CELCIS submission to the Scottish Parliament Equalities and Human Rights Committee Inquiry into the impact of Covid-19 pandemic on Equalities and Human Rights

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CELCIS is Scotland's Centre for Excellence for Children's Care and Protection, based at the University of Strathclyde. CELCIS provided detailed feedback to Scottish Government on the guidance associated with the Coronavirus (Scotland) Act 2020 and Coronavirus (Scotland) (No.2) Act 2020. We welcome the opportunity to respond to the Scottish Parliament's Equality and Human Rights Committee's Inquiry into the impact of the COVID-19 pandemic (the pandemic) on equalities and human rights.

Our response is based on research evidence, practice experience and feedback from our long-standing, cross-organisational networks, comprising practitioners and leaders working across the spectrum of children's services and other public services in support of children.

1. **How have groups of people been affected by the virus?**

Babies, children, young people (anyone under the age of 18 referred to hereafter as children), care leavers and families in need of care and protection all possess their own unique strengths and needs. Nonetheless, significant and enduring challenges remain in relation to the rights of children in need of care and protection. In their 2016 Concluding Observations to the UK, the UN Committee on the Rights of the Child highlighted continued concerns in relation to a number of issues, including high rates of child poverty; discrimination of children in care; inadequate family support; and, inequalities in educational attainment and access to health services for children in care.[i]

The pandemic and subsequent public health protection response has affected many groups in areas such as digital exclusion, mental health, poverty and food security; however, these are examples of existing inequalities that have been intensified and continue to disproportionately affect many vulnerable children and families in particular. This response will help articulate some of the specific needs and rights impacts affecting these groups.

2. **Which groups have been disproportionately affected by the virus and the response to it?**

The public health response necessitated by the pandemic has had a significant impact on children and families in need of care and protection.

Poverty and Vulnerability
The Independent Care Review recognised poverty as one of the factors that increases the risk of child abuse and neglect.[ii] Children's economic rights are a fundamental part of the United Nations Convention on the Rights of the Child (UNCRC),[iii] as this is the right not only

to survive but also to develop to their full potential; requiring an adequate standard of living that ensures they can develop physically, mentally and socially, meeting their best interests and best health. Children living in poverty erodes all of these rights. Provisions to supporting children in poverty cannot be distinguished from support to their families. The pandemic has hugely amplified this existing issue and subsequently children's right to the best possible health.[iv]

In the initial stages of the responses being formed to the pandemic, two categories of children were identified who may require alternative education provision via School Hubs. These were the categories of *keyworker children* and *vulnerable children*. The lack of national definition of vulnerability has resulted in an inconsistency in the definition of and subsequent response to vulnerable children across Local Authorities in Scotland. This includes those who may not have initially been viewed as vulnerable, but now could become so. The lack of clarity has led to many being excluded for fear of identifying themselves as 'vulnerable', with the possible association of stigma and potential involvement of formal services. We note with concern that the number of children accessing hub supports for vulnerable children only represents around 0.5% of the children with multi-agency child's plans, which undermines the right to education for this group of children, who are more likely to face barriers such as digital exclusion when accessing educational learning at home. [v]

Family Support and Care
Consideration must be given to providing support for families whose circumstances have worsened during the pandemic and been affected by reductions in community services and other preventative supports. We anticipate, through engagement of senior leaders in children's services and an understanding of data that this will lead to more families in need of care and protection.[vi] In line with Girfec principles agencies should work together to support families. [vii] A preventative approach, that supports families from an early stage, before the need for formal interventions (for example, by Courts and Children's Hearings), can be achieved with a competent and well supported workforce, strong leadership strategies and a targeting of resource towards a preventative approach. *Part 12: Children at risk of becoming looked after* of the 2014 Act places duties on Local Authorities to provide relevant services where children are at risk of becoming looked after. [viii] However, a recent review of the implementation of this legislation found this to be inconsistent, highlighting the need for attention to drivers of culture change, relationships and skillsets, resources, as well as changes to law and policy.[ix]

Attention should also be drawn to children who are currently looked after in the home on Compulsory Supervision Orders. Adversity has been exacerbated for many families during the pandemic and it is imperative that offers of this crucial support to parents and carers in ways that are accessible and non-stigmatising continue.

Improvements need to be made in providing long-term, substantial support for any family that requires it, going beyond current normative practice.[x] Families of all types must be supported in ways that are tailored to their own strengths and challenges. The UNCRC recognises families as fundamental groups in societies; however, while there has been consistent legislation aimed at supporting families, there has not been consistent support

available to complement the policy intentions. Intensive family support is required to help keep children and young people, where safe, at home in the community. Where this is not possible, all alternative families, including but not limited to foster and kinship families, must receive an array of holistic support regardless of legal status or familial make up.

Foster Care

Emergency changes to legislation in response to the pandemic removed limits on the number of (unrelated) children who may be placed within one fostering family, so as to ensure adequate provision in responding to children who require substitute family-based care. The longer-term implications of this must be recognised. Once emergency legislation is lifted, there is a danger that children may face increased changes of placement, to their detriment.

The responsibilities of foster carers have increased as a result of the pandemic, including engaging children in learning at home, facilitating engagement with birth families, ensuring public health guidance is maintained and supporting the wellbeing of children where contact with multi-agency supports may have been reduced. Despite a great willingness across Scotland, this may not be sustainable over a longer timeframe, resulting in disruption to children who may be moved in response. There is an urgent need for additional recognition, support and resources, as recommended by the Independent Care Review.[xi]

Registered fostering providers are currently considering creative means of how to convert existing assessment practices to virtual methods. However, some protective practices cannot be replicated virtually, for example, a full assessment of any physical environment in which a child would live. Conversely, the increasing use of online and virtual connection has enabled access to carer support groups without the logistical barriers of geography and time restrictions, as had been the practice previously. In some instances, this new practice has allowed both foster carers in one household to participate. It may also create possibilities for support groups to be created relating to children's needs and areas of development, rather than centred around the geographical area in which a fostering family live. This indicates that the progression of any service will require incorporation of both virtual and physical settings for support and assessment.

Kinship Care

There is significant variance in Scotland in approaches and responses to kinship care. These include whether there is recognition of the formal or 'informal' status of the arrangement legally. By association this affects what assessment is undertaken which in turn determines what financial and other support can be accessed by families. Kinship care arrangements can often occur in an emergency response but the changing context for both child and relative may not be reviewed. In comparison to registered fostering and residential services, kinship families have far less infrastructure around them, yet are often managing highly complex dynamics within their family network and at the same time providing care to children in their family who have experienced trauma. Evidence from our networks has suggested that the pandemic has exacerbated the paucity of financial, practical and emotional supports for kinship carers, who can often be living in low-income communities across Scotland.[xii] It is suggested there is an urgent response to the families in Scotland and

that the views of the child are considered within these decision-making processes and that assessments are robust.

Children's Voice

Scotland has recognised the need to acquire children's views in adherence to Article 12 of the UNCRC. Approximately 50% of children subject to applications for Child Protection Orders or whose names are placed on Child Protection Registers are under 2 years old.[xiii] There are particular challenges in ascertaining the views of very young children; however, these children are very able to communicate their experience in a variety of ways if they have adults attuned enough to observe and listen to them. The pandemic has dramatically reduced the already-limited capacity for services to engage directly (face-to-face) in order to listen and respond to their needs.

Infants are wholly reliant on adults for care, protection and interpretation of their rapidly developing needs. Where a decision has been made for the need of immediate protection of a child, but with no decision on their longer-term care, maintaining connection with birth parents as well as safe arrangements for substitute family care may be assessed as crucial. How to enact this safely in the context of physical touch being a risk to health, and the restrictions of movement between households is highly complex. What is clear is that this group of children require particular attention. This affirms the importance of considering the developmental and communication needs of a child in all decisions about contact during the pandemic, including the recent guidance from Social Work Scotland that CELCIS has contributed to.[xiv]

Children with Additional Support Needs

All children, but particularly those with additional support needs benefit from predictable, consistent patterns and routines. The Independent Care Review recognised the important role schools have in enabling children to enjoy stable, nurturing relationships.[xv] The pandemic has heralded a dramatic change for all children in how they see and experience the world around them. Care providers across Scotland are noticing for some children with additional support needs that the reduction in transitions between environments positively affects their sense of containment, helping them feel more settled. However, primary care givers may experience a higher level of intensity in the home where external provision may have reduced. As education services develop plans to create safe environments for children to return to school-based learning, there are essential considerations required to support children with additional support needs and their families, in order to ensure their right to education is upheld.

Care Leavers

The issue of financial hardship and the impact of poverty on care leavers is well documented. Outcomes for care leavers remain disproportionately poor across a range of measures compared to the general population.[xvi] The impact of the pandemic has further exacerbated and amplified the precariousness of many care leavers' situations, and the inconsistencies and variations that exist in relation their right to aftercare support and services. We have seen examples of innovative practice from local authorities, such as providing digital technology to young people who need it or freeing up bureaucracy to provide financial support where needed. We have also heard of support and contact are

maintained between staff and young people, both online and at times in person, where necessary and with appropriate PPE. However, this practice is not consistent across all local authorities and is further evidence of an already established *postcode lottery* of provision and support. [xvii] Similarly, some areas have noted improved partnership working with housing teams, however the sustainability of this development is likely to be challenged by increasing concerns over the availability of move on accommodation as emergency supports to homeless people are ended.

We have heard from Local Authorities of many young people who do not have active bank accounts, online banking or the ability to use contactless payments, thus adding layers of complications when trying to shop or navigate everyday financial transactions. Being furloughed from low-paid temporary jobs, mounting debt, arrears, and issues with Department of Work and Pensions (DWP) payments have all been highlighted an exacerbated by the pandemic. We welcome the extension of the university bursary during the summer months as a positive step.

3. **Have there been specific equality or human rights impacts on groups of people as a response to the virus?**

Digital Exclusion

A key rights and inequality issue, amplified during this pandemic is digital access. As evidenced by Scottish Government data,[xviii] the pandemic has exposed the issue of digital exclusion. This deep 'digital divide' exacerbates inequalities and risks fundamentally denying access to services, support and networks so many are relying on during this crisis.

For children unable to play with others or outside, access to technology to play virtually online can be their only outlet for play. Digital access enables connection with support services, recreation, utilities (e.g. banking), family and friends, all of which are protective factors for their physical and mental wellbeing. For students of all ages, exclusion from the digital world currently provides a fundamental challenge to the right to education. Through targeted engagement, CELCIS has become aware of young people having to make benefit applications or care experienced students who have had to access study materials on their mobile device. The principle of *Assumption of entitlement* must apply for corporate parents to support young people in this area. [xix]

The *Connecting Scotland* initiative is welcome, but currently this only reaches 9,000 people deemed as clinically vulnerable,[xx] which would exclude many care experienced children and their families. We also welcome the recent increase in attainment funding to support Local Authorities in finding creative solutions to the digital divide; however, urge that a focus be maintained on this crucial issue into medium and long-term planning.

Children's Hearings

Children's Hearings are now being held virtually as an emergency response to the pandemic; however, there are a limited number of hearings that can be processed through the current digital platform. Children's right to attend has not changed, yet accessing a hearing may have become more difficult. Whilst the provision of virtual hearings ensures that orders do not lapse and our most vulnerable children are protected, they do not provide the capacity

needed to handle an expected increase in referral activity post-lockdown or to process swiftly any backlog of cases that have built up. Attention also needs to be given to delays in decision-making by hearings and courts caused by the pandemic, particularly in relation to permanence cases.

Virtual hearings also present a challenge to the meaningful participation of children and young people, for example, providing confidential space to participate or access to advocacy. Cues can be missed that would be picked up in a face-to-face meeting and this may adversely impact on decision-making and their right to be heard.

Access to papers/reports is fundamental in preparation and to fair process. The provision of papers/reports via a digital portal will not be suitable for all children and families. Some may find it challenging to process information provided in this way; for example, those with poor levels of literacy or with additional support needs, while others may not have the capacity or data to allow them to access these materials while devices are needed by other members of their household. Others will welcome the pressure of not having to travel to Hearings and be able to have some kind of emotional distance from the stress factors of a physical tribunal.

Moving out of lockdown requires changes to be made to ensure offices and children's hearing centres are safe, clean and accessible. It is encouraging to see that a wider variety of hearing options are now being considered - from full traditional, face-to-face physical hearings to fully virtual hearings and variations in between. This will provide more options for young people and their families in relation to how they participate and it is crucial that these elements of choice are maintained in our rebuilding process. CELCIS networks have reflected that whilst there are inconsistencies in the ability for all children, carers or local authorities to either access or facilitate virtual meetings, for some virtual meetings are preferable. This includes children who chose to attend their LAC reviews by telephone with support of a key worker, and as a result felt more confident expressing their views. Some kinship carers found virtual decision making panels more accessible, reducing geographic or other practical barriers to attending. Additionally, some of the workforce have reflected that virtual meetings could take place more frequently as practical issues accessing physical spaces were reduced. CELCIS research is underway to improve and understand the experience of all who are involved in virtual hearings, which we would be happy to share with the Committee. This will capture information around the use of a blended model of hearings as well as the voice of children whose hearings have been deferred, and will complement data that is already being gathered by Children's Hearings Scotland and Scottish Children's Reporter Administration (SCRA).

Family Time
Emergency legislation did not alter the duty on Local Authorities to comply with the measures contained in Compulsory Supervision Orders. However, at the start of lockdown we understand that many children were prevented from spending time with their families. We welcome that creative solutions are emerging and a framework for decision-making has now been produced.[xxi]

Some Local Authorities are trialling new ways of supporting family time, however others are finding it more challenging, and in some instances, efforts to continue relationships have ceased all together. Some excellent practice is emerging of practitioners making use of outside space and digital means to ensure families can spend time together. We would urge the Committee to work with Scottish Government to ensure that there is robust and enabling guidance in place, such as that supported by CELCIS and published by Social Work Scotland, which helps practitioners work alongside children and families to maintain relationships, to protect and enhance the wellbeing of children and young people and uphold their rights.[xxii]

Mental Health
Isolation is having a huge impact on mental health and we would ask the Committee to be aware of the hidden social costs of these changes. We have reports from local teams of an increase in self-harming and hospital admissions due to lack of preventative support and interventions. A recent survey by Children's Parliament has also highlighted the rise of children feeling scared or anxious as a result of the pandemic and there being a lack of appropriate support around this.[xxiii]

4. **What do the Scottish Government and public authorities (e.g. local authorities, health boards etc.) need to change or improve as a matter of urgency?**

We urge greater improvements in the collection, interpretation and use of data to improve decision-making processes that affect children and families. All services and decision-making processes surrounding a child have been made more challenging as a result of the emergency measures. In order to '*Build Back Better',* children's voices must be embedded meaningfully in any decision-making process that affects their lives. This must be done with the support of advocacy services.

We have heard of positive responses from many Local Authorities, with an appropriate relaxation of local rules and procedures in terms of providing additional emergency funds to care leavers and families living in poverty who are in need of support. This is to be welcomed but this individual practice is indicative of the variation of support and services that exist across Scotland. We urge a joined up approach in providing financial support that meets individual needs. The recent extension of the free school meals programme across the summer months is a welcome example of this approach.

The pandemic has reinforced the fundamental importance of access to secure, reliable and affordable digital connection, which includes the skills, financial means, confidence and emotional support to participate digitally. Digital access must no longer be viewed as a luxury, or added extra, but as a fundamental rights issue. We urge a focus on three key areas in relation to the digital divide.

1. Improvements in availability of physical digital resources for children, young people and families.
2. Internet connection and access, particularly in rural areas; both in practical and financial terms.
3. No less importantly, practical support to improve digital literacy.

The Scottish Government and Scottish Parliament should continue to monitor the impact and effectiveness of changes brought about through the emergency measures to understand which changes do not have a desired impact on the pandemic, so that these can be removed without delay. We must avoid any risk of adversely affecting the rights of those the legislation aims to protect. The voices of infants, children, young people and families must also be heard during this process. We welcome the Committee's Inquiry in providing a focus on prevention of rights breaches in the first instance.

5. What do the Scottish Government and public authorities need to change or improve in the medium to long term?

We fully support the Scottish Government's commitment to full incorporation of the UNCRC into Scots Law within the original timescales. This, together with implementation of the Independent Care Review Promise will ensure that children's rights are realised now, and as we move beyond the emergency measures.

It is important to note that to enable effective participation in decision-making processes, emotional as well as practical support, together with access to digital devices and infrastructure, will need to be provided for children of all ages and their families[xxiv]. We emphasise the importance of choice and participation within education options for children and young people, as well as their families and carers. A recent University of Lancaster study referred to children's participation as 'not a luxury, it is a protective measure' and evidenced how children often make valuable contributions in responding to disasters and risk reduction.[xxv] By enabling children to help shape responses to the pandemic we can ensure that any rebuilding process takes proper account of their rights and needs. Providing opportunities for children and young people to have control and agency in the decisions that affect them, allows Scotland to implement a rights-based approach into everyday care[xxvi].

We welcome and encourage creative Local Authority practice that has ensured continuity, stability of placement and support arrangements during the pandemic. Some residential workers have chosen to move into homes with young people for a week at a time during lockdown, which is having a positive impact on young people, their relationships and outcomes. Many vulnerable children are thriving during these new ways of working, including less educational pressure due to a move away from mainstream schooling, better relationships and attachments with care givers due to increased time and availability and increased innovation and debate around what 'works'. Proactive reassurance regarding medium-longer terms planning for placement support and transition planning must continue, so that they can be enacted as public health measures ease.

The situations of children in need of care and protection can be complex and fast changing. As we rebuild, it is essential to build a care system not based solely upon chronological age, but instead on developmental age, need, stage and the meaningful participation of children. The needs of this group of children require robust, holistic and developmentally informed assessment by skilled, valued and empowered carers and practitioners. To assist providers in doing this, CELCIS have developed an online learning course collating knowledge from our

networks internationally on the challenges arising in child protection case management during this pandemic, and how service providers can respond and adapt to these needs.[xxvii]

For some care leavers, continuing care has been the default during lockdown, providing much-needed stability and security; however, the concern remains that young people may find themselves being transitioned out at a more accelerated pace. Despite individual good practice examples, there are very limited options for young people requiring emergency move on accommodation, but also in relation to planned transitions moves after the pandemic. Continuing care ('Staying Put') is the single most important factor in improving the outcomes into adulthood for care leavers, and encouraging, enabling and empowering young people to 'stay put' has been a key policy for a number of years now. Consistent implementation has been, and remains an ongoing challenge to focus on as we seek to 'B*uild Back Better*.[xxviii] During this rebuilding process, it is important not to lose sight of the many ways in which innovative practice in this area has been able to flourish and thrive.

Existing effects of poverty and inequality have been compounded and exacerbated by the pandemic. Many vulnerable children and families may already be living with the impact of poverty and require practical support to access food, power and ongoing financial support. Communities living in poverty are unable to exercise their rights. Targeted efforts are needed to reduce the stress of poverty and allow families to focus on their health and wellbeing during this crisis. Enabling third sector and statutory agencies to support communities through funding support and guidance is crucial in this respect.

Services and practitioners will need robust, clear and helpful national and local guidance in order to adapt to new ways of working as the lockdown restrictions are eased. Our experience of supporting organisations to implement new ways of working and sustain change tells us that in order for any new initiative to be successful, organisations need:
- leaders who are able to lead in both a technical and adaptive way;
- good quality data collection and analytical systems;
- staff teams with the correct skills, knowledge, characteristics and qualifications; and
- an enabling and facilitative context to work within; [xxix]

We would encourage continued focus on the work already being undertaken to identify helpful and meaningful new ways of working that have been necessitated by this crisis. This should begin with the careful selection of well-defined approaches, which show promising evaluative data. We welcome the emerging practice here that seeks to address this.

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