

## UK COVID-19 INQUIRY, MODULE 8

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### CLOSING WRITTEN SUBMISSIONS ON BEHALF OF THE NORTHERN IRELAND COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE

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#### Introduction

1. The Northern Ireland Commissioner for Children and Young People (“**Commissioner**”) makes the following submissions in his role as a Core Participant in Module 8. The written submissions made on behalf of the Commissioner and his office (“**NICCY**”) at the opening of this Module detail the statutory powers of the Office, they are not repeated here. These submissions focus on matters the Commissioner invites the Chair to include as part of her

recommendations for the issues addressed in this Module. Whilst these recommendations are set out under separate headings, they are necessarily interlinked and there is a high degree of complementarity about them.

### Reviewing the Evidence

2. Surveying broadly the evidence adduced in this Module, the relevant Northern Ireland authorities were clearly woefully unprepared to manage the pandemic [See Module 2 Report, para 11.74 re the failure of the Northern Ireland Executive to address its role in a pandemic]. What emergency pre-planning had been done was inadequate [See Module 2 Report para 15.3 referencing *“the lack of preparedness discussed in the Inquiry’s Module 1 Report”*] and, in any event, any plans that were in existence in relation to a particular issue, like the emergency closure of schools, for example, were not known to the [then] Permanent Secretary of the Department of Education in Northern Ireland. In relation to the pre-pandemic planning, the Permanent Secretary stated in evidence *“Yes, I would fully accept that the department was neither psychologically nor practically prepared for huge swathes of the education system closing down in March 2020”* [Transcript 11/136/12-15]. In relation to the contingency guidance that was then in place for the closure of schools he stated, *“I would have to concede to the Inquiry that when Covid struck in March 2020, I wasn’t even aware of the existence of this guidance”* [Transcript 11/143/17-20].
3. The evidence adduced in this module, and indeed in Module 2 [See, for example, Module 2 Report, para 12.100-104 re communication with children; para 10.89-92 re children as a vulnerable group], also discloses that there were two significant, identifiable, failures in relation to children. The first was the failure to consider the impact or needs of children and young people (“CYP”) in the preparation for to the pandemic, whilst the second was the failure to consult with the Commissioner, children’s organisations or CYP themselves. The first of these failures underscores the need to ensure robust systems are in place for structured consideration of the rights and needs of CYP, and that relevant data has been gathered to support those assessments and considerations. The second of these failures highlights the need for systems that require consultation and engagement with the Commissioner, CYP, and for these systems to contain legally enforceable duties.
4. Significantly, during the initial period in March 2020 when the Covid-19 virus was being addressed, no engagement was made with the Commissioner, NICCY or with CYP themselves. Furthermore, once the initial onset of the Covid-19 virus had passed, there was still little or no engagement with the Commissioner, NICCY, or with CYP [See Witness

Statement of Koulla Yiasouma INQ000588091\_0017 para 48, re closure of schools March 2020; and INQ000588091\_0036 para 100, re cancellation of exams; Evidence of Chris Quinn, Northern Ireland Commissioner, Transcript 16/12-13/11-25,1-22]. Indeed, it is worth noting that the evidence adduced showed the experience of the other Commissioners in the United Kingdom was the same as that of the Northern Ireland Commissioner, in that they too were not consulted [Cifuentes (Welsh Commissioner) Transcript 16/43/20-23; Baroness Longfield (Former English Commissioner), Transcript 4/7/3-20 re General practice pre-pandemic; 4/15-17/21-22 re school closures; Witness Statement of Nicola Killean (Scottish Commissioner), INQ000649659\_0029 para 109 re closure of schools; INQ000649659\_0033 para 124 re exam certification; INQ000649659\_0041 para 155 re limited notice re changes in prison rules affecting children].

5. While acknowledging that ministers and public administrators had a difficult task in managing the pandemic, the Commissioner pointed out in evidence that *“there are mechanisms in place through our community and voluntary sector”* for gathering the views of CYP, *“But those views weren't filtering up into government. I believe part of the dynamic there is the failure to engage with the Commissioner's offices”* [Transcript 16/14/16-24]. Given the lack of preparedness and the speed with which the lockdown and school closure decisions were made, as well as the poverty of the data sets, it was even more important to draw on the available knowledge, expertise and experience that existed in NICCY and the voluntary sector.
6. The evidence adduced in this Module shows clearly that even though the crisis had clear and obvious implications for CYP, the Northern Ireland authorities' failure to engage in any meaningful way, with the Commissioner, NICCY, or with CYP to aid their decision making in managing the impact of that crisis on CYP, persisted throughout the crisis.
7. Equally, it is clear that little or no attempt is now being made to learn the relevant lessons from the management of the pandemic as they pertain to CYP, for future events that would also impact on CYP. In relation to the education sector, for example, the then Permanent Secretary of Education, Derek Baker, stated that various 'workstreams' had been commenced to manage the pandemic, but accepted nonetheless that *“there was no single overarching lessons learned exercise”* [Transcript 11/189/21-22] echoing the evidence in the related Witness Statement. Some Departments have stated that they have engaged in 'lessons learned' exercises, such as the Department for Communities (“**DfC**”) for example. However, on closer inspection some of these exercises engaged in by DfC focus more on administrative processes, than on CYP as a vulnerable group who endured negative

impacts as a result of the pandemic and the government's response to it [Witness Statement of Colum Boyle, DfC, Section 19 "General Assessment During the Specified Period and Lessons Learned" INQ000584591\_0042-0046].

### Recommendations of the Inquiry and their implementation

8. That evidence should, if it is submitted, lead the Inquiry to conclude that it is necessary for recommendations that will lead to clear legal obligations being placed on public authorities with responsibility for CYP, because the existing statutory duties – such as those flowing from the Children's (NI) Order 1995 or the Children's Services Co-operation Act (NI) 2015 – proved inadequate to the task [Chris Quinn, Northern Ireland Commissioner, Transcript 16/39-40/15-19,9-15]. Only in this way will the Inquiry ensure that the rights of CYP are meaningfully considered when any future health emergency, or similar crisis arises, and when public authorities frame future legislative and policy making initiatives, or take significant decisions, that impact on them.
9. The recommendations that the Commissioner proposes should be made are set out for convenience here, and elaborated upon, later in these submissions. The Commissioner requests the Chair to recommend that the Northern Ireland Executive, and/or where appropriate the UK government, ensure that:
  - a. the obligations contained in the UN Convention on the Rights of the Child ("**UNCRC**") are incorporated into Northern Ireland law, and into UK law as it pertains to Northern Ireland.
  - b. a statutory duty to consult with the Commissioner is enacted in a manner that renders that duty meaningful and useful.
  - c. a statutory duty be enacted to require public authorities to consult directly with CYP or otherwise directly incorporate the 'voice of the child' into its decision-making processes, as part of the process of creating "*a minister with responsibility for representing the interests of vulnerable groups in the future civil emergency decision-making structures*" [Module 2 Report, Recommendation 10: Civil emergency decision-making structures].
  - d. legislative protection from discrimination is provided for CYP in Northern Ireland that is at least equivalent to the protections that exist in the rest of the UK.
  - e. a statutory duty is enacted that requires the completion of Children's Rights Impact Assessments ("**CRIs**") where legislative or policy proposals are made that will have a significant impact on CYP, along with an accompanying obligation on public

authorities to collect data on the impact of its functions on CYP, and to provide that data on request to the Commissioner.

10. The Commissioner welcomes the Inquiry's process for monitoring the responses of the UK government and the devolved administrations to Inquiry recommendations, outlined in respect of its reports on Modules 1 and 2. He urges the Inquiry to adopt a similar approach to the recommendations made in respect of this Module. However, the Commissioner also urges the Inquiry, before it disbands and after the recommendation-monitoring process has completed, to assess the extent to which the Inquiry's recommendations in this Module have been addressed.

### **Incorporation of UNCRC into domestic law**

**Recommendation: The Commissioner requests the Inquiry recommend that the obligations contained in the UNCRC are incorporated into NI law, and into UK law as it pertains to Northern Ireland.**

11. The Inquiry has heard a wide variety of witnesses and Core Participants, from the Children's Commissioners themselves to NGOs, all testify that the UNCRC should be incorporated into UK domestic law [See, for example, Ferguson (Playing Out), Transcript 2/114/12; Anstey (Child Poverty Action Group), Transcript 3/95/12; Longfield (Former English Commissioner), Transcript 4/94/6, Cifuentes (Welsh Commissioner, Transcript 16/50/24-25], albeit as the Scottish Commissioner recognised, the incorporation of the UNCRC is "*still only a first step on [the] journey*" of enforcing children's rights [Transcript 16/5/25]. That the UNCRC is incorporated domestically is also a recommendation of the Northern Ireland Commissioner.

### **Incorporation and Devolution**

12. Northern Ireland has extensive devolved competences, relative to those of the other devolved administrations. Some of these areas of legislative competence have been devolved for considerable time, dating back to 1922 in many instances, including education, housing, health and social care. Therefore, it would be possible to incorporate the UNCRC in respect of matters that have been devolved to the Northern Ireland Assembly and Executive, separately from incorporation for the remainder of the UK, and without impacting on Westminster legislation in the field of reserved or excepted matters, or in a manner that impacts the sovereignty of Parliament. The parameters of what is constitutionally permissible have already been set by the Supreme Court's decision in the Reference by the

Attorney General and the Advocate General for Scotland – United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill [2021] UKSC 42.

13. This is not to say that the Commissioner is not supportive of the UNCRC also being incorporated in England and Wales, but simply to make the point that not only would it be extremely impactful for Northern Ireland but also feasible in that it is within the competence of the Northern Ireland Assembly to incorporate the UNCRC for devolved matters.

14. Such a recommendation would not be wholly inconsistent with the approach taken by the Northern Ireland administration to date in relation to the significance accorded to the UNCRC ‘domestically’. The Children’s Services Co-operation Act (Northern Ireland) 2015, whose main purpose is “to **require**<sup>1</sup> co-operation among certain public authorities and other persons to contribute to the well-being of children and young persons; to **require** the adoption of a children and young persons strategy”. That strategy is the Children and Young People’s Strategy of 2020 – 2030, which was published by the Executive on 22 January 2021 and by it, public administrators committed themselves to “taking into account the UNCRC” as provided by para 5.5, which provides in mandatory terms:

- *Departments will take into account the UNCRC and the recommendations in the 2016 Concluding Observations **in their policies, planning and service delivery.***
  - *Consistent with Article 3 of the UNCRC, the best interests of the child shall be a **primary consideration in all decisions and actions that affect children and young people.***
  - *Departments will work with the Northern Ireland Commissioner for Children and Young People to **promote greater awareness and understanding of the UNCRC.***
- [INQ000582983\_0029]

15. Whilst the incorporation of UNCRC in domestic Northern Ireland law is a different to the published ministerial commitments on the UNCRC, particularly given its implications for the enforcement of CYP rights, it is nonetheless entirely consistent with how the Northern Ireland government intends to act.

### **Incorporation and Reserved and Excepted Matters**

16. The Commissioner also submits that the Inquiry should recommend the incorporation of the UNCRC in respect of ‘reserved matters’ and ‘excepted matters’ under the Northern Ireland

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<sup>1</sup> All emphasis is added save where it appears to the contrary

Act 1998 i.e. matters that have not been devolved under the 1998 Act. It is logical to provide the same rights protection to Northern Ireland CYP irrespective of the source or origin of the legislative power being invoked. In any event, the importance of the UNCRC to making decisions affecting children's lives has long been accepted in central government, a fact recognised by Sir Gavin Williamson in his evidence when he stated: *“There was a cross-government commitment first made in 2010, and reiterated in 2018, to give due consideration to the UN Convention on the Rights of the Child when making legislation or policy affecting children”* [Transcript 10/127/6].

17. The Commissioner observes that given the clear unanimity of opinion amongst NGOs and the Commissioners, the most direct way to incorporate the UNCRC across all Northern Ireland law would be by way of Act of the Westminster Parliament, and such an Act could be drafted to apply to the jurisdictions overseen by all four statutory Commissioners. The example for such an Act is the Civil Partnership Act 2004.

#### **Likely Impact of Incorporation**

18. An issue that arose in evidence was whether the incorporation of the UNCRC would have made a difference to the management of the pandemic and the lives of CYP.

19. The Commissioner was clear in his evidence that he considered it would. In his witness statement, he offered the following view for example in relation to managing future pandemics: *“In terms of what could be done differently in any future pandemic, I have spoken previously about the importance of taking a child rights approach to decision making, to include the use of CRIAs. Decisions around public health were being made without adequate consideration of child rights and the use of CRIAs would have given the rights of children and young people a more prominent role in these life changing decisions. CRIAs would aid the consideration of both short- and long-term consequences of emergency policies for children. Another way a children and young person's rights approach could be incorporated would be to embed the UNCRC in emergency planning to ensure the plan is rights compliant”* [INQ000588092\_0059-0060, para 179].

20. Later in that witness statement, the Commissioner states that *“whilst the UNCRC has been ratified by the UK, NICCY calls for the full incorporation of the UNCRC into domestic law as a mechanism to fully realise the rights it provides. NICCY calls on the Executive to follow the successful example set by Scotland and incorporate the UNCRC into domestic legislation. Such a move would strengthen children's rights and illustrate the importance with which*

*child rights are viewed by those in power. It would also ensure the children's rights are placed at the heart of government and properly considered ahead of any decision that affects children and young people*" [INQ000588092\_0064, para 193]

21. The Commissioner notes the remarks of the Scottish Commissioner who stated, in relation to the incorporation of the UNCRC in Scotland in 2024, that *"some of the concerns that my witness statement outlines might not have occurred, or might not have occurred to the same extent, had the UNCRC (Incorporation) (Scotland) Act been in force"* [Transcript 16/5/19-22].
22. The Commissioner also notes the remarks of Counsel for the Welsh Government in her closing oral statement when reflecting on whether the duty on Welsh administrators had made a difference during the management of the pandemic. She stated that *"the evidence as a whole suggests that the legal framework in Wales and the regular consultation with organisations whose duty it is to support children, including the Children's Commissioner for Wales, did result in decision making which considered the rights of children and young people during the pandemic"*. She continued: *"In some cases, this led to different decisions being taken in Wales compared to the rest of the UK, and, in other cases, similar decisions being taken but, in the Welsh case, the government having considered the implications for children and young people carefully, substantively, and thought about mitigations"* [Transcript 16/139/L2-14]. This then is the core response to the question as to whether incorporation will make a difference.
23. The justification for the incorporation of any international human rights law treaty into domestic law – as can be seen with the European Convention of Human Rights brought 'home' through the Human Rights Act 1998, is that it provides a form of protection that can be used by individuals against the improper use of power, not that it will always lead to different decisions being made. Incorporation provides a legal basis for requiring a human rights-compliant assessment of the subject decision. Further, requiring the decision-maker to act in accordance with human rights law is likely to enhance the decision-making process. This point was made in the closing oral submissions on behalf of the Scottish Government, which incorporated the UNCRC into Scottish law in 2024, an act done *"to deliver a proactive culture of everyday accountability for children's rights across public services in Scotland"* [Transcript 16/150/10-12]. In practical terms, incorporation would shift the issue of accountability for decision making in relation to CYP to the time of the making of the decision, and not to a subsequent investigation or inquiry, such as this one.

24. The evidence of the Scottish Commissioner is important in this regard because she explained “*what that [incorporation] means is that children can go to court when their rights are breached, but, just as importantly, it changes culture and practice, hopefully to avoid the need for that action to have to happen.*” [Transcript 16/5/9-12]
25. In responding to the evidence of some witnesses that decisions had to be taken urgently, Article 39 explained the benefits that incorporation would bring as “*it’s precisely because a pandemic or a national emergency engenders panic in government and requires swift decision making that the structures and the guide rails need to be in place to ensure that children are not an afterthought or forgotten altogether, that their rights are not overlooked, and that government is required to listen to those who advocate for children. Incorporation of the UNCRC and the statutory obligation to consult with children’s commissioners will provide those guide rails*” [Article 39 closing oral submissions, Transcript 16/74/15-25].
26. Counsel for the Welsh Government in her oral closing submissions also indicated that the Welsh Government was receptive to the incorporation of the UNCRC, though reflecting on the limited competence of the Welsh Government to do so: “*The full incorporation cannot be achieved by the Welsh Government alone, because, of course, as you know, it can only legislate in respect of its own devolved powers, and there are other complexities where they don’t have the same devolved powers as the Scottish Government, for example.*” [Transcript 16/140/17-22].
27. With Scotland having incorporated the UNCRC in 2024, and Wales indicating that it intends to address the taking of such a step, it would be anomalous if Northern Ireland were to fall further behind the other devolved administrations in respect of this issue, particularly given the advantages in times of UK-wide crises of CYP being treated consistently.
28. A further issue raised by way of opposition to incorporation is that it is an unnecessary step and/or that it would place additional administrative burdens on public authorities.
29. This appears to be the thinking underlying the suggestion being pressed by Counsel for the Department of Education for England, in her closing oral submissions that those CPs urging the Inquiry to recommend the incorporation of the UNCRC, should review the debate in the House of Lords on 18<sup>th</sup> September 2025 in relation to amendments to the Children’s Wellbeing and Schools Bill [See, House of Lords, Hansard, Children’s Wellbeing and Schools Bill Volume 848: debated on Thursday 18<sup>th</sup> September 2025, Columns 2409-2433; Ms. Ward KC, Transcript 16/159-160/23-25,1-6]. These amendments sought, inter alia, to

include a duty on Ministers under that Bill to complete CRIAs. One amendment was framed to require the completion of CRIAs *“in relation to any legislative provision, policy decision, budgetary decision, or other decision of a strategic or operational nature that has or will have a direct or indirect impact on children’s wellbeing, social care or education”*. The purpose of such a CRIA was *“to secure better or further effect of the rights set out in the United Nations Convention on the Rights of the Child (UNCRC) [Amendment no 469].”* This proposed amendment and a related proposed amendment - no 470, which provided for a more general duty requiring Ministers to consider, protect and promote children’s rights as set out in the UNCRC, was withdrawn at the conclusion of the debate.

30. According to Baroness Blower who moved the amendments, they were proposed making it clear that they were addressing the UNCRC incorporation ‘debate’: *“These amendments would be important steps in complying with that recommendation [the 2023 recommendation of the UN Committee on the Rights of the Child that the UNCRC be incorporated into domestic law] and would also bring England closer to the protection of children’s rights provided for in Wales, Scotland and Jersey. They would add teeth to the Government’s aim of child-centred action across departments and facilitate the Government’s mission-led approach in the opportunity mission in particular. The duty on Ministers in Amendment 470 would ensure visibility of children’s rights and best interests in policy-making so that their needs and well-being were not overlooked. In line with Article 12 of the convention, it would mean listening to children so that they were heard and had their views respected”* [Baroness Blower, Column 2410].

31. The opposition to the amendments included: (1) that they *“would create a vast and costly administrative burden for very little additional value”*; (2) *“that any good government decision or action involves balancing some worthwhile upsides with at least some downsides. It is unrealistic to believe that there are decisions that are all positive, with no downsides”* and (3) *“that the public at large want government by elected representatives, not human rights lawyers”* [Column 2423 Baroness Spielmann].

32. Other objections were that few countries had taken the step of incorporation, and that doing so would create *“a straitjacket in effect on how we kind of evolve in terms of policy”* [Baroness Coffey, Col 2425] and that *“instead of enhancing a child’s education, it would further slow our ability to legislate and implement effectively”* [Earl of Effingham – Col 2429].

33. However, what is instructive is that the amendments were withdrawn, rather than defeated in a vote of the House, in response to what would appear to be assurances on behalf of the Government from Baroness Smith of Malvern in which she stated:

*“...we are continuing to work with policymakers across government to carry out CRIAs to analyse the impact of government decisions on children. It is a valuable tool, and the department has worked with civil society experts, for example, to develop a robust template, which was one of the suggestions made by the noble Lord, Lord Russell. We will continue work with children’s rights experts to promote children’s rights across government and upskill officials on the importance of considering children’s rights in policy-making and how best to utilise the assessment tool. However, while I recognise the importance of this work, assessments should be effective and proportionate. Each department should remain responsible for considering where these are required. To place a duty on all government departments to complete and publish child rights impact assessments for all decisions that affect children would be a significant and challenging undertaking. [Col 2430]*

34. Further, the Baroness reassured the House that *“where this Government consult children and young people and where we assess potential impacts of new policy and interventions on the very people that they are intended to serve, including through child rights impact assessments, these processes are neither superficial in their intent or execution nor intended to shield actions from judicial review”* [Col 2432]. She also offered a further reassurance that *“we will continue our work to ensure that child rights impact assessments will be delivered across government and that children’s rights and interests will be at the heart of decisions made by this Government. Having made those reassurances and commitments, she invited the proposers to withdraw the amendments”* which Baroness Blower, who had moved them, duly did [Col 2433].

35. The fact that the amendments were withdrawn on foot of, or in response to, the assurances given by the Minister is a matter of some importance in considering the arguments made against the amendments. It is not that CRIAs will not be conducted, or that there is opposition to the concept of the consideration of children’s rights in government per se. These reassurances are commitments that will give rise to procedural legitimate expectations in appropriate circumstances.

36. The Commissioner welcomes the recommendation in Module 2 that the UK government should introduce legislation to place child rights impact assessments on a statutory footing

in England and that the Northern Ireland Executive should consider an equivalent provision. However, the Commissioner wishes the Inquiry to make it clear that the Northern Ireland Executive **should also introduce such legislation, rather than merely considering its introduction.**

37. The commitment to complete CRIAs, and to consider children's rights, is a worthy one, honestly made. However, then converting that commitment to a legally actionable one adds no real further burden on public administrators. In relation to some of the other concerns, the Commissioner suggests that they are misplaced and do not arise: the exercise of completing CRIAs, and the application of children's rights in particular scenarios, involves public administrators evaluating evidence of the potential impact of future legislative and policy decisions and making balanced decisions on foot of that evidence, rather than being decisions 'made by human rights lawyers', as claimed. Ultimately, the courts in a Judicial Review will act as supervisors of the administrative decision, but that is a function that the courts will retain in any event, whether or not the UNCRC is incorporated.

38. However, the Commissioner wishes to be clear that the issue of the incorporation of the UNCRC into domestic law is a separate and distinct matter from placing CRIAs on a statutory footing. He respectfully suggests that nothing in the parliamentary debate of September 2025 undermines the competence of this Inquiry to address the issue of whether to recommend the incorporation of the UNCRC. Nor does this debate in relation to a Bill applying largely to education in England - though a limited number of provisions would apply to Northern Ireland and Scotland - preclude the Inquiry from recommending the incorporation of the UNCRC in Northern Ireland.

### **Statutory Duties ensuring meaningfully public sector engagement with the Northern Ireland Commissioner**

**Recommendation: The Commissioner requests the Inquiry to recommend that a statutory duty to consult with the Commissioner is enacted in a manner that renders that duty meaningful and effective, along with ancillary statutory duties.**

39. The evidence of the Commissioner, and other witnesses to the Inquiry, was that none of the Children's Commissioners were consulted as the pandemic approached, or as it unfolded. The failure to do in relation to the Northern Ireland Commissioner is at odds even with the commitment in the Children and Young Person's Strategy 2020-2030 para 5.5, in which the Northern Ireland Executive stated that "*Departments will work with the Northern Ireland*

*Commissioner for Children and Young People to promote greater awareness and understanding of the UNCRC*” [INQ000582983\_0029].

40. Other witnesses stated that consultation with the relevant Children's Commissioner was a very important feature of the children's rights protections for the future: “*Consultation with the Office of the Children's Commissioner is absolutely an absolute requirement for future pandemics*” [Homden (Coram), Transcript 2/58/13]; “*Incorporation of the UNCRC **and a statutory obligation to consult with the Children's Commissioner** in matters of policy and legislation affecting children would address these lacunae and would protect the rights of children in the event of a future pandemic*” [Article 39 closing submissions, Transcript 16/73/17].
41. The Commissioner's principal statutory aim is “*to safeguard and promote the rights and best interests of children and young persons*” [Article 6, Commissioner for Children and Young People (Northern Ireland) Order 2003]. That role can only be meaningfully fulfilled if the Commissioner can articulate CYP's human rights concerns to the Executive and relevant Northern Ireland public authorities. However, the evidence of the management of the pandemic is that absent a requirement to consult with the Commissioner and his office, public authorities will not do so, as is identified in the Witness Statement of Commissioner Yiasouma, and the oral evidence of Commissioner Quinn. Indeed, that was the experience of the other Commissioners in the UK [See Cifuentes (Welsh Commissioner), Transcript 16/19/20-22; 16/43/20; 16/44/16; and Baroness Longfield (Former English Commissioner), Transcript 4/7/3-20 & 4/15-17/21-2 re general practice pre-pandemic].
42. Ensuring that there is meaningful and substantive engagement between the Commissioner and Northern Ireland public authorities will require the development of other associated measures such as:
- a. A statutory duty to consult the Commissioner
  - b. A duty to respond to the Commissioner's statutorily required review reports
  - c. [Re] establishing a 'Minister for Children'
  - d. A statutory duty to consult with CYP and to provide CYP with enhanced protection from discrimination

### **A Statutory Duty to Consult NICCY**

43. Given the almost total lack of consultation with the Commissioner across the Covid-19 period [see Witness Statement of Koulla Yiasouma INQ000588091\_0017 para 48, re

closure of schools March 2020; and INQ000588091\_0036 para 100, re cancellation of exams] as opposed to information sharing [for which see the same statement, INQ000588091\_0032-0033 para 90], it is necessary to enact a statutory duty that requires consultation with the Commissioner when legislative and policy changes are being considered that are likely to have significant impacts on CYP.

44. Stated commitments by public authorities that they will do so when appropriate, with 'appropriateness' being determined by Northern Ireland public authorities, will not ensure the engagement with the Commissioner or NICCY that is required to give voice to CYP concerns and issues actually takes place, nor will it ensure that there is adequate and timely consideration of CYP rights when decisions are to be made that will impact on them. The Commissioner's experience of the management of the pandemic and the evidence adduced by the Inquiry, particularly in this Module, make that clear.
45. Indeed, the experience of the Commissioner's predecessor, Koulla Yiasouma, of the poor response by departments of the Northern Ireland Executive to the NICCY Covid-19 report, a '*New and Better Normal*' [INQ000147201, INQ000147202, INQ000147203], underscores the need for statutory obligations to consult. She states in her witness statement at para 157 that she "*was disappointed with the quality of information and feedback provided to NICCY by government and officials*" and at para 159 gave as an example the process of working on the report and the lack of departmental engagement [see INQ000588091\_0052 to 0053]. As the report was available by July 2021, the same urgency that had applied at the time of the initial management of the pandemic did not apply, and the Commissioner expected much more engagement across public administration by that time.

#### **A Duty to Respond to NICCY's statutorily required reports**

46. The current Commissioner, Chris Quinn, gave evidence in the Module on the numerous review reports compiled in accordance with the duty under Article 24 of the Commissioner for Children and Young People (Northern Ireland) Order 2003. This duty requires the Commissioner to keep under the review the working of the that Order and to make reports to its sponsor department, the Department for Communities (prior to 2016 it had been reporting to the First Minister and Deputy First Minister) every 3 years on its adequacy, which may contain recommendations on any necessary or desirable amendments. Short of a bare acknowledgement that his report, and those of his predecessors, had been received, no substantive responses have ever been received, despite the last such report having been submitted over 2 years ago in October 2023 and, significantly, post pandemic [Transcript

16/8-10/18-3]. Clearly, an essential purpose of such a reporting duty is to keep the NI government informed about the operational effectiveness of the legislation by which the Commissioner exercises the important function of safeguarding and promoting the rights and best interests of CYPs. Accordingly, the lack of engagement with the Commissioner is telling. The tendering of the report should engender discussion and debate between the Commissioner, the Department for Communities and relevant Departments, such as the Departments of Health (“DoH”), Education (“DE”), Justice (“DoJ”), and The Executive Office (“TEO”) on how to make improvements to the legislation that enables the Commissioner to better fulfil his role. This has not occurred.

47. The Commissioner is, therefore, of the view that whether the Department for Communities or any given Department or Minister will engage with the Commissioner in relation to Article 24 review reports cannot be left to Departmental or Ministerial discretion. Rather, statutory provisions that require engagement with the Commissioner about those review reports is required. Furthermore, the Article 24 ‘duty to report’ should have a concomitant duty inserted into it, requiring the Department for Communities and relevant Ministers and their Departments to respond substantively to the Commissioner within a specified period on each of the recommendations made in an Article 24 review report. Accordingly, the Commissioner urges the Chair to make such a recommendation.

### **Minister for Children**

48. The Inquiry has also heard evidence from witnesses about the necessity of having the interests of CYP represented at Cabinet level, or the provision of a similar mechanism, to ensure there is a focus on children’s rights and interests at senior levels of government [See CROs closing, Transcript 16/66/6; Article 39 closing, Transcript 16/70/22; Longfield (Former English Commissioner), Transcript 4/85-86/18-2; 4/95-96/24-1]. The essence of the argument in favour of this development was best encapsulated by Baroness Longfield when she stated that there “*was no one in the decision-making quad or in the cabinet table that were looking particularly at children’s best interests.*” [Transcript 4/85/18-20] The operationalisation of that recommendation at Westminster level is a matter on which the Commissioner does not offer a view, but he does make the submissions below in relation to Northern Ireland.

49. As the Commissioner outlined in his evidence, when his office was established in 2003 Northern Ireland had a Children’s Minister in the form of a Junior Minister in the Northern Ireland Office (“NIO”) who headed the Children and Young Person’s Unit within the NIO

[Transcript 16/8/2-11]. When devolution was restored in 2007, responsibility for the Children and Young Person's Unit was placed with what was then the Office of the First and Deputy First Minister ("OFMDFM"), now TEO. That CYP Unit continued in existence until the public sector reform of 2016 pursuant to the Departments Act (Northern Ireland) 2016 and the Departments (Transfer of Functions) Order (Northern Ireland) 2016, which implemented the "Fresh Start" agreement. The goal of this restructuring was to streamline government, gain efficiencies, and create departments with broader, more aligned functions. Part of those changes involved the transfer of Departmental responsibility for the Commissioner and his office to the newly formed Department for Communities, and the transfer of documents in relation to the CYP Unit to the DE [Witness Statement of Claire Archbold, TEO, INQ 000651557\_0004, para 14]. The DE now has an Early Years, Childcare and Children and Young People's Strategy Directorate, one of six within the Education and Children's Services Group (there being three Groups within the Department along with the Inspectorate). One of the 'teams' within the Early Years, Childcare and Children and Young People's Strategy Directorate is the 'Children's and Young People's Strategy Team', which is responsible for "*coordinating, monitoring and reporting on the Executive's Children's and Young People's Strategy, leading on UNCRC issues, taking forward a project to facilitate the participation of young people in decision making and play policy*" [Witness Statement of Baker and Browne, DE, INQ000235720\_0011].

50. Additionally, the Commissioner notes that the evidence of the DfC, in its witness statement, is that there is a wide range of children about whom the Inquiry is interested, for which Departments other than DfC are responsible, such as the DoH and the DE. These children include those with Special Educational Needs and Disabilities, those in contact with social care, and those from different ethnic groups. [See for example the Witness Statement of Colum Boyle, DfC, INQ000584951\_0022, para 2.12.3]. Therefore, on DfC's view of matters, the focus on, and responsibility for, children and aspects of their lives is distributed between at least three different Departments.

51. In any event, the previously acknowledged benefit of having a singular, co-ordinated focus on CYP in Northern Ireland appears to have been lost in the effort to achieve greater efficiencies through Departmental restructuring. In the Commissioner's oral evidence, he put these developments in the following way: "*the regret that I have is that many of the mechanisms and vehicles that were set up as part of the Good Friday -- Belfast Good Friday Agreement we have rolled back on them. Even in terms of the positioning of my office, I am no longer positioned within -- centrally within the architecture of Northern Ireland Government, which is -- is not compliant with Paris Principles*" [Transcript 16/11/5-12].

52. TEO does retain some responsibility for CYP, and it also has two junior ministers appointed within it. Those junior ministers have a wide range of responsibilities including 'children and young people' Additionally, TEO send a representative to NICCY's Children's Champions forum. That representative is known as TEO's 'Children's Champion' who *"regularly engages with the Northern Ireland Children's Commissioner and other departmental children's champions through Children's Champions meetings facilitated by the NI Commission for Children and Young People (NICCY) and participation forums. These engagements focus on issues pertinent to young people and will continue to do so as work continues to progress on media literacy."* [Witness Statement of Claire Archbold, TEO, INQ000651557\_0007 para 23].

53. The Commissioner considers that it would be feasible to designate one of the two current junior ministers as a Minister for CYP. That Junior Minister could oversee a CYP Unit, which assistance from TEO's Children's Champion, who at present is a senior civil servant, and already charged with engaging with the Commissioner as well as other Departmental children's champions and therefore could develop a liaising role in relation to CYP issues and interests. That CYP Unit would have responsibility for overseeing the implementation of the Children's and Young Person's Strategy 2020-30, and future versions of that Strategy, as well as the observation of the UNCRC in Northern Ireland. This would entail removing that responsibility from the Department of Education where it currently sits, within the Children's and Young People's Strategy Team.

54. The Commissioner does not expect the Chair to develop the requested recommendation to that level of detail, but to demonstrate that whilst some statutory amendment may be required it would not disturb the balanced arrangements within the Executive, agreed between the parties as part of the Belfast Good Friday Agreement, and subsequent related addendum agreements, and constituted in the Northern Ireland Act 1998.

55. The Commissioner notes the response of the Northern Ireland Executive to "Recommendation 2: Cabinet Office leadership for whole-system civil emergencies in the UK" made in Module 1 namely that the *"UK government should abolish the lead government department model for whole-system civil emergency preparedness and resilience; and require the Cabinet Office to lead on preparing for and building resilience to whole-system civil emergencies across UK government departments."* In its response the Northern Ireland Executive state: *Mirroring the approach of Cabinet Office, TEO will explore taking on an enhanced co-ordination role on the planning and mitigation of broader societal*

*impacts, while other departments or the UK government address specific risks within their remit, which will also support the broader decision making around enhanced co-ordination.* This approach by the TEO indicates how it **can** co-ordinate matters within the context of Northern Ireland constitutional limits.

56. Accordingly, the Commissioner asks the Chair to recommend the establishment (or re-establishment) of structures at Northern Ireland Executive level that will ensure the effective oversight of CYP's rights.

### **Future Proofing the Protection of CYP Rights during Suspension of Northern Ireland Assembly and Executive**

57. A feature of the evidence adduced in this Module, and indeed in Module 2C, is that both politicians and public servants sought to explain the lack of preparedness of the Northern Ireland administration for the pandemic by reference to the suspension of the Assembly and Executive from 2017 until 2020. Unfortunately, suspension of the devolved administration has occurred frequently since devolution was first introduced under the Northern Ireland Act 1998.

58. The Commissioner respectfully submits that the recommendations made by this Inquiry should be framed to anticipate such a scenario in the future. The recommendations therefore should ensure that the legal and administrative mechanisms that are created pursuant to these recommendations continue in existence during any such suspension, when the Secretary of State for Northern Ireland, and the NIO, acquire constitutional responsibility for Northern Ireland. The Commissioner notes that the Inquiry has anticipated this type of problem more generally in the recommendation in its report to Module 2 entitled "*Recommendation 9, Delegated powers in Northern Ireland in an emergency*".

59. Therefore, the role of 'Minister for Children' outlined above should revert to the NIO during such periods of suspension. During that period of suspension, the NIO-based 'Minister for Children' should have the authority to direct the CYP Unit in the TEO. If not, the responsibilities of the CYP Unit must be transferred to the NIO until devolution is restored.

60. The Commissioner does not intend these suggestions to be prescriptive, or to be the only way in which the aim of having a singular, co-ordinated, focus on CYP within the Northern Ireland devolved administration might be achieved but to indicate the issues that need to be addressed in framing the requested recommendation.

61. The purpose of a recommendation of the Inquiry in relation to this issue should be to create a structure that ensures that a ministerial role, with a supporting administrative unit, is dedicated to championing the rights and interests of CYP in Northern Ireland, whether or not the Northern Ireland Executive and the Assembly are functioning. In the same way that the Inquiry's Recommendation 9 in the Module 2 report seeks to ensure that there is no "administrative vacuum" in the future, should a pandemic strike Northern Ireland when the institutions are suspended, equally there should be no 'children's rights' vacuum during such a period of suspension.

### **A duty to consult with CYP and enhanced protection of CYP from discrimination**

**Recommendation: The Commissioner submits that the Inquiry recommend that a statutory duty be enacted to require public authorities to consult directly with CYP or otherwise directly incorporate the 'voice of the child' into its decision-making processes. The Commissioner further requests that the Inquiry recommend that legislative protection from discrimination for CYP in Northern Ireland is at least equivalent to the protections in the rest of the UK.**

62. The Commissioner's position is that merely requiring Northern Ireland public authorities to consult with the Commissioner, as a mechanism of realising CYP's rights, would not be sufficient. To ensure meaningful implementation of children's rights, there must also be a process of engaging with CYP themselves. The Children's Services Co-operation Act (Northern Ireland) 2015 and the Children and Young People's Strategy of 2020 – 2030 both require all Departments to consider the interests of CYP in relation to the services they are to provide, but that is an entirely different process from, and cannot be a substitute for, hearing directly from CYP. One witness arguably captured this point when she stated: *"I think we need to find a way of also having the lens that starts with the child, starts with the child and their families, and thinks about what are the needs, what are the drivers of vulnerability and what does that mean in terms of protective public services? Because I think that helps you follow the trail, if you like, through to decisions about which of the services that you need to try to protect, and if you can't, what the risks are that you need to be prepared to mitigate, or the recovery plan for when things ease"* and *"but actually for me it's much more about how do you approach understanding the needs of children and young people? ... I think, for me, a service lens and a sector lens only gets you so far."* [Morris (Former Director General, Dept for Education), Transcript 9/65-66/9-19,2-20].

63. The Inquiry has heard directly from CYP and had the benefit of their serious and insightful comments. It is difficult to see why government would wish to deprive itself of the views of such effective advocates on the impact of government decision-making on CYP, what they wish to see happen, and why.
64. In fact, there was provision for just such a feature to be developed in the original administrative mechanisms developed when the office of the Commissioner was established in 2003. The Children and Young People Strategy for 2006-2016, the first such strategy, made provision for the participation of children and young people in a variety of ways including a Participation Network, Participation Hub, Northern Ireland Network for Youth, and District Youth Networks [Our Children and Young People – Our Pledge – A Ten Year Strategy for Children and Young People in Northern Ireland 2006 – 2016, ‘The involvement of children and young people through implementation’ INQ000549344; Chris Quinn (NI Commissioner), Transcript 16/8/3-11]
65. As part of the restructuring in 2016, it appears that the separate CYP Unit and the related mechanisms to make provision for the participation of CYP narrowed into the creation of the Children’s Team within the Department of Education. Further, if this Children’s Team has taken “*forward a project to facilitate the participation of young people in decision making and play policy*” as indicated in the written evidence of the DE [Witness Statement of Baker and Browne, INQ000235720\_0012], then no evidence of that has been adduced in this Module, and no evidence has been provided of the participation of young people in decision-making in relation to the management of the pandemic. [See for example Witness Statement of Koulla Yiasouma, INQ000588091\_0058 para 172].
66. It is worth highlighting the lack of governmental engagement with CYP during the pandemic that was referred to by Koulla Yiasouma at INQ000588091\_0058, para 173-174. A joint press conference for children was eventually organised in 2021 but cancelled prior to it taking place due to the political parties not wishing to hold joint engagements. It is noted that the Module 2 Report, para 12.100 highlights: “*The evidence heard by the Inquiry indicated that inadequate steps were taken throughout the pandemic by both the UK government and the Northern Ireland Executive to address the need to communicate effectively with children*”. Sadly, whilst Module 8 heard evidence that government places great import in the best interests and well-being of CYP, a recent example illustrates that nothing has changed in Northern Ireland. At a World Children’s Day event organised by NICCY that took place at Stormont on 20<sup>th</sup> November 2025, the First Minister and Deputy First Minister were scheduled to attend and participate in a panel answering questions from a cross section of

children from across the province. The day before the event, they informed NICCY they could not attend, and did not provide replacements.

67. Change is therefore required for the future. Effective mechanisms need to be created to allow CYP to be consulted with directly. Given the Commissioner's submissions on the requirement for a 'Minister for Children', preferably within TEO and supported by a CYP Unit, he suggests that it would be sensible to also place such mechanisms there.

68. As regards the issue of enhanced protection of CYP from discrimination, a number of witnesses highlighted the fact that being a child is not a protected characteristic within the Equality Act 2010. [See for example Ferguson (Playing Out), Transcript 2/102/10-14; 2/114/23-25; Wong (Clinically Vulnerable Families), Transcript 3/140/16-22]. Children in Northern Ireland are in an even weaker position as the Equality Act 2010 does not apply there and outside the specific areas of employment, vocational training and further/higher education, there is no legal protection in Northern Ireland against age discrimination in accessing goods, facilities or services[See ECNI and NICCY, 2012 report on '*Proposals for Reform; Strengthening Protection for all Ages Ending Age Discrimination in the Provision of Goods and Services*' INQ000549343]. In those circumstances, the Commissioner seeks a recommendation by the Chair for legislative protection from age discrimination be enacted to cover the access to goods, facilities, and services.

### **Children's Rights Impact Assessments (CRIAs) and Children's Rights Impact Evaluations (CRIEs)**

**Recommendation:** The Commissioner requests that the Inquiry recommend that a statutory duty be enacted that requires public authorities to complete a Children's Rights Impact Assessment (CRIA) where legislative or policy proposals are made that will have a significant impact on CYP and a Children's Rights Impact Evaluation (CRIE) following implementation.

Such a duty would also require public authorities to gather data, in relation to the operation of their functions, pertinent to the conduct of CRIAs and CRIEs.

Lastly, the Commissioner should have a statutory power to request data, similar to that afforded the English Commissioner in Section 2F, Children Act 2004.

69. CRIAs formed a recurring feature of the evidence adduced in the Inquiry. The Commissioner notes, and warmly welcomes, the terms of Recommendation 7 in the Module 2 report, namely that: "*The UK government should introduce legislation to place child rights impact*

*assessments on a statutory footing in England. The Northern Ireland Executive should consider an equivalent provision.*" However, from a Northern Ireland perspective, the recommendation appears only to require that a CRIA statutory duty be 'considered', in contrast with the recommendation directed to the UK government that it 'introduces' such a duty. The Commissioner considers that the recommendation directed to the UK government is more forthright than that directed to the Northern Ireland authorities. Consequently, the Commissioner would welcome a more robustly worded recommendation directed to the Northern Ireland Executive.

70. Further, as noted elsewhere in these submissions, despite the existence of a statutory duty to conduct equality impact assessments ("**EQIAs**") under section 75, Northern Ireland Act 1998, the Module 2 report records the almost complete failure of the Northern Ireland Executive to observe that duty during the management of the pandemic [Module 2 Report, para 10.97-98]. This is a rather shocking failure given that the Section 75 duty had been in place for over 20 years when the pandemic struck. This evidence should inform the approach the Inquiry takes to considering how to frame recommendations about CRIAs and CRIEs in this Module.

71. Clearly, public authorities in Wales must perform CRIAs, and did do so during the Covid-19 period. Witnesses stated that a statutory duty requiring their completion would provide "*a framework for children's rights to be understood and acknowledged and to understand what impact policies and legislation will have on children*" [Anstey (Child Poverty Action Group), Transcript 3/95/16], and would provide a systematic approach to assessing whether children's rights have been observed [Homden (Coram), Transcript 2/58/7].

72. Professor Steve Turner President of the Royal College of Paediatrics and Child Health expressed the strong view in his statement that "*regular children's rights impact assessments should be carried out and published to accompany all policy decisions or legislation changes which impact them*" [INQ000651508\_0023 para 49.3]. When asked to expand on this point in oral evidence, he stated: "*I think because it would help people think "child" ... it would remind people not to forget children. Children do have rights, and these need to be considered in amongst the rights of the rest of the population.*" [Transcript 7/103/11] Baroness Longfield captured the particular value of CRIAs in the context of a pandemic, when she stated that they "*are crucial...if there had have been a thorough children's right impact assessment across all of the aspects of the strategy which, in my view, was lacking but should have been there, for children and for vulnerable children... then that would have been an ability to be able to consider those vulnerable children, to*

***ensure that the impacts were proportionate, and ensuring that the measures that were put into place didn't put any children at greater risk than they were, and in fact that those risks were ameliorated.*** In her view, their absence constituted “***a huge gap in the machinery of government that should have been there...But although there were occasional impact assessments, they didn't have the status... weren't given the importance by ministers and government leaders that would mean that they would have the teeth to ensure that the resources followed.***” [Longfield (former Commissioner England), Transcript 4/89-90/8-4]

73. The resistance to enacting a statutory duty to complete CRIAs (and CRIEs) appears to be that it would create an extra administrative burden on public authorities where those public authorities have already committed themselves to completing them where relevant. However, it is difficult to see how a statutory duty that mirrored such a commitment would add to the workload involved. Further, if a commitment to conduct CRIAs and CRIEs where appropriate is genuinely made, then there should be no objection to ‘converting’ that commitment into a statutory one.

74. A further point of resistance appears to question whether the completion of a CRIA would have made a difference to the decisions made during the management of the pandemic. The Commissioner’s view is that such an argument misses the point. A CRIA will evaluate the impact of a proposed measure on CYP, and then, where appropriate, propose mitigations to reduce the adverse impact on CYP. As such, a CRIA is an exercise in considering CYP rights in a focussed and methodical way and requiring the person completing it to explore creative ways to reduce the impact on CYP. The decision maker must, in effect, show what Charlie Taylor of the Prison Inspectorate referred to as ‘imagination’ when making such decisions. He was giving evidence about the approach taken in Rainsbrook STC when new child prisoners were admitted during the pandemic. He explained that on admission, “*rather than being a little bit more creative*”, they were isolated for up to two weeks, instead of being placed in a ‘bubble’ with other CYP admitted at the same time, as had occurred in some of the YOIs [Transcript 2/66/13-25].

75. Given that the use of CRIAs in Northern Ireland was virtually non-existent during the relevant period, any commitment to complete them in the future where appropriate rings hollow.

76. In the Commissioner’s view, placing an obligation to complete CRIAs on a statutory basis is the only way to ensure that, where a significant decision is to be taken with respect of CYP,

detailed, directed, and close scrutiny will be given to that proposal against the range of children's rights, with solutions offered to mitigate the impact on CYP. The companion to a CRIA, which is completed prior to new policy or regulation, is a CRIE, which is completed to evaluate the impact once the policy is put into operation or the regulation in force. To fully give effect to the need to consider CYP rights, the Commissioner submits that both are required so that there can be appropriate learning and necessary policy adjustments and improved regulation.

77. In framing its recommendation about CRIAs and CRIEs, the Commissioner urges the Inquiry to direct the Northern Ireland Executive to frame the statutory duty to ensure that the duty to conduct CRIAs and CRIEs continues to apply in emergency situations, such as those under scrutiny in this Inquiry. This is because the clear evidence adduced in Module 2 was that EQIAs under Section 75 Northern Ireland Act 1998 were not conducted in relation to steps taken by the Northern Ireland Executive during the management of the pandemic, when arguably they ought to have been [Module 1 Report, para 10.97-8, and also para 10.118, recording the view of Jenny Pyper, Interim Head of Northern Ireland Civil Service from December 2020 to August 2021, that “*she considered that the Executive Covid-19 Taskforce (Northern Ireland), instituted in December 2020, should have had a specific equality workstream*”]. In future scenarios where CYP rights are engaged, the duty to perform CRIAs (and CRIEs) must not become the ‘dog that did not bark’.

### **CRIAs and Data**

78. The usefulness of CRIAs (and CRIEs) is largely dependent upon the data on which they are based. John Swinney recognised in his evidence that for CRIAs to be effective, the public authority must have access to appropriate data [Swinney (First Minister Scotland) Transcript 8/195/13-17]. The issue of inadequacy of datasets in relation to vulnerable groups, including those with disabilities and CYP, is dealt with extensively in the Module 2 report, which concludes that: “*The lack of comprehensive, equality-disaggregated data led to a general failure by the UK government and devolved administrations to understand who was most vulnerable to the pandemic and how the governments’ interventions could be better calibrated*” [Module 2 Report, para.10.48].

79. Two ‘lessons learned’ in relation to data collection, and outlined in the Module 2 report, are that administrators must collect reliable and timely data and that the data must be presented to decision-makers [Report Module 2, Lessons 9 and 10, paras 15.32 and 15.38]. The issue

of data also forms a central part of Module 2's Recommendation 12 regarding taskforces: *"The response to a future whole-system civil emergency should be coordinated via central taskforces in each of the UK, Scotland, Wales and Northern Ireland, with responsibility for the commissioning and synthesis of advice, coordination of a **single data picture** and facilitation of decision-making processes."*

80. The evidence adduced in relation to data collection in Northern Ireland chimes with the overall assessment of the Inquiry on the issue of data collection generally. Thus, the Module 2 report records that *"The Department for Communities (Northern Ireland) did not seek systematically to gather information or data specifically relating to the impact of measures on vulnerable or at-risk groups of people"* [Module 2 Report, para.10.117], which includes CYPs. The poor state of data collection was confirmed in evidence, with the former Permanent Secretary of the Department of Education in Northern Ireland accepting that *"the former Children's Commissioner for Northern Ireland has made the point that during the pandemic there was a considerable lack of disaggregated data available on children by age or other characteristics that made them particularly vulnerable"*, [Transcript 11/161/3-7].

81. Furthermore, Northern Ireland authorities were also poor at collecting pandemic-related data to inform and improve its responses into the future. The former Permanent Secretary of the Department of Education acknowledged the failings in relation to data and agreed with the Inquiry's senior counsel *"that really, the department...had no real information about the numbers of vulnerable children"* [Transcript 11/160/9-11]. The lack of data also featured in the closing oral submissions on behalf of the present Commissioner, when counsel pointed out, in relation to 'recovery plans' for Northern Ireland CYP, that *"It's not even clear that there is the data to know exactly who has been affected and how. And without that, it's difficult to see how there can be any effective recovery plans to help them"* [Transcript 16/115/14-17].

Therefore, in tandem with the obligation to perform CRIAs and CRIEs where relevant, there must also be a duty on public authorities to collect data in relation to CYP and on the impact of their functions and policies on CYP. This data would form some of the key evidential material to be considered when completing a CRIA or a CRIE.

82. However, the collection of data is one matter. Making it available is another matter. As the 'Lessons Learned' section of the Module 2 report explains, and has been outlined above, useful data must also be presented to decision makers [Module 2 Report, para 15.38]. The availability of robust data is central not only to the completion of CRIAs and CRIEs but also

to the efficient functioning of the Commissioner's office. Such data can be used by the Commissioner to inform the statutory functions of the office.

83. During evidence, it became clear that the Commissioner lacks the power to seek data from public authorities that his English counterpart enjoys. This difference is relevant to the performance of his functions and those of his office and would be relevant to the proper conduct of CRIAs. In evidence, Baroness Longfield highlighted what she regarded as the English Commissioner's "*highly useful power*" to require a public authority to provide data, [Transcript 4/5/19-25]. This power appears at Section 2F, Children Act 2004, which provides that "*any person exercising functions of a public nature must supply the Children's Commissioner with such information in that person's possession relating to those functions as the Commissioner may reasonably request for the purposes of the primary function or the function under section 2D*". The primary function of this provision being "*promoting and protecting the rights of children in England*". The Commissioner does not have an equivalent or similar power, and he considers that having such a power would enhance the Commissioner's capacity to meet his statutory obligations allowing him, for example, to gather relevant data on a regular or rolling basis on the impact on CYP of policies on their human rights. The Commissioner, therefore, seeks a further recommendation that an equivalent power to Section 2F be enacted within the Commissioner for Children and Young People (Northern Ireland) Order 2003.

### **Monitoring Implementation of the Inquiry's recommendations**

**Recommendation: The Commissioner commends the Inquiry's intention to ensure the implementation of its own recommendations by monitoring the actions and steps taken by public authorities to do so. However, the Commissioner requests that the Inquiry consider the extent to which the recommendations made in this module have been addressed and considered by the Northern Ireland Executive and/or the UK government, as appropriate, before it concludes finally.**

84. The Commissioner is heartened that the Inquiry is conscious of the need to ensure that the efforts expended to date in understanding how the pandemic was managed, and, crucially, what lessons may be learned for the future, bear fruit, and that if accepted its recommendations are addressed by government and public authorities.

85. Before finally concluding its functions, however, the Commissioner recommends that the Inquiry produce an audit of, or otherwise assess or report on, the extent to which its

recommendations made in this Module have been properly addressed and considered by the UK government or Northern Ireland Executive, as appropriate. This approach can, of course, be taken in respect of all jurisdictions overseen by the respective Children's Commissioners.

## Conclusion

86. It is correct that the final thoughts are left to the CYP who have assisted the Commissioner in his work in terms of this Inquiry. Members of NICCY's Youth Panel contributed to powerful testimony in both the Commissioner's opening and closing statements during the public hearings. When asked to review these submissions to assure they aligned with their views and wishes, the responses were equally powerful. Seren (13 years old at the start of the pandemic and living in a Clinically Vulnerable Family) touched on the points made above in terms of importance of collating proper data *"If you don't know we exist, how can you support us or consider our needs? The decisions made were largely seen as black and white, with little to no consideration for CYP and the complexities of their lives"*. Aoife (\*not her real name, 13 years old at the start of the pandemic) confirmed *"the recommendations are what I would also recommend"*.
87. Finally, Elodie (10 years old at the start of the pandemic) commented that it is *"so important to me as a young person to see the recommendations for the future. The most important outcome to me would be that the failings of our national and local government can never be allowed to happen again"*. When discussing how the UNCRC is currently incorporated in Scotland and not other parts of the UK, she states *"It is fundamentally unequal and unfair and requires immediate change"*. She concludes with *"As children, we are always taught to take accountability for our actions and to learn from our mistakes. By incorporating the UNCRC and undertaking to provide a national Children's Cabinet Minister, the government will help give hope to us young people that they also are willing to take some accountability and to learn from their own mistakes. It is critical for our future"*.
88. Incidentally, the CYP consider the conclusion of the Chair in the Module 2 report, para.15.42 to be impactful: *"The UK government and devolved administrations owe a duty to their people to ensure that we are as well prepared as reasonably possible to meet any new threat. The cost of not doing so would be immense. More importantly, as a nation, we owe it to those who lost their lives, as well as those who continue to live with the consequences, direct and indirect, of the Covid-19 pandemic"*.

89. It is crucial that the need for change and improvement identified by this Module is acted upon and the Commissioner believes that the recommendations outlined above would go some way to addressing the serious faults and omissions that caused such disastrous and long terms impacts on the children and young people of these islands.

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**28<sup>th</sup> November 2025**