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Your ref: DE/01544-3
Our ref: Z2500665

30 June 2025

Dear Sirs,

Letter Before Action: The Maggie Oliver Foundation v Secretary of State Home Department

1. We write in response to your letter of 16 June 2025.

2. We will not rehearse the background to the Independent Inquiry into Child Sexual Abuse ("**IICSA**"). The IICSA Terms of Reference made clear that it would publish a report with *recommendations*; it did not have the power to bind the Government. We will not repeat the IICSA recommendations, which are summarised in your letter, nor the contents of the Tackling Child Sexual Abuse Progress Update published on 9 April 2025 ("**the Progress Update**"), save so far as necessary for the purposes of exposition.

3. The Government is well aware of the scale and nature of child sexual abuse across the country and is dedicating significant time and resource to consider the appropriate response. We note that your letter was written prior to publication of Baroness Casey's National Audit on Group-Based Child Sexual Exploitation and Abuse ("**the Audit**") on 16 June 2025. The Audit contains its own detailed set of recommendations, to which the Government responded on 16 June 2025 ("**the Audit Response**"). This is still a developing area of policy and further updates will be provided over the coming weeks.

4. In relation to the recommendations on which you focus at §§28 – 56 we note the following.

5. As to the first recommendation, while the Government has not established a single set of core data relating to child sexual abuse and child sexual exploitation, it is taking several actions to address the concern underlying that recommendation as set out at §§29 – 30 of the Progress Update. Baroness Casey has made further recommendations in the Audit in relation to the collection of data on child sexual abuse and exploitation and the sharing of information between statutory safeguarding partners. The Audit Response has set out a range of commitments to address these recommendations.

6. As to the fifth recommendation, the Government has not accepted this recommendation for the reason set out in the Progress Update. We note for the avoidance of doubt that paragraph 5.28 of the Use of Force, Restraint and Restrictive Practices in the Children and Young People Secure Estate ("**UFRRP**") remains in place and provides:

> *"Staff are not permitted to use restraint techniques which deliberately cause pain, however there may be instances where they are responding to an incident where the life of a child or someone is at threat or there is risk that they will suffer a significant or life changing injury and the common law principle of using an intervention which is reasonable, necessary and proportionate with the intended outcome will apply. All such instances will be subject to detailed and thorough review and staff members who were involved will be expected to be fully accountable for the action taken."*

7. For the avoidance of doubt, the Government has not removed that passage. However, that does recognise that there may be situations in which intervention is justified at common law, if strictly necessary. While such techniques should never be used except as a last resort in an emergency in the circumstances permitted at common law, failing to recognise the possibility of such an emergency would potentially put people at risk. We note that Independent Restraint Review Panel will ensure scrutiny and transparency over the use of the techniques.

8. In relation to the UN Convention on the Rights of the Child ("**UNCRC**") we remind you that UNCRC is an unincorporated Treaty and does not form part of the domestic law of the UK but, in any event, the Government's response is not in breach of Article 3 of the UNCRC: the Government accepts that the best interests of children must be a primary consideration but that does not mean that there are not circumstances in which it may be necessary to use the relevant techniques.

9. As to the sixth recommendation, the Government does not consider that legislative amendment is needed to achieve the outcome of this recommendation at this stage and has set out in the Progress Update the steps it is taking to ensure effective advocacy on behalf of children looked after by local authorities. Ensuring effective advocacy services will better enable children in care to share their concerns with trusted adults and will result in action taken to protect them much more quickly than a vulnerable child having to navigate a complex court process. We also note that legislation is a matter for Parliament: Parliament cannot be compelled to legislate.

10. In relation to the remaining recommendations, we note what is set out in the Progress Update.

Legitimate expectation: Principles

11. We note the statement of principle as to when a legitimate expectation may arise as set out at §62 of *Re Finucane's Application for Judicial Review* [2019] UKSC 7; [2019] 3 All ER 191. A claim for legitimate expectation requires that there be a clear and unambiguous representation; and that the circumstances be such that resiling from that representation would be so unfair as to amount to an abuse of power.

12. The onus of establishing that there has been a sufficiently clear and unambiguous promise or undertaking falls on the party asserting it: *Finucane* §64.

13. We also note the following passage in *Finucane* in relation to the application of legitimate expectations to situations involving macro-political issues:

> *"75. The reference to "macro-political issues" derived from the judgment of Laws LJ in Nadarajah . At [69] of the judgment in that case, Laws LJ said:*
> *"... where the representation relied on amounts to an unambiguous promise; where there is detrimental reliance; where the promise is made to an individual or specific group; these are instances where denial of the expectation is likely to be harder to justify as a proportionate measure. ... On the other hand where the government decision-maker is concerned to raise wide-ranging or 'macro-political' issues of policy, the expectation's enforcement in the courts will encounter a steeper climb. All these considerations, whatever their direction, are pointers not rules. The balance between an individual's fair treatment in particular circumstances, and the vindication of other ends having a proper claim on the public interest (which is the essential dilemma posed by the law of legitimate expectation) is not precisely calculable, its measurement not exact."*
> *76. Where political issues overtake a promise or undertaking given by government, and where contemporary considerations impel a different course, provided a bona fide decision is taken on genuine policy grounds not to adhere to the original undertaking, it will be difficult for a person who holds a legitimate expectation to enforce compliance with it."* (emphasis added)

UNCRC: Principles

14. We will not repeat the text of Articles 3 and 34 of the UNCRC as set out in your letter before action. However, we note that UNCRC is not binding in the domestic legal system of the UK. In *R (SC) v Secretary of State for Work and Pensions* [2022] A.C. 223, Lord Reed said:

> *"77. In relation to the second point, it is a fundamental principle of our constitutional law that an unincorporated treaty does not form part of the law of the United Kingdom. Lord Oliver explained this in the International Tin Council case at p 500:*
> *"as a matter of the constitutional law of the United Kingdom, the Royal Prerogative, whilst it embraces the making of treaties, does not extend to altering the law or conferring rights upon individuals or depriving individuals of rights which they enjoy in domestic law without the intervention of Parliament. Treaties, as it is sometimes expressed, are not self-executing. Quite simply, a treaty is not part of English law*

unless and until it has been incorporated into the law by legislation. So far as individuals are concerned, it is res inter alios acta from which they cannot derive rights and by which they cannot be deprived of rights or subjected to obligations ..."
78. That dictum was cited with approval, and the principle which it lays down reasserted by 11 justices of this court, in R (Miller) v Secretary of State for Exiting the European Union [2018] AC 61, paras 56, 167 and 244 . As was there explained, the dualist system, based on the proposition that international law and domestic law operate in independent spheres, is a necessary corollary of Parliamentary sovereignty. It is only because "treaties are not part of UK law and give rise to no legal rights or obligations in domestic law" (para 55) that the prerogative power to make and unmake treaties is consistent with the rule that ministers cannot alter the law of the land."

Response to grounds

Ground One

15. First, there is no merit in the proposed claim based on legitimate expectation. There is no clear, precise and unambiguous representation that the Government would implement all of the recommendations of the IICSA report.

16. In relation to the various statements quoted at §§60 – 65 we note that the Government has not committed to implementing all of the IICSA recommendations. The Secretary of State's statement made on 16 January 2025 was as follows:

"Before Easter, the Government will lay out a clear timetable for taking forward the 20 recommendations of the final IICSA report. Four of those are specifically for the Home Office. I can confirm that we have accepted them in full, *including on disclosure and barring, and work is already under way. A cross-Government ministerial group is considering and working through the remaining recommendations, and that group will be supported by our new victims and survivors panel. In addition, I can confirm today that the Government will implement all the remaining recommendations in the child abuse inquiry's separate stand-alone report on grooming gangs from February 2022, including updating key Department for Education guidance..."*

17. That noted that the Government would set out a timetable for "taking forward" the 20 recommendations of the final IICSA report. It has done that in some instances by setting out the steps it is taking to implement the recommendation, in other instances by making clear that it does not intend to implement the recommendation and in other instances by indicating the actions it is taking in order to address the concerns underlying the basis of the recommendations.

18. In any event, it is neither unfair nor abusive for the Government to respond to the IICSA recommendations in the manner in which it has. The appropriate measures to tackle child sexual exploitation are quintessentially matters of policy judgment for the Government to determine. The previous Government's response to the final report of the IICSA was published on 22 May 2023. This Government has again looked at the IICSA recommendations and further

explained its policy position in the Progress Update and the Audit Response which demonstrates a strong commitment to the issue of child sexual abuse. This is an evolving area of policy, and the Government is entitled to consider what is the appropriate response to the scourge of child sexual exploitation, which may not entirely align with the recommendations of the IICSA report. That approach is not unreasonable.

19. Nor has the Government failed to have regard to the interests of children or the importance of protecting them from all forms of child sexual exploitation and sexual abuse. On the contrary, the best interests of children lie at the heart of the extensive measures that the Government is taking to address this issue.

Ground Two

20. In relation to Ground Two, the Government's response to recommendation 1 of the IICSA report is not unreasonable. We remind you that in the context of a claim for judicial review, the threshold for unreasonableness is very high: the *Wednesbury* threshold. Your letter does not explain how that threshold could possibly be met. The Government has explained the steps that it is taking to improve the data in this field, including in the Audit Response as well as the Progress Update. The Government is taking reasonable steps and is not obliged to introduce a single set of core data.

21. We do not accept that the Government is under an obligation to give reasons, and you do not identify any basis for the assertion of such obligation. But, in any event, the Government has given a clear explanation of its current policy intentions.

Ground Three

22. There is no merit in your proposed ground three. As noted above, the Government has not departed from its previous position as reflected in the August 2023 amendment to the UFRRP guidance. However, as a matter of law, the common law recognises that there may be circumstances, in an emergency, when treatment that would otherwise not be permitted is justified by necessity. The Government has not amended that position. That is not in breach of Article 3, UNCRC – the Government has had regard to the best interests of children – but, as above, that is in any event not binding in domestic law. Nor is it in breach of the Government's positive obligations with regards to Article 3, ECHR. The Government was not under any duty to give reasons and has explained its position in the Progress Update.

Ground Four

23. There is no merit in your proposed ground four. You do not adduce any argument as to why the Government has acted in a manner that is Wednesbury unreasonable. The Government is alive to the importance of improving advocacy on behalf of children in care and taken steps to address this. In any event, legislation is a matter for Parliament. Parliament cannot be compelled to legislate. You do not identify any basis on which there could be a breach of the Equality Act 2010: being a child in care is not a protected characteristic for the purposes of the Equality Act 2010 and there is already an extensive legal framework in place in relation to children in care which does not apply to children who are not in care. The Government was not under any duty to give reasons and has explained its position in the Progress Update.

Ground Five

24. For the same reasons as given above, the Government is not obliged to implement the recommendations of the IICSA and has not undertaken to do so. In any event, its policy position is as it has set out. It is for the Government to determine what policy to introduce and the timescale in which to introduce it. This is a complex policy area involving a large number of stakeholders across government and it will inevitably take some time to implement any changes, having regard as well to the inevitable limits on public resources.

25. We would like to reiterate that the Government remains committed to tackling child sexual abuse and has introduced a raft of measures to do so. That work will continue. A claim for judicial review of this nature would be nothing more than a distraction from the important work that is being done across a range of Government departments.

26. In these circumstances we do not agree to take the action you have requested, and any claim will be robustly defended. We do not consider that your proposed claim has merit and, as a result, we do not agree to a costs capping order but would consider any application if made.

Yours sincerely,

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