

Just for Kids Law submission to the Education Select Committee Inquiry on the impact of COVID-19 on education and children's social care

The impact of COVID-19 on education

Just for Kids Law (JfKL) is an award-winning UK charity working with and for children and young people to hold those with power to account, and fighting for wider reform by providing legal representation and advice, direct advocacy and support, and campaigning. The Children's Rights Alliance for England (CRAE) merged into Just for Kids law in 2015 and works with over 100 members to promote children's rights and monitor government implementation of the UN Convention on the Rights of the Child.

Reintegration when schools reopen

Whilst we believe children should go back to school as soon as it is safe to reopen to ensure vulnerable children are safeguarded and educational inequality is reduced, the reopening of schools presents urgent challenges for the reintegration of vulnerable children or those with additional needs. Reintegration into school after a protracted period of absence can be a real challenge for many young people. The Literature Review commissioned by Edward Timpson for his review into school exclusions concluded that "*several factors were identified as necessary to maximise the effectiveness of reintegration: not least matching the individual child's needs, working holistically and across agencies, and developing positive relationships and collaboration across schools, staff and parents*".¹

We have observed this in our legal casework.

One client Richard (age 7) had a sensory disorder which caused him to exhibit disruptive and, at times, violent behaviour which eventually led to his permanent exclusion in October 2019. After some time, the exclusion was quashed on review and Richard was readmitted. However, by this time he had been out of school and away from any social contact for so long that his reintegration was chaotic and caused more severe problems between him and his peers. The school therefore segregated him from the rest of the community until a new school could be found. He remains out of mainstream classes now and there are concerns that reintegration when schools reopen will result in further upheaval for him.

There are now thousands of children in Richard's position. Some will transition straight to secondary school after a long absence. We know that the transition from primary to secondary school can be difficult for many children.² However, for young people with special educational needs and disabilities (SEND), and particularly a disorder such as autism, which can be exacerbated by breaks in routine and familiarity, this is a very trying time. We are concerned this is likely to cause a spike in exclusions and other disciplinary measures which will have a lasting impact on young people when schools reopen. If many year groups in both primary and secondary schools do not recommence

until the new academic year, there will be huge challenge to successfully reintegrate thousands of children with high-end needs.

This problem will be exacerbated by the trauma that some young people will have experienced in the family home during the period of lockdown whilst schools were closed.³ For thousands of children, their home is not a safe space and school is their only place of safety.⁴ Children who experience or observe domestic abuse and neglect will likely have felt even more trapped, isolated and anxious during this period. It is well documented that trauma will lead to disruptive behaviour in some children and young people;⁵ we often find that a spike in disruptive behaviour has followed experience of neglect or domestic violence at home with the young people we support.

The Government should take a proactive approach to guaranteeing the rights of children to be protected from abuse under Article 19 of the UNCRC.⁶ Failure to take appropriate steps to manage reintegration may result in the exclusion of children for behaviours resulting from abuse, which will only perpetuate it.

Young people with SEN but no EHCP unable to access education

Even before the relaxed obligations in relation to the timeframe for assessment and preparation of an ECHP contained in the Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020, and the reduction of the duty to realise the provision set out in an EHCP triggered by the Secretary of State's notice of 28 April 2020 came into force, there has been a dramatic difference in the entitlements enjoyed by young people who have SEND but no Education, Health and Care Plan (EHCP), and those who have an EHCP. This is because young people registered as having SEND but who do not have a Plan are not entitled to have any specified interventions funded. They are, instead, reliant on a school's delegated funding which is not ringfenced to any individual child. Instead, the relevant guidance requires schools to use their "best endeavours" to meet the needs of children with SEND.⁷

It has been reported for a long time that this money is not sufficient and therefore provision through delegated funding is insufficient. Families therefore feel that their only option is to obtain an EHCP in order to secure provision for themselves.⁸ Unfortunately, delays to the EHCP assessment and drafting process as well as poor decision making from local authorities under pressure, are commonplace.⁹ This means many families who are entitled to support simply do not get it.

The Government's measures have exacerbated these problems – among year groups who have not yet been returned to school, only children with an EHC Plan can attend school (excluding key worker and vulnerable children). Therefore, children who failed to secure an EHCP have been left without access to the SEND support they would have been receiving through the school's delegated funding. It also means that some young people who are entitled to an EHCP but have not received one due to delays or poor decision making have been unfairly denied months of their education.

This problem is made worse by the relaxation of the framework for completing timely assessments¹⁰ and creating plans.¹¹ It is likely that families whose applications were stalled due to these statutory instruments will be unable to resolve the situation by the time schools reopen.

Just for Kids Law are supporting Jai, a fourteen-year-old with ADHD. He has difficulties regulating his emotions and has found it exceedingly difficult to adjust to the lockdown. Before the measures came into place, Jai was being assessed for an EHCP. He was being supported by a mentor and with therapy through CAMHS for depression. All of this support has come to a sudden stop and Jai cannot rely on his usual support systems such as seeing friends.

The local authority tried to place Jai in a school during the lockdown, but the school refused without reason. The situation has deteriorated to the point that Jai's mother has had to call the police several times as his behaviour becomes violent. There is concern that this will result in a criminal record and prolonged stays in police custody, which could also expose him to COVID 19.

Jai's story highlights the difficulties some young people with SEND will have in realising their rights under Article 23 of the UNCRC.¹² The Government must ensure that they facilitate access to education for children like Jai by meeting their additional needs.

Vulnerable children already excluded from school risk going off the radar

The Government guidance on the criteria for 'vulnerable children' and therefore those who can attend school includes those in receipt of free school meals, having a social worker, an EHC plan, SEND or children and young people otherwise vulnerable e.g. in care, in AP, young carers or 'others at the Educational Provider's and local authority's discretion'.¹³ However we believe that there is a lack of clarity about 'the others' and share concerns of others in the voluntary sector¹⁴ that these children could fall through the cracks of support with disastrous consequences. Government guidance for schools states it is up to schools and local authorities to make a '*judgment*' on defining vulnerable children.¹⁵ We are concerned this may miss children excluded from school prior to lockdown, either permanently or fixed-term and those informally excluded. As highlighted by RoTA, many excluded children will have all the characteristics of being vulnerable but will not be defined as such and may have dropped off the radar completely.¹⁶ According to the Children's Commissioner, only 1 in 20 children identified as eligible to attend some form of schooling during lockdown are doing so which may include '*Children previously at risk of being excluded or who had high levels of absence*'.¹⁷ The lack of data on excluded children, particularly those from BAME and Gypsy Roma Traveller backgrounds who are more likely to be excluded makes it all the more concerning and crucial that greater clarity is given around schools and local authorities' responsibilities towards these children.

Children vulnerable to exploitation

One area we are particularly concerned about is the risk of exploitation to young people who have been excluded from school. The National Crime Agency has identified absence from mainstream education as a factor that will increase a young person's risk of CCE.¹⁸ The Children's Society, National Police Chief's Council, the Home Office and the National Children's Bureau have corroborated this view within the context of exclusion from school.¹⁹

This risk is likely to be more acute amongst vulnerable young people, particularly those who have been excluded before lockdown and might not be accessing school support and those with SEND given that, as set out above, without an EHCP they will likely be missing out on support. They may also be more susceptible to exploitation; research shows that gangs target children with SEND.²⁰

Just for Kids Law have observed this in their casework, with one young person going missing for a long period during the lockdown, with clear evidence that they have been trafficked. This, of course, poses huge risks to the young people involved. Victims of CCE are often trafficked for the purpose of carrying drugs in so called “county lines” operations. This practice places young people at great risk of serious physical harm due to violence, and at risk of being arrested and entering the criminal justice system for nominally serious offences.²¹ It can also lead to their exclusion from school which will have further impacts on their capacity to engage with their education and make them more vulnerable to further exploitation.

Children and young people should be protected from the prejudicial effect of exploitation under Article 36 of the UNCRC.²² This means the Government must act to protect children from the act of exploitation itself, but also to safeguard their welfare from the consequences of that exploitation.

Recommendations

- **The Department for Education should work with school leaders to make a comprehensive plan to ensure that as schools reopen, children with SEND are reintegrated into school with enough support, reasonable adjustments and resources.** This would ensure that we do not end up with an increase in disruptive behaviour, disciplinary measures, exclusions, as well as school refusing and mental health difficulties amongst children with SEND. This must include a trauma-based approach for children without SEN who have experienced trauma.
- **The Government should complete a Child Rights Impact Assessment (CRIA) on the Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020 and the notice given by the Secretary of State to relax EHCP entitlements** to ensure that the impact on children’s rights can be properly understood and measures put in place to mitigate the risks. This would also ensure the measures taken can be effectively monitored, are proportionate to the crisis, and can be revoked as soon as possible.
- **The Government should make sure children with SEND or an EHCP who need and want to be in school can attend to ensure they have access to the right support and resources they need to continue their education.** This is particularly important if the notice to suspend the EHCP is reissued. Some families would choose not to return their children to school if they cannot obtain the support they would normally be entitled to under an EHCP, because the inevitable consequence will be an escalation of conflict or distress for the young person, and possible disciplinary measures. In such circumstances, families must not be punished for refusing to return their children to school and the Government must clarify that in such circumstances any absence will be recorded as “authorised”.
- **The Government should urgently complete the SEND Review.** The Government should ensure it produces a system which is more efficient, so the current burden on families to fight for support is ended. It also needs to be sustainable which means that schools discretionary funding and local authority high needs budgets are sufficient to meet each category of need. Finally, it must address the gross inequalities faced by children with SEND attempting to access their right to education.
- **The Government should ensure local authorities have the resources to provide continuation of care for children and young people with mental health difficulties.** They should provide resources to local authorities to facilitate digital alternatives to face-to-face clinical and assessment sessions, and to engage the services of locum professionals when employed mental health practitioners are unavailable due to the crisis.

- **The Government guidance on vulnerable children should include children who were excluded from school, either formally or informally, prior to lockdown.** Local authorities should continue to assess and make provision for vulnerable children, including ‘those not formally recognised as vulnerable’ during the COVID-19 outbreak.
- **The Government’s Actions for Schools guidance should state clearly the duties of schools and local authorities during the COVID-19 lockdown towards young people missing from school.** Those who do not appear in the permanent and fixed term exclusions statistics include informally excluded and self-absenting pupils. More clarity is needed for schools and local authorities to monitor, record and follow up pupils during the COVID-19 outbreak. Systems should be put in place to help schools and local authorities to monitor and follow up pupils who are not attending any form of schooling, who were previously at risk of exclusion or who had high levels of absence.
- **The Government should ensure that children who fall victim of CCE during school closures are not criminalised and do not end up entering the youth justice system as a result.** To achieve this the Government should ensure that the National Referral Mechanism is resourced to deal with any resulting cases and that the Police and CPS are equipped with appropriate guidance to prevent unnecessary criminalisation. In addition, schools should be provided with guidance to prevent unnecessary exclusions where that exclusion would result from a young person’s exploitation.

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¹ Department for Education report (2019) *School exclusion: a literature review on the continued disproportionate exclusion of certain children*. See page 9.

² Sec Ed article (June 2019) *Getting transition right for vulnerable pupils* <https://www.sec-ed.co.uk/best-practice/getting-transition-right-for-vulnerable-pupils-1/>

³ TES article (May 2020) *Covid-19: ‘Trauma gap’ could overwhelm schools and PRUs* <https://www.tes.com/news/coronavirus-trauma-exclusions-reopen-prus-schools-lockdown>

⁴ Office for National Statistics (January 2020) *Child abuse extent and nature, England and Wales: year ending March 2019* <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/childabuseextentandnatureenglandandwales/yearendingmarch2019>

⁵ Child Mind Institute (undated) *How Trauma Affects Kids in School* <https://childmind.org/article/how-trauma-affects-kids-school/>

⁶ *United Nations Convention on the Rights of the Child 1989*. Article 19(1) “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

⁷ Department for Education Guidance (2014) *SEND 0-25 Years Code of Practice*

⁸ The Independent (December 2019) *Surge in families seeking help for children with special needs, figures show*. “The funding just isn’t there for many autistic children to get the early support they need, meaning parents are being forced to fight for an EHCP”. <https://www.independent.co.uk/news/uk/home-news/children-special-needs-ehcp-send-local-councils-a9261801.html>

⁹ Special Needs Jungle (June 2019) *The latest SEND Tribunal figures paint a troubling picture* <https://www.specialneedsjungle.com/latest-send-tribunal-figures-paint-a-troubling-picture/>

¹⁰ *The Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020* See regulation 5. <http://www.legislation.gov.uk/ukxi/2020/471/contents/made>

¹¹ Notice of the Secretary of State for Education (2020) *Coronavirus Act 2020 Modification of section 42 of the Children and Families Act 2014 (England) Notice 2020* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/882290/CV19_Act_modification_notice_SEND.pdf

¹² *United Nations Convention on the Rights of the Child 1989*. Article 23(3) “Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education”

¹³ Department for Education *Supporting vulnerable children and young people during the coronavirus (COVID-19) outbreak* (22nd March 2020, updated 15th May 2020) <https://www.gov.uk/government/publications/coronavirus-covid-19-guidance-on-vulnerable-children-and-young-people>

¹⁴ The Children’s Society (March 2020) *The Impact of Covid-19 on Children and Young People* <https://www.childrenssociety.org.uk/sites/default/files/cv-19-impact-on-children-report-from-the-childrens-society.pdf>

¹⁵ Department for Education *Actions for schools during the coronavirus outbreak* (22nd March updated 18 May 2020) <https://www.gov.uk/government/publications/covid-19-school-closures>

¹⁶ Eleanor Stokes (May 2020) *COVID-19 and the issue of informal exclusion from school* ROTA <https://www.rota.org.uk/sites/default/files/researchpublications/Covid-19%20informal%20school%20exclusions%20Final%20May2020.pdf>

¹⁷ Children's Commissioner (April 2020) *Tackling the disadvantage gap during the Covid-19 crisis* <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2020/04/cco-tackling-the-disadvantage-gapduring-the-covid-19-crisis.pdf>

¹⁸ Child criminal exploitation (CCE) describes the process of coercing, controlling or exploiting young people to engage in criminal activity. NCA Intelligence assessment (2018) *County lines drug supply, vulnerability and harm*. See paragraph 30 <https://nationalcrimeagency.gov.uk/who-we-are/publications/257-county-lines-drug-supply-vulnerability-and-harm-2018/fil>

¹⁹ The Children's Society (2018) *Children and young people trafficked for the purpose of criminal exploitation in relation to county lines: a toolkit for professionals* starting at page 11 <https://www.csepoliceandprevention.org.uk/sites/default/files/Exploitation%20Toolkit.pdf>

YJLC (2019) *Child criminal exploitation: County lines gangs, child trafficking and modern slavery defences for children*: page 5 under the heading "identifying CCE" <https://yjlc.uk/wp-content/uploads/2018/01/Modern-Slavery-Guide-updated-2018.pdf>

Home Office (2018) *Criminal Exploitation of children and vulnerable adults: County Lines guidance*: starting on page 4. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/863323/HOCountyLinesGuidance_-_Sept2018.pdf

²⁰ YJLC (2018) *Child Criminal Exploitation: county lines gangs, child trafficking & modern slavery defences for children*

²¹ Joint report of Ofsted, Care Quality Commission, HMICFRS, HMIOP (2018) *Protecting children from criminal exploitation, human trafficking and modern slavery: an addendum*

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756031/Protecting_children_from_criminal_exploitation_human_trafficking_modern_slavery_addendum_141118.pdf

²² *United Nations Convention on the Rights of the Child 1989*. Article 36 "States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare."