

Children's Wellbeing and Schools Bill

Briefing for MPs

January 2025

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Children's Commissioner briefing on the Children's Wellbeing and Schools Bill

The Children's Wellbeing and Schools Bill is urgent. The death of Sara Sharif and the recent resurfacing of the crimes by grooming gangs have further highlighted that too many services children rely on are failing - whether that is children missing out on the benefits of school and education, or children living in social care who, instead of getting the care they deserve, grow up in illegal children's homes.

The Bill lays the foundations for change for these children. Importantly, it aims to improve the systems that children rely on, as well as the services they receive. The Children's Commissioner has called on successive governments to introduce a unique identifying number for children and a register of all children not in school. Writing these two landmark measures into law will be of huge significance for every children in this country, but especially those at risk of harm.

There will be a need for further legislation in this Parliament that is focussed on children, not least for those in need of support for Special Educational Needs and Disabilities. But let's be clear: this Bill is a huge opportunity to safeguard children who are at risk of serious harm or abuse, to better support children with complex needs, and to be assured that children currently hidden or missed by public services are able to get the help and protection they need.

Many of the provisions in the Bill will specifically – and significantly – help those children. However, there are some areas the Children's Commissioner would like to see go further. First, this is the opportunity to give children the same protection from assault as adults in England. The Bill should send a clear message to children that the state is there to protect them and should eliminate any shades of grey that leave parents, carers, professionals and children themselves uncertain about what level of violence is acceptable in their lives.

Secondly, some of the most vulnerable children in the country are living in illegal children's homes or having their liberty deprived without proper safeguards. This legislation is an opportunity to bring an end to both.

Thirdly, the Commissioner warmly welcome the introduction of a register of children not in school. However, the Bill should go further to both improve the support for children in home education and to introduce a clear national framework for data sharing so that local Children Missing Education teams can quickly identify and support children who are missing from education to return swiftly and with the right support.

Finally, the Commissioner would like to see provisions to protect children at a known risk of harm strengthened further. That should include a requirement to obtain consent from the local authority before a child is removed from school, in any case where a child has been referred to social services for a Child in Need or Child Protection enquiry in the last 12 months, and where the primary need was abuse or neglect. Where children have a Child in Need Plan or a Child Protection Plan, for these reasons, these plans should always include a named school.

For these children, this significant legislation cannot come quickly enough. This briefing sets out the priority areas of action for the Children's Commissioner's office. Over the coming months the office will be monitoring the progress of the Bill, sharing further insights from children, and sharing more specific recommendations for the Bill with parliamentarians to ensure we firmly grip this opportunity to improve children's lives – and prevent any repeat of the horrors we have seen in headlines all too recently, and all too frequently.

The Children's Commissioner would greatly welcome the opportunity to speak with you in more detail on any issues raised here or in the Bill more generally. Please get in touch with Joe Lane, Deputy Director for Projects and Delivery (joe.lane@childrenscommissioner.gov.uk), with any questions.

A child friendly version of the Bill

The Children's Wellbeing Bill is the first key piece of child-focussed legislation in this parliament. It is essential that as the bill progresses, it both improves children's lives and that its aims are clearly communicated with children themselves. The government should do that by publishing a child friendly version of the Bill at the soonest opportunity.

Children often say that they don't feel listened to by decision makers. The Children's Commissioner's Big Ambition survey found that just 22% of children agree that people who run the country listen to their views. We can't fix that overnight, however children are enthusiastic about being more involved with, and informed about, decisions that affect them. A child friendly version of the Bill would help children to do that.

Part 1: Social Care

Missing from the Bill

Equal protection

Background:

The Children's Commissioner wants England to be the best place for children to grow up. Every child should be safe, healthy and happy – and not live in fear. However currently in England, children are the only people who are not fully protected in law from assault and battery. The Children Act 2004, a piece of legislation intended to protect children, creates a defence for assault against children. The 'reasonable punishment' defence in Section 58 means that if a parent or carer commits assault against their child, they may be able to argue that it was legitimate and lawful.

What constitutes 'reasonable punishment' is not defined in legislation. While the most serious cases of violence and abuse against children would still be a criminal offence, this defence to a charge of assault creates problematic shades of grey within the law. It leaves parents, carers, professionals, and children themselves, uncertain about what level of violence is acceptable.

The Children's Commissioner's position:

The Children's Commissioner is calling for the Children's Wellbeing and Schools Bill to amend Section 58 of the Children Act 2004 to remove the defence of 'reasonable punishment' in England. This law change is sometimes referred to as a 'smacking ban', however the Commissioner believes that describing it in this way trivialises the issue, is misleading about the types of behaviour that would come under scrutiny, and misleadingly implies the creation of a new offence.

This change would instead remove the defence currently available to parents and carers who have been charged with assault – which by nature are some of the most serious cases of child maltreatment. These are not '*one-off light smacks*', but cases in which, but for the defence, a parent could be charged with common assault. Those are cases where the frequency or severity of corporal punishment mean that children live their lives in fear.

Evidence from elsewhere, including Wales, shows that removal of this defence has not led to increased criminalisation of parents and carers. This change instead serves primarily as a deterrent for physical punishment of children, and provides much-needed clarity that physical assault of children is never acceptable.

Law change alone will of course not create the cultural shift needed to protect children from harm. Families need to understand why this change is in the best interests of children, and to receive non-judgemental support to adapt their disciplinary approaches. This includes ensuring that support is tailored to individual communities and sensitive to different cultural contexts, working in partnership with organisations led by and for the communities they serve.

Illegal children's homes

Background:

Over the past year the Children's Commissioner's independent advocacy team 'Help at Hand' has supported numerous children with extreme vulnerabilities, often subject to a Deprivation of Liberty (DoL) order, who are placed in children's homes not registered with Ofsted as by law they should be.

In recent years the number of unregistered homes has grown, with statistics showing the number of unregistered homes of which Ofsted became aware increasing year on year. The number of homes of which they became aware grew from 144 in 2020-21 to 931 in the year to March 2024.

In a December 2024 report, for the first time, the Children's Commissioner's office (CCo) used local authority data to establish how many children are placed in unregistered accommodation and how much these placements are costing.

On 1st September, there were 775 children in unregistered homes. That included children under the age of 10, children who had spent over two years in those homes and children in entirely inappropriate unregistered settings, such as caravans. Staggeringly, the average cost was over £1,500 a day, with an estimated total annual cost to local authorities of over £400 million.

The use of these homes is a national scandal - vulnerable children are being failed which should never be allowed. If we wouldn't allow it for our own children, we cannot allow it to happen for those for whom the state is the corporate parent.

The Children's Commissioner's position:

We welcome the introduction of enforcement powers for Ofsted to issue civil penalties against providers of unregistered children's homes. However, it's also crucial that local authorities and, where they exist, regional care cooperatives are accountable for the use of illegal homes in their area.

Clause 2: Inclusion of childcare and education agencies in safeguarding arrangements

Background:

Schools play a fundamental role in keeping children safe and protecting them from harm. Often, they are the first to know if children are facing challenges in their lives. The Children's Commissioner's Family Review showed that children deeply trust schools and often turn to teachers or teaching assistants when they need help. In the office's Big Summer Survey, 26% of children said that they would talk to a teacher for support with family life. Professionals from other services were less likely to be approached for support.¹

However, despite the importance of education settings in children's lives, they are not statutory safeguarding partners and therefore do not participate in regular operational and strategic discussions around safeguarding children.

There is widespread support for making education settings statutory safeguarding partners. In a 2023 consultation the government asked: "To what extent do you agree that making education a statutory safeguarding partner is the only way to secure the right level of collaboration in multi-agency arrangements?" Over two thirds (69%) of respondents agreed.²

The Bill places a duty on safeguarding partners to secure the participation of education settings in multi-agency safeguarding and to ensure their views are sufficiently included.

The Children's Commissioner's position:

While the Children's Commissioner appreciates the recognition of the vital role education settings play in safeguarding, this clause falls short of requiring all education settings to be a safeguarding partner. The Bill only puts in place measures to require education partners' participation, it does not make them a partner, and therefore does not put them on an equal footing with social care, health and police. The Commissioner recommends that this clause is strengthened to make schools a fourth statutory safeguarding partner.

Clause 3: Multi-agency child protection teams for local authority areas**Background:**

One of the big challenges in the children's social care system is local and regional disparities. That is true for the number of children in the system and the support they get when they are. The Children's Commissioner's 2024 reports on child in need plans have illustrated the postcode lottery in the support this group receive.³ The proposed provision in the Bill would legislate for the creation of new child protection teams which would bring greater consistency to the way children are supported when issues of child protection are identified.

The Children's Commissioner's position:

The Commissioner thinks this is a step in the right direction – there should be clearer minimum standards across children's social care for the support children and families should be entitled to. Minimum standards are the best foundation for innovative local implementation.

However, this should go further to bring greater consistency. In particular, the Bill should introduce a new consistent threshold for assessment and support under Section 17, through defined national thresholds of needs and strengthened national guidance for local authorities on the use of child in need plans as an intervention.

Clause 4: Information sharing and consistent identifiers

Background:

Since the Commissioner came to post in 2021, the development of a consistent identifier for children is one of the most important systemic changes she has been pushing for. A consistent identifier, sometimes referred to as a 'unique childhood identifier', 'unique ID', 'consistent child identifier (CCI)' or 'single unique identifier', is a number or code that is used across different services to identify a child.

Currently, we look at children's needs and experiences in isolation: many schools do not know how many of their pupils are on waiting lists for mental health services; children's social care services are not always told when a police officer arrests a child; health services are often trying to treat children's illnesses without vital context of the wider determinants of their health, such as housing and access to welfare. This not only means many professionals are hindered in doing their job, it means children and families have to repeat their stories, and is detrimental to children's outcomes.

A consistent identifier for children would ensure that information about a child can be much more easily joined up across different services, for example between schools, health, social care, the justice system, housing and welfare. It will help to build a whole picture of a child and their needs, and prevent them from falling between the gaps of services working in silo. It would not only ensure smoother transitions and join up between services, such as when a child moves school or local authority area, it would also support more rapid information-sharing to safeguard children. In building a fuller picture of every child, we can design more holistic and effective interventions to meet their needs. This not only improves children's outcomes, but is empowering for professionals, and saves public money in the long-term.

The Children's Commissioner's position:

The Commissioner strongly welcomes that the bill makes provision to enable the specification of a consistent identifier for children. This is an important first step towards ensuring children do not fall through the gaps between different services and data systems.

It is vital that this legislation paves the way for the ambitious introduction of a consistent identifier that realises all the benefits of data sharing between agencies and professionals. That should include:

- Professionals must be informed about the existence of the consistent identifier and upskilled to effectively embed its use.
- Guidance and training must be clear that its use is not limited to a narrow definition of safeguarding as 'protection from harm', but also in the promotion of children's welfare, health and development.
- There must be clear guidance on the rare circumstances when its use would not be in a child's best interests to use their consistent identifier when sharing information.
- There must be clear guidance on what would constitute "unreasonable delay" which prevents a professional from finding out a child's consistent identifier before sharing information.
- The government should set a clear target for when this change will be fully operational across all local areas, and outline a framework for monitoring how it is being used in practice.

Clause 10: Use of Deprivation of Liberty orders

Background:

Last year the Children's Commissioner was commissioned to carry out research with children by the Department for Education's Task and Finish Group on 'Improving cross-sector support for children with multiple needs in complex situations'. In November, drawing on interviews with 15 young people who have been subject to a Deprivation of Liberty (DoL) order, the office published 'Children with complex needs who are deprived of their liberty'.⁴ This work showed just how complex and varied the needs of children on DoLs are. Despite these children being highly vulnerable, most children interviewed had previously been placed in an illegal children's home.

Moreover, in the Children's Commissioner's report 'Illegal Children's Homes'⁵, the office found that of 775 children living in unregistered placements on 1 September 2024, almost a third (31%) were subject to a court-ordered DoL. The placement of these highly vulnerable children in wholly illegal settings is deeply concerning.

Notably, Clause 10 in the Bill would amend Section 25 of the Children Act 1989 to provide for the courts to be able to authorise the deprivation of a child's liberty in accommodation other than a

secure children's home (referred to as "relevant accommodation"). It is important that this amendment ensures that when any child is deprived of their liberty, it happens under a clear legislative regime.

That's why the Children's Commissioner is calling for a new legal framework, one that provides a mechanism for restrictions on children's liberty other than in a secure setting, supported by statutory guidance. That must include children whose primary needs are learning and physical disabilities needing support/supervision; and children experiencing, or at risk of, external or extrafamilial risk factors such as sexual or criminal exploitation.

The Children's Commissioner's position:

Clause 10, which would amend Section 25 of the Children Act 1989, is a welcome step. However, it is crucial that the clause applies to all children who need to be deprived of their liberty for welfare reasons. The new legal framework needs to provide a clear mechanism for restrictions on children's liberty other than in a secure setting, supported by statutory guidance.

Clause 14: Powers to limit profits of relevant providers

Background:

The office is glad to see provisions aimed at limiting profit making in the Bill. The profit making from residential care placements is a huge challenge and recognised as a growing issue that needs addressing. However, until the Children's Commissioner's report 'Illegal Children's Homes'⁶, the role of private provision and profit making in unregistered accommodation acting as children's homes had not been quantified.

In the Commissioner's December 2024 report, for the first time, data from local authorities established how many children are placed in unregistered accommodation and how much these placements are costing. Of the 775 children living in unregistered placements on 1 September 2024, the vast majority of placements (94%) were supplied by private providers. Altogether, the estimated yearly cost of unregistered placements to English local authorities is almost £440 million, most of which goes to private profit.

The Children's Commissioner is deeply concerned about profit making at the expense of some of England's most vulnerable children.

The Children's Commissioner's position:

The Children's Commissioner welcomes the introduction of a power for Ofsted to issue an unlimited monetary penalty where companies fail to comply with an improvement plan aimed at addressing quality issues across subsidiary companies.

The office also welcomes the introduction of powers for the Secretary of State for Education to cap the level of profit as well as determine an acceptable level of profit that can be made from children's social care placements.

While the acknowledgment of the need for incremental change to avoid instability within the placement market is welcome, the office is concerned about the lack of clarity around the timeframe for the enforcement of the cap. Without a clear indication that the cap will be enforced, the CCo is concerned that the financial oversight scheme will not act as a substantial deterrent to highly profitable private providers of unregistered children's homes.

Part 2: Education

The Children's Wellbeing and Schools Bill rightly recognises the vital role schools play in protecting children and the importance of removing barriers to opportunity. While the provisions in this Bill are very welcome, the Commissioner believes that they must be accompanied by wider reform.

We urgently need a new vision for childhood, one which enshrines every child's right to a brilliant, inclusive education with a reimagined children's services which recognises the vital role schools play in supporting children. Where children need additional support, it should be easily accessible and should enable them to thrive in education and grow up happy and healthy. This Bill marks an important first step in these reforms.

Clause 21: Free breakfast club provision in primary schools in England

Background:

The Children's Commissioner has heard from children across the country about the importance of breakfast clubs. In *The Big Ambition*, children told the Children's Commissioner that they wanted the government to provide breakfast clubs in every school. One child aged 10 said that: *"breakfast clubs should be free because some parents can't afford it."*

For some children, breakfast clubs are one of the things that motivates them to go to school. In March 2023 the Children's Commissioner's office polled children in England aged 8 to 17 on the things they look forward to at school; 8% of children said they looked forward to breakfast clubs. 13% of children on free school meals said they looked forward to breakfast clubs.⁸ The Bill introduces a requirement for all primary schools to secure breakfast club provision which is free of charge.

The Children's Commissioner's position:

The Children's Commissioner welcomes this clause in the Bill. In *The Big Ambition*, the Commissioner called upon the government to introduce breakfast club provision in every school for children who need it, free of charge to parents. The Commissioner wants breakfast clubs to be offered to children of all ages who would otherwise start the day hungry.

Clause 23: School uniforms: limits on branded items

Background:

Throughout *The Big Ambition*, children often told the Commissioner about the challenges their family faced because of the cost-of-living crisis. They talked about the importance of giving children equal access to things they needed for school to enable them to thrive in education. One young boy aged 11 said: *“They should create an organisation that gives children a roof over their head. Also, they should have free school dinners free uniform and free stationary. All children should be treated the same way no matter what background they come from.”*

The Bill introduces a limit on the number of branded items primary and secondary schools can require for their school uniform. This measure will hopefully reduce the cost of uniform for families across the country. The Children’s Commissioner has heard from children and young people about the strain on family finances of expensive school uniforms.

The Children’s Commissioner’s position:

The Children's Commissioner welcomes this measure and hopes that it will relieve some of the financial pressures families face and help more children to access education. The Commissioner would like to see the government look at other ways it can poverty-proof schools through its Child Poverty Taskforce.

Clause 24: Children not in school: local authority consent for withdrawal of certain children from school

Background:

Schools are an essential form of early help for many children. For children with an identified vulnerability, school provides ongoing support and a safeguarding structure. Despite the important role that school plays in keeping children safe, in the current system there is no restrictions on parental rights to withdraw children from home education if they are known to children’s social care.

The Children’s Commissioner’s research has shown that children in home education are disproportionately likely to be known to social care as a Child in Need. In *Lost in Transition* the office

found that children who left school rolls between Spring 2022 and Spring 2023 and went into home education were 50% more likely to be known to social care as a Child in Need in March 2022 relative to all pupils in state-funded schools (3.9%, compared to 2.6%). More than half (54%) of these children who moved into home education and were a Child in Need were known to social care because of abuse or neglect.⁹

While home education is not a safeguarding risk in and of itself, the current system allows parents who harm their children to remove them from school, which may be their only safe haven. The recent case of Sara Sharif underlines how important it is to introduce greater protections for this vulnerable group of children.

While Sara's case was tragic, it was unfortunately not an isolated incident. Last year, the Child Safeguarding Practice Review Panel analysed 27 rapid reviews of serious harm where children were home educated. These 27 incidents involved 41 school age children where six had died and 35 had been seriously harmed. Most of these children were historically known to children's social care: 23 were previously children in need or the subject of a child protection plan. However, only one child was on a child protection plan at the time of the incident. Just over half the children (21) had never attended school.¹⁰

The Bill introduces two measures to restrict the use of home education when there are concerns about a child's home environment:

- 1) A requirement for parents to obtain consent from the local authority before they remove their child to home education if they are open to Section 47 (Child Protection) Enquires or subject to Section 47 (Child Protection plans), or if they are educated in a special school.
- 2) A power for local authority home education teams to request home visits and to return children to school via a School Attendance Order if they believe that the home environment is not suitable for home education.

The Children's Commissioner's position:

The Children's Commissioner warmly welcomes these protections as she has regularly advocated for greater protections for children at risk of harm. However, the Commissioner believes these measures

must go further. As currently drafted, they would not protect children who are not on a school roll or who are known to be at risk of harm or abuse who have not met the threshold for a Child Protection plan. The Commissioner recommends that this part of the Bill is strengthened to include all children whether they are on a school roll or not, and to include children referred to social services for a Child in Need enquiry or Child Protection enquiry in the last 12 months where the primary need was abuse or neglect. Where children have a Child in Need plan or a Child Protection plan, there should always be a named school.

Clause 25: Children not in school: registration

Background:

Since coming to post, the Children's Commissioner has made it her mission to protect every child's right to an education under the UN Convention of the Rights of the Child. One of the key areas of focus for the Commissioner has therefore been school attendance and children not in school.

The number of children estimated to be in home education or children missing education has grown substantially in recent years. The latest figures from the Department for Education suggests that 153,300 children were home educated¹¹ and 149,900 were identified as a child missing education¹² at some point in 2023/24.

Despite growing concern about this group of children, very little is known about them. The Children's Commissioner has called on successive governments to introduce a register of children not in school and strongly welcomes this measure. Her Attendance Audit found that many of these children have fallen through the gaps of the education system. The office conducted a nationwide survey of all local authorities in England to investigate how much they knew about children not in school. The survey showed that local authorities do not have an accurate figure of how many children there are in England, let alone how many children are not receiving education.¹³

This Bill seeks to introduce a register of children not in school. This register will collect information on children who are educated other than at school such as home education, are on part time timetables, or are flexi schooled. The Bill also introduces a duty on local authorities to provide support through information and guidance to families of children not in school.

The Children's Commissioner's position:

The Children's Commissioner warmly welcomes this clause of the Bill. It is vital that we know where all children are and can offer the necessary support for them to thrive in education.

While the Commissioner welcomes the provision of support for home educating families, she believes it does not go far enough. Home educating families have told the office that in some cases they have felt forced out of school and their children have not received the support they need, whether that is for mental health, special educational needs, or to address bullying. Families have told the office that they sometimes struggle to afford textbooks and to pay exam entrance fees. The office has also heard of instances where children with Education, Health and Care Plans (EHCPs) have had them withdrawn once they have left the school roll.¹⁴ The Commissioner believes that the section on support should therefore be strengthened to name the educational, health and care support available to children in home education.

Further, when children are missing education, they must be given urgent help to return to school. Currently, local authorities struggle to find children missing education and some children missing education are missing for at least a year.¹⁵ In many cases, children remain missing because local authorities cannot get access to public data to trace their whereabouts. The Commissioner would therefore recommend that this clause is strengthened to introduce a National Framework for data sharing which places an obligation on public bodies to share information with Children Missing Education teams.

Clause 47: Co-operation between schools and local authorities

Background:

The Children's Commissioner's research on children missing education has found that one of the central challenges local authorities face is finding a suitable school place for a child who is out of education. All too often, once a child who is missing education is identified by a local authority, they remain out of the education system for a significant period because of a lack of access to suitable school places.¹⁶ More than one in ten children who are missing education (13%) are recorded as missing for at least a year.¹⁷

In the Children's Commissioner's Attendance Audit, less than half of local authorities (4 in 10), were able to tell the Children's Commissioner how many children in their area were missing education because they were waiting for a school place in Autumn 2021. Local authorities told the office that they do not co-ordinate in-year admissions.¹⁸

The office has also heard that, because of the fragmented admissions system, local authorities are not always aware of whether schools have places available for in-year admissions. Sometimes, local authorities have to direct in-year admissions to secure a place for a child. Local authorities have told the office that under the current system there is little point trying to use this power when the school is an academy as the referral system takes too long.¹⁹

The Bill introduces a duty for local authorities and schools to cooperate on school places and admissions. The Bill also introduces a power for local authorities to direct admissions to academies and additional triggers to enable a local authority to direct admissions for a child who is previously looked after.

The Children's Commissioner's position

The Children's Commissioner welcomes these measures in the Bill. She has long called for the local authority to be made the admissions authority for all schools to simplify the system for parents and children and to support consistency and fairness across an area.

The Children's Commissioner believes that the government should require schools to prioritise children with additional needs (such as those known to social care or with an EHCP) in their admissions and consider how it can speed up the admissions process for children who are out of school.

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