

Witness Name: Louise King

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UK COVID-19 INQUIRY

WITNESS STATEMENT OF
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DIRECTOR OF THE CHILDREN'S RIGHTS ALLIANCE FOR ENGLAND

I, Louise Miranda Brunel King, Co-Lead for Just for Kids Law and Director of the Children's Rights Alliance for England, will say as follows:

1. I am Louise King, Co-Lead of Just for Kids Law (JFKL) and Director of the Children's Rights Alliance for England (CRAE). CRAE is an alliance of over 100 members which monitors UK government implementation of the UN Convention on the Rights of the Child (CRC) in England and undertakes influencing work to ensure that children's rights are better realised. CRAE has been hosted by the charity JFKL since 2015.
2. JFKL provides legal advice and representation for children and uses the evidence from its case work to achieve strategic change in law, policy and practice through policy and public affairs work and strategic litigation to ensure that children's rights are better realised. It took a number of legal challenges during the pandemic to ensure that children's rights protections were not being weakened.
3. I have over 20 years of experience working in policy and public affairs, specialising in children's rights. I rejoined CRAE as its Director in 2015 and I am responsible for CRAE's strategy and leading its human rights monitoring work, which includes engaging with international human rights mechanisms. I also Co-Chair the UN CRC Action Group with a senior civil servant in the Department for Education (DfE) and, as part of this group, worked with the DfE to develop a template for civil servants to carry out child rights impact assessments alongside an e-learning tool for officials on children's rights. Prior to joining CRAE, I worked at Save the Children. Most recently, I led on child rights governance policy and advocacy in the UK. I have also been Vice

President of Euronet – the European Children’s Network, and Chair of the Separated Children in Europe Programme.

4. I have extensive expertise on the General Measures of Implementation (GMI) of the CRC and have worked for many years to influence the UK Government to better implement the GMI. I have also written a number of publications on the subject, including *Governance fit for Children: To what extent have the general measures of implementation of the CRC been realised in the UK*¹; numerous *State of Children’s Rights in England reports*² and submissions to UN human rights monitoring mechanisms including treaty monitoring reporting processes and Universal Periodic Review.
5. I have had the opportunity to read the Statement of Dan Paskins, Director of UK Impact at Save the Children Fund (SCUK) and agree with and endorse the points that he has made. I have been working closely with Mr Paskins as SCUK, JFKL and CRAE are joint core-participants in the Covid Inquiry. We work in similar areas, but I have not covered the material covered in Mr Paskins’ statement in order to avoid repetition.
6. It is my view, and the view of CRAE, that in March 2020 children were structurally disadvantaged, that their rights were not properly considered in decision-making and their rights and needs often forgotten, over-looked or not properly considered by policy-makers and politicians. My opinion is based on my years working in this area and speaking to many civil servants, politicians and others in the charity sector who seek to influence the UK government. Whilst different governments have understandably different priorities, the invisibility of children in decision-making is a longstanding problem which is not and was not specific to the current UK government.
7. My experience of the pandemic, for the reasons set out below, was that this invisibility of children led to poor decisions during the pandemic and caused unnecessary harm to the nation’s children when there were some straightforward things that the UK

¹ L, King, (2011) *Governance fit for Children: To what extent have the general measures of implementation of the CRC been realised in the UK* Save the Children UK <https://resourcecentre.savethechildren.net/pdf/4048.pdf>

² CRAE publishes a regular State of Children’s Rights in England report, a key publication to scrutinise the Government and assess whether it is making progress on children’s rights and to hold it to account for its actions to implement the UN CRC Committee’s recommendations. Children’s Rights Alliance for England (CRAE), State of Children’s Rights in England <https://crae.org.uk/our-work/monitoring-compliance-childrens-rights/state-childrens-rights-england>

government could have done better from the outset, clearer messaging about play being a form of exercise being just one of them. Had there been better decision-making at UK government level about children, then it is likely that these decisions would have been better made, with better outcomes for the nation's children. It is clear that at the outset of the pandemic a lot of decisions were made very quickly, demonstrating the need for proper decision-making about the rights of children to be fully embedded into government. Further, it is clear that during the course of the pandemic, lessons were not learnt about how children were impacted earlier on in the pandemic, even when there was emerging evidence and there had been time to consider and reflect and make different decisions, to ensure that harm to children was mitigated and their rights better respected.

8. Children's rights are enshrined in the CRC, which sets out the fundamental human rights that all children (aged 17 years and younger) have, so that every child is able to have a good childhood and develop to their full potential. The UK Government ratified the CRC in 1991.
9. In my statement I set out some of the key issues concerning the structures, mechanisms and legal framework, which are necessary for the rights of children to be properly taken into account in government decision-making. These are set out in articles 4, 42 and 44.6 of the CRC and known as the 'General Measures of implementation.' Article 4 obliges States Parties to '*undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention.*'
10. The UN Committee on the Rights of the Child (the UN Committee) has also published a General Comment on the General Measures of Implementation, which gives further detail on how States can meet obligations under the 'General Measures of Implementation'.³ These include the need for CRC incorporation into domestic law, systematic Child Rights Impact Assessments (CRIA), as well as systems and structures to ensure adequate co-ordination and monitoring of the CRC – often in the form of a

³ UN Committee on the Rights of the Child (2003) *General Comment No. 5 on "General measures of implementation"* CRC/ GC/2003/5
<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7vhsiQq18gX5Zxh0cQqSRzx6Zd2%2FQRsDnCTcaruSeZhPr2vUevjbn6t6GSi1fheVp%2Bj5HTLU2Ub%2FPZZtQWn0jExFVnWuhiBbqgAj0dWBoFGbK0c>

senior minister for children. It is my firm belief that had these measures been in place in March 2020 the decisions made by the UK government throughout the pandemic would have been fundamentally different. This statement sets out those key issues, and some of my experiences of how decisions which impacted on children and their rights were actually made in the pandemic.

Incorporation of the CRC

11. The UN Committee has made it clear that it expects governments to take all appropriate measures so that the CRC is given legal effect within their domestic legal systems.
12. Bringing the CRC into domestic law would mean ensuring that new policies and legislation are ‘child rights proofed’ – through a system of mandatory CRIA - see below - and also, importantly, that public authorities are fully accountable for upholding children’s human rights.
13. The UN Committee makes it clear that incorporation “*should mean that the provisions of the Convention can be directly invoked before the courts and applied by national authorities.*”⁴
14. In its Concluding Observations on the combined sixth and seventh reports of the United Kingdom of Great Britain and Northern Ireland, repeating its previous recommendations, the UN Committee recommended that action must be taken to “*Strengthen efforts to fully incorporate the Convention into national legislation.*”⁵
15. Despite numerous calls by the UN Committee and civil society to do so, there has been no progress on incorporating the CRC into UK domestic law, but efforts have been made to do so in both Wales and Scotland.

⁴ UN Committee on the Rights of the Child (2003) *General Comment No. 5 on “General measures of implementation”* CRC/ GC/2003/5

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsiQql8gX5Zxh0cQqSRzx6Zd2%2FQRsDnCTearuSeZhPr2vUevjbn6t6GSi1fheVp%2Bj5HTLU2Ub%2FPZZtQWn0jExFVnWuhiBbqgAj0dWBoFGbK0c>

⁵ UN Committee on the Rights of the Child (2023) *Concluding observations on the combined sixth and seventh reports of the United Kingdom of Great Britain and Northern Ireland* CRC/C/GBR/CO/6-7 paragraph 8

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGBR%2FCO%2F6-7&Lang=en

16. The Welsh Government formally adopted the CRC as the basis of policy making relating to children in 2004 and it enshrined the CRC in Welsh law under the Rights of Children and Young Persons (Wales) Measure 2011.⁶ This places a duty on Ministers to have due regard to the CRC when developing or reviewing legislation and policy, giving appropriate weight to the requirement in the CRC. It gives Welsh Ministers the power to amend legislation, within the legislative competency of the Senedd, if desirable to give further or better effects to the rights and obligations under the CRC.⁷ It further makes Ministers responsible for ensuring that people in Wales know about, understand and respect the rights of children as outlined in article 42 of the CRC.
17. The Welsh government has also developed a CRIA to ensure that Ministers comply with the duty to have due regard and to ensure compliance (see below).
18. In Scotland there is currently a Bill being passed to give effect to Children's Rights in Scotland: UNCRC (Incorporation)(Scotland) Bill. The progress of this Bill has been slowed due to litigation in the UK Supreme Court and concerns over whether its first iteration was within the competence of the Scottish Parliament. It has been amended in light of the Supreme Court's judgement in this matter as is expected to pass shortly.
19. In countries where incorporation has taken place it has led to improved policy making, a greater culture of respect towards children, an increased awareness and understanding of children's rights and better realisation of the CRC.

Child Rights Impact Assessments

20. It is essential when considering matters that impact children, that different considerations are given and the impact properly assessed. This is for a number of self-evident reasons.
21. First, children have different needs and rights to adults. For example, the right to play - set out in article 31 of the CRC - is fundamental for the cognitive, physical, social,

⁶ Welsh Government (28 February 2022) Children's rights in Wales <https://www.gov.wales/childrens-rights-in-wales>

⁷ Section 6 of the Measure

and emotional well-being of children and is often a form of exercise. I have read the Rule 9 response from the organisation Playing Out that sets out the necessity of play for children in more detail and endorse its response.

22. Second, children are at a developmental stage of life, which itself means that they have different needs, but also that negative impacts on them may have longer lasting effects on their physical and mental health and development. It is important to note, however, that childhood must not be viewed only as a path to productive adulthood, childhood itself is sacrosanct, and children have a right to have their best interests, needs, safety, welfare and happiness be considered for their own end not just in relation to how such things impact on a child's future development.
23. Third, a decision will often impact children differently to how it impacts adults, in two ways. First, a decision may have a different direct impact on children, for example, throughout large parts of lockdown only one person was allowed to meet one other person from a different household. This enabled two adult friends to meet each other outside. It did not allow two child friends aged say six or seven years of age, and too young to leave their house independently, to meet each other, because to do so would have necessitated a supervising adult which would have broken the 1:1 rule. Concerns about this specific rule were raised by CRAE and other organisations in a letter to the government in March 2021⁸. Yet our concerns went unheeded.
24. Further, even where the direct impact of a rule may be the same, children experience time differently to adults and feel impacts in different ways. They have different needs and rights as set out above.
25. It is not uncommon for decision-makers when considering a universal policy to overlook its impact on children. For example, in the pandemic, the Ministry of Justice extended custody time limits for all those remanded in custody awaiting their trials given the delays caused by court closures. It did so, seemingly without considering that a number of those impacted by those changes were children remanded to the children's secure estate. Nor was there adequate consideration given to the fact that

⁸ Press release (8 March 2021) 'Campaigners call on Prime Minister to allow children to play outside together as they return to school' <https://www.justforkidslaw.org/news/campaigners-call-prime-minister-allow-children-play-outside-together-they-return-school>

Black boys are more likely to be remanded to custody than their white peers⁹ and that the majority of children remanded to custody do not go on to receive a custodial sentence.¹⁰ It was only following the issuing of a judicial review by JFKL, alongside discussions with Ministry of Justice officials, that amended regulations to exclude children were laid in Parliament.

26. A CRIA is a tool that can be used by policy-makers to ensure that children do not remain invisible in policy decisions and can ensure that consideration is given to the rights of children set out in the CRC. For the reasons set out above, CRIAs are necessary to ensure that children's rights are not overlooked and are particularly important to undertake if article 3 of the CRC is to be realised:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

27. The European Network for Ombudspersons for Children have emphasised the importance of CRIAs for the realisation of article 3:

The 'best interests of the child' is one of four general principles of the UNCRC and is a cornerstone for interpreting and implementing all rights in the Convention.

*'Primary consideration' means that, when different or competing interests are under consideration, greater weight is attached to what will serve the child or children best. It is difficult to determine whether this duty is being met without child-specific impact assessment, monitoring and post-implementation evaluation processes and procedures being in place.*¹¹

28. CRIAs are designed to help government officials and ministers to assess and consider the impact of policy-making and legislation on children's rights and can also be used

⁹ Ministry of Justice and Youth Justice Board for England and Wales (2022) *Youth Justice Statistics 2020-2021* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1054236/Youth_Justice_Statistics_2020-21.pdf

¹⁰ Ministry of Justice and Youth Justice Board (2020) *Youth Justice Statistics: 2018 to 2019* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/862078/youth-justice-statistics-bulletin-march-2019.pdf

¹¹ European Network of Ombudspersons for Children (2020) *Common Framework of Reference on Child Rights Impact Assessment: A Guide on How to carry out CRIA* <https://enoc.eu/wp-content/uploads/2020/12/ENOC-Common-Framework-of-Reference-FV.pdf>

by parliamentarians to scrutinise the development and implementation of government policy and legislation and assess whether they are upholding or undermining children's rights.

29. CRIAs consider policy or legislation through a 'child rights lens', using the CRC as the framework for assessing whether they protect and implement the rights included in the CRC. No policy is child neutral – every policy can directly or indirectly have an impact on the lives of children, either positive or negative. For example, laws, policies or decisions that are not aimed at children but have indirect consequences for them include, for example, social security provision, housing supply and quality, measures on air quality and public transport systems.
30. The UN Committee has published several General Comments relating to the importance of and need for CRIAs. General Comment No. 5,¹² as noted above, sets out the need for CRIAs (emphasis added):

*Ensuring that the best interests of the child are a primary consideration in all actions concerning children (art. 3 (1)), and that all the provisions of the Convention are respected in legislation and policy development and delivery at all levels of government demands a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation). **This process needs to be built into government at all levels and as early as possible in the development of policy.***

Self-monitoring and evaluation is an obligation for Governments. But the Committee also regards as essential the independent monitoring of progress towards implementation by, for example, parliamentary committees, NGOs, academic institutions, professional associations, youth groups and independent human rights institutions (see paragraph 65 below).

¹² UN Committee on the Rights of the Child (2003) *General Comment No.5 General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)* CRC/GC/2003/527, Paragraph E <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsiQq18gX5Zxh0cQqSRzx6Zd2%2FQRsDnCTcaruSeZhPr2vUevjbn6t6GSi1fheVp%2Bj5HTLU2Ub%2FPZZtQWn0jExFVnWuhiBbqgAj0dWBoFGbK0c>

The Committee commends certain States which have adopted legislation requiring the preparation and presentation to parliament and/or the public of formal impact analysis statements. Every State should consider how it can ensure compliance with article 3 (1) and do so in a way which further promotes the visible integration of children in policy-making and sensitivity to their rights.

31. General Comment No. 16¹³ (2013) on State obligations regarding the impact of the business sector on children's rights also sets out the importance of CRIAs.

Child-rights impact assessments: Ensuring that the best interests of the child are a primary consideration in business related legislation and policy development and delivery at all levels of government demands continuous child-rights impact assessments. These can predict the impact of any proposed business-related policy, legislation, regulations, budget or other administrative decisions which affect children and the enjoyment of their rights and should complement ongoing monitoring and evaluation of the impact of laws, policies and programmes on children's rights. (p.21)

32. As does General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1):¹⁴

CRIA needs to be built into Government processes at all levels and as early as possible in the development of policy and other general measures in order to ensure good governance for children's rights. Different methodologies and practices may be developed when undertaking CRIA. At a minimum, they must use the Convention and its Optional Protocols as a framework, in particular ensuring that the assessments are underpinned by the general principles and have special regard for the differentiated impact of the measure(s) under consideration on children. The impact assessment itself could be based on input from children, civil society and experts, as well as from relevant Government departments, academic research and experiences documented in the

¹³ UN Committee on the Rights of the Child (2013) *General comment No. 16 State obligations regarding the impact of the business sector on children's rights* CRC/C/GC/16, Paragraph 78
<https://www2.ohchr.org/english/bodies/crc/docs/crc.c.gc.16.pdf>

¹⁴ UN Committee on the Rights of the Child (2013) *General comment No. 14 The right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)* CRC/C/GC/14, Paragraph 99
https://www2.ohchr.org/english/bodies/crc/docs/gc/crc_c_gc_14_eng.pdf

country or elsewhere. The analysis should result in recommendations for amendments, alternatives and improvements and be made publicly available.

33. Further when examining the UK on how well it is meeting its obligations under the CRC, the UN Committee has made a number of ‘Concluding Observations’ relating to CRIAs. The Concluding Observations on the third and fourth periodic report of the United Kingdom of Great Britain and Northern Ireland in 2008 found¹⁵ (emphasis added):

*The Committee notes with appreciation the increase in expenditures on children in recent years. Nevertheless, the Committee is concerned that the increases are not sufficient to eradicate poverty and tackle inequalities **and that the lack of consistent budgetary analysis and child rights impact assessment** makes it difficult to identify how much expenditure is allocated to children across the State party and whether this serves to effectively implement policies and legislation affecting them.*

*The Committee recommends that... **Child rights impact assessment should be regularly conducted** to evaluate how the allocation of budget is proportionate to the realization of policy developments and the implementation of legislation. (p.5)*

34. The Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland (2016)¹⁶ recommended that the State party (emphasis added):

*(a) **Introduce a statutory obligation at the national and devolved levels to systematically conduct a child rights impact assessment** when developing laws and policies affecting children, including in international development cooperation;*
*(b) **Publish the results of such assessments and demonstrate how they have been taken into consideration in the proposed laws and policies.** (Paragraph 10)*

¹⁵ UN Committee on the Rights of the Child (2008) *The Concluding Observations on the third and fourth periodic report of the United Kingdom of Great Britain and Northern Ireland* CRC/C/GBR/CO/4, Paragraphs 18 and 19
<https://www2.ohchr.org/english/bodies/crc/docs/advanceversions/crc.c.gbr.co.4.pdf>

¹⁶ UN Committee on the Rights of the Child (2016) *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* CRC/C/GBR/CO/5, Paragraph 10
<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7vhsKHOj6VpDS%2F%2FJqg2Jxb9gncnUyUgbnuttBweOlylyYPkBbwffitW2JurgBRuMMxZqnGgerUdpjxij3uZ0bjQBOLNTNvQ9fUIEOvA5LtW0GL>

35. The Concluding observations on the combined sixth and seventh reports of the United Kingdom of Great Britain and Northern Ireland (2023)¹⁷ recommended that (emphasis added):

“...the State party develop mandatory child-rights impact assessment procedures for legislation and policies relevant to children in England, Northern Ireland and Wales. (p.2)

Take measures to develop and implement a tool for the purpose of Child Rights Impact Assessments throughout the State party.” (p.6)

There have been a number of reviews of CRIAs by various bodies, including UNICEF UK. Its report on CRIAs¹⁸ concludes that there is no single, global model of CRIA in place – individual governments can develop a model best suited to their specific requirements, which addresses local priorities and objectives but that CRIA tends to follow a set of steps or stages common across Impact Assessment (IA) practice: screening/initial assessment; scoping; data collection, evidence gathering and stakeholder consultation; assessing the impact; options and recommendations; monitoring and review. (p.3)

36. My organisation, CRAE has also published a briefing on how to use CRIAs to improve policy making: *Using Children’s Rights Impact Assessments to improve policy making for children*¹⁹ and sets out the following points:

“CRIAs are an essential tool to help ensure that Government policy, legislation, programming and budgeting are consistent with children’s rights standards... (p.1)
To date very few have been carried out by the Westminster Government using their

¹⁷ UN Committee on the Rights of the Child (2023) *Concluding observations on the combined sixth and seventh reports of the United Kingdom of Great Britain and Northern Ireland* CRC/C/GBR/CO/6-7, Paragraphs 8(e) and 21(c) https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGBR%2FCO%2F6-7&Lang=en

¹⁸ UNICEF UK (2017) *Child Rights Impact Assessment (CRIA): A review of comparative practice across the UK* https://www.unicef.org.uk/wp-content/uploads/2017/09/Unicef-UK-CRIA-comparative-review_FOR-PUBLICATION.pdf

¹⁹ Children’s Rights Alliance for England (2021) *Using Children’s Rights Impact Assessments to improve policy making for children* <https://crae.org.uk/sites/default/files/uploads/Using-CRIAs-to-improve-policy-making-CRAE-Briefing.pdf>

CRIA template developed in 2018 but Scotland and Wales each have their own form of mandatory CRIsAs. (p.4)

CRIsAs are an essential tool to help ensure that Government policy, legislation, programming and budgeting are consistent with children's rights standards... (p.1)
To date very few have been carried out by the Westminster Government using their CRIA template developed in 2018 but Scotland and Wales each have their own form of mandatory CRIsAs. (p.4)

CRIsAs provide an opportunity to engage children in public policy and decision-making processes. The UN Committee has recommended that CRIsAs should be based on 'input from children, civil society and experts, as well as from relevant government departments, academic research and experiences documented in the country or elsewhere'. The evidence base for CRIsAs must not only include reliable qualitative and quantitative data, but also the views and experiences of children affected by policies and other measures. (p.4)

37. Despite the UK's obligations under the CRC and the numerous recommendations it has received from the UN Committee in its 'Concluding Observations,' there is no statutory obligation on UK government officials and Ministers to conduct CRIsAs in all policy areas affecting children, despite similar requirements in Wales and Scotland.

38. As noted above, the Rights of Children and Young Persons (Wales) Measure 2011 imposes a duty on Welsh ministers to have due regard to children's rights as expressed in the CRC. Part one of the Children and Young People (Scotland) Act 2014 requires all Scottish ministers to give better or further effect to the requirements of the CRC; take account of the relevant views of children of which they are aware; promote public awareness and understanding of the rights of children; and report every three years to the Scottish Parliament on what they have done to fulfil these duties.

39. A report of the Wales Observatory on the Human Rights of Children and Young People,²⁰ describes the procedural compliance and substantive assessment processes:

Section 1 of the Rights of Children and Young Persons (Wales) Measure 2011 places a duty on the Welsh Ministers to have ‘due regard’ to specified provisions of the United Nations Convention on the Rights of the Child when exercising any of their functions. The Welsh Ministers have published a Children’s Rights Scheme setting out arrangements they have made for securing compliance with the due regard duty. The Scheme includes a formal six-step Child Rights Impact Assessment procedure (CRIA) to predict the likely impact of legislation or policy on children’s rights. CRIA is carried out ex ante as part of Welsh Government decision-making processes. The CRIA six-step procedure is:

- *Step 1- What’s the piece of work and its objective(s)?*
- *Step 2 – Analysing the impact.*
- *Step 3 – How does the work support and promote children’s rights?*
- *Step 4 – Advising the Minister and Ministerial decision.*
- *Step 5 – Recording and communicating the outcome.*
- *Step 6 – Revisiting the piece of work as and when needed. (p.4)*

40. An academic review into the incorporation of the UN Convention by Ursula Kilkelly, Laura Lundy and Bronagh Byrne (2021)²¹ discussed the use of CRIAs across the UK in particular in Wales and found that:

As a policy tool, CRIA is consistent with the Committee’s recommendation that all policy, legislative and budgetary proposals and programme decision which will have an impact on children should be assessed in advance for compliance with the CRC. In 2015, the Welsh Government claimed that the due regard duty had contributed to embedding children’s rights in policy and to the emergence of an ‘ingrained culture of thinking about children’s rights in the Welsh Government’ (p.111). These claims are partially confirmed by an evaluation of CRIA carried out by the Welsh Government in

²⁰ Wales Observatory on Human Rights of Children and Young People (2015) *Evaluation of the Welsh Government’s Child Rights Impact Assessment procedure under the Children’s Rights Scheme pursuant to the Rights of Children and Young Persons (Wales) Measure 2011* <https://cronfa.swan.ac.uk/Record/cronfa30963>

²¹ Ursula Kilkelly, Laura Lundy and Bronagh Byrne (eds.) (2021) *Incorporating the UN Convention on the Rights of the Child into National Law* International Journal of Law, Policy and the Family <https://academic.oup.com/lawfam/article-abstract/35/1/ebab040/6428499?redirectedFrom=fulltext#no-access-message>

2015, which found that the procedure had contributed to increased visibility and awareness of the CRC within the Welsh Government and had contributed to some better policy output for children. (p.112)

41. Despite a lack of progress in introducing a statutory requirement to carry out CRIAs, the UK government has given a commitment to ‘give due consideration to the UNCRC articles when making new policy and legislation.’²² However, in practice this is largely absent from policy making. It is my view that this is due to the non-statutory nature of the ‘due consideration’ commitment.
42. In April 2020, the UN Committee also issued a statement warning of *“the grave physical, emotional and psychological effect of the COVID-19 pandemic on children”* and called on States *“to protect the rights of children.”* It issued guidance to governments on how to protect children’s rights in pandemic responses and to take steps to mitigate any adverse impacts on children. It stated that restrictions *“must be imposed only when necessary... proportionate and kept to an absolute minimum.”*
43. To the best of my knowledge, I am not aware of evidence which shows that the UK government took the UN Committee’s statement into account as part of its decision-making processes during the pandemic. This is in contrast to action taken by the Scottish Government.²³
44. Despite its wide-ranging impact on the rights of children, particularly on the most disadvantaged, discriminated against, and vulnerable, no CRIA was carried out on the Coronavirus Act or on many of the Regulations that followed it. This key tool should have been used in order for the UK to take into account the UN Committee’s statement and comply with its child rights obligations. In contrast, the Scottish Government did undertake a number of Child Rights and Wellbeing Assessments on the impact of the

²² Lord Agnew of Oulton, Parliamentary Under Secretary of State for the School System (20 November 2018) Written Ministerial Statement for Universal Children’s Day, HLWS1064 <https://www.parliament.uk/business/publications/written-questions-answers-statements/writtenstatement/Lords/2018-11-20/HLWS1064/>

²³ Scottish Government (2020) *Scottish Government Response to the UN Committee on the Rights of the Child: COVID-19 Statement* https://www.togetherscotland.org.uk/media/1514/scottishgovernment_childrens-rights_covid-19-response.pdf

COVID legislation generally.²⁴ We note, however, that child rights organisations in Scotland concluded that they could have been more robust.²⁵

45. An example of two Regulations where no CRIA was carried out, yet had particularly harmful effects on children, were the Prison and Young Offender Institution (Coronavirus) (Amendment) (No. 2) Rules 2020²⁶ and The Secure Training Centre (Coronavirus) (Amendment) Rules 2020²⁷. This resulted in children being subjected to awful conditions for months, characterised by poor in-cell provision, withdrawal of support services, and deprived of education, visits and contact.²⁸ An Explanatory Memorandum set out a minimum restricted regime, for children (some as young as 12) held in Secure Training Centres with a reduced time out of cell from the usual 14 hours to only at least 1.5 hours a day.²⁹
46. This policy effectively permitted solitary confinement for some of the most vulnerable children in society - a high proportion of children in prison are care experienced, have special educational needs and serious mental health issues.³⁰ It is also important to highlight that youth justice statistics for 2020-2021 show that racialised children make up the majority (53%) of those imprisoned; 29% are Black.³¹ Despite concerns being raised by children's charities³² and the then Children's Commissioner for England,³³

²⁴ Scottish Government (2020) Coronavirus (Scotland) Bill: child rights and wellbeing impact assessment <https://www.gov.scot/publications/coronavirus-scotland-bill-child-rights-welfare-impact-assessment/>

²⁵ Together the Scottish Alliance for Children's Rights (2020) *Analysis of Scottish Government's Response to UN Committee's 11 recommendations* https://www.togetherscotland.org.uk/media/1670/sg_tog_covid_report_060820.pdf

²⁶ The Prison and Young Offender Institution (Coronavirus) (Amendment) (No. 2) Rules (2020) <https://www.legislation.gov.uk/ukSI/2020/508/contents/made>

²⁷ The Secure Training Centre (Coronavirus) (Amendment) Rules (2020) <https://www.legislation.gov.uk/ukSI/2020/664/made/data.pdf>

²⁸ HM Chief Inspectorate of Prisons for England and Wales (2020) Annual Report 2019–20 Alliance for Youth Justice (2022) 'The Youth Justice response to the Covid-19 Pandemic'; Harris, M and Goodfellow, P. (2022) *Crises and crossroads for the children's secure estate: Resisting child imprisonment and rethinking youth custody post-pandemic*, Alliance for Youth Justice <https://www.ayj.org.uk/news-content/crises-and-crossroads-for-the-childrens-secure-estate-resisting-child-imprisonment-and-rethinking-youth-custody-post-pandemic>

²⁹ The Secure Training Centre (Coronavirus) (Amendment) Rules (2020) and Explanatory Memorandum to the Secure Training Centre (Coronavirus) (Amendment) Rules 2020 <https://www.legislation.gov.uk/ukSI/2020/664/note/made>

³⁰ Ministry of Justice and Youth Justice Board (2017) *Key characteristics of admissions to youth custody: April 2014 to March 2016, England and Wales* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/585991/key-characteristics-of-admissions-april-2014-to-march-2016.pdf

³¹ Ministry of Justice and Youth Justice Board (2022) *Youth Justice statistics England and Wales April 2020-March 2021* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1054236/Youth_Justice_Statistics_2020-21.pdf

³² Letter to the Rt Hon Robert Buckland QC MP Lord Chancellor and Secretary of State for Justice Ministry of Justice 18th March 2020

³³ Children's Commissioner for England (8 July 2020) 'Anne Longfield responds to amended statutory rules for secure training centres' <https://www.childrenscommissioner.gov.uk/news/childrens-commissioner-responds-to-amended-statutory-rules-secure-training-centres/>

the UK government failed to take steps to amend these Regulations that caused so much harm to children or release any children from prison.

47. A CRIA³⁴ was carried out on regulations relating to children’s social care (The Adoption and Children (Coronavirus) (Amendment) Regulations 2020). However, it was carried out *after* the regulations had come into force. CRAE also disagreed with its conclusions and whether it could really be described as a full impact assessment on children’s rights. It concluded, for example, that the changes were “low risk and small scale” despite it amending ten sets of Regulations and making changes which included relaxing the requirement on the frequency of social worker visits to children, the weakening of standards in children’s homes, and a dilution of safeguarding checks for new foster carers. The lack of prior consultation on these regulations was later deemed to be unlawful.³⁵

Cabinet Minister for Children

48. The UN Committee’s General Comment No.5³⁶ also emphasises the importance of co-ordination and monitoring of the implementation of the CRC. Although the UN Committee is not prescriptive on how this should be achieved, it has consistently recommended that the UK Government should: (emphasis added)

Establish structures, such as a ministerial lead at the national level ...responsible for ensuring the effective monitoring and coordination of all activities related to the implementation of the Convention across all sectors and at all levels.

49. The UN Committee’s Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland (2016)³⁷ recommended that the

³⁴ Department for Education (2020) Children’s Rights Impact Assessment. Amendments to children’s social care regulations during the COVID-19 pandemic: The Adoption and Children (Coronavirus) (Amendment) (No 2) Regulations 2020 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/913234/Children_s_rights_impact_assessment.pdf

³⁵ See <https://article39.org.uk/2020/11/24/court-of-appeal-rules-education-secretary-acted-unlawfully-in-removing-safeguards-for-children-in-care/>

³⁶ UN Committee on the Rights of the Child (2003) *General Comment No.5 General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)* CRC/GC/2003/527 <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsiQq18gX5Zxh0cQqSRzx6Zd2%2FQRsDnCTcaruSeZhPr2vUevjbn6t6GSilfheVp%2Bj5HTLU2Ub%2FPZZtQWn0jExFVnWuhiBbqgAj0dWBoFGbK0c>

³⁷ UN Committee on the Rights of the Child (2016) *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* CRC/C/GBR/CO/5, Paragraph 11

State party put in place effective mechanisms “at a high inter-ministerial level with a clear mandate and sufficient authority to coordinate all activities...”

50. In addition to these recommendations, there has also been growing calls for a cabinet minister for children to be appointed, including in the final report of Independent Inquiry into Child Sexual Abuse, which concluded that a cabinet minister for children would “provide a sharper focus within government on critical issues which affect children and would provide the necessary leadership, profile and influence on matters of child protection.”³⁸ In May 2023, 52 children’s organisations also called on the Prime Minister to establish a cabinet minister for children to ensure that children’s rights and needs are represented at the Cabinet table and fully visible in Government decision-making. Despite this, there remains no cabinet minister with responsibility for children’s rights.
51. Currently, and as was the case during the pandemic, the minister with responsibility for children sits within the DfE and has remained Parliamentary Under-Secretary of State (a junior minister) since 2018, when the role was demoted from Minister of State.³⁹ Not only it is a junior minister role, but the role is for children and families, thereby encompassing more than just the rights of children.
52. There are approximately 14 million children⁴⁰ in England, and clearly their needs are often distinct from adults, as set out above, and encompass more than just education. Having a children’s minister in the DfE unduly limits the scope of the Minister and means that important issues concerning children, such as playgrounds and play are not within their remit (there is no play strategy for England, unlike, for example in Scotland)⁴¹ as well as many policy decisions which affect the most vulnerable children

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPFPRiCAqhKb7yhskHOj6VpDS%2F%2FJqg2Jxb9gncnUyUgbnuttBweOlylfyYPkBbwffitW2JurgBRuMMxZqnGgerUdpjxij3uZ0bjQBOLNTNvQ9fUIEOvA5LtW0GL>

³⁸ Independent Inquiry into Child Sexual Abuse (2022) *The Report of the Independent Inquiry into Child Sexual Abuse*

https://webarchive.nationalarchives.gov.uk/ukgwa/20221215051709/https://www.iicsa.org.uk/key-documents/31216/view/report-independent-inquiry-into-child-sexual-abuse-october-2022_0.pdf

³⁹ Apart from a brief interlude in Autumn 2022 - between 7 September 2022 and 27 October 2022 - when the Minister of State (Minister for Schools and Childhood) had responsibility for children.

⁴⁰ UNICEF Data, How many children are there in the UK?

<https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fdata.unicef.org%2Fhow-many%2Fhow-many-children-under-18-are-there-in-the-uk%2F&data=05%7C01%7Cr.paul%40savethechildren.org.uk%7Cbfee3caf9d184d1a335d08dbb5cd9e28%7C8ea28934d20d47ecaa20b96d5ea33f70%7C0%7C0%7C638303667432937676%7CUnknown%7CTWFpbGZsb3d8evJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Iik1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=DBNyD5byHiVUwTWIMbirvoiceuqldYmul7V9nEtHexM%3D&reserved=0>

⁴¹ Scottish Government (2013) *Play strategy for Scotland: our action plan* <https://www.gov.scot/publications/play-strategy-scotland-action-plan/>

– children in contact with the immigration system and children in contact with the criminal justice system.

53. The remit of the children’s minister⁴² does however include among other policies children’s social care, children and young people’s mental health, adoption and care leaver, protection from violence, and the coronavirus recovery for children’s services and early years.

54. It is my view that a junior minister, regardless of the qualities of any individual in that role, is not able to provide the senior political influence required to ensure that children’s rights and needs are high on the political agenda and are fully taken into account whenever government policy, legislative or budgetary decisions are made.

Listening to children

55. Taking account of the views of children in all decisions affecting them is a fundamental principle of the CRC. Article 12.1 requires States Parties to:

assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

56. In its General Comment No. 12 on the right of the child to be heard⁴³ the UN Committee states: (emphasis added)

Article 12 of the Convention on the Rights of the Child (the Convention) is a unique provision in a human rights treaty; it addresses the legal and social status of children, who, on the one hand lack the full autonomy of adults but, on the other, are subjects of rights...

The right of all children to be heard and taken seriously constitutes one of the fundamental values of the Convention... The Committee on the Rights of the Child

⁴² Department for Education, Parliamentary Under Secretary of State (Minister for Children, Families and Wellbeing) <https://www.gov.uk/government/ministers/parliamentary-under-secretary-of-state-minister-for-children-families-and-wellbeing>

⁴³ UN Committee on the Rights of the Child (2009) *General Comment No.12 The right of the child to be heard* CRC/C/GC/12, Paragraphs 1 and 2 <https://www2.ohchr.org/english/bodies/crc/docs/advanceversions/crc-c-gc-12.pdf>

has identified article 12 as one of the four general principles of the Convention, the others being the right to non-discrimination, the right to life and development, and the primary consideration of the child's best interests, which highlights the fact that this article establishes not only a right in itself, but should also be considered in the interpretation and implementation of all other rights.

57. The UN Committee goes on to stress that (emphasis added):

*The views expressed by children may add relevant perspectives and experience **and should be considered in decision-making, policy-making and preparation of laws and/or measures** as well as their evaluation. These processes are usually called participation. The exercise of the child's or children's right to be heard is a crucial element of such processes. The concept of participation emphasizes that including children should not only be a momentary act, but the starting point for an intense exchange between children and adults on the development of policies, programmes and measures in all relevant contexts of children's lives.⁴⁴*

58. It is also important to note, in relation to the pandemic, that the UN Committee is clear that *"the right embodied in article 12 does not cease in situations of crisis or in their aftermath".⁴⁵*

59. In spite of these obligations, the clear benefits to policy-making, and calls to do so by UNICEF UK⁴⁶ and others,⁴⁷ the UK Government did not hold any sort of engagement or consultation with children to enable them to share their experiences of the pandemic or their views on the UK Government's response to it despite both having a profound impact on children's lives. Engagement with children could have provided valuable insight, particularly around any negative consequences, so that

⁴⁴ UN Committee on the Rights of the Child (2009) *General Comment No.12 The right of the child to be heard* CRC/C/GC/12, Paragraphs 12 and 13 <https://www2.ohchr.org/english/bodies/crc/docs/advanceversions/crc-c-gc-12.pdf>

⁴⁵ UN Committee on the Rights of the Child (2009) *General Comment No.12 The right of the child to be heard* CRC/C/GC/12, Paragraph 127 <https://www2.ohchr.org/english/bodies/crc/docs/advanceversions/crc-c-gc-12.pdf>

⁴⁶ UNICEF UK Open letter to the UK Government https://act.unicef.org.uk/page/59179/petition/1?ea.tracking.id=web-lp&_ga=2.78936852.1450997461.1589363101-1170394205.1589363101

⁴⁷ See for example Church Times (13 May 2020) 'Listen to children and young people's coronavirus fears, says Bishop of Gloucester' <https://www.churchtimes.co.uk/articles/2020/15-may/news/uk/listen-to-children-and-young-people-s-coronavirus-fears-says-bishop-of-gloucester>

mitigating action could be taken. This contrasted with some consultation which was carried out by the devolved governments.

60. The UK government could have also made use of research with children carried out by others during the pandemic, for example, *Life Under Coronavirus: Children's Views on their Experiences of their Human Rights*,⁴⁸ to inform decision making as the pandemic progressed and put in place resources to mitigate harmful effects on children.

Conclusion

61. It is my firm view, and that of JFKL and CRAE, that the lack of adequate structures and mechanisms in place to ensure that children's rights are properly taken into account in UK government decision-making prior to the start of the pandemic caused the stark invisibility of children in government decision-making during the pandemic. This meant that many of the decisions the UK government made had a detrimental impact on children, caused trauma and harm, and exacerbated structural inequalities and discrimination for children from disadvantaged social economic backgrounds and racialised groups.
62. It is crucial that action is taken now to introduce the necessary structures and mechanisms within UK government decision-making processes to ensure that the impact on children's rights are fully taken into consideration if we are to avoid making the same mistakes in a future pandemic. This would be best achieved through taking forward the CRC 'General Measures of Implementation' in full but especially through incorporation of the CRC into domestic law or, at the very least, a statutory requirement to carry out a CRIA as part of government policy and legislative development; the appointment of a cabinet minister for children; and the implementation of a cross-government mechanism, and associated funding, to ensure the views of children are systematically considered in policy-making, including younger children and those from marginalised groups.

⁴⁸ Lundy L., et al (2021) 'Life Under Coronavirus: Children's Views on their Experiences of their Human Rights' International Journal of Children's Rights https://brill.com/view/journals/chil/29/2/article-p261_261.xml

63. Taking such action now would ensure such structures are fully embedded in policy making ahead of any future pandemic and would thus help avoid the harm caused by the invisibility of children in decision-making or at least ensure that decisions are taken that mitigate such harm as much as possible.

Statement of Truth

64. I believe the facts stated in this witness statement are true. I understand that proceedings may be brought against anyone who makes or causes to be made, a false statement in a document verified by a statement of truth without an honest belief of its truth.

Dated:

Signed: _____

Louise Miranda Brunel King