

# Professional social work and the defence of children's and their families' rights in a period of austerity: A case study

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**Abstract:** This article explores the implications of austerity for professional child and family social workers. Their ability to offer and provide a range of child and family support services was threatened by proposed clauses in the 2016/17 Children and Social Work Bill, now Act, which would have exempted local authorities from meeting key existing statutory duties. Having established a policy context for progressive social work, the article records the Bill's passage through Parliament, and details the successful Together for Children campaign against the clauses, in which the British Association of Social Workers (BASW) and the Association of Professors of Social Work participated. The authors conclude by identifying some of the ways in which social workers can apply their progressive and professional values and knowledge to defend the social care rights of children and families.

**Keywords:** children; social work; legislation; children's rights; campaigning; austerity

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## Introduction

What role do child and family social workers have in facilitating or fighting UK government austerity policy? Tensions over protecting social work's professional identity and integrity boiled over during a recent high profile campaign around several controversial clauses – which came to be known as the 'exemption clauses' – in the Children and Social Work Bill. The potential consequences of this legislation for social workers, specifically their continuing ability to offer, provide, organise and defend statutory social care services for children and families, underline the ways in which austerity can and does impact on professional roles. If passed, the exemption clauses would have dramatically altered the nature of local authority social care provision in respect of children and families, shifting it from a national system underpinned by universal legal entitlements to a state of fragmented and precarious rights managed by a select few within and close to Whitehall.

Current opposition to the 'Henry VIII powers' proposed in the European Union (Withdrawal) Bill – so-called because they mimic the provisions in the Proclamation by the Crown Act 1539, which gave the monarch the authority to rule by decree, independent of Parliament – featured prominently in the organised resistance to the exemption clauses (Evans, 2016; Jones cited in Butler, 2016; Simmonds, 2017; Willow, 2016a). Separated by a matter of weeks (the Children and Social Work Bill gained Royal Assent on 27 April 2017, the Brexit Bill appeared on 13 July 2017), the constitutional battle to defend Parliament and the rule of law in the first statute proved victorious and prescient. The constitutional settlement post-Brexit is yet to unfold.

Had they survived, the exemption clauses would have permitted area-based deregulation 'pilots' (see Tunstill's critique of the research aspects, 2016) whose end-goal was to remove local authority duties nationally. The extent of the government's plan to strip away children's law was never fully revealed, though when the Children and Social Work Bill first appeared every children's social care statutory duty introduced since 1933 was threatened, including virtually all of the Children Act 1989. In later stages of the Bill, Ministers retreated on six 'core legal duties', four from the 1989 Act and two from the Children Act 2004, placing them out of scope of the new power. As with the Bill itself, there was no public consultation on which parts of children's social care law should be saved from deregulation testing. The move did not assuage the strident and growing opposition, organised under the banner of children's rights, and three months later Education Secretary Justine Greening added her name to opposition amendments to remove the clauses altogether from the Bill.

It is hoped that this case study account of the 'Together for Children' campaign, in which professional social work organisations – including BASW, CoramBAAF, Nagalro and the National Association of Independent Reviewing Officers – played central roles<sup>1</sup>, can contribute to contemporary debates around the current and future purpose and form of professional child and family social work in England and Wales.

Organised into three main sections, the article begins by setting a policy context for the Bill, exploring the tensions and realities of the traditional relationships between poverty, disadvantage and the social work role, and the implications of modern austerity policies for professional social work. Part two records the origins, organisation and successful outcome of the campaign against the exemption clauses mounted under the aegis of children's rights charity Article 39. In the third and final section, the authors identify challenges to professional child care social work posed by austerity policies, and propose ways in which social workers can realise their progressive values and goals through defending the rights of fellow citizens, both children and adults.

## **The policy context of the Children and Social Work Act 2017**

### **Poverty, disadvantage and the social work role**

The current period of austerity, around a decade in length, exposes the inherent and perennial tensions in the relationship between the social worker role and government policy in respect of poverty, disadvantage and inequality. The history of professional social work policy and practice in the UK is inextricably bound up with state interventions in the lives of poor people, a linkage perhaps at its most obvious in the relationship between the Poor Law and the inauguration of the Charity Organisation Society.

A cursory look backwards through the social history of UK child care social work reflects a largely progressive trajectory over the last two centuries. Legislation has moved on or, depending on the reader's perspective, *progressed* from destitute families being torn apart and housed in separate parts of the local workhouse (1834 Poor Law Amendment Act), to a duty to prevent reception into care (1963 Children and Young Persons Act), to a duty to safeguard and promote the welfare of children in need and to promote their upbringing by their families (1989 Children Act). The emergence from the 1970s onwards of effective self-advocacy groups, of children in care (Stein, 2011) as well as parents and other family members (ATD Fourth World, 2017), has heralded a growing body of legal entitlements, as diverse as the right of children to have support from independent advocates when they make a complaint or express their views about social care services, to the right of both parents and children to information and involvement in decision-making. Additionally, and in tandem, the post-war codification of human rights, in particular the 1989 United Nations Convention on the Rights of the Child, demands a strong welfare state and deep commitment to the equal human potential and dignity of all citizens. Firmly lodged in international human rights law, the 'rights not charity' and 'nothing about us, without us' mantras of many self-advocacy groups serve as

mighty counterweights (ideologically if not always in reality) to government and professional power.

This is not to imply that, prior to this highly contentious Bill, all was rosy in the child and family social work garden. Or that we believe child and family social work can ever be completely free of conflict, coercion and power struggles. What we contend is that children's legislation has hitherto reflected a mediation between dominant laissez-faire (neoliberal) attitudes and the growing social science evidence-base around children's needs, subjectivity and agency and (albeit a more contested) awareness of the importance to a child's welfare and development of her/his birth family (MacLeod, 1982; Pierson, 2011). Furthermore, one important and reinforcing strand over this same period is the evolution of a (broadly accepted) professional identity for social work focused around human rights and social justice; the necessity of university based qualification, and practice informed by social science theory and research; a traditional regulatory structure; and, for those employed by local authorities, democratic accountability to those who depend upon, use and have a moral or legal right to social care services (Rogowski, 2010; Bamford, 2015).

The history of social welfare shows how evolving expectations of the social worker role reflect changes in the wider prevailing political ideology, especially around child and family poverty. This is not to suggest a linear or static progression. Indeed, many of the teachings of the Charity Organisation Society, with its emphasis on modifying individual behaviour, would not stand out of place in the 'responsibilisation' agenda of today's Troubled Families programme (Crossley cited in Pell, Wilson and Lowe, 2016):

There can be no doubt that the poverty of the working classes of England is due, not to their circumstances, ... but to their improvident habits and thriftlessness. If they are ever to be more prosperous it must be through self-denial and forethought. (Charity Organisation Review 1881, cited in Mooney, 2011, p.8)

By the 1950s, Harriet Wilson, who was to go on to found the Child Poverty Action Group (CPAG), was highlighting the plight of poor parents and the pressure on social workers to reform individuals instead of systems, often on the basis of oppressive theories and assumptions:

The social work profession was trying to lift 'the problem family' out of the sterile field of biological determinism in psychiatric terms .... I questioned the assumption of Elizabeth Irvine et al that poor people are poor because they are immature, and I suggested we should alter the environment in the first place before trying to treat the condition of 'immaturity'. (Wilson 1959, p.118)

Wilson recorded her deliberate 'strategic' decision to call the new group the *Child*

(not *Family*) Poverty Action Group, given public sentiment about children: poor parents then, as now, often being punitively seen as the agent of their own poverty (Tunstall, 2015).

The pinch points in social workers' relationships with the state have sometimes, though not always, reflected public – as well as professional – disquiet at the removal of children from their (poor) families. Social concern in the late 1960s around homelessness, for instance, greatly increased when the harrowing removal by social workers of children from homeless parents was depicted by Ken Loach in 'Cathy Come Home'. The image of children being taken forcibly from parents, simply because they were homeless, had a powerful impact on wider attitudes and national child care policy. One of the earliest actions of the British Association of Social Workers (BASW), formed in 1971, was to issue guidance that no social worker should receive a child into care because of homelessness alone. BASW also actively disseminated professional concerns about the aims of the 1975 Children Act (Fox Harding, 1987), fearful that the legislation would increase the rate and speed of child removal from their families and critical at the absence of any provision for family support or preventive work. BASW and CPAG members jointly lobbied Parliament; their representatives gave committee evidence; and branch level meetings were held to protest against an Act widely seen as unfair to poor people. In 1976, CPAG published what was to become a seminal pamphlet, *Inequality in Child Care*, by Bob Holman, which led to the formation of the Family Rights Group. This organisation has grown to become part of the campaigning machinery around child care social work policy and practice.

It was not until the 1989 Children Act that local authorities became duty-bound to safeguard and promote the welfare of children in need and to promote their upbringing within their families through the provision of services. Although its implementation has been much criticised (Tunstall et al), there is no escaping that this part of the Act established a legislative link between *need* and *harm*. The associated guidance makes clear that social workers should pay attention to the circumstances of children, *and*, crucially, their parents, in promoting the welfare of children. Moreover, the Act had an unusually empirical gestation period, having been the product of close partnership between the Law Commission and the Department of Health. Its aims and objectives could be traced back to the programme of evaluative research funded by government, and indeed a substantial body of research accompanied its subsequent implementation.

### **Children's services in the current austerity era: Emerging trends**

The policy trajectory adopted by governments since the 2007-8 global financial crash, which marked the beginning of this latest period of UK austerity, means the potential of the 1989 Act continues to be thwarted through a combination

of inadequate funding and a risk-based approach, whereby adversarial care proceedings have replaced the partnership work with parents and long-term social investment in children envisaged by its architects (Hughes & Rose, 2010; Featherstone et al, 2014). Austerity's familiarity and apparent simplicity – everyone knows about balancing budgets, especially the poorest – has arguably been a cruel confidence trick. The austerity consensus (Farnsworth and Irving, 2012) has prevailed until recent times, despite the ideological and optional nature of welfare retrenchment. As Bamford describes (2015, p. 57), austerity is an

economic philosophy based on free markets, deregulation, privatisation [which] has had a significant impact on the development of a mixed economy of welfare and the sustained retreat of local authorities from direct provision of care.

From the start, the Together for Children campaign challenged austerity in children's social care, by highlighting how the exemption clauses would enable greater privatisation and arguing that this would not be in the interests of children. The trade union UNISON reported that 99 per cent of social workers surveyed about the Bill ( $n=2,858$ ) did not trust the government not to privatise social work functions (UNISON, 2016). One of the earliest government concessions was to table an amendment to prevent the exemption clauses being used to circumnavigate the partial ban on privatisation in children's services. This was not to allay fears within or outside of Parliament, however, as we outline below.

UNISON asked social workers to rank a menu of social care priorities. Greater investment in social work services and dealing with caseload levels secured first and second place in the list of priorities. Around the same time, research for the Department for Education had shown a 9 per cent reduction in council spending on children in need between 2010/11 and 2013/14 and that 'participating councils reported that spending on looked after children was difficult to reduce as they had to meet statutory responsibilities' (Aldaba and Early Intervention Foundation, 2016, p.36). It was surely no coincidence that the legal opt-outs publicly mooted by Ministers and the Chief Social Worker for Children and Families were all concerned with children in care and care leavers (Article 39, 2016a; Department for Education, 2016b, 2016c; Willow, 2016b).

Hunger, homelessness and the care system are some of the lived consequences of austerity for children, with Bywaters et al (2017) finding that children in the 10 per cent most deprived local authorities were around 11 times more likely to be in care than children from the least deprived decile. A similar conclusion was reached by the All Party Parliamentary Group for Children, which drew a link between the sparsity of resources invested in family support and 'more children being taken into care' (APPG, 2017, p.3). The Association of Directors of Children's Services' response to this APPG report was desperate:

... the impact of several years of financial austerity is now all too visible in local communities. Poor parental mental health, substance misuse and domestic abuse are sadly becoming more common and record numbers of children coming into care. With further reductions in local government funding expected and fundamental changes to our financing on the horizon, our ability to step in and prevent problems escalating to crisis point is in serious jeopardy. Put simply, we cannot go on as we are. (ADCS, 2017)

The parliamentary passage of the 2017 Children and Social Work Act undoubtedly provided a relief valve for much of the anger and frustration over the palpable harm caused to children and families by austerity. Approaching one in three (29%) of children in the UK – 3.9 million in all – were living in relative poverty in 2014/15 (Department for Work and Pensions, 2016). The month before the Bill appeared, The Trussell Trust reported that its foodbanks had issued over 1.1 million three-day supplies of food in the financial year 2015/16, with 37 per cent of beneficiaries being children. Social workers are among the professionals referring children and families to these anti-hunger services (The Trussell Trust, 2016). An evaluation of the impact of the bedroom tax ('spare room subsidy') by the Cambridge Centre for Housing and Planning Research and Ipsos MORI on behalf of the Department for Work and Pensions found 341,258 children were affected by August 2014. Individuals and families affected were asked what actions they had taken in response to the bedroom tax: the single biggest response was to spend less on household essentials. The most common reason for families being unable to move to a smaller property was children's schools, cited by 48 per cent of families with children (Clarke, et al, 2015).

In addition, there was the emergence of independent trusts and community interest companies to run statutory child and family social work services outside of local authorities, together with a recent attempt by government to pass secondary legislation allowing local authorities to delegate virtually all of their statutory children's social care obligations (except adoption and the independent reviewing officer function) to third party providers, namely profit-making companies. Increasing government control of the social work profession – embodied by, for example, fast-track training, compulsory accreditation of children's social workers and the funding and promotion of tightly prescribed practice models – was another feature of the contentious backdrop to the Bill. Taken altogether, many were suspicious that what was being presented as innovation in the Bill was in reality an ideologically-driven agenda to strip more power from local authorities and the public (social work) sector.

In the face of robust challenge, Ministers ditched their plan (introduced late into the Bill) to make Social Work England (the new regulator) an executive arm of government under direct control of the Secretary of State. But the new regulator must still obtain the Education Secretary's approval for professional standards; and the Minister has gained new powers to set 'improvement standards' for social workers,

and to introduce assessments for practitioners. By the time parliamentarians came to scrutinise these late changes to the political organisation of social work, a fierce battle had already been waged and won. And this was about the very legal basis of the care and protection of vulnerable children within and outside their families.

## **The fight for children's social care rights**

### **You say innovation, we say exemption**

The Children and Social Work Bill was published on the UK Parliament website on 19 May 2016, the day after the Queen's Speech. The most contentious part of the Bill, spanning five clauses, empowered local authorities to apply to the Secretary of State to suspend any number of their legal duties towards vulnerable children, young people and families for up to six years. In a particularly Orwellian move, one of the clauses empowered the Secretary of State, at that time Nicky Morgan MP, to remove statutory duties from local authorities currently under government intervention for failing to meet their legal obligations. No consultation or consent was required from these local authorities. Richard Watts, Chair of the Local Government Association Children and Young People Board which strongly opposed this particular clause, was to warn, 'A lot of councils see that as potentially a backdoor to mass privatisation of children's services' (cited in Hayes, 2016).

The Bill, the accompanying explanatory memorandum and the impact assessment all described this unprecedented unwinding of universal entitlements as testing different ways of working. Innovation was the buzzword, though 'exemption' was in the detail. For the purpose of achieving better outcomes, or achieving the same outcomes more efficiently, the Bill gave the Secretary of State the power to:

- (a) exempt a local authority in England from a requirement imposed by children's social care legislation;
- (b) modify the way in which a requirement imposed by children's social care legislation applies in relation to a local authority in England.

(Children and Social Work Bill, 2016)

A complete list of affected children's social care legislation was not included in the Bill, leading the Editor of Nagalro's *Seen and Heard* journal to comment: 'The overall impression is that the draftsman wanted to make his work as impenetrable as possible' (Noon, 2016). Exemptions were to apply to any of the children's social care provisions in Schedule 1 to the Local Authority Social Services Act 1970. This spans 80+ years of legislation and includes social care provisions in the Children and Young Persons Act 1933, Chronically Sick and Disabled Persons Act

1970, Mental Health Act 1983, Children Act 1989, Housing Act 1996, Adoption (Intercountry Aspects) Act 1999, Carers and Disabled Children Act 2000, Adoption and Children Act 2002, Children Act 2004, Mental Capacity Act 2005, Children and Young Persons Act 2008, Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the Care Act 2014. Then there were the regulations (secondary legislation) attached to each of these Acts of Parliament, for example regulations relating to the review of looked after children's care and treatment (2010), leaving care entitlements (2010) and statutory complaints procedures (1991). Near the end of campaigning, Shadow Children's Minister Emma Lewell-Buck MP obtained from the House of Commons Library a full list of the duties which could be 'tested' by being removed from children and families in a local authority area for up to six years. The document stretched to 12 pages. Area-based removal of duties was only part of the danger, though. The policy goal was to use this 'testing' process to remove statutory obligations altogether. A policy document issued by the Department for Education five months after the Bill's publication explained:

The aim of trials will be to test provisions to create the evidence base for changes to the law across the system. (Department for Education, 2016b)

## **Deregulation, deregulation, deregulation**

The Cabinet Office's 'Red Tape Challenge', in force between 2011 and 2014, gained media opprobrium after scores of people perished in the Grenfell Tower fire (Poole, 2017). But it was not only fire safety that was put out to consultation; the public was also asked whether 122 aspects of children's law should stay or go. In response to this, Willow wrote (2011, p.4):

The Cabinet Office's 'Red Tape Challenge' recently asked whether protections for children in and leaving care would be better framed as a 'voluntary code' – taking us back 100 years, before the 1908 Children Act of the then Liberal Government regulated foster care for the first time and empowered local authorities to remove children from workhouses. If there was no serious threat of children in care losing vital safeguards, why ask the public for their views? Why demean these children by conceptualising the care they receive from the state as a 'burden'?

In the event, only five children's social care regulations were scrapped, three of which were redundant anyway. Fourteen separate regulations were actually improved. So why was deregulation back on the agenda in 2016? And how upfront were Ministers about this?

A *Sunday Times* article by the then Prime Minister, David Cameron, published the weekend before the Bill appeared, made no mention of the exemption clauses

(though months before he had promised the 'academisation' of children's social care: see Jones, 2016b). The Queen's Speech, delivered the day before the Bill's publication, similarly said nothing about allowing councils to opt-out of their legal duties:

A Bill will be introduced to ensure that children can be adopted by new families without delay, improve the standard of social work and opportunities for young people in care in England.

Children's rights charity Article 39 was the first organisation to raise the alarm, in a summary posted on its website the week after the Bill appeared (2016b). The following day, *Children and Young People Now* magazine published a news piece which quoted the charity's director at length, under the heading: "Exemption" clause could allow councils to ditch child protection duties' (Willow cited in Puffett, 2016). Two weeks later, at the instigation of Article 39, a letter was published in the *Guardian* co-signed by senior representatives of eight organisations (Article 39, Association of Lawyers for Children, The Care Leavers' Association, Nagalro, Family Action, NYAS, Institute of Recovery from Childhood Trauma and the National Association of Independent Reviewing Officers) as well as several social work academics (among them Jane Tunstill) and the former chair of the National Association of Young People in Care. As well as indicating that hundreds of legal protections could be removed for up to six years, the joint letter warned, 'The prohibition on profit-making companies taking on child protection services could be lifted' and criticised the lack of public consultation (Willow et al, 2016c).

## **No public consultation**

Unusually for a Bill with such wide-ranging provisions, there had been no Green or White Papers and therefore no opportunity for children, young people and families, and those who work with them, to express their views. Leap-frogging the normal policy-making process meant Ministers (and the civil servants briefing them) had escaped public and professional scrutiny and media challenge. As the campaign progressed, the gulf between Ministers and their few supporters, and the large and growing opposition, became irretrievably wide. Those of us most closely involved shared collective disbelief at the apparent failure of the 'innovation' champions to grasp the legal ramifications of allowing a Secretary of State unbridled power to disapply statutory duties. Bamford (2016) summed up the general feeling as follows:

The view of just about all those who have examined the draft legislation echoes the football chant at referees: 'you don't know what you're doing'.

A policy statement issued by the Department for Education quoted Professor Eileen Munro's objection to professionals being 'forced to follow unnecessary legal rules' (Department for Education, 2016b). It was as if the Bill was dealing with minor red tape, rather than the care and protection of vulnerable children. An accompanying letter from the Chief Social Worker for Children and Families, Isabelle Trowler, similarly complained of 'a morass of well-meaning rules', which again suggested this was about council bureaucracy rather than Acts of Parliament and carefully crafted secondary legislation. The Chief Executive of Cafcass (Children and Family Court Advisory and Support Service), whose staff are employed to uphold the law on behalf of children, wrote a blog stating, 'The proposed power to innovate will help to strip back bureaucracy to a safe minimum level, so that the professional time of social workers and social care staff is spent on delivering services and programmes that make a positive difference to children and families in England today' (Douglas, 2016). Again, no mention of the suspension of legal duties in particular geographical areas.

Members of the Together for Children campaign group had numerous meetings with civil servants, and some with local authorities and the Chief Social Worker. Discussions afterwards often took place in pubs closest to Whitehall and the same depressing theme dominated: they don't understand the law. There was sympathy for the handful of local authorities seemingly brought into meetings to strengthen the government's case, but whose energy and enthusiasm was noticeably directed at improving practice rather than unravelling children's law.

Two months before the campaign was won, CoramBAAF's Director of Policy, Research and Development explained in clear terms in a national newspaper the constitutional significance:

It is the sovereign right of parliament alone to make and amend the law. The law of the land applies to everybody – to every area, service and individual. And the courts alone have the duty and responsibility to determine the administration of the law. A clause that transfers these powers to individual local authorities and the secretary of state is a fundamental challenge and change to the constitution. (Simmonds, 2017)

The first explanation of the government's rationale was given by Schools Minister Lord Nash, during the Bill's Second Reading in the House of Lords:

There is a consensus stemming back to the landmark Munro Review of Child Protection that over-regulation gets in the way of good social work practice. Addressing this is central to our strategy to reform children's social care and this new power to innovate will enable us to carefully pilot and evaluate deregulatory measures. It mirrors a similar existing power for schools. (House of Lords Hansard, 2016a, column 1116)

Lord Nash promised, 'that any relaxation of statutory requirements should not be undertaken lightly' and said 'a number of significant safeguards' had been designed into the exemption-making process. These included a time limit on 'pilots' (two three-year periods); use of the affirmative parliamentary procedure for opt-outs from primary legislation; and a requirement on the Secretary of State to consult Ofsted (Office for Standards in Education, Children's Services and Skills) and the Children's Commissioner for England.

## Gaping holes

The holes in these so-called safeguards were gaping. Six years is an incredibly long time for vulnerable children, young people and families to be part of a local 'pilot' of not having legal entitlements. The affirmative procedure for removing statutory duties would only give parliamentarians the right to vote on the government's plans in their entirety; no amendments would be allowed. Ministers would have known all too well that statutory instruments (which would have been the route for legal opt-outs) are virtually never voted down. Lord Judge, the former Lord Chief Justice, writing about parliamentary sovereignty and the proliferation of statutory instruments, explains (2016):

with only seventeen instruments rejected in sixty-five years, and none in the Commons since 1979, it is difficult to avoid the conclusion that the Parliamentary processes are virtually habituated to approve them.

As for the safeguard of government consulting Ofsted and the Children's Commissioner, this was not a reassuring prospect. Many in the children's sector view both Ofsted's Chief Inspector and the Children's Commissioner as increasingly political roles unlikely to challenge or change government plans. On paper, both bodies are meant to be independent of government and should not have been tied into an administrative process for deregulating children's social care. Despite being the only statutory body explicitly required to promote and protect children's rights, particularly the rights of vulnerable children, the Children's Commissioner had given her support to the exemption clauses. This was highlighted by the Children's Minister before a crucial vote in the House of Commons (House of Commons Hansard, 2017, column 171). No assessment of the Bill was ever undertaken by her office; an early email from the Commissioner to her senior staff said she supported the exemption clauses for 'strategic' reasons (Willow, 2017).

At Second Reading of the Bill, Lord Nash offered no evidence for stripping away the universal basis of children's social care law. Neither did he refer at this stage to a piece of work which had been commissioned by Ministers from LaingBuisson, on marketising children's social care.

In June 2014, the same month the Department for Education announced it would not extend privatisation in children's social care (not entirely the full picture – see below), LaingBuisson was commissioned to research ways of developing the capacity of private companies and the voluntary sector to deliver children's services.

A Birmingham social worker had already made several unsuccessful attempts to obtain LaingBuisson's advice to Ministers, when Article 39 also submitted a request. The Department for Education refused Article 39's request on the grounds that it intended to publish the LaingBuisson report 'in summer 2016'. Yet this reply came in September 2016! Earlier in 2016, the then Children's Minister, Edward Timpson MP, had told the Parliament Education Committee that the study would 'be published, as indicated, as soon as [the EU Referendum] purdah is over' and that 'the reason it is being published is because it is a helpful paper. It is trying to flesh out some of the ways that we can deliver children's services that are more innovative' (Timpson in Education Select Committee, 2016). Note that the Minister at this stage said LaingBuisson had provided 'a helpful paper'.

LaingBuisson's work on outsourcing children's services, funded by the taxpayer, originated from a recommendation made in February 2014, by Professor Julian Le Grand, Alan Wood and Isabelle Trowler who said that the company's study should be completed by September of that year. Nearly two years had passed when campaigners sought to force the report into the public domain.

Le Grand, Wood and Trowler had explained the motive for such a study as follows (2014, p. 23):

The assessment in [Birmingham's] case is hampered by the current lack of available improvement capacity, whether in the private, not-for-profit or local authority sectors. We need urgently to consider how such capacity can be created or promoted such that the range of options available can be fully explored. This is particularly the case for a large authority like Birmingham where both the scale and persistent nature of the problem indicate the need for a radical, long-term solution.

Edward Timpson responded swiftly to this advice, writing to the Leader of Birmingham City Council the following month:

I have accepted Professor Le Grand's recommendation that we should explore how improvement capacity can be created or promoted in the children's services system nationally and that as part of this work, specific consideration should be given to potential longer-term solutions for Birmingham. I have therefore decided to commission a piece of work, overseen by Professor Le Grand, to look at developing capacity for delivering children's services *outside of local authorities.* [Emphasis added]

Both the Birmingham social worker's and Article 39's complaints to the Information Commissioner were awaiting investigation when the Department

for Education released LaingBuisson's advice, describing it as an 'independent' report (Department for Education, 2016a). The report noted that the Department for Education's advisory panel – comprising only of Le Grand, Wood and Trowler – had 'encouraged the authors of this report to be ambitious and we have sought to be so, while being aware of the need to balance the desirability of considering bold solutions against the imperative to have fully understood the risks of new and inevitably not fully tested ways of working to deliver better children's social care services' (LaingBuisson – Cobic and Cicada, 2016, p. 9). This was the first clue that the exemption clauses were likely to be linked to LaingBuisson's work.

LaingBuisson's work spanned four months and the advisory panel met four times during this period, strongly suggesting Le Grand, Wood and Trowler closely steered the work. The company's report advised Ministers on options for achieving wholesale outsourcing of children's services, including child protection, drawing on similar developments in adult social care, the National Health Service and probation privatisation. Companies and the voluntary sector ('suppliers') were willing 'to play the long game if consistent government support and requisite provisions were in place', LaingBuisson reported (2016, p. 85). A table shows the market values of children's services – £6.9 billion, with the independent sector 'share' being 27% (2016, p.30). A debate on the capacity of companies and large charities such as Action for Children taking on large contracts observes that providers are:

highly conscious of the risks of operating in a high profile and *highly regulated area*. The demise of Castlebeck Group in 2012 in the adult mental health sector illustrates the existential threat to providers from failure of quality assurance. To place matters in context, however, there have as yet been no such catastrophic, value-destroying corporate failures in the children's social care sector. (LaingBuisson, 2016, p. 40) [Emphasis added]

The 'existential threat' as experienced by the Castlebeck Group arose from the systemic abuse of vulnerable adults in Winterbourne View private hospital. Eleven members of staff were sentenced for cruelty to adults, six receiving jail terms, though this was not mentioned in the LaingBuisson report.

Despite setting the terms of reference and closely steering its work, on publication the Department for Education distanced itself from LaingBuisson's advice on forcing local authorities to outsource all or a proportion of their children's services. It said it rejected options that would allow profit-making companies to run children's social care services (Department for Education, 2016a).

## Trojan horse

The government narrative that profit-making companies are not permitted

to run children's social care services is a misrepresentation (see Jones, 2015, 2016b). Even before the publication of the LaingBuisson report, campaigners and parliamentarians were suspicious that the true purpose of the exemption clauses was to clear the way for more outsourcing.

At Second Reading, Labour's lead on the Bill in the House of Lords, Lord Watson, set out a number of concerns, including that financial pressures on local authorities could lead to statutory obligations being sacrificed. He pointed to the absence of evidence that legal duties were thwarting innovation and expressed Labour's concern 'that this clause could be a Trojan horse' to get round the partial ban on profit-making in child protection (House of Lords Hansard, 2016a, column 1120).

Government denials that the clauses were part of a wider privatisation plan became more emphatic as the Bill progressed through Parliament. Isabelle Trowler, Chief Social Worker for Children and Families, joined in the defence. She told directors of children's services at their annual conference in July 2016 that, 'Contrary to the media headlines, this is not some kind of sinister political plot to overthrow public authorities or a ruse to wipe out decades of children's rights' (cited in McNicoll, 2016). An alternative view was put forward by former director of social services and social work academic, Ray Jones (2016a):

[B]eware those who say that giving exceptional powers over the social work profession to one politician is about generating creativity and innovation. Instead, recognise that the rewriting of legislation and resetting of rights and responsibilities without public debate or parliamentary scrutiny would be undertaken in the context of austerity and cuts and within what at this time – as yet not reversed by the new prime minister – is a continuing agenda of generating a marketplace for social work and child protection.

The move to outsource children's social care services tentatively started with Labour's Children and Young Persons Act 2008. Part 1 of the Act allowed services to individual looked after children and young people and care leavers to be contracted out by local authorities in pilot areas. This had also been conceived by Julian Le Grand. Social work services were required to register with Ofsted and had to employ registered social workers. In 2009, six local authorities were identified as pilots, then 10 more local authorities were added by the new coalition government. From November 2013, all local authorities in England were allowed to contract out services for looked after children and care leavers.

Local authorities were permitted to outsource all other social services functions, including child protection, from September 2014. Huge opposition mobilised against the Department for Education's original proposal to permit profit-making across all children's services and the government apparently turned 180 degrees in response (Department for Education, 2014). However, although the revised regulations prohibit a 'body corporate that is carried on for profit' from entering an arrangement to deliver social services functions, the explanatory memorandum explains (2014, p.2):

[This] will not prevent an otherwise profit-making company from setting up a separate non-profit making subsidiary to enable them to undertake such functions.

In summary, no profit-making ban exists in social work services for looked after children and care leavers. All children's services besides the adoption and independent reviewing functions can be outsourced, to the voluntary sector and to subsidiaries of profit-making companies. Moreover, the Deregulation Act 2015 removed the requirement that outsourced social work services be required to register with Ofsted – opposed at the time by The College of Social Work (Lepper, 2015).

## Peers reject the clauses

Schools Minister Lord Nash was unable to quell opposition in the House of Lords and the exemption clauses were voted out in early November 2016 (by 245 votes to 213). Peers were forthright in their assessments. Former chief inspector of prisons Lord Ramsbotham said the clauses 'amount to nothing less than the subversion of Parliament's constitutional position'; former director of social services Lord Warner accused Ministers of taking 'an extremely large sledgehammer to crack quite small nuts'; and Labour's Lord Watson questioned the professionalism of the Chief Social Worker for Children and Families. Perhaps the greatest attack came from Lord Low, a lifelong campaigner for the rights of disabled people:

If it is sought to test out different ways of fulfilling a duty, it makes no sense to get rid of the duty. The only circumstances in which it would make sense would be if it were intended to give the duty to someone else – in other words, privatisation, or dismantling of the state... That is what this is all about. In the last six years, the Government have substantially emasculated local authorities by cutting at least 40% of their funding... Now, it is evidently proposed to complete the process by getting rid of the statutory obligations themselves. (cited in House of Lords Hansard, 2016b)

A month after the peers voted out the clauses, the then Children's Minister Edward Timpson announced in a *Community Care* article that he planned to reinstate 'a much altered and improved set of clauses' when the Bill entered the House of Commons (Timpson, 2016).

## Into the Commons

At the beginning of December, the Public Bill Committee that would be scrutinising the new clauses issued a call for evidence on all aspects of the Bill. To make any kind of impact, concerned organisations and individuals would have to draft and submit evidence over the Christmas holidays. Submissions on the exemption clauses were made by 47 separate organisations and individuals. Only one of these, from the

Local Government Association, supported the Government's plan to allow councils to opt-out of their statutory duties (Together for Children, 2017). This is not to say only one organisation supported opt-outs from legal duties.

In an answer to a parliamentary question at the end of January 2017, the then Children's Minister Edward Timpson MP listed organisations which had given statements of support to the government: Achieving for Children, Barnardo's, Cafcass, Catch-22, The Children's Society, the Foster Care Associates, Leeds City Council, Lincolnshire County Council, Local Government Association, National IRO (Independent Reviewing Officer) Network, Ofsted, the Society of Local Authority Chief Executives, North Yorkshire County Council, and Tri-borough Children's Services (the London boroughs of Hammersmith, Kensington and Chelsea, and Westminster) (Timpson, 2017).

It later transpired that the National IRO Network was, in fact, the National IRO Managers Partnership and the organisation issued a statement two weeks after this parliamentary statement saying exemptions would be 'an unnecessary step' (NIROMP, 2017). An FOI request made by Article 39 established that Cafcass as an organisation had not developed a position on the exemption clauses; the support came from its chief executive Anthony Douglas. This left only 11 organisations publicly supporting the exemption clauses.

The Minister also reported he had statements of support from Anne Longfield, the Children's Commissioner for England, and Professor Eileen Munro, but the latter was soon to make a spectacular U-turn.

## **The final weeks**

Despite overwhelming evidence of the likely damage to children, young people and families, and an online petition which had, by that stage, attracted over 107,500 signatures, the Public Bill Committee voted along party political lines and reinstated the revised exemption clauses on 10 January 2017. Only one member of the Committee, the Shadow Children's Minister Emma Lewell-Buck MP, explicitly referred to the evidence the Committee had received. Undeterred, the campaign against the exemption clauses refused to countenance the fragmentation of children's law, and pressed on with lobbying MPs of all parties while preparing for the Bill's return to the Lords. Requests were made for meetings with lead officials of the Department for Education, including the Chief Social Worker for Children and Families, the Children's Commissioner for England and Professor Eileen Munro. A meeting with Professor Munro was to prove a major breakthrough, since the following day she sent an email to the Shadow Children's Minister Emma Lewell-Buck, former Children's Minister Tim Loughton MP and Carlyne Willow, stating the reasons she no longer supported the Government. This was widely reported in the professional social work press and by the BBC.

A delegation of parliamentarians, including Tim Loughton MP and former social worker Lord Laming, met the Education Secretary Justine Greening MP a couple of weeks later to express their concerns. The day after, a letter from the Co-Chairwomen of the Association of Lawyers for Children, the President of the Law Society, the Chairman of the Family Law Bar Association and the Chairman of Resolution (an organisation of family lawyers) appeared in *The Times* urging 'We must not allow these clauses to pass into law' (Cover et al, 2017). The following week news reached the Together for Children campaign that Greening would be adding her name to amendments tabled by the opposition to withdraw all of the exemption clauses from the Bill. The campaign was won. Children's social care rights were secure.

## **Austerity and professional social work identity**

This article set out to identify and discuss the professional role of child and family social workers in the current political and policy context of UK government austerity policy. The question posed at the beginning was: should social workers facilitate or fight austerity-led measures which impact on the people they serve? Is it part of the professional responsibility and identity of social workers to advocate for and defend the rights of children and families? The above account records the national campaign, in which social workers took a leading role, against the Conservative Government's legislative plan to reduce statutory requirements (legal entitlements) in child and family social care services, initially on a piecemeal basis and then nationally. The contested clauses embodied the two linked austerity goals of shrinking the state and privatising public services (or at least making children's social care services 'market-ready'). In this final section, we reflect on the implications of austerity for the professional identity and status of child and family social workers; and identify key lessons which can be learned from the successful Together for Children campaign.

Children and families with whom social workers work are in the frontline of a prolonged assault on welfare services mounted in the name of austerity. At the start of our article we described the creation of the Child Poverty Action Group. More than half a century since its launch, the charity's current chief executive warned: 'there is no greater burning injustice than children being forced into poverty as a result of government policy' (Garnham cited in Butler, 2017). If injustices can ever be ranked, separating a child from her or his family solely as a consequence of poverty must sit shamefully high. Proving that this is a human rights issue, were this to be ever in doubt, the United Nations Committee on the Rights of the Child has twice urged the UK to ensure children are not brought into the care system solely due to poverty, with its 2016 recommendation stating:

the Committee emphasizes that conditions directly and uniquely attributable to poverty should never be the sole justification for removing a child from parental care.

Bywaters et al (only the most recent to do so) demonstrate conclusively that children in care are predominantly the children of the poor. Budget pressures mean that children and families must demonstrate even greater levels of need before they can gain access to social care support and protection, despite universal legal entitlements. By the time thresholds are reached, families are often in severe crisis and coercive, risk-led interventions dominate. So widespread and serious have these concerns become (National Children's Bureau, 2017), that the All Party Parliamentary Group for Children has launched an inquiry to review thresholds in different areas of the country (Stevenson, 2017). A picture emerges of a depressing policy/practice loop, which unchecked could see the role of professional social workers limited to residual intervention, having far more in common with the 1834 Poor Law Reform Act than the 1989 Children Act.

Are there any hopeful lessons for social work to be derived from our case study? Does the mainstream social work literature hold any clues as to how child and family social work could avoid a looming residual role as child removers, responsible only for a narrow forensic family monitoring role. There is increasing consensus about activities which comprise the social work role. Moriarty's (2015) typology identifies five such key dimensions in the professional literature: transformational; social order; maintenance; emancipatory; and therapeutic. Nine complementary social worker tasks emanate from these categories: facilitator; gatekeeper; regulator; upholder; advocate; partner; assessor of risk /need; care manager; and agent of social control. As Moriarty and her colleagues conclude (2015, p.11) there are major tensions between different conceptions of the social work role, in particular around individual versus collectivist ways of working exemplified by Trevithick 2008: 'should social work be about reform or revolution? Should it 'fit' people into the system, change the system – or both?'. This was a theme echoed by Staniforth et al (2011) who asked, 'Where should social workers be engaged in the change effort – should they be helping people change themselves or be involved in changing society?'

We would argue that this apparent choice for social work between ownership of a wider collective model of responsibility as a profession, or acting as proponents of individualised responsibility is a false one and should be firmly rejected. Professional social workers must be able to recognise and respond to individual needs, circumstances and wishes; we must be ready to challenge (and help change) harmful individual behaviour; we must also have a deep understanding of the social, economic, political and cultural contexts of people's lives; and we must seek to reduce and remove societal harms.

## **Key messages for professional social work**

### **Challenging austerity and protecting the legal basis of services**

From the Liberal reforms a century ago, the promotion and protection of children's welfare has been a consistently central feature of the welfare state. The 1989 Children Act and the UK's ratification of the UN Convention on the Rights of the Child firmly established the child as a rights holder, with justifiable claims on the state. Both the Act and the treaty give primacy to the child's right to be cared for by her or his parents; both place obligations on the state to support the family, which the latter describes as 'the fundamental group of society'. When children are unable to live with their families, it is for the state to ensure they are loved, protected and can thrive and be happy. Continuing and growing poverty and inequality can only increase the need (demand) for child and family social work and family support services. It is the professional duty of social workers to do everything possible to challenge austerity (BASW, 2017), to protect services and to defend social care legal entitlements.

### **Importance of the campaigning role in social work**

Of the lessons for professional practice which can be derived from the experience recorded above, perhaps the most obvious concerns the value and potential impact of collaborative effort, whereby campaigning can help to resist legislative injustice. The organisations and individuals who came together for children had a major impact on the final shape of the Children and Social Work Act 2017. With the Local Government Association (2017) warning that children's services are facing a £2 billion shortfall in their budgets, council leaders across the country could now be seriously contemplating, or worse pressing ahead with, opting-out of statutory duties in order to balance their books. Thanks to the Together for Children campaign, this is no longer a possibility.

The same values inform the 2017 manifesto based campaign of the British Association of Social Workers, the largest UK social work professional member group. This identifies eight priorities for professional social work. Drafted during the general election campaign, the organisation advocates three priorities for government action in respect of austerity, poverty and disadvantage: end austerity policies that cause harm to children, adults and families with care and support needs; shift children and family policy towards tackling child poverty and intervening early to support families and communities; and ensure strong, coherent democratic accountability for statutory social work services.

## The importance of forging alliances

In day-to-day practice, social workers have a strong sense of the importance of partnership working and cross-professional collaboration, and the families with whom they work pull together in times of challenge and change. So too did the organisations and individuals in the Together for Children campaign put to one side any pre-existing differences to pursue a single goal – the protection of children’s law. Self-advocacy groups, social workers, children’s rights campaigners, lawyers, academics, trade unionists, politicians and a few of the country’s largest children’s charities worked closely and tirelessly for months. When Together for Children launched, it had the public backing of 20 organisations and the same number of individual experts. Six months later, 53 organisations and more than 160 experts were behind the campaign. Many parliamentarians made exemplary, evidence-based, contributions to the Bill. In addition to the 245 Peers who voted to remove the exemption clauses, the Shadow Children’s Minister Emma Lewell-Buck MP (a children’s social worker before entering Parliament) and former Children’s Minister Tim Loughton MP stood out in the Commons as formidable champions of child and family social work. This highlights the importance of social work organisations making and sustaining relationships with key parliamentarians across the political divide. Multi-disciplinary working in the interests of children at its best!

## Note

1. The campaign was run by a co-ordinating group comprising Article 39, Liberty, Nagalro and the National Association of Independent Reviewing Officers.

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