



Children's Rights and the Law in a Time of Coronavirus - Part 2



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Children's Rights and the Law in a Time of Coronavirus - Part 2

Tuesday 19th May 2020

SPEAKERS:

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The impact of Covid-19 on disabled children and young people

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Doughty Street Chambers

Children, coronavirus and international human rights



8 May 2020

 Oliver Lewis Zimran Samuel

- human rights
- children
- covid-19
- coronavirus
- united nations
- family
- education
- lockdown
- violence
- child abuse

This article, written by two members of Doughty Street Chambers' **Children's Rights Group**, sets out recent guidance issued by UN bodies on the coronavirus impact on children and young people and implications for the UK. It looks at five issues: (A) Participation and information; (B) Violence, exploitation and abuse; (C) Education; (D) Supporting families; and (E) Children in detention.

While COVID-19 may produce less severe symptoms for children and thankfully a lower mortality rate, a **UN policy brief** has observed that it is "potentially catastrophic for many children around the world. Its impact risks unravelling global progress across several of the Sustainable Development Goals for children, putting already ambitious targets out of sight".



Policy Brief: The Impact of COVID-19 on children

15 APRIL 2020

“Uneven impact”

1. Extreme poverty
2. Learning crisis
3. Health and survival
4. Risks for safety

Children with disabilities are among those most dependent on face-to-face services—including health, education and protection—which have been suspended as part of social distancing and lockdown measures. They are least likely to benefit from distance learning solutions.

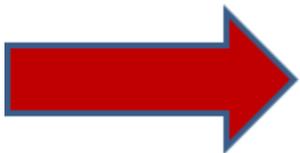
Children living in institutions and detention – including child migrants – face a different kind of vulnerability. Their continued care is easily put in jeopardy at a time of crisis.

Bans... then adding disabled people back in

NHS England's Visitor guidance (amended 8 April)

The only exceptional circumstances where one visitor – an immediate family member or carer – will be permitted to visit are listed below.

- The patient you wish to visit is receiving end-of-life care.
- You are the birthing partner accompanying a woman in labour.
- You are a parent or appropriate adult visiting your child.
- You are supporting someone with a mental health issue such as dementia, a learning disability or autism, where not being present would cause the patient to be distressed.



International human rights law

CRC General Comment No. 9, 2007: “Discrimination in service provision excludes them from education and denies them access to quality health and social services”

CRPD

- Article 5 non-discrimination
- Article 7 children: Duty on states to ensure child is provided with “disability and age-appropriate assistance” to realise rights



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Disability, coronavirus and international human rights

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Oliver Lewis

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This is a summary of guidance from international human rights bodies in relation to the protection of the rights of people with disabilities in the coronavirus pandemic. By "people with disabilities" I include people with intellectual disabilities, cognitive disabilities (such as dementia), autism and mental health issues: Article 1 CRPD.

It is hoped this post will be of benefit to people with disabilities, their families, carers and advocates. It may also be useful to organisations providing services as well as independent inspectorates of places of detention.

Latest update 11 May 2020.

This post addresses the following topics: (A) Information accessibility; (B) Physical distancing and lockdown; (C) Continuity of support in the community; (D) Rights in institutional settings; (E) Getting people out of institutional settings; (F) Monitoring institutional settings; (G) Non-discrimination in healthcare; (H) Participation; and (I) Education.



Disability Rights CA
@DisabilityCA



Updated Information: Coronavirus (#COVID2019) Information, Response, and Planning

View:
disabilityrightsca.org/post/announcem...pic.twitter.com/nYms7H9Q1x

5 9:44 PM - Mar 13, 2020



See Disability Rights CA's other Tweets



Disability Rights Pa
@drnpa



Many people with disabilities feel excluded from the COVID19 response. This group of disabled activists said "nothing about us without us..."
[kqed.org/news/11806414/...](https://kqed.org/news/11806414/)

30 2:02 PM - Mar 20, 2020



The impact of Covid-19 on children's immigration and asylum applications

[Marisa Cohen](#)

[Children's Rights Group](#)

Doughty Street Chambers

BACKGROUND RECAP

- Covid-19 has led to a disproportionate impact on migrant children including school closures; changes to service provision and legal duties by local authorities; limited oversight and intervention for children cared for by local authorities; and effects on their mental health.
- In its Covid-19 Statement and Recommendations, the Committee on the Rights of the Child expressly recognised these disproportionate impacts and requested at recommendation 7 that governments protect asylum seeking children and refugee children. **The manner of that protection was said to include targeted measures to protect children in vulnerable situations.** ([https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/1 Global/INT CRC STA 9095 E. pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/1%20Global/INT_CRC_STA_9095_E.pdf))
- Section 55 BCIA 2009 places a duty on the SSHD to make arrangements for ensuring that her functions are discharged having regard to the need to safeguard and promote the welfare of children concerned.

Issues

- Registration of children's asylum claims
 - Home Office continue to insist on lodging of asylum claims in person.
 - Request that one person accompanies the child.
 - No consideration of whether claims can be lodged remotely with biometrics registered on a later date.
- FTT appeals
 - New procedure

First-tier Tribunal procedure

- A new Rule 4A in the amended 2014 Procedure Rules permits the Tribunal to make a decision which disposes of proceedings without a hearing, if the Tribunal considers that the matter is urgent, it is not reasonably practicable for there to be a hearing, including a remote hearing, and it is in the interests of justice to do so.
- Generic appeal Covid-19 directions
 - ASA and evidence
 - Adjournments
- Pilot PD for Tribunals, *'12. Insofar as compatible with the efficient administration of justice, the tribunals will take into account the impact of the Covid-19 pandemic when considering applications for the extension of time for compliance with directions and the postponement of hearings'*.

<https://www.judiciary.uk/wp-content/uploads/2020/03/General-Pilot-Practice-Direction-Final-For-Publication-CORRECTED-23032020.pdf>

- What is missing?

Existing guidance re vulnerability and children

- Joint Presidential Guidance Note No 2 of 2010
 - it is a matter for the Judge to determine the extent of an identified vulnerability, the effect on the quality of the evidence and the weight to be placed on such vulnerability in assessing the evidence before him or her, taking into account the evidence as a whole [3]
 - The substantive hearing should proceed with minimal exposure to trauma or further trauma of vulnerable appellants [4]
 - Expressly refers to the UNCRC at [26]

<https://www.judiciary.uk/wp-content/uploads/2014/07/ChildWitnessGuidance.pdf>
- FTT and UT PD on Child, Vulnerable Adult and Sensitive Witnesses
 - In determining whether it is necessary for a child to give evidence to enable the fair hearing of a case the Tribunal should have regard **to all the available evidence** and any **representations** made by the parties [3]
 - The Tribunal must consider how to facilitate the giving of any evidence by a child [6]
- Equal Treatment Bench Book:
 - Judges and magistrates have a role in safeguarding vulnerable people at court in ways which further the overriding objective and do not interfere with judicial independence [23];
 - Safeguarding concerns should not be over-ridden because of pressures arising elsewhere in the justice system process [27].
- AM (Afghanistan) v SSHD [2017] EWCA Civ 1123

Re P (A child: remote hearing) [2020] EWFC 32

- Establishing that a hearing can be conducted remotely, does not in any way mean that the hearing must be conducted in that way (original underlining) [8]
- Even in the nature of child abuse cases, the case was described as extremely complicated [11]
- ‘... asking a member of the solicitors’ staff to sit in a room with someone who thinks that they have had or are getting over Covid-19 is more than can be properly asked of anyone in that position...’ [20]

24. *The decision whether to hold a remote hearing in a contested case involving the welfare of a child is a particularly difficult one for a court to resolve. A range of factors are likely to be in play, each potentially compelling but also potentially at odds with each other. The need to maintain a hearing in order to avoid delay and to resolve issues for a child in order for her life to move forward is likely to be a most powerful consideration in many cases, but it may be at odds with the need for the very resolution of that issue to be undertaken in a thorough, forensically sound, fair, just and proportionate manner. The decision to proceed or not may not turn on the category of case or seriousness of the decision, but upon other factors that are idiosyncratic of the particular case itself, such as the local facilities, the available technology, the personalities and expectations of the key family members and, in these early days, the experience of the judge or magistrates in remote working. It is because no two cases may be the same that the decision on remote hearings has been left to the individual judge in each case, rather than making it the subject of binding national guidance.*

...

26. *The reason for having the very clear view that I have is that it simply seems to me impossible to contemplate a final hearing of this nature, where **at issue are a whole series of allegations of factitious illness, being conducted remotely**. The judge who undertakes such a hearing may well be able to cope with the cross-examination and the assimilation of the detailed evidence from the e-bundle and from the process of witnesses appearing over Skype, but that is only part of the judicial function. **The more important part, as I have indicated, is for the judge to see all the parties in the case when they are in the courtroom, in particular the mother, and although it is possible over Skype to keep the postage stamp image of any particular attendee at the hearing, up to five in all, live on the judge's screen at any one time, it is a very poor substitute to seeing that person fully present before the court. It also assumes that the person's link with the court hearing is maintained at all times and that they choose to have their video camera on. It seems to me that to contemplate a remote hearing of issues such as this is wholly out-with any process which gives the judge a proper basis upon which to make a full judgment. I do not consider that a remote hearing for a final hearing of this sort would allow effective participation for the parent and effective engagement either by the parent with the court or, as I have indicated, the court with the parent. I also consider that there is a significant risk that the process as a whole would not be fair.***

...

28. *Given the wealth of factual detail that is to be placed before the court in relation to this mother's actions over the last three or four years, for her to have a full real-time ability to instruct her legal team throughout the hearing, not just by a phone call at the end of each witness's evidence, seems to me to be a prerequisite for her to be able to take an effective part in a fair process at the trial of issues such as this.*

Relevant issues include

1. Complexity of the issues at stake
2. Can there be effective participation? Can relevant arrangements be made?
3. Do the parties want a remote hearing?

The impact of the COVID-19 lockdown on domestic abuse & violence

Zimran Samuel

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Lockdown and domestic abuse/domestic violence on children

- Family stresses related to the COVID-19 crisis – including job loss, isolation, excessive confinement, and anxieties over health and finances – heighten the risk of violence in the home, including both violence between partners and by caregivers against children.
- School closures due to the virus may increase the number of cases of child abuse that go unreported, as teachers are often best positioned to identify children who may be experiencing violence in the home and seek appropriate intervention.
- Lockdown could have long term effect on children suffering domestic abuse.

Global challenge

- Across the world there has been an increase in lockdown on abuse and domestic violence. The UN Committee on the Rights of the Child warned early on that the pandemic “may expose children to increased physical and psychological violence at home, or force children to stay in homes that are overcrowded and lack the minimum conditions of habitability”.
- International examples:
 - In [France](#), government authorities reported that in one week, domestic violence increased by over 30 percent in areas under movement restrictions.
- The UN Secretary-General has reported a “horrifying” global surge in domestic-based violence linked to COVID-19: <https://news.un.org/en/story/2020/04/1061052>
- Phumzile Mlambo-Ngcuka, Executive Director of UN Women has echoed the UNSG’s message and has added that confinement is fostering the tension and strain created by security, health and money worries; and is increasing isolation for women with violent partners. She described the situation as “a perfect storm for controlling, violent behaviour behind closed doors.”
- The UN Special Rapporteur on violence against women has urged states to take urgent measures to address domestic violence against women and children in the context of COVID-19, warning that, “For too many women and children, home can be a place of fear and abuse. That situation worsens considerably in cases of isolation such as the lockdowns imposed during the COVID-19 pandemic.” – see <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25749&LangID=E>

UK overview

- The number of calls to the National Domestic Abuse helpline run by Refuge (the UK's largest domestic abuse charity) was [25% above average in the second week of lockdown](#) and 49% higher than normal after three weeks.
- During the lockdown, Refuge an astonishing reported a 700% increase in calls to its helpline in a single day.
- Forms of violence being reported during lockdown:
 - Children directly experiencing violence, often related to the increased stresses within households, as a form of punishment or due to a parent or carer being intoxicated.
 - Children witnessing violence in the home during the lockdown.
 - Cases and calls regarding children attacking parents / carers
 - Forms of emotional abuse and neglect
- The NSPCC surveyed over 2,000 adults in Britain and found that 26% are not confident they would know where to seek help if they thought a child or young person was being abused or neglected.[1](#)
The survey showed more adults are worried about the impact of the lockdown on children suffering domestic abuse than any other type of harm. A significant number were also concerned about emotional and physical abuse.[2](#)

Online risk

- The risks for children from online violence, abuse and exploitation [are growing](#), especially because people are not travelling so they are spending more time online.
- Najat Maalla M'jid UN Special Representative on Violence against Children has expressed concern regarding “sexual grooming online by paedophiles and predators, live streaming of child sexual abuse and the production and distribution of child sexual abuse material”.
- The UN Secretary General has called on social media companies to step up to their “special responsibility to protect the vulnerable.”
- To help parents keep their children safe online while stuck at home during the outbreak, UNICEF has produced useful [guidance](#).
- Further guidance on has also been produced by the NSPCC:
<https://www.nspcc.org.uk/keeping-children-safe/online-safety/>

Rise in 'Revenge porn' during lockdown

- The Revenge Porn Helpline opened more than 200 cases in the four weeks from 23 March, and more last week than in any week since 2015, when it came into existence as a consequence of section 33 of the Criminal Justice and Courts Act - the law making intimate image abuse a criminal offence for the first time.
- Charities are suggesting that one effect of the lockdown is an increase in "sexting" from couples who are not isolating together, which then increases the likelihood of intimate image abuse arising as a result.
- The Internet Watch Foundation, an organisation that removes child sexual abuse imagery online, said: "We are very worried that the increased number of children online, as well as an increased number of criminals who may be looking to exploit this, could put children in danger."

'Honour' based practices such as FGM and forced marriage

- There are increasing reports of the manner in which harmful traditions such as FGM, child marriage and forced marriage (which were underground pre-coronavirus) are increasing while the world is in lockdown and attention is elsewhere.
- A UN analysis by UNFPA suggests direct and lasting effect on such forms of honour based violence including FGM and forced marriage: *Impact of the COVID-19 Pandemic on Family Planning and Ending Gender-based Violence, Female Genital Mutilation and Child Marriage, UNFPA 27 April 2020* https://www.unfpa.org/sites/default/files/resource-pdf/COVID-19_impact_brief_for_UNFPA_24_April_2020_1.pdf
- Karma Nirvana, which trains the police, NHS and social services on issues of forced marriage and honour-based abuse, experienced a 200 per cent surge in calls to its helpline during a six-week period from 16 March to 24 April compared to the same period leading up to it. The organisation had their busiest week of the year at the end of April, with more than 250 calls.

Family Court interventions

- Non molestation Orders & Occupation Orders, Family Law Act 1996
- Forced Marriage Protection Order, Forced Marriage Act 2007
- FGM Protection Orders, Serious Crime Act 2015
- Care Proceedings, Children Act 1989

The Adoption and Children (Coronavirus) (Amendment) Regulations 2020

- Safeguarding standards
- Adoption proceedings, Article 6 & 8
- Care Standards

Thank you

- The freephone, 24-hour National Domestic Abuse Helpline
[0808 2000 247](tel:08082000247)
- Forced Marriage Unit
fmufco.gov.uk
Telephone: 020 7008 0151
From overseas: +44 (0)20 7008 0151
Monday to Friday, 9am to 5pm
Out of hours: 020 7008 1500 (ask for the Global Response Centre)
- NSPCC Keeping children safe online:
<https://www.nspcc.org.uk/keeping-children-safe/online-safety/>



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Questions?



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