Written evidence submitted by the Challenging Behaviour Foundation to The Children's Wellbeing and Schools Bill Committee (CWSB257).

About the Challenging Behaviour Foundation

The Challenging Behaviour Foundation (CBF) is a national charity which supports children, young people and adults with severe learning disabilities whose behaviour challenges, and their families. The CBF exists to demonstrate that individuals with severe learning disabilities can enjoy ordinary life opportunities when their behaviour is properly understood and appropriately supported.

A child with a severe learning disability will typically: have very little or no verbal speech, find it very difficult to learn new skills, and require life-long support. The CBF exists to demonstrate that individuals with severe learning disabilities can enjoy ordinary life opportunities when their behaviour is properly understood and appropriately supported.

Challenging behaviour refers to a range of behaviours which some people with severe learning disabilities may display to get their needs met. The term 'challenging behaviour' is a well evidenced term, and you can read more about the use of the term 'challenging behaviour on the CBF's website. Behaviours that challenge may include, but are not limited to, hurting others, self-injury, destructive behaviours, or eating inedible objects. Research indicates that there are around 41,000 children with learning disabilities whose behaviours challenge, aged 0-18, in England.

Further information about the Challenging Behaviour Foundation can be found on our website: https://www.challengingbehaviour.org.uk

Executive Summary

Children with severe learning disabilities whose behaviours challenge are likely to experience worse outcomes than their peers and face significant social and health inequalities. These include being placed in residential schools which are miles away from their family and are not adequately regulated increasing the risk of abuse and neglect. The Department for Education does not publish data on how many children are in residential school – the latest data is over ten years old and showed 1,360 children with learning disabilities or autism in residential schools, over half of them 50 miles from home. Children with a learning disability are 1.6 times

more likely to live in income poverty, 1.5 times more likely to be obese by age 11 and 4.5 times more likely to have a mental health problem.

Overall, the CBF welcome the Bill and its intentions, we suggest that the Bill could be strengthened in some areas to ensure effective support for children with severe learning disabilities. We would like to see investment in community services to support children to thrive in their local communities thereby reducing the number of children in out of area independent educational provision. We support the Child Safeguarding Practice Review Panel call for additional safeguards for disabled children placed in independent educational institutions to mitigate against the risk of abuse and neglect which are yet to be implemented.

Children with severe learning disabilities and their families can also face challenges in gaining equitable access to support and services to thrive. We would like to see equitable access to breakfast clubs to support disabled children. Equitable access can be enabled by flexibility in the provision of school transport and meeting the support and dietary needs of children with SEND.

In relation to part 1 of the Bill we would like to raise the following issues:

1. **Promoting educational achievement (Part 1: clause 6)**

Virtual School Heads

The CBF welcomes the proposal to extend the Virtual School Head scheme to some children in need and children in care, the CBF notes that clauses 5 and 6 must be strengthened to ensure that these measures are effective. For instance, clause 6 subsection 3.1 states that "a local authority must take such steps **as it considers appropriate**". There should be guidance on what factors the authority must take into account when making these decisions to ensure that this duty is not weakened. Additionally, clause 6, subsection 4 states that there is no requirement for a local authority to "take steps in relation to a particular child"; we are concerned that this creates a gap in ensuring children receive individual, comprehensive support. Ultimately, there should be a stronger duty to promote educational achievements of children with special educational needs.

Nevertheless, the CBF recognises the benefits to having a Virtual School Head, and welcomes the commitment from the Minister for School Standards that the Department "will continue to review resourcing alongside the impacts of the extended role to make sure that virtual school heads have the resources to meet their duties and serve the children they are there to support", and "will issue updated statutory guidance to local authorities a framework to support the outcomes of all children they have a duty towards. Local authorities will be held to account for the discharge of these duties through Ofsted inspections of local authority children's services."

In relation to part 2 of the Bill we would like to raise the following issues:

1. **Free breakfast club provision in primary schools in England (Part 2. Section 21)**
2. **Independent educational institutions (Part 2. Section 30-40)**

Breakfast clubs

We warmly welcome the inclusion of the provision to offer a free breakfast club to every state-funded school with primary aged pupils in England. Research shows that children with a learning disability are 1.6 times more likely to be living in a family in income poverty, therefore this provision could be particularly beneficial for this group of children and young people.

However, in order to make use of the provision there are some issues that will need to be addressed in the legislation, regulations or guidance.

Firstly, the Bill, and/or guidance, should provide clarification as to whether state-funded special needs schools which provide primary education are also included within Section 551B (6) (b) (d) "a maintained school". This clarification is needed to ensure that this programme is delivered in all maintained special schools and the families of children who are educated outside of mainstream provision are aware of what rights their child has in relation to breakfast clubs.

Secondly, the CBF wishes to advocate that pupils with special educational needs who rely on school transport should not be placed at disadvantage in comparison to their peers. There is a statutory requirement for local authorities to provide free home-to-school transport for children of compulsory school age (5-16) who attend state schools, academies/free schools/PRUs, or independent schools named in an EHCP, if this school is either (a) further than the statutory walking distance, (b) there is no safe walking route, or (c) the child has an SEN, disability, or mobility difficulty which would prevent them from walking to school[1]. For children with complex needs, including health needs, this transport might entail a specialised vehicle, trained staff, etc.

We are concerned that the legislation published thus far does not make reference to making adjustments to school transport to enable children who have a SEN, disability or mobility difficulty which would prevent them from walking to school to access breakfast clubs with equity.

---

[1] It is also worth highlighting that currently, not only is this duty not always upheld, but home-to-school transport can also frequently result in children arriving at school later than the start of the day, meaning they miss out on education to which they are entitled https://contact.org.uk/wp-content/uploads/2023/05/Inquiry-into-School-Transport-Report_Contact-2017.pdf

For example, home-to-school transport may take the form of a minibus, which transports multiple children from their homes to school, with a driver and an escort who is trained to support disabled children. If half of the children who currently uses this minibus were to attend a breakfast club, but other children who use it were not, then the 'reasonable adjustment' which would enable disabled children to attend with parity to their non-disabled peers could be the need for the transport to be re-scheduled to make two trips or the provision of two smaller vehicles to make the journey.

The current guidance states that "if a child with disabilities needs a reasonable adjustment to attend the breakfast club, the school must pay for it, not parents and carers". However, home-to-school transport is paid for by the local authority, not the school, and the current legal entitlement to transport states that this is to enable children "to travel to school for the beginning of the school day, and to return home at the end of the school day"; e.g., local authorities are not required to make arrangements "to enable children to attend extra-curricular activities and other commitments outside of school hours", making it unclear whether breakfast clubs would be covered. If, as detailed in the above illustration, additional transport was needed to enable the child to attend with equity, the current guidance (which only names schools), and the existing duties around home-to-school transport, would create confusion as to whether the local authority or the school is responsible for covering this additional cost. We recommend that the guidance sets out clearly which body would be responsible for covering this additional cost, to prevent confusion/delays/potential legal cases (should there be dispute between an authority and a school).

Finally, the guidance also states that "breakfast clubs can be led by various individuals including teachers, teaching assistants, school catering staff, volunteers, or other specifically hired to deliver the role". It is vital that those delivering breakfast clubs in special needs schools, or in mainstream schools which are attended by children with special educational needs, are specially trained to understand the needs of children with severe learning disabilities. For example, children with severe learning disabilities may be unable to **verbally** express their likes and dislikes and may rely on alternative methods of communication (like sign language, or Picture Exchange Communication System (PECS)). Therefore, it is crucial that people working to deliver the breakfast clubs are able to understand the communication used by each individual child. Staff must also be able to meet children's health needs e.g. some epileptic children require staff who are trained to administer rectal diazepam if they have a seizure.

Additionally, children with learning disabilities may have allergies or require a specific diet e.g. diary or gluten free. It would be helpful if guidance can stipulate the need to meet the medical/dietary needs of children with special educational needs to ensure that no child feels excluded.

Making adjustments to school transport and providing staff who are suitably trained to meet the needs of children with SEND would support parents of disabled children to increase their hours or return to work and support children who are living in households in income poverty.

Independent educational institutions in England

Many children with learning disabilities will be educated outside of mainstream schools. Data published in 2014 shows that there were 1,360 children and young people with a learning disability placed in residential schools.

Parents frequently report instances to the CBF of their child being placed very far from the child's home – the Safeguarding children with disabilities in residential settings (also known as the 'Hesley Report') identified that the average distance was 95.16 miles, with 60% of children being placed more than 50 miles away from home. Such long distances mean that parents and family carers are infrequently able to visit their child, which can exacerbate feelings of isolation and vulnerability. The separation from family and community support networks can have a significant impact on the emotional and psychological well-being of young people with learning disabilities – further details on these impacts can be found here.

The Child Safeguarding Practice Review Panel, found that children with disabilities were being placed "*in residential settings at a considerable distance from home, which increased their vulnerability and safeguarding risk".* The Child Safeguarding Practice Review Panel proposed joint inspections by CQC and Ofsted, to reflect that these settings provide both educational and health/care services, and that both regulators should be involved in monitoring quality and safeguarding the children in these settings.

Recommendation 9 of the phase 2 report by the panel, calls for the Department for Education and the Department of Health and Social Care to "*(a) review and revise the regulatory framework for residential settings to reduce complexity and improve the impact of the current arrangements for monitoring, quality assurance and oversights (b) Take immediate steps to establish arrangements for joint inspection by Ofsted and CQC of residential settings for children with disabilities and complex health needs"*. The implementation of this recommendation would ensure that the systemic weaknesses in the current system of safeguarding identified by the Child Safeguarding Practice Review panel are addressed and the well-being of children with disabilities and complex health needs is protected by strengthened by joined up quality assurance. **We strongly recommend that this recommendation is taken forward** and included in the Children's Wellbeing and Schools Bill.

Additionally, there is a significant gap in the legislation which means that directors of residential settings are not subject to appropriate, fit and proper persons vetting and they are unable to be prosecuted for the abuse of children and young people with learning disabilities that takes place at their service. Because residential educational settings are regulated by Ofsted, they are not deemed as 'health care providers' despite being settings that are responsible for 24/7 care of children, including those with healthcare needs. This means that, under Section 21 of the Criminal Justice and Courts Act 2015, action cannot be taken against an education setting, as this specifies that the ill-treatment or wilful neglect of an individual must come from a 'care provider'. By not holding directors responsible for allowing closed cultures and inappropriate behaviour to develop at their services, there is a lack of accountability for the people responsible for the significant levels of trauma that children and young people with severe learning disabilities experience as a result.

In order to rectify this issues he CBF would also like to propose that that existing legislation is updated to ensure that directors of independent schools (including those in the independent sector) can be prosecuted in the same way that care providers at an independent hospital would be when there is evidence of wilful neglect or abuse at their setting caused by a lack of training, supervision and quality assurance and a fit and proper persons test is introduced. If these recommendations are not implemented, vulnerable children will continue to be at risk of harm.

At a more preventative level the CBF recommends enhancing services and support within the community, so that using residential settings is a last resort – details on early intervention programmes which can support this can be found here. We also recommend improving access to advocacy for children and young people with severe learning disabilities in residential settings, as recommended by the Child Safeguarding Practice Review Panel and the Children's Commissioner. This should include access to non-instructed advocacy.

Institutional abuse

On top of changing the legislation to ensure that residential school directors can be prosecuted in the same way that care providers at a hospital would be, and to combine the powers of Ofsted and CQC, there must also be changes to address the multiple and ongoing cases of institutional abuse, in order to capture the harm that can occur outside of the family home. Abuse may range from one off incidents to ongoing ill-treatment and can stem from neglect or poor professional practice as a result of the structure, policies, processes, and practices within an organisation. The systemic abuse of children with learning disabilities and autism in Doncaster detailed in the Hesley reviews is a clear example of significant harm arising from institutional abuse and neglect, stemming from closed cultures. **Finding 10.3** (**Phase 1**) - "The individuals responsible for this harm and abuse are the subject of criminal investigations. While no system, however robust, can fully eliminate all risk of harm and abuse, those risks were exacerbated by wider systemic failings arising from inadequate leadership and management, poor quality training, support and supervision of the workforce, weak compliance with legal requirements, and regulatory failure." (Page 73).

There have been multiple cases of serious harm to children with special educational needs and disabilities in educational settings, often related to restraint, seclusion and segregation (e.g., Whitefield School, Life Wirral).

Examples of neglect and acts of omission by an institution may include:

- Ignoring medical, emotional, or physical care needs
- Failure to provide access to appropriate health, care, and support or educational services
- The withholding of the necessities of life, such as medication, adequate nutrition, and heating
- Failure to train and supervise staff and/or inappropriate or inadequate systems, process and procedures

In order to better protect children with disabilities from risks outside of their home, the CBF recommends including a definition of institutional abuse in guidance. The establishment of a clear and concise definition would mean that professionals and staff members have a framework for identifying and addressing abuse, ensuring that all children receive the protection and care they deserve.

February 2025.