Response ID ANON-HFCU-9NTH-9

Submitted to Law Commission consultation on disabled children's social care law
Submitted on 2025-01-30 22:34:34

About you

What is your name?

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What is the name of your organisation?

Enter the name of your organisation::
Coram Children's Legal Centre

Please share any details you wish us to know about your organisation below::

Coram Children's Legal Centre (CCLC) holds Legal Aid Agency contracts in education law, family law, immigration and asylum law, community care law, and public law. CCLC represents children, or their parents depending on the area of law, in hundreds of cases per year where the subject at the heart of the legal case is a child.

As well as being a legal aid provider, CCLC delivers charitable grant-funded work providing free advice line and outreach advice services to thousands of children, young people and families each year, including through the Child Law Advice Service (CLAS).

The Child Law Advice Service (CLAS) is a Department for Education-funded service providing free legal advice and information to members of the public on family and education law. It is one of the very few alternative sources of free advice on out of scope family and education law issues. Between 2020 and 2023, CLAS provided 50,508 individual sessions of advice via telephone and email to 42,396 unique clients. Demand for this service is consistently extremely high. CLAS also provides free online legal information and received 4,550,386 unique visitors to its website during the same period.

This response also contains evidence from Coram Voice, a national advocacy charity providing independent advocacy services to children in care and on the edge of care across the UK.

Are you responding to this consultation in a personal capacity or on behalf of your organisation?

Response on behalf of organisation

If other, please state::

Confidentiality

If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential.:

N/a

Anonymity

No

Chapter 2: The impact of this review (Q 1-2)

Consultation Question 1.

Please share your views below::

No comment

Consultation Question 2.

Please share your views and/or evidence below::

No comment

Chapter 3: Assessing the child’s needs – obtaining an assessment (Q 3-6)

Consultation Question 3.

Yes

Please expand on your answer below::

Implementing a single, defined duty with clear guidance on its application could lead to more effective decision making, and better oversight.

This issue particularly affects children with complex disabilities, who are likely to have multiple duties owed to them. It is especially critical during the transition from children's social care to adult social care to ensure that both sectors make consistent and well-informed decisions regarding the child’s needs. For example, a 17-year-old should not be disadvantaged by a delay in conducting a comprehensive assessment of their needs.

In the long term, this approach may result in cost savings for local authorities, as assessments will be more thorough and less likely to need revision.

Bringing the threshold to assess in line with that under the Care Act 2014 (as seems to be proposed under Question 4 below) would provide some legal clarity. The guidance should emphasize the importance of assessors considering whether any other relevant statutory assessment duties are triggered when evaluating the social care needs of a disabled child.

Consultation Question 4.

Option 2

Please expand on your answer below::

We are of the view that the threshold must remain low, to prevent vulnerable children from being wrongly denied assessments and services as a result of a lack of knowledge or information on the part of those considering whether to carry out an assessment. We would strongly oppose options (3) and (4) on that basis.

As an example of the above, Coram’s Child Law Advice Service advised a single father of a non-verbal autistic child, who had requested a needs assessment from his local authority. The authority refused on the basis that the child did not meet the threshold for an assessment, and offered an early help support worker instead. Had the father accepted this offer, the child would have been denied the opportunity of accessing statutory support under a Child in Need plan. The local authority had fundamentally misunderstood the current, low threshold. Raising or increasing the complexity of the threshold will lead to many more children wrongly missing out on access to support.

We agree with the consultation paper that it is important to ensure clarity, both for local authorities and to manage the expectations of the families of those children affected. We suggest a focus on simplifying the law, both through a single, express duty to assess as set out at Question 3, and by aligning with adult social care law by setting the threshold to assess as when it appears the child may have needs for care and support (option 2). If the current threshold is not being maintained, we would also prefer option (2) as being consistent with the Care Act 2014, providing further clarity on how the law should be applied.

On the basis of clarity, we would oppose option (5) as out of step with current case law, and creating uncertainty for families and potentially a considerable additional burden of work for local authorities for no apparent advantage. Local authorities may feel encouraged or obliged to make extensive inquiries into the support provided by family before undertaking an assessment. It could also be suggested that all disabled children may be presumed to have needs above and beyond what a non-disabled child needs, and would therefore benefit from some level of additional support.

Consultation Question 5.

Option 3

Please expand on your answer below::

We prefer option (3)(c), as our experience is that assessments can be repetitive and/or incomplete. This approach could be particularly effective in cases where a child is transitioning to adult social care, especially when there is a lack of communication between Adult Social Care and Children’s Social Care. We find that there is often a disjointed approach, where assessments are neither shared nor combined. As a result, we believe the current system is neither workable nor fair to children and their parents or carers, who face significant challenges in navigating multiple assessments and understanding their rights, as outlined in the consultation paper. Consequently we do not consider options (1) and (2) to be to be workable in practice.

There may be instances where it is more practical for assessments to remain separate, for a variety of reasons. Statutory guidance could provide an open list of scenarios where there is a legitimate reason not to combine assessments, offering clarity on when separate assessments are justified.

Sub-option 3(c)

Please expand on your answer below::

Please see above.

Consultation Question 6.

Please share your views and experiences below::

We agree with the detailed response submitted by Garden Court Chambers on this point, in that great care must be taken when relying on capacity assessments, particularly where there may have been changes in the protected party's medical condition or mental capacity. Since assessments can become outdated over time, we do not believe that equivalent assessments should be used routinely.

Where equivalent assessments under the Mental Capacity Act 2005 are inadequate or lacking in detail, a challenge can be brought through the Court of Protection, and further evidence of capacity can be ordered under s.49 of the MCA 2005 which is funded by the NHS Trust, rather than by the parties to the proceedings. Much greater care would need to be taken in the context of disabled children's social care, where there is no recourse to non-means tested legal aid in order to challenge an inadequate assessment, and indeed no means of challenge in most cases other than judicial review.

We are concerned that lack of legal recourse in children's social care would lead to some local authorities seeking to save costs by relying on older assessments or carrying out very brief and inadequate revised assessments. Any possibility of relying upon equivalent assessments must be accompanied by detailed guidance of how this would work in practice (including requiring full reasons to be given), and specifying that this should not be a routine occurrence. That said, we do believe that the option of equivalent assessments may be appropriate in some cases, provided the threshold for assessment remains low and a single express duty is enacted: for example, where there is concern around repetitive and/ or unnecessary assessments, and subject to safeguards such as the duty to provide reasons and/or a rebuttable presumption.

Chapter 4: Assessing the child's needs – the process and content of the assessment (Q 7-12)

Consultation Question 7.

Please share your experiences below::

At Coram Children's Legal Centre, the Child Law Advice Centre, and Coram Voice we are usually contacted where there has been a negative experience in assessing the social care needs of disabled children. Some examples include:

- Where families are declined an assessment and referred for early help/ early intervention services instead, despite the services offered by the early help team being inadequate to meet the needs of the child. For example, a case where a child with diagnosed learning difficulties and a genetic condition causing chronic cardiovascular and feeding problems required support to attend social opportunities that their family could not meet (due to their own medical issues), and was referred inappropriately to the early help team, which cannot assess for short breaks as required.

- Families being declined an assessment and directed by the local authority to pay privately/ using their Disability Living Allowance funds for any extra support needed.

- Where local authorities are assessing children under the Chronically Sick and Disabled Person's Act 1970 rather than within the framework of s.17 Children Act 1989, leading to a CSDPA plan which does not offer the full range of services that would be available to the child under a Child in Need plan.

- Lack of consideration of the views of other professionals working with the child who have relevant expertise, especially where the external professional's recommendation is for a higher level of support (and often therefor higher cost) than the local authority has provided. For instance, Coram's Child Law Advice Service supported a family whose children had been assessed by an independent specialist centre for complex developmental trauma as in need of specialist trauma therapy, but the local authority Child in Need plan expressed a preference for a short course of play therapy. The latter would have had no cost implication for the authority as opposed to the funding required for the specialist therapy, but was inappropriate to the needs of the children.

Consultation Question 8.

Yes

Please expand on your answer below::

We agree, provided that the guidance defines "proportionate and appropriate" in relation to a child's perceived needs. Specifically, an assessment should consider the severity of a child's needs and ensure that the necessary safeguards and measures are implemented accordingly.

Consultation Question 9.

Yes

Please expand on your answer below::

We agree, and consider that expertise in specific conditions would improve the process for all involved. Long term it could also reduce costs for local authorities, by ensuring a correct assessment and appropriate support are given the first time around, rather than after a child's circumstances have deteriorated following inappropriate support when an assessor did not properly understand their condition.

Please share your views below::

Please see above.

Consultation Question 10.

Yes

Please expand on your answer below::

This would be in line with practice in other areas of law.

Consultation Question 11.

Yes

Please expand on your answer below::

We agree. However, it must be clear that the engagement of statutory duties by other areas of local or national government does not diminish or replace the duty owed by the local authority, and cannot be considered an alternative to the local authority's duties.

Consultation Question 12.

Please share your views below::

No comment.

Chapter 5: Assessing the needs of parents and carers (Q 13-17)

Consultation Question 13.

Please share your experiences below::

No comment.

Consultation Question 14.

Yes

Please expand on your answer below::

With regards to part (b) we suggest that this could be triggered where the disabled child's needs were being reassessed (unless there is good reason not to do so), to ensure a holistic consideration of carer and child's needs.

Consultation Question 15.

Yes

Please expand on your answer below::

We agree with the reasoning of the consultation paper.

Consultation Question 16.

Yes

Please expand on your answer below::

This would be in line with practice in other areas.

Consultation Question 17.

Yes

Please expand on your answer below::

Yes, provided that statutory guidance clearly explains and provides examples of what constitutes "proportionate and appropriate" in various circumstances, to prevent any potential misunderstanding of these principles.

Chapter 6: Assessing siblings' needs (Q 18-21)

Consultation Question 18.

Please share your experiences below::

Our role as an advice and legal service means we generally see assessments that have been inadequately done. Our experience is that siblings' needs are generally not considered in any depth, and the ongoing impact upon them is not taken into account.

Consultation Question 19.

Please share your experiences below::

No comment

Consultation Question 20.

Yes

Please expand on your answer below::

It is important that the needs of all the children in the family are properly considered. If a disabled child's needs can only be met in circumstances that mean their siblings' care needs are not being met, then the disabled child's needs cannot be considered to be met in a sustainable manner.

Consultation Question 21.

Other

Please expand on your answer below::

We would agree only if robust and detailed statutory guidance sets out the differences between children and adult carers, which must in particular set out the different approach to assessment that must taken place for each.

Chapter 7: Eligibility for services other than short breaks (Q 22-30)

Consultation Question 22.

Yes

Please expand on your answer below::

We agree. However, the introduction of a statutory duty should not lead to a reduction in the range of services available to disabled children and their families, nor should it narrow the statutory powers that enable their provision. Specifically, if amendments are made to Section 17 of the Children Act 1989 to exclude disabled children as deemed 'children in need', the broader framework for providing social care to disabled children should retain the same flexibility and scope currently afforded under Section 17. It is important to note that not all cases will meet eligibility criteria, so residual powers will remain crucial.

The overall legislative framework should ensure that children's needs are assessed holistically, without the unnecessary complexity of separating different types of needs. Moreover, there would need to be consideration as to how to prevent cases from being lost between separate legal frameworks.

Consultation Question 23.

Yes

Please expand on your answer below::

In principle, this would be helpful in avoiding a 'postcode lottery' and creating a fairer system for all. However, again, careful implementation is crucial. The eligibility criteria would need to be clear enough for children and families to hold local authorities to account; but if it's too rigid, it could end up as a gatekeeping mechanism, ultimately weakening children's rights.

Consultation Question 24.

Please share your views below::

The consultation paper indicates that eligibility criteria will be co-produced between central and local government, due to resource implications. We anticipate that the criteria will be produced in regulations, rather than primary legislation. We consider that a key feature should be to reflect the need to support the child's carers, as that will assist the child to have as normal a life as possible.

This is supported by the Children Act 1989, which states at Schedule 2 paragraph 6 that "Every local authority shall provide services designed (a) to minimise the effect on disabled children within their area of their disabilities, (b) to give such children the opportunity to lead lives which are as normal as possible, and (c) to assist individuals who provide care for such children to continue to do so, or to do so more effectively by giving them breaks from caring". This sets out the current expectation that services must consider the situation of the whole family holistically, in the context of the disabled child's needs being met.

It is important that eligibility criteria should not create a threshold that requires parents or carers to reach a point where they are unable to sustain their role, or are at risk of compromising their physical or mental health, before assistance is provided. Instead, eligibility criteria should reflect the principle that disabled children should have the opportunity to enjoy as normal a family life as possible. This means that families should not be placed under an unreasonable level of strain due to the demands of the parents' or carers' caregiving responsibilities.

Consequently, the criteria should explicitly recognize that, in order to support disabled children in enjoying a normal family life, parents or carers must have the capacity to: (a) meet the needs of any other children in the family, (b) perform essential day-to-day tasks required to manage the household, and (c) have a reasonable opportunity to engage in education, training, or regular leisure activities on their own behalf. These are currently recognised in the Breaks for Carers of Disabled Children Regulations 2011, and should not be diminished.

Consultation Question 25.

Please provide copies of any eligibility criteria here::
No file uploaded

Consultation Question 26.

Yes

Please expand on your answer below::

We agree that this is important. We have seen examples through our practice of local authorities offering services to disable children under the Chronically Sick and Disabled Person's Act 1970 by way of a CSDPA plan, which does not provide the full range of services that would be available to the child and their families under a Child in Need plan. It is important that all disabled children and their families are able to access the full range of services available to meet their needs.

Consultation Question 27.

Please share your views below::

The requirement to be physically present is a more inclusive and preferable option. However, consideration should be given to where responsibility lies for looked-after children placed out of area.

Either way, we believe that statutory powers to provide services to disabled children (in addition to the proposed statutory duty) should be exercisable by local authorities for any disabled child who is physically present in their area, without the need for a requirement of ordinary residence.

If disabled children are to be taken out of s.17 Children Act 1989 as a category of children in need, we would strongly urge importing powers that are at least equivalent to those under s.17 into the new statutory framework alongside the new statutory duty. It is important that there is no reduction in the discretion that local authorities currently have to provide services to disabled children and their families under s.17.

Consultation Question 28.

Please share your views below::

No comment.

Consultation Question 29.

Yes

Please expand on your answer below::

Section 17 Children Act 1989 currently sets out a broad general duty/ discretion that allows for the provision of services to a child in need with a view to safeguarding and promoting the child's welfare, and to any member of their family for the same purpose. The range of services is wide, and includes providing accommodation for the child and their family, and help in kind or in cash.

If disabled children are to be removed as a category of children in need under s.17, there must be no diminution of their rights or the support available to them and their families. We would suggest replicating these provisions or creating new similar provisions that are no less wide and flexible alongside the new statutory duty.

Consultation Question 30.

Yes

Please expand on your answer below::

We agree with the reasoning of the consultation paper.

Chapter 8: Eligibility for short breaks (Q 31-36)

Consultation Question 31.

Please provide your experiences below::

N/a

Consultation Question 32.

Please tell us about short breaks services in your area below::

N/a

Please upload any relevant files here::
No file uploaded

Consultation Question 33.

Yes

Please expand on your answer below::

We agree. However, it would be helpful to include in the definition the provision of care alongside the usual parent or carer, so it is not limited to providing a “break from caring” by providing care to temporarily replace the usual parent or carer.

The term "short break" can be misleading, as it does not easily align with the concept of regular, day-to-day care that supplements the parents' or carers' efforts. Many families with a disabled child who has high needs require consistent, ongoing support. It should be clear that the scope and level of care provided should not be limited by the term ‘short break’ (if that term is retained in the new statutory framework). The configuration and extent of care should be based on the child's needs, not the label attached to the service.

We would further suggest that consideration should be given to ensuring that parents or family carers have the right to ongoing support if they choose not to directly provide the care their children need, such as when they wish to engage in paid work. This approach could help reduce the number of families of disabled children living in poverty and may have long-term positive effects across the entire family. Moreover, it could lead to reduced demand across statutory services by supporting families in achieving greater financial stability.

Consultation Question 34.

Other

Please expand on your answer below::

Yes, provided, as above, that it is made clear that the term ‘short breaks’ encompasses a broad range of service configurations designed to assist with the care of a disabled child. Where appropriate, this should include regular support for meeting the needs of a disabled child with high needs, both in the home and in the community.

Consultation Question 35.

Other

Please expand on your answer below::

Yes, provided the eligibility criteria considers the impact on the parents or carers and the impact on the whole family (including siblings) of the parent or carer’s role in meeting the needs of the disabled child.

Consultation Question 36.

Yes

Please expand on your answer below::

Chapter 9: The range of services that should be available (Q 37-40)

Consultation Question 37.

Please share your experiences below::

Our role as an advice and legal service means that we mainly see families who are in dispute with local authorities with regard to the level of support they receive. The majority of queries centre around needing additional support to supplement the parent or family carer’s role in caring for their disabled child. Parents are often under considerable strain, and may have their own physical and mental health needs, other children in the family to care for, and the financial burden of supporting the family. The parents are seeking more help with caring so that an adequate level of normal family life can be provided for the whole family.

Consultation Question 38.

Please tell us below::

N/a

Consultation Question 39.

Yes

Please expand on your answer below::

This would both empower parents and family carers to exercise their rights directly with local authorities, and provide additional clarity for local authorities as to the scope of their powers and duties.

Consultation Question 40.

Please share your views below::

The consultation report proposes the following examples of services that could be included in the open list:

- accommodation;
- the provision of care at home and elsewhere;
- educational or leisure activities;
- services to assist parents and carers in the evening, at weekends and during the school holidays;
- adaptations to the home;
- counselling and other types of social work;
- goods and facilities; and
- information, advice and advocacy.

We strongly recommend that the distinction between short breaks involving accommodation away from home and longer-term accommodation away from home is preserved under the new statutory duty. Longer term arrangements are provided for under s.20(1) Children Act 1989, along with the associated legal framework and regulations, constitutes a comprehensive statutory scheme that sets out when a child can be voluntarily accommodated by the local authority without their parents. It also outlines key principles for decision-making, such as considerations regarding placement (e.g., proximity to the child's home) and requirements for detailed care planning.

There should also be clear guidance on whether accommodation provided under the new statutory duty can include provisions for a disabled child to stay with their family, or if it is restricted to the child alone. This relates to broader concerns that changes to the legal framework for services for disabled children could lead to the discontinuation of certain services, particularly accommodation for the child and their family. Section 17 of the Children Act 1989 provides a power to offer a range of services to the family of a 'child in need' (which currently includes disabled children), including accommodation for both the child and their family when necessary to safeguard or promote the child's welfare. We are concerned that any changes to the legal framework for disabled children should not narrow the scope of this power, particularly regarding families with disabled children. The ability to provide such accommodation under Section 17 is a critical safety net for families. Should the approach be to remove disabled children from Section 17, this is a key area that must be considered.

Furthermore, cash support is not currently included in the provisional list of services proposed. Section 17(7) Children Act 1989 currently grants local authorities the power to provide cash to the family of a 'child in need', or any member of that child's family, when it is provided for the purpose of safeguarding or promoting the child's welfare. This provision can be unconditional or subject to conditions regarding repayment, offering a more flexible form of assistance than direct payments. It is important that the option to meet needs through this type of provision remains accessible to disabled children and their families, should a new statutory duty be introduced. A new statutory duty should not in any way lead to a diminution of the support offered.

Chapter 10: How to provide services (Q 41-43)

Consultation Question 41.

Yes

Please expand on your answer below::

It should be clearly set out that direct payments are a choice. Where they will work best for some, in other cases parents may welcome not having to undertake the difficult job of finding additional carers themselves, on top of their existing responsibilities.

Consultation Question 42.

Yes

Please expand on your answer below::

Consultation Question 43.

Yes

Please expand on your answer below::

Chapter 11: The plan to meet the needs of a disabled child (Q 44-46)

Consultation Question 44.

Yes

Please expand on your answer below::

Consultation Question 45.

Yes

Please expand on your answer below::

Yes, provided it is statutory guidance (and therefore enforceable unless there is a good reason not to follow it).

Consultation Question 46.

Yes

Please expand on your answer below::

Yes, provided combined care plans maintain a clear structure that identifies the source of each service e.g. whether it relates to social care, care leaver services, educational provision, or other areas. This clarity is essential so that parents, carers, and the child can easily understand what services are being provided, the basis for these provisions, and ensure they align with their entitlements.

Chapter 12: Means testing and charging (Q 47-48)

Consultation Question 47.

Please provide examples below::

No comment.

If you would like to upload any documents, please do so here::
No file uploaded

Consultation Question 48.

Please share your views below::

No comment.

Chapter 13: The intersection with SEND (Q 49)

Consultation Question 49.

Please share your views below::

There is wide potential for greater alignment. We would particularly welcome this with regards to the assessment, appeals and enforcement processes. For example, currently children's social care and special educational needs departments in local authorities do not routinely share information, and operate separately. This can result in a disabled child being assessed as a disabled child in need under s. 17 Children Act 1989 without that triggering any assessment of their special educational needs. An integrated approach would allow a more holistic assessment, and allow for combined assessments as discussed in Question (5). This would be more efficient for local authorities, and fairer to children and their parents or carers, who face significant challenges in navigating multiple assessments and understanding their rights.

The enforcement regime for securing provision outlined in SEND law is more robust, and we see significant benefits in aligning disabled children's social care law with this system. Section 42 Children and Families Act 2014 imposes an absolute duty to secure special educational provision and healthcare provision in an EHCP. However, it does not apply to social care provision in an EHCP. Case law has made clear that a claim for judicial review based on a breach of section 42 is a swift and effective remedy, and will generally result in a mandatory order with tight timescales (ordinarily 5 weeks) for a local authority to comply. Implementing a similar statutory duty in social care, that mirrors the strength of the duty in SEND law, would help ensure that the necessary services are delivered effectively and consistently.

Chapter 14: The intersection with health care (Q 50-52)

Consultation Question 50.

Yes

Please expand on your answer below::

We agree that this would provide clarity.

Consultation Question 51.

Yes

Please expand on your answer below::

We agree that this would provide clarity and transparency.

Consultation Question 52.

Yes

Please expand on your answer below::

We agree that this should improve decision making and reduce the risk of disabled children slipping through the cracks between services. Point (5) in particular is key: disabled children must not be left in limbo or face inadequate provision while disputes between two public authorities are being resolved. One public authority should assume responsibility for the costs and take charge of the situation, even on a without prejudice basis. Disagreements over financial responsibility between the authorities must be handled separately and should not impact the quality or continuity of services provided to the disabled child.

Chapter 15: The transition to adult social care (Q 53-55)

Consultation Question 53.

Please share your views below::

Problems related to the transition to adult support is a recurring issue that comes up in Coram Voice's advocacy services. Advocacy (including non-instructed advocacy) is an important part of ensuring children in care and care leavers' voices (including those with disabilities) are heard in matters that affect them and that their rights are upheld as illustrated by the below case study.

There is a chronic lack of information sharing between children and adult social care services, which leads to a lack of transition planning, or inadequate/ impracticable arrangements being made. Moreover, transition planning is often left to the last minute, leading to gaps in provision where children's social care is brought to an end before adult social care provisions are in place, or a significant drop in the level or type of support provided.

This is compounded by a failure to communicate with other parts of the local authority, such as the special education needs team (as discussed at question 49 above), which can lead to serious disruption to SEND provision if the adult social care team does not take into account what care is required for a young person's educational needs to continue to be met.

In order to reduce the 'cliff edge' of transition, changes to social care law for disabled children should, wherever possible, be consistent with the Care Act 2014 and other established adult law and guidance (such as the Mental Capacity Act, the Mental Health Act and Continuing Health Care guidance) so as to remove the need to make changes to either entitlement, support or provision simply because you turn 18.

Coram Voice's specialist disability advocate has collated some of the most common issues disabled young people face as they grow older, particularly children with disabilities in care. These include:

Process issues
- Lack of planning or failure to plan at all until it's too late e.g. Care Act Assessments, Pathway plans, Mental Capacity Assessments and Education, Health and Care plans not completed lawfully or in a timely fashion
- Drift: decisions have been made about future planning, but they have not been acted upon

Failure to work together
- Failure to communicate between agencies
- Disagreements between professionals, carers and social workers about what is in a young person's best interests

Rights based issues
- Lack of recognition that disabled adults can also be care leavers/entitled to care leaver support
- Disputes about how much capacity a young person has
- Refusal to assess and/or such rigid criteria that individual needs are not considered
- Failure to convene meetings or refer to court when disputes arise

Non-person-centred approach:
- Failure to listen to young people about their wishes with regards to transition planning, especially if they lack capacity in some areas
- Lack of appropriate communication with the young people themselves about complex issues
- Frequent changes of staff/no allocated worker who knows the young person and understands them and their needs
- Failure to prepare young people or recognise the emotional impact of transition: the need for planned endings/life story work, therapy etc.

Funding:
- Disputes between different agencies about which service funds what e.g. health, social care and education (especially if a young person was/is looked after by one LA but lives in another)
- Difficulties with identifying suitable provisions, placements, educational options etc. especially for young people 'with complex needs'
- Disputes about whether high-cost placements are justified

Case study from Coram Voice Specialist advocacy service (Alison is a pseudonym):

Alison was a 17-year-old looked after child when she was referred to the Coram Voice disability advocacy service. At this time, she was living in a specialist children's home in the north of England. Alison has autism and a learning disability.

Alison’s support workers referred her to an advocate five months before her 18th birthday, as there had been no discussions about her transition to adulthood. Alison was expressing anxieties about where she would live as an adult, and who would help her with things. Alison spoke to her social worker in Children’s Services who agreed to follow this up, but the plans remained unclear.

An advocate met with Alison and discussed her worries about the future. She also advised Alison of her rights. The advocate explained that a transition assessment should have been undertaken, so that a plan could be made for when Alison turns 18. The advocate wrote to Alison’s social worker’s manager. As a result of this, a referral was made for a transition social worker, who completed an assessment. Alison then visited some supported living providers, and a new home was identified.

Alison moved into her new home and began to settle in. By this time, she was 18 and a care leaver. However, she still did not have all the support she needed. Although Alison had a social worker with Adult Services, she had no allocated Personal Adviser (PA) in the Leaving Care Team. She also had difficulty understanding and managing money, because of her learning disability. No one had helped her to make a welfare benefit claim or access her setting up home allowance. The advocate supported Alison to make a complaint. As a result, a leaving care PA was allocated, who met with Alison to complete a pathway plan. The PA also supported Alison to make a benefits claim, and adult social care completed a mental capacity assessment regarding finances. Following this and another meeting, an appointee was arranged to support Alison in managing her money.

Alison is now enjoying life in her new home. She has been supported to purchase some items for her bedroom, using her setting up home allowance. Alison’s PA is now focusing on supporting Alison with her education, by helping her to apply for a college course for the next academic year. Alison is now feeling positive about the future and gaining skills for independence. She has a social worker and PA, as well as the staff at her home, who make sure she has access to support.

Consultation Question 54.

Yes

Please expand on your answer below::

Consultation Question 55.

Please share your views below::

We support the idea of having a set age for transition assessments, but it should be a 'no later than' age to avoid creating a barrier to early planning. Early transition planning is vital to ensure continuity of care and support, avoiding the "cliff edge" many experience when moving to adult social care.

Chapter 16: Identifying need in the local area and securing sufficient services to meet that need (Q 56-57)

Consultation Question 56.

Please tell us below::

N/a

You're welcome to upload any relevant files here::
No file uploaded

Consultation Question 57.

Please provide your views and experiences below::

N/a

Chapter 17: Co-operation and joint working (Q 58-60)

Consultation Question 58.

Please share your views below::

This could be beneficial to ensure teams within local authorities work together effectively, provided it is a senior position to ensure they can do their job effectively.

Consultation Question 59.

Please share your experiences below::

No comment.

Consultation Question 60.

Please share your views below::

Factors that hinder effective cooperation and joint working:

Rapid turnover of staff and restructuring of teams.
Lack of communication between local authority teams, preventing a holistic approach.
Clash of budgetary goals between different teams.

Factors that help effective cooperation and joint working:

Meaningful involvement of the family, ensuring the voice of the child and their family carers are heard.
Regular joint working team around the child meetings ('TAC'), bringing together social care, education and health care personnel.
Effective record keeping of TAC minutes with designated actions to hold the different teams accountable.
Having a single individual with overarching responsibility for a disabled child across different areas, such as a designated social care officer as per question 58.

Chapter 18: Remedies (Q 61-66)

Consultation Question 61.

Please share your views below::

We often see local authorities failing to meet the statutory timeframes for handling complaints, without a valid reason provided.

We've also seen local authorities prevent, or seek to prevent, complainants from escalating their complaints to stage 2 or stage 3 when the complaint has been accepted or upheld at the previous stage, despite it being their right to pursue the complaint further.

Local authorities have the discretion to exclude a person from accessing the statutory social care complaints procedure and instead direct them to the corporate complaints procedure when a complaint is made relating to a child or young person, but not on the child or young person's behalf. In several cases we've come across, the local authority argued that the complaint revolved around how the complainant (the child's parent) felt they had been treated, which is why the complaint was being considered under the corporate procedure. However, the complainants were raising serious concerns about the child's welfare and the services provided to the child. In one case, the complainant was only informed that their complaint was being handled under the corporate procedure after they attempted to escalate it to stage 3, only to be told that there was no escalation option available because the complaint was not being dealt with under the statutory social care procedure. The Local Government and Social Care Ombudsman investigated and determined that the complaint should be considered under the statutory procedure. The rules around this part of the eligibility criteria need to be tightened.

We would also highlight that the statutory guidance for local authority children's services on representations and complaints procedures were published in 2006, and have not been revised since. Regardless of whether the Law Commission recommends going ahead with the wider statutory changes considered in the consultation paper, we would recommend reviewing this guidance with a view to updating it, in addition to preventing local authorities from using their discretion to avoid use of the complaints procedure.

Consultation Question 62.

Please share your experiences below::

While the LGO's recommendations are not legally binding, our experience tells us that local authorities comply with them in the vast majority of cases. It's helpful that the LGO generally publishes its decisions, ensuring a level of accountability.

Consultation Question 63.

Please share your views below::

We do not see the benefit to this unless the Children's Commissioner is provided with an appropriate increase in resources to enable them to act upon this power in a meaningful way.

Consultation Question 64.

Please share your views below::

There needs to be greater access to legal help and legal aid for all disabled children and their families, many of whom do not currently qualify and cannot afford to self-fund.

We also need improved methods to address the misuse of the complaints system by local authorities. While the system can be effective when properly implemented, issues such as prolonged stage 2 investigations (where the complaint is not outright refused but is delayed) effectively enable local authorities to delay providing the support the child is entitled to, to the detriment of the child and their family.

As we mentioned at question 61, local authorities can also currently misuse their discretion to avoid use of the statutory procedure by deciding that a complaint is about how the parent feels they are treated, rather than concerns about the child's welfare and the services provided to the child. The guidance on this area needs amending to prevent this.

Consultation Question 65.

Please share your views below::

In principle, expanding the jurisdiction of the SEND Tribunal is appealing, as it would provide a single route of redress for children and young people with special educational needs and disabilities who also have health and social care needs. However, given the existing significant delays with appeals and a SEND system in limbo, this is not practical at the moment, as it would merely add to the backlog.

While we support the work the Law Commission is undertaking to update social care law for disabled children, this will not achieve the required change without similar work to update the legal and practice framework for specialist education support (and specialist health care) for disabled children.

Consultation Question 66.

Other

Please expand on your answer below::

We agree with the sentiment behind this proposal, but believe it does not go far enough. This proposal would be more effective if the Tribunal's jurisdiction were expanded to allow it to order local authorities to undertake assessments, rather than merely recommending them. This would ensure more timely and decisive action in meeting the needs of disabled children.

Chapter 19: The definition of disability (Q 67-69)

Consultation Question 67.

Other

Please expand on your answer below::

The definition of disability is outdated and fails to adequately encompass neurodiversity and other contemporary understandings of disability. Disability needs to be seen in the context of the impact upon a person’s daily life. A broader, more inclusive definition is necessary, reflecting the diverse experiences and needs of disabled children, including those with social, emotional, and communication challenges.

The current definition also poses problems with the way we count and record children with disabilities. The disability categories used in the Child in Need Census are dated and do not give full insight into children’s experiences. Coram Voice’s recent report, Disability, Disparity and Demand, highlighted significant disparities: 13% of care leavers are officially recorded as having a disability, while 27% self-identify as having a disability or long-term health condition. This is partly due to the current definition excluding mental health. We would suggest considering the concerns of young people in the process of drafting a new definition.

Case study: A mother contacted Coram’s Child Law Advice Service because her child, who has special educational, mental health, and social-emotional needs, meets both local thresholds and the legal criteria for a S.17 assessment. However, the local authority, due to an unlawful policy which discriminates against hidden disabilities, refused to carry out the assessment.

Given that it is the access to services which is critical, a single definition of disability that ensures no reduction in available services under either Act is preferable. The most practical definition is s. 6 of the Equality Act 2010, as it is already well-established and understood, providing clarity and consistency.

Consultation Question 68.

Yes

Please expand on your answer below::

While the exclusions are outlined in the Equality Act (Disability) Regulations 2010, we do not believe it would be fair to incorporate them into disabled children’s social care law. Excluding a child with an impairment that results in the conditions outlined in (1) – (6) children's social care would be both unfair and highly problematic. It would also contradict the inclusive approach underpinning the proposals, which aims to ensure all disabled children receive the support they need.

Consultation Question 69.

Please share your views below::

To the extent that any adaptation of the definition of "substantial and long-term" would not create inconsistency, it may be useful to adapt the definition of disability to ensure that younger children who require significantly more care than their peers without impairments can access the necessary services. This would help ensure that children with substantial care needs, even at an early age, are not excluded from essential support.

Chapter 20: Statutory principles (Q 70-73)

Consultation Question 70.

Yes

Please expand on your answer below::

This would be in line with the approach to assessing and meeting children's needs in other areas of law.

Consultation Question 71.

Yes

Please expand on your answer below::

We agree, and suggest adding the principle of least restriction to the list of considerations to which decision makers ought to have regard.

Consultation Question 72.

Please share your views below::

We are of the view that the requirement to have regard to this list is generally useful. By framing the conversation with regard to specific factors, it helps maintain focus on the desired overall outcome for the disabled person, rather than getting sidetracked by financial or operational considerations.

Consultation Question 73.

Please share your views below::

We believe that participation should not be limited by age, as all children, regardless of developmental stage, should have the opportunity to engage with the services responsible for supporting their needs.

Chapter 21: Participation (Q 74-77)

Consultation Question 74.

Other

Please expand on your answer below::

We broadly support the proposals above.

We support the introduction of opt-out independent advocacy for children with disabilities to ensure that they are made aware of the proposed legal duties and how to make requests and representations. It will be important that children and young people are actively supported to understand what their rights and entitlements are, that they can make representations and how the systems works.

In order to opt out of advocacy and make an informed decision, children and young people will need to be offered it and given clear and non-biased information of the role of advocacy and how it can benefit them. There should therefore also be a legal duty to offer disabled children independent advocacy.

Consultation Question 75.

Yes

Please expand on your answer below::

Consultation Question 76.

Option 2

Please expand on your answer below::

We prefer option (2) as being clearer for all to understand. The term 'competence' has a variety of definitions depending on context, even within a legal setting.

Consultation Question 77.

Yes

Please expand on your answer below::

We agree. While it is important to acknowledge the wishes and feelings of the child regarding participation, the decision to opt out or not engage should not automatically suspend the local authority's duty. Instead, it should trigger further investigation to ensure that the child's best interests are still being considered and that appropriate support is provided.

Chapter 22: Advocacy (Q 78-81)

Consultation Question 78.

Other

Please expand on your answer below::

Children supported under section 17 do not seem to have as clear an entitlement to advocacy as looked after children do (except for complaints). We agree that clarifying and embedding a statutory right to advocacy for every disabled child is helpful. We also believe that the right to and provision of advocacy for disabled children in the care system needs to be strengthened. Evidence from the Children's Commissioner found that on average 5% of children entitled to advocacy accesses it. We agree with the position taken by the Independent Review of Children's Social care that "there should be an expectation that a child's advocate will attend care planning meetings and that no significant decisions should be made without the input of the child, with or via their advocate." (The independent review of children's social care – final report).

Advocacy plays a vital role in safeguarding children. It enables children to have a distinct voice. The child's voice is essential in terms of identifying where the system is not working understanding their experiences. For some children who cannot directly share their wishes and feelings, this may include partially instructed or non-instructed advocacy. Coram Voice's recent report 'Disability, Disparity and Demand' shows how children with disabilities and complex needs continue to be failed by a system that do not understand their experiences.

We support the call for independent advocacy to be available to children, and believe this should be offered to children on an opt out basis when they need it, including in assessments, reviews, and when making representations.

There is a need to update the statutory guidance on advocacy for children, be clear on the groups who should be entitled to advocacy and who should commission and provide it. The duties in statutory guidance identified in paragraph 22.10 of the consultation paper to secure access to advocacy (rather than a duty to commission it) leads to very patchy access; with the majority of children being unaware of their entitlement to advocacy and how to access it, and some providers making it available where other do not. For example, some children's homes choose to commission visiting advocacy to regularly see children in the homes, where other do not. Local authority children's advocacy contracts are inconsistent, and this will apply likewise to advocacy support for disabled children under any new legal framework unless the issue of commissioning is addressed.

The Department for Education consulted on a revised version of the National Standards for the Provision of Children Advocacy Services 2002 in 2023, but new standards have yet to be published. Nor have the statutory guidance for local authorities accompanying it been published. This leaves us with existing standards and guidance on advocacy that are woefully out of date, and the work undertaken to update the framework not capitalised on. Current lack of clarity around what should be available to whom means that too many children are not supported to have their voices heard. Without fixing this issue we will continue to see children, including disabled children, failed by the system.

We are concerned with the proposal to mirror adult entitlement to advocacy for children. There are differences between adults and children which is why distinct standards are needed for the provision of advocacy for children. What makes children's advocacy intrinsically different to adult advocacy is the important role that parents often play in their lives. However, as recognised by the UN Convention on the Rights of the Child, children are rights holders in their own right rather than just dependants. If you don't make specific provisions for the child's wishes, the person or the entity with parental responsibility for them can override their rights.

We are particularly concerned by the proposal that the right to advocacy will only apply to a child "who would otherwise have difficulty in participating in the assessment" and will not apply where "there is already an appropriate person who can represent and support that child".

In brief, our concerns are a.) that a child's entitlement to advocacy support hinges on how much difficulty the child has participating in social care decision making and b) that if the parent is able to, they will speak on the child's behalf. This effectively removes the right to advocacy for children whose parents want to speak for them and makes the parents' wishes and views interchangeable with the child's. It also removes the option of advocacy support for a high functioning disabled child, who may still require support to fully have their voice and views heard. Finally, it suggests that a parent is as equipped as a professional advocate to know a child's rights and navigate the social care system, which shows a misunderstanding of the expertise that advocates bring to the assessment and planning process.

The requirement for the child to have a "difficulty in participating" to access advocacy may unjustly limit access for those who could benefit from advocacy but do not meet this subjective threshold. Children inherently have difficulty navigating the care system and participating effectively. We must also recognise the power imbalance between children and professionals, which can further complicate their ability to engage and be heard. Even where a child is able to express their views, they may not be clear on how things work (processes, procedures, roles and responsibilities), what the language used means (jargon, acronyms), or what should happen (rights and entitlements).

We have seen a lack of clarity with the term "substantial difficulty" in the Care Act 2014. It is a diluted version of the Mental Capacity Assessment, leading to varied interpretations by social workers and, as a result, inconsistent application. Anecdotally, advocates at Coram Voice have had conversations with social workers that refused to refer for an advocate, as the person did not have "substantial difficulty". Often the person wanted advocacy support due to the difficult relationship with the social worker and not feeling listened to by them, rather than due to a "substantial difficulty" in participating. When challenged by the advocate, they would often concur and provide a referral for advocacy, but this only happened if the people that wanted advocacy support found their way to an advocacy provider independently and the advocacy provider is able take the case without a referral. Depending on the contract with the local authority the provider could take this under the general advocacy contract, but this isn't always commissioned and has other issues as well. There is a risk that the same will happen if this proposal is implemented.

This could also be another area where adultification occurs, with some children not getting the support they need, as they would not be seen to have "difficulty in participating" due to assumptions about their maturity and/or capability.

While assessing "difficulty in participating" may help evaluate the appropriateness of providing advocacy support, it should not be the determinative factor. There are other relevant considerations that are at risk of being overlooked. For example, a child may seek advocacy support due to a difficult relationship with their social worker and feeling unheard or misunderstood, even if there is no "difficulty in participating" per se. Advocacy, in these types of cases, is essential in providing that bridge to ensure that the rights of the child are respected and upheld.

Regarding the appropriate person, it may be difficult for the child to express a preference for someone independent of their parent. If this is the case, will the child be provided with a safe space to voice this? There is also a question as to the definition of appropriate person, which we suggest should mimic the definition in the Care Act 2014 for clarity.

We further suggest that clarity is required as to whether the child will be consulted about whether they want the selected ‘appropriate person’ to support them. The social worker may deem someone an “appropriate person” to support the child, but the child may not want to be supported by them. Will the parent be seen as default appropriate or does this have to be checked with the child? It may not be easy for them to say they want someone independent and not their parent to support them. Will they be given a safe space to say this?

It is crucial to have adequate safeguards in place to ensure that a child's right to advocacy is not denied, even if they have a capable parent who wishes to speak on their behalf. It is not always straightforward for parents to fully understand the difference between what they want and what their child wants, which can lead to the child’s voice being overlooked. As recognised by the UN Convention on the Rights of the Child, children are rights holders in themselves rather than just dependants. If specific provisions are not made to listen to the child’s wishes, the person or the entity with parental responsibility can override their rights, which is undesirable.

Paragraph 22.31 of the consultation paper states that under the proposed model in relation to advocacy “There could therefore be circumstances where an advocate is instructed because the parents require additional support to help their child through the process.” But who makes this decision – the parent? The Local Authority? What if the parent believes they can advocate, but the LA disagrees, or vice versa? We appreciate that the consultation outlines steps to mitigate risks by defining what constitutes an appropriate person. However, we are concerned that the whole approach is too subjective and discretionary, leaving the process vulnerable to gatekeeping and misuse.

Paragraph 22.35 states that “The only other alternative would be to require independent advocacy to be provided in relation to every assessment. That would not only be impractical, but it would also in many cases give the entirely incorrect message that parents or carers are incapable of advocating for their children.” We suggest that it need not be an either/or situation. Advocacy should complement, not undermine, parental views, allowing both parents and children to have their own distinct voices, each equally valued.

Paragraph 22.36 suggests a fundamental misunderstanding of what advocacy is for, when it states “The only other alternative would be to require independent advocacy to be provided in relation to every assessment. That would not only be impractical, but it would also in many cases give the entirely incorrect message that parents or carers are incapable of advocating for their children.” The purpose of advocacy is not to undermine parental views, but rather to support parents and children to have their own distinct voices, both of which can be equally valued.

Paragraph 22.39 mentions a concern that non-instructed advocates (NIAs) have licence to ignore the child’s wishes, and it is questioned whether the risk is overstated. We believe this is not a case of overstating, but it’s simply factually incorrect to say that NIAs ignore the child’s wishes.

The provision of independent advocacy, in all its forms, is based on a set of underpinning principles. These are set out in the Advocacy Charter. The Charter says: “The Advocacy Provider and Advocates will put the people they advocate for first, ensuring that they are directed by their wishes and interests. Advocates will be non-judgmental and respectful of people's needs, views, culture and experiences.”

When providing non-instructed advocacy, being person centred means:

- Act in line with the relevant legislation and frameworks and use the recognised approaches to non-instructed advocacy to find out more information about the child or young person and their situation.
- Spend time with the child or young person in order to get to know them and build a picture of their preferences, wishes, views, circumstances, lifestyle and their cultural or religious background.
- Seek appropriate alternative forms of communication, which enable the child or young person to express wishes, views and choices.
- Ensure the child or young person’s rights are respected and upheld.
- Follow the process of supported decision making to ensure the child or young person is involved, as much as possible, in decisions about them.
- Challenge professionals and decision makers in order to promote a person-centred approach.

When working with disabled children non-instructed advocacy can provide important safeguards as advocates would take action to safeguard their best interest, so there are things we would want to check and ensure without the instruction from the child or young person. You would check the things above and take action without instruction, if you are concerned about anything. This may include

- Appropriate deprivations of liberty
- Appropriate use of isolation or restrictions
- Communication support
- Appropriate people involved in their care

We appreciate the Law Commission’s recognition of the importance of advocacy, and hope that Coram Voice’s specialist insight into the role and function of professional advocates is of assistance in shaping the Law Commission’s approach in this area.

Consultation Question 79.

Please share your experiences below::

Below are a number of case studies from Coram Voice’s advocacy with disabled children that centres on advocates roles in assessments and care planning decisions. The children's names have been replaced with pseudonyms.

(1) Case study: Coram Voice advocacy (Liam)

Seventeen-year-old "Liam" has autism and global developmental delay. He is struggling to stay engaged with education, which is a requirement for him to remain where he lives. His refusal and ongoing objection to attend regularly is putting his place at the home at risk. Liam spends most of his time in his room and in bed, which a concern is given that he is able to mobilise.

On reflection it would seem that activities reflect the limited opportunities or conditions of living in his current environment. His mother is determined for him to stay where he is, as she lives only 30 minutes away, allowing for her to stay closely involved. It is unclear if anyone is trying to figure out what truly motivates Liam and how to help him build a meaningful, independent future.

Liam and his mother may have different wishes. His mother wants closeness, while Liam seems detached from his current routine and possibly unsure of what he wants for himself. Our independent advocate recognised that this situation raises important questions, and wants to help to make Liam's voice heard.

(2) Case study: Coram Voice advocacy ("Billy")

Coram Voice supported "Billy", a 14-year-old boy with autism and a learning disability. Billy has complex needs and does not use spoken words. This led to challenging behaviours, which had been escalating and caused issues for him both at home and school.

Billy's advocate had been making person centred observations and attending meetings on Billy's behalf, on a non instructed advocacy basis. At these meetings the advocate had expressed for Billy that he was unhappy with his current situation and this was being shown in his behaviours. The outcome of these meetings was that the local authority had agreed to secure a residential therapeutic school for Billy.

Following Coram Voice advocacy Billy moved to a specialist residential school when he is reported to be settled. The advocate visited Billy at his new residential school and observed that he was happy, smiling the whole time and very calm. The advocate observed Billy concentrating on his activity. Staff reported that he is now remaining in the classroom for learning, which he wasn't doing previously. He has also made a friend and spends a lot of his time outdoors, which he was not able to do before moving.

Billy's case is a good example of how advocacy can make sure a child's voice is heard, even when they are not able to communicate. Advocacy also promoted Billy's right to access suitable support, education and a living environment that meets his needs.

(3) Case study: Coram Voice advocacy ("Jeremy")

Coram Voice advocated for Jeremy, a 9-year-old child with autism spectrum disorder a learning disability.

Jeremy exhibits extreme sensory seeking behaviour which can place him at risk of physical harm, and has limited danger awareness. Jeremy was referred to the project after a promotional visit to his school by our specialist advocate, following which the designated safeguarding lead at the school referred Jeremy for advocacy support.

The referral focused on the school feeling they would not be able to meet Jeremy's learning needs long term, and the fact that Jeremy's family were also struggling to support him at home, with only limited hours of carer support provided by children's services. Jeremy is not able to verbally instruct an advocate and has very limited understanding and communication skills, so a non instructed advocacy approach was taken:

An experienced advocate was allocated who observed Jeremy both at home and at school, and gathered information from his parents and staff at school, who knew him well. It became clear that Jeremy is in need of continuous supervision to keep him safe which was placing a huge strain on Jeremy and those who support him. The advocate observed that the situation was not sustainable for Jeremy.

The advocate contacted social care to raise concerns about the support package being inadequate to meet Jeremy's needs, and his lack of allocated social worker. Following this Jeremy's mother requested that Jeremy be taken into care (accommodated under section 20) as his parents felt unable to meet his needs at home. Initially, social care refused to accommodate Jeremy. There was some discussion about greater support at home, but a lack of clarity on what this would look like. The advocate followed up and attended social care meetings, such as a child in need review, on Jeremy's behalf to ensure a full assessment took place.

Following the assessment, the local authority agreed to accommodate Jeremy as a looked after child, with his parents retaining parental responsibility and full involvement in his life. A suitable specialist children's home has been identified. The home also has a linked educational provision, that can meet Jeremy's needs. Jeremy has yet to move in and the advocate continues to remain involved throughout the transition process, to ensure Jeremy's rights are upheld.

Without advocacy support, Jeremy would most likely not have been accommodated: for a long time his parents and school had asked for support and nothing had been done. The advocate's involvement made the social care team more accountable, and empowered those around Jeremy to fight for his rights. He now has a full package of support as a looked after child, and is soon to move to his new home.

Consultation Question 80.

Please share your experiences below::

No comment.

Consultation Question 81.

Other

Please expand on your answer below::

We suggest that there must be clarity on the face of the guidance that this is about assessing the parent or family carer's needs in relation to supporting their child, similar to a carer's assessment under the Care Act; and not just "their own needs", as this would be a needs assessment under the Care Act and would come with eligibility to Care Act advocacy.

We would also add that at paragraph 22.31 point (2) of the consultation paper, we do not think it is appropriate for the advocate to have to make up for expertise that may be lacking by the social worker. Both roles should have the appropriate expertise.

In addition, we are concerned by paragraph 22.47 (2) of the consultation paper, which states "Unless absolutely necessary, we would not want to create the potential for situations where both the child and parents have an advocate appointed. Not only would this be costly, it would also give rise to the potential for extremely difficult problems resolving the 'battle of the advocates'." We suggest that, again, this shows a misunderstanding of the purpose of advocacy. Children have a right to disagree with their parents, or at least to have their own perspective put forward and heard.

Chapter 23: A new legal framework? (Q 82-83)

Consultation Question 82.

Yes

Please expand on your answer below::

We agree with the Law Commission's reasons, and with the Law Commission's provisional views as set out at paragraphs 23.16 – 23.18 of the consultation document, as there is a clear need to reduce complexity. We agree that the existing framework is already a maze, and further amendment to existing legislation will not provide the clarity and accessibility needed.

Section 17 is a catch-all where everything is mainly framed as safeguarding, but this type of assessment is often not appropriate for disabled children. This is a resourcing issue and a narrow misinterpretation of Section 17, which should be a needs-based assessment.

In principle, the creation of a new unified legal framework could be a positive change, as it might help social workers work more effectively with disabled children and their families and recognise that this is a specialised area of social work, different from parenting support and safeguarding (although it will of course sometimes encompass these things too). However, we are very concerned that if poorly designed or implemented, it could weaken the rights of disabled children. There is the risk that, by creating a broad category of children in need, the needs of disabled children as a discrete group are no longer fully met. If there is to be separate criteria, it must be inclusive of all disabled children, not just those with the "highest needs." This means it must not include rigid eligibility criteria based upon e.g. IQ, and must recognise those with social, emotional and communication needs as well as physical and learning disabilities. It would need to be a flexible system allowing for child centred assessments.

Throughout our responses to earlier questions, we have emphasized our concern that nothing should be lost in the transition to a new framework. Specifically, we believe that the powers to provide services for disabled children should remain at least as comprehensive as those currently granted under s. 17 of the Children Act 1989. These powers should be included in any new legal framework for social care for disabled children, alongside the introduction of the new statutory duty.

It's also important to note that not all parents and carers want their child to be identified as disabled, and not all disabled children wish to be recognised as such. Singling out children on the basis of a separate piece of legislation may enable the meeting of needs, but at the cost of creating or reinforcing negative perceptions, either externally or internally.

Consultation Question 83.

Other

Please expand on your answer below::

We agree that new guidance is required, but are concerned by the possibility of conflict between the two proposed sets of guidance, and which would have the overriding legal status in that event.

Although we see the benefit of a document to support parents and carers to navigate and enforce the proposed new statutory framework, we would suggest that the traditional form of statutory guidance alone is referred to as 'legal guidance'. The document for parents and carers could then be referred to as something like 'a simplified guide to the rights and entitlements of disabled children and their families and carers', and refer back to the 'legal guidance' as appropriate. This would provide clarity regarding enforceability against a public body.

Additional Consultation Question (Q 84)

Consultation Question 84.

Please share your views below::

Children in custody are some of the most vulnerable and least heard in society. We would recommend a wholesale review of the provision of support to disabled children (including those with social, emotional, and communication challenges) in custody. HM Inspectorate of Prisons report ‘Children in Custody 2023-24' found that 63% of children surveyed reported having been in local authority care, and 35% reported having a disability. Given that 44% reported having health problems, and that some children with neurodiversity and other contemporary understandings of disability may not recognise themselves as ‘disabled’, the true number of children in custody with disabilities is likely to be even higher. This is not a niche issue.

Provision of support to disabled children in the secure estate faces immense challenges, of which the foremost is the lack of funding within the system and chronic staff shortages. Given HM Inspectorate of Prisons finding that “Most institutions were characterised by high levels of violence and disorder with children spending most of their time locked up alone in their cells”, it often seems to be broadly accepted by local and national government that it is simply not possible to provide an adequate level of disability support, and prioritise other issues. However, the state’s duty to these children remains the same as to those in family-based care, and it must be insisted upon that these children have access to the support, care, and advocacy services that they are entitled to.

We do recognise that any proposals are unlikely to effect significant change without further investment into the secure estate and youth justice as a whole, but would nonetheless support ambitious proposals to improve in this area.