

Written evidence submitted by the National Association of Special Schools (NASS) to The Children's Wellbeing and Schools Bill Committee (CWSB24).

Background

The National Association of Special Schools (NASS) is a national membership body for special schools outside local authority control. We have over 450 member schools and organisations across England and Wales. We work to represent the sector on the national stage and support the sector through advice, guidance, training and commissioning of research.

Our concerns

We wish to raise our concern that there was very little time allocated in the parliamentary process to allow key stakeholders to question and discuss the intentions behind the changes proposed in the bill and the likely impact on children and young people (CYP).

In this regard, we accept that much of the detail around implementation will not be on the face of the Bill, but in secondary legislation (regulations) and guidance. This needs to be subject to meaningful consultation and robust scrutiny.

Of concern to NASS is the impact on Special Academies (including Special Free Schools who are Special Academies), and the impact any proposals may have on the education and wellbeing of the cohort of CYP that they provide for. We also have concerns about the impact of the 'backstop' clauses on profit in Children's Social Care, and in particular, their application to residential special provision that is registered as a children's home.

We hope that the Government allows sufficient time and space to work with the wider sector on any future secondary legislation and guidance. We would welcome the opportunity to provide oral evidence to the committee, specifically relating to the 'backstop' clauses on profit in children's social care. We are concerned about possible unintended consequences where we could see some market exit of providers that offer a 52-week provision for children and young people who require the most complex special educational needs and disability (SEND) support.

Proposed amendment

Clauses 11-17: ‘Backstop’ clauses on profit in children’s social care

On 18th November, Secretary of State for Education, Bridget Phillipson announced new measures in the House to address ‘excessive profiteering’ in children’s social care provision. In her statement, she claimed that a group of the largest providers in the country were making unreasonable levels of profit from their operations. She warned that if the sector did not take measures to remedy this, the Government would introduce new regulations to limit profits. The current Bill creates the power for the Government to do this via a sequence of clauses, aimed at fostering and children’s home providers. This power allows for the Government to introduce regulations at a later date.

Whilst NASS is an association that represents schools, many of our members operate residential provisions that are registered as children’s homes. Contrary to the wider children’s homes market, the number of special schools with residential provision is decreasing, despite an increased need for these services.

We acknowledge the Government’s concerns about how public funds are being used for children’s social care. However, the Bill as it stands creates a poorly defined threat to the majority of children’s home providers currently operating. Our concerns are as follows:

No clear definition of ‘profiteering’ or ‘excessive profits’

Whilst the Government has committed to consult publicly before introducing a future profit cap, there are no clear definitions of terms used freely in discussions, e.g. ‘profiteering’ and ‘excessive profits’. The sector has been told to ‘address’ these without any clear sense of what is seen as acceptable or unacceptable behaviour. We do not believe that this power should exist without clear definition of what it is that providers should address to stop it being enacted. We therefore ask the Secretary of State to commit to working together with key stakeholders within the first three months of this Act to provide clarity to the sector.

Misquoting of the 2022 Competitions and Marketing Authority report on children’s social care

The 2022 Competitions and Marketing Authority report on children’s social care has been consistently misquoted. Whilst the report does call this market ‘dysfunctional’, it notes that the price paid for a place in a private children’s home is not higher than the price paid for a local authority children’s home. Ofsted has confirmed that there is no difference in quality between private homes and local authority-operated homes. We would ask

that the Secretary of State meets with providers and key stakeholders within the first three months of this Act to gain further insight.

Power to limit profits of relevant providers

Despite these clauses being introduced to impact the largest groups of providers with the biggest market share, clause 14 of the Bill amends the Care Standards Act 2020 so that these powers can be applied to any provider operating one or more home. This effectively means over 80% of children's home providers could be subject to these powers. This is too broad – the rationale for including this much wider range of providers is unstated and unclear. In 2023, an Ofsted report noted that the largest 22 companies operated 40% of children's homes¹. The 10th largest provider operates 37 homes. Consequently, we have proposed an amendment so that this clause only applies to providers operating 25 or more homes. We recognise that fostering agencies operate differently but believe including agencies with two or more branches would similarly catch only the largest providers.

We therefore propose the following amendment to the proposed clause 14:

Existing clause:

(2) "Relevant provider" means a person, other than a local authority, who is registered under this Part as carrying on **one** or more relevant establishments or agencies.

Amended clause:

(2) "Relevant prover" means a person other than a local authority, who is registered under this Part, carrying on either **twenty-five** or more children's homes and/or two or more branches for fostering agencies.

Other Comments

Wellbeing of children and young people

We are disappointed by the omission of the wellbeing of children and young people in the current bill. We believe that this is a missed opportunity to demonstrate a commitment to improve the wellbeing and mental health of

¹ Ofsted: 'Largest national providers of private and voluntary social care (March 2023)': <https://www.gov.uk/government/publications/inspection-outcomes-of-the-largest-childrens-social-care-providers/largest-national-providers-of-private-and-voluntary-social-care-march-2023>

the children and young people of this nation. We are working together with several other organisations from the children's sector on a possible amendment to rectify this omission.

Family group decision-making (Clause 1)

We have concerns about section 1 (3).

“The duty under subsection (1) or (2) does not apply where the local authority considers that it would not be in the best interests of the child for a family group decision-making meeting to be offered or (as the case may be) to be held”.

We ask that clarification be made in the accompanying guidance in terms of the grounds on which Local Authorities (LA) can determine that it would not be in the child's best interests to offer a family group decision-making meeting.

Inclusion of education and childcare agencies in safeguarding arrangements (Clause 2)

We welcome the change to include education and childcare agencies in safeguarding arrangements, however we ask that future guidance highlights the importance of all schools (including non-local authority maintained schools), are included in planning and training opportunities. As the Secretary of State noted during the 2nd reading of the bill “we need to ensure that local authorities are working with schools, health services and other partners in their areas”. We seek a commitment for the subsequent guidance on these clauses to focus on how we improve relationships and practice between agencies, rather than retaining the current narrow focus on safeguarding monitoring and audits.

Use of accommodation for depriving liberty (Clause 10)

We are seeking urgent clarification of Clause 10 in relation to children with SEND on care orders who do not have the capacity to keep themselves safe. We would ask that the Committee considers how this clause relates to the Mental Capacity Act 2005.

Material Changes (Clause 33)

Clause 33 principally makes various amendments to sections 101 to 105 of the 2008 Act to expand on the categories of matters that constitute material changes to independent school provision. This is for the purpose of conferring powers related to Ofsted visits and inspections and to change how applications for material change approval can be determined by the Secretary of State.

Section 5 sets out all the things that count as material changes.

Section 7 sets out conditions under which approval may be withheld and sets out the process for sending Ofsted to inspect.

We have heard from members that they already often face significant delays in getting material changes agreed. This has been an issue for schools across a range of issues, for example, where they are seeking a change to the maximum number of pupils (i.e. the registered capacity of the school) or if starting or ceasing to provide residential provision in order to meet the demand from local authorities for suitable places. This has on occasion meant that a student cannot access a suitable provision due to unnecessary bureaucratic delays.

We therefore request that the Department of Education commits to publishing a Service Level Agreement (SLA) to give clarity to providers on expected timescales for dealing with material change requests, and their rights if these are breached.

School teachers' qualifications, induction and Qualified Teacher Status (Clause 40)

We would like to seek assurance that the Government has conducted an impact assessment of the requirement for every single teacher to have, or to work towards, Qualified Teacher Status. If not, we would support an amendment to require the Government to conduct an impact assessment in terms of cost, impact on current staff, capacity of training providers and impact on the education opportunities for children and young people with SEND.

For some specialist schools, for example, there may be times when non-qualified teachers are best placed to teach certain subjects and activities, e.g. forest schools. We would wish to be reassured that such unintended consequences have been considered, and any further guidance reflects such considerations.

Academy schools: duty to follow National Curriculum (Clause 41)

This clause amends the Academies Act 2010 to introduce the requirement for Academy schools to teach the National Curriculum. Although Academies will not be required to follow the National Curriculum until after the Curriculum and Assessment Review concludes, we wish to be reassured that consideration is given to the complexities and particular challenges that Special Academies will face. We also ask that any further guidance and legislations outlines that within Special Academies 'the national curriculum will be followed as far as possible to ensure that the pupils receive the fullest possible education regardless of disability, but they can differentiate the curriculum if applicable'

Extension of statutory pay and conditions arrangements to Academy teachers (Clause 45)

Although currently Academies have the freedom to set their own pay and conditions of service, the majority choose to adopt the provisions of the STPCD and Burgundy Book. We are concerned that the extension of statutory pay and conditions arrangements to all Academy teachers may cause a significant financial burden to schools. If any increased costs of implementing the statutory pay and conditions is not provided initially to Academies via a focused grant, this may result in a reduction in staff numbers in order to cover the additional staff costs. This, in turn, may mean a reduction in support staff or Teaching Assistants. We therefore ask that the Secretary of State conducts an impact assessment to determine the cost to MATs of the proposed extension of statutory pay and conditions arrangements to Academy teachers.

We also ask that the provision for a support grant adequately reflects any other findings of the impact assessment and is made available in a timely manner to ensure that the changes won't negatively impact service provision.

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