

Written evidence submitted by the Equality and Human Rights  
Commission

# **Evidence to the Education Select Committee inquiry on the impact of COVID-19 on education and children's services**

Submitted by the Equality and Human Rights Commission

Friday 29 May 2020

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## Introduction

1. The Equality and Human Rights Commission has powers to advise Government on the equality and human rights implications of laws and proposed laws, and to publish information or provide advice, including to Parliament, on any matter related to equality, diversity and human rights.<sup>1</sup>
2. We recognise that these are unprecedented circumstances, and that the Government has been required to make rapid and difficult decisions in order to safeguard public health.
3. However, in this submission, we identify aspects of the UK Government's response in England to coronavirus in the area of education and children's services that risk exacerbating existing inequalities, and may lead to breaches of domestic and international human rights obligations.<sup>2</sup>
4. We recommend measures that should be adopted immediately to address these issues, and identify medium and longer-term changes to the education system that will help to make it more resilient in future.

## Equality and human rights framework

5. Early available evidence indicates that the Government's response to coronavirus is affecting children and young people with different protected characteristics differently. The Equality Act 2010 and, in particular, the Public Sector Equality Duty (**PSED**) requires the Government and other public authorities to take active steps to ensure these differential impacts are understood and mitigated.<sup>3</sup>
6. The Government's response to the pandemic must also comply with the Human Rights Act 1998 and the core UN human rights treaties ratified by the UK, including the UN Convention on the Rights of the Child (**UNCRC**).<sup>4</sup> These instruments guarantee the right of every child to education without discrimination, and require State Parties to progressively implement the right of disabled children to inclusive education.<sup>5</sup> The UNCRC also includes the principle that the best interests of the child must be the primary consideration in any decisions involving children.<sup>6</sup>

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<sup>1</sup> Equality Act 2006.

<sup>2</sup> Note that references to Government, Departments and Ministers throughout this submission refer to the UK Government, Departments and Ministers except where otherwise specified. Education and children's services are devolved matters and some issues have been approached differently by the devolved administrations.

<sup>3</sup> Equality Act 2010, s 149 requires public authorities and those exercising a public function to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between those who share protected characteristics and those who do not.

<sup>4</sup> [UNCRC](#)

<sup>5</sup> [Human Rights Act 1998](#) (incorporating the [European Convention on Human Rights](#) into domestic law); Protocol 1, Art 2 of the [European Convention on Human Rights](#); [UNCRC](#); [International Covenant on Economic, Social and Cultural Rights \(ICESCR\)](#); and the [UN Convention on the Rights of Persons with Disabilities \(UNCRPD\)](#).

<sup>6</sup> [UNCRC, Art 3\(1\)](#); UNCRC (April 2020), [Statement of the UN Committee on the Rights of the Child on the physical, emotional and psychological effect of COVID-19 on children](#).

7. We recognise, in line with the international human rights framework, that restrictions on our rights and freedoms may be required to keep people safe. However, any restrictions must be necessary, proportionate, time-bound and receive adequate and regular public and parliamentary scrutiny.

## **Impact of coronavirus and the Government's response on children in need**

### Concerns about the safeguarding gap created by school closures

8. School closures have reduced the ability of schools to perform their safeguarding role in respect of vulnerable children, leaving many at risk.<sup>7</sup> Whilst Government guidance specifies that schools should remain open for children identified as "vulnerable",<sup>8</sup> the narrow definition excludes a number of at-risk groups,<sup>9</sup> and uptake has been low.<sup>10</sup>
9. There are particular concerns about the impact of school closures on children at risk of abuse and neglect<sup>11</sup> – including domestic abuse,<sup>12</sup> harmful practices,<sup>13</sup> online abuse and grooming,<sup>14</sup> and children at risk of criminal exploitation<sup>15</sup> – and the danger that many will become 'invisible' to social services without school safeguarding.<sup>16</sup> Disabled children are more likely to be subject to abuse or neglect, and can face challenges in reporting abuse.<sup>17</sup> LGBT young people may

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<sup>7</sup> The Children's Society (April 2020), [School's out and young people are at risk: what closures mean for children across the country](#); Children's Commissioner (April 2020), [We're all in this together?](#)

<sup>8</sup> See Department for Education (May 2020), [Supporting vulnerable children and young people during the coronavirus \(Covid-19\) outbreak](#).

<sup>9</sup> Including children living in poverty and children at risk of exploitation: see The Children's Society (April 2020), [School's out and young people are at risk: what closures mean for children across the country](#). There is also a risk that children who are newly vulnerable, as a result of the pandemic, will not be identified as requiring support.

<sup>10</sup> Early data shows that uptake by 'children in need' or with an EHCP was low, an estimated 5%. See Department for Education (21 April 2020), [Coronavirus \(COVID-19\) attendance in education and early years settings – summary of returns](#). The most recent data shows that uptake by 'vulnerable' children has improved, with an estimated 14% attending school, though this remains low. See Department for Education (15 May 2020) [Coronavirus \(COVID-19\) attendance in education and early year settings – summary of returns to 15 May 2020](#).

<sup>11</sup> The Children's Society (April 2020), [Covid-19's impact on children at risk of abuse, neglect and exploitation](#).

<sup>12</sup> Research by the Children's Commissioner in 2019 found that 830,000 children in England live in homes where domestic abuse has taken place in the last year: see Children's Commissioner (July 2019), [Childhood vulnerability in England 2019](#). The Government's announcement of £3.1 million for specialist services for children affected by domestic abuse is welcome. See Home Office (April 2020), [Further support for children affected by domestic abuse](#).

<sup>13</sup> Including female genital mutilation and forced marriage: see Oxford Against Cutting (May 2020), [Launch of lockdown poster campaign to support those at risk of female genital mutilation \(FGM\) or forced marriage](#); The Independent (May 2020), [Coronavirus could cause rise in witchcraft and possession allegations in UK, police say](#).

<sup>14</sup> BBC News (27 March 2020), [Coronavirus: Online child abuse warning during lockdown](#); The Children's Society (April 2020), [Covid-19's impact on children at risk of abuse, neglect and exploitation](#). Also see our section below: 'Impact of coronavirus and the Government's response on children with SEND.'

<sup>15</sup> The Children's Society (April 2020), [Huge rise in child exploitation cases amid Covid 19 fears](#); Children's Commissioner (April 2020), [We're all in this together?](#)

<sup>16</sup> Children's Commissioner (April 2020), [We're all in this together?](#)

also be at risk of abuse in the home from hostile family members.<sup>18</sup> The Children’s Commissioner for England has warned of a surge in child protection referrals when schools reopen, with local authorities concerned about managing the increase in demand.<sup>19</sup>

#### 10. The Government should:

- **Take steps to ensure that more vulnerable children are able to attend school, when it is safe to do so, including by ensuring that adequate, accurate and accessible information is available to them.**
- **Allocate additional, ring-fenced funding to local authorities to ensure increased access to support services for children at risk of harm, both while schools are closed and following their reopening.**
- **Support all schools in monitoring and identifying indicators of abuse when children return to school, ensuring schools have the resources to assist those who have experienced abuse.<sup>20</sup>**

#### Reduced local authority support for children’s social care services

11. The safeguarding gap created by school closures is compounded by the reduction in local authority support for children’s social services, leaving vulnerable children at even greater risk.<sup>21</sup>

12. On 24 April, the obligations that English local authorities owe to children in care were temporarily modified,<sup>22</sup> including by removing the requirement on social workers to visit children in care every six weeks, and by relaxing the mandatory six-monthly independent reviews of a child’s care.<sup>23</sup> These changes have been

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<sup>17</sup> The NSPCC has highlighted that international studies have shown that disabled children and young people are three times more likely to be abused or neglected than non-disabled young people: see NSPCC (2020), [Coronavirus \(COVID-19\) and keeping children safe from abuse](#) and NSPCC (2014), [We have the right to be safe: protecting disabled children from abuse](#); and Social Care Institute for Excellence (April 2020), [Safeguarding children and families during the COVID-19 crisis](#).

<sup>18</sup> See [LGBT Foundation briefing](#) on the impact of Covid-19 on LGBT people.

<sup>19</sup> M Bulman, The Independent (May 2020), [Coronavirus: Social workers brace for a surge in child protection referrals when schools re-open](#).

<sup>20</sup> This recommendation has been adapted from recommendations made by the Victim’s Commissioner to reflect the role of schools. Victim’s Commissioner (April 2020), [Sowing the Seeds: Children’s experience of domestic abuse and criminality](#). On 22 May the Government announced funding for social workers to work in schools to identify victims of abuse and neglect, though the project is limited to approximately 150 schools, see UK Government (2020), [Social workers to work with teachers in schools](#). Schools already have a duty to safeguard and protect the welfare of children, and this includes reporting abuse, see UK Government’s statutory guidance, [Working together to safeguard children](#).

<sup>21</sup> See [UN Committee on the Rights of the Child Covid-19 Statement](#) which urges States to define core child protection services as essential and ensure that they remain functioning and available.

<sup>22</sup> [The Adoption and Children \(Coronavirus\) \(Amendment\) Regulations 2020](#); see also [Explanatory Memorandum](#).

<sup>23</sup> [The Adoption and Children \(Coronavirus\) \(Amendment\) Regulations 2020, reg 8\(13\)](#) amending [The Care Planning, Placement and Case Review \(England\) Regulations 2010, reg 28](#); and [The](#)

met with widespread criticism.<sup>24</sup> In updated guidance, the Government outlined the changes to local authorities' duties and emphasised that these newly introduced "flexibilities" should only be used when absolutely necessary.<sup>25</sup>

13. It is vital that changes of this nature are necessary, time-bound, flexible and proportionate.<sup>26</sup> We are concerned that the legislative changes received no parliamentary scrutiny,<sup>27</sup> and that this dilution of duties comes at a time when vulnerable children are in need of more, not less, protection.
14. **The Government should consider all possible means to maintain children's social care provision at the level available prior to the outbreak of the pandemic, including by reinstating the legal protections now removed for children in care. Until then, any use of the new 'flexibilities' should only be done with robust oversight, proper consultation, clear reference to equality considerations and adherence to human rights obligations.**<sup>28</sup>

### **Concerns about discrimination in approaches to assessments and grading**

15. The Commission expressed early concern about Ofqual's proposals to replace GCSE, AS and A level exams with predicted grades this year. We highlighted evidence that there may be patterns of conscious or unconscious bias when teachers predict grades, with particular implications for ethnic minority pupils, including Gypsy, Roma and Traveller pupils, and children with SEND.<sup>29</sup>
16. Following a wide-ranging consultation, Ofqual has now issued further clarifications on the exceptional arrangements that will be used to award grades.<sup>30</sup>

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[Adoption and Children \(Coronavirus\) \(Amendment\) Regulations 2020, reg 8\(14\)](#) amending [The Care Planning, Placement and Case Review \(England\) Regulations 2010, reg 33](#).

<sup>24</sup> For example, from [The Children's Commissioner for England, Article 39, Become, Just for Kids Law](#), and [Coram Voice](#). The Leader of the Opposition also tabled a parliamentary motion to annul the statutory instrument which introduced the changes: [Children and Young Persons Early Day Motion #422](#) (4 May 2020).

<sup>25</sup> Department for Education (06 May 2020), [Guidance for children's social care](#). See also, Welsh Government (21 April 2020), [Children's social services during the COVID-19 pandemic: guidance](#), which is clear that local authorities must continue to meet their statutory duties to children.

<sup>26</sup> See above, the [Welsh Government's guidance](#) which does not identify any necessary changes to the duties on local authorities. As per para 3.5 of the [Explanatory Memorandum to the Adoption and Children \(Coronavirus\) \(Amendment\) Regulations 2020](#), the Regulations impose a duty on the Secretary of State to keep these amendments under continuous review, and they should not be in place longer than is necessary. This may mean they are rescinded earlier than their statutory end date of the 25 September 2020, if they are deemed unnecessary. Previous attempts have been made to introduce these changes to children's social care duties, for example via an exemption clause to the Children and Social Work Bill which was eventually scrapped after widespread criticism. See A McNichol (2 March 2017), [Government scraps controversial social care exemptions plan](#).

<sup>27</sup> See [Explanatory Memorandum to the Adoption and Children \(Coronavirus\) \(Amendment\) Regulations 2020, s 3](#).

<sup>28</sup> [United Nations Convention on the Rights of the Child, Art 3\(1\)](#): "In all actions concerning children...the best interests of the child shall be a primary consideration".

<sup>29</sup> Equality and Human Rights Commission (29 April 2020), [Consultation response: Exceptional arrangements for exam grading and assessment in 2020](#). See also concerns expressed by Runnymede Trust and other stakeholders: Runnymede Trust (5 April 2020), [Open Letter: Predicted Grades and BME students](#).

<sup>30</sup> Ofqual (15 April 2020), [Open consultation: Exceptional arrangements for exam grading and](#)

This will include a proposed statistical standardisation process to address inconsistencies in the grade predictions made by individual schools.<sup>31</sup>

17. We are pleased that Ofqual has taken on board some of our recommendations, including on the need to issue guidance on the approach that teachers should take to predicting grades and ranking pupils, to minimise the risk of conscious or unconscious bias.<sup>32</sup>

18. We acknowledge that there may be practical challenges in using the statistical standardisation process to address potential bias in the predicted grades issued by schools.<sup>33</sup> It will therefore be crucial for Ofqual to ensure that the routes available for pupils to challenge the grades they receive, including on grounds of suspected unlawful discrimination, are effective and accessible.<sup>34</sup>

19. **We recommend that Ofqual:**

- **Conduct an evaluation of the exceptional arrangements for awarding grades once the process has concluded. If the evaluation reveals higher than average disparities for pupils sharing particular protected characteristics, or from socio-economically disadvantaged backgrounds, these should be investigated by Ofqual.**
- **Publish information in easy to understand and accessible formats about the routes available for pupils to challenge the grades that they are awarded through this year's exceptional arrangements, including on grounds of suspected unlawful discrimination.**

20. In Higher Education, there are concerns about the lack of a consistent approach to student assessments, with some universities cancelling exams in some subjects, while others continue with online examinations. Students who do not have access to the required technology and/or students without family support are likely to be adversely impacted by the shift to online examinations.<sup>35</sup> Disabled students may also be disproportionately affected, given uncertainties about the extent to which on-line examinations will accommodate reasonable adjustments.<sup>36</sup>

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[assessment in 2020](#).

<sup>31</sup> Ofqual (22 May 2020), [Consultation decisions: Exceptional arrangements for exam grading and assessment in 2020](#).

<sup>32</sup> Ofqual (22 May 2020), [Guidance for Heads of Centre, Heads of Department and teachers on objectivity in grading and ranking](#).

<sup>33</sup> Ofqual explains that this could lead to arbitrary changes to the rank orders which schools are obliged to send to exam centres along with the predicted grades for each pupil and that the issue of potential bias is best dealt with by supporting schools to make objective judgements. Instead, the statistical standardisation process will be used to ensure that an individual student's grade is informed by their position in the centre's rank order for that subject, their prior attainment where available, and the centre's past performance. Ofqual (22 May 2020), [Consultation decisions](#).

<sup>34</sup> Ofqual notes that pupils can raise a complaint to their school if they have evidence of bias or that they were discriminated against. They could also pass such evidence on to the exam board who could investigate for potential malpractice. Ofqual (22 May 2020), [Consultation decisions](#).

<sup>35</sup> More information about the vulnerability of students without support from parents or wider family is available in: Office for Students (14 May 2020) [Coronavirus briefing note: Students without family support](#).

<sup>36</sup> NUS (14 April 2020), [National approach needed to exams, assessment and 'no detriment'](#) [on-line

21. Guidance on coronavirus from the Office for Students (**OfS**) encourages higher education providers to be mindful of the needs of all students when deciding on their approach to assessments, including students with specific learning difficulties.<sup>37</sup> However, it does not stipulate particular approaches.
22. We recognise that different approaches are needed to accommodate the diversity of higher education providers and degree qualifications. However, we consider that greater clarity regarding existing obligations would be helpful.
23. **The OfS should update its guidance in order to clarify the need for higher education providers to:**
- **Consult meaningfully with students and representative bodies at an early stage in developing their approach to assessments for the next academic year.**<sup>38</sup>
  - **Comply with their legal obligations under the Equality Act when deciding and implementing their approach to assessments.**

### **Impact of remote learning on widening educational inequalities**

24. We consider that inequalities in the home-learning environment risk undermining the right to education,<sup>39</sup> and exacerbating existing attainment gaps for certain groups including disabled pupils,<sup>40</sup> some ethnic minorities<sup>41</sup> and those who are socio-economically disadvantaged.<sup>42</sup>
25. It is estimated that one million pupils lack adequate access to computers or the internet.<sup>43</sup> There are also particular issues with remote learning for children from socio-economically disadvantaged backgrounds<sup>44</sup> and for some pupils sharing protected characteristics, including Gypsy, Roma and Travellers.<sup>45</sup>

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press release].

<sup>37</sup> Office for Students (3 April 2020), [Guidance for providers about quality and standards during coronavirus \(COVID-19\) pandemic](#).

<sup>38</sup> We recognise that assessments are already taking place in many higher education institutions so this might only help to inform approaches to assessments in 2020-2021, should adjustments still be required at that date.

<sup>39</sup> As set out in the Human Rights Act 1998 and international human rights law.

<sup>40</sup> Also see our section below: 'Impact of coronavirus and the Government's response on children with SEND.'

<sup>41</sup> Department for Education (2020, [Key stage 4 performance 2019](#) (revised).

<sup>42</sup> EPI report that by age 16 disadvantaged pupils are over 18 months behind their more affluent peers in attainment; and pupils with SEND are, on average, over three years behind their peers by the end of secondary education. See Education Policy Institute and Fair Education Alliance (July 2019), [Education in England: Annual Report 2019](#); Education Policy Institute (May 2020), [Preventing the disadvantage gap from increasing during and after the Covid-19 pandemic](#).

<sup>43</sup> Institute for Public Policy Research (March 2020), [Children of the Pandemic: Policies needed to support children during the Covid-19 crisis](#).

<sup>44</sup> A recent survey found that 'children from better-off families are spending 30% more time on home learning than are those from poorer families.' These pupils have more access to individualised teaching resources, a better home set-up for distance learning; and their parents report feeling more able to support them. See Institute for Fiscal Studies, (May 2020), [Learning during the lockdown: real](#)

26. These issues will be more pronounced for children from migrant backgrounds and for Gypsy, Roma and Traveller pupils, whose parents often face language or literacy barriers.<sup>46</sup> Young carers may also find it more difficult to engage with their learning due to other responsibilities.
27. We welcome the development of the specialist curriculum for pupils with SEND by the Government-supported Oak National Academy.<sup>47</sup> However, information received by the Commission suggests that parts of their website and many of their learning resources remain inaccessible.<sup>48</sup> **The Department for Education should ensure that Oak National Academy's online content is accessible for pupils with SEND.**
28. Although we welcome the Government's laptop and internet access scheme,<sup>49</sup> we are concerned about the timescales,<sup>50</sup> and its narrow eligibility criteria.<sup>51</sup> There are reports that schools are being allocated a fraction of the laptops they apply for.<sup>52</sup>
29. Concerns about affordability and access to online resources exist in higher education.<sup>53</sup> In order to run assistive software programs, disabled students may

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[time data on children's experiences during home learning.](#)

<sup>45</sup> Research from Friends Families and Travellers found that only 38% of the 50 Gypsies and Travellers they surveyed had a household internet connection. The 2011 Census data reported that 86% of the general population have an internet connection. See Friends Families Travellers (19 September 2008), [Digital exclusion in Gypsy and Traveller communities in the United Kingdom.](#)

<sup>46</sup> Traveller Movement (April 2020), [Open letter to the Department for Education.](#)

<sup>47</sup> Department for Education (19 April 2020), [New major package to support online learning.](#) For details of its funding see: A Gibbons, TES, (19 April 2020), [Coronavirus: Williamson backs national online academy.](#)

<sup>48</sup> [The National Academy Accessibility Statement.](#)

<sup>49</sup> This followed a legal challenge citing breaches of the right to education and discrimination on grounds of sex and race. See R Adams, The Guardian (6 April 2020), [UK councils face lawsuits over access to education in lockdown London.](#) A pre-action protocol issued by the Good Law Project notes that the effect of digital exclusion will be felt more by children in lone parent families which are mainly comprised of lone parent mothers, and by children from certain ethnic minority groups, given their disproportionate representation among socio-economically deprived households. See Simpson Millar LLP (17 April 2020), [Letter to the Secretary of State for Education.](#)

<sup>50</sup> [Secretary of State oral evidence to the Education Committee,](#) (April 2020).

<sup>51</sup> UK Government (April 2020), [Guidance: Get help with technology for remote education during coronavirus \(COVID-19\).](#) The Department for Education has announced it will provide free laptops and internet access to disadvantaged year 10 pupils, as well as those receiving support from a social worker and care leavers. The guidance indicates that pupils aged 16 to 19 without a suitable device for education may be eligible for support through the 16 to 19 Bursary Fund. The eligibility criteria for accessing a bursary are restricted to 16-19 year olds who are in receipt of benefits or income support in their own name - there are reports of families starting legal action against the government due to lack of laptops and internet connection, and the impact for their children on accessing education. See R Adams, The Guardian (7 May 2020), [Families sue UK government over 'little or no education' for their children.](#)

<sup>52</sup> F Whittaker, Schools Week (1 May 2020), [Coronavirus: £85m free laptops scheme falls short.](#)

<sup>53</sup> Association of Colleges, Universities UK, UCISCA and Jisc. (April 2020), [Open letter to The Rt Hon Oliver Dowden CBE MP and Dame Melanie Dawes, CEO Ofcom.](#) Also Association of NMH Providers, (May 2020), [Your DSA support and Covid-19 - student and provider survey.](#) Also National Association of Disability Practitioners, (May 2020), [Covid-19: Disabled students in higher education: student concerns and institutional challenges,](#) which also reports issues such as Higher education institutions having difficulties in identifying students who need support with IT resources.

have to purchase upgraded laptops.<sup>54</sup> According to guidance on Disabled Students' Allowances (DSA) they must contribute £200 towards this cost.<sup>55</sup>

### 30. The Department for Education should:

- **Seek to ensure that the provision of digital devices and internet access is available to children of all ages who do not have adequate access to computers or the internet, including those in primary education.**<sup>56</sup>
- **Where disabled students in higher education require a laptop upgrade due to the shift to online learning caused by the pandemic, the DSA expectation of a £200 contribution should be waived.**

### **Impact of remote learning on children and young people's mental health and safety**

31. We are concerned that remote learning potentially increases the risk of exposure of both children<sup>57</sup> and young people<sup>58</sup> to online harms.<sup>59</sup> We know that the spectrum of online harms disproportionately affects those who share certain protected characteristics.<sup>60</sup> As a result, we welcome the Government's guidance for schools on this issue.<sup>61</sup> **We recommend the creation of accessible versions of this guidance suitable for distribution to children and young people.**<sup>62</sup>

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<sup>54</sup> As raised by Disability Rights UK in a written briefing

<sup>55</sup> Gov.uk, [Help if you're a student with a learning difficulty, health problem or disability](#).

<sup>56</sup> UN Committee on the Rights of the Child [statement](#), (April 2020). See para 3 which urges governments to 'Ensure that online learning does not exacerbate existing inequalities or replace student-teacher interaction'.

<sup>57</sup> National Crime Agency (04 April 2020), [Law enforcement in coronavirus online safety push as National Crime Agency reveals 300,000 in UK pose sexual threat to children](#); NSPCC (27 March 2020), [Hundreds of children counselled over impact of coronavirus outbreak](#); The Independent, [Coronavirus: 90% fewer child sex abuse images taken down during pandemic, watchdog warns](#).

<sup>58</sup> D Batty, The Guardian (22 April 2020), [Harassment fears as students post extreme pornography in online lessons](#).

<sup>59</sup> "Online harms" is the umbrella terms for a spectrum of harmful online behaviour – from child sexual abuse, terrorism and revenge porn through to hate crime, harassment and intimidation/bullying. We have also provided evidence on our more general concerns about mental health to the Health and Social Care Committee, accessible [here](#).

<sup>60</sup> Department for Digital, Culture, Media & Sport and the Home Office, [Online Harms White Paper](#), p 19; Law Commission of England and Wales (2018), [Abusive and Offensive Online Communications: A Scoping Report](#), para 3.49 (and the footnotes cited therein); Ditch the Label (2019), [The Annual Bullying Survey](#).

In general, LGBT young people also face high risks related to online harms and bullying: Stonewall (2017), [School Report: The experiences of lesbian, gay, bi and trans young people in Britain's schools in 2017](#), as do girls and young women: Plan International (2020), [The State of Girls' Rights in the UK \(2019 – 2020\)](#).

Our recent report also highlighted the "common experience" of racial harassment in universities suffered by students and staff: Equalities and Human Rights Commission (2020), [Tackling racial harassment: universities challenged](#).

<sup>61</sup> Department for Digital, Culture, Media & Sport, Department for Education and the Home Office (14 April 2020), [Coronavirus \(COVID-19\): support for parents and carers to keep children safe online](#).

<sup>62</sup> It is particularly important that this advice reaches those families in receipt of new equipment, who

32. **Given the current increased dependence on digital technologies, the Government should deliver on its commitment to work with the technology industry to reduce exposure of children and young people to online harms,<sup>63</sup> while ensuring that any measures adopted are consistent with the right to freedom of expression.<sup>64</sup>**
33. The impact of school closures on social isolation and related mental health issues among children and young people also raises concerns.<sup>65</sup> **The Government should commit to long-term funding of pastoral therapeutic care in schools, as well as child and adolescent mental health services, during and after the pandemic, along with resources to publicise nationally the availability of these services.<sup>66</sup>**

### **Impact of coronavirus and the Government's response on children with SEND**

34. We are concerned about the Government's decision to temporarily modify the legal obligation on local authorities and health commissioning bodies to provide the support listed in a child's Education, Health and Care Plan (EHCP). Following this decision, local authorities and health bodies are now only required to make reasonable endeavours to discharge their duty.<sup>67</sup> In addition, new regulations have relaxed timescales for conducting EHCP assessments.<sup>68</sup>
35. These changes risk compounding the already difficult situation faced by many families who are looking after children with SEND at home during the period of school closures, often without adequate support.<sup>69</sup> The Commission has received

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may be unfamiliar with the technology and the risks that it poses – as view echoed by the Children's Commissioner: Children's Commissioner (April 2020), [We're all in this together?](#)

<sup>63</sup> Department for Digital, Culture, Media & Sport and the Home Office (12 February 2020), [Online Harms White Paper – Initial consultation response](#).

<sup>64</sup> See Article 10, European Convention on Human Rights and Article 19, International Covenant on Civil and Political Rights (ICCPR). We also raised this issue in our recent submission on the ICCPR: Equality and Human Rights Commission (March 2020), [Civil and political rights in Great Britain, p 90](#).

<sup>65</sup> Childline has reported an unprecedented spike in demand for their services since the outbreak of COVID-19. See: NSPCC (27 March 2020), [Hundreds of children counselled over impact of coronavirus \(COVID-19\) outbreak](#); A survey of 2111 young people up to the age of 25 years with a mental health history in the UK showed 83% said that the current pandemic and associated restrictions had made their conditions worse. See YoungMinds (March 2020) [Coronavirus: Impact on Young People with Mental Health Needs](#). BBC News (19 May 2020), [Coronavirus: Youth mental health 'needs recovery plan'](#).

<sup>66</sup> UN Committee on the Rights of the Child (3 June 2016), [Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland](#). This view is supported by comments of Javed Khan, CEO of Barnado's in comments made to the [Education Select Committee on 12 May 2020](#). See also [an open letter to Government on young people's mental health during lockdown by over 30 organisations](#) (May 2020).

<sup>67</sup> UK Government (30 April 2020), [Decision: Modification notice: EHC plans legislation changes](#).

<sup>68</sup> [The Special Educational Needs and Disability \(Coronavirus\) \(Amendment\) Regulations 2020](#). Latest figures from the Department for Education show that, in 2019 calendar year, only 60% of EHCPs were issued within the previous statutory deadline of 20 weeks: Department for Education (07 May 2020), [Education, health and care plans](#).

<sup>69</sup> There is reported lack of support with specialist equipment, additional tutoring, accessible learning resources and social care. See Special Needs Jungle (14 May 2020), [Coronavirus: Disabled children's education rights must be restored now, before any formal return to school](#). The decision to keep children with SEND at home is the result of individual risk assessments undertaken by local

reports that some local authorities have effectively ceased SEND provision.<sup>70</sup> The reductions in support may exacerbate attainment gaps between disabled and non-disabled pupils,<sup>71</sup> or increase the number of disabled children reaching crisis point and being admitted to inpatient units or held in restrictive settings.<sup>72</sup>

**36. Government must provide effective oversight of the reasonable endeavours undertaken by local authorities and health bodies to secure provision set out in EHCPs to ensure that decision-making complies with equality and human rights obligations.<sup>73</sup> In particular, the Government should:**

- **Require local authorities and health bodies to report on changes in levels of support provided to children and young people with EHCPs.**
- **Commission Ofsted and the CQC to conduct targeted joint assessments of local area SEND provision at this time.<sup>74</sup>**

**37. Government should ring-fence part of its pandemic grant to local authorities to ensure that children with SEND who stay at home receive the support they need, including specialist equipment, training materials and social care.**

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authorities (as required by the Government guidance), as well as the preference of parents: Department for Education (19 April 2020 (updated 26 May 2020), [Supporting children and young people with SEND as schools and colleges prepare for wider opening](#)). The SEND system in England has been the subject of recent critical reports: National Audit Office (11 September 2019), [Support for pupils with special educational needs and disabilities in England](#); Local Government & Social Care Ombudsman (October 2019), [Not going to plan? Education, Health and Care plan two years on](#); House of Commons Public Accounts Committee (29 April 2020), [Support for children with special educational needs and disabilities](#).

<sup>70</sup> A Jackson and E Wright (May 2020), [Education: recent developments \(Legal Action\)](#). This view is also supported by anecdotal evidence provided to us by Just for Kids Law in May 2020.

<sup>71</sup> Department for Education (May 2020), [Special educational needs and disability: an analysis and summary of data sources](#).

<sup>72</sup> This is in breach of the right to live independently as part of the community, guaranteed in [Art 19 United Nations Convention of the Rights of Persons with Disabilities](#). Children in these settings are no longer receiving support normally provided in schools or community services. See National Preventive Mechanism (2020), [Letter to UK Secretary of State for Justice Robert Buckland QC MP](#). See also Joint Committee on Human Rights (2019), [The detention of young people with learning disabilities and/or autism](#); and Equality and Human Rights Commission (2020), [Health Secretary faces legal challenge for failing patients with learning disabilities and autism](#). We have significant and longstanding concerns that the treatment of children and young people with learning disabilities and/or autism in inpatient units is contrary to domestic and international human rights protections. At the extreme, there is evidence of preventable deaths and overuse of restraint, seclusion and segregation, as well as breaches of the right to a private and family life and likely failures to make reasonable adjustments: Equality and Human Rights Commission (2017), [Evidence to the Joint Committee on Human Rights](#).

<sup>73</sup> The Coronavirus Act 2020 provides that an order temporarily relaxing or removing the duties of local authorities in relation to EHCPs can only be issued when “strictly necessary” and for the shortest possible amount of time.

<sup>74</sup> These inspections should be focussed on those local areas where Ofsted/CQC have already identified significant weaknesses in SEND provision through their existing project of joint SEND inspections, which is currently on pause. In line with the recent recommendation from the Public Accounts Committee, these inspections should utilise intelligence from a broader range of stakeholders, including parent carer forums, school forums and head teachers: House of Commons Public Accounts Committee (29 April 2020), [Support for children with special educational needs and disabilities](#).

## **Increased vulnerability of children eligible for free school meals**

38. School closures have placed children eligible for free school meals (**FSM**) at increased risk of going hungry.<sup>75</sup> Where schools are not able to deliver FSM,<sup>76</sup> the Government has introduced a national voucher scheme to make sure all eligible children can benefit from FSM.<sup>77</sup> This scheme has been marred by administrative difficulties, including problems encountered by parents logging on, downloading the vouchers and vouchers not working in stores.<sup>78</sup>
39. Although improvements have been reported in recent weeks, large numbers of eligible families still appear to be having difficulties accessing vouchers.<sup>79</sup> With disabled children<sup>80</sup> and children from certain ethnic minorities<sup>81</sup> disproportionately represented among those eligible, the failure to deliver food to these families means the policy is not meeting its stated objective, and could result in a breach of the Equality Act.<sup>82</sup>
40. While we welcome the extension of FSM eligibility to some families with No Recourse to Public Funds (NRPF),<sup>83</sup> there are concerns that the new eligibility criteria are too narrow meaning that there are still children at risk of poverty who will not be able to access this support.<sup>84</sup>

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<sup>75</sup> A Food Foundation survey has found that particular groups of children were at higher risk of food insecurity including those in families with single parents (the majority of whom are women), where a child has a disability, large households and households which included NHS workers and their children. See Food Foundation, (May 2020), [New food foundation survey: five million people living in households with children have experienced food insecurity since lockdown started](#). See also S Weale and J Murray, The Guardian (9 April 2020), [UK's poorest families suffering as free school meal vouchers delayed](#).

<sup>76</sup> For example, through their usual provider.

<sup>77</sup> Department for Education (20 April 2020), [Guidance: Coronavirus \(COVID-19\): free school meals guidance for schools](#).

<sup>78</sup> See BBC News (7 May 2020), [Coronavirus: 'Humiliation' as school meal vouchers fail at till](#). A recent survey by Channel 4 News and the National Association of Head teachers (NAHT) found that 96% of surveyed head teachers and school business leaders said the scheme was 'not working properly'. Of those surveyed 86% said parents had struggled to access the vouchers, 58% had had to make other provision to feed families who had experienced problems with the scheme - including teachers and school staff putting thousands of pounds of food costs on their own personal credit cards. See [Channel 4 News](#) (4 May 2020).

<sup>79</sup> Z Tidman, The Independent, (20 May 2020) [Coronavirus: Education leaders criticise 'failed' free school meals voucher scheme for children during lockdown](#).

<sup>80</sup> UK Government (24 April 2020), [Special education needs in England: January 2019](#), national tables (table 5).

<sup>81</sup> Office for National Statistics, (February 2020), [Child poverty and education outcomes by ethnicity](#).

<sup>82</sup> See also UN Committee on the Rights of the Child [statement](#), (April 2020). See para 4 which urges governments to "activate immediate measures to ensure that children are fed nutritious food during the period of emergency, disaster or lockdown."

<sup>83</sup> Department for Education (May 2020), [Coronavirus \(COVID-19\): temporary extension of free school meals eligibility to NRPF groups](#). Under normal circumstances, eligibility for Free School Meals is through qualifying benefits such as Universal Credit or Part VI of the Immigration and Asylum Act 1999. See Gov.uk, [Apply for free school meals](#). The Government's recent temporary extension to NRPF groups includes for example those receiving support under Section 17 of the Children Act 1989 and have NRPF, and a subset of failed asylum seekers who receive support under Section 4 of the Immigration and Asylum Act 1999.

<sup>84</sup> For example, undocumented children whose families are not in receipt of asylum support or support under section 17 of the Children Act 1989. See, Sustain: The alliance for better food and farming (April 2020), [Open letter to Secretary of State for Education](#). The letter also raises concerns about the

41. **Government should urgently address any remaining administrative difficulties associated with the national voucher scheme and consider introducing an option for families to receive cash payments rather than vouchers.**
42. **Government should consider options for extending eligibility for Free School Meals to children in families with NRPF beyond the groups set out in guidance.**

### **Risk of discrimination resulting from the introduction of remote hearings**

43. The Commission welcomes the introduction of videoconference and paper-based options in order to facilitate school admissions appeals during the pandemic.<sup>85</sup> However, it is important to ensure that these new formats provide access to justice, particularly for disabled appellants; those for whom English is not their first language; or those who have limited access to the Internet.<sup>86</sup>
44. Our inquiry into the experiences of disabled people in the criminal justice system, found that video hearings can significantly impede communication and understanding for people with certain impairments.<sup>87</sup> This issue is particularly important in the context of admissions appeals where appellants usually represent themselves.<sup>88</sup>
45. It is encouraging that the accompanying non-statutory guidance references the Equality Act 2010 and the need for admissions authorities to consider any reasonable adjustments in the context of remote hearings.<sup>89</sup> However, the guidance does not stipulate the types of measures that admissions authorities should consider.
46. Government guidance regarding the conduct of exclusions reviews during the pandemic acknowledges that it may not be possible for governing bodies and Independent Review Panels (**IRPs**) to meet the timeframes set out in regulations for conducting the reviews.<sup>90</sup> Although the guidance does not explicitly introduce

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maximum income threshold for eligibility and the particular issues this poses for families that have NRPF. We are concerned that eligibility for asylum support can change rapidly and multiple times, thereby creating confusion in terms of accessing FSM under the new rules. Families may also have lost employment, or be unable to work safely at present, and yet are unable to access public funds.

<sup>85</sup> [The School Admissions \(England\) \(Coronavirus\) \(Appeals Arrangements\) \(Amendment\) Regulations 2020](#).

<sup>86</sup> See the section on remote learning for further consideration of access to the internet and devices.

<sup>87</sup> Equality and Human Rights Commission, (April 2020), [Inclusive justice: a system designed for all](#).

<sup>88</sup> Related issues include the fact that during a face-to-face hearing appellants may be represented, or accompanied by a friend. Due to the practicalities of a remote hearing, this right is either impeded or its effectiveness reduced, which may have a greater adverse impact on vulnerable appellants or those with disabilities. Likewise, there are likely to be issues with multiple party hearings, where there could be many people from groups with different protected characteristics all attending the same hearing.

<sup>89</sup> Department for Education, (April 2020), [Changes to the admission appeals regulations during the coronavirus outbreak](#).

<sup>90</sup> Department for Education (updated May 2020), [Guidance: Actions for schools during the coronavirus outbreak](#).

the option of video hearings, we understand that the Department for Education has advised governing bodies and arranging authorities to undertake a case-by-case assessment to decide whether a delay, or proceeding with the use of alternative technology, is most suitable.<sup>91</sup>

47. The Commission is aware of delays occurring to the exclusions appeal process due to concerns about conducting the process virtually.

**48. The Department for Education should update the guidance accompanying the changes to the school admissions appeals system and provide necessary support to ensure that admissions appeals clerks and tribunals:**

- **Proactively identify people for whom video hearings would be unsuitable and consider how to minimise the impact of any delay on these people.**
- **Provide appellants with accessible information that explains their right to effective participation, and encourages them to raise any issues they may encounter.**
- **Ensure that appellants are able to access the support to which they are entitled, including the assistance of a friend and / or interpreter.**

**49. The Department for Education should issue updated guidance on exclusion appeals during the pandemic, introducing the option of video hearings and setting out requirements for governing boards and IRPs to ensure the accessibility of this format.**

### **Toward a more resilient education system**

50. We are at an early stage in understanding the full equality and human rights impacts of the Government's response to the pandemic. Gaps in available data, for example in relation to the religion or belief of children, and the lack of disaggregated data, including by ethnic group and impairment type, obstruct effective impact monitoring.

51. As Government progresses plans to re-open schools to more children, additional equality and human rights issues are likely to emerge. These include possible health and safety risks for teachers and children, which may disproportionately impact those from ethnic minority backgrounds.<sup>92</sup> There is also a risk that schools may increase the use of restraint and exclusions to try to control the behaviour of children, whilst maintaining social distancing measures.<sup>93</sup>

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<sup>91</sup> NGA (March 2020), [Governing in challenging circumstances: Business continuity and holding virtual meetings](#).

<sup>92</sup> D Batty, The Guardian, (26 May 2020), [Plans to reopen English schools 'fail to address risk to BAME staff'](#).

<sup>93</sup> We have had longstanding concerns in relation to the use of restraint and exclusions: Equality and Human Rights Commission (October 2018), [Is Britain Fairer?](#), ch 2; Equality and Human Rights Commission (March 2019), [Human rights framework for restraint](#). We also launched an inquiry in Feb

**52. Government should ensure that the statutory reports to Parliament required by the Coronavirus Act 2020 address the impacts of the legislation on different protected characteristic groups, and explain how the best interests of children are at the forefront of decision-making.**

53. Looking ahead, schools will need to prepare for the possibility of further closures, due to a possible resurgence in coronavirus or another national emergency. **Government should develop the sector's resilience by working with schools and local authorities, with the participation of children, to:**

- **Put a proper recovery plan in place, including individualised support packages for children who have fallen behind in their education.**
- **Strengthen aspects of the curriculum to focus on building empathy, safe relationships and well-being.**
- **Prioritise inclusive education for children with SEND and adequately resource children's services to meet the increased demand.**

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2020 into how schools in England and Wales are monitoring and recording their use of restraint and restrictive interventions, following concerns about its use and the lack of data available, further details [here](#).

## **Further information**

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. Find out more about our work on [our website](#).

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