



## **Key Point briefing to the Education Committee**

### **Response to Consultation on Cross-Departmental Covid-19 Vulnerable Children and Young People's Plan**

**Children's Law Centre  
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The Children's Law Centre is an independent charitable organisation established in September 1997 which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and every child can achieve their full potential.

Our organisation is founded on the principles enshrined in the United Nations Convention on the Rights of the Child (UNCRC), in particular:

- Children shall not be discriminated against and shall have equal access to protection.
- All decisions taken which affect children's lives should be taken in the child's best interests.
- Children have the right to have their voices heard in all matters concerning them.

We offer training and research on children's rights, we make submissions on law, policy and practice affecting children and young people and we run a legal advice/information/representation service. We have a dedicated free phone legal advice line for children and young people called CHALKY and provide legal information through an online platform known as 'REE' and legal advice through 'REE Live Chat'. We also undertake strategic litigation to vindicate children's rights.

From its perspective as an organisation which works with and on behalf of children, both directly and indirectly, the Children's Law Centre is grateful for the opportunity to engage with the Education Committee on the consultation on the Cross-Departmental Covid-19 Vulnerable Children and Young People's Plan.

## Introduction

The Children's Law Centre (CLC) has shared our full response to the Cross-Departmental COVID-19 Vulnerable Children's Action Plan with the Education Committee. The following information is a summary of the key points. For further detail on the issues below, please refer to the full consultation response.

## Monitoring and Reporting of the Plan – Equality Duties

1. Equality duties owed by public authorities remain in force and become even more important during the Covid-19 pandemic period. The Equality Commission have emphasised the importance of discharging Section 75 duties during the pandemic in their [Advice Note](#) for public authorities dated 21/04/20. CLC have not have sight of an initial Screening/Screening assessment, which should have been published alongside the Action Plan as part of this consultation. Given the clear evidence gathered by CLC and others over the last 8 months, there is significant potential for differential adverse impact and therefore this Action Plan should have been screened in and a full equality impact assessment carried out prior to consultation to ensure it is fit for purpose and to enable mitigation of any adverse impact.
2. CLC do not believe the Departments have complied with their statutory equality schemes, including that they have failed in their duty to consult with all stakeholders and critically with those directly affected i.e. with vulnerable children and young people and their families. The Departments have deprived themselves of the opportunity to be fully informed when developing and operating this Action Plan, which appears to have been operational during the currency of this consultation. Acting on partial information, the Departments may have in fact exacerbated inequalities for some of the most vulnerable children by diverting resources away from them.
3. CLC believes that the ongoing crises affecting vulnerable children and their families, including threats to life and health, constitute serious and sustained equality and human rights abuse. We believe this deeply concerning situation has been caused as a consequence of inadequately screened government policies, leading to actions and omissions which restrict access to essential services such as specialist education and respite.
4. The Children's Law Centre is currently extremely concerned about the serious ongoing equality impacts which we are now witnessing as a result of persistent failure to systemise the collection of and to act upon relevant and timely information about impacts of government policies upon children with disabilities in Northern Ireland. On that basis the Children's Law Centre has filed 3 judicial reviews in the High Court against the Department of Education grounded upon equality and human rights failures associated with their response to the pandemic.

## **Definition of Vulnerable Children**

5. The definition used at the start of the policy document may need to be widened as it excludes children who need a Social Worker but as a result of ongoing delays are waiting for one to be allocated. Further “children in need” should be defined as in Article 17 of the Children (NI) Order 1995, which is broader than the definition the Departments have used in the policy. CLC would also recommend that the list should be expanded to explicitly include children and young people living in poverty; children and young people currently in hospital; young people in Woodlands Juvenile Justice Centre; and children and young people who are currently at home while their peers are at school (for example, if a child or their parent is clinically vulnerable or if a child has been a close contact and has to self-isolate).

## **Aim of the Plan and Actions**

6. The Aim of the Plan needs to be refined. Under this heading, young people cared for via statutory provision should be added to the categories covered. The Actions are currently retrospective, recording what has been available in the past, which proved inadequate. They need to be forward-looking, accounting for lessons learned; planning for contingencies in the event of further restrictions of services; and provide for rebuilding of services so that they actually meet the ongoing and increased levels of need of vulnerable children and their families. Recognising that Covid-19 has exposed pre-existing deficits in children’s services this plan must take the opportunity to ‘build back better’. The Plan should be populated with concrete practical actions with clear lines of responsibility and measurable outcomes. Clarity is needed about how the Plan will be monitored and reported on.
7. CLC has identified through its legal advice and casework that failure to actively gather relevant comprehensive disaggregated data about adverse equality impacts upon children with disabilities, including failures to consult their parents and carers, has led to a situation where there is a significant level of unmet need and a failure to correctly weigh and balance the effects of various potential “harms”, to the extent that serious avoidable harm was caused to children, their siblings, parents and carers. This included physical harm, damage to property, harm to mental health leading to decisions to apply chemical restraint, interference with family life and in severe cases, risk to life. During the recent “circuit breaker” put in place by the Executive, this remains the case. Actions and omissions carried out during the ‘circuit breaker’ have been undertaken with knowledge and foresight about the damage likely to ensue and without appropriate planning for avoidance of harm and mitigation of adverse impacts of policies.

## **Increased Risk of Harm in the Home (Point 1.1 Action Plan) – Tina and Lauryn**

8. The “specific supports” under point 1.1 do not address all vulnerable children who require maintained school attendance as a primary protective factor for them. In fact, the supports appear to relate solely to homelessness with a particular emphasis on child victims of domestic abuse. CLC recognises and strongly supports specific consideration of this group of very vulnerable children. However, this Plan has not been working nor will it work for vulnerable children who need the protection afforded by attendance at specialist schools because they exhibit challenging behaviour when routines are broken and they exhibit severe distress at home unless their specific needs are also considered and prioritised.
9. The Action around securing access to school for vulnerable children when school is closed to others, relates to the period of lockdown that has passed and therefore it needs to be reframed to refer to protection during school closures and ongoing or future disruptions to school access.
10. There is clear evidence that there were efforts at running a joint health/education vulnerable child panel process at a late stage during the lockdown which cut parents out of the decision-making and proved inadequate and unfit for purpose. Information we received from the Department of Education shows that, as at 21<sup>st</sup> August 2020, 71 children out of 209 identified (i.e. one third) were not placed in a supervised education placement. We know that not all relevant at-risk children, siblings and families were identified and that the Education Authority online form process to enable parents to ask for help arrived very late and was under-resourced. The process was discontinued on 30<sup>th</sup> June 2020 and no visible, accessible alternative has been put in place to identify and prioritise essential service access for vulnerable children by the Departments of Education and Health.
11. Open Democracy has produced a video with the Children’s Law Centre and Tina, who is the parent of Lauryn. Tina’s powerful testimony evidences the need for a continuous, properly resourced, vulnerable child process. You can watch and listen to Tina here: <https://childrenslawcentre.org.uk/sedated-and-abandoned-the-struggle-to-care-for-my-disabled-daughter-during-lockdown/>
12. We have evidence through our casework during the two-week school closure over Halloween and ongoing that lessons have not been learned from the inhuman, degrading and damaging lockdown experiences of vulnerable children and families, which indicates that there have been planning and process failures in relation to protection of and provision for vulnerable children.
13. During this circuit breaker Lauryn, (mentioned at point 11 above) was left with no school and no respite despite repeated communications seeking direct help

and despite all that had gone before. Her respite facility has been repurposed to accommodate a child who has no suitable community placement. The Departments of Education and Health in response to CLC's communication about Lauryn and others, cited this Action Plan and access to therapeutic support. The therapeutic support was in reality an increased use of chemical restraint. On pressing repeatedly, we secured a drive out for Lauryn on the second Friday of the school break. That is all the direct help she received with no future help confirmed. The mental and physical resources of her family carers have been completely drained away and just as she was adjusting to the Education Restart, Lauryn's routine ceased again and predictably, her mental state and the health of family carers has significantly deteriorated.

14. **The most important Action that the Departments can take in relation to mitigating this particular risk to children at home when they need to be in a school for protection, or otherwise outside the home for periods of respite, is to put in place a coherent, transparent, accessible, visible, properly and jointly resourced multidisciplinary Vulnerable Children Process, directed and guided by the Departments of Education and Health (with clear lines of responsibility) and operationalised by the Education Authority and the five Health and Social Care Trusts in cooperation with all relevant children's services providers.**
15. This process needs to actively identify all relevant children and operate at any time when vulnerable children face disruption to school attendance, whether through formal school closures or otherwise and therefore it should not be contingent on formal school closure but should operate continuously. The process must always have the best interests of the child as the primary consideration when decisions are being made.

#### **Educational Disadvantage Caused by School Closures (Point 1.5 Action Plan)**

16. Management information published by the Department of Education on [pupil and workforce attendance](#) shows that only 84.7% of pupils were attending school during the week commencing 12<sup>th</sup> October 2020, just before the two week "circuit breaker", which means that **over 15% of pupils were not at school**. CLC is aware of children who are unable to attend school because they have clinically vulnerable parents (kidney transplant, cancer diagnosis); children with profound needs who are clinically vulnerable; and children who are isolating or whose school is closed due to infection rates.
17. The Action Plan is out of step with the current impacts of school disruptions. The Children's Law Centre strongly recommends that the description of the risk under this point is reformulated to include not only school closures but also disruptions to **school attendance**. We are aware of many children and young people, including those in Section 75 protected groupings and children who are socio-economically disadvantaged, who are unable to attend school for

reasons related to the coronavirus pandemic, whilst their peers are attending and being taught and supported by professionally qualified teachers and support staff, thus widening existing equality gaps.

18. Online “learning” is a term that was commonly used during lockdown when schools were closed. This generally involved provision of worksheets and information online without any direct teaching. These materials proved inaccessible to many vulnerable children who face barriers to learning such as SEN, disabilities, socio-economic deprivation, digital poverty, language barriers and of parents/carers being unable to help during the working day.
19. Since Education Restart, a significant number of children are at home and unable to attend school during the pandemic whilst peers are being taught and supported in school by professional educators and support staff.
20. Children at home require equality of access to education. There should be a reasonable consistency of provision expected from schools and the Education Authority, for those children who would require support to enable home “teaching” and SEN support. We are seeing different children within the same family receiving different standards of education, with the most disadvantaged receiving the least access to education. Examples are included in our full response.
21. To date, the Department of Education has issued a [Circular 2020/05 - Supporting Remote Learning](#) which acknowledges the benefits of “synchronous and asynchronous” online teaching, but has consistently failed in spite of CLC’s numerous direct requests, to direct and provide resources to schools on this issue, leaving many struggling to provide for their pupils. Emergency volunteers have been called for through the [Department of Education Volunteer Scheme](#) but have not been deployed. The Department has been reluctant to intervene in individual cases raised and takes the view that “this is an operational matter for the Education Authority and schools”.
22. School staff and Education Authority staff require to be properly resourced to enable them to serve all members of school communities regardless of background or status and to offer a range of properly formulated solutions, informed by and co-designed with appropriate stakeholders and families.
23. CLC advocates that the Department of Education, with help and cooperation from the Department of Health where needed, should direct and resource school staff and emergency volunteers to teach and directly support pupils who are at home during term time using available technology portals such as C2K to enable access to live teaching time, direct lesson delivery by professional educators, classroom assistant support, Stage 3 SEN supports and pre-recorded lessons.

24. CLC has pointed out to the Department of Education on several occasions over the past number of months that it has a legal power to make a Temporary Continuity Direction under Section 38 and Schedule 17 of the Coronavirus Act 2020 to direct that a given standard of remote education is provided to all children who are at home, including those in vulnerable groups. A similar power has been exercised in England, with a Direction in force until the end of this school year. The Department responded to CLC on 11<sup>th</sup> November 2020, saying that it will not make such a Direction. **CLC calls for an Action within the Plan to provide urgently for a Department of Education Temporary Continuity Direction on Remote Education.**

## **SEN Support**

25. The Coronavirus Act 2020 enabled the diminution of the entirety of the substantive legal obligations within the SEN framework in Northern Ireland through issue of [Temporary Modification Notices](#) by the Department of Education. The legislation passed without proper scrutiny. Modification notices and a raft of education policies followed, in the absence of proper equality screening or any consultation, resulting in avoidable and predictable adverse impacts upon vulnerable children with SEN and disabilities. Education Restart policies have not, to the best of our knowledge, been equality screened or properly consulted upon. Due to the lack of proper consultation with affected parties, we do not believe that the Department was or is in a position to make evidence-based decisions on these thresholds in compliance with their equality and human rights obligations.
26. A cascade of disadvantage has been caused to children with SEN which this Action Plan does not appear to address. Pre-existing failures and inefficiencies in the operation of the SEN framework, including extensive delays in meeting mandatory statutory duties by the Education Authority, were compounded by the disruption to schooling caused by the emergence of coronavirus and by a swift reduction of legal duties across the entire substance of the SEN framework to a “best endeavours” duty without any consultation. The negative impacts of these actions flowed over the SEN population unchecked by public authorities.
27. To compound this damage further Stage 3 Education Authority Pupil Support Services remain restricted, although children have had full legal entitlement to SEN support restored in August 2020, when the Temporary Modification Notices were discontinued. It is clear from the Education Authority’s website just how restricted services are currently. For example, as can be seen on the Pupil Support section of the [EANI website](#), direct peripatetic literacy support is restricted, direct autism intervention is suspended and there is no direct language and communication service.
28. Educational Psychology Services are currently the gateway to Stage 3 children’s support services. The Children’s Law Centre became aware recently of an Education Authority policy to await 2 IEP cycles (Individual Education Plan) to allow children to “settle” back to school before an Educational Psychologist would do a Stage 3 assessment. This could precipitate delays in



access to educational support services for children who have already missed out significantly on opportunities for learning throughout the pandemic by anything from 6 months to a year. Given the existing delays and bottlenecks in accessing assessments and the levels of need that children are returning to school with and taking into account the findings of the NICCY “Too Little Too Late” report and the two NIAO reports on SEN, we find this policy incredibly concerning. Again, this policy has not been subjected to proper screening as required by the Education Authority’s Equality Scheme.

29. It is important for the Departments to note that the mandatory equality rights for children with disabilities enshrined within SENDO 2005 have been unaffected by the Coronavirus Act 2020 and yet steps have been taken and are continuing which have a strong likelihood of resulting in reduced access to education for disabled children, when compared with non-disabled peers, which is potentially unlawfully discriminatory. This includes difficulties in accessing education both whilst attending school and during periods of non-attendance.

**30. The Children’s Law Centre calls for the Department of Education to review the legal equality entitlements for children in education with disabilities within the Education (NI) Order 1996 and SENDO 2005 and to state Actions within the Plan to ensure sufficient human, revenue and capital resources to enable full legal compliance by schools and the Education Authority with their legal duties under the SEN and Inclusion framework to children with SEN and disabilities.**

31. Actions are required within the Plan to enable reinstatement of and increases in access to SEN services and supporting health services for all children registered as having SEN.

#### **Inability to Access Services due to Reduced Service Provision (Point 1.6)**

32. The Children’s Law Centre is particularly concerned about lack of service access for vulnerable children who are unable to access education; are looked after; in need of social services or accommodation; require CAMHS or require daytime respite and/or short breaks.

33. Some extremely distressed vulnerable children have been chemically restrained as a direct result of loss and disruption of respite and education services. These children who are most in need have been deprioritised for service. Respite facilities have been repurposed with no notice or consultation and in a manner, which is highly questionable, based on the available evidence.

34. CLC is extremely concerned that there is no mention of respite services in this Action Plan and would strongly recommend that this is addressed as an immediate priority, with respite being recognised as a primary protective factor in the lives of vulnerable children with complex disabilities. Resources need to

be directed to meet the pre-existing and additional needs of vulnerable children and families.

**Legislative changes needed to facilitate service delivery (Point 3.3 Action Plan)**  
**Reduced Workforce Capacity (Point 3.4 Action Plan)**  
**Service Delivery During Rebuild (Point 4.1, Action Plan)**

35. A key point, of critical importance to the immediate impacts of this Action Plan in terms of **equality and human rights compliance for the Departments**, relates to Actions put in place to deal with the risks posed by reduced workforce capacity. In this respect, the Plan provides that **“essential” services will be maintained on a “priority” basis, in accordance with needs and risk assessments.**”
36. Looking at the example we described above (at Point 10), regarding Tina and Lauryn, it is clear that primary protective factors of specialist education attendance, daytime respite and short breaks that this child and family were assessed as needing **before** the pandemic to prevent harm and hold the family together, have not been assessed as essential throughout the pandemic and have certainly not been a priority during the half-term “circuit breaker” despite lessons learned exercises purportedly having taken place.
37. Children and families are currently suffering personal injuries, mental breakdown, threat to life and health and destruction of their right to respect for private and family life. Children are being chemically restrained in the absence of provision of services that they have previously been assessed as needing. These are grave and serious human rights abuses flowing directly from the decisions of state actors in relation to resource allocation. These issues have been highlighted to the relevant public authorities and the Departments by a range of concerned parties including CLC, from a very early stage in the pandemic.
38. The Actions needed are that firstly, **public authorities should dispense immediately with unnecessary, disproportionate, discriminatory emergency legislation and regulation which dilutes obligations to safeguard and promote the wellbeing of children.**
39. Secondly, **public authorities should comply with and use existing legislation effectively to facilitate service delivery, including for example compliance with Articles 17, 18 and 21 of the Children (NI) Order 1995. All duty bearers should comply with the duty to cooperate under Section 2 of the Children’s Services Cooperation Act (NI) 2015.** Resources should be directed into vulnerable children’s services, not away from them. For example, specialist Nursing and Allied Health professionals should not be directed away from special school provision. Specialist respite facilities for disabled children with complex medical needs should not be repurposed. All vulnerable children

cared for within the statutory system should have their needs met in appropriate safe, settings staffed by appropriately trained professional staff.

40. Thirdly, recognising that the already significant gaps in the delivery of children's rights have become chasms as a result of COVID-19, the **Children's Law Centre calls for the government to "build back better" for the longer term, with a strong, cohesive, cross-departmental Children and Young Persons Strategy underpinned by an adequately resourced cross-departmental children's services budget, aimed at increasing service capacity to meet evidenced need. There also needs to be significant emphasis on fulfilling statutory obligations under the Children's Services Co-operation Act (NI) 2015, in particular by maximising the exercise of the power in Section 4 for children's authorities to share resources and pool funds.** Allocation of resources necessitates establishment of clear lines of accountability for outcomes. To ensure the necessary change it is imperative that there is transparent and effective cross-Departmental Ministerial accountability for the full and effective implementation of the Children and Young Persons Strategy.

## **Conclusion**

CLC is grateful to have the opportunity to give evidence to the Education Committee in relation to the Cross-Departmental Action Plan for Vulnerable Children and Young People. If any further detail or clarification is required, we would be pleased to assist.