

# Written evidence from the NYAS (National Youth Advocacy Service) (COV0149)

## **What will the impact of specific measures taken by the Government to address the COVID-19 pandemic be on human rights in the UK?**

### **Introduction**

Thank you for the opportunity to provide written evidence to this inquiry. We are 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 to have their voices heard when key decisions are being made about their future. NYAS has been working with thousands of care-experienced children and young people throughout the COVID-19 pandemic, providing rights-based services such as advocacy, independent visiting, return interviews, mentoring, children's homes regulation 44 visits, youth participation and mental health support.

### **Our submission**

Our submission highlights the impact of measures taken by the UK Government to address the COVID-19 pandemic on the human rights of care-experienced children and young people living in England, with reference to the Human Rights Act (HRA) as domestic law, and the United Nations Convention on the Rights of the Child (UNCRC) as a ratified legally-binding international treaty.

### **Changes made by Statutory Instrument 445 (SI 445)**

On the 24<sup>th</sup> of April 2020, The Adoption and Children (Coronavirus) (Amendment) Regulations 2020, which we will refer to as SI 445, came into force in England. The legislation is 'temporary' and set to expire on the 25<sup>th</sup> of September 2020.

The new law includes 65 losses or dilutions to the rights of care-experienced children and young people living in England, including:

- Social workers no longer have to visit children in care within strict statutory timescales. The requirement is now that they must do so 'as reasonably practical.' This applies even to visits done by phone or video call.
- Independent six-month reviews of each child in care during COVID-19 are no longer mandatory (in the case of third or subsequent reviews).
- Placement plans no longer have to be finalised before a child lives with someone named in a child arrangement order, and any suitability assessment of them as a carer is now required to be done 'as soon as is reasonably practicable'.
- It is no longer required that a nominated officer must approve a fostering to adopt placement, therefore removing the accompanying seniority and experience needed to make such decisions.
- Twice-yearly Ofsted inspections of children's homes are no longer required.

After reading the legislation and the guidance associated with it, we could not identify a single measure that enhances protection for care-experienced young people. These changes come at a time when 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.

### **The Human Rights Act 1998**

The Human Rights Act (HRA) confers two relevant duties for the point of our submission.

1. Parliament should seek to make laws which are compatible with the rights set out in the European Convention on Human Rights, and if they are not, make a declaration of incompatibility. Although this is not necessary for secondary legislation (including SI 445), guidance says that it is “good practice” to do so.
2. The HRA confers a duty on all public authorities to act compatibly with Convention rights, unless there is a law that prevents it from doing so.

SI 445 was not subject to a Human Rights Statement, nor an Impact Assessment, because it was deemed that the ‘changes are temporary and there is no, or no significant impact on business, charities, voluntary bodies or the public sector.’ The decision to bypass the ordinary procedure, in which a statutory instrument is laid down for 21 days before Parliament, was done so as a result of ‘extraordinary pressure on local authorities, providers and services to try and meet statutory obligations.’

Yet these changes affect the rights and entitlements of over 78,000 vulnerable children. It can no longer be guaranteed that public authorities dispense their duties in compliance with our country’s rights framework, because no rights-based scrutiny of the law has taken place.

### **Impact on rights under the Human Rights Act**

These changes could interfere with care-experienced children and young people’s rights under the HRA. Every person has the right to private family life under Article 8, including the right to live with their family, and where this is not possible, the right to correspondence. Family extends beyond the ‘traditional family unit’, it can extend to siblings, grandparents and foster parents. This right can be derogated from under Article 15 ‘in times of war or other public emergency threatening the life of the nation [...] to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with other obligations under international law.’

Not all of the decisions that are made in children’s social care during COVID-19 are ‘temporary’ for the child, and some have clear lifelong implications. This includes for young people in fostering to adopt placements, where the requirement for a nominated officer has been removed, with the view of placements ‘proceeding swiftly.’ In the case of adoption, the requirement for an adoption panel, which makes a recommendation of suitability has also been removed, without consideration on how this may affect the rights of children and young people to private family life.

We know that the impact of having no contact with loved ones during COVID-19 can be distressing. In a recent survey of 230 care-experienced children and young people living across England and Wales, more than one in four young people (27%) told us that they missed their friends or their families when asked what they were finding difficult during the lockdown. Beyond that, it is estimated that as many as four in ten children in England are living 'out of area', away from their home postcode, and possibly without their familiar support networks during this time of uncertainty.

### **Proportionality of interference under the HRA**

Assuming that there is an interference, the test is whether that interference was proportionate within the context of COVID-19. The Children's Commissioner for England, responsible for promoting and protecting the rights of children as set out in the UNCRC and the HRA, said that she believes that the changes are 'not necessary or justified' and has called for the withdrawal of SI 445. Contrary to the explanatory note accompanying the legislation which claimed that 'only low risk changes to administrative and procedural duties have been made', the House of Lords Legislation Committee stated that 'the instrument makes extensive changes.'

SI 445 was recently debated by the Chamber, and during her closing speech the Minister for Children and Families, Vicky Ford MP said that 'they [the powers conferred by SI 445] are being used infrequently.' If that is the case, can it be said that the measures, which remove fundamental safeguards for children at a time of crisis, are proportionate to the need expressed by local authorities?

We, like the Children's Commissioner for England, do not consider that the changes made by SI 445 were necessary or proportionate and continue to call for their immediate withdrawal.

NYAS support children and young people across England and Wales, and we note that Welsh Government has not sought to reduce rights or protections for vulnerable children in response to the COVID-19 pandemic.

### **UNCRC rights disregarded**

The UK ratified the UNCRC in 1991. SI 445 arguably interferes with many Articles contained within the treaty, including Article 19, which states that Governments must 'do all they can to ensure that children are protected from all forms of violence, abuse, neglect or mistreatment.' By changing statutory timescales for social worker contact to unenforceable wording of 'whenever reasonably practicable', we believe that a crucial safeguard against mistreatment for children in care has been degraded. The JCHR may consider whether the UK Government is doing all it can to protect this right.

Article 25 of the UNCRC says that 'if a child has been placed away from home, in care, hospital or custody for example, they have the right to a regular check of their treatment and conditions of care.' SI 445 removes the requirement for an independent six-month review of each child in care (for third or subsequent reviews) as well as twice-yearly Ofsted inspections of children's homes.

Most significantly, care-experienced children and young people have the right to express their wishes and feelings when decisions are made about their lives, as is defined in Article 12 of the UNCRC. We have seen no evidence that the voices of children and young people have been sought

or heard by the government in the drafting of SI 445. In writing to the Minister for Children and Families on 30<sup>th</sup> April 2020, NYAS received no answer to the specific question: “Can you please confirm whether children and young people have been involved at any stage in shaping this new legislation?”

### **Upholding human rights during COVID-19**

It is our submission that SI 445 reduces the standards of care for children in England considerably and threatens their rights during COVID-19 and potentially long into the future. We humbly urge the JCHR to consider the impact of this legislation on the rights and protections of care-experienced children and young people.

*03/07/2020*