

Education and Skills Committee Evidence of the Children and Young People's Commissioner Scotland.

On 18 March 2020, the First Minister announced that schools in Scotland would close, for the vast majority of children, from Friday 20 March. On 19 March, the Deputy First Minister provided further information, including making commitments around continued support for vulnerable children, alternative provision for those entitled to free school meals and continuity for children with complex additional support needs attending residential special schools. He also announced that the 2020 SQA exam diet would not go ahead.

The measures taken to protect life and public health are necessary, including the closure of schools, but have had a profound impact on children and a disproportionate impact on those already at risk through poverty, social exclusion or the need for additional support. The most obvious impact is on the right to education (Article 28 and 29 UNCRC) which must be focused on the development a child's unique personality, talents and abilities. "Education" goes far beyond formal schooling to embrace the broad range of life experiences and learning processes. A rights-based education, built upon supportive relationships, with strong participation and peer-to-peer support from children and young people is the best way to help develop children to their fullest potential. Teachers, parents and carers have been doing amazing work over to support children's education over the last few months, but there is a significant period ahead before fully school-based learning will be possible.

Professor Aoife Nolan of the University of Nottingham and Member of the Council of Europe's Committee on Social Cultural Rights has provided a human rights analysis of school closures and we would ask members to read that briefing in conjunction with our own. The closure of schools was, in human rights terms, a proportionate response to the unprecedented emergency the Coronavirus Pandemic presented. However, as Professor Nolan identifies, governments have an obligation to address human rights issues which arise from the closures and to anticipate and address those arising from the re-opening of schools. This is particularly the case where a partial or phased re-opening is considered, including the blended learning model proposed by the Scottish Government. To do so, it is necessary to consider which groups are likely to be disproportionately impacted and the ways in which that impact can be mitigated.

Ongoing support during closures

Whilst longer-term planning for re-opening of schools is vital, we remain concerned that there have and continue to be significant gaps in support provision. Many of these have been identified and repeatedly raised during the 11 weeks of lockdown, by our office, and others. With the partial re-opening of schools still 9 weeks away these gaps must be urgently addressed.

In his announcement on 19th March, the Deputy First Minister gave reassurances that children with complex additional support needs receiving both care and education in residential settings would continue to receive support. Unfortunately we have heard evidence that this has not occurred and that some providers have withdrawn support from this group of children. We have raised specific concerns directly with the Deputy

First Minister for a group of children with complex additional support needs, who had been subjected to an earlier traumatic and sudden closure of their school less than 16 months prior to the lockdown emergency period. Notwithstanding an ongoing Independent Review into the circumstances surrounding the original closure of the school and the impact on the children, and the fact that the residential care facilities have remained open during lockdown, day pupils attending the school were not offered continued support in the school.

For children with less complex additional support needs, including those attending special schools as day pupils and those attending mainstream schools, we continue to hear concerns that they are not being provided with differentiated learning appropriate to their needs or the support they need to continue learning, including one to one support. The Scottish Government has stated that it does not expect parents to become teachers and it is particularly important that this expectation is not placed upon the parents of disabled children, who now need to meet all their children's care needs full time. Local authorities continue to have legal duties towards these children in terms of the Additional Support for Learning (Scotland) Act 2004.

Vulnerable children

The definition of vulnerable children used by the Scottish Government¹ is broad and we welcome this for the flexibility it provides, in terms of access to hubs and other support. However, we continue to hear from third sector colleagues and from parents that some local authorities are still applying a narrow definition which limits access to support. The numbers of vulnerable children accessing these hubs remains very low.

We appreciate that the Hub model used by local authorities allowed them to develop and implement support services for vulnerable children, as well as childcare for essential workers, very quickly in response to an emergency. However, it was clear from the Deputy First Minister's announcement on 19 March that it was intended that other services, particularly from child minders and other private childcare providers, would supplement this. The Hub model is inappropriate for some children, who nonetheless still require support, in particular those with disabilities or where they or a family member are at higher risk from Covid-19. It is essential that alternatives to Hub provision, for example support from child-minders, are used where more appropriate to support individual children and their families.

Free School Meals Alternatives

Poverty and food insecurity were the biggest human rights issues facing children in Scotland before the Covid-19 pandemic. Now things are worse. Children have a right to adequate nutritious food and to benefit from an adequate standard of living.² The UN Committee on the Rights of the Child has highlighted that States should be taking immediate measures to ensure this continued to happen.³

Scottish Government has introduced measures aimed at maintain free school meal provision and address food insecurity. Local Authorities are providing a flexible range of options, however we are concerned that only a small number are offering direct payments and in many cases these are for less than the normal cost to the authority of providing school meals. We acknowledge the significant effort that Local Authorities, civil society and community organisations have made to ensure access to food, but

¹ <https://www.gov.scot/publications/supporting-vulnerable-children-young-people-data-intelligence-report/>

² Articles 24 and 27 UNCRC

³ [UN CtteeRC Covid-19 Statement](#)

these haven't proved sufficient. The Trussell Trust recently reported a 62% rise in emergency food parcels for children. The Poverty and Inequality Commission's survey on local areas' experiences of food insecurity during the coronavirus crisis shows that current funding levels are not sufficient and organisations using their reserves is not sustainable. Human rights aren't a matter of charity. The State has a legal duty to ensure an adequate standard of living. Every hungry child is a failure by those in power who could have done more.

Since the announcement of school closures, we have called for a direct payment of at least £20 per week per child to be made available to all families eligible for free school meals, including those who became eligible since March, in addition to other supports such as food delivery where appropriate. Civil society organisations have called on Scottish government to urgently provide lump sum payments of at least £250 per child to low-income families through the Best Start and School Clothing Grant alongside other supports for food, housing and other living costs. We must extend cash payments for children eligible for free school meals until full school provision is available.

Digital exclusion

Schools are using a variety of online platforms to provide ongoing teaching and learning while schools are closed. As the Scottish Government intends to re-open schools using a blended learning approach, reliance on online platforms will necessarily continue well into the new school year. Where a family does not have access to appropriate or sufficient IT equipment or a fast internet connection with sufficient data, it impacts significantly on the child's right to an education.⁴ While some schools are providing alternatives to online learning, these are limited.

Digital exclusion disproportionately impacts families experiencing poverty, however it also affects families in remote rural areas (where broadband and/or 4G coverage may be poor). In families with multiple children there are significant challenges with children sharing devices and internet connection with siblings or other family members. Families relying on their own equipment for children's education are faced with additional costs and challenges of ensuring the equipment is able to work across multiple platforms and apps used by different schools. This can be challenging with older equipment and slow internet. The UN Committee highlighted that States must ensure that online learning does not exacerbate existing inequalities or replace student-teacher interaction⁵.

In particular, we have seen little evidence of schools proactively deploying devices to those children who need them. We warmly welcome the significant commitment of £30 million by the Scottish Government for digital support for children's education and note that the first phase of £9 million will provide laptops and internet connection to 25,000 children. This must be urgently addressed so that learners are ready for a blended learning curriculum in August.

SQA

We have expressed concerns to both the SQA and the Scottish Government that decisions to cancel all exams and procedures for alternative means of grading have not involved children and young people, despite them being those most directly affected. There is an obligation on the state under Article 12 of UNRC to ensure that children's views are taken into account on decisions that affect them. We agree with the #iwill

⁴ Article 28

⁵ [UNCRRC Covid-19 Statement](#)

Ambassadors who in their letter of 29th May, raised ongoing concerns about the impact of this lack of engagement.

No Children's Rights Impact Assessment was undertaken prior to the decisions or issuing of Guidance to school staff, nor has there been an Equalities Impact Assessment. It is not clear how the SQA will ensure that the potential negative impacts on particular groups (including disabled children, care experienced children, those living in poverty, and BAME children) will be mitigated, or how the appeals process will be made sufficiently robust and directly accessible to children. Children and young people have reported that they have been unable to make informed choices about further education or work-placements as they have been refused the opportunity to discuss the grading process with their teachers. Teachers have expressed concerns that they were prohibited from speaking with children directly about the grading process and that they were unable to include earlier work, as some individual students' assessment work has been retained by SQA who indicated they would not be marked, nor returned to schools or children for inclusion in the grading process. We are pleased that the SQA has indicated they might be willing to meet with our Young Advisers to hear their concerns expressed directly and we look forward to a constructive discussion to influence future improvements in rights-respecting approaches. However, we would call on the Scottish Government to ensure that this year's cohort of children are able to meaningfully engage with SQA and teachers to ensure the appeals and/or complaints procedures are transparent and fair and that no child is discriminated against in the processes.

Return to School

Over the next 2 months the Scottish Government, Education Scotland, the Regional Improvement Collaboratives, Local Authorities and schools will be planning the delivery of a very different form of education to that we are used to. They all have a duty to involve children and young people in their planning processes.⁶ This needs to occur at national, regional and local levels and needs to start now. A Covid-19 Education Recovery Group has been established by Scottish Government, but we were disappointed to note that no children and young people are members of this group.⁷

In the absence of a vaccine for Coronavirus, it is inevitable that not all children will return to school in August. Some will be unable to because they or a family member are in the shielding group. In other cases parents will have legitimate concerns about whether their children will be safe. For some children with additional support needs, particularly autistic spectrum disorder or mental health problems such as anxiety, part time attendance at school may not be in their best interests. The needs of all these children must be individually considered and it is essential that schools continue to support the learning of children who do not immediately return to school once they re-open, including where possible maintaining connections to the classes they will return to.

Children have experienced not only the closure of schools, but also a period in which their social contact has been severely limited. Many have experienced significant familial stress and increased conflict. Some have lost a loved family member. They will be returning to schools that look and feel very different from what they knew before. Reminding them why social distancing and hand hygiene is important will highlight that school reopening is accompanied by risk. Even the most resilient children may find it

⁶ Article 12 UNCRC

⁷ <https://www.gov.scot/groups/covid-19-education-recovery-group/>

difficult to adjust to school again. It is therefore important that this is seen as a time of transition for all children and schools must provide with them support to adjust.

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