



**Cynulliad Cenedlaethol Cymru  
The National Assembly for Wales**

**Y Pwyllgor Plant a Phobl Ifanc  
The Children and Young People Committee**

**Dydd Mawrth, 27 Ebrill 2010  
Tuesday, 27 April 2010**

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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal,  
cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

These proceedings are reported in the language in which they were spoken in the committee.  
In addition, an English translation of Welsh speeches is included.

**Aelodau'r pwyllgor yn bresennol**  
**Committee members in attendance**

Helen Mary Jones	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)
Val Lloyd	Llafur Labour
Sandy Mewies	Llafur Labour
Joyce Watson	Llafur Labour

**Eraill yn bresennol**  
**Others in attendance**

Trudy Aspinwall	Swyddog Polisi Hawliau Plant, Achub y Plant Cymru Child Rights Policy Officer, Save the Children Wales
Dr Samantha Clutton	Uwch Swyddog Ymchwil a Pholisi, Barnardo's Cymru Senior Research and Policy officer, Barnardo's Cymru
Lynne Hill	Cyfarwyddwr Polisi, Plant yng Nghymru Policy Director, Children in Wales
Sean O'Neill	Cyfarwyddwr Polisi, Plant yng Nghymru Policy Director, Children in Wales
Keith Towler	Comisiynydd Plant Cymru Children's Commissioner for Wales
Catriona Williams	Prif Swyddog Gweithredol, Plant yng Nghymru Chief Executive Officer, Children in Wales
Jane Williams	Darlithydd, Ysgol y Gyfraith, Prifysgol Abertawe Lecturer, School of Law, Swansea University

**Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol**  
**National Assembly for Wales officials in attendance**

Sarah Bartlett	Dirprwy Glerc Deputy Clerk
Abigail Phillips	Clerc Clerk
Helen Roberts	Cynghorydd Cyfreithiol Legal Adviser
Siân Thomas	Gwasanaeth Ymchwil yr Aelodau Members' Research Service

*Dechreuodd y cyfarfod am 9.18 a.m.*  
*The meeting began at 9.18 a.m.*

**Cyflwyniad, Ymddiheuriadau a Dirprwyon**  
**Introduction, Apologies and Substitutions**

[1] **Helen Mary Jones:** Bore da, **Helen Mary Jones:** Good morning, gyfeillion, a chroeso cynnes ichi i gyd i everyone, and a warm welcome to the gyfarfod o Bwyllgor Plant a Phobl Ifanc meeting of the Children and Young People Cynulliad Cenedlaethol Cymru. Committee of the National Assembly for Wales.

[2] Atgoffaf bawb fod croeso i dystion ac Aelodau siarad Cymraeg neu Saesneg. Mae offer cyfieithu ar gael a gall yr offer hwnnw eich helpu i glywed yn well os oes angen hynny arnoch. I remind everyone that witnesses and Members are welcome to speak Welsh or English. Interpretation equipment is available and that equipment can amplify the sound if needs be.

[3] Gofynnaf i bawb yn yr ystafell hon a'r oriel ddiffodd unrhyw ffonau symudol, 'mwyar duon', a galwyr sydd ganddynt. Nid yw'n ddigon i'w rhoi ar 'dawel' oherwydd bydd yn parhau'n bosibl iddynt amharu ar yr offer sain a darlledu. I ask everyone in this room and the gallery to switch off any mobile phones, BlackBerrys, pagers that they may have with them. It is not enough just to put them on silent as they can still interfere with the sound and broadcasting equipment.

[4] Nid ydym yn disgwyl ymarfer tân heddiw, felly os ydym yn clywed larwm tân yn seinio, bydd hynny'n golygu bod problem a bydd y tywyswyr yn dangos i ni'r ffordd orau i adael yr adeilad. We do not expect a fire drill today, so if we hear the fire alarm, that will mean that there is a problem and the ushers will show us the best way to leave the building.

[5] Gofynnaf i Aelodau wneud unrhyw ddatganiadau o fudd sy'n ofynnol o dan Rheol Sefydlog Rhif 31. Gwelaf nad oes datganiadau o'r fath. I ask Members to make any declarations of interest required under Standing Order No. 31. I see that there are none.

[6] O ran ymddiheuriadau a dirprwyo, mae Eleanor Burnham ac Angela Burns wedi ymddiheuro. Yr wyf yn deall y bydd yn rhaid i Sandy Mewies ein gadael am gyfnod byr yn hwyrach yn y cyfarfod, ond yr ydym yn hynod o ddiolchgar y bydd Val Lloyd yn ymuno â ni am y rhan honno o'r cyfarfod. Diolch yn fawr i Val am gytuno i wneud hynny. On apologies and substitutions, Eleanor Burnham and Angela Burns have sent their apologies. I understand that Sandy Mewies will have to leave for a short while later in the meeting, but we are very grateful that Val Lloyd will join us for that part of the meeting. Thanks very much to Val for agreeing to do that.

9.20 a.m.

### **Y Mesur Arfaethedig Ynghylch Hawliau Plant a Phobl Ifanc (Cymru): Casglu Tystiolaeth**

#### **The Proposed Rights of Children and Young Persons (Wales) Measure: Evidence Gathering**

[7] **Helen Mary Jones:** Croesawaf Keith Towler, Comisiynydd Plant Cymru, i'r cyfarfod. Diolch yn fawr iawn i chi, Keith, am roi o'ch amser i fod yma gyda ni yn y cyfarfod hwn i fynd i'r afael â mater sy'n bwysig iawn i ni i gyd. Diolch am y papur sydd wedi dod o'ch swyddfa. Gan ein bod wedi derbyn gwybodaeth ysgrifenedig, os yw'n iawn gyda chi, trown yn syth at y cwestiynau. **Helen Mary Jones:** I would welcome Keith Towler, the Children's Commissioner for Wales, to the meeting. Thank you very much, Keith, for making the time available to be here, in this meeting, to deal with a matter that is very important to all of us. Thank you for the paper that has come from your office. As we have received written information, if it is okay with you, we will turn straight to questions.

[8] I will take the first question. Could you outline for us your overall response to the draft of a proposed Measure as set out in the Government's consultation document?

[9] **Mr Towler:** Yes indeed, Chair. I think that it is a good start and it is good to see the draft of a proposed Measure out here. It is good to see that it establishes the principle that the UN Convention on the Rights of the Child is important. In many ways, if we get this draft of a proposed Measure through, Wales will be leading the UK.

[10] The convention is all pervasive and makes it very clear that all rights are connected and that no rights are more important than any other. The key issue for me in relation to the weakness of the proposed Measure as currently drafted is the issue about relevant functions—the list of what is in, which thereby implies what is out. That is a concern for me, as are things around due regard and scrutiny.

[11] In the way in which it is currently drafted, I suppose that the danger is that we could end up with less consideration about children's rights rather than something that would change the cultural approach to children and their rights. So, it is great to see that a proposed Measure has been drafted and that we are going through a process. I think that there is much more that we could do to strengthen what we currently have in the draft.

[12] **Sandy Mewies:** Good morning, Keith. You have already raised the issue of the pervasiveness of the draft. I want to talk about the soft-law approach and the duty to have due regard. In your evidence, you raise the issue of the soft-law approach within the context of the due regard duty. Could you clarify what your concerns are on these issues?

[13] **Mr Towler:** I suppose that I am at pains of almost repeating myself straight away. I accept that we cannot fully embed the UNCRC into a legislative approach, but there are some principles at play within the UNCRC, and it is that point at which the UNCRC makes it very clear that all rights are connected. So, as for a pervasive approach and due to the nature of international aspirations, some of those things are always going to be aspirational to some extent, are they not? We know that we are trying to hit a convention standard here, but there is a point at which even the convention becomes rather aspirational.

[14] What we have is an exciting opportunity to pin down some things here for children and young people, which would deliver a child-rights approach that, for children and young people, would completely underscore how outcomes for children would be improved as a direct result of having this draft of a proposed Measure in place.

[15] For me, if we have to accept that there has to be some sort of progressive realisation of what we are talking about, I think that that would be okay, but the starting point must not be limited by a list of things that are relevant functions. Maybe we will come back to some of the things about relative functions later, but the problem with relevant functions is that all that we have in that list are particular duties or responsibilities that apply to some children. If you look at the relevant functions, they are predominantly education based.

[16] Within the relevant functions, for example, is the review of the national service framework. To me, the delivery of the NSF should be all pervasive—if we could only crack the delivery of the NSF, we would not have to sit here, time and again, discussing outcomes for children. The national service framework for children touches health, education and safeguarding—you name an issue that affects children's lives and it is in there. That is what we need to do with this draft. We need it to be far broader in principle so that we are not ruling things out as a result of them not being listed.

[17] **Sandy Mewies:** I think that you have answered a greater part of the next question, but because this is one of the key issues in your evidence, I want to ask it anyway. Are there any arguments to support a view that this draft is a missed opportunity not to seek a stronger direct duty or formulation, such as statutory implementation? There has been a court ruling as

well, has there not?

[18] **Mr Towler:** Yes. I think that we have an exciting opportunity here and we need to embrace it. We need to grab hold of this and really make something of it. I do not think that it is necessarily a missed opportunity because, of course, we are at the beginning of a process here. As all of us are trying to think through how we can make this draft stronger so that it will do what we want it to do for children, I am hoping that all of our concerns will drive up the standard of the proposed Measure that will be passed.

[19] So, it is an exciting opportunity. Let us not forget that commitment about embedding the principles of the Convention on the Rights of the Child within what we are attempting to do. Frankly, if we manage to get this on the Welsh statute, as an achievement, that is not to be sniffed at. That would be something really quite considerable. So, it is not a missed opportunity, but on implementation, we really need to focus on that relevant function element because that, within everything, encapsulates the weakness of what we currently have.

[20] **Joyce Watson:** Good morning. In respect of the consultation process in preparation for the children's scheme, you say that it should be less procedural and administrative, with a clear shift towards reporting and monitoring. You also, however, identify that current proposals for the consultation process do not require Welsh Ministers to have regard to the views of consultees, nor to share the results of any consultation. Are you seeking for these changes to be made to the draft, or is your view that such detail is not required?

[21] **Mr Towler:** There is something within all of this about the role of the children's commissioner. For me, in relation to how I can hold Ministers and the First Minister to account in relation to this proposed Measure and others, the consultation referred to the role and functions of the Children's Commissioner for Wales, but that does not appear in the draft of the proposed Measure. So, what I would like is some clarification from Government about the role of the children's commissioner. Inherent within that, in relation to the way in which this is currently drafted, no-one has to pay any attention to the Children's Commissioner for Wales. Now, I would say this, would I not, but that cannot be right, can it? The role and function of the children's commissioner is to hold people to account in relation to children's rights and outcomes for children. At the moment, what I am saying is that I would like some clarification from Government about what its thinking is on that because it is not clear to me.

[22] **Helen Mary Jones:** Thank you; that was interesting. On compliance, in your evidence, Keith, you say that the draft of a proposed Measure is not prescriptive in measuring compliance. Can you outline changes to the draft that you would like to see to strengthen the issue of compliance?

[23] **Mr Towler:** Yes. Again, it is about the issue of holding people to account. This does not just apply to me as the children's commissioner, but to the National Assembly for Wales as well, given the scrutiny function that it has as a body. It is good to have domestic compliance mechanisms, but I think that we need some clarity about what holding to account means.

9.30 a.m.

[24] I have a role in this. I have a duty, as far as my reading of the UNCRC is concerned, to report to the UN committee on a five-year basis about how well or not we are doing in the UK—Wales in particular, from my point of view—in relation to this. So, it would seem to me that the reviewing powers contained within the Care Standards Act 2000 need to be looked at in relation to this draft of a proposed Measure.

[25] One thing that we might want to consider is that the five-year reviewing cycle is quite

a long period of time. We could look at some quite exciting opportunities, such as an annual, themed way of looking at children's rights within Wales. Let us say that we were looking at safeguarding and child protection issues in the first year of a five-year reporting cycle, and in the second year, we might want to take a look at something in relation to health—in other words, doing something that really informed a five-year cycle, building on a five-year cycle, that had some kind of process within it that strengthened my powers and responsibilities to hold people to account, but also having thought through the National Assembly for Wales's functions in relation to holding to account.

[26] It seems to me that the spirit of the draft of a proposed Measure, having listened to Rhodri Morgan when he was First Minister talking about his thinking and Government thinking in introducing this draft of a proposed Measure, was about the spirit of change. It was about establishing in Wales that we not only believed and loved our children but also respected them as rights holders. What we are trying to do here is to drive some kind of cultural practice change that really defines how we work in Wales. To get that right, we really need to strengthen that holding-to-account mechanism. The reporting cycle is one way of thinking about that, but also thinking about what the National Assembly for Wales might be doing, what the children's commissioner might be doing, and how that links to this UN committee reporting cycle.

[27] In other words, what we would have in place is not some kind of bureaucracy that would add all kinds of difficulties, but it would build up, year upon year, so that we were actually informing and developing our practice rather than having some kind of process that was to one side.

[28] **Helen Mary Jones:** I think that that almost covers your next question.

[29] **Mr Towler:** I am sorry.

[30] **Helen Mary Jones:** No, that is good.

[31] **Joyce Watson:** I am going to talk about age range, because you mention it in your written evidence. Can you confirm that you are seeking the removal of powers in respect of young people aged from 18 to 24 from the draft of a proposed Measure?

[32] **Mr Towler:** The original intention was to embed the principles of the UNCRC into our law-making, and the UNCRC applies to under-18s. The intention was to address the legal vulnerability of children. So, issues around protection of children, the provision of services and the participation of children and young people in our democracy as far as the UN committee is concerned are about children and young people under the age of 18.

[33] There is nothing wrong with the intention of expanding that to 19 to 24-year-olds, but I am not sure whether the draft of a proposed Measure is the right way of doing that if what we are attempting to do is embed the UNCRC, because the UNCRC is very clear on age range. There are other protections in place for over-18s, but the central principle, I guess, is that, if we are trying to embed the UNCRC, it does limit itself to that age.

[34] **Helen Mary Jones:** Thank you. I want to return in a bit more detail to this pervasive/non-pervasive question. Your written evidence raises concern about the non-pervasive nature of the identification of relevant functions. It seems to me that we have two issues here: whether we should be identifying relevant functions at all, and, if you do identify relevant functions, how that is done. You talk about the non-pervasive nature of the identification of relevant functions. Can you tell us a bit more about why that matters so much?

[35] **Mr Towler:** Yes. This is a bit of pick and mix—it reminds me of Woolworth's. When you were a child and went to Woolworth's for pick and mix, you chose all the sweets that you really liked and every now and again you got one that you really did not like. The unintended consequence of the pick and mix approach is that you forget the things that are not included within it. So, I would prefer to see no lists. The difficulty is that, if something is in a list, it is in, and that would make civil servants think about what they had to do in relation to children's rights. If, however, we were talking about a highways piece of legislation—highways was not listed in the draft of a proposed Measure as a relevant function but children use highways every day—it is not going to be in so we are not going to think about the implications for children.

[36] So, we would need the best list in the world, which would be almost impossible to achieve, I think. If we had a list, we would need to be thinking about who was going to monitor it and who was going to make sure that it was updated appropriately. It would be better, in my view, not to have a list at all. Again, going back to the point about trying to create something that is about normative behaviour and this draft of a proposed Measure doing what it says on the label, it is about children's rights: children's rights applying across every aspect of children's lives, not just those that we deem to be giving to them in relation to education, which is predominantly what is in that list. That really sums it up for me.

[37] Doing away with lists of what is in is really important, because the unintended consequence is what happens to all those things that are perceived to be outside of the list. There are too many things outside of the list that are important. In every aspect of work that we have discussed as a committee, or things that I have discussed in this place—I use young carers as an example—if we were looking at the needs and the rights and the support that young carers deserve in Wales and we looked at the draft of a proposed Measure, the only support that they would get would be in relation to education. There would be very little in relation to the health support that they would need. There is very little recognition there about their mental health needs. There is very little in there that would fulfil what those young carers need and what rights they have as right holders.

[38] We really need to make sure that we are very clear about the unintended consequence of the list, because it lets people off the hook. That is a real worry for me and it goes against the spirit of what we are attempting to achieve here, or what I feel that we are attempting to achieve.

[39] **Helen Mary Jones:** That is very interesting. You make a very persuasive case, I think, for a pervasive approach. Could you perhaps give us an illustration of how, if this non-pervasive approach is stuck to, that might impact on children or a group of children? You have mentioned young carers. Are there other illustrations? I know that some of the issues relating to child poverty have been raised as a concern, for example.

[40] **Mr Towler:** The other one that I scribbled down when I was thinking in preparation for this is about safeguarding and child protection. I do not think that there is anything more important than safeguarding and child protection. That is absolutely what we should be concerned about. If you just think about the agencies involved in safeguarding and protecting children, this is not a children's services/social services agenda. This is every public service that comes into contact with children. All of us have that prime responsibility. The safeguarding issues alone illustrate the limitations of something that operates on a list function. It really puts children at risk.

[41] **Helen Mary Jones:** As we are trying to include all of those—

[42] **Mr Towler:** Absolutely.



[43] **Helen Mary Jones:** Do we risk ending up having an education system that takes a rights-based approach and safeguarding that takes a much more old-fashioned, welfare-based approach?

[44] **Mr Towler:** Absolutely. If you were thinking about safeguarding responsibilities and about youth offending services, which beautifully illustrates the kind of devolved and non-devolved area as a concept, people providing youth offending services in Wales, knowing that we had the draft of a proposed Measure, would also, on that cultural change, impact upon the way that the police think and the way that the probation services think. That is a fantastic opportunity.

9.40 a.m.

[45] That is really beginning to create the kind of shift where the Assembly and the Welsh Assembly Government would be punching way above its weight for an outcome, because it would be influencing the practice of non-devolved areas. That is such a powerful argument for why we should not have a list process.

[46] **Helen Mary Jones:** Thank you, Keith.

[47] **Sandy Mewies:** As the Chair said, it is a very persuasive argument that what is proposed should place an all-pervasive duty on all functions of Welsh Ministers. You go on to say that the simple approach would incorporate the concept of redress and provide the interface that is lacking for the citizen in this proposed model. What we have been discussing has led me to wonder how, if you were to go along the all-pervasive route, you would state it, because even though you are saying not to state it, it nevertheless has somehow to be stated in an eventual Measure. If a child felt it had been let down, would the redress be through case law in court? If it is through case law in court, given that this would be Welsh legislation, how would it fit in with the judicial system of the UK? I know that I have moved off slightly, but listening to the evidence suggests that, in one way, there could be an unintended consequence. Have you thought about that?

[48] **Mr Towler:** Yes. I am not a lawyer.

[49] **Helen Mary Jones:** We may wish to come back to this with our next lot of witnesses, but could you give us your impressions, Keith?

[50] **Mr Towler:** I am not a lawyer, but you will be talking to somebody who is—without putting on any pressure on anyone. There are lawyers out there who are more than happy to help with this and they are actively considering the draft of a proposed Measure and its implications. We would be foolish not to listen to that expertise outside of the people who are currently drafting, because I think that it could assist.

[51] On redress, it seems to me that there is an important principle within this. I do not understand how this works, essentially, particularly in relation to what you are talking about, namely case law and UK functions, but I do not think that this would be outside judicial review. I would be very surprised if children and young people were queuing up to take the judicial review route. I think that we have another one of those things that provides the opportunity to do what we have discussed before, which is that aspiration to deliver outcomes. Actually, all children and young people want to see is improved quality of services. That is the bottom line; that is what they want. So, I doubt that we would see queues and queues of people going there.

[52] In matters of redress, it would be brilliant for children and young people to come to the Children's Commissioner for Wales and say to me, in relation to a Measure that has been

passed, 'I want you, commissioner, to hold Helen to account because she has not delivered', with me saying, 'Come on, Helen, look at the Measure; look at your obligations under this', without me invoking powers and issuing letters. The spirit and culture of how we work in Wales means that Helen would respond to me, but given what we are trying to achieve, I think that we could drive up a practice outcome without recourse to the judicial review route, without that kind of case law being necessary.

[53] What I see currently is that agencies respond to me when I raise issues, as I have done about young carers and so on. They do; they respond. In my two and a bit years now as the children's commissioner, I have not had to issue a letter that says, 'I am exercising my power under the Care Standards Act'. What I have done is to say, 'Look, Helen, we need to sort this out', and Helen has said, 'Okay, let us sit round the table and talk about it'. So long as we know the frameworks within which we are working, I do not think that we should get too hung up, because I think that we can drive that practice. Those pillars that are built there create the kind of change that we are looking for.

[54] Listen to the lawyers' expertise that is out there, because there is some in relation to the legality of what I am saying. As for the spirit of what is proposed, it is important part of this is to tell children and young people that the eventual Measure would give them an opportunity to ask questions about what is happening in their life and about the quality of services they are receiving and what they can expect to have from health, education and social services. We would tell them that the children's commissioner can help them with that, and that they can raise those issues here and in a number of places. That is the important principle.

[55] **Helen Mary Jones:** Thank you. Sandy, I think that we will need to explore this a bit further. It has certainly been put to me in other contexts that having the list potentially creates more capacity for litigation, because you can then litigate on whether something is technically in or technically out, but that may be something we want to talk about a bit more with our next lot of witnesses.

[56] **Joyce Watson:** In outlining the rationale for the concept of relevant functions—and we have heard a few of those comments this morning—the consultation document states that the best approach for the Welsh Government is for it to start by putting its efforts into areas that will make the biggest difference to the lives of the children in Wales. I can almost guess what you are going to say, by how do you respond to that? I want to come back, because I have my own thoughts.

[57] **Mr Towler:** I accept that there has to be a starting point, to raise children and young people's awareness that these rights exist and, thinking from a very practical point of view, to deliver that. We are entering into a whole world of new jargon here. People have talked to me about the progressive realisation of this draft of a proposed Measure, in that we will build slowly. I can accept that, so long as it is built on a principle that exists within the UNCRC; in other words, that all rights are important, they are all inter-connected and none is more important than any other.

[58] If you convince me that that is accepted—and there are some practical things that we need to do to administer that, such as making children aware of it—I am prepared to be reasonably patient about the delivery of that progressive realisation, but it has to be pervasive.

[59] **Helen Mary Jones:** Joyce, do you want to come back on that?

[60] **Joyce Watson:** I do, because I have strong views on it, the same as Keith. The fundamental issue is that we are talking about a rights-based approach, and there is a convention that gives the rights to the child. If we start by putting the child at the centre and wrap the rights that deliver the services around the child, as Huw Lewis has proposed many

times, would that be far more satisfactory and commensurate with the ethos of the rights-based approach than what we currently have?

[61] **Mr Towler:** Yes, because in many parts of Wales, you will hear practitioners, managers and senior people talking about the team around the child, the windshield or whatever the jargon is, and that is all about placing the child and the family at the centre of what we are delivering. The important point with that is that we are accepting within the draft that children are rights holders and that they understand what that means, which is not the usual rights/responsibility debate, because it means that, as a rights holder, you can ask a question and expect an answer. It still amazes me that children in the looked-after system will often talk to me about having answers to questions, which is way short of raising a complaint about a service. It is just saying, 'Is it okay if I ask this question, please?', and I will say, 'Yes, of course it is'. When they say, 'Who would you ask?', the reply is, 'Well, you could ask your social worker or your foster mum or whatever, and you should expect an answer. If you do not get the answer, give me a call because I will help you get the answer'.

[62] The second point about placing the children and families at the centre is the issue about holding to account. So, with them as right holders, it means that agencies that provide services recognise the children as rights holders and are held to account by the people they are working with. That is a really important principle within this. It does not mean that you cannot set boundaries for children, or do any of the things that we know about good parenting and everything, but it does shift the relationship. Absolutely, child and family should be at the centre, with everything wrapped around it.

[63] Going back to the list function, if you were to wrap around the child what you wanted, you would find that the list currently has big gaps, health being the principal one.

9.50 a.m.

[64] **Joyce Watson:** This is my final question on this particular area. Have you considered any resource implications if the Government were to include all departments within the functions, to make all departments pay due regard to the duty?

[65] **Mr Towler:** The simple answer to that, I suppose, is 'no'. We have not looked at that in absolute detail. If this is about a practice shift and about how we respond to children and young people, and if we think about the added value and the real economies to be had from partnerships working really well, it would be a cleverer, more astute way of using the resources that we have, because it would really minimise duplication and unnecessary competition. It would make people think much more cleverly about the resources that they have and how they use them.

[66] **Helen Mary Jones:** Thank you, Keith. This is the last question from me, looking at the way ahead. In your evidence to us, you state,

[67] 'The key aim for the Measure must be to mainstream children's rights within Wales and at present the proposals fall short of achieving this aim'.

[68] You have set that out very clearly for us this morning, and we will need to consider carefully what you have said before we make our representations. What next steps would you like to see in this respect? What do you think needs to happen next? Earlier, somebody asked whether this was a lost opportunity. You said that it was not and, perhaps a bit presumptuously, I have added a 'yet', and taken that as a 'not yet'.

[69] **Mr Towler:** We are still working on my full response to the Welsh Assembly Government. Within this consultation stage—and this picks up on a point that Joyce, I think,

was asking about—we need from the Welsh Assembly Government a recognition of the activity and the thought going into this at the moment. You will hear from the NGO monitoring group and others that there is a lot of expertise in Wales on children’s rights and the application of children’s rights. I congratulate the Welsh Assembly Government on getting this far. The real task now in the consultation is to listen to the expertise that exists, as these are not people talking from an uninformed position. We have a lot of expertise in Wales, and we need to maximise what we have to make this work. I want to see the proposed Measure amended sufficiently well that we all feel that there is enough here for us to get our teeth into and to make children’s rights a reality. The opportunity is not lost by any means. The opportunity is there. We are at the consultation stage. It would be brilliant for the Government to hear the key messages, which I think will be consistent, and to make the amendments that we need to see.

[70] What we then need to think about is how we can all make this a reality. We think about the holding-to-account functions, the role of the commissioner, and the functions of this place. We think about how we are raising awareness about their rights among children and young people. We have seen some things moving on that, but we need a lot more progress on it. So, it is about building on the start that we have made.

[71] If we manage to pass the kind of amendments that I have been discussing, we need to blow our trumpet a bit, because what we ought to be thinking about is how this could impact on UK law, too. I know that that is a hard nut to crack and that there are things that I should not say at the moment so I am not going to say them; nevertheless, if we manage to crack this, we should not underestimate its impact at a UK level.

[72] The next steps are therefore to listen to what is coming in through the consultation, nail the drafting, be big enough to take the lawyer expertise that exists outside this place, if required, come up with a good proposed Measure, think about the awareness-raising strategy with children and young people, and let us make it happen.

[73] **Helen Mary Jones:** Thank you, Keith. Is there anything that you would like to add that we have not had an opportunity to touch on yet this morning?

[74] **Mr Towler:** No, I do not think so.

[75] **Helen Mary Jones:** Thank you very much. Those are some very powerful messages that we will need to take very seriously.

9.55 a.m.

**Y Mesur Arfaethedig Ynghylch Hawliau Plant a Phobl Ifanc (Cymru)—Casglu  
tystiolaeth: Grŵp Monitro Cyrff Anllywodraethol Cymru ar gyfer Confensiwn y  
Cenhedloedd Unedig ar Hawliau’r Plentyn  
The Proposed Rights of Children and Young Persons (Wales) Measure—  
Evidence Gathering: the Wales NGO Monitoring Group for the UN Convention  
on the Rights of the Child**

[76] **Helen Mary Jones:** Croesawn at y bwrdd gynrychiolwyr grŵp monitro cyrff anllywodraethol Cymru: Jane Williams o Brifysgol Abertawe, Trudy Aspinwall o Achub y Plant Cymru, a Dr Sam Clutton o Barnardo’s Cymru. Diolch i’r tri ohonoch.

**Helen Mary Jones:** I welcome to the table representatives from the Wales NGO monitoring group: Jane Williams from Swansea University, Trudy Aspinwall from Save the Children Wales, and Dr Sam Clutton from Barnardo’s Cymru. Thank you, all three of you.

[77] We are very grateful to you for your written evidence, which was really useful. We will go straight into questions, if you are happy with that. Then, at the end of the evidence session, if there is anything that you want to put on the public record that we have not had an opportunity to talk about, arising out of our questions, you will have an opportunity to do so.

[78] I am very grateful to the three of you for the written paper and for making time to be with us today. It is always a bit more tricky when there are more witnesses for you to decide who responds to what, so on the whole I will leave that up to you, because there may be different bits that each of you wants to take a lead on in responding. Feel free to add to each other's responses. We always have time constraints, but we are not as bad this morning as we are sometimes.

[79] I will begin by asking a general question. Could you briefly outline for us the monitoring group's overall response to the proposed Measure as set out in draft form in the consultation document from the Welsh Government?

[80] **Ms Williams:** Yes. In a sense, I want to pick up where the children's commissioner left off and just explain a little, if I may, about the process that we have gone through as part of this consultation exercise. The monitoring group comprises a number of NGOs and other members. We have taken the opportunity to engage with people outside the monitoring group, including senior legal practitioners, people in international organisations, specifically the UN Committee on the Rights of the Child, and UNICEF UK, as well as to be in touch with our colleagues in the Children's Rights Alliance for England and the Rights of the Child UK Coalition, which has been supporting a private Member's Bill on children's rights at the UK level. So, we have expanded this.

[81] There is a remarkable degree of consensus about the main points made by the group in the paper submitted to this committee, specifically on the need, which you have already heard about this morning, for a pervasive impact of the convention through the mechanism of this proposed Measure. There are a number of other matters in relation to which we think that the proposed Measure requires improvement, but that is the key one.

[82] I also want to reiterate something that you have already heard, which is that, in a sense, the eyes not only of the UK but, to some extent, the world—or at least the children's rights community in the world—are on Wales. There is clearly great admiration for the step that has been taken here and the intention that has been declared. At the moment, that is coupled with bewilderment about the relevant functions and a sense of dismay, actually. So, this really does need fixing.

[83] **Helen Mary Jones:** So, bewilderment and dismay—I think that is a fairly clear response.

[84] **Ms Williams:** Coupled with congratulations. [*Laughter.*]

[85] **Helen Mary Jones:** Trudy or Sam, do you want to add anything to that as a general overall impression?

[86] **Dr Clutton:** No, I would reiterate what Jane and Keith have already said, and perhaps we will talk a little later about the relationship between this proposed Measure and the Children and Families (Wales) Measure 2010, on child poverty. Action on child poverty is all-pervasive, and we could use this legislation to support or undermine our action on child poverty, in respect of the relevant functions and so on.

[87] **Helen Mary Jones:** We will certainly want to come back to that in a bit more detail

shortly.

[88] **Sandy Mewies:** Congratulations and dismay—that sounds a bit like some marriage ceremonies, does it not? [*Laughter.*] Anyway, moving on swiftly, you heard the question that I asked before. It is interesting that, in many ways, this is the crux of the whole thing: it is all-pervasive as compared with a list.

10.00 a.m.

[89] You state that you support the general duty within the draft of a proposed Measure to have due regard to the convention on the rights of the child rather than stronger formulations. It is the same question as before: are there any arguments to support a view that the draft of a proposed Measure is a missed opportunity not to seek a stronger, direct duty or formulation such as statutory implementation?

[90] **Ms Williams:** Yes. I will take this because it a legalistic issue. It is about approaches to the implementation of a broad range of civil, political, social, cultural and economic rights. It is also about the parameters of devolved competence and an issue that I think that you have already referred to, which is the fused judicial system of England and Wales.

[91] I should say that I have a slight disagreement with the terminology that is sometimes used about ‘soft law’ in relation to this sort of due regard duty. I think that it is an administrative law duty as opposed to an individual legal-claims approach. We have taken the view that this is very appropriate for a Measure at the devolved level, having regard to the scope of the powers of the Assembly and Welsh Ministers at the moment.

[92] Interestingly, at the UK level, there is a private Member’s initiative for a human-rights-Act-type approach on children’s rights, which would include the range of mechanisms in the Human Rights Act 1998. There is a strong duty of interpretation imposed directly on the courts, an individual legal complaint where a violation of a convention right is alleged, a remedy in damages where appropriate, and a stronger duty in section 6 of the Human Rights Act than mere due regard. It is a requirement for compatible action; all public authorities have to act compatibly with the convention rights except in certain circumstances.

[93] So, there is already an alternative model, if you like, that one could take. There are then further variations on that theme that one can see elsewhere in the world; for example, giving superiority to the convention rights over ordinary domestic law and various other things. The question is what is appropriate for the here and now. Our feeling has been that the due regard duty is appropriate. Soft law it is not, because it is a legal duty and is, therefore, something for which there is potentially recourse to the courts in the case of a failure to comply with the duty. The mechanism would be judicial review, as you rightly identified.

[94] In the commissioner’s written submission there is a very useful summary of how the courts in England and Wales have approached the import of such a due regard duty in equalities legislation. There is a seven-step guide to what the public authority must do in order to be sure that it is properly complying with that duty. So, it is not as though there is no law around this or even that it is particularly soft. It is simply that the thrust of this kind of approach is to try to inject into the administrative and political decision making a consciousness of children’s rights so that you are not thinking, ‘Now we can go and sue for damages for a violation’, but about changing the way in which administrative decisions are made.

[95] **Helen Mary Jones:** Would you say that that is a more effective approach at this stage, given the nature of the current devolution settlement and the responsibilities of Welsh Ministers?

[96] **Ms Williams:** Absolutely, yes.

[97] **Helen Mary Jones:** Thank you. I think that Joyce has some questions on the relevant functions issue.

[98] **Joyce Watson:** You say that removing the reference to relevant functions and making the duty apply to all functions of Welsh Ministers is the single most important change that needs to be made. Can you outline the main reasons for that view?

[99] **Ms Williams:** The reason is the nature of the convention, which again you have already heard about, in that it requires a holistic approach recognising the interdependence of the rights and also the range of civil, political, social, cultural and economic rights that does not lend itself to being given effect in a sectoral way, because decisions taken in relation to environment, planning, transport and budgeting also impact on the way in which children can access their entitlements and the way in which these obligations can be delivered. It does not make sense to have a sectoral approach.

[100] We have this body of opinion, to which I have referred, supporting that assertion, but it is there also in global comparative studies of different approaches to UNCRC implementation. It will cause unnecessary, unwieldy definitional problems—what is within and what is not within the functions—and could potentially be quite counter-productive, even undermining the considerable progress that has been achieved by the Assembly over the last 10 years.

[101] **Dr Clutton:** If we were to look at the list as it stands at the moment, some things cannot be achieved if we take a sectoral approach, because children do not come in little pieces that fit into places. We have to work with the whole child. So, thinking about child poverty and thinking about play in particular—I know that you have been looking at that as well—if we think about limited opportunities for play and pro-social leisure opportunities for children living in poverty, and we think about the solutions to those, we have really strong evidence that social and emotional wellbeing and physical health, play and community-based play are essential for children and young people's cognitive development. We know that that can lead to better outcomes educationally and socially, with reduced offending behaviour and so on.

[102] We also have some good international evidence of responses to that, such as home zones, making communities safe places for children to play so that they can get these opportunities and can have intergenerational mixing and so on. However, if we try to do that through a single avenue such as health—because it will reduce obesity and improve health—it will not work. If we try to do it through the play division, if we think at a local authority level, that will not work unless the other partners are working with them. What is already undermining that kind of action in Wales is planning departments and transport divisions, because they are crucial to bringing about those changes but essentially they do not see child poverty as their business. By having a list instead of saying that there should be due regard, we undermine action to deliver on rights and to tackle child poverty, I think.

[103] **Ms Aspinwall:** I would just like to add a bit in relation to children and young people's perspectives on relevant functions and on what they consider are relevant to their lives. I know that in the consultations that have already taken place with young people involved in Funky Dragon, when they have been looking at the draft of a proposed Measure, the very clear response from those young people to date is that giving a message that only certain areas are concerned with children's rights is giving an okay to certain Government departments to ignore children's rights. There was a very strong sense from them that, currently, they feel that an organisation like Funky Dragon has a clear remit to go to the

Welsh Assembly Government and to Ministers to talk about anything that children choose to talk about.

10.10 a.m.

[104] The draft of the proposed Measure has already made that group feel that that position will be taken backwards, and there are only some elements of their lives that will be considered by Ministers in light of their rights.

[105] **Joyce Watson:** In outlining the rationale for the concept of relevant functions, the consultation document states that the best approach for the Welsh Government would be to start by putting its efforts into areas that it feels will make the biggest difference to the lives of children in Wales. I know that you do not think that that is necessarily the case, but we want it on the record. How are you going to respond to that? What do you think that the resource implications might be if we had to include all Government functions?

[106] **Ms Williams:** First, a pervasive application to all of the Welsh Ministers' functions would be simpler and, to that extent, more economical to implement. Time would not be spent agonising, and potentially responding to challenges, over whether something was in or out.

[107] Secondly, I think that we have to take a view of resource that is itself rooted in the UN convention. There are some very useful publications by the UN committee, not just the concluding observations, but general comments and reports on days of discussion and so on. Around article 4 of the convention, which talks about the obligation to implement social, economic and cultural rights to the maximum extent of available resources, the committee has considered what 'resources' means in this context. Of course, it acknowledges that it means money spent by Government—money that is coming from direct taxation and is coming out of the usual channels. It also involves resource in the wider sense of the engagement that one can get from civic society, from the non-governmental organisations, from families, communities, children and young people themselves, and that it is something that needs to be considered in qualitative as well as quantitative terms. I think that this is an example of the kind of imaginative leap that is required in order to really make progress in implementation. Everybody knows that resources are tight and are going to get tighter over the next few years, but here is a legal underpinning for that kind of inclusive, imaginative approach to resource.

[108] **Dr Clutton:** On how this issue has been dealt with across the UK, Wales has been a leader and has stood out. We have had the statement of intent that the Welsh Assembly Government has translated the UNCRC into seven core aims for all children and young people, which has been with us for some time. As for the principles of the UNCRC and what Keith was saying, to have a pick list of where we recognise children's rights and where we do not, completely undermines the whole approach and does not fit with the principle of children's rights.

[109] Aligned to that, again making a link back to child poverty, if you think about the process of child poverty proofing and the policy gateway, it is about making sure that there are no unintended consequences of policy development that act to make child poverty issues worse, and surely we could have a similar system in relation to children's rights. What we would be looking at is resource neutral to that process, but also a more effective use of the resources that we have by recognising unintended outcomes upfront and making sure we did not have a poor impact on children and young people.

[110] **Ms Aspinwall:** I will just add, on resources, that I was looking at the national action plan, the 'Getting it Right 2009' document, which outlines the Assembly Government's response to the recommendations of the UN committee in its concluding observations. I think



that it covers 15 priorities—the first one of which is tackling child poverty. It is an extensive document. At the end, there is a section on implementation and it makes it very clear that because of the approach that the Welsh Assembly Government and the National Assembly have taken, many policies and practice in relation to children and young people are already based on the seven core aims. In the national action plan, it actually says,

[111] ‘The resources to support implementation are already in place at a national and local level’.

[112] I do not think that we are talking about anything different here. Obviously, we are talking about ensuring that all policies and areas that affect children and young people’s lives are involved in thinking about children’s rights, but it is about imaginatively using those resources to promote children’s rights in the best possible way and not about spending millions more pounds on providing additional services.

[113] **Dr Clutton:** The national action plan picks 15 or 16 priorities in recognition of the fact that we cannot do everything at once, which we know that the UN committee recognises as well. It has to be incremental. We will prioritise and look at these first, but we are still committed to the whole ethos of all the articles.

[114] **Ms Williams:** Would you mind if I just added something here to make a link between the question of resource and the question of legal challenge? I know that it is fairly obvious that one of the possible reasons for seeking to confine the application of this duty to have due regard is fear about challenge to resource allocation decisions that Ministers may need to make. I think that there are two aspects to that. One is just to draw attention again to what the duty of due regard does and, indeed, the nature of judicial review: it is not about second guessing decisions that have been made by Ministers; it is about an examination of the process to ensure that the proper things have been taken into account.

[115] The CRC itself has this inbuilt recognition of a progressive realisation within resources. So, there is a double legal protection, if you like, for these sorts of decisions. I have found it quite useful to refer to summaries of the case law under the Human Rights Act 1998. On resource-allocation decision making generally, you find that the courts are incredibly reluctant, for very good reasons, to get drawn into questions of resource allocation. I have with me a splendid article that I am more than happy to leave with Members if anybody wants to look at the legal and technical aspects. The headline is that even the Human Rights Act, with its more directly legalistic approach to enforcement, has not produced the sorts of litigation results that some people thought it might.

[116] **Helen Mary Jones:** It would be very useful for our legal adviser to take a look at that, Jane, if that is possible.

[117] **Joyce Watson:** Noting your paper, you talk about the sectoral approach as being worse than doing nothing. Is that a view that you hold dear? Are you saying that it is better to leave things as they are rather than taking the sectoral approach that you have suggested would be the result of implementing this legislation?

[118] **Dr Clutton:** As for what I said earlier, we have established ourselves as a country that is committed to a rights-based approach and to delivering the seven core aims. If you look at something like bullying, for example, in Wales a child has a right not to be bullied; in England, a child has a responsibility not to bully.

10.20 a.m.

[119] There are some very clear differences in our approach to children and young people

in that regard.

[120] If we turn this into a tick-box exercise, how do we explain rights to children if we then tell them that those rights are only enforceable in relation to certain elements of their life. That would undermine the whole principle. Also, how do we explain to the UK and the international community that Wales is committed to rights in specific areas and that we support rights elsewhere? It would undermine the position in which we are leaders—this list would take us backwards.

[121] **Helen Mary Jones:** I want to explore that a little bit further. In your written evidence, and in your oral evidence today, you have provided us with a very strong critique of the sectoral approach. In the written evidence, you have stated that it is especially depressing to note that the sectoral approach proposed in the consultation document actually runs counter to Welsh Ministers' carefully constructed position on child poverty.

[122] Sam, you have touched on this already. You say that such internal consistency represents a failure of joined-up government. Do you believe that removing the relevant functions clause would be enough to address the concerns that you raise in that regard? Are we looking at a simple set of amendments here, or are we looking at something much more complex?

[123] **Ms Williams:** I have had a little think about that, inevitably, and so far as I can see, it would require a simple amendment to what is at the moment sections 1 and 2. One could even remove the word 'relevant' so that you simply have the duty applying to the exercise by Welsh Ministers of their functions. That would give you a pervasive effect, and section 2(1) would then be redundant, so that would come out as well.

[124] In looking at the draft yesterday evening, just to try to pick up any other consequentials, it occurred to me that it is almost as though what is proposed has been drafted in such a way as to ease the removal of this particular strand of the policy. *[Laughter.]*

[125] **Helen Mary Jones:** Are you suggesting that they put it in knowing that they might have to take it out? It would not be the first time, would it?

[126] **Ms Aspinwall:** Maybe it is just fortuitous.

[127] **Helen Mary Jones:** Yes, indeed.

[128] **Dr Clutton:** On the relationship with child poverty, in the discussions about child poverty and there being different levels of intervention, children in poverty are a diverse group. So, we could have children at risk who are in child poverty, children in need who are in child poverty, and children who are in special circumstances or in poverty who are doing reasonably well. I think that we have to move away from presuming that all children in poverty are also children in need, because we have 190,000 children living in poverty in Wales, and about 20,000 are legally defined as children in need.

[129] We have some persuasive evidence—including evidence that the Assembly commissioned in relation to their 'Extending Entitlement' framework, for example—that shows that children in poverty and poor socioeconomic circumstances are in most need of their rights and entitlements and the least likely to be able to claim them. In moving forward with the child poverty agenda, if we can have due regard to and a pervasive duty in relation to children's rights, then in taking forward action on child poverty, we can say that all children and young people should have these rights.

[130] I could talk at length about this, but I will try to cut it right down. Currently, children

often access social and economic rights through their membership of a family unit. If you are a child born to a family unit in which the adult or adults pay their taxes and fulfil their responsibilities and can claim their rights, the chances are that you will also enjoy a life full of rights and entitlements. If you are a child who is unfortunate enough to be born to parents who are unable to fulfil their economic or social responsibilities for numerous reasons, then by default your access to rights is reduced. Those children in vulnerable and poor families have to have the right to claim those rights for themselves, regardless of whether their parents are fulfilling a benefit condition, are working, are disabled, and so on. That child needs to be a rights bearer. We cannot achieve that if we have a pick list of where those rights are enforceable.

[131] **Helen Mary Jones:** Thank you. That is a very strong case. Val, I welcome you to the meeting. Thank you so much for substituting. I know that Tuesday mornings are a horrendously busy time for everybody, so we are very grateful to you for making the time to be here. I invite you to ask your first question.

[132] **Val Lloyd:** Thank you very much. I want to turn to accountability, or possibly the undermining of it. You argue that the draft is flawed in that it is self-referential, and not referential to the United Nations Convention on the Rights of the Child, stating that

[133] ‘The overall effect is to neutralise the impact of the new duty’.

[134] In practice, how should the draft Measure be amended to address this specific concern?

[135] **Ms Williams:** The comment about it being self-referential goes to the list approach. Just looking at the indicative list offered in the consultation—it is fair to say that it is offered as an indicative list—it reveals the thinking. It looks like a list that has been gathered together by policy divisions consulting with one another and identifying where they, at the moment, have a consciousness of children’s rights. They have listed the policies, but they have not even listed the functions in a way that is legally recognisable, by way of powers and duties exercised by the Ministers. They have done it according to policy division labels for the work that they are doing and the associated strategies, and, in some cases, funding streams and programmes.

[136] This gives me the impression that it is a highly self-referential exercise. It is not something that has been carried out by starting with the UNCRC, understanding what the convention requires and then looking at what we do to see how we can do it in a way that furthers the objectives of the convention and fulfils the obligations. I think that that approach also makes accountability more difficult because, presumably, in the Assembly’s scrutiny, this committee would see quite a lot of information and would look into quite a lot of those programmes and policies that are identified in that list. It would be seeing little bits all the time, but it would not be seeing the whole picture. It seems to make accountability harder from that point of view, and it makes it harder for the outside world to engage in that democratic scrutiny.

[137] **Helen Mary Jones:** Val, did you have a further question?

[138] **Val Lloyd:** Because I came in in the middle of the meeting, my mind is probably not quite tuned in. Could you encapsulate your argument? I heard your long answer—when I say ‘long’, I do not mean it rudely at all; I mean the wider argument. In a very brief response, how would you recommend it be done?

[139] **Ms Williams:** The first thing is to make the duty to have due regard apply to all the functions. You then have a clear commitment, and your accountability is tied into measures

that are set out in the children's scheme as being what Ministers are doing to fulfil the general duty to 'have due regard'. That would be the thing that would come under scrutiny and the subject of inquiry, so that accountability would range across the board of ministerial functions as well as the scheme.

[140] **Val Lloyd:** Thank you.

10.30 a.m.

[141] **Joyce Watson:** Your evidence suggests two changes to the draft legislation in respect of the legislative scrutiny role. One is that it should compel the National Assembly to require Welsh Ministers to consider revisions to the children's scheme, and the other recommendation that you make is to follow the precedent set in the Human Rights Act 1998 in the context of the proposed power within the draft legislation to amend existing legislation by means of statutory instrument. How significant are the changes that you propose?

[142] **Ms Williams:** We would agree with the point about the importance of accountability and the role of the Assembly, about which you have heard from the commissioner this morning. This model, as a general legislative measure of implementation, is what some people might identify as a parliamentary model. It is principally about using the parliamentary mechanisms and the democratic processes that engage with that as the means of scrutiny rather than legal challenge. So, the stronger and more robust that is, the better.

[143] At the moment, the draft legislation confers a role on the Assembly, but it is a rather reactive one. So, what we are suggesting is that there should be a proactive element and that would also be something that would be easier for the external world to engage in.

[144] On the subordinate legislation, the point is simply that this is quite a wide power that is being conferred on Welsh Ministers and it is interesting that Parliament in the Human Rights Act 1998 thought that it was appropriate to have more than the normal degree of affirmative resolution scrutiny for a remedial Order. It seems logical for that to be applied here as well.

[145] **Helen Mary Jones:** In responding to Joyce you have more or less answered this question, but I will just put it to you in case there is something that you need to add about scrutiny. In respect of the role of the scrutiny of executive action, you state that the National Assembly should be empowered to call for a report on any aspect of Welsh Ministers' performance under the scheme. How important do you think that such a change would be?

[146] **Ms Williams:** It is not nearly as important as the main point about relevant functions, but it is offered as something that one could envisage maybe being sorted out during the legislative process, and within that sort of negotiation. It is about beefing up the powers of the Assembly a little bit. It is not critical in the way that the relevant functions issue is critical.

[147] **Val Lloyd:** Your evidence discusses the inclusion of young people aged 18 to 24 within the draft of the proposed Measure. Could you clarify that you are seeking for this to be removed and for the draft to focus only on children and young people aged up to 18?

[148] **Dr Clutton:** Going back to what Keith said earlier, the UN convention is for children and young people up to the age of 18. It would seem odd and, I understand, would be unenforceable in a lot of ways to introduce this for those up to the age of 24. So, while we agree strongly that it does not belong within this legislation I would like to see consideration of where it might belong instead, because we know that even though 18 to 24-year-olds do have the right to vote and so on, those from vulnerable families often find themselves in severe economic and social hardship during that time.

[149] There is a presumption, for example, within social welfare and the benefits system that young people under the age of 25 need less to live on, which is simply not true. If you do not have parents who can or will support you, that does not happen and so there is youth homelessness and so on. However, we do not see a place for that within this legislation. We welcome the fact that the children and young people framework covers those up to the age of 25, and, in the transition between children's services and adult services—and I know that that is an issue that will come up again and again—we see those aged under 25 as a very vulnerable group, but we do not think it appropriate for that to be dealt with within this legislation, because it runs counter to the convention.

[150] **Helen Mary Jones:** Thank you. This is my final question. Your written evidence states that the draft legislation as detailed in the consultation document has suffered from a lack of engagement with external expertise. What steps would the monitoring group wish to see now to address those concerns?

[151] **Ms Aspinwall:** I think that we have been disappointed by the way in which this draft legislation has emerged without apparent engagement with the large body of expertise that exists in Wales and, in particular, through the NGO monitoring group. We would like to see an improvement on that for the future. Jane did not mention earlier, I do not think, that there was an experts' legal seminar held by Jane and the School of Law at Swansea University last Friday. The wealth of expertise there and also the consensus around this legislation was overwhelming. The NGO monitoring group contains representation from a whole range of NGO organisations in Wales, as well as observers from key institutions such as the Office of the Children's Commissioner for Wales and the Equalities and Human Rights Commission and the Welsh Local Government Association, and we are all very willing to work with the Welsh Assembly Government on developing this further. Jane, do you want to say something about the suggestion from the seminar on Friday?

[152] **Ms Williams:** What has certainly struck me is that, in this particular case, there is a coincidence of interest and expertise and the group itself has been quite important in that. We have discussed to some extent the possibility of giving thought to how ad hoc groups of expertise might feed into policy development in general but, in relation to this specific legislation, we reiterate that we stand ready and more than willing to apply and to garner such expertise as we can to contribute to the further development of this legislation in a way that will achieve what we understood to be the original vision of the First Minister nearly a year ago.

[153] **Helen Mary Jones:** As a committee, we would certainly want to pass that offer of help and support on to Ministers and I am sure that they would be grateful for it. We may need, further down the process, to access some of that support ourselves. Thank you all very much indeed for some very powerful evidence. Following the evidence we have received from you and from the children's commissioner, the committee will consider how we proceed with regard to making formal submissions to the Ministers as part of the consultation. Thank you very much indeed.

10.38 a.m.

### **Ymchwiliad i Fannau Diogel i Chwarae a Chymdeithasu—Casglu Tystiolaeth Inquiry into Safe Places to Play and Hang Out—Evidence Gathering**

[154] **Helen Mary Jones:** Atgoffaf **Helen Mary Jones:** I remind Members and Aelodau a thystion bod ein hamser yn witnesses that we are tight on time. I know gyfyng. Gwn fod gan Aelodau bethau eraill y that there are other things that Members have mae'n rhaid iddynt eu gwneud y bore yma. to do this morning. I welcome Catriona

Croesawaf Catriona Williams, Lynne Hill a Sean O'Neill o Blant yng Nghymru a'r Rhwydwaith Dileu Tlodi Plant Cymru. Yr wyf yn eich croesawu i'r bwrdd a diolchaf i chi am eich tystiolaeth ysgrifenedig. Gan ein bod wedi derbyn hynny, symudwn yn syth i'r cwestiynau.

Williams, Lynne Hill and Sean O'Neill from Children in Wales and the End Child Poverty Network Cymru. I welcome you all to the table and thank you for your written evidence. As we have received that, we will move straight to questions.

[155] The first question is from me, and I will just reiterate that we are quite tight for time, because Members need to attend other functions this morning before Plenary. In your written evidence you state that not all children and young people in Wales are able to access a range of play opportunities. Can you tell us more about the evidence that you have that supports that view?

[156] **Ms Williams:** We basically felt that we would like to drill down in two areas, because you have had a lot of evidence from our members, such as Play Wales and so on, and those are disabled children and children who are living in poverty. So, Lynne will give you some of our direct evidence.

10.40 a.m.

[157] **Ms Hill:** Thank you. Yes, we do some work that engages directly with disabled children and young people, so we took the questions out to groups of children, both in north and south Wales, and did some pieces of work that asked them what their issues were. We took the questions and we made those into a series of exercises and games so that we really did give them an opportunity to search and explore their issues. So, what came through from them are the key issues and barriers, which are identified in the report, but not feeling safe I think is the key thing that comes over from the group of disabled children. I should flag up at this point that disability is a very wide issue. It is easy, sometimes, to think of all disabled children as being the same but, obviously, there are a range of issues. Broadly, the key issues that came back were about not feeling safe in the community, feeling that they were bullied, feeling that there were gangs of people around that they felt intimidated by, worried about being called names, and worried about bullying.

[158] Bullying has always been a key issue for disabled children and young people. It is something that comes over every time we talk to them about any issues. It is about being outside. That is also reiterated often by parental concern; some of the young people, as I said, in here talked about their parents getting anxious for them. Their parents are saying, 'How do we make sure you are safe?', which is natural. I am sure that they are not the only parents who talk about children being safe; we hear about and we see images of crime and victimisation. So, I think that, for disabled children, when they feel vulnerable, if there is not a culture of support for them, that makes it doubly difficult. That is why many of the local services that support them, and support them to go into the community, are things that disabled children and their families value very highly.

[159] The other thing that has come through in this research, is looking at how we start very young with children and young people. Actually, I look back at some of the research that has been done on childcare and supporting very young children, pre-school, into mainstream settings. What comes through from their evaluation by the National Childminding Association, Wales Pre-school Playgroups Association and Mudiad Ysgolion Meithrin is that, where families are able to be integrated into a mainstream play setting or childcare setting at a very early age, it gives the child confidence to mix. It gives the families confidence that their child can take part in the things that everybody else's child joins in with, and also helps other children from a very early age to accept that there are a range of children around them. They will not necessarily see that as some children with disabilities; they will just be, 'Joe who

comes to my playgroup who needs a walking frame'. So, there is something about looking at very early integration that sets the pattern. For some children, where they are not able to do that or where they do not have those opportunities of getting into teenage groups, it is very hard and anything that decreases your confidence is a real barrier.

[160] **Val Lloyd:** The Welsh Government has a number of relevant policies, such as the play policy, the play policy implementation plan and the National Youth Service strategy. What are your views on the effectiveness of these policies?

[161] **Ms Williams:** I have to say that we are very supportive of these policies. We are very lucky in Wales to have play as a major policy; it is the only country in Europe that has play as a major policy. I will hand over to colleagues about their success but, clearly, there is quite a long way to go. Children in Wales was the midwife of Play Wales, and Mike Greenway sat in our office trying to develop the play agenda. So, there is quite an attitudinal change—a cultural change—that is required for the whole of society. We need to be aware that a lot of people look at groups of children playing and think, 'Why are they out in the street? What are they doing there?' There is a two-pronged approach to getting not only the public but the various agencies looking at where to put new roads, what the speed limits are—the whole environmental issue. People have to work together much more to think, 'Hang on, children's lives have become more and more restricted over the past 10 years, when it comes to playing'. So, the effectiveness of the play policy—I will hand over to Lynne to comment in more detail—will be very much dependent on an attitudinal shift. I think that the media has a role to play in supporting the positive approach to children playing.

[162] **Ms Hill:** To echo those comments, I think that what working on the play policy and the play implementation plan did was lead to people to say, 'Play is everybody's business, it is not something that we should just leave to children'. There are a range of things where we can support that, particularly for disabled children—which is one of the focuses of my work—about looking at where broad policies allow as many children as possible to access something and how we then work to make sure that those who still face some barriers can be helped to overcome them.

[163] **Joyce Watson:** I think that you have answered questions 3, 4 and 5—most of my questions. I am going to get to the bits that you have not answered. Time is against us, unfortunately, this morning. Could you tell us about the barriers that prevent disabled people and young people playing and hanging out safely?

[164] **Ms Hill:** For me, the main barrier that young people mention is about feeling safe and feeling that they will be bullied and that they are more vulnerable. Also, for older young people rather than very small children, the barriers to hanging out are also about being able to get to meet with groups of friends. Sometimes there are issues of transport, particularly from people in north Wales. This is particularly pertinent where young people may be at a special school that serves a broader community than a very local school, so that the friends that they want to meet maybe live some distance away.

[165] **Joyce Watson:** May I probe you a bit further? Would that be any different to somebody who was living in rural isolation, even if they were able-bodied?

[166] **Ms Williams:** No. What struck me in putting this written evidence together is that there are a lot of issues that are common not just to disabled children but to many other groups of children and young people.

[167] **Joyce Watson:** Thank you; we were trying to draw those sorts of things out. I will move on to the next question. You have talked a lot this morning again about bullying, on which we know that there are lots of initiatives. What additional steps do you think should be

taken by those in charge to address the weaknesses?

[168] **Ms Hill:** Obviously, where people have bullying policies, it is about whether they are working effectively. For me, it is about an attitudinal shift and some of that comes with time, with children being integrated and supported to be integrated, as I say, almost from a very early age. If as many children as possible are able to mix together when they are very young, they do not see the differences any more than they will see somebody with blond hair or dark hair. It is then that children themselves feel that both disabled and non-disabled children can integrate.

[169] **Helen Mary Jones:** Thank you. I want to move to question 8. I might come back to some of the others a bit later on, but we are trying to focus on the key actions and what needs to change. So, I will bring Sandy in.

[170] **Sandy Mewies:** Thank you, Chair. Thank you for your understanding—I apologise; I have to leave in a little while—and for letting me know where I am now. What are the key actions that could increase the opportunities for children and young people from low-income households to access play and leisure opportunities?

[171] **Ms Hill:** I will hand over to Sean, who chairs our End Child Poverty Network.

[172] **Mr O'Neill:** Yes. I will pick up a few points. The major elements are going to be around the poverty agenda. When we look at poverty and play, there are two significant issues that have come out through our work with the network and through a range of other stakeholders, including children and young people. One is the income element of it, because a lot of this is very much dependent on the family finances, how affluent the family is or how affluent the area is where the young person resides.

10.50 a.m.

[173] So, I think that money is an important factor around this, particularly as we could argue all day about the opportunities that children and young people have these days to be able to engage. We are here in Cardiff bay where we have a bowling area, a theatre, a cinema, an ice rink and an international swimming pool. They are some fantastic opportunities that certainly were not around when I was younger, or for a lot of other generations. They all cost a significant amount of money, but a lot of the children and young people are excluded simply because their parents cannot afford to be able to engage with those facilities, to take those children to them.

[174] It is more complex than that, as it always is with the child poverty agenda, and I think that we also need to look at poverty of opportunity, which affects lots of children. We need to look at whether there are opportunities for free play, whether it is in an urban area or a rural area, but also designated play areas as well. I think that this cuts across affluence, because you could be a very rich family, living in a beautiful, rural, idyllic area, but there may be very little opportunities for you to engage in free play, or you may live too far away from the nearest cinema or any other organised summer club activity in which you could engage because of the problems that have been mentioned around transportation in particular and public transport. So, there are a lot of challenges. I do not want to lose sight of income because it is important, but it is not the only element of the poverty agenda.

[175] **Helen Mary Jones:** You touched there on rural issues and, Joyce, I think that your next question builds on those.

[176] **Joyce Watson:** It does. Do you have anything further to add on rurality, an issue that you have already raised, or, more specifically, do you have a recommendation that you think



that we ought to consider?

[177] **Mr O'Neill:** When we look at the countryside, certainly from high up, we see lots of beautiful landscapes across Wales: lots of fields, lots of mountains, but lots of these areas are inaccessible for a range of reasons to children and young people. Some of that is down to transportation, actually being able to get from A to B and simple things like that. We heard, in our evidence, how some children and young people live 25 to 30 miles away from the nearest cinema or swimming pool. These are huge things. Living in rural areas, there is a case of isolation in trying to access these areas, and some of them are beautiful areas and some of the issues are to do with parents being slightly more afraid to let children roam as freely as they may have been allowed to do in the past. So, that is a further complication with children being prevented from being able to access these areas.

[178] **Joyce Watson:** Could you provide us with the evidence that you have found? I am a bit staggered that anyone would live 25 miles away from the nearest swimming pool because that is a huge challenge.

[179] **Helen Mary Jones:** I certainly did in rural Montgomeryshire.

[180] **Joyce Watson:** It would be worth us finding out because if we are serious about making recommendations, anecdotal and factual evidence would be very useful to us and if you could provide that, that would be great. It would be very useful.

[181] **Mr O'Neill:** I certainly can. The End Child Poverty network produces a report on child poverty and that example was from Gwynedd on the particular challenges there.

[182] **Helen Mary Jones:** Sean, going back to Joyce's original question, we are clear on the picture about lack of access, transport and those sorts of issues. Did the evidence that you took throw up any specific recommendations that you would like us to make to Government or to local government that would begin to help address those issues?

[183] **Mr O'Neill:** I think that one of the major ones is public transport. I think that has to be a major issue, particularly now that the recession has kicked in, because more families are having to tighten their belts, so more families are less able to access these free green spaces that we talk about—the free play areas. Also, on summer clubs in the summer holidays, for any other outside activity, particularly if you are in a small urban area or a small village, often you have to travel into the nearest large city or the nearest town. A lot of it is around the fact that I feel that the environment needs to change and we need to prioritise the needs and rights of children and young people within that. We need to look at the environment through a lens of a child: if we were children, how would we be able to access that, given all the barriers that we face?

[184] I also think that we need to have more of a consistent prioritisation of play at a national and Government level. It is very interesting that we had play as one of the key priorities in the Children and Families (Wales) Measure 2010, which we very much welcomed—particularly the duties that were placed on local authorities on sufficiency of play. However, you would have heard evidence this morning on the draft of a proposed Measure on children's rights that does not discuss play at all: play policy is not one of the listed areas in that draft.

[185] To conclude on this evidence, it would be to say that play is always a priority for children—and when we say children, we are talking about teenagers as well, because teenagers do want to play as much as very young children—but we need to have a consistent prioritisation of play across all levels of government.

[186] **Helen Mary Jones:** I will bring Catriona in in a minute, but Sandy had an additional question that she wanted to raise.

[187] **Sandy Mewies:** On that point, the area that I represent has big problems with access, not just for children, but for older people as well. I just wanted to be clear. When you are talking about public transport, would you include community transport in that? For me, transport is a key issue in relation to barriers to all sorts of things. Do you think that one of the things that would take this forward and increase opportunities for children and young people who may be able to get to a bowling alley by taking a bus a long way, but who cannot get back home, would be further exploration of this across the piece? I know that the Minister for Health and Social Services is doing it now for non-emergency patients. We were talking about joined-up thinking across the whole spectrum of government earlier on and because transport is such a huge barrier if it is not available, I was thinking that more work should be done on that and that would lead to a positive outcome for this, but hopefully for other things as well.

[188] **Mr O'Neill:** Yes. I would agree entirely with that because if services are in place specifically for children and young people—but, as you say, for other age groups as well—we do need to consider how people are going to get there, particularly when we look at older children who may want to travel on public transport with their friends. They may not want to rely on going separately, with 10 or 12 cars going to the local bowling green; they may all want to go collectively. We have heard evidence of people having to walk, get a bus and then get a train and, by the time they get there, the film has finished and it is time to come back home.

[189] **Helen Mary Jones:** Catriona, there was an additional point that you want to make, and then I want to bring Joyce in on some of the attitudes to children and young people that affect these issues.

[190] **Ms Williams:** On specific actions, you have mentioned joined-up working. There has to be a very strong focus on any sort of developments in neighbourhoods. On child-friendly cities across Europe, that sort of initiative needs to be brought into Wales because we need to make it possible for children to go out in the environment around any small or large community. There should be a very strong public campaign to push the health and wellbeing benefits for children of playing, free play and the physical activity side of play.

[191] Finally, I think that there should be a very strong message somehow, if the Assembly can influence the media, about stranger danger, because the danger is minute in comparison to the potential level of deaths and illnesses of children in the whole population. The message could be: 'Let your children play out, they do not have to be mollycoddled quite so much.' I do not think that we realise, compared to other European countries, just how inactive our children have become. In other countries, you see cycling and all sorts of physical activity, so I think that there needs to be a very big message to parents.

[192] **Helen Mary Jones:** Thank you, Catriona; that is helpful. Joyce, you have some questions about attitudes, which is something that the committee has been worried about in relation to a number of issues.

[193] **Joyce Watson:** It is about the perception that young people commit antisocial behaviour, so teenagers are moved on by the police and everyone else in society thinks that they should not be there. How prevalent do you think that is as an issue for children and young people and, again, if you have an action point for us, what would it be?

[194] **Ms Williams:** I will hand over to Sean, but I think that it is hugely prevalent because groups of children are regarded as trouble wherever they are seen, whatever age they are, and

it is frightening—even little groups of young children. I think that the media has a lot to answer for in this respect. They are labelling children, if they are in a group, as if they are trouble, when, actually, they are just friends together. The action point would be a public awareness campaign, linked back to the health benefits for children. The public needs to be educated that play develops children's health and wellbeing, they will be much more able to contribute to society if they are healthy and well in the future, and that it is not a sign of delinquent behaviour.

11.00 a.m.

[195] **Mr O'Neill:** A safe environment in which children can play and be free is one issue that children themselves are raising, not just in respect of the perception of being in danger, particularly in dark areas, but also the environment: where broken glass, litter or dog waste is preventing them from playing. Where do we want children to be? If we are asking them to go to designated play areas, we may need to make those places interesting for children of all ages. We need to maintain parks and landscapes so that they are safe places for children and young people, but we also need to make them interesting places for anyone over the age of eight, so that if young people want to congregate in parks, they can do so in a safe environment.

[196] Some interesting work has been done: certain skate parks have started to introduce floodlights to allow people to play in the winter months, for example. In that way, play does not have to shut down at 4 p.m. on a winter's evening; it can carry on. If children are interested in a stimulating environment, there could be 20, 30 or 40 of them of all different ages playing together, all stimulated, with no parents around, and there would be no problems or difficulties with that at all because they will have taken ownership of the environment.

[197] We do need to look at the places where children and young people want to hang out, of course. We know of Mosquito devices being installed outside shops to move children on, but where are they meant to go? If they are meant to go back indoors, we will criticise them for sitting in front of the television playing video games, which feeds into health and obesity issues. So, there is a huge contradiction there, and we are giving our children mixed messages about where they are meant to be and what they are meant to be doing, rather than engaging them better. We should also engage our town planners better. When we develop new environments, children should be at the heart of the decision making, helping to inform it, so that there are green spaces and things for children to do, and so that children are made to feel welcome.

[198] **Helen Mary Jones:** That is very useful. Thinking of the time, I will move us on to question 13 which is precisely about that: engaging children and young people in decisions about these issues.

[199] **Sandy Mewies:** We have heard evidence from Barnardo's of the varying degrees to which local authorities and others support young people's involvement in making decisions. Do you have any views on that? Have you come across anything very positive or, indeed, very negative?

[200] **Ms Hill:** We agree absolutely that children and young people need to be involved, and not just given the opportunity occasionally. There will be times when what children see as an issue we do not, and when children want something that we had not thought of. A long time ago, when consulting children and young people about developing an area, they said that they did not want grass there because they said that it would hide needles or broken glass, which made it dangerous. They wanted a hard surface, but adults would have said, 'Let us put grass down because it is much nicer'.

[201] Sean raised skate parks. My godson lives in Bristol and, there, residents campaigned long and hard for a skate park but, when one was built, it was put out of the way behind a scout hut. None of the children uses it because they do not feel safe there, as people go there to sit and drink alcohol, and there is also drug abuse. The children said, 'If they had asked us at the start, we would have said that we did not want to be right under mum's nose, but we did want to feel safe'.

[202] **Sandy Mewies:** That is a very good point. Thank you.

[203] **Helen Mary Jones:** I have one final question. Your written evidence highlights some of the barriers to children and young people playing and hanging out safely, but is there one particular priority issue or recommendation for action, of all the things that need to be done? From your evidence today and the evidence that we have also received from other member organisations, which Catriona referred to earlier, what would be the absolute key recommendation that you would like to see implemented? Is there one that is most important? That is a really difficult question. You can have one each, if you like.

[204] **Ms Williams:** I am looking to my colleagues.

[205] **Mr O'Neill:** I will start, if I may. A key issue for us is activities not being reliant on a family's affluence, particularly now, as we reach the summer holidays, as some children have six or seven-week summer holidays. In some areas, there are really great schemes, but they are expensive and lots of children are not able to engage in them. In some areas, there are far fewer.

[206] What we have not touched on this morning is the opportunity to look at the community-focused school agenda. Many schools will remain closed and locked for six weeks of the summer holidays, but they have perfectly good playing fields and are a perfectly good environment in which children can feel safe. There is no provision for activities engaging our children and young people at a reasonable cost or for free. It is just wasted space. Children and young people would really like to do something over the summer holiday but, given the recession and the levels of poverty that we have in this country now, many of them will have to go without, simply because their parents cannot afford it, as there are no reasonably-priced activities. So, I would look at the schools agenda very closely.

[207] **Ms Hill:** I would echo everything that Sean says but add that the families of disabled children are often families in poverty. There are common themes. To build on that, we need to look for opportunities for integrating disabled children and young people from a very early age. They and their families should be able to expect to be a part of everyday life, rather than see it as a bonus if it happens.

[208] **Helen Mary Jones:** What about you, Catriona, as you are the one with the overview?

[209] **Ms Williams:** Mine would be the involvement of children and young people with planners, to plan their environment. There has to be a greater distance that children can go into a play space, which is not necessarily designated as an area. That would cover speed limits, the number of open spaces—the whole environment. Planners, children and youth fora ought to have a role, contributing to the overall planning of an area. Certainly for new-build, there should be a requirement to give thought and consideration to children and young people's safety and play opportunities.

[210] **Helen Mary Jones:** Thank you all very much. This is a massive agenda and the paper is very useful. It was useful for you to focus on two particular areas, because, as Catriona said earlier, we have heard lots of evidence from your member organisations. Thank you very much.

11.08 a.m.

**Cynnig Trefniadol**  
**Procedural Motion**

[211] **Helen Mary Jones:** Cynigiau fod **Helen Mary Jones:** I move that  
*y pwyllgor, o dan Reol Sefydlog Rhif 10.37, yn cytuno mynd i sesiwn breifat er mwyn penderfynu ar ei adroddiad.* *the committee, under Standing Order No. 10.37, agrees to go into private session to decide on its report.*

[212] Gwelaf fod y pwyllgor yn gytûn. I see that the committee is in agreement.

*Derbyniwyd y cynnig.*  
*Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 11.08 a.m.*  
*The public part of the meeting ended at 11.08 a.m.*