



Children's Commissioner for Jersey Promoting and Protecting Children's Rights

18th May 2020

Formal Advice to the Minister for Education on a return to classroom-based learning

1. Guiding principles

Guiding principles which will determine when and how schools will provide a return to classroom learning on the school site for pupils, extending the current provision for children living in situations of vulnerability and children who live with key workers, is to be welcomed as the first step towards a new normal for our children, their parents and care givers.

The guidance published by UNICEF 'Framework for Reopening Schools'¹ aims to inform decision making regarding reopening of schools. They outline six key priorities to assess the readiness of those schools and inform planning. These are based on policy, financing, safe operations, learning, reaching the most marginalised and wellbeing/protection. I strongly advise the Government to use this framework in their planning for a return to classroom-based learning.

Human rights guarantee basic freedoms and meet the basic needs of all humanity, underpinned by respect for human dignity. Human rights are binding on the Government and on public authorities at all levels in Jersey, and provide a strong ethical framework for planning, decision-making and action.

Children are entitled to their human rights, including being able to access and exercise their rights. Children's rights are set out in international treaties, including the European Convention on Human Rights (ECHR). Children's rights are entitlements, they are not optional. Children aged 0-17 years are given special human rights protection by the United Nations Convention on the Rights of the Child (UNCRC).

In 2014 Jersey formally agreed to ensure that every child on the island has all the rights listed in the convention by ratifying the UNCRC. This means that the Government has agreed to do everything in their power to protect and to promote children's rights. This does not stop during the COVID-19 pandemic. In fact, they are more important than ever.

A Children's Rights Approach is a principled and practical framework for working with children, grounded in the UNCRC. It is about placing the UNCRC at the core of planning and service delivery and integrating children's rights into every aspect of decision-making, policy, and practice. It is a systematic approach to ensure that the Government upholds its duty and responsibilities to respect, promote and fulfil the rights of children and young people. Children's rights are the lens through which we can examine how actions that affect children are rooted, reviewed, and resolved.

A children's rights-based analysis of the presenting issues caused by the pandemic will not provide us with a panacea as to how a return to classroom-based learning should be managed. What it does provide is a framework, based on the UNCRC guiding principles to consider these fundamental

¹ Framework for Reopening Schools UNESCO, UNICEF, the World Bank and the World Food Programme
<https://www.unicef.org/media/68366/file/Framework-for-reopening-schools-2020.pdf>

challenges. A clear set of guiding principles based on children's rights will enable the Government to plan a safe return to classroom-based learning.

2. United Nations Convention on the Rights of the Child

Protection from discrimination (Articles 2)

There have been reports in the UK around discrimination against children and adults perceived as being of Asian descent, because of the outbreak. Schools must be alert to any discrimination or bullying because of this or because they or a family member has tested positive.

A phased return will result in some children returning to school and others not. This could be regarded as discrimination. It is important to identify a clear, transparent, process that schools will use to prioritise who returns to the classroom. Any return to school must be implemented in a fair and non-discriminatory manner. A phased return to school has been suggested in some jurisdictions where the needs of children at certain key stages of learning are prioritised. We know that for those children already disadvantaged in their learning may continue to be disadvantaged unless they return to school. Those children already identified as being the most vulnerable children should be prioritised to provide greater equity in access to education. Digital exclusion and inconsistency of the quality of the online education offer means that some children may be discriminated against if they do not return to school. Pupils experiencing digital exclusion, without suitable access to online learning could also be prioritised in a return to the classroom.

Best Interest (Article 3)

On an individual pupil basis, the best interest of the child must be a top priority in making any decision about their return to school along with overall public health considerations. I welcome a 'return to school' assessment for each pupil focused on their wellbeing. 651 children and young people in the survey stated that they had negative feelings about their mental health. Any return to school must address these needs with access to services being readily available.

Right to life, survival, and development (Article 6)

Any return to classroom-based learning must not compromise the child's right to survive and develop and must not put a child's health at risk. There needs to be careful consideration to balance the right to life and survival and those children whose development may be harmed by not going to school.

Ability for children to access information (Article 17)

Children have a right to access information from a range of sources. Inadequate information increases the risk of children becoming misinformed and can subsequently cause negative health implications. The Government must provide accurate and accessible information regarding Covid-19 for children and their care givers to provide reassurance around possible risks when returning to school.

Protection from violence, abuse, and neglect (Article 19)

There are child protection concerns with children not attending school. Whilst those children identified as living in situations of vulnerability are given the opportunity to attend school, we know that take up is low. Referrals to the Multi Agency Safeguarding Hub are low. Therefore, the plans must make paramount the protection of those children who may be at home in situations of risk.

The right to the highest attainable standard of physical and mental health (Article 24)

The right to health extends beyond access to health care. Importantly in the context of the coronavirus pandemic, it includes a right to the prevention, treatment, and control of disease. The physical environment in schools is a further factor here in that some of our schools in Jersey do not readily adapt to physical distancing with small classrooms and narrow corridors and limited play space. A blanket return to school for a certain year group does not consider the individual limitations of a school building.

International law confirms the right of all people not only to work, but to enjoy just and favourable conditions of work. This includes a right to safe and healthy working conditions. Teachers, support workers and all working in the school environment must have safe and healthy working practices. A return to classroom learning should be made in consideration of the rights of both staff and children to enjoy the highest attainable standard of health. Parents, care givers and school staff should feel confident that schools are healthy and safe environments.

There are workload implications for teachers in managing both in-class teaching and managing online learning for those children still at home. The right of teachers to enjoy good mental health may also be compromised by a sense of risk in the return to classroom teaching.

UNICEF and WHO guidance “GUIDANCE FOR COVID-19 PREVENTION AND CONTROL IN SCHOOLS” published in March 2020 should be considered during planning for a return to classroom-based learning.²

Right to an education and goals of education (Articles 28 and 29)

Every child has the right to an education. This right is described as essential for people to participate effectively in a free society. Countries are obliged to protect the right by ensuring, at a minimum, free, and compulsory primary education and a system of schools to provide equitable access to education at each level. Equitable access means that by enabling some pupils to return to school and not others may be seen as a breach of their rights. Nevertheless, it makes sense for a phased return to school prioritising some children over others to attend in the first instance. In the joint Government and Children’s Commissioner survey 109 children reported that they have not been able to do any schoolwork at home, with 30 of these children aged 11-16. Pupils responded that video lessons and more teacher input would help them learn better at home, as well as having resources and a laptop.

Listening to the views of children and young people (Article 12)

A recent survey by Island Global Research asked parents and guardians living in Jersey, Guernsey, and the Isle of Man about the impact of COVID-19 on their children’s education. 33% said they were very concerned, and a further 39% are somewhat concerned. The survey was completed by 1,684 residents in the Crown Dependencies.

2,105 children and young people took part in the joint Government and Children’s Commissioner survey during May 2020. 1007 (47.8%) stated that they were worried. Of these, 280 were worries related to school and /or work. 479 were worries around concern for others.

² https://www.unicef.org/media/66036/file/Key%20Messages%20and%20Actions%20for%20COVID-19%20Prevention%20and%20Control%20in%20Schools_March%202020.pdf

1,128 said they were feeling excited about returning to school, college, and university. However, 322 said they felt anxious, 105 feeling sad, with 159 concerned about safety. 468 children stated that they would need wellbeing support after the pandemic and lockdown is over. 376 stated that they would need support with education. They have asked for time to return to normality; safety in school; better information provision; and mental health support.

It will be imperative to take their views into consideration in any plan to return to classroom-based learning.

3. Key principles of Children's Rights Approach

In considering any plan for a return to classroom-based learning, I urge the Government to apply the key principles of Children's Rights Approach:

- **Embedding children's rights** – putting children's rights at the centre of core planning and service delivery. It is about creating a culture where children's rights are both respected and realised.

Children's rights should be at the core of planning any return to classroom-based learning. The Articles are indivisible however the articles mentioned in this advice are particularly important in this planning. The Government guidance should be clear and transparent where children's rights have been considered.

- **Equality and non-discrimination** – ensuring that every child has an equal opportunity to be the best that they can be.

There should be no discrimination against children as individuals or as a group when planning for a return to classroom-based learning. Any return to school must be implemented in a fair and non-discriminatory manner. Those children already identified as being the most vulnerable children should also be prioritised to provide greater equity in access to education.

- **Empowering children** – enhancing children's capabilities as individuals so that they are better able to realise their rights and engage with and hold accountable the institutions and individuals that affect their lives. Human rights should empower children, and this means removing barriers to children's access to information or resources that enable them to understand and exercise their rights.

The Government must provide timely, accurate and accessible information regarding Covid-19 for children and their care givers to provide reassurance around possible risks when returning to school. Communicating any decision to change the operation of schools must be given well in advance of any required action, allowing school staff, pupils, and parents to plan ahead.

- **Participation** – listening to children and taking their views meaningfully into account.

Participation means listening to children and taking their views meaningfully into account. Our island children have had the opportunity to complete the survey. Their views should be taken seriously when decisions are made regarding any return to school. The Government should make it clear how children have influenced their decisions and how their views have been considered.

- **Accountability** – authorities should be accountable for decisions and actions that affect children and young people's lives.

Children's human rights give rise to obligations which demand accountability. Ministers will be accountable to children for these decisions and actions which affect their lives. Children should be provided with information and given access to procedures which enable them to question and

challenge decision-makers. To obtain any human right a child must know they are entitled to it and be able to actively claim their human rights, including when making a complaint or challenging decisions and actions. Accountability means holding decision-makers to account, which requires information and data on performance against children's rights standards. I would recommend that a child friendly complaints mechanism be in place to ensure children can easily challenge decision makers, and that Ministers directly engage with children through participatory approaches.

4. Conclusion

Limitations on rights must be necessary, lawful, and proportionate. However, a return to school must not compromise the care, support, and protection of children.

There are therefore considerable rights tensions. The timing of any return to classroom-based learning must be guided by the best interests of every child and overall public health considerations.

From a child rights point of view, it is an ongoing balancing act: trading off the right to an education and all the social and developmental needs that this involves, with the stark and immediate right to life and survival.

The United Nations Secretary-General Report 'The Impact of COVID-19 on Children'³ outlines three main channels through which the pandemic is affecting children – infection; the socioeconomic effects generated by government measures to contain and mitigate the pandemic; and the impact of containment and mitigation strategies on the most vulnerable children. The harmful effects of this pandemic will not be distributed equally. Being out of school and not having equity in the home learning environment exacerbates the learning gap – the attainment gap is already too wide in Jersey.

It is imperative that parents, staff, and pupils have confidence in returning to school. Pupils should only return to classroom-based learning when the evidence and advice suggests that it is the right thing to do.

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³ UN Impact of Covid-19 on children April 2020