

**Consultation Question 1 (Paragraph 2.7)**

I do not have the skills or knowledge to comment on the draft impact assessment

**Consultation Question 2 (Paragraph 2.12)**

In my opinion the proposals, if enacted in their entirety will be of benefit for disabled children (in general and neurodivergent children in particular) and for parent carers. The proposals should address many of the failings that have been identified in the Children Act 1989 in relation to the rights of disabled children and the process by which Children’s Services assess their eligibility for care and support services. The research paper L Clements and A Aiello [Institutionalising Parent Carer Blame](#) (Cerebra 2021) identifies many of these failings and is cited in Commission’s Consultation Paper.

**Consultation Question 3 (Paragraph 3.62)**

Agreed: there should be a single express duty to assess the social care needs of disabled children.

**Consultation Question 4 (Paragraph 3.63)**

The threshold for carrying out an assessment should be

- (1) the child appears to be disabled; and
- (2) it appears that the child may have needs for care and support.

This:

- (a) mirrors the requirements in the Care Act 2014 and (insofar as this is appropriate) a consistency of approach between procedures and practices of the adult and children’s social care legislation is desirable – not least in order to avoid the upheavals and discontinuities that occur when responsibility for a disabled child and their carer shifts from the Children’s Act 1989 to the Care Act 2014; and
- (b) accords with logic. Authorities will not, in general, know if a disabled child and/or their carer are eligible for care/support (and if eligible, the nature of their support needs) until an assessment has been undertaken. In this respect (and as highlighted below) the legislation should include the presumption contained in section 21(1) of the Social Services and Well-being Act 2014 that “*a disabled child is presumed to need care and support in addition to, or instead of, the care and support provided by the child’s family*”.

**Consultation Question 5 (Paragraph 3.65)**

In order to respond to this question, concerning whether disabled children’s assessments undertaken for different purposes could be combined, it is necessary to

distinguish between the data gathering process of an assessment and the process concerned with the exercise of judgment by the assessor.

In terms of data collection there is a case for the assessor using interviews with a disabled child and their family to collect information necessary to discharge more than one assessment function – for example to determine eligibility for social care support under the Children Act 1989, to complete a ‘child’s needs assessment’ under s58 Care Act 2014 and to determine the child’s needs arising from (or related to) their mental disorder under s117 Mental Health Act 1983. Multiple ‘data gathering’ meetings for each of these statutory processes could be stressful and a poor use of resources.

However, the actual assessment determination (and the evidence-based reasons for that determination) should be distinct for each of these roles – ie in the above case for example, resulting in a separate Children Act 1989 assessment/eligibility determination document; a separate Care Act 2014 assessment/eligibility determination document; and a separate s117 assessment/eligibility determination document.

There would appear to be a good argument for this administrative law principle to be detailed in the Statutory Guidance to the amended Children Act 1989 i.e. not to be spelled out in legislation.

#### **Consultation Question 6 (Paragraph 3.67)**

I do not have sufficient experience on this issue to provide an informed response (the question concerns experiences of assessments under the Mental Capacity Act 2005).

#### **Consultation Question 7 (Paragraph 4.26)**

My colleague Dr Ana Aiello and I have published a detailed critique of the inappropriate safeguarding/risk focus of the disabled children’s assessment process (L Clements and A Aiello [\*Institutionalising Parent Carer Blame\*](#) (Cerebra 2021)) and the findings of collaborative research we undertook with parent carers as [\*Draft Guidance: Assessing the Needs of Disabled Children and their Families\*](#) (University of Leeds 2023) both of which have been considered in the Consultation paper.

The legislation should mandate the key stages in the assessment process along similar lines to the Care Act 2014 with the detail fleshed out in regulations and statutory guidance. The absence of statutory underpinning of this kind has, in large measure, caused the wholly inappropriate assessment practice described in the above research. Aligning the statutory requirements for the assessment process for disabled children with those in the 2014 Act will also avoid the upheavals and discontinuities that occur when responsibility for a disabled child and their carer shifts from the Children’s Act 1989 to the Care Act 2014

#### **Consultation Question 8 (Paragraph 4.34)**

Subject to the comments in the above response (Q.7), the proposal makes considerable sense – namely that assessments be proportionate and appropriate to the circumstances of the child and their family.

**Consultation Question 9 (Paragraphs 4.37 and 4.38)**

Agreed: it is essential that there be a requirement that assessors have appropriate expertise and training (similar to that mandated by the Care Act 2014).

**Consultation Question 10 (Paragraph 4.40)**

Agreed: it is essential that there be a requirement that local authorities provide disabled children and their families with a copy of their assessment.

**Consultation Question 11 (Paragraph 4.42)**

Agreed: assessors need to consider whether any other relevant statutory assessment duty is engaged when assessing the social care needs of a disabled child.

**Consultation Question 12 (Paragraph 4.45)**

This would be undesirable. There is little or no evidence that the delegation of the assessment process to 'trusted' third parties (in the Act 2014) has had a positive impact on the quality (or cost effectiveness) of assessments. As a point of principle, the assessment process should be discharged by public bodies – not least to ensure that they retain 'ownership' of this core function of the state.

**Consultation Question 13 (Paragraph 5.25)**

In my experience many local authorities fail to undertake carers needs assessments: many front-line workers have little understanding as to the purpose of such assessments and see it (at best) as a tick box activity – often simply sending the carer a *pro forma* to complete. In my experience there is widespread ignorance among assessors that carers have the right to engage in paid work, to engage in education, training and leisure activities.

**Consultation Question 14 (Paragraph 5.34)**

Agreed: there should be a single duty to assess the needs of a carer for a disabled child, which should arise upon: (a) request by the carer or (b) it appearing to the local authority that the carer may have needs for support. There should in addition be a duty to inform carers, in writing, of their right to request such an assessment.

**Consultation Question 15 (Paragraph 5.36)**

Agreed: well-being having the same meaning as in section 1 Care Act 2014 (with necessary changes for young carers).

**Consultation Question 16 (Paragraph 5.37)**

Agreed: all carers should have a right to a copy of their assessment.

### Consultation Question 17 (Paragraph 5.39)

Agreed – but subject to the statutory framework mandating the key stages in the carers assessment process (along similar lines to the Care Act 2014) with the detail fleshed out in regulations and Statutory Guidance - the proposal makes considerable sense, namely that assessments are proportionate and appropriate to the circumstances of the carer.

### Consultation Question 18 (Paragraph 6.18)

The Consultation question concerns the extent to which siblings' needs are considered during the assessment of a disabled child. In my opinion this is often cursory and risk orientated (ie considered from a 'safeguarding' perspective).

In very many cases the failure to properly address the care and support needs of a disabled child in an appropriate way, has serious impacts on that child's siblings (regardless of whether they are considered to be 'young carers'). Examples of this issue can be found in: *JG v Kent County Council* [2016] EWHC 1102 (Admin); Local Government and Social Care Ombudsman Complaints No 07B 04696 and 07B10996 against Croydon LBC, 16 September 2009; in the Local Government Ombudsman's Digest of Cases (Education) 2008/09 Report 06B04654; in complaint No. 15 015 904 against Salford City Council para 19 25 August 2016; Complaint no 13 010 519 against Birmingham City Council 31 March 2014; and *JR 30 (HN, a minor)* [2010] NIQB 86 at para 28. – cases summarised in Clements, L, *Carers & their Rights* (2018) para 11.20 at <http://www.lukeclements.co.uk/wp-content/uploads/2018/05/7th-ed-draft-Carers-Guide-11.pdf>.

I pick up on this concern in response to Consultation Q.20 below.

### Consultation Question 19 (Paragraph 6.20)

My comments in response to Q.13 above apply with equal force to young carers.

### Consultation Question 20 (Paragraph 6.25)

I do not consider that a statement in the statutory guidance that 'local authorities should consider whether the needs of any siblings need to be taken into account as part of the assessment of the needs of a disabled child' to be sufficient.

As noted in my response to Q18 above, a failure to properly address the care and support needs of a disabled child in an appropriate way, very often has serious impacts on that child's siblings (regardless of whether they are considered to be 'young carers'). The default position in any disabled child's assessment must be that 'consideration be given as to the likely impact any failure to provide appropriate care and support may have on the child's siblings (regardless of whether they are considered to be 'young carers')'.

### Consultation Question 21 (Paragraph 6.27)

Agreed.

**Consultation Question 22 (Paragraph 7.44)**

I agree with the proposal, although I have reservations about the analysis that precedes this question, I am in agreement with the analysis that follows it (i.e. paras 7.45 – 7. 50).

My understanding of the Law Commission's proposal is that once a local authority has determined that: (1) a disabled child's need is an 'eligible need'; and (2) the financial resources of relevant family members do not render the child ineligible for support; then an individually enforceable non-resource dependent duty crystallises.

**Consultation Question 23 (Paragraph 7.51)**

Agreed – the statutory duty to meet the social care needs of a disabled child should be subject to national eligibility criteria.

**Consultation Question 24 (Paragraph 7.52)**

The essential features of any national eligibility criteria should be: simplicity, comprehensibility and accessibility. These should be similar to the criteria in the Care and Support (Eligibility Criteria) Regulations 2015 reg 2 and the criteria in the Care and Support (Eligibility) (Wales) Regulations 2015 reg 4 – but without the much criticised 'can and can only test' in reg 4(c) and the difficult to understand requirement in reg 4(d).

**Consultation Question 25 (Paragraph 7.53)**

N/a

**Consultation Question 26 (Paragraph 7.55)**

This is agreed – on the basis that it relates to an individually enforceable duty (not subject to resource constraints) to meet the social care needs of a disabled child. Such a duty should take precedence over any other powers and duties (of the local authority) which could be used to provide the services. It will be necessary, however, for it to be stated that no charges can be levied if the child would otherwise be eligible for care and support under section 117 Mental Health Act 1983.

**Consultation Question 27 (Paragraph 7.57)**

This would appear, primarily, to be a local authority issue. Although there are disputes as to 'who pays', the current guidance is clear that these should not delay the provision of care and support (the ordinary residence test is not in any event a requirement for the triggering the duty to assess – which is also the case under the Care Act 2014).

**Consultation Question 28 (Paragraph 7.59)**

The proposal that disabled facilities grants should be provided under a single

statutory duty is very interesting and most welcome. The duty would need to be wider – as the duty under the Housing (GC&R) Act 1996 also covers adaptations to make the premises safe for ‘other persons’ and this is often the case where a disabled child’s condition creates risks for other occupants (particularly siblings).

I would question whether the practical/legal barriers set out in para 7.38(3) are ‘considerable’ – apart from the difficulties of getting agreement between two different government departments. Having a single individually enforceable statutory duty could overcome many of the counterproductive ‘budget protecting’ behaviours that characterise this field: actions that cause immense harm to families and wastage of public funds (see in this respect L Clements and S McCormack [Disabled Children and the Cost Effectiveness of Home Adaptations & Disabled Facilities Grants](#) (Cerebra 2017)).

**Consultation Question 29 (Paragraph 7.62)**

Agreed – authorities should have the power to meet needs

- (1) that do not satisfy the national eligibility criteria; and
- (2) pending an assessment of needs.

**Consultation Question 30 (Paragraph 7.69)**

Agreed: that there should continue to be a power to meet the needs of parents and carers. Statutory Guidance should however emphasise that in most cases there will be a duty to address carers’ eligible needs but discretion about whether to meet these through carers services or through care and support services to the disabled child (see comments to this effect by the Commission for Social Care Inspection (2008) *Cutting the cake fairly: CSCI review of eligibility criteria for social care* CSCI, Newcastle para 3.22).

**Consultation Question 31 (Paragraph 8.32)**

N/a

**Consultation Question 32 (Paragraph 8.33)**

N/a

**Consultation Question 33 (Paragraph 8.40)**

Agreed (the definition of short breaks).

**Consultation Question 34 (Paragraph 8.46)**

Agreed: short breaks should be made available under a single statutory duty to meet the social care needs of disabled children i.e. the duty should fall within the wider duty proposed in Chapter 7

**Consultation Question 35 (Paragraph 8.49)**

I do not agree with the proposal that there be separate eligibility criteria for short breaks support. There should be only one set of eligibility criteria for care and support services (as is the case under the Care Act 2014 and the Social Services and Well-being (Wales) Act 2014). Eligibility should be based on 'need' and not the service response to that need. Short breaks care/respice care/replacement care is provided to adults, and I can see no reason why a single set of regulations cannot be drafted to encompass all care and support service responses that may be necessary under the revised legislation. Short breaks care services are provided to a disabled child: they meet the child's needs for care and support.

#### **Consultation Question 36 (Paragraph 8.51)**

Agreed: children who are provided with a short break in the form of accommodation away from the family home should have the same benefits and safeguards as currently apply to children provided with a short break under section 20 of the Children Act 1989 – but that the existing exceptions should continue to apply.

#### **Consultation Question 37 (Paragraph 9.22)**

I believe that parent carers and parent carer organisations are in a better position to respond to this question than me.

#### **Consultation Question 38 (Paragraph 9.23)**

N/a

#### **Consultation Question 39 (Paragraph 9.24)**

Agreed – that the non-exhaustive list of the social services that can be provided to disabled children should include short breaks.

#### **Consultation Question 40 (Paragraph 9.25)**

The examples given in para 9.20 of services that could be provided is welcome, but in relation to:

- (2) this should include the words "and support" after the word "care"; and
- (4) I do not understand why this excludes support during the day. The exclusion of daytime support will be interpreted by local authorities as meaning that support of this kind is excluded – contradicting the Law Commission's 'non-exhaustive' intentions. If there is to be a duty to help parent carers remain in/return to work/education/training etc – then excluding daytime support is regressive and indeed may indirectly discriminate on grounds of sex.

#### **Consultation Question 41 (Paragraph 10.27)**

Agreed: local authorities should be able to provide services directly, indirectly through third parties and by means of direct payments.

**Consultation Question 42 (Paragraph 10.28)**

It is difficult to see what benefit families would gain from having a personal budget (as opposed to a direct payment). The Consultation Paper does not explain what this benefit would be and there is little research recent evidence to suggest how Personal Budgets have benefitted disabled adults (apart from Personal Budgets paid as a direct payment).

**Consultation Question 43 (Paragraph 10.29)**

Agreed: the amount of a direct payment should be an amount sufficient to secure the provision needed and payments should be kept under review, so that their sufficiency can be monitored and alternative arrangements made if necessary.

**Consultation Question 44 (Paragraph 11.26)**

Agreed: disabled children who are eligible to have their needs met by social services should have a statutory entitlement to a plan setting out what services they are to receive, and where, when and how those services will be provided.

**Consultation Question 45 (Paragraph 11.29)**

Agreed: the content of the plan to meet the needs of a disabled child should be dealt with in Statutory Guidance.

**Consultation Question 46 (Paragraph 11.31)**

Agreed: the plan to meet the needs of a disabled child should be combined, where appropriate, with other plans such as an EHCP, care plan or pathway plan.

**Consultation Question 47 (Paragraph 12.25)**

It appears that few local authorities charge for disabled children's care and support services. The legislation should state that authorities may not impose a charge for care and support provided or arranged to meet the needs of a child (as is the case in Wales – see The Care and Support (Charging) (Wales) Regulations 2015 reg 30).

**Consultation Question 48 (Paragraph 12.26)**

I am not qualified to answer this question.

**Consultation Question 49 (Paragraph 13.29)**

This is a technical and complex issue. Clearly alignment can be a good thing – but if this means making the process of accessing social care more like the process of accessing SEN support – there are dangers. There is a not insignificant risk of disabled children's rights to social care provision being subsumed within the 'process heavy', resource consuming, law dominated mechanisms that litter the path that families must

(in practice) tread in order to obtain SEN support.

#### Consultation Question 50 (Paragraph 14.51)

The legislation should contain a 'limits of social care' provision equivalent to section 22 Care Act 2014. It was a simple Parliamentary oversight/slip that the provision (in section 21(8) National Assistance Act 1948) was not transposed into the 1989 Act when the obligations in the 1948 Act were moved to that Act – see L Clements [‘Means testing children’s healthcare ~ by stealth’](#) (2018).

The Care Act 2014 contains no regulation-making power to enable the NHS/social care line to be changed in the future and this should not be contemplated in the new legislation. This is, in essence, a constitutional principle. If the boundary line can be changed in the future by regulation or agreement (see consultation question 52 below), it would mean that services currently the responsibility of the NHS can be shunted into children services and families then charged for using them. A National Health Service free at the point of need is probably the nearest thing we have to a constitutional right in the UK and these proposals would significantly undermine that right

#### Consultation Question 51 (Paragraph 14.53)

Agreed. In this context it is important that the Law Commission in its final report address the problem thrown up by the judgment in *Sammut & Others v Next Steps Mental Healthcare Ltd & The Greater Manchester Mental Health NHS Foundation Trust* [2024] EWHC 2265 (KB) as it applies to support arrangements for disabled children (not merely those accommodated under section 117 Mental Health Act 1983).

#### Consultation Question 52 (Paragraph 14.55)

I strongly disagree with this proposal – namely that guidance should be issued advising how local authorities and NHS bodies carve up their respective health and social care obligations to disabled children and their families.

See my comments in relation to Consultation Q.50 above. It is unacceptable that the intersection between health care and (currently 'chargeable') social care should be dealt with by an internal discussion between the local health and social care bodies.

In my work I am encountering a significant number of cases where the NHS is unilaterally cutting or withdrawing funding for many profoundly ill and disabled children (several of which have a short life expectancy) and seeking to shunt responsibility to the local authority and to their families. To suggest that this is simply an issue for NHS bodies and Children’s Services authorities – and one that they can sort out 'behind closed doors' – is unacceptable. This is, as noted above (question 50), a constitutional principle of immense importance.

#### Consultation Question 53 (Paragraph 15.19)

The problems faced by disabled children receiving social care, in making the transition to adult social care is an issue on which Stephen Broach KC and I have provided our views – see chapter 10 of *Disabled Children: a legal handbook* (Legal Action 2020)

**Consultation Question 54 (Paragraph 15.33)**

Agreed, provided this is expressed as the maximum age by which transition planning should be started in relation to disabled children.

**Consultation Question 55 (Paragraph 15.34)**

I would suggest, 14 as the statutory age at which transition planning should be started in relation to disabled children.

**Consultation Question 56 (Paragraph 16.24)**

N/a

**Consultation Question 57 (Paragraph 16.25)**

N/a

**Consultation Question 58 (Paragraph 17.21)**

It appears to be a sensible / interesting idea that local authorities be required to have a designated social care officer.

**Consultation Question 59 (Paragraph 17.24)**

N/a

**Consultation Question 60 (Paragraph 17.25)**

I set out (briefly) my views on this issue in L Clements *Clustered injustice and the level green* (Legal Action) 2020 chapters 5 and 7.

**Consultation Question 61 (Paragraph 18.79)**

In relation to attempts made by disabled children and their families to access their legal entitlements, there is, currently, a wholesale failure of 'accountability'. This is something I witness on a daily basis and a topic to which the Local Government Ombudsman makes not infrequent reference. Children's Services control the local complaints process and decide whether they will accept any outcomes/recommendations that emerge from this process.

The process is intimidating and exhausting for families who seldom have access to any form of advocacy or other support. This in turn privileges those families with the resources/knowledge/good networks that enable them to extract the best outcomes from this flawed system.

If a family wishes to refer their complaint to the Local Government Ombudsman this, itself, is beset with delay as the Ombudsman service is running on a shoe string (see L Clement and A Aiello [Unacceptable delay: Complaints procedures for disabled children and their families](#) (Cerebra 2019). During this process there is no

independent mechanism available to question whether the local authority is acting 'lawfully'. Investigators (and the Ombudsmen) are not able (or are unwilling) to question the legal interpretations given by local authority lawyers.

Although in theory, legal aid exists for some families to challenge decisions (by way of judicial review) – in practice it is virtually impossible to find a solicitor able to take such cases.

Social justice demands that this lack of accountability be addressed. There is a pressing need for individuals to have a mechanism that enables them to challenge unlawful or irrational decisions; for this to occur with the minimum of delay; and for it to result in seriously dissuasive penalties that ensure that the public body changes the way it behaves.

There are many ways that this can be achieved and there is a pressing need for the Law Commission to develop a practical proposal to achieve this end.

#### **Consultation Question 62 (Paragraph 18.84)**

I do not consider that the Local Government and Social Care Ombudsman system enables timely and appropriate resolution of such complaints. Our above research (cited in my response to Q.61) demonstrated this – and since its publication in 2019 the situation has, in my opinion, deteriorated.

#### **Consultation Question 63 (Paragraph 18.90)**

It would appear to be positive to provide the Children's Commissioner with an express power to initiate legal proceedings in respect of the social care needs of disabled children. In practice, however, this is not going to be an effective mechanism to address the chronic and pervasive lack of an effective remedy experienced by so many families.

#### **Consultation Question 64 (Paragraph 18.100)**

See above: in order for families to have an effective and independent mechanism to challenge and rectify decisions concerning their disabled child's social care needs, they need expert advocacy support to access a well-resourced forum (call it a 'tribunal' if needs be) that can interpret the law, independently weigh up the evidence and hand down binding decisions. Mechanisms of this kind exist in many branches of the welfare and administrative state – eg in relation to social security rights, education rights, planning rights and so on.

#### **Consultation Question 65 (Paragraph 18.101)**

Agreed: extending the powers and jurisdiction of the SEND Tribunal could be a potential option to address aspects of this profound problem.

#### **Consultation Question 66 (Paragraph 18.103)**

A 'solution' that simply provides for a body to 'recommend' a course of action is not a solution. Families need access to a well-resourced body that can hand down

mandatory rulings backed up by seriously dissuasive sanctions in the event of non-compliance.

#### **Consultation Question 67 (Paragraph 19.28)**

Agreed: the definition of a disabled child should stipulate that:

- (1) they have a physical or mental impairment; and
- (2) that the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

#### **Consultation Question 68 (Paragraph 19.29)**

Agreed: the statutory definition of disability should clarify that social care services should not be denied to a child purely on the basis that their impairment gives rise to: addiction; a tendency to set fires; a tendency to steal; a tendency to physical or sexual abuse of other persons; exhibitionism; and voyeurism.

#### **Consultation Question 69 (Paragraph 19.31)**

I do not envisage that the definition of 'substantial and long term' requires adaptation for younger children in the context of disabled children's social care law. This is, as the Consultation paper makes plain, a complex question. An observation is, however, appropriate – namely that the Social Services and Well-being (Wales) Act 2014 (section 3(5)) adopts the 2010 Act's definition without modification but includes a provision (section 3(6)) for amending regulations should the need arise. So far as I am aware this definition has not, as yet, proved to be a problem in Wales.

#### **Consultation Question 70 (Paragraph 20.39)**

It appears sensible that decision-making as to the assessment and the meeting of the social care needs of disabled children, should include the considerations listed in this question – ie the best interests of the child as the primary consideration; a set of considerations to which decision-makers must have regard in applying that principle; and a proportionality provision concerning least 'restrictiveness'.

#### **Consultation Question 71 (Paragraph 20.40)**

In addition to the considerations listed in this Consultation Q (71), I suggest that consideration be given to including the principles detailed in the ['Draft Guidance Assessing the Needs of Disabled Children and their Families'](#) 2023 (pages 2-4). These have been developed by parent carers and their adoption would be practical evidence that the Law Commission is in earnest in its advocacy for co-production. Perhaps the most compelling of the principles included in the 2023 publication is 'the importance of beginning with the assumption that parents are best placed to judge the well-being of their disabled child'.

#### **Consultation Question 72 (Paragraph 20.41)**

The considerations detailed in section 1(3) of the Care Act 2014 comprise a relevant list of considerations/issues that would be of practical value if included in the proposed legislation.

#### **Consultation Question 73 (Paragraph 20.43)**

It is a complex, wide ranging question – as to how the nature and extent of a disabled child’s participation in the social care processes should vary according to their age. One mechanism could be for the legislation simply to acknowledge that this will inevitably vary depending on many factors, including the child’s age, understanding, maturity, etc.

#### **Consultation Question 74 (Paragraph 21.19)**

Agreed: the legislation should provide that children (of any age) who have the ability to do so, are able to make the requests and decisions etc. listed in this Consultation Q.

#### **Consultation Question 75 (Paragraph 21.22)**

Agreed: the test for whether a child aged 16 or 17 is able to make the decisions set out in Consultation Q 74 (above) should be the test contained in the Mental Capacity Act 2005.

#### **Consultation Question 76 (Paragraph 21.32)**

I am not sufficiently expert to express a view as to the test that should be advanced by the legislation in order to decide if a child aged under 16 is to be deemed able to make the decisions set out in Consultation Q 75 (above).

#### **Consultation Question 77 (Paragraph 21.35)**

I agree that the law should provide that a local authority should carry out an assessment of the social care needs of a disabled child where the child is seeking to opt out of such an assessment – if the child is experiencing, or is at risk of, abuse or neglect.

#### **Consultation Question 78 (Paragraph 22.38)**

I agree that the new legal framework should include a right to independent advocacy for any disabled child who would otherwise have difficulty in participating in the assessment and planning process around their social care needs. I believe, however, that the right to independent advocacy should exist:

- regardless of whether they have difficulty in participating in the assessment and planning process around their social care needs – as the child may not have sufficient understanding of the assessors/care planners’ legal duties or to appreciate if the correct processes are being followed; and

- even if the child has an appropriate person who can represent and support them – unless that person is also willing and able to fulfill this role.

#### **Consultation Question 79 (Paragraph 22.41)**

N/a

#### **Consultation Question 80 (Paragraph 22.44)**

N/a

#### **Consultation Question 81 (Paragraph 22.53)**

See my comments to Q.78 above. I agree that the new legal framework should include an entitlement for parents and carers of disabled children to have advocacy support in respect of the assessment of their own needs. I believe however that this right should exist:

- regardless of whether or not they have difficulty in participating in the assessment and planning process around their social care needs, as they may not have sufficient understanding of the assessors/care planners' legal duties or to appreciate if the correct processes are being followed; and
- that this right should exist even if there is an appropriate person who can represent and support them – unless that person is also willing and able to fulfill this role.

#### **Consultation Question 82 (Paragraph 23.23)**

I agree that disabled children should be taken out of the scope of section 17 Children Act 1989 and that there should be a new simplified and unified legal framework for addressing their social care needs.

#### **Consultation Question 83 (Paragraph 23.25)**

I do not agree with the suggestion that the new legal framework should be accompanied by two sets of guidance, one for professionals applying the law, and the other for parents and carers who need to understand their rights under the law.

The Statutory Guidance to the Care Act 2014 speaks to professionals and to adults in need/carers and I can see no issue of principle or practice that would justify the need for two sets of guidance and the Consultation Paper does not provide compelling reasons for such an arrangement.

#### **Consultation Question 84**

I am not sufficiently expert to express a view on this question – namely whether any of the proposals in the consultation paper require adaptation in order to meet the needs of disabled children who are not in family-based care (for example, children in custody).