

Agenda – Children, Young People and Education Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 16 October 2019

Meeting time: 09.15

For further information contact:

Llinos Madeley

Committee Clerk

0300 200 6565

SeneddCYPE@assembly.wales

Private pre-meeting

(09.15 – 09.30)

1 Introductions, apologies, substitutions and declarations of interest

(09.30)

2 Inquiry into Children's Rights in Wales – evidence session 1

(09.30 – 10.30)

(Pages 1 – 38)

Wales UNCRC Monitoring Group

Sean O’Neil, Policy Director, Children in Wales

Tim Ruscoe, Public Affairs and Participation Officer, Barnardo’s Cymru

Dr Simon Hoffman, Associate Professor, Swansea University

Attached Documents:

Research Brief

CYPE(5)–28–19 – Paper 1



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

3 Inquiry into Children's Rights in Wales – evidence session 2

(10.30 – 11.10)

(Pages 39 – 47)

Noah's Ark Children's Hospital for Wales

Dr Phillip Connor, Consultant in Paediatric Haematologist, Directorate Research and Development Lead, The Noah's Ark Children's Hospital for Wales

Rhian Croke, Children's Human Rights Advisor, Human Rights Wales

Rhian Thomas Turner, Senior Operations Manager, Children's Hospital for Wales

Attached Documents:

CYPE(5)–28–19 – Paper 2

Break

(11.10 – 11.20)

4 Inquiry into Children's Rights in Wales – evidence session 3

(11.20 – 12.00)

(Pages 48 – 58)

Equality and Human Rights Commission

Melissa Wood, Senior Associate

Hannah Wharf, Principal

Attached Documents:

CYPE(5)–28–19 – Paper 3

5 Inquiry into Children's Rights in Wales – evidence session 4

(12.00 – 12.40)

(Pages 59 – 77)

Children's Commissioner for Wales

Sally Holland, Children's Commissioner for Wales

Rachel Thomas, Head of Policy and Public Affairs

Attached Documents:

CYPE(5)–28–19 – Paper 4

6 Papers to note

(12.40)

6.1 Letter from the Minister for Health and Social Services – Update on Perinatal Mental Health

(Pages 78 – 80)

Attached Documents:

CYPE(5)–28–19 – Paper to note 1

6.2 Letter from Chair of Public Accounts Committee – Looked after Children

(Page 81)

Attached Documents:

CYPE(5)–28–19 – Paper to note 2

6.3 Letter from the Welsh Government – Quadrilateral meeting with the Secretary of State for Business, Energy and Industrial Strategy

(Pages 82 – 83)

Attached Documents:

CYPE(5)–28–19 – Paper to note 3

- 7 Motion under Standing Order 17.42(ix) to resolve to exclude the public from the remainder of the meeting**

(12.40)

- 8 Inquiry into Children's Rights in Wales – consideration of the evidence**

(12.40 – 12.45)

Document is Restricted

CYPE(5)-28-19 - Paper 1

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Plant, Pobl Ifanc ac
Addysg
Ymchwiliad i Hawliau plant yng Nghymru
CRW 14
Ymateb gan: Grŵp Monitro CCUHP
Cymru

National Assembly for Wales
Children, Young People and Education
Committee
Inquiry into Children's rights in Wales
CRW 14
Response from: Wales UNCRC Monitoring
Group

Consultation response - National Assembly for Wales Children, Young People and Education Committee: Short inquiry on children's rights in Wales to review the impact of the Rights of Children and Young Persons (Wales) Measure 2011

About

The **Wales UNCRC Monitoring Group** is a national alliance of non-governmental and academic agencies, tasked with monitoring and promoting the United Nations Convention on the Rights of the Child (UNCRC) in Wales. The Wales UNCRC Monitoring Group was established in 2002 and since May 2016 has been facilitated by Children in Wales. The Group has worked with the UN Committee on the Rights of the Child and submitted civil society reports to inform successive UK State Party Examinations in 2002, 2008 and 2016, and is engaged in other opportunities to forward children's rights, through other UN treaty mechanisms, Welsh Government and National Assembly policy and legislative processes.

Members of the Wales UNCRC Monitoring Group are representatives of, and nominated by, non-governmental organisations and academics which are as follows - Barnardo's Cymru, Centre for Welsh Legal Affairs - Aberystwyth University, Children in Wales, Children's Commissioner for Wales (observers), Equality and Human Rights Commission Wales (observers), NSPCC Wales/Cymru, Play Wales, Save the Children Wales, The Children's Society, The Observatory on Human Rights of Children, UNICEF and the Welsh Local Government Association (observers)

Further information on the work of the Wales UNCRC Monitoring Group can be found here <http://www.childreninwales.org.uk/our-work/rights/wales-uncrc-monitoring-group/>

1. Introduction

The Rights of Children and Young Persons (Wales) Measure 2011 came into full effect in May 2014 and requires Welsh Ministers through primary legislation to have due regard to the UNCRC when carrying out all of their functions (Part 1). Wales was the first, and presently the only part of the UK to implement such a duty, following repeated calls from the UN Committee on the Rights of the Child (UN Committee) and the Wales UNCRC Monitoring Group through successive civil society reports, to bring domestic legislation both in Wales and in the UK in line with the Convention's General Measures of Implementation.

The primary objective of the Measure is to ensure that the UNCRC is taken fully into account and given sufficient attention in policy development undertaken by Welsh Government officials on behalf of the Welsh Ministers. It is not intended to prescribe policy outcomes but provides a framework for Ministers, through the introduction of the Children's Rights Impact Assessment (CRIA) process, to embed the UNCRC into Welsh law. This process in turn should provide for enhanced policy output and improved outcomes for children and young people.

In 2018, Hoffman & O'Neill¹ - thereafter "the Study" (2018) - undertook a short examination into the impact of the legal integration of the UNCRC in Wales on behalf of the Equality and Human Rights Commission (EHRC). They concluded that

'the Measure has resulted in greater visibility for children's rights in policy processes undertaken by Ministers...(and) although there remain challenges of implementation of the Convention in Wales through government policy and action, overall the Measure has had a positive impact on the way policy is undertaken' (pp. 9)

This Study (2018) considered the impact of the Measure in achieving its intended objectives, focusing on policy development, advocacy and accountability. Professionals engaged through the fieldwork reported that in general, the Measure had had a positive influence on how policy was developed, believing that greater attention and thinking was being given to progressing children's rights in Wales. This in turn had raised expectations around compliance in that policy would take account of the Convention in its development or revision, and through increased visibility, enabling stakeholders to make greater reference to children's rights and the articles of the Convention in their engagement with the policy process. Nevertheless, the quality of consideration and analysis was also described as 'patchy and inconsistent' with the impact of the application of the legislation described as 'uneven'.

¹ <http://www.childreninwales.org.uk/resource/impact-legal-integration-un-convention-rights-child-wales/>

2. Securing compliance with the due regard duty

Part 2 of the Measure requires Welsh Ministers to make a 'Scheme' which sets out the arrangements they have made to secure compliance with Part 1 of the Measure. The present Scheme² (2014) set out a number of actions Welsh Ministers are taking to ensure compliance is achieved. We are aware that a refreshed Scheme is in progress and have made reference to this later in this submission.

2.1 Coordination & awareness raising within Welsh Government

The UN Committee requires government to establish a structure with a clear mandate and sufficient authority to coordinate all activities related to the implementation of the Convention. Such a structure should have '*sufficient human, technical and financial resources*' to be sufficiently effective. In relation to coordination, the current Children's Scheme (2014) makes reference to the Measure Implementation Team within Welsh Government, and describes its role, and many of its key functions and responsibilities (the more recent Compliance report notes that these responsibilities are now within the Children's Branch). We very much see this Team needing to be the internal source of expertise within Welsh Government to support the implementation of the due regard duty through a number of key internal functions.

It is essential that officials across all departments are fully aware and familiar with this resource, and are able to access appropriate and timely advice, support, knowledge and guidance. It is equally important that all departments are made aware of relevant initiatives commissioned by this Team to assist in the realisation of Convention articles e.g. Young Wales, and that such initiative have sufficient resources to meet potential demand.

As well as having the necessary expertise, this Team will require sufficient capacity and resources, and have an embedded strategic relationships with senior personnel and structures across Government (such as the Internal Children's Network referenced in the Compliance Report 2018) if they are to be truly effective in implementing Ministerial duties and the key components of the Measure. We anticipate that the forthcoming refreshed Children's Scheme will provide sufficient detail in relation to current internal arrangements and structures; the roles and responsibilities of the key groups who support the Welsh Ministers to comply with their duty under the Measure and the interface between different layers of governance.

² <http://www.assembly.wales/Laid%20Documents/GEN-LD9732%20-%20Children's%20Rights%20Scheme%202014-22042014-255569/gen-lD9732-e-English.pdf>

The Children's Branch have established a Children's Rights Advisory Group (CRAG), which consists of four members of the Wales UNCRC Monitoring Group³, whose role it is to provide advice through quarterly meetings to members of this Team in relation to pre-identified policy priorities and other related activities⁴. This is a positive development and provides a vehicle by which timely advice can be given to officials in support of their implementation functions (which should be seen as an on-going process) on behalf of Ministers

2.2 Increasing knowledge through internal training

The present Scheme notes the commitment to raise awareness and train staff using resources which have been developed, and that a Raising Awareness and Training Strategy is in place which includes the training tools and methods aligned with staff responsibilities. We would wholly agree that training is crucial in enabling officials, particularly those leading on the development of the CRIA process, to have sufficient knowledge and understanding of the Convention and the due regard requirements prescribed by the Measure in order to carry out their functions to the best of their ability.

Part 4 of the Measure requires Welsh Ministers to produce a Report (known as the Compliance Report) reporting on the activities undertaken to comply with Part 1 of the Measure. The Compliance report (2018) identified '*commissioning, coordinating and supporting training*' as one function, reporting that 648 staff across 4 departments have completed the online training during the period covered by the report, a number which is significantly lower than in the previous period. We understand that the training is currently being refreshed and updated to improve its accessibility and alignment with more recent policy changes, but we have yet not had sight of those changes or the recording and reporting mechanisms to ensure that the training is being delivered and accessed as intended, and that it meets its primary objective of increasing knowledge and understanding amongst staff.

It is essential that there is an element of face-to-face and specialised/targeted training to staff, including lawyers, as part of this new package being developed to complement the online element for staff, and that this support through training be continuous, and be compulsory for all new starters as part of their induction programme. It should also be ensured that officials thereafter receive training where there is a change in their role or function.

³ External members of the CRAG are Children's Commissioner for Wales, Children in Wales, Observatory on Human Rights of Children and UNICEF

⁴ This has included giving advice on draft CRIA and more recently, we have had an opportunity to pass comment on the forthcoming refreshed Children's Rights Scheme.

We anticipate that the forthcoming refreshed Children's Scheme will provide sufficient detail in relation to the new arrangements and package for training, taking account of all the points made above. We would see the role of the Team of officials referenced above being instrumental in coordinating and driving forward these arrangements.

It should be emphasised that as due regard duty is non-delegable, that Welsh Ministers should also routinely undertake training as well.

2.3 Child Rights Impact Assessment (CRIA) process

To ensure that due regard is applied, the Welsh Government has adopted the CRIA process, consistent with the Convention's General Measures of Implementation. CRIA remains an important mechanism by which to ensure that 'due regard' is applied in practice, and through CRIs being made public, as a basis for scrutiny and accountability. Whilst it's been reported that the introduction of the CRIA process has resulted in a greater focus and attention given to children's rights in the policy process, their quality is often regarded as variable.

In a briefing report⁵ (2017) UNICEF found that *'practice had varied quite extensively to date'*, and whilst there were good examples of CRIA, many were *'drafted too late'*, *'become one-off products drafted to record and communicate decisions rather than to inform them'*.

The Study (2018) reported that 260 CRIA have been completed across a range of Government departments since May 2012, and examined a number of policies as case examples where a CRIA was undertaken, or where there were significant omissions e.g. 2017-18 budget (This despite child rights budgeting being a fundamental component of the General Measure of Implementation, supported by published UN Guidance on public budgeting for the realisation of children's rights⁶). The Study (2018) concluded that the CRIA process can be effective to inform and improve policy development where the 'due regard' duty is consistently applied.

We have previously made the following recommendation that quality CRIs should be consistently undertaken on all proposed policies, budgetary decisions and legislation likely to impact on children and young people, and that these are routinely made available in a timely manner to external stakeholders, and for

⁵ <https://www.unicef.org.uk/publications/unicef-uk-cria-2017/>

⁶ UNCRC General Comment No. 19 (2016) <https://www.eurochild.org/policy/library-details/article/un-general-comment-no-19-on-public-budgeting-for-the-realisation-of-childrens-rights-article-4/>

scrutiny by children and young people who should also be engaged in their preparation. This should equally apply as the Strategic Integrated Impact Assessment model which is being implemented.

This would not only enhance accountability, by enabling external players, including children and young people to be better able to hold Ministers to account but also enable them to gain an enhanced understanding of why and how certain decisions had been made and how due regard had been fully taken into account.

2.4 Accountability, compliance and enforceability

As stated, Part 4 requires Welsh Government to produce a periodic report to demonstrate how they have complied with the duty. The latest report was published in 2018⁷, although was not subject to any scrutiny procedures by the National Assembly for Wales at the time.

The Measure does not provide direct legal accountability for children and young people who consider their rights to have been breached. We note that leading child rights advocates in Scotland have called⁸ for a ‘compliance duty’ to form a key component of their forthcoming legislation as the Scottish Government prepares to incorporate the Convention into Scots law. The Study (2018) makes reference to the limitations of the Measure in respect of enforceability by children, young people or persons making representation on their behalf. Wales UNCRC Monitoring Group member The Observatory on Human Rights of Children provides a persuasive case for Welsh Ministers introducing amendments to the Measure to allow for a compliance duty aligned to current competencies, and we would wish to draw the Committee’s attention to their written response.

The Children’s Scheme does provide for a child to make a complaint or challenge a decision, and sets out ways in which support to do so is available. However, the Compliance report makes no reference to any complaints being received and the Study (2018) makes reference to no complaints having been made during the period. The forthcoming refreshed Children’s Scheme now provides an opportunity to set out ways in which children could be better made aware of the complaints mechanism, supported by child-friendly and web-based materials.

3. Due regard duties placed on Public Bodies

We welcome the inclusion of the ‘due regard’ duties to the Convention through the Social Services and Wellbeing (Wales) Act 2014 and the Additional Learning

⁷ <https://gov.wales/rights-children-and-young-people-compliance-report>

⁸ <https://www.togetherscotland.org.uk/media/1200/childrens-rights-scotland-bill-2019.pdf>

Needs and Education Tribunal (Wales) Act 2018 in recent years. Welsh Ministers should follow the logic of the 'due regard' provisions further and extend a general public sector duty of due regard to the Convention in Wales which applies to all public bodies and all bodies delivering public functions. The role of public bodies is pivotal in delivering services which can enhance the promotion of children's rights and help children achieve better outcomes.

We believe that existing legislation could be strengthened to bring it in line with the requirements set out for Welsh Ministers in the Measure. Welsh Ministers are required by law to publish a Children's Scheme which sets out arrangements for complying with the due regard duty as well as a report which outlines how they have complied with that duty. There are no equivalent requirements on public bodies. Consideration should therefore be given to producing guidance to help public bodies comply with legislation and to strengthen scrutiny and accountability arrangements.

4. Strategic response to the Concluding Observations of the UN Committee on the Rights of the Child.

On the 3 June 2016, the UN Committee issued its Concluding Observations⁹ to the UK and devolved governments which set out ways in which governments can better meet their obligations in respect of implementing the UNCRC. These Concluding Observations, the first issued since the implementation of the Measure, were informed by the UN Committee's consideration of the report of the UK State Party, which the devolved governments contribute to¹⁰; reports from civil society organisations, including that of the Wales UNCRC Monitoring Group and from young people¹¹, including those in Wales¹². The Committee welcomed the positive steps being taken by the Welsh Government towards fully incorporating the UNCRC into domestic law, recognising that good progress had been made to secure and protect the rights of many children and young people,

We have previously called for there to be a national action plan for Convention implementation, which identifies key priorities and actions to address the recommendations made in the Concluding Observations. The then Cabinet Secretary for Children issued an initial response through a Written Statement¹³ welcoming the Concluding Observations upon their release in June 2016 and the

⁹ <http://gov.wales/docs/dsjlg/publications/cyp/160727-final-concluding-observations-2016-en.pdf>

¹⁰ The Welsh Governments contribution to the State Party Report - <http://gov.wales/docs/dsjlg/publications/cyp/131120-cyp-periodic-report-en.pdf>

¹¹ The report from Young Wales and the response from Welsh Government to that report - <http://www.youngwales.wales/index.php/priority-areas/uncrc>

¹² All documents submitted can be accessed via the website of the UN Human Rights Office of the High Commissioner - http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=987&Lang=en

¹³ <http://gov.wales/newsroom/people-and-communities/2016/un-committee-highlights-welsh-progress-childrens-rights/?lang=en>

relevant minister has issued similar statements since. However, whilst reference is made to certain recommendations from the UN Committee, a report setting out progress made to date in taking forward the actions and planned future activity until 2021 to implement the Concluding Observations as they relate to our devolved competencies has not been published.

To note that in November 2009, the previous Welsh Government published a National Action Plan “Getting it Right 2009: United Nations Convention on the Rights of the Child¹⁴” in response to the 2008 Concluding Observations. Described as a 5-year rolling action plan, it set out Welsh Government’s priorities in responding to the UN Committee’s previous recommendations.

Whilst the Measure stipulates that Welsh Ministers must have regard when preparing a Children’s Scheme to ‘any other reports, suggestions, general recommendations or other documents issued by the UN Committee relating to the implementation of the Convention’ this is not akin to having a duty to publish a comprehensive National Action Plan on activities to implement the Concluding Observations. We note that there is a legal obligation placed on the Scottish Government to report on steps taken to give further effect to the UNCRC, with their latest report also setting out progress made in taking forward the Concluding Observations and planned activity until 2021¹⁵.

We suggest that the Welsh Government consider introducing a duty on Welsh Ministers to publish, and monitor a National Plan which sets out progress made in implementing the Concluding Observations. Part 6 of the Measure provides for power to amend legislation to give further or better effect to the Convention.

In addition, we support calls from the Equality and Human Rights Commission Wales (EHRC) for the Welsh Government to adopt a formal mechanism to coordinate and monitor the implementation of all UN recommendations, including those from the UN CRC Committee, which would provide Welsh Ministers with a means by which to track progress more holistically. Many of the Concluding Observations issued by UN Committees of other UN treaties¹⁶ make recommendations in support of progressing children’s rights, and a coherent mechanism across Government would aid implementation and monitoring (we would wish to draw the Committee’s attention to the written response of EHRC Wales for more details)

¹⁴ <https://dera.ioe.ac.uk/10867/1/091117gettingitrighten.pdf>

¹⁵ <https://www.gov.scot/publications/progressing-human-rights-children-scotland-report-2015-2018/pages/13/>

¹⁶ For example, there are recent recommendation in relation to children in the Concluding Observations issued by the following UN committees - UN Convention on Torture (UNCAT); UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) & the UN Convention on the Rights of Persons with Disabilities (UNCRPD)

5. Implementing the duty to promote knowledge and understanding of the UNCRC amongst the public, including children and young people

Section 5 of the Measure places a duty upon Welsh Ministers to promote knowledge and understanding of the Convention amongst the public, including children and young people. The latest Compliance Report makes reference to a contract awarded to University Wales Trinity St David for sector specific training, and grant funding to Children in Wales for participation training to the workforce. It should be noted that a broad range of Third Sector and Wales UNCRC Monitoring Group organisations, the Children's Commissioner for Wales, Young Wales and the new Youth Parliament, also deliver activities which contribute to this aim as part of their broader work. We are not aware of any specific programmes of training activity aimed at raising awareness amongst the general population, although the Welsh Government have produced (and currently refreshing) hard copy materials and e-resources to promote knowledge of children's rights and the Convention, supported by social media and web base activities.

This year marks the 30th anniversary of the Convention with the Welsh Government have commissioned multi-media activity and engagement opportunities with children and young people in the lead up to a national event on 20th November¹⁷. This will provide a further opportunity to promote the Convention and activities in Wales which work to promote children's rights including the implementation of the National Participation Standards for Children and Young People in Wales.

The extent to which activities to date have directly achieved their intended aim of increasing knowledge and understanding of the Convention is difficult to gauge, given that no comprehensive survey of the whole population has been carried out. In respect of children, messages from the Study (2018) indicate that accessing knowledge about the Convention is largely dependent on which school a pupil attends and/or whether or not they are involved in any formal engagement structures and mechanisms, such as youth forums, Children's Commissioner's Ambassadors or Young Wales. The young people's workshops conducted to inform the Study found that 92% of young people had heard of the UNCRC with a clear majority having some knowledge about the Convention. However, this cannot be said to be representative of the population as a whole, with other reports put this figure significantly lower (Young Wales report to inform the UN scrutiny session in 2016 – 55% had heard of the Convention)

¹⁷ <http://www.childreninwales.org.uk/item/event-celebrate-30-years-uncrc-wales/>

There is a clear need for an approach which achieves consistency and provides an opportunity for all children and young people to be able to access information and knowledge about the Convention. This should be achieved in collaboration with existing structures which support awareness raising and opportunities for participation. In addition, we support a growing number of calls for human rights education to be fully incorporate into both the content of the whole new curriculum and across the whole school environment.

Welsh Ministers may wish to consider producing a national strategy for promoting knowledge and understanding of the Convention. This would support Ministers when monitoring and evaluating progress in achieving the duties set out in Part 5 of the Measure and inform their reporting requirements under Part 4. It would also contribute to broader priorities, including the programme of work around enhancing workforce development.

6. Making use of due regard to influence policy & legislation, and enhance scrutiny

The Measure also provides an opportunity to use the due regard duty as the basis for policy advocacy in Wales, and the study draws attention to ways in which Assembly members and stakeholders external of Government have made use of this opportunity. In the absence of a more detailed examination, the Study (2018) drew attention to the effective use of the due regard duty to influence policy and scrutinise Ministers, citing the CYPE Committee scrutiny of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 as one case example where the Measure was used to support policy positions and amendments. However, the opportunity to make reference to and use of the due regard duty during debates, plenary sessions and scrutiny undertaken by National Assembly committees was not always embraced when it might have been.

The use of the due regard duty by professionals is also mixed, with many Wales UNCRC Monitoring Group members more accustomed to utilising the Measure and rights-based language than many others. The recent evidence provided to inform the CYPEC scrutiny sessions in respect of the Children (Abolition of Defence of Reasonable Punishment)(Wales) Bill powerfully illustrates how the Convention can be utilised to good effect when putting forward and influencing policy positions. Assembly members and the National Assembly Committee Clerks and research teams may wish to consider exploring opportunities to access training to help support with scrutiny arrangements and making better use of the Measure when holding Ministers to account on their due regards duty

7. Independent monitoring

The UN committee welcomed the increased independence of the Children's Commissioner, but were concerned that powers were still limited. It recommended that independence should be strengthened. We commend the Welsh Ministers' position that the remit of the Children's Commissioner for Wales extend to any matter, devolved or non-devolved, affecting a child or children in Wales. This will significantly enhance enjoyment of their rights by children in Wales and is supported by the legacy report of the National Assembly for Wales' Children, Young People and Education Committee. In 2014, Welsh Government commissioned an independent review into the legislative framework¹⁸, role and accountability of the Children's Commissioner for Wales. Amongst the recommendations was that accountability and funding should be transferred to the National Assembly for Wales, consistent with the Paris Principles. However, we regret the Welsh Ministers' opposition at that time to make the office accountable to the National Assembly for Wales (the parliament) rather than the Welsh Ministers (the government). The Welsh Ministers should promote legislation to reform the Commissioner's statutory role and remit, including by making the Commissioner accountable to the National Assembly for Wales.

8. Closing Remarks

The Measure is a Wales-only significant piece of legislation which seeks to integrate the UNCRC into Welsh Law, with the Study (2018) showing that it is an effective mechanism by which to raise the profile of rights in law and policy. Wales was, and still is, the only part of the UK with such a law, which builds on the legacy of Wales being a country which prides itself on promoting children's rights and embedding them in policy and practice. It is timely for the Committee to reflect on the good progress which has been made but also look at ways in which children's human rights could be further realised. We hope that this response, along with those submitted by organisations as members of the Monitoring Group, assists assembly members in their deliberations and when forming recommendations.

Developed and submitted by Children in Wales, in consultation with and on behalf of member organisations of the Wales UNCRC Monitoring Group.

September 2019

¹⁸ <https://gov.wales/written-statement-review-role-and-functions-childrens-commissioner-wales-announcement-reviewer>

CYPE(5)-28-19 - Paper 2

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Plant, Pobl Ifanc ac Addysg
Ymchwiliad i Hawliau plant yng
Nghymru
CRW 17
Ymateb gan: Ysbyty Arch Noa i Blant
Cymru

National Assembly for Wales
Children, Young People and Education
Committee Inquiry into Children's rights in
Wales
CRW 17
Response from: Noah's Ark Children's Hospital
for Wales

Access to medicines and good quality paediatric research: children's human rights implications and considerations for the Welsh context

Authors to the evidence submission

- Dr Phillip Connor, Cardiff and Vale UHB, *Consultant Paediatric Haematologist, Clinical Board R&D Lead: Children and Women and Welsh Speciality Lead for Child Health Research, Children's Hospital for Wales*
- Rhian Croke, Children's Human Rights Advisor, *Human Rights Wales*.
- Rhian Thomas Turner, *Senior Operations Manager (R&D) Children's Hospital for Wales*
- This evidence submission is supported by the Royal College of Paediatrics and Child Health (RCPCH)

1. Introduction

To the Children and Young People's Committee, National Assembly for Wales, for the purposes of its short inquiry on children's rights in Wales to review the impact of the Rights of Children and Young Persons (Wales) Measure 2011.

This evidence concerns Welsh Government's decision-making on allocation of resource for health services and research in Wales in general and specifically on the issue of access to medicines and research into medicines for children.

We submit that there is as yet little evidence of implementation in practice of the duty of due regard to the requirements of the UNCRC in the published documents and statements on these issues.

2. Why is access to medicines and good quality paediatric research a children's human rights issue?

Access to essential medicines is entrenched in the right to the highest attainable standard of health, which is enshrined in international law and the development of essential medicines requires good quality paediatric research. States are obliged under international human rights law to respect, protect, and fulfil the right to health, which includes an obligation to adopt legislative, administrative, and budgetary measures to facilitate access to medicines that are affordable, accessible, culturally acceptable, and of good quality. There are a core set of *minimum obligations* which are not subject to progressive realization, including access to essential medicines.¹²

United Nations Convention on the Rights of the Child (UNCRC)

With respect to the UNCRC and the provisions of the *Rights of Children and Young Person's Wales Measure*, the two key articles of the United Nations Convention on the Rights of the Child in relation to the child's right to health are:

Article 6 of the UNCRC states that:

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 24 of the UNCRC states that

"States Parties must recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services."

¹[U.N. Doc. E/C.12/2000/4 (August 11, 2000)]

²Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights have elaborated, the progressive realization of rights also suggests that states, regardless of their level of economic development, are obligated to take measures immediately and "move as expeditiously as possible" towards the realization of those rights. See <https://www.escri-net.org/docs/i/425445>.

Additionally the UN Committee on the Rights of the Child General Comment No. 15 explains that services should comply with their obligation to adhere to what is commonly referred to as the AAAQ framework.³⁴ States should ensure that all children's health services and programmes comply with the criteria of availability, accessibility, acceptability and quality. According to General Comment No. 15 of the UNCRC, realizing the right to access medicines is contingent upon the realization of these four interrelated elements.

There are many articles of the UNCRC that are essential to realising a child's right to health. In considering the implications of this response we would like the Committee to take into account these further articles, summarised below:

Article 2: No child should be discriminated against on any grounds.

Article 3: The best interests of children should always be considered in individual care decisions, but also in the planning, delivery, and setting of service standards

Article 4: Economic, social and cultural rights (including the right to health) must be implemented to the maximum extent of available resources.

Article 12: All children should be involved in decisions that affect them, from individual care decisions through to shaping health services that they might use.

Article 23: All children with disabilities have the right to be involved, which includes having appropriate communication support.

Article 27: Every child should have a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Article 28: Every child has the right to education, including as an inpatient, structuring services to avoid missing school due to participation in clinic appointments.

³ United Nations Committee on the Rights of the Child (2013) General Comment No. 15 paras. 113-116

⁴See also the WHO, "Equitable Access to Essential Medicines: A Framework for Collective Action" in *WHO Policy Perspectives on Medicines Bulletin* (2004), <http://apps.who.int/medicinedocs/pdf/s4962e/s4962e.pdf>, 2.

Article 31: Every child has the right to rest, relax and play when engaging with health services.

3. The Problem

3.1 Inadequate paediatric research across the UK

“Children are not small adults; they need biomedical and health services research that takes account of their changing physiology, and addresses their problems directly, generating evidence to improve the quality of the treatments and healthcare they receive, and the policies that affect their wellbeing” (Royal College of Paediatrics and Child Health (RCPCH) 2012)

The prevailing Research and Development (R&D) model is currently ill-prepared to respond to the child population which has little purchasing/voting power, which sees children health research neglected overall and a lack of development of medicines across the UK (and globally). The UK ranks 19th in Europe for neonatal mortality and 20th for under 5 mortality dropping significantly from its position in 1990.⁵ Paediatric research is critically important as many interventions still lack a robust evidence base. Improvements in health care in children will potentially have the longest (lifetime) impact.

According to the *Royal College of Paediatrics Turning the Tide report 2018*:⁶

- Consultant academic paediatricians are still a very small percentage of the UK paediatric workforce
- Consultant paediatricians have limited time for research in their work plans.
- Children’s interests are not currently represented adequately in the UK life sciences industry’s strategy
- Not enough paediatricians on national research boards or committees promoting the interests of children.
- Funding for child health research is decreasing year on year since 2012

⁵ See ONS data 2017

⁶Royal College of Paediatrics and Child Health (2018)Turning the tide-five years on
https://www.rcpch.ac.uk/sites/default/files/2018-03/turning_the_tide_-_five_years_on_2018-03

It is discriminatory and not in the best interests of children as a social group that they are not gaining the benefits of good quality research. This is a breach of their rights as laid out in most globally ratified human rights treaty the United Nations Convention on the Rights of the Child (UNCRC) and concurrently our own domestic legislation the *Rights of Children and Young Person's Wales Measure 2011*. A progressive programme of work has been undertaken by the European Union through the 'Paediatric Regulation' that has encouraged increased access to medicines for children since 2007. However given that the UK could be about to leave the European Union, a clear framework of accountability for children is essential. Research has demonstrated that with legal systems with legislative provisions in place the availability of a higher number of new paediatric medicines for children has been achieved.⁷ According to the RCPCH, if the UK is; 'not completely aligned with the European Paediatric Regulations, the volume of commercial research in the UK will be reduced with strong negative impacts on child health'.⁸

3.2 Welsh Health Research Infrastructure neglects Paediatric Research

This is set against a context whereby paediatric research in Wales is already underrepresented and resourced. From 2010-2015 children's paediatric research was included in the Welsh Health Infrastructure⁹ through the Children and Young People's Research Network; however, the change from the old infrastructure to the new Centres and Units in 2015 resulted in a loss of focus on paediatric research. The creation of a Clinical Research Facility for children was one of the National Centre for Population Health and Wellbeing's objectives, however no funding was made available for this and Cardiff and Vale University Health Board moved forward with this as a solo project. Since 2015 paediatric research across Wales has been supported in 2 ways: a) through the Children's Speciality Lead and b) through Activity Based Funding (ABF). This is wholly inadequate; the Speciality Lead (currently held at the Noah's Ark Children's Hospital for Wales (NACHfW)) is funded for one session of consultant time (3.75 hours) a week to encourage and increase paediatric research across Wales and the ABF model does not

⁷European Commission (2017) State of Paediatric Medicines in the EU 10 years of the EU Paediatric Regulation. COM https://ec.europa.eu/health/sites/health/files/files/paediatrics/docs/2017_childremsmedicines_report_en.pdf p. 9,

⁸ Royal College of Paediatrics and Child Health (2018)

https://www.rcpch.ac.uk/sites/default/files/201803/turning_the_tide_-_five_years_on_2018-03.pdf p.7

⁹ Please see map of the Welsh Research Health Infrastructure <https://www.healthandcarerresearch.gov.wales/research-infrastructure-map/>

compensate for the complexity of paediatric trials and the fact that numbers will always be a very small proportion of adult studies.

Despite these challenges, in 2017 the Children and Young Adults' Research Unit (CYARU), the first Clinical Research Facility in Wales dedicated to children was opened. Initially funded by Cardiff and Vale University Health Board at risk but now with two research nurses funded through ABF allocation, CYARU has doubled the number of children recruited into clinical research studies in Wales.

The aim is to build on the work of the CYARU and the work of the Speciality Lead and develop Wales-wide paediatric research; however, for this to happen, core funding must be secured. In April 2019 the Children's Hospital in partnership with Wales, wide collaborators put forward an application to the Health and Care Research Wales infrastructure fund. The application, after being considered by an External Review Board (ERB) failed to receive funding. Basic feedback regarding the ERB's decision was offered in the outcome letter; however the letter also stipulated that no further feedback would be forthcoming. The Wales wide collaborators understand the competitive nature of research funding, however, without further feedback it is impossible to determine whether due regard was paid to the UNCRC when the funding decision was made.

We are concerned that access for children to good quality clinical research have not been embedded effectively across Welsh Government health portfolios and policy. We also question whether Welsh Government is failing to ensure that its duties within the Measure are translated into the public bodies it provides funding to? We are therefore pleased that the National Assembly's Children and Young People's Education Committee are taking the opportunity to scrutinise this issue.

3.3 Activity Based Funding Model: Discriminatory towards children

Activity Based Funding (ABF)¹⁰ is a Welsh Government formula for paying for each patient recruited in to a portfolio study. Portfolio studies are those deemed of sufficient quality to qualify for such recognition and are placed on an All Wales register of research studies. Studies are categorised in to three bands and funded per patient recruited: interventional (£976), observational

¹⁰ The ABF model is currently under review by Health and Care Research Wales.

(£311) and large sample studies (£89). ABF does not work for low recruiting, highly complex studies that are prevalent in paediatric research.

The ABF model should be assessed for compliance with the UNCRC. Although the model may not be prima facie discriminatory against children however when practically applied there is a discriminatory impact. This can result in accessing fewer opportunities to develop critical and age appropriate medicines. This indirect discrimination may breach a child's best interests (article 3 of the UNCRC) the child's right to survive and develop (article 6) to their fullest potential and to the highest attainable standard of health (article 24). Any health funding model should treat all patients equally and without discrimination.

It is also discriminatory because of the resulting limited opportunities to participate in a clinical study in the Welsh context. Early Phase Paediatric Oncology research is a prime example of this issue. Children and their caregivers who, following discussions with clinical teams have decided they would like to consent to participate in early phase studies currently have to travel out of Wales to participate in such studies. Adult patients do not have to do this. Children and caregivers may have to travel long distances to participate in clinical studies, take longer periods of time off work and face negative impacts on their household economy (Article 27). This may also have a negative impact on the child, who consequently does not have regular access to siblings, extended family and to friends who can offer support to the child and the caregiver, in addition to their education (Article, 28 of the UNCRC).

Children's views and perspectives should be considered and in particular the children who are directly affected by these funding decisions (article 12 UNCRC) and is an important aspect of compliance with the Measure. In Wales, there are currently few mechanisms allowing children's views to be heard in the production of research for conditions they are affected by. This is also demonstrated by other mechanisms e.g. Health Wise Survey that does not consult children who are under the age of 16. The 2019 Parliamentary Review of Health and Social Care recommend, "*Strengthening through voice and control in health and care and ensuring all ages and communities have equal involvement*", additionally the Prudent Health Care Principles emphasise the importance of co-production. Children currently do not have equal involvement in health care decision making that affects them.

3.4 Lack of transparency with regards to health budget decision making

We are concerned that there is still a lack of visibility of children in the Welsh Government health research budget. We would urge more detailed analysis on specific areas of spend in particular in relation to health research.

Although requested from the Health and Care Research Wales Support Centre, the figure for what is currently spent by Welsh Government on paediatric research is not forthcoming. The lack of transparency in public expenditure on paediatric research means that it is currently not possible to tell without more detailed analysis, whether the Welsh Government is using sufficient levels of expenditure to fulfil children's right to the highest attainable standard of health. Under article 4 of the UNCRC, Ministers have a clear obligation to demonstrate whether it is fulfilling children's economic, social and cultural rights 'to the maximum extent of available resources'. We believe that transparent evidence of spending on children in relation to health research is an essential tool in both meeting this obligation and evidencing how planned spending and indeed spending cuts are impacting on the outcomes for children and young people in the enjoyment of their rights. We urge that in accordance with the Children's Scheme that all decision making, including budgetary decisions are assessed for compliance with children's rights i.e. a Children's Rights Impact Assessment is undertaken.

4. Conclusion

Even though there is a strong national commitment to the human rights of children in Wales, it is apparent that currently health policy and decision making around access to medicines and paediatric research has not incorporated the accountability framework of children's human rights and international human rights treaty obligations. These obligations could have greater significance given the UK may be about to leave the European Union and the protections and regulatory framework the EU Paediatric Regulation provides.

Welsh Government must urgently dedicate funding to the development of paediatric research and the development of a paediatric academic workforce. The current Welsh Government funding models for funding clinical research in Wales unfairly impact on the paediatric population. The Welsh Government should urgently harness and incorporate the positive elements of the EU Paediatric Regulation and also take this critical opportunity to honour their obligations under the *Rights Measure 2011*. Working with other public bodies they should commit funding and an

action plan to ensure Wales become world leaders in paediatric research and medicinal development for children. A fully funded Wales-wide Research Infrastructure for paediatrics will be essential to delivering this goal and should be underpinned by a children's human rights approach.

Key recommendations

1. Children's human rights should never be an afterthought but a primary consideration and central to any decision making and actions taken regarding research and development and access to medicines for children in Wales.
2. Welsh Government should review their health budget and policies for their compliance with 'due regard' to the principles and provisions of the Rights of Children and Young Persons (Wales) Measure 2011, through conducting a children's rights impact assessment and publish the findings.
3. Welsh Government should introduce a public sector duty, for all public bodies (including health bodies) to have due regard to the UNCRC.
4. Welsh Government should urgently develop a time bound action plan and dedicate funding to the "maximum extent of available resources" to the development of
 - paediatric research,
 - medicine development
 - the academic paediatric workforce in Wales.

Agenda Item 4

CYPE(5)-28-19 - Paper 3

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Plant, Pobl Ifanc ac
Addysg
Ymchwiliad i Hawliau plant yng Nghymru
CRW 26
Ymateb gan: Comisiwn Cydraddoldeb a
Hawliau Dynol

National Assembly for Wales
Children, Young People and Education
Committee
Inquiry into Children's rights in Wales
CRW 26
Response from: Equality and Human Rights
Commission

Consultation response

The Equality and Human Rights Commission (the Commission) welcomes the opportunity to respond to the Committee's inquiry into children's rights in Wales. In December 2017 the Commission procured research to examine the impact to date of the Rights of Children and Young Persons (Wales) Measure 2011 (the 'Measure'). The research aimed to assess the impact of the Measure and how (if at all) it has made a difference to children's rights in Wales. Questions pertaining to the Measure in this response are primarily informed by this report. The research was carried out by the Wales Observatory on the Human Rights of Children and Young People, and Children in Wales between 1 January and 31st March 2018. The research adopted a mixed methodology including a literature review, a review of National Assembly for Wales (NAW) proceedings, surveys to obtain the views of civil society and legal professionals, case studies and consultations with children and young people.

The full research report can be accessed here:

https://www.equalityhumanrights.com/sites/default/files/the_impact_of_legal_integration_of_the_un_convention_on_the_rights_of_the_child_in_wales_eng.pdf

- 1. the extent to which the Rights of Children and Young Persons (Wales) Measure 2011 has influenced the Welsh Government's decision making, including its financial allocations and whether it has fulfilled the Convention's 'general measures' of implementation;**

Background

In 2011, NAW enacted Wales-only legislation to give effect to the Convention on the Rights of the Child (the Convention) in policy development in Wales: the Rights of Children and Young Persons (Wales) Measure 2011 (the 'Measure'). The Measure came into full effect in May 2014. It is primary legislation that requires the Welsh Ministers to have due regard to the Convention when carrying out any of their functions.

The Measure embeds the Convention in Welsh Government policy processes. It introduces legal devices to strengthen accountability for the way in which children's rights are considered in policy in Wales, and to promote awareness of the Convention.

General Measures of implementation

When a State ratifies the Convention on the Rights of the Child, it takes on obligations under international law to implement it. Implementation is the process whereby State parties take action to ensure the realization of all rights in the Convention for all children in their jurisdiction. Article 4 requires States parties to take "all appropriate legislative, administrative and other measures" for implementation of the rights contained therein.

Whilst it can be argued that the Measure meets the expectations of the UN Committee on integration of the Convention into domestic law as a general legislative measure of implementation, the research authors state that it does not meet in full the prescription for incorporation as set out by the UN Committee¹

Our research concludes,

"The UN Committee recommends incorporation of the Convention in national legal systems. This means that the Convention should be capable of being directly invoked before national courts and will prevail when in conflict with domestic law, and that a remedy is provided for violation.... The Measure has added a new basis for judicial review and the Convention may be relied on before a UK court to challenge a decision taken by a Welsh Minister. Arguably this meets the UN Committee's first requirement

¹

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f5&Lang=en

for incorporation. However, incorporation as contemplated by the UN Committee also requires a remedy and suitable reparation where Convention rights are violated, including compensation. Remedies on judicial review do not usually include damages. In any event, the due regard formula falls short of incorporation as it does not give the Convention superior status over policy determined by the Welsh Government. While the Welsh Government has gone further than the UK Government and any other devolved authority in the UK to integrate the Convention in domestic law, it cannot be said to have incorporated the Convention as anticipated by the UN Committee. Rather, the Measure is a legislative measure of implementation to integrate the Convention into Welsh law” (Hoffman & O’Neill 2018, pg 48)

The Commission believes that all the relevant rights contained in UN human rights treaties should be made part of domestic law so individuals can effectively challenge rights violations using the domestic legal system and access a domestic remedy for alleged breaches of human rights. For example, the rights in the European Convention on Human Rights are incorporated into domestic law by the Human Rights Act (HRA). We believe that the HRA is well crafted in allowing people to enforce their rights and the Committee should explore how a HRA model of incorporation could be applied in Wales.

Recommendation: The Commission recommends that measures to protect children’s rights in Wales should be further strengthened by making these rights (and other UN treaty rights) legally enforceable. How has the measure influenced Welsh Government’s decision-making?

Our report states that the Measure has had a significant impact on the way policy *is undertaken* by the Welsh Government. Stakeholders interviewed as part of the research were generally in agreement about the impact of the Measure to ensure the Convention is ‘on the radar’ of officials working on policy. An example of this examined the Well-being of Future Generations (Wales) Act 2015 and found that draft legislation was amended during legislative scrutiny to allow local Public Service Boards to make specific reference to children in their well-being assessments. The Welsh Government attributed the amendment to the due regard duty, discussions between Welsh Government departments and direct engagement with children’s and young people’s organisations (Hoffman & O’Neill, pg27).

However, there was some ambivalence and difference in opinion with stakeholders about its impact on the *quality* of decision-making. Comments included:

“...the quality of consideration and analysis given to children’s rights in Welsh Government policy development is often patchy and inconsistent”.

“The [Measure] is an innovation in human rights and child’s rights implementation. But the impact of this law has been very uneven so far”

“Officials take the [Convention] into account, but some do so in quite a superficial way, without fully considering the implications of children’s rights. We cannot be 100% confident that the Measure has led to an improvement in the way policy is decided in every instance, but we are aware of some policies that are certainly better as a result of more detailed thinking about children’s rights brought about by the Measure”.

How has the measure influenced its financial allocations?

Our research provides a case study of Welsh Government’s draft budget for 2017-18 that shows a CRIA was not completed. Instead, a Strategic Integrated Assessment was prepared which includes reference to a number of objectives, including children’s rights. In its General Comment on the General Measures of Implementation, the UN Committee has clearly stated that governments cannot tell whether they are fulfilling children’s economic, social and cultural rights, which are included in the Convention, to the maximum extent of available resources, as Article 4 of the Convention requires, unless they can “identify the proportion of national and other budgets allocated to the social sector and, within that, to children, both directly and indirectly”.

Whilst stakeholders expressed a belief that CRIA is an important tool to hold Welsh Government to account for policy decision making, many expressed concerns that CRIA practice may undermine its use as an accountability mechanism:

“...carrying out or publishing a [CRIA] is not a mandatory process under the Measure. Where [the Welsh Government] has not carried out or published a CRIA, there is a notable lack of visibility for children’s issues and children’s rights, and it is often very difficult to discern how individual policies and decisions might impact children”.

2. evidence of whether the Measure has led to improved outcomes for children and young people;

There is a lack of evidence that the Measure has directly improved outcomes for children and young people in Wales. There is also a lack of clarity on what outcomes Welsh Government want to improve for children and young people as a result of the Measure. However, it is important to bear in mind that the Measure was not designed to prescribe policy outcomes and that the Measure is still relatively new.

Welsh Government could specify strategic outcomes for children and young people that are based on evidence from robust and relevant sources. These outcomes should inform policy decisions made by Welsh Government Ministers. This could then be monitored to provide evidence of progress on improving outcomes for children and young people. This approach has parallels with the Commission's GB-wide position on the potential reform of the PSED to ensure that it focuses public bodies on delivering priority equality outcomes that are informed by *Is Wales Fairer?*, other data as well as stakeholder engagement (or otherwise explain why they have not done so).

Recommendation: The Welsh Government should explore how to strengthen the implementation of the Measure to ensure that it is strategic, through developing outcome-focused objectives that seek to address the areas of greatest need in relation to children's rights, and the key inequalities affecting children. These outcomes can be informed by evidence from *Is Wales Fairer? 2018* and other relevant and robust sources.

3. Whether the duties within the Measure have been embedded effectively across Welsh Government cabinet portfolios and policy

Our research evidences that whilst the Measure has made a difference to the way children's rights are considered by policy makers, this has not been implemented across government.

The due regard duty, The Children's Scheme and Children's Rights Impact assessments (CRIA)

The primary mechanism for embedding the Convention in policy in Wales is set out in Section 1 of the Measure. This places a duty on the Welsh Ministers

to have due regard to the Convention when exercising any of their functions.

Section 2 of the Measure requires Ministers to make and publish a 'Children's Scheme' setting out the arrangements they have made for securing compliance with the due regard duty. The requirement for a Children's Scheme is intended to promote a proactive approach to compliance with the due regard duty.

The Children's Scheme commits the Welsh Government to undertake a CRIA of all policy proposals. Welsh Government identifies CRIA as a significant innovation to support compliance with the due regard duty stating in their 2018 compliance report:

"CRIA is part of the Welsh Government's procedures for ensuring that due regard is given to children's rights when policies, programmes or legislation are being developed"²

Our research report provided case study examples of CRIA good practice demonstrating how CRIA can be used effectively to draw attention to relevant Convention rights in policy development. For example, in both the Child Poverty Strategy 2015 and the Active Travel (Wales) Act 2013 CRIAs were completed that took account of the Convention and the proposals or draft legislation was amended as a result.

Despite this, the research suggests that in other instances the impact of CRIA, and therefore the due regard duty, is undermined by inconsistent application, as stated by one stakeholder below,

"Because of the due regard duty, the Welsh Government has to conduct a [CRIA], but we know that the quality of these is inconsistent, so while children's rights are being considered as part of the process, I don't think that the full impact of policy development on children's rights is being thoroughly assessed every time".

Policy advocacy

The Measure provides the opportunity to use the due regard duty as a basis for policy advocacy in Wales. Our research included a short examination of

² Welsh Government, Compliance Report 2013-2018

how Assembly Members (AMs) use the duty when challenging or encouraging action on behalf of children and young people. It found that AMs made little reference to the due regard duty when urging Ministers to take action in support of children's interests. The research also found some effective use of the duty by the Children, Young People's and Education (CYPE) Committee. However, when examining six inquiries into issues affecting children carried out by the Committee in 2016, the research established that only one of the committee reports made reference to the due regard duty as an express underpinning for a recommendation to Welsh Government.

This demonstrates that the Measure has not been embedded across Welsh Government cabinet portfolios as well as it could be.

4. The extent to which the Welsh Government has sought to ensure that its duties within the Measure are translated into the work of the public bodies it provides funding to, including local authorities and NHS bodies;

We do not have the evidence to answer this question

5. The extent to which the Welsh Government has implemented its duty to promote knowledge and understanding of the UNCRC amongst the public, including children and young people;

Section 5 of the Measure includes a duty on Ministers to "take such steps as are appropriate to promote knowledge and understanding amongst the public (including children) of the Convention and the Protocols"³

As part of our research project, workshops were held with young people to examine knowledge and awareness of the UNCRC and knowledge and understanding of the role of children's rights in Welsh Government policy and legislative development.

The young people who participated in the workshops believed that children's rights are still not visible enough in Wales and there is a need for greater awareness raising through mainstreaming information, i.e. not just through school councils or youth forums. Although the young people were able to talk about some of their experiences of accessing their rights, in particular Article 12, they did not link this with Welsh Government and the Children's Rights Measure. However, at the end of the workshop, when they could see the connections, they felt more empowered as they could

³ <http://www.legislation.gov.uk/mwa/2011/2/section/5>

understand that they had a right in Welsh law to access their rights, which was more impactful than only linking it back to the UNCRC, a big international agreement. Some of them thought there were more opportunities now to get their voices heard but only if they were linked to a particular group or youth forum or were a Children's Commissioner Ambassador.

The education system plays a vital role in establishing and reinforcing the shared values that provide the foundation for a society in which all individuals are respected and have the opportunity to flourish and there are good relations between different groups. For that reason, we advocate for a human rights approach to education. The reform of the national curriculum in Wales offers an opportunity for the Welsh Government to fulfil its international and domestic obligations by fully implementing human rights education (HRE) in schools. HRE is any learning that develops the knowledge, skills and values of human rights. It includes education about human rights, through human rights and for human rights. Education about human rights improves individuals' understanding of how they should be treated and how they should treat others as part of an open, democratic society, and the legal protections they can rely on to exercise their rights. Education through human rights is about adopting a rights-based approach to the school environment. Education for human rights encourages individuals to adopt the attitudes and behaviours of respecting, protecting and promoting human rights in their daily lives.

Recommendation: The Commission recommends that in order to comply with the duty to promote knowledge and understanding of the UNCRC amongst the public, including children and young people, the Welsh Government must ensure human rights education is fully implemented into the new curriculum for Wales.

6. How the duty to have 'due regard' to the Convention on the Rights of the Child is being implemented in practice and whether Child Rights Impact Assessments are being used as a meaningful tool;

As discussed in questions 1 & 3 above, the Commission believes that, whilst the duty to have due regard to the Convention has resulted in greater visibility for children's rights in policy processes undertaken by Ministers and their officials, there remain challenges of implementation through government policy and action.

The introduction of the due regard duty has led directly to the introduction of CRIAs that is consistent with general administrative measures of implementation of the Convention by the UN Committee. CRIA has helped raise the profile of children's rights in policy development in Wales, however application of CRIA in practice is 'patchy and inconsistent', sometimes undermining the substantive application of the due regard duty.

7. the effectiveness of the Children's Right's Scheme and the most recent Welsh Government compliance report, and the extent to which they evidence sufficient action on the part of Welsh Government to ensure full implementation of the Measure;

We do not currently have the evidence to answer this question

8. How effectively the Welsh Government responds on a strategic basis to the Concluding Observations of the UN Committee on the Rights of the Child.

To our knowledge, there is currently no formal mechanism within the Welsh or UK Government to coordinate and monitor the implementation of UN recommendations. At present, a large number of the UN's recommendations are often not acted upon, and so recommendations are frequently repeated across UN reviews/reporting cycles. Where progress is being made, governments often fail to make links to UN recommendations. A centralised, transparent mechanism would help assess where progress has/has not been made.

The absence of a formal mechanism risks conflicting and piecemeal approaches, particularly where recommendations involve issues that cut across departments, and an incoherent approach to systemic human rights issues. A government owned mechanism would help ensure a coordinated approach to monitoring, reporting and encouraging implementation of UN recommendations.

The Commission has previously made calls in our treaty monitoring reports for governments to develop action plans and strategies to ensure implementation of the government's international human rights obligations, and also called for more coordinated cross-government(s) action on concluding observations.

At international level, there has been an increasing recognition that it is not enough for governments to submit reports to treaty bodies and engage in the Universal Periodic Review mechanism, and that what is needed is a much stronger focus on implementation of international human rights obligations. Similarly, there has been increased interest in more deeply embedding domestic oversight of these obligations.

The UN High Commissioner for Human Rights and UN treaty bodies have repeatedly called for the establishment of National Mechanism for Implementation, Reporting and Follow-up (NMIRFs) to ensure a coordinated approach to reporting to, and engaging with, international and regional human rights mechanisms, and the implementation of the UK's human rights obligations. In 2016, the Committee on the Rights of the Child recommended in its Concluding Observations (COs) on the UK (July 2016) that the coordination and evaluation of the Convention's implementation needs to be strengthened. Recently the Committee on the Elimination of Discrimination against Women, in its COs on the UK (March 2019) called for a national mechanism to oversee implementation, and asked for governments to provide further information on their steps to establish one. In their most recent COs on the UK (May 2019) the Committee against Torture asked governments to include 'plans for implementing some or all of their recommendations' in a follow-up report due within a year. The Women and Equalities Select Committee (WESC), in a letter to the CEDAW Committee, called for a monitoring mechanism to ensure that women's rights are fulfilled between treaty review cycles.

There is no 'one size fits all' approach to such mechanisms, but they should be permanent and include a cross-section of relevant departments. They could also include or consult with representatives from other public bodies, parliaments and the judiciary, as well as national human rights institutions (NHRIs) and civil society.

Recommendation - The Commission recommends that the Welsh Government implement a National Mechanism for Implementation, Reporting and Follow-up (NMIRF) of UN recommendations

Equality and Human Rights Commission

The Equality and Human Rights Commission is Great Britain's national equality body and has been awarded an 'A' status as a National Human Rights Institution (NHRI) by the United Nations.

Our job is to help make Britain fairer. We do this by safeguarding and enforcing the laws that protect people's rights to fairness, dignity and respect.

As a statutory non-departmental public body established by the Equality Act 2006, the Commission operates independently. We aim to be an expert and authoritative organisation that is a centre of excellence for evidence, analysis and equality and human rights law. We also aspire to be an essential point of contact for policy makers, public bodies and business.

We use our unique powers to challenge discrimination, promote equality of opportunity and protect human rights. We work with other organisations and individuals to achieve our aims, but are ready to take tough action against those who abuse the rights of others.

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Plant, Pobl Ifanc ac Addysg
Ymchwiliad i Hawliau plant yng Nghymru
CRW 11
Ymateb gan: Comisiynydd Plant Cymru

National Assembly for Wales
Children, Young People and Education Committee
Inquiry into Children's rights in Wales
CRW 11
Response from: Children's Commissioner for Wales

CYPE Committee Inquiry on Children's Rights in Wales

1. The extent to which the Rights of Children and Young Persons (Wales) Measure 2011 ("the Measure") has influenced the Welsh Government's decision making, including its financial allocations and whether it has fulfilled the Convention's 'general measures' of implementation

The introduction of the Measure made Wales a leading nation across the UK, in directly incorporating the rights of the UNCRC into Welsh law. However, it is important to recognise that children in Wales already had all of these rights, by virtue of their age. Their rights are directly derived from the UNCRC and so the Measure does not *grant* those rights, it simply draws them down into Welsh law. By doing so, the Measure is all about how the Welsh Government gives effect to these rights in Wales.

In my annual report for 2017-18¹ I include reflections on the general measures of implementation including the Compliance Reporting process and the use of Children's Rights Impact Assessments (CRIA). Compliance reporting, a due regard duty (for Ministers) and a children's rights scheme are included in the Measure. In this response I'll discuss in detail my assessment of the efficacy of these measures at present.

I provided written evidence to the EHRC's commissioned report on the legal integration on the UNCRC, the report of which was published in March 2019.² That report concluded that the Measure has embedded the UNCRC into policy making in Wales via the due regard duty, and also by raising awareness and visibility of children's rights across Government. I would agree with this conclusion, but share the reservations that this hasn't resulted in "consistent good practice" due to the "uneven application of CRIA". I will return to this later in my evidence at point 6 below.

In relation to budgeting, I gave detailed written³ and oral⁴ evidence to the joint Inquiry of three Assembly committees in relation to budgets and impact assessments. Within that evidence I set out my concerns at the lack of consideration for children's rights as a matter of course in the budget setting process, which had resulted in decisions to cut certain budget lines without a real understanding of what that budget provided and its benefit to children, or consideration about whether any budget lines crossover or leave gaps where one department assumes that another will be dealing with that provision. Examples of this include school uniform grants and funding for disadvantaged learners, and money for the All Wales School Liaison Core Programme (SchoolBeat) provided in conjunction with the Police. Whilst I am pleased that those decisions were able to be overturned through the influence of my office and this Committee, as well as others, a detailed CRIA would have been able to identify these crossover areas before the budget decisions had been published.

¹ <https://www.childcomwales.org.uk/wp-content/uploads/2018/09/Annual-Report-2017-18.pdf>
pages 35-39

² Hoffman and O'Neill 'The impact of legal integration of the UN Convention on the Rights of the Child in Wales' https://www.equalityhumanrights.com/sites/default/files/the_impact_of_legal_integration_of_the_un_convention_on_the_rights_of_the_child_in_wales_eng.pdf

³

<http://www.senedd.assembly.wales/documents/s80336/Written%20evidence%20Childrens%20Commissioner%20for%20Wales%20-%20Impact%20assessments%20in%20relation%20to%20the%20draft%20bu.pdf>

⁴ <http://senedd.assembly.wales/ielListDocuments.aspx?CId=440&MId=5398&Ver=4>

I welcome the joint committees' report following this scrutiny but was disappointed to note the Government's response to that report, as noted in my follow up correspondence from June 2019⁵. The Government view appears to be that publication of impact assessments in a central location would be confusing if they have already been published in relation to individual policy decisions. Not only does this lack transparency, but it does not address the wider issue of drawing together individual policy decisions to be considered *jointly* rather than simply alongside each other. I would also note that my office is yet to see consistency and transparency in the publication of these impact assessments in respect of individual policy decisions particularly at the point of public consultation.

I am due to meet with the Finance Minister on 23rd September 2019 ahead of the publication of this year's budget. I understand that a different, cross government approach is being taken to the budget setting process this year and I look forward to hearing more about this when we meet. I'll be happy to return to this in oral evidence either for this inquiry or any further budget scrutiny later in the year.

One key aspect of implementation of the UNCRC is to have an independent human rights institution that can hold duty bearers to account; this is the foundation of the creation of my role. During summer 2019 the Welsh Government held a consultation with funded public bodies, in respect of changing the ways in which funding is provided (Amending the Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2018 Consultation). The proposal included changes to how funding would be drawn down from Government and the organisation's reserves, there in our case predominantly to enable the exercise of my powers at any time.

As Accounting Officer in receipt of public money, I had no objections with plans contained in the consultation document to "simplify systems, improve the consistency and transparency of Welsh Government finance and providing clearer accountability to the Assembly and the public." Nevertheless, the lack of detail within the consultation around any new processes raised concerns around the implications – or possibly unintended consequences – of these changes on my position's independent status.

For example, in my response to the consultation I raised concerns that the lack of ability to hold reserves might result in my office having to formally apply to the government for funding in the event that I planned to use my powers to review the Government's functions. I, and the other Commissioners in Wales, await the results of the consultation.

The Paris Principles⁶ – which establish the minimum standards required for the independence and effective functioning of national human rights institutions - require that a national institution such as the Children's Commissioner for Wales:

"Shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence."

⁵ <http://www.senedd.assembly.wales/documents/s90681/CYPE5-21-19%20-%20Paper%20%20-%20Childrens%20Commissioner%20for%20Wales.pdf>

⁶ https://www.equalityhumanrights.com/sites/default/files/paris_principles.pdf

As the sole source of revenue since this institution's inception in 2001, the Welsh Government (including the previous First Minister) has been clear with all post-holders there should not be – and has not been, to date – any interference with how we determine our priorities and activities. I would like to acknowledge that to date I have experienced no interference from Government in how I conduct my work. Nonetheless, this recent consultation led me to raise some concerns on this matter with Government.

There should not be an “appropriate degree of independence from Welsh Ministers” as the budgets consultation document suggested, but instead this national human rights institution should be treated as wholly-independent from Government and Welsh Ministers. If not, there's a danger this post-holder could be restricted by the very public bodies they've been set up to oversee and challenge. I note the previous First Minister's view, when we raised this issue with him previously, was that there had never been a problem with independence so he did not consider this to be a priority. Whilst I acknowledged that there hadn't been an issue, there was nothing formal in place to protect the status of the Commissioner's role should there be a change of approach by any future Government.

The Public Service Ombudsman is appointed by the National Assembly for Wales; the legislature rather than the executive. This allows for full independence but also regular scrutiny opportunities on budget and influencing work. I would encourage the Committee to consider whether this Inquiry presents the opportunity to suggest changes in relation to my role to preserve and protect its independence and to avoid the unintended consequences of Government's latest developments. This is a matter I've previously raised, for example in response to the Shooter review of my office's functions.⁷ My response to that review also suggested broadening of my remit to all matters affecting children's lives, not just devolved areas, as children's experiences cannot be neatly split into devolved and non-devolved issues.

In summary, the existence of the Measure has undoubtedly been a positive step towards introducing children's rights to the discussions of policy and decision makers. However I am not yet certain that this has been sufficiently embedded across the Government, nor that the general measures of implementation including children's budgeting, have progressed far enough to be seen as happening as a matter of course in every department. This leads on to the next question where I consider how well the Measure relates to improved outcomes for children.

2. Evidence of whether the Measure has led to improved outcomes for children and young people

I believe that the existence of the Measure and the resultant discourse around children's rights have helped to pave the way for policies such as the removal of the defence of reasonable punishment, which is currently passing through the Assembly. The policy intent and accompanying documents for the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill are clearly framed in children's rights, and the evidence received by this Committee at Stage 1 reflected the importance of the Bill in upholding and taking forward children's rights to protection and a safe family life.

⁷ <https://www.childcomwales.org.uk/wp-content/uploads/2016/04/Response-to-CCFW-Independent-Review.pdf>

It is too early to identify whether this will be the case in practice of course although I note this Committee's recommendation to agree the general principles of the Bill. This is the sort of policy that will benefit from follow up evaluation, as recommended in the Stage 1 report, to assess and analyse what works to improve children's outcomes. The existence of the Measure and its effect on policies and guidance is being seen slowly, and I acknowledge that it takes time to change approaches and mindsets, but I would argue that the Measure has already done this to some degree at the policy setting stage. Where I'm less sure or haven't yet seen as much change is in relation to outcomes for children and this may in part be attributed to the lack of focus on the achievement of outcomes in either the Measure or the Scheme as it presently stands.

Other relevant areas that would benefit from such ongoing scrutiny would be the Additional Learning Needs and Education Tribunal (Wales) Act and the new curriculum proposals. Neither of these is in force yet but these are clear examples of child specific policies that *should* be grounded in rights and lead to improving outcomes.

It is unclear to me at present whether or how the Welsh Government systematically monitors the outcomes of policy decisions for children. Many CRIAs will recommend a review after a year to monitor progress against the assumptions made at the policy development stage, but I cannot recall seeing an updated published CRIA that has done this.

My feedback on a revised draft Children's Rights Scheme in May 2019 asked Government officials how a revised scheme would shift the focus from numerical data to monitoring outcomes, and whether or not targets or aims could be included in order to seek progression. This was one of the primary stated aims of their 2018 Compliance Report. More detail is included on this at point 7 below.

Section 6 of the Measure allows the Government to make changes to legislation if it "concludes that it would be desirable, for the purpose of giving further or better effect to the rights and obligations" of the UNCRC. However, the wording of this Section means that the Government may only do so if they have already concluded in their own report, including the Compliance Report, that this would be worth doing. The Compliance Report has not previously considered individual policy areas and I have not seen any such identification of potential law changes arising from such a report. It is often mistakenly assumed that Section 6 would allow others, including myself, to suggest changes to laws, as I do through the recommendations of my thematic policy reports and Annual Report. Although it is open to any person to take a judicial review of the Government's exercise of the due regard duty in creating or amending policies, this is not a straightforward or quick process. Section 6 was considered an avenue to bring forward such ideas but its current wording does not make it particularly open to achieving policy change that could lead to improved outcomes for children. At present this means that there is a potential gap in the accountability of policy making to children and young people; this is further exacerbated by the lack of a generally applicable duty on public bodies in relation to children's rights, which I will cover in more detail at point 4 below.

3. Whether the duties within the Measure have been embedded effectively across Welsh Government cabinet portfolios and policy

Despite calls to do so, the Government has missed an opportunity to portray its absolute commitment to children's rights through its omission from *Prosperity for All*⁸, as it does not overtly refer to children's rights under the UNCRC. When policies or consultations are brought forward, this strategy is then referred to as the originating reason or background for bringing forward particular pieces of work. Unfortunately, in the absence of clear links to children's rights throughout this strategy, the subsequent policies are therefore not being framed within a children's rights approach. By far the clearest example of this would be the terms of the Childcare Offer, and the committee will be very familiar with my calls around the lack of consideration of children's rights and equality duties in taking that policy forward⁹.

The Well-being of Future Generations (Wales) Act, which features prominently in many strategies including *Prosperity for All*, makes no reference to human rights on its face. The statutory guidance that accompanies the Act notes that the principles of the Act "support" existing commitments to the Welsh Language, equalities and the UNCRC. The offices of the Children's Commissioner and Future Generations Commissioner have developed resources which illustrate the compatibility between the two¹⁰. Whilst this demonstrated how a children rights approach support progress towards wellbeing goals, it does not mean that the well-being principles can supplant children's rights as the language and scope are entirely different. Well-being takes an all age approach and does not protect the inherent rights of children in the same way as a distinct children's rights approach.

The existence of the due regard duty in the Measure *should* result in children's rights being embedded and considered from the outset of policy development. However, the practice of completing CRIA towards the end of the development phase, to reflect decisions already taken, is not uncommon and means that in reality rights are being fitted around the decisions rather than being used to drive policy development and intent.

I have repeatedly called on the Government, via written reports and in face to face meetings, to introduce a sub-Committee of Cabinet to consider children's issues. I last discussed this with the current First Minister in January 2019; whilst he was still not minded to set up a specific sub-committee, he was proposing to introduce 'themed' cabinet discussions on particular policies or topics, alternately with regular format Cabinet meetings in order to allow for space for cross government discussions. There was a proposal for external attendees to potentially be invited to such meetings, including my office, but I have not been invited as yet.

These discussions had come against a backdrop of my frustration at a lack of 'join up' across Government on children's issues. Whilst a dedicated Ministerial position for children is welcome, there will be relevant issues for children in the majority of portfolios. I meet with a number of ministers on at least an annual basis including the Ministers for Education, Health and Social Services,

⁸ <https://gweddill.gov.wales/docs/strategies/170919-prosperity-for-all-en.pdf>

⁹

<http://senedd.assembly.wales/documents/s75785/CCF%2002%20Childrens%20Commissioner%20for%20Wales.pdf>

¹⁰ <https://www.childcomwales.org.uk/resources/childrens-rights-approach/future-fit-children/>

and Transport. I meet with the Deputy Minister on a quarterly basis, where we get an opportunity to discuss in-depth the most current issues and efforts are on-going to secure a joint meeting with the Minister for Health. The meetings with the Deputy Minister are for a full hour every quarter.

I have had to raise issues such as Elective Home Education, safe accommodation options for young people with complex needs and the support for children's emotional health and well-being with Ministers, the First Minister, the Head of the Cabinet Office and the Permanent Secretary, in order to bring departments and officials together. I have twice in the last year arranged meetings between senior officials from different departments to try to progress multi-disciplinary plans for residential accommodation for children with complex mental health and social care needs.

I am pleased that the Ministers for Health and for Education now co-host a Ministerial Advisory group on a Whole School Approach to well-being, but this followed a year of influencing work including a joint meeting with both ministers where they reflected that they did not recognise the issues around a lack of joint working that I was raising. I am aware that this Minister for Education also expressed this view in oral evidence to the Committee as part of the *Mind over Matter* inquiry. In the absence of formal structures to bring these discussions together, I am not certain that they will happen automatically. While I will continue to do so if it appears to be necessary, it should not require me to call meetings in order for these departments and Ministers to work together.

In summary, the Measure does not appear to be fully embedded across Government; there are other areas within this response where I suggest ways in which this could be achieved, but in relation to this point specifically I believe that a mechanism or range of mechanisms including networks or cabinet committees will be the only way to ensure that this happens routinely and effectively. I welcome efforts being made for example to discuss issues that have been overtly raised such as policies names here and broader topics like the budget, but the Measure itself does not secure that this will happen as a matter of course in future.

4. The extent to which the Welsh Government has sought to ensure that its duties within the Measure are translated into the work of the public bodies it provides funding to, including local authorities and NHS bodies

At present, there is no due regard duty applicable to all public bodies in Wales. Through lobbying efforts and with the considerable support of this Committee, similar duties have been added to the Social Services and Well-being (Wales) Act 2014, and the Additional Learning Needs and Education Tribunal (Wales) Act 2018 in order to embed rights within the laws that will be applied by public bodies, for the benefit of children across Wales. On both occasions this required amendments to be tabled as the Government was not willing to add the duties to the draft Bills. The forthcoming Curriculum and Assessment Bill will be the next relevant piece of children specific legislation, in which it would make absolute sense for a due regard duty to be included. This would bring it in line with the ALN proposals and avoid creating a situation in which in which some children and young people have the provisions of the UNCRC in domestic legislation pertaining to their education but not others. This step would also make Wales an international leader in terms of rights being experienced in the school environment. I have discussed this at length with policy officials and the Minister for Education, and submitted detailed papers and consultation responses on this. My published position paper can be

found here¹¹ and sets out a clear and coherent argument for the benefits that embedding rights within the curriculum would have for all of our learners.

In 2018 I presented a paper to officials from the Children's Branch (my link branch in Government) on further incorporation of the UNCRC into Welsh law, following discussions about it with the then Minister for Children and Social Care at our quarterly meetings. At this point, the then Leader of the House announced the intention to commission research on the range of treaties applicable to Wales and the levels of direct and indirect incorporation of these, with a view to exploring potential extensions, and my office is represented on a steering group for this work. This work should include consideration of extending the Measure in order to give greater effect to children's rights. In the absence of a broader due regard duty it remains essential for duties to be added to the relevant Acts in order to translate the Convention into directly applicable implementation and realisation of rights for children in their daily lives.

Overall my preference would be for further incorporation of the UNCRC through a duty on all public bodies to act compatibly with the UNCRC in carrying out their duties. My own role requires me to have regard to the UNCRC in carrying out my functions¹¹.

Whilst the Measure was an important step forward, it does not amount to full direct incorporation of the UNCRC. This means that it is not available to members of the public, including children, to make a direct challenge for a breach of their rights under the UNCRC.

The closest example at a UK level is the Human Rights Act 1998 (HRA), where bodies have to act compatibly with the rights that it directly introduces into law. An individual/person can take a case against a body for breaching a particular right under that Act.

The very existence of a legal duty and ability to challenge should itself be enough to change culture and policy approaches. Full direct incorporation is not about increasing the number/frequency of actual legal challenges, but embedding the duties into policy and practice so that people don't have to take such challenges.

England and Wales courts will already refer to relevant UNCRC articles when dealing with HRA cases, but cannot directly rule on a UNCRC breach due to lack of incorporation. At the extreme end particular laws can be declared "incompatible" with the HRA using a case. In Wales, this is very rare but is far stronger than the current section 6 of the Measure, that will only permit the Welsh Government to overturn or revise Welsh law if they themselves have concluded via a report that identifies that law to be insufficient.

The Equality Act 2010 takes a compliance and reporting approach which can be more onerous for governments due to the ongoing monitoring requirements, so direct incorporation is actually less of a burden in that sense.

The Wales Act 2017 sets out reservations around international relations but the Welsh Government is not prevented from "observing and implementing international obligations, obligations under the

¹⁰ <https://www.childcomwales.org.uk/wp-content/uploads/2018/11/CCFW-Children-Rights-and-Curriculum-Reform-Position-Paper-2018.pdf>

Human Rights Convention and obligations under EU law”¹². It should be noted that the Scottish Government is planning to fully incorporate the UNCRC into Scottish law and has recently consulted on these proposals.

Practical implications of further incorporation

- It gives a strong message on the status of children, leading to culture change
- It applies to all professionals not just ministers
- It gives potential for the UNCRC to be used in litigation
- The UNCRC allows for progressive realisation
- It enables accountability for children’s human rights

In the absence of a proactive duty on public bodies including local authorities and health bodies, I published *The Right Way*¹³, a practical guide to implementing a children’s rights approach in their work. Since 2016 I have published a suite of resources including a specific guide for education settings, and interactive documents that allow organisations to self-assess their progress in relation to children’s rights. All of the materials include practical examples and advice as to how this could look in each organisation and how other organisations have successfully involved children and children’s rights in their day to day business. In addition, my thematic reports such as the *Full Lives*¹⁴ review of wheelchair access in schools and *Don’t Hold Back* report looking at transitional support for young people with a learning disability, include applied examples of how a children’s rights approach could extend the work of public bodies interacting with these young people. I have also established an annual seminar for all health bodies in Wales, which is driving progress and healthy competition between these bodies, to embed and enact a children’s rights approach to their work. As an example of this work, Swansea Bay University Health Board have worked with their Youth Board to make significant practical changes to their provision and also initiated systemic change to the service model. This has led to tangible impacts on the lives of individual children, which the Board are evaluating through patient stories. All health boards and almost all health trusts have either taken steps towards implementing a children’s rights approach or have made a commitment to do so.

As an extension of this, I have also offered training and support to a range of organisations including the Public Services Boards in Wrexham and the Vale of Glamorgan and this has led to changes including a more systematic involvement of children and young people in those bodies’ work. Wrexham Council has been developing systematic implementation in several of its departments, including social services and education and an early example has been the launch of much more child-friendly access to the complaints system.

South Wales Police will become the first police authority to adopt my ‘Right Way’, and embed a children’s rights approach across the service. With support from my office they are working with children on a children’s rights charter and have set included Engagement with Children and Young People as an objective in the Joint Equality Plan, allocating leadership roles to drive their children’s rights approach, and developing a strategy, working group and delivery plan.

¹² <http://www.legislation.gov.uk/ukpga/2017/4/schedule/1/enacted>

¹³ <https://www.childcomwales.org.uk/wp-content/uploads/2017/04/The-Right-Way.pdf>

¹⁴ <https://www.childcomwales.org.uk/wp-content/uploads/2018/03/Full-Lives-Equal-Access.pdf>

These are just some of the examples of large public organisations that my office is supporting to implement a children's rights approach. I continue to promote a children's rights approach in two thirds of primary schools, as well as over a hundred secondary schools through my ambassador schemes which include training for children and teachers.

Although these efforts are promoting important culture change, they do not bring formal measures to hold these bodies to account and progress is vulnerable to being lost with changes of leadership. In addition, I would welcome the Government formally adopting the Right Way across its work, to demonstrate that continued commitment and leadership in relation to children's rights. Whilst some document such as the 2018 Compliance Report have used the principles as an outline structure, I believe that formally adopting the approach will allow officials to champion children's rights across government and to move beyond the recognition of rights to a truly embedded approach where children's rights are at the heart of policy making.

It has been a source of great national pride that Wales has led the way on children's rights across the UK, with the first Children's Commissioner and the introduction of the Measure as key focus points. However, other UK nations and Crown Dependencies are now taking steps forward on this, namely Scotland and Jersey. Both jurisdictions have taken the Measure and due regard model as starting points, but are seeking to move beyond this to full, direct incorporation of the UNCRC. In other words, they note the potential deficits of a due regard model, as it does not directly require bodies to act in a certain way proactively and it can be harder to challenge. In addition, they are seeking to require public bodies to act compatibly with the UNCRC rather than just show that they've considered the rights. Although in theory this would allow for legal challenges to be brought by individuals, primarily the introduction of such a duty would be aimed at the *avoidance* of legal challenge, by proactively requiring public bodies to act in this way. For Wales to keep pace with these developments, and to ensure children in Wales can fully access their rights from all public services, it is incumbent on Government to consider how the current duties can be extended here.

5. The extent to which the Welsh Government has implemented its duty to promote knowledge and understanding of the UNCRC amongst the public, including children and young people

Section 5 of the Measure includes a duty on Ministers to "take such steps as are appropriate to promote knowledge and understanding amongst the public (including children) of the Convention and the Protocols."¹⁵

The National Survey for Wales covering 2017-18 asked participants whether they had heard of and what they understood about the UNCRC. 13% said they had heard of it and that they had a fair idea of the rights it involves, 21% had heard of it but were not sure what rights it involves, and 65% had not heard of it. 66% of people in households with a child under the age of 16 had not heard of it.

The Government are required to make the UNCRC accessible and well known across Wales. This is something I also do as a matter of course throughout my work, but it remains a duty of Ministers to

¹⁵ <http://www.legislation.gov.uk/mwa/2011/2/section/5>

do so too. This takes forward Article 42 of the UNCRC. There used to be a small advisory group alongside the Children's Rights Advisory Group (CRAG) which specifically covered the Article 42 work; this is no longer meeting. My office has suggested that it should be reconvened at various times to support the development of a comprehensive communications strategy, but this suggestion has not been taken up. A very recent development has been the investment by Welsh Government into a new communications plan to support the 30th anniversary of the CRC in Wales. This work has seen Government draw key partners to support the work, including my office. I have been pleased with this approach and the investment and will be encouraging the Government to continue with this way of working to ensure momentum is not lost.

The Regulations¹⁶ governing my office and role require me to take reasonable steps to ensure children know about the Commissioner, the location of the office and ways they can make contact with us. I am also required to make materials for children accessible and appropriate to age and language preferences and to seek children's views to inform my work programme. I do this in a variety of ways and have recently updated my website to make it more accessible and user friendly. I've been extending the reach and content on my 'Ambassador' schemes¹⁷ that support children and young people to learn about their rights and implement them in their school or community. This has involved my team working alongside children and teachers to ensure that our Ambassadors work is accessible to children with additional learning needs and to develop a suite of lessons to enable younger children to learn about their rights in the Foundation Phase.

The Ambassadors Scheme also enables children and young people to directly feed into my work programme. Examples of this include the two large-scale consultations, with tens of thousands of children, that have set my priorities for successive work programmes, our major reports on bullying, *Sam's Story*¹⁸ and our *Charter for Change*¹⁹ work on tackling child poverty.

In the absence of an up-to-date Welsh Government hub for resources on children's rights – I am aware that work is now underway to revise the site - I've also been developing a suite of free resources and content on my website, and most accessible via Hwb, that can be used by teachers, youth workers, participation workers and others to help children learn about their rights, and to use their rights to make their own decisions locally. I've extended the range of accessible resources using British Sign Language and Widget symbols, following feedback from children and their teachers. All of my resources are available bilingually. In addition this year I've launched a Rights Challenge badge for the Scout and Guide movements; again these are freely available on my website for anyone to access and use.²⁰

Since late 2017 I've been regularly discussing with the relevant Children's ministers the 30-year anniversary of the signing of the UNCRC, which falls on 20th November 2019 (Universal Children's Day). I believe it is important to use this anniversary as an opportunity to celebrate progress on children's rights issues in Wales and to recognise the importance of this to the everyday lives of children. As

¹⁶ <http://www.legislation.gov.uk/wsi/2001/2787/regulation/22/made>

¹⁷ <https://www.childcomwales.org.uk/our-schemes/>

¹⁸ <https://www.childcomwales.org.uk/publications/sams-story/>

¹⁹ <https://www.childcomwales.org.uk/wp-content/uploads/2019/04/A-Charter-for-Change-Protecting-Welsh-Children-from-the-Impact-of-Poverty.pdf>

²⁰ <https://www.childcomwales.org.uk/resources/>

noted above, we have worked alongside the Government and members of the CRAG to bring together a campaign of awareness raising and events on the UNCRC this year and the campaign will launch on 19th September 2019. My office has played a key advisory role in this over the last year and many of my resources have been utilised as part of the core information pack being created. I'll also be hosting my own events and engaging with children that week and will be inviting children and Assembly members to join me at a lunchtime event in the Senedd on the 20th November.

When public consultations are launched by the Government, on occasion specific children and young people's versions or accessible versions have been published. This is not universally the case unfortunately but where they have been included I have taken the opportunity to welcome this in my consultation response. However, even when these versions have been created and some of the introductory language has been simple and straightforward, it has been frustrating that much of the content has continued to use jargon or required readers to also read the full consultation document in order to get the full context and understand the abbreviations that are used. In some cases there has been a young person's explanatory document but this has referred users back to the full list of consultation questions in the main document. In others, the accessible version has been excellent but it offered no method of actually responding to the consultation. I would like to be able to promote Government consultations more widely through my social media channels, which have many schools, teachers, youth clubs and members of the public as followers. It is important that young people have the opportunity to respond directly to consultations as well as their views feeding into responses such as my own. However, I have felt at times unable to strongly promote consultations that are not suitably clear and accessible.

I have raised this issue with my link Branch previously as well as raising it in individual consultation responses. Notably recent examples include the 'Improving Public Transport' consultation. Accessing public transport is an issue that young people all across Wales have raised with me, and one that I have no doubt they would have strong views that they would wish to share in any proposals for change. There was a Community and Youth consultation document published with the main proposals. The introductory sections of that version were clearly explained and laid out, and I welcomed that in my response. However, the questions themselves were still quite technical and referred to complex terminology and concepts such as Joint Transport Authorities (JTA), Enhanced Quality Partnerships, Franchises and specific terms of Licensing. Whilst some attempts were made within that document to explain these terms, it wasn't particularly clear in explaining enough detail of how those arrangements would work. The questions that followed the explanations were still quite technical in language and appeared off putting; the explanations did not give enough information to enable a young person to fully answer the rigid questions.

The youth and community version of the Welsh Government's *Healthy Weight : Healthy Wales* had similar pitfalls around a lack of explanation of terminology, and questions which did not give proper opportunity for children and young people to use their own experiences to respond to individual proposals, which I highlighted in my response to the consultation.

In addition, the consultation on the Code of Practice for the delivery of autism services had an easy read version published with the main proposals. I was pleased to note that children of a range of different ages were depicted within it. However it referred to an easy read response form but I was

unable to locate this and this may have been an issue for others hoping to respond to the consultation. Again I raised this in my response and with my link Branch officials.

The most complete analysis within a CRIA that I have observed to date was for the 2018 proposals around a minimum unit price for alcohol sales in Wales. It was particularly pleasing as this is not an area that you'd automatically think of as relating to children's policy. The CRIA was thoughtfully undertaken, with clear analysis of both positive and negative impacts, and these were cross referenced to recent pieces of leading research. The analysis also looked beyond the immediate issues being considered in the consultation itself, to include related considerations of health and well-being, not only now but also for the future. This meant it had considered not just the impact for key groups such as the Government, retailers and customers, but also services such as counselling, preventative services and those dealing with hidden harms.

The CRIA for the Children (Abolition of the Defence of Reasonable Punishment) (Wales) Bill was also thoroughly undertaken and cross referenced to relevant research, and contained options to mitigate any potential negative impact identified.

The current Children's Rights Scheme contains information for children and young people to "challenge the Minister when they feel that Ministers have not complied with the due regard duty when making decisions that affect their lives".²¹ My feedback on the revisions to the Scheme has highlighted this as an area that needs development to be more suitable and accessible to children. The language would need to be adapted and the options available give little information as to how a young person can be supported in this process. My suggestion would be for a separate complaints process/leaflet to be created to allow children and young people to raise any policy matters that they feel the Government aren't taking seriously and to have their voices heard on issues of importance to them. This feedback hasn't been acted upon so far.

Including a due regard duty in the curriculum legislation would be a highly effective mechanism to support Welsh Government to raise awareness and understanding, and to meet its responsibility for requiring full compliance with the Convention. This will have a substantive positive impact on Article 4 (General Measures of Implementation) of the UNCRC.

6. How the duty to have 'due regard' to the Convention on the Rights of the Child is being implemented in practice and whether Child Rights Impact Assessments are being used as a meaningful tool

CRIA is the primary tool by which the Welsh Government *evidences* how the due regard duty has been complied with across Government, when advising Ministers. The CRIA is not, in its own right, the exercise of the due regard duty, it simply draws together the ways in which officials and Ministers have paid due regard through their work. Through the process of completing a CRIA, it may become apparent to officials that there are gaps, perhaps a lack of engagement with children and young people in developing the policy. By completing the CRIA at the earliest stage of policy development and

²¹ <http://www.assembly.wales/Laid%20Documents/GEN-LD9732%20-%20Children's%20Rights%20Scheme%202014-22042014-255569/gen-ld9732-e-English.pdf>

keeping it under review, this allows the CRIA process to inform and guide how the due regard duty is exercised.

I have previously given written and verbal evidence to this Committee on the patchy quality of CRIA, particularly the lack of analysis of the options, and mitigation of any negative consequences. It appears to me that officials preparing CRIA are reluctant to expressly note any potential negatives to a policy decision, in what I suspect to be fear of litigation as a result. What I would prefer to see is acknowledgment of any negatives or deficiencies of a particular policy or decision at that point, but with clear mitigating actions and intentions to keep this situation under review. A balanced analysis of the options, including a cost benefit analysis and realistic assessment of the possibilities within any budget constraints, would show full consideration of all of the children's rights issues.

It would be unlikely that *any* policy would solely have positive or neutral implications for the whole population, so by only mentioning positives it makes the assessment incomplete and potentially misleading in my view. Achieving children's rights will always require careful balancing considerations, on the interaction of different rights and principles such as enabling children's participation against consideration of what may be in their best interests.

The lack of analysis of options in the majority of CRIA seen by my office is a significant weakness in the current format and operation. This may be due to the format which asks about positive and negative impacts but doesn't automatically question the author on their conclusions. Ministers are currently reliant on the conclusion of CRIA as the primary way in which they exercise due regard and should be concerned that the advice being provided to them may not be based on a full consideration of all the relevant issues as part of that broader analysis. My team and I have not always been able to consider the quality of the analysis of impact on children's rights due to CRIAs not always being made available to my team in a timely manner.

Some recent examples to illustrate these points are as follows:

The Curriculum for Wales proposals: my team requested a copy of this in May 2019 as this was not published alongside the consultation. The CRIA was eventually received in August 2019 even though it was dated May 2019 (v3). The CRIA was essentially a description of actions and not an actual impact assessment. I was unable to explore this fully in my response to the consultation as the CRIA was not provided during the period it was open, despite chasing.

The Health and Social Care (Quality and Engagement) Bill: As required, a CRIA was published alongside the draft Bill, and it pointed to a number of potential positive impacts as a result of the proposals. However, the only potential pro-Rights effect described in the Integrated Impact Assessment was termed as 'consequential'. On exploring the proposals in full, I was disappointed to note that the Citizen Voice proposals had not fully explored the possibility for children's participation, which might be why it was only coming up as consequential. Further, the Bill lacked clarity generally on which parts were relevant to children and young people, including any advocacy support. A more thorough CRIA and Integrated Impact Assessment (IIA) would have recognised the potential that these proposals presented to take forward children's rights, and could have been used to inform and drive a more rights friendly and inclusive policy direction. This was a clear example of a major legislative proposal that had only been partly thought through in relation to children.

I was also concerned to learn earlier this year that there is no longer any compulsory training for Government officials who are responsible for policy development and the preparation of CRIA. In addition, officials may have undertaken basic training when they first joined the organisation but there is no requirement to revisit this upon promotion to roles such as Deputy Director, a role which includes the requirement to sign off the CRIA. Similarly there is no training for Ministers on how to exercise due regard to children's rights through their role. Earlier this year I was pleased to take the opportunity to meet with Directors from across the Government at the invitation of the Permanent Secretary. I was able to offer constructive challenge to those present including a quiz on children's rights and the UNCRC to help them consider how well versed they and their staff may be in children's rights and the Government's duties in this area. This was positively received and certainly appeared to cause some Directors to recognise gaps in their knowledge. Without compulsory training however I would remain concerned that this may not translate into improved policy development across Government. This could be an area in which the Committee considers making a recommendation. It is open to the Government to make any changes it wishes to the Scheme such as making training compulsory.

The right to participate is a guiding principle of the UNCRC and as such represents an underlying requirement for children's rights to be realised. There are opportunities to inform better policy making through better participation of children and young people that goes beyond just consultation on already developed proposals. I welcome the establishment of a National Youth Stakeholder Group in the development of the whole school approach to mental health and wellbeing. Other policy areas would benefit similarly from such participation models. As an example, I repeatedly called for the participation of children and young people in the curriculum design, making recommendations to this effect in my Annual Reports of 2015/6 and 2017/8. This 2015/6 recommendation was positively received by Welsh Government and In 2016 a sub-group of the strategic stakeholder group was established to look specifically at participation. However this group was disbanded and despite significant efforts from my opportunity for participation of children and young people until the summer term of 2019. By this time the opportunity for sustained co-construction with children and young people at a national level had passed and this represented a model of participation in which young people are consulted and informed, rather than co-producing policy.

In the last year, the Government has consulted the Children's Rights Advisory Group (CRAG), at which my office is represented, in the developmental stages of some CRIA. This has been a welcome development that has allowed officials to meet with the CRAG and talk through their thinking, and receive advice on any notable gaps or omissions and on how to undertake the balancing exercise in making a recommendation to their Minister. It has appeared to be a useful approach that has been taken up by officials from Education and the Children and Families Division. One thing that has again been clear through these sessions is the lack of *analysis* of options and lack of a concluding paragraph containing the actual advice to the Minister.

The new template/format that feeds into the broader Integrated Impact Assessment does ask the writer to set out both positive and negative impact of the policy, which is a welcome addition. I would note however that even with a new format, the CRIA that I have seen have not consistently followed it, so some have just asked broader questions about impact generally, rather than expressly considering positive and negative impact. I feel a concluding section is still lacking however resulting in an incomplete assessment and advice to the Minister.

I have been working on my own CRIA template in recent weeks, which would take users through the principles of a children's rights approach and prompt the author to consider not only what they've done to date but what other options could be taken forward, how they would do this and how they've involved children throughout. Although intended for a range of public bodies, this work arose following a request from a number of local authorities. , I would be happy to share this widely including with Government once completed. I have felt the need to prepare this document due to the varying quality of CRIA and lack of analysis and concluding advice I see too often.

7. The effectiveness of the Children's Right's Scheme and the most recent Welsh Government compliance report, and the extent to which they evidence sufficient action on the part of Welsh Government to ensure full implementation of the Measure

The Measure requires a Children's Rights Scheme to be maintained, and for a Compliance Report to be prepared every 2.5 years. The last Compliance report was published in March 2018²² , and it concluded that the Scheme should be revised (a requirement to be expressly considered in any compliance report) and that this would be done by December 2018. My team and I raised this at regular intervals with officials since then, as unfortunately this work was not forthcoming. The Compliance Report was published and laid but was not presented for a plenary debate at the Senedd.

Work eventually commenced with a revised draft being shared in late April 2019, just days before the CRAG meeting on 1st May 2019. My office is a statutory consultee for any revisions to the Scheme; we were concerned to be given such short notice in which to respond before the scheme was planned to go out to public consultation.

We were very disappointed to see that very few changes had been made in the revised draft, despite clear commitments within the 2018 Compliance Report. Following the meeting, my team sent detailed follow up feedback to officials, including a revised structure for the Scheme that would include all of the required elements, and also extend the purpose and reach of the Scheme further as intended. The new structure was focused around the five principles of a children's rights approach *The Right Way*, which would be applicable to Government as well as other public bodies in Wales. The team offered to work closely alongside officials and/or attend workshops to assist in the redrafting of the scheme; this offer has not been taken up to date. We also agreed at CRAG that it would be better for the Government to revise the scheme to get it right instead of focusing on an artificial deadline of summer recess.

A redraft was shared with my team on 9th September 2019, again just days ahead of the next CRAG meeting on 11th September. The consensus amongst members of the CRAG at this meeting was that the revised draft wasn't clear as to *how* Welsh Government officials should be carrying out the due regard duty, and what help, support, training or resources was available to them to do this. It needs to act as a manual to support officials in achieving due regard rather than just ticking a box to say a CRIA has been completed. In addition, the revised draft still doesn't take forward the areas noted in the Compliance Report 'next steps', namely a revised plan for funding external training, a review and extension of the Government's participation strategy, implementing previous report recommendations to improve the quality of CRIA and a move towards focusing more on outcomes for

²² <https://gov.wales/sites/default/files/publications/2019-06/rights-of-children-and-young-people-compliance-report.pdf>

children. This revised draft did not follow the principles of the Right Way. A further draft is now expected to be shared in October 2019; my team have renewed their offer of support in rewording and restructuring the draft.

I must emphasise that my office maintains a constructive relationship with our link branch and on the basis of this we are able to provide forthright feedback and engage in robust but positive debate with officials. I welcome this open engagement as it allows me to conduct my scrutiny remit. As the current scheme remains operational throughout this process, I have been clear to officials that I would rather some delay in the revised scheme if that means the final result will be better for children's rights work in Government.

In addition, the 2014 Children's Rights Scheme includes the internal Children's Network, where senior officials from across Government would come together to discuss children's issues. I have presented at the Network more than once and think it is a good arrangement that would promote cross government working. Whenever I've asked about the Network however, it appears to not meet particularly regularly. The revised draft currently omits reference to this Network, which I think would be a significant loss given the issues I've raised above and discussed with the Committee previously around lack of proactive 'join up' across Government.

Any compliance scheme has to include metrics such as the numbers of CRIAs completed and numbers of staff members attending children's rights training. The 2018 report noted a reduction in the number of CRIAs and those accessing training, but did not include any proposals as to how to address that decline. Given that the commitment had already been given to revise the Scheme within that report, it presented an ideal opportunity to extend awareness and understanding of children's rights across Government rather than continue with the status quo. There will have been staff turnover and many role changes in the years since the Measure was first enacted and it cannot be assumed that all those within Government have received up to date information and training.

8. How effectively the Welsh Government responds on a strategic basis to the Concluding Observations of the UN Committee on the Rights of the Child

The Concluding Observations from the UN Committee on the Rights of the Child are formally directed to the UK Government, as the relevant State Party signed up to the Convention. However, there will be areas that relate in part or wholly to devolved areas that are the responsibility of the Welsh Government.

At my suggestion, in July 2017 the then Cabinet Secretary for Communities and Children issued a statement marking a year since the publication of the 2016 Concluding Observations.²³ Whilst this was a welcome step, the statement did not address the relevant recommendations directly, and just highlighted the areas in which the Government already had plans for policy or legislative developments from the previous year's manifesto and the *Prosperity for All* strategy.

²² <https://gov.wales/written-statement-marking-first-anniversary-publication-un-committee-rights-childrens-concluding>

The then Minister for Children, Older People and Social Care published a statement²⁴ to mark the second anniversary. This statement was largely similar to the previous year's statement and again did not directly address the recommendations, including those where the Welsh Government has not yet acted.

I am not aware of a statement published on the third anniversary in July 2019 and have not been able to locate anything on the Government website.

Although we have not systematically tested this, when speaking to officials from a range of government departments it does not appear that they are aware of the Concluding Observations relevant to their policy area.

There is no published schedule of relevant recommendations for Wales and the Government's assessment of progress against these. In November 2019 the Children's Commissioners for the UK and Jersey will publish a joint report on the UK's progress against the 2016 Concluding Observations. This will be our own assessment of progress against those recommendations. The report will highlight areas of progress in each of the nations but will also set out areas that persist and where there is work to be done to progress and uphold children's rights under the UNCRC. This report will be shared with the Committee, and my office will be publishing a Wales specific version as well as an accessible version.

Section 2 (4) of the Measure states that Ministers "must, within six months of the Committee making any suggestion or general recommendation under article 45(d) based on a UK report, consider whether to revise or remake the scheme in the light of that suggestion or recommendation." This is a statutory requirement to at least consider whether the Scheme requires revision due to the content of the Concluding Observations. For example, if the UN Committee raised a point around access to complaints mechanisms and judicial remedies, the Scheme may need updating. I am not aware of this ever having been done either; if it has it hasn't been discussed or shared with my office, nor has it been published.

Conclusion

I warmly welcome the Committee's scrutiny of the impact of the Measure and the opportunity to provide my views in relation to this.

I am proud of much of Wales' record on children rights and am well aware that to date the Measure has been the strongest legal measure implementing children's rights in the United Kingdom. However, I do not feel that measuring ourselves against the rest of the UK is an ambitious enough target and I would like to see Wales reaching the very best international standards. I will continue to recognise good work by the Welsh Government and other public bodies but also press for more systematic implementation of children's human rights.

In summary, whilst the Measure has been a welcome addition to the Welsh legal landscape, in my view there is clearly more to be done to extend its reach and impact in order to ensure that children's

²³ <https://gov.wales/written-statement-marking-second-anniversary-publication-un-committee-rights-childrens-concluding>

rights are directly applied and accessible across Wales. I feel that the current Children's Rights Scheme, that translates the duties of the Measure into the day to day work of Government, does not make the most of the opportunities to develop and extend the application and realisation of children's rights across all areas of Government's work, and action by Government is needed in order to achieve this. Whilst the current scheme requires actions such as CRIA to take place to evidence the due regard duty, there needs to be far more detail and requirements contained within the revised Scheme to combat the quality and timeliness issues identified in this response. In addition, I am not yet certain that the Measure is sufficiently embedded across Government to be having greatest possible effect for policy and decision making on any issues relevant to children.

Embedding the UNCRC across Government practice and procedure does not start and end with the introduction of the Measure. As noted within this response, it is one way in which the Government can be held to account on due regard for the UNCRC, but there are many other ways that this could be progressed and implemented further, including further incorporation of the UNCRC to apply duties to all public bodies in Wales. Implementation of the UNCRC is expected to be a process of 'progressive realisation' and there is plenty more that could be done in Wales to continue with this journey, including the potential extension of my role and remit as the independent children's rights institution in Wales.

Submitted by



Sally Holland

Children's Commissioner for Wales

Agenda Item 6.1

CYPE(5)-28-19 - Paper to note 1

Vaughan Gething AC/AM

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MAP-VG-3447-19

Lynne Neagle AM

Chair

Children, Young People and Education Committee

1 October 2019

Dear Lynne,

I am pleased to inform the Committee that since the appointment of the National Clinical Lead for Perinatal Mental Health, the Wales Perinatal Mental Health Network has been formally established. The National Clinical Lead has focused on developing connections between services across Wales and developing a common understanding of the current status of services, alongside expectations for future development. This work has been prioritised due to variances in practice and service development across the health board areas and is supporting clear communication of the expected strategic direction of perinatal mental health services. In order to develop these connections, the National Clinical Lead has engaged with health boards to support them in establishing or re-focusing their perinatal mental health steering groups. This will assist individual health boards to develop work plans which focus on partnerships, pathways, people and performance. These work plans will complement the themes of the national work plan which is structured to drive the same objectives.

The National Clinical Lead has made progress in a number of other areas, with an early key success being the establishment of professional forums for midwives, health visitors, mental health practitioners, specialist team leads, psychologists and psychiatrists. These forums will make a significant contribution to the wider network, and develop clinical practice. The National Clinical Lead is currently working with the Neonatal Network to shape '*All Wales Guidelines for Psychotropic Medication and the Newborn*' having identified this as an area where improvements could be made to the clinical pathway.

With the National Clinical Lead now in place and the Network established, I expect there to be an acceleration in the pace of implementing the Welsh Government's response to the Committee's report, published in October 2018. To support the increased pace, we have also provided additional resource to the core network team with two new posts, both of which have been appointed to support project management. This core network team has re-established meetings of the Perinatal Mental Health Community of Practice group which is providing opportunities for peer support and the sharing of good practice.

In line with the recommendations of the Perinatal Mental Health in Wales Report, Welsh Government continues to make progress with the development of a mental health core data

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Gohebiaeth.Vaughan.Gething@llyw.cymru
Correspondence.Vaughan.Gething@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

set. The data set will ensure formal mechanisms for collecting performance management and outcome data from the new community perinatal mental health services which are in place. As with any new health service, building a comprehensive and robust data collection system is a complex process and takes time. Data requirements for perinatal mental health services are being built into this dataset and there are two stakeholders workshop events planned in October to consolidate the data to be collected and to ensure consistent definitions are utilised. The dataset will be fully operational by 2022, in line with the Together for Mental Health delivery plan. Whilst the formal data collection systems are being established, as part of our monitoring of the community services in health boards, we continue to request information including the number of staff in posts, numbers of referrals and interventions offered every six months.

This data is incomplete as not all health boards have yet been able to collect the relevant information, though all health boards are building their data collection capacity to facilitate this, which understandably takes time. Whilst the data is incomplete, they do provide a sense of the volume of activity and the settings of treatments.

Within the data returns received health boards reported a wide range of interventions offered within their services. These included;

- individual interventions such as cognitive behaviour therapy, cognitive analytical therapy, REWIND, anxiety management around childbirth
- group interventions such as dialectic behaviour therapy, play and development groups
- wellbeing sessions
- birth planning
- medication review
- professional advice, signposting and education
- crisis management

Health boards have also responded to Welsh Government's request to report on the composition of the Community Perinatal Mental Health Teams. Welsh Government does not routinely collect workforce data by health board and therefore any information provided offers only a snapshot of staff composition. However, we are aware that individual health boards are building perinatal teams with a range of roles which include specialist perinatal midwives, specialist perinatal visitors, psychologists, community psychiatric nurses, occupational therapists and nursery nurses.

According to the data received for the period of 1 August 2018 to 31 March 2019, a total of 2,667 referrals were received across Wales, with 2,320 referrals accepted. There is significant variance across health boards, with the numbers of referrals received ranging from 55 to 794 for the period. Health boards provided a range of reasons for referrals being rejected, including referrals not being appropriate for the service, women no longer requiring the referral and the referred women not meeting the referral criteria. Health boards reported providing signposting for inappropriate referrals. The Network is currently reviewing the functions of these specialist teams, to ensure that women across Wales receive appropriate care.

Within the data that was provided to Welsh Government, 928 women were treated for perinatal mental ill health by the Community Mental Health Team, 32 women were treated at home or by a crisis team, 16 women were treated within a mother and baby unit and 11 women were treated in an adult psychiatric ward without their child. No women were treated in an adult psychiatric ward with their child. It should again be noted that these figures should be viewed as indicative due to the incomplete status of the data and do not reflect the total numbers of women treated in perinatal settings. Incidences of women being treated in a mother and baby unit were limited. However, I am aware that the feedback suggests

that the low numbers of women receiving treatment in a mother and baby unit is predominantly driven by limited availability of facilities in appropriate locations rather than low demand.

We therefore remain committed to establishing a Mother and Baby Unit in Wales and this work, led by the Welsh Health Specialised Services Committee (WHSSC), is being progressed as a matter of priority. As previously stated, the implementation of such a specialised service is complex and requires consideration of a number of factors including location, workforce and premises. WHSSC Management Group have been working with Swansea Bay University Health Board to develop a business case for a six bedded Mother and Baby Unit to be hosted in the region. The latest indicative planning set out by the Health Board indicates a timescale with the Unit becoming operational in summer 2021. I am concerned that this timetable has slipped and I have therefore asked my officials to work with WHSSC and Swansea Bay to quickly explore options for an interim solution and/or to accelerate planning. These discussions are being taken forward as a matter of urgency.

In our previous update to you in February we outlined our expectation that perinatal mental health community services should meet the All Wales Perinatal Mental Health Standards by March 2020 and to meet the relevant Royal College of Psychiatrists' quality standards by the end of the following financial year. These will be clear milestones for the Welsh Government to monitor through the life time of the Together for Mental Health Delivery Plan 2019-2022 which will be published later this year.

Perinatal mental health has also been made a priority of the mental health service improvement funding which commences from 2019/20, with health boards investing an additional £500,000 per annum for perinatal mental health services.

I hope this information is helpful and I will provide a further update in six months, as agreed with the Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Vaughan Gething". The signature is written in a cursive, flowing style.

Vaughan Gething AC / AM

Minister for Health and Social Services

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol

CYPE(5)-28-19 - Paper to note 2

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Cyfrifon Cyhoeddus

National Assembly for Wales
Public Accounts Committee

Lynne Neagle AM
Chair, Children, Young People & Education Committee
National Assembly for Wales

04 October 2019

Looked after Children

Dear Lynne,

Thank you for the copy of your letter to the Welsh Government with regards to your budget scrutiny priorities. The Public Accounts Committee welcomes the attention that your Committee is giving to the important issue of Looked After Children, and the profile it has been given in your reports.

As part of our Autumn work programme, and in light of our commitment at the beginning of the Assembly to undertake a long term inquiry into this area, we have scheduled an evidence session with Welsh Government officials to discuss progress against the recommendations in our report on Care Experienced Children and Young People on 2 December 2019.

I would like to invite you or any Member of your Committee to join our session if you would like, or if there are any issues you would like us to raise with the Accounting Officers please let me know.

Yours sincerely,



Nick Ramsay AM
Chair



Cynulliad Cenedlaethol Cymru
Bae Caerdydd, Caerdydd, CF99 1NA
SeneddArchwilio@cynulliad.cymru
www.cynulliad.cymru/SeneddArchwilio
0300 200 6565

National Assembly for Wales
Cardiff Bay, Cardiff, CF99 1NA
SeneddPAC@assembly.wales
www.assembly.wales SeneddPAC
0300 200 6565

Agenda Item 6.3

CYPE(5)-28 19 - Paper to note 3

Ken Skates AC/AM
Lesley Griffiths AC/AM
Kirsty Williams AC/AM



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/P/KS/5090/19

Lynne Neagle AM
Chair
Children, Young People and Education Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

11 October 2019

Dear Lynne,

We wish to provide advanced notice of a quadrilateral meeting with the Secretary of State (SoS) for Business, Energy and Industrial Strategy (BEIS) on 17 October 2019.

Representation at the meeting is expected as follows:

- UK Government - Andrea Leadsom MP, Secretary of State for Business, Energy and Industrial Strategy.
- Scottish Government - Rosanna Cunningham MP, Cabinet Secretary for Environment, Climate Change and Land Reform.
- Northern Ireland – Unknown, official representation.

The meeting was due to take place on 07 October but was cancelled by the Secretary of State at short notice. We are deeply frustrated by this and will be writing to the Secretary of State to express our frustration.

At the meeting the Welsh Government will be represented by the Minister for Economy and Transport and the Minister for Environment, Energy and Rural Affairs. The Ministers will raise and cross-cutting issues relevant to the Education portfolio.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

It has been agreed that the draft agenda will include discussion on how we prepare business and citizens for Brexit, the role of the UK in tackling climate change and the Industrial Strategy, in particular the place-based approach. We will also be highlighting the need to strengthen and maintain Ministerial engagement with BEIS through more robust inter-governmental structures necessary to ensure the devolution settlement is protected and impacts on Welsh citizens and businesses is limited.

Following the meeting, we will produce a Written Statement which will provide members with a summary of the issues discussed and an outline of the positions advanced by the Welsh Government.



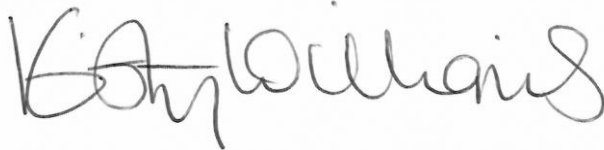
Ken Skates AC/AM

Gweinidog yr Economi a Thrafnidiaeth
Minister for Economy and Transport



Lesley Griffiths AC/AM

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs



Kirsty Williams AC/AM

Y Gweinidog Addysg
Minister for Education