Dear Sir/Madam,

The Children Wellbeing and Schools Bill

As a solicitor with decades of experience in education law, I respectfully suggest I am sufficiently qualified to present an opinion on the above Bill. Many of my opinions have already been published on my social media account which has to date attracted over half a million views. I am particularly focused on Part 2 of the same and in particular sections 24-29. I have already expressed a detailed view to a cross party Education Committee ("solving the SEND crisis") and would very respectfully ask that this letter be read alongside those representations (reproduced at the foot of this letter for ease of reference at appendix 3).

In short I am opposed to the introduction of some of these sections for multiple reasons including that I consider some to be an unjustified invasion into the private role and rights of parents, which I shall endeavour to articulate.

Introduction

It appears that recent disturbing events pertaining to the ill treatment of children precipitated an endeavour on the part of Government to impetuously demand change utilising purported justification that new law is necessary to target so called "ghost children" - a name given to those children who have not been attending at school. The Minister promotes a long jilted quixotic hypothesis that a one size fits all conventional approach represents a kind of educational panacea. In my experience and very respectfully, this is simply wrong. Neither are new laws extending the severity of criminal punishment against parents necessary, not least due to the diversion of attention away from the magnitude of state failure in regard to its ineffectual endeavour to protect children. Indeed as I referred in my letter to the education committee, it has been repeatedly proven that recurrent local government (rather than the parent population at large) indifference and ineptitude has contributed, and at times even led, to the needless harm, including the deaths of so many children.

The Bill claims to introduce a number of things including a non-attendance at school register, increased fines and terms of imprisonment for parents alongside measures to prevent parents of children with complex disabilities from having the same freedom to change schools without a council's consent. I believe this will have a particular deleterious effect on the most vulnerable children that I respectfully suggest Government should be protecting. The Bill also seeks to promote an unnecessarily burdensome invasion into the private lives of families by seeking to coerce parent's to permit council officers to assess family homes or else face the risk of formal notices which may in turn result in parent prosecutions with courts having extended powers to impose increased fines and even terms of imprisonment. None of this is justifiable in my view. Indeed an introduction of a best interest test applied by authority rather than by parents represents an unpardonable erosion of the rights, duties and responsibilities of parents. I say this considering not only my experience as a lawyer in this field, but also the fact that all of this is being advocated within the context of statistics that unequivocally divulge the extraordinary number of parents who have won legal cases at Tribunal against councils who have so frequently sought to defend the legally indefensible. It appears that parental vindication is being met not by state apology or empathy but by aimless decline into anachronistic authoritarianism.

Indeed it seems that fair criticism may support a finding that little has been learned since the 2003 Lord Laming report or since from the multiple rulings of the courts and Tribunals in child disability cases. If nothing is learned from past public inquiries into child abuse it begs the question why it is that Ministers apparently fail to recognise that inexcusable failure to use existing legal powers all of which have been long held by Local Government is the greater imperative rather than to work on increasing the levels of sanctions or interference that parents of disabled children may have to endure. I am quite sure that if Ministers would care to fathom the levels of stress and painful emotional endurance that the average parent of a very disabled child experiences, one would recognise that the State should not be adding to their woes. Over thirty years I have listened to the voices of parents in these situations, and being a parent of an autistic adult myself I soon came to learn and to recognise that greater wisdom exists in listening as opposed to

In my letter to the Committee I highlighted these points. I underlined that the problem which appears to have impelled this motion for more legislation is a fundamental failure to recognise that local Government has simply not done all that it should to safeguard and protect children. There is already in existence an overwhelming perception among parents that their local councils should not be trusted. Statistics give them this cause (see below). That is why I say that Government priority should be to imperil those failing councils rather than to put at risk the weakest and most vulnerable.

It is for all the following reasons that I believe that certain provisions in this Bill are unnecessary. In coming to this conclusion I speak as a parent and not just as a lawyer. I believe the provisions referred to below are disproportionately focused on penalising parents and serve to needlessly suppress rights in a manner suggestive of blatant disregard to the true overall context. Parents have up to now largely succeeded in their legal challenges against councils (as the statistics have shown)- thus it makes no sense for parents to be penalised.

The arguments used to support the need for change is apparently that the law is currently inadequate. I disagree. The current law has simply not been properly implemented. On this point may I refer you to my analysis at appendix 1 as well as statistics in appendix 2.

The problem-

(a) Children are still suffering

Despite this plethora of obligation children have continued to suffer significant harm. One merely has to look at the statistics (see appendix 2) . The ugly reality is that this is largely due to a failure of these agencies rather than due to the vast majority of their parents falling short of that which might be required of them. From this one can see that the state already exercises, quite properly vast powers to supervise and protect children. The fact is that the law to protect children if implemented properly should do its job. It does not do this because public agencies have failed to meet their obligations in the same way as they have failed the scores of young women and girls who have been subjected to repulsive gang rapes and that little girl who was murdered by an act of brutality beyond comprehension. It is also the same failings that have caused so many parents of disabled children to find themselves vindicated at Tribunal. The sweeping of these failures under the carpet under the guise of claiming that re-exposure of this scandal (without first recognising all who were to blame) represents

unsavoury political point scoring, or that it represents only the views of the newly defined "far right" merely demonstrates the infinite depth of a self-serving mind. Ignorance of the plight of these children as well as these facts would be equally inexcusable. Restrictions on free speech have not helped. On the contrary, and analogous to a painful own goal, free speech restrictions have also played a part in exposing children to suffer harm thereby permitting the cultivation and expansion of psychopathic fundamentalism of a kind that has also prompted some warped minds to believe that they may possess an unlimited license to brutally harm little girls whilst confident that their crimes will be hidden.

As I say statistics confirm that the vast majority of SEN decisions made by councils are overturned at Tribunal. In other words the majority of council SEN decisions are ultimately adjudged to be wrong. This begs the question. Should we be advocates in support of more authority and power to those mistaken Councils? Will this not permit them to make even more wrongful decisions? Should decisions in regard to lives of children be considered more appropriately made by Government officers as opposed to placing trust in the expertise and knowledge of their parents? The Bill is calling for certain parents (those of the most disabled children) needing consent to home educate their children or even to move schools. To target an individual group of the most disadvantaged cannot in any way be justified although to make the matter even worse the “best interest” decision maker will be the council and not parents irrespective of the fact that the legal duty to provide education rests solely on the shoulders of parents. It appears odd that the target of these changes happen to be parents who might wish to withdraw their children from school. Determining that councils as opposed to parents are somehow better placed to determine best interest decisions is a sweeping change unlike anything I have seen in Education law in over 30 years. Councils, the very body that statistics frown upon should not be replacing the decisions of parents in this way. Indeed, I predict that one of the fall outs of this Bill should it become law in its current form will be even more unlawful and unreasonable decisions for overburdened and hard pressed courts to have to resolve not to mention the likely reluctance on the part of parents to seek placements within the specialist sector. Sceptics among us may be excused for believing that perhaps this might be part of a growing agenda – to shoe horn children including the most needy into mainstream schools. If so, it is not only at cross purposes with the concept of responding properly to need but it is in a word cruel.

(b) The fallacious theory of mainstream for all

There appears little doubt that the Government is promoting a misconceived narrative that mainstream provision offers better outcomes for children with special needs. Further it seems that an interpretation of the 98% success rate for parents challenging poor decision making at Tribunal is being interpreted as results for the rich only. For example in November 2024 whilst reporting to MPs Labour’s Luke Charters said that the 98% of EHCP appeals which were decided in favour of families -

“*feels to me like a two-stage process that inherently actually favours better-off parents with the financial means to go to tribunal*” adding

“*The broken appeal systems is making it harder for poorer families, isn’t it*"

Yet this theory is fundamentally flawed. Firstly those with special needs may have various levels of cognitive potential meaning that comparing outcomes in one setting to the other is like comparing chalk with cheese. Secondly it appears to be no answer to claim that wrongful decision making wherever it might be should somehow be tolerated. In other words the fact that some people have been able to bring successful challenges merely exposes the scale of the problem especially when MPs heard from Susan Ackland Hood (Dfe permanent secretary) who said only "about two and a half per cent of appealable decisions go to appeal" (see article in Disability news service by John Pring 21st November 2024). Not exactly coded language some may say, for disregarding unlawfulness in the 97.5% of the remaining population. Once again this exposes a need to ensure that the law is implemented properly for all rather than to prompt a need for fundamental reform. Yet fundamental reform appears to be on the agenda. Not because it is prompted by children's needs but because of finance. (The Education Committee call for evidence in what is called an SEN crisis).

When one considers all that is said in appendix 1, it seems that it is hard to justify introducing law that seeks to impose even greater threats on parents or indeed provision that seeks to advocate that which was called for in the 1970's yet failed should be resurrected.

(c) Defining suitable education? Yet such a definition can decide a parent's fate

What is suitable for one child may not be suitable for the other but determinations in this regard made by councils may soon distinguish between those who will face a section 47 investigation including those who may face prosecutions and those who do not. The Bill in defining categories of children who must seek consent before moving schools or home education does not mean that others are likely to be outside of scope. The ease by which a section 47 investigation may begin is going to get even less difficult prompting fear that parental perception of malevolent thinking on the part of their perceived opponents may soon put families into disarray.

The Bill seeks to claim that councils need to satisfy themselves that whatever is being delivered is in the best interests of a child irrespective of whether the education might be "suitable'. As such without a finding of that kind, it might steer a way forward to initiate a section 47 investigation or else permit the service of an attendance order. But what constitutes best interests is a deeply personal thing. Furthermore the words "suitable education" may of course mean different things to different people. Without definition it is easy to see how a snap shot analysis may be prone to criticism based on matters such as conflict of interest and distorted views based upon misguided objective criteria which fundamentally fails individual children. Worse still, a child may be unsettled by the action of a council only to find that 12 months later a parent's idea as to what might have been reasonable for their child may be later upheld by a Tribunal. The disruption to a child will be dramatic. The law has long shunned the idea that something that may work for one person will work for all others. This is the entire idea behind competent assessment and Tribunal oversight. Children are of course different. I say unique. It goes without saying that I trust the Government is not thinking of abandoning parental Tribunal appeal rights? I ask because I am bewildered in regard to what might be buried in the minds of those promoting such a need for fundamental SEN reform?

This in turn may lead to serious mistakes and families unnecessarily turned upside down. The result will be, more damaged children and families together with potential economic decay.

From this one can see that the key to determining whether a parent will face enforcement action is whether a council in its absolute discretion, taking into account advice and guidance from the Government through any provisions that it might record within statutory instrument or guidance, will decide if a child's best interests justify a withdrawal from or change of school. Perhaps the most significant provisions that might cause alarm is the apparent duty to refuse consent (see below). I have no doubt children will suffer if this is introduced. One condition that springs to mind among many others is how the council might approach ME sufferers. In such cases these children may be particularly prone to coping only with highly flexible arrangements. Indeed as I have explained in appendix 2 (statistics) – it is more probable than not, that this Bill will impact disproportionately on certain disabled groups. For that reason I add that I consider these provisions to be discriminatory.

(d) . The unappealing need for council consent

The Bill includes a provision under section 434A to require the council to first consent to a parent request for either withdrawing their child from one school to another or to home educate in certain circumstances. Those circumstances will be either that they hold an EHCP naming a special state or independent school or are otherwise under a child at risk investigation under s47 of the Children Act 1989.

Subsection (6) in fact records that a *a council must refuse consent if the local authority considers—*

(*i*) *that it would be in the child's best interests to receive education by regular attendance at school*, *or* (*ii*) *that no suitable arrangements have been made for the education of the child otherwise than at school*

From this we can see that the decision maker in regard to both best interests and suitability is not going to be the parents but, the very body that not only controls the purse strings in SEN cases (a matter which I raise in my letter to the education committee) but is also the very body which in case of school neglect may be cited as a defendant in any negligence proceedings. Statistics have already shown that council views on education suitability are in 98% of cases proved to be wrong. Where else in the world will you see this? Can one imagine the public accepting that an employee who is deeply unhappy due to the actions or inactions of his or her employer such that the employee becomes unwell, not being in control as to whether it is in the best interests for that person to leave?

Why are children any different I ask? Is it because they are less likely to complain? They have a lesser voice? Or is it because the state is seriously advocating that all that it has subscribed to under the UN convention on the Rights of the Child is meaningless?

These rights of course are said to include-

That they shouldn't be discriminated against (*Article* 2)

should have their best interests accounted for as a primary consideration (*Article* 3)

have the right to survive and develop (*Article* 6)

have the right to have their views heard and taken seriously (*Article* 12)

To afford a council these powers not only epitomises the extent of indifference toward the flourishing of an obvious conflict of interest , but a distasteful disregard to the very statistics that MPs quote. This Bill if passed in its present form will be a shameless assault on the rights of parents, and will put this country at the bottom of the list of those who genuinely strive to safeguard and protect the rights of children.

I believe that it is also discriminatory. It promotes conflict of interest. It presumes that the state is expected to know better than a child's loving parent. It unfairly stereotypes all parents (with those who commit monstrous crimes). It fails to give the child any independent voice at all. It disregards due process and dismantles basic human rights as well as imposing once again unreasonable state interference in private life. Indeed it places groups of disabled children at special schools in a worse position than their non disabled peers. Indeed unlike those at other schools parents of children at special schools will be heavily restricted in a manner that is difficult for anyone to justify. Indeed this restriction will apply quite irrespective of whether there exists any kind of concern.

Some among the ill-informed may argue that this is the correct approach, but I would respectfully disagree. Whilst I have mentioned that the law already permits the creation of lists of children who might be out of school, the idea that those under a section 47 investigation or those who might hold an EHCP naming a special school should not have an unfettered freedom is I believe a serious mistake.

(e) The potential of abusing the purpose of section 47 investigations

The weaponry held by councils under the current law is considerable and sufficient. Emergency protection orders, Care Orders and school attendance orders have rightly long existed and continue to exist today. Tragically harm has befallen some children in recent years not merely because of the monstrous actions of a tiny minority but also because of the utter disregard and incompetence of the relevant councils entrusted to protect. It is pointless uttering new words into laws that nobody in authority have up to now properly sought to apply and implement. It is not necessary to go on pressurising and penalising parents without first recognising the states' own wrongdoing. It is the overhaul of child protection procedures and the implementation of the current law that needs enforcing. Further it is wrong to presume that section 47 investigations only apply to cases where parents are at fault. Such investigations may apply when a child is at risk due to issues beyond the control of parents (ie at school or even due to disability) or indeed in cases of domestic abuse toward a parent.

The fact is that in a country deserved to be called a democracy we must subscribe to the notion that people are not guilty merely because they are investigated. On the contrary they are guilty when there is sufficient evidence to prove it. As for cases where evidence may fail to meet the standard of proof necessary but nevertheless warrants reasonable suspicion that

a child may be at risk, the law already allows more than adequate protection for this. It is disappointing if the state has either ignored the laws which currently cover this or else embarrassingly do not know. In this country we do not judge a person merely by the fact that that a person might be under investigation. A council quite properly already has emergency powers to take action in cases where there exists reasonable belief that a child may be subjected to harm. This includes the power to seek emergency protection orders or care orders. Such an order permits a council to make decisions. Therefore if the state seeks to impose restrictions on the freedom of parents it should be bold enough to have its evidence tested before the courts. If the evidence is in some way insufficient an order will be declined. It cannot logically follow that the state, with insufficient evidence should in any case impose its wishes on the rights of children and their parents. An investigation is just that. An investigation. It is not a finding of fact and thus it cannot serve as a finding justifying unreasonable state interference.

In the meantime children vulnerable to exploitation and harm at inappropriate schools due to the imprudent operation of a one size fits all policy will simply go on suffering, confined whilst those in authority rather than parents debate whether to afford freedom as it is those who are in authority who will hold the keys. In a moral society that cannot be right.

(f) Children may be kept to long at the wrong school

A decision to place a disabled child within a special school should not bring with it a state held power to incarcerate children within a school that they may be rightly unhappy with. By imposing this restriction I believe parents of many children may be reluctant to agree to have their children placed at special schools in a way that directly collides with the best interests of children. Children will indeed suffer the consequences of this. Not only may disabled children suffer by being caught (due to parental fear of special schooling) within an unsuitable mainstream environment but other non-disabled children may suffer as a result of diverted teacher attention.

Neither would it be necessarily in the interests of disabled children to be shoe horned into mainstream schools, particularly those which they might feel unsuited to. Because of this, we really need to understand which groups of children are most likely to be impacted more significantly by any such legal reform. It is most likely to be those who are disabled.

(g) The ease by which a parent may be criminalised

Councils already have the power to issue school attendance orders. However unlike the current system, this Bill will permit criminal proceedings being issued and progressed even if a parent might satisfy a council or a court that their child is receiving suitable education but fail to show that school would not be better. Up to now a parent can defend criminal proceedings if they can show that their child is receiving a suitable education. This Bill

proposes to change that. Parents now must show that home education will be better as opposed to merely being suitable. I fail to see how this can in any way be justified.

I have not touched in detail upon the home education register itself albeit suffice to say that I think that the provisions that are being proposed are likely to catch many people who propose to educate children out of school as the requirement applies to those who provide "any programme or course of education". This of course has a very wide meaning. I contemplate – how many people including groups may fall under this umbrella and how many may soon fear financial penalties in case of default? After school club providers? Church groups ? I shudder to think about the fear that this will promote let alone the scale of bureaucratic misery.

Summary

1. This Bill fundamentally invades the rights of parents to determine what is in the best interests of their children. It threatens to ease the ability of councils to criminalise parents who withdraw their children from school. It erodes statutory defences and endangers parents and in particular those of disabled children. It does this by the threats of prison sentences not to mention even longer ones. The call for the imposition of greater penalties upon parents (prison for up to 51 weeks and or heavier fines) not only unfairly stereotypes the vast majority of decent loving parents parent's with the very tiny minority of those who commit monstrous crimes but imperils innocent parents who are currently offering what they consider best for their children but who do not persuade the state of the same. It also seeks to unfairly send a message that parents who have been legally vindicated when they have won at court or at Tribunal up to now should be punished. Instead it promotes greater chances of state abuse and over reach in a manner that I cannot see would survive legal challenge. The proposed law is difficult to reconcile with the ECHR (I mention article 8 as the most obvious but also articles 9, 14 as well as article 2 of the first protocol.
2. The law as it currently stands ought to fully protect children. The fact that children have been failed is consequent to the failure on the part of Local Government to properly implement it. Legislation which says the same thing differently but with increased scope for restriction and penalty is not going to change things for the better. It will instead polarise parties even more (parents and the state) when we should be encouraging collaboration and conciliation.
3. A one size fits all approach has never worked and will never work. Shoe horning children into inappropriate placements not only damages life chances but fails to properly place the best interests of children as a primary consideration. It silences their voices when their voices are deserved of respect and serious consideration.
4. It promotes an idea that in this country person may face criminal proceedings on the back of a section 47 investigation (including those investigations when no fault has ever been alleged against parents but rather simply due to the presentations of the child). If a power is given to force a child to attend at a particular school simply consequent to them having manifestations of disabilities that make them difficult to manage (as section 47 may of course cover) an innocent parent, who is likewise unable to manage without support may face the arduous stress of a needless prosecution when they are unable to do so. This country should not seek to criminalise parents who are in need and neither should it endorse the idea that criminal proceedings can be concluded even

before due process is applied to the question as to what the child in fact needs. These prosecutions empowered under this Bill should it become law, may be brought and even concluded before a Tribunal has time to speak. That cannot in any way be right.

5. The rules to require consent before any withdrawal or transfer from a school will have a disproportionate impact on groups of the most disabled. It places too much discretion on councils (both in terms of interpreting “best interests” and “suitable education”) as well as creating more room for conflict of interest (ie to save money) and runs the risk of unlawful discrimination and harm by incarcerating children in the wrong place. It fails to take into account that no other person in this country may have their civil freedoms restricted in this way (ie adults being bullied at their place of work can leave freely whereas children cannot). It also runs the considerable risk of parents seeking to avoid having their children educated in the special school sector. It also once again promotes the chances of state abuse by self-serving councils seeking to avoid its duty to respond to need. This is something I addressed in my note to the education committee. Even on the existing law never mind that which is proposed, there needs to be greater powers given to the Tribunal to address such an unequal balance of power.
6. The legislation promotes a regime of scepticism and polarisation rather than to promote harmonious relationships between parents and councils. It instead empowers greater state over reach into the private lives of families and stokes hostility. Indeed it is sure to lead to greater disputes and litigation for an already overrun judicial system.
7. It will expose more children to the risk of bullying and other peer abuse as they get caught within the wrong environment disregarding entirely Human Rights and fundamental freedoms.
8. It introduces a burdensome register for multiple home education providers and is likely to create what can only be described as a bureaucratic nightmare.

For all these reasons I oppose these provisions within this Bill. I truly believe it will if passed be ruled incompatible with the UK's Human Right obligations.

I call for amendments and or abandonment of these provisions.

Yours sincerely

Michael Charles