

The Childcare Bill

From Poor Law to Partnership, from Welfare State to Family State?

A briefing paper on the Childcare Bill prepared by Peter Elfer for the Froebel Research Committee

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1. Introduction

The Childcare Bill, now in its Report stage and due to become law in Autumn 2006, marks a further milestone in the development of legislation concerning children over nearly 60 years since the first post war legislation (the Children Act 1948).

The Bill places three broad duties on Local Authorities in England and Wales:

- To improve outcomes for all children (see 'Every Child Matters' below);
- To ensure the provision of sufficient child care to meet the needs of working parents and to be responsive to the needs of parents (see HM Treasury 'Strategy for Child Care' below);
- To provide information, advice and assistance to parents right through until their children are in adulthood (0-20);

The Bill gives legislative force to recommendations and priorities set out in two key policy and strategy documents:

*Every Child Matters Green Paper 2003 (ECM); and
Choice for parents – the best start for children: a ten year strategy for child care – HM Treasury Dec 2004 (SCC)*

2. The Bill in more detail

The Bill is in four main parts:

Part 1 requires local authorities in England:

a) to improve well being (defined by the five outcomes of ECM (to be healthy; safe; enjoying and achieving; making a positive contribution; achieve economic well being);

b) to secure sufficient child care for working parents and those making the transition to work, including some 'free of charge' provision and to regularly assess demand (this repeats the 'review' duty in the Children Act 1989 and the 'audit' duty in the School Standards and Framework Act 1998;

c) to provide an information service for parents and children on services, facilities and publications that might assist them

Part 2 repeats the above with the exception of a) for Wales;

Part 3 gives powers to Government to:

a) to integrate and review regulation and inspection of early education and child care;

b) to create a single framework of learning and development from 0 to 5 (this is the new Early Years Foundation Stage that will incorporate the existing Birth to Three Matters Framework, the Foundation Stage guidance for 3 and 4 year olds and the 14 National Standards);

Part 4 contains a number of general provisions but requires local authorities to encourage the involvement of parents and private providers in the establishment of integrated early years' services.

3. The Bill in context of post war legislative framework for children

3.1 The extent to which the CC Bill reflects the balance of responsibility between the state and individual families in the upbringing of children, is much more easily seen in the light of nearly 60 years of child care legislation.

3.2 The **Children Act 1948** (CA48) and **Nurseries and the Child-Minders Regulation Act 1948** (NCMRA48), were the first post war Acts in a long sequence of legislation seeking to implement a changing relationship between state and family.

The CA48 sought to 'lay to rest' the punitive provisions of the Poor Law and ensure that when families 'failed', the state could take over with residential homes for children that sought to promote the well being of the children rather than to punish them.

3.3 Similarly, the NCMRA48, sought to enact the state's growing sense of responsibility to ensure minimum standards for the care of children during the day, if parents passed on that care to nurseries and child minders. The Act was a victory in principle, if not in practice (given how *minimal* were the minimum standards) for those who saw the care of young children as not an exclusive and private responsibility of the family only.

3.4 15 years later, that balance of responsibility between state and family was given a further tilt towards the state with the **Children and Young Persons Act 1963**. This enshrined the first 'prevention' principle, based on the belief that it was not enough for the state to care well for children when their family situation broke down but that the state should provide assistance to families to help *prevent* breakdown:

3.5 The **Children and Young Persons Act 1969**, sought to widen further the responsibility of the state by applying principles of prevention of (further) harm

and promoting well being not only to vulnerable young children but by seeing older delinquent children as vulnerable too, their offending expressing underlying disturbance ('mad' not 'bad'). The CYPA69 raised the age of criminal responsibility from eight to ten years and the old approved schools were incorporated into the child care system becoming 'community homes'.

This growing optimism in the power of the state to intervene successfully in the lives of children was manifested in the creation in 1970 of the new local social services department (SSD), a generic department for families. The SSD brought together in one department under one Director the three previous departments (children, welfare and mental health) that had had responsibilities for assisting families. The SSD was to work with its local communities, responsive to their needs but also drawing on their resources to help local families. It is interesting that the Prime Minister should have said in the Forward to the ECM Green Paper and referring to the new Children's Trusts, that the Green Paper would '*crucially, for the first time ever, require local authorities to bring together in one place, under one person, services for children...*'. In fact, we have been here before!

The spirit of optimism and capacity to deliver universal family support was undermined by the increasing documentation of very different kinds of families, not ones that were struggling to parent well but needing support and assistance, but families who had the capacity to systematically and sadistically abuse children. The political climate changed sharply.

3.6 The **Children Act 1975** shifted the balance of power between family and state dramatically towards the state with in extreme circumstances, draconian powers for social workers to intervene in families, remove children and even for the courts to remove parental rights, freeing children for adoption.

Despite these new powers, children continued to be abused and to die. In Cleveland, over 100 children were removed from families in a period of a few months on grounds of suspected sexual abuse. Many were returned for lack of evidence on full investigation. Concern grew about the damage these extensive social work powers were doing to attempts to work in a spirit of trust and partnership with families.

3.7 The **Children Act 1989** was thus the result of a major review of policy and practice drawing on ESRC and Government funded research. The three principles of the CA89 are well known:

- The welfare of the child being paramount;
- The sanctity of parental responsibility that may need to be shared with the State but very rarely removed; and
- The responsibility of public services to work together in partnership with families.

These three represented what was intended to be a long term resolution of the family – state balance of responsibility for the upbringing of children. They still underpin the provisions of the current CC Bill.

3.8 The ECM strategy is designed to address the failure of the 3rd Children Act principle above to prevent the murder of Victoria Climbié where, once again, a committee of inquiry found a failure of police, health and social services to share information and work together. The current CC Bill therefore ratchets up a little more the paramountcy principle by specifying five outcomes of the ‘welfare of the child’ – see above). It also strengthens the ‘working together’ principle by imposing a duty on local authorities to integrate health, social services and education services for young children.

It did this through the **Children Act 2004** which placed a duty on local authorities to have clear accountability for children's services, to enable better joint working and to secure a better focus on safeguarding children. The central provisions of the Act are the establishment of the Children's Commissioner post, Directors of Children's Services posts within local authorities bringing together education and social services into a Children's Trust, Local Safeguarding Children Boards, and powers to establish a database of children and young people living locally.

Conclusion

Will the CC Bill help bring about its twin aims of improving well being and reduce inequality for children?

Like any piece of legislation, it depends of course on resources, time and some political stability (public outrage at another child death might easily undermine the ECM strategy – confidence in initiatives, strategies and target setting is already highly fragile).

On the positive side, I think the Children's Trusts (introduced by the CA2004) will both raise the profile of children and increase the potential locally for a more coordinated approach to provision for children, family support and sharing of information for children at risk. There is also serious money being invested in workforce development and the Children's Centre programme. This provides a management and service infrastructure within which the CC Bill proposals can be implemented.

On the negative side, I think working with young children, even ordinary children from ordinary families in ordinary nurseries, yet alone children and families with complex needs, is emotionally far more difficult than Government has begun to recognise. The majority of the early years' workforce is under qualified or not qualified at all, inadequately supported, underpaid and under recognised. I have been working with colleagues, through Lord Listowel, to add clauses to the Bill that will make it a duty for early years' staff to receive regular mentoring / supervision. The Government is very resistant to any clauses that are not ‘cost neutral’.

Second, the majority of early years' provision in England and Wales is in the private sector and paid for by parent's fees. This means salaries will remain low and despite workforce development above, investment in professional development will not be adequate;

Third, resource constraint means that local authorities, in allocating resources for family support, need to identify priorities, which families will 'deserve' support and which will not. This was a central criticism of the CA89 and brings with it problems of labelling and stigma.

Fourth, whilst the Bill will make the new Early Years Foundation Stage a statutory requirement and separate it from the National Curriculum, acute anxieties remain about the significance of a curriculum for babies and the youngest children.

Overall, it seems extremely doubtful to me, given the deep structural problems in society that lead to inequalities in children's life chances, that action by local authorities alone, now much reduced in their powers and strategic capacities, and however much the Government sets targets, can really reduce inequality. There are though distinctively new powers and a new rhetoric. Will this new rhetoric lead to real change for children? I think child protection WILL be more effective. I think the reduction in inequality will be more difficult to achieve.

On the topic of rhetoric, I wanted to finish with what I thought was an interesting and enjoyable quote from Teresa Smith concerning the language of family support:

"I used to think I was poor. Then they told me I wasn't poor, I was needy. Then they told me it was self-defeating to think of myself as needy, I was deprived. They then told me deprived was a bad image, I was underprivileged. They then told me underprivileged was overused, I was disadvantaged..."

A 1990s' version would surely add 'at risk' and 'social exclusion'. The Punch line ran "I still don't have a dime. But I have a great vocabulary" (Smith 1999)

Sources

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