

# Article 39's response to The Case for Change

August 2021



## About us

1. Article 39 fights for the rights of children living in state and privately-run institutions in England. A registered charity, we take our name from Article 39 of the United Nations Convention on the Rights of the Child (UNCRC), which grants every child who has experienced abuse or other serious rights violations the right to recover in environments where their health, self-respect and dignity are nurtured. Our work runs across four complementary areas: legal education; practice development (our national network of independent advocates has nearly 300 members); policy advocacy, research and strategic litigation; and awareness-raising of the rights, views and interests of children.

## Children's rights at the heart

2. In May 2021, Article 39 and others made a joint submission to the review asking it to adopt a children's rights approach and to use the UNCRC as its framework. We explained that:

*The UNCRC entitles all children to a comprehensive set of economic, social and cultural and civil and political rights, without discrimination. It guarantees a wide range of support and social protection to parents. Children separated from their families are granted special protection and assistance – vital safeguards to ensure they can recover from harm and thrive. Those who have been abused or suffered other rights violations are entitled to recover in environments which nurture their health, self-respect and dignity. The treaty's preamble affirms the importance of every child being able to grow up in a family environment, in an atmosphere of happiness, love and understanding.*

3. We regret that The Case for Change refers only to one provision of the UNCRC, and then only in passing and attributed to Unicef. There is little indication that children's rights are at the heart of this review.

## Concerns about the review process

4. We continue to be deeply concerned about the wide scope of this review and the speed at which it is being undertaken. The significant gaps in research and analysis we have identified in The Case for Change are by no means exhaustive.
5. There is virtually no reference to children's voices and perspectives, as elicited by the review, in The Case for Change, and there are no direct quotes from children's accounts and testimony shared directly with the review.<sup>1</sup>
6. The Case for Change is missing any statement of values and principles and there is no overarching narrative from which conclusions in respect of major policy and organisational change can be confidently drawn.
7. There have been no published themes for consultation and engagement events. Notes from events held prior to the publication of The Case for Change have not been published. That the majority of consultation and engagement events appear to be convened by external organisations, rather than the review itself, suggests a lack of coherent strategy. There has been only one call for evidence (which ran between the 1<sup>st</sup> and 30<sup>th</sup> March 2021), though the chair said that was to be the first of several, and even now the review is encouraging feedback on The Case for Change by the deadline of 13<sup>th</sup> August

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<sup>1</sup> By contrast, the summary prepared for children and young people includes quotes from young people.

2021, but stating that emails after this are welcome.

8. The review seems not to have undertaken proactive investigations itself – for example, there is no evidence it has sought detailed information from local authorities; there is no analysis of the learning and messages from the Independent Inquiry into Child Sexual Abuse (IICSA); and there has been no sample review of child protection assessments or care plans (other than numbers) to be confident about assertions that the state interferes too much in family life. As a matter of principle, and wanting children’s fundamental rights to be protected, we absolutely share the review’s deep concern about the very high number of children separated from their families. But we regret the absence of analysis of how children in care today could thrive with their families with the right support. There is an obvious danger of the pendulum swinging the other way, with a policy push on kinship care (which is already supported in law) that leaves children and their relatives struggling with little material and other help. The recent £1 million announced for support groups for kinship carers and other measures in 2020/21<sup>2</sup> amounts to £6.67 per kinship family, were this public money to be distributed to them directly.
9. Last month, in response to a statement made during a podcast interview given by the chair of the review, we sought reassurance from the government that any recommendations made by the review for legal reform are subject to Green and White Paper consultation. We were alarmed that the review chair’s explanation for the expedited process is to make use of the Conservative Party majority in the House of Commons. If fundamental reform of the law protecting and supporting children within their families and in care, as well as adults who were formerly in the care of the state, is being considered, the widest expertise and consensus should be secured. We continue to recommend that the Law Commission be given the leading role in considering and drafting any changes to the Children Act 1989, should this review process find there is need for this (we are not convinced there is).
10. There remains lack of transparency over who is working on the review, how members of the three different groups – Experts by Experience, the Evidence Group and the Design Group – were recruited and how (and if) they are influencing the review’s conclusions and recommendations.
11. The lack of critique of central government is striking compared to the review’s all-embracing criticism of local government.

## Our response to The Case for Change

12. Our response to The Case for Change is in two parts. Part I considers the questions posed and the themes presented within the five chapters of The Case for Change. We then, in Part II, explore what we believe to be the most significant omissions of the review.

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<sup>2</sup> <https://www.gov.uk/government/news/families-across-england-to-receive-better-support-to-adopt>

## Part I: The Case for Change themes and questions

### Chapter one: The context

– What do you think the purpose of children’s social care should be?

13. The high-level statutory aims of children’s social care as formulated by the Children Act 1989 and supported by the United Nations Convention on the Rights of the Child (UNCRC) remain sound. These are that local authorities (public bodies under the UNCRC):
  - a. Safeguard and promote the welfare of children in their area who are in need
  - b. Promote the upbringing of children in need (including disabled children and young carers) within their families by providing a wide range of services and support
  - c. When a child is suffering, or has suffered, significant harm in their area, take action to safeguard and promote that child’s welfare
  - d. Look after children who are unable to live with their families
  - e. Safeguard and promote the welfare of the children they look after, securing their well-being now and into the future
  - f. Support adults who were in care as children, so they enjoy fulfilling adult lives
14. We have more to say below on the state’s parenting role and responsibilities.
15. There are two areas of children’s social care which we consider require policy development in order to meet needs and fulfil the rights of children, and a further area which would benefit from legislation.

### ***Policy development***

16. First, we believe local authorities and their partners should have a far more proactive educational role in promoting children’s right to protection from all forms of violence, abuse and neglect. The Children Act 1989 requires local authorities to publish information about their services provided under Sections 17, 18, 20 and 23D<sup>3</sup>, and to take steps to ensure those who could benefit from these services receive this information.<sup>4</sup> There is no equivalent duty in respect of Section 47, the provision which entitles children to help so they can recover from significant harm. Given the vast majority of children who experience sexual abuse never come to the attention of services which could potentially help them, there is a pressing need for appropriate public education on the role and function of child protection services. Communicating children’s right to protection from all forms of violence, abuse and neglect and how the child protection system works, should be an important part of the role of social workers based within schools.
17. Second, we need a paradigm shift from the adult rescue model of child protection where the energy and focus rests disproportionately on finding out and investigating whether abuse has happened towards understanding and attending to the feelings and needs of children who have been harmed. There is far too little focus in our children’s social care system on the provision of psychological, emotional and other support for the children who have suffered sexual and other forms of violence and

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<sup>3</sup> Relating to services for children in need and their families, day care, local authorities accommodating children with the agreement of parents (and the child when they are aged 16 or 17) and personal advisers for teenagers in care and adults who have left care.

<sup>4</sup> Paragraph 1 of Schedule 2, Children Act 1989.

abuse. Flowcharts and procedural guidance in *Working Together to Safeguard Children* give scant attention to the real purpose of child protection which must be to prevent serious harm happening to children and to help children recover and thrive when they have been hurt.

18. National data collection brings together the number of Section 47 enquiries, categories of harm and child protection plans, yet a child protection system truly focused on children would want to know what their experience of being protected is, and whether they feel safer and stronger as a result of the state intervening to help them. Even within the current data collection, it is notable that local authorities are required to submit disaggregated information showing the number of children (individual – self<sup>5</sup>) who directly approach children’s services for help but this is not reported in the annual published statistics. This means there is no way of assessing from the published data whether more children are seeking help themselves than in the past.
19. When children themselves have sought help, the imperative to find out whether their experiences were positive or not is arguably even greater. Article 39’s focus is children who live in institutional settings. An example of the child protection system completely losing its way is the practice of local authorities sending children letters telling them that their allegations have been found to be ‘not substantiated’. This was graphically highlighted in the aftermath of BBC Panorama’s exposé of systemic child abuse in G4S-run Medway secure training centre. A review undertaken by a newly formed Improvement Board found that children in Medway secure training centre waited, on average, three months, for a letter from the local authority designated officer telling them the outcome of their allegations. Aside from the unforgivable delay in responding to concerns raised directly by incarcerated children, the content of the letters appeared to serve no protective function whatsoever; on the contrary - they would be likely to deter children from raising their voices in future. Although the Improvement Board’s attention was on the significance of CCTV cameras, our concern surrounds children being sent official letters which communicate they haven’t been believed:

*The Board noted with unease that young people are sent letters from the local authority telling them that their allegations have not been substantiated based on a lack of CCTV evidence (e.g. “on seeing the CCTV we could not see much due to where the cameras were situated and therefore could not evidence what you said happened”); “we have therefore concluded that the allegation of you being hurt by a member of staff is unsubstantiated, which means that we do not have any proof to evidence that the staff member had hurt you and we cannot tell either way what really happened”). As a consequence, it must be obvious to both staff and young people that CCTV evidence is crucial to action being taken, and may have an impact on when and where staff feel they can behave in this way towards children (as was also evident in the Panorama programme).<sup>6</sup>*

20. Article 39’s Director gave oral evidence to IICSA on, among other matters, the difficulties children in custody face in accessing the child protection system and being believed when they report abuse.<sup>7</sup> A fundamental problem is that institutional settings follow statutory guidance designed for schools and colleges, which provides the outcomes below. The Department for Education updated the guidance this year and, despite the evidence before IICSA, retained the same terminology. Of five headings, from a child’s perspective only one communicates that their concerns have been treated seriously. This framing, while maybe useful for internal personnel recording purposes, is anathema to child protection and should not be used directly with children.

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<sup>5</sup> Department for Education (2020) *Children in need census 2021 to 2022 Guide for local authorities – version 1.0*, page 36.

<sup>6</sup> Medway Improvement Board (2016) *Final report of the Board’s advice to Secretary of State for Justice*, page 37.

<sup>7</sup> <https://www.iicsa.org.uk/key-documents/5623/view/public-hearing-transcript-12-july-2018.pdf>

## Outcome of investigations in educational settings – statutory guidance<sup>8</sup>

**Substantiated:** there is sufficient evidence to prove the allegation;

**Malicious:** there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive;

**False:** there is sufficient evidence to disprove the allegation;

**Unsubstantiated:** there is insufficient evidence to either prove or disprove the allegation. The term, therefore, does not imply guilt or innocence;

**Unfounded:** to reflect cases where there is no evidence or proper basis which supports the allegation being made

21. How children's concerns are investigated and fed back to them is one of many ways in which our child protection system is not sufficiently focused on helping children recover from serious harm. When communicating to children the purpose of children's social care we would want them to know that there are people and places to whom they can turn and trust, and who will help them feel listened to, safe and respected. Critical to this is reassurance to children that social workers and others will help them, their parents and wider family, and only in exceptional circumstances will children have to permanently leave their families to be safe.

### ***Central government responsibilities – policy and legislation***

22. As set out above, we consider the legal framework in respect of local authorities to be generally sound. However, there are fundamental gaps when it comes to the responsibilities of central government. We highlight the National Health Service Act 2006 as an example of general duties on the Secretary of State in relation to health services. Although the Secretary of State for Education has a general duty to promote the well-being of children in England<sup>9</sup>, it is an anomaly that there are no specific duties around ensuring sufficient funding for children's social care and working with local authorities and others to plan the provision of specialist children's services such as secure accommodation. The government committed five years ago to phase out juvenile young offender institutions and secure training centres because they cannot keep children safe<sup>10</sup>, yet, as The Case for Change acknowledges, there has been very little progress and a national closure programme remains to be published<sup>11</sup>, let alone implemented. Children from black, Asian and minority ethnic communities occupy every second prison cell in the child secure estate.<sup>12</sup>
23. We deeply regret the changes to the Children Act 1989, that were rushed through Parliament in 2017 without proper scrutiny, to enable more looked after children from England and Wales to be sent to

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<sup>8</sup> Department for Education (2021) Keeping children safe in education (2020). Statutory guidance for schools and colleges, page 58.

<sup>9</sup> Section 7 Children and Young Persons Act 2008.

<sup>10</sup> Ministry of Justice (December 2016) The government response to Charlie Taylor's review of the youth justice system.

<sup>11</sup> In February 2021, the House of Commons Justice Committee recommended the government publish a timetable for the closure of child prisons: House of Commons Justice Committee (February 2021) Children and young people in custody (part 2): the youth secure estate and resettlement, paragraph 92. This recommendation was effectively rejected by the government in its April 2021 response to the Committee.

<sup>12</sup> End Child Imprisonment (2020) The case for ending child imprisonment. Questions & answers, page 1.

Scottish secure units. Article 39 strongly opposed these changes.<sup>13</sup> It is welcome that The Case for Change acknowledges the practice of sending children to Scotland “can exacerbate isolation for children and reduces the number of homes available for Scottish children”. Had there been a children’s social care sufficiency duty on the Secretary of State, we believe successive governments would not have been able to wind down secure children’s homes in England – 15 were closed between 2003 and 2018<sup>14</sup> – and policy makers in 2017 would not have been able to convince themselves that sending children to Scotland was in their best interests. More generally, a central government sufficiency duty would hopefully act as a brake on the severe funding cuts local authority children’s services have experienced over the past decade.

### ***Reducing socio-economic inequalities***

24. The Case for Change suggests that children’s social care could be a vehicle to achieve “levelling up outcomes for the poorest children and families”. The government’s ‘levelling up’ agenda remains ill-defined.<sup>15</sup> Rectifying entrenched inequalities which make it harder, and often impossible, for millions of children to thrive cannot be a task solely for children’s social care, since it is the way our society is structured and organised – spanning fiscal policy, education, health, social security, housing, criminal justice and more – that most profoundly affects children’s lives, their families and communities. Nearly one in three children in the UK live in poverty; and 0.7 million live with severe low income and material deprivation.<sup>16</sup> Almost one million food bank parcels were given to children during 2020/21.<sup>17</sup>
25. As a credible alternative, we draw the review’s attention to legislation which Parliament has already debated and passed, though it has still not been brought into force in England. Section 1 of the Equality Act 2010 requires government departments, local authorities, health trusts and others when making strategic decisions about their functions to “have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage”. We urge the review to recommend the commencement of this duty in England.

### ***Impact of austerity on children and families***

26. This first chapter setting the context of children’s social care conspicuously underplays the impact of austerity on families, community support and services. It also avoids scrutiny of the reduction in total expenditure on children’s services from 2009/10.
27. Analysis for the Children’s Commissioner for England by the Institute of Fiscal Studies reported that total expenditure on children’s services in England increased from around £4.8 billion in 2000/01 to £9.7 billion in 2009/10.<sup>18</sup> From this point onwards, there followed nearly a decade of reduced spending on children in need and their families as part of successive governments’ austerity programme.

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<sup>13</sup> This article sums up the losses for children, written after the Children Act 1989 was amended in 2017: <https://www.communitycare.co.uk/2017/04/28/new-powers-help-councils-shunt-responsibility-secure-placements>

<sup>14</sup> Expanding capacity in the children’s secure estate. DfE policy brief, 2018 – document obtained by Article 39 in November 2020 following a freedom of information request.

<sup>15</sup> See, for example, the Prime Minister’s speech on 15 July 2021: <https://www.gov.uk/government/speeches/the-prime-ministers-levelling-up-speech-15-july-2021>

<sup>16</sup> Department for Work and Pensions (March 2021) Households below average income, 2019/20.

<sup>17</sup> <https://www.independent.co.uk/news/uk/home-news/food-banks-children-coronavirus-b1835200.html>

<sup>18</sup> Kelly, E. and others (Institute of Fiscal Studies) (2018) Public spending on children in England: 2000 to 2020, page 34.

28. The total expenditure on children's services decreased significantly in 2010/11 to £9.3 billion<sup>19</sup>, and reduced again in 2011/12 – to £8.6 billion.<sup>20</sup> Between 2012/13 and 2015/16, total expenditure on children's services – at £8.9 billion<sup>21</sup> – continued to be below 2009/10. The following year, 2016/17, total expenditure increased to £9.2 billion – still half a billion pounds below 2009/10. In 2017/18, expenditure increased to £9.4 billion<sup>22</sup> but remained £0.3 billion lower than in 2009/10.
29. After nearly a decade of reduced local authority spending on children's services, in 2018/19 there was an increase of £0.1 billion (from 2009/10 figure) to £9.8 billion.
30. In 2019/20, total expenditure on children's services was £10.5 billion, as indicated by The Case for Change. This is an increase of 8% from 2009/10. Across this same period, the UK's child population aged 0-15 years increased by 8%.<sup>23</sup> So, after more than a decade of brutal cuts to public funds for children in need and their families, with the decimation of services and support across the country, and 24% more children in care, we are only now back to the level of expenditure in 2009/10 (taking into account the child population changes).
31. Analyses by the University of Sheffield and the University of Huddersfield have estimated that funding continues to fall around 15% below levels at the start of the decade for the average local authority.<sup>24</sup>
32. This financial context, including the irrefutable under-resourcing of children's social care services, makes it even more remarkable that the chair made a contractual promise before starting the review that he would only make recommendations requiring public funds for children and families if offset by savings elsewhere.<sup>25</sup>

### ***Governments which work for children and families***

33. Given the known impact of poverty and inequality on family life and children's well-being, we would have expected the review to analyse why government policies have been pursued which are deeply injurious to children and their families – from the two child universal credit limit, to the child benefit cap, to the bedroom tax, to the closure of community services such as Sure Start centres, youth facilities and public libraries – and to consider what could be put in place to protect children and families from adverse government policies in future.
34. The United Nations Committee on the Rights of the Child has consistently urged the UK to fully incorporate the principles and provisions of the UNCRC into UK law. The Scottish Parliament recently

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<sup>19</sup> Department for Education (January 2012) Local authority and school expenditure on education, children's services and social care for 2010-11, including school revenue balances.

<sup>20</sup> Department for Education (January 2013) Local authority and school expenditure on education, children's services and social care for 2011-12, including school revenue balances.

<sup>21</sup> Department for Education (December 2013) Expenditure by local authorities and schools on education, children's and young people's services 2012-13; Department for Education (December 2016) Expenditure by local authorities and schools on education, children and young people's services 2015-16.

<sup>22</sup> Department for Education (December 2018) Expenditure by local authorities and schools on education, children's and young people's services in England 2017-18.

<sup>23</sup> Office for National Statistics (June 2020) Population estimates for the UK, England and Wales, Scotland and Northern Ireland: mid-2019.

<sup>24</sup> See <https://calumwebb.co.uk/posts/2021-08-08-why-2010-2012-matters/>

<sup>25</sup> The chair's contract can be found here (see page 23):

<https://www.contractsfinder.service.gov.uk/Notice/Attachment/464646b8-bbbf-4909-ba5f-21a3386fb84b>

passed legislation to this effect<sup>26</sup> (which the UK Government has legally challenged<sup>27</sup>) and the Welsh Assembly introduced Ministerial children's rights duties a decade ago.<sup>28</sup> The coalition government of 2010 committed to give due consideration to the UNCRC when making new policy and legislation<sup>29</sup>; and this pledge has been repeated since, most recently in a speech by the current Children's Minister at a children's rights Parliamentary event in March 2020. However, the Children's Rights Alliance for England has found that children's rights impact analysis of proposed legislation and policy hardly ever happens.<sup>30</sup>

35. Article 39 brought legal action in 2020, after secondary legislation was introduced removing or diluting 65 safeguards for children in care. During these proceedings we learnt that the Children's Minister had signed off the statutory instrument before the impact assessment was completed. The Court of Appeal was to find that the Secretary of State for Education had acted unlawfully in failing to undertake proper consultation. We mention this here to emphasise that effective children's rights scrutiny *within government* during the policy-making process can prevent damaging legislation and policies being adopted.

### Chapter two: We're not doing enough to help families

- What is the role of the Children's Social Care system in strengthening communities rather than just providing services?
- How do we address the tension between protection and support in Children's Social Care that families describe? Is a system which undertakes both support for families and child protection impeded in its ability to do both well?
- What do you think about our proposed definition of family help? What would you include or exclude?

36. We have already addressed the question about the role of children's social care in reducing inequalities which arise from socio-economic disadvantage – by urging the review to recommend the government commences Section 1 of the Equality Act 2010 (paragraph 25 above).

### **Rights responsibilities**

37. Directors of children's services and lead members for children's services are required through statutory guidance to have regard to the UNCRC general principles when undertaking their statutory functions and ensure children and young people's involvement in the development and delivery of local services.<sup>31</sup> The general principles of the UNCRC are articles 2, 3, 6 and 12.

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<sup>26</sup> The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill was unanimously passed by the Scottish Parliament on 16 March 2021.

<sup>27</sup> The case was heard in the Supreme Court on 28 and 29 June 2021: <https://www.supremecourt.uk/cases/uksc-2021-0079.html>

<sup>28</sup> Rights of Children and Young Persons (Wales) Measure 2011.

<sup>29</sup> Written Ministerial Statement by the Children's minister Sarah Teather MP, 6 December 2010:

<https://www.theyworkforyou.com/wms/?id=2010-12-06a.5WS.1>

<sup>30</sup> Children's Rights Alliance for England (2020) England civil society submission to the United Nations Committee on the Rights of the Child to inform its List of Issues Prior to Reporting (LOIPR), page 6.

<sup>31</sup> Department for Education (2013) Statutory guidance on the roles and responsibilities of the Director of Children's Services and the Lead Member for Children's Services, page 5.

**Article 2 – all children have the right to enjoy all of their rights without discrimination.**

**Article 3 – the child’s best interests must be a primary consideration in all actions concerning them (relating to individual children and wider policy-development and decision-making affecting all children or constituencies of children).**

**Article 6 – every child’s right to maximum survival and development.**

**Article 12 – the child’s right to be heard and for their views to have influence (due weight).**

38. In addition to their UNCRC obligations, local authorities have a critical role to play in ensuring the principles and provisions of both the Human Rights Act 1998 and the Equality Act 2010 are realised in children’s lives and across communities. It is regrettable that The Case for Change fails to mention either of these Acts of Parliament, and their place in ensuring that dignity, respect and equality drive our public services.
39. We are not aware of any targeted national funding or leadership programmes developed for directors of children’s services and lead members around the fulfilment of human rights and equality duties. We maintain that decision-making and services would be radically transformed for the better if they were powered by an explicit commitment to dignity, respect and justice.

### ***Protection and support***

40. On the tension between protection and support, it is not made clear in The Case for Change if the review believes this can be vanished away by splitting what it calls family help from child protection services. If this is the belief, presumably this would be organisations separate from the local authority providing support, with local authorities continuing to be responsible for child protection. Or perhaps the review is considering removing child protection from local authorities?
41. The splitting of responsibilities according to levels of risk and function was pursued in probation from 2014 and five years later was acknowledged by government to have been a serious mistake. The cost of this failed experiment to the taxpayer was enormous: the National Audit Office in 2019 reported that the reforms had cost £467 million more than originally planned.<sup>32</sup>
42. In 2014, the supervision of individuals who had committed the most serious offences was made the responsibility of the National Probation Service and private companies (replacing local probation trusts) were contracted to work with those considered medium to low risk. Similar segmentation of children’s social care was considered around that same period by LaingBuisson, in a four-month “major study”<sup>33</sup> commissioned in June 2014 by the Department for Education and overseen by a small advisory panel comprising the Chief Social Worker for Children and Families, Alan Wood (most recently Chair of the What Works Centre for Children’s Social Care) and economics professor Julian Le Grand.
43. After lengthy freedom of information battles, including by Article 39, LaingBuisson’s report was finally published in December 2016. In a section on international outsourcing of children’s social care services, the report observed: “Largely, where any outsourcing of welfare services had been a success, it should be noted that child protection had remained the responsibility of the authority or the state”.<sup>34</sup> The

<sup>32</sup> National Audit Office (2019) Transforming rehabilitation: progress review, page 9.

<sup>33</sup> LaingBuisson’s description: <https://www.laingbuisson.com/press-releases/laingbuissons-dfe-report-finally-published/>

<sup>34</sup> LaingBuisson – COBIC and CICADA (2016) The potential for developing the capacity and diversity of children’s social care services in England, page 50.

analysis did, however, suggest family support services could be put out to the market:

*We were particularly attracted to the model of ‘tiered’ segmentation applied in the recent national procurement of probation services, where independent sector providers across England have won contracts to run 21 Community Rehabilitation companies to provide support services, leaving the highest level functions only for public sector in-house supply ... a similar segmentation could be applied in children’s social care services. ‘Tiered’ elements might be delivered by ‘Early Help’ companies which would contract with local authorities to provide preventive services, family support, targeted youth services, substance misuse and under-fives provision.<sup>35</sup>*

44. In the event, when the Department for Education published the LaingBuisson report, it distanced itself from its recommendations. At the time, it was deep in controversy over clauses in a Bill<sup>36</sup> (‘the exemption clauses’) which would have allowed local authorities to opt out of any number of their children’s social care duties for a period of up to six years. The plan was for local deregulation to be trials for the removal of duties nationally. There had been no Green or White Papers before the Bill was introduced into Parliament. The clauses were eventually deleted after Ministers failed to secure parliamentary support amid strong opposition among social workers, care experienced people, children’s charities, trade unions and others. Very few individuals and organisations publicly supported the government at the time. Nevertheless, we are concerned about the possible influence within the review of those who championed the exemption clauses.
45. Article 39’s focus is children and the protection of children’s rights. We are dismayed that the dichotomy between protection and support presented by the review is only considered from the perspective of parents (though not in any detail).
46. The central argument appears to be that the support provided or arranged for parents by children’s social care is fundamentally compromised by the local authority simultaneously having the ability (and the statutory obligation) to intervene without the parents’ agreement and co-operation to protect their child or children. The review does not, however, explain how support provided by a separate organisation would resolve this tension – since those working with families in a collaborative, partnership arrangement would inevitably have to refer significant child protection concerns to the local authority (or other future agency) as they arise. The Case for Change quotes an extract from a speech by Lady Hale marking 30 years of the Children Act 1989, where she discusses the difficulties of partnership working with families when the threat of care proceedings looms in the background. It is regrettable that the document does not signpost the next part of Lady Hale’s speech when she refers to case law confirming parental rights under the Children Act 1989 and the Human Rights Act 1998. Lady Hale then speaks of the devastating death of 17 month-old Peter Connolly and the consequent increase in risk averse practice.<sup>37</sup> Others have analysed the far-reaching impact of political responses to this little boy’s death.
47. We have already set out our concern that child protection is not sufficiently focused on the child’s recovery from harm, which for most children takes place within their families. When children have suffered sexual abuse, they and their parents or carers often require long-term, skilled support from a variety of services. Children who have endured significant trauma from domestic abuse, whose needs have been overshadowed by parents struggling with addiction or mental health difficulties, who have

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<sup>35</sup> LaingBuisson – COBIC and CICADA (2016) The potential for developing the capacity and diversity of children’s social care services in England, page 23.

<sup>36</sup> The Children and Social Work Bill, which became the Children and Social Work Act 2017.

<sup>37</sup> <https://www.supremecourt.uk/docs/speech-191113.pdf>

lived for years in a state of material, psychological and emotional deprivation – they all require sustained care and attention and for the harm to stop, but their well-being and happiness will frequently rely upon a variety of family support services (including welfare rights advice and access to decent housing and social security) which make life better for them and their parents.

48. The Case for Change expresses concern about rising numbers of children who are the subject of child protection enquiries and who are entering care, and the failure of central and local government and other agencies to protect teenagers from serious criminal and sexual exploitation within the community. However, it has very little to say about children’s views and experiences of either family support or child protection. It does not give any consideration to the possible impact on children of splitting family support from child protection. Parents’ views and experiences are vital to this review. But so too are children’s and young people’s. A children’s rights-based approach to the review would have ensured careful consideration of the possible implications of radical changes to family support and child protection on all members of families – children and adults.
49. We identify five main risks to having different organisations with lead responsibility for family support and child protection:
  - a. That the refocusing of child protection on violence prevention and children’s recovery from harm will be much harder to achieve within an agency or organisation whose priorities are investigations and decisive action (these appear to be The Case for Change’s goals – see chapter 3 below)
  - b. That child protection becomes even more associated with compulsory and coercive interference in family life, which in turn risks making children (and their parents and other family members) more fearful of reporting abuse and asking for help. Referrals by teachers, health visitors and neighbours may be similarly negatively affected if the public image of child protection becomes even more associated with family separation
  - c. That children (and their families) experience more disruption and instability in their relationships with social workers and others, as they move from one agency / organisation to another as levels of risk rise or fall
  - d. If services are located regionally or nationally, rather than within children’s neighbourhoods, this could make them even more inaccessible and remote, leading to an increased sense of isolation by children and their families
  - e. That children in contact with an agency or organisation solely associated with child protection suffer more stigma and shame (which could trigger an even greater avoidance of children’s social care)

### **Section 17 Children Act 1989**

50. The purpose of family help provided in The Case for Change is consistent with the statutory aims of family support set out in Section 17 of the Children Act 1989 – to safeguard and promote the welfare of children and, wherever possible, to promote the upbringing of children by their families. We believe this encompasses kinship carers, adoptive parents and foster carers, since family is defined as including “any person who has parental responsibility for the child and any other person with whom [the child] has been living”.<sup>38</sup>

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<sup>38</sup> Section 17(10) Children Act 1989.

51. Schedule 2 of the Children Act 1989 is far more expansive than the definition of family help proposed by the care review. It includes: advice, guidance and counselling; occupational, social, cultural or recreational activities; home helps (which may include laundry facilities); facilities for, or assistance with, travelling to and from services; and assistance to enable children and families to have a holiday.<sup>39</sup>
52. As well as championing the full implementation (including resourcing) of Section 17 of the Children Act 1989, we urge the review to be much bolder in its thinking around family support / help – such as whether families (including kinship carers, foster carers and adoptive parents) receiving help from children’s social care should be entitled to significantly higher levels of child benefit allowances. A moratorium on school exclusions (unless absolutely necessary to prevent serious harm) for children in contact with children’s social care, together with educational grants for school clothing and shoes, equipment and trips and activities, could also significantly ease pressure on families. Free schools meals for all children would be a non-stigmatising measure to help tackle child poverty and educational inequality.

**Chapter three: We need a child protection system that keeps children safe through more effective support and decisive action**

- How do we raise the quality of decision making in child protection?
- How do we fill the accountability gap in order to take effective action to keep teenagers safe?
- What can we do to support and grow kinship care?
- Given the clear evidence of positive outcomes and value for money of programmes that support parents at the edge of care and post removal why aren’t they more widely available and what will it take to make this the case?

53. Central to The Case for Change’s narrative is that too many families are being investigated for child protection reasons, and that positive help is rarely available.

***Runaway train for whom?***

54. We agree that the majority of parents who come into contact with children’s social care are parenting in conditions of serious adversity. However, this does not mean that the child protection system is a ‘runaway train’ that should be stepping back from families.<sup>40</sup> The Case for Change notes that in the year ending 31 March 2020 there were 201,000 enquiries by local authorities to ascertain whether they needed to take action to safeguard or promote a child’s welfare. In that same year:
- a. There were 45 homicides of children aged 15 and younger in England and Wales
  - b. There were 57,234 sexual crimes recorded against children in England (a significant underestimate because data for children aged 16 and 17 is subsumed within the adult statistics – see paragraph 95)
  - c. There were 1,070 child abduction crimes recorded in England

<sup>39</sup> Paragraph 8 of Schedule 2, Children Act 1989.

<sup>40</sup> In an interview with The Times newspaper, the review’s chair said:

“We’ve got a bit of a runaway train at the moment in terms of the continual surge in section 47 investigations, initiations of child protection conferences, that don’t result in further action, that aren’t correlated with an increase in identified harm”.

Dugan, E., The Times newspaper, 13 June 2021, ‘Social workers too quick to wade in, review finds’

- d. There were 21,337 child cruelty crimes recorded in England<sup>41</sup>
  - e. Around 1 in 5 households with a single adult and children, and 1 in 20 households of adults and children reported domestic abuse<sup>42</sup>
55. While the review expresses concern about the rising number of Section 47 investigations (whose statutory purpose is for local authorities to decide whether to take action to safeguard or promote the child's welfare – there is nothing in the legislation which requires this to be punitive), it makes no suggestions about the kinds of scenarios where it believes it is not appropriate for the state to enquire about a child's welfare.
56. The majority of referrals to local authorities concerning children who could potentially be in need for a variety of reasons (including abuse) come from statutory partners. Of 642,980 referrals to children's social care services in the year ending 31 March 2020, 62% came from the police, schools and health services. If we remove the 'individual', 'other', 'anonymous' and 'unknown' referrers from the latest children in need data, then 83% of referrals were made by statutory agencies and professionals working with children and families. It is not clear whether the care review believes that agencies and professionals are wrongly referring children/families to children's social care, or that the real problem is that there isn't the help available to children/families (including material help) once need has been acknowledged. Similarly, it is not clear whether the review believes too many concerned relatives or members of the public are contacting children's social care.
57. The information cited in *The Case for Change*, leading to the review's question about improving the quality of decision-making in child protection, points to three different categories of failings:
- a. Poor assessments and decision-making where a child has died or been seriously harmed
  - b. Poor decision-making leading to 'over-intervention'
  - c. Variation across local authorities as to what kind of help is offered
58. There is no deep discussion of any of these challenges. For example, in respect of children dying or suffering serious harm it has long been known that a failure to consistently endeavour to understand the child's life, *as felt and lived by them*, increases risk. This is not discussed in *The Case for Change* (unlike in prominent previous reviews such as Munro and Laming). There is no discussion of the extent to which the duty to ascertain and give due consideration to the child's wishes and feelings during Section 47 enquiries, which only came into force in 2005, is being implemented. The right to an advocate in adult safeguarding is far stronger than in child protection; similarly there is no duty on local authorities to record in writing the child's wishes and feelings when assessing their needs and deciding what (if any) action to take to safeguard or promote their welfare. This would inevitably help to keep the focus on the child.
59. Independent advocates have a critical role in being available to children and young people where there are Section 47 enquiries so that they can be helped to understand what is happening and why, and to express their own wishes and feelings. We welcome the review's support for advocacy for parents in child protection, though this must be funded independent advocacy as well as peer (volunteer) advocacy. We share the review's concern about the serious discrimination faced by care experienced

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<sup>41</sup> All recorded crime statistics taken from Home Office (2021) Police recorded crime. Police force area open data tables, year ending March 2013 onwards. Data for British Transport Police excluded; only forces in England included; and Office for National Statistics (2021) Homicide in England and Wales: year ending March 2020 - appendix tables.

<sup>42</sup> Office for National Statistics (November 2020) Domestic abuse prevalence and victim characteristics, England and Wales: year ending March 2020 - appendix tables.

parents.

60. Another area that is not explored in The Case for Change is what was anticipated when the meaning of harm in the Children Act 1989 (in respect of care and supervision orders) was amended, in 2002, to include “impairment suffered from seeing or hearing the ill-treatment of another”<sup>43</sup>, and what has been the reality. It was a great step forward for the terrible impact of domestic abuse on children to be recognised and understood, but two decades after this change to the law children plainly do not have more access to psychological and emotional support than before (whether they remain within their families or enter care). Similarly, the amendment in 2015 to the Children and Young Persons Act 1933, providing that the offence of cruelty includes physical *and psychological* suffering or injury, was not accompanied by any new resources to ensure children’s psychological needs are attended to.

### ***Protecting children in institutional settings***

61. The review has not examined children’s access to the child protection system when they live in institutional settings, which is a major oversight. Our own work around trying to improve safeguarding arrangements in institutional settings, particularly child prisons, has shown that the child protection system is not organised to effectively respond to serious harms suffered by children living away from home. We believe this stems from organisational defences which seek to keep local authorities and other agencies out of institutions, but also a child protection system that is especially not sensitised to the needs, rights and feelings of teenagers. Critically, there remains far too little sustained challenge to abusive restraint and other coercive treatment. Despite decades of collective learning about institutional abuse, it remains the case that the integrity and behaviour of children living in group-based settings is too often doubted when they report abuse, making it far easier for the narrative of the institution to prevail.
62. At the national level, we asked the Child Safeguarding Practice Review Panel to consider undertaking a review of safeguarding in child prisons (including local authority arrangements) and were pleased our concerns led to some additional scrutiny. However, we were very disappointed that the Panel decided not to undertake a national review, despite evidence of very serious abuse and systemic failure to keep children safe. IICSA found 1,070 alleged incidents of sexual abuse in child prisons between 2009 and 2017.<sup>44</sup>
63. Research undertaken for the NSPCC found that in 2011/12 the rate of abuse allegations in residential care in England was 15.41 out of every 100 children in residential care. The confirmed abuse rate was found to be 3.34 out of every 100 children in residential care<sup>45</sup> – around 20% of allegations resulted in confirmed abuse. But this research did not seek disaggregated data for different residential settings, and it did not elicit information about Section 47 enquiries. It is only at the point of a Section 47 enquiry being undertaken that local authorities have a duty to ascertain and give due consideration to the wishes and feelings of the child.<sup>46</sup> Article 39 therefore made a freedom of information request to all local authority designated officers in England, asking for data on institutional abuse allegations, Section 47 enquiries and the outcomes of these enquiries. This request was made in May 2015, and data was

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<sup>43</sup> Section 31 Children Act 1989, as amended by Section 120 Adoption and Children Act 2002.

<sup>44</sup> Independent Inquiry into Child Sexual Abuse (February 2019) Sexual abuse of children in custodial institutions: 2009-2017. Investigation report, page 30.

<sup>45</sup> Biehal, N., Cusworth, L., Wade, J. with Clarke, S. (2014) Keeping children safe: Allegations concerning the abuse or neglect of children in care. Final report. NSPCC. Table 4.3, page 69.

<sup>46</sup> Section 47(5A) requires the local authority, as far as reasonably practicable and consistent with the child’s welfare, to ascertain and give due consideration to the child’s wishes and feelings when determining the action to take with respect to a child.

sought for the three preceding years. (We recently repeated this exercise and are currently analysing the data provided).

64. Following the 2015 request, 52 local authorities provided data for the three preceding years disaggregated across different institutional settings. Together, these local authorities were notified of abuse and/or neglect allegations in every institutional setting we listed except immigration detention. The settings where allegations had been received were children's homes, secure children's homes, boarding schools, residential special schools, mental health inpatient units, other hospitals, young offender institutions, secure training centres and police custody. The highest total number of referrals concerned children's homes, including secure children's homes (1,681 across three years).<sup>47</sup> The next highest was child prisons, which referred 241 abuse/neglect allegations to local authorities across the three years. However, this figure related to only four institutions.
65. The data we were able to elicit on Section 47 enquiries (from only 34 local authorities) indicated that the vast majority of allegations concerning adults working in institutional settings – 76% – did not result in a formal child protection investigation.
66. One local authority received 82 referrals over 3 years in respect of a single young offender institution. This resulted in 28 Section 47 enquiries. None of the allegations were found to be substantiated. We do not consider it plausible that, of those 82 referrals to the local authority, no child suffered significant harm and no child required protective action, although we recognise that local authorities and other outside agencies are very limited in what they can do to help children in prison recover from serious harm.

### ***Transforming child protection***

67. We have previously communicated to IICSA that the following nine measures “could have a transformative effect on child protection in our country”, and we ask the review to consider them carefully:
  - a. Removal of the ‘reasonable punishment’ / ‘reasonable chastisement’ defence so that children have the same legal protection from assault as adults
  - b. National communications campaign to inform children of their rights under the UNCRC and where and how they can seek help to protect these rights
  - c. A new duty of protection which would require all those who work with children in institutional settings to report concerns about the mistreatment of children and children's human rights violations
  - d. The development of statutory guidance on keeping children safe in institutional settings – to include lessons learnt over decades about the risks of institutional settings; creating a culture of respect for children's rights and equality of access for all children to protection and safeguards; selecting staff; identifying child abuse and coercive cultures and practices; and upholding children's right to recover. We consider this guidance should have the widest possible definition of institutional setting, including faith groups and the armed forces. Companion guidance should also be produced for the voluntary sector

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<sup>47</sup> There were 1,760 children's homes in England in March 2014 – Department for Education (December 2014) Children's homes data pack.

- e. Every organisation which has functions relating to children to be encouraged to appoint a senior postholder whose role is to champion the rights of children within the organisation, particularly their right to be heard
- f. The Children Act 1989 to be strengthened through an amendment to give children an explicit right to help from an advocate during child protection enquiries and assessments and decision-making
- g. National data collection to be reformulated so that central government, local authorities and others can monitor children's views and experiences of the child protection system and use this as the basis for continuing improvement
- h. A new impetus to preventing abuse through a cross-government, joined up and properly funded approach to child protection and safeguarding that would strategically integrate the above reforms. Actions by government and others in response to each of IICSA's recommendations would be an essential element of this strategic approach.<sup>48</sup>

#### **Chapter four: Care must build rather than break relationships**

- If we were creating care today that was good enough for all our children what would it look like?
- How can care help to build loving lifelong relationships as the norm?
- What changes do we need to make to ensure we have the right homes in the right places with the right support? What role should residential and secure homes have in the future?

#### ***Rights-based care system***

68. After persistent and widespread revelations of abuse and neglect in care in England during the 1980s and 1990s, the term 'corporate parent' came to be used by policy makers to emphasise the moral and legal obligations of local authorities and other agencies. This was a very important endeavour at the time. However, today the term is widely seen as impersonal and unhelpful in focusing attention on what children need as they grow up, just like all other children, and what they need in addition as children separated from their parents and wider family. We believe the concept of 'corporate parenting' encourages detached and dispassionate language and terminology<sup>49</sup>, and works against what children consistently say they want from care – to feel loved, secure, to understand their identity and their past and to be connected to people who appreciate and value them, and stay in their lives.<sup>50</sup>
69. In 2017, without any prior public consultation, legislation was passed which set out corporate parenting principles for the first time. Local authorities must have regard to these principles when carrying out their functions in relation to children in their care, and adults (up to age 25) who were formerly in their care. The principles are:
  - *To act in the best interests, and promote the physical and mental health and well-being, of those children and young people*
  - *To encourage those children and young people to express their views, wishes and feelings*
  - *To take into account the views, wishes and feelings of those children and young people*

<sup>48</sup> Article 39 Director's witness statement to IICSA's effective leadership of child protection investigation, May 2020.

<sup>49</sup> TACT Fostering and Adoption (2019) Language that cares. Changing the way professionals talk about children in care.

<sup>50</sup> Children's Commissioner for England (2019) *Children's voices: children's experiences of instability in the care system*. Office of the Children's Commissioner for England.

- *To help those children and young people gain access to, and make the best use of, services provided by the local authority and its relevant partners*
- *To promote high aspirations, and seek to secure the best outcomes, for those children and young people*
- *For those children and young people to be safe, and for stability in their home lives, relationships and education or work*
- *To prepare those children and young people for adulthood and independent living.*<sup>51</sup>

70. There are vital provisions from the UNCRC which were not included in the statutory principles above – such as: nurturing children’s family relationships (including with their siblings) and supporting reunification with their parents wherever possible, and as quickly as possible; ensuring all children can enjoy their rights without discrimination<sup>52</sup>; providing environments where children feel loved, secure, respected, understood and can thrive and pursue their individual interests and goals; helping children recover from experiences which have caused them significant pain, distress and anguish; and being reliably there for them for as long as is needed throughout their adult life. We would also like to see a commitment to challenging inequality and prejudice arising from the child’s care status (through the development of a new protected characteristic in the Equality Act 2010). This would hopefully help to reduce public prejudice towards care experienced children and adults, as well as ensure equal treatment across public services including education.

71. Children who grow up in care should never be treated in such a way that protective action by the state would be taken if it occurred within a family environment. Those who spend time in care should leave with good memories and very positive reflections about the people who loved and cared for them and the opportunities and experiences provided, notwithstanding the hurt they may feel by not being with their own families. The well-being and life chances of children who have spent substantial periods of their childhood in care should be markedly better than they would have been had they remained with their families.

72. A reimagining of the purpose of care would, we believe, greatly help to keep the focus where it should be – on the child’s happiness, well-being and development. Some years ago, following consultation and partnership with children and young people and others, a blueprint was published for a child-centred approach to public care. Its title summed up the fundamental change envisaged: ‘Start with the child, stay with the child’.<sup>53</sup> Setting out the purpose of care from a children’s rights perspective would help us achieve that. Connected to this is the need to commit to being there for children as they enter adulthood, and beyond – for as long as they need it. We urge the review to have dialogue with children and young people, social workers and employers about the introduction of schemes which recognise and value long-term relationships.

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<sup>51</sup> Section 1 Children and Social Work Act 2017.

<sup>52</sup> This relates not only to children’s care and treatment once in care but in the co-ordinated efforts and resources required to prevent children’s separation from their families. Children from deprived communities, children from black, Asian and minority ethnic communities and disabled children are disproportionately separated from their families (there is overlap across these three groups, and the same disproportionate separation of children from their families within our child welfare system is also entrenched within our criminal justice system).

<sup>53</sup> Voice for the Child in Care and National Children’s Bureau (2004) Start with the child, stay with the child: A blueprint for a child-centred approach to children and young people in public care. Voice for the Child in Care.

### ***Long-term commitment to children***

73. A major conference run by and for care experienced children and adults in England in 2019 urged policy makers to reimagine care from the growing child's perspective – and not to sever relationships at 18, 21 or 25 years, simply because of age, but to continue caring, supporting, guiding and helping for as long as is needed.<sup>54</sup> Children and adults who report most positively on their time in the care of the state invariably cite individual adults who loved them, believed in them and were there for them through good times and bad.<sup>55</sup>

### ***Listening to children and the power of independent advocacy***

74. Systems and structures are necessary to ensure that children's views and experiences are known, understood and acted on throughout all of their time in care, and in wider policy and practice development. There is very little in The Case for Change about the importance of listening to children and young people, and the necessity of cultural change which consistently affirms children as people with their own feelings, needs and rights.

75. All institutions accommodating children and young people should have independent advocates who attend regularly and are available to see and listen to them in private, and inform them of their rights. This is important to help children and young people to feel confident to express their views, to raise any concerns and to make staff and others aware of their needs and rights. The Case for Change appears lukewarm about the power of children and young people's independent advocacy, though there are no references to research or other evidence about children and young people's experiences of having an advocate.<sup>56</sup>

76. Independent advocacy services help maintain a sharp focus on children; they implicitly and explicitly challenge competing demands and priorities – including financial, political and professional/personal. In empowering children and young people, advocacy services can rebalance organisations when they stray from children's rights and interests.

### ***Care for all children***

77. We remain bitterly disappointed that the review has supported the government's very regressive change to legislation which only requires that children in care aged 15 and younger live in settings where they receive day-to-day care.<sup>57</sup> This is a very positive development for this group of children (fewer than 100 children this age are currently not living in care settings) but it discriminates against 16 and 17 year-olds in care (several thousand children this age are living in settings where they receive no day-to-day care). It creates a two-tier care system and is the first time legislation has differentiated care planning and placement decision-making on the basis of age. The impact will be disproportionately borne by teenagers from black, Asian and minority ethnic communities, and by boys. The review's failure to champion the rights of children aged 16 and 17 seriously undermines its credibility as seeking to bring about love and stability for all children.

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<sup>54</sup> The Care Experienced Conference (2019) The conference for care experienced people Liverpool Hope University, 26th April 2019. Summary report.

<sup>55</sup> The importance of relationships with social workers, of having stability and permanence and being able to understand and connect to their individual roots were the three principal recommendations made by children and young people taking part in a national inquiry: The Care Inquiry (2019) The views and recommendations of children and young people involved in the Care Inquiry.

<sup>56</sup> See, for example, Children's Commissioner for England (2019) Advocacy services for children.

<sup>57</sup> This change is due to come into force on 9<sup>th</sup> September 2021: The Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021.

## **Small group living**

78. The severe shortage of suitable homes for children in care has been neglected by central government for far too long. Considerable public funds will be required to deal with the current crisis – the £24 million available to local authorities this year to increase capacity in children’s homes equates to only £158,000 per council. We support the North East Association of Directors of Children’s Services submission to the care review which advocates the elimination or capping of profit from children’s residential care (and fostering).<sup>58</sup> We also recommend a change to local planning requirements, making it easier for small homes to open in a diverse range of neighbourhoods. Local and national politicians must do much more to champion our collective commitment and obligations to children and be ready to challenge hostility and prejudice towards children in care.
79. There is no analysis in The Case for Change of the work and impact of the Residential Care Leadership Board, which was established by the Department for Education in 2017 and ran for four years. We note that at least one Safeguarding Children Board / Partnership has recommended a national review of the availability of homes for children in care:

*This Review asks the Department for Education to undertake a review of national placement sufficiency for children who need to be in care or placed under secure arrangements. This national review will analyse residential home provision; secure home provision and should include the views and experiences of children and their families who have and continue to use such provisions. This will inform changes to policy, sufficiency levels and contractual arrangements with independent providers.<sup>59</sup>*

80. We believe that there will always be a place for group-based living for a small number of children for whom living in nuclear families is presently too painful or difficult. Children entering care when they are older are often intensely loyal to their family and don’t want people to try and replace them. There is therapeutic value in children living with others who have been through similar traumatic experiences (though there are challenges associated with this too). However, there needs to be radical change to current provision so that it truly emulates a family environment and attracts, remunerates and supports highly qualified and skilled staff. The focus must be on helping children to recover from harm and rebuild relationships with their families, or develop new relationships with foster families who can see them through their childhood and be there for them when they are adults. We support shared care arrangements and much greater flexibility so that children enjoy nurturing relationships with individuals fulfilling grandparenting roles for example. We regret the Department for Education has not supported IICSA’s recommendation that a professional registration body be established for children’s homes’ staff, given the knowledge, skills and aptitudes required for working with children in residential settings.

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<sup>58</sup> North East ADCS (2021) North East submission to the independent review of children’s social care, page 33.

<sup>59</sup> Oxfordshire Safeguarding Children Board (2021) “Untouchable Worlds”: Protecting children who are criminally exploited and harmed. ‘Jacob’: <https://www.oscb.org.uk/wp-content/uploads/2021/01/CSPR-for-Jacob-.pdf>

## **Chapter five: System factors**

- How can we strengthen multi-agency join up both locally and nationally, without losing accountability?
- How do we free up social workers to spend more time in direct practice with children and families and reduce risk aversion?
- How can monitoring and inspection make the most difference to children’s and families’ experiences and engender greater freedom and responsibility in the workforce?
- What will need to be different about this review’s recommendations compared to previous reviews so that they create a tipping point for improvement?

### ***Rights and participation services***

81. In England, we have a well-developed mechanism of supporting children’s right to be heard through the appointment of independent advocates and children’s rights officers and wider participation initiatives, including children in care councils. Children’s rights and advocacy services began to emerge in the 1980s and 1990s as the systemic abuse of children in care was recognised. This innovation was led by local authorities and voluntary organisations.
82. Expenditure on children’s rights and participation services at a local level is highly variable<sup>60</sup>, and they have been adversely affected by austerity. National government has still not championed and funded UNCRC education, training and awareness-raising among different professional groups and key constituencies such as elected members. Thirty years after the UK ratified the UNCRC, there is little sense that children’s views and experiences are systematically influencing policies, services and decision-making which affect them profoundly (and are often claimed to be transforming their lives). We have arrangements in place for children in care to be interviewed privately when they have run away, but there are no comparable, routine systems for inviting children and young people to share their reflections on living in a particular setting, or receiving a particular service, once they have moved from that place or stopped using the service. Independent advocates could support this process. Similarly, we are not aware of any employer scheme which recognises and validates social workers and other professionals who have stayed in their roles in order to maintain very significant relationships with children.

### ***Strategic implementation of children’s rights***

83. At a national level, there is no Cabinet-level Ministerial position leading on all aspects of children’s rights and welfare, or the UK’s implementation of the UNCRC.
84. Formal structures and systems, which are properly funded and have real influence nationally and locally, are vital in ensuring children are properly heard, know their rights and can raise concerns. This includes ring-fenced funding for self-advocacy groups and organisations run by and for care experienced people. However, these formal mechanisms should enhance and build upon what children need, and have a right to receive and experience, in their everyday lives. Everyone who works within care settings, and everyone whose work and decision-making impacts upon children, must strive to ensure that children feel listened to, understood and respected – not as a by-product of a project or an event or a particular initiative but because this is the environment in which they are growing up.

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<sup>60</sup> The Children’s Commissioner found that expenditure on advocacy services varied between £21.20 and £3,018.84 per child being helped in England in 2018/19 (data from 68 of 152 local authorities): Children’s Commissioner for England (2019) Advocacy for children. Children and young people’s advocacy services in England.

### **Getting to the heart of children's rights**

85. Too often children's rights are associated with conflict and complaints, with children having to 'fight' for their basic needs to be met through adversarial procedures. Whilst it is critical that children have access to tailored information, help and remedies when they are being (or have been) ignored, silenced and/or mistreated, it is a misunderstanding and misapplication of the UNCRC to view this as the start and end of a children's rights approach.
86. A children's rights approach is about valuing children as human beings with integrity and agency, and doing everything we can to help them feel loved, safe, secure, respected, fulfilled and hopeful for the future<sup>61</sup> – by ensuring they have equal access to all of the wonderful, life-enriching experiences and opportunities available to other children whilst also making up for the rights violations they have endured in their past.
87. We note the chair's response to a submission from Article 39 and others urging the review to put the UNCRC at the centre of its work:

*Whilst I do support the UNCRC, the 54 articles on their own are not enough to ensure that all children grow up with safety, stability and love and that the state provides the same foundation for the children in its care. For this, we need to go beyond a discussion simply of rights to one that includes a focus on the relationships that children need in their lives and this is a significant focus for the review. I have already seen a number of examples where, despite rights – or duties – already being clearly set out in law, services are not delivering what is promised or intended. This should remind us that legislation alone is rarely a successful way of making change happen.<sup>62</sup>*

88. We strongly contest the insinuation that England has tried to transform children's lives through UNCRC implementation, and this has failed. It is notable that the review has not considered the considerable body of recommendations made by the United Nations Committee on the Rights of the Child between 1995 and 2016, which remain to be implemented.
89. It would be a great disservice to children and their families for the current very significant challenges in children's social care to be reframed as a problem arising from having too much legislation. If we are serious as a society about meeting children's needs and honouring their rights, then they must have the force of law behind them.
90. Furthermore, rights are about culture, the respect and dignity we show to one another *as well as* legal entitlements. The review is fundamentally misunderstanding children's rights if it believes they do not prioritise relationships and children's lived experiences.

### **Understanding and respecting different social work roles and tasks**

91. On freeing up social workers' time for direct practice with children and families, we ask that the review recognises constructive time spent by social workers engaging in professional tasks that enhance direct work, which includes: planning and preparing for their time with children and their families; liaison with other services and agencies on behalf of children and families (telephone calls, emails, letter and report-writing); maintaining accurate and up-to-date records; supervision; drafting reports for courts; team-building and support; and continuing professional development.

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<sup>61</sup> Another way of looking at this is, what makes children's lives good – Coram Voice and The Rees Centre (2020) The voices of children in care and care leavers on what makes life good: Recommendations for reviewing the care system.

<sup>62</sup> Letter from Josh MacAlister, 4 June 2021.

92. We reject the assertion that social work suffers from too many “professional observers who are not directly involved in practice”. Although left unsaid in *The Case for Change*, we expect this refers to the role of line managers and independent reviewing officers (IROs), a theme pursued in a blueprint for children’s care authored by the review chair and others in 2019.<sup>63</sup> The Department for Education has for several years been seeking to delete or dilute the role of IROs, from the exemption clauses in 2016/17 through to Statutory Instrument 445 in 2020.
93. Having quoted from Lady Hale’s speech marking 30 years of the Children Act 1989, the authors of *The Case for Change* should know that she was one of the Court of Appeal judges who developed the idea of starred care orders as a means of the family court keeping a watchful eye on local authorities where there were concerns plans for a child may not be realised and their rights under the European Convention on Human Rights/Human Rights Act may be breached. Lady Hale explains in her speech why this was overturned in the House of Lords.<sup>64</sup> But the fact remains – the IRO role was developed in order to ensure that every child in the care of the state has an independent person holding local authorities to account and ensuring their human rights are protected.

## Part II: Significant omissions

94. The lack of focused attention given to the scale and devastating impact of child sexual abuse is arguably *The Case for Change*’s greatest single weakness. It is a fundamental omission. The document notes research undertaken for the NSPCC which found that nearly one in five (16.5%) children aged 11 to 17 had experienced sexual abuse, yet only one in eight are known to services.<sup>65</sup> Despite this acknowledgement, there is no exploration by the review as to why this disparity exists or the implications for children who have been sexually abused. Indeed, the review shows a profound lack of curiosity about the extent to which our child protection system is known and trusted by children, and whether they are receiving the help they need to recover from sexual abuse.
95. Police force statistics for rape and many other sexual offences do not give a true picture of reported crimes against children. Children aged 16 and 17 are subsumed within adult rape statistics. They are also missing from child sexual assault and sexual activity with a child statistics.
96. In 2020/21 there were 13,945 recorded rapes of children aged 15 and under in England – 26% of all rapes recorded by police forces in England that year. In addition, there were 12,130 recorded sexual assaults on a child aged 12 and younger, and 20,634 crimes of sexual activity with a child aged 15 and younger. There were 6,153 crimes recorded of sexual grooming, 1,051 crimes recorded of abuse of children through sexual exploitation and 255 recorded crimes of abuse of position of trust of a sexual nature. Bringing these figures together, there were 54,168 recorded sexual crimes committed against children in England in 2020/21 – a significant under-estimate for the reasons set out above.
97. Data is not yet available for the number of children who were the subject of child protection plans in 2020/21 due to sexual abuse. However, in 2019/20 the number was 1,970 children subject to child protection plans under an initial category of sexual abuse. Sexual abuse was identified as a need 30,460 times following a children in need assessment in 2019/20.<sup>66</sup> The disparity is significant between

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<sup>63</sup> Macalister, J. and others (2019) *A blueprint for children’s social care. Unlocking the potential of social work.* Frontline, Centre for Public Impact (a Boston Consulting Group Foundation) and Buurtzorg Britain and Ireland.

<sup>64</sup> <https://www.supremecourt.uk/docs/speech-191113.pdf>

<sup>65</sup> Radford, L. and others (2011) *Child abuse and neglect in the UK today.* NSPCC.

<sup>66</sup> 2019/20 data available here: <https://explore-education-statistics.service.gov.uk/find-statistics/characteristics-of-children-in-need/2020#dataBlock-0247c828-2398-4d34-8b98-08d884b70554-tables>

children coming into contact with the police for sexual crimes committed against them, and children receiving help from children’s social care.

Year: 2019/20, England
<b>57,234 sexual offences recorded against children in England<sup>67</sup> (significant under-estimate)</b>
<ul style="list-style-type: none"> <li>▪ 14,856 recorded rapes of children aged 15 and under</li> <li>▪ 12,571 recorded sexual assaults on a child aged 12 and younger</li> <li>▪ 22,569 recorded crimes of sexual activity with a child aged 15 and younger</li> <li>▪ 5,926 recorded crimes of sexual grooming</li> <li>▪ 979 recorded crimes recorded of abuse of children through sexual exploitation</li> <li>▪ 333 recorded crimes of abuse of position of trust of a sexual nature</li> </ul>
<b>Sexual abuse identified 30,460 times following a children in need assessment</b>
<b>1,970 children subject to child protection plans under an initial category of sexual abuse</b>

98. Serious case reviews undertaken on older children often demonstrate the deep psychological and emotional injury of child sexual abuse.<sup>68</sup>

99. IICSA is the UK’s largest ever public inquiry. It has amassed substantial evidence of sustained sexual violence against children across all parts of society. A review which promises once-in-a-generation changes to children’s social care ought to have paid very close attention to the inquiry’s painful lessons about adult violence against children, and the longstanding impact which sexual abuse can have on a person’s life. For children living away from home, IICSA provides a major body of evidence of children not being believed, not being taken seriously and not being protected.

100. The Case for Change gives no attention to institutional abuse, despite IICSA’s work and findings across the past six years. The public inquiry has heard evidence from 648 witnesses, it has conducted 323 days of public hearings and published 24,565 documents. Its 15 investigations have included:

- a. The abuse of children in the care of Nottinghamshire Councils
- b. The abuse of children in the care of Lambeth Council
- c. The abuse of children in custodial institutions
- d. The abuse of children in residential schools
- e. The abuse of children within the Anglican Church
- f. The abuse of children within the Catholic Church

<sup>67</sup> All recorded crime statistics taken from Home Office (2021) Police recorded crime. Police force area open data tables, year ending March 2013 onwards. Data for British Transport Police excluded; only forces in England included.

<sup>68</sup> See, for example:

- Dudley Safeguarding People Partnership (2020) Child D: learning theme: repeat missing episodes between 2017 and 2019: “if you take me home, I’ll just go missing again”: <https://bit.ly/3ityPgX>
- Kent Safeguarding Children Board (2020) ‘Child I: Carys’: <https://bit.ly/3xuki8L>
- Luton Safeguarding Children Board (2020) ‘Child G’: <https://bit.ly/2TZEL13>
- Medway Safeguarding Children Board (2020) ‘Faith’: <https://bit.ly/3xtAvuK>
- Cumbria Local Safeguarding Children Board (2019) ‘Child CH’: [https://ciossafeguarding.org.uk/assets/1/2019\\_12\\_04\\_final\\_lcsp\\_report.pdf](https://ciossafeguarding.org.uk/assets/1/2019_12_04_final_lcsp_report.pdf)
- Safeguarding Children Partnership for Cornwall and the Isles of Scilly (2019) ‘Child C’: [https://ciossafeguarding.org.uk/assets/1/2019\\_12\\_04\\_final\\_lcsp\\_report.pdf](https://ciossafeguarding.org.uk/assets/1/2019_12_04_final_lcsp_report.pdf)
- Brighton and Hove Safeguarding Children Board (2017) ‘Child A’: <https://www.bhscp.org.uk/wp-content/uploads/sites/3/2019/11/Child-A-Full-Report.pdf>

101. IICSA's final investigation focused on effective leadership of child protection. Core participants were the Secretary of State for Education, Independent Schools Inspectorate, National Crime Agency, National Police Chiefs' Council, Ofsted and College of Policing.<sup>69</sup> Findings from the investigation will be included in the Chair and Panel's final report next year. We urge the review to await this final report before making recommendations about child protection. It must also undertake a thorough analysis of the findings, conclusions and recommendations of each of the inquiry's investigations in order to draw out themes for ensuring the continued improvement and development of our child protection system.

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<sup>69</sup> <https://www.iicsa.org.uk/key-documents/797/view/list-core-participants-october-2020-.pdf>