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“I have walked this journey alone; my soul is tired.”

*Poverty, Child Protection, and the Right to Protection and Assistance
to the Family in England*

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Abbreviations

All Together in Dignity Fourth World UK	ATD Fourth World UK
Children and Family Court Advisory and Support Service	Cafcass
Child Welfare Services	CWS
Convention on the Elimination of Discrimination Against Women	CEDAW
Convention on the Rights of the Child	UNCRC
Department of Work & Pensions	DWP
European Committee of Social Rights	ECSR
European Convention on Human Rights	ECHR
European Court on Human Rights	ECtHR
European Social Charter	ESC
Growing Rights Instead of Poverty Partnership	GRIPP
Human Rights Based Approach	HRBA
International Covenant on Civil and Political Rights	ICCPR
International Covenant on Economic, Social and Cultural Rights	ICESCR
International Human Rights Law	IHRL
Middle Layer Super Output Areas	MSOA
National Audit Office	NAO
Parent Families and Allies Network	PFAN
The Supreme Court of the United Kingdom	UKSC
United Nations Committee on Civil and Political Rights	CCPR
United Nations Committee on Economic, Social and Cultural Rights	CESCR
United Nations Committee on the Rights of the Child	CRC

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Human Rights Local

Launched in 2020, Human Rights Local is a project of the Human Rights Centre of the University of Essex to make human rights locally relevant.

Human Rights Local shows that human rights are closely linked to everyday life by establishing effective relationships with local and community groups, local authorities and other stakeholders. Human Rights Local brings human rights closer to the ground, adapting international standards and principles to the local context. By identifying local priorities and needs, Human Rights Local supports local communities to translate their concerns into rights-based demands for change and create avenues for dialogue and participation.

Published in 2021, the report 'Human Rights and Local Government – lessons from human rights cities in Europe' identified some of the common characteristics among nine European cities, three of them in England, as well as the potential benefit of becoming a Human Rights City.¹

Published in 2022, the report 'Poverty and Social Rights in Essex' highlighted the state of social rights in and near Colchester, home of the University of Essex Human Rights Centre.² The report combined quantitative and qualitative desk research, as well as 13 in-depth interviews with representatives and local officials, local community groups, local charities and non-profit organisations and academics. *Poverty and Social Rights in Essex* relied on the International Covenant on Economic, Social and Cultural Rights as the normative and analytical framework, focussing on housing, social security, food poverty and child poverty, and access to libraries.

Find out more about Human Rights Local here: <https://www.essex.ac.uk/research-projects/human-rights-local>

¹ Irem Aref and Koldo Casla, 'Human Rights and Local Government' (University of Essex Human Rights Centre and Law School, 2021) <<https://www.essex.ac.uk/research-projects/human-rights-local>> accessed 2 September 2022.

² Lyle Barker and Koldo Casla, 'Poverty and Social Rights in Essex' (University of Essex Human Rights Centre and Law School, 2022) <<https://www.essex.ac.uk/-/media/documents/research-projects/human-rights-local/poverty-and-social-rights-in-essex-county---human-rights-local.pdf?la=en>> accessed 25 October 2022.

Executive summary

Child protection interventions in England have grown significantly in number in the last ten years.

Families in poverty can be subjected to harsh interventions in the name of child protection, interventions that are sometimes discriminatory on the basis of the socio-economic status.

82,170 children were removed from their parents in 2021-2022, that's 22.5% more than ten years before, and 37.6% more than twenty years before.

The UK is a continental outlier in terms of the frequency of forced/contested adoptions.

Child interventions affect families in poverty disproportionately. Research led by Paul Bywaters, and supported by Nuffield Foundation, shows that working class families and unemployed people are approximately twice as likely to encounter child protection services than the general population. The differences are also observable from a geographical perspective. Children living in the 10% most deprived areas in England are ten times more likely to be part of a child protection plan from social workers than children living in the 10% least deprived areas. Each 10% increase in deprivation translates roughly in a 30% increase in the probably that the family will have to deal with some sort of intervention.

In 2022, Josh MacAlister, Chair of the Independent Review of Children's Social Care, stated "that the current system of social care is often dysfunctional, and reform is urgent".

Academics, practitioners and parents have also been calling for a reform of the child protection system in England.

This report is based on law and policy desk research, data analysis, and interviews and focus groups with a total of 33 people (28 of them female), including parents, social workers and young adults.

The report shows that families in poverty in England can be subjected to harsh interventions that are discriminatory and driven by the excessive risk-aversion of the child protection system, which is inconsistent and fails to fully consider the harm done by removing children into care or contested closed adoptions. This harm includes the current insufficient regulations for the accommodation of 16 to 18-year-olds in care, which makes them potentially vulnerable to grooming and trafficking.

All of this compromises the economic, social and cultural rights of families in poverty, including the right to protection and assistance to the family of Article 10 of the International Covenant on Economic, Social and Cultural Rights, signed and ratified by the UK and by 170 more countries.

Measures of austerity, cuts to child protection services, and privatisation of child protection services have all contributed to families being unable to receive the assistance they require, which in turn has trapped and pulled them into poverty.

While social work services are meant to assist families and reduce trauma, parents and children report that interventions from social workers and the removal of children only create further suffering due to a lack of support and understanding from the child protection system and the separation of the family itself.

UK authorities should consider implementing a number of legal and policy recommendations to ensure England's child protection system respects, protects and fulfils all human rights, including the social rights of families with lived experience of poverty.

The UK Government and local authorities should do their utmost to pursue reintegration of the family through kinship care, unless contrary to the best interests of the child. The UK Government should strive to ensure that kinship care is favoured over contested closed adoptions and this model of placement is adequately supported.

Unregulated accommodation for 16 to 18-year-olds, where there can be a complete lack of supervision, has long been widespread, with reports of abuse of children living in unregulated care homes. Children of Black, Asian and Minority Ethnic communities are overrepresented in unregulated or semi-independent accommodation. The UK Government has made a commitment to banning unregulated accommodation for 16-17-year-olds. This is a positive move. To ensure that this ban is effective and is enforced in practice, the UK Government should ensure adequate accommodation and protection measures for children under the age of 18 who have been deprived of a family environment and placed in unregulated alternative care.

Risk-aversion in child protection services is motivated by the understandable eagerness to prevent any imaginable situation where a child could suffer severe harm. However, evidence shows that the culture of risk-aversion can have very harmful consequences for families, with disproportionate impact on families in poverty and on mothers. It can result in severe trauma and damage mental and physical health of adults and children. The assessment of current risk must be balanced with the likely risk of family separation in the future.

The harsh interventions affecting families in poverty disproportionately must be put in the context of local government funding cuts and austerity measures in the last decade. Along with austerity cuts to social security benefits, public services for families passing through the system of child protection have rapidly decreased since the 2010s. The social security system as a whole must ensure sufficiently adequate benefits so recipients can afford the necessary essentials of a life with dignity.

The UK Government should ensure that for-profit children's homes are regulated and monitored. Likewise, the UK Government should also use its maximum available resources to ensure that more funding is given to local authorities with greater levels of deprivation.

Public authorities should explore and provide assistance to peer-parent support and parent-to-parent advocacy. These programmes can contribute to the necessary change in the culture of children's social care and other agencies working with children based on the principles of partnership and participation of affected families.

Evidence suggests that through the participation of parents in poverty in social work interventions, parents are more likely to have a better dialogue with social workers, leading to a more open and frank conversation about their situation. Parents are also likely to benefit from those who have prior direct and learnt knowledge and experience of the child protection system from peer support, possibly resulting in local authorities being less overwhelmed by an exhaustive and complex system.

1. Introduction

“In a country without the death penalty, separating a child from their parents is arguably the most draconian power the state has to intervene in our lives – in many ways as devastating as a life sentence, because the effect of that decision lasts forever.”³

Child protection interventions in England have grown significantly in number in the last ten years. This report shows that families in poverty can be subjected to harsh interventions in the name of child protection, interventions that are sometimes discriminatory on the basis of the socio-economic status. The resulting impact makes these families feel like they “walk this journey alone”,⁴ without adequate support.

According to figures from the Department of Education’s annual children in need census, child protection enquiries in England under section 47 of the Children Act 1989 increased by 136.3% from 2009-10 levels to 217,800 in 2021-22.⁵ Section 47 of the Children Act 1989 requires local authorities social care services to make enquires and decide if any action must be taken if there is reasonable cause to suspect a child is suffering or likely to suffer significant harm.

In England, 82,170 children were removed from their parents in the year up to March 2022, that’s 22.5% more than ten years before, and 37.6% more than twenty years before.⁶ Of these children removed from their family home, 54,270 (66%) were removed because social work services determined these children were at risk of abuse or neglect, 5,790 (7%) were removed because neither parent was available to

³ Polly Curtis, *Behind Closed Doors: Why We Break Up Families and How to Mend Them* (Virago 2022) xi.

⁴ Interview with mother, conducted by Human Rights Local and ATD Fourth World UK on 26 November 2022 via Zoom.

⁵ 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 2022’ (*gov.uk*, 2022) <<https://explore-education-statistics.service.gov.uk/find-statistics/characteristics-of-children-in-need>> accessed November 3 2022.

⁶ The Department for Education, ‘Children Looked after in England including adoptions, Reporting year 2022’ (*gov.uk*, 2022) <<https://explore-education-statistics.service.gov.uk/find-statistics/children-looked-after-in-england-including-adoptions>> accessed 22 March 2023.

provide for the child, and 1,000 (just over 1%) were removed due to low income or socially unacceptable behaviour.⁷ Out of the 2,140 children placed in adoption, only 210 (10%) were adopted with consent.⁸

Overall, these statistics are indicative of a child protection system that is increasingly interventionist and fails to preserve the family as the primary unit of care in society.

In 2022, Josh MacAlister, Chair of the Independent Review of Children's Social Care, stated "that the current system of social care is often dysfunctional, and reform is urgent".⁹

"[T]his 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."¹⁰

Academics, practitioners and parents have also been calling for a reform of the child protection system in England.¹¹

⁷ Ibid.

⁸ The Department for Education, 'Children looked after in England including adoptions - CLA on 31 March by characteristics' (gov.uk, 2022) <<https://explore-education-statistics.service.gov.uk/data-tables/fast-track/275cbaa4-5400-4920-86d1-08da7eccd8d3>> accessed 5 May 2023.

⁹ Josh MacAlister, 'The Independent Review of Children's Social Care: Final Report' (The Independent Review of Children's Social Care 2022) 2-3

<https://webarchive.nationalarchives.gov.uk/ukgwa/20230308122535mp_/https://childrensocialcare.independent-review.uk/wp-content/uploads/2022/05/The-independent-review-of-childrens-social-care-Final-report.pdf> accessed 20 October 2022.

¹⁰ The Independent Review of Children's Social Care: Final Report (n 9) 8.

¹¹ Yuval Saar-Heiman and Anna Gupta, 'The Poverty-Aware Paradigm for Child Protection: A Critical Framework for Policy and Practice' (2019) 50(4) *The British Journal of Social Work* 1171-1177 <<https://doi.org/10.1093/bjsw/bcz093>> accessed 18 October 2022; Bird Featherstone et al., 'Let's Stop Feeding the Risk Monster: Towards a Social Model of 'Child Protection' (2018) 7(1) *Families, Relationships and Societies* 8 <<https://doi.org/10.1332/204674316X14552878034622>> accessed 14 October 2022; Hazel Kemshall, 'Risk Rationalities in Contemporary Social Work Policy and Practice' (2010) 40(4) *British Journal of Social Work* 17-19 <<https://doi.org/10.1093/bjsw/bcp157>> accessed 14 October.

Measures of austerity, cuts to child protection services, and privatisation of child protection services have all contributed to families being unable to receive the assistance they require, which in turn has trapped or pulled them into poverty.¹² Since the 2010s, austerity has weakened the UK's social security system to where it cannot effectively help those who need more support in society.¹³

Families in poverty are disproportionately affected by forceful separations,¹⁴ with poverty becoming the wallpaper of practice for social workers “being too big to tackle and too familiar to notice,” in the words of Bywaters and his team under the Child Welfare Inequalities Project, which examined data concerning over 35,000 children in care.¹⁵

While social work services are meant to assist families and reduce trauma, parents and children report that interventions from social workers and the removal of children only create further suffering due to a lack of support and understanding from the child protection system and the separation of the family itself.¹⁶

This report shows that families in poverty in England can be subjected to harsh interventions that are discriminatory and driven by the excessive risk-aversion of the child protection system, which is inconsistent and fails to fully consider the harm done by removing children into care or contested closed

¹² Calum J. R. Webb, Davara L. Bennett and Paul Bywaters, 'Austerity, Poverty, and Children's Services Quality in England: Consequences for Child Welfare and Public Services' (2022) 1 *Social Policy and Society*

<<https://doi.org/10.1017/S147474642200001X>> accessed 1 June 2023; Naomi Philips, 'The Privatisation of Children's Social Care Is a National Scandal' (*Tribune*, 2022) <<https://tribunemag.co.uk/2022/07/children-social-care-homes-privatisation-profit/>> accessed November 3, 2022 <<https://doi.org/10.1017/S147474642200001X>> accessed 22 March 2022.

¹³ Miranda Bryant, 'Britain's Welfare System 'Unfit for Purpose' With Millions Struggling, Experts Warn' (*the Guardian*, 2022) <<https://www.theguardian.com/society/2022/jan/23/britains-welfare-system-unfit-for-purpose-urgent-reform-experts-regardless#:~:text=Britain's%20welfare%20system%20is%20%E2%80%9Cunfit.cost%2Dof%2Dliving%20crisis>> accessed 5 May April 2023; Daniel Edmiston, 'Plumbing the Depths: The Changing (Socio-Demographic) Profile Of UK Poverty' (2021) 51(2) *Journal of Social Policy* <<https://doi.org/10.1017/S0047279421000180>> accessed 25 June 2023.

¹⁴ Jane Fenton and Timothy B. Kelly, 'Risk Is King and Needs to Take a Backseat! Can Social Workers' Experiences of Moral Injury Strengthen Practice?' (2017) 31(4) *Journal of Social Work Practice* 479 <<https://doi.org/10.1080/02650533.2017.1394827>> accessed 3 November 2022.

¹⁵ Paul Bywaters et al., 'The Child Welfare Inequalities Project: Final Report' (Child Welfare Inequalities Project 2022) 4-5 <https://pure.hud.ac.uk/ws/files/21398145/CWIP_Final_Report.pdf> accessed 25 October 2022.

¹⁶ Karen Broadhurst and Claire Mason, 'Birth Parents and the Collateral Consequences of Court-ordered Child Removal: Towards a Comprehensive Framework' (2017) 31 *International Journal of Law, Policy and the Family* 48 <<https://10.1093/lawfam/ebw013>> accessed 25 October 2022; Study Group session with social workers, parents, parent advocates and academics, conducted by ATD Fourth World UK on 6 June 2022 in South London.

adoptions. This harm includes the insufficient regulations for the accommodation of 16 to 18-year-olds in care, which makes them potentially vulnerable to grooming and trafficking.¹⁷

Kinship care, when safe and appropriate, should be preferred to closed adoptions.¹⁸ All children in care should be placed only in safely regulated accommodation until the age of 18. Community-based resources should be promoted through family support services (including youth services) and housing support services.¹⁹

¹⁷ Julie Blindel, 'Woman Groomed and Abused in Care Gets Apology after 30 Years' (*the Guardian*, 2022)

<<https://www.theguardian.com/society/2022/nov/20/woman-groomed-and-abused-in-care-gets-apology-after-30-years>> accessed 5 May 2023.

¹⁸ By "kinship care" we mean to situations where a child lives with a relative other than their parents or with a close friend.

¹⁹ The Independent Review of Children's Social Care (n 9) 94-97, 115-116.

2. Method and structure

This report draws on quantitative and qualitative desk research, study groups, focus groups and interviews held in partnership with ATD Fourth World UK. The report analyses the relationship between poverty and the protection of the family under International Human Rights Law (IHRL) in circumstances that involve intervention from England’s child protective services. The report develops the meaning of the right to protection and assistance to the family under Article 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).²⁰ It does so by highlighting the voices of parents, young people and social workers with lived experience of poverty to provide perspective on how they are experiencing the child protection system. The report also includes law and policy recommendations based on human rights principles, social work literature and lived experience testimonies.

2.1. Method

The research for this report was carried out between May 2022 and June 2023. It consisted of a review of literature in Sociology, Anthropology, Psychology and Human Rights, IHRL standards, national and local reports, data and statistics on the relationship between families in poverty and the right to protection and assistance to the family in relation to England’s social work services, along with qualitative research conducted through seven study groups, eight focus groups and ten interviews, all in partnership with ATD Fourth World UK.

The focus of the study groups was to bring parents – particularly mothers – and young people (16–18-year-olds) with lived experience of going through child protection systems in the UK, as well as academics, parent advocates and social workers together to share problems, and suggest solutions, for issues they have faced or studied within the system. Focus groups primarily intended to identify patterns amongst parents, young people and parent advocates and social workers from the evidence preliminarily gathered from the interviews.

The desk-based research included literature review and data analysis on seven key themes identified at the beginning of the project. The seven themes were selected by members of ATD Fourth World UK and Parents, Families and Allies Network members (PFAN) in a participatory and peer-led process involving nine members and associates of both organisations. The seven themes were: (1) risk and fear in

²⁰ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 art 10 (ICESCR).

children's social care; (2) poverty as neglect in children's social care; (3) community resilience, strengths-based agency, and parent-to-parent advocacy; (4) discrimination in the context of children's social care; (5) stigmatised and jargonistic language; (6) youth voices; and (7) gender-specific challenges in social work interventions.

Whilst this research examines some child protection cases from Scotland, the focus is on England and English Law. Despite legal differences, research from Bilson and Macleod suggests that intervention rates between Scotland and England appear not to be that dissimilar, but divergence in intervention rates appear to be due to differences at a local level particularly concerning actions and decisions by local authorities.²¹

Interviews and focus groups were conducted with a view to gathering a direct understanding of the lived experience of the issues identified in desk-based research. Interviews and focus groups were conducted with: parents, primarily mothers, who have experience with social work services, and/or had their children in care, as well as with social workers and parent advocates; young people (16–18-year-olds) who have experience with social work services and people with experience in care as a young person; and social workers and parent advocates (individuals who provide peer support to other parents). We collected data on the participants' gender, age and location but we did not collect data on their race, colour, and nationality ethnic or national origins. In total, 33 people participated in this research.

Eight focus groups and ten interviews were held in-person and virtually on 26th November 2022, and 2nd, 6th and 13th December 2022. Interviews lasted approximately one hour with focus groups lasting approximately two hours. Focus groups were facilitated by members and allies of ATD Fourth World, whilst interviews were facilitated by Dr Koldo Casla and Lyle Barker. Each focus group and interview adhered to safe and ethical practices, going over issues of consent, data protection and anonymity at the beginning of each session. Participants were free to withdraw their consent at any point during the interview, or indeed after the interview until the moment of publication. Participants remain anonymous, unless they expressly stated that they wanted to be named. The interviews were not recorded, but facilitators and interviewers took notes.

²¹ Andy Bilson and Marion Macleod, 'Social Work Interventions with Children under 5 in Scotland: Over a Quarter Referred and One in Seventeen Investigated with Wide Variations between Local Authorities' (2023) 53(4) *The British Journal of Social Work* <<https://academic.oup.com/bjsw/advance-article/doi/10.1093/bjsw/bcad079/7048783>> accessed 7 March 2023; Fenton and Kelly (n 14).

Seven **study group sessions** were facilitated and hosted by ATD Fourth World UK at their base in Addington Square in South London between May 2022 and June 2023.²² Study groups were led by ATD Fourth World UK as part of their own research, while the focus groups were often facilitated by members of ATD Fourth World UK, with questions and goals also being co-defined by the two authors of this report and members of the organisation so that they were accessible to participants. Discussions for these sessions were chosen in advance by a smaller, yet diverse in experience, steering group. The study groups acted as an in-person learning space which intended to facilitate that parents and young people with lived experience could come together with academics and social workers as individuals rather than in their professional capacity. The topics of these study groups revolved around the seven key themes identified by the steering group. Each session lasted approximately three hours, with a one-hour break in between so that all involved could share a meal together as part of ATD Fourth World UK’s philosophy of coming together.²³

	Number of participants	Sex	Age range	Locations of Participants
Parents that have experience with social work services/had their children in care	17	15 Females and 2 Males	30-52	Birmingham, Buckinghamshire, Hertfordshire, Ipswich, London, Newcastle, Peterborough, Liverpool, Orkney, and Stoke-on-Trent
Social workers/parent advocates	10	8 Females and 2 Males	32-56	Bedfordshire, Blandford, Brighton & Hove, Buckinghamshire, Ipswich, Leicester, Liverpool, Stains-upon-Thames, and Wivenhoe

²² Study Group sessions were facilitated and hosted by ATD on: 6 June 2022, 29 July 2022, 28 October 2022, 16 December, 26 January 2023, 17 March 2023 and 2 June 2023.

²³ ATD UK, 'Sharing More Than Food - ATD Fourth World UK' (ATD Fourth World UK, 2016) <<https://atd-uk.org/2016/06/22/sharing-more-than-food/>> accessed 23 August 2022.

Young people that have experience with social work services/People with experience in care as a young person	6	5 Females and 1 Male	3 Young people (16-18) 3 People with experience in care as a young person (35-37)	Liverpool, London, Orkney, and Reading
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2.2. Structure

Chapter 3 presents the international human rights legal framework relevant to the issues of poverty and child protection, with a particular focus on the right to protection and assistance to the family under Article 10 ICESCR.

Chapter 4 lays out relevant domestic law and policy of England's children protection system.

Chapter 5 first discusses the issue of povertyism within England's child protection system, illustrating the fact that families in poverty are overrepresented in this system. The chapter then moves on to present some of the negative consequences of the disproportionate risk-aversion in the system, contending that various policy and practice issues are leading to future harm – fuelled by a system that is single minded in its focus on the potential risk of harm caused by parents rather than the potential risks of harm generated through intervention from the child protection system. The chapter then examines the impact that austerity and privatisation has had on families in poverty and the budgets of local authorities.

Finally, **Chapter 6** explores parent-to-parent advocacy, which facilitates a peer support system and can address cultures of risk-aversion and povertyism within social work practice.

3. International human rights law framework

The UK has signed and ratified a number of international human rights treaties, both at the UN and the regional European human rights system.²⁴ Combined, these international human rights obligations mean, among other things, that the UK and its public authorities must protect and provide assistance to the family, enhance children's best interests, and respect, protect and fulfil socio-economic rights.

ICESCR is the primary normative reference in relation to socio-economic rights like housing, health, education and social security.

Article 10(1) ICESCR declares the right to protection and assistance to the family: “The **widest possible protection and assistance should be accorded to the family**, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children...”

Article 10(3) ICESCR goes on to state that “special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions...”

The right to protection and assistance to the family is connected with other rights recognised in ICESCR, particularly the right to work and rights at work (Articles 6 and 8), the right to social security (Article 9), and the right to an adequate standard of living (Article 11), which includes housing and food.

²⁴ OHCHR, ‘United Kingdom of Great Britain and Northern Ireland Ratification Status’ (*United Nations Treaty Bodies | Body Database*, 2022) <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CESCR&Lang=en> accessed 2 November 2022; Council of Europe, ‘By Member States of the Council of Europe - Treaty Office’ (*Council of Europe | Treaty Office*, 2023) <<https://www.coe.int/en/web/conventions/by-member-states-of-the-council-of-europe?module=treaties-full-list-signature&CodePays=UK&CodeSignatureEnum=&DateStatus=04-03-2023&CodeMatiere=>> accessed 228 March 2023; International Labour Organization, ‘Ratifications of ILO conventions: Ratifications for United Kingdom of Great Britain and Northern Ireland’ (*International Labour Organization*, 2023) <https://www.ilo.org/dyn/normlex/en/f?p=1000%3A11200%3A0%3A%3ANO%3A11200%3AP11200_COUNTRY_ID%3A102651> accessed 28 March 2023.

As a signatory to ICESCR, the UK has made a legally binding commitment to respect, protect and fulfil the rights contained in this international treaty.²⁵ However, ICESCR has not yet been incorporated into the UK internal legal system. Therefore, ICESCR is not directly enforceable by UK domestic courts, meaning that rights-holders cannot bring cases that concern violations of their rights under ICESCR to UK courts.

The right to protection and assistance to the family is also closely related to Article 23 of the 1966 International Covenant on Civil and Political Rights (ICCPR), also signed and ratified by the UK.²⁶ Article 23(1) ICCPR recognises that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” Another relevant provision in ICCPR is Article 17, which prohibits arbitrary or unlawful interference with the family. Article 10 ICESCR, however, is not limited to the prohibition of this sort of interference, as it has a wider ambit that includes “the widest possible” measures of assistance and protection of the family.

Regrettably, the UN Committee on Economic, Social and Cultural Rights (CESCR) has not issued an authoritative interpretation of Article 10 ICESCR in the form of a general comment. The Committee has not had the chance either to elaborate the meaning of this article in its case-law in application of the Optional Protocol to ICESCR,²⁷ an instrument that in any case is not directly applicable in the UK since the State has not signed up to the Protocol.²⁸

Article 17 of the ICCPR provides a subjective and “broad interpretation of ‘family’ to “include all those comprising the family as understood in the society of the State party concerned.”²⁹ Similarly, the European Court of Human Rights (ECtHR), in application of the European Convention on Human Rights (ECHR), which is also binding for the UK,³⁰ has established that family includes marriage-based relationships but also other de facto family ties, including couples of same sex or different sexes who are

²⁵ United Kingdom of Great Britain and Northern Ireland Ratification Status (n 24); Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 art 26; UNGA ‘Report of the United Nations High Commissioner for Human Rights’ (2016) UN Doc E/2015/59 paras 16-30.

²⁶ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR); United Kingdom of Great Britain and Northern Ireland Ratification Status (n 24).

²⁷ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (adopted 10 December 2008, entered into force 5 May 2013) UNTS 2922.

²⁸ United Kingdom of Great Britain and Northern Ireland Ratification Status (n 24).

²⁹ CCPR ‘General Comment No. 16: Article 17 (Right to Privacy) The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation’ (1988) UN Doc HRI/GEN/1/Rev.9 (Vol. I) para 5.

³⁰ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR); Human Rights Act 1998, s 2; By Member States of the Council of Europe - Treaty Office (n 24).

living together outside marriage.³¹ Both the UN Committee on the Rights of the Child (CRC) and the European Court of Human Rights have stated that family life includes at least the ties between near relatives, for instance those between grandparents and grandchildren, since such relatives may play a considerable part in family life.³² Furthermore, the ECtHR has held that family life can encompass relationships between siblings, aunts, uncles, nieces, and nephews.³³

In line with Article 10(3) ICESCR, any intervention and assessment of risk made by **child protection services** must be proportionate and free from discrimination.

The ECtHR and the European Committee of Social Rights (ECSR) have made pertinent observations on the relationship between child protection and the right to family life. The European Committee of Social Rights monitors compliance with the European Social Charter (ESC) by countries that have signed up to this treaty, including the UK.³⁴

In the case of *Soares de Melo v Portugal*, the European Court of Human Rights condemned the country's child protection services for punishing a mother by removing her children simply because she lived in poverty. In light of the right to private and family life (Article 8 ECHR), the Court held that poverty must not be conflated with neglect, and it can never be the sole ground for separating children from their families.³⁵

Article 16 ESC also protects the right of the family to social, legal and economic protection. The European Committee of Social Rights (ECSR) has established that "financial conditions or material circumstances" are not by themselves sufficient reasons to interfere with the right to family life. Placement of children outside of the home should be an exceptional and temporary measure, and in all circumstances

³¹ *Paradiso and Campanelli v Italy* App no 25358/12 (ECtHR, 24 January 2017) para 140; *Oliari and Others v Italy* App nos 18766/11 and 36030/11 (ECtHR 21 July 2015) para 130.

³² *Marckx v Belgium* App no 6833/74 (ECtHR, 13 June 1979) para 45; *Bronda v Italy* App no 22430/93 (ECtHR, 9 June 1998) para 51; *T.S. and J.J. v Norway* App no 15633/15 (ECtHR, 4 April 2017) para 23; CRC 'General Comment No. 14: Right of the child to have his or her best interests taken as a primary consideration (Article 3.1)' (2013) UN Doc CRC/C/GC/14 para 60; Convention on the Rights of the Child (adopted 20 November 1989 and entered into force 2 September 1990) 1577 UNTS 3 (UNCRC) art 5.

³³ *Moustaquim v Belgium* App no 12313/86 (ECtHR, 18 February 1991) para 36; *Mustafa and Armağan Akın v Turkey* App no 4694/03 (ECtHR, 6 July 2010) para 19; *Boyle v the United Kingdom* App no 16580/90 (ECtHR, 28 April 1994), paras 41-47.

³⁴ European Social Charter 1996 (Original Version) (adopted 18 October 1961, entry into force 26 February 1965) CETS 35 (ESC); By Member States of the Council of Europe - Treaty Office (n 24).

³⁵ *Soares de Melo v Portugal* App no 72850/14 (ECtHR, 16 February 2016), paras 106-108.

appropriate alternatives to placement should first be explored, considering the views and wishes expressed by the child, their parents and other members of the family. Reintegration with the family should always be a goal, ensuring contact with the family during the placement outside the home, unless contrary to the best interests of the child, and “[w]henver possible, placement in a foster family or in a family-type environment should have preference over placement in an institution.”³⁶

Article 3 UN Convention on the Rights of the Child (UNCRC) establishes the **principle of the best interests of the child**:

“1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

“2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.”

“3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”

Interpreting ICCPR, the UN Human Rights Committee (CCPR) stated that “in cases where the parents and the family seriously fail in their duties, ill-treat or neglect the child, the State should intervene to restrict parental authority and the child may be separated from his family when circumstances so require.”³⁷

The CRC, in charge of monitoring compliance with UNCRC, adds that “[t]he terms ‘protection and care’ must be read in a broad sense, since their objective is not stated in limited or negative terms (such as ‘to protect the child from harm’), but rather in relation to the comprehensive ideal of ensuring the child’s ‘well-

³⁶ ECSR ‘Conclusions 2011: Statement of Interpretation on Article 16 and 17(1)’ Conclusions no 2011_163_03/Ob/EN (12 December 2011).

³⁷ Human Rights Committee ‘General Comment No. 17: Rights of the Child (Article 24)’ (1989) UN Doc HRI/GEN/1/Rev.1 para 6.

being' and development. Children's well-being, in a broad sense includes their basic material, physical, educational, and emotional needs, as well as needs for affection and safety."³⁸

At the same time, however, children are also entitled to protection and assistance to the family. Article 9(1) UNCRC states that "a child shall not be separated from his or her parents against their will, except when... such separation is necessary for the best interests of the child." The child who is separated from one or both parents is entitled "to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests" (Article 9(3) UNCRC).

The CRC notes that "applying a best-interests approach to decision-making means assessing the safety and integrity of the child at the current time; however, the precautionary principle also requires assessing the possibility of future risk and harm and other consequences of the decision for the child's safety."³⁹ Separation "should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary; separation should not take place if less intrusive measures could protect the child."⁴⁰ However, "[b]efore resorting to separation, the State should provide support to the parents in assuming their parental responsibilities and restore or enhance the family's capacity to take care of the child, unless separation is necessary to protect the child. Economic reasons cannot be a justification for separating a child from his or her parents."⁴¹ In such an assessment, "[d]ecision-makers should consider measures that can be revised or adjusted accordingly, instead of making definitive and irreversible decisions... To do this, they should not only assess the physical, emotional, educational and other needs at the specific moment of the decision, but should also consider the possible scenarios of the child's development, and analyse them in the short and long term. In this context, decisions should assess continuity and stability of the child's present and future situation."⁴²

Article 19 UNCRC prohibits **all forms of violence against children**.⁴³ The interpretation of this article by the CRC can be used as a point of reference for Article 10 ICESCR. The CRC lists under the prohibited forms of violence: neglect or negligent treatment, mental violence, physical violence, corporal punishment, sexual abuse and exploitation, torture and inhuman or degrading treatment or punishment,

³⁸ CRC 'General Comment No. 14: Right of the child to have his or her best interests taken as a primary consideration (Article 3.1)' (2013) UN Doc CRC/C/GC/14 para 71.

³⁹ *ibid* para 74.

⁴⁰ *ibid* para 61.

⁴¹ *ibid*.

⁴² *ibid* para 84.

⁴³ *ibid* art 19.

violence among children, self-harm, and other harmful practices.⁴⁴ The CRC has also stated that when it comes to family separation and placing a child in an institution, child protection services should aim to find a middle ground between evaluating the child's safety, current risks, and present harm, while also considering the possibility of future risks and harm to the child's safety in both the short and long term.⁴⁵

In accordance with the right to protection and assistance to family, **active participation** must be respected. Families' voices must be heard in the development of policies that may affect them, including the opinions and views of families living in poverty. Civil society organisations with expertise in this regard should be consulted on the relevant policies.⁴⁶ Children's views and opinions must be "given due weight in accordance with the age and maturity of the child," and this includes in court and in administrative proceedings (Article 12 UNCRC).

With the UK also being a signatory to the Convention on the Elimination of **Discrimination Against Women** (CEDAW),⁴⁷ the State, and its public and local authorities, also have obligations under Articles 1 and 2(2) of the Convention to prevent the discrimination of women in any form.

The CESCR has stated that "**poverty** may be defined as a human condition characterised by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living" and other human rights.⁴⁸

Families in poverty should have access to appropriate social services suited to their needs, including counselling and psychological advice.⁴⁹

⁴⁴ CRC 'General Comment No. 13: The Right of the Child to Freedom from all Forms of Violence' (2011) UN Doc CRC/GC/13 paras 19-31.

⁴⁵ CRC General Comment No. 14 (n 38) paras 78, 84.

⁴⁶ Conclusions 2011: Statement of Interpretation on Article 16 and 17(1) (n 36).

⁴⁷ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) UNTS 1249 (CEDAW).

⁴⁸ CESCR 'Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights' (2001) UN Doc E/C.12/2001/10 para 8.

⁴⁹ ECSR 'Conclusions 2019 - Serbia - Article 16' Conclusions no 2019/def/SRB/16/EN (5 December 2018); ESCR 'Conclusions 2019 – Article 16' Conclusions no 2019/def/BGR/16/EN (5 December 2019).

It is the view of the European Committee of Social Rights that Article 16 ESC should cover the right to **adequate housing**, including prohibition of forced evictions.⁵⁰ States should provide an adequate supply of housing, taking the needs of different types of families into account, ensuring that housing meets the requirements of adequacy, is of suitable size and includes essentials such as heating and electricity.⁵¹

“**Family benefits**” are explicitly mentioned in Article 16 ESC. Family benefits should be sufficient in quantity, and must meet the standards of availability, adequacy and accessibility of the right to social security, recognised both in ESC and in ICESCR.⁵² Other forms of economic protection, like birth grants, additional payments for large families, tax reliefs and in-kind contributions can be considered family benefits as well.⁵³ ILO Convention No. 102, concerning social security, also ratified by the UK, includes under “family benefits” those related to child maintenance, either on a contributory insurance or universal means-tested social security basis, and involving either cash payments and/or direct support for children (for food, clothing, housing, holidays or domestic help).⁵⁴

The CESCR has also established that:

“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.”⁵⁵

Like all other socio-economic rights, the right to protection and assistance to the family is subject to **progressive realisation** under Article 2(1) ICESCR, making use of the maximum of available resources.

⁵⁰ *COHRE v Italy* Complaint no. 58/2009 (ECSR, 25 June 2010) para 115; ECSR, *FIDH v Ireland* Complaint no. 110/2014 (ECSR, 12 May 2017) para 121; ECSR, *ERRC v Bulgaria* Complaint no. 31/2005 (ECSR, 22 May 2017) para 9.

⁵¹ CESCR ‘General Comment No. 4: The Right to Adequate Housing (Art. 11(1) of the Covenant)’ (1991) UN Doc E/1993/23 para 8.

⁵² CESCR ‘General Comment No. 19: The right to social security (art. 9)’ (2008) UN Doc E/C.12/GC/19.

⁵³ Karin Lukas, *The Revised European Social Charter* (Edward Elgar 2021) 221.

⁵⁴ International Labour Organization (ILO) Convention Concerning Social Security (Minimum Standards), 1952 (No. 102) (adopted 28 June 1952, entered into force 27 April 1955) ILO Treaty No. 102 pt VII; Ratifications of ILO conventions (n 24).

⁵⁵ General Comment No. 19 (n 52) para 18.

As observed by the UN CESCR, “the concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time.”⁵⁶ The idea of progressive realisation “imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.”⁵⁷

The principle of **non-retrogression** means that economic measures that “may result in impermissible retrogression” are to be considered, in principle, in breach of human rights. This will be so unless the State can prove that such measures are only temporary, legitimate, reasonable, necessary, proportionate, non-discriminatory, and protective of the core content of the rights at play, and that the decisions were taken in a transparent and participatory process, subject to meaningful accountability and impact assessment.⁵⁸

The burden of proof rests with the State, which must be able to show that the policies under question are indeed the most suitable ones to prevent undue retrogression and to advance progressively towards the ultimate goal of fulfilling economic and social rights for everyone.⁵⁹

The mobilisation of the **maximum of available resources** includes the requirement of a fair and effective tax policy capable of providing public authorities with the necessary means to fulfil socio-economic rights, particularly for people at greater risk of harm, disadvantage and discrimination, such as families with lived experience of poverty.

Despite the expectation that the full satisfaction of economic and social rights will only be achieved over time, certain **obligations** in relation to Article 10 ICESCR have **immediate effect**. At least the prohibition of discrimination and the principle of gender equality are to be considered immediate, as well as the need for the State to adopt a national policy or plan towards the realisation of the right to protection and

⁵⁶ CESCR ‘General Comment No. 3: The Nature of State Parties’ Obligation (Art. 2, Para. 1, of the Covenant)’ (1990) UN Doc E/1991/23 para 9.

⁵⁷ *ibid.*

⁵⁸ Independent Expert on Foreign Debt and Human Rights, ‘Guiding Principles on Human Rights Impact Assessments of Economic Reforms’ (OHCHR 2018) 6 <https://www.ohchr.org/sites/default/files/GuidePrinciples_EN.pdf> accessed 3 November 2022.

⁵⁹ CESCR ‘An Evaluation of the Obligation to Take Steps to the Maximum Available Resources’ (2007) UN Doc E/C.12/2007/1 para. 9.

assistance to the family, paying special attention to particularly vulnerable families, mothers and children.⁶⁰

⁶⁰ Ben Saul, David H Kinley and Jacqueline Mowbray, 'Article 10: Rights of Families, Mothers and Children' in Ben Saul, David H Kinley and Jacqueline Mowbray (eds), *The International Covenant on Economic, Social and Cultural Rights: Commentary Cases and Materials* (Oxford University Press 2014) 727-728.

4. The law and policy of England's child protection system

The Children Act 1989 and Adoption and Children Act 2002 provide the foundation for the child protection framework in England. This chapter will lay out relevant provisions under this Act, precedent under English case-law and the UK Government's guidance for social work practice.

4.1. The duties of local authorities

Section 17(1)(a) of the Children Act 1989 imposes a general duty on local authorities to safeguard and promote the welfare of children who are 'in need' and to promote the upbringing of such children by their families by providing a range and level of services appropriate to those children's needs. Section 17(1)(b) states that the local authority has the duty to "promote the upbringing of such children in their families", so long as it is consistent with the duty under section 17(1)(a). These services can include "one-to-one work with parents and child and group work at Children in Need Centres."⁶¹ Section (4A) of the Act also requires that, before any services are provided, the local authority should "consider the child's wishes and feeling regarding these services," and that they are "given due consideration (having regard to his/her age and understanding)." Section 17(4A) (b) of the Act provides that "[o]ther agencies also have a duty to co-operate with Social Care in carrying out their duty to assess the needs of children and to provide services as necessary." Additionally, Section 17(8) states that "[b]efore giving any assistance or imposing any conditions, **a local authority shall have regard to the means of the child concerned and of each of his parents.**"

Section 17(10) of the Children Act defines a situation of a "child in need" as such in which:

- "The child 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/her of services by a Local Authority."
- "The child's health or development is likely to be significantly impaired, or further impaired without the provision for him/her of such services."

⁶¹ Royal Borough of Greenwich, 'Child and Family Assessments' (*Royal Borough of Greenwich*, 2011)

<[University of Essex](https://www.royalgreenwich.gov.uk/info/200237/family_support_and_safeguarding_children/957/child_and_family_assessments/3#:~:text=After%20meeting%20with%20you%20and,from%20other%20professionals%20to%20you.> accessed November 3 2022.</p></div><div data-bbox=)

- “The child is disabled.”

Section 20(1)(c) of the Act requires that “**every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation** as a result of 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.” Section 20(3) goes on to state that “[e]very local authority shall provide accommodation for any child in need within their area who has reached the age of sixteen and whose welfare the authority consider is likely to be seriously prejudiced if they do not provide him with accommodation.” Although, in September 2021, the law changed prohibiting local authorities from placing a child under the age of 16 in an unregulated placement.⁶²

In March 2023, following the publication of the UK Government’s children’s social care strategy and Independent Review into Children’s Social Care, the Government published a consultation response that aims to ban unregulated accommodation for 16–17-year-olds.⁶³ The consultation “sets out key features of an Ofsted regulatory regime, including enforcement powers and offence provisions, such as right of entry powers and the prosecution of providers who do not register. The response also outlines the standards that providers will have to follow, covering physical surroundings of homes, as well as how children are kept safe and the mental and emotional support they should be given.”⁶⁴

From these duties, Section 43(1) states that the local authority may make an application to an English family court for an assessment of the child if:

- “[T]he applicant has **reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm.**”
- “[A]n **assessment of the state** of the child’s health or development, or of the way in which he has been treated, **is required to enable the applicant to determine whether or not the child is suffering, or is likely to suffer, significant harm;** and”
- “[I]t is unlikely that such an assessment will be made, or be satisfactory, in the absence of an order under this section.”

⁶² Tom Harrill, ‘The Prerogative Rules, Not the Statute: How to Place Children under Sixteen in Unregulated Placements’ (St Ives Chambers 2021) 1 <<https://www.stiveschambers.co.uk/content/uploads/2021/10/The-Prerogative-Rules-Not-the-Statute-How-to-Place-Children-Under-Sixteen-in-Unregulated-Placements-FINAL.pdf>> accessed 3 November 2022; The Care Planning, Placement and Case Review (England) (Amendment) Regulations 2022.

⁶³ UK Government, ‘Government Bans Accommodation for Young People in Care’ (*gov.uk*, 2023) <<https://www.gov.uk/government/news/government-bans-unregulated-accommodation-for-young-people-in-care>> accessed 28 March 2023.

⁶⁴ *ibid.*

Under Section 44, the local authority can apply for an emergency protection order where there are reasonable grounds for believing there is an immediate risk of “significant harm” to a child.

Section 47 requires that “where there are child protection concerns (reasonable cause to suspect a child is suffering or likely to suffer significant harm) local authority social care services must make enquiries and decide if any action must be taken.”

4.2. The legislation on looked after orders

If a child is considered to be “in need” or at risk of “significant harm” following an assessment, the case will usually be referred to a domestic English family proceedings court for a care or supervision order. Section 31(2) of the Children Act requires that “children only be removed from their parents if they have suffered, or are at risk of suffering, significant harm.” However, whilst this threshold of “significant harm” is mentioned throughout the Act, there is no strict definition for this principle. Julie Haines, of the group Justice for Families, stated in 2012 that “Parliament has given the courts free rein to define the term ‘significant harm’ within case law authorities and has not deemed it necessary to provide a definitive meaning within the Act. There is no check list of harm, no clues as to what the courts could be looking for.”⁶⁵

Under section 22 of the Children Act, “[w]hen a **Care Order** has been made, the local authority must”:

- “Receive the child into its care for the duration of the Care Order.”
- “Provide accommodation and maintenance for the child.”
- “Safeguard and promote the child’s welfare.”
- “Before making any decision in respect of the child, the local authority must ascertain the wishes and feelings of the child, those with Parental Responsibility, parents and anybody else relevant to the child, and give consideration to those wishes and feelings.”
- “Appoint an independent visitor for the child in some circumstances.”
- “Make arrangements for the care plan to be reviewed by an Independent Reviewing Officer.”
- “Advise, befriend and assist the child with a view to promoting their welfare once they are no longer looked after.”
- “Allow for reasonable parental contact with the child whilst they are in care.”
- “Keep under review whether to apply to discharge the Care Order.”

⁶⁵ Julie Haines, ‘Written Evidence Submitted to the Education Committee – Children First: The Child Protection System in England’ (UK Parliament, 2012) <<https://publications.parliament.uk/pa/cm201213/cmselect/cmeduc/137/137vw72.htm>> accessed 3 November 2022.

Under section 35, “[w]hen a **Supervision Order** has been made, the supervisor must”:

- “Advise, assist and befriend the supervised child.”
- “Take such steps as are reasonably necessary to give effect to the order; and”
- “Where the order is not wholly complied with; or the supervisor considers that the order may no longer be necessary, to consider whether or not to apply to the court for its variation or discharge.”

A care order gives the local authority parental responsibility over the subject child or children (meaning that it can make decisions for the child and override the wishes of the parents and the child) and becomes the ‘corporate parent’. A care order will last for the entirety of the child’s childhood and the child is treated as a looked after child, unless the order is discharged.⁶⁶

A supervision order places an obligation on the Local Authority to advise, befriend, and assist the subject child or children. It does not confer parental responsibility and the child is not treated as a looked after child. The order lasts for up to a year and can then be extended annually by up to three further years.⁶⁷ The language around “advise, befriend and assist” has been contested by parents and professionals, for whom it is too nebulous and unclear.⁶⁸

Section 8 of the Act defines a “**Child Arrangements Order**” as an order regulating arrangements relating to any with whom a child is to live, spend time or otherwise have contact, and when a child is to live, spend time or otherwise have contact with any person.

Section 14 of the Act defines a “**Special Guardianship Order**” is an order appointing one or more individuals to be a child’s “special guardian” (or special guardians).

Under the Act, a special guardian:

- “Must be aged eighteen or over; and”
- “Must not be a parent of the child in question”.

⁶⁶ Carrie Lewis, ‘What is the difference between a Care order and a Supervision Order’ (*The Family Law Co.*, 2019) <<https://www.thefamilylawco.co.uk/blog/children/what-is-the-difference-between-a-care-order-and-a-supervision-order/>> accessed 3 November 2022.

⁶⁷ *ibid.*

⁶⁸ Mary Ryan, Alice Roe and Jordan Rehill, ‘Supervision orders in care proceedings: survey findings’ (Nuffield Foundation 2021) 32 <https://www.nuffieldfjo.org.uk/wp-content/uploads/2021/05/nfjo_supervision_orders_survey_findings_report_final_20210408.pdf> accessed 12 May 2023.

“The individuals who are entitled to apply for a special guardianship order with respect to a child are”:

- “Any guardian of the child.”
- “Any individual who is named in a child arrangements order as a person with whom the child is to live”.
- “Any individual whom the child has lived for a period of at least three years or has parental responsibility of the child”.
- “A local authority foster parent with whom the child has lived for a period of at least one year immediately preceding the application.”

“A relative with whom the child has lived for a period of at least one year immediately preceding the application.”

Under section 20(8) there are children who are placed in the care system through “**Voluntary Arrangements**”. These arrangements can be established without involving the court and do not require a court order. Additionally, children’s services do not assume parental responsibility for a child who is placed in the care system through a voluntary arrangement. It is important to note that children in voluntary arrangements are not referred to as being “in care.”⁶⁹ Sir James Munby, a retired judge who presided the Family Division of the High Court of England and Wales, criticised the use of Section 20(8), stating that “there is, I fear, far too much misuse and abuse of section 20 and this can no longer be tolerated.”⁷⁰

Under section 21 of the Adoption and Children Act 2002, the court can grant a local authority the “authority to place a child for adoption with any prospective adopters who may be chosen by the authority” under a “**Placement Order**.”

“The court may not make a placement order in respect of a child unless:”

- “The child is subject to a care order.”
- “The court is satisfied that the conditions in section 31(2) of the 1989 Act (conditions for making a care order) are met, or”
- “The child has no parent or guardian.”

⁶⁹ Family Rights Group, ‘Children in the Care System under Voluntary Arrangements (Section 20)’ (*Family Rights Group*, 2022) <<https://frg.org.uk/get-help-and-advice/what/children-in-the-care-system-under-voluntary-arrangements-section-20/>> accessed 1 June 2023.

⁷⁰ *N (Children) (Adoption: Jurisdiction)* [2015] EWCA Civ 1112 [158].

“The court may only make a placement order if, in the case of each parent or guardian of the child, the court is satisfied:”

- “That the parent or guardian has consented to the child being placed for adoption with any prospective adopters who may be chosen by the local authority and has not withdrawn the consent, or”
- “That the parent’s or guardian’s consent should be dispensed with.”

Under Section 34(1), children’s services **must allow child in care reasonable contact** with:

- “Their parents;”
- “Any guardian;”
- “Any person who held a Residence Order or Child Arrangements Order for residence immediately before the Care Order was made; and”
- ‘Any person who had care of the child under wardship immediately before the Care Order was made.’”

Children’s Services have a general duty to promote contact with wider family members, such as grandparents and siblings under Schedule 2(15). This is the default position in the absence of any court orders. A child in care can also make an application under a section 8 “**Child Arrangements Order**” to have contact with a sibling.

4.3. The law on the best interests of the child

In the consideration of providing these orders, the court must determine the child’s best interests by following a set of principles under Section 1 of the Children Act. In deliberation of the best interests of the child, the court must have regard to:

- “The ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding).”
- “This physical, emotional and educational needs.”
- “The likely effect on him of any change in his circumstances.”
- “His age, sex, background and any characteristics of his which the court considers relevant.
- “Any harm which he has suffered or is at risk of suffering.
- “How capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs.”
- “The range of powers available to the court under this Act in the proceedings in question.”

In addition to these consideration, in case of *Zoumbas v Secretary of State for the Home Department*,⁷¹ the UK Supreme Court (UKSC) held that “when making an assessment of proportionality under Article 8 (the right to respect for private and family life) ECHR, the best interests of the child have to be a primary consideration.”⁷² The Court reiterated the seven principles guiding the best interests of the child under Article 8 ECHR (previously provided in *ZH (Tanzania), H v Lord Advocate*⁷³ and *H(H) v Deputy Prosecutor of the Italian Republic*):⁷⁴

1. “The best interests of a child are an integral part of the proportionality assessment under article 8 ECHR.”
2. “In making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration.”
3. “Although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant.”
4. “While different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued when other important considerations were in play.”
5. “It is important to have a clear idea of a child's circumstances and of what is in a child's best interests before one asks oneself whether those interests are outweighed by the force of other considerations.”
6. “To that end there is no substitute for a careful examination of all relevant factors when the interests of a child are involved in an article 8 assessment; and”
7. “A child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent.”

4.4. The UK Government’s guidance on child protection

In 2018, the UK Government provided the ‘Working Together’ guidance on what local authorities must consider when carrying out the assessments.⁷⁵

⁷¹ [2013] UKSC 74.

⁷² *ibid* [33].

⁷³ [2012] UKSC 308.

⁷⁴ [2013] 1 AC 338.

⁷⁵ UK Government, ‘Working Together to Safeguard Children A guide to inter-agency working to safeguard and promote the welfare of children’ (UK Government 2018)

When referring to the length of time of an assessment, the guidance provides that “the maximum timeframe for the assessment to conclude should be no longer than 45 working days from the point of referral. If, in discussion with a child and their family and other practitioners, an assessment exceeds 45 working days, the social worker should record the reasons for exceeding the time limit.”⁷⁶ In an assessment, “local authority children’s social care should convene a strategy discussion to determine the child’s welfare and plan rapid future action if there is reasonable cause to suspect the child is suffering or is likely to suffer significant harm.”⁷⁷

The guidance goes on to provide that following a Section 47 enquiry, “a child protection conference should be established to bring together family members (and the child where appropriate), with the supporters, advocates and practitioners most involved with the child and family, to make decisions about the child’s future safety, health and development.”⁷⁸

From there, “a child protection plan should be set up to”⁷⁹:

- “Ensure the child is safe from harm and prevent them from suffering further harm.”
- “Promote the child’s health and development.”
- “Support the family and wider family members to safeguard and promote the welfare of their child, provided it is in the best interests of the child.”

The official guidance also states that “[w]here a child in need is approaching 18 years of age, this transition point should be planned for in advance. This includes where children are likely to transition between child and adult services.”⁸⁰

However, PFAN has criticised the ‘Working Together’ guidance for its lack of consideration towards the involvement of parents in social work assessments. For PFAN, new guidance should state that:⁸¹

- “Section 47 investigations should be separated from children in need assessments.”

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942454/Working_together_to_safeguard_children_inter_agency_guidance.pdf> accessed 3 November 2022.

⁷⁶ ibid 34.

⁷⁷ ibid 41.

⁷⁸ ibid 49.

⁷⁹ ibid 51.

⁸⁰ ibid 38.

⁸¹ PFAN, ‘Children’s Social Care: The Way Forward’ (PFAN 2022) 8 <<https://www.pfan.uk/wp-content/uploads/2022/02/Childrens-social-care-the-way-forward.pdf>> accessed 3 November 2022.

- “Children in need assessments should be led by the parents’ and child’s concerns and the coproduction of a child in need plan.”
- “A requirement that even where there is an investigation under section 47 there should be a child in need assessment.”
- “Staff should be focussed on providing help – a well-funded system of help for families which includes staff whose role is to co-produce a range of services with children, parents, families and local communities and to divert children and families from unnecessary child protection involvement.”

In June 2023, the Department for Education has announced plans to make changes to the ‘Working Together’ guidance.⁸² The new ‘Working Together’ guidance is currently planned around four areas of reform which include “working together towards the same goal”, “multi-agency safeguarding arrangements”, “help and support for children and their families” and “decisive multi-agency child protection”.⁸³ New guidance should reflect PFAN’s recommendations and other calls for change in child protection policy discussed in this report.

⁸² Department for Education, ‘Open consultation - Guide for children and young people: Working Together to Safeguard Children’ (gov.uk, 2023) <<https://www.gov.uk/government/consultations/working-together-to-safeguard-children-changes-to-statutory-guidance/guide-for-children-and-young-people-working-together-to-safeguard-children>> accessed 25 June 2023.

⁸³ *ibid.*

5. Human rights concerns in England's child protection system

This chapter presents three human rights concerns in England's child protection system. First it examines the issue of povertyism, understood as the negative stereotyping against people in poverty. This is important because evidence shows how families in poverty are overrepresented in the system.

Secondly, the chapter exposes some of the adverse and unintended effects of the disproportionately risk-averse nature of the system. Various policies and practices are leading to future harm, fuelled by a system that is single-minded in its focus on the potential risk of harm caused by parents rather than the potential risks of harm through intervention from the child protection system.

Finally, the chapter examines the impact that austerity and privatisation has had on families in poverty and the capacity and resources of local authorities.

5.1. Discrimination on the grounds of povertyism

Since 2008, ATD Fourth World and its allies have been working to raise awareness of discrimination on the grounds of poverty or socio-economic disadvantage, conceptualising this form of discrimination as "povertyism".⁸⁴ In his 2022 report, the UN Special Rapporteur on Extreme Poverty and Human Rights, Olivier de Schutter, took heed of this concept and encouraged all States to ensure their anti-discrimination framework effectively to prohibit direct and indirect discrimination on the grounds of povertyism.⁸⁵ Discrimination that occurs on the grounds of poverty or socio-economic status is in direct contradiction of Article 2(2) ICESCR.⁸⁶

⁸⁴ Matt Davies, 'Eradicating child poverty: the role of key policy areas - The effects of discrimination on families in the fight to end child poverty' (Joseph Rowntree Foundation 2008) <<https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/2271-poverty-exclusion-discrimination.pdf>> accessed 25 June 2023.

⁸⁵ UNCHR 'Report by Special Rapporteur on Extreme Poverty and Human Rights' (2022) UN Doc A/77/157 paras 4, 46.

⁸⁶ CESCR 'General Comment Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)' (2009) UN Doc E/C.12/GC/20 para 35.

Children and families in poverty are significantly more likely to be the subject of state intervention.⁸⁷ Research carried out by Bennett and others in 2022 finds that “[b]etween 2015 and 2020, across England, after controlling for employment rates, local authorities that saw a greater rise in child poverty had greater increases in the rate of children entering care, the most drastic state intervention into the lives of children and families. These same local authorities also had greater increases in rates of children becoming subject to a child protection plan and beginning an episode of need.”⁸⁸ In March 2021, Isabelle Trowler, the Government’s Chief Social Worker for Children and Families, admitted that “too many children are wrongly being taken into care”.⁸⁹

A peer-reviewed study by Webb and colleagues 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.”⁹⁰ In March 2022, Bywaters and others published their report ‘The Relationship Between Poverty and Child Abuse and Neglect: New Evidence’, which concluded that “18% of parents in contact with Child Welfare Services (CWS) were from the wage earners compared to 47% in the general population, while 70% in contact with CWS were working class or unemployed compared to 34% in the population.”⁹¹

This research also highlights the intersectional nature⁹² of deprivation rates: “[a]t average levels of deprivation, ethnic minority populations [analysed in ‘The Relationship Between Poverty and Child Abuse and Neglect’ report] had significantly different levels of child protection interventions when compared to

⁸⁷ Kate Morris et al., ‘Social work, poverty, and child welfare interventions’ (2018) 23(3) *Child & Family Social Work* 1 <<https://doi.org/10.1111/cfs.12423>> accessed 28 March 2023.

⁸⁸ Davara L Bennett et al., ‘Child Poverty and Children Entering Care in England, 2015–20: A Longitudinal Ecological Study at the Local Area Level’ (2022) 7(6) *The Lancet Public Health* 500 <[https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(22\)00065-2/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(22)00065-2/fulltext)> accessed 7 March 2023.

⁸⁹ 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>> accessed 7 March 2023.

⁹⁰ Calum James Rablin Webb et al., ‘Income Inequality and Child Welfare Interventions in England and Wales’ (2020) 75(3) *Journal of Epidemiology and Community Health* 251-257 <<https://doi.org/10.1136/jech-2020-214501>> accessed 7 March 2023.

⁹¹ Paul Bywaters et al., ‘The Relationship Between Poverty and Child Abuse and Neglect: New Evidence’ (Nuffield Foundation 2022) 70 <<https://www.nuffieldfoundation.org/wp-content/uploads/2022/03/Full-report-relationship-between-poverty-child-abuse-and-neglect.pdf>> accessed 28 March 2023.

⁹² By “intersectional nature” we mean the interconnected nature of social categorisations such as race, class, and gender as they apply to an individual or group, regarded as creating overlapping and interdependent systems of discrimination and disadvantage.

White British MSOA [Middle layer Super Output Areas] populations, but there were no simple universal patterns.”⁹³ In January 2019, Bywaters and others published research on ethnic inequalities in child welfare services, noting that “[o]verall out-of-home care rates for Black and Mixed Heritage children were substantially higher than those for White children but overall child protection plan rates for Black and White children were similar.”⁹⁴

In July 2018, the All-Party Parliamentary Group for Children published its report ‘Storing Up Trouble: A Postcode Lottery of Children’s Social Care’.⁹⁵ The report concludes that “the level of need a child has to reach in order to access support varies across the country meaning that children with very similar needs are getting different interventions based on where they live. Preventative and early help services are particularly prone to variation. This ‘postcode lottery’ of protection, which risks leaving many children without the support they need, is unacceptable.”⁹⁶

When speaking to families that have experienced discrimination on the grounds of poverty, a couple spoke of their son’s nursery referring them for investigation by children’s social care three times in a year because of his frequent bruises.⁹⁷ Each time, children’s social care concluded that the bruises were the natural result of rambunctious play and closed the case. The third social worker put a note against their names to say “[t]here’s nothing wrong with this family, please leave them alone”.⁹⁸ That stopped the investigations, but the mother feels that povertyism played a role in these referrals.

Parents in poverty who have physical disabilities and/or learning difficulties sometimes face discrimination by children’s social care services. Speaking about their experience as a parent advocate, a parent told us:

“It’s true that some parents don’t have the skills needed to raise children. No one ever took the time to teach them how to cook or clean or budget. And these parents haven’t realised that they

⁹³ *ibid* 72.

⁹⁴ Paul Bywaters et al., ‘Paradoxical evidence on ethnic inequities in child welfare: Towards a research agenda’ (2019) 96 *Children and Youth Services Review* 149 <<https://doi.org/10.1016/j.childyouth.2018.11.042>> accessed 28 March 2023.

⁹⁵ Party Parliamentary Group for Children, ‘Storing Up Trouble: A postcode lottery of children’s social care’ (All Party Parliamentary Group for Children 2018) <<https://www.ncb.org.uk/sites/default/files/uploads/files/NCB%20Storing%20Up%20Trouble%20%5BAugust%20Update%5D.pdf>> accessed 7 March 2023.

⁹⁶ *ibid* 48.

⁹⁷ Interview with mother, conducted by ATD Fourth World UK on 7 July 2022 in Feltham, West London.

⁹⁸ *ibid*.

deserve support. Recently I was supporting a mother with a learning disability whose child is in foster care. During a Zoom conversation, I taught her how to make soup that she could bring to her child during a contact visit. The social worker told me that I was 'interfering with the case' because they were already planning for the child's adoption and wanted to show that this mother was not capable of raising her child. Later when the social worker made an unannounced visit to the mother's home, when she found it properly cleaned, she guessed that I had again been supporting the mother, so she had a go at me for 'interfering'. It's only because they're setting parents up to fail that wrapping a community of care around a parent is seen as controversial."⁹⁹

We also spoke to a parent who expressed that she felt helpless when it came to understanding what was going on in Family Court proceedings:

"I had a parent-to-parent advocate. She was lovely. She helped me. She was not allowed in court with me. How am I supposed to understand it when sometimes I don't understand what's going on? Sometimes the barrister helps me. But the barrister is ahead of me. Without family and the parent-to-parent advocate, I was alone."¹⁰⁰

Without representation and advice that parents can rely upon, they could be misrepresented and mischaracterised, coupled with the likelihood of not being "taken seriously, seen or heard."¹⁰¹ On the other hand, parents from more affluent backgrounds are likely to find less hardships in the child protection system because of their background, social standing, resources and connections.¹⁰² Bywaters and others note that "social workers described finding it more difficult to engage middle class parents, a greater tendency for disguised compliance and the potential for social workers to feel intimidated by parents who were wealthy or well educated".¹⁰³ As observed by Curtis, "[w]e all have lapses in standards sometimes; but being comfortable enough to have those lapses is a privilege in itself."¹⁰⁴

The issue of "disguised compliance" occurs when a family makes an effort to appear as if they are adhering to plans aimed at safeguarding or promoting the well-being of a child, but they fail to follow through with substantial action. This may sometimes involve a brief period of improvement that is not

⁹⁹ Interview with mother, conducted by Human Rights Local and ATD Fourth World UK on 2 December 2022 via Zoom.

¹⁰⁰ Interviews with mothers, conducted by Human Rights Local and ATD Fourth World UK on 6 December 2022 in South London.

¹⁰¹ The Relationship Between Poverty and Child Abuse and Neglect (n 91) 75.

¹⁰² *ibid* 34.

¹⁰³ *ibid* 75.

¹⁰⁴ Curtis (n 3) 196.

sustained over time.¹⁰⁵ However, a fundamental issue with this practice is that “disguised compliance” can be mistaken for parent’s unwillingness to meaningfully communicate due to the shame that some parents in poverty experience.¹⁰⁶ Moreover, Leigh, Beddoe and Keddell have noted that while the term “disguised compliance” may appear to identify worrisome behaviour, its implementation overlooks the fact that families labelled as such will perpetually face challenges in meeting the expectations of professionals, putting them in a lose-lose situation. If parents comply with the prescribed objectives, they will be regarded with caution; if they resist, they will be viewed with suspicion. As such, Leigh and colleagues go on to express that when social workers employ the term, they are not truly addressing disguised compliance but rather encountering “disguised resistance”.¹⁰⁷ In order to avoid discriminatory practices, it is necessary for social workers to be mindful of the feeling of shame that some parents may have before any accusations are brought forward and wary in their use of the term “disguised compliance”.

To combat these concerns involving povertyism, Bywaters and others argue that “policies which set the structural context of children’s social care services should be ‘poverty proofed’.”¹⁰⁸ This can be addressed at a national level by:¹⁰⁹

- “Examining the distribution of funding between and within local authorities, and the connections between families’ needs and service provision, so that allocations better meet need.”
- “Reviewing the data that is collected about families and the focus of analysis and reporting so that the impact of family socio-economic circumstances is visible and can be addressed.”
- “Refocusing the attention paid by regulators, such as Ofsted, in England, so that addressing the causal impact of poverty and inequality on families becomes a core issue for quality judgements.”
- “Reviewing the role and ethos of family courts so that courts require consideration of families’ resource needs.”
- “Reconsidering the content of social work education, so that staff are better prepared to help families with issues of poverty and inequality.”

¹⁰⁵ Peter Reder, Sylvia Duncan and Moira Gray, ‘Child Protection Dilemmas in a “not-Existing” Pattern of Abuse’ (1993) 15(1) *Journal of Family Therapy* <<https://doi.org/10.1111/j.1467-6427.1993.00740.x>> accessed 1 June 2023.

¹⁰⁶ Anna Gupta and Hannah Blumhardt, ‘Giving Poverty a Voice: Families’ Experiences of Social Work Practice in a Risk-Averse Child Protection System’ (2016) 5(1) *Families, Relationships and Societies* <<https://doi.org/10.1332/204674316X14540714620166>> accessed 1 June 2023.

¹⁰⁷ Jadwiga Leigh, Liz Beddoe, and Emily Keddell, ‘Disguised compliance or undisguised nonsense? A critical discourse analysis of compliance and resistance in social work practice’ (2020) 9(2) *Families, Relationships and Societies* 280 – 285 <<https://doi.org/10.1332/204674319X15536730156921>> accessed 25 June 2023.

¹⁰⁸ *The Relationship Between Poverty and Child Abuse and Neglect* (n 91) 96.

¹⁰⁹ *ibid* 97.

The UK Government has also introduced a new pilot scheme to improve transparency in court proceeding that will run for 12 months from January 2023.¹¹⁰ The scheme will allow journalists and legal bloggers to report from Family courts in Cardiff, Leeds and Carlisle and will allow them to access “quite a number of documents which [journalists and bloggers] always had to beg for before. And [journalists and bloggers] will be allowed to quote from them.”¹¹¹ This scheme has the potential to reduce stigmatisation of poverty within the Family Court reporting process.

The Equality Act 2010 does not include the socio-economic status as a protected characteristic. In its 2016 Concluding Observations, the CESCR 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.¹¹² This refers to the socio-economic duty (section 1 of the Equality Act 2010), 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 the UK Government, in its 2022 report to the CESCR for its seventh periodic review of the UK, says “there are no plans to implement the socio-economic duty for English and cross-border bodies.”¹¹³ If the Act (including the socio-economic duty) is commenced in full, and if the socioeconomic status is included as protected characteristic, both of these measures could be useful tools to prevent and combat discrimination on the grounds of povertyism from occurring in social work spaces (and all other areas of life and work for individuals in the UK).

Ultimately, in order to respect, protect and fulfil the rights to non-discrimination (Article 2(2) ICESCR), the right to protection and assistance to the family (Article 10 ICESCR) and the domestic obligation under section 17(8) of the Children Act, the UK Government should follow Bywater’s and others recommendations, use its maximum available resources (Article 2(1) ICESCR) to prevent and alleviate poverty, extend the Family Court transparency scheme to become a permanent policy, bring the whole of the Equality Act to life (including the socio-economic duty under section 1), and add socio-economic status to the Act’s list of protected characteristics. In doing so, the Government would be able to take

¹¹⁰ House of Common Library, ‘Reporting in the Family Court’ (*UK Parliament*, 2023)

<<https://commonslibrary.parliament.uk/reporting-in-the-family-court/>> accessed 7 March 2023.

¹¹¹ Bron Maher, ‘New era for transparency in family court reporting begins with pilot scheme’ (*Press Gazette*, 2023)

<https://pressgazette.co.uk/media_law/family-court-reporting-pilot-scheme/> accessed 7 March 2023.

¹¹² 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.

¹¹³ UK Government, ‘The United Kingdom’s 7th periodic report under the United Nations Convention on Economic, Social and Cultural Rights (ICESCR)’ (UK Government 2022) 11 <<https://www.gov.uk/government/publications/international-covenant-on-economic-social-and-cultural-rights-icescr-7th-periodic-report>> accessed 1 May 2023.

steps towards realising its obligation under IHRL to ensure that poverty is not conflated with neglect, it is never the sole ground for separating children from their families, and the system is free from this form of discrimination.

5.2. A failure to consider future harm and disproportionate risk-aversion

Fear and risk-aversion reign king in current policy and practice within England's child protection system.¹¹⁴ Public authorities must act to protect children from severe harm, whatever the source. However, the single-mindedness of the system's policies and practice in avoiding harm at the hands of parents can result in a failure to adequately consider the best interests of the child, and in some cases, results in future harm to both children and parents, caused by intervention from the child protection system.

5.2.1. Contested closed adoptions and kinship care

“The UK is unusual, compared to the rest of Europe, for the frequency of forced (contested) adoptions.”¹¹⁵ Data from 2015 suggests that almost half of the 5,050 children adopted in the previous year were given new homes without their parents' consent.¹¹⁶ Similarly, as previously noted, the annual 'children looked after in England including adoptions statistics' show that out of the 2,140 children placed in adoption, only 210 (10%) were adopted with consent.¹¹⁷

Voluntary agreements and placement orders require consent from the parent or guardian and amount to 18,077 (22%) of children removed from their family home between March 2021 and March 2022.¹¹⁸ However, there is not data about whether consent was obtained or not in relation to the majority of children (63,270 or 77%) removed from their families under a care order. According to Alexandra Conroy Harris, a legal consultant for CoramBAAF (an organisation which supports individuals and organisations working around fostering and adoption), this means removals under a care order “will almost certainly

¹¹⁴ Fenton and Kelly (n 14).

¹¹⁵ Cherry Casey, 'The UK Has a Forced Adoption Problem - Prospect Magazine' (*Prospect Magazine*, 2022) <<https://www.prospectmagazine.co.uk/society-and-culture/the-uk-has-a-forced-adoption-problem>> accessed November 3 2022.

¹¹⁶ *ibid*; European Parliament's Policy Department, 'Citizen's Rights and Constitutional Affairs' (European Parliament 2015) 20 <[https://www.europarl.europa.eu/RegData/etudes/STUD/2015/519236/IPOL_STU\(2015\)519236_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2015/519236/IPOL_STU(2015)519236_EN.pdf)> accessed 28 March 2023.

¹¹⁷ Children looked after in England including adoptions - CLA on 31 March by characteristics (n 8).

¹¹⁸ Children looked after in England including adoptions (n 6).

have been made without the consent of the child's parents.”¹¹⁹

Research conducted by Bilson and Munro in 2019 reveals that in 2016-17, there was an increase of over 35% in the rate of children adopted or investigated for child protection concerns before the age of five compared to 2011-12. There was also a 60% rise in the rate of unfounded child protection investigations during the same period. Furthermore, approximately 1 in 16 children underwent investigation before age five, with 1 in 38 investigations deemed unfounded. Bilson and Munro also note that Since 2000 (up until 2017), there had been an almost twofold increase in the rate of five-year-old children being separated from their parents when considering children in care, adoption, and special guardianship.¹²⁰ Further to this, in 2020, Bilson and Bywaters found that from 2008 to 2017, the total number of children born into care was 24,230, while the ‘Nuffield Family Justice Observatory ‘Born into care: newborns and infants in care proceedings in England’ 2018 report indicated that 16,849 children were involved in care proceedings within one week of their birth.¹²¹ With social workers carrying out 217,800 investigations under section 47 of the Children Act in the year up to March 2022,¹²² the second year in a row with the highest total number of enquires recorded, the number of children likely to be placed under a care order and removed without consent is only likely to increase given the trend. These statistics paint a clear picture of a child protection system that is increasingly populated by contested closed adoptions that are often detrimental to family life.

In this context, more support for kinship care could help alleviate the number of forced contested closed adoptions.¹²³ “Kinship care is when a child lives full-time or most of the time with a relative or friend who isn’t their parent, usually because their parents aren’t able to care for them” and can include an informal agreement, a Child Arrangements Order, a Special Guardianship Order or kinship foster carers within

¹¹⁹ The UK Has a Forced Adoption Problem (n 115).

¹²⁰ Andy Bilson and Elizabeth Hunter Munro ‘Adoption and child protection trends for children aged under five in England: Increasing investigations and hidden separation of children from their parents’ (2020) 96 *Children and Youth Services Review* <<https://doi.org/10.1016/j.childyouth.2018.11.052>> accessed 25 June 2023.

¹²¹ Andy Bilson and Paul Bywaters ‘Born into care: Evidence of a failed state’ (2020) 116 *Children and Youth Services Review* 3 <<https://doi.org/10.1016/j.childyouth.2020.105164>> accessed 25 June 2023. Prof Karen Broadhurst, et al., ‘Born into care: Newborns in care proceedings in England’ (2018) 21 <<https://www.nuffieldfjo.org.uk/wp-content/uploads/2021/05/BiC-Full-report-201118.pdf>> accessed 25 June 2023.

¹²² *ibid*; Mithran Samuel, ‘Child protection enquiries reach record levels, reveal official figures’ (*Community Care*, 2022) <<https://www.communitycare.co.uk/2022/10/31/child-protection-enquiries-reach-record-levels-reveal-official-figures/>> accessed 28 March 2022.

¹²³ Samantha M Davey and Jaime Lindsey (eds), *Grandparents and the law: Rights and relationships* (Hart 2023).

the local authority.¹²⁴ Research conducted by Dinithi Wijedasa and others at the University of Bristol reported that, in 2017, there were an estimated 162,400 children in kinship care.¹²⁵ This is nearly double the 82,170 children in local authority care as of November 2022.¹²⁶ However, “[f]or some, particularly those living in poverty or already caring for their own children, the arrangement can break down, leading to yet more children being put into care.”¹²⁷ The Independent Review of Children’s Social Care is also in favour of kinship care orders being used more widely, expressing that “[w]e need to support family networks to help their relatives before children may need to enter care... The review believes that many court proceedings that did not result in a Care Order could have been avoided if a shared care arrangement had been considered and supported at an earlier stage.”¹²⁸

While in some cases kinship care is the best option to ensure the best interests of the child,¹²⁹ “more than a third (36%) of kinship carers receive no financial support from their local authority at all, this rises to 85% of kinship carers on an informal arrangement. Even among those who do get financial support, the average weekly allowance for informal carers [in 2021] was just £18.46.”¹³⁰ In light of this, in March 2022, the Kinship Care Charity’s ‘Out of the Shadows’ report concludes that the system for providing financial allowances to kinship families is perversely based on the legal status of the child and where they live rather than on their level of need.¹³¹ The report recommends that the UK Government should:¹³²

1. Ensure that all kinship carers receive prompt financial assistance to facilitate a smooth transition for the child; grant all kinship carers a universal, standardised, non-means-tested allowance equivalent to the current national minimum fostering allowance until the child reaches 18; and

¹²⁴ Kinship, ‘What Is Kinship Care? - Kinship - the Kinship Care Charity’ (*Kinship*, 2022) <<https://kinship.org.uk/for-kinship-carers/what-is-kinship-care/>> accessed 28 March 2023.

¹²⁵ Dinithi Wijedasa et al., ‘Children growing up in the care of relatives in the UK’ (University of Bristol 2017) 1 <https://www.bristol.ac.uk/media-library/sites/policybristol/briefings-and-reports-pdfs/2017-briefings--reports-pdfs/PolicyBristol_Report_November_2017_Kinship_Care.pdf> accessed 28 March; Kinship, ‘Out of the Shadows: A Vision for Kinship care in England’ (Kinship 2022) 4 <<https://kinship.org.uk/wp-content/uploads/Out-of-the-Shadows-2022-WEB-003.pdf>> accessed 18 March 2023.

¹²⁶ Children looked after in England including adoptions (n 6).

¹²⁷ The UK Has a Forced Adoption Problem (n 115).

¹²⁸ The Independent Review of Children’s Social Care (n 9) 97.

¹²⁹ *A and B v Rotherham Metropolitan Borough Council* [2014] EWFC 47 [96].

¹³⁰ Kinship, ‘Kinship Care Allowances Report 2021 - Kinship Carers in the Media - Kinship - the Kinship Care Charity’ (*Kinship*, 2021) <[https://kinship.org.uk/news/kinship-care-allowances-report-2021-kinship-carers-in-the-media/#:~:text=More%20than%20a%20third%20\(36,carers%20is%20just%20%C2%A318.46.](https://kinship.org.uk/news/kinship-care-allowances-report-2021-kinship-carers-in-the-media/#:~:text=More%20than%20a%20third%20(36,carers%20is%20just%20%C2%A318.46.)> accessed 13 June 2023

Paul McGrath and Emma Wrafter, ‘Kinship Care Financial Allowances Survey’ (Kinship 2021) 1-10 <<https://kinship.org.uk/wp-content/uploads/Kinship-Care-Financial-Allowances-Survey-3.pdf>> accessed 28 March 2023.

¹³¹ Out of the Shadows (n 125) 5-6.

¹³² *ibid.*

establish kinship care leave, guaranteeing parity with adoption leave..

2. Offer impartial, transparent, and easily accessible guidance to families engaged in or interested in participating in kinship care.
3. Offer tangible and emotional assistance to kinship carers and their children, including the provision of peer support.

The 'Out of the Shadows' report noted that "for every 10,000 children who are diverted from local authority care into well-supported kinship care, the state saves £370 million."¹³³

As indicated earlier, IHRL has a broad understanding of the idea of "family", including extended family. The UK Government and local authorities should do their utmost to pursue reintegration of the family through kinship care, unless contrary to the best interests of the child. The European Committee of Social Rights recommends that "[w]hensoever possible, placement in a foster family or in a family-type environment should have preference over placement in an institution".¹³⁴ Furthermore, the CRC in its 2023 Concluding Observations, following its review of the UK, has also recommended that sufficient funds be allocated for family-based care options to ensure the reintegration of children into their families.¹³⁵

Moreover, if it is the wish of a child stay with relatives, rather than being placed in the care of the local authority, this view must be heard. Under the principle of best interests of under the Children Act,¹³⁶ the wishes and feelings of children must be taken seriously. Therefore, taking into consideration the child's age and understanding and the reasonability of their wishes and feelings, the opinion of the child on where they would like to be placed should be acknowledged. Additionally, to ensure the voices of children are heard, and that obligations under the UNCRC are adhered to, Children and Family Court Advisory and Support Service (Cafcass) workers (known as a 'guardian') should ensure that the children they are assigned are able to fully participate in social work investigations when appropriate. In this regard, the CRC in its 2023 Concluding Observations on the UK also stated that the UK Government should "[e]nsure that children are heard in decisions affecting them in alternative care placement throughout their stay, and that relevant authorities and professionals have the technical capacities required to guarantee respect for children's views in alternative care."¹³⁷

¹³³ Out of the Shadows (n 125) 8.

¹³⁴ Conclusions 2011 (n 36).

¹³⁵ CRC 'Concluding observations on the combined sixth and seventh reports of the United Kingdom of Great Britain and Northern Ireland' (2023) UN Doc CRC/C/GBR/CO/6-7 para 38(f).

¹³⁶ Children Act 1989, ss 1 (3)(a), 17 (4)(a), 20 (6), 22(4)-(5), 47(5)(a).

¹³⁷ CRC 2023 concluding observations on the UK (n 135) para 38(g).

Overall, the UK Government should strive to ensure that kinship care is favoured over contested closed adoptions and this model of placement is adequately supported, whilst also ensuring that the rights of the child to participate and to be heard in social work interventions are fulfilled.

5.2.2. Letterbox contact

Communication between adopted children in England and their birth parents typically takes place through a system called 'letterbox' contact. During Family Court proceedings, a plan can be 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 18.¹³⁸ Most often either one or two letters per year are allowed.¹³⁹

On this limited contact allowed between birth parents and their children, parents told us:

"Social workers shredded the cards I sent. I was heartbroken. The adopters said I can send cards and even pictures. So, I was sending love cards for the first year. But then later the social workers rung and said, 'We can't pass these cards and pictures on, because the adopters have refused it so we'll just put the cards through the shredder'. But they'd said I could send cards! They probably don't even get my letters."¹⁴⁰

"I like to have pictures of my child. My kids are my life. I don't care what you think. It's like if you don't do that, it's like you've forgotten about him. They were invading my privacy. Telling me to put the pictures of my son down. It feels like they are invading my private space. I wanted my little safe space. They were being judgmental."¹⁴¹

An enquiry by the British Association of Social Workers in 2018 observed that "[l]etterbox 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."¹⁴²

¹³⁸ Interview with social worker, conducted by Human Rights Local and ATD Fourth World UK on 26 November 2022 via Zoom.

¹³⁹ *ibid.*

¹⁴⁰ ATD Fourth World UK, 'A conversation among birth parents' (*ATD Fourth World UK*, 2022) <<https://atd-uk.org/2022/07/04/a-conversation-among-birth-parents/>> accessed 1 May 2023.

¹⁴¹ Interview with mother on 6 December 2022 (n 100).

¹⁴² Brid Featherstone, Anna Gupta and Sue Mills, 'The role of the social worker in adoption – ethics and human rights: An

The Independent Review of Children’s Social Care notes that:

“[G]iven the ease of contacting birth relatives due to modern technology, contact between adopted children and birth parents should start to be assumed by default and supported unless this is not in the child’s best interest. The Adoption Support Fund should specifically include provision to support better contact between adopted children, adoptive parents and birth parents. Recognising that family circumstances change through time, plans should be put in place so that contact arrangements are reviewed by adoptive parents at regular intervals, and certainly at transition points including when children become teenagers and just before they turn 18 years old.”¹⁴³

“[C]hildren have told the review that they do not have enough contact with their brothers, sisters, other relatives or friends, and when they do it is often in contact centres which are not welcoming enough and mean they do not make good memories.”¹⁴⁴

In light of these issues with letterbox contact, the Nuffield Foundation’s 2021 report ‘Modernising Post-Adoption Contact: Findings from a Recent Consultation’ pointed out that “[d]igital solutions potentially allow people to express their feelings more easily (there are limits to what can be accommodated in a physical letter sent via the post).”¹⁴⁵ The report added that “[d]igital tools may provide many new ways of communicating, such as video, voice notes, questionnaires, ‘likes’ and emojis (and could also help to create a digital life story for the child). For birth or adoptive parents who find letter writing challenging, it may be easier for them to ‘like’ something that has been shared or to communicate their thoughts through emojis.”¹⁴⁶

On the basis of IHRL, reintegration of the family is a desirable objective that ought to be pursued by public authorities. Maintaining of personal relations and direct contact with both parents on a regular basis can help to that end. Unless contrary to the best interests of the child, the UK Government and local authorities should reform letterbox contact towards digital solutions that provide more contact, greater accessibility and are equipped for the modern age.

Enquiry' (The British Association of Social Workers 2018) 11, 27

<https://www.basw.co.uk/system/files/resources/basw_55505-10_1.pdf> accessed 7 March 2022.

¹⁴³ The Independent Review of Children’s Social Care (n 9) 112.

¹⁴⁴ *ibid* 153.

¹⁴⁵ Nuffield Family Justice Observatory, ‘Modernising post-adoption contact: findings from a recent consultation’ (Nuffield Foundation 2021) 8 <https://www.nuffieldfjo.org.uk/wp-content/uploads/2021/08/nfjo_report_adoption_connections_20210913v2.pdf> accessed 28 March 2023.

¹⁴⁶ *ibid*.

5.2.3. Unregistered accommodation for 16-18-year-olds

A child's home is supposed to provide them with a safe and stable place to live where they are "cared for" by an adult.¹⁴⁷ However, unregulated accommodation for 16 to 18-year-olds, where there can be a complete lack of supervision, has long been widespread. In 2021, the Safeguarding and Child Protection Association reported that at least 1,286 reports of abuse against children living in unregulated care homes were made in 2019-2020.¹⁴⁸ Despite the 2021 change in law that now requires "supported" accommodation for 16 to 18-year-olds,¹⁴⁹ that standard currently remains lower than the one for children under 16.

Data published from the Department for Education in March 2023 shows:¹⁵⁰

- There were 7,370 children in care aged 16 and 17 living in unregulated, non-care settings on 31 March 2022.
- More than 56% of children living in unregulated accommodation were from Black, Asian and Minority Ethnic communities.
- More than 73% of children living in unregulated accommodation were boys.
- More than 26% of children living in unregulated accommodation were the subject of a care order made by a family court.
- More than 7% of children living in unregulated accommodation were disabled.
- More than 44% of children living in unregulated accommodation went to live there within less than a week of entering care.
- More than 83% of children were living in unregulated accommodation provided by for-profit private provision.

¹⁴⁷ UK Government, 'How to open a children's home | introduction to children's homes' (*gov.uk*, 2023)

<<https://www.gov.uk/government/publications/how-to-open-a-childrens-home/introduction-to-childrens-homes>> accessed 7 March 2023.

¹⁴⁸ Safeguarding and Child Protection Association, 'Hundreds of abuse cases at unregulated children's homes' (*Safeguarding and Child Protection Association*, 2021) <<https://www.sacpa.org.uk/2021/05/27/hundreds-of-abuse-cases-at-unregulated-childrens-homes/>> accessed 7 March 2023.

¹⁴⁹ UK Government, 'Unregulated accommodation banned for vulnerable children under 16' (*gov.uk*, 2021) <<https://www.gov.uk/government/news/unregulated-accommodation-banned-for-vulnerable-children-under-16>> accessed 7 March 2023.

¹⁵⁰ The Department for Education, 'Looked after children aged 16 to 17 in independent or semi-independent placements, Reporting year 2022' (*gov.uk*, 2023) <<https://explore-education-statistics.service.gov.uk/find-statistics/looked-after-children-aged-16-to-17-in-independent-or-semi-independent-placements>> accessed 14 June 2023.

New legislation came into force in August 2022,¹⁵¹ adding supported accommodation to the list of services that are regulated under The Care Standards Act 2000. The regulations now prohibit local authorities from using accommodation for children in care and care leavers aged 16 and 17 that is not registered as supported accommodation or otherwise permitted. However, the secondary legislation does not provide a description of supported accommodation. It also guarantees care to every child in care only to the age of 15.¹⁵²

Carolyn Willow, the Director of Article 39, a charity that defends the rights of children in institutional settings, stated:

“This further entrenches a second-rate care system for older children, where they don’t actually receive any care where they live. Boys who make perilous journeys to the UK without a parent or carer, in the hope of securing refugee status, are amongst those most affected. [...] More than £140million of public funds are being poured into this, but we cannot even tell children there will be a meal waiting for them when they get home from school or college, that their clothes will be washed and when they need to go to the GP or hospital they will not be alone. We know that 29 children in care aged 16 and 17 died in these settings over the past five years, though still the government appears to believe it’s acceptable for children to go for long periods without adult supervision. It beggars belief that children in the care of the state, including those for whom local authorities have parental responsibility, are expected to manage alone years ahead of those growing up in loving and supportive families.”¹⁵³

Sir James Munby, lately President of the Family Division, references comments made by Judge Dancey, a colleague of his, whilst expressing his doubt over the effectiveness of banning unregulated accommodation:

“He [Judge Dancey] also draws attention to the growing and deeply worrying ‘County Lines’¹⁵⁴ problem and other ways in which children are being criminally exploited. Is the system really

¹⁵¹ The Care Standards Act 2000 (Extension of the Application of Part 2 to Supported Accommodation) (England) Regulations 2022.

¹⁵² Carolyn Willow, ‘Care Standards Act 2000 extended to supported accommodation for children in care’ (*Article 39*, 2022) <<https://article39.org.uk/2022/07/18/care-standards-act-2000-extended-to-supported-accommodation-for-children-in-care/>> accessed 7 March 2023.

¹⁵³ *ibid.*

¹⁵⁴ “‘County lines’ is a policing term used to describe the distribution of illegal drugs. [...]. The criminal exploitation of children via ‘county lines’ is a key strategic priority in the Serious Youth Violence Strategy.” Lauren Wroe, ‘Young people and “county

geared up to dealing with this criminality effectively? 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?”¹⁵⁵

Parents and young people told us about the dangerous of unregulated accommodation for 16–18-year-olds:

“I was placed in adult accommodation and was abused by all of them [other adults in the accommodation] and this was extremely problematic. If you can't be placed in an order, someone has to be responsible, so they just place them in this type of this accommodation.”¹⁵⁶

“When I was 16, my first placement when I left care was in a shared house with one girl that was in her 20s and a girl that was about 18. Both girls were actually using the place to have — I'll say 'clients' — come in, and that was my first house. One of the girls stole from me. I reacted and kicked off her door to get back my belongings. Guess who's getting in trouble — me, so I got moved. They then put me in a high-rise flat by myself in an area that was cordoned off as like the safe zone for the red-light district so it can be monitored. I lived on the fifth floor and the lift quite regularly was covered in toilet and alcohol all over the floor, and God knows what else on the walls. I used to have to go up the stairs and there would be working girls doing their business on the stairs, and drug users injecting and smoking. There was a bail hostel as well for people on the sex offenders register, literally over the road from where I was living, and then there was lots and lots of single men in the area. A lot of them were migrants, not that there's a problem with that, but there are obviously language barriers and cultural barriers. That was where I had to live for three years. I got a guy who punched me in the face, so then I got a dog to protect myself. But when the council found out I had a dog, they evicted me. That was my first four years living in care.”¹⁵⁷

lines”: a contextual and social account' (2021) 16(1) Journal of Children's Services <<https://doi.org/10.1108/JCS-10-2020-0063>> accessed 7 March 2023.

¹⁵⁵ Sir James Munby, 'Inequality and Rights – Contemporary Challenges in the Child Protection and Family Justice Systems before and during the Pandemic' 9 (Royal Holloway, University of London 2021) <<https://www.royalholloway.ac.uk/media/16720/wswd%20speech%20by%20sir%20james%20munby.pdf.pdf>> accessed 7 March 2023.

¹⁵⁶ Interview with adult with experience of the care system, conducted by Human Rights Local and ATD Fourth World UK on 26 November 2022 via Zoom.

¹⁵⁷ Focus Group with teenagers, children, young people and people that have experienced the care system as a child, conducted by Human Rights Local and Youth Voices on 2 December 2022 via Zoom.

The CRC has expressed a deep concern over the number of the children in unregulated accommodation.¹⁵⁸ However, as previously mentioned, the UK Government has made the commitment to ban unregulated accommodation for 16-17-year-olds.¹⁵⁹ This is a positive move. To ensure that this ban is effective and is enforced in practice, as reminded by the CESCR, the UK Government should “ensure adequate accommodation and protection measures for children under the age of 18 who have been deprived of a family environment and placed in unregulated alternative care.”¹⁶⁰

5.2.4. The risk of future emotional harm

The social model of child protection in England “is dominated by a focus on risk and risk aversion... [Child protection] 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.”¹⁶¹

PFAN observes that “[t]he 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.”¹⁶²

As observed by Simon Haworth, a social work academic at the University of Birmingham and member of PFAN, “[t]here can be grave and profound outcomes for children and their families if ‘risk of emotional harm’ is identified, including the removal of children from their birth families.”¹⁶³ Under the ‘Working Together to Safeguard Children’ guidance, emotional abuse is defined as “the persistent emotional maltreatment of the child such as to cause severe and persistent adverse effects on the child’s emotional

¹⁵⁸ CRC 2023 concluding observations on the UK (n 135) paras 37(a), 38(e).

¹⁵⁹ UK Government, ‘Government Bans Accommodation for Young People in Care’ (*gov.uk*, 2023)

<<https://www.gov.uk/government/news/government-bans-unregulated-accommodation-for-young-people-in-care>> accessed 28 March 2023.

¹⁶⁰ CESCR ‘List of issues in relation to the seventh periodic report of United Kingdom of Great Britain and Northern Ireland’ (2023) UN Doc E/C.12/GBR/Q/7 para 27.

¹⁶¹ Featherstone et al. (n 11) 7.

¹⁶² The Way Forward (n 81) 8.

¹⁶³ Simon Haworth, ‘Hazily defined and a culture of risk: how can social workers properly approach risks of future emotional harm?’ (*Community Care*, 2018) <<https://www.communitycare.co.uk/2018/10/19/hazily-defined-and-a-culture-of-risk-how-can-social-workers-properly-approach-risks-of-future-emotional-harm/>> accessed 7 March 2023.

development.”¹⁶⁴ On this definition, Haworth observes that “[t]he concepts of persistence and severity are of importance in this definition, meaning that the risk of emotional abuse should incorporate these significant concepts. However, the prospect of emotional neglect significantly expands the span of emotional harm.”¹⁶⁵ The Working Together to Safeguard Children guidance states that neglect may also include neglect of, or unresponsiveness to, to a child’s basic emotional needs.¹⁶⁶ Grappling with the scope of these categories, Haworth says that “[a]ssessments 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.”¹⁶⁷ He also goes on to state that “[t]here is an inherent emotional harm [in social work investigations and removal], which can be compounded by further social sanctions, such as loss of accommodation and benefits, stigma and much more.”¹⁶⁸

Emotional harm caused by social work intervention and/or the removal of children from the family home can have a severely detrimental effect on the mental health of mothers.¹⁶⁹ Research conducted by Elizabeth Wall-Wieler and others concluded that mothers who have children taken into care have increased psychological distress and are at greater risk for suicide and suicide attempts.¹⁷⁰ In providing a solution to tackling risk of future emotional harm, Haworth proposes that “effective assessments and analysis of ‘risk of emotional harm’ must be based upon principles of partnership with families, clearer understanding of what constitutes emotional harm in our practice and genuine recognition of the potential emotional harm engendered through child protection investigations and removal of children from their birth families.”¹⁷¹

Parents and young people who have had experience with social work interventions and removal told us how they have experienced emotional harm which has resulted in a subsequent distrust in authorities:

¹⁶⁴ Working Together to Safeguard Children (n 75) 107.

¹⁶⁵ Haworth (n 163).

¹⁶⁶ Working Together to Safeguard Children (n 75) 108.

¹⁶⁷ Haworth (n 163).

¹⁶⁸ *ibid.*

¹⁶⁹ Vivek Sankaran and Christopher Church, ‘The ties that bind us: An empirical, clinical, and constitutional argument against terminating parental rights’ (2023) 61(2) Family Court Review <<https://doi.org/10.1111/fcre.12710>> accessed 25 June 2023; Elizabeth Wall-Wieler et al., ‘Suicide Attempts and Completions among Mothers Whose Children Were Taken into Care by Child Protection Services: A Cohort Study Using Linkable Administrative Data’ (2017) 63(3) The Canadian Journal of Psychiatry <<https://journals.sagepub.com/doi/full/10.1177/0706743717741058>> accessed 7 March 2023.

¹⁷⁰ Wall-Wieler et al. (n 169).

¹⁷¹ Haworth (n 163).

“It [social work intervention] does not improve anyone’s mental health. We all as adults and children want to have agency in life. People want to be actively engaged in their life and want to do meaningful and positive things. But this kind of intervention is the opposite and it is debilitating. You cannot even go to work; you have to go to court and get abuse screamed at you. Then you have to pretend to be okay when you go and pick up your other children. Doing things well, doesn’t fix anything, it just keeps things afloat. There’s all stick and no carrot.”¹⁷²

“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.”¹⁷³

“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.”¹⁷⁴

The removal of children from their families and their placement into alternative care also has the possibility of causing physical harm to children, resulting in emotional trauma for birth parents and children. In 2022, a woman who had been removed from her family and placed in care 30 years earlier was offered an apology by Leeds City Council following a case she won against the local authority for failing to provide her with the necessary care after she was groomed and abused when she was under the authority’s care.¹⁷⁵

ATD Fourth World UK spoke with a parent who shared:

“[W]e 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

¹⁷² Interview with mother on 2 December 2022 (n 100).

¹⁷³ Study Group session with social workers, parents, parent advocates and academics, conducted by ATD Fourth World UK on 15 July 2022 in South London.

¹⁷⁴ Focus Group with teenagers, children, young people and people that have experienced the care system as a child, conducted by Human Rights Local and Youth Voices on 26 November 2022 via Zoom.

¹⁷⁵ Blindel (n 17).

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.”¹⁷⁶

Under Article 12(1) of ICESCR, both parents and child have a right to the enjoyment of the highest attainable physical and mental health. Evidence shows that mothers are disproportionately impacted and discriminated against due to the emotional harm created by child protection policies and practice. The UK Government and local authorities should ensure that policies and practices that can lead to potential future emotional harm for parents and children are avoided at all costs, and when this harm is unavoidable, adequate support is provided to parents, particularly mothers, and children. Additionally, when there is no other possible alternative but to remove the child from the family home, the UK Government and local authorities should follow the recommendation of the CRC to ensure that parents and children are able to easily access counselling and one-to-one support.¹⁷⁷

Overall, the evidence signifies a lack of adequate consideration from the system's policies and practice towards the best interests of the child and the potential future harm that intervention from the child protection system can create for families. The testimonies also illustrate that social work interventions can result in deep seeded trauma, and in some cases, can even result in a complete distrust of authority and institutions. Additionally, mothers are disproportionately discrimination against due to these policies and practice, which violates their right to the highest attainable physical and mental health as well as the growth and prosperity of families.

Academic research and the accounts of parents highlight a disproportionate emphasis on risk from parents, rather than ensuring that all IHRL obligations are respected, and the best interests of the child are truly sought. A lack of attention to the risk posed by intervention represents a huge bias within the system, which is to the detriment of everyone it is intended to help. Actual and likely risks must be considered, present and future, and efforts must be made to manage risks effectively.

5.2.5. A culture of risk-aversion

The system's policies and practice intend to avoid past mistakes by the child protection system, which garnered a great deal of media attention, resulting in social services, and their workers, having a

¹⁷⁶ Study Group session on 6 June 2022 (n 16).

¹⁷⁷ CRC 2023 Concluding observations on the UK (n 135) para 38(b).

heightened focus on avoiding catastrophe rather than the goal of protecting and assisting the family (this is known as the Baby P effect).¹⁷⁸

Risk-aversion is motivated by the understandable eagerness to prevent any imaginable situation where a child could suffer severe harm. However, evidence shows that the culture of risk-aversion can have very harmful consequences for families, with disproportionate impact on families in poverty and on mothers. It can result in severe trauma and damage mental and physical health of adults and children. The assessment of current risk must be balanced with the likely risk of family separation in the future.

The child protection system should aim to put the protection and assistance of family at the centre. Featherstone and others classify this issue as the “risk monster”¹⁷⁹: the model of child protection in England “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.”¹⁸⁰ In 2017, a study led by Keddell “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 choice.”¹⁸¹

Various academics have highlighted the over-zealous nature of England’s child protection system, stating that assessing the potential risk of harm caused by parents has been central in an effort to combat the “failure of professionals to prevent children dying at the hands of parents or carers.”¹⁸² Gupta, Morris and Warner highlight that this model views the parent as needy, rather than as a rational and responsible actor: the model not only punishes the parent but is also neglectful of the social determinants that place parents in poverty, and into unmanageable circumstances, instead opting to focus on the individualised risk factors that will impact their children.¹⁸³

¹⁷⁸ Andy Nicoll, ‘Baby P 10 Years on: Social Work’s Story’ (*Community Care*, 2017)

<<https://www.communitycare.co.uk/2017/08/03/ten-years-baby-p-social-works-story/>> accessed November 3, 2022

¹⁷⁹ Featherstone et al. (n 11).

¹⁸⁰ *ibid* 7.

¹⁸¹ Emily Keddell, ‘Comparing Risk-Averse and Risk-Friendly Practitioners in Child Welfare Decision-Making: A Mixed Methods Study’ (2017) 31(4) *Journal of Social Work Practice* <<https://doi.org/10.1080/02650533.2017.1394822>> accessed 7 March 2023.

¹⁸² Featherstone et al. (n 11) 10; Kemshall (n 11); Fenton J and Kelly TB, Fenton and Kelly (n 14).

¹⁸³ Featherstone et al. (n 11) 10-16.

For PFAN, “[t]he 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. The focus of social workers is on identifying risk rather than 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.”¹⁸⁴

A parent expressed to us their concern over the consequences of risk-aversion and what should be happening in its place:

“There would be less risks to our children and our families if all social workers used the principles that we try to use as good parents. Criticising and shouting never makes anything better. When our children are struggling with something, we try to calm them down by being nurturing and loving. That's the approach we need more of from social workers.”¹⁸⁵

We also spoke to one parent who expressed that this culture of risk-aversion permeates more than just social workspaces:

“I’m scared of submitting school papers for my daughter because my son went in one day and did not come back. This also happened to a family I was working with it. Children will go to school, and they won’t come home because an allegation was made, without risk assessment or police intervention. The school system does not promote education. The school did not care about my son with extra needs, they have locked him in rooms, suspended him for his behaviour. They are being paid a lot of money to look after him but they are not doing this. I fear the school just as much as children services. But your parental responsibility is to put them in school. But it is a catch 22, I can’t afford to home school my children.”¹⁸⁶

Social workers also expressed their concern over the impact this culture is having in their work:

“On a board with names, staff can see each other’s progress. It's upsetting to see how you’re performing in comparison to your peers when you might have outstanding cases and targets, perhaps in red. That puts the pressure on you to turn the cases over and make decisions and

¹⁸⁴ The Way Forward (n 81) 8.

¹⁸⁵ Study Group session on 6 June 2022 (n 16).

¹⁸⁶ Interview with mother on 26 November 2022 (n 4).

therefore you're not given that focused time. Time is so precious in children's social care and that's a commodity that we must give to our parents and children; but we don't because we are so driven by targets, on our timescales, just processing people through. It is very risk averse."¹⁸⁷

"They don't see the chaos that they've caused in the cases. Particularly if there is little awareness of long-term harm of intervention. They are risk-averse. They don't take into account the risk for the mother. The risk for the child of the mother is not taken into account."¹⁸⁸

Interventions from the child protection system are, in some cases, creating 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.¹⁸⁹ This is indicative of a system that, through its policies and practice, fails to acknowledge the burden placed on families living in poverty – blaming individuals instead of recognising the wider context and the impossible position they have been put in due to austerity policies and public authorities' failure to adequately address economic inequality and the cost-of-living crisis. The UK Government, along with local authorities, should reform policies and practice so that protection and assistance to the family is placed at the centre of England's child protection system.

5.3. The impact of austerity on social work services and families in poverty

Along with austerity cuts to social security benefits, public services for families passing through the system of child protection have rapidly decreased since the 2010s.¹⁹⁰

In 2021, the Public Service Committee stated that "[m]ore than a million vulnerable children in England have had their life chances reduced by cuts to early years and youth support since 2010."¹⁹¹

¹⁸⁷ Study Group session on 6 June 2022 (n 16).

¹⁸⁸ Focus Group with social workers and parent advocates, conducted by Human Rights Local and ATD Fourth World UK on 2 December 2022 via Zoom.

¹⁸⁹ Natasha, 'UK Family Courts Are Harming Children's and Parent's Mental Health' (*Researching Reform*, 2019) <<https://researchingreform.net/2019/01/22/uk-family-courts-are-harming-childrens-and-parents-mental-health/>> accessed 7 March 2023.

¹⁹⁰ Public Services Committee, *Children in crisis: the role of public services in overcoming child vulnerability* (HL 2021–22, 95) 3 <<https://publications.parliament.uk/pa/ld5802/ldselect/pubserv/95/95.pdf>> accessed 3 November 2022.

¹⁹¹ *ibid.*

International human rights bodies have denounced that welfare austerity cuts that disproportionately target particularly vulnerable people are contrary to the realisation of the right to social security under Article 11 ICESCR and other related rights under the Covenant.¹⁹²

In March 2022, the Resolution Foundation noted that real terms cuts to social protection undermined “the idea that those with extra needs should be supported, such as the benefit cap, which now affects 165,000 families; and the two-child limit, which now affects 1.25 million children and is expected to affect 3 million when fully rolled-out by 2035.”¹⁹³ In September 2022, in relation to the UK Government’s 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).”¹⁹⁴ In January 2023, they warned that “absolute poverty is set to rise in the short-run, from 17.2 per cent in 2021-22 to 18.3 per cent in 2023-24 (or an additional 800,000 people in poverty).”¹⁹⁵ In March 2023, the Department for Work & Pensions (DWP) acknowledged that 350,000 children are currently in poverty in the UK.¹⁹⁶

As Bywaters observes in the 2022 ‘The Relationship Between Poverty, Child Abuse and Neglect’ report, “[c]hild 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.”¹⁹⁷ The situation is only deteriorating severely after the Covid-19 pandemic and with the cost-of-living crisis.

¹⁹² CESCR 2016 concluding observations on the UK (n 112) paras 18, 19, 40, 41, 42; OHCHR ‘Report on Austerity Measures and Economic and Social Rights’ (2013) UN Doc E/2013/82 paras 35, 36.

¹⁹³ Mike Brewer, Karl Handscomb, Gavin Kelly, James Smith & Lalitha Try, ‘Social Insecurity: Addressing Trends in Social Security to Prepare for the Decade of Change Ahead’ (Resolution Foundation 2022) 11 <<https://economy2030.resolutionfoundation.org/wp-content/uploads/2022/01/Social-Insecurity.pdf>> accessed 2 October 2022.

¹⁹⁴ Torsten Bell et al., ‘Blowing the budget: Assessing the implications of the September 2022 fiscal statement’ (Resolution Foundation 2022) 4 <<https://www.resolutionfoundation.org/app/uploads/2022/09/Blowing-the-budget.pdf>> accessed 7 March 2023.

¹⁹⁵ Mike Brewer, Emily Fry and Laitha Try, ‘The Living Standards Outlook 2023’ (Resolution Foundation 2023) 63 <<https://www.resolutionfoundation.org/app/uploads/2023/01/Living-Standards-Outlook-2023.pdf>> accessed 28 March 2023.

¹⁹⁶ UK Government, ‘Households Below Average Income: an analysis of the UK income distribution: FYE 1995 to FYE 2022’ (gov.uk, 2023) <<https://www.gov.uk/government/statistics/households-below-average-income-for-financial-years-ending-1995-to-2022/households-below-average-income-an-analysis-of-the-uk-income-distribution-fye-1995-to-fye-2022#children-in-low-income-households>> accessed 28 March.

¹⁹⁷ The Relationship Between Poverty and Child Abuse and Neglect (n 91) 7.

In 2022, the UN Special Rapporteur on Extreme Poverty Oliver De Schutter told UK authorities that “[n]ot aligning social benefits or minimum wages with increased costs of living is a retrogressive measure so the government would be violating its international human rights obligations if it were to cut down on social benefits [in real terms], and that is what we may see happening.”¹⁹⁸

The combined impact of austerity, the Covid-19 pandemic, and the cost-of-living crisis is only set to put further strain on the resources and capacity of local authorities, possibly leading to more outsourcing to for-profit children’s homes, and according to the research conducted by Bennett and others in 2022, more children in poverty, and likely more children experiencing social work intervention in their lives.¹⁹⁹ As families in deprived areas are more closely monitored by child protection services, it is to be expected that the number of families under this bracket is only likely to increase.

Parents and people with experience in the care system told us about what it is like to suffer directly the consequences of austerity and what the reality of living in poverty is like in the UK:

“The government says we can work our way out of poverty; but I'm told by the Job Centre that I am £500 a month worse off because I'm working than if I would just go on complete benefits. Also, because I work, I'm not able to access things like free school meals and other options that would support and help my children. But at the same time, I'm not allowed to earn enough to support them. It's a myth that you can just work your way out of poverty. It feels like the tax system enforces poverty. Before, the system used to consider the number of children in your family. But now it doesn't, so that if you have a big family, you quickly reach the threshold of being taxed and are far worse off.”²⁰⁰

“When I was a child growing up in poverty there was a strong internal feeling of shame — being shamed in relationships with other people. Like being on free school meals and being shamed by other young people who could see I had my lunch tickets. Or being shamed when I went along to appointments at job centres to pick up my mother's allowances and so on. Shame is the unifying

¹⁹⁸ Robert Booth, 'UN Poverty Envoy Tells Britain It Is 'Worst Time' to Bring in Austerity' (*the Guardian*, 2022)

<<https://www.theguardian.com/society/2022/nov/02/un-poverty-envoy-tells-britain-this-is-worst-time-for-more-austerity>>
accessed November 3 2022.

¹⁹⁹ Bennett et al. (n 88).

²⁰⁰ Focus Group on 2 December 2022 (n 157).

thing in all of that. You want to fit in or do what you enjoy doing; but because of not being able to do that it creates that feeling of shame and injustice.”²⁰¹

Not only has austerity impacted people’s lives in a detrimental way, but it has also resulted in large-scale cuts to local authority funding. According to the National Audit Office (NAO), government funding for local authorities fell in real terms by 49.1% between 2010 and 2018.²⁰² Research conducted by Pro Bono Economics in July 2022 estimated that, from 2010-11 to 2020-21, available funding for children’s social care experienced a decline of 22% in real terms.²⁰³ The funding decreased from £10.4 billion to £8.1 billion in real terms during this period.²⁰⁴ Notably, the areas with the highest levels of deprivation and potentially greater needs for children and families often faced the necessity to make the most substantial reductions in early support services.²⁰⁵ In this timeframe, “total spending on children and young people’s services fell by £241m in the most deprived local authorities (a 10% decrease), while it rose by £228m (13% increase) in the least deprived.”²⁰⁶

In 2021 the Local Government Association estimated “that costs in children’s social care in England will need to increase from £10.9bn in 2021-22 to £11.4bn in 2022-23; £12.1bn in 2023-24; and £12.6bn in 2024-25 – a 16% rise over the three-year period.”²⁰⁷ Therefore, the Local Government Association “called on the Government to meet this by increasing funding for children’s social care by £600m for each year of the spending review period, 2022-25, as well as provide an extra £1bn to fund existing pressures on the service.”²⁰⁸ Although the Institute for Financial Studies has estimated that councils’ core spending is set to increase by 11% in real terms over the next two years due to additional funding provided by the UK Government.²⁰⁹ Until delayed reforms (originally planned for 2019) for local government spending are

²⁰¹ Focus Group on 26 November 2022 (n 174).

²⁰² National Audit Office, ‘Financial sustainability of local authorities 2018’ (NAO 2018) 7
<<https://www.nao.org.uk/reports/financial-sustainability-of-local-authorities-2018/>> accessed 7 March 2023.

²⁰³ Pro Bono Economic, ‘Stopping the spiral: Children and young people’s services spending 2010-11 to 2020-21’ (Pro Bono Economic, 2022) 27-28 <<https://www.probonoeconomics.com/Handlers/Download.ashx?IDMF=220cb776-5e78-4866-826b-437ce913131a>> accessed 9 May 2023.

²⁰⁴ *ibid.*

²⁰⁵ *ibid* 13-14.

²⁰⁶ *ibid.*

²⁰⁷ Local Government Association, ‘Spending Review 2021 Submission’ (*local.gov.uk*, 2021)
<<https://www.local.gov.uk/publications/spending-review-2021-submission>> accessed 28 March 2023.

²⁰⁸ *ibid.*

²⁰⁹ Kate Odgen, ‘English Councils’ Core Spending Power Is Set to Grow by up to 11% in Real-Terms over the next Two Years’ (*Institute for Financial Studies*, 2022) <<https://ifs.org.uk/articles/english-councils-core-spending-power-set-grow-11-real-terms-over-next-two-years>> accessed 13 June 2023.

enacted,²¹⁰ it is likely that councils will struggle to adequately fund children’s social care services beyond 2025.

Research by Bywaters and others in their 2018 ‘The Child Welfare Inequalities Project’ report states that “[c]hildren who live in the most deprived 10% of neighbourhoods [were] ten times more likely to be looked after or on a child protection plan, than children in the least deprived 10% of areas.”²¹¹ They go to report that “[r]oughly one in every 60 children in the most deprived communities was in care compared to one in every 660 in the least deprived.”²¹² “Each 10% increase in deprivation rates saw a 30% rise in a child’s chances of entering care... Relative to demand, more deprived councils have less funding to allocate to children’s social care.”²¹³

In February 2023, The New Statesman reported that “[s]ince 2010, the policy of austerity has led to the closure of 1,416 Sure Start centres in England (down from a total of 3,620 in 2010 to 2,204 in 2023) – a figure that doesn’t even include children’s centre sites linked to Sure Start.”²¹⁴ The lack of children centres suggests that the obligation for local authorities to ensure “sufficient provision of children’s centres to meet local need” under section 5 of the Childcare Act 2006 is unlikely to be fulfilled for a lot of families. This also runs contrary to IHRL obligations to ensure regular contact with children and their birth families when in the child’s best interests.

In January 2023, Conservative Councillor Mieka Smile, Deputy Mayor and Executive Member for Children’s Services on Middlesbrough Council, called for “more cash [for local authorities] to tackle the underlying causes of deprivation – and lessen the number of children needing our help in the first place.”²¹⁵

²¹⁰ *ibid.*

²¹¹ The Child Welfare Inequalities Project (n 15) 4.

²¹² *ibid* 29 – 49; Andy Nicoll, ‘Children in Poorest Areas ‘10 Times More Likely to Enter Care’ (*Community Care*, 2017) <<https://www.communitycare.co.uk/2017/02/28/children-poorest-areas-likely-enter-care-finds-study/>> accessed November 3 2022

²¹³ The Child Welfare Inequalities Project (n 15) 29; Children in Poorest Areas ‘10 Times More Likely to Enter Care’ (n 213).

²¹⁴ Anoosh Chakelian, ‘Replacing lost Sure Start centres is a tacit admission of austerity’s failure’ (*New Statesman*, 2023) <<https://www.newstatesman.com/quickfire/2023/02/replacing-lost-sure-start-centres-is-a-tacit-admission-of-austeritys-failure>> accessed 7 March 2023.

²¹⁵ Cllr Mieka Smiles, ‘Mieka Smiles: Looking after children in care is driving councils to the brink of bankruptcy’ (*conservativehome.com*, 2023) <<https://conservativehome.com/2023/01/12/mieka-smiles-looking-after-children-in-care-is-taking-councils-to-the-brink-of-bankruptcy/>> accessed 7 March 2023.

When speaking about the impact of austerity policies, one social worker told us “[t]hings are getting more difficult because it comes down to money. Local authorities are getting less and less money from Central Government’s austerity policies and we are having to fill in the gaps.”²¹⁶

The lack of resource and capacity for local authorities has led to a rise in outsourcing of children’s homes to private sector (or for-profit) children’s homes. According to the Government’s children’s social care statistics, 80% of all children’s homes in England are delivered by for-profit companies.²¹⁷ 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%).²¹⁸ In March 2022, the UK Government reported that private companies own the majority of providers across children’s homes and independent foster Agencies (IFA).²¹⁹ Therefore, additional funds provided to help local authorities meet demands for children’s social care are going into the pockets of private companies that are already making £300m in profits.²²⁰

Moreover, 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.²²¹ In support of this, research published in May 2023 by Bach-Mortensen and others also reported that services in England often rely on outsourcing to for-profit entities, a trend that is associated with a higher likelihood of placing children away from their homes, linked to more unstable

²¹⁶ Interview with social worker on 26 November 2022 (n 138).

²¹⁷ UK Government, ‘Main findings: children’s social care in England 2022’ (*gov.uk*, 2022) <<https://www.gov.uk/government/statistics/childrens-social-care-data-in-england-2022/main-findings-childrens-social-care-in-england-2022>> accessed 28 March 2023.

²¹⁸ Ofsted, ‘Children’s social care statistics (2014-2022)’ (*gov.uk*, 2022) <<https://www.gov.uk/government/collections/childrens-social-care-statistics>> accessed 7 March 2023.

²¹⁹ UK Government, ‘Largest national providers of private and voluntary social care (March 2022)’ (*gov.uk*, 2022) <<https://www.gov.uk/government/publications/inspection-outcomes-of-the-largest-childrens-social-care-providers/largest-national-providers-of-private-and-voluntary-social-care-march-2022>> accessed 28 March 2023.

²²⁰ Michael Savage, ‘Revealed: Top 10 Children’s Care Providers Made £300m Profits’ (*theguardian.com*, 26 March 2022) <<https://www.theguardian.com/society/2022/mar/26/revealed-top-10-childrens-care-providers-made-300m-profits>> accessed 1 June 2023.

²²¹ Andres Malthe Bach-Mortensen, Benjamin Goodair and Jane Barlow, ‘Outsourcing and Children’s Social Care: A Longitudinal Analysis of Inspection Outcomes among English Children’s Homes and Local Authorities’ (2022) 313 *Social Science & Medicine* <<https://doi.org/10.1016/j.socscimed.2022.115323>> accessed 7 March 2023.

and short-term placements, and which may not necessarily lead to an improvement in the quality of care provided to children.²²²

A parent we spoke with raised concerns with the prevalence of for-profit children's homes: "The care system must be demonetised. Money must be given to agencies and it should be a non-profit system."²²³

As observed by the UN Committee on Economic, Social and Cultural Rights, 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."²²⁴ The UK Government should ensure that for-profit children's homes are regulated and monitored.²²⁵ Likewise, the UK Government should also use its maximum available resources to ensure that more funding is given to local authorities with greater levels of deprivation.

In April 2023, more than 90 organisations led by Joseph Rowntree Foundation and the largest food bank provider Trussell Trust, called for a social security system where benefits are set at a level that ensures an adequate standard of living where recipients can enjoy life with dignity.²²⁶

In February 2023, the Institute for Financial Studies stated that the current uprate of benefits by 10.1% in April 2023 will "merely take [benefit recipients] back to around the real level they were at a year earlier. It will not address the shortfall that opened up between September 2021 and April 2022 due to the deficient (lagged) way in which benefits are uprated. That ground will only be regained some time after inflation returns to the level it was at before Autumn 2021."²²⁷ They go on to state that "[t]he fact that benefits, despite being price-indexed, have not kept pace with inflation during this crisis is the backdrop

²²² Andres Malthe Bach-Mortensen, Benjamin Goodair and Jane Barlow, 'For-Profit Outsourcing and Its Effects on Placement Stability and Locality for Children in Care in England, 2011–2022' A Longitudinal Ecological Analysis' (2023) 313 *Social Science & Medicine* <<https://doi.org/10.1016/j.chiabu.2023.106245>> accessed 14 June 2023.

²²³ Interview with mother, conducted by Human Rights Local and ATD Fourth World UK on 13 December 2022 via Zoom.

²²⁴ CESCR 'General comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities' (2017) UN Doc E/C.12/GC/24 paras 21-22.

²²⁵ CESCR 2023 UK List of issues (n 160).

²²⁶ Trussell Trust, 'Guarantee Our Essentials' (*Trussell Trust*, 2023) <<https://www.trusselltrust.org/get-involved/campaigns/guarantee-our-essentials/>> accessed 1 June 2023.

²²⁷ Jonathan Cribb et al., 'The cost of living crisis: a Pre-Budget briefing' (The Institute for Financial Studies 2023) 3-4 <<https://ifs.org.uk/sites/default/files/2023-02/The-cost-of-living-crisis-a-pre-Budget-briefing-Institute-for-Fiscal-Studies.pdf>> accessed 5 May 2023.

behind the additional cost of living payments made available to benefit recipients during 2023–24 to try to plug the gap. Overall, these payments actually result in the government spending around £2 billion more on recipients of means-tested or disability benefits in 2023–24 than it would have needed to simply raise ordinary benefits in line with current inflation.”²²⁸

The UK Government should uprate benefits in line with inflation and set the benefits to the level at which recipients can afford the necessary essentials in life. The Government must address economic fallout created by the cost-of-living crisis in order to alleviate poverty and financial hardship that many families are experiencing.

²²⁸ *ibid.*

6. Parent-to-parent advocacy: a tool towards better social work practice

“Government needs to provide leadership by creating a clear vision based on partnership, humane practice and family support.”²²⁹ Whilst legislative and policy reform is urgently needed, parent-to-parent advocacy approaches would go a long way in deterring cultures of risk-aversion and povertyism in social work practice. This chapter focuses on parent-to-parent advocacy as a means to address the stigma generated from social work practice. Such approaches would allow local authority practice to realise and go further than the UK’s IHRL obligations.

6.1. Parent-to-parent advocacy

In their ‘Children’s Social Care: The Way Forward’ report, PFAN state that “[t]he current Working Together guidance has a constant focus on identification of risk by agencies. Even when discussing early help the language used sees workers with the duty to “identify the symptoms and triggers of abuse and neglect” and to be aware of “the new and emerging threats, including online abuse, grooming, sexual exploitation and radicalisation.” The focus is on local organisations and agencies “identifying emerging problems” rather than coproduction and identification of difficulties or emerging problems by parents, children and their communities. This focus on investigation can negate the ability of social workers to build and develop relationships with families.²³⁰

In their ‘The Way Forward’ report, PFAN advocates for peer support practices:

“Key to this is the need for a change in the culture of children’s social care and other agencies working with children from rescue and parent blame to partnership and participation. Developing parent advocacy alongside services is a powerful way to change organisational cultures in child welfare systems and to improve support for children and families.”²³¹

²²⁹ The Way Forward (n 81) 4.

²³⁰ *ibid.*

²³¹ The Way Forward (n 81) i.

PFAN provides examples for what this practice can look like, noting that “[p]arent advocacy in child protection is where parents with child welfare experience work with other parents to provide advocacy in three areas – case, program and policy”:²³²

- **“Case advocacy:** increasing parent participation in decisions regarding their own case/involvement with child protection systems. This includes having a parent advocate or ally present when a decision is considered about whether to remove a child from a parent’s custody; playing a role in the development of the case/family support plan; and making ongoing decisions on a child’s care (such as health care).”
- **“Program advocacy:** This includes parents working as trained parent advocates in social service agencies (such as prevention, family support, out-of-home placement and legal assistance) to assist parent who are struggling to raise their children safely or to be reunited with them.”
- **“Policy advocacy:** This involves parents: a) participating in governmental and NGO advisory boards, speaking on panels at conferences, teaching in classes of social work and law, writing about their experience and recommendations; b) working at the grassroots and community levels to advocate for reform; and c) acting politically to change policy, legislation and resources for family support.”

According to PFAN, programmes of parent-to-parent advocacy not only help parents going through the child protection system “address their feelings of isolation, powerlessness and hostility to services by connecting families newly involved in the child protection system to parent advocates ‘who have already experienced the child welfare system, who can mentor, encourage, and instil hope for the journey ahead.’”²³³ Such programmes also “reduce maltreatment; help parents to engage effectively with the judicial and child protection processes; reduce entry to care, increase the speed of reunification; help

²³² PFAN, ‘Parent Advocacy’ (PFAN, 2020) <<https://www.pfan.uk/parent-advocacy/>> accessed 7 March 2023; International Parent Advocacy Network, ‘Parent Advocacy’ (*parentadvocacy.net*, 2023) <<https://parentadvocacy.net/parent-advocacy/>> accessed 7 March 2023.

²³³ International Parent Advocacy Network, ‘Parent Advocacy Literature review’ (International Parent Advocacy Network 2020) 26 <<https://toolkit.parentadvocacy.net/wp-content/uploads/2020/10/Parent-Advocacy-Literature-Review-.pdf>> accessed 7 March 2023; Better Care Network and International Parent Advocacy Network, ‘International Review of Parent Advocacy in Child Welfare: Strengthening Children’s Care and Protection Through Parent Participation’ (BCN and IPAN 2020) 86-94 <https://bettercarenetwork.org/sites/default/files/2020-10/BCN_Parent_Advocacy_In_Child_Welfare.pdf> accessed 25 June 2023.

parents to overcome alcohol and substance use problems; and be instrumental in changing the culture and approach of the child protection system itself.”²³⁴

A social worker we spoke with also voiced support for this participatory and humane approach to social work intervention, stating that “I would want community-foster-care: it’s better that children stay with them. Trusting them. Go there in the morning. Go in the house. More scaffolding for everyone.”²³⁵

Parent-to-parent advocacy models provides parents with the support they may not receive from the current child protection system, support they require to meaningfully engage with such a complex and overwhelming system in the first place.

On the participation of parents in the child protection system, PFAN note that “[p]arents should be actively involved in all decisions that affect them, especially the co-production of services. Parents with lived experience of children’s social care should have a role in the governance of children’s services through advisory boards or in a fashion similar to parent governors in schools. A system of parent advocacy provided by parents with lived experience should be available for parents in all stages of the system.”²³⁶

“The social care system is complex and hard to understand for parents not trained in its ways. Parents involved with children’s services are under considerable stress. They often experience a range of emotions, including fear, anger, and hopelessness... They usually attend meetings such as child protection conferences unrepresented often not knowing what will happen. Parents are rarely included in the creation of these reports in any meaningful way and are not provided opportunities to feed back. Parents are often pressured to sign forms they don’t fully understand (such as for section 20); agree to do things social workers ask of them which may be impractical, which they don’t know how to do or where relevant services are not available; and are involved in a system where they don’t know the rules or the implications of their responses.”²³⁷

This was evidenced by a parent we spoke with, who stated that “I did feel quite pressured to sign something (I don’t remember what it was) and I was threatened with court and asked to leave the hospital afterwards – this was not explained well at all.”²³⁸

²³⁴ *ibid.*

²³⁵ Interview with social worker on 26 November 2022 (n 138).

²³⁶ *The Way Forward* (n 81) 4.

²³⁷ *ibid.*

²³⁸ Interview with mother on 13 December 2022 (n 223).

In evidencing how exactly parent participation in social work intervention can occur, research conducted by Yuval Saar-Heiman and Michal Krumer-Nevo in 2019 states that adopting a dialectic stance towards knowledge, which involves acknowledging both concerns and hopes while considering the real-life context, can enhance parents' involvement in crisis situations within the child protection system.²³⁹ For Saar-Heiman and Krumer-Nevo, such dialogue on power/knowledge successfully promotes the participation of parents in social work intervention in four different levels.²⁴⁰ The first is through acknowledging the structural context of the situation: “[b]y challenging both the transparency of the material context of parents in poverty and the devaluation of their knowledge, a dialogue on power/knowledge promotes an ethical stance of resistance to poverty and its harmful effects while contextualizing and enriching the knowledge about the situation at hand.”²⁴¹ The second level of dialogue is that of the social workers’ role: “conducting a dialogue on power/knowledge does not mean that social workers shirk the responsibility to take decisions. On the contrary, the utilization of such a dialogue becomes the responsibility of social workers in order to promote parents’ participation and to make decisions based on firm and shared knowledge.”²⁴² On the third level, Saar-Heiman and Krumer-Nevo provide that “insistence on dialogue with parents permits the establishment of meaningful relationships. A close relationship is important as an ethical social work commitment, but it also serves practical aims, since it enhances the chances for the successful ongoing implementation of any decision taken.”²⁴³ Finally, “[t]he fourth level is that of the conflict between the child’s best interests and loyalty to the parents. This conflict is based on the assumption that until the parents make progress in their treatment, the child is liable to be seriously harmed. In the context of parents’ participation, the conflict is manifested mainly when parents and social workers find it difficult to reach a joint decision. Paradoxically, when decisions do not fit with parents’ points of view, wishes or preferences, they tend to have poor outcomes in improving child safety and wellbeing. The dialogue on power/knowledge aims to reduce this conflict by promoting participation, taking the best interests of both parties into consideration.”²⁴⁴ However, they do preface this point by noting that there are certain situations where the power/knowledge dialogue may not result in a consensus, and decisive action to safeguard children, even if against the parents' wishes, becomes necessary.²⁴⁵

²³⁹ Yuval Saar-Heiman Y and Michal Krumer-Nevo, ‘You Decide: Relationship-Based Knowledge and Parents’ Participation in High-Risk Child Protection Crisis Interventions’ (2019) 50 *The British Journal of Social Work* 1753 <<https://doi.org/10.1093/bjsw/bcz086>> accessed 7 March 2023.

²⁴⁰ *ibid.*

²⁴¹ *ibid* 1754.

²⁴² *ibid.*

²⁴³ *ibid.*

²⁴⁴ *ibid.*

²⁴⁵ *ibid.*

6.2. A tool that places human rights values at its core

Parent-to-parent advocacy can help uphold the UK's IHRL obligations by addressing issues within risk-aversion and povertyism in social work practice. It can also promote a human rights-based approach (HRBA) and go further than IHRL obligations.

A HRBA is widely considered to mean a way of using "IHRL standards to ensure that people's human rights are put at the very centre of policies and practice."²⁴⁶ "Such approaches empower people to know and claim their rights."²⁴⁷ "They also increase the ability of organisations, public bodies, and businesses to fulfil their human rights obligations and create accountability so people can seek remedies when their rights are violated."²⁴⁸ The PANEL principles have been widely used as a set of guiding principles to consider when applying a HRBA in practice.²⁴⁹ The principles consist of:

- **Participation:** "Everyone should be involved in decisions that affect their rights."
- **Accountability:** "There should be monitoring of how people's rights are being affected, as well as remedies when things go wrong."
- **Non-Discrimination and Equality:** "All forms of discrimination must be prohibited, prevented, and eliminated. People who face the biggest barriers to realising their rights should be prioritised."
- **Empowerment:** "Everyone should understand their rights and be fully supported to take part in developing policy and practices which affect their lives."
- **Legality:** "Approaches should be grounded in the legal rights that are set out in domestic and international laws."

Thus, through encouraging the participation of parents, models of parent-to-parent advocacy allow parents to hold social workers to account better through an increased understanding of the child protection system. Moreover, through the participation of parents in poverty in social work interventions, parents are more likely to have a better dialogue with social workers, leading to a more open and frank conversation about their situation. Parents are also likely to benefit from those who have prior direct and learnt knowledge and experience of the child protection system from peer support, possibly resulting in local authorities being less overwhelmed by an exhaustive and complex system. Thus, the

²⁴⁶ Scottish Human Rights Commission, 'A Human Rights Based Approach: An Introduction' (Scottish Human Rights Commission 2019) <https://www.scottishhumanrights.com/media/1409/shrc_hrba_leaflet.pdf> accessed 5 January 2023.

²⁴⁷ *ibid.*

²⁴⁸ *ibid.*

²⁴⁹ European Network of National Human Rights Institutions, 'Human Rights-Based Approach' (*ennhri.org*, 2022) <<https://ennhri.org/about-nhris/human-rights-based-approach/>> accessed 5 January 2023.

implementation of such models would fulfil the recommendation made by the CRC in their 2023 concluding observations on the UK to establish preventative and supportive services to families in order to reduce the number of children in alternative care.²⁵⁰

Parent-to-parent advocacy systems are currently in place in some local authorities in England, such as in Camden, Southwark and Leeds.²⁵¹ Through the adoption of similar models, local authorities have a real opportunity to not only realise and go further than the UK's IHRL obligations, but to also reflect where national legislation and policy should be heading.

²⁵⁰ CRC 2023 Concluding Observations on the UK (n 135) para 38(a).

²⁵¹ Camden Council, 'Advocacy support: Guidance for parents and children receiving a social work service' (Camden Council 2022) <<https://www.camden.gov.uk/documents/20142/1006758/Advocacy+information+leaflet+new.pdf/3feaa90d-5d06-4ccc-003f-fe5eaf552d90?t=1606996971041>> accessed 7 March; Southwark Council, 'Parent to Parent Peer Advocacy' (*southwark.go.uk*, 2022) <<https://www.southwark.gov.uk/childcare-and-parenting/parent-to-parent-peer-advocacy>> accessed 7 March 2023; Social Care Institute for Excellence, 'Strengthening Families, Protection Children: Leeds Family Valued' (*scie.org.uk*, 2022) <<https://www.scie.org.uk/strengthening-families/leeds-family-valued>> accessed 7 March 2022.

7. Conclusions and Recommendations

7.1. Conclusions

Official independent reviews, academics, social workers and parents and families are all calling for immediate and urgent change to the child protection system in England.

The current system results in harsh interventions that disproportionately affect families with lived experience of poverty. Systemic and transformative change is needed.

The system has gone so long without much needed transformative reform, resulting in toxic cultures of risk-aversion and povertyism permeating the system as a whole. This has led parents and children alike to often “feel like they are abandoned and alone.”²⁵²

Data shows how families in poverty are overrepresented and disproportionality discriminated against. The UK Government should take action to prevent and deter this discrimination, extending the Family Court transparency scheme to become a permanent policy, bringing the Equality Act to life in full (including the socio-economic duty under section 1), and adding socio-economic status to the Act’s list of protected characteristics.

The lack of a sufficiently holistic consideration to the best interests of the child, including the potential future harms that intervention from child protection can create, is troubling. The system should not blame families and create harm. It should instead protect and aid them.

Currently, more and more families in poverty must deal with child protection interventions because of the lack of economic freedom as a result of social security cuts. Austerity measures enacted by the UK Government in the 2010s, and the Government’s failure to adequately address economic fallout from the Covid-19 pandemic and the cost-of-living crisis, have resulted in more economic insecurity for families with lived experience of poverty, which puts their socio-economic rights at risk.²⁵³ Due to economic disadvantage, families of a lower socio-economic background are helpless in avoiding discrimination on

²⁵² Interview with mother on 26 November 2022 (n 4).

²⁵³ Poverty and Social Rights in Essex (n 2).

the grounds of povertyism and the potential harms inflicted onto their family by a disproportionality risk-averse system.

Local authorities and social work services are crumbling as a result of years of funding cuts. The majority of social workers have good intentions, but they are unable to follow them through due to systemic restrictions.

There is a clearly significant gender impact to child protection interventions on families in poverty. 15 out of the 17 parents that participated in interviews and focus groups identified as women, whilst we also heard of women experiencing domestic abuse and sexual abuse in unregulated accommodation. There are clear discriminatory gendered realities for women in the child protection system.

7.2. Recommendations

1. To prevent and eradicate cultures of risk-aversion, the UK Government should reform the legislation of England's child protection system and make changes in its planned update to the 'Working Together' guidance to ensure that:
 - Kinship care, unless contrary to the best interests of the child, is pursued at all available opportunities and those wishing to undertake this model of care are adequately supported.
 - Birth families and the children removed from these families are able to have regular contact, working towards reintegration with the birth family, unless this is contrary to the child's best interests. In this vein, the letterbox contact system should be abandoned in favour of a more modernised system of contact for better and more regular communications between birth families and the children removed from their home.
 - The announcement to ban unregulated accommodation for 16 to 18-year-olds is realised in practice, while also providing as much support as necessary to foster carers so that every child in care has a safe place to live.
 - Local authorities are able to provide support in the form of counselling and one-to-one support for parents and children when there is no other possible alternative but to remove the child from the family home.
2. The UK Government must address economic fallout from austerity measures, the Covid-19 pandemic and the cost-of-living crisis to ensure that families are provided with an adequate level of social security benefits and an adequate standard of living. Social security benefits must be set at a level to secure an adequate standard of living so everyone can afford the necessary essentials in life.

3. The UK Government should make use of the maximum of available resources to address the issue of distribution of funding for local authorities, and the connections between families' needs and service provision.
4. The UK Government, and local authorities when applicable, should regulate and monitor for-profit children's homes.
5. Local authorities should ensure that parent-to-parent advocacy schemes are in place in their social work departments to deter cultures of risk-aversion and povertyism, and to reduce the case-load burden of social work services. The UK Government should promote parent-to-parent advocacy schemes locally and monitor local authorities to ensure that such schemes are in place.
6. The UK Government should make the transparency scheme for reporting from journalists and bloggers in Family Courts in Cardiff, Leeds and Carlisle a permanent policy for all Family Courts to ensure that any occurrence of povertyism in Family Court proceedings can be acted upon through this transparency.
7. The UK Government should bring to life the socio-economic duty under section 1 of the Equality Act 2010. The Act should be amended to include socio-economic status as a protected characteristic.