



## **Vulnerable Children: Work of the Children's Commissioner**

### **Debate on 14 December 2017**

#### **Summary**

On 14 December 2017, the House of Lords is scheduled to debate a motion by Baroness Dean of Thornton-le-Fylde (Labour) on the report by the Children's Commissioner for England, *On Measuring the Number of Vulnerable Children in England*, published on 4 July 2017. The Commissioner, Anne Longfield, had instigated the report because she believed there were unidentified and "invisible" vulnerable children that were suffering a variety of harms and risks. The report identified a total of 32 groups of children in England that were categorised as vulnerable, and provided estimated figures for the number of children in each group. The figures were not mutually exclusive. Included among the report's findings were:

- 580,000 children who were directly supported or accommodated (or previously accommodated) by the state;
- 370,000 children and young people whose actions put their futures at risk—for example, excluded pupils;
- 2,300,000 children with health-related vulnerabilities—for example, children with long-standing illness, disability or infirmity; and
- 670,000 children with family-related vulnerabilities—such as children whose parents use substances problematically.

The Commissioner has since published two further briefings in relation to two of the vulnerable groups identified: children excluded from school, and children's mental health. The reports found that:

- there were an estimated total of 805,950 children aged 5 to 17 with mental health disorders;
- between one-in-four and one-in-five children with a mental health condition had received help last year;
- in 2015/16, the estimated figure of excluded pupils was 173,810 across all state-funded primary, secondary and special schools; and
- children with Special Educational Needs accounted for half of all permanent exclusions, despite being 14 percent of the school population.

This House of Lords Library Briefing sets out the findings contained in the Children's Commissioner's report on vulnerable children, and explores her follow-up reports on excluded children and children's mental health, and includes discussion of the Government's recent green paper on children's mental health services.

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## 1. On Measuring the Number of Vulnerable Children in England

On 4 July 2017, the Children’s Commissioner for England, Anne Longfield, published her report *On Measuring the Number of Vulnerable Children in England*.<sup>1</sup> In the foreword to the report, Anne Longfield explained her view that, in one sense, all children are vulnerable.<sup>2</sup> However, she hoped to address the group of children “who carry with them risks and difficulties which make it much harder for them to succeed in life, to be happy and healthy and have a chance at a good future”.<sup>3</sup> The Commissioner had instigated the report because she believed there were unidentified and “invisible” vulnerable children that were suffering a variety of harms and risks. In order to address the needs of vulnerable children, she argued, people needed to know who the vulnerable were and how many there are.

The report identified a total of 32 groups of children that were recognised as vulnerable, which it classified into four broad types of vulnerability containing 22 groups. The tables below provide the aggregate totals of the estimated number of vulnerable children in England, for each group and type.

**Table 1: Aggregate Totals of Vulnerable Children in England (Estimated)**

<b>Vulnerability Type I: Children Directly Supported or Accommodated (or previously accommodated) by the State</b>	<b>Estimated Number of Children in England</b>
Children in Need	394,400
Children who have special educational needs and/or disability (SEND) (with Education, Health and Care (EHC) plan)	236,805
Children involved with the criminal justice system	31,193
Children in the secure estate or secure children’s homes	936
Children adopted during 2016 (inflow)	4,690
Young people who ceased to be looked after aged 16–18	16,569
Children involved in Special Guardianship Order during 2016 (England/Wales, inflow)	7,323
Children who have been reported as potential victims of modern slavery during 2016 (inflow)	1,204
Children with severe and/or complex mental health problems requiring Tier 4 services	9,095
<b>Estimated Total Type I</b>	<b>580,000</b>

<sup>1</sup> Children’s Commissioner, [On Measuring the Number of Vulnerable Children in England](#), 4 July 2017, p 1.

<sup>2</sup> *ibid*, p 3.

<sup>3</sup> *ibid*, p 1.

<b>Vulnerability Type 2: Children and young people whose actions put their lives at risk</b>	<b>Number of children</b>
Young people Not in Education, Employment or Training aged 16–18 years old	121,000
Teenage mothers aged 19 and under living with their children in 2016	36,000
Excluded pupils (including fixed period and permanent exclusions)	159,860
Children aged 10–18 who are members of a gang	46,053
Children reported missing in 2014	54,947
<b>Estimated Total Type 2</b>	<b>370,000</b>
<b>Vulnerability Type 3: Children with health-related vulnerabilities</b>	<b>Number of children</b>
Children aged 0–17 with a long-standing illness, disability or infirmity	1,478,487
Children aged 5–17 who have mental health disorders	805,950
Children who have special educational needs and/or disability (SEND) (Not on an EHC plan)	991,980
<b>Estimated Total Type 3</b>	<b>2,300,000</b>
<b>Vulnerability Type 4: Children with family- related vulnerabilities</b>	<b>Number of children</b>
Children under 18 years old living with adults in drug treatment (England, 2016)	11,624
Children under 18 years old living with adults in alcohol treatment (England, 2016)	15,499
Children who are homeless or who are in insecure/unstable housing (households in temporary accommodation)	118,960
Children in the 'troubled families' programme	407,924
Young unpaid carers 5 to 17 years old	171,024
<b>Estimated Total Type 4</b>	<b>670,000</b>

(Source: Children's Commissioner, [On Measuring the Number of Vulnerable Children in England](#), 4 July 2017, pp 13–14)

By the Children's Commissioner's own admission, the findings of the report were based on a "rapid" review which took place between February and May 2017. Findings for each category were based upon a wide range of existing evidence, and the report states a number of the estimates provided are "preliminary" and "experimental".<sup>4</sup> In addition, the report identified three main technical challenges in assessing the numbers in the groups. First,

<sup>4</sup> Children's Commissioner, [On Measuring the Number of Vulnerable Children in England](#), 4 July 2017, p 1. For further details, see the 'Technical Papers' at: '[Children's Commissioner's Report on Vulnerability](#)', accessed 5 December 2017.

figures in the groups were not mutually exclusive.<sup>5</sup> In order to estimate a total for each type, the report explained that it had “tried to remove potential double-counting where possible”.<sup>6</sup> However, the report noted “significant challenges” in doing so, and was unclear how much cross-over there may be, particularly across all of the four types.<sup>7</sup> Second, many of the numbers were “only” for those children who were vulnerable *and* known to services.<sup>8</sup> Third, the report suggested that some groups had imprecise or unclear definitions; which created a wide-range of possible numbers of children in each group, depending on how definitions were interpreted.<sup>9</sup> The report also explained that not every child in a vulnerable group will necessarily experience harm or poorer outcomes, and that names and concepts in the list were disputed.<sup>10</sup>

Providing comment on the report in September 2017, Anne Longfield said:

At the time we made it clear that this was the very start of an ongoing study of the levels of vulnerability in England and an initial attempt to map who is being discussed where multiple interpretations of “vulnerable” and miscounting of individuals with multiple vulnerabilities has long distorted the picture. There has also always been critical gaps in the data.

[...] The next phase is a conversation with charities, local authorities and government departments to identify and address the gaps that still exist in the data. It’s important for us that we can start working on important groups that so far the system has left hidden, ignored, or poorly understood. We’ll do this by reviewing responses to the work, and consulting widely on what we think is the start of a framework that could be adopted by everyone. We mean to talk as widely as possible to get a really clear idea of what would make the framework valuable to all, which can then be adopted by government, councils and the children’s sector.<sup>11</sup>

The Government did not issue a formal response to the Children’s Commissioner’s report. However, it has responded to a number of oral questions regarding the report. Among them, on 6 July 2017, the Government responded to a question from Baroness Eaton (Conservative) on what further action the Government was taking to support families in light of the report. The Minister, Viscount Younger of Leckie, welcomed the report, describing it as a “valuable contribution to the growing evidence on

<sup>5</sup> Children’s Commissioner, [On Measuring the Number of Vulnerable Children in England](#), 4 July 2017, p 11.

<sup>6</sup> *ibid*, p 15.

<sup>7</sup> *ibid*.

<sup>8</sup> *Ibid*, p 11.

<sup>9</sup> *ibid*.

<sup>10</sup> *ibid*.

<sup>11</sup> Children’s Commissioner, [‘Call for Government, Councils and the Children’s Sector to Adopt Vulnerability Framework’](#), *In Brief*, 20 September 2017, issue 22.

vulnerable children and families”.<sup>12</sup> He further added that:

Measuring the scale of the challenge is important; so too is action to improve children’s lives through building children’s resilience as well as addressing vulnerability. Across government, we are taking action, whether through reforming children’s social care, prioritising mental health, tackling child sexual exploitation or better protecting victims of domestic violence and abuse.<sup>13</sup>

## 2. Further Reports from the Children’s Commissioner

Since July 2017, the Commissioner has published two further briefings in relation to two of the vulnerable groups identified: children with mental health disorders, and children excluded from school. Therefore, this briefing will focus on each of these two policy areas, addressing them in turn.

As health is a devolved matter in the UK, this section focuses on healthcare in England only.

### 2.1 Children’s Mental Health

The Children’s Commissioner’s July 2017 report found that there were an estimated 805,950 children aged 5 to 17 with mental health disorders.<sup>14</sup>

The Children’s Commissioner said she made children’s mental health a focus of her work because, since taking up her position on 1 March 2015, it has been the issue “most frequently raised” with her by children, parents, carers and frontline professionals.<sup>15</sup> In October 2017, the Children’s Commissioner published a further briefing on children’s mental healthcare in England, and also provided evidence to the House of Commons Health Committee in a one-off evidence session in November 2017. In both of these instances, the Commissioner provided recommendations of how to improve children’s mental health services in advance of an anticipated government green paper on children and young people’s mental health, which was subsequently published on 4 December 2017.

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<sup>12</sup> [HL Hansard, 6 July 2017, col 980.](#)

<sup>13</sup> [ibid, col 981.](#)

<sup>14</sup> The report did not define the use of the word “disorder” in this context. However, Technical Paper 6 stated “Green et. al (2005) provides the percentage of children with emotional disorders, conduct disorders, hyperkinetic disorders and less common disorders. We used the overall prevalence rates for any of these disorders for 5 to 10 year olds (7.7 percent) and 11 to 16 year olds (11.5 percent). We assumed the prevalence rates for 17 year olds would be similar to 16 year olds. The figure reported in Table 4 was calculated by using the ONS population estimates from 2016” (Children’s Commissioner, [Estimating the Number of Vulnerable Children](#), 4 July 2017, p 13).

<sup>15</sup> House of Commons Health Committee, [Written evidence from Anne Longfield OBE, Children’s Commissioner for England](#), 20 November 2017.

Before examining the Children’s Commissioner’s recommendations and the proposals contained in the green paper, the next section first examines recent government policy in this area.

## Background

In February 2016, the Conservative Government, led by David Cameron, committed to implementing recommendations in the *Five Year Forward View for Mental Health*. This report had been published by the Independent Mental Health Taskforce to the NHS, and made a number of recommendations for improving outcomes in mental health by 2020/21.<sup>16</sup> These included that more children should have access to high-quality mental health care. It also committed to implementing earlier recommendations that had been made by the Children and Young People’s Mental Health and Wellbeing Taskforce, in March 2015, such as improving access to services for children and young people who were particularly vulnerable.<sup>17</sup>

In January 2017, the Prime Minister, Theresa May, announced a number of further reforms to improve mental health support.<sup>18</sup> The announcement included that a new green paper on children and young people’s mental health would be published “to set out plans to transform services in schools, universities and for families”.<sup>19</sup> The announcement also included:

- a major thematic review of children and adolescent mental health services across the country, led by the Care Quality Commission, to identify what is working and what is not;
- support for NHS England’s commitment to eliminate inappropriate placements to inpatient beds for children and young people by 2021; and
- new support for schools with every secondary school in the country to be offered mental health first aid training and new trials to look at how to strengthen the links between schools and local NHS mental health staff.<sup>20</sup>

On 2 May 2017, the House of Commons Education and Health committees also published a joint report on *Children and Young People’s Mental Health: The Role of Education*.<sup>21</sup> The terms of the inquiry were to consider the role of education in promoting emotional wellbeing in children and young people, and in preventing the development of mental health problems.<sup>22</sup>

<sup>16</sup> Mental Health Taskforce, [The Five Year Forward View for Mental Health](#), February 2016.

<sup>17</sup> The Taskforce had been established in September 2014.

<sup>18</sup> Prime Minister’s Office, [‘Prime Minister Unveils Plans to Transform Mental Health Support’](#), 9 January 2017.

<sup>19</sup> *ibid.*

<sup>20</sup> *ibid.*

<sup>21</sup> House of Commons Education and Health Committees, [Children and Young People’s Mental Health—the Role of Education](#), 2 May 2017, HC 849 of session 2016–17.

<sup>22</sup> House of Commons Health Committee, [‘Children and Young People’s Mental Health: Role of Education’](#), 1 December 2017. The inquiry was described by the Committee Chair,

According to the committees, half of all mental illness started before the age of 15.<sup>23</sup> The report therefore emphasised the importance of children’s mental health services in improving wellbeing, building resilience and providing early intervention, and that schools could play a key role in that.

However, the committees suggested a number of factors currently acted to limit the role of education in assisting in the mental health of children. For example, the committees cited evidence from the Institute of Public Policy that only a third of Ofsted reports allegedly made explicit reference to pupils’ mental health and wellbeing. The committees therefore concluded that “insufficient prominence” was being given to it by inspectors, and recommended that mental health and wellbeing should contribute to the overall grade given to the school.

The Government responded to the committees’ report on 24 October 2017. On this issue, the Government cited evidence from Ofsted, who stated that it believed that mental health and wellbeing had been given due prominence in its school inspection handbook. However, Ofsted also said that:

We are working with CQC [Care Quality Commission] colleagues who are leading on the thematic review of children and adolescent mental health services to identify what is working well and what is not. This will draw on evidence from inspections, including the first year of local area inspections of services for children and young people who have special educational needs and/or disabilities. We will use the findings from this review to inform future thinking about all relevant inspection remits.<sup>24</sup>

### **Children’s Commissioner’s Report on Children’s Mental Healthcare**

On 9 October 2017, the Children’s Commissioner published a briefing on *Children’s Mental Healthcare in England*. Similarly to the Education and Health committees’ report, it estimated that only between one-in-four and one-in-five children with a mental health condition had actually received help last year.<sup>25</sup> Treatment for children’s mental health is divided into four tiers.<sup>26</sup> In summary:

- Tier I covers universal provision by non-specialists in universal

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Dr Sarah Wollaston, as a “follow up” to the House of Commons Health Committee’s report, [Children’s and Adolescents’ Mental Health and CAMHS](#) (5 November 2014, HC 342 of session 14–15) and the [Government Response](#).

<sup>23</sup> House of Commons Education and Health Committees, [Children and Young People’s Mental Health—the Role of Education](#), 2 May 2017, HC 849 of session 2016–17, p 5.

<sup>24</sup> *ibid*, p 9.

<sup>25</sup> Children’s Commissioner, [Briefing: Children’s Mental Healthcare in England](#), 9 October 2017, p 4.

<sup>26</sup> *ibid*, pp 10–11.

settings. It includes early intervention and preventative programmes aimed at improving well-being and resilience.

- Tier 2 is provision for those with less severe issues delivered by mental health practitioners working in universal or primary care settings.
- Tier 3 is specialist out-patient provision delivered by the Children and Adolescent Mental Health Services (CAMHS) service, including different disciplines (for example, therapists, psychiatrists) to treat persistent and complex mental health treatment. This is all commissioned by local CCGs [clinical commissioning groups].
- Tier 4 is in-patient care and some highly specialised care, such as CAMHS for deaf children.<sup>27</sup>

One of the concerns raised in the Children’s Commissioner’s report was that not a high enough proportion of spending for mental health services was going to “universal services”. According to the report:

- 38 percent of NHS spending went to providing in-patient mental health care, which was accessed by 0.001 percent of children aged 5 to 17;
- 46 percent went to providing CAMHS community services, which were accessed by 2.6 percent of children aged 5 to 17; and
- 16 percent went to providing universal services.<sup>28</sup>

The report, however, argued that a higher spend should be on universal services. The report explained that the spend on universal services needed to be able to support the “one in ten children” who are thought to have a clinically significant mental health condition but were not accessing CAMHS. It also was needed to support a “currently unknown” number of children with lower level needs. The report also gave a further three key reasons. First, it contended that early intervention was “much cheaper to deliver” than more specialist services.<sup>29</sup> Second, it argued that it was highly cost effective in preventing greater costs in future.<sup>30</sup> Third, the Commissioner argued that children would be less likely to develop a more serious mental health condition if they were provided with timely early provision support.<sup>31</sup>

Another issue raised in the report was the “massive discrepancy” between children’s and adults’ mental health services. According to the report, local areas spend an average of 6 percent of their mental health budget on

<sup>27</sup> Children’s Commissioner, [Briefing: Children’s Mental Healthcare in England](#), 9 October 2017, pp 10–11.

<sup>28</sup> *ibid.*, p 4; and Care Quality Commission, ‘[CQC Completes Initial Review of Mental Health Services for Children and Young People](#)’, 27 October 2017, p 8.

<sup>29</sup> *ibid.*

<sup>30</sup> *ibid.*

<sup>31</sup> *ibid.*

children, despite children making up around 20 percent of the population.<sup>32</sup> The Children’s Commissioner further added that NHS England monitors 39 local measures for adult mental health but only nine for children’s mental health, which may negatively impact children’s provision.<sup>33</sup>

To address these issues, the report made a number of recommendations, which it argued should be in the Government’s then forthcoming green paper.<sup>34</sup> These included setting out clear expectations on what a child can expect in terms of mental health support, in particular:

- that every child benefits from teaching and a school environment which helps them build up emotional resilience;
- that any child who needs it can access early support for problems when they first start to emerge. This could include parenting support or a short course of therapy;
- that any child with a more serious condition is able to access high-quality, specialist support within clear waiting time standards; and
- which bodies are responsible for providing each element of this support with clear expectations placed on: schools; local authorities; clinical commissioning groups; NHS England; and that these organisations are held to account on their performance.<sup>35</sup>

The report also made a number of recommendations for schools, local authorities, and CCGs with regard to “creating an accountable and transparent system”, such as requirements for local authorities and CCGs to report on services provided and spending on mental health services.<sup>36</sup>

### ***CQC Review of Mental Health Services for Children and Young People***

On 27 October 2017, the CQC published the first phase of the government-commissioned review of mental health services for children and young people in England. As had been the case with the Children’s Commissioner’s briefing, among the CQC’s findings were difficulties that children and young people faced in accessing appropriate support for their mental health concerns.<sup>37</sup>

The CQC report found that most specialist services provided good quality for those who accessed these services, but that “too many” young people

<sup>32</sup> Children’s Commissioner, [Briefing: Children’s Mental Healthcare in England](#), 9 October 2017, p 5.

<sup>33</sup> *ibid.*

<sup>34</sup> See also: [Written Evidence from the Children and Young People’s Mental Health Coalition](#), 14 November 2017.

<sup>35</sup> Children’s Commissioner, [Briefing: Children’s Mental Healthcare in England](#), 9 October 2017, p 8.

<sup>36</sup> *ibid.*, p 5.

<sup>37</sup> Care Quality Commission, [‘CQC Completes Initial Review of Mental Health Services for Children and Young People’](#), 27 October 2017.

found it difficult to access services. Therefore, they did not receive the care that they needed when they needed it. Indeed, the CQC referenced reports of children waiting 18 months to receive help.<sup>38</sup>

The report also raised concerns with the “complexity” of the system, stating that:

Many organisations are involved in planning, funding, commissioning, providing and overseeing support and care for young people with mental health problems. Poor collaboration and communication between these agencies can lead to fragmented care, create inefficiencies in the system, and impede efforts to improve the quality of care.<sup>39</sup>

As a consequence, the report explained that when concerns were identified by those who work with children, children and their families struggle to navigate the complex and fragmented system of services which it argued was created by a lack of joined-up working.<sup>40</sup>

The CQC also contended that difficulties in gaining access to specialist help were compounded by those who work with children not always having the skills or capacity to identify or support their mental health needs.<sup>41</sup>

The CQC report did not make any recommendations, but will do so in March 2018 when it publishes phase two of its review.

### **Green Paper on Children and Young People’s Mental Health Provision, December 2017**

On 4 December 2017, the Department for Health and Department for Education published [Transforming Children and Young People’s Mental Health Provision: a Green Paper](#).<sup>42</sup> A written statement to accompany publication by the Secretary of State for Health, Jeremy Hunt, noted the focus of the green paper was on “earlier intervention and prevention” so mental health issues could be addressed, particularly in and around schools and colleges, before they “escalate”.<sup>43</sup>

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<sup>38</sup> Care Quality Commission, [Review of Children and Young People’s Mental Health Services: Phase One Report](#), 27 October 2017, p 5.

<sup>39</sup> Care Quality Commission, [CQC Completes Initial Review of Mental Health Services for Children and Young People](#), 27 October 2017.

<sup>40</sup> *ibid*; and [Review of Children and Young People’s Mental Health Services: Phase One Report](#), 27 October 2017, p 15.

<sup>41</sup> *ibid*, p 5.

<sup>42</sup> Department for Health and Department for Education [Transforming Children and Young People’s Mental Health Provision: a Green Paper](#), 4 December 2017, Cm 9523.

<sup>43</sup> *ibid*.

The green paper set out three core government proposals, referred to as ‘pillars’:

- We will incentivise and support all schools to identify and train a Designated Senior Lead for Mental Health with a new offer of training to help leads and staff to deliver whole school approaches to promoting better mental health.<sup>44</sup>
- We will fund new Mental Health Support Teams to provide specific extra capacity for early intervention and ongoing help, supervised by NHS children and young people’s mental health staff, whose work will be jointly managed by schools and the NHS. These teams will be linked to groups of primary and secondary schools, and to colleges. They will provide interventions to support those with mild to moderate needs and support the promotion of good mental health and wellbeing. The Designated Senior Leads for Mental Health in schools will work closely with the new Support Teams, who, as part of their role, will provide a clear point of contact for schools and colleges. We will test different models for delivering these teams—including how they can link effectively to a range of other provision locally and how they can improve support for vulnerable groups.<sup>45</sup>
- We want to reduce waiting times for NHS services for those children and young people who need specialist help.<sup>46</sup>

The Government explained that it would roll-out its proposals “in phases” across the country, incorporating all three pillars and trialling different approaches to delivering teams.<sup>47</sup> Where areas already had leads and collaborative support in place, it would “test how teams can enhance existing provision”.<sup>48</sup> The paper stated the aim was to roll-out the proposals “to at least a fifth to a quarter of the country” by the end of 2022/23.<sup>49</sup> It added that this process would start with a number of ‘trailblazer’ areas, operational from 2019, adding that:

The precise rollout will be determined by the success of the trailblazers, and securing funding after 2020/21, the end of the Government’s current spending period. This will be part of future spending review decisions.<sup>50</sup>

According to the Government, taking such an approach to the initial phase of implementation would allow it “to test how best to deliver this new service through local innovation and differentiation, and understand how its

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<sup>44</sup> Department for Health and Department for Education [Transforming Children and Young People’s Mental Health Provision: a Green Paper](#), 4 December 2017, Cm 9523, p 18.

<sup>45</sup> *ibid.*

<sup>46</sup> *ibid.*

<sup>47</sup> *ibid.*, p 19.

<sup>48</sup> *ibid.*

<sup>49</sup> *ibid.*

<sup>50</sup> *ibid.*

benefits can extend to all children and young people”, including the most vulnerable.<sup>51</sup> The paper further stated the “mix of provision will look very different in different areas” and that the Government did not believe there was “a single model that should be implemented nationally”.<sup>52</sup>

With regard to funding, Jeremy Hunt further explained in his written statement that:

The proposals as set out in the green paper would cost £215 million over the next three years towards the creation of mental health support teams, piloting a four-week waiting time standard and rolling out mental health first aid training to primary schools. Funding will be made available to take forward the final proposals following consultation. We will confirm the amounts to be provided to schools and colleges for training leads following consultation and development of training packages. However we will cover the costs of a significant training programme and provide up to £15 million to 20 million each year from 2019 to cover costs until all schools and colleges have had the chance to train a lead.<sup>53</sup>

The green paper also set out how whole-school approaches to mental health would be supported by other developments, such as with regard to relationships and sex education, and personal, social, health and economic education.<sup>54</sup> The green paper is being followed by a consultation, which is now open. The consultation is expected to close on 2 March 2018.<sup>55</sup>

## Reaction to the Proposals

Labour’s Shadow Cabinet Minister for Mental Health, Barbara Keeley, raised concerns about the measures announced in the green paper in a press release published the day after the publication of the report.<sup>56</sup> In particular, she expressed doubt about whether the proposed funding was sufficient or would lead to adequate support.

Others, such as the Local Government Association (LGA), welcomed the green paper as a “first step” but also raised concerns with its provisions. In particular, the LGA had apprehensions about the Government’s proposal to roll-out provisions, rather than implement support more broadly immediately. The Chairman of LGA’s Community Wellbeing Board,

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<sup>51</sup> Department for Health and Department for Education [Transforming Children and Young People’s Mental Health Provision: a Green Paper](#), 4 December 2017, Cm 9523, p 4.

<sup>52</sup> *ibid.*

<sup>53</sup> House of Commons, [‘Written Statement: Children and Young People’s Mental Health: Update’](#), 4 December 2017, 41–3WS.

<sup>54</sup> *ibid.*

<sup>55</sup> Department of Health and Department for Education, [Transforming Children and Young People’s Mental Health Provision: a Green Paper](#), 4 December 2017, Cm 9523.

<sup>56</sup> Labour Party, [‘Tories’ Record on Children and Young People’s Mental Health has Been Shocking: Keeley’](#), 3 December 2017.

Councillor Izzi Seccombe, stated that support was “long overdue”, and that “children and their families need help and support right now”. She added “[d]epression, anxiety, bereavement, and family crises do not wait” and that support needed to be available “on the same day, at the point of request”.<sup>57</sup>

The British Association for Counselling and Psychotherapy (BACP) also expressed concerns stating the recommendations set out in the green paper were “a missed opportunity” to deliver the most effective mental health support in schools and colleges. In particular, the BACP raised a number of questions about the nature of the therapy on offer, particularly about the level of training which would be provided to those working with children, stating:

What level of training will the ‘Mental Health Support Teams’ have to work with young people? The Government are [...] choosing to ignore thousands of highly-trained and under-utilised counsellors and psychotherapists. The counselling workforce is already there, trained and willing to fill these posts now and immediately start helping young people get the support they need.<sup>58</sup>

## 2.2 Excluded Pupils

Another of the vulnerable categories identified by the Children’s Commissioner’s July 2017 report was pupils excluded from school, with her report finding in 2014/15 that an estimated 159,860 pupils had been excluded across all state-funded primary, secondary and special schools.<sup>59</sup> This figure included permanent and fixed-period exclusion, defined as follows:

- **Permanent exclusion** refers to a child who is excluded and cannot attend the same school again (unless the exclusion is overturned). His or her name is removed from the school register and he/she would then be educated at another school or via some other form of provision.
- **A fixed-period exclusion** refers to a pupil who is excluded from a school for a set period of time. A pupil may be excluded for one or more fixed periods up to a maximum of 45 school days in a single academic year. Pupils in fixed-period exclusions remain on the register of that school, as they are expected to return when the exclusion period is completed.<sup>60</sup>

<sup>57</sup> Local Government Association, ‘[LGA Responds to Government Green Paper on Children’s Mental Health](#)’, 4 December 2017.

<sup>58</sup> British Association For Counselling and Psychotherapy, ‘[BACP response to the Children and Young People Green Paper](#)’, 4 December 2017

<sup>59</sup> Children’s Commissioner, *On Measuring the Number of Vulnerable Children in England*, 4 July 2017, p 14.

<sup>60</sup> Children’s Commissioner, *Estimating the Number of Vulnerable Children (29 Groups): Technical Paper 3 in Children’s Commissioner Project on Vulnerable Children, Alma Economics*, 4 July 2017, p 72.

The most recent data on exclusion, published by the Department of Education (DfE), suggests the number of excluded children may have risen further. Reporting on the year 2015/16, the DfE found an estimated 173,810 pupils had been excluded across all state-funded primary, secondary and special schools.<sup>61</sup> This included 167,125 pupil enrolments with at least one fixed-term exclusion, and 6,685 permanent exclusions. According to the DfE, the latter corresponded to around 35.2 permanent exclusions per day in 2015/16, up from an average of 30.5 per day in 2014/15.<sup>62</sup>

### **Children’s Commissioner’s October 2017 Report: Key Findings**

On 14 November 2017, the Children’s Commissioner published the first of a number of follow-up briefings expected as a continuation of her July 2017 report. The briefing, *Falling through the Gaps in Education*, focused on vulnerable children excluded from school, but also considered those educated in other non-mainstream settings or not being educated at all.<sup>63</sup>

The section below focuses on the highly controversial topic of “unofficial” exclusions. Unofficial exclusions are those where, for example, a child is removed from a mainstream school’s roll and placed permanently in another setting—such as alternative provision—without it being recorded as an exclusion.<sup>64</sup> In some cases, this may be due to a managed move, which involves transferring a child from one school to another with the prior agreement of the head teachers of both schools and the parents of the child.<sup>65</sup> However, the matter is controversial because some, such as the Children’s Commissioner, have raised that, “transitions that might be framed as managed moves could also involve an element of coercion: the child leaves their current school, either for another school or to be educated at home, under the threat of permanent exclusion if they don’t”.<sup>66</sup> The issue of unofficial exclusions were of particular interest to the Commissioner, as official figures on fixed period or permanent exclusions would not capture illegal and unofficial exclusions. As a consequence, numbers are unclear and children could effectively become “invisible”.<sup>67</sup>

### **Unofficial Exclusions**

The Children’s Commissioner reported figures that indicated there were unofficial exclusions from schools that had been taking place. For example, according to the briefing, “most of the children who move from mainstream

<sup>61</sup> Department for Education, ‘[Permanent and Fixed Period Exclusions in England: 2015 to 2016](#)’, 20 July 2017.

<sup>62</sup> Children’s Commissioner, [Estimating the Number of Vulnerable Children \(29 Groups\): Technical Paper 3 in Children’s Commissioner Project on Vulnerable Children](#), Alma Economics, 4 July 2017, p 72.

<sup>63</sup> Children’s Commissioner, [Falling through the Gaps in Education](#), 14 November 2017, p 2.

<sup>64</sup> *ibid*, p 17.

<sup>65</sup> *ibid*.

<sup>66</sup> *ibid*.

<sup>67</sup> *ibid*, p 6.

to alternative provision do so in Year 10 or 11”, and of these, only 1 percent of them go on to achieve five A\*–C GCSE passes including English and Maths. It also noted that thousands of others leave state education altogether, of which only 6 percent achieve five GCSE passes. The report suggested that, in some cases, children could be moved out of mainstream schools for reasons “that are more in the school’s interest than the child’s”.<sup>68</sup> For example, it stated that that nine out of ten mainstream schools were actually benefiting from these pupils leaving, “in the sense that their GCSE pass rates are higher than they would be if these children had stayed with them until the end of secondary school”.

On 7 November 2017, a written question by Lord Watson of Invergowrie (Labour) addressed the issue of unofficial exclusions. He asked the Government “what action they take when Ofsted determines that pupils have been ‘off-rolled’ by a state-funded school in an attempt to maximise their results and league table rankings”. Lord Agnew of Oulton, the Parliamentary Under Secretary for the Department for Education, answered on 20 November 2017 that a pupil can only lawfully be deleted from the admission register on the grounds prescribed in regulation 8 of the Education (Pupil Registration) (England) Regulations 2006, as amended. He explained:

Schools can exclude pupils, either permanently or for a fixed period, for disciplinary reasons, and the Department supports schools in using exclusion where this is warranted. Permanent exclusion should only be used as a last resort, in response to a serious breach or persistent breaches of the school’s behaviour policy and where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.<sup>69</sup>

He added that the DfE had written to all secondary schools in the summer, reminding them of the rules surrounding exclusion. He also added that Ofsted had recently issued guidance to inspectors “reminding them to be alert to this matter”.<sup>70</sup> He contended:

The guidance makes clear that instances of off-rolling should be discussed with school leaders during the inspection, and should inform the evaluation of evidence for the effectiveness of leadership and management, and outcomes for pupils.<sup>71</sup>

Legislation regarding the exclusion of pupils from maintained schools is provided in section 51A of the Education Act 2002, as amended, and associated regulations. According to the legislation, head teachers, school governing bodies, local authorities and appeal panels must have regard to

<sup>68</sup> Children’s Commissioner, *Falling through the Gaps in Education*, 14 November 2017, p 5.

<sup>69</sup> House of Lords, ‘[Written Question: Pupil Exclusions](#)’, 20 November 2017, HL3045.

<sup>70</sup> *ibid.*

<sup>71</sup> *ibid.*

guidance issued by the Secretary of State when carrying out their functions in relation to exclusions.<sup>72</sup> Following a consultation, the DfE published new guidance for schools on their exclusions processes on 19 July 2017. This guidance is set out in the DfE's [Exclusion from Maintained Schools, Academies and Pupil Referral Units in England](#). The guidance governs the exclusion of pupils from: local authority maintained schools; academies and free schools; and pupil referral units. It also details the legal responsibilities for those who exclude students from educational settings.

### **Children with Special Educational Needs and other Vulnerabilities**

Another key finding in the Commissioner's report was the disproportionately high number of exclusions of children who had special educational needs (SEN). According to the report, children with SEN accounted for half of all permanent exclusions. This was despite children with SEN "being only 14 percent of the school population".<sup>73</sup>

The Commissioner argued these children were "in need of extra help", and yet contended that hundreds of mainstream schools were illegally excluding children with special educational needs "because the school does not feel able to cope".<sup>74</sup>

On 6 November 2017, Norman Lamb (Liberal Democrat MP for North Norfolk) asked the Secretary of State for Education what guidance had been issued "to ensure that school governors give appropriate consideration" to autism and special educational needs and disability (SEND) when considering exclusion appeals. On 16 November 2017, the Minister of State for Children and Families, Robert Goodwill, replied that statutory guidance was provided to head teachers and governors on exclusion, which, he contended "covers the process from start to finish, and includes specific requirements in relation to pupils with special educational needs (SEN)".<sup>75</sup> He further added that:

In particular, head teachers should make additional efforts to consider what extra support may be required to avoid exclusion of pupils with special educational needs and disability, and as far as possible, should avoid permanently excluding pupils with an Education, Health and Care Plan or Statement.

In reaching a decision on whether or not a pupil should be reinstated, the governing board should consider whether the decision to exclude the pupil was lawful, reasonable and procedurally fair, including

<sup>72</sup> For further information, see: House of Commons Library, [Constituency Casework: Schools in England](#), 22 November 2017.

<sup>73</sup> Children's Commissioner, [Falling Through the Gaps in Education](#), 14 November 2017, p 4.

<sup>74</sup> *ibid*, p 4.

<sup>75</sup> House of Commons, '[Written Question: Pupil Exclusions: Appeals](#)', 16 November 2017, 111787. For guidance referred to, see: Department for Education, [Exclusion From Maintained Schools, Academies and Pupil Referral Units in England](#), September 2017.

considering whether a head teacher has complied with the guidance in relation to pupils with SEN.<sup>76</sup>

### **Exclusions Review**

On 10 October 2017, the Prime Minister announced that the Department for Education would take forward an external review on exclusions to improve practice in exclusions.<sup>77</sup> Such a review would “share best practice nationwide” and focus on the experiences of groups who are “disproportionately likely” to be excluded.<sup>78</sup>

On 20 November 2017, further details of the review were given by Lord Agnew of Oulton, the Parliamentary Under Secretary for the Department for Education, in answer to a written question by Lord Watson of Invergowrie, regarding reducing inequality in school exclusions.<sup>79</sup> As part of his response, Lord Agnew explained that:

The Government recently announced an externally led review of exclusions practice and implications for pupil groups disproportionately represented in the national statistics. The review will consider how schools use exclusion and how this impacts on all pupils, but particularly why some groups of children are more likely to be excluded from school. The Department will publish full details of the review, including how views can be submitted, in due course.<sup>80</sup>

### **3. Further Reading**

- Institute for Public Policy Research, [Making the Difference: Breaking the Link between School Exclusion and Social Exclusion](#), 10 October 2017
- House of Lords Communications Committee, [Growing up with the internet](#), 21 March 2017, HL Paper 130 of session 2016–17; and [Government Response](#), October 2017
- House of Commons Health Committee, [Suicide Prevention](#), 16 March 2017, HC 1087 of session 2016–17; and [Government Response](#), July 2017
- House of Lords Library, [World Day Against Trafficking in Persons, 30 July 2017](#), 18 July 2017
- House of Lords Library, [International Day of Zero Tolerance for Female Genital Mutilation, 6 February 2017](#), 31 January 2017

<sup>76</sup> House of Commons, ‘[Written Question: Pupil Exclusions: Appeals](#)’, 16 November 2017, 111787.

<sup>77</sup> Cabinet Office, ‘[Prime Minister Launches World-leading Project on Impact of Ethnicity on Everyday Life](#)’, 10 October 2017.

<sup>78</sup> *ibid.*

<sup>79</sup> House of Lords, ‘[Written Question: Pupil Exclusions](#)’, 20 November 2017, HL3042

<sup>80</sup> *ibid.*

- House of Commons Library [\*The Troubled Families Programme \(England\)\*](#), 5 April 2017
- House of Commons Library, [\*Home Education in England\*](#), 18 January 2017