

## Written evidence submitted by Children's Rights Alliance for England (CRAE), Just Fair

### **Just Fair and the Children's Rights Alliance for England's written evidence to the Public Accounts Committee inquiry into 'COVID-19: Education'**

#### **A. Background**

1. Just Fair<sup>1</sup> is a UK charity that is working to realise a fairer and more just society by monitoring and advocating for economic, social and cultural rights in the UK. We aim to ensure that the UK's law, policy, and practice comply with its human rights obligations and commitments pertaining to economic, social and cultural rights. We are committed to increasing public awareness of international and domestic human rights law, and the capability of the UK Government and relevant public bodies to respect, protect and fulfil economic, social and cultural rights.
2. The Children's Rights Alliance for England (CRAE)<sup>2</sup> works with over 100 members to promote children's rights and monitor government implementation of the UN Convention on the Rights of the Child. CRAE fights for children's rights by listening to what children say, carrying out research to understand what children are going through and challenging those who violate children's rights. CRAE is part of Just for Kids Law.

#### **B. Executive Summary**

3. This submission of evidence is written by Just Fair and the Children's Rights Alliance for England (CRAE) in response to the Public Accounts Committee inquiry into 'COVID-19: Education', which assesses how well the UK Government's Department for Education (DfE)<sup>3</sup> managed its overall response in 'the first national lockdown' (23 March – 23 June 2020),<sup>4</sup> including whether it "effectively supported schools and pupils in England during this period, whether it managed the move to mainly home-learning effectively and whether it effectively supported vulnerable and disadvantaged children".<sup>5</sup>
4. The UK Government's response to COVID-19, including the DfE's decisions and actions, put children's human rights at risk during the first national lockdown. In our submission we provide evidence which indicates that educational inequalities widened for specific groups of children.

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<sup>1</sup> <https://justfair.org.uk/>

<sup>2</sup> <http://www.crae.org.uk/>

<sup>3</sup> <https://www.gov.uk/government/organisations/department-for-education>

<sup>4</sup> Gov.UK, 'Prime Minister's statement on coronavirus (COVID-19): 23 March 2020'

<https://www.gov.uk/government/speeches/pm-address-to-the-nation-on-coronavirus-23-march-2020>;

Gov.UK, 'PM announces easing of lockdown restrictions: 23 June 2020',

<https://www.gov.uk/government/news/pm-announces-easing-of-lockdown-restrictions-23-june-2020>

<sup>5</sup> <https://committees.parliament.uk/call-for-evidence/401/covid19-education/>

5. The DfE is a duty-bearer, with legal obligations under international human rights law to ensure all children enjoy and exercise their right to education, and interconnected economic, social and cultural rights, equally and without discrimination. The DfE has a duty to support disadvantaged children. Compliance with these obligations is required even in times of economic or health crises; any retrogressive measures must be taken in accordance with the law.
6. First, this submission sets out the UK Government (and DfE) obligations to ensure children enjoy their right to education and right to life, survival and development; the best interests of the child; non-discrimination; the child's right to be heard; legislative, administrative and other measures realise children's rights; lawful decision-making in economic and health crises; and adequate investment in children's rights.
7. Second, this submission sets out key issues during the lockdown, including school attendance and accessibility; access to social security and food insecurity; access to healthcare and support services; and consideration of the impact on children's rights. We address these key issues in light of the UK Government (and DfE) duties under the UNCRC and other international legal instruments.
8. We set out human rights-based questions which we recommend the Public Accounts Committee addresses when it questions senior officials at the DfE on how well the DfE managed its overall response in the first lockdown.
9. As United Nations High Commissioner, Michelle Bachelet, said "[p]rotecting and advancing human rights, including the rights of all children, is the foundation for recovering better -- into more just, equal and resilient societies. The United Nations human rights system, with all its mechanisms, plays a crucial role in indicating the path to a more inclusive and sustainable recovery."<sup>6</sup>

## **C. Legal obligations to ensure children enjoy their right to education**

### **Right to education**

10. In accordance with Article 28(1) of the Convention on the Rights of the Child (UNCRC)<sup>7</sup> the DfE must ensure all children enjoy their right to education, this right must be realised progressively and on the basis of equal opportunity. As set out under Article 29(1)(a), children's education should be directed to the development of the child's personality, talents and mental and physical abilities so that they can achieve their fullest potential.
11. The DfE must encourage the development of different forms of secondary education, including general and vocational education. It must make these forms of education available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need (Article 28(1)(b) of the UNCRC). The DfE must ensure primary education is available and free to all children (Article 28(1)(a) of the UNCRC). This includes the DfE

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<sup>6</sup> 'OHCHR News, 'Realising Rights, Changing Lives' -- The impact of the United Nations human rights system on the enjoyment of children's rights UNICEF / Universal Rights Group policy report launch Video statement by United Nations High Commissioner, Michelle Bachelet 8 December, 15h00 (CET) <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26579&LangID=E>> accessed March 2021

<sup>7</sup> Convention on the Rights of the Child (UNCRC)

supporting families who need financial assistance for children’s virtual or in-person learning and support.

### **Right to life, survival and development**

12. Under Article 6 of the UNCRC, the DfE commits to ensuring the development of all children. The development of the child is “a holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological and social development” and the “implementation measures should be aimed at achieving the optimal development for all children” (Article 6 of the UNCRC).

### **Acting in the best interests of the child**

13. Article 3(1) of the UNCRC provides that the best interests of the child shall be a primary consideration in all actions concerning children. The UK Government (and DfE) is obliged to integrate and apply this principle in all legislative, administrative and judicial proceedings that have a direct or indirect impact on children,<sup>8</sup> including budgets. In General Comment No. 14 (2013), the Committee on the Rights of the Child notes that the right of the child to have his or her best interests is taken as a primary consideration, the rights set out in the UNCRC and its Optional Protocols provide the framework for assessing and determining the best interests of the child.

### **Right to non-discrimination**

14. The DfE is obliged to protect children from all kinds of discrimination “irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status” (Article 2(1) of the UNCRC). All administrative levels of the UK Government (including the DfE) shall serve to prevent discrimination and shall not directly or indirectly discriminate against children in budget-related legislation, policies or programmes.<sup>9</sup>

### **Right to be heard**

15. Under Article 12 of the UNCRC, every child has the right to express their views in all matters affecting them, the views should be given due weight in accordance with the age and maturity of the child.

### **Legislative, administrative and other measures required to realise children’s rights**

16. In line with Article 4 of the UNCRC the UK Government (including the DfE) must take “all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the UNCRC. With regard to economic, social and cultural rights, the UK Government should take measures to the maximum extent of their available resources.”<sup>10</sup>

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<sup>8</sup> See general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, para. 6 (a)

<sup>9</sup> UN Convention on the Rights of the Child, General comment No. 19 (2016) on public budgeting for the realization of children’s rights (art. 4), 20 July 2016 (CRC/C/GC/19) <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f19&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f19&Lang=en)> accessed 14 July 2020, paras 41-44.

<sup>10</sup> UN Convention on the Rights of the Child (Adopted 20 November 1989, Entered into force 2 September 1990) 1577 UNTS 3, Article 4 <<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>> accessed 14 July 2020.

17. The UK Government (including the DfE) should use legal measures such as direct incorporation of the UNCRC into domestic law, which makes the full range of children's rights enforceable in domestic courts, and non-legal measures to implement the UNCRC, a key one being child rights impact assessments (CRIA). "Ensuring that the best interests of the child are a primary consideration in all actions concerning children (art. 3 (1) [of the UNCRC]), and that all the provisions of the Convention are respected in legislation and policy development and delivery at all levels of government demands a continuous process of child impact assessment . . . This process needs to be built into government at all levels and as early as possible in the development of policy." (UN Committee on the Rights of the Child, 2003, para.45)

### Children's rights in economic and health crises

18. The UK Government (and DfE) is under an obligation, under Article 4 of the UNCRC, to realise children's economic, social and cultural rights "to the maximum extent". This means that the DfE should not take deliberate retrogressive measures in relation to economic, social and cultural rights;<sup>11</sup> the DfE should not allow the level of enjoyment of children's rights to deteriorate.<sup>12</sup> In times of economic crisis, regressive measures may only be considered after assessing all other options and ensuring that children are the last to be affected, especially children in vulnerable situations. Measures must be necessary, reasonable, proportionate, non-discriminatory and temporary; any rights thus affected must be restored as soon as possible.<sup>13</sup> However, the immediate and minimum core obligations<sup>14</sup> imposed by children's rights shall not be compromised by any retrogressive measures, even in times of crisis. The DfE is expected to demonstrate that it has made "every effort to mobilize, allocate and spend budget resources to fulfil the economic, social and cultural rights of all children".<sup>15</sup>

### Investment in children's rights

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<sup>11</sup> UN Committee on the Rights of the Child, General comment No. 19 (2016) on public budgeting for the realization of children's rights (art. 4), 20 July 2016 (CRC/C/GC/19) <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f19&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f19&Lang=en)> accessed 14 July 2020, para 31. See paras. 24 and 25 of the recommendations from the day of general discussion on the issue of resources for the rights of the child: responsibility of States (2007), general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, para. 72, and general comment No. 3 of the Committee on Economic, Social and Cultural Rights, para. 9.

<sup>12</sup> UN Committee on the Rights of the Child, General comment No. 19 (2016) on public budgeting for the realization of children's rights (art. 4), 20 July 2016 (CRC/C/GC/19) <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f19&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f19&Lang=en)> accessed 14 July 2020, para 31.

<sup>13</sup> UN Committee on the Rights of the Child, General comment No. 19 (2016) on public budgeting for the realization of children's rights (art. 4), 20 July 2016 (CRC/C/GC/19) <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f19&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f19&Lang=en)> accessed 14 July 2020, para 31.

<sup>14</sup> See the core obligations specified in the general comments of the Committee on Economic, Social and Cultural Rights, such as No. 13 (1999) on the right to education, No. 14 (2000) on the right to the highest attainable standard of health, and No. 19 (2007) on the right to social security.

<sup>15</sup> UN Convention on the Rights of the Child, General comment No. 19 (2016) on public budgeting for the realization of children's rights (art. 4), 20 July 2016 (CRC/C/GC/19) <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f19&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f19&Lang=en)> accessed 14 July 2020, para 30.

19. The investment in early childhood development is acknowledged as having “a positive impact on children’s ability to exercise their rights”; investment “breaks poverty cycles and brings high economic returns” while underinvestment in children “in their early years can be detrimental to cognitive development and can reinforce existing deprivations, inequalities and intergenerational poverty”.<sup>16</sup>

## D. Key issues

### School attendance and accessibility

20. In accordance with Article 28(1)(e) of the UNCRC, the DfE should take measures to encourage regular attendance at school. During a lockdown period, the DfE should mitigate the rate of learning absences, and ensure no worsening of the attainment gap and drop-out rates.
21. **Disadvantaged children:** According to research by the Education Policy Institute, disadvantaged children<sup>17</sup> are nine months behind their peers by Key Stage 2 in primary school, and an average of 18 months behind their peers at GCSE age.<sup>18</sup> Initial Ofsted analysis reported concerns that this gap has worsened after school and nursery closures of six months during lockdown, which carries long-term consequences.<sup>19</sup>
22. **Gypsy/Roma pupils:** According to the Education Policy Institute, there continues to be a gap between children of different ethnic backgrounds; particularly for Gypsy/Roma pupils, who are nearly three years behind their peers by the end of secondary school, and Travellers of Irish Heritage, who are two years behind.<sup>20</sup> Reportedly, a lack of access to IT resources for remote learning during the pandemic has exacerbated this further.<sup>21</sup>
23. **Young carers:** The UK’s 700,000<sup>22</sup> young carers also experience worse academic attainment,<sup>23</sup> according to research by the Carers Trust and The Children’s Society.

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<sup>16</sup> UN Convention on the Rights of the Child, General comment No. 19 (2016) on public budgeting for the realization of children’s rights (art. 4), 20 July 2016 (CRC/C/GC/19) <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f19&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f19&Lang=en)> accessed 14 July 2020, para 50.

<sup>17</sup> Disadvantage is defined by the DfE as a student who has been in receipt of free school meals at any time in the preceding six years. Education Policy Institute (2020) Education in England: annual report [https://epi.org.uk/wp-content/uploads/2020/09/EPI\\_2020\\_Annual\\_Report\\_.pdf](https://epi.org.uk/wp-content/uploads/2020/09/EPI_2020_Annual_Report_.pdf)

<sup>18</sup> Education Policy Institute (2020) Education in England: annual report [https://epi.org.uk/wp-content/uploads/2020/09/EPI\\_2020\\_Annual\\_Report\\_.pdf](https://epi.org.uk/wp-content/uploads/2020/09/EPI_2020_Annual_Report_.pdf)

<sup>19</sup> Ofsted (2020) Covid-19 series: briefing on schools: October 2020; Ofsted (2020) Covid-19 series: briefing on early years: October 2020 <https://www.gov.uk/government/collections/Ofsted-covid-19-series>. See also: Lally, C. and Bermingham, R. (2020) Covid-19 and the disadvantage gap Rapid response UK Parliament <https://post.parliament.uk/covid-19-and-the-disadvantage-gap/>

<sup>20</sup> Education Policy Institute (2020) Education in England: annual report [https://epi.org.uk/wp-content/uploads/2020/09/EPI\\_2020\\_Annual\\_Report\\_.pdf](https://epi.org.uk/wp-content/uploads/2020/09/EPI_2020_Annual_Report_.pdf)

<sup>21</sup> Walker, A. (8 April 2020) ‘Coronavirus: School Pupils Lacking Internet Access Could Fall Behind’ Each Other <https://eachother.org.uk/coronavirusschool-pupils-lacking-internet-access-could-fall-behind/>

<sup>22</sup> Young Minds, <https://youngminds.org.uk/find-help/looking-after-yourself/young-carers/>

<sup>23</sup> Carers Trust and The Children’s Society (2020) Young Carers in School <https://carers.org/downloads/resources-pdfs/young-carers-in-schools/young-carers-in-schools->

Young Minds reports that on average, young carers miss or partially miss 48 school days per year.<sup>24</sup> Research into the impact of the COVID-19 pandemic on young carers suggests that the pandemic is likely to have aggravated this, with more children taking on caring responsibilities and spending more time out of school during lockdown. Research by Carers Trust found that 58% of young carers aged 12 to 17 said they were caring on average for an extra 10 hours a week since the start of the pandemic. Of young carers aged 12 to 17, 40% said their mental health was worse as a result of COVID-19 and 66% of young carers aged 12 to 17 felt more stressed as a result of the crisis.<sup>25</sup>

24. **Asylum seekers:** The DfE has a legal obligation to ensure that higher education is made accessible to all on the basis of capacity by every appropriate means. This obligation is recognised under Article 28(1)(c) of the UNCRC. However, Better ConNected<sup>26</sup> finds that during the COVID-19 lock-down measures, university learning moved online, which meant that students needed to access courses using their own laptops and home internet. For many disadvantaged students access to higher education has been difficult, and it has been a particular challenge for sanctuary scholars.<sup>27</sup> This is demonstrated in the following case study:

“Being... an asylum seeker I have got many restrictions. I live on £37 a week, which restricts me to obtain my basic daily needs every day during the pandemic. All the study materials are online and to access online I need data. As I didn't have the right to apply for the [university's] hardship fund for the students it was quite hard for me to continue with my studies during COVID-19 without the support from the university.”  
Asylum seeker, Newcastle, 2020.<sup>28</sup>

Home broadband packages and substantial phone data are a luxury that most asylum seekers cannot afford. Without access to internet or their own laptops, these students are unable to continue their studies, putting themselves at risk of missing exams or failing assignments.<sup>29</sup>

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guidance-for-schools-covid-19-recovery.pdf

<sup>24</sup> Young Minds, <https://youngminds.org.uk/find-help/looking-after-yourself/young-carers/>

<sup>25</sup> Carers Trust (2020) My Future, My Feelings, My Family <https://carers.org/downloads/what-we-do-section/my-future-my-feelings-my-family.pdf>

<sup>26</sup> Better ConNected, is a collaboration of organisations and individuals across the North East of England who are working in some way to tackle digital inclusion and are passionate about creating lasting change in this arena. The Better ConNected campaign was developed in response to the digital exclusion experienced by many groups in the North East of England during the first COVID-19 lockdown – in summer 2020. Its aim is to build a North East where digital inclusion is a right enjoyed by all, where people have the skills, technology and internet to access goods, services and information, in order to close the digital divide. The campaign development team is supported by Just Fair, NE Law Centre, ReCoCo, VONNE, Difference, Hartlepool Action Lab, Newcastle Vision Support, APLE Collective, Crisis NE, Action Foundation, Not-Equal, Digital Voice, Inclusion North, and the Wharton Trust. Most of these groups are members of the Social Rights Alliance North East (SRANE) <https://www.betterconnected.org.uk/>

<sup>27</sup> Treated as international students, asylum seekers are usually unable to study at university in the UK due to the high tuition fees that accompany learning and transport costs. A number of universities across the country have begun to offer Sanctuary Scholarships, where tuition fees are waived for successful asylum seeker applicants. In some cases, a grant towards learning and/or housing costs is also provided. These scholarships make it possible for more adults to have their right to education realised in the UK. Better ConNected, 'Digital support for Sanctuary Scholarship students in the NE' <https://www.betterconnected.org.uk/post/digital-support-for-sanctuary-scholarship-students-in-the-north-east>

<sup>28</sup> Case study provided by Better ConNected to Just Fair in 2020.

25. **Disabled children:** In accordance with Article 23(1) of the UNCRC, the DfE has an obligation to ensure that all mentally or physically disabled children enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community. The DfE must recognise the special needs of a disabled child. Article 23(3) of the UNCRC stipulates that assistance must be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child. This assistance must be designed to ensure that the disabled child has effective access to and receives education and training, in preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.
26. **In-person support services for disabled children:** ALLFIE's research shows that in-person support services are vital for promoting equality of access and opportunity for disabled students. According to the organisation, these services cover everything from specialist teaching, communication facilitation, therapists, learning mentoring, reviewing essay work, providing personal care, and mental health support.<sup>30</sup> "Disabled students' need for support has increased during the pandemic, while disabled students' support from [Disability Support Allowance] DSA and universities has decreased." Disabled Students UK, 2020<sup>31</sup>
27. **Learning mentors, specialist teaching, communication facilitation and therapy sessions:** ALLFIE reports that disabled students, because of their impairments and health conditions, may not be able to participate in their learning without accessing therapeutic interventions, the use of learning mentors, specialist teaching, and communication facilitation. For instance, without physiotherapy and occupational therapy, for many disabled students their physical health deteriorates.<sup>32</sup> ALLFIE reports that as a result of the Children and Families Act's s(42) easement, many disabled students are without education support. Whilst the COVID-19 guidance suggested therapy sessions ought to be provided via Zoom and other virtual platforms, ALLFIE has found that local authorities had made no effort to secure online or other SEND provision for disabled students with education, health and care

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<sup>29</sup> Better ConNected, <https://www.betterconnected.org.uk/>

<sup>30</sup> Just Fair, 'Just Fair's Evidence to the House of Lords COVID-19 Committee inquiry 'Living online: the long-term impact on wellbeing' (2020) <https://justfair.org.uk/wp-content/uploads/2021/01/House-of-Lords-COVID-19-Committee-Submission-on-Digital-Technology-and-Wellbeing-Submitted-by-Just-Fair-091220.pdf>; ALLFIE, 'Submission to the Women and Equalities Committee Inquiry: Unequal impact? Coronavirus, disability and access to services' (2020) <https://www.allfie.org.uk/news/briefings/submission-to-the-women-and-equalities-committee-unequal-impact-coronavirus-disability-and-access-to-services/#Introduction>

<sup>31</sup> Just Fair, 'Just Fair's Evidence to the House of Lords COVID-19 Committee inquiry 'Living online: the long-term impact on wellbeing' (2020) <https://justfair.org.uk/wp-content/uploads/2021/01/House-of-Lords-COVID-19-Committee-Submission-on-Digital-Technology-and-Wellbeing-Submitted-by-Just-Fair-091220.pdf>; ALLFIE, 'Submission to the Women and Equalities Committee Inquiry: Unequal impact? Coronavirus, disability and access to services' (2020) <https://www.allfie.org.uk/news/briefings/submission-to-the-women-and-equalities-committee-unequal-impact-coronavirus-disability-and-access-to-services/#Introduction>

<sup>32</sup> Just Fair, 'Just Fair's Evidence to the House of Lords COVID-19 Committee inquiry 'Living online: the long-term impact on wellbeing' (2020) <https://justfair.org.uk/wp-content/uploads/2021/01/House-of-Lords-COVID-19-Committee-Submission-on-Digital-Technology-and-Wellbeing-Submitted-by-Just-Fair-091220.pdf>; ALLFIE, 'Submission to the Women and Equalities Committee Inquiry: Unequal impact? Coronavirus, disability and access to services' (2020) <https://www.allfie.org.uk/news/briefings/submission-to-the-women-and-equalities-committee-unequal-impact-coronavirus-disability-and-access-to-services/#Introduction>

plans (EHCPs) once the Secretary of State for Education gave notification at the beginning of May.<sup>33</sup>

28. Overall, downgrades to the duties, bought in April 2020, owed to young people with EHCPs to provide SEND support have had an ongoing impact beyond the first lockdown.<sup>34</sup> Specifically, the impact of a loss of support for many young people, particularly with behavioural or certain SEMH needs, will make reintegration harder as therapies and other highly tailored interventions came to an abrupt end. This is likely to have impacted the success rate at which this cohort of young people could be reintegrated and potentially lead to school exclusion either by formal processes or otherwise.
29. **School exclusion:** The UK government introduced new COVID-19 regulations in response to the exclusions regulations that are still in force today.<sup>35</sup> These downgraded the procedural protections young people had to a timely and effective review.<sup>36</sup> Young people whose reviews take a long time can find reintegration very difficult afterwards, and this may have disproportionately impacted disabled children during the pandemic, as young people with EHCPs had a right to go to school when others did not.<sup>37</sup> These changes risked allowing unlawful or unfair exclusions to cause irreversible damage before being overturned by a delayed appeals process.

## Education and access to social security and food

30. According to international human rights standards,<sup>38</sup> food must be available in a quantity and quality sufficient to satisfy dietary needs, with nutrients for physical and mental growth, free from adverse substances and culturally acceptable. Still, we are seeing evidence of inadequate food provision to families with low or no-income. Even in times of crisis, the UK Government has a duty to ensure physical and economic access at all times to adequate food or means for its procurement. And accessibility of food must be sustainable and not interfere with the enjoyment of other human rights, such as the right to education or health.
31. **No recourse to public funds (NRPF), destitution and food insecurity:** Destitution faced by families in the immigration system is impacting children's access to education. Families are not eligible for social security due to their immigration status and having the NRPF condition applied. Children in households affected by NRPF face high levels of destitution, hunger, and homelessness.<sup>39</sup> Research by Eve

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<sup>33</sup> Just Fair, 'Just Fair's Evidence to the House of Lords COVID-19 Committee inquiry 'Living online: the long-term impact on wellbeing' (2020) <https://justfair.org.uk/wp-content/uploads/2021/01/House-of-Lords-COVID-19-Committee-Submission-on-Digital-Technology-and-Wellbeing-Submitted-by-Just-Fair-091220.pdf>; ALLFIE, 'Submission to the Women and Equalities Committee Inquiry: Unequal impact? Coronavirus, disability and access to services' (2020) <https://www.allfie.org.uk/news/briefings/submission-to-the-women-and-equalities-committee-unequal-impact-coronavirus-disability-and-access-to-services/#Introduction>

<sup>34</sup> Local Government Lawyer (June 2020) *COVID-19 changes to SEN duties*

<sup>35</sup> The School Discipline (England) (Coronavirus) (Pupil Exclusions and Reviews) (Amendment) Regulations 2020

<sup>36</sup> Department for Education (2020) Changes to the school suspension and expulsion process during the coronavirus (COVID-19) outbreak

<sup>37</sup> Just for Kids Law (2020) Just for Kids Law secures new protections for children excluded during the pandemic

<sup>38</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f5&Lang=en)

Dickson suggests that children affected by NRPF struggle to get statutory support owed to them under Section 17 of the Children Act 1989, as local authorities often refuse support, leaving families and children destitute and homeless.<sup>40</sup> Research shows that this hardship has been exacerbated by COVID-19.<sup>41</sup> While the Government extended free school meals to some families with NRPF, there were delays around this decision, which is only temporary and under review, and they are not eligible for some vital benefits.<sup>42</sup>

- 32. Companies providing inadequate free school meals:** The main human rights instrument which recognises the right to access food is the International Covenant on Economic, Social and Cultural Rights.<sup>43</sup> This international agreement imposes a number of general obligations on the UK Government to respect, protect and fulfil the right to food. This means that the UK Government should not directly or indirectly interfere with the right to food; prevent third parties (e.g. companies) from interfering with the right to food; and take steps to ensure everyone enjoys their right to food.
- 33.** Under international law, the UK Government must not prioritise the interests of business entities over people's right to food without adequate justification, or pursue policies that negatively impact the right to food and related rights.<sup>44</sup> Last year, the UK Government's food box scheme was supposed to be a lifeline, but the contract to Bidfood and Brakes – worth £208 million without tender – resulted in meal distribution which failed to meet right to food standards.<sup>45</sup> The Public Accounts Committee published its report which states that the DfE and its contractor, Edenred UK Group Limited, extended a free school meals contract twice, increasing its value fivefold, from £78 million to £425 million, and failed to take opportunities and secure better value for money for the taxpayer.<sup>46</sup> The DfE was "surprisingly unconcerned" on whether the corporate free school meals contractor was "profiting at taxpayers' expense".<sup>47</sup> While the privatisation of food provision is not prohibited by international human rights law, strict regulation by the UK Government (and DfE) is required.<sup>48</sup>

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<sup>39</sup> The Children's Society (2020) A Lifeline for All: Children and families with No Recourse to Public Funds <https://www.childrensociety.org.uk/sites/default/files/2020-10/a-lifeline-for-all-summary.pdf>

<sup>40</sup> *Not Seen, Not Heard: Children's experiences of the 'hostile environment'* <https://www.project17.org.uk/media/70571/Not-seen-not-heard>

<sup>41</sup> Dickson, E., Jolly, A., Morgan B., and Qureshi, F. (2020) Local Authority Responses to people with NRPF during the pandemic, Research Report [https://www.researchgate.net/publication/343774922\\_Research\\_report\\_Local\\_Authority\\_Responses\\_to\\_people\\_with\\_NRPF\\_during\\_the\\_pandemic](https://www.researchgate.net/publication/343774922_Research_report_Local_Authority_Responses_to_people_with_NRPF_during_the_pandemic)

<sup>42</sup> Children's Rights Alliance for England, 'England Civil Society Submission to the United Nations Committee on the Rights of the Child to inform its List of Issues Prior to Reporting (LOIPR)' (2020) [http://www.crae.org.uk/media/129724/CRAE\\_LOIPR\\_09-DEC-20.pdf](http://www.crae.org.uk/media/129724/CRAE_LOIPR_09-DEC-20.pdf); Children's organisations have pressed the Government to extend free school meals permanently to all families with NRPF, following a campaign by footballer Marcus Rashford to persuade the Government to provide free school meals during the summer holidays. BBC News (13 August 2020) 'Free school meals 'should be extended' for pupils from low-income migrant families' BBC News <https://www.bbc.com/news/uk53766050>

<sup>43</sup> International Covenant on Economic, Social and Cultural Rights

<sup>44</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f24&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f24&Lang=en)

<sup>45</sup> <https://www.contractsfinder.service.gov.uk/Notice/c8d13eea-f7db-4cff-8f15-6c0c1aed1d7f>; <https://goodlawproject.org/news/food-parcels/>

<sup>46</sup> <https://publications.parliament.uk/pa/cm5801/cmselect/cmpubacc/689/68902.htm>

<sup>47</sup> <https://committees.parliament.uk/committee/127/public-accounts-committee/news/138996/dfe-surprisingly-unconcerned-on-whether-free-school-meals-contractor-was-profiting-at-taxpayers-expense/>

<sup>48</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f)

## Education and access to healthcare and support services

34. Research by civil society organisations in England, documents that “exam stress, fear of failure, unhappiness, inequality, and the environment are all key concerns for children”.<sup>49</sup> As reported in the ‘England Civil Society Submission to the United Nations Committee on the Rights of the Child to inform its List of Issues Prior to Reporting (LOIPR)’ the COVID-19 pandemic has taken its toll on children, “with a sharp increase in sleeping pill prescriptions, eating disorders, self-harm, and feelings of inability to cope with life”.<sup>50</sup> According to this research, many parents are unable to get mental health support for their children. In 2020, evidence from civil society organisations in England, reported that there is “insufficient data on children’s wellbeing, including mental health, with surveys carried out infrequently”.<sup>51</sup> It is unclear how, during the first national lockdown, the DfE supported and ensured access to adequate and available mental health support for children.

## Lack of consideration of the impact on children’s rights

35. Despite the Government’s commitment to: ‘give due consideration to the UNCRC articles when making new policy and legislation’,<sup>52</sup> in practice this is largely absent. Although the Government produced a CRIA template in 2018, in practice very few CRIs have been carried out since and most are not published.<sup>53</sup> One of these, on the Adoption and Children (Coronavirus) (Amendment) Regulations,<sup>54</sup> was completed after Ministerial approval. There is no statutory obligation to conduct CRIs in all policy areas affecting children, despite similar requirements in Wales and Scotland.<sup>55</sup>

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<sup>49</sup> Children’s Rights Alliance for England, ‘England Civil Society Submission to the United Nations Committee on the Rights of the Child to inform its List of Issues Prior to Reporting (LOIPR)’ (2020) [http://www.crae.org.uk/media/129724/CRAE\\_LOIPR\\_09-DEC-20.pdf](http://www.crae.org.uk/media/129724/CRAE_LOIPR_09-DEC-20.pdf); The Children’s Commissioner for England (2020) Childhood in 2020: Business plan consultation with children 2020-21 <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2020/03/cco-childhood-in-2020.pdf>; The Children’s Society (2020) The Good Childhood Report 2020

<https://www.childrenssociety.org.uk/sites/default/files/2020-11/Good-Childhood-Report-2020.pdf>

<sup>50</sup> Children’s Rights Alliance for England, ‘England Civil Society Submission to the United Nations Committee on the Rights of the Child to inform its List of Issues Prior to Reporting (LOIPR)’ (2020)

[http://www.crae.org.uk/media/129724/CRAE\\_LOIPR\\_09-DEC-20.pdf](http://www.crae.org.uk/media/129724/CRAE_LOIPR_09-DEC-20.pdf); Marsh, S. and Hill, A. (21 October 2020) ‘Figures lay bare toll of pandemic on UK children’s mental health’ The Guardian <https://www.theguardian.com/society/2020/oct/21/figures-lay-bare-toll-of-pandemic-on-uk-childrens-mental-health#:~:text=The%20children’s%20>

[commissioner%20for%20England,eating%20disorders%20and%20self%2Dharm](https://www.childrenssociety.org.uk/sites/default/files/2020-10/life-on-hold-childrens-well-being-and-covid-19.pdf); The Children’s Society (2020) Life on Hold: Children’s well-being and Covid-19

<https://www.childrenssociety.org.uk/sites/default/files/2020-10/life-on-hold-childrens-well-being-and-covid-19.pdf>;

<sup>51</sup> The latest data available was published in 2018 by NHS Digital and the previous survey was carried out in 2004 – see the Children’s Rights Alliance for England, ‘England Civil Society Submission to the United Nations Committee on the Rights of the Child to inform its List of Issues Prior to Reporting (LOIPR)’ (2020) [http://www.crae.org.uk/media/129724/CRAE\\_LOIPR\\_09-DEC-20.pdf](http://www.crae.org.uk/media/129724/CRAE_LOIPR_09-DEC-20.pdf);

<sup>52</sup> Lord Agnew of Oulton, Parliamentary Under Secretary of State for the School System (20 November 2018) Written Ministerial Statement for Universal Children’s Day HLWS1064 <https://www.parliament.uk/business/publications/written-questions-answers-statements/writtenstatement/Lords/2018-11-20/HLWS1064/>

<sup>53</sup> The true scale of how many CRIs have been conducted is unknown as they are not centrally collected. Most are not published.

<sup>54</sup> Child’s rights impact assessment amendments to children’s social care regulations during Covid-19 outbreak [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/913234/Children\\_s\\_rights\\_impact\\_assessment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/913234/Children_s_rights_impact_assessment.pdf)

A raft of emergency legislation, regulations, and guidance affecting children and their education was brought in during the pandemic without the usual parliamentary scrutiny, consultation period, or consultation with the Children's Commissioner,<sup>56</sup> showing a worrying lack of democratic scrutiny for children's rights. CRAs are a vital tool in implementation of the UNCRC and allow consideration of the impact of a policy to be assessed across all areas of the UNCRC and steps taken to mitigate and address any risks to children's rights.<sup>57</sup>

36. At national level, children are rarely involved in policy-making and there is no permanent structure or plan to facilitate systematic participation as recommended by the UN Committee on the Rights of the Child.<sup>58</sup> Unlike in Scotland, the UK Government did not provide any opportunities for under-18s to share their views and experiences of the pandemic and being out of school or going back, despite significant campaigning from the children's voluntary sector.<sup>59</sup>

**We recommend that the Public Accounts Committee addresses the following points when it questions senior officials at the DfE on how well the DfE managed its overall response in the first lockdown:**

- Did the DfE undertake a Child Rights Impact Assessment on the impact of closing schools and home learning, and on the regulations on children with SEND and exclusions?
- Were the best interests of the child a primary consideration of the DfE where its actions impacted and concerned children?
- What steps were taken by the DfE to ensure that secondary education (general and vocational) was available and accessible to every child; were appropriate measures taken such as the introduction of free education and offering financial assistance in case of need?

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<sup>55</sup> The Rights of Children and Young Persons (Wales) Measure 2011 imposes a duty on ministers to have due regard to children's rights as expressed in the CRC. Part one of the Children and Young People (Scotland) Act 2014 requires all Scottish ministers to give better or further effect to the requirements of the CRC; take account of the relevant views of children of which they are aware; promote public awareness and understanding of the rights of children; and report every three years to the Scottish Parliament on what they have done to fulfil these duties.

<sup>56</sup> Article 39 v the Secretary of State for Education [2020] EWCA 1577 (Civ) <https://www.bailii.org/ew/cases/EWCA/Civ/2020/1577.html> The Department for Education was found by the Court of Appeal to have acted unlawfully in adopting these regulations without consulting the Children's Commissioner and other bodies representing the rights of children in care. This judicial review was brought by Article 39 after a broad coalition of organisations and concerned individuals undertook a campaign challenging the regulations, their broad scope and the lack of scrutiny around their adoption. Article 39 [accessed 23 November 2020] <https://article39.org.uk/scrapsi445/>

<sup>57</sup> Payne, L. (2017) 'Child Rights Impact Assessment (CRIA): A review of comparative practice across the UK', Unicef UK [https://www.unicef.org.uk/wp-content/uploads/2017/09/Unicef-UK-CRIA-comparative-review\\_FOR-PUBLICATION.pdf](https://www.unicef.org.uk/wp-content/uploads/2017/09/Unicef-UK-CRIA-comparative-review_FOR-PUBLICATION.pdf)

<sup>58</sup> Children's Rights Alliance for England, 'England Civil Society Submission to the United Nations Committee on the Rights of the Child to inform its List of Issues Prior to Reporting (LOIPR)' (2020) [http://www.crae.org.uk/media/129724/CRAE\\_LOIPR\\_09-DEC-20.pdf](http://www.crae.org.uk/media/129724/CRAE_LOIPR_09-DEC-20.pdf);

<sup>59</sup> Including calls on the UK Government by children's charities and youth representative; <https://www.iwill.org.uk/open-letter-to-uk-govt>

- How did the DfE prevent direct or indirect discrimination against children, who are in families subject to the no recourse to public funds condition (NRPF), in budget-related legislation, policies or programmes?
- How did the DfE ensure every child had the right to express their views in matters affecting them, such as school closures and home-schooling?
- What measures were taken by the DfE to encourage regular attendance at school, particularly for disadvantaged students including those in families on low or no income, Gypsy/Roma pupils, young carers, asylum seekers and disabled children?
- What steps did the DfE take to ensure that disabled children had effective access to and receipt of education and training, including in-person support services, learning mentors, specialist teaching, communication facilitation and therapy sessions?
- Why were there delays to the extension of free school meals to some children in families with NRPF?
- What steps did the DfE take to ensure that the interests of business entities were not prioritised over people's right to food, without lawful justification?
- How did the DfE ensure access to adequate healthcare and support services for children?
- How did the DfE ensure that young people with SEND were not disproportionately impacted by measures, and how did they ensure that young people who lost provision under an EHCP or suffered delays to their exclusion process did not suffer long term consequences and were able to return to their usual school and education successfully?

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