

Written evidence submitted by Just for Kids Law (MRS0315)

About Just for Kids Law

Just for Kids Law (JFKL) was founded in 2007. Through a unique model of holistic representation, we provide client-led support, advice and legal services to children and young people in London and push for nationwide systemic change through strategic litigation and policy and public affairs work. The Children's Rights Alliance for England (CRAE) merged into JFKL in 2015. CRAE was established in 1991 when the UK ratified the UN Convention on the Rights of the Child (CRC) and pushes for full implementation of the CRC in England. The Youth Justice Legal Centre (YJLC) was set up by Just for Kids Law in 2015 to provide legally accurate information, guidance and training on youth justice law. It aims to raise standards in criminal courts and supports lawyers doing vital work representing children and young people across England and Wales.

This submission is informed by our work monitoring implementation of the CRC in England, as well as our direct advocacy and legal case work with children and young people. We share your concerns about the impact that Government measures to tackle Covid-19 is having on people with protected characteristics and welcome this inquiry. We are particularly concerned about children and young people with Special Educational Needs and Disabilities (SEND) and Black, Asian and Minority Ethnic (BAME) children and young people coming into contact with the police and criminal justice system – some of the most vulnerable in our society.

All primary and secondary legislation relating to the pandemic should be subjected to a full and transparent Child Rights Impact Assessment (CRIA), with input from the Children's Commissioner and other relevant children's rights organisations, so measures taken can be monitored, are proportionate to the crisis, and can be revoked as soon as possible.

Children and young people coming into contact with the police and criminal justice system

Before the current crisis, BAME children and young people were disproportionately coming into contact with the police and criminal justice system, for example:

- Children and particularly BAME children are disproportionately stopped and searched. Between October 2017 and September 2018, the largest proportion stopped of all age groups (42,424) were 15-19 year olds.¹ Between 2009/10 and 2018/19 Black people had the highest stop and search rates in every police force area for which there was data.²
- Between April 2018 and March 2019, Taser was used on children in England and Wales 1,700 times.³ Between January and October 2019, there were already 1,009 uses of Taser on children by the Metropolitan Police Service (MPS). Of those, nearly 74% was on BAME children.⁴ Across the whole of 2017 and 2018, BAME children accounted for 34% of spit-hood use nationally and 72% of MPS use.⁵
- In the year ending March 2019, there were just over 60,200 arrests of children (aged 10-17) by the police in England and Wales (excluding Lancashire)⁶ for notifiable offences.⁷ Black children were over four times more likely than White children to be arrested. BAME children account for 29% of children arrested.⁸
- In 2019, BAME children accounted for two thirds (67%) of the 7,038 children detained overnight by the MPS.⁹

- An annual survey of children in prison for 2018-2019 revealed over half (53%) identified as being from a Black and Minority Ethnic background – its highest level on record. Nearly one in 10 (9%) indicated that they were from a Traveller community. It is estimated that BAME children make up approximately 17% of the 10-17 year old general population.¹⁰

As noted above, in the year ending March 2019, Black children were over four times more likely than White children to be arrested.¹¹ BAME children are therefore exposed to a greater risk of contracting COVID-19, through arrest and detention. Despite children seeming to be less at risk from the virus, the heightened chance of infection in busy and confined spaces such as police stations, still poses a real danger to them, especially those with underlying health conditions, their families and wider communities. The Government has recently launched an inquiry to look at the disproportionate impact of COVID 19 on BAME communities, following the high number of BAME people who have died from the virus. It is therefore crucial that all measures are taken to ensure that the BAME community is not unnecessarily exposed to the coronavirus, including in their contact with the police.

The risk brought about by this pandemic is disproportionate to the need to arrest and detain children and young people for minor offences. Especially now that, as and when the disease moves into different phases, the UK Government Coronavirus action plan 4.48 will require police forces to concentrate on responding to serious crimes and maintaining public order.¹²

The Police and Criminal Evidence Act 1984 (PACE) Code C is clear that “*all persons in custody must be dealt with expeditiously and released as soon as the need for detention no longer applies.*”¹³ Specifically, the College of Policing requires officers to take into account the age of a child or young person when deciding whether any of the statutory grounds for arrest apply. Officers should pay particular regard to the timing of any necessary arrests of children and young people, ensure that they are detained for no longer than necessary, both pre and post-charge, and avoid holding them overnight in police cells unless absolutely necessary.¹⁴ The National Police Chiefs’ Council further reiterates the need to “*use custody for children only as a last resort*”,¹⁵ while also recognising that children are inherently vulnerable and should be treated wholly differently to adults in all encounters with the police.¹⁶

Further, PACE s38(6) places a duty on the police to transfer children who have been charged with a criminal offence and refused bail to local authority accommodation rather than keeping them in the police station overnight. Where a custody officer authorises an arrested child to be kept in police detention the custody officer shall secure that the arrested child is moved to local authority accommodation, unless he certifies that it is “impracticable” for him to do so; or, in the case of an arrested child who has attained the age of 12, that no secure accommodation is available and that keeping him in other non-secure local authority accommodation such as emergency foster care, a children’s home or staying with family members would not be adequate to protect the public from “serious harm” from the child.¹⁷

However, despite this legislation and guidance and the risks posed by COVID 19 we are continuing to see too many children arrested for minor offences, and children being held for long periods in police cells. We appreciate that there will be occasions when it is appropriate

to arrest a child to protect the public or themselves but the vast majority of children we have represented since the introduction of the lock down have been for offences which do not meet this criteria.

We also have concerns that children who fail to comply with directions given under the Coronavirus Act 2020 or contravene the requirements of the Health Protection (Coronavirus) Regulations 2020 commit an offence. However, we are still unclear as to how the powers will be interpreted for children in the absence of the ability to issue them with fixed penalty notices. The Police can enforce compliance with the regulations using reasonable force and there is a risk that children confronted by police will end up arrested for other offences. We are also concerned about the potential for increased use of force, including greater use of tasers as a 'safe distance weapon', on the most vulnerable children, including BAME children who are already disproportionately impacted by the use of force.

The impact of the new powers on children must be carefully monitored, especially on BAME children who are already disproportionately policed.

Recommendations

The Government must:

- **Collect data on children and young people coming into contact with the criminal justice system under the emergency legislation, which must be fully disaggregated by gender, ethnicity and age.**
- **Issue urgent national guidance requiring police officers and custody sergeants to refrain from arresting children and young people, detaining them and therefore exposing them to greater risk of contracting COVID-19, unless absolutely necessary, and only pursue most serious offences committed by children and young people.**
- **Ensure that data is available on the numbers of under-18s arrested in the last two months disaggregated by ethnicity and reason for arrest.**
- **Issue specific guidance to police as to how to interact with children and young people who are potentially in breach of the new enforcement COVID-19 powers.**

Children with Special Educational Needs and Disabilities

We are concerned that the closure of schools and some of the measures introduced by the Government during the COVID crisis raise a number of issues that threaten to disproportionately impact on the ability of children with special educational needs and disabilities (SEND) access education. In fact, some of the provisions explicitly weaken the entitlements of children with SEND to access the support needed for their education when they are some of the most pupils in need. For example, provisions in the Coronavirus Act 2020 downgrade the duty for local authorities to assess and create an education, health and care plan (EHCP) as well as the school's duty to admit a child once named on a EHCP to a 'reasonable endeavours' duty. New regulations also extend the 16-week timescale to assess an EHCP and 20-week timescale to request to a plan to 'as soon as is reasonable practicable.'¹⁸ We are very concerned that there was no consultation on these measures, Equality Impact Assessment or Child Rights Impact Assessment and that the Education Secretary has suggested these changes could be extended permanently.¹⁹

Below are some issues identified and examples of our casework during the COVID 19 crisis.

Delays to SEND procedures impacting on access to education

David is five and has autism. His family have been working for a long time to get him assessed for an EHCP. His first year of school had been a very difficult experience and now the whole family are in lockdown, there are days in which they struggle to provide the support he needs.

David's request for an EHCP went to panel in April and a decision was made that he should be assessed. However, the assessment was initially postponed until schools reopened, in contradiction with the usual requirements that the assessment should be conducted within 16 weeks.

This is concerning because it would mean that David would have to go to a school just to be assessed, only to be moved once the assessment was completed. For a person with autism, who suffers from heightened anxiety around new and complex social situations, overstimulation and changes to routine, this is problematic.

It might also mean that David would miss out on schooling during the shutdown that he would otherwise have obtained once the assessment was completed. This is because a young person with an EHCP will have more certainty obtaining a place during the shutdown than one who does not have one.

Finally, it would mean David facing the daunting process of reintegration after a long absence without having had a professional review of what support might help him through that process.

Reintegration once schools reopen

Reintegration into school can be a real challenge for many young people. Just for Kids Law worked with Richard, who was seven years old. Richard's sensory disorder caused him to exhibit disruptive and, at times, violent behaviour which eventually led to his permanent exclusion in October 2019. After some time, the exclusion was quashed on review and Richard was readmitted. However, by this time he had been out of school and away from any social contact for so long that his reintegration was chaotic and caused more severe problems between him and his peers. The school therefore segregated him from the rest of the community until a new school could be found.

There are now thousands of children in Richard's position. Some will transition straight to secondary school after a long absence. We know that the transition from primary to secondary school can be difficult for many children. However, for young people with SEND, and particularly a disorder such as autism, which can be exacerbated by breaks in routine and familiarity, this is a very trying time and a hotspot for exclusion and other disciplinary measures.

Therefore, if schools do not recommence until the new academic year, we fear a huge challenge for the successful reintegration of thousands of children with high end needs without a sensible, measured and resourced plan in place to facilitate this.

School closures, online access and professional support

Just for Kids Law are supporting Jai, a fourteen-year-old with ADHD. He has difficulties regulating his emotions and has found it exceedingly difficult to adjust to the lockdown. Before the measures came into place, Jai was being assessed for an EHCP. He was being supported by a mentor and with therapy through CAMHS for depression. All of this support has come to a sudden stop and Jai cannot rely on his usual support systems such as seeing friends.

The local authority tried to place Jai in a school during the lockdown, but the school refused without reason. The situation has deteriorated to the point that Jai's mother has had to call the police several times as his behaviour becomes violent. There is concern that this will result in a criminal record and prolonged stays in police custody, which could also expose him to COVID 19. We have also heard anecdotally that there are difficulties in finding children who have become violent with their immediate families alternative accommodation with other family members for a 'cooling' off period, as would usually happen, given concerns about catching the virus.

This case study illustrates the difficulties and profound consequences that families with children with SEND and mental health problems are facing during this period. The downgrading of statutory duties for children with SEND will make it very difficult for Just for Kids Law to secure support and access to education for children like Jai and others because the legal safeguards they would have used to challenge the authorities are no longer in place.

Recommendations

- **The Government should complete a Child Rights Impact Assessment on the Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020 to ensure that the measures taken can be monitored, are proportionate to the crisis, and can be revoked as soon as possible.**
- **The Government should make sure children with SEND or an EHCP who need and want to be in school can attend to ensure they have access to the right support and resources they need to continue their education.**
- **The Department for Education should work with school leaders to make a comprehensive plan to ensure that when schools reopen, children with SEND are reintegrated into school with enough support and resources to ensure that we do not end up with a spike in exclusions, school refusing and mental health difficulties amongst young people with SEND.**
- **The Government should ensure local authorities have the resources to provide continuation of care for children and young people with mental health difficulties. They should provide resources to local authorities to facilitate digital alternatives to face to face clinical and assessment sessions, and to engage the services of locum professionals when employed mental health practitioners are unavailable due to the crisis.**

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¹ Children's Rights Alliance for England, 2019, *State of Children's Rights 2018: Policing and Criminal Justice* http://www.crae.org.uk/media/127098/B8_CRAE_POLICINGCJ_2018_WEB.pdf

² Ministry of Justice, 2020, *Stop and Search data* <https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/stop-and-search/latest>

³ Home Office, 2019, *Police use of force statistics, England and Wales: April 2018 to March 2019* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/853204/police-use-of-force-apr2018-mar2019-hosb3319.pdf

⁴ Children's Rights Alliance for England, 2020, *Children's rights and policing: Tasers and children's rights* https://yjlc.uk/wp-content/uploads/2020/04/CRAE_POLICING-TASER-PRINT-1.pdf

⁵ Children's Rights Alliance for England, 2020, *Children's rights and policing: Spit-hoods and children's rights* https://yjlc.uk/wp-content/uploads/2020/04/CRAE_POLICING-SPITHOODS_PRINT.pdf

⁶ Lancashire could not supply data for the years ending March 2017, 2018 and 2019. Data have been removed for this force for all years so valid comparisons can be made. In the years for which data were available, figures show Lancashire's arrest numbers contributed between 2% and 4% of the total. Youth Justice Board / Ministry of Justice, 2020, *Youth Justice Statistics 2018/2019: England and Wales* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/862078/youth-justice-statistics-bulletin-march-2019.pdf

⁷ Notifiable offences are those offences which require the police to record an incident as a crime and report the occurrence to the Home Office.

⁸ Youth Justice Board / Ministry of Justice, 2020, *ibid*

⁹ Responses to FOI requests by Just for Kids Law. Overnight signifies that a detainee was held within Custody for four or more consecutive hours between 00:00 & 08:00. FOIA/MOPAC Ref Number 01/FOI/20/013397

¹⁰ Youth Justice Board / Ministry of Justice, 2020 *ibid*

¹¹ *ibid*

¹² Department of Health and Social Care, 3 March 2020, *Coronavirus action plan: a guide to what you can expect across the UK* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/869827/Coronavirus_action_plan_-_a_guide_to_what_you_can_expect_across_the_UK.pdf

¹³ Paragraph 1.1, Code C: Code of Practice for the detention, treatment and questioning of persons by Police Officers, Police and Criminal Evidence Act 1984 (PACE) Codes of Practice

¹⁴ College of Policing, 23 October 2013, Section 2, Detention and custody: Children and young persons <https://www.app.college.police.uk/app-content/detention-and-custody-2/detainee-care/children-and-young-persons/> (Last modified: 5 January 2017)

¹⁵ National Police Chiefs' Council, 2017, *The National Strategy for Police Custody* <https://www.npcc.police.uk/documents/NPCC%20Custody%20Strategy.pdf>

¹⁶ National Police Chiefs' Council, 2016, *National Strategy for the Policing of Children and Young People* <https://www.npcc.police.uk/documents/edhr/2015/CYP%20Strategy%202015%202017%20August%202015.pdf>

¹⁷ Examples of "impracticable" were included in the [Home Office Circular 78/1992 – Criminal Justice Act 1991: Detention Etc of Juveniles](#). They include extreme weather and repeated efforts to contact the local authority with no response – impracticable does not include lack of accommodation or staff. "Serious harm" means 'death or serious injury, whether physical or psychological', section 38(6A) PACE 1984. This only relates to children charged with murder or offence under Schedule 15 of Criminal Justice Act 2003 such as manslaughter; grievous bodily harm; robbery; rape. See Home Office, 2014, *Concordat on Children in Custody* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655222/Co

[ncordat on Children in Custody ISBN Accessible.pdf](#). For more information see <https://yjlc.uk/wp-content/uploads/2016/10/YJLC-Section-38-Guide-2016-final.pdf>

¹⁸ The Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020

¹⁹ Simpson, F. (Wednesday 29th April 2020) 'Williamson: Changes to SEND Tribunals and EHC Plans could be made permanent' CYP Now <https://www.cypnow.co.uk/news/article/williamson-changes-to-send-tribunals-and-ehc-plans-could-be-made-permanent>