

RIGHTS OF THE CHILD AND SOCIAL PROTECTION POLICIES

1. What social protection systems are in place for children in your country?

The Children Act 1989ⁱ provides the foundation for the child protection framework in England. Section 31 allows family courts to remove a child from its family “if it is satisfied that the child is suffering, or is likely to suffer, significant harm”. This calculation about what may be likely in the future often leads to the removal of unborn children, sometimes into foster care, but often into a contested adoption. Professor Simon Haworth of the University of Birmingham argues that when social workers try to assess the likelihood of future harm—which is often considered through the lens of emotional neglect:

Assessments of these rather hazy classifications of harm are being undertaken within a context where risk can be a dominant discourse in social work practice to avoid uncertainty and potential mistakes that may lead to public, media and government criticism and scapegoating. Perhaps this is where the greatest concern should lie in terms of our practice? A second question is whether through looking for risk of emotional harm we often confirm its presence? Certainly, by focusing on the identification of risk as a certainty, social work can exclude alternative views or positions about ‘risk’ that may challenge. Then the inherent disconnect between risk of potential future harm and actual events of child harm occurring can be forgotten. If we expect risk to be there, it is easier to find and confirm.ⁱⁱ

Contested closed adoptions are a major concern for a large number of families in the UK, and that has been the case for a long time. According to Prospect Magazine,

The UK is unusual, compared to the rest of Europe, for the frequency of forced adoptions. Exact statistics are difficult to pin down, but data from 2014 suggests that almost half of the 5,050 children adopted in the previous year were given new homes without their parents’ consent. In England alone, 80,000 children were removed from their parents in the year up to March 2021. Of those, 4,600 had a ‘placement order granted’ for their removal. The context behind the removal of the remaining 76,000, is less clear.ⁱⁱⁱ

According to figures from the annual children in need census, child protection enquiries in England under section 47 of the Children Act 1989 increased by 126.7% from 2009-10 levels to 198,790 in 2020-21.^{iv} These statistics are indicative of a child protection system that is failing to promote and protect the family as a unit.

While many countries now consider open adoptions to be best for the well-being of children as well as of their birth families and adoptive families, in the UK adoptions most often remain closed, with connections broken not only between children and parents, but also with siblings, grandparents, cousins and the entire extended birth family. The only communication between adopted children and their birth parents typically takes place through a system called ‘letterbox’ contact. During family court proceedings, a plan is made for the adoption agency to mediate an exchange of letters between the adoptive parents and the child’s birth family until the child turns 18. Most often only one or two letters per year are allowed, on specific court-chosen dates. An enquiry by the British Association of Social Workers notes:

Letterbox contact posed many challenges and was often experienced as unsatisfactory by birth parents and adoptive parents, with problems also mentioned by some adopted young people. [...] A significant rethink of approaches to ‘contact’ and connection between adopted children and their families is needed.^v

2. What are the main gaps and challenges to children’s enjoyment of social protection in law, policy, and practice in your country and the impacts on children’s rights?

As observed by the Chair of the Independent Review of Children’s Social Care, Josh Macalister:

This moment is a once in a generation opportunity to reset children’s social care. What we need is a system that provides intensive help to families in crisis, acts decisively in response to abuse, unlocks the potential of wider family networks to raise children, puts lifelong loving relationships at the heart of the care system and lays the foundations for a good life for those who have been in care. What we have currently is a system increasingly skewed to crisis intervention, with outcomes for children that

continue to be unacceptably poor and costs that continue to rise. For these reasons, a radical reset is now unavoidable.^{vi}

The Equality Act 2010 does not include the socio-economic status as a protected characteristic.^{vii} In the last Concluding Observations (2016), the UN Committee on Economic, Social and Cultural Rights recommended the UK to bring into force the relevant provisions of the Equality Act 2010 concerning public authorities' duty with respect to socio-economic disadvantage.^{viii} This refers to the socio-economic duty (s.1 Equality Act 2010),^{ix} which, if implemented, would require public authorities to actively consider the impact that their policies may have on increasing inequalities of outcome. The socio-economic duty was brought to life in Scotland and Wales in 2017 and 2019 respectively, but, in its report the UK Government says "there are no plans to implement the socio-economic duty for English and cross-border bodies".^x The Equality Act should be implemented in full, and should be reviewed with the view to prohibiting discrimination and stereotyping against people in poverty.

In 2021, Isabelle Trowler, the Government's Chief Social Worker for Children and Families, admitted that "too many children are wrongly being taken into care".^{xi} Povertyism has severe consequences for families dealing with children's social care, skewing interventions towards harsh investigations that disproportionately affect families in poverty and deprived areas. Families in poverty go through painful separations more often than other families, with poverty becoming the wallpaper of practice for social workers "being too big to tackle and too familiar to notice."^{xii}

Evidence shows socio-economic discrimination is linked to removals of children into care often based on an assessment of risk of future harm. A peer-reviewed study published in 2018 showed that "income inequality, income deprivation, ethnic density and higher education were able to explain around 75% of the variance in English and Welsh state care rates."^{xiii}

The Child Welfare Inequalities Project of Coventry University analysed data on over 35,000 children in the care system as a looked-after child or on a child protection plan. Roughly one in every 60 children in the most deprived communities was in care compared to one in every 660 in the least deprived. Each 10% increase in deprivation rates saw a 30% rise in a child's chances of entering care. The researchers, led by Professor Paul Bywaters at Coventry University, said the most likely explanation is that, relative to demand, more deprived councils have less funding to allocate to children's services.^{xiv}

While social work services are meant to assist families and reduce trauma, parents and children alike have stated that interventions from social work, including the removal of the child, often only create further trauma for both parents and children due to a lack of support and understanding from the child protection system and the separation of the family itself.

The Department for Education's annual children in need statistics showed that:

the number of child protection enquiries reached record levels in 2021-22, as referrals to children's social care surged in the wake of the removal of Covid restrictions. Social workers carried out 10% more enquiries (217,800) under section 47 of the Children Act 1989 than in 2020-21, the first rise after three years of falling numbers and the highest total ever recorded.^{xv}

These statistics are indicative of a child protection system that is failing to promote and protect the family as a unit.

According to the Government's children's social care statistics, 80% of all children's homes in England are delivered by for-profit companies. Many local authorities are increasingly unable or unwilling to look after children in care with their own resources. This may be partly the result of austerity-driven local government funding cuts in the 2010s. However, the number of children in care homes run by for-profit providers was still high in 2014 (68%).^{xvi} In March 2022, The Guardian reported that, at a time of austerity and shrinking public funding, increasing local authority money is going into private companies making large profits.^{xvii}

Recently published research from the University of Oxford, based on the analysis of 13,000 children's homes inspections by the Government's agency Ofsted between 2014 and 2021, found that for-profit children's homes receive worse ratings and violate more statutory requirements than those run by charities and local

authorities.^{xviii} As observed by the CESC, private providers should “be subject to strict regulations that impose on them so-called ‘public service obligations’,” and States are ultimately responsible and have “the obligation to regulate private actors to ensure that the services they provide are accessible to all, are adequate, are regularly assessed in order to meet the changing needs of the public and are adapted to those needs.”^{xix}

Department for Education data published in July 2022 shows that there were 5,980 children in care aged 16 and 17 living in unregulated, non-care settings on 31 March 2021.^{xx} Until September 2021, there were no regulations for the accommodation of 16 to 18-year-olds,^{xxi} which has often put them in situations where they are vulnerable to being groomed and trafficked. Sir James Munby, the retired president of the Family Division of the High Court of England and Wales, does not think that the new regulation for supported accommodation will help:

There is the scarcity of suitable housing accommodation available for young people in care [...]. In relation to this, we need look no further than the judgment of His Honour Judge Dancey [...] [2019] EWFC 62,^{xxii} a shocking case accurately epitomised by a journalist as the grim story of a child passed around the local authority care system like a bag of potatoes, ending up in a caravan park. [...] In the considered conclusions of this very experienced judge: ‘[...] There are growing concerns around child sexual exploitation, County Lines¹ and other forms of criminal exploitation as risks for these young people’.[...] Thus far the response of Government has been to propose banning the use of unregulated accommodation. But how is that going to help, when the fundamental problem is the absence of suitably regulated accommodation?^{xxiii}

The main objective of a children’s home is providing children with a safe and stable place to live where they are “cared for”^{xxiv} by an adult. However, the government does not house and care for all minors equally. Unregulated accommodations for 16 to 18-year-olds have long been widespread. In 2019, BBC Newsnight stated that “every night in England 6,000 kids in care are living in one [...] and being exposed] to violence and crime”.^{xxv} Despite the 2021 change in law that now requires “supported” accommodation for 16 to 18-year-olds, that standard remains lower than the one for children under 16.

“Article 39” is an independent charity that fights for the rights of children living in state and privately-run institutions in England, and named for Article 39 of the Convention on the Rights of the Child. The accommodations being challenged by Article 39 are mostly run by private landlords whose main objective is clearly not the best interests of the child, but profit. As explained in this article by the Guardian: “The majority of providers are privately owned, and the average cost of an unregulated place is £948 a week, with average operating profits of £330 a week, according to the Competition and Markets Authority.”^{xxvi} These profits can skyrocket to surprising figures. One example is shown in a mini-documentary series by BBC Newsnight about unregistered accommodations:

It seems the kind of high-risk children that Klaudia lived with attracted premium payments for the company that ran the home, now called Harvest Care Group. Her council, Luton Borough, stopped using it in 2017 but many London boroughs kept the residents and the money flowing in for Harvest Care Group owner Craig Cameron. His company received more than four and a half million pounds in fees between 2015 and 2019, according to figures obtained by the open contracting partnership, and the spend network for Newsnight. Invoices seen by Newsnight indicate that Mr Cameron sometimes charged fees of more than £20,000 a month per resident.^{xxvii}

We can further see these astonishing profits in a 6-bedroom unregulated house where:

Paige’s council, Walsall, paid £2,000 a month to keep her there. Echo’s council, Merton, paid £3,600 a month. They shared the house with a 16-year-old from Cumbria, and that council paid nearly

1 “County lines’ is a term used to describe gangs and organised criminal networks involved in exporting illegal drugs into one or more importing areas within the UK.... They are likely to exploit children and vulnerable adults to move and store the drugs and money and they will often use coercion, intimidation, violence (including sexual violence) and weapons.” Home Office, ‘County Lines Programme Overview’ (GOV.UK, 2022) <<https://www.gov.uk/government/publications/county-lines-programme/county-lines-programme-overview>>

£16,000 a month. Also inside, a 15-year-old from Hampshire, housed at a cost we believe to her local council of £18,000 a month. In the extension, there was a 15-year-old from London. The place charged his council around £22,000 a month. And the highest charge was for a child who appears to have cost Bromley council more than £28,000 a month. The number of children in the house at any one time varied, but our research suggests that in a good month, they would earn £72,520 in fees for just six children.^{xxviii}

Many children say that social service investigations erode their sense of trust in people in a role of authority: Social workers don't really talk to children or explain anything at all. They just walk into your life and, 'oh, here are these adults with power over us and I have no idea what they're doing'. They tell you they're doing it for your own good. Not that they explain what they think that is or how this helps meet that. They just expect you to put up with them. Our trust in professionals is destroyed because of the way professionals treated our family. That doesn't just affect us. My children will never trust professionals, and probably their children as well.^{xxix}

3. How can States deliver more effectively to ensure the effective implementation of universal social protection for children, including through international cooperation?

Families need to be offered appropriate support and access to services to ensure an adequate standard of living and to prevent and end child poverty.

As observed by the CESCR:

Benefits for families are crucial for realizing the rights of children and adult dependents to protection under articles 9 and 10 of the Covenant. In providing the benefits, the State party should take into account the resources and circumstances of the child and persons having responsibility for the maintenance of the child or adult dependent, as well as any other consideration relevant to an application for benefits made by or on behalf of the child or adult dependent. Family and child benefits, including cash benefits and social services, should be provided to families, without discrimination on prohibited grounds, and would ordinarily cover food, clothing, housing, water and sanitation, or other rights as appropriate.^{xxx}

Since the 2010s, austerity has weakened the UK's social security system to a point in which it cannot effectively support those that need support most in society.

In its 2016 Concluding Observations, the CESCR expressed its serious concerns “about the disproportionate, adverse impact that austerity measures introduced in 2010 [were] having on the enjoyment of economic, social and cultural rights by disadvantaged and marginalized individuals and groups,” and reminded the UK “of its obligations under the Covenant to use the maximum of its available resources with a view to progressively achieving the full realization of economic, social and cultural rights.”^{xxxi} These concerns were reiterated, among others, by the then UN Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, after his official mission to the UK in November 2018.^{xxxii}

Austerity also affected local government funding cuts sternly. According to the National Audit Office, government funding for local authorities fell in real terms by 49.1% between 2010 and 2018.^{xxxiii} The Institute for Fiscal Studies estimated that the local authorities that received the largest share of their funding from government grants in 2009 experienced most significant cuts to their service spending. The 10% of authorities most dependent on grants in 2009 received an average cut of 33%, compared to 12% for the 10% of authorities that are less dependent on grants.^{xxxiv}

The situation is deteriorating severely after the Covid-19 pandemic and with the cost-of-living crisis. In September 2022, speaking on the UK Governments Autumn Budget, the Resolution Foundation stated that “even assuming that benefits are increased by 10 per cent in cash terms next April... the proportion of people living in absolute poverty is projected to rise from 17 to 20 per cent (equivalent to an extra 2.3 million people) between 2021-22 and 2023-24, with the proportion of children jumping from 23 to 28 per cent (an extra

700,000 children).^{xxxv} “Child protection system responses sometimes interact with policies covering housing, benefits and employment to exacerbate economic and other pressures on parents while making recovery and the reunification of separated families more difficult.”^{xxxvi} Public services for families passing through the system of child protection have rapidly decreased since the 2010s. In 2021, the UK Parliament’s Public Service Committee concluded that “more than a million vulnerable children in England have had their life chances reduced by cuts to early years and youth support since 2010.”^{xxxvii}

Due to mistakes by the child protection system garnering a lot of media attention, a culture of fear and risk-aversion has permeated social work, resulting in social workers having a heightened focus on avoiding catastrophe rather than the goal of protecting and assisting the family.^{xxxviii} The social model of child protection “specifically draws attention to the economic, environmental and cultural barriers faced by people with differing levels of (dis)ability, but has not been used to think about ‘child protection’, an area of work in England that is dominated by a focus on risk and risk aversion... This area has paid limited attention to the barriers to ensuring children and young people are cared for safely within families and communities, and the social determinants of much of the harms they experience have not been recognised because of the focus on individualised risk factors.”^{xxxix}

A peer-reviewed study found “that risk-averse practitioners estimated more harm to children over time if there was no intervention... even whilst professionals acknowledge that risk-aversion may not always be the best decision choice.”^{xl} The risk-averse model sees the parent as “needy”, rather than a rational and responsible actor; the model not only punishes the parent because of this but is also neglectful of the social determinants that place parents in poverty, and therefore into unmanageable circumstances, instead opting to focus on the individualised risk factors that will impact their children.^{xli}

In support of this, the Parents, Families and Allies Network (PFAN) state that:

The focus of children’s social care is mainly on risk of harm from parents and this often leads to a search for potential harm and a blaming approach to parents [...] rather than [focusing on] the difficulties faced by the family and the help needed to overcome them. This assessment of risk of harm is unbalanced focusing only on risk of harm from parents and not weighing this against an assessment of the risk of intervention, such as the risk of a child being harmed when taken into care.^{xlii}

Parents in poverty state that:^{xliii}

We worry about the risk of our children being removed from their family. We've seen our children be endangered, or treated like slaves by carers the court assigned them to. We've seen our children get physically abused by adopters we had a bad feeling about, but we were ignored. Social workers have blinkers that come down when we speak and they just don't want to know. We do know what our children need, but we're not listened to by carers or social workers.

My mother was forcibly removed into care and raised outside of her ethnic and cultural identity. This trauma lasts for generations.

Being removed as children made my kids worry about becoming parents themselves. When their child gets the slightest bruise, they're terrified they won't manage to prove to a social worker that it was an accident.

Overall, this evidence signifies a lack of adequate consideration towards the potential of future risk of harm to children that forced separation from their parents represents when assessing the child’s best interests. This runs contrary to the international human rights standards that the UK should abide by. It is also indicative of a system that is disproportionately concerned with the risk within the family while remaining blind to the harm caused by intervention and separation.

We recommend that kinship care, when safe and appropriate, should be preferred to closed adoptions, and that measures be created to prevent socio-economic discrimination by children's social care services. All children in care should be placed only in safely regulated accommodation until the age of 18. It is important to support and promote community-based resources through family support services (including youth services) and housing support services.

And first and foremost, listening to children's voices can make a positive difference in reforming children's social care.

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- iii Cherry Casey, 'The UK Has a Forced Adoption Problem - Prospect Magazine' (*prospectmagazine.co.uk*, 2022) <<https://www.prospectmagazine.co.uk/society-and-culture/the-uk-has-a-forced-adoption-problem>>.
- iv Rob Preston, "TV Investigation Aims to Highlight Trauma Faced by Families from Wrongful Child Protection Action" (*Community Care*, 2022) <<https://www.communitycare.co.uk/2022/05/16/tv-investigation-aims-to-highlight-trauma-faced-by-families-from-wrongful-child-protection-action/>> accessed November 3 2022; UK Government, "Characteristics of Children in Need, Reporting Year 2021" (GOV.UK, 2022) <<https://explore-education-statistics.service.gov.uk/find-statistics/characteristics-of-children-in-need/2021#dataBlock-64194056-dcd0-436e-5b03-08d98e357d76-tables/>> accessed November 3 2022
- v Brid Featherstone, Anna Gupta and Sue Mills, 'The role of the social worker in adoption – ethics and human rights: An Enquiry' (*basw.co.uk*, 2018) 11 and 27 <https://www.basw.co.uk/system/files/resources/basw_55505-10_1.pdf>.
- vi Josh McAlister, 'The Independent Review of Children's Social Care: Final Report' (The Independent Review of Children's Social Care 2022) 8 <<https://childrensocialcare.independent-review.uk/wp-content/uploads/2022/05/The-independent-review-of-childrens-social-care-Final-report.pdf>>.
- vii The Equality Act 2010.
- viii CESCR 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (2016) UN Doc E/C.12/GBR/CO/6 para 23.
- ix The Equality Act (n 4) s 1.
- x UK Government, 'The United Kingdom's 7th periodic report under the United Nations Convention on Economic, Social and Cultural Rights (ICESCR)' (UK Government 2022) <<https://www.gov.uk/government/publications/international-covenant-on-economic-social-and-cultural-rights-icescr-7th-periodic-report>>, paras 38-39.
- xi Emily Dugan, 'Too Many Children Wrongly Taken into Care, Admits Chief Social Worker Isabelle Trowler' (*News | The Sunday Times*, 2021) <<https://www.thetimes.co.uk/article/too-many-children-wrongly-taken-into-care-admits-chief-social-worker-isabelle-trowler-95g5ft0ss>>.
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- xiii Kate Morris et al (n 8) 364-372.
- xiv Andy Nicoll, "Children in Poorest Areas '10 Times More Likely to Enter Care'" (*communitycare.co.uk*, 2017) <<https://www.communitycare.co.uk/2017/02/28/children-poorest-areas-likely-enter-care-finds-study/>>; P a u l Bywaters et al., 'The Child Welfare Inequalities Project; Final Report' (Child Welfare Inequalities Project 2022) 6 <https://pure.hud.ac.uk/ws/files/21398145/CWIP_Final_Report.pdf>.
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- xxxi CESCR Concluding Observations 2016 (n 5) 18-19.
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- xliii ATD Fourth World UK study group, 15 July 2022, <https://atd-uk.org/2022/11/30/study-group-poverty-is-not-neglect/>