (11-17 November 1999, p. 29), highlighting the fact that many young disabled people might find themselves excluded from the proposed new arrangements.

On 18 November 1999, the initial draft of the [Children \(Leaving Care\) Bill](#) was introduced in the House of Lords. The accompanying [explanatory notes](#) indicated that there were indeed some important contradictions and issues concerning the eligibility of young disabled people for leaving care services. The notes made no specific reference to young disabled people, but instead referred to the ineligibility 'children who return home permanently and children who receive respite care'. Thus: 'Some young people normally live at home with their families and are only looked after for short periods of respite care in order to give their carers a rest. These periods of respite care could amount to thirteen weeks or whatever period is prescribed, but the Government believes that these young people are the responsibility of their families and should not become subject to this new regime'. However, the notes did suggest that children receiving respite care might be eligible for the services of a Young Person's Adviser.

During the Bill's [Second Reading](#), on 8 December 1999, questions were raised about the particular implications for disabled young people (bearing in mind that up to a quarter of the looked after population are disabled young people). Assurances were given that there would be specific guidance on these issues (*Lords Hansard*, 7 Dec 1999, Column 1188). At this stage, we produced a short [policy briefing paper](#) on the issues raised for young disabled people in the Bill. This was circulated to a wide range of local authority staff, voluntary sector organisations, civil servants and interested politicians. In particular, we highlighted the need to examine issues of

eligibility and support for young disabled people living away from home.

The Bill was debated in [Grand Committee](#) on 10 February 2000, and we worked with others to lobby for a number of [amendments to the Bill](#) at this stage. Most of the issues we had highlighted were discussed during debate:

On the question of eligibility, Lord Clement-Jones pointed to the large number of disabled young people who, 'are placed in residential schools either on full-time placements or receive Social Services Department respite or health authority care for periods during school holidays, but are not officially looked after', arguing that their experiences were often similar to those of other looked after children - 'they will spend most of their childhood living away from their families and are unlikely to return to live with their families when they finish their education' (10 Feb 2000, Column CWH8). Consequently, concerns were expressed that disabled young people living away from home, but not necessarily within the remit of the Bill, should be entitled to assistance from a Young Person's Adviser. Thus, Earl Howe argued:

'Disabled children and young people who live away from home, in some cases from birth right up to the age of 18, are as much estranged from their families as are children who are looked after by foster parents or in a local authority children's home. They are as much in need of a pathway plan and the services of a personal adviser as those other children, and the duty owed to those children by the state is in no way different from the duty owed to children who, in the ordinary sense, are in the care system.

As the noble Lord, Lord Clement-Jones, said, these are children who are marginalised by society. All too often, decisions are taken about their future which are not based on any kind of formal assessment of their aptitude or their wishes. They are simply transferred, when they reach official adulthood, from one residential environment to another on the basis, quite often, of sweeping assumptions. What a difference it would make to those young people to have someone assigned to them who could defend their corner and argue for a meaningful choice in where they live and what they do.' (10 Feb 2000, Column CWH9)

However, it became apparent that disabled children's interests would not be fully incorporated without substantially altering the Bill's intended focus (on specific groups of non-disabled care leavers). Thus Lord Hunt's response was to argue that:

We must make a distinction between those defined as being looked after and those who are not. Where a child is provided with accommodation by either the NHS or the local education authority for more than three months consecutively, the local authority must be notified. At that point, the social services department must take all reasonable, practical steps to enable it to decide whether the child's welfare is adequately safeguarded and promoted while the child stays in the accommodation. It also has to decide whether it is necessary to exercise any of its functions under the Children Act. The placing authority must also notify the social services department when it is proposed to end the child's placement. The current Section 24 duties and powers to provide aftercare support apply to these children if they reach the age of 16 and have been accommodated for at least three months. These provisions ought to ensure that those children who need the full protection of being looked after do in fact receive that support.

The issue then arises where young people have not been brought within the care system in the first place and we do not think it will be helpful to take responsibility for them away from their families when they reach a certain age and give it to local authorities. (10 Feb 2000, Column CWH10)

The Government response to the eligibility question has been to highlight provision that might be available through other initiatives (for example, through Quality Protects, and the provision of advisers under the new [ConneXions](#) service, or the Learning Disability Strategy). Our concern remains that this approach masks the fact there are a substantial number of young disabled people spending large proportions of their childhood in the care of services away from home, who will not be defined as looked after within the terms of the new legislation. For example, as Lord

Clement-Jones noted, 'children who are in residential schools for 52 weeks will not have statutory rights. They will have rights under the Quality Protects programme but that is not the same as having the statutory rights enshrined in the Bill' (10 Feb 2000, Column CWH13).

Our second issue of concern was around the age limits proposed for support available to care leavers. As Earl Howe pointed out in the debate:

'Evidence shows that disabled young people remain in care longer than their non-disabled peers and, while the Bill encourages young people to remain in care until they are ready and willing to leave, there are implications for young people whose impairment may make it difficult to ascertain how willing they are to leave. These people need to know that the support will be there regardless of when they leave care.' (10 Feb 2000, Column CWH32)

For this reason, arguments were made to increase the eligibility for leaving care support from 16-17 olds to those up to the age of 21. For our part, we argued that such eligibility should not be based on chronological age (which would be inevitably disabling) but on a defined period of time following the point when a young person ceases to be looked after (e.g. two years).

The Bill reached its [Report Stage](#) on 9 March 2000, at which point no specific issues were raised regarding disabled care leavers. The [Third Reading](#) took place on 22 May 2000, when arguments were again made for increased flexibility in the raising the eligible age to 21. As Baroness Masham argued, 'Many young people who have been in care or are coming out of care are disabled or have learning difficulties, and the process therefore takes much longer'. The Bill was then passed to the Commons, together with [explanatory notes](#)).

In the [Second Reading](#) debate in the Commons (on 21 June 2000), very little reference was made to the specific situation of disabled young people, although three members raised concerns about the eligibility of those in educational placements, and entitlement to the services of a young person's adviser. As Tom Clarke argued:

Even now, many disabled children leave home. There are no advisers or advocates, and often there is no involvement in any decision that affects the future of disabled children. I hope that that will be put right, and I think that the Bill offers an opportunity to do it, particularly in the areas of education and employment.

The most acute area is probably that of children with learning difficulties. They, above all, are in need of the kind of advice, the kind of pathway plan, that the Bill seeks to achieve elsewhere. (*Commons Hansard*, 21 Jun 2000, Column 390)

Concerns expressed by Barnardo's about ineligible children, living away from home, were also aired during the debate:

'...children and young people who are placed in residential schools on full-time placements, or those who receive care during school holidays, are not officially looked after, and it is concerned about their position. It believes that those young people will spend most of their childhood living away from their families and are unlikely to return to them when they finish their education.

The transition planning requirements address the transfer from education and children's services to adult services, but I am advised that there is no requirement for those young people to have an adviser or advocate and that decisions about their future are often made without reference to their wishes and feelings. Frequently, assumptions are made about their abilities, and they are not given the opportunity to consider independent living or access to mainstream education and employment services. That group of marginalised and excluded young people are denied rights available to others...' (21 Jun 2000, Column 401)

As in the Lords, the Government's response has been to highlight the existence of alternative provisions in this area, particularly:

We are keen to extend to other groups the principle of support through young persons advisers, and that is why the Department for Education and Employment is piloting the ConneXions scheme, which aims to provide a personal adviser for all young people aged 13 to 19 to help them to move into a career, and to provide more intensive support for those who need it most. (Yvette Cooper, 21 Jun 2000, Column 416)

The Bill was committed to Commons Standing Committee A and is currently under consideration. The [Commons Committee Stage](#) involved five sittings. In the first four sittings the situation of disabled care leavers was not specifically discussed, although the need for advocacy arrangements was emphasised by Julie Morgan:

'The plans will not succeed unless young persons and local authorities work together, and I support those who say that advocacy must play a part. I stress strongly that many of young people involved will have serious difficulties as a result of experiences that many of us cannot imagine; some will be disabled, or have learning difficulties. It is essential to build in a great deal of support for such children, so that they are in a position of strength when working with their local authority.' (Commons Standing Committee, second sitting)

In the fifth sitting (13 July pm) concerns were expressed about potential confusion over the entitlement of young disabled people to financial benefits under the new arrangements:

'It is clear from the guidance that non-means-tested benefits will remain available to a young person, which is absolutely right. However, will young disabled people who receive disability living allowance be denied access, because they are disabled, to the support, including finance, that would otherwise be available through their local authority? One section of the guidance states that all disabled young people will be on benefit. The guidance says that all disabled young people will be on benefit, whereas in another place it states that only those benefits that apply to the disablement are affected by the exclusion measure in the clause.' (Peter Brand)

Assurances from John Hutton for the Government, indicated that young disabled people would indeed 'continue to be entitled to benefits when they leave care'. To which, Peter Brand asked whether it might be appropriate to consider an extra benefit for young disabled people, 'in recognition of their special need for emotional and financial support?', and that 'one set of regulations may not meet the needs of all'.

The Bill was reported on 13 July 2000.

Considerable negotiations and behind the scenes discussion have gone on in the preparation of detailed guidance and regulation. This has resulted in a delay to the implementation of legislation, which was originally intended to affect young people leaving care on or after 1 April 2001.

Watch this space for more details!

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