

IN THE MATTER OF THE UK COVID-19 INQUIRY

BEFORE BARONESS HEATHER HALLETT

**OPENING SUBMISSIONS FOR MODULE 2
ON BEHALF OF JUST FOR KIDS LAW,
SAVE THE CHILDREN FUND & THE CHILDREN'S
RIGHTS ALLIANCE FOR ENGLAND**

Introduction

1. In 1924, the League of Nations in Geneva adopted the Declaration of the Rights of the Child. The Declaration was drafted by Eglantyne Jebb who, together with her sister Dorothy Buxton, had founded the Save the Children Fund (“SCUK”) in London in 1919 to provide relief to children suffering poverty, sickness and starvation following the First World War. The Declaration was an historic document that for the first time recognised and affirmed the existence of rights specific to children and the responsibility of adults towards children. It was adopted in an extended form by the United Nations (“UN”) in 1959 and later inspired the 1989 United Nations Convention on the Rights of the Child (“UNCRC”), a landmark international agreement that enshrines the civil, political, social, economic, and cultural rights of children and has become the most widely ratified human rights treaty in history. Every member state of the UN other than the United States has ratified the UNCRC.
2. Yet despite the United Kingdom (“UK”) government’s ratification of the UNCRC in 1991, despite the prominent role played by UK social reformers for over a century in advancing the cause of children’s rights, and despite the remarkable achievements of the UK’s many campaigning and charitable children’s rights organisations (“CROs”) and activists, children continue to be a low political priority in Westminster. Indeed, the state of children’s rights in the UK was bleak on 23 March 2020 when then Prime Minister Boris Johnson announced a nationwide lockdown to curb the spread of the

Covid-19 virus. Almost a third of the more than 14 million children in the UK were living in poverty after a decade of austerity, with some of the worst outcomes in terms of health, social care, and education in the developed world. That is a shocking and depressing statistic for one of the richest countries in the world. However, that is only part of the overall picture. As far as high-level decision-making is concerned, children are largely invisible, and their needs and rights are often largely ignored, forgotten, or barely considered. Our systems, institutions, and approaches towards the issues that impact children are predominantly adult-oriented and indifferent to the importance of children. There is no statutory requirement to have a Child Rights Impact Assessment (“CRIA”) for all new policy and legislation. Discussions at government level, and in the media, tend to focus on how children impact adult lives with, for example, debates around childcare policy primarily framed around parental involvement in the labour market and not the early learning needs of young children. When the needs of children, as distinct from the needs of adults, are considered, the focus is too often on education, passing exams and becoming productive future workers. Whilst educational attainment is undoubtedly a laudable aim, it is a very narrow vision of childhood and children’s rights. There is much more to childhood and children’s rights than simply passing exams. It is telling that the only minister at Cabinet level with a specific portfolio that focuses on children is the Secretary of State for Education.

3. In these circumstances, it is hardly surprising that the invisibility of children in Westminster led to decisions at government level being made during the Covid-19 pandemic that caused unnecessary harm, in the short, medium, and long term, to the nation’s children. The pandemic exacerbated the lack of considered and robust decision-making insofar as children’s rights are concerned.
4. When considering the non-pharmaceutical interventions (“NPIs”) implemented by the UK government during the pandemic, the process by which decisions were reached is in many ways as important to the findings of the Inquiry as the correctness of the decisions themselves, as the parameters and challenges of a future crisis will be different. It is for this reason, for example, that we do not argue on behalf of the CROs we represent that schools should never close, but rather that schools should be considered essential infrastructure and should be among the last to close. However, we ask the Inquiry to examine why pubs and shops reopened before playgrounds, why yoga

was allowed, when the lockdown rules were relaxed, but not skateboarding, whether a 13-year-old boy had to die alone in hospital, and why young children in England could not meet their friends, when the lockdown rules were relaxed, as their parents and Scottish children could. More broadly, we ask the Inquiry to examine the decisions made by the government during the pandemic through the lens of how they impacted children, how decision-making in a crisis operates, and how it can be improved for children.

5. Finally, by way of introduction, we do not address herein every issue concerning children that was affected by high-level decision-making during the pandemic. We are necessarily selective and have focused on the issues most relevant to Module 2.

Lockdown

6. The lockdown announced on 23 March 2020 was unprecedented. The nation was told that it was a criminal offence to leave our homes unless certain conditions applied, and it was a criminal offence to meet face to face with anyone who did not live with us.¹ It was the first time that the government had to consider what was essential about leaving the home and meeting other human beings. The decisions made concerning that were not only hugely important in terms of their impact on the lives of the population, but also instructive about whose rights the UK government considered important and how able or willing they were to make adaptations for marginalised groups.
7. During the pandemic, the rules as to meeting others and social distancing changed on multiple occasions, lockdown to lockdown. In broad terms, there were two types of changes. Firstly, there were the substantive changes that relaxed and tightened the Regulations. This Inquiry will consider the modelling which helped inform how stringent the Regulations needed to be and whether those decisions were correct. Secondly, alongside decisions on when and where to order a lockdown, and the stringency of the rules, there were other changes during the pandemic that tinkered with the rules and made small adaptations to allow, for example, in the first set of changes

¹ The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020

on 22 April 2020², for people to leave their house to attend a bank to withdraw money and to attend a grave. These were matters that clearly had not been considered when the Regulations were initially laid before Parliament on 26 March 2020 but, on reflection, were considered important as they had a significant impact on people's lives. The changes made, and the changes not made although campaigned for, are instructive as to how the government considered the rights of the population to live their lives.

8. Consequently, we invite the Inquiry to assess all changes, some of which are discussed below, to consider the proposition that young children were disproportionately and adversely affected by the Regulations, and that despite numerous groups campaigning for better and more child-focused Regulations for children, those calls were ignored, especially in England. We also invite the Inquiry to examine the differences within the UK, and specifically the different approaches eventually taken in Wales and Scotland where more allowances were made for children. Were Wales and Scotland right to take different approaches? Why did Wales and Scotland take different approaches as compared to England? Why did England not follow suit? Was the decision in England not to follow suit a deliberate one? Or were the different approaches taken in Wales and Scotland not even considered by English decision-makers?

Lockdown in England

9. Whilst the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, which came into force on 26 March 2020, had a huge impact on everyone, they did not have a uniform impact. There were those who continued to have face to face contact because of their work, and there were those who lived in large households. However, many who lived alone did not see another human being for weeks.
10. It is now apparent that the impact of separating people from anyone with whom they did not live was quickly considered too great a sacrifice by the UK government. This can be seen in the first easing of the lockdown on 13 May 2020 that allowed any person to meet one to one with another member of another household, whether for exercise or

² The Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020

for the “purposes of open-air recreation”. Furthermore, even when lockdowns were later re-imposed, there was never again a restriction that prohibited meeting anyone at all from other households.

11. Whilst this easing allowed adults to meet those close to them, it did not allow children who were too young to go out independently to meet their friends or peers, as the presence of a supervising adult would have breached the Regulations. Consequently, young children could not see their closest friends. Most children saw no other children other than those with whom they lived if they were lucky enough to have siblings. Although, in theory, “vulnerable” children were able to go to school, in practice, many were denied this right due to poor administrative decision-making. Only three to four per cent of primary school children still went to school during the 70 days between 23 March and 1 June 2020.
12. On 1 June 2020, the Regulations were further relaxed to allow groups of up to six people to meet outdoors. This permitted greater socialisation, but children, with the need for supervising adults who often went out in family groups, were still disproportionately affected. The inclusion of children in the so-called Rule of Six was criticised at the time by the then Children’s Commissioner for England, Anne Longfield. A parent who spoke to Playing Out, an organisation and a national movement for change, described the Rule of Six in England as follows: “This will mean that although six adults can meet up, two families with two parents and two children still won’t be allowed to meet. Yet again adults before children.”³
13. For most of the country, the Regulations ended on 3 July 2020, although local lockdowns in Leicester and then later across wide parts of Northern England, meant that children in those areas were again severely restricted as to who they could meet. For example, young children in Leicester could not meet other children indoors for 134 days after the nation first went into lockdown. The same was not true for adults who could meet one other person from a different household indoors at a time. The need to

³ INQ000099722_0007 (Playing Out’s Rule 9 response)

supervise young children meant that young children faced greater restrictions than their parents.⁴

14. When the third national lockdown was imposed on 6 January 2021, and schools were again closed to all but “vulnerable” children and children of critical workers, there was an even longer period of isolation for children. For 77 days, it was not legally possible for a young child to meet another child outside their household, thereby depriving many children of the company of their peers. This did not apply to adults or older children who could leave home independently and meet friends one to one.
15. Throughout the pandemic, adaptations were made to the rules. In recognition of the difficulties faced by single-parent households, the government introduced “linked households”⁵, often referred to as “support bubbles”, on 10 June 2020. These allowed a single adult or a single parent to meet with one other family member during lockdown.
16. In recognition of the difficulties faced by parents trying to look after their children, childcare bubbles were then introduced in September 2020, allowing another household, such as grandparents, to help look after children under 13.⁶ Additionally, because parents of very young children could not leave their children at home alone when they met their friends, children under five were also exempted from the one to one rules, allowing parents to bring children under five with them when they met their friends.
17. It is laudable that the UK government gradually adapted the rules to allow different groups of people to have human contact, which is so important, albeit on a restricted level. We ask the Inquiry to examine why such consideration was not given to children over the age of five and under the age of 11, especially when it should have been obvious that the isolation that they endured would cause them huge harm. Why were adaptations not made for the benefit of children in England when the devolved governments of Wales and Scotland were able to make some variations for children? Why did the UK government ignore the many requests and pleas to reconsider the rules

⁴ The Health Protection (Coronavirus, Restrictions) (Leicester) Regulations 2020

⁵ The Health Protection (Coronavirus, Restrictions) (England) (No.4) Regulations 2020, Reg 12

⁶ The Health Protection (Coronavirus, Restrictions) (England) (No.4) Regulations 2020, Reg 13

regarding children in England? And how can better child-focused decision-making be embedded in government so that lessons can be learned, and neglecting to take account of children's rights can be avoided in the future?

Impact of Isolation

18. The isolation of lockdown had a huge impact on children. A report by the Childhood Trust in May 2021 noted that “not only have social distancing measures affected beneficiaries’ mental health, but they have also contributed to the destabilisation of social networks, which play a vital role in the socialisation and development of children and young people”.⁷
19. A rapid response article on 27 October 2021 was prepared to brief parliamentarians on research on the impact of the pandemic on the Early Childhood Education & Care (“ECEC”) sector in England and the impact of changes in access to ECEC on pre-school children. The response reported that the changes in access to ECEC impacted pre-school children in several ways, including “social, emotional and behavioural development and mental health, physical development and school readiness”, and acknowledged that negative impacts on children’s development and mental health were more likely to affect disadvantaged children and children with special education needs and disabilities. Furthermore, children who were able to access ECEC during the pandemic (for example, because they were children of essential workers) had greater cognitive and vocabulary development than children who had limited socialising.⁸
20. Much of what was later reported about the impact of isolation on children was well known and recognised from the outset of the pandemic. Early research, published in July 2020, found that children’s happiness with friends and the amount of choice in life were adversely affected.⁹ BBC Children in Need published a paper entitled *Understanding the Impact of Covid-19 on Children and Young People* in July 2020 that identified challenges to emotional well-being and mental health, including loss of coping mechanisms, regression of social skills and difficulties reintegrating back into

⁷ *Post-Lockdown Children in Crisis* (Childhood Trust, May 2021), pp13-14

⁸ *Impact of Covid-19 on Early Childhood Education & Care* (UK Parliament, 27 October 2021)

⁹ *Life on Hold: Children’s Wellbeing and Covid-19* (Children’s Society, July 2020), p27

the community.¹⁰ Also in July 2020, the Youth Sport Trust published an evidence paper on the impact of Covid-19 restrictions on children and young people. A section on young people's mental health noted that as of May 2020 "two thirds of primary school children report feeling lonely" which is up 50% on normal levels.¹¹ It further noted that as a result of loneliness during lockdown, children and young people aged between four and 21 years old had been found to be up to three times more likely to develop depression in the future, and that the duration of loneliness may be more important than its intensity in causing this. It also recognised the impact of "unplanned endings" which have been shown in research to lead to consequent feelings of disappointment, loss, abandonment, confusion, and sadness.¹²

21. Many researchers pointed to the well-established principle that social interaction among children at school is a determining factor for their cognitive and emotional development, which in turn, influences their academic, social and family performance.¹³ During the first national lockdown in 2020 and the third national lockdown in 2021, the majority of children were not only not in school but were also unable to see their peers for extended periods of time, exacerbating the damage. It is, therefore, important not to look at NPIs in isolation, as they did not happen in isolation. Schools were closed at the very time when the lockdown was at its most severe. We ask the Inquiry to recognise that the UK government should have considered the cumulative effect on children but did not.

Criticisms at the Time

22. From the outset of the pandemic, CROs and experts were calling on the government to adopt different policies in relation to children, as were children themselves. On 7 May 2020, 130 young people and leaders of 80 youth groups signed an open letter calling on the government to talk to young people about Covid-19 and include their questions in press briefings. This never happened.

¹⁰ *Understanding the Impact of Covid-19 on Children and Young People* (BBC Children in Need, July 2020), pp9-10

¹¹ *The Impact of Covid-19 on Children and Young People* (Youth Sport Trust, July 2020), p3

¹² *The Impact of Covid-19 on Children and Young People* (Youth Sport Trust, July 2020), p3

¹³ See, for example, *The Impact of School Closure on Children's Well-being during the Covid-19 Pandemic* (Asian Journal of Psychiatry 67 (2022))

23. The Children’s Society produced several impact and parliamentary briefing papers, including *Life on Hold: Children’s Wellbeing and Covid-19* in July 2020. On 6 January 2021, when the third national lockdown was imposed, several charities including Playing Out and Play England wrote directly to the Prime Minister to urge him to take a different approach to children, in line with Wales and Scotland. This was followed by a further letter¹⁴ also signed by Just for Kids Law (“JfKL”) and the Children’s Rights Alliance for England (“CRAE”) and supported by professionals working with children. It included a quote from Dr Sunil Bhopal, Clinical Lecturer in Paediatrics at the University of Newcastle and the Great North Children’s Hospital:

“The Government has effectively made it illegal for any children over the age of four who need supervision to meet even one friend and hasn’t given us a good reason for this. In Scotland, all children under 12 have been allowed to play outside together since last July, with no evidence of increased transmission as a result. Children need children and they are not developing properly without socialisation. We are seeing sadness and distress. If we want children to grow, develop and thrive, they have to be able to play and interact with each other.”

24. The Rule of Six and the differing approaches of Wales and Scotland who exempted children from the Rule of Six was addressed by Michael Gove MP in September 2020, when he said in radio interviews that children would not be made exempt in England due to the need to keep the rules simple. However, shortly after on 21 September 2020, it was announced that childcare would be exempt from interhousehold mixing by the formation of “childcare bubbles.” The need for simplicity did not extend to prohibiting adults from finding childcare. This is but one example of children being seen through the lens of adults. Children were often viewed as problems that needed to be solved, rather than as independent beings with needs and rights of their own.

Lockdown in Scotland, Wales and Northern Ireland

25. Whilst all four jurisdictions of the UK had broadly similar rules in terms of lockdowns and school closures, there were different rules and restrictions in the different regions at various times.

¹⁴ INQ000099722_0013 (Playing Out’s Rule 9 response)

26. There was some recognition in Scotland of the need for differential treatment of children, in that it was recognised that it was difficult for young children to comply with social distancing. Consequently, the need for children under 12 to distance physically from each other was removed on 10 July 2020. Furthermore, it was recognised that young children needed to be treated differently in order to treat them equally. Children under 12 were exempt from both the Rule of Six when it was reintroduced in Scotland on 14 September 2020, and from the one-to-one rule when it was reintroduced on 5 January 2021. Scotland also exempted all children from the two-household outdoor limit on 23 September 2020, allowing groups of children to play, although children aged 12 and above were expected to observe social distancing.
27. When Wales re-introduced the Rule of Six on 14 September 2020, children under 11 were excluded from the limits on the numbers of people who could gather indoors or outdoors.¹⁵
28. Whilst restrictions in Northern Ireland did vary, no exemptions were made for younger children as Wales and Scotland had done.

Different Approaches to Children's Rights

29. Significantly, the Welsh and Scottish governments carried out assessments on how restrictions on socialisation impacted children and explicitly considered the rights of children under the UNCRC. No such overarching assessment was carried out in England. The different approaches to children's rights and the UNCRC across the UK are set out in more detail in the witness statement of Louise King, Director of CRAE.
30. For the avoidance of doubt, it is not suggested that children in Wales and Scotland were sufficiently considered when Covid-19 decisions were made. Indeed, there have been many criticisms of the Welsh and Scottish governments by civil society organisations in Wales and Scotland for not doing enough to safeguard and promote the rights of children during the pandemic. Nevertheless, the different approaches taken in Wales and Scotland, and the reasons behind them, may be instructive.

¹⁵ The Health Protection (Coronavirus, Restrictions) (No. 5) (Wales) Regulations 2020

31. The Scottish government carried out and published a Children’s Rights and Wellbeing Impact Assessment (“CRWIA”) prior to imposing restrictions in September 2020 and adapted many of the restrictions to meet children’s needs.¹⁶ The CRWIA noted that “there is a disproportionate effect on children because the duration of this pandemic, and the associated restrictions takes up a greater part of the lives so far, in comparison to adults” and that “there is a strong recognition that social interactions, with friends and wider family is a key part to optimise children’s development and their wider wellbeing, this has different impacts depending on their age and stage of development, and the circumstances that children are currently living in. A range of evidence has been gathered on the impact on children during this time, and it shows that although for some children the experience has had some positive effects including spending more time with their parents in the home, for the majority of children the impacts have been negative and continue to be so.” The CRWIA also noted that the evidence suggested that a significant proportion of children had not played with children from outside of their own household or not met any other children at all.

32. As far as children between the ages of 12 and 17 were concerned, the CRWIA noted a sharp increase in children in that age range expressing feelings of loneliness, with nearly 30% reporting such feelings.

33. As far as children under 12 were concerned, the CRWIA noted that the exemptions were justified under Article 31 of the UNCRC which provides that “States Parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.” The CRWIA pointed out that the risk of children in that age range becoming seriously ill due to Covid-19 was very low. The CRWIA also pointed out that “for children and young people, the importance of maintaining social interaction and engagement with their peers is of fundamental importance to wellbeing which is why important exemptions are being applied to the general population level restrictions on social gatherings so that children and young people can continue to, as far as possible, interact with their friends socially. The science is clear that indoor social gatherings,

¹⁶ *Impact of COVID-19 Restrictions on Children and Young People* (Scottish Government, September 2020)

for any age, are not possible at this time, but outdoor social gatherings are seen as lower risk, and continue to be allowed.”

34. The Welsh government maintained that the rights in the UNCRC were informing decision-making, as was required in Wales. It said it was using the results of the *Coronavirus and Me* survey, completed by 23,700 children and young people in Wales, and facilitated by the Children’s Commissioner for Wales, to inform policy development.¹⁷ The Welsh government also published a full Equality Impact Assessment (“EIA”) in respect of the introduction of its Alert Levels system in December 2020. It identified the decision to keep schools open across all Alert Levels to be crucial to avoid generating further adverse impacts for children from specific disadvantaged groups. It also noted that the opening of community centres, public facilities, and libraries, except in Alert Level 4 areas, was in part a response to evidence that children and young people generally, but racialised children specifically, were “more likely to say the closure of community centres and not being able to go outside affected their learning.” The Welsh government said that the decision to permit outdoor mixing outside the household, except in Alert Level 4 areas, was evidence that they had listened to the children who in the *Coronavirus and Me* survey had indicated they wished to socialise with friends, and not only with parents and grandparents.¹⁸

35. In England, the EIA for the Coronavirus Act 2020 (which was published in July 2020, four months after the legislation was enacted) acknowledged that “children may be affected by the quarantine provisions in a different way to adults” but did not meaningfully consider how, or how such effects might be mitigated. Drafted by the Department of Health and Social Care, the EIA was largely focussed on health outcomes, and to the extent that other outcomes were considered, emphasis was placed on academic outcomes rather than holistic development.¹⁹ As restrictions were eased as part of the roadmap in spring and summer 2021, the UK government published a

¹⁷ *Moving to Remote Learning until 18 January 2021: Children’s Rights* (Welsh Government, February 2021)

¹⁸ *Alert Levels in Wales: A Guide to Restrictions – Summary Impact Assessment* (Welsh Government, December 2020)

¹⁹ *Coronavirus Act 2020: The Public Sector Equalities Duty Impact Assessment* (Department of Health & Social Care, July 2020)

new EIA which, among other things, considered how face coverings hindered social interaction with other children and thereby children's development.²⁰

School Closures

36. We know from the Module 1 hearings that despite earlier recommendations to make plans for school closures, no such plans were made. We also know that from as early as February 2020 the possibility of closing schools was being discussed by the Scientific Advisory Group for Emergencies ("SAGE") and civil servants. The position at the heart of government appeared to be that schools would not close, and the focus was on how to keep them open. Apparently, it is for that reason that the Department of Education had to write an 'Advice' on school closures overnight for the Prime Minister between 17 and 18 March 2020. This did not allow time to conduct either an EIA or a CRIA. This was why teachers and families alike had so little time to plan for what life would look like when the majority of children stopped going to school.
37. These Module 2 opening submissions do not explore the closure of schools in any great detail, as the Inquiry will be devoting a later module to considering the impact of school closures on children and education in particular. There are, however, important points that do fall within the scope of Module 2.
38. Firstly, the impact on children of the lockdown in general cannot be considered fully without considering the additional impact that closing schools had on those same children. Secondly, who was making decisions in the UK government, how those decisions were made and whether children were sufficiently considered, directly affected the decisions that were made as to whether, when and how to close schools. These decisions are, therefore, instructive in helping the Inquiry to form conclusions regarding the consideration of children in high-level decision-making.
39. The position of the CROs we represent is not that it was necessarily wrong for there to be any closure of schools. We acknowledge the huge sacrifice made by children, that most countries closed schools, and that there was concern about children spreading the

²⁰ *Equality Impact Assessment of The Health Protection (Coronavirus, Restrictions) (Steps etc.) (England) (Revocation and Amendment) Regulations 2021* (UK Government, 14 July 2021), p15

virus. Nevertheless, it is correct for the Inquiry to consider how the initial decision was made and the sudden pivot on or around 17 March 2020 to close schools when it appears that school closures were not previously envisaged. Was this done because the UK government was following the science, public opinion, or both? Who made the decision to close schools? Were the serious consequences of closing schools properly considered and debated? It is relevant and important to query what the advice was from SAGE at that time, because even early on during the pandemic, it was clear that children were the least affected by the Covid-19 virus. The Scientific Pandemic Influenza Group on Modelling, Operational Sub-Group (“SPI-M-O”) said that they had “mixed views” on the closing of schools in mid-March.

40. Furthermore, the Inquiry will want to consider not just whether schools should have been closed. The Inquiry will also want to consider for how long schools should have been closed, whether it was right to allow non-essential shops to reopen in June 2020, so that children were allowed to go shopping but not go to school, and what support should have been put in place for children not at school, particularly vulnerable children who could not attend school due to administrative failings²¹ and were trapped at home. After all, the lives of all children were suddenly turned upside down. Was any of this properly considered?

41. The impact of closing schools on children was immense. Inequalities have widened, with the educational gap between wealthier and poorer children 46% wider than it was pre-pandemic. The true impact on this generation cannot yet be fully known. The importance of school, not just for educational attainment, but for socialisation and the other benefits it brings, is self-evident. It was recognised by the then Secretary of State for Education, Gavin Williamson MP, on 16 May 2020²², when he noted that “the first years of school are pivotal for children to develop social and behavioural skills and learn the basics that are going to have a huge bearing on how well they do in their life.” He emphasised that this is “particularly important for vulnerable and disadvantaged young people.”

²¹ INQ000273750 (Witness statement of Anne Longfield, para 48)

²² Secretary of State for Education’s Coronavirus Press Conference (16/5/20)

Play

42. As noted above, the right to play is enshrined in Article 31 of the UNCRC. Wales has a “Play Policy”, and Scotland has enshrined a child’s right to play outdoors every day in its national Health and Social Care Standards. Sadly, the UK government has made no such commitment.
43. Outdoor exercise was permitted throughout the various lockdowns. However, despite numerous and repeated calls for clarification, play was not included in the legislation as a legitimate reason for leaving the home. This led to confusion, reprimands from neighbours or the police, and a very cautious approach from many parents. Playgrounds were shut, and even when they were allowed to reopen, there was little administrative or financial support to ensure that all of them could reopen quickly.
44. There was a lack of prioritisation and a lack of a child-focused approach to decisions around playgrounds. Little consideration appears to have been given to closing playgrounds, and little effort made to ensure that they reopened. While some restrictions imposed during the first lockdown began to lift from 13 May 2020, playgrounds were one of the last services to be allowed to reopen. Even then, there were additional obligations (including the obligation to carry out a risk assessment) which meant some playgrounds could not open straight away, unlike pubs and other businesses or services. During the third national lockdown in 2021, some local authorities in England elected to close children’s playgrounds, notwithstanding that government guidance at the time allowed playgrounds to stay open.
45. We ask the Inquiry to explore who in high-level decision-making was responsible for child development and the need for play, who was responsible for decisions around playgrounds, and why the need for play was never given greater priority.
46. Not only was the right to play neglected but parks and playgrounds were generally heavily policed during the pandemic, and often closed. This particularly affected children who did not have access to private gardens and made it hard for them to spend time outdoors. Some members of the public and some police officers mistakenly interpreted trips to the park and teenagers meeting up as violations of lockdown rules,

due to a lack of clarity. This discouraged many children from leaving home and led to increased isolation. It also led to unnecessary arrests, fines, and convictions, particularly for children and young people from racialised groups who were already over-policed. As one 15-year-old boy put it succinctly, “I went out to do my exercise which for me is skateboarding. I was told off by the police and made to go home.”²³

47. Police guidance on what constituted a “reasonable excuse” to leave home during lockdown gave specific examples of adult exercise, such as running and yoga, but did not mention children or play. The first Regulations that came into force on 26 March 2020 only allowed people to leave their house for “exercise.” This was later amended on 13 May 2020 to include “open air recreation.”
48. Several play organisations and experts wrote an open letter to government, asking for the Regulations to be clarified to avoid the confusion and ensure that children were allowed to play. No such clarification was provided. The government response on 25 March 2020 was that “we recognise and appreciate the importance of play to children’s physical and cognitive development, but given our present circumstances, Government’s response right now must focus on preventing the spread of Covid-19.”²⁴
49. In June 2020, over a hundred leading psychologists wrote an open letter to the Secretary of State for Education, Gavin Williamson MP, in which they said that “as experts working across disciplines, we are united as we urge you to reconsider your decision and to release children and young people from lockdown.”²⁵ There was also a parent-led petition submitted to the government urging them to allow children to play outside with children from one other household.
50. Despite all the pleas and representations made, the confusion continued as to whether play counted as exercise and whether parents were permitted to leave home to supervise children playing. In March 2021, clarity was still being sought. A letter from CRAE,

²³ *Policing the Pandemic: Exploring Young People’s Experiences & Recommendations* (Leaders Unlocked, July 2020), p15

²⁴ INQ000099722_0010 (Playing Out’s Rule 9 response)

²⁵ *Coronavirus: Child Psychologists Highlight Mental Health Risks of Lockdown* (BBC news report, 14/6/20)

JfKL, and Playing Out to the Prime Minister again asked for the guidance to be clarified for the third national lockdown:

“We are concerned that the current guidance on leaving your house currently reads: ‘You should minimise time spent outside your home, but you can leave your home to exercise. This should be limited to once per day, and you should not travel outside your local area.’ This guidance discourages families from leaving their house for their children to play at all, it is unclear that play (including play outside of playgrounds) is a legitimate form of exercise, and we query whether it is appropriate to limit it to once a day for families, which further reinforces that they should stay in as much as possible, whereas we believe that safe outdoor play should be actively encouraged.”²⁶

51. Not only was the matter never fully clarified, but there was further confusion when a government spokesperson said that playgrounds were only for children who did not have access to outdoor space at home. Downing Street later confirmed that any child could use a playground for exercise, but it was not clarified whether children were allowed to play outside playgrounds or what forms of play were permitted.
52. There are numerous examples of the impact of this entirely unnecessary confusion. Playing Out gave an example of a parent in London who reported that the police told off her children for playing football in a park and stopped her daughter from climbing a tree, and another parent who reported that a police riot van pulled up when she and her children were paddling in a river and sent them all home, telling them that they could only be outside to exercise.²⁷

Lack of Uniformity

53. Not all children had the same experiences during the pandemic. Children with larger houses, gardens or access to outdoor space had obvious advantages, as did those who were allowed to go to school and those who had parents who were able to devote more time to helping them with their learning.

²⁶ INQ000099722_0013 (Playing Out’s Rule 9 response)

²⁷ INQ000099722_0006 (Playing Out’s Rule 9 response)

54. It is undeniable that structural inequalities and discrimination already existent in society have worsened because of the pandemic, due to far too little being done at the time or since to allow those children left behind to catch up or to mitigate the harm and trauma that children suffered. We ask the Inquiry, when hearing from the inequality experts, to bear in mind the intersectionality of different inequalities, as the disadvantages suffered generally by all children were particularly acute for those who were also from, or whose parents were also from, other marginalised or discriminated against groups.
55. For example, lockdown was more problematic or even dangerous for those children who lived in homes that were unhappy or unsafe. There was a 22% increase in calls to domestic violence helplines and a 20% increase in serious child harm cases reported by local authorities. And then there were the unreported cases of children not in school or not being seen regularly by professionals working in social care or child protection. There can be no doubt that many concerning incidents remained hidden. The UK government relaxing many of the legal requirements for social workers, including the duty to visit children in care every six weeks, hardly helped.
56. We ask the Inquiry to consider whether these risks and disadvantages were considered and properly weighed in the balance when making high-level decisions that impacted on children. And if not, why not? We ask the Inquiry to remember that it is not simply a question of whether a specific Regulation was necessary in all the circumstances. Equally important is what support was considered or provided to mitigate the risks created by that Regulation.

Criminal Justice System

57. As a discrete group, children within the criminal justice system were particularly overlooked during the pandemic. They are some of the most vulnerable in society. Some three-quarters of children in contact with the criminal justice system have mental health needs, over half of those in custody are from ethnic minority backgrounds, and over half of care-experienced people have a conviction by the time they are 24.
58. Children in custody usually have particularly complex needs and prior to the pandemic there were already serious concerns about the safety of children in custody, the

difficulties children in custody encounter in keeping in contact with their families, and the inability of custodial settings to meet the needs of children in custody.

59. It is now clear that pandemic planning for custodial settings overlooked that some of those in custody were children. Education was halted, children were confined to their cells in conditions akin to isolation, and face-to-face visits with families and support workers were cancelled. Trials were delayed, and the initial decision by the Ministry of Justice to extend custody time limits for those awaiting trial did not exempt children, which permitted un-convicted children to remain in custody for up to eight months. The Regulations were only changed to exempt children after a judicial review was issued by JfKL. And whilst the Ministry of Justice did introduce Regulations allowing the temporary release of prisoners, despite the conditions and the overcrowding in prisons, not a single child was in fact released under these powers.
60. We anticipate that the Inquiry will examine the impact of the pandemic on the criminal justice system and those in custody more fully in a later module as this is yet another example of where planning appears to have been undertaken only with adults in mind. In the meantime, we do ask the Inquiry during Module 2 to examine what, if any, consideration was given by high-level decision-makers to children affected when the courts closed, and when new rules were introduced for custodial settings.
61. Furthermore, we anticipate that the Inquiry will be looking at the laws and regulations that were implemented to enforce the lockdown. New criminal offences were created that resulted in significant financial penalties for some and criminal records for others who were of previous good character. When considering whether the implementation and enforcement of these laws was proportionate, the Inquiry should also consider whether the policing and fining of children for breaches was proportionate, or whether children were in fact over-criminalised.
62. JfKL's Rule 9 response explained that children continued to be arrested for minor offences throughout the pandemic, necessitating children being in police cars and police cells, making transmission of the Covid-19 virus more likely. Children were often targeted by the police due to the rules lacking clarity, and children from ethnic minority backgrounds were more likely to be arrested and convicted than white children.

Furthermore, the implementation and enforcement of Covid-19 laws and regulations, and the policing of them, gave insufficient if any weight to the necessity of policing children. This in turn led to the over-criminalisation of children.

Whose Responsibility Were Children?

63. An early UN report from April 2020 forecast that although children were not the face of the pandemic, they risked being among its biggest victims.”²⁸
64. We recognise that it is outside the scope of these submissions and the Inquiry’s terms of reference to examine every detail of how the pandemic impacted children. However, it is undeniable that Family Court closures meant children were living in unsuitable family arrangements for longer. It is undeniable that delays to school exclusion hearings meant that children stayed out of school even when they reopened and that children were not able to participate fully in important hearings that had moved online. It is undeniable that child poverty and child hunger increased, and the attainment gap between children in poverty and their peers grew. It is undeniable that domestic violence increased, and that children trapped in homes where domestic violence was taking place witnessed it and were victims of it, more than they had been previously.
65. But a central theme to all of this, and a central question for Module 2, is whose responsibility was it to consider the rights of children, a quarter of the population, who have different needs and rights to adults and who were affected differently by the government’s various NPIs?
66. Playing Out, who repeatedly attempted to engage with the government, said that there was a problem “with nobody in government seeing it as their responsibility.” They found that the Minister for Children “deflected concerns about children’s wellbeing, play, social interaction etc on the basis that it was not in his remit.” They quote from a letter that he wrote in which he said that concerns about outdoor play should be directed to the Department of Health and Social Care.

²⁸ *Policy Brief: The Impact of COVID-19 on Children* (United Nations Sustainable Development Group, 15 April 2020)

67. Playing Out also found that, in their experience, the Children’s Commissioner for England was largely ignored by the government, despite the statutory remit of the role to promote and protect the rights of children.
68. It is worth noting that the Court of Appeal ruled on 24th November 2020 that the Secretary of State for Education had acted unlawfully by failing to consult the Children’s Commissioner for England before making substantial and wide-ranging changes to legal protections for children in care.²⁹ Trade unions, industry leaders and other special interest groups were rightly consulted about UK government decisions that affected them. Not only did it take legal action for the UK government to consult the Children’s Commissioner for England, but children themselves were banned from asking questions at press conferences. We ask the Inquiry to consider to whom the UK government listened during the pandemic when considering children and how they took such advice and expertise into account.
69. The remit of playgrounds is an example of an area of responsibility that fell through the cracks. It was not apparently the responsibility of the Minister for Children. It was not apparently the responsibility of the Department of Health and Social Care. It apparently fell under the remit of the then Department for Housing, Communities and Local Government (now the Department for Levelling Up, Housing and Communities).
70. In 2021, there was increasing discussion in Parliament around children’s rights and best interests having been neglected during the pandemic. For instance, in May 2021, Baroness Lister noted that “the needs of children more generally have been largely overlooked during the pandemic. Yes, there has rightly been a focus on their education and the likelihood of a widening of the educational divide, with longer-term implications for unequal life chances, but this has meant a preoccupation with children as ‘becomings’ at the expense of them as ‘beings’, vulnerable to mental health difficulties and a childhood scarred by Covid. The opportunity for all children to enjoy a flourishing childhood is one test of an inclusive society; 152 organisations have called on the government to embrace a new vision of childhood and to put children at the heart

²⁹ *R (Article 39) v Secretary of State for Education* [2020] EWCA Civ 1577

of the recovery. This is very much the message of the new Children’s Commissioner for England, who wants children to be ‘right at the top of the government agenda.’”³⁰

71. Alex Thomas, from whom the Inquiry will hear during Week 2 of the Module 2 hearings, discusses decision-making at Downing Street in his report and states that “the circle of advisers and decision makers, as well as being small, was not diverse. We heard privately that there was some concern about the narrowness of personal and professional experience when decisions were made about childcare, whether children counted towards the ‘rule of six’ gathering restriction, or lockdown exemptions for those at risk of domestic abuse, for example.”³¹
72. Government decision-making, even in a crisis, should not depend on what personal or professional experience happens to be brought to the table. Children’s rights need to be embedded in decision-making, including with a voice at Cabinet level. As Gavin Williamson MP recognises in his witness statement, “the PM and Cabinet need stronger safeguards in place to take account of children and young person’s interests better.”³²
73. We trust that the Inquiry will ask itself the following questions in respect of high-level decision-making that impacted children:
 - a) When a decision was made that impacted children, who, if anybody, was responsible for considering the impact on children?
 - b) Was the impact of the decision on children in fact considered? And if the impact was thought to be negative, was any mitigation considered?
 - c) When the impact of the decision on children was considered, how practically speaking was this done? What expertise or analysis was obtained? How were the rights of children balanced against the rights of adults?

Incorporation of the UNCRC

74. Although the UK government ratified the UNCRC in 1991, the UNCRC has not been embedded and made part of domestic law. Consequently, the protections contained

³⁰ See *Hansard*, 12th May 2021

³¹ INQ000236243 (Expert report of Alex Thomas, para 86)

³² INQ000268013_0060 (Witness statement of Gavin Williamson MP)

within the UNCRC remain legally unavailable to many children and young people across the UK. By contrast, the Welsh government has taken steps towards incorporation by introducing the Rights of Children & Young Persons (Wales) Measure 2011. Furthermore, the Scottish government is in the process of incorporating the UNCRC. Although the Supreme Court ruled in 2021 that sections of the Scottish Bill incorporating the UNCRC went beyond the powers of the Scottish Parliament³³, a new revised Bill is now going through the Scottish Parliament.

75. The important question that the Inquiry will wish to consider is whether the decisions made by the UK government during the pandemic that caused unnecessary harm to the nation's children could have been avoided or mitigated had the UNCRC been incorporated into domestic law.
76. Whatever one's legal or political views about individual decisions that have been made by the UK courts since the incorporation of the European Convention of Human Rights ("ECHR") in 1998, it is indisputable that fundamental rights have enjoyed greater protection in the domestic courts since the ECHR was incorporated. This is hardly surprising given the statutory obligations on public bodies to comply with the ECHR when making decisions and the legal accountability that inevitably flows from the incorporation of an international treaty into domestic law.
77. For similar reasons, the CROs whom we represent strongly support the incorporation of the UNCRC into domestic law as part of a series of measures that will improve the UK government's response in a future crisis and political decision-making more generally, insofar as the impact on children is concerned.

Recommendations

78. We acknowledge that the Inquiry will wish to hear all the evidence during Module 2 before making any decisions about the lessons to be learned from core UK decision-

³³ *In re United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill* [2021] UKSC 42, [2021] 1 WLR 5106

making and political governance during the pandemic. Nevertheless, we invite the Inquiry to bear the following recommendations in mind during the Module 2 hearings:

- a) **Ensure children’s rights are embedded in decision-making**
 - i) By incorporating the UNCRC in full into domestic law;
 - ii) By making CRIAs a statutory requirement for all new policy and legislation, using the existing template developed by the Department for Education, and ensuring the CRIAs are robust and place children at the heart of decision making;
 - iii) By appointing a Cabinet Minister for Children with cross-departmental responsibility for protecting children’s rights across all policy making and ensuring that oversight and co-ordination of a Children’s Rights Strategy and Action Plan takes place at the highest levels of government.
- b) **Ensure the government fully takes children’s rights and best interests into account before and during future crises**
 - i) By publishing a Children’s Rights Strategy and Action Plan and a cross-departmental strategy to tackle child poverty and by setting out the government’s vision for children with a clear road map for how it will meaningfully improve their lives and tackling inequalities that children and families experience;
 - ii) By classifying schools as essential infrastructure, strengthening parliamentary oversight and scrutiny before schools can be closed in future emergencies, and ensuring the decision to close schools cannot be made by ministers alone and is considered only as a last resort;
 - iii) By testing future pandemic policy guidance with children and families, creating child and youth accessible, friendly and relevant information about accessing health services, and recognising and safeguarding opportunities to play and stay safe.
- c) **Supporting the Covid generation to thrive and honouring children’s contribution to overcoming the pandemic**
 - i) By providing the full £13.5bn of educational recovery funding that was recommended during the pandemic directly to schools, nurseries and colleges, and focusing on children’s social and emotional development and mental health, so children can thrive and fulfil their potential;

- ii) By setting out a comprehensive, long-term funding settlement for children’s services and children’s social care that invests at least £4.6 billion a year in early intervention and therapeutic services;
- iii) By investing in child poverty reduction so all families can afford essentials, scrapping the two-child limit and expanding free school meals for all families that receive Universal Credit.

Conclusion

79. In the College of Medicine’s *Hope for the Future* manifesto³⁴ published in March 2021, Sir Al Aynsley-Green, the first Children’s Commissioner for England, and Dr Sunil Bhopal stated that:

“A decent post-Covid response puts promotion of child health and well-being both front and centre. Needs are identified, intervention is early. The country recognises that what happens in childhood has life-long ramifications for individuals, which, in turn, determines the kind of societies we build into the future. The prize if we choose to accept this challenge? The chance to re-set British childhood and move into a post-Covid world creating a better, more resilient society for generations to come.”

80. We ask the Inquiry to reflect these aspirational sentiments in their eventual findings. After all, as Nelson Mandela famously said in 1995, “there can be no keener revelation of a society’s soul than the way in which it treats its children.”

**RAJIV MENON KC
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Garden Court Chambers

25 September 2023

³⁴ *Hope for the Future: A manifesto for the next ten years, where patients, people and communities come first* (College of Medicine, March 2021), chapter 6 – cited in *The Children’s Inquiry* by Liz Cole & Molly Kingsley (Pinter & Martin, 2022), p221