

Written Evidence submitted by NYAS (National Youth Advocacy Service)

NYAS (National Youth Advocacy Service)

Ben Twomey, Head of Policy and Research

The Impact of Covid-19 on education and children's services **NYAS submission to the Education Select Committee call for evidence**

Contents

1	Introduction
2	"Why are we going backwards?"
2	Rights undermined, protections degraded
3	Safeguarding impact
3	No meaningful consultation
4	Warnings from the Children's Commissioner
5	How do we move forward?
5	Advocacy
5	Technology
5	Missing Children
6	Unregulated Accommodation
6	Mental Health
7	Funding for local authority children's services
7	No decision about young people, without young people
7	In their own words

Introduction

Thank you for the opportunity to provide written evidence to this inquiry. I am writing on behalf of the National Youth Advocacy Service (NYAS), a leading children's rights charity that supports and empowers care-experienced children and young people across England and Wales.

NYAS has been working with thousands of care-experienced children and young people throughout the COVID-19 pandemic, providing services such as advocacy, independent visiting, return interviews, mentoring, children's homes regulation 44 visits, youth participation and mental health support. We know this is a particularly challenging time for the children and young people we work with.

We recently published a survey from 230 care-experienced children and young people in the care of 55 different local authority areas in England and Wales, to reveal a snapshot of the issues affecting them during the lockdown. This submission directly includes the voices of children and young people from this survey as well as our wider professional experience.

We have structured our submission under three headings, which relate specifically to the Committee's terms of reference focusing on support for vulnerable children and young people. The first provides evidence around a question asked by a 19 year-old care leaver whom we work with, "why are we going backwards?" The second is evidence related to how we move forward. We conclude this submission with direct quotes from care-experienced children and young people during this pandemic.

"Why are we going backwards?"

This question was posed by Charlotte, a care leaver and campaigns adviser to NYAS, on BBC North West last month. Charlotte was discussing how the children's rights framework has been seriously undermined by The Adoption and Children (Coronavirus) (Amendment) Regulations 2020, also known as Statutory Instrument 445 (SI 445). You will hopefully recall that NYAS wrote to the committee members and clerk about this issue on 30th April 2020.

Rights undermined, protections degraded

The day before SI 445 was published by the government, we were pleased that the Minister for Children and Families' wrote to us to say that protecting vulnerable children is the government's "top priority".

After reading the legislation, followed by the guidance associated with it, we could not identify a single measure that enhances protections for care-experienced children and young people. Instead, children's rights and protections appear to be degraded throughout.

In these uncertain times, we completely understand the need for flexibility in the approach taken by children's services. We have had to be flexible in the delivery of our services too, developing new programmes and learning the best way to continue our work 'virtually' during the lockdown. Whilst flexibility at this time is important, it must not be a byword for the unnecessary dismantling of children's rights.

The expansive list of changes, with 65 separate losses or dilutions of legal protections for children in care or entering care, include:

- The requirement that social workers must visit children living in care, or who are privately fostered, in accordance with strict statutory timescales – within one week when they have gone into care, and every six weeks for the year after that – have been relaxed. Now if they are unable to visit within the timescales they must do so as 'reasonably practicable' thereafter. This applies even if the visits are done by phone or video call.
- Independent six-month reviews of each child in care during COVID-19 are no longer mandatory.
- Placement plans are no longer mandatory where a child is placed with a family member or relative and any assessment of kinship care's suitability does now have to take place 'as soon as is reasonably practicable' rather than within 10 working days.

- The independent panels which approve foster carers and adoption placements have become optional, removing a layer of scrutiny for these highly important and life-changing decisions.
- It is no longer required that a nominated officer must approve a fostering to adopt placement, instead responsibility exclusively lies with already overstretched local authorities.
- Twice-yearly Ofsted inspections of children's homes are no longer required.

Safeguarding impact

NYAS professionals and volunteers have made more than triple the number of safeguarding referrals during the lockdown compared to the same period last year. In this context, no responsible parent would reduce the protections for their children or stop checking on their welfare. It should be no different for corporate parents.

NYAS has recently published findings from a survey which asked 230 care-experienced children and young people across England and Wales about their experiences during lockdown. Our survey found that 1 in 10 children in care have had no contact from their social worker since lockdown started, and a third had only been contacted once (lockdown measures were put in place more than three weeks before the survey went live). The same survey found that over half of care-experienced children are feeling lonely and anxious more often.

With the Department for Education reporting that only 1 in 20 students identified as vulnerable continue to attend school during the lockdown, many children and young people at risk of harm are living without the safety net that school would usually provide, as well as having less contact with social workers and safeguarding professionals. Safeguarding must be a central focus for all agencies working with children and young people during the COVID-19 pandemic. Reduced contact by professionals increases safeguarding risks.

All of these changes come at a time when Ofsted inspections have been suspended and bi-annual independent reviews of a child's care are no longer mandatory. NAIRO (National Association of Independent Reviewing Officers) has called SI 445 "neither necessary nor helpful" and expressed their fear that it "reduces essential safeguards for looked after children".

SI 445 does not encompass only 'low risk changes to administrative and procedural duties' as the explanatory note to the legislation claims. The suggestion that SI 445 removes a layer of unnecessary 'bureaucracy' for children's services is dispelled by social workers themselves, as BASW (British Association of Social Workers) stated: "Hard won rights in law are not simply bureaucratic processes but exist to protect children and young people and promote their well-being."

No meaningful consultation

Care-experienced children and young people have the right to express their wishes and feelings when decisions are made about their lives. This right is guaranteed by Article 12 of the United Nations Convention on the Rights of the Child (the UK ratified the treaty in 1991) and enshrined in the Children Act 1989.

There is one group who should have been consulted above all others: the care-experienced children and young people who will be most affected by the legislation. We have not seen any evidence that the voices of children and young people have been sought or heard by the government in the drafting of SI 445.

Meanwhile, children's rights charities were not consulted on the impact of SI 445 or given a mechanism by which to offer feedback on how these changes would affect the vulnerable children and young people that we work with. This is despite the explanatory note claiming that proposed changes to regulations were shared widely with the children's social care sector. NYAS and many others work with local authorities to deliver statutory independent advocacy across England and would have welcomed any form of consultation.

The government has still not provided a clear summary of changes to legislation to inform our advocates. This has added confusion and pressure for professionals and practitioners. Nor has the government produced child-friendly summaries of the changes. Children in care have been left uninformed about these very significant changes to their rights and protections during the pandemic.

One day prior to the publishing of SI 445, the letter we received from the Minister for Children and Families made no mention of the extent of changes due to be made. Two days before, our Head of Policy spoke with DfE senior officials attending the Alliance for Children in Care and Care Leavers. Again, no mention was made of the scale of changes due to come into force the same week. The 21-day rule, which requires instruments to be laid before Parliament for 21 days before they come into force, was 'not possible' according to the explanatory note, as a result of already stretched services and shortages.

It is our opinion that given the significance of these changes, the notice period of less than 24 hours was insufficient, especially as a full impact assessment had not been prepared for the instrument. The SI 445 explanatory note states: "An impact assessment has not been produced... no, or no significant, impact on the private or voluntary sector is foreseen". The House of Lords Legislation Scrutiny Committee, which was only able to review the changes after they came into force, appeared to disagree by stating that "This instrument makes extensive changes to a very sensitive policy area".

Meanwhile, guidance was drafted partly to assist the implementation of SI 445 but is non-statutory and therefore does nothing to restore safeguards lost in the legislation. We hope meaningful guidance during COVID-19 can be consulted upon and issued once Statutory Instrument 445 is withdrawn, and are eager to participate in a constructive discussion on how such guidance could improve outcomes for care-experienced children and young people.

Warnings from the Children's Commissioner for England

The Children's Commissioner for England has recently called for all of the regulatory changes contained within SI 445 to be withdrawn. We echo the Commissioner's belief that we must not remove protections from vulnerable children, but should instead see increased protections to reflect the additional pressures they may be feeling.

We share the Commissioner's view that the changes, brought forward with minimal consultation, without complying with the usual 21-day rule and without the opportunity for public scrutiny, are not justified.

Meanwhile, BASW (British Association of Social Workers) has urged the government to withdraw the statutory instrument, which it says: "risks the welfare and rights of children".

NYAS stands with the Children's Commissioner, social workers, colleagues across the sector and care-experienced people who are calling for SI 445 to be urgently withdrawn.

How do we move forward?

Advocacy

With Ofsted inspections of children's services and homes suspended, and reported issues of capacity for professionals working with care-experienced children and young people, there is clearly a need for interim measures to reduce risks. We have called on the government to extend an 'active offer' of non-face to face independent advocacy for every care-experienced child or young person where inspections are no longer taking place or services are reduced. An active offer is one where children choose to opt-out rather than opt-in to independent advocacy support, in order to make certain that they are aware of their rights.

Technology

Children must be provided with the necessary access to equipment to enable non-face to face support through the use of technology. Our survey found that 1 in 5 care leavers, and 1 in 10 children in care were living through lockdown without the technology they needed to stay in contact with friends and family, leading to increased loneliness and anxiety levels.

We welcome the government's provision of laptops, tablets and internet access for children and young people. We are particularly grateful that the DfE acted on our concerns that initial provision looked to be focused only on education, and needed instead to be widened to include care leavers.

Care leavers are more likely than their peers to not be in employment, education or training, but would face difficulties living independently without getting online during the lockdown. We will continue to work with the government to ensure their offer of digital devices and internet access for care leavers and children with social workers reaches those in need.

Missing Children

Despite the enforced 'lockdown' and restriction of movement for children in care (and all of us), children continue to go missing. Our return interview services operate across 10 local authorities in England and responded to 184 reports of missing children between 24th March (the first full day of lockdown) and 23rd May 2020. This represents a 27% drop in children and young people being reported as 'missing' across our return interview services during the lockdown compared to the same period in the previous year.

However, we have seen a 19% increase in children aged 15 and younger being reported missing, rising from 86 in the period last year to 102 during lockdown. This suggests that while older teenagers are being reported missing less often, our work across England shows that younger children may currently be at greater risk.

The need for independent return interviews must be included in any offer of support for vulnerable children and young people, and steps must be taken to avoid criminalising them under any new police powers. Although they may not be reported missing, we are hearing of children going out in breach of lockdown rules and not abiding by social distancing. We welcome the College of Policing's clarity that police enforcement must always be a last resort.

Where an independent return interview is offered, the likelihood of repeat missing episodes for care-experienced children and young people significantly reduces. Given the increased risks facing missing children during the pandemic, including to their health, independent return interviews are an effective way of preventing further episodes.

Domestic abuse can also be a reason for children to go missing. We welcome the efforts by the government and local police forces to communicate that it is legitimate to leave home during the lockdown if fleeing domestic violence. However, more emphasis in these campaigns could also be given to signposting and safeguarding children and young people who are victims or witnesses of abuse.

Unregulated Accommodation

We fear that unregulated accommodation is not attracting the attention it requires by the government and stretched local authorities at the moment. Ensuring independent advocacy contact within these settings would help to reduce risks and empower children and young people to escalate any issues. Therefore an active offer of advocacy, one where children choose to opt-out rather than opt-in, for all those living in unregulated accommodation could be an effective safeguarding measure during the pandemic. We would also encourage an active offer longer term if unregulated accommodation continues to be used.

During this time of crisis, we are urging the Department for Education to set out rigorous measures to safeguard children in unregulated accommodation equivalent to that in registered and regulated children's homes. All contractual procurement arrangements for unregulated accommodation should make explicit reference to the 2015 Children's Homes Quality Standards. Children and young people in such settings should not feel they are facing this period of crisis alone. Corporate parents need to be active with close supportive parenting. Government must act to direct local authorities to ensure the rights of young people in unregulated and unregistered settings are upheld.

We have been pleased to make a submission to the government's consultation on this topic, as well as facilitate the DfE's direct consultation with care-experienced young people we work with. However, longer term, all accommodation providers for children in care must be accountable through independent regulation by Reg.44 visitors and inspection by Ofsted.

Mental Health

Care-experienced children are four times more likely to have a mental health difficulty, which in many cases is attributed to isolation and loneliness. Those difficulties have been exacerbated by the current lockdown. Our survey revealed that four in five care leavers, and two in five children in care are feeling more anxious. Four in five care leavers, and over half of children in care feel lonely more often. The mental health of care-experienced children during the lockdown must be a priority.

We are concerned by the relaxation of the rules on the detention and release of children under the Coronavirus Act and urge the inclusion of an 'active offer' of advocacy for them. We have asked the government that arrangements be put in place to ensure independent mental health advocacy services, rather than hospital managers or other staff, proactively inform children of their right to an advocate and the help they can provide. We have already been running these 'Rights Sessions' with the permission of mental health settings where we are contracted to provide advocacy.

We would also welcome a pause to any children and young people being moved on from CAMHS to Adult Mental Health Services. This is a risky and sometimes mismanaged period in normal times, but pausing this transition now will save lives.

Funding for local authority children's services

A key question facing local and national government is what contingency planning can be introduced to ensure the resilience of the sector in the case of any future national emergency. In our view, ensuring local authorities have the resources to fulfil their corporate parenting duties in normal times would be a vital start. Even before COVID-19 began to affect daily life in the UK, local authorities were flagging that children's services are their biggest and most immediate financial pressure. Government funding cuts have left local authorities with the difficult decision of how to bridge funding shortfalls in a time of crisis, often without healthy reserves.

Prevention is better than cure, and we support the calls for proper funding made by the local authorities that we work with. Care-experienced children and young people need a consistent and well-resourced support framework to help them to thrive.

No decisions about young people, without young people

Co-production with care-experienced children and young people should always be part of the approach to policies and guidance that will affect their lives. NYAS and our colleagues in the sector are able to support and facilitate this. The current pandemic must not get in the way of a child's right to be listened to and taken seriously, as enshrined in Article 12 of the United Nations Convention on the Rights of the Child. We encourage the Committee to consider not only how children and young people are continuing to be heard during the COVID-19 pandemic, but also how you might directly engage with them to help shape your work.

In that spirit, we wanted to share some direct quotes from children and young people we have been working with or who responded to our survey. Names have been changed for anonymity, but we hope they offer helpful insights for the Committee.

In their own words

“Not being able to socialise has affected my mental health, increasing my anxiety levels and depression. Only being given one walk a day to grab essentials or walk the dog is not enough considering I used to go out for three or four each day of the week.”

- *Harry, 17, Living with a relative*

“My social worker has other priorities; I have not seen them since this lockdown started.”

- *Aisha, 17, Care Leaver*

“My social worker is good, she calls me more because of the new home I am in.”

- *Rosie, 14, Living in a residential children’s home*

“I am speaking to my psychologist over the phone weekly and pay to have the mental health team to give me my medication each day, but it is hard. I live in a bedsit in a hostel. My room is small, and it is hard being in all day. I was due to leave the hostel, but everything is on hold until after the lockdown. I am missing college.”

- *Olivia, 19, Care Leaver*

“I’m rather depressed and anxious, as I am unable to talk to family and friends. I do not have a phone to be able to contact them on and the WiFi connection is too poor. I can’t go on social media or Netflix.”

- *Sophie, 22, Care Leaver*

“I am using this time to focus on my wellbeing, and I am focusing on things that I have been meaning to accomplish for years that I have never had the time to do. As worrying as this period of time is, I think after this pandemic is demolished, we will all be different and better people in our own unique ways. I hope that people can comprehend how quickly the planet has recovered whilst we have been in lockdown and that they can reduce their carbon footprint.”

- *Ethan, 17, Living with foster carers*

“I have a unit mobile but not my own phone yet. I hope that my social worker will provide the placement with money to buy me one. My advocate is going to follow up with her about this.”

- *Emily, 14, Living in a residential children’s home*

“The hostel I am staying in does not have Wi-Fi. I do not have any data left on my phone and the signal is poor. My advocate has asked on my behalf that my personal adviser supports me in purchasing a new data package from my weekly allowance. This is being done.”

- *Chloe, 19, Care Leaver*

“Staff are trying to make it fun by doing activities, so we are not bored.”

- *Grace, 12, Living in a residential children’s home*

“I don’t have many friends here, I just moved to a new house and then this all began. I live in the middle of nowhere and there’s no service or anything!”

- *Alice, 16, Living with foster carers*

June 2020