Together for Children

Nadhim Zahawi MP
Parliamentary Under Secretary of State for Children and Families
Department for Education

By email

13 March 2018

Dear Minister

FOSTERING STOCKTAKE

We are organisations and individuals who worked together to defend the rights of children and families during the passage of the Children and Social Work Act 2017.

We write to respectfully ask that you reject those recommendations in the fostering stocktake which would require a change to the law (**4, 6, 7, 8 and 33**).

If acted on, recommendations 4, 6, 7, 8 and 33 would greatly weaken the legal protections enjoyed by our country's most vulnerable children and young people. They each advocate a dilution of legal safeguards; together they communicate a lack of understanding for the origins and importance to children's welfare of existing policy. We are doubtful that any of the legislative proposals would be compliant with the UK's human rights obligations, both within the Human Rights Act and the United Nations Convention on the Rights of the Child.

Three of the recommendations (6, 7 and 8) were subject to detailed scrutiny and opposition during the passage of the 2017 Act. When the former Secretary of State for Education Justine Greening abandoned plans to permit local authorities to opt-out of their statutory duties in children's social care, the Department issued a statement saying it had "listened to concerns".

Our grave concerns were based on a sound understanding of the evolution of children's law and safeguards and the UK's human rights obligations. The policy goals communicated by the Department, during parliamentary debate and through written communications, including from the Chief Social Worker for Children and Families, pointed to a dangerous relaxation of legal protections for vulnerable children and young people.

We were very relieved when the Department cancelled its plans to 'test' deregulation of key legal safeguards and accepted our arguments about the intolerable risks to children's welfare. That similar proposals have reappeared so quickly within a review that was supposedly about "the question of what different foster carers need – skills, expertise, support – in order to meet the diverse needs of today's looked after children"[1] appears dishonourable. We hope you will reject recommendations 4, 6, 7, 8 and 33 for the reasons we set out below.

[1] Department for Education (2016) Putting children first. Delivering our vision for excellent children's social care.

We remain absolutely committed to working with you and the Department in the interests of children, young people and families.

All good wishes

Article 39
Association of Independent Visitors and Consultants to Child Care Services
Association of Lawyers for Children
Association of Professors of Social Work
Become
British Association of Social Workers England
The Care Leavers' Association
Children England
Children's Rights Alliance for England
CoramBAAF
The Fostering Network
Howard League for Penal Reform
Independent Children's Homes Association
Legal Action for Women
The MAC Project (Central England Law Centre and the Astraea Project)
Nagalro
National Association for People Abused in Childhood (NAPAC)
National Association for Youth Justice
National Association of Independent Reviewing Officers
Napo: the professional association and trade union for Probation and Family Court workers
NYAS
Parents of Traumatised Adopted Teens Organisation
Refugee Council
Siblings Together
Single Mothers' Self-Defence
Southwark Law Centre
South West London Law Centres
UNISON

Dr Maggie Atkinson, freelance consultant and former Children's Commissioner for England
Dr Liz Davies, Emeritus Reader in Child Protection, London Metropolitan University
Brid Featherstone, Professor of Social Work, University of Huddersfield
Anna Gupta, Professor of Social Work, Royal Holloway University of London
Pam Hibbert OBE
Ray Jones, Emeritus Professor of Social Work, Kingston University and St George's, University of London
Dr Mark Kerr, Managing Partner, The Centre for Outcomes of Care
Jenny Molloy, Author, Adviser and Trainer
Kate Morris, Professor of Social Work, University of Sheffield
Peter Saunders, Founder NAPAC
Mike Stein, Emeritus Professor, University of York
June Thoburn CBE, Emeritus Professor of Social Work, University of East Anglia
Judith Timms OBE
Jane Tunstill, Emeritus Professor of Social Work, Royal Holloway, London University
Sue White, Professor of Social Work, University of Sheffield

Recommendation 4 asks the Department to remove authority from parents* whose children are being voluntarily accommodated under s20 Children Act 1989, so that there is automatic delegated authority to foster carers.

Existing statutory guidance (Children Act 1989 Volume 2, June 2015) describes the legal meaning and exercise of parental responsibility when a child is voluntarily accommodated. It accurately explains the child's own legal right to make decisions. The guidance provides nuanced advice for those circumstances in which parents do not agree (for whatever reason) to delegate day-to-day parenting authority, reminding local authorities of their overarching legal responsibility to safeguard and promote the child's welfare.

We cannot see how the 2015 guidance could be amended to categorically remove the right of parents whose children are accommodated under s20 (and children with capacity) to exercise and influence decision-making in day-to-day parenting matters. Such a move would require a radical change to the Children Act 1989 and to the Family Law Reform Act 1969 (in relation to 16 and 17-year-olds), neither of which we believe would be compatible with the UK's human rights obligations.

**This would include adopters, special guardians and carers with child arrangements orders.*

Recommendation 6 states that a single social worker should be given the task of supervising foster carers <u>and</u> discharging the local authority's duties to children in long-term foster placements.

Since April 2015, care planning regulations have permitted a child in long-term foster care to be visited by his or her social worker only twice a year. There is no mention of this relatively recent regulatory change in the stocktake report, so it is impossible to know whether recommendation 6 was made in ignorance of the current legal position.

Besides quotes from two carers, the fostering stocktake report relies on the pilot conducted by Match Foster Care to advocate a change to care planning regulations. Yet the evaluation report from the Match Foster Care pilot describes a complex picture, including that two of the eight children in the very small sample were still visited by their own local authority social worker and there was ambivalence within local authorities about how they discharged their legal responsibilities. The researchers point to the 2015 regulatory change and associated guidance as "a valuable new framework". Of most significance is the fact that the evaluation was not conclusive in respect of the benefits to children of a single, all-purpose social worker.[2]

Children having their own social worker is a fundamental safeguard and a lynch-pin of the care system. When it works well, it gives children the opportunity to develop a positive and trusting relationship through which they can safely explore their history and identity, share their experiences and raise any concerns. Regulations set down an expectation that the social worker will meet the child in private (though this is not rigid) which further underlines the importance of the child's social worker being seen as *there for them*. The stocktake report itself states that children want to see more of their social workers.

Alongside this, foster carers require – and have the right to expect – their own specialist

[2] Beek, M., Schofield, G. and Young, J. (October 2016) Supporting long-term foster care placements in the independent sector. Research report. Department for Education.

support.

The Supreme Court's ruling last October, that local authorities can be held vicariously liable for the abuse of children in foster care, is pertinent to this particular recommendation, though there is no reference to it within the report. The Department will be aware that one of the potential outcomes of *Armes (Appellant) v Nottinghamshire County Council* is a greater degree of monitoring and supervision by local authorities, as indicated by Lord Reed: *"It may be - although this again is empirically untested - that such exposure, and the risk of liability, might encourage more adequate vetting and supervision"* [69].

Recommendation 7 urges the abolition of the independent reviewing officer (IRO) role. This recommendation could have a profound impact on the rights and welfare of children, including those who are remanded to custody, yet there is a dearth of evidence for it within the stocktake report.

The short section on IROs in the report contains an opinion expressed by a fostering manager and the views of two Directors of Children's Services. A fourth quote describes the difficulties of 'speaking truth to power'. The report is silent on who is intended to take on the statutory reviewing function and the monitoring of individual children's human rights.

In addition to their vital statutory responsibility in relation to termination of placements for looked after children[3], children cannot be moved from accommodation regulated under the Care Standards Act 2000 to other arrangements without a statutory review of their care plan chaired by their IRO.[4]

Furthermore, the statutory guidance (Children Act 1989 Volume 3, January 2015) states, "No young person should be made to feel that they should leave care before they are ready. The role of the young person's IRO will be crucial in making sure that the care plan considers the young person's views. Before any move can take place, the statutory review meeting, chaired by their IRO, will evaluate the quality of the assessment of the young person's readiness and preparation for any move".

In other words, IROs have a critical statutory role and responsibilities in ensuring young people's successful transitions to adulthood. These will be enhanced by the new provisions contained within the Children and Social Work Act 2017, including the extension of support to all care leavers to 25 years of age (from April 2018).

The fostering stocktake was not designed to review the role of IROs in safeguarding and promoting the rights and welfare of children in foster care, let alone across the care system. There was no call for evidence about the IRO role, and the authors of the stocktake report have no professional background or expertise in this policy area. The authors' conclusion that "despite the commendable commitment of some individuals, we saw little to recommend the IRO role" displays a level of confidence out of synch with the report's rudimentary analysis. This recommendation cannot be treated with any credibility.

[3] Regulation 14, The Care Planning, Placement and Case Review (England) Regulations 2010.
[4] Section 22D Children Act 1989 (as amended by the Children and Young Persons Act 2008).

Recommendation 8 asks for an assessment and consultation on the effectiveness, cost and value for money of fostering panels.
The 'case' for a review of fostering panels is made in a very short paragraph with a single quote from an unnamed "distinguished commentator". There is no discussion of the evolution or legal basis of fostering panels.

The importance of fostering panels was debated by parliamentarians and the children's sector during the passage of the Children and Social Work Act 2017. The government's proposal that local authorities should be able to opt-out of having fostering and adoption panels was widely rejected – including, eventually, by Ministers.

The fostering stocktake was intended to be "a fundamental review", it was undertaken over several months and received over 300 responses. Yet the stocktake report contains scant discussion of fostering panels. Unless the evidence to the stocktake was not properly collated, analysed and considered, we must conclude that contributors did not raise fostering panels as a significant area of concern. It is difficult therefore to see how this recommendation originates from this review.

Recommendation 33 recommends that local authorities should not presume that brothers and sisters in care should live together.
This is a radical proposal that flies in the face of established childcare practice and law. It implicitly dismisses decades of testimony from children in care and care leavers. It would require a change to the Children Act 1989, which we do not believe would be compatible with Article 8 of the European Convention on Human Rights.

The Children Act 1989 requirement to enable siblings to live together has an important legal caveat – it must be exercised *so far as is reasonably practicable in all the circumstances of each individual child's case*. It sits within local authorities' wider legal duty to safeguard and promote the welfare of children. The law allows flexibility so the individual child's best interests prevails. The 2015 statutory guidance sums up:

Wherever it is in the best interests of each individual child, siblings should be placed together.

It is difficult to comprehend why the authors would wish to deny the importance of placing siblings together when this is in their best interests though, tellingly, they do not quote directly from the legislation.

We hope the Department will robustly defend current law and policy, recognising that being able to live alongside and have meaningful relationships with brothers and sisters continues to be a top priority for many children in care and care leavers.

The law on contact
We make one final observation in respect of the law. On page 82 of the stocktake report, the authors observe:

> *In 2013, the Government was persuaded that sometimes decisions on contact – however well intended - were not always in the best interests of the child. They decided that the long-established assumption that contact between a child or infant in care, and their birth family, was not in the child's best interests, and should be*

removed from legislation. This followed significant concern about the distress caused to infants and younger children by contact, particularly contact which took place frequently, sometimes daily.

The authors state the presumption in favour of contact was removed by the Children and Families Act 2014. This is inaccurate.

The changes to s34 of the Children Act 1989 in respect of contact were twofold: firstly, to cross-refer to the pre-existing general duty to safeguard and promote the child's welfare and, secondly, to remove any continuing duty to promote contact where a court has refused it, or the local authority has used its emergency powers to refuse contact. Neither of these provisions has the effect of removing the presumption of contact.