



Whatever Next?

YOUNG DISABLED PEOPLE LEAVING CARE

Policy briefing on the Children (Leaving Care) Bill (Committee Stage)

We welcome the Government's move to legislate on leaving care issues, in line with recommendations from Safeguards Review and subsequent consultation. However, we are concerned that the provisions set out in the Bill may further marginalize the needs of disabled young people and disadvantage them in a number of unforeseen ways.

General issues in framing the Bill

According to the Government's own estimates, in *Me Survive Out There*, up to a quarter of all looked after young people may be 'disabled in some way'. However, we feel that the Bill has been framed so as to exclude large numbers of them from its provisions. We are concerned that this goes against the Government's stated intentions to reduce segregation, and to include disabled people in the mainstream of policy making. A care leavers Bill that excludes large numbers of care leavers seems a less than convincing piece of legislation.

It is our view that the Bill should explicitly locate local authorities' leaving duties within the context of the 1986 Disabled Persons Act and the 1995 Disability Discrimination Act. In this sense, authorities should meet the needs of disabled young people through the same kind and quality of services provided to other care leavers. To do otherwise would raise conflicts of policy and legislation.

The scope of regulation and guidance

Extensive guidance and regulation is an established feature of social policy making. However, we feel that too much of the Bill is left to regulation and that there are important points of principle and practice that would be better included in the wording of the Bill.

Eligibility criteria

Paragraph 19A outlines the purpose of the Bill clearly and concisely and we would support this intention. However, we have grave concerns about the criteria for eligibility in 19B (and to a lesser extent 24).

The use of **chronological age** to define eligibility appears simple but is fraught with difficulties. Disabled young people are more likely to remain looked after for longer than their non-disabled peers. Many will not leave care until they are 18 or 19 years old. We feel that it would be less discriminatory to replace the age criterion with a realistic time-scale—e.g. 'from their sixteenth birthday and for a subsequent period

of two years after the date on which they ceased to be looked after'. This would be consistent with the Bill's intentions and would not substantively alter its implementation. A similar principle could be applied to section 24 (e.g. replacing age 21 with a period of five years after leaving care).

The intention to regulate on prescribed age and qualifying period seems unnecessarily obscure and there is little reason why these should not be specified in the Bill. More importantly, we are very concerned by the Secretary of State's role in prescribing the eligibility or otherwise of 'additional categories of children'. It is clear from the explanatory notes and consultation documents that this is the mechanism that will be used to exclude large numbers of disabled young people from the provisions of the Bill. The consequence of regulation is that such exclusion may not be debated in Parliament.

In particular, the experience of young disabled people who have made regular use of 'respite care' should be considered very carefully. Many young people live away from home for between two and six nights every week under the euphemism of 'short break' services. Their experiences of institutional or substitute family care are often very similar to children looked after within mainstream services. Others live wholly or substantively in the care of authorities under so-called 'educational placements' (sometimes for 52 weeks of the year). Such children may not appear on lists of looked after children. In addition, there are many young disabled people, accommodated within hospitals, hospices and voluntary sector homes, whose position is often ambiguous. We welcome the definition of 'looked after' in section 24(2), which clarifies many of these concerns.

Assessment and pathway planning

The proposed mechanisms of support through pathway planning and personal advisers build on existing good practice and are broadly to be welcomed. However, great care will be required in legislating and regulating to ensure that disabled young people receive the same standards and quality of care. It is arguable that more detail on the form and content of such planning should be guaranteed within the wording of the Bill (rather than within regulation). In particular, we are concerned about the rights of disabled children to influence their plan and to exercise choice in the selection of a personal adviser.

It is all too common for disabled children to be denied their rights to proper consultation under the Children Act and the United Nations Convention on the Rights of the Child. This is particularly true for children with perceived learning difficulties, complex health needs and those who do not use speech as their first mode of communication. It is our view that the Bill should more clearly include a guarantee to meaningful expression of views by the child, and that this should be reinforced in the guidance with specific reference to disabled young people. We believe that phrases like 'so far as is reasonable' are unnecessary in this context and should be avoided.

The aspirational goals of pathway planning towards independence and participation in education, employment and citizenship are to be applauded and it will be important to emphasise that these should be applied equally to disabled young people.

There are considerable areas of potential duplication/conflict between the Bill's proposals for assessment and pathway planning and the provisions of relevant disability legislation (such as Section 2 of the 1970 Chronically Sick and Disabled Persons Act, Sections 5 and 6 of the 1986 Disabled Persons Act and the 1990 Community Care Act). It will be important to clarify these relationships in the Bill.

Personal advisers

The choice of personal advisers seems critical to the success of pathway planning and support for care leavers. We are concerned that disabled young people should be given the same choices and rights in expressing their views about who should perform this role. In addition, it will be important for guidance to ensure that appropriate options are presented to young disabled people—including the option to choose a suitable disabled adult in this role. Thought should be given to encouraging the contribution of disabled people's organisations and Centres for Independent Living in providing adults for this role.

Appropriate and explicit linkage to the 1986 Disabled Persons Act might help to clarify the role of advisers in transition for looked after disabled young people. The provision for regulation of 'other groups' in 23D(1) would be better dealt with in the wording of the Bill, to include all looked after children.

We are concerned that the prescription of personal advisers' duties in 23D(2) leaves a great deal unsaid and that this would benefit from clarification in the Bill. There are also considerable advocacy and communication support issues for many disabled children that will need to be addressed in regulation. Further advice should be sought from young disabled people about these issues. We have similar concerns about the content of pathway plans in 23E.

Suitable accommodation

Subsection 23B(9) rightly highlights the significance of 'suitable accommodation'. However, the explanatory notes make no reference to disability issues here. This is surprising, given the significant housing needs of many disabled care leavers and the Government's recent provisions for accessible housing policy, not to mention the Disability Discrimination Act. Again, it is our perception that the Bill has been consistently framed without disabled people's needs in mind—while not explicitly saying so.

Financial assistance

We would support other groups in arguing that a minimal level of leaving care grant should be included as a local authority duty rather than a power. More generally, we feel that more clarification is required about the relationship between financial assistance for care leavers and that available to young disabled people (e.g. the Independent Living Fund and forthcoming changes for 16 and 17 year olds under the 1996 Community Care (Direct Payments) Act).

Summary Points

- Disabled young people form a significant group in the population of care leavers.
- Many will be left out because of the way that services are organised and labelled, rather than because of differences in their needs.
- The Bill should be framed so as to explicitly include disabled young people with a variety of looked after experiences.
- Explicit links should be made to relevant disability legislation in the wording of the Bill.
- Too much is being left to regulation.
- There is concern about disabled children's rights to consultation and participation.