# Children and Young People Committee

Meeting Venue:
**Committee Room 1 - Senedd**

Meeting date:
**13 June 2012**

Meeting time:
**09:15**

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

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## Agenda

### 1. Introductions, apologies and substitutions

### 2. School Standards and Organisation (Wales) Bill: Stage 1 - Evidence Session 3 (09:15 - 10:15) (Pages 1 - 9)

**Association of School and College Leaders (ASCL) and the Association for All School Leaders (NAHT) Cymru**
Gareth Jones, Secretary, ASCL
Tim Pratt, President, ASCL
Anna Brychan, Director, NAHT Cymru
Graham Murphy, NAHT Cymru

### 3. School Standards and Organisation (Wales) Bill: Stage 1 - Evidence Session 3 (10:15 - 11:05) (Pages 10 - 16)

**Michael Imperato**
Solicitor specialising in education law in Wales

**(Break 11.05 - 11.15)**

### 4. Inquiry into adoption (11.15 - 12.30) (Pages 17 - 24)

**Academic Expert Witnesses**
Dr Julie Selwyn
Dr Alan Rushton

### 5. Papers to note

**ASCL and NAHT submission**

**to the**

**Children and Young People Committee**

**on**

**The School Standards and Organisation (Wales) Bill**

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**Introduction**

1. Thank you for inviting us to present evidence regarding the School Standards and Organisation (Wales) Bill.
2. ASCL and NAHT represent the majority of school leaders in Wales.
3. In submitting evidence it is our intention to identify issues that we think need detailed consideration in terms of the provisions of the Bill, and to raise some questions about the strength of the structures that will be given considerably more focussed powers under the Bill. We hope that these will be taken into account by Assembly Members.
4. Our response on these issues has been informed by comments from our respective legal specialists.

**General comments**

5. It is clear from the provisions of this Bill that Welsh Ministers believe that it is essential that power over the structure and content of our education system be centralised. The Bill provides for Welsh Ministers, should they so determine, to take powers over everything from the organisation of SEN; intervening in schools; what and how to teach; whether to shut or open sixth forms; and whether to open, close or restructure school places,
6. The rationale for the Bill is based on:
    i. The Welsh Government's assessment that the education system in Wales is at best 'fair' and that action is needed to enable it to become 'good' – that it is essentially at a stage where it would benefit from a centralise and standardise model.
    ii. The Welsh Government's conviction that the current arrangements are opaque and not well understood. This, it is argued, has led to a damaging failure by Local Authorities to intervene in a timely fashion in schools causing concern.

7. We would ask Assembly Members to consider the following:

I i. The centralisation of power in England which took place post 1997 and involved mandatory national literacy and numeracy strategies for example, led to an apparent but short term rise in standards but also led to the unintended consequences identified by Professor Alison Wolf in her report on Vocational Qualifications.

ii. Paragraph 7.17 of the Explanatory Memorandum claims that:

> *International benchmarking evidence suggests that education systems with poor and fair performance can achieve improvement through a centre that increases and scripts instructional practice for schools and teachers.*

iii. In contrast, the executive summary of a Mckinsey Report entitled "How The World's Most Improved School Systems Keep Getting Better" (2010) states:

> *Systems further along the journey sustain improvement by balancing school autonomy with consistent teaching practice. While our study shows that systems in poor and fair performance achieve improvement through a center that increases and scripts instructional practice for schools and teachers, such an approach does not work for systems in 'good' performance onwards. Rather, these systems achieve improvement by the center increasing the responsibilities and flexibilities of schools and teachers to shape instructional practice – one-third of the systems in the 'good to great' journey and just less than two-thirds of the systems in the 'great to excellent' journey decentralize pedagogical rights to the middle layer (e.g. districts) or schools.*

7. Assembly Members' evaluation of where Wales is on its school improvement journey is therefore fundamentally important in considering whether the provisions of this Bill are appropriate.

8. Equally, the effectiveness of the provisions detailed in the Bill are dependent on the capacity of Local Authorities and officials directed by Welsh Ministers to assume this level of responsibility and deliver the intended change in a systematic, effective and expert fashion.

9. We think that recognising and coming to a judgement on this issue of capacity is important in considering this Bill.

10. A key feature of the Bill is the provision for further regulation and guidance to be issued by the Minister. As stated in paragraph 3.35 of the Explanatory Memorandum:

    *The powers to issue statutory school improvement guidance have been*

*purposely drafted to be broad based. They will enable the Welsh Ministers to issue guidance targeted at a number of levels namely, local authority; governing bodies of maintained schools and head teachers. Guidance may be directed at a specific school or schools in a particular group or individual local authorities working in a Consortia. Different guidance may be issued on specific topics i.e. education at a particular key stage; guidance will affect consortia regions; local authorities; schools; governing bodies; head teachers; practitioners; learners.*

11. These regulations and guidance are to be subject to the annulment procedure within the Assembly. We would ask Assembly Members to consider whether this represents a sufficiently strong restraint on a Ministers' powers.

12. While Assembly Members may share a widespread view that Local Authorities in Wales have not always had a good track record of effective intervention in schools and will therefore welcome putting Welsh Ministers' powers to intervene on an unequivocal statutory basis, they may wish to consider carefully the way the legislation is framed. The phrase *'to the ministers' satisfaction',* for example, makes the Ministers' intervention almost unchallengeable in the courts even if Ministers act unreasonably. Whether the safeguard of Assembly scrutiny is sufficiently strong is for Assembly Members to decide.

13. We would ask Assembly Members to consider the provisions on school reorganisation. In particular we would draw attention to the provision for three categories of objectors, their objections to be heard by Welsh Ministers or the Local Authority depending on the category. Two categories of objector will he heard by a Local Determination Panel for a judgement on a reorganisation proposed by that same Local Authority. The effectiveness of a 'Chinese wall' between the Educational arm of the Local Authority and the rest of the Local Authority will be a matter of debate,

14. It is doubtful that anyone within the Education Service is going to object to the formal disappearance of the annual parents meeting. It is a matter that has needed resolution for quite some time.

15. The proposals on counselling do not seem to us to raise issues of appropriateness and will in the main be welcomed by the teaching profession.

16. Similarly, the provisions with regard to free school breakfasts seem appropriate.

**Detailed Comments**

Intervention in schools and/or Local Authorities

1. The Grounds for Intervention:

Ground 1:

a. We find the phrase *'in all the circumstances'* curious. The courts are well-accustomed to considering the issue of 'reasonableness'. The addition of this phrase can only muddy the waters, particularly when pupils' 'circumstances' seem to be covered by the other two clauses.

*b.* While it is an entirely legitimate expectation that a school must maintain a standard, there should be some recognition that normal statistical variation (depending on the size of the school) means that schools can go up as well as down within a range. As it is, the current phrasing - '*the standards previously attained'* could be interpreted to mean that any drop below the previous year's results would invite intervention. This would ignore well-known and understood cohort variation.

*c.* What is added by the phrase '*where relevant*'? When would it not be relevant to consider standards previously attained by a pupil? If the intention is to require action in significant circumstances, it would be more helpful to state '*where statistically significant.'*

Ground 3

d. In relation to the behaviour of parents, we are concerned that this clause comes close to punishing pupils (and staff) for the behaviour of parents. We believer this requires greater clarification.

Ground 6

e. Whilst acknowledging the intention to ensure clarity of understanding by all parties, is this clause necessary? In administrative law it is assumed that persons given powers by the legislature must act reasonably or risk acting

ultra vires, in which case there would be a duty to intervene by the Local Authority in any event.

2. Power to intervene ( Chapter 1, paragraph 4)
   a. In the interests of fairness and acknowledging that intervention has potential consequences for governors and school leaders, should there be an explicit process of appeal within the body of the legislation should the school feel that the Local Authority has acted unreasonably in exercising its powers to intervene? The current provisions imply that the only course of action for a school would be to seek legal redress via the courts which has financial costs and implications. This may be the intention of paragraph 4(*8)(b) which the proposed Statutory Guidance will clarify.

3. Minister's Power to intervene in maintained schools ( Chapter1; paragraph 11-15)
   a. The grounds for intervention in maintained schools are essentially summed up in paragraph 11(2)(c)- namely intervention would occur if *the Ministers are satisfied that the local authority has not taken, and is not likely take, adequate action for the purposes of dealing with the grounds for intervention.*

   b. We would suggest that this section include a reference to either the evidence upon which the Ministers' judgement will be based, the appeal process that may be followed by the school, or the form of scrutiny to be undertaken by the Senedd.

4. <u>Intervention in Local Authorities (Chapter 2)</u>

   We would suggest greater clarity would also be helpful in Ground 3 for intervention in Local Authorities. Who defines what is '*an adequate standard*?' What degree of objectivity is expected here? Should it not be expanded further?

5. <u>School Improvement Guidance (Chapter 3)</u>

   Paragraph 35(2): We do not feel that this paragraph is helpful. The usual legal language used with regard to the application of statutory guidance is that schools must 'have regard to it.' This means that they must apply it unless they (or in this

case also Local Authorities) have good reason not to do so. This legally familiar phrase which is capable of being tested in court seems to us to answer the need here too.

a. Paragraph 37: We are concerned that this provision allows Welsh Ministers to take on the function of the courts and decide that a school's reasons for departing from statutory guidance are inadequate without any evidence. This clause assumes that there is one right way of doing things and that Welsh Ministers know what it is; it also assumes that Welsh Ministers and their civil servants (who will be responsible for drawing up the statutory guidance, presumably in the confident belief that its universal application will raise standards), will simultaneously be able to judge impartially the decision of some schools to apply a different solution. This seems improbable.

6. School Organisation ( Part 3)

We support moves to clarify and simplify the procedures surrounding the complex and at times contentious issues regarding school organisation. We think it reasonable in the interests of efficient use of resources and maintaining full curricular access for all pupils. We would however like to draw Assembly Members;' attention to:

a. Paragraph 51-53: Most objections to reorganisation proposals will be considered either by the Local Authority or Welsh Ministers, depending on the category of objector. We are concerned that while the concept of a 'Chinese Wall' within Local Authorities or the Department for Education and Skills separating those making the reorganisation proposals from colleagues determining the validity of a case brought by objectors to those proposals might seem valid in theory, it is a system that will be open to suspicion in practice.

b. Whilst Schedule 3 does define, to some extent, the independence of the Local Determination Panel, the issuing of a statutory code (Chapter 1; Paragraphs 38-39) may assist in allaying these concerns. It may be appropriate for the Bill to require the Code to include clear guidance on to how the independence of the body or person charged with the approval or rejection of a proposed reorganisation is to be established.

c. Paragraph 41(2) states *'Any person may make proposals to establish a new voluntary school'.* We think this clause requires clarification. Would, for example, enable the establishment of Free Schools in Wales?

d. Paragraph 42 allows proposals for the alteration of an existing Foundation School but does not mention the establishment of new Foundation Schools, which are prohibited under the Education Measure (Wales) 2011. However, under Paragraph 45(5 and 6) a local authority or Governing Body may make proposals for a community special school to become a foundation special school. Is this not a contradiction? The rationale for allowing foundation schools in one context but not another is not clear to us.

7. Parent meetings (Paragraph 95)
   a. The proposals to enable parents to call meetings if and when they consider them necessary are sensible.
   b. We believe that Governing Bodies will welcome them.
   c. We would however ask Assembly Members to look again at the thresholds that trigger a meeting, especially the 10% threshold for smaller primary schools. In schools with 50 pupils for example, a request by five parents would trigger a meeting.
   d. We would encourage consideration of a sliding scale, i.e. that a higher percentage of parents would have to request a meeting in smaller schools. Otherwise meetings might be convened by a very small number of parents whose specific issues would be far more efficiently dealt with in a meeting with the headteacher.
   e. It would also be sensible to consider a clarification of 'parent'. Some children as a result of relationship breakdown, may have three or even more individuals who have registered parental rights. We wonder for example if a father and mother acting separately count as two parents for the purposes of convening a parents' meeting?

8. Code of Practice on LA and School Relationships.(paragraph 97).
   a. We accept the logic of repealing the provisions of Section 127 of the School Standards and Framework Act 1998 in the light of the proposals contained in

the School Standards and Organisation (Wales) Bill 2012. However we believe that the new legislation must stipulate that regulations or guidance initiated by Welsh Ministers must include statements regarding the appropriate protocols to be observed by both Local Authorities and Schools in managing relationships.

**Concluding Comments.**

9. We appreciate that the provisions contained in this Bill stem from a conviction that Local Authorities have not always intervened effectively in schools in the past; and that there is a need to direct the work of schools and Local Authorities more exactly than has been the case previously..
10. As stated in our evidence above, we would ask that Assembly Members consider carefully both the assessment of state of the Welsh education system and the capacity of our current structures to operate the centralised model described in the new legislation effectively.
11. Significant powers are enshrined in this Bill. We would also like Assembly Members to consider that even if they are persuaded that current Welsh Ministers and Local Authorities will intervene appropriately and effectively, whether sufficient safeguards exist in the legislation and the scrutiny processes of the National Assembly to guard against excessive or misguided intervention in the future.

# SUBMISSION TO THE CHILDREN AND YOUNG PEOPLE COMMITTEE
# SCHOOL STANDARDS & ORGANISATION (WALES) BILL 2012

Submission by
Michael Imperato,
Solicitor

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Member of Law Society Wales Committee;
Immediate Past President Cardiff & District Law Society;
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May 2012

**Please note that these submissions represent a purely personal view and not those of NewLaw, the Law Society or ELAS**

**Intervention in Schools Causing Concern**

Where schools are falling behind, action must be taken and, importantly, needs to be seen to be taken. The evidence is that only a few local education authorities (LEA) in Wales have issued warning notices to schools. Also, it is stated that the legislation in practice is confusing. Unfortunately, it is common in education law for procedures to be spread over several different areas of legislation. This can give rise to procedural failings, resulting in delay, legal challenges, etc.

I welcome the idea of school improvement guidance for LEAs, though any such guidance on when to intervene in schools is going to have to be kept up-to-date. The educational landscape changes regularly. Such guidance will have to be updated and therefore consulted upon almost as a continuous process, particularly if it is going to include technical guidance on teaching and management techniques. It may be akin to "painting the Forth Bridge".

It is proposed that the Welsh Minister (WM) would be able to direct LEAs to take action. The WG would be able to direct the LEA to take any action it considers appropriate and WM can issue guidance targeted at a specific school. In theory, this seems an admirable principle. If an LEA is not dealing with a failing school adequately and promptly, there should indeed be the opportunity for government intervention. However,

- How easy would it be for WM to take an informed and detailed view of what is happening on the ground in a particular school?
- How is WM going to be able to rapidly put together a detailed plan or even an informed outline plan for one individual school?
- Who is going to do this? Are educational specialists going to be brought in?
- How quickly can this be done – speed is of the essence?

The statutory guidance is going to have to be very carefully framed as to when WM intervene (where WM considers the LEAs' policy is not likely to improve education).

What if the LEA or other interested parties oppose the WM intervention? What is the mechanism for such disagreement?

Overall, is this principle not at odds with school organization (see later), where the virtues of local knowledge, rather than WG involvement, is placed at the forefront? This is a huge contradiction running through the proposed bill.

**School Organization**

In summary, it is clear that the preferred option of WM is to remove the current system, whereby appeals relating to school organization are determined by WM and instead, most will be determined by a local determination panel (LDP). This is a hugely flawed proposal.

Starting the Process – The Trigger

Part of the proposal deals with the trigger for an appeal by way of objections. I agree that it does, on the face of it, seem absurd that one person, potentially with no link to the school, can be able to trigger a conflict process. On this point, I am inclined to agree with the WG proposal as to the need for 10 or more persons to object. I am not entirely sure what is meant when it is said that such person must have a "direct interest". I would submit that this needs to be given the widest possible definition. I would not want to exclude, for example, parents of pupils who will be attending a school within the next couple of years but who are not presently there. If anything, they are probably the people with most at stake in any school reorganization. What of people with no children, living next door to a school, either one that is proposed to being closed or one that is proposed to being built? What of governors, staff, parents of pupils of neighboring schools? It may be better to avoid trying to legislate for a "link". Also, there seems to be something inherently wrong where a school with no pupils is also subject to the same complex procedures relating to school organization.

However, it is not quite so black and white where the school a very low number of pupils. Should such schools be treated differently? Is this not imposing an arbitrary distinction on such schools? As a matter of law, it could be seen as fettering discretion. Although very small, such schools can be disproportionately important in their communities, being a real hub for a village or area, particularly in rural Wales.

Statutory Guidance on Consultation

In my personal experience, consultation by LEAs during the school organization process is variable and patchy. Guidance on good practice is overdue. It is stated in the regulatory impact assessment (RIA) at 7.27, that guidance may not be effective as proposers (LEAs) only need to have regard to it. In my experience in judicial review (JR) cases, any LEA ignoring WM guidance would be given short shrift by a court. Guidance should be adhered to. However, the relevance and importance of any such guidance could be undermined by the LDP system. As is pointed out at RIA 7.33, if LDPs are established, the result may be that LEAs are less inclined to follow guidance closely as there will be a lack of independent scrutiny of the whole process, no accountability.

Any such guidance will have to be produced from consultation. My concern is that WM consultation is often somewhat incestuous. It will be important that parent groups and solicitors who have been involved in school organizational challenges over the last few years are tracked down and actively encouraged to partake in consultation, rather than it being dominated by LEAs and other bodies linked to the Welsh Government.

Local Determination Panel

It is suggested in the Legislative Background paper (LB) at 3.55, that this will be five persons, either local authority members or lay people. Presumably, the lay people are

"worthys" from the area where the organization is taking place. How this option is described in RIA 7.31 is very instructive. It is intended to "remove requirement for an independent decision maker". This lack of independence is the main issue. Any kind of administrative or legal process which seeks to resolve challenges between persons or organizations has to be seen to be seen to be fair and independent. This can never be the case with an LDP. A number of issues arise.

- Who will be these people?
- If it's going to include actual councilors from the LEA itself, how can that be independent?
- Who are the lay members going to be? They are probably going to be former teachers and head teachers, former councilors or local authority employees. How independent can they be?
- Who chooses them? Presumably, it's the LEA.
- Who trains them? Presumably it's the LEA.
- Who provides back office service to them, presumably the LEA?

A major concern is who is going to clerk the meetings? There are likely to be some very contentious issues arising, including complex legal arguments. The clerk from the local LEA must inherently lack independence. In these matters emotions often high, the clerk is going to have a key role and will have to be experienced and robust.

Such cases will have to have a significant back office level of support. Who's going to collate and summarise the objections and prepare papers for the LDP – presumably the LEA? These cases produce mountains of paperwork.

There is an inherent contradiction in seeking to have an independent decision-making panel whilst at the same time; such a panel is close to the local decision. Even if a member of the panel has no link with the LEA, they may have direct or indirect links with the school in question or neighboring schools which will be impacted by any decision. It's going to be virtually impossible to find an able person, with knowledge of the education system, in the immediate locality to sit on the LDP without some sort of link to the school in question or LEA. I can envisage individual LDP members facing considerable scrutiny in this context, the threat of Article 6 HRA challenges will be routinely raised.

<u>Cost of LDP</u>

With respect I wholly disagree with the cost benefit analysis, suggesting that the LDP will produce savings in money. It's reckoned that it cost £4,000-£5,000 per annum for WM to consider a school organization challenge. I find it astonishing to read in "Costs and Benefits" (CB) at 8.56 that the cost of a clerk, room hire, refreshments, allowances and expenses is expected to be £250 per meeting. This is so far off beam, it's embarrassing. If this process is to be properly prepared, considered, clerked and staffed by able people, the cost would be far higher. Virtually every proposal would probably need a number of meetings, such meetings will likely last all day if not for several days

(this will depend on the format of the panel meetings, see below). A significant cost, which conveniently seems to have been forgotten, is the back office cost of the preparation of papers for such meetings. Many of these challenges generate huge amounts of documentation, a number of lever arch files, complex pupil number projections for both the LEA and – in opposition – from parental groups. There are complicated arguments over costings, often involving independent surveyor reports. There are complex legal arguments around issues of guidance and issues arising from the consultation. See below comments on the form of the panel hearings, costs could be greatly increased. Where a decision is made, it will have to be very carefully worded and phrased. Decisions are normally quite lengthy. They have to be legally watertight to try to avoid the subsequent JR challenge. All in all, it is a lengthy complex process, often involving vast amounts of documentation and complex analysis. If, as the evidence suggests, the average cost of WM considering such an issue is £4,000-£5,000, in my respectful view, this represents excellent value for money. Para 8.56 envisages "little administrative support, or legal advice", what kind of process is envisaged? It seems to be no more than a "rubber stamp", that indeed would be cheap but it is not, with respect, a proper process.

How many Judicial Review (JR) challenges have there been to the WM? I would expect there to be potential for far more under the LDP scheme (especially as envisaged), thus increasing costs significantly.

Speed

Lay people, members of the LDP will need to assimilate complex educational arguments. In contrast, those acting for WM are steeped in the process, guidance and educational issues and yet are also independent with no obvious vested interest. It's suggested the LDP system will be quick, but will it?

The evidence suggests that WM decisions take several months. Is the LDP process going to be any quicker, unless it's wholly arbitrary? I don't honestly think it will be. If anything, given the lack of expertise of some of the LDP members, given the lack of support they will have, given problems obtaining the availability of a suitable clerk, I can see the LDP process actually being a lengthier one than the current process.

Is the LDP going to determine the challenge at a hearing? The phrase panel and reference to a clerk suggest it will be. Are panels going to hear witnesses? Are interested parties going to have legal representation? In such circumstances the LEA is bound to want to have legal representation (probably a QC). Juggling availability of the above will make the process very cumbersome especially if hearings go part heard. The process could take months and months.

As stated above I would expect more JR challenges, thus slowing down the decision process significantly. The suggestion in RAI 7.21 that the LDP will remove "bottlenecks" is risible. It shows a total lack of understanding of the process.

Other Observations

It says at LB 3.49 and RIA 7.21 that the use of WM causes a level of bureaucracy, but one is bound to have some sort of level of bureaucracy to allow any sort of challenge to an LEA plan. The LDP is a level of bureaucracy. Therefore, this is a nothing point. In my view the LDP will prove a more cumbersome, expensive, slow and less credible level of bureaucracy compared to what currently exists.

In RIA 7.20, it says the WM is not able to have detailed knowledge of local needs and this is a drawback of the current system. But how will this tie in with WM being able to take the lead in intervening in schools (see above)? Also, most of the issues in the school organization challenge are based on broad principles, such as the LEA's interpretation of projected demands, the interpretation of guidance, castings of new school buildings. None of the cases I have personally been involved in has there been an issue arising out of any perceived lack of local knowledge of those making decisions for WM. Again, this is a nothing point.

My main concern is actually recognized at RIA 7.33, in that there is a lack of any independent scrutiny and this undermines confidence in the whole system. It is vital that fairness (justice) is seen to be done. The LDP system will ensure that resentment of those opposing school organization will fester and remain for many years. There is no true "honest broker" in the process envisaged.

I agree with comments in respect of an independent adjudicator. This would be costly and is there enough work to justify? May be viable if linked to other functions, but why change the current process?

Conclusion on LDP

I am bound to say that LDP seems to me to be likely to be perceived as a "kangaroo court" of local worthy's rubberstamping a decision already made by other local worthys. I do not believe this system has any merit in speeding up the process or saving costs. Indeed, I consider it is inevitable it will be more cumbersome, more costly. I consider it will give rise to far more JR challenges than are already undertaken. The LDP will make mistakes; there will be challenges as to its composition, the role and decisions of the clerk, etc. LDP's will result in the opposite of what they are supposed to achieve. I have no doubt about this.

Why introduce a quasi legal process to replace a distinct and easily manageable administrative process? It makes little practical sense.

Finally, I consider the whole proposal to remove the role of an obviously independent adjudicator, such as WM, and introduce LDPs may be subject to challenge under the human rights legislation as it is so obviously flawed.

**Annual Parents Meeting**

As a school governor, I have often attended the annual governors meeting. In my personal experience, it is normally very poorly attended by parents. The school of which I have been a governor for over 15 years has tried all kinds of things to make the meeting more attractive, but none of them have worked. As stated, small governing bodies have to send out an annual report in any event.

I broadly agree with the proposals. There of course must be a mechanism for parents to push for a formal meeting. I wonder if the 10% threshold is a little on the high side, as there of course will always be a lot of apathy amongst parents and part of the problem could be that the wrong impression is being given by school management and only a small handful of parents know that there is, in reality, a problem.

On a practical level, parents will need to clearly know of their rights to trigger a meeting with governors and this right will have to be reminded regularly.

Michael Imperato,

May 2012.

# Evidence to the Children and Young People Committee at the National Assembly for Wales

## Topic - the support given to adoptive parents and children post-adoption in Wales.

**Dr. Alan Rushton** was for over 25 years Director of the MSc programme in Mental Health Social Work at the Institute of Psychiatry, King's College, London where he continues as a Visiting Professor. He has been engaged in follow-up studies of older, abused children adopted from care and in predictors of placement outcome. He has published eight books (including 'Adoption support services for families in difficulty', BAAF, 2002) and over 50 academic papers. He is currently involved in the British Chinese Adoption Study: a follow-up into adulthood of 100 Chinese babies adopted into UK homes in the early 1960s; and also in the dissemination of the parenting manual used in his randomised controlled trial of adoption support known as 'Enhancing Adoptive Parenting'. He is a trustee and former Chair of the Post-Adoption Centre in London. He is an adoptive parent.

### A brief outline of the specific mental health and behavioural issues which may affect some adopted children

The range of problems manifested by children placed for adoption from care is likely to be the product of numerous influences: biological, environmental and psychological. Studies of the family backgrounds of such children have recorded the frequent occurrence of major mental illness, personality problems and alcohol and drug problems (Quinton et al, 1998). Genetically inherited problems may therefore play a part in the children's development and they may carry certain vulnerabilities. Pre-natal factors like maternal stress, drug and alcohol exposure and subsequently poor parenting, abuse and neglect, sudden changes of environment and disrupted attachments may all interact with any vulnerability. Given that children might have suffered not one but a range of adversities, it becomes difficult to establish which factors are linked to which effects. It is also striking that not all children suffer to the same extent from similar negative experiences. It is a major research question to discover why this might be the case.

The findings presented here are mostly drawn from two UK investigations (The Maudsley Family Research Studies and the Hadley Centre studies) documenting the problems of late adopted children. Not all childhood problems pose the same level of parenting challenge. It is important to know not just the range of problems a child demonstrates, but which ones are likely seriously to challenge the stability of the placement, or are likely to contribute to continuing family stress and dissatisfaction. The problems of children placed from care can challenge even experienced parents. Research has shown that the presence of conduct, overactivity and relationship problems are the ones most likely to predict poor adoption outcomes (Quinton et al, 1998; Selwyn et al, 2006).

Conduct problems might involve refusal to comply with parental requests, temper tantrums, and more rarely extreme expressions of anger and aggression. They are more likely to threaten a placement than emotional difficulties. This may appear surprising, but is perhaps because the adopters are sympathetic to the child's distress or anxiety and find a way to empathise and to calm the child whereas the oppositional child may strain their tolerance and understanding and leave them at a loss as to how to manage the behaviour successfully. Poor concentration and restlessness have proved to be common problems in children in adoptive placements. Such problems can persist and interfere with learning and with establishing positive social interaction.

Difficulties for the child in forming a satisfactory relationship with new parents can be a central problem. This might show itself as the child maintaining an emotional distance, avoiding closeness, being socially undiscriminating and disinhibited, being unable to trust and expressing feelings in a distorted way. Adopters will expect the child to form a positive attachment to them, even if they have been warned that this might be a slow process. The Maudsley study shows that many children do form satisfactory new attachments, especially in the context of responsive parenting. However if the child continues to withhold affection and to reject the adopters, despite their best efforts, adoption can be an unrewarding experience. The fact that impaired functioning for these

children may appear in many aspects of development – behavioural problems, disorders of attachment, indiscriminate friendliness, emotional dysregulation, cognitive delay and poor executive functioning (i.e. impulsiveness and poor decision making) - will make effective treatment particularly challenging. The problems do not sit within discrete diagnostic categories.

**Developmental recovery and persistence of problems**

A stable, loving home which replaces neglect with care, inconsistency with consistency, regularity with chaos and neglect with protection will have a beneficial effect. But does this radically improved environment result in the gradual abatement of all problems? The research shows that many children settle after a matter of months with a diminution of problems, or at least a reduction in their intensity, for most in the first year. Problems like distress and anxiety, enuresis, encopresis and temper tantrums are likely to diminish, whereas relationship problems may persist for much longer. However in one of the longer term follow-ups conducted on late placed children (Rushton and Dance, 2006), in 28% of the continuing placements the children had substantial difficulties even after six years living in the adoptive family. These included enduring developmental, behavioural and social difficulties. In the longitudinal non-infant adoption study (Selwyn et al 2006) only two fifths of the children followed up at an average of seven years after placement were found to be free from behavioural problems.

**Better devised screening tools to identify those most at risk of socio-emotional problems**

In adoption work, comprehensive and reliable assessments of children's current functioning are needed. The benefits of systematic assessment are that problems can be accorded priority and the best links made with available services. Standardised measures, observations, file searches and interviews should be used to create the most reliable history of the children's key pre-adoption experiences and their strengths and vulnerabilities. This information should be conveyed, with appropriate explanation, to the adopters.

Some concern has arisen that standard screening measures fail to do justice to the range of problems in adopted children, especially those associated with very adverse backgrounds and a transition to a new family. Difficulties like insecure identity and confused or conflicted ethnic identification are important to capture, but are hard to measure satisfactorily and tools have yet to be widely used and validated. Tarren-Sweeney (2007) has argued that the use of standard, parent-completed problem check lists has led to under-reporting of, for example, attachment difficulties, dissociative responses to trauma, inappropriate sexual behaviour and self-harm. He has developed a new, comprehensive instrument more geared to this population. – the Assessment Checklist for Children (ACC). A similarly focussed instrument (the Ages and Stages Questionnaire - Socio-emotional) is currently being developed and tested in the US (Jee et al, 2010).

If a well recognised instrument like the Strengths and Difficulties Questionnaire (Goodman, 2001; Whyte, & Campbell, 2008) is used in an assessment, it can be profitably supplemented with other measures like an attachment questionnaire (Minnis, Rabe-Hesketh and Wolkind, 2002) and a self-esteem measure (Coopersmith, 1981). Attention also needs to be paid to possible discrepancies between informants, as teachers, carers and social workers may see the child from different perspectives.

**The specific CAMHS and therapeutic interventions which are evidenced to meet such needs**

There has been longstanding criticism of CAMHS for failing to adapt its assessment and therapeutic services to the needs of adoptive families. In particular adoptive families whose children have multiple problems often fail to receive prompt, relevant, effective services. Struggling adopters can have a sense of failure when approaching services and often report feeling blamed for the child's problems or treated like a dysfunctional family. Clearly the approach has to be 'adoption aware' and sensitively managed. However some child mental health services have improved and we have reports of excellent service (Monck and Rushton, 2009).

Adoption support needs to be available for different purposes and levels of intensity. This can extend from generalised services like group support for adopters, adopted people and birth parents, to telephone help lines, social events, fact sheets and newsletters. At the more intensive end are major therapeutic and educational services by specialist professionals, for example, longer term family based interventions, direct psychotherapeutic work with a child and efforts to resolve sibling group conflicts. Service evaluation can be undertaken at several levels, from surveys of user satisfaction to simple 'before and after assessments' to experimental trials. Although there is evidence of the benefits of behavioural programmes and family therapy with non-adoptive families, empirical support is thin when interventions are applied specifically to the adoption of maltreated children. Evaluations in the adoption field are mostly at the softer end of investigations and few studies are sufficiently rigorous to demonstrate effectiveness. More controlled evaluations have been conducted in the field of foster care. One US adoption academic has stated boldly that there is no good evidence on what works in adoption support!

Voluntary adoption support agencies can provide a range of innovative services employing experienced professionals. The link with local authorities will be improved when clearer specification is made of what the LA requires and what services the ASAs are providing.

The Adoption Passport idea, as discussed in An Action Plan for Adoption: Tackling delay (DfE) is worth pursuing as a way of guaranteeing a measure of post adoption support – but depends on the provision of services of sufficient capacity, expertise and availability to meet any entitlement. Resources should be allocated on the basis of need not as a fixed amount.

**Parenting support programmes for adopters**

Parenting programmes specially tailored for adopters are strongly to be recommended. The benefits are that they are easy to commission, not too costly, do not need extensive training for parent advisers are easily accessible and should provide a practical response to pressing challenges for adopters and lessen the likelihood of disruption or other poor outcome. Some agencies make claims to have evidence-based programmes but this may simply be a survey of user feedback – usually favourable. A stricter test of effectiveness is needed namely the Randomised Controlled Trial (RCT) whereby cases are allocated on a random basis to either the intervention group or a comparison group. Having equalized the groups in this way allows the outcomes to be fairly compared. This is the only way to demonstrate that it is the intervention that has caused the outcomes and not some other confounding factors.

The 'Enhancing Adoptive Parenting' programme was tested with an RCT design (Rushton and Monck, 2009 & 2010). This individualised, structured programme combined child behaviour management techniques with help in understanding the possible origins and meaning of the children's disturbed behaviour. The trial showed that parenting confidence and satisfaction improved significantly more so for those receiving the ten week programme than for the control group when followed up six months beyond the end of the intervention. The children however sustained a high level of problems in both groups over this relatively short period of time. The parenting manual has now been amended and expanded in the light of the study findings and has been published by the British Association of Adoption and Fostering (Rushton and Upright, 2012). The Post Adoption Centre in London is now offering the programme to adopters and is training professionals to be parent advisers.

Different parenting programmes emphasise different aspects of adoptive parenting, use different theoretical models and formats ( individual versus group sessions) . 'Safebase', for example, offered by After Adoption, is an attachment focussed parenting programme

which uses Theraplay (structured play therapy for children and their adopters). This programme has yet to be subjected to a controlled trial.

I should like to see an evidence-based adopter parenting programme offered to all new adopters of challenging children. At the end of the programme, with the aid of 'before and after' measures to assess change, I should like to see a review to identify any persistent problems followed by a focussed therapeutic plan.

**Some brief responses to other questions**

- Specialist professional university based adoption work courses are needed with academic accreditation to improve skills and gain up-to-date knowledge, giving practitioners greater opportunity to read and critique relevant research. These would be of benefit to teachers and other school staff, to psychologists, medical professionals and social workers.

- Research funds are needed to conduct a longitudinal study of all adoptions in Wales. This will require contact with adoptive families to learn about the quality of placements, not just disruptions, and the effectiveness of support services.

- A national adoption service would be best placed to deliver a recruitment campaign to address the shortage of adopters and to provide easily accessible information about the adoption process and the nature of the children waiting for placement. A national service would maximize the best chance of a good match between adopters and children. A national service could have a research function.

- The preparation of adopters can often be lengthy and not always be relevant for a particular family. Scarce resources are better deployed when the child has been placed and where the parent/ child interactions can be observed and assessed. All these processes should have the children's timescale firmly in mind (Rushton and Monck, 2009).

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