



Key Point Briefing to the Education Committee

Response to Consultation on Cross-Departmental Covid-19 Vulnerable Children and Young People's Plan

**Children's Law Centre
11th November 2020**

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The Children's Law Centre is an independent charitable organisation established in September 1997 which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and every child can achieve their full potential.

Our organisation is founded on the principles enshrined in the United Nations Convention on the Rights of the Child (UNCRC), in particular:

- Children shall not be discriminated against and shall have equal access to protection.
- All decisions taken which affect children's lives should be taken in the child's best interests.
- Children have the right to have their voices heard in all matters concerning them.

We offer training and research on children's rights, we make submissions on law, policy and practice affecting children and young people and we run a legal advice/information/representation service. We have a dedicated free phone legal advice line for children and young people called CHALKY and provide legal information through an online platform known as 'REE' and legal advice through 'REE Live Chat'. We also undertake strategic litigation to vindicate children's rights.

From its perspective as an organisation which works with and on behalf of children, both directly and indirectly, the Children's Law Centre is grateful for the opportunity to engage with the Education Committee on the consultation on the Cross-Departmental Covid-19 Vulnerable Children and Young People's Plan.

Introduction

The Children's Law Centre (CLC) has shared our full response to the Cross-Departmental COVID-19 Vulnerable Children's Action Plan with the Education Committee. The following information is a summary of the key points. For further detail on the issues below, please refer to the full consultation response.

Monitoring and Reporting of the Plan – Equality Duties

1. Equality duties owed by public authorities remain in force and become even more important during the Covid-19 pandemic period. The Equality Commission have emphasised the importance of discharging Section 75 duties during the pandemic in their [Advice Note](#) for public authorities dated 21/04/20. CLC have not have sight of an initial Screening/Screening assessment, which should have been published alongside the Action Plan as part of this consultation. Given the clear evidence gathered by CLC and others over the last 8 months, there is significant potential for differential adverse impact and therefore this Action Plan should have been screened in and a full equality impact assessment carried out prior to consultation to ensure it is fit for purpose and to enable mitigation of any adverse impact.
2. CLC do not believe the Departments have complied with their statutory equality schemes, including that they have failed in their duty to consult with all stakeholders and critically with those directly affected i.e. with vulnerable children and young people and their families. The Departments have deprived themselves of the opportunity to be fully informed when developing and operating this Action Plan, which appears to have been operational during the currency of this consultation. Acting on partial information, the Departments may have in fact exacerbated inequalities for some of the most vulnerable children by diverting resources away from them.
3. CLC believes that the ongoing crises affecting vulnerable children and their families, including threats to life and health, constitute serious and sustained equality and human rights abuse. We believe this deeply concerning situation has been caused as a consequence of inadequately screened government policies, leading to actions and omissions which restrict access to essential services such as specialist education and respite.
4. The Children's Law Centre is currently extremely concerned about the serious ongoing equality impacts which we are now witnessing as a result of persistent failure to systemise the collection of and to act upon relevant and timely information about impacts of government policies upon children with disabilities in Northern Ireland. On that basis the Children's Law Centre has filed 3 judicial reviews in the High Court against the Department of Education grounded upon equality and human rights failures associated with their response to the pandemic.

Definition of Vulnerable Children

5. The definition used at the start of the policy document may need to be widened as it excludes children who need a Social Worker but as a result of ongoing delays are waiting for one to be allocated. Further “children in need” should be defined as in Article 17 of the Children (NI) Order 1995, which is broader than the definition the Departments have used in the policy. CLC would also recommend that the list should be expanded to explicitly include children and young people living in poverty; children and young people currently in hospital; young people in Woodlands Juvenile Justice Centre; and children and young people who are currently at home while their peers are at school (for example, if a child or their parent is clinically vulnerable or if a child has been a close contact and has to self-isolate).

Aim of the Plan and Actions

6. The Aim of the Plan needs to be refined. Under this heading, young people cared for via statutory provision should be added to the categories covered. The Actions are currently retrospective, recording what has been available in the past, which proved inadequate. They need to be forward-looking, accounting for lessons learned; planning for contingencies in the event of further restrictions of services; and provide for rebuilding of services so that they actually meet the ongoing and increased levels of need of vulnerable children and their families. Recognising that Covid-19 has exposed pre-existing deficits in children’s services this plan must take the opportunity to ‘build back better’. The Plan should be populated with concrete practical actions with clear lines of responsibility and measurable outcomes. Clarity is needed about how the Plan will be monitored and reported on.
7. CLC has identified through its legal advice and casework that failure to actively gather relevant comprehensive disaggregated data about adverse equality impacts upon children with disabilities, including failures to consult their parents and carers, has led to a situation where there is a significant level of unmet need and a failure to correctly weigh and balance the effects of various potential “harms”, to the extent that serious avoidable harm was caused to children, their siblings, parents and carers. This included physical harm, damage to property, harm to mental health leading to decisions to apply chemical restraint, interference with family life and in severe cases, risk to life. During the recent “circuit breaker” put in place by the Executive, this remains the case. Actions and omissions carried out during the ‘circuit breaker’ have been undertaken with knowledge and foresight about the damage likely to ensue and without appropriate planning for avoidance of harm and mitigation of adverse impacts of policies.

Increased Risk of Harm in the Home (Point 1.1 Action Plan) – Tina and Lauryn

8. The “specific supports” under point 1.1 do not address all vulnerable children who require maintained school attendance as a primary protective factor for them. In fact, the supports appear to relate solely to homelessness with a particular emphasis on child victims of domestic abuse. CLC recognises and strongly supports specific consideration of this group of very vulnerable children. However, this Plan has not been working nor will it work for vulnerable children who need the protection afforded by attendance at specialist schools because they exhibit challenging behaviour when routines are broken and they exhibit severe distress at home unless their specific needs are also considered and prioritised.
9. The Action around securing access to school for vulnerable children when school is closed to others, relates to the period of lockdown that has passed and therefore it needs to be reframed to refer to protection during school closures and ongoing or future disruptions to school access.
10. There is clear evidence that there were efforts at running a joint health/education vulnerable child panel process at a late stage during the lockdown which cut parents out of the decision-making and proved inadequate and unfit for purpose. Information we received from the Department of Education shows that, as at 21st August 2020, 71 children out of 209 identified (i.e. one third) were not placed in a supervised education placement. We know that not all relevant at-risk children, siblings and families were identified and that the Education Authority online form process to enable parents to ask for help arrived very late and was under-resourced. The process was discontinued on 30th June 2020 and no visible, accessible alternative has been put in place to identify and prioritise essential service access for vulnerable children by the Departments of Education and Health.
11. Open Democracy has produced a video with the Children’s Law Centre and Tina, who is the parent of Lauryn. Tina’s powerful testimony evidences the need for a continuous, properly resourced, vulnerable child process. You can watch and listen to Tina here: <https://childrenslawcentre.org.uk/sedated-and-abandoned-the-struggle-to-care-for-my-disabled-daughter-during-lockdown/>
12. We have evidence through our casework during the two-week school closure over Halloween and ongoing that lessons have not been learned from the inhuman, degrading and damaging lockdown experiences of vulnerable children and families, which indicates that there have been planning and process failures in relation to protection of and provision for vulnerable children.
13. During this circuit breaker Lauryn, (mentioned at point 11 above) was left with no school and no respite despite repeated communications seeking direct help

and despite all that had gone before. Her respite facility has been repurposed to accommodate a child who has no suitable community placement. The Departments of Education and Health in response to CLC's communication about Lauryn and others, cited this Action Plan and access to therapeutic support. The therapeutic support was in reality an increased use of chemical restraint. On pressing repeatedly, we secured a drive out for Lauryn on the second Friday of the school break. That is all the direct help she received with no future help confirmed. The mental and physical resources of her family carers have been completely drained away and just as she was adjusting to the Education Restart, Lauryn's routine ceased again and predictably, her mental state and the health of family carers has significantly deteriorated.

14. The most important Action that the Departments can take in relation to mitigating this particular risk to children at home when they need to be in a school for protection, or otherwise outside the home for periods of respite, is to put in place a coherent, transparent, accessible, visible, properly and jointly resourced multidisciplinary Vulnerable Children Process, directed and guided by the Departments of Education and Health (with clear lines of responsibility) and operationalised by the Education Authority and the five Health and Social Care Trusts in cooperation with all relevant children's services providers.

15. This process needs to actively identify all relevant children and operate at any time when vulnerable children face disruption to school attendance, whether through formal school closures or otherwise and therefore it should not be contingent on formal school closure but should operate continuously. The process must always have the best interests of the child as the primary consideration when decisions are being made.

Educational Disadvantage Caused by School Closures (Point 1.5 Action Plan)

16. Management information published by the Department of Education on [pupil and workforce attendance](#) shows that only 84.7% of pupils were attending school during the week commencing 12th October 2020, just before the two week "circuit breaker", which means that **over 15% of pupils were not at school**. CLC is aware of children who are unable to attend school because they have clinically vulnerable parents (kidney transplant, cancer diagnosis); children with profound needs who are clinically vulnerable; and children who are isolating or whose school is closed due to infection rates.

17. The Action Plan is out of step with the current impacts of school disruptions. The Children's Law Centre strongly recommends that the description of the risk under this point is reformulated to include not only school closures but also disruptions to **school attendance**. We are aware of many children and young people, including those in Section 75 protected groupings and children who are socio-economically disadvantaged, who are unable to attend school for

reasons related to the coronavirus pandemic, whilst their peers are attending and being taught and supported by professionally qualified teachers and support staff, thus widening existing equality gaps.

18. Online “learning” is a term that was commonly used during lockdown when schools were closed. This generally involved provision of worksheets and information online without any direct teaching. These materials proved inaccessible to many vulnerable children who face barriers to learning such as SEN, disabilities, socio-economic deprivation, digital poverty, language barriers and of parents/carers being unable to help during the working day.
19. Since Education Restart, a significant number of children are at home and unable to attend school during the pandemic whilst peers are being taught and supported in school by professional educators and support staff.
20. Children at home require equality of access to education. There should be a reasonable consistency of provision expected from schools and the Education Authority, for those children who would require support to enable home “teaching” and SEN support. We are seeing different children within the same family receiving different standards of education, with the most disadvantaged receiving the least access to education. Examples are included in our full response.
21. To date, the Department of Education has issued a [Circular 2020/05 - Supporting Remote Learning](#) which acknowledges the benefits of “synchronous and asynchronous” online teaching, but has consistently failed in spite of CLC’s numerous direct requests, to direct and provide resources to schools on this issue, leaving many struggling to provide for their pupils. Emergency volunteers have been called for through the [Department of Education Volunteer Scheme](#) but have not been deployed. The Department has been reluctant to intervene in individual cases raised and takes the view that “this is an operational matter for the Education Authority and schools”.
22. School staff and Education Authority staff require to be properly resourced to enable them to serve all members of school communities regardless of background or status and to offer a range of properly formulated solutions, informed by and co-designed with appropriate stakeholders and families.
23. CLC advocates that the Department of Education, with help and cooperation from the Department of Health where needed, should direct and resource school staff and emergency volunteers to teach and directly support pupils who are at home during term time using available technology portals such as C2K to enable access to live teaching time, direct lesson delivery by professional educators, classroom assistant support, Stage 3 SEN supports and pre-recorded lessons.

24. CLC has pointed out to the Department of Education on several occasions over the past number of months that it has a legal power to make a Temporary Continuity Direction under Section 38 and Schedule 17 of the Coronavirus Act 2020 to direct that a given standard of remote education is provided to all children who are at home, including those in vulnerable groups. A similar power has been exercised in England, with a Direction in force until the end of this school year. The Department responded to CLC on 11th November 2020, saying that it will not make such a Direction. **CLC calls for an Action within the Plan to provide urgently for a Department of Education Temporary Continuity Direction on Remote Education.**

SEN Support

25. The Coronavirus Act 2020 enabled the diminution of the entirety of the substantive legal obligations within the SEN framework in Northern Ireland through issue of [Temporary Modification Notices](#) by the Department of Education. The legislation passed without proper scrutiny. Modification notices and a raft of education policies followed, in the absence of proper equality screening or any consultation, resulting in avoidable and predictable adverse impacts upon vulnerable children with SEN and disabilities. Education Restart policies have not, to the best of our knowledge, been equality screened or properly consulted upon. Due to the lack of proper consultation with affected parties, we do not believe that the Department was or is in a position to make evidence-based decisions on these thresholds in compliance with their equality and human rights obligations.
26. A cascade of disadvantage has been caused to children with SEN which this Action Plan does not appear to address. Pre-existing failures and inefficiencies in the operation of the SEN framework, including extensive delays in meeting mandatory statutory duties by the Education Authority, were compounded by the disruption to schooling caused by the emergence of coronavirus and by a swift reduction of legal duties across the entire substance of the SEN framework to a “best endeavours” duty without any consultation. The negative impacts of these actions flowed over the SEN population unchecked by public authorities.
27. To compound this damage further Stage 3 Education Authority Pupil Support Services remain restricted, although children have had full legal entitlement to SEN support restored in August 2020, when the Temporary Modification Notices were discontinued. It is clear from the Education Authority’s website just how restricted services are currently. For example, as can be seen on the Pupil Support section of the [EANI website](#), direct peripatetic literacy support is restricted, direct autism intervention is suspended and there is no direct language and communication service.
28. Educational Psychology Services are currently the gateway to Stage 3 children’s support services. The Children’s Law Centre became aware recently of an Education Authority policy to await 2 IEP cycles (Individual Education Plan) to allow children to “settle” back to school before an Educational Psychologist would do a Stage 3 assessment. This could precipitate delays in

access to educational support services for children who have already missed out significantly on opportunities for learning throughout the pandemic by anything from 6 months to a year. Given the existing delays and bottlenecks in accessing assessments and the levels of need that children are returning to school with and taking into account the findings of the NICCY “Too Little Too Late” report and the two NIAO reports on SEN, we find this policy incredibly concerning. Again, this policy has not been subjected to proper screening as required by the Education Authority’s Equality Scheme.

29. It is important for the Departments to note that the mandatory equality rights for children with disabilities enshrined within SENDO 2005 have been unaffected by the Coronavirus Act 2020 and yet steps have been taken and are continuing which have a strong likelihood of resulting in reduced access to education for disabled children, when compared with non-disabled peers, which is potentially unlawfully discriminatory. This includes difficulties in accessing education both whilst attending school and during periods of non-attendance.

30. The Children’s Law Centre calls for the Department of Education to review the legal equality entitlements for children in education with disabilities within the Education (NI) Order 1996 and SENDO 2005 and to state Actions within the Plan to ensure sufficient human, revenue and capital resources to enable full legal compliance by schools and the Education Authority with their legal duties under the SEN and Inclusion framework to children with SEN and disabilities.

31. Actions are required within the Plan to enable reinstatement of and increases in access to SEN services and supporting health services for all children registered as having SEN.

Inability to Access Services due to Reduced Service Provision (Point 1.6)

32. The Children’s Law Centre is particularly concerned about lack of service access for vulnerable children who are unable to access education; are looked after; in need of social services or accommodation; require CAMHS or require daytime respite and/or short breaks.

33. Some extremely distressed vulnerable children have been chemically restrained as a direct result of loss and disruption of respite and education services. These children who are most in need have been deprioritised for service. Respite facilities have been repurposed with no notice or consultation and in a manner, which is highly questionable, based on the available evidence.

34. CLC is extremely concerned that there is no mention of respite services in this Action Plan and would strongly recommend that this is addressed as an immediate priority, with respite being recognised as a primary protective factor in the lives of vulnerable children with complex disabilities. Resources need to

be directed to meet the pre-existing and additional needs of vulnerable children and families.

Legislative changes needed to facilitate service delivery (Point 3.3 Action Plan)
Reduced Workforce Capacity (Point 3.4 Action Plan)
Service Delivery During Rebuild (Point 4.1, Action Plan)

35. A key point, of critical importance to the immediate impacts of this Action Plan in terms of **equality and human rights compliance for the Departments**, relates to Actions put in place to deal with the risks posed by reduced workforce capacity. In this respect, the Plan provides that **“essential” services will be maintained on a “priority” basis, in accordance with needs and risk assessments.**”
36. Looking at the example we described above (at Point 10), regarding Tina and Lauryn, it is clear that primary protective factors of specialist education attendance, daytime respite and short breaks that this child and family were assessed as needing **before** the pandemic to prevent harm and hold the family together, have not been assessed as essential throughout the pandemic and have certainly not been a priority during the half-term “circuit breaker” despite lessons learned exercises purportedly having taken place.
37. Children and families are currently suffering personal injuries, mental breakdown, threat to life and health and destruction of their right to respect for private and family life. Children are being chemically restrained in the absence of provision of services that they have previously been assessed as needing. These are grave and serious human rights abuses flowing directly from the decisions of state actors in relation to resource allocation. These issues have been highlighted to the relevant public authorities and the Departments by a range of concerned parties including CLC, from a very early stage in the pandemic.
38. The Actions needed are that firstly, **public authorities should dispense immediately with unnecessary, disproportionate, discriminatory emergency legislation and regulation which dilutes obligations to safeguard and promote the wellbeing of children.**
39. Secondly, **public authorities should comply with and use existing legislation effectively to facilitate service delivery, including for example compliance with Articles 17, 18 and 21 of the Children (NI) Order 1995. All duty bearers should comply with the duty to cooperate under Section 2 of the Children’s Services Cooperation Act (NI) 2015.** Resources should be directed into vulnerable children’s services, not away from them. For example, specialist Nursing and Allied Health professionals should not be directed away from special school provision. Specialist respite facilities for disabled children with complex medical needs should not be repurposed. All vulnerable children

cared for within the statutory system should have their needs met in appropriate safe, settings staffed by appropriately trained professional staff.

40. Thirdly, recognising that the already significant gaps in the delivery of children's rights have become chasms as a result of COVID-19, the **Children's Law Centre calls for the government to "build back better" for the longer term, with a strong, cohesive, cross-departmental Children and Young Persons Strategy underpinned by an adequately resourced cross-departmental children's services budget, aimed at increasing service capacity to meet evidenced need. There also needs to be significant emphasis on fulfilling statutory obligations under the Children's Services Co-operation Act (NI) 2015, in particular by maximising the exercise of the power in Section 4 for children's authorities to share resources and pool funds.** Allocation of resources necessitates establishment of clear lines of accountability for outcomes. To ensure the necessary change it is imperative that there is transparent and effective cross-Departmental Ministerial accountability for the full and effective implementation of the Children and Young Persons Strategy.

Conclusion

CLC is grateful to have the opportunity to give evidence to the Education Committee in relation to the Cross-Departmental Action Plan for Vulnerable Children and Young People. If any further detail or clarification is required, we would be pleased to assist.



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Introduction

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Equality Impact

Equality duties continue during the Covid-19 pandemic period. The Equality Commission have emphasised the importance of discharging Section 75 duties in the context of the need to legislate and develop policy quickly. They also recognise that decisions made in the current circumstances may actually exacerbate the disadvantage already suffered by some of the protected categories. The Departments

will be aware of the [Advice Note](#) issued by the Equality Commission, for public authorities on the Section 75 duties when developing Covid-19 related policies.

The Departments named in this Cross-Departmental Plan are designated bodies for the purposes of the Section 75 equality duty.

The Cross-Departmental Covid-19 Vulnerable Children and Young People Plan is a policy for the purposes of the Section 75 duty. Departments were therefore required to comply fully with their equality duties in the preparation of this plan and were required to undertake a screening exercise in the first instance. CLC have not had sight of an initial Screening/Screening assessment, which should have been published alongside the Action Plan as part of this consultation.

Under their respective Equality Schemes, the Departments have a duty to consult directly with children and young people in respect of the development of this Cross-Departmental Vulnerable Children and Young People Covid-19 Action Plan. Furthermore, central to compliance with the statutory duties imposed under Section 75 is the concept of increased participation in policy making and development. The Equality Commission's guidance¹ states that consultation must be meaningful and inclusive, in that all persons likely to be affected by a policy should have the opportunity to engage with the public authority. It also states that targeting consultation at those most affected by particular policies is also beneficial, in terms of identifying any adverse impact of policies or proposed policies at the earliest possible stage.²

In failing to do so the Departments have not only breached their statutory duties under Section 75 of the Northern Ireland Act 1998 and their own Equality Schemes, they have also deprived themselves of the opportunity to be fully informed when developing the Action Plan.

Further to consult directly with children and young people as per the Equality Commission's guidance, the duty bearers are also required to produce accessible versions of the consultation documents.

¹ 'Section 75 of the Northern Ireland Act 1998 – A Guide for Public Authorities' Equality Commission for Northern Ireland, April 2010, p.14

² Section 75 of the Northern Ireland Act 1998 – A Guide for Public Authorities' Equality Commission for Northern Ireland, April 2010 p. 38 and 39

We would therefore be grateful to receive copies of the child accessible consultation by return.

We also note the 12-week required consultation period has not been adhered to. *The Equality Commission outlines in their published guidance 'Section 75 of the Northern Ireland Act 1998: A Guide for Public Authorities':*

*“that adequate time be allowed for groups to consult amongst themselves as part of the process of forming a view. We recommend that the consultation period lasts for a **minimum of twelve weeks**. However, the Commission recognises that there may be exceptional circumstances when this timescale is not feasible, for example implementation of EU Directives or GB legislation, to meet Health and Safety requirements, urgent public health matters or to comply with Court judgements. In these circumstances a public authority can shorten timescales to 8 weeks or less, if required, before the policy is implemented, but can continue consultation thereafter and review the policy as part of its monitoring commitments.”³*

We do not accept that this consultation falls within the definition of those for which 6 weeks is an acceptable period for consultation as the impacts of the pandemic have been known for at least 8 months and the impacts of the pandemic and associated government actions have and will be long term. Likewise, and for the aforementioned reasons above we do not accept that a ‘targeted’ consultation fulfils the relevant Department’s equality duties, nor does it comply with their Equality Schemes.

We would be grateful to receive by return details of disaggregated data used in the compilation of this plan and the sources of this data. CLC has a considerable body of evidence of the differential adverse impact Covid-19 and associated government actions have had on children and young people, especially the most vulnerable children, which had we been asked, we would willingly have shared with government to inform this plan to try and ensure it addresses the significant needs of disadvantaged children and young people.

We would also request details of the system by which it is intended to analyse and evaluate responses to this consultation.

³ <https://www.equalityni.org/Employers-Service-Providers/Public-Authorities/Section75/Section-75/PublicConsultation/Consultation-principles> taken from '[Section 75 of the Northern Ireland Act 1998 - A Guide for Public Authorities](#)' pdf - pages 38-39

The integrity of the consultation has further been called into question by the fact that notwithstanding that the consultation period for this plan has not ended and responses have therefore not been analysed, the Department of Health has, without any consultation, extended the suspension of its statutory obligations by extending the operational period of The Children's Social Care (Coronavirus) (Temporary Modification of Children's Social Care) Regulations (NI) 2020.

Without prejudice to the aforementioned points, CLC would make the following comments and observations.

Definition of Vulnerable Children

Whilst we recognise that the definition used by the Department for vulnerable children has been widely used during the Covid-19 pandemic there are a number of issues regarding the definition which may impact upon some young people who may be excluded from it. Firstly, if a child must be assigned a social worker before being considered to be vulnerable there will be a number of children who will be excluded as there are a significant number of children awaiting allocation of a social worker. This is a pre-Covid-19 matter which has been significantly exacerbated by Covid-19.⁴

Further there is a statutorily defined category of "child in need" under Article 17 of the Children (NI) Order 1995 and a range of duties both statutory and discretionary in place for this group. The definition of child in need as per the consultation document is much narrower than the statutory definition.

Article 17 of the Children (NI) Order 1995 provides that:

For the purposes of this Part a child shall be taken to be in need if—

(a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by an authority under this Part;

(b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or

(c) he is disabled,

⁴<http://www.hscboard.hscni.net/download/PUBLICATIONS/CORPORATE%20AND%20FINANCIAL/Annual-Report-and-Accounts-2018-2019.pdf>

and “family”, in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living.

The use of the word family is important in these terms as the statute permits services to be provided to the family of a child in need not just to the child. This is an important distinction which must be recognised as part of the cross-departmental response to the pandemic.

The definition of vulnerable children in the Plan further goes on to state that it includes:

“A young person who was previously a looked after child, whether or not they are receiving support from statutory services.”

A young person is defined as anyone under the age of 25. It is unclear therefore if it is intended by the Department to include “former relevant” young people who are over 18 years of age within this definition. i.e., young people who were in care prior to the age of 18 and whom are entitled to full leaving and aftercare supports up to the age of 21 or sometimes beyond if they have remained in full time education. CLC advocates strongly for the inclusion of all “former relevant” young people. It is also the case that a young person can have a statement of special educational needs up until the age of 19 years, and again the Plan should cover over 18s in that category.

CLC would also recommend that the list should be expanded to explicitly include children and young people living in poverty; children and young people currently in hospital; young people in Woodlands Juvenile Justice Centre; and children and young people who are currently at home while their peers are at school (for example, if a child or their parent is clinically vulnerable or if a child has been a close contact and has to self-isolate).

Aim of the Plan

In the first instance, CLC would seek clarification in relation to the Aim of this Plan. Upon reading the Actions/ Possible Actions, it appears that in many instances, the Actions were undertaken during the initial lockdown period. It is unclear what actions will be taken forward in any future lockdown or circuit breaker period, nor is it clear what lessons have been learned from past actions. CLC would strongly recommend that this Action Plan is reframed to outline what actions will be taken forward in the future should there be any further restrictions imposed as a result of Covid-19 and

what actions will be taken going forward. In most instances, had the statutory provision been in place pre-Covid-19 the impact on children, especially the most vulnerable, would not have been as devastating. Therefore, recognising that Covid-19 exposed significant pre-existing gaps in the protection and delivery of services to and for children and their families, this plan must result in the cessation of service restrictions for vulnerable children, rectify the pre-existing deficit in service provision and 'build back better'.

Notwithstanding the comments above, CLC would recommend that the aim of the plan should be amended to read:

"The aim of this plan is to promote the safety and well-being of children and young people during the Covid-19 pandemic period and to 'build back better'.

- 1. Within the home environment;*
- 2. Within the wider community;*
- 3. Within statutory provision"*

'Within statutory provision' would allow children and young people in education, in hospital, young people in Woodlands JJC and unaccompanied asylum-seeking children to be included for the purposes of this Plan.

As stated above in relation to the aim to *"rebuild services"*, a number of services for children and young people in this jurisdiction were not sufficient prior to the outbreak of Covid-19 and therefore the aim of this Plan should be to 'build back better'. In many areas, this system was in crisis before the pandemic, and Covid-19 has put pressure on an already struggling system. Cracks in the system for vulnerable children and young people are now chasms. Learning should be utilised from this period to ensure that services are fit for purpose going forward. For example, young people who cannot perfect bail are often placed in unsuitable accommodation due to the lack of suitable accommodation. This deficit, which was previously known to duty bearers, including as a result of successful litigation taken by CLC, was exacerbated during the lockdown period as even unsuitable accommodation was unavailable (for example, B&Bs). This cannot be permitted to continue.

CLC would also seek clarification in relation to how long this plan will be in effect and would recommend that this Action Plan for vulnerable children and young people is

translated into a longer-term plan with the primary focus of 'building back better'. It is likely that the negative impacts of the restrictions imposed by the government will far outlast the pandemic, so the Departments should maintain and continue to monitor the impacts of a Vulnerable Children and Young People's Action Plan on a longer-term basis.

Many of the categories of vulnerable children and young people identified in this Plan were not safe and protected prior to the outbreak of Covid-19 and the subsequent lockdown period. An opportunity now exists to ensure that these vulnerable children and young people are protected and kept safe.

Monitoring and Reporting of the Plan

In relation to monitoring and reporting of the Plan, it would be useful if the data, statistics and evidence that will be used are identified for consultees to consider. Furthermore, information on how the Plan will be monitored and reported is necessary as part of this consultation exercise in order for stakeholders to consider and provide feedback and to ensure that the monitoring and reporting of the plan is fit for purpose.

The stated reason for the development of this Plan is to respond to the challenges and risks facing children young people and their families due to the Covid-19 pandemic, the associated public health restrictions and the prolonged period of lockdown.

It is crucial that the Plan responds adequately through specific targeted actions formulated upon the basis of evidence of need. As it currently stands, and on the basis of evidence gathered by CLC, the "specific supports" within the Plan are not reflective of the critical issues that vulnerable children are experiencing which explains why the Plan, which is largely retrospective, is currently and will continue to be ineffective. If the Plan does not contain relevant actions, it will not be monitoring outcomes in the relevant areas of concern. This Plan has, in correspondence to CLC from the Departments of Health and Education, been relied upon as offering the solution to disruptions to essential services for vulnerable children and families, such as education and respite. However, it is CLC's experience to date that the Plan has not delivered the necessary responses for vulnerable children in crisis.

It is gravely concerning to CLC that these ongoing crises, including threat to life and health, constitute serious and sustained equality and human rights abuses

caused by inadequately screened government policies, leading to actions and omissions which restrict access to essential services such as specialist education and respite. These denials of rights are not and will not be addressed by this 'Action Plan' as currently framed.

Despite the experience of the previous 8 months, the inability of the Departments to monitor, respond to and meet the needs of vulnerable children using this Plan and the associated lack of effective planning leading to failure to deploy appropriate resources was patently obvious to CLC during the “circuit-breaker” which had been predicted and was applied by the Executive over the Halloween mid-term, with schools closing to all children, including vulnerable children, for 2 weeks.

There was no evidence that lessons had been learned from the previous period of formal school lockdown or that any cogent, properly resourced contingency plans were in operation. CLC’s case work evidence that even more resources were taken away from vulnerable children during the circuit breaker (when compared to the previous lockdown), despite the evidence within the knowledge of the Departments and the existence of this Plan. The reliance of the Departments upon the Plan when the CLC questioned them about what support would be put in place during a potential circuit breaker and its failure to delivery strongly suggests that it cannot and will not protect vulnerable children during and post Covid-19.

Schools were closed completely during the Halloween ‘circuit breaker’, with no facility or process for supervised education placements to safeguard vulnerable children as had previously been provided for some vulnerable children. The multi-disciplinary Vulnerable Children process led by the Education Authority, which ceased on 30th June 2020, was not restarted. We have been informed that at the same time, Health and Social Care staff were not redeployed into the Children with Disabilities Teams as they had previously been, to enable allocation of emergency day-time respite to families in immediate crisis.

CLC strongly advocates for the need to implement evidence-based policies, particularly in times of emergency, where more targeted approaches may be required to remedy immediate, major adverse equality and human rights impacts. It is stated in relation to monitoring and reporting on the Plan, that “*available facts, statistics and evidence will be used to identify emerging issues and keep the Plan under review*”.

The current Action Plan is not fit for purpose as it is not an evidence-based policy. This needs to be addressed urgently. Such evidence as the Departments have, despite failure to widely seek out the evidence as required for proper discharge of their equality duty, has not been acted upon.

Further, we wish to emphasise that it is insufficient merely to rely on existing available data in a fluid situation where emergency powers are in operation and there is a growing reliable and contemporaneous body of evidence available from sources outside of government.

CLC takes the view that order to identify emerging issues, to enable monitoring and respond appropriately, Departments will need to actively and urgently identify current gaps in data and gather relevant data from affected parties, disaggregated by Section 75 status. We are currently extremely concerned about the serious ongoing equality impacts which we are now witnessing as a result of persistent failure to systemise the collection of any relevant and timely information about impacts of government policies upon vulnerable children including children with disabilities in Northern Ireland. On that basis CLC has filed 3 judicial reviews in the High Court against the Department of Education.

Further evidence could have been harvested directly from those impacted. Relevant groups of families who could easily be identified and contacted have not been consulted appropriately about what they need and identified gaps in provision have simply not been addressed or have been addressed in a way that skews the equality impacts in a fashion that exacerbates existing inequality and causes increased risk rather than mitigating risk.

The Equality Commission for Northern Ireland states in its [Press release of 7th July 2020](#) in relation to the obligation upon public authorities to collect data that:

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*“This pandemic would appear to be reinforcing existing health and wider inequalities and there is real concern that existing inequalities will be exacerbated, or new inequalities may emerge...*

*Equality considerations must be at the heart of public policy decision making as we work to protect people in our society most at risk from the virus and its effects. We*

*need comprehensive data across equality grounds to be collected, analysed and used to inform decision making in relation to Covid-19 as our Executive and policymakers design, deliver and/or review our laws, policies or service provision...*

*Currently whilst the Department of Health Covid-19 dashboard data includes information of impacts by age and gender, it does not include for example data on race or disability...*

*We would query how our Executive and public policy makers can respond to the pandemic's different impacts without more detailed equality data. At this time, more than any other, it's vital that we understand as much as can about how Covid-19 impacts on people most at risk."*

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CLC has identified through its legal advice and casework services that failure to actively gather relevant comprehensive data about adverse equality impacts upon children with disabilities, including failures to consult their parents and carers at this time, has led to a situation where there was and is a significant level of unmet need and a failure to balance the effects of various potential "harms" due to inaction of the state, to the extent that serious avoidable harm was caused to children, their siblings, parents and carers.

This included physical harm, damage to property, harm to mental health leading to decisions to apply chemical restraint, interference with family life and in severe cases, risk to life. As we write during a "circuit breaker" put in place by the Executive, this remains the case, has been carried out with a level of knowledge and foresight about the damage likely to ensue and has been done without appropriate planning for mitigation.

CLC's experience has been that our caseworkers and sectoral colleagues have been continuously and proactively providing information to Departments to highlight emerging issues, particularly about Education, Health and Justice, and seeking urgent action to deal with immediate crises. We have continuously sought compliance with Section 75 equality duties to ensure legislative and policy development meets the needs of the most vulnerable children, to no avail, so that we have had to file legal actions regarding failures to screen, gather data, consult affected parties and carry out

Equality Impact Assessments. It is these processes which enable the Departments to satisfy themselves that disproportionate equality impacts of policies are identified and mitigated effectively.

The Equality Commission for Northern Ireland, in its [Advice Note](#) for public authorities entitled “Section 75 duties when developing Covid-19 related policies” dated 21/04/20 states that:

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*“In these unprecedented times, the Commission recognises that policymakers may need to make quick and often challenging policy decisions. Yet, even if justified by the needs of the moment, it is important to recognise that such decisions may have different impacts on different groups of people. It is important that public authorities recognise that the duties set out in Section 75 of the Northern Ireland Act 1998 continue to apply, even when implementing Covid-19 related policies. These duties provide a mechanism to identify and mitigate any adverse impacts of policies being developed and are important duties, particularly at a time of crisis and when policies need to be developed at pace...*

*The [Section 75 duties](#) continue to apply at this time. The Commission has no legal authority to revoke them, or to suspend their operation at any time, including the present...*

*Some of these policies may relate to the powers derived from the Coronavirus Act 2020, which has made some temporary changes to statutory law to help public authorities to cope with the current challenges by modifying or alleviating some of their legal duties. No such changes have been made in relation to the Section 75 duties or to the anti-discrimination laws...*

*In the context of Section 75, if a [consultation exercise](#) is to be conducted around the present time, it will likely be done as part of an EQIA. The question of whether the usual EQIA consultation arrangements may be modified (e.g. a shorter consultation period) will depend on what each public authority’s equality scheme arrangements allow. Most, if not all, public authorities’ current schemes allow for some such modifications in special circumstances, including to address urgent public health matters. Clearly, the present is such a time.”*

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CLC asserts that in Northern Ireland, it is the most vulnerable in our society who have carried the greatest burden and suffered the most damage due to the implementation of government policies flowing from the outbreak of coronavirus. CLC is aware that evidence of grave and serious equality impacts upon vulnerable children and their families, arising from legal restrictions and decisions about service reprioritisation, started to emerge at a very early stage, from at least mid-March to late March 2020. Over many weeks, and months, assurances were given by public authorities to CLC and others that this was being addressed. These assurances did not lead to resolution, but rather contributed to false hope, delay and ultimately legal non-compliance and system failure. It is clear to CLC that this Action Plan will not remedy the inequalities that have been suffered by children and their families.

There is a continuing situation of grossly unequal impacts, particularly upon vulnerable children with complex disabilities such as autism and severe learning difficulties. We are writing to Departments, child by child, seeking help, when help should have been systemic and should have flowed automatically from effective data gathering and consequent evidence-based planning and monitoring for effective mitigations and supports that would be needed.

Families that are known to the authorities are being abandoned by government. We are gravely concerned for families we know about and for families that have not yet been identified, who are invisible to the authorities, who are suffering in silence, exhausted, with no advocate, with no expectation of help on the way and no knowledge that they deserve and are legally entitled to better treatment.

Risk/Challenge and Actions

1. Promoting safety and well-being in the home environment

1.1 Increased risk of harm in the home

Since the beginning of the lockdown in March 2020, the increased risk to vulnerable children in the home environment has been a priority area of work for CLC due to continuous flow of severely distressed parents, carers and professionals (from

education, health and social care) who have contacted us to seek legal advice and information. We have consistently highlighted our concerns to the relevant authorities, including Departments.

It is important to identify at the outset that the cause of the increased risk to vulnerable children has been a combination of Covid-19 restrictions and 10 years of austerity cuts which emanated from purposeful failure to prioritise the equality rights which are designed to protect the most vulnerable people in our society. For children, this failure presented as active stripping back of children's services, particularly within health, social care and education to the point where there was insufficient system capacity to meet essential needs in "normal" times before the pandemic.

The aims of this Action Plan include to strengthen system capacity to respond to the current challenges and risks and to rebuild services. CLC absolutely agrees that there is an urgent need to strengthen system capacity to mitigate the harms currently being suffered by vulnerable children and their families. There is a need to actively consult affected people, to be flexible, creative and swift in response and to place human and financial resources where the evidence gathered shows that they are most needed.

Therefore, the second part of that aim, to rebuild services, is not enough. Recognising that the already significant gaps in the delivery of children's rights have become chasms as a result of Covid-19, the Children's Law Centre calls for the government to 'build back better' for the longer term, with a strong, cohesive cross-departmental Children and Young Persons Strategy underpinned by an adequately resourced cross-departmental children's services budget, aimed at increasing service capacity to meet evidenced need and with significant emphasis on fulfilling statutory obligations under the Children's Services Co-operation Act (NI) 2015, in particular by maximising the exercise of the power in Section 4 for children's authorities to share resources and pool funds. Allocation of resources necessitates establishment of clear lines of accountability for outcomes. To ensure the necessary change it is imperative that there is transparent and effective cross-Departmental Ministerial accountability for the full and effective implementation of the Children and Young Persons Strategy.

The Action set out in the Plan to deal with the increased risk of harm in the home is to "*Maximise opportunities for vulnerable children to spend time safely out of the home*".

One of the stated methods of achieving this is *“identification of vulnerable children who would benefit by attending school during lockdown by professionals.”*

Firstly, we note that parents are not listed as one of the parties enabled to identify that the child needs to be outside the home and to attend school as a form of protection. The failure to properly enable parents to refer and to be full partners in the vulnerable children “processes” to date has resulted in some very poor decisions being made resulting in serious failures to protect children and families from harm.

This includes parents who were very proactively throughout the lockdown and beyond seeking help from schools, HSCTs, EA, DE and medical professionals and who had advocacy from CLC and others. Critically, it also includes parents and families who, whilst known to services, did not cry out for help, did not feel comfortable in challenging public authorities and who suffered harm and damage in silence believing that there was no help available and not having the tools to ask. A number of such families came to the attention of CLC at a late stage and are still slowly emerging. The circumstances that they have endured are nothing short of horrific. We are very concerned about all of these families and especially those that the system has failed to identify.

It is clear that this Action around securing access to school for vulnerable children when school is closed to others, relates to the period of lockdown that has passed and therefore it needs to be reframed to refer to protection during **school closures and disruptions to school access during further lockdowns and during any other emergencies.**

The “specific supports” under point 1.1 bear no relation whatsoever to the action for identifying relevant vulnerable children to maintain school attendance as a primary protective factor for them. The supports appear to relate only to child victims of domestic abuse. While CLC are firmly of the view that it is critical that these children are also afforded maximum protection especially during lockdown there is also a duty to protect other vulnerable children who are at increased risk of harm in the home. The focus on a narrow definition of children at increased risk of harm in the home may go some way to explaining why this Plan has not been working and will not work for vulnerable children who need the protection afforded by attendance at specialist schools because they exhibit challenging behaviour when routines are broken and they exhibit severe distress at home.

The most important Action that the Departments can take in relation to mitigating this particular risk to this group of children at home when they need to be in a school for protection or “supervised education placement” is to put in place a coherent, transparent, accessible, visible, properly and jointly resourced multi-disciplinary **Vulnerable Children Process**, directed and guided by the Departments of Education and Health (with clear lines of responsibility) and operationalised by the Education Authority and the five Health and Social Care Trusts.

We know that this is needed because since the outset of the pandemic, various processes, none of which have been fully effective, have slowly emerged for vulnerable children to access the protection of school attendance when school life is disrupted. This included that parents could ask schools for help (which was not useful when certain special schools refused to open to even one of their own vulnerable pupils); Social Workers could ask schools for help (this help was refused in urgent cases that we are aware of and in some cases Social Workers did not put forward relevant children); the Education Authority and the Health Trusts had weekly “Joint Health and Education Panel” meetings (which we believe ceased on Education Restart but are referred to as a support in point 1.6 of the Plan) and there was a high-level “Health and Education Oversight Group” which we believe includes the Department of Education, the Department of Health, the Public Health Agency and the Health and Social Care Board. We are unsure if the Oversight Group is still operating though we note it is mentioned under point 1.6 of the Action Plan.

We are not entirely clear on these matters as very little detail is available about the membership and operation of the joint working arrangements. It is not clear how children were being identified, or whether they were on any “list” to be discussed by these groups. We do know that parents had no direct input because this rendered significant proportion of the suggested “solutions” for children that were identified unworkable because the authorities were working on partial information.

Week by week during the pandemic, CLC has been advocating on behalf of specific vulnerable children and their families who were suffering harm and at risk of further harm including in the home. The system was bureaucratic and incredibly slow to respond in the circumstances. There was also a significant failure of the Departments to use available powers of direction. For example, the Department of Education was

and still is empowered under **Paragraph 14(4) of Part 3** of [Schedule 17 of the Coronavirus Act 2020](#), through issue of a Temporary Continuity Direction, to ensure that reasonable steps are taken by schools and to ensure that relevant special schools opened to their vulnerable pupils with complex disabilities such as autism with severe learning difficulties. Concurrently, the Department of Health should have directed that relevant health and social care staff including nurses and Allied Health Professionals specialised to work with children remained available to provide for identified needs within specialist school settings and within respite settings, including specialist respite settings such as Forest Lodge, for the protection of vulnerable children.

Direction should have been given and resources put in place to enable provision of essential services. Further the Emergency Volunteer scheme administered by the Department of Health and volunteers coming in through the [Department of Education Volunteer Scheme](#) (which we understand have never been deployed) could have been used and should now be used as and when necessary to direct essential resources into specialist schools to meet the needs of vulnerable children with complex disabilities.

Regarding the Department of Education, Paragraph 14(4), mentioned above, provides powers of the Department of Education to make Temporary Continuity Directions that may, amongst other things:

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*(a) require the taking of reasonable steps in general terms, or require the taking of particular steps that the Department considers reasonable;*

*b) in the case of a school, require the school to open, to stay open, to re-open, or to open at times when it would not usually be open;*

*(c) in the case of a school, require the school to allow specified pupils to attend that school for the purpose of receiving education or services relating to education provided by or on behalf of that school;*

*(d) in the case of a school, require the alteration of term dates, holiday dates or examination dates;*

*(e) in the case of a school, require the school to provide or make arrangements for the provision of education or services relating to education;*

*(f) make different provision for different purposes, or be framed by reference to whatever matters the Department considers appropriate;*

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It is noteworthy that the Department of Education to date was swift to use Coronavirus Act 2020 powers (under Section 38 and Schedule 17 - paragraph 17) from 2nd April 2020 to issue [Temporary Modification Notices](#) diluting the entire substance of the SEN legal framework to a “best endeavours” standard which was incredibly wide in scope. At the same time, it failed to employ its available powers to secure protection for vulnerable children with complex disabilities who needed the primary protective factor of school attendance and support from trained specialists.

We note the recent situation where the Department of Education does not appear to have been consulted by the Department of Health when restrictions were being designed, so that children would have been unable to receive Physical Education at school in groups of more than 15, with class sizes being 30+ in many schools. This points to a lack of cooperation and joint planning in relation to matters affecting the health and wellbeing of children.

To put the above issues in context, data from 21st August 2020 that CLC received on request from the Department of Education about the outcomes of the late-arrived multi-disciplinary Vulnerable Child Process which EA was leading, shows that during the lockdown phase 209 vulnerable children were identified through a range of sources as potentially needing a supervised education placement. **71 of these 209, that is, approximately one third of identified vulnerable children with complex needs, did not receive a supervised education placement** (in 14 of those cases it was assessed it was not needed though it is unclear if there was a challenge process on this decision). It is important to note that this only refers to the 209 children who were identified. Other children that we know of went unidentified. There will be a group of children that no one has identified.

In conclusion, there is clear evidence that there was a joint health/education vulnerable child process but that it was inadequate and unfit for purpose. A

new properly resourced joint process which accounts for lessons learned, is visible and accessible, involves parents directly and with a lead co-ordinating authority is urgently required.

It is not clear what input parents and other stakeholders have had into any lessons learned processes from previous periods of restriction in Northern Ireland. The Education Authority told us in response to pre-action and other correspondence that lessons would be learned about how they managed placement of vulnerable children during lockdown. The Department of Education told us that the Joint Health and Education Oversight Group were conducting a “lessons learned survey” with stakeholders and they would take our correspondence into account. We have not been surveyed, nor to our knowledge has the Children with Disabilities Alliance (CDSA), of which we are a member. Our clients do not appear to have been surveyed. We have no knowledge as to who has been consulted or what lessons have been learned. Given our intensive involvement in this matter throughout the pandemic, this indicates to us that relevant stakeholders outside of public authorities have not been properly consulted.

It has been clear during the recent two-week school “circuit breaker” that lessons have not been learned as matters have in fact deteriorated further which indicates that there has been a planning and process failure in relation to protection of and provision for vulnerable children including those at increased risk of harm in the home.

In relation to the vulnerable children process imagined in DE Guidance and operated/lead by the EA at a late stage through an [EA Online Form Process for Vulnerable Children](#) the Children’s Law Centre had raised an array of concerns.

The [Department of Education Guidance on Vulnerable Children](#) states that:

“Schools should work in conjunction with parents/carers, the Education Authority (EA) and, where appropriate, social services to identify and assess vulnerable children to determine if their best interests would be met by the school’s continued supervised learning...”

Some families need more support than others and attending educational settings is an important protective factor for children receiving support from a social worker. We want to prioritise supporting those most in need at this difficult time...

If attendance is deemed in the child's best interest then they should have access to school settings, either in their normal setting or a suitable alternative."

Our primary concern was that the DE guidance provided for a two-step process. First, a multi-disciplinary best interests' assessment on whether it was in the child's best interests to leave their home to go to a supervised education placement. Second, a risk assessment to determine how best to meet the child's needs outside the home. We have received assurance from the EA that lessons would be learned and any future process would be improved. Our experience was that some special schools simply risk assessed out the most challenging children without a multi-disciplinary input and left those children at home when it was against their best interests. Trust staff told us that they experienced great difficulty in getting some schools to cooperate to help particular children. Some schools who were willing to open, and did provide for some children, cited lack of available health staff as a reason for being unable to manage certain children safely. The Education Authority told us that certain extremely vulnerable children we identified hadn't been raised at weekly joint meetings by the Trust. If lessons have been learned from previous processes as public authorities may state, the issues identified and the learning undertaken should be made public and shared. We are not confident that this Action Plan will address these ongoing significant issues and afford protections for all children at increased risk of harm in the home.

After issue of 4 urgent items of legal correspondence indicating the intention to take legal action by the CLC, the EA tried to set up a Vulnerable Child Process that was closer to that envisaged by the Department of Education guidance. However, it was too little, too late. A single senior EA Officer was deployed and did their best to contact all known families and liaise with Social Workers, medical professionals and schools as well as CLC. Some families were then offered a limited set of short sessions at school. Others were offered nothing. Some refused because the sessions clashed with emergency respite sessions, evidencing a lack of coordination between services. Some refused because their children with severe learning difficulties and autism would

not react well to having inconsistent last-minute provision just before the summer holidays. Some took up the sessions and had some small respite for a short time. Then the summer break came, provision ended and the struggle to find help recommenced. The process was flawed, confused, poorly resourced and a mere reaction to legal challenge, lacking proactivity. A clear example of lack of evidence-based planning developed without proper equality impact assessment.

The experience we can share demonstrates that Covid-19 restrictions imposed by the government have had major, grave and serious impacts upon vulnerable children who fall within Section 75 protected groups. Equality screening failures have meant that this undeniable fact has not been formally acknowledged and recorded as such. **In the continuing absence of proper and lawful equality screening of the relevant policies which impact upon vulnerable children including this Action Plan, and the conduct of full EQIAs reflective of the gravity of the adverse impacts, the government will continue to cause avoidable harm to the most vulnerable children and their siblings, parents and carers.**

There are ongoing major adverse equality impacts upon children with complex disabilities and their families, notably those with autism and severe learning difficulties who exhibit distress in the form of challenging behaviour. These families tell us that they have been abandoned by the state; that they have suffered physical and mental harm and that their children have been chemically retrained with strong drugs to try to keep them safe rather than having services provided by HSCTs, EA and others. This points to an entrenched and shameful inequality suffered by a legally protected vulnerable group within Northern Ireland society which has been fully exposed and significantly exacerbated by the current emergency situation.

Tina and Lauryn

One of the Children's Law Centre's clients, Tina, worked with Open Democracy and the Children's Law Centre to make a video explaining the abandonment of her daughter Lauryn and their family by government during the lockdown. Lauryn is a 17-year-old young person with disabilities, including autism, severe learning difficulties and challenging behaviour triggered by distress. We have provided the video and article previously as compelling evidence of the inadequacy of the response of the Departments, the Trusts and the Education Authority throughout this pandemic. You

can listen to Tina here: <https://childrenslawcentre.org.uk/sedated-and-abandoned-the-struggle-to-care-for-my-disabled-daughter-during-lockdown/>

Lauryn's mother Tina and CLC had highlighted the terrible impacts of service restriction during lockdown by public authorities upon Lauryn and her family through legal correspondence, attending meetings, negotiation, continuous contact pleading for urgent help from the Trust, Education Authority, Department of Education and Department of Health. At a late stage the Trust was able to put in place some day time help from the limited resources it had available. From February 2020 (pre-lockdown) until August 2020, Lauryn was not granted any education placement to support time outside the home despite being at increased risk of harm in the home.

Unfortunately, despite concerted efforts by the CLC, Lauryn's mother Tina and others to seek improved response by the Departments and related public authorities, and to avoid causation of further harm, Lauryn's case has produced an example of what went wrong "on the ground" during the Halloween "circuit breaker".

Lauryn's school was directed by the Department of Education to close for two weeks at Halloween (which it had not planned or wanted to do). Her respite facility had been repurposed by the Trust, which was known to the Department of Health and no respite was available. Lauryn therefore lost two essential support services simultaneously. Staff who had previously been redeployed into the Children with Disabilities Team to provide day-time help when schools had closed, like taking children out for a drive, had not been redeployed on this occasion so the Trust offered no practical help as it had no resources. CLC were assured by the Departments of Health and Education that Lauryn's case (and others we highlighted) had been noted and steps would be taken. Lauryn wasn't receiving any practical help and her family continued to struggle and to suffer physical and mental harm.

CLC, noting that the assurance given by the Departments of Health and Education with reference to this Plan had produced no outcome, and noting that her mother's regular communications to the Trust produced no help, continued to press the Trust. On the second Friday of the two-week lockdown, Lauryn was taken out for a drive. No further respite is currently scheduled. Lauryn's psychiatrist had no option but to increase her sedative medication again during the circuit breaker to chemically restrain her within her home. We are informed that Lauren experienced significant difficulties

adjusting during this two-week period and challenging behaviours were predictably triggered largely by the combined absence of school and absence of respite resulting in a significant increased use of physical restraint and chemical restraint in the form of PRN medication for distress and agitation. CLC has evidence, also within the knowledge of Departments, that Lauryn was not the only vulnerable disabled child known to services who had to be chemically restrained as an alternative to receiving a protective health or education service. CLC sent photographs and descriptions of physical injuries to the Departments.

CLC's concern now is that despite continuing desperate need within the community there is currently no effective dedicated coordinated process or resourcing for vulnerable children, particularly those who require for safety reasons and for the protection of life and health to spend time outside of the home in education and health facilities and public spaces.

The Departments have failed to comply with the legal duty to cooperate under Section 2 of the Children's Services Cooperation Act (NI) 2015. CLC takes the view that the Departments, to protect Vulnerable Children who are at risk in the home, and to mitigate the risks identified across the entirety of the Action Plan and this consultation process, should as an initial **overarching Action** comply with the **mandatory legal duty to cooperate under Section 2** and exercise the power under **Section 4 of the Children's Services Co-Operation Act (NI) 2015** which enables children's authorities to share resources and pool funds. While it should not be necessary, it is critical that this Action Plan reminds Departments of their duty to cooperate in the best interests of children. Resources include **staff, goods, services and accommodation**. The pooling of funds enables the children's authorities contributing to make relevant expenditures in the exercise of their children's services functions. Such cooperation should be used to put in place a holistic **Vulnerable Children Process** and that process should have **multi-disciplinary assessment of the best interests of the child as a primary function** of the process. Once best interests are established, it is essential that **service provision follows** and that any **risk assessments** as a second step **are for the purpose of enabling access, rather than exclusion from service.**

Summary of Actions Needed under Point 1:1 (and relevant to Point 1.6 and in some respects to the Plan as a whole):

- Full and proper discharge of the equality duty including full EQIAs of all existing and forthcoming Covid-19 policies affecting vulnerable children and of all plans to ‘build back better’
- A wider understanding and consequently ‘definition’ of children at increased risk of harm in the home
- Gathering and collation of disaggregated data relating to vulnerable children at increased risk of harm in the home
- Establishment of a multi-disciplinary Vulnerable Children’s Process with best interests of the child as the primary consideration to identify and provide education, health and social services for vulnerable children with complex disabilities who require to spend time out of their home, using pooling of financial and human resources from the Departments of Education and Health under Section 4 of the Children’s Services Cooperation Act (NI) 2015.
- Increased funding to voluntary sector providers who have been successfully providing direct services to children outside their homes during the pandemic
- Publish contingency plans, including for deployment or redeployment of staff and emergency volunteers to enable service provision within specialist schools and specialist respite facilities
- Publish information about lessons learned by public authorities regarding the treatment of vulnerable children and young people with complex disabilities
- Dispense with emergency legislation which damages children’s rights and comply with existing legal duties, including under the Children (NI) Order 1995 and the Children’s Services Cooperation Act (NI) 2015.

1.2 Increased pressure on families due to lockdown and social distancing restrictions

CLC, through calls to our advice line and direct engagement with children and young people, are aware of the increased pressure on families due to lockdown and social distancing restrictions relating to digital poverty including the lack of internet access,

the lack of electronic devices to access the internet and increased costs in utilities such as food, lighting and heat.

There has been a significant adverse impact for children and young people in this jurisdiction as a result of digital poverty. This includes children and young people who live in rural areas where internet coverage is patchy at best. We are also deeply concerned by the socio-economic discrimination experienced by children and young people who live in poverty and therefore their families do not have the means to pay for internet connection or associated devices.

These children and young people have been impacted by the lack of internet access for some time, however the Covid-19 lockdown has exacerbated the issue, particularly as children and young people were expected to access their education via the internet and their only way of communicating with their teachers, friends and wider family was through online means.

Their right to education under Article 29 United Nations Convention on the Rights of the Child and Article 2 of Protocol 1 along with Article 15 European Convention on Human Rights are engaged and have been breached, as has Article 8 ECHR Right to Private and Family Life, Article 2 (non-discrimination), Article 3 (best interests), Article 6 (right to life, survival and development), Article 12 (the right of the child to express views), Article 13 (freedom of expression), Article 15 (freedom of association), Article 19 (protection from violence, injury, abuse, neglect or negligent treatment) and Article 31 (the right of the child to rest and leisure, to engage in play and recreational activities). Article 40 (right to fair trial) (and also Article 6 of the ECHR) of UNCRC are also engaged and it is CLCs view that they have been breached as a consequence of the digital discrimination which children are experiencing.

The UN Committee on the Rights of the Child is currently developing a General Comment on children's rights in relation to the digital environment. Whilst still in draft form, the General Comment sets out clearly the rights of children in relation to the digital environment:

*“Meaningful access to digital technologies can support children to realise the full range of their civil, political, cultural, economic, social, cultural and environmental political and social rights... If digital inclusion is not improved, already existing inequalities are likely to be exacerbated....”*⁵

The draft General Comment also provides a useful commentary in relation to the UNCRC Articles that we feel have been breached for those children and young people who do not enjoy digital access.

Article 2: *“The right to non-discrimination requires that States ensure all children, including children of lower income families and children living in rural and remote areas, have equal and effective access to the digital environment in ways that are meaningful for them. States should take all necessary measures to lower the cost of connectivity, provide free access to children in safe dedicated public spaces, and invest in policies and programmes that support all children’s use of digital technologies at school, home, and in their community, to overcome inequalities and improve digital inclusion...”*

Specific groups of children may require particular measures to prevent discrimination on the grounds of sex, disability, socioeconomic background, ethnic or national origin, or any other ground. This includes minority and indigenous children, asylum-seeking, refugee and migrant children, LGBTI children, child victims of sexual exploitation, children in poverty and children in alternative care, including institutions, and children from other vulnerable situations... This is because, for such groups, the digital environment may both provide unique access to vital resources, and also it may present heightened risks...”

Article 3: *“The best interests of the child is a dynamic concept that requires an assessment appropriate to the specific context. Although the digital environment was not originally designed for children, they occupy the digital space along with adults. Therefore, this principle has a special importance in relation to the digital environment. States shall ensure that in all decision-making regarding the provision, regulation,*

⁵ <https://www.ohchr.org/EN/HRBodies/CRC/Pages/GCChildrensRightsRelationDigitalEnvironment.aspx>

design and management of the digital environment that may impact children's rights, the best interests of the child shall be a primary consideration....".

Article 6: *"Online experiences and opportunities provided by the digital environment are of crucial importance for children's development, and may be vital for children's life and survival, especially in situations of emergency."*

Article 12: *"Children report that the digital environment affords them crucial opportunities for their voice to be heard. The use of digital technologies can enhance children's right to be heard in matters that affect them and help to realize children's participation at local, national and international levels...."*

Article 13: *"A child's right to freedom of expression includes freedom to seek, receive and impart information and ideas of all kinds, using any media of their choice. Children report that these technologies offer significant scope to express their ideas, opinion, and political views. For children in disadvantaged or vulnerable situations, online participation with others who share their experiences can help them to express themselves."*

Article 29: *"The digital environment can enable and enhance children's access to quality education, including resources for formal, informal, peer-to-peer and self-directed learning. Children highlight the importance of digital technologies in improving their access to education, as well as in supporting their formal and informal learning and participation in extracurricular activities. These resources can support children to engage with their own creative and cultural practices and to learn about those of others. States should enhance children's online learning and encourage awarding children with certification when needed to prove their participation."*

Article 31: *"The digital environment promotes children's right to culture, leisure and play, which is essential for their well-being and development. Children of all ages report that they find pleasure, interest and relaxation through engaging with a wide range of media of their choice, as well as concern that adults may not understand their digital play and how it can be shared with friends."*

Furthermore, in direct engagement with CLC, young people have told us that they would use the internet to access advice and/or support more so than any other means, for example, using a freephone telephone number or speaking directly to someone. Therefore, the lack of internet access for children and young people results in them not accessing the advice or support they need. CLC through our case work, have evidence of children and young people, particularly those in the care of the state who have found it tremendously difficult to obtain legal advice due to the lack of IT access. This resulted in challenges in relation to CLC's legal team being able to consult with and represent clients.

This is of particular concern where there are child protection or children's rights issues involved. Their ability to vindicate their rights is consequently engaged.

There are also issues in relation to right to the fair trial in the digital environment in the context of children who have been asked to participate in teleconference (rather than audio visual) hearings during the COVID-19 health crisis. For children and young people, the use of only teleconference as opposed to maximum digital engagement makes it very difficult for young people to follow proceedings and can make participation in the hearing much harder. CLC are strongly of the view that this is a breach of both Article 40 UNCRC and Article 6 ECHR.

Specifically, in relation to children's rights during the Covid-19 crisis, the UN Committee on the Rights of the Child released a statement in April 2020 warning of the grave physical, emotional and psychological effect of the Covid-19 pandemic on children and calls on States to protect the rights of children including their digital rights which have been thrown into sharp focus as a result of the pandemic and lockdown⁶. Inter alia, they recommended that States:

“Ensure that online learning does not exacerbate existing inequalities or replace student-teacher interaction. Online learning is a creative alternative to classroom learning but poses challenges for children who have limited or no access to technology or the Internet or do not have adequate parental support. Alternative solutions should

⁶ <https://yjlc.uk/covid-19-uk-childrens-rights-committee-on-the-rights-of-the-child-recommendations-for-states/>

be available for such children to benefit from the guidance and support provided by teachers...

Protect children whose vulnerability is further increased by the exceptional circumstances caused by the pandemic.... States should respect the right of every child to non-discrimination in its measures to address the Covid-19 pandemic as well as take targeted measures to protect children in vulnerable situations.”⁷

Given that the internet is now essential to work, schooling, finding information, advice and support and connecting with others, CLC believe that failure to ensure equality of access to both internet and digital technology is a serious breach of children’s rights. Learning should be taken from the previous lockdown period, with digital poverty addressed in the short-term within this Action Plan, with a longer-term Strategy developed to ensure that everyone has access to both the internet and digital devices.

Furthermore, many families have experienced a drop in their income during the pandemic period. This may be due to, for example, parents being placed on furlough, due to a parent on a zero hour contract no longer receiving any hours, or being made redundant. This coupled with increased costs to run the family home, due to increased use of heat and electricity with everyone at home has put many families under huge pressure.

Lorna Ballard, NI director of Action for Children for example, speaking to the Belfast Telegraph advises that:

"While parents on low incomes are starting to buckle, a new wave of families who have never needed help before are now also struggling to make ends meet.... some 71% of families accessing the Action for Children appeal did not have financial problems before the pandemic, which has been causing distress in all kinds of places and in all kinds of ways.”⁸

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https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CRC/STA/9095&Lang=en

⁸ <https://www.belfasttelegraph.co.uk/opinion/viewpoint/our-child-poverty-figures-disturbing-39527399.html>

It is imperative that this Action Plan addresses the increased pressure through financial insecurity and uncertainty that families have been facing as a result of the Covid-19 pandemic to ensure that no child is left behind.

The Action Plan should address the need to properly resource and provide access to independent advice service providers, such as CLC, who have experienced an overwhelming increase in demand for services since the beginning of the pandemic. Even prior to the outbreak of Covid-19, there was a strong body of evidence reflecting the huge unmet need for advice services for young people. As with many other examples outlined in this consultation response, Covid-19 has accentuated this issue further. CLC would strongly recommend that action to resource and provide access to independent advice services for young people and their families is addressed within the Plan.

1.3 Reduced service provision and/ or interaction with services results in children and young people being less visible

CLC recognise that visiting children during lockdown presented considerable challenges including how best to protect the health of the child, staff members, parents/carers/foster parents and to balance competing rights and needs. CLC are unsure how a risk assessment to determine whether it is necessary to visit a child in person was undertaken in a verifiable and reliable way.

CLC remain concerned that the child's 'accessibility' to and ability to use audio visual technology without interference may not be reliable especially in cases when the child is most at risk.

This also presumes that the child is of sufficient age and capacity to use audio-visual technology. Consequently, reliance on audio visual engagement with the child as part of the risk assessment process presents challenges. Without the safety net of external

contact and noting the fall in child protection referrals⁹, we remain concerned that the child's right to protection and potentially their right to life is fully not guaranteed.

Furthermore, there has been a marked increase in the number of children referred to social services, an increase in children on the child protection register and more children in care since last year¹⁰ and a significant increase in reports of domestic abuse¹¹. CLC would therefore question whether the suspension of Department of Health duties to visit children in their homes during lockdown was proportionate. CLC outlined these concerns to the Health Committee in respect of The Children's Social Care (Coronavirus) Temporary Modification of Children's Social Care) Regulations (Northern Ireland) 2020. Our submission can be accessed [here](#).

1.4 Families facing financial hardship and/or food poverty

CLC welcome that there have been additional payments to families normally eligible for free school meals via the Covid-19 Free School meals direct payment scheme. CLC would urge that NI departments learn from previous experience and ensure that additional payments are secured in advance for all school holidays and for periods where a child is required to self-isolate going forward or is out of school. This is particularly crucial given the child poverty rates and the number of children experiencing 'holiday hunger', which existed pre Covid-19 but has been sharply exacerbated during the pandemic.

Many vulnerable and community sector organisations have seen a dramatic increase in the number of families they have been asked to support during the Covid-19 pandemic period, it is critical that these organisations are provided with additional resourcing from government to reflect the increase in service provision.

It is also crucial that work is ramped up to develop, publish and implement the long-awaited Anti-Poverty Strategy for NI as a matter of urgency given the alarming rates of child poverty in this jurisdiction.

⁹ <https://www.health-ni.gov.uk/news/minister-urges-public-report-child-protection-concerns>

¹⁰ <https://www.bbc.co.uk/news/uk-northern-ireland-54685375>

¹¹ <https://www.belfasttelegraph.co.uk/news/northern-ireland/significant-increase-in-reports-of-domestic-abuse-amid-covid-lockdown-in-northern-ireland-39574392.html>

1.5 Children facing education disadvantage due to school closures

Matters that we have outlined under Point 1.1 of the Action Plan above are also relevant for this section and we ask that those concerns are also taken into account here. We have also dealt with relevant issues around digital access and socio-economic deprivation elsewhere which we also ask to be considered under this heading.

CLC strongly recommends that the description of the risk under this point is reformulated to include not only school closures but also disruptions to school attendance. We are aware of many children and young people, including those in Section 75 groupings and children who are socio-economically disadvantaged who are unable to attend school for reasons related to the coronavirus pandemic, whilst their peers are attending and being taught by professionally qualified teachers and support staff.

Management information published by the Department of Education on [pupil and workforce attendance](#) shows that only than 84.7% of pupils were attending school during the week commencing 12th October 2020, just before the two week “circuit breaker”, which means that **over 15% of children were not at school.**

There does not appear to be any collection of relevant equality data or disaggregation of data by Section 75 grouping to enable proper assessment of the equality impacts of non-attendance at school related to Covid-19. CLC calls on the Departments to urgently put in place an Action to collect this data to enable effective equality screening and monitoring of education policies regarding children who are at home while their peers are in school. Providing more detailed coding for schools to record absences would facilitate such data gathering.

CLC would ask the Departments to reflect upon and formulate Actions within the Plan based upon the Equality Commission of Northern Ireland’s [Education Policy Equality Recommendations](#) of 3rd July 2020, which are as follows:

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*“In tackling the virus, there must be a focus on avoiding the emergence or widening of inequality. Clearly no-one should be unfairly disadvantaged because of who they are;*

*and protected equality grounds or characteristics should not be a predictor of outcomes...*

*Urgent action by Government, built on the analysis of equality-disaggregated data and on engagement with key stakeholders, families and communities, is essential to better promote equality of opportunity and avoid the emergence or widening of inequalities in the response to Covid-19.*

*Our (the Equality Commission's) recommendations for legislation, public policy and/or service provision, which build upon our existing calls for action, are:*

- ***Use equality duties** to inform decision-making.*
- ***Collect comprehensive equality data** to identify equality impacts and shape targeted actions to advance equality.*
- ***Maximise collaborative approaches** to identify and respond to barriers to education, involving the families and wider communities of key equality groups.*
- *Mitigate the negative impact on children of the **closure of preschool** settings caused by the Covid-19 outbreak, including for those with disabilities, from minority ethnic communities and new residents.*
- *Take action to identify and mitigate potential negative equality impacts arising from **reduced access to formally taught education**.*
- *Address any negative equality impacts arising from the **shift to home-based learning**.*
- *Identify and mitigate potential negative equality impacts arising from any **move to 'blended' learning**.*
- *Consider the equality impacts of decisions regarding **assessment** and any opportunities to better promote equality.*
- *Ensure that the **benefits of sharing in education** are maintained now, when schools reopen, and as social-distancing is relaxed.*
- *Deliver strong and visible leadership to maintain and **promote an anti-bullying culture** within education, and combat the potential for racially motivated negative attitudes and behaviours.*
- *Assist schools in making effective use of **dual language resources to help Newcomer learners** access the curriculum.*

- *Identify and address any effects of Covid-19 that **poverty or socio-economic status** may have on the emergence or exacerbation of inequalities experienced by a range of equality groups.”*

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CLC notes the actions listed in the Plan, many of which simply record actions already taken during lockdown and services which were already available, but do not appear to reflect the above equality recommendations in a practical, measurable way in terms of Actions to prevent and mitigate against negative equality impacts already experienced or likely to arise in future. The Plan does not appear to take account of the current situation being experienced by vulnerable children facing educational disadvantage due to school closures and disruptions to school attendance which leads us to believe there has been insufficient data gathering and an absence of effective equality and human rights screening and impact assessment.

Essential human resources, including nurses and specialist children’s Allied Health Therapists have been directed away from vulnerable children, out of special schools for example and into the community, without proper consideration of the disproportionate negative impacts upon children on the basis of protected grounds such as age and disability. This has been cited as a safety issue by some schools and a range of children have been refused access to school during various phases of the government’s response to the pandemic. In some situations, the Departments need to make additional or different resources available to proactively resolve difficulties that arise. For example, children who require aerosol generating procedures during the school day have not been enabled, through provision of appropriate resources such as staffing and a secure space, to return to special school for a prolonged period, while their peers enjoy the return to school.

The Department of Education has a policy of inclusion of children with disabilities within mainstream education under the Education (NI) Order 1996, as amended and the Special Educational Needs and Disability (NI) Order 2005 (SENDO). That policy has resulted in the direction of children with complex SEN and disabilities into mainstream schools. The vast majority of children with SEN attend mainstream schools. Mainstream schools rely upon help and cooperation from Health Service and

Education Authority specialist services to enable them to support children with disabilities to access the curriculum and maintain attendance at school.

CLC have long argued that insufficient resources have been put in place to support proper and lawful inclusion, and to provide the right support for children at the right time, with some very poor outcomes and traumatic experiences resulting for a significant number of children with complex SEN and disabilities. These existing issues, many of which have been highlighted by NICCY and the NIAO in recent reports, and which the Department of Education and the Education Authority say they are now beginning to address, have been exacerbated by the Covid-19 restrictions because the level of direct support available has dropped off considerably.

Stage 3 Education Authority Pupil Support Services remain restricted, though children have full legal entitlement to SEN support. It is clear from the Education Authority's website just how restricted services are currently. For example, as can be seen on the Pupil Support section of the [EANI website](#), direct peripatetic literacy support is restricted, direct autism intervention is suspended and there is no direct language and communication service.

Educational Psychology Services are the gateway to Stage 3 children's support services. CLC became aware recently of an Education Authority policy to await 2 IEP cycles (Individual Education Plan) to allow children to "settle" back to school before an Educational Psychologist would do a Stage 3 assessment. This could be anything from 6 months to a year. Given the existing delays and bottlenecks in accessing assessments and the levels of need that children are returning to school with, and taking into account the findings of the NICCY "Too Little Too Late" report and the recent NIAO report, we find this incredibly concerning. Again, this policy has not been subjected to proper screening as required by the Education Authority's Equality Scheme.

CLC calls for Actions within the plan to enable reinstatement of and increases in access to SEN services and supporting health services for all children registered at stages 1-5 of the Code of Practice. Access to these services must reflect the need to redress the negative impact of the denial of the right of these children to access education during the pandemic on an equal footing with their peers.

It is important for the Departments to note that the mandatory equality rights for children with disabilities enshrined within SENDO has been unaffected by the emergency powers under the Coronavirus Act 2020. Despite this, steps have been taken and are continuing which have a strong likelihood of resulting in reduced access to education for disabled children, when compared with non-disabled peers. This is potentially unlawful discrimination. This includes difficulties in accessing education both whilst attending school and during periods of non-attendance (when peers are attending). **CLC calls for the Departments to review the legal equality entitlements for children in education with disabilities within the 1996 Order and SENDO and to state Actions within the Plan to ensure sufficient human, revenue and capital resources to enable full legal compliance by schools and the Education Authority with their legal duties.**

Focussing upon children with SEN and disabilities and to put the current situation into context, throughout the Coronavirus pandemic, there have been significant equality and human rights impacts upon vulnerable children with special educational needs and disabilities. This is as a result of the out-workings of the Coronavirus Act 2020, which enabled the diminution of the entirety of the substantive legal obligations within the SEN framework in Northern Ireland through issue of [Temporary Modification Notices](#) by the Department of Education. The legislation passed without proper scrutiny. Modification notices and a raft of education policies followed, in the absence of any or adequate equality screening or any consultation, resulting in avoidable and predictable adverse impacts upon vulnerable children with SEN and disabilities.

Education Restart policies have not to the best of our knowledge been equality screened or properly consulted upon.

In order to comply with Human Rights obligations including derogation from rights protection in emergency situations, decisions which restrict legal rights in a way which impacts adversely upon protected equality groups must demonstrably be necessary, proportionate to the goal to be achieved, non-discriminatory and must stay in place for the shortest possible period of time. CLC takes the view that no meaningful consideration took place on the part of the Department of Education in relation to these duties. Further, due to the lack of proper consultation with affected parties, we not

believe that the Department was is in a position to make evidence-based decisions on these thresholds in compliance with their human rights and equality obligations.

As a result, during the lockdown which commenced in March 2020, pre-existing issues, such as lack of access to education and disrupted education placement were swiftly exacerbated by the emergency caused by the pandemic. Children's services in education which had been run down through sustained austerity cuts, were unable to cope with the level and type of need that emerged and a wide range of support services simply stopped direct provision.

CLC had to issue pre-action correspondence and court proceedings in relation to a number of children with severe learning disabilities, autism and challenging behaviour who have been left at home during school closures. Children and their families have suffered harm due to the loss of the protective factor of school attendance at specialist schools alongside disruption of health and social services supports. They have not been enabled to access any form of education throughout the entire lockdown. We have three sets of court proceedings pending in the High Court and it is likely further cases will issue due to cessation of family support provision through the HSCTs.

Despite making numerous enquiries, we were not aware of any contingency plans for the circuit breaker. Nor are we aware for any contingency plans or for future periods when children may be at home during school term for a variety of reasons related to the coronavirus pandemic.

To compound matters, there are extensive delays in health assessments for children with SEN and disabilities in Northern Ireland which is blocking access to early intervention. The coronavirus epidemic has exacerbated these inequalities with children unable to access education, particularly when their parents cannot afford to pay for private assessments, which some parents can manage to do. The Children's Law Centre are aware of children who have been unable to get medical appointments for assessment for ADHD, Autism, Occupational Therapy, Speech and Language Therapy and ENT appointments. For example, we are working with a parent of a young child who is on 3 separate waiting lists for speech and language therapy, an ENT appointment to assess the extent of a hearing loss and an assessment for Autism/ADHD. The current waiting list in the relevant HSC Trust area is 22 months. The child has started mainstream school with no support and no statement of special

educational needs in place, and is struggling and displaying signs of distress, including aggression in the home.

Vulnerable children and their families are still suffering the lasting impacts of the coronavirus pandemic, which has exacerbated pre-existing problems and they tell us they cannot sustain further damage. We are dealing with numerous ongoing crisis situations as we have been throughout the pandemic on behalf of at-risk children and young people.

Home “Learning” or Home “Teaching”?

An issue that we would like to emphasize is that we are working with significant cases of children who are at home during the pandemic whilst peers are being taught and supported in school. For example, children with clinically vulnerable parents (kidney transplant, cancer diagnosis); children with profound needs who are clinically vulnerable; children who are isolating or whose school is closed due to infection rates; children whose parents are afraid to send them to school for fear of infecting vulnerable grandparents.

These children at home are purportedly engaged in “online learning”. Some of these children have very significant SEN and disabilities which makes online learning inaccessible. Some of them are with parents who themselves had reduced educational opportunity or are economically not well off or who are very ill with cancer or other conditions. Income poverty and digital poverty are severely impacting. There is a wealth of survey evidence that the Departments will be aware of showing that it is **home teaching and direct support** that children require as well as **peer interaction**, particularly those who are already disadvantaged.

We are seeing a range of different responses from school leaders to these issues and there is a lack of consistency of approach, including where children may have longer term absences and episodes of intermittent interruptions.

It is our belief that the provision of work sent home to parents to complete with their children, be it in paper form or online folders, is not an adequate response to the problem of how to teach, support and educate children who are at home; especially those who have individual needs; who may be vulnerable or may become vulnerable and whose parents have not elected to carry out home education. We are further

concerned by the longer-term impact of extended periods out of school on children's social and emotional wellbeing and mental health.

School staff and Education Authority staff require to be properly resourced to enable them to serve all members of school communities without discrimination, regardless of background or status and to offer a range of properly formulated solutions, informed by and co-designed with appropriate stakeholders, including families.

CLC have been corresponding regularly with the Department of Education about this issue since 23rd September 2020. We have drawn attention to a P7 child at home because their parent has a transplant. The parent is unable to educate the child. The child sits outside his class looking in at distant peers for around 2 hours. Even this provision has been inconsistent. We have asked repeatedly how this child is to be taught and educated. The Department has written on 11th November 2020 to suggest home tuition from the EA and we will have to investigate this option. It is unclear how other children might access such provision.

CLC have recently written to the Department of Education for a family who have 3 school aged children, two of whom have autism and complex SEN. Both parents have significant life-threatening medical conditions and the children cannot attend school on medical advice. Two have statements of SEN. One is receiving remote access to classroom assistance and is relatively well supported. The other, who has more complex needs had accessed no education or SEN support after negotiation of an extensive package through a statement and has had no online interaction with a teacher or full time 1-1 classroom assistant. That child is regressing. The third, who has no SEN is accessing school interaction via MS Teams. We asked the Department to issue directions, guidance and resources to schools to ensure consistency of provision and equality of access to teaching and learning for children who are at home whilst their peers are at school. **The Department responded that this is an operational matter for schools and the Education Authority.**

CLC advocates that the Department of Education with help and cooperation from the Department of Health where needed should direct and resource school staff and emergency volunteers to teach and directly support pupils who are at home during term time using available technology portals such as C2K to enable access to live teaching time, direct lesson delivery by professional

educators, classroom assistant support, Stage 3 SEN supports and pre-recorded lessons.

CLC has pointed out to the Department of Education on several occasions that it has a legal power to make a **Temporary Continuity Direction** under **Section 38 and Schedule 17 of the Coronavirus Act 2020** to direct that a given standard of remote education is provided to all children who are at home, including those in vulnerable groups. The Department responded on 11th November 2020 to say that it will not issue such a Direction. **CLC calls for an Action within the Plan to provide urgently for a Department of Education Temporary Continuity Direction on Remote Education.**

The Department will be aware that the DfE in England has just recently issued a [Temporary Continuity Direction on Remote Education](#) , commencing 22/10/20 and continuing until the end of this school year, regarding compulsory provision of remote education in specified circumstances with guidance about the expected quality of remote education, with a power of injunction if schools do not comply to the requisite standard. An [Explanatory Note](#) has been issued regarding this Direction.

Whilst it is CLC's view that the English provision does not go far enough because paragraph 5 is too narrow in scope, it is clear in principle that the Department of Education could use its powers under the Coronavirus Act 2020 to ensure a given quality of remote teaching and learning by teachers directly to their pupils, consistently across NI, including in situations such as those described by CLC.

The Department of Education issued DE [Circular 2020/05 - Supporting Remote Learning](#), in June 2020, which we are pleased to see sets out a rationale as to why direct teaching using both synchronous and asynchronous approaches is desirable and also acknowledges the views of parents garnered from a variety of studies over lockdown, which show the clear need for direct teaching approaches. However, this is left to the discretion of schools which is likely to result in inequalities and inconsistencies of access to education across the region.

CLC is concerned that the Department has shown reluctance to take any steps regarding individual difficulties and refuses to give direction regarding remote teaching more generally, as has been done elsewhere.

In order to ensure due regard for the promotion of equality of opportunity, consistency of provision, to prevent ongoing disability or other discrimination in education and to ensure human rights compliance, the Departments should consider both the impacts of existing policies and the implications of failure to act. They should also consider the policy deficits which arise as a result of a failure to consult affected people and failure to guide, direct and resource the Education Authority and schools as to minimum expected levels of education provision, including alternative, effective, accessible modes of special educational provision. In their consideration they must, bear in mind also that that full-strength mandatory SEN and disability statutory duties apply.

1.6 Children/ families unable to access services due to reduced service provision

Our response above in relation to Action Plan point 1.1 is also relevant to this section and we ask that the points made there are also taken into account here.

CLC fully appreciate and have been sympathetic to the challenges facing Trusts and other statutory bodies in the current crisis including in respect of how they discharge their duties to children for whom they have a statutory duty. We agree that keeping children, young people and staff as safe and well as possible in the current context is imperative. In that context when discharging their duties towards children and young people the Trusts and other statutory bodies must also continue to adhere to their obligations under Article 3 of the United Nations Convention on the Rights of the Child (UNCRC), Article 7 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and the Children (NI) Order 1995 and therefore when making decisions about children and young people the best interests of the child must be the paramount consideration.

In evidence given to the Health Committee by Departmental officials in respect of The Children's Social Care (Coronavirus) Temporary Modification of Children's Social Care) Regulations (Northern Ireland) 2020, for example, one of the factors cited as a factor necessitating the introduction of these regulations was the fact that the services which are engaged by these regulations were under pressure prior to the pandemic. The issue of staff shortages and services under pressure would reflect CLC's clients

experience prior to lockdown including in relation to delayed discharge from hospitals and mental health facilities, delays in the implementation of community-based support packages, failure to undertake pathway planning in a timely manner and delays in progressing complaints. The Department of Health also cited the potential of the continuation of these pressures for the regulations to extend beyond 'lockdown' and indeed that now appears to be the case, with the regulations being extended for a further 6 months **without any consultation**.

It would be CLC's view that longstanding and well documented understaffing of Social Care and other pressures cannot be relied upon as justification for the introduction of emergency legislation and the associated diminution of children's rights or the continuation of such emergency legislation.

In giving evidence to the Health Committee, CLC welcomed the Department's clear statement in the associated Guidance that the modifications are intended to only apply when 'absolutely necessary'. Regrettably it has been the experience of CLC's clients both before and since lockdown that the time limits extended by these regulations were already being breached. In the context of that experience, while we welcomed the absolute necessity requirement, we were not confident that the extended time period would not become the norm as opposed to the exception. Further we have concerns that, as had been the case prior to the introduction of these regulations, there may emerge a practice of failing to adhere to the extended time frames. To ensure the absolute necessity requirement is adhered to and the new extended deadlines do not become the default practice the implementation of these regulations must be very closely monitored and reported on to the Committee at very regular intervals. CLC are disappointed to learn that the Department has altered the reporting to the Committee from monthly to quarterly, again without any consultation. CLC would strongly recommend that these Regulations are immediately repealed because they are not proportionate, necessary, non-discriminatory, nor for the shortest possible period of time. At a very minimum, the Department of Health should be required to continue to submit monthly monitoring reports to the Health Committee to ensure the safety and well-being of our most vulnerable children.

It has been CLC's experience since 'lockdown' that the capacity of Trusts to engage audio-visual technology varies considerably. Further there is a lack of consistency across Trusts and care facilities as to the nature of the audio-visual technology to be employed with some using one platform which other Trusts staff are denied access to. There have also been occasions where the only facility offered was audio which proved very unsatisfactory and denied both the young person and their representatives the opportunity to participate in any meaningful way. The lack of availability of and access to suitable audio-visual technology has presented considerable difficulties in allowing young people, their parents and carers, their advocates and their legal representatives to participate in meetings including LAC reviews, pathway planning meetings and critical legal meetings. This has on occasion resulted in a breach of the child's right to a fair trial, including by participating in decision making in breach of Art 6 ECHR.

While the Guidance accompanying The Children's Social Care (Coronavirus) (Temporary Modification of Children's Social Care) Regulations (NI) 2020, outlined that Trusts need to ensure that children have access to technology to engage during the emergency, we are concerned by the Guidance's reference that 'contact may be maintained remotely using remote audio-visual communication technology **wherever possible**' (CLC's emphasis). These two would appear to be inconsistent. It is imperative both to guarantee the child's right to participate in decision making about their lives and wellbeing and to ensure their safety and right to be safeguarded that all children impacted upon by these regulations are provided with the necessary equipment to enable audio visual contact to be maintained. Against the backdrop of an increased level of domestic violence, there is an imperative on the Trusts to ensure every child impacted by these regulations has appropriate audio-visual technology.

The reduced number of child protection referrals would suggest that vulnerable children living at home may be suffering digital poverty and have no access, or no safe access, to the necessary technology to enable them to engage with social workers and/or contact vital lifelines such as Childline.

Like the Department of Health, we are also acutely aware that those children most vulnerable to abuse in the current context are also least likely to be able to use

technology either as a result of age or because of the actions of the abuser, we therefore note the Children's Social Care (Coronavirus) Temporary Modification of Children's Social Care) Regulations (Northern Ireland) 2020 Guidance's requirement that robust risk assessment plans will be developed. The development, maintenance and continuous revision of these risk assessment plans should be included in this Action Plan.

Looked After Children's (LAC) Reviews

CLC also remain concerned that the extended timeframe (outlined in The Children's Social Care (Coronavirus) Temporary Modification of Children's Social Care) Regulations (Northern Ireland) 2020) for first time LAC reviews are not proportionate or necessary. CLC's experience of attending LAC reviews with our clients had been that the first LAC Review is short but provides an essential planning opportunity for both the young person and social services. This first review often sets out action points to be achieved for the young person and can promote matters such as family contact and reunification. If these are to be conducted with all participants including the child/young person and their representative attending using audio-visual technology, we do not think an extension of this timescale is proportionate or necessary. Further given the experience of our clients of delays in the holding of such LACs we are concerned that first LACs being conducted in 4 weeks as opposed to 2 will occur as a matter of course rather than when 'absolutely necessary'. CLC would recommend the inclusion of actions and targets within the Action Plan that ensure LACs are conducted within the original 2-week timeframe.

Care leavers - Review of Pathway Plans

It has been CLC's experience both before and during lockdown that the 'normal' timescales in respect of review of pathway plans were not and are not being met. It has been the experience of our clients that Pathway Planning meetings are in some cases only taking place shortly before the young person turns 18. Against this backdrop we are concerned that the amended Covid-19 regulations may create a culture where there is further and more widespread slippage in adherence to timescales and that the amended timescale's will be the norm as opposed to when absolutely necessary. CLC would welcome actions and targets within this Action Plan to ensure that slippage in timescales does not become the norm.

Respite Care

Some families have had to choose between allowing carers into their homes to help them with vulnerable young people or not allowing carers in to protect young people from Covid-19 and having to then cope without help. Families with direct payment packages were similarly affected as they are unable to access external carers.

Further, it has been long recognised that the care system would be unable to operate as it does without the work of informal carers. Figures estimate that there are over 200,000 people in Northern Ireland who have a caring role.

One of the services available to carers to allow them to continue in that role is respite/short breaks. The purpose of these is to provide children and young people with the opportunity to socialise with others outside of their family circle and to provide their carers with necessary breaks from their caring role to enable them to be able to continue in that role.

Short breaks can take many forms, they can be for a few hours or overnight respite. Prior to the Covid-19 pandemic respite services for children and young people were a contentious issue, mainly due to the limitations in the service. Those who use the short break service report that it is essential, however CLC is aware from its own casework that services are extremely limited. There are limited respite units within each Trust, e.g., Belfast Trust has 2 beds in Willow Lodge, 4 of the 8 beds in Lyndsay House and 8 beds for children with medical needs and learning disabilities in Forest Lodge.

During the pandemic respite units were closed. Unfortunately, the timing of this closure coincided with the closure of special schools and pressure was put on at home services due to absences and families being concerned about bringing extra footfall into their homes given the medical vulnerabilities of their children. Respite services have not fully recommenced. Families have been without that already limited but essential service since March 2020 at the same time as limitations on other outlets for their vulnerable children with disabilities closed as well. It is essential that short break services are available to meet the needs of these vulnerable children with disabilities and complex needs and their carers.

Respite and short breaks have always been an essential service to protect the wellbeing, health and safety of complex vulnerable children with disabilities and their siblings and carers. Respite is even more essential to vulnerable families during this period of emergency, as they have suffered hardship, isolation, mental and physical injury and interference with family life for many months. Some extremely distressed vulnerable children have been chemically restrained as a direct result of loss and disruption of respite and education services. These children who are most in need have been deprioritised for service. Respite facilities have been repurposed with no notice or consultation in a manner that on the available evidence raises serious questions.

CLC is extremely concerned that there is no mention of respite services in this Action Plan and would strongly recommend that this is addressed as an immediate priority, with respite being recognised as a primary protective factor in the lives of vulnerable children with complex disabilities and resources being directed to meet the pre-existing and additional needs of vulnerable children and families.

Literacy and numeracy support

There are many children in our schools who receive additional literacy and numeracy support in a small group or on a one-to-one basis. There is no reason why this could not have continued during lockdown and/or the Halloween circuit breaker via online means. CLC would recommend that learning is taken from the lockdown period to ensure that should there be any further school closures, that measures are put in place to ensure the delivery of additional supports for those children that need it the most.

CAMHS

Through calls to our advice line and through our casework, CLC has, during the current crisis, seen a sharp increase in young people requiring help for their mental health needs. This is echoed across other organisations with Childline for example, saying it has seen an increase of more than 25% in young children in Northern Ireland getting in touch about their mental health and emotional well-being.¹²

¹² <https://www.belfasttelegraph.co.uk/news/health/coronavirus/almost-400-children-in-northern-ireland-with-mental-health-concerns-contacted-childline-during-covid-19-outbreak-39372849.html>

This Action Plan must prioritise the emotional and mental health needs of children and young people, as well as providing adequate and appropriate support in education and health. There must be an increase both in budget and in capacity for CAMHS in NI in order to address the needs of young people in this jurisdiction. Again, this is an area that has been chronically underfunded and was under immense pressure prior to the outbreak of Covid-19 and there is now an opportunity to reflect on the lessons learning during lockdown and beyond, and ‘build back better’.

Additionally, there must be a recognition of the role the voluntary and community sector has played in supporting children and young people with their mental health and well-being during the pandemic period. Additional resources from government, guaranteed for both this year and the next financial year are essential for voluntary and community sector organisations to ensure that the invaluable support they provide for children and young people can continue.

Homeless Children and Young People

The consultation document does not mention homeless children and young people. CLC through its case work has been consulted by a number of homeless 16- and 17-year-olds during the pandemic. Health and Social Care Trusts have a duty under the Children (Northern Ireland) Order 1995 to provide a range of services for persons under 18 who are children in need. Therefore, a referral can be made to the relevant Health and Social Care Trust in such instances.¹³ The needs and rights of homeless 16- and 17-year-olds need to be reflected in the action plan which does not recognise their specific needs many of which predate the pandemic.

The law with regards homeless 16- and 17-year olds is governed by Children (NI) Order 1995 – Article 21(1), which places Health and Social Care Trusts under a specific statutory duty to provide accommodation for any child in need within their area that require accommodation as a result of:

21.—(1) Every authority shall provide accommodation for any child in need within its area who appears to the authority to require accommodation as a result of—

(a) there being no person who has parental responsibility for him;

¹³ Northern Ireland Housing Executive Chronic Homelessness Action Plan, page 11

- (b) his being lost or having been abandoned; or*
- (c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.*

The first two are alternatives rather than cumulative requirements. It is an incorrect approach to say that Trusts do not owe an Article 21 duty to a child because parents still retain parental responsibility for the young person. In practice the majority of cases will involve Article 21(1)(c) rather than the more extreme situations resulting in a or b. It is important to note that Article 21(1) applies to all children up until the age of 18.

It is clear from case law that Article 21(1) (c) is to be given a broad-brush definition – This was reaffirmed in the JR66 case where Justice Tracey stated –

*“The notion that a person who has parental responsibility is ‘prevented’ from caring for a child is to be given a broad-brush approach (see **R (AH) v Cornwall CC** para14).*

*Further, the House of Lords in **R(G) v LB of Southwark** accepted that:*

“It is not disputed that this covers a child who has been excluded from home even though this is the deliberate decision of the parent.” (para28)

The Article 21 duty to homeless 16- and 17-year olds can be triggered by applying the seven-step test as set out by Baroness Hale in the Southwark case and the same test is repeated in JR66’s Application and at Appendix 9 of the Regional Good Practice Guidance.

Importantly the Article 21 duty may be triggered before the child becomes homeless. This is reflected in the addendum to the Regional Good Practice Guidance with sets out the pathway to be followed in the case of young people leaving Woodlands Juvenile Justice Centre or those who are homeless and require to perfect bail. CLC have been engaged by a number of young people who have been granted bail subject to an address but who have been unable to perfect bail due to not having an address. Issues have also arisen as a result of the pandemic regarding a lack of suitable and appropriate accommodation for these young people.

What amounts to suitable accommodation is supported by the Children (NI) Order 1995 and the Leaving and Aftercare Regulations 1996 and is informed by Articles 27 and 39 of the UNCRC – the right to a standard of living adequate for the child’s development, and state parties undertaking to take all appropriate measures to promote social reintegration of children who have suffered from neglect. It is widely recognised that certain types of accommodation are unsuitable for homeless 16- and 17-year olds, in particular Bed and Breakfast or hostel accommodation is not suitable for homeless 16- and 17-year olds. Baroness Hale in the case of *R (M) v Hammersmith LBC*¹⁴ raised concerns about Bed and Breakfast and stated that it is not suitable for 16- and 17-year olds even on an emergency basis. **However due to the pandemic and the closure of such types of accommodation these have not been available for homeless young people (despite their unsuitability). Funding of suitable and appropriate accommodation for homeless 16- and 17-year olds during the pandemic should be secured to protect this vulnerable group of young people.**

2. Promoting safety and well-being in the wider community

2.1 Increased risk of exploitation

2.2 Increased exposure to risk of online harm due to children spending more time online

The introduction of emergency legislation which curtails the rights of citizens is an extreme measure and must only be undertaken in a human rights’ compliant way. This duty is even more important when the opportunities for parliamentary scrutiny are significantly curtailed. **Emergency legislation must only be introduced when it is found to be proportionate, necessary, non-discriminatory and it should be repealed at the earliest possible opportunity.** As previously referred to above, CLC is concerned that the Children’s Social Care (Coronavirus) Temporary Modification of Children’s Social Care) Regulations (Northern Ireland) 2020 have been extended for 6 months without any consultation with young people or with stakeholders. The provisions set out in the regulations, which reduce the statutory duties of Trusts is potentially putting children and young people at increased risk and CLC would urge

¹⁴ [2008] UKHL 14

the Department of Health to give full effect to their statutory duties as a matter of priority.

3. Strengthen system capacity to respond to current risks

3.1 Availability of adequate information in a timely manner to inform decision-making in response to Covid-19

It is imperative that when collating adequate information to inform decision-making in response to Covid-19, that the children and young people and their families impacted by changes to service delivery are directly asked their views, in line with the statutory equality duty and Article 12 of the UNCRC. Additionally, it is important that targeted consultation with vulnerable families is undertaken, given that these families have been much more affected by Covid-19 decisions than others.

Furthermore, information collated must be disaggregated across all Section 75 categories in order to easily identify where differential adverse impact may arise. Given the obvious disproportionate impact of Covid-19 on socio-economically disadvantaged families, disaggregation across this category should also be collated.

3.2 Provide guidance to parents, families, professionals and the public

Guidance that is produced outlining any new decisions as a result of Covid-19 must be provided in a child friendly format to ensure that children and young people that are affected understand the changes and how they will impact on their lives. CLC would welcome an action point within this Action Plan in this regard.

3.3 Consider legislative changes required to facilitate changes to service delivery

CLC would repeat its serious concern that the Children's Social Care (Coronavirus) (Temporary Modification of Children's Social Care) Regulations (Northern Ireland) 2020 have been extended for 6 months without any consultation with young people or with stakeholders. The provisions set out in the regulations, which reduce the statutory duties of Trusts is potentially putting children and young people at increased risk including of domestic and other abuse and CLC would urge the Department of Health to repeal the Regulations as a matter of urgency and thereafter give full effect to their statutory duties as a matter of priority.

Actions required are firstly, that public authorities should dispense immediately with unnecessary, disproportionate emergency legislation and regulation which dilutes obligations to safeguard and promote the wellbeing of children and ensure that all decisions are taken with the best interests of the child as a primary consideration.

Secondly, public authorities should comply with and use existing legislation effectively to facilitate service delivery, including for example compliance with Articles 17, 18 and 21 of the Children (NI) Order 1995 and compliance with the duty to cooperate under Section 2 of the Children's Services Cooperation Act (NI) 2015. Resources should be directed into vulnerable children's services, not away from them. For example, specialist Nursing and Allied Health professionals should not be directed away from special school provision. Specialist respite facilities for disabled children with complex medical needs should not be repurposed. All vulnerable children cared for within the statutory system should have their needs met in appropriate safe, settings staffed by appropriately trained professional staff.

3.4 Reduced workforce capacity due to illness/ self-isolation

The issue of staff shortages and services under pressure would reflect CLC's clients experience prior to lockdown including in relation to delayed discharge from hospitals and mental health facilities, the implementation of community-based support packages, failure to undertake pathway planning in a timely manner and delays in progressing complaints. This has been exacerbated during the pandemic period.

A key point, of critical importance to the immediate impacts of this Action Plan in terms of **equality and human rights compliance for the Departments**, relates to Actions put in place to deal with the risks posed by reduced workforce capacity. In this respect, the Plan provides that ***“essential” services will be maintained on a “priority” basis, in accordance with needs and risk assessments.*** Looking at the example we described above, regarding Tina and Lauryn, it is clear that primary protective factors of specialist education attendance, daytime respite and short breaks that this child and family were assessed as needing **before** the pandemic to prevent harm and hold the family together, have not been assessed as essential throughout the pandemic. Further, they have certainly not been a priority during the half-term “circuit breaker” despite lessons learned exercises purportedly having taken place. Families cannot “hold their

fingers in the dam” any longer while they await the government’s actions to mitigate the major adverse impacts they are currently suffering.

Children and families are currently suffering personal injuries, mental breakdown, threat to life and health and destruction of family life. Children are being chemically restrained in the absence of provision of services that they have previously been assessed as needing. These are grave and serious human rights abuses flowing directly from the decisions of state actors in relation to resource allocation. These issues have been highlighted to the relevant public authorities and the Departments by a range of concerned parties from a very early stage in the pandemic.

Full equality and human rights impact assessments of the policies which define “essential services” and allocate resources on a “priority basis” are urgently required. There is also a need for full transparency and openness with the public about the meaning and impact of terminology. The definition of “essential” services currently in operation should immediately be made public, along with the criteria being used to prioritise families for services, such as respite.

3.5 Protection measures for staff delivering face-to-face services

CLC agree that keeping staff as safe and well as possible in the current context is imperative. CLC fully appreciate the need to protect staff, however this needs to be balanced with risk to a child if face-to-face services are not delivered.

4. Rebuild services

4.1 Service delivery during Covid-19 rebuild period

Rebuilding services following the pandemic period is of crucial importance. As outlined throughout our response, many services prior to Covid-19 were not fit for purpose, were chronically underfunded and understaffed, with huge waiting lists for young people to access services. The action point to ‘develop and implement service-specific rebuild plans, in line with the Executive’s 5 Step Plan’ does not provide stakeholders with enough information to provide a meaningful comment. However, given the

destructive impact that Covid-19 has had on services, and the pre-existing service deficits, it is clear that we cannot return to the service delivery level that existed before. It is imperative that the opportunity is taken now to learn from past experiences, to take stock of where the gaps are and to 'build back better'. There needs to be an adequately resourced strategic and operational plans put in place in order to be able to 'build back better'. This complete redesign of how services are delivered in this jurisdiction will take time, it is therefore crucial that this work commences immediately.

As stated above, CLC takes the view that the Departments, to protect Vulnerable Children who are at risk in the home, and to mitigate against the risks identified across the entire Action Plan and identified through this consultation process, should as an **overarching Action to properly and fully** exercise the power under **Section 4 of the Children's Services Co-Operation Act (NI) 2015** which enables children's authorities to share resources and pool funds. Resources include **staff, goods, services and accommodation**. The pooling of funds enables the children's authorities contributing to make relevant expenditures in the exercise of their children's services functions. Such cooperation should be used to put in place a holistic **Vulnerable Children Process** and that process should have **multi-disciplinary assessment of the best interests of the child as a primary function** of the process. Once best interests are established, it is essential that **service provision follows** and that any **risk assessments** as a second step **are for the purpose of enabling access, rather than exclusion from service**.

CLC calls for the government to "build back better" for the longer term, with a strong, cohesive cross-departmental Children and Young Persons Strategy underpinned by an adequately resourced cross-departmental children's services budget, aimed at increasing service capacity to meet evidenced need and with significant emphasis on fulfilling statutory obligations under the Children's Services Co-operation Act (NI) 2015, in particular by maximising the exercise of the power in Section 4 for children's authorities to share resources and pool funds. Allocation of resources necessitates establishment of clear lines of accountability for outcomes. To ensure the necessary change it is imperative that there is transparent and effective cross-Departmental Ministerial accountability for the full and effective implementation of the Children and Young Persons Strategy, including the appointment of a dedicated Minister for Children.

Conclusion

CLC hopes that our comments in relation to the Cross-Department Action Plan for Vulnerable Children and Young People during the Covid-19 pandemic period are helpful and useful.

If any further detail or clarification is required, we would be happy to assist.