



SUBMISSIONS FOR THE PRELIMINARY HEARING OF MODULE 2

ON BEHALF OF

SAVE THE CHILDREN UK, JUST FOR KIDS LAW AND THE

CHILDREN'S RIGHTS ALLIANCE FOR ENGLAND

Introduction

1. The UK Covid-19 Inquiry (“the Inquiry”) was opened on 21st July 2022 and the proposed scope for module 2 was published on 31st August 2022. This module will look at, and make recommendations upon, the UK’s core political and administrative decision-making in relation to the Covid-19 pandemic between early January 2020 until February 2022¹. The Children’s Rights’ Organisations (“the CROs”): Just for Kids Law (“JFKL”), the Save the Children Fund (“STC UK”) and the Children’s Rights Alliance for England (“CRAE”) were designated as Core Participants to the Inquiry on 13th October and are grateful to the Chair for the opportunity to contribute to this Inquiry and to bring a focus to the way in which the rights of children were considered by Government during the pandemic.
2. These submissions are written in advance of the first preliminary hearing which will take place on 31st October 2022 and to respond to Counsel to the Inquiry’s Note of 21st October 2022.

¹ [Module 2 Outline of Scope \(covid19.public-inquiry.uk\)](https://covid19.public-inquiry.uk)

3. STC UK is the UK member of the Save the Children movement, a global network of national organisations helping children survive and thrive in 118 countries. In the UK it launched an Emergency Response Programme along with education support for children and families during the pandemic. The report published by STC UK drew on experiences from over 7,000 families with children aged 0-6. Its key findings and recommendations highlighted issues with the lack of proper financial support for families and the impact this had on the children's health, education, development and mental well-being. It also highlighted the difficulties caused by lack of access to services such as health visitors, GPs and education support.
4. JFKL works with and for children and young people to hold those with power to account and fight for wider reform by providing legal representation and advice, direct advocacy and support, and campaigning to ensure children and young people have their legal rights and entitlements respected and promoted and their voices heard and valued. JFKL hosts CRAE, which works with over 100 members to promote Children's Rights and monitor Government implementation of the UN Convention on the Rights of the Child, which the UK ratified in 1991.
5. Throughout the pandemic the CROs were providing direct support to children and young adults and as such saw first-hand the impact that the decision-making had on children and families. As a membership body CRAE is also aware of the experience and concerns of a number of other children's charities and organisations who supported and worked with children throughout the period in question.
6. In addition to the direct support set out above, the CROs engaged through their policy, legal and advocacy work with Government and other decision-makers in arguing for proper consideration of the impact of the decisions upon children and for decisions to be made with a proper consideration of Children's Rights². For example, CRAE promoted the use of Child Rights' Impact Assessments (CRIAs), as recommended by the United Nations Committee on the Rights of the Child³ to ensure decision-making

² As set out in the UN Convention on the Rights of the Child and other human rights treaties

³ General Comment No 5 (2003), Art 4 UNCRC

takes into account Children's Rights. A template CRIA has been drafted by the Department for Education for use across Whitehall and CRAE has been working with Government bodies to embed this tool in decision-making. As a further example, JFKL issued judicial review proceedings against the Ministry of Justice for failing to consult the Children's Commissioner for England and acting unlawfully in the imposition of longer custody time-limits for children in custody as a result of delays to the courts system in the pandemic⁴. This case was settled with the Ministry of Justice laying a statutory instrument which reversed the changes for children.

7. As was recognised in the grant of Core Participant status, the CROs are "*national organisations [who] are committed to championing children's rights and addressing inequalities and they each work directly with children and young people.*"
8. The CROs share a concern that the UK Government's response to the pandemic did not sufficiently consider Children's Rights, their best interests, welfare, health and wellbeing. It has been the experience of the CROs, and others they have worked with, that both the legal rights of children and the impact that decisions or policies had on children were frequently ignored or not sufficiently taken into consideration during the pandemic. They share a common concern that proper analyses of Children's Rights were not carried out prior to key decisions being taken, in many cases despite concerns being raised by the CROs or other children's organisations. The CROs believe that those failures had numerous adverse impacts on children.
9. This was of particular concern as the response to Covid-19 resulted in a raft of emergency legislation, regulations and guidance being brought in without the usual parliamentary scrutiny. It is not intended to set a full list of the concerns in this document, some examples of regulations that were passed without sufficient consideration of Children's Rights are provided in the application for core participant status and are not repeated here. The CROs hope to be able to assist the Inquiry going forward by highlighting the impacts they have seen and where appropriate providing evidence of such.

⁴ [Just for Kids Law welcomes Government U-turn to exempt children from extended custody time limits | Just For Kids Law](#)

10. It is right that the impact on children is considered in this module and throughout the Inquiry, and not solely in a separate module or as a separate point in a list of topics. Just as all the key decisions affected adults, so too did they affect children, a generation of whom will carry the effects of the pandemic with them. It is therefore necessary to consider their rights in every decision. Despite this, children are structurally disadvantaged and often invisible to decision-makers. The CROs are aware that a focus on children and young people did not appear in the initial Terms of Reference of the Inquiry but was added following the public consultation at the Chair's request⁵.
11. The Inquiry provides an opportunity to examine how those key decisions were taken, whether the interests of children were considered as part of the process of core political and administrative decision-making in response to Covid-19 and for recommendations to be put forward about how Children's Rights can be better embedded in decision-making, so that children are not forgotten, but rather are considered as a core part of a Government's duty including when deciding on its response to major events such as a pandemic.

Children

12. For clarity in these submissions all those under the age of 18 are referred to as "children". This in accordance with the definition of children under the United Nations Convention on the Rights of the Child, and in domestic legislation such as the Children Acts 1989 and 2004. The CROs all work with children. JFKL also works with young people up to the age of 25 in recognition of the fact that adolescence as a biological concept lasts into the mid-twenties whilst the brain is still developing, and this is increasingly recognised in the statutory provision of services to young people. For the purposes of these submissions and indeed this Inquiry the focus of the CROs will very much be on children.
13. These submissions highlight the need for special consideration of children as distinct from adults. The focus in these submissions is on children as a single group, it has not been possible within the time allotted to explore the different issues affecting different groups of children. There are of course many different considerations for different age groups of children. Additionally, many children have other vulnerabilities in addition

⁵ [FINAL Letter - Chair to PM letter - ToRs consultation recommendations \(covid19.public-inquiry.uk\)](#)

to their young age and may therefore be “doubly vulnerable”. All children have different characteristics and there were some issues in the pandemic that particularly affected certain cohorts of children, such as Black children aged 10 and over were at a particular risk of being over-criminalised. It has not been possible to distinguish between those cohorts within these submissions, which are necessarily brief. But it will be necessary for the Inquiry to consider the different characteristics of groups of children and take an intersectional approach to assessing the potentially discriminatory or unequal impact of the measures.

Scope of Module 2

14. As set out above, this module will look at, and make recommendations upon, the UK’s core political and administrative decision-making in relation to the Covid-19 pandemic between early January 2020 until February 2022⁶. It is understood that the scope of the module is necessarily provisional and will be adapted as evidence is gathered and responses to the Rule 9 requests come in.
15. The CROs believe that the rights of children are relevant to each of the issues identified in the draft scope to module 2. Therefore, no representations are made to amend or adapt the proposed scope, but only to urge the inquiry to consider whether children’s rights were considered and how the consideration or lack of, impacted on children.
16. Some examples of where this might be of particular relevance were given in the application for Core Participant status. The CROs can provide examples of when different decision regarding children were taken by the different devolved governments. For example, in the lockdown in early 2021 children in Scotland under the age of 12 were exempt from the rules prohibiting more than two people from meeting outdoors, whereas children in England were only exempt if under the age of 5. The CROs invite the Inquiry to consider the communications between the devolved governments, the reasons for differentiated decision-making, and whether lessons were learnt from the different approach of the other devolved governments.
17. There will be particular issues about how the scientific advice was handled in relation to children, especially in the circumstances where the medical evidence suggested

⁶ [Module 2 Outline of Scope \(covid19.public-inquiry.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/94424/Module_2_Outline_of_Scope_(covid19_public_inquiry).pdf)

different risks to children as compared to adults, and how that was analysed in decision making.

18. There are a number of child-specific decisions that were made, that include the closing of playgrounds and the closing of early years and education settings. Further there was a lack of decision-making or consideration of issues that impacted children so that, for example, soft play centres for young children were one of the last sectors to receive advice about reopening, months after pubs had reopened.
19. There are also many decisions that were universal but where the lack of differential treatment of children had an unequal or unfair impact. An example of this was the Custody Time Limit Regulations mentioned above, and also the various rules concerning the mixing of people from different households. At the time where the rules allowed one person from one household to meet one other person from a different household, the failure to treat children differently had a severe impact on them. Two six-year-olds could hardly meet independently without a supervising adult being present. This meant there were some young children (such as those without siblings) who spent many weeks without being legally allowed to see another child.
20. JFKL represents children in the criminal justice system and is further concerned about decisions regarding criminal sanctions that were imposed for breaching lockdown rules. This contributed in JFKL's view to the overcriminalisation of children during the pandemic
21. Whilst some provision was made for vulnerable groups in society, children were not systematically identified as a vulnerable group requiring additional support to cope with the restrictions (unlike some groups of vulnerable adults, even if that additional support was not always adequate). The CROs believe that this led to a number of issues, including lack of consideration about how child protection concerns would continue to be identified and addressed; there was a 20% fall in referrals to children's social services during the first months of the first lockdown⁷.

⁷ ([LGA 2020](#)).

22. The CROs understand that all of these issues will fall under the proposed scope as currently drafted, and indeed the designation of Core Participant status recognised the CROs would be able to “*provide evidence including in relation to the ways in which government considered, or failed to consider, the impact on children, the impact of decisions concerning NPIs on children and families and how public health communications were received by families and organisations providing services to children and families.*”
23. The CROs welcome the ongoing commitment from the Chair that inequalities will be at the forefront of the inquiry⁸, and they hope that as Core Participants they can assist the Inquiry in analysing both the unequal treatment and unequal impact on children.

Experts

24. The CROs are grateful for the list of proposed areas for experts. In the time allotted it has not been possible to fully consider what other expertise they would suggest that the Inquiry considers. However, they would at this stage suggest expert evidence be received on the impact of the lockdown and the other non-pharmaceutical interventions (NPIs) on mental health, and on childhood development. Whilst not wishing to stray outside the scope of this module, it is submitted that it is appropriate when analysing the decision-making to hear evidence about the impact those decisions had. That evidence should not be limited to the effectiveness of lockdown on disease transmission and compliance.
25. The CROs would welcome the opportunity to consider this in more detail and make some practical suggestions to the Inquiry about relevant expertise in due course, and hope to be provided with further updates about the proposed expert evidence.

Listening Exercise

26. The CROs welcome the intention to hold a listening exercise to allow the Inquiry to hear from a wide range of people about their views and the impact of the decisions made by Government. It is noted that the intention is to hear from people without the

⁸ Chair’s Opening Statement, July 2022

formality of giving evidence or attending a public hearing, and this lack of formality may well assist the engagement and participation of children in the process.

27. Limited information about how the listening exercise will work in practice has been provided thus far. The CROs have considered the note regarding the listening exercise⁹, and understand from this that further details will be provided in due course, and once those are provided the CROs hope to make further submissions about how this is conducted in relation to children.
28. The CROs consider it will be of great assistance to hear directly from children about their experiences during the pandemic, as well as from families and those who work with children. This will not only assist the Inquiry in its task, but further allow many of those who felt unheard during the pandemic, and not able to exercise their participation rights,¹⁰ to now express themselves and their views taken into account.
29. There are specific arrangements that would need to be made to ensure children can fully participate in this process, for example it may be appropriate to actively seek out children who are willing and able to speak about their experiences as they may be less likely to proactively come forward to ask to speak and to take part in the Listening Exercise. It would appear from the Note that there will be an online platform, but also some work done to engage harder to reach groups. The CROs are interested in how the Inquiry proposes to reach out and engage children as part of this.
30. The Note is clear that this will be a non-legal process which will not require those who wish to engage in it to have legal representation¹¹, however it may be appropriate or necessary to provide other forms of support or assistance to some vulnerable groups, especially children. As organisations that directly work with children and facilitate their participation in a wide-range of activities including giving evidence to government bodies, the CROs look forward to working with the Inquiry to ensure children are properly encouraged and supported to share their stories in a helpful and meaningful way.

⁹ [2022-09-13 STI Note re Listening Exercise and Commemoration \(covid19.public-inquiry.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/107113/2022-09-13_STI_Note_re_Listening_Exercise_and_Commemoration_covid19_public-inquiry_uk.pdf)

¹⁰ For example, Article 12 UNCRC.

¹¹ Para 1.14 Note on the Listening Exercise and Commemoration

31. Further, children should be prioritised within the listening exercise, especially younger children, for whom as time goes by will struggle to remember the details and may find the listening exercise of less relevance.

Rule 9 Requests

32. The CROs recognise the need to focus on key areas and note the ruling that Core Participants will not be provided with Rule 9 requests. As briefly outlined above the CROs share numerous concerns about many different areas of decision-making and policy that affected children. These concerns are both about the process by which decisions were made, and the substance of those decisions. In the time allocated it has not been possible to set out in full all the areas of concern but the CROs will give further feedback about the requests and areas of concern to the Inquiry in order that all appropriate Rule 9 requests are made.
33. The Ministry of Justice does not appear on the list of Government departments to whom Rule 9 requests have been sent. The Ministry of Justice made many key decisions during the pandemic that impacted children as well as other groups. This included the closing, and then gradual re-opening of courts. The closure of criminal courts led to many trials being delayed, causing prejudice to children due to appear before them whether as victims, witnesses or defendants. This delay also led to children crossing significant age thresholds, and in some cases turning 18, and therefore entering the adult justice system and losing the protections they would have been entitled to, had their case been completed when they were still a child. It also led to a number of people, including children, being kept in custodial settings for longer periods of time, and the extension of custody time limits.
34. All court closures will have had impact, in particular the family courts, and the decisions about how access to justice was considered should be a key part of this module.

35. Additionally, the Ministry of Justice brought in new rules for prisons including regulations that enabled a minimum restrictive regime in Secure Training Centres which a reduced time out of cell from the usual 14 to 1.5 hours¹².

36. We intend to supplement these written submissions with brief oral submissions at the preliminary hearing on 31st October in order to deal with other matters arising from the Inquiry team or other Core Participants.

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27th October 2022

¹² <https://www.legislation.gov.uk/uksi/2020/664/memorandum/contents>