

Agenda – Equality and Social Justice Committee

Meeting Venue:

Committee Room 5 (Hybrid)

Meeting date: 12 June 2023

Meeting time: 13.30

For further information contact:

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Committee Clerk

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Pre-meeting registration (13:00– 13:30)

1 Introductions, apologies, substitutions and declarations of interest

(13:30)

2 The public health approach to preventing gender-based violence: evidence session 4

(13:30–14:30)

(Pages 1 – 38)

Anne-Marie Lawrence, Wales Development Manager, Plan UK

Dr Stephen Burrell, Assistant Professor (Research), Durham University

Dr Nathan Eisenstadt, Honorary Senior Research Associate University of Exeter, Senior Research Associate University of Bristol, Director of Kindling Transformative Interventions

Break (14:30–14:45)

3 The public health approach to preventing gender-based violence: evidence session 5

(14:45–15:45)



Professor Zara Quigg, Director of the World Health Organization
Collaborating Centre for Violence Prevention, Liverpool John Moores
University

Dr Rachel Fenton, Associate Professor University of Exeter Law School,
Director of Kindling Transformative Interventions

4 Papers to note

(15:45)

4.1 Memorandum of Understanding between the Welsh Ministers and the Secretary of State for the Home Department: The Protection from Sex-based Harassment in Public Bill

(Pages 39 – 41)

4.2 Correspondence between the Minister for Social Justice and Chief Whip and the Equality and Social Justice and Local Government and Housing Committees regarding accessibility of information

(Pages 42 – 46)

4.3 Correspondence from the Minister for Social Justice and Chief Whip to the Public Accounts and Public Administration Committee regarding implementation of the Future Generations Act

(Page 47)

4.4 Written response from the Welsh Government to the report by the Equality and Social Justice Committee entitled: "60% – Giving them a voice – Speech, Language and Communication Needs in the Youth Justice System"

(Pages 48 – 54)

4.5 Correspondence between the Minister for Social Justice and Chief Whip to the Equality and Social Justice and Children and Young People Committees regarding the UK Government's Illegal Migration Bill

(Pages 55 – 62)

5 Motion under SO17.42 (vi) and (ix) to exclude the public for the remainder of the meeting

(15:45)

6 The public health approach to preventing gender-based violence: consideration of evidence

(15:45– 16:05)

7 Legislative Consent Memorandum on the Illegal Migration Bill: consideration of responses

(16:05–16:10)

(Pages 63 – 94)

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By virtue of paragraph(s) vii of Standing Order 17.42

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Introduction and Summary

At Plan International UK we strive for a just world that advances children's rights and equality for girls. Our work spans education, healthcare, humanitarian responses and more, creating a powerful force for change. With Plan, whole communities put girls' rights first and give children every chance to flourish.

Despite the UK being one of the wealthiest countries in the world, with a commitment to achieving gender equality in policy and legislation, girls' rights are being denied.

Through our UK programmes we create meaningful opportunities for girls' voices to be heard and acted upon, while working towards a society where all girls can flourish free from fear, violence and discrimination.

While our own work in the UK has focused particularly on what works to end public sexual harassment, we are clear that this constitutes a harmful form of violence against women and girls, with different forms of violence against women and girls occurring along the same continuum of behaviours and a range of shared risk and protective factors for public sexual harassment and other forms of Violence Against Women Domestic Violence and Sexual Violence (VAWDASV). Internationally we have extensive experience of programmes tackling many forms of Gender-Based Violence (GBV) across the world. A growing body of research shows the interconnections between different forms of violence, and the fact that these forms share many (although not all) common risk factors.¹

In drafting this submission, we have drawn on our own experiences of running programmes with girls and boys, our research to understand girls' experiences of violence and what might work to address these and on the body of academic and government literature available. In summary we would recommend:

- A focus on addressing the underlying causes of VAWDASV.
- An ecological approach to prevention, with interventions at the level of individuals, communities and societies
- A life-course approach, with interventions targeted at key stages in a person's life when the biggest difference can be made, particularly adolescence.
- A focus on the interventions which have been shown to be effective or promising through evaluation, as well as testing emerging approaches.
- A public health approach, focused on prevention, drawing on multi-disciplinary evidence to design interventions to be delivered across a broad range of sectors
- Ensure a rights-based approach is taken to the design of interventions, including by ensuring that the particular experiences, needs and barriers of those sharing protected characteristics are addressed.
- Involve women and girls' and their organisations in design, decision-making and evaluation.

¹ (Centers for Disease Control and Prevention and Prevention Institute, 2014)

What works in preventing gender-based violence before it occurs (primary prevention) and intervening earlier to stop violence from escalating (secondary prevention)?

It is well established that multiple interacting factors lie behind gender-based violence. Therefore, a strategy aimed at preventing gender-based violence should **take an ecological approach**² – with interventions at different levels, including:

- Individual & relationship factors (for example socio-economic status, employment status, level of education, ACES, levels of equality in relationships, history of having witnessed or experienced violence as a child)
- Community factors (for example, safe communities, safe and effective education settings, access to positive activities and trusted people)
- and societal factors (for example, gender norms that perpetuate inequality, social norms supportive of violence, robust policy and legislation)

A strategy aimed at prevention should include interventions **at different levels** which are part of a theory of change addressing root causes. A whole societal approach is required with a clear vision and effective frameworks that support implementation.

Different risk and protective factors are associated with different types of violence against women and girls, but some common high level factors include:³

- Gender inequality - Gender inequalities can influence the development of harmful attitudes and beliefs, social norms and stereotypes that uphold privilege, inequality and subordination which can lead to the expression of violence against women and girls.
- Social cultural norms around violence – social and cultural norms guide attitudes and behaviour around gender roles and the acceptance of violence within a group or society. For example, patriarchal norms and values uphold the system of violence experienced by girls and women. They tell men and boys they are entitled to be in control. They normalise the use of violence as a way to assert power, control and dominance over girls and women, perpetuate harmful masculinities which drive violence, and which may prevent girls and women from seeking support or reporting violence owing to pervasive stigma and normalisation of the issue. These norms can be influenced by families, peer groups and society e.g., Social media, TV and film, gaming and pornography.
- Lack of material resources and support systems, including systems which prevent and respond to violence such as safe spaces, specialist health care, psychosocial support, referral mechanisms and accessible reporting processes.

Primary prevention of violence against women should therefore **address these underlying factors** and reduce the likelihood that violence against women will take place. Such actions may include strategies that:⁴

- promote equal and respectful relations between men and women;

² Walden, I. and Wall, L., *Reflecting on primary prevention of violence against women The public health approach*, ACSSA issues, AUSTRALIAN CENTRE FOR THE STUDY OF SEXUAL ASSAULT, No.19, 2014.

³ Walden, I. and Wall, L., *Reflecting on primary prevention of violence against women The public health approach*, ACSSA issues, AUSTRALIAN CENTRE FOR THE STUDY OF SEXUAL ASSAULT, No.19, 2014.

⁴ Walden, I. and Wall, L., *Reflecting on primary prevention of violence against women The public health approach*, ACSSA issues, AUSTRALIAN CENTRE FOR THE STUDY OF SEXUAL ASSAULT, No.19, 2014.

- promote non-violent social norms
- promote access to resources and systems of support.⁵

We would also recommend a **life-course approach** to developing prevention strategies, considering life stages of preconception, infant and early years, childhood and adolescence, working age adults and older people. In Wales people who have experienced significant adversity in childhood are 15 times more likely to experience violence as an adult.⁶ We know that there are some stages- pregnancy, becoming a parent and cohabiting that are particularly important for violence prevention.

Adolescence is a transformative period as a time of increased vulnerability but also a transformative period for shifting harmful norms which drive violence, promoting gender equality and healthy masculinities and preventing intergenerational cycles of violence. Attitudes around gender inequalities and unequal power relations are further embedded during adolescence, and harmful masculinities which drive GBV become more prevalent. It is therefore essential that a life course approach is taken to shifting and transforming harmful stereotypes and norms which drive GBV, engaging children, adolescents, parents and caregivers to transform these norms, attitudes and power relations, promoting gender equality, breaking intergenerational cycles of violence, and ensuring long-term and effective change.

In terms of assessing the effectiveness of different measures, it's important to understand that there is limited robust evaluation, with:

- some types of intervention, such as school-based interventions, parenting interventions and economic interventions having been more closely studied than others.
- many interventions have been assessed for their impact on risk factors for gender-based violence, rather than their impact on violence itself
- difficulty in attributing outcomes to individual interventions
- many studies looking at the short to medium term impact, but not at the sustainability of any impact.

With these limitations in mind, evidence shows that the following are **effective/promising interventions** at tackling community/societal level risk/protective factors related to one or more form of gender-based violence⁷:

⁵ VicHealth, *Preventing violence before it occurs: A framework and background paper to guide the primary prevention of violence against women in Victoria*, Melbourne: VicHealth, 2007

⁶ Willis et al., (2016), Adverse Childhood Experiences and their impact on health_harming behaviours in the Welsh adult population, Project Report, Public Health Wales NHS Trust, Cardiff - <https://researchonline.ljmu.ac.uk/id/eprint/2648/>

⁷ See Plan International UK, *What Works for Ending Public Sexual Harassment*, 2021; UN Women, *A FRAMEWORK TO UNDERPIN ACTION TO PREVENT VIOLENCE AGAINST WOMEN*, 2015; Walden, I. and Wall, L., *Reflecting on primary prevention of violence against women The public health approach*, ACSSA issues, AUSTRALIAN CENTRE FOR THE STUDY OF SEXUAL ASSAULT, No.19, 2014; Fulu, E., Kerr-Wilson, A., Lang, J., "What works to prevent violence against women and girls? Evidence Review of interventions to prevent violence against women and girls", June 2014.

- School-based measures - Schools-based interventions can have positive impacts on improving young people's attitudes about gender equality and prevent violence. Successful approaches typically use critical reflection on gender roles, attitudes and behaviours, often using games, role play, or play-based learning. Comprehensive gender-transformative sexuality education which promotes gender equality and healthy, non-violent relationships is an essential part of this and can have a significant impact in transforming gender attitudes, norms and behaviours and promoting healthy masculinities and relationships.⁸ The most effective approaches work at multiple levels, known as 'whole school' interventions and include staff training, codes of conduct, policies, engagement of parents, improving the built environment, and improving reporting, monitoring and accountability.
- Community-based education programs, involving both men and women - There is research supporting a focus on community-based programs to engage, support and equip people with the knowledge, skills and resources they may need as they transition into different types of relationships, such as cohabitation, becoming a parent, or taking on caring responsibilities for others. This might involve group education workshops to promote critical reflection and dialogue on gender norms and behaviour that encourage VAWDASV and gender inequality.
- Community activism to change social norms - This is one of the most effective ways to improve gender equality, address power imbalances and tackle violence against women and girls. However, these interventions require extensive engagement over a period of 2 to 3 years and need to be strongly designed and implemented in order to ensure enough community members are exposed to the intervention to sustain change. Community buy-in and leadership are considered essential components of successful design and implementation. Promising examples are evident in the setting of sporting clubs, where interventions aim to change macho, violence supportive attitudes and behaviours, and provide leadership role-models for the broader community.
- Parenting programmes to prevent child abuse and neglect such as nurse home-visit programmes aimed to strengthen parenting attitudes and skills, can also help to address violence against women. Gender transformative positive parenting programmes are effective.⁹
- Gender equality training for women and girls - School or community programmes to improve women's and girls' agency, which can include other components such as safe spaces, mentoring and life skills training.
- Economic empowerment and income supplements plus gender equality training, such as micro-finance, vocational training, job placement or cash or asset transfers plus gender equality training.
- Collectivization of sex workers, supporting sex workers to come together as a collective and become advocates

Public awareness-raising campaigns are often seen as attractive due to their wide reach and comparatively low costs. However, while public education campaigns may be effective in increasing awareness of legislative change or knowledge of what constitutes violence, the deeper attitudinal and behaviour changes required to stop violence against women are likely

⁸ See, for example, Holden, J., Bell, E. & Schauerhammer, V. (2015). We Want to Learn About Good Love: Findings from a Qualitative Study Assessing the Links Between Comprehensive Sexuality Education and Violence Against Women and Girls. London: Plan International UK and Social Development Direct

⁹ For example, Plan ran a programme in Rwanda and Senegal called REAL Fathers, which focused on reducing Intimate Partner Violence (IPV) and Violence Against Children promoting positive engagement of male caregivers. 7% of women experienced physical IPV in past 3 months after participation in REAL Fathers, compared to the baseline of 24%.

to require more intensive, direct forms of intervention.¹⁰ Evaluations show that these types of campaigns can raise awareness and influence attitudes, but on their own they are unlikely to change behaviour. Instead, researchers recommend using awareness raising campaigns as part of a wider multicomponent intervention with other activities designed to change behaviour.

Certain **factors contribute to the effectiveness** of interventions. Supporting the work of **girl-led groups and girl activists** working on GBV and ensuring they are meaningfully involved in all decision making is an important element of any strategy to address violence against women and girls. A study of 70 countries from 1975-2005 concluded that a strong, autonomous feminist movement is both substantively and statistically significant as a predictor of government action to redress various forms of violence against women.¹¹

Plan UK's *What Works for Ending Public Sexual Harassment* report concludes that the key considerations when developing an intervention on public sexual harassment include:

- Address risk and protective factors, including social norms and gender inequity
- Work strategically and politically to challenge, negotiate and shift power around gender norms
- Adapt and tailor approaches to the local context
- Use group-based and age-appropriate participatory learning methods that emphasise critical reflection and communication skills
- Include multiple training or awareness sessions to reinforce key concepts and allow time for reflection and learning rather than one-off sessions
- Use a coordinated approach to awareness-raising through media, advocacy and popular education
- Work with both women and men / girls and boys, especially in highly patriarchal contexts
- Carefully select staff and volunteers for their gender equitable attitudes and non-violence behaviour, who are thoroughly trained, supervised and supported
- Combine both prevention and response elements, including linking with reporting mechanisms and high-quality services for survivors
- Prioritise well-designed interventions that address groups at high risk of experiencing or perpetrating sexual harassment in public spaces, for example adolescent girls, who may require more tailored approaches.¹²

¹⁰ Horsfall, Bromfield, & McDonald, 2010; Saunders & Goddard, 2002; Fanslow, 2005; Davies, Hammerton, Hassall, Fortune, & Moeller, 2003.

¹¹ Htun M and Weldon S (2012) 'The Civic Origins of Progressive Policy Change: Combating Violence against Women in Global Perspective, 1975–2005', *American Political Science Review*, Vol 106, No 3, pp 548-569

¹² What works to end sexual harassment

In Wales Plan UK deliver the EDGE (Education Developing Gender Equality) programme in educational settings, using a whole school approach the programme aims to

- Address harmful gender stereotypes and social norms
- Educate and address peer on peer sexual harassment
- Improve attitudes to gender equality
- Educate and encourage healthy relationships
- Create safer school environments

EDGE was developed in response to the ESTYN 'We don't tell our Teachers report'. The programme can also be adapted to be delivered in youth, community and informal education settings.

In an exciting development to the EDGE project Plan UK in Wales are conducting work exploring engaging with boys and young men to prevent gender based violence. We are supporting eight 'Test & Learn' projects with grassroots organisations to discover how to engage boys and young men in issue based work around identity, masculinity, healthy relationships, attitudes towards women & girls, violence and . We hope to develop this work to help inform future practice in Wales and beyond.

Her Voice Wales, a group of girls participating in Plan UK's Young Changemaker programme led #wedontfeelsafecampaign. They have produced awareness raising publicity materials and are exploring how the public, private and third sectors can pledge their support to create safe spaces that young people can use as a refuge when feeling vulnerable.

Plan UK also established the Girls Rights Wales Collective which has over 200 members and provides a real opportunity to connect grassroots delivery organisations, academics, policy and decision makers in working together to create large scale change for Wales.

How effective is a public health approach to preventing gender-based violence and what more needs to be done to address the needs of different groups of women, including LGBT+, ethnic minorities, young and older people at risk of violence at home and in public spaces.

Gender-based violence is so wide-spread and its impact so serious, that it must be treated as a matter of public health. A public health approach is essential to ensure gender-based violence is treated, prioritised and invested in as a political matter with causes and consequences that are the proper concern of the state and which the state has a duty to address, rather than as a private or individual matter that must be accepted.

It is also important that gender-based violence is treated as a **human rights issue**, in particular by:

- Ensuring that measures to prevent violence are consistent with other rights of women and girls (e.g. their right to freedom of movement and to full participation in education, employment, entrepreneurship, politics and society more broadly).
- Ensuring that affected communities and stakeholders, in particular women and girls, are engaged in the planning and implementation of prevention activities.

A public health approach is effective in that it demands:

- A focus on **preventing** the problem from occurring by targeting key risk factors and addressing these at a whole of population level. It is an ambitious, brave and long-term goal, but it is imperative that the state should seek to prevent this most serious of human rights abuses from occurring in the first place.
- A **multi-disciplinary** response, drawing on psychology, sociology, criminology, economics, etc. to properly understand gender-based violence its prevalence, risk factors, protective factors and to design and evaluate effective interventions.
- A response requiring action from **diverse sectors right across society**, including education, health, criminal justice, work and welfare, media, culture and sport, third sector, religious and community groups, etc. The complex interacting risk and protective factors that lay behind gender-based violence are likely to demand interventions from all these sectors, operating at different levels, in order to bring about widespread, long-lasting and significant change.
- A strategy which includes all **four stages** of a public health response:
 - o Defining the problem - understand the “who”, “what”, “when”, “where” and “how”.
 - o Identifying risk and protective factors for both perpetration and victimisation and which might be modified through interventions.
 - o Funding, developing and evaluating prevention interventions to target risk and protective factors.
 - o Encouraging widespread adoption by disseminating the information about “what works” to scale up effective and promising interventions in a wide range of settings and learning from what doesn’t work

A rights-based approach to tackling gender-based violence would give priority to preventing violence affecting women and girls who suffer **multiple forms of discrimination** and face a higher risk of violence or who are more vulnerable to its consequences. This involves targeting activity to these groups of women, and to risk and protective factors affecting them. It also involves making sure that activity designed for the whole population reaches and is relevant to high-risk groups.

There is a lack of rigorous evidence on intersectional discrimination and VAWDASV. In particular, there is limited data on gender identity, including the experiences of transgender or non-binary people. However, we do know that both VAWDASV are experienced differently by different groups of girls and young women. Gender intersects with other identity characteristics, such as sexuality, gender identity, disability, ethnicity and immigration status, to produce unique experiences of violence.¹³ For example:

- 92% of girls who consider themselves to have a disability have experienced any of the sexual harassment behaviours compared to 74% of their non-disabled counterparts
- 92% of those who selected ‘other’ for race have experienced any of the behaviours, followed by 88% of mixed race girls, 82% of Black, African, Caribbean and Black British girls, 75% of white girls and 70% of Asian and Asian British girls.
- 90% of non-heterosexual girls and young women have experienced any of the sexual harassment behaviours, compared to 72% of heterosexual girls and young women.

¹³ Plan International UK, What Works for Ending Public Sexual Harassment, 2021

- 92% of those who preferred to self-describe their gender identity have experienced any of the sexual harassment behaviours.

The affect of VAWDASV for particular groups can also be different:

- Non-heterosexual girls and young women are significantly more likely to have avoided activities such as exercise, socialising and school, due to experience or worry about sexual harassment, compared to their heterosexual counterparts (78% vs. 58%).
- Disabled girls are significantly more likely to have avoided such activities compared to their non-disabled counterparts (83% vs. 60%).¹⁴

The particular experiences of those groups sharing protected characteristics are relevant to all four stages of the public health approach:

- In defining the problem, it will be important to understand whether different groups' experiences differ and where some groups are disproportionately affected
- In identifying risk and protective factors, it will be important to understand whether the risk and protective factors are different or of different importance for particular groups
- In testing and evaluating prevention interventions, it will be important to design interventions which are appropriate in light of the protected characteristics of participants and to measure whether outcomes are different for different groups
- In encouraging adoption, it will be necessary to consider how dissemination takes place in order to ensure take up and impact amongst different protected characteristic groups and in different contexts.

Given what we have said above about the importance of a life-course approach to design of a strategy to tackle gender-based violence, we would recommend taking into account age in designing interventions. For example, we know that adolescence is a time of elevated vulnerability for multiple forms of VAWDASV. Adolescence is a stage when girls begin to establish intimate relationships with men and boys, exposing them to the risk of intimate partner and dating violence as well as sexual violence from non-partners. The risk of sexual violence perpetrated against women outside of their families also increases in adolescence.¹⁵ It is also true that "adolescence is considered an ideal time to influence attitudes and behaviours".¹⁶ Therefore, we would recommend a particular focus on this age group in interventions.

We also know that racialised adolescent girls can be at greater risk, experience different forms of violence, that it can impact them differently and they can face additional barriers in accessing support. For example, our research found "the harassment of Black and minoritised girls often hinged on their difference from the White or majority norm, in terms of appearance, attire, and body shape. Their bodies were commented on by strangers and peers and this was linked to an oversexualisation of Black girls' and young women's bodies in particular.... The impact on Black and minoritised girls' and young women's lives is significant and wide ranging. Girls and young women spoke about how experiencing PSH had impacted on their mental health, self-esteem and identity. It particularly impacted on their body image and the pressures they experienced to conform to White Western beauty ideals. The cumulative impact of intersecting forms of harassment, combined with a lack of

¹⁴ Plan International UK, What Works for Ending Public Sexual Harassment, 2021

¹⁵ Walden, I. and Wall, L., *Reflecting on primary prevention of violence against women The public health approach*, ACSSA issues, AUSTRALIAN CENTRE FOR THE STUDY OF SEXUAL ASSAULT, No.19, 2014

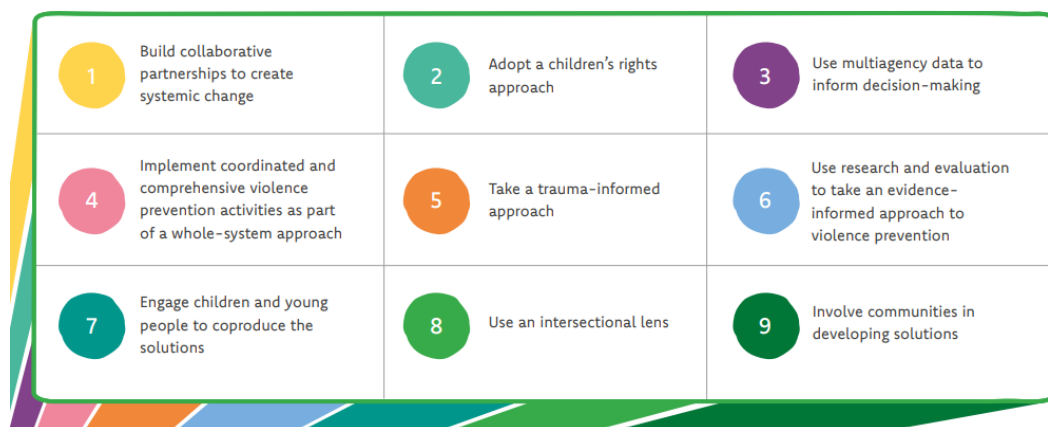
¹⁶ Walden, I. and Wall, L., *Reflecting on primary prevention of violence against women The public health approach*, ACSSA issues, AUSTRALIAN CENTRE FOR THE STUDY OF SEXUAL ASSAULT, No.19, 2014

support to get ‘closure’ when incidents occur, may mean these behaviours have particularly harmful impacts on Black and minoritised girls’ and young women’s lives”.¹⁷

What is the role of the public sector and specialist services (including the police, schools, the NHS, the third sector and other organisations that women and girls turn to for support) in identifying, tackling and preventing violence against women, and their role in supporting victims and survivors

Good strides have been made in Wales with the new VAWDASV framework and the new shared framework for Preventing Violence among Children and Young People, we now need to understand how to bring together all agencies and stakeholders to deliver these ambitions in a co-ordinated way. This will include how to identify and fund effective primary, secondary and tertiary prevention initiatives that contribute to the framework objectives to create systemic and societal transformation for Wales.

We would support the implementation of the approach identified in the Wales Without Violence framework.



In terms of the role that each sector should play within such a strategy, we would point you towards to UN framework which sets out the roles different parts of the public and private sector can play
<https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/PreventionFrameworkNov2015.pdf>

¹⁷ Plan International UK, *EVERYTHING IS RACIALISED ON TOP: Black and minoritised girls’ and young women’s experiences of public sexual harassment in the UK*, 2022.

Entry point	Rationale
Central government and legislature	<ul style="list-style-type: none"> • The State has the primary responsibility for the implementation of its human rights obligation to prevent VAW. • Policy and legislative measures must be undertaken to prevent violence, eradicate discrimination against women in law and practice and promote women's rights. This encompasses some of the measures listed below, including as they refer to health and social policies; law enforcement and justice responses; and labour policies.
Schools and educational facilities	<ul style="list-style-type: none"> • Schools and educational facilities play an important role in the socialization of children and young people and are a means of reaching large proportions of the population. Interventions can be built into school curricula and structures, but require training of teachers and other staff (see Foundations for prevention section 6.2.1). • In some contexts schools and educational facilities are sites in which VAW is common.
<p>Health services:</p> <ul style="list-style-type: none"> - Primary health care services - Mental health service - Sexual and reproductive health and HIV - Child and Adolescent health services <p>Social services:</p> <ul style="list-style-type: none"> - Early childhood services - Services supporting families, adolescents and young adults and migrants and refugees 	<ul style="list-style-type: none"> • Health programmes have played a key role in leading effective cross-sector interventions to prevent VAW. Prevention strategies can be readily built into other interventions (e.g. SRH, HIV prevention, adolescent health, mental health programmes). • Health programmes play an important role in providing support to parents to prevent child abuse and neglect. They can also support couples in pregnancy and the transition to parenting. • Poor mental health is a risk for both victimization and perpetration, suggesting the importance of integrating strategies to prevent VAW into programmes to prevent and respond to poor mental health. • Health services are an important point for early identification and intervention of women and children subject to or at risk of violence. • Social service programmes can be an important means of reaching young people, especially those outside of the formal education system – a particularly high-risk group. Services supporting migrants and refugees can target groups that may not be reached by strategies designed for host populations, and can implement prevention efforts soon after arrival.
Police and the justice sector	<ul style="list-style-type: none"> • Although primarily involved in response, this sector is critical to engage when laying foundations for prevention given that effective investigation of allegations, prosecution of alleged perpetrators, promoting accountability and ensuring effective access to remedies for victims are important conditions for effective prevention (see 6.2.1). In some contexts, law enforcement personnel may be implicated in the perpetration of VAW, a further consideration at this stage.
Media, popular culture and information and communications technologies	<ul style="list-style-type: none"> • The media can be an important partner in preventing VAW as it has wide reach, and plays a significant role in shaping and maintaining social norms (Flood and Pease, 2009). Information and communications technologies (ICTs) can be an important vehicle for empowerment, especially of young women. • At the same time, however, the media can perpetuate violence-supportive social norms, and actively undermine gender equality and women's freedom from violence. In this respect, the media may need to be considered as targets for intervention, or barriers to success in some contexts. • There is growing evidence of ICTs being used as vehicles or sites for the perpetration of VAW. Examples include the use of tracking technologies to monitor women's movements by perpetrators of IPV (Hand et al., 2009) and the grooming of adolescent girls for the purposes of sexual exploitation via chat rooms (UNICEF Innocenti Research Centre, 2011).

Entry point	Rationale
Workplaces, including unions and employers' organizations	<ul style="list-style-type: none"> • These environments provide opportunity to reach a large number of people where work is integrated into their day-to-day lives. • Workplaces are sites for some forms of VAW (e.g. workplace harassment). • Workplaces are also key settings in which unequal and stereotyped gender roles exist and can be addressed. Some workplaces (e.g. the police, military, the construction industry) offer opportunities to reach a large number of men and are settings that have significant impact on development of attitudes and social norms pertaining to VAW. • Unions and the private sector may be engaged in prevention through workplaces.
Sport and recreation environments and the arts	<ul style="list-style-type: none"> • In societies where sport plays an important role, professional and amateur (sometimes called community-based) sports organizations are contexts in which attitudes and behaviours toward gender relations can be shaped and changed. Sports 'stars', both men and women, can be influential leaders and ambassadors. Sports organizations can provide a powerful infrastructure through which to reach populations, in particular young men. • The arts are similarly a valuable medium for challenging social norms pertaining to VAW and gender inequality.
Male dominated environments (e.g. prisons, sports clubs, military, police forces)	<ul style="list-style-type: none"> • These environments offer the opportunity to reach a large number of men and may influence attitudes and social norms pertaining to VAW. However the entrenched 'macho' culture that may prevail in some of these bodies poses important challenges.
Community networks, organizations and institutions (e.g. faith-based organizations, cultural institutions, clubs and societies)	<ul style="list-style-type: none"> • Such entities can be critical partners in prevention, providing the means to reach communities and to deliver messages in a familiar environment. Leaders within such environments (e.g. faith and community leaders) can be influential allies in prevention. • At the same time, some of these bodies may also have cultures and practices that contribute to gender inequality and VAW and may resist change. In this regard they may become targets for intervention, or there may be barriers that need to be addressed in prevention planning.
Local authorities/local governments	<ul style="list-style-type: none"> • As a level of government close to people, they may be well placed to support localized mobilization and specific prevention activities (an approach found to be effective in preventing VAW) (Arango et al., 2014).
Employment/economic empowerment and poverty reduction programmes	<ul style="list-style-type: none"> • Interventions using economic empowerment, including but not limited to providing full and productive employment and decent work for women, have been found to be effective in preventing VAW (see Table 3). As male unemployment is a risk factor for perpetration of violence in certain circumstances, organizations addressing unemployment may hold some promise as an entry point.
Transport sector	<ul style="list-style-type: none"> • Access to safe spaces and transport increases women's and girls' autonomy, safety and capacity for economic, social and civic participation.

Submission to Senedd Cymru / Welsh Parliament
Consultation: The public health approach to preventing gender-based violence
28th April 2023

Dr Stephen Burrell
Deputy Director – Centre for Research into Violence and Abuse
Leverhulme Early Career Fellow
Department of Sociology, Durham University
More information: <https://www.durham.ac.uk/staff/s-r-burrell/>

1. About

I am an Assistant Professor (Research) in the Department of Sociology at Durham University, currently undertaking a Leverhulme Trust Early Career Fellowship. My research focuses on men, masculinities and violence. My PhD, completed in 2019, was on primary prevention work with men and boys to end men's violence against women in England, and I have subsequently conducted several other pieces of research related to this topic. This includes a project for the UK Government Equalities Office (Burrell, Ruxton and Westmarland, 2019) on the impacts of masculine gender norms in the UK and how to engage men and boys in shifting them.

2. What works in preventing gender-based violence before it occurs

There is a growing body of evidence about what works in preventing gender-based violence from happening in the first place (Burrell, 2019; Burrell, Ruxton and Westmarland, 2019). Some of the common key findings of research in this area include that primary prevention work must:

- Be holistic; operate at multiple levels across an organisation or community, addressing its culture and structures as well as individual attitudes and behaviours, in an ongoing, in-depth way.
- Start from as young an age as possible (in an age-appropriate way), and continue across the life-course in a range of different settings.
- Be gender-transformative; actively addressing and working to change the gendered norms and power inequalities which are at the roots of gender-based violence.
- Recognise and tackle the intersecting social inequalities which shape different people's experiences of violence and abuse and influence their ability to play a role in preventing it.
- Foster ongoing dialogue, reflection and critical thinking, and empower individuals to play an active role in prevention, rather than simply 'lecturing' people in what they should/should not do.

Gender-based violence primary prevention work remains under-developed and under-supported in the UK context, especially when considering the different aspects of good practice described above, and compared to the pervasive scale of the problem (Burrell, 2018).

A key aspect of gender-based violence primary prevention work is engaging with men and boys (Flood, 2019). Given that the vast majority of violence and abuse in society is perpetrated by men, that means men also have a vital role to play in tackling the problem – and are often in particularly significant positions of power and influence to do so. Of course, all members of the community benefit and have much to learn from primary prevention work. But a focus on engaging men and boys as part of this helps to get to the roots of the problem, shift the onus onto those primarily responsible for the abuse, and challenges victim-blaming narratives.

Furthermore, when delivered effectively, with a gender-transformative focus, this work can be of much value to men and boys themselves. This means highlighting and opening up conversations about the patriarchal gendered norms and expectations which lie at the heart of violence and abuse (Flood, 2019). For example, the idea that men should be ‘active’ and women ‘passive’ in (hetero)sexual interactions. Or that men should be ‘in control’ of most decisions within relationships. Or that violence and aggression are normal, expected, even desirable ways for men and boys to solve problems and get what they want. Research illustrates that these norms surrounding masculinity continue to be highly influential in the lives of young men – and cause much damage in holding men and boys back themselves (Heilman, Barker and Harrison, 2017).

Working with children and young people to discuss the problems with these expectations, the fact that they don’t have to conform to them, and that there are many different ways of being a ‘woman’ or a ‘man’ (or neither), should therefore be a key aspect of relationships and sex education. For instance, by highlighting that men and boys can and should be allowed to develop deep, caring, emotionally-expressive relationships with other people and with themselves. Indeed, learning about and encouraging critical thinking on gender norms and inequalities should also be embedded more widely through different parts of the curriculum and teacher training, and in settings beyond education too. Regular discussions which unpack rigid and restrictive gender norms could help to improve health and wellbeing and bring into question harmful behaviour in the workplace, for example. Key to engaging men and boys in these discussions is a positive approach which builds on the assets they already possess, highlights examples where men and boys are already challenging restrictive masculine norms and putting into practice caring, connected ways of being, and offers positive routes forward in terms of the positive role everyone can play in building gender equality, and how we all benefit from doing so.

3. How effective is a public health approach to preventing gender-based violence

There is much value to a public health approach which places an emphasis on the *prevention* of gender-based violence (Burrell, 2019). This is one of the biggest public health problems we face, with devastating long-term impacts on the wellbeing of women and girls, and ripple effects well beyond the immediate victims too, which have significantly deleterious effects on society as a whole. Public health offers

many useful frameworks, concepts and tools for preventing different social problems. It helps us to understand the scale of violence and abuse as a multifaceted phenomenon, grounded in the interplay of personal, situational and sociocultural factors. For example, the 'social ecological model' has become increasingly influential internationally in helping to make sense of the complexities of how different interacting levels of society influence the behaviour of individuals (and vice versa) and contribute to the perpetration of abuse – and that interventions are therefore also needed at each of these levels in order to prevent the problem (Fulu, Jewkes and Lang, 2014). Public health demonstrates that gender-based violence is not inevitable, and that it can be prevented, if sufficient resources and commitment are invested in tackling its causes.

However, it is crucial that within a public health approach, the gendered roots of violence against women and girls remain front and centre. Ultimately, this violence is founded in, and plays a significant role in reproducing, gender inequalities in which women's lives are valued less and men are encouraged to expect to have more power. This cannot simply be seen as one among many factors contributing to gender-based violence – it is the central factor. A public health approach which lacks this kind of sociological, gendered analysis will therefore be highly constrained. For instance, violence and abuse is not the same as a disease, and framing it in these terms risk painting it as something inevitable and uncontrollable, rather than a phenomenon based on human actions and choices, which can and should be changed. Similarly, whilst categorisations of 'primary', 'secondary' and 'tertiary' prevention are useful, they also have limitations, in that some of those participating in a primary prevention workshop in a school for example may have already engaged in some form of abusive behaviour.

4. What is the role of the public sector and specialist services in identifying, tackling and preventing violence against women

Violence against women and girls is a society-wide problem, which requires active involvement across the whole of society in order to prevent it. Whilst educating young people is a crucial aspect of prevention, this cannot be the only area of focus – because young people have limited power to create wider change in society. This also neglects how children learn much from observing how adults behave (Fawcett Society, 2020). Prevention efforts are therefore needed across all organisations, institutions and communities. For instance, my research has highlighted the importance of more primary prevention work to be developed within businesses and workplaces (Burrell, 2020). These are also a vital environment in which to engage with men 'where they are', for example through 'allyship networks', and encouraging men (especially at senior levels), to speak out about violence against women and for gender equality, among their peers and more broadly in society. Gender-transformative primary prevention efforts can help to create workplace cultures which are healthier and more inclusive and supportive for everyone, which in turn has a beneficial impact on the organisation as a whole. Public sector organisations are a crucial environment for this kind of work, and can provide an example for other employers to follow.

It is vital to collaborate with specialist services in the development and delivery of primary prevention work. For example, there are organisations specialising in engaging with men and boys in spaces such as schools and workplaces, such as White Ribbon UK and Beyond Equality. More broadly, organisations delivering specialist services in the violence against women and girls sector are not only the experts in the problem itself, but often in how to prevent it. It is therefore beneficial to collaborate with these organisations wherever possible, also as a way of listening to and being accountable to victim-survivors and ensuring that their voices are heard within prevention work. It is vital too that preventative efforts do not take resources away from frontline support services – both of these are crucial components of a whole-system, public health approach to tackling gender-based violence, and properly investing in all aspects of this is important in order to demonstrate that we as a society take gender-based violence seriously and are committed to ending it.

5. References

Burrell, S.R. (2018) The contradictory possibilities of engaging men and boys in the prevention of men's violence against women in the UK. *Journal of Gender-Based Violence*, 2(3): 447-464. <https://dro.dur.ac.uk/27183/>

Burrell, S.R. (2019) *Engaging men and boys in the prevention of men's violence against women in England*. Doctoral Thesis. Durham: Durham University. <http://etheses.dur.ac.uk/13074/>

Burrell, S.R. (2020) *Engaging men in preventing violence against women: The role of businesses and workplaces*. Department of Sociology Research Briefing No.18. Durham: Durham University. <https://www.dur.ac.uk/resources/sass/research/briefings/SBurrell-Engagingmenandboysinpreventingviolenceagainstwomen.pdf>

Burrell, S.R., Ruxton, S. & Westmarland, N. (2019) *Changing gender norms: Engaging with men and boys*. London: Government Equalities Office. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952527/Changing_Gender_Norms-Engaging_with_Men_and_Boys.pdf

Fawcett Society (2020) *Unlimited potential: Report of the Commission on Gender Stereotypes in Early Childhood*. London: Fawcett Society. <https://www.fawcettsociety.org.uk/News/gender-stereotypes-significantly-limiting-childrens-potential-causing-lifelong-harm-commission-finds>

Flood, M. (2019) *Engaging Men and Boys in Violence Prevention*. New York, NY: Palgrave Macmillan.

Fulu, E., Kerr-Wilson, A. & Lang, J. (2014) *What works to prevent violence against women and girls? Evidence Review of interventions to prevent violence against*

women and girls. London: Department for International Development.
<https://www.gov.uk/research-for-development-outputs/what-works-to-prevent-violence-against-women-and-girls-evidence-review-of-interventions-to-prevent-violence-against-women-and-girls>

Heilman, B., Barker, G. and Harrison, A. (2017) *The “man box”: A study on being a man in the US, UK, and Mexico*. Washington, DC and London: Promundo-US and Unilever. <https://www.equimundo.org/resources/man-box-study-young-man-us-uk-mexico/>



University of Exeter

Law School

Equality and Social Justice Committee

Inquiry into the Public Health Approach to Preventing Gender-Based Violence

Evidence provided by Dr Rachel Fenton, and Dr Nathan Eisenstadt, University of Exeter and Directors of Kindling Transformative Interventions.

Accompanying oral evidence will be given on 12th June 2023.

We note and build on the evidence provided by Public Health Wales to this inquiry, concentrating specifically on bystander intervention. We also note recent systematic reviews (Addis and Snowdon, 2021; Jouriles et al, 2018; Kettery and Marx, 2019; Kovalenko et al, 2020; Mujal at al., 2019) and do not repeat that evidence here, other than to say that the evidence base is increasingly promising as to the effectiveness of bystander programmes to tackle GBV. Our evidence is mixture of our academic specialisation (Fenton in bystander intervention, gender and law; Eisenstadt working with male perpetrators of DVA at all risk-levels) and our expertise derived from many years of designing, delivering and evaluating bystander programmes in the UK both as academics and as Directors of Kindling Transformative Interventions, and working with men and boys.

The most crucial point to note is that not all bystander intervention programmes are created equal. As was noted in recent evidence session to The Women and Equalities Select Committee Inquiry into Attitudes Towards Women and Girls in Education (2022), there are many providers and offers of bystander intervention programmes now in the UK, but many providers do not detail the evidence underpinning their programmes, nor their credibility to be working effectively in this field. Therefore, we should not be suggesting that generically, bystander intervention programmes either 'work or do not work', but rather, whether specific programmes might demonstrate effectiveness. What follows is a summary of what effective programmes should contain, a series of recommendations for working with men and boys, and suggestions for the legal context.

Bystander Intervention

Bystander intervention is a form of primary intervention based on the premise that most gender-based violence (GBV) is preventable. By situating ending GBV as the responsibility of everyone in the community as fully equipped active bystanders, the manifestation of attitudes and behaviours which underpin, excuse, facilitate, empower and constitute perpetration will elicit a negative response and thus cease to be socially acceptable. Bystander programmes also include secondary prevention in that they should equip participants with the skills to support victims after the event and signpost to appropriate specialist services.

Bystander interventions are complex. They are designed to increase the ability of bystanders to make safe and effective interventions. They also function to change attitudes, beliefs and overcome resistance on the part of participants. They require careful development and should be accompanied by a logic model thoroughly rooted in the literature. As such, bystander interventions require financial investment; they take time and money to implement properly. **It must be noted that investing money in short, ineffective programmes is a waste of money and may actually cause more harm than good.** Despite this message being repeated constantly in the UK for at least a decade, demand is always for the cheapest and shortest programme available, due to non-prioritisation of the safety of women and girls, lack of serious investment, lack of any legal obligations, shortage of public funding and lack of corporate civic responsibility.

Bystander Theory of Change

The theory underpinning bystander intervention training is rooted in social psychology and the bystander theory of change. This is that participants progress through the following psychological stages: from noticing the issue, through recognising it as a problem, to assuming responsibility and being motivated and confident to act and having the requisite skills to act, to actually acting (see below from Fenton et al, 2016).

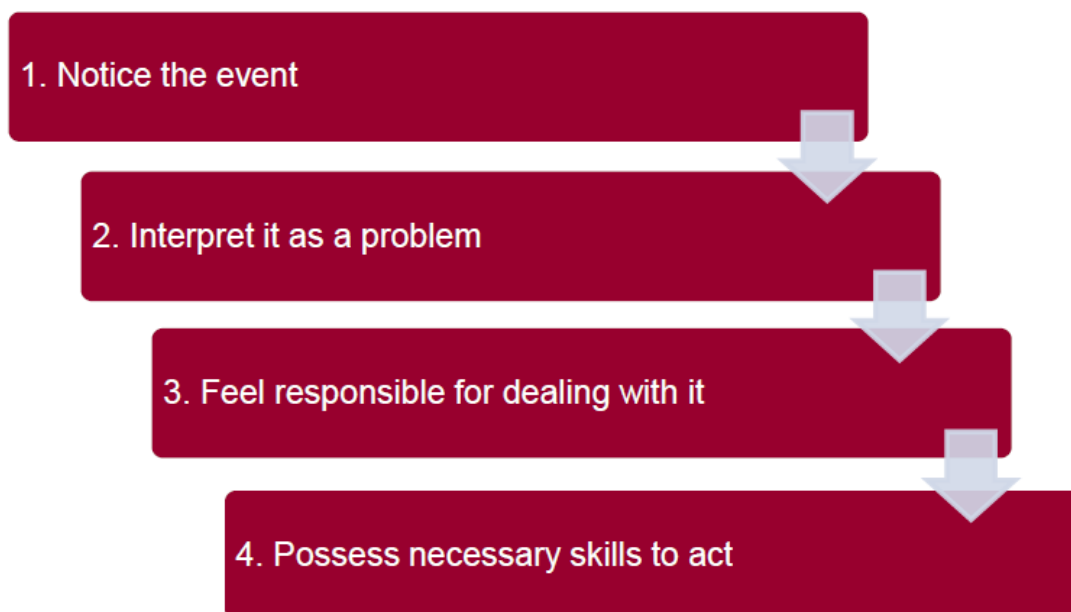


Figure 1. Four stages to becoming a prosocial bystander
(Adapted from Berkowitz, 2009, p10)

The noticing element for VAWG prevention requires a **gender-transformative approach** that examines the root causes of VAWG, i.e. sexism, gender inequity, gendered social norms and harmful masculinities. It further requires an awareness and understanding of the behaviours that constitute the harms that the particular programme focuses on (e.g. sexual harassment in public spaces, rape and other sexual harms, DVA, coercive control, and stalking). The gender-transformative approach acts to change participants' (including perpetrators') own harmful beliefs and attitudes such those expressed in rape, sexual harassment and DVA myth acceptance. Equipping participants to intervene in myth acceptance is crucial as myth acceptance is related to perpetration in the literature.

The noticing part of the programme should pay attention to understanding the intersectional nature of harms with other axes of inequality and include the experiences and needs of different women, particularly women of colour, LGBT+ women, older women, disabled women.

In our experience, **the inclusion of the pyramid of harm is a critical component part of noticing**, and leads to 'lightbulb' moments with men in particular as they realise that their own complicity at the lower levels of the pyramid empowers other men to enact the behaviours further up the pyramid. This further furnishes them with responsibility and motivation to intervene at the bottom of the pyramid - where opportunities to intervene with other men abound.

Social Norms Theory

Evidence indicates that for maximal effectiveness a social norms approach should be integrated (Berkowitz, 2009), to overcome barriers to intervention. Often, we misperceive the positive norm (pluralistic ignorance) which impedes our intervention. If this happens, the wrongdoer is not challenged, the positive bystander intervention is not modelled to other potential bystanders and the perpetrator's behaviour is legitimised. This translates into real-life as male perpetrators of DVA are shown to overestimate how many other men also use DVA (e.g. Neighbours et al, 2010). Moreover, men overestimate other men's comfort with rape-supportive behaviours and underestimate other men's willingness to intervene to prevent sexual harm (Fabiano et al, 2003; Berkowitz, 2010). Given that perceptions of other men's willingness to intervene is a key predictor of intervention (Fabiano et al, 2003; Brown and Messman-Moore, 2010) **the correction of peer and social norms misperceptions is an essential part of bystander trainings.**

Skills Training

Core to pedagogy is skills training. Practice scenarios (role-plays) are indicated and can also change opinion in the desired direction as well as model intervention strategies thus increasing confidence and likelihood to act as an active bystander (Fenton et al 2016). Crucially, scenarios must be socio-culturally relevant to the intended audience (Nation et al 2003); for an example of co-creation with communities and stakeholders see Fenton et al (2019). For example, Kindling's practice scenario pedagogy centres around moving people beyond simple 'in-the-moment' interventions (which in themselves are great but not enough) towards 'gold standard' 'transformative interventions'. These interventions actually change those deeply rooted attitudes and beliefs underpinning behaviours (and resistance such as #notall men or defensive attribution), by connecting with the feelings beneath them and ensuring that those feelings are heard and acknowledged in a safe environment and then challenged in a positive way.

Bystander programmes which are likely to be effective should be able to demonstrate a logic model which is thoroughly rooted in the literature.

Pedagogy, Content and Delivery

In addition to the GBV content, Nation et al.'s (2003) specific public health pedagogy for prevention should be followed in bystander training content and delivery (see Fenton et al, 2016; Fenton and Mott 2017; Fenton et al, 2019) For content, interventions should be theory-based, and tailored for a specific audience. For example, programmes developed by Kindling utilise stakeholder focus groups and anonymous surveys with intended audience about their experiences, to inform development and role-play scenarios. For delivery, programmes should be delivered over time with sufficient dosage, be comprehensive and utilise expert facilitators. Facilitators should be highly trained not only in the delivery materials but also in the wider GBV context, non-verbal communications and, in particular, in holding transformative conversations which deal with resistance in a positive way. For example, in addition to being highly trained trainers in the field in their own right, all Kindling

professional trainers undergo an intensive 2-day training programme with continued quality control, self-reflective practices, de-briefing and community of practice. Kindling also always utilises two professional trainers for every training, with one identifying as male or non-binary and one identifying as female or non-binary, to model gender equality, ensure participant safety and to achieve maximal effectiveness. We believe this to be best practice.

At first glance, a ‘train the trainer’ at the community-level approach (e.g. training lots of different people with ties or job roles which take them into communities, but who are not professional trainers or experts in GBV and are delivering voluntarily) feels intrinsically sustainable and appears cost-effective for limited public money. However, our experience in running several community-level train the trainer programmes as requested by commissioners, is that few people in the community who sign up to the training actually go on to deliver, or deliver at scale, outside of those who attend from a specialist agency. This is because of time, workload, role turnover and ability / confidence to deliver an involved programme that requires significant expertise. Monitoring quality of delivery and fidelity to the programme content is also difficult. Whilst these people are usually extremely committed and real assets to their community, and will likely go on to be great interveners, it is in our experience not actually a sustainable model and therefore not cost-effective. **The funds would be better spent on training a smaller core body of professional trainers and on actual paid delivery that is more likely to be effective and can be more tightly monitored for quality.**

It is also worth noting that effective interventions are specifically designed to be cumulative and therefore not shortened or delved into like ‘pick and mix’. The experience of Fenton and Mott’s ‘The Intervention Initiative’, which was put into the public domain, is that it was ‘butchered’ by very many universities seeking to claim that they were ‘doing bystander’ (see Donovan et al. 2023) and parts were even sold by other providers without knowledge or permission of the creators, as part of un-evidenced online programmes. **Quality control of delivery and fidelity to the model is absolutely essential for programme effectiveness.**

Measuring Effectiveness

Measuring effectiveness is also one of Nation’s criteria. Academic evaluations include design and implementation of pre-post and follow-up surveys (including bespoke evidence-led validated psychometric scales) to measure effectiveness, backlash, monitor/evaluate facilitation, and self-reported learning. **Just like rigorous delivery, rigorous evaluation is expensive and requires proper funding.** The first evidence-led programme, designed for universities in the UK (Fenton and Mott, 2017, 2018a) showed significant results across a range of measures (Fenton and Mott, 2018b). Active Bystander Communities (ABC) which covered DVA in a general community setting for the first time, showed significant improvements across a range of measures including *further improvement at follow-up* indicating that the changes were not only sustained over time but also actually got better over time (Gainsbury, Fenton and Jones, 2019, 2020). Football Onside was evaluated in a controlled evaluation showing significant results by Kovalenko’s successful PhD at Exeter Medical School (Kovalenko and Fenton 2023, Kovalenko, Fenton and Eisenstadt, 2023, forthcoming).

What is also interesting about these evaluations is that they show that even groups that present with really high baseline scores, meaning that they don't have far to 'travel' as they are already on board with the messages, still shift significantly in the desired direction. Of further interest is the way in which patterns emerged, and which can inform further development of programmes. For example the pattern of rape myth acceptance with university students, for whom myths about falsity of allegations and that men rape accidentally were most believed in (Fenton and Mott 2018b; Fenton and Jones 2017), was replicated by adults (predominantly men) in the Football Onside evaluation (Kovalenko and Fenton, 2023).

What we notice from the qualitative interviewing in evaluations is that participants use the skills and make interventions in all aspects of their lives, no matter in which capacity they attend the training (e.g. as a work training). For example:

“My future brother-in-law, I'm a little bit concerned, he likes to isolate my sister quite a lot but not too sure if that is just one aspect of it...I am more aware and alert now. I've discussed it with my sisters and they had a similar impression, so we're gonna keep an eye out” (from evaluation of ABC)

*“Knowing what I did from the course, it's made me [...] chat with my daughters and find out what they're doing in their relationships, and then find out what in particular is not as good as I thought it was, and **a little bit controlling on his [boyfriend's] side**. So, yes, I **wouldn't have known the signs** what to look for without actually doing the course. I was totally blissfully unaware of what was going on.”* (from evaluation of Football Onside)

Legal Obligations

The evidence base supporting the effectiveness of bystander interventions (which adhere to the above criteria) is considered sufficiently strong that the Westminster Government has repeatedly been asked (e.g. The Women and Equalities Select Committee: Sexual harassment of women and girls in public places (2018)) to implement legal obligations akin to those in the US on universities to respond and prevent GBV including an obligation to implement bystander intervention. To date this has not happened. **The Welsh Government could proactively consider legislation requiring schools and colleges and universities to implement evidence-led bystander programming as part of a holistic solution to ending GBV.** Further, by requiring / obligating larger organisations, particularly those where men make up the majority of the workforce, to implement bystander intervention as part of their **civic responsibility**, the Welsh Government could be extremely progressive and ensure reach to the widest section of Welsh society. **The Welsh Government might lead by example and ensure that the Welsh Parliament and staffers undertake bystander training.**

Working with Men and Boys

The bystander approach is suitable for mixed gender groups and with men and boys alone. The fundamental theory of bystander intervention that positions men and boys as part of the solution rather than the problem, and as bystanders rather than perpetrators, allows them to engage and reduces defensiveness. As noted, an effective programme should be gender-transformative, facilitating critical self-awareness and self-reflection.

Men and boys are overwhelmingly the perpetrators of VAWDASV, including where men/boys are victimised. Meanwhile, male violence against women is more prevalent than women's violence against men, tends to be more severe, perpetrated at higher frequency and has longer lasting negative health impacts.

We also know that men and boys are profoundly concerned with what other men think of them and thus that intervention/advice/leadership by other men is more likely, for many, to result in behaviour change. There is thus both a practical and moral imperative to engage men in the work of ending VAWDASV.

Engaging men and boys is challenging. Men and boys rarely share VAWG prevention content on social media, even when that content is squarely directed at men. Meanwhile, voluntary training programmes and talks/events in the community which are open to all genders are overwhelmingly attended by women. This presents two approaches:

- **Improve campaigns and training that is aimed men in order to better appeals to men/boys.**
- **Make VAWDASV training a compulsory component within organisations that men/boys are already a part of, e.g. workplaces, sports teams, university courses or in schools.**

Whether attempting to attract men to a voluntary programme or campaign, or to engage and retain men in a 'compulsory' programme, work with/aimed at men and boys should:

- Be relevant to the specific culture, sub-culture, community or group men/boys are coming from:
 - Content should be written in the specific vernacular and imagery should reflect the group it is aimed at.
 - Content/messaging should be co-designed with men and boys.
- Emphasise positive qualities of interveners including mobilising traditional 'masculine qualities' in support of behaviour change e.g. courage, leadership, strength, fair-play.
- Position men and boys as part of the solution.
- Mobilise social norms/ideas around how other will see them if men/boys if they cause/prevent harm
- Work with respected peers/leaders/'influencers' to amplify positive messaging.
- Encourage responsibility-taking as way of being a 'good'/'real' man.
- Avoid shaming men and traditional masculine identities while directly challenging harmful behaviour.

- Focus on the impact/harm of behaviour, rather than the intentions or character of the harm-doer.
- Engage with boys as early as is feasible.
- Adopt a whole system approach to changing deeply ingrained attitudes, beliefs and behaviours – one off training or campaigns will be ineffective if teachers and parents, police and other institutions and influences reinforce harmful social norms.

Summary and Recommendations

- Bystander approaches can be effective if they are rooted in evidence and rigorously designed by experts in conjunction with stakeholders
- Serious levels of investment are required in order to ensure the quality of design, delivery and evaluation of bystander programmes.
- Quality of delivery is more important than quantity and tightly monitored delivery is essential
- Care should be taken not to mistake first glance sustainability for effectiveness
- Providers should be able to demonstrate a logic model rooted in evidence for any bystander programme they offer and a pedagogically sound model for content and delivery adhering to public health criteria
- Evaluation (beyond feedback) using rigorous methods is crucial
- Bystander approaches can work with men and boys and mixed gender groups.
- Engaging men and boys as part of the solution is key and content should be written specifically with men and boys, mobilise traditional 'masculine qualities' and avoid shaming.
- Early intervention is key
- The Welsh government could consider legislation to require schools, colleges and universities to implement evidence-led bystander training, combined with obligations on large organisations to embed bystander training as part of their civic responsibility in order to reach the largest possible audience in Welsh society. The Welsh Parliament could lead by example.

References

- Addis, S. and Snowdon, L. (2021) What Works to Prevent Violence against Women, Domestic Abuse and Sexual Violence (VAWDASV)? Systematic Evidence Assessment [online] Available at: https://www.violencepreventionwales.co.uk/cms_assets/research/What-Works-to-Prevent-Violence-against-Women-Domestic-Abuse-and-Sexual-Violence-Systematic-Evidence-Assessment_2021-09-20-124755_aypz.pdf
- Berkowitz, A.D. (2009) *Response Ability: A Complete Guide to Bystander Intervention*. Chicago: Beck & Company.
- Berkowitz, A.D. (2010) *Fostering Healthy Norms to Prevent Violence and Abuse: The Social Norms Approach* [online]. Available from: www.alanberkowitz.com/articles/Preventing_Sexual_Violence_Chapter_new.pdf
- Brown, A. L., & Messman-Moore, T. L. (2010). Personal and perceived peer attitudes supporting sexual aggression as predictors of male college students' willingness to intervene against sexual aggression. *Journal of Interpersonal Violence, 25*(3), 503-517.
- Donovan, Bracewell, Chantler and Fenton (2020). Findings from a National Study to Investigate How British Universities are Challenging Sexual Violence and Harassment on Campus
- Fabiano, P. M., Perkins, H. W., Berkowitz, A. D., Linkenbach, J., & Stark, C. (2003). Engaging men as social justice allies in ending violence against women: Evidence for a social norms approach. *Journal of the American College Health Association, 52*(3), 105-112.
- Fenton R, Jones C, Moss S, Cooke K. The challenges of developing and implementing a bystander intervention for the prevention of domestic violence and abuse in UK communities. *J Gender-Based Violence. 2019*;3(2):215–31.
- Fenton, R. A., & Jones, C. (2017). An exploratory study on the beliefs about gender-based violence held by incoming undergraduates in England. *Journal of Gender-Based Violence, 1*(2), 147-167.
- Fenton, R. A., & Mott, H. L. (2017). The b@stander approach to violence prevention: Considerations for implementation in Europe. *Psychology of Violence, 7*(3), 450-458.
- Fenton, R. A., & Mott, H. L. (2018a). The Intervention Initiative: theoretical underpinnings, development and implementation. *Gender based violence in university communities, 169-188*.
- Fenton, R. A., & Mott, H. L. (2018b). Evaluation of the Intervention Initiative: A Bystander Intervention Program to Prevent Violence Against Women in Universities. *Violence and Victims, 33*(4), 645-662
- Fenton, R. A., Mott, H. L., McCartan, K., & Rumney, P. N. (2016). A review of evidence for bystander intervention to prevent sexual and domestic violence in universities. (6), 58-58.
- Gainsbury, A. N., Fenton, R. A., & Jones, C. A. (2020). From campus to communities: Evaluation of the first UK-based bystander program for the prevention of domestic violence and abuse in general communities. *BMC Public Health, 20*(1), 1-11.

- Jouriles, E., Krauss, A., Vu, N. L., Banyard, V. L., & McDonald, R. (2018). Bystander programs addressing sexual violence on college campuses: A systematic review and meta-analysis of program outcomes and delivery methods. *Journal of American college health : J of ACH*, 1-10.
- Kovalenko, A. G., Abraham, C., Graham-Rowe, E., Levine, M., & O'Dwyer, S. (2022). What Works in Violence Prevention Among Young People?: A Systematic Review of Reviews. *Trauma, Violence, & Abuse*, 23(5) 1388-1404
- Kettrey, H. H., & Marx, R. A. (2019). The Effects of Bystander Programs on the Prevention of Sexual Assault across the College Years: A Systematic Review and Meta-analysis. *J Youth Adolesc*, 48(2), 212-227.
- Mujal, G. N., Taylor, M. E., Fry, J. L., Gochez-Kerr, T. H., & Weaver, N. L. (2019). A Systematic Review of Bystander Interventions for the Prevention of Sexual Violence. *Trauma, Violence, & Abuse*.
- Nation, M., Crusto, C., Wandersman, A., Kumpfer, K. L., Seybolt, D., Morrissey-Kane, E., & Davino, K. (2003). What works in prevention: Principles of effective prevention programs. *American Psychologist*, 58(6-7), 449-456.
- Neighbors, C., Walker, D.D., Mbilinyi, L.F., O'Rourke, A., Edleson, J.L., Zegree, J. and Roffman, R.A. (2010) Normative misperceptions of abuse among perpetrators of intimate partner violence. *Violence Against Women* [online]. 16 (4), pp. 370-386

Agenda Item 4.1

Memorandum of Understanding

Between

The Welsh Ministers

And

The Secretary of State for the Home Department

1 June 2023

Memorandum of Understanding

The participants in this Memorandum of Understanding (“MoU”) are:

(1) The Welsh Ministers; and

(2) The Secretary of State for the Home Department.

(together “the Participants”)

1. Background

The Protection from Sex-based Harassment in Public Bill (“the Bill”) was introduced in the UK Parliament, on 15 June 2022.

The Bill makes provision in the following areas:

- a) Clause 1 provides for the new offence of ‘Intentional harassment, alarm or distress on account of sex’ to be inserted into the Public Order Act 1986.
- b) Clause 2 provides that the Secretary of State must issue and publish guidance to police about the offence, and in particular include guidance about the reasonable conduct defence in section 4A(3)(b)¹ of the Public Order Act 1986.
- c) Clause 3 makes consequential amendments to the Football Spectators Act 1989, the Police Act 1997, and the Elections Act 2022 as a result of the creation of the offence in Clause 1.
- d) Clause 4 confirms the extent, commencement and short title of the Bill.

The Bill, as amended, extends to England and Wales (the consequential amendments in clause 3 have the same extent as the provisions amended). Clauses 1, 3 and 4 (the latter in so far as it relates to the commencement of clauses 1 and 3) make provision within the legislative competence of the Senedd.

On 17 April 2023, the Welsh Government laid a legislative consent memorandum recommending that the Senedd provides its consent to the relevant provisions in the Bill.

Clause 4(3) of the Bill grants the Secretary of State the power to make a statutory instrument appointing the commencement date of clauses 1, 2 and 3 of the Bill. Clause 4(4) allows for different dates to be appointed for different purposes.

This MoU sets out the process for the Participants to agree the commencement date for clauses 1 and 3 (“the Relevant Provisions”) of the Bill.

¹ Section 4A(3) It is a defence for the accused to prove— (b)that his conduct was reasonable.

2. Operation of the MoU

The Secretary of State agrees to:

- Write to the Welsh Ministers and propose a commencement date (the same date to cover commencement in both Wales and England) for the Relevant Provisions before exercising the power under the Bill to make a statutory instrument appointing a commencement date for the Relevant Provisions.
- Provide the Welsh Ministers a reasonable time to respond to the proposed commencement date before making any statutory instrument appointing a commencement date for the Relevant Provisions.

The Welsh Ministers agree to:

- Respond within a reasonable time and either agree to the proposed commencement date or propose an alternative commencement date for the Relevant Provisions.

The Participants agree that:

- This MoU is not legally binding on the Participants.
- This MoU will come into effect upon the date when both Participants have signed the MoU and will remain effective until the Relevant Provisions come into force.
- If the Welsh Ministers propose an alternative commencement date and the Secretary of State does not agree with it, the Participants will arrange a meeting between officials to discuss and seek to agree a suitable commencement date.

In witness thereof, this MoU has been prepared in both English and Welsh and once completed the Participants must each retain a copy.

[For the Welsh Ministers]



Signed:

Name: Jane Hutt MS

Date: 01/06/2023

Minister for Social Justice and Chief Whip

[For the Secretary of State for the Home Department]

Signed:



Name: Sarah Dines MP

Date: 01/06/2023

Minister for Safeguarding

Jane Hutt AS/MS
Gweinidog Cyfiawnder Cymdeithasol a'r Prif Chwip
Minister for Social Justice and Chief Whip

Agenda Item 4.2

Llywodraeth Cymru
Welsh Government

Russell George MS
Chair, Health and Social Chair Committee

Jenny Rathbone MS
Chair, Equality and Social Justice Committee

2 June 2023

Dear Russell and Jenny,

Equality, Local Government and Communities Committee report: Into sharp relief: Inequality and the pandemic

Please accept my apologies for the delay in responding to your letter in relation to RNIB highlighting recommendation 37 of a report to the previous Senedd's Equality, Local Government and Communities Committee regarding inequality and the pandemic. This recommendation calls for an accessibility lead within the Welsh Government to oversee the production of all key public health and other information in accessible formats. I have copied this letter to the Minister for Health and Social Services as this recommendation clearly impacts on both of our portfolio areas.

The Welsh Government is fully committed to ensuring accessibility of all information for all Welsh citizens. You will be aware during the Covid-19 pandemic we ensured all public information was fully accessible including the presence of a British Sign Language (BSL) interpreter at each of our Covid-19 news conferences and ensuring that large print and braille were available on request alongside other accessible formats on key products, such as the shielding letters from the Chief Medical Officer.

During the pandemic we established an Accessible Communication Group, to discuss and overcome the barriers stopping people from accessing information. This Group includes a wide range of organisations, who have testified to the difficulties that some of those with impairments experienced when trying to access clear and concise information during the coronavirus pandemic. The Group also includes organisations who represent refugees, children and the Gypsy, Roma Traveller communities. The group co-created a guidance document which sets out the standards that the Welsh Government will meet to make sure that communications are accessible and meet the needs of people across Wales.

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

We continue to maintain and improve our advice and guidance on accessibility on a cross-government basis. This sets clear and commonly understood standards which apply to the whole government and provides a framework for all departments to provide key information in a way which is accessible to all. It is the responsibility of all parts of the government to ensure that the material they produce aligns with these standards. As part of the development of those standards, it is clear that given the breadth and complexity of its policy responsibilities, the Welsh Government generates and publishes a very significant amount of material every year, over which it would likely be impossible for one individual to maintain effective oversight. We will continue to keep the recommendation for a single lead under consideration, but the current approach of system-wide responsibility for accessibility, carried out on a cross-government basis, and with a foundation of common standards, enables effective delivery to meet the needs of the people of Wales.

The Social Services and Well-being (Wales) Act 2014, and supporting codes of practice set out requirements, in line with the Equality Act 2010, to ensure equality of access to services. This includes local authorities providing information advice and assistance relating to care and support, which is accessible and meets the needs of the population. Also, in delivering care and support, local authorities must use the language of need and preferred means of communication, for example British Sign Language, braille, large print versions.

This means people must be able to fully participate in the assessment of their potential needs. Everyone must be able to express their views, wishes and feelings as an equal partner about what matters to them and what they want to achieve. Our 2014 Act requires that local authorities must support people to be able to do this.

The 2014 Act also requires Regional Partnership Boards to assess and plan for the care and support needs of their populations. Guidance sets out core themes for these population assessments and area plans, including for those with sensory impairments.

The Welsh Government is fully committed in supporting all disabled people in Wales. We have set up the Disability Rights Taskforce which will run until 2024. It brings together people with lived experience, Welsh Government Policy Leads and representative organisations to identify the issues and barriers that affect the lives of many disabled people. The Taskforce works within the scope of the Welsh Government's legal remit and not in areas that solely fall under the UK Government's responsibilities.

The Taskforce established a number of workstreams which were identified as priority areas:

- Embedding and Understanding of the Social Model of Disability (across Wales)
- Access to Services (including Communications and Technology)
- Independent Living: Health, Wellbeing and Social Care
- Travel
- Employment and Income
- Affordable and Accessible Housing
- Children and Young People
- Criminal justice System

The Working Groups have a range of stakeholders which includes organisations that support disabled people, disabled people with lived experience and Welsh Government policy leads. These include blind and partially sighted members who provide lived experience to working groups, including travel and access to services. The working groups' co-produced recommendations will form an action plan, to improve the lives of disabled people in Wales.

Yours sincerely,

A handwritten signature in black ink that reads "Jane Hutt". The signature is written in a cursive style with a long horizontal line above the first few letters.

Jane Hutt AS/MS
Gweinidog Cyfiawnder Cymdeithasol a'r Prif Chwip
Minister for Social Justice and Chief Whip

**Y Pwyllgor Iechyd a
Gofal Cymdeithasol**

**Health and Social Care
Committee**

**Y Pwyllgor Cydraddoldeb
a Chyfiawnder Cymdeithasol**

**Equality and Social Justice
Committee**

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Jane Hutt MS
Minister for Social Justice

3 January 2023

Dear Jane

Equality, Local Government and Communities Committee report: Into sharp relief: inequality and the pandemic

The Equality and Social Justice Committee and Health and Social Care Committee have recently been contacted by RNIB Cymru about a report of the previous Senedd's Equality, Local Government and Communities (ELGC) Committee regarding inequality and the pandemic.

RNIB Cymru has highlighted recommendation 37 of that report, which called for the Welsh Government to appoint an accessibility lead within the Welsh Government to oversee the production of all key public health and other information in accessible formats. This recommendation was accepted by the Welsh Government in its response to the report (September 2020), but RNIB Cymru is concerned that this has not yet been implemented.

This issue was raised again in a report by the Health and Social Care Committee in April 2022.¹ The Welsh Government accepted the Health and Social Care Committee's recommendation. However, the narrative in the response focused on the establishment of the Disability Rights Taskforce, a review of the use of British Sign Language and the preparation of guidance for staff prepared by the Access to services (including accessible communications) working group rather than directly addressing the

¹ Health and Social Care Committee, Waiting well? The impact of the waiting times backlog on people in Wales, April 2022, recommendation 13

appointment of an accessibility lead within the Welsh Government to oversee the production of all key public health and other information in accessible formats.

We would be grateful if you could provide an update in relation to the ELGC Committee's initial recommendation, including timescales for its implementation and any reasons why the appointment of an accessibility lead was omitted from the subsequent response to the Health and Social Care Committee.

We are copying this letter to the Minister for Health and Social Services.

Yours sincerely



Russell George MS
Chair, Health and Social Care Committee



Jenny Rathbone MS
Chair, Equality and Social Justice Committee

cc Eluned Morgan MS, Minister for Health and Social Services

Croesewir gohebiaeth yn Gymraeg neu Saesneg. We welcome correspondence in Welsh or English.

Agenda Item 4.3

Jane Hutt AS/MS
Gweinidog Cyfiawnder Cymdeithasol a'r Prif Chwip
Minister for Social Justice and Chief Whip



Llywodraeth Cymru
Welsh Government

Our ref: MA/JH/1463/23
Mark Isherwood MS
Chair of Public Accounts and Public Administration Committee
Senedd Cymru
Cardiff Bay CF99 1SN

06 June 2023

Dear Mark,

Following publication of the Public Accounts Committee (5th Senedd) report *Delivering for Future Generations – the story so far* in March 2021 you wrote to me in December 2021 requesting six-monthly updates on the Welsh Government's progress in implementing the report's recommendations. In my letter to you on 10 January 2022, I committed to provide updates in June and December 2022. These updates were sent to you on 25 May and 1 December 2022.

I am of the view that all recommendations for the Welsh Government have been complete and addressed and therefore I plan to use our annual progress reporting on the recently published [Well-being of Future Generations Continuous Learning and Improvement Plan 2023-25](#) to continue to communicate the progress we are making to implement the Well-being of Future Generations (Wales) Act 2015. The Plan brings together over 50 actions that the Welsh Government is taking to deepen the understanding and application of the sustainable development principle in how the organisation works, including how we use our budget processes, public services boards arrangements, and our national milestones and indicators to do this. The Plan also serves as the Welsh Government's substantive response to the recommendation in the Future Generations Commissioner for Wales' section 20 review report, which was published in December 2022.

I will ensure that you are sent copies of the annual progress reports when they are published.

Yours,

Jane Hutt AS/MS
Gweinidog Cyfiawnder Cymdeithasol a'r Prif Chwip
Minister for Social Justice and Chief Whip
Copied to the Chair of Equality and Social Justice Committee

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

Jane Hutt AS/MS
Gweinidog Cyfiawnder Cymdeithasol a'r Prif Chwip
Minister for Social Justice and Chief Whip

Agenda Item 4.4

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/JH-/1229/23

Jenny Rathbone MS
Chair, Equality and Social Justice Committee

7 June 2023

Dear Jenny

Thank you for sending me the Equality and Social Justice Committee's report entitled *60% - Giving them a voice - Speech, Language and Communication Needs in the Youth Justice System*.

Please find attached our response to the committee's recommendations.

Yours sincerely



Jane Hutt AS/MS
Gweinidog Cyfiawnder Cymdeithasol a'r Prif Chwip
Minister for Social Justice and Chief Whip

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

Written response from the Welsh Government to the report by the Equality and Social Justice Committee entitled *60% - Giving them a voice - Speech, Language and Communication Needs in the Youth Justice System*

A detailed response to each of the recommendations is listed below.

Recommendation 1

The Committee recommends that

We recommend that the Welsh Government convene a summit of key stakeholders working in the sector with the aim of formulating a new workstream looking specifically at the impact of SLCN on children and young people and the link to the involvement of most young people involved with the youth justice system. The summit and concomitant workstream should be finalised before the end of 2023 and include realistic actions, measurable targets, and a timeline for their completion within the All-Wales Justice Board forward work programme.

Response: Accept

Work is ongoing under the Youth Justice Blueprint on a Prevention Framework for youth justice services. This will consider the preventative work delivered by youth offending services teams across Wales, ensuring there is a framework in place for sharing knowledge and promoting consistency of delivery. This framework will include how youth offending services teams work in partnership with devolved policy areas and will structure conversations about possible opportunities for improving the strength and consistency of provision for these services across Wales.

Financial Implications – Not yet known

Recommendation 2

The Committee recommends that

The Welsh Government should set out in its response to this report how it intends to work with local education authorities, school leaders and governors and, where appropriate, local health boards, to ensure better understanding and awareness of SLCN in children and young people as they progress from primary to secondary school.

Response: Accept

The Curriculum for Wales which has been introduced into schools from September 2022 places emphasis on speaking skills. Oracy is a key part of the literacy cross curriculum skill which for the first time is a mandatory part of the curriculum and will be taught across all subject areas.

The 'Our National Mission: High Standards and Aspirations for All' document sets out that all learners will receive targeted support to improve cross- curriculum skills as we deliver on our Oracy and Reading Toolkit.

Current preventative activities include Welsh Government's 'Talk with Me' (TWM) delivery plan, which prioritises evidence based support for SLC at universal, population and targeted levels. By getting early identification and support right, we can reduce the demand for specialist services and free up capacity to support learners with more specialist needs, including ALN.

Objective 4 of the TWM plan is to 'upskill the childcare, health and social care workforce to address SLC needs'. The All Wales SLC 0-5s training pathway tool has been rolled out in order to address this commitment. Settings across Wales can access a range of SLC training options. We also have a dedicated Talk with Me practitioner page which provides a wide range of resources to support practitioners in giving evidence-based support.

Financial Implications – None

Recommendation 3

The Committee recommends that

The Welsh Government should work with Police and Crime Commissioners through the Youth Justice Blueprint Programme Board to assess the feasibility of having dedicated NHS speech and language therapists working in custody suites at police stations with a view to embedding them across Wales in the medium term. The initial feasibility work should be concluded within three months and the Welsh Government should report back to this Committee with its findings.

Response: Reject

The benefits arising from this recommendation for young people in custody suites are recognised. However, there are only around 800 registered speech and language therapists (SLTs) in Wales. There are currently insufficient NHS employed SLTs to meet this additional workload. A feasibility study will identify that workforce pressure. This would require additional training places and the creation of workforce establishment (posts). There could be potential for private SLTs to be used but given the current challenging financial situation, there would be significant challenge in funding both the education of additional SLTs to meet this demand in the long term

and a challenge in funding the employment of these workers, either by Health or the Justice system.

One of the actions in the National Workforce Implementation Plan is for HEIW to review the allied health professions, including SLTs, to understand the current position and future needs to deliver services. This should provide some of the data and analysis to understand the workforce requirements.

Financial Implications – Not yet known, however there could be significant workforce implications given current waiting times. Potential financial implications could arise as NHS SLTs are not employed to do this currently. Waiting times data (Feb 2023) shows 3,805 people currently waiting for an SLT assessment and treatment.

Recommendation 4

The Committee recommends that

The Welsh Government should work with its partners in the youth justice system to extend the current ‘active offer’ entitlement of independent advocacy to children and young people with speech, language and communication needs in the criminal justice system and report back on progress within 6 months.

Response: Accept in principle

We will use the evidence provided to the Committee to ensure that children’s views, wishes and feelings continue to be at the centre of decisions that affect them. This will engage all relevant partners to secure a consistent and coherent offer for independent advocacy across the youth justice system that empowers, listens and responds to children’s voices.

The work on the Prevention Framework for youth justice services being delivered under the Youth Justice Blueprint will ensure this offer is embedded and used effectively across the youth justice system.

Financial Implications – No immediate implications

Recommendation 5

The Committee recommends that

The Welsh Government should update the Committee on progress by HMPPS in implementing the recommendations of the Joint Inspection Report on Neurodiversity in the Criminal Justice System.

Response: Accept in principle

As the CJS is non-devolved Welsh Government cannot comment on progress. However, in order to improve outcomes for neurodivergent people within the CJS in line with recommendation 1 of the Joint Inspection on Neurodiversity in the Criminal Justice System, we continue to work closely with our colleagues in the Ministry of Justice to advise on devolved areas and where appropriate advise on the development of appropriate strategies. We are working with the newly appointed ND co-ordinators in prisons within Wales and are helping facilitate better connections between the MoJ and ND services in Wales.

Financial Implications – No immediate implications

Recommendation 6

The Committee recommends that

The Welsh Government should work with local authorities to develop plans for embedding speech and language therapists within every Youth Offending Team in Wales. This work should be completed by December 2023.

Response: Reject

The work on a Prevention Framework for youth offending in Wales, being taken forward under the Youth Justice Blueprint and referred to in our response to Recommendation 1, will also be relevant for this recommendation.

The benefits for young people arising from this recommendation are recognised. However, there are only around 800 registered speech and language therapists in Wales. There are insufficient NHS employed SLTs to meet this additional workload to NHS services. This would require additional training places and workforce supply. A feasibility study will identify that workforce pressure. There could be potential for private SLTs to be used, but given the current challenging financial situation there would be significant challenge in funding both the education of additional SLTs to meet this demand in the long term and a challenge in funding the employment of these workers, either by Health or the Justice system.

One of the actions in the National Workforce Implementation Plan is for HEIW to review the allied health professions, including SLTs, to understand the current position and future needs to deliver services. This should provide some of the data and analysis to understand the workforce requirements.

Financial Implications – There could be significant workforce implications here given current waiting times. Potential for significant financial implications as NHS SLTs are not employed to do this currently.

Recommendation 7

The Committee recommends that

The Welsh Government should work with Health Education Improvement Wales (HEIW) to address any shortages being faced in the speech and language therapy profession, mapping the current roles and competencies of the SLCN workforce and ensuring adequate future workforce planning. The initial mapping work should be completed by December 2023.

Response: Accept

The Minister for Health and Social Service published the National Workforce Implementation Plan in January 2023. In the plan two specific actions have been assigned to HEIW regarding all Allied Health Professions:

- HEIW will review allied health professions to understand the current position and future needs to deliver our services, resulting in an AHP retention plan. This action is due for completion by 31 July.
- HEIW will use the AHP workforce guidance to organise how AHPs work in integrated services, maximising their impact, wellbeing and professional governance and skill mix. This action is due for completion by 30 September.

It is intended these actions will assist in addressing workforce planning across all AHPs, including the speech and language therapy profession.

Welsh Government have established a Strategic Workforce Implementation Board, who are directly responsible to the Minister for Health and Social Services, that will ensure progress against the actions in the Plan. I understand Caroline Walters of the Royal College of Speech and Language Therapists is a member of this board.

HEIW is responsible for the annual education and training commissioning process in Wales, to address workforce requirements on behalf of the NHS Wales.

There are currently 49 speech and language therapist training places available across Wales, split across the two training programmes operating in Wrexham and Cardiff. The number of student places was increased in 2020 by 10%, from 44 places to 49. The number remains at 49 for 2023/24, to match service demand.

HEIW will continue to engage with NHS health boards, trusts and wider stakeholder groups including Social Care Wales to create and inform the education and training plan for 2024/25. Ultimately it is HEIW's responsibility to produce a plan that is deliverable and meets long term service needs within the context of the education and training capacity available.

Financial Implications – None. Any additional costs will be drawn from HEIW's existing programme budgets.

Agenda Item 4.5

Ynys Hutt
Gweinidog Cyfiawnder Cymdeithasol a'r Prif Chwip
Minister for Social Justice and Chief Whip



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-JH-1398-23

Jayne Bryant
Chair, Children and Young People Committee

Jenny Rathbone
Chair, Equality and Social Justice Committee

By email only.

07 June 2023

Dear Jayne and Jenny,

Thank you for your letter of 22 May seeking views on Committee questions relating to the Illegal Migration Bill. Thank you also for agreeing to the slight extension in providing this letter for your consideration.

Below I have listed your questions as sub-headings with my responses underneath.

An update on discussions with the UK Government, including details of any assurances the Welsh Government is seeking on the impact of the Bill on unaccompanied asylum seeker children.

I met with the UK Minister for Immigration, Robert Jenrick MP, on 30 March to ensure he was aware of our concerns with the Bill and our view that some of the Bill's provisions impacted on devolved competence. We have followed up with letters to UK Ministers and through engagement between officials at the Home Office.

We have expressed our concern that the content of the Bill does not place the rights and needs of the child at the forefront of decisions. We have made clear our belief that local authority social workers are best placed to assess the care and support needs of children who arrive in the UK without prior immigration permission. We have stated in the Legislative Consent Memorandum and in engagement with the UK Government that we will not support the diminution of this authoritative role for social workers in assessing what is in the best interests of children in their care.

Our initial concerns related to the constitutional erosion of Senedd Cymru's competence to legislate on matters of social care in Wales, as well as the more practical concern that the

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

Secretary of State may remove a child from care in Wales despite the professional opinion of expert social workers.

As amendments have been laid, our concerns have broadened to include concerns that children will be treated as adults, either because they refuse to consent to invasive so-called 'scientific' methods of age assessment or because the Home Office has removed the right of appeal against an age assessment decision. Both of these outcomes will create safeguarding concerns in Wales and the potential removal of children from the UK.

Unfortunately, despite discussions the UK Government has made no offer to engage proactively with our concerns and find ways to ensure the ongoing lead role for local authorities in any consideration of the best interests of these children.

It is also important to note that the Bill proposals do not only affect unaccompanied **asylum seeking** children. The Bill is drafted to include any unaccompanied child who meets the four conditions in clause 2 of the Bill.

The Welsh Government's concerns in respect of the impact the Bill would have on separated asylum seeking children in Wales.

It is noted that clause 19 which is about extending the Bill's provisions in relation to unaccompanied children to Wales, Scotland and Northern Ireland that the Home Secretary has a power to make extending regulations rather than a duty. It is also noted that in relation to the clauses relating to unaccompanied children, these are powers for the Home Secretary rather than duties and s/he will use them 'principally' in specific circumstances.

However, while these powers may or may not be used in Wales, it is important to make the following points.

When the clause 15-18 provisions are used (following extension to Wales through clause 19), a child would be removed from the local authority's care. The local authority will have thought carefully about the care and support needs of that child and will have put such support in place to ensure compliance with its duties under the Social Services and Well-being Act (Wales) 2014. When the child is removed, this will inevitably have a detrimental effect on that child's ability to exercise their rights and maintain integration in the community they have been living within.

The accommodation provided by the Secretary of State for unaccompanied children may be detained or non-detained accommodation, as this is not stated on the face of the Bill. There is no duty to provide care and support to these children, as required by the Children Act 1989 (and in Wales, by Part 6 of the Social Services and Well-being (Wales) Act 2014). The Secretary of State would have a power to provide support for the child but not a duty.

Welsh Government feels it is vital the protection from the power to remove which applies to unaccompanied children should extend beyond their 18th birthday. Having the threat of removal hanging over children's heads as they reach adulthood will risk many of them going missing in an attempt to avoid this, leaving them open to exploitation and abuse.

The reference to the Home Office detaining children and young people is of concern. Welsh Government does not agree the Home Office should be provided with the legal power to accommodate children and is concerned this function could replicate and raise the same issues as the contingency hotel accommodation for unaccompanied asylum-seeking children in England. This has proved to not meet their needs and has highlighted significant safeguarding issues.

Clause 16 enables children to be taken from Secretary of State accommodation and returned to local authority care but there is no requirement (or expectation) that this would mean the child was returned to the local authority where they had previously been cared for, nor is there a clear understanding about how the local authority would ensure placements are kept available for removed children.

Finally in relation to unaccompanied children, Article 22 of the UN Convention on the Rights of the Child states that if a child is seeking refuge, governments must provide them with appropriate protection and assistance to help them enjoy all the rights in the Convention. This Bill is clearly incompatible with this Article.

Ultimately, such children may be removed from the UK regardless of the views of the Welsh local authority social worker's expert opinion about what is in the best interests of that child.

In relation to clauses 55 and 56, the UK Government's approach diverges from established Welsh approaches for assessing the age of unaccompanied children, as set out in the [Welsh Government Age Assessment Toolkit](#).

Welsh Government does not agree with the provision in the Bill relating to 'consequences of a person refusing consent for their age to be assessed by a specified scientific method'. This could result in them being treated as an adult if they refuse consent to scientific age assessment methods. It contradicts the recommendations made by the Home Office Age Estimation Scientific Advisory Committee (AESAC) which recommended in its 2022 report on age assessments: - "unaccompanied asylum-seeking children should be provided with clear information explaining the risks and benefits of biological evaluation in a format that allows the person undergoing the process to give informed consent and no automatic assumptions or consequences should result from refusal to consent."

Welsh Government is concerned the provision will undermine children's right to informed consent as the potential consequences of detention and removal (notwithstanding the trauma they have likely already suffered) will place them under significant pressure to consent to the process.

It remains our position that exposure to radiation (used in x-rays for the biological assessment of age) for a non-medical purpose is an unethical and unreliable indicator of age. Welsh Government feels that children and young people arriving in the UK seeking safety and shelter need to be met with care and dignity and should be treated as children first and migrants second and supported appropriately.

Welsh Government is concerned the Bill will make the appeals process near impossible for children who have been incorrectly assessed as adults. The Bill sets out that someone subject to the duty to arrange removal under the Bill cannot appeal against an age assessment decision. They would be permitted to apply for judicial review, but the application would 'not prevent the exercise of any duty or power under this Act to make arrangements for the person's removal'. Welsh Government feels that it is imperative that all children and young people should have the right to appeal decisions made about them, in particular when these can have such catastrophic consequences on their safety where deportation is considered.

This is particularly concerning as recent reports suggest that around two thirds of initial age assessment decisions are later found to be incorrect.¹ The removal of the appeals process, which was set out in the government's Nationality and Borders Act, could see children

¹ [Hundreds of UK asylum seeker children wrongly treated as adults, report shows | Immigration and asylum | The Guardian](#)

deported back to unsafe countries and denied their UNCRC-afforded rights to shelter and protection.

The impact of the UK Government's changes in this Bill would be that some children are wrongfully considered to be adults and removed from Welsh local authority care, accommodated with adults awaiting removal from the UK with the safeguarding concerns this brings, and then removed from the UK. We know that initial age assessment decisions are frequently successfully challenged and changed from a decision that someone is an adult, to recognition that the person is a child. The changes in the Bill prevent those reconsiderations taking place, leaving children in unsafe situations amongst adults.

The anticipated implications of Bill on the assessment of needs and provision of care and support under the Social Services and Well-being (Wales) Act 2014.

For the most part, the Bill provisions should not prevent Welsh local authorities from assessing the needs of unaccompanied children coming to their area, in accordance with the Social Services and Well-being (Wales) Act 2014. However, utilising the powers in clauses 15-18 would mean the interruption of the provision of care and support to affected children as they will be removed from local authority care. If the UK Government then decides it cannot remove the child from the UK in a timely manner, it is not clear how the child will be returned to local authority care.

Despite the UK Government's age assessment processes, there is no legislative reason why Welsh local authorities cannot also follow the Welsh Government Age Assessment Toolkit as part of their assessment of care and support needs in Wales. However, it is likely that some cases will lead to contrasting age assessment decisions. Should Welsh local authorities find that the person is a child with care and support needs, these can be provided locally – though the UK Government will not provide the funding required to provide necessary services if they consider the young person to be an adult. If the UK Government considers the young person to be an adult, the Secretary of State will be under a duty to remove this young person from the UK regardless of Welsh local authority assessments.

Whether the Bill is compatible with the Rights of Children and Young Persons (Wales) Measure 2011, including what impact it would have on the 'Child First, Migration Second approach' which underpins the delivery of support to child asylum seekers in Wales.

In Wales, local authorities treat all unaccompanied asylum-seeking children as looked after children in line with Part 6 of the Social Services and Well-being (Wales) Act 2014. The Act also provides for a range of assessment functions to help Welsh local authorities to consider the care and support needs of children in their area. Social services is a subject which is fully devolved to the Welsh Government and as such, all legislative and policy decisions relating to social services are for the Welsh Ministers.

In exercising their functions relating to looked after and accommodated children, local authorities must have regard to their overarching duties to have due regard to Part 1 of the United Nations Convention on the Rights of the Child as set out in section 7 of the Act. However, clauses 19 and 20 of the Bill would enable the Secretary of State to compel the transfer of an unaccompanied children into or out of their care regardless of the determinations that Welsh local authorities might make of the care and support needs of those children, or of what is considered to be in the best interests of those children, under the SSWBA and the UNCRC.

It is noted that there is no specific Children's Rights Impact Assessment (CRIA) carried out on the Bill. A CRIA would likely bring forward several areas where children's rights are denied. There is however reference to 'Age' in UK Government's [Equality Impact Assessment](#) (EIA) published on 26 April 2023 but no clear rationale explaining why UK Government considers the Bill to have no negative impact on children.

The Rights of Children and Young Persons (Wales) Measure 2011 places a due regard duty on Welsh Ministers in relation to the consideration of children's rights in policy making. Children's rights are set out in the Articles of the UNCRC which in turn is the articulation of children and young people's human rights as set out in the Human Rights Act 1998 and the European Convention on Human Rights. It is noted that on the front page of the Bill itself, UK Government cannot confirm that the Bill complies with the European Convention on Human Rights.

Article 1 of the UNCRC states that everyone under the age of 18 has all the rights in the Convention. It is noted that the EIA references the numbers of people who crossed the channel in 2022 – 45,755. It breaks down the figures for 18–39-year-olds (33,464) but does not give the ages of the 12,291 remaining people who travelled. Thus, it is unclear how many were under 18. In any event, all of those that are children have the human right to be treated as children and access the protections afforded by Article 1 of the UNCRC. It is noted that the Bill states that its removal provisions apply from 7 March 2023 and that the Home Secretary has the power to remove an unaccompanied child who arrived here on or after that date. It is clear then that this provision creates a new class of child; one without any of the 42 Convention rights afforded by Article 1.

The anticipated cost burdens which would be imposed on Welsh local authorities.

At present it is not possible to consider the costs of these changes to Welsh local authorities. The explanatory notes for the Bill do not provide information about the costs imposed by these clauses. The costs associated with use of the powers under clauses 15-18 would also only arise if the Secretary of State decides to extend the provisions to Wales.

Nevertheless, it is clear that there would be costs to local authorities if these proposals are implemented. In view of the potential for children to be incorrectly assessed as an adult (with the mental health impact on children and safeguarding risks), there could be significant cost burdens imposed for Welsh local authorities and / or Welsh health bodies, by these clauses and regulations made under them. The use of powers under the amended clause 3 to alter Senedd legislation is likely to incur costs in relation to legal advice, changes to guidance, and training but these cannot be estimated at this time.

Concerns relating to the Bill and compatibility with Convention rights.

In making a s.19(1)(b) statement upon introducing the Bill, the Secretary of State is unable to confirm that its provisions are compatible with the European Convention on Human Rights ("the Convention"). As well as probably breaching International Human Rights Law, provision in the Bill narrows the scope of human rights protections in the UK so as remove such protections entirely in some cases. Doing so puts the UK further in breach of its obligations under the Convention. This sits wholly at odds with the centrality of the Human Rights Act 1998 to the devolution settlement. The Welsh Ministers and the Senedd, in exercising respective powers, must comply with the rights contained in the Convention. Many affected persons will have no legal protection. The few who do are likely to face lengthy procedures which keep them in a state of limbo posing real risks to their emotional well-being and general welfare.

Are you able to confirm whether the post of Independent Anti-Slavery Commissioner is vacant at present and if so, the duration of the vacancy and when we can expect the post to be filled?

I can confirm the position of Independent Anti-Slavery Commissioner has been vacant since Dame Sara Thornton left office in April 2022. I set out my concern about the delay in filling this post in my [Written Statement on tackling modern slavery and supporting survivors](#) in November 2022. My officials have regularly raised these concerns with the Home Office. The Home Office re-opened the recruitment process for appointing a new Commissioner earlier this year. We understand this process is due to conclude shortly.

I hope that these answers are useful in the Committees' considerations on the Illegal Migration Bill Legislative Consent Memoranda.

Yours sincerely,

A handwritten signature in black ink that reads "Jane Hutt". The signature is written in a cursive style with a long horizontal stroke above the first letter of "Jane".

Jane Hutt AS/MS
Gweinidog Cyfiawnder Cymdeithasol a'r Prif Chwip
Minister for Social Justice and Chief Whip

Children and Young People Committee

Equality and Social Justice Committee

Minister for Social Justice and Chief Whip

Deputy Minister for Social Services

22 May 2023

Dear Ministers,

UK Government's Illegal Migration Bill

As you are aware, the UK Government's Illegal Migration Bill ("the Bill") was introduced to the UK Parliament on 7 March 2023. The Bill seeks to change the law regarding the detention and removal of those who arrive in the UK in breach of immigration control, either to their home country or a safe third country.

The Welsh Government laid a Legislative Consent Memorandum (LCM) setting out that clauses 19 and 20 of the Bill require consent from the Welsh Parliament. The LCM has been referred to several Senedd Committees and this letter is being issued jointly by Children, Young People and Education and the Equality and Social Justice Committee. As part of considering its response to the LCM, we would like to invite you to give written evidence regarding your views on the issue of legislative consent.

In particular, we would be most interested to hear your views on the following:

- An update on discussions with the UK Government, including details of any assurances the Welsh Government is seeking on the impact of the Bill on unaccompanied asylum seeker children.
- The Welsh Government's concerns in respect of the impact the Bill would have on separated asylum seeking children in Wales.



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- The anticipated implications of Bill on the assessment of needs and provision of care and support under the Social Services and Well-being (Wales) Act 2014.
- Whether the Bill is compatible with the Rights of Children and Young Persons (Wales) Measure 2011, including what impact it would have on the 'Child First, Migration Second approach' which underpins the delivery of support to child asylum seekers in Wales.
- The anticipated cost burdens which would be imposed on Welsh local authorities.
- Concerns relating to the Bill and compatibility with Convention rights.

Finally, are you able to confirm whether the post of Independent Anti-Slavery Commissioner is vacant at present and if so, the duration of the vacancy and when we can expect the post to be filled?

Time is very much of the essence in this matter and therefore the Committee asks that all written responses are received by no later than 1 June 2023.


Yours sincerely,

Jayne Bryant MS



Chair Children and Young People
Committee
Welsh Parliament

Jenny Rathbone MS



Chair, Equality and Social Justice Committee
Welsh Parliament

Croesewir gohebiaeth yn Gymraeg neu Saesneg

We welcome correspondence in Welsh or English



Agenda Item 7

By virtue of paragraph(s) vii of Standing Order 17.42

Document is Restricted

Evidence submitted by the Bevan Foundation to the Children, Young People, and Education Committee and the Equality and Social Justice Committee as they consider their response to the Legislative Consent Memorandum laid in respect of the Illegal Migration Bill (referred to below as 'the Bill').

This document is written in reference to the amended Bill as at 1 June 2023 (HL Bill 133)

Key points

- The Bill runs counter to the vision of Wales as a Nation of Sanctuary and to the Child First, Migrant Second approach that underpins the delivery of support to asylum-seeking children in Wales.
- The Bill makes provisions in the devolved area of social care in Wales.
- The Bill introduces powers that conflict with local authority duties under the Social Services and Well-Being (Wales) Act 2014.
- The Bill is incompatible with the international obligations of the UK, and Wales as a devolved government, under the 1951 UN Refugee Convention, the European Convention on Human Rights (ECHR), the UN Convention on the Rights of the Child (UNCRC), and the Council of Europe Convention on Action Against Trafficking in Human Beings.
- The Bill contravenes the Rights of Children and Young Persons (Wales) Measure 2011.
- The Bill fails to consider the best interests of the child.
- The Bill makes provision within the devolved competence of the Senedd. We urge the Committees to recommend that the Senedd refuse legislative consent.

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Evidence

1. Overview: our view of the Bill

- 1.1 This is a response to the Committees' invitation to give evidence regarding the issue of legislative consent for the Illegal Migration Bill. It focuses on aspects of the Bill which require legislative consent from the Senedd.
- 1.2 The Bevan Foundation has broader concerns about the Illegal Migration Bill and its impact on human rights, the UK constitution, and the rule of law. The Bill runs counter to the Nation of Sanctuary principles and undermines the vision of Wales as a country where people seeking sanctuary "[are met with welcome, understanding, and celebration](#)".
- 1.3 The Illegal Migration Bill is not compatible with the obligations of the UK and Wales under international law.
- 1.4 The Bill's scope is broad. It removes the right to seek refugee protection for people arriving by irregular routes. It curtails the jurisdiction of the High Court in relation to decisions on detention and in certain circumstances limits the effects of judicial review. It provides extensive powers to the Home Secretary to repeal, amend, and revoke existing legislation and to implement further changes to law with minimal Parliamentary scrutiny.
- 1.5 The speed at which the legislation is being progressed is concerning, particularly given limitations that it will place on the courts and legislature to exercise their vital functions to challenge and constrain Executive powers.

2. Separated/unaccompanied children in Wales

2.1 Background

- 2.1.1 [StatsWales](#) shows that in 2022, local authorities in Wales looked after 110 unaccompanied children.
 - Every local authority in Wales looks after at least one unaccompanied child.
 - Numbers of unaccompanied children in Wales are likely to rise as transfers and asylum dispersals increase.
 - 30% of unaccompanied children in the UK are aged 15 or under.

2.1.2 In this document we use the term ‘unaccompanied children’ for clarity. We stress that there is no distinction between an unaccompanied child and any other child, other than their circumstances and life experiences.

2.2 Key concerns

2.2.1 Most unaccompanied children are forced to use irregular routes to seek protection in the UK due to the lack of regular routes. The Bill penalises children because of the way in which they are forced to seek protection.

2.2.2 More - and more consistent - support is needed for unaccompanied children and young people in Wales. We support the call for a [national guardianship scheme for all unaccompanied children in Wales](#) and ready access to expert legal advice and representation.

3. Implications for the care and support of children

3.1 Background

3.1.1 In line with the Social Services and Well-Being (Wales) Act 2014, unaccompanied children in Wales are treated as looked-after children.

3.1.2 Unaccompanied children are likely to have additional support needs. The Welsh Government briefing, [Supporting unaccompanied asylum-seeking children in Wales](#), states:

“These children are likely to be at heightened risk of exploitation or abuse and are less able to access education or opportunities to build social relationships with peers because of linguistic barriers.”

3.2 Key concerns

3.2.1 Unaccompanied children in Wales already face unacceptable risks. Children recently abducted from hotels in Sussex and Kent [have been found in North and South Wales](#). When the Home Office placed 87 asylum-seekers in a Snowdonia hotel last year, amongst residents were [15 young people in need of local authority care](#).

3.2.2 Without robust assessment procedures, appropriate care, and continuity of assistance and support extending beyond their period in care, unaccompanied children are at heightened risk of abduction, trafficking, and exploitation. It is vital for their well-being that the duty and power to provide care, support, and assistance remains with the local authority.

3.2.3 The following elements of the Bill would severely impact the welfare of children and young people and clash with duties conferred on local authorities by the Social Services and Well-Being (Wales) Act 2014.

3.3 Duty to remove care leavers from the UK

The current law:

3.3.1 [Part 6 of the Social Services and Well-Being \(Wales\) Act](#) places a [duty on local authorities](#) to provide support to care leavers. This recognises that young people leaving care need ongoing support, assistance, and contact.

3.3.2 The duty to support continues beyond the age of 18 where a young person has been in local authority care for 13 weeks or more before their 18th birthday.

The proposed law:

3.3.3 Clause 2(1) places a duty on the Home Secretary to arrange the removal of adults from the UK if they arrive by irregular routes. This duty would apply to young people on reaching the age of 18 and would result in the compulsory deportation of unaccompanied care leavers.

3.3.4 The duty would extend to children with family members in the UK, even where those families have been granted humanitarian protection and are recognised refugees.

3.3.5 The Bill severely restricts rights of appeal and limits the basis for legally suspending removal. It introduces a shortened procedure requiring a person to seek legal advice and make a claim within 7 days. The Home Office must reach a decision within 3 days.

3.3.6 Asylum claims of young people subject to the duty to deport would be declared inadmissible. Support and protections under the Modern Slavery Act 2015 would be removed. The duty to deport would apply even if a young person is a victim of trafficking, or where there is a human rights application or judicial review.

3.3.7 The legislation would restrict future grants of visas, settlement, and citizenship for anyone who has ever been subject to the duty to remove.

The impact:

- 3.3.8 The legislation would create conflicting duties on the part of the Home Secretary and local authorities in respect of 18-year-old care leavers who have been accommodated as unaccompanied children. It would render impossible local authority support for unaccompanied care leavers.
- 3.3.9 Pending deportation would have considerable impact on the emotional well-being of unaccompanied children throughout their period in care.
- 3.4 Powers to remove unaccompanied children from the UK

The current law:

- 3.4.1 The Social Services and Well-Being (Wales) Act 2014 places duties on local authorities towards children in need of care and support. These are:
- a duty to assess needs (Section 21)
 - a duty to meet care and support needs (Section 37)
 - a power to meet care and support needs (Section 38)
- 3.4.2 When looking after unaccompanied children, the local authority has an overarching duty to have due regard to Part 1 of the United Nations Convention on the Rights of the Child (UNCRC).
- 3.4.3 Under Section 28 of the Children Act 2004, local authorities and other statutory bodies have a duty to [work together to safeguard children](#) and young people. Section 47 places a duty on a local authority to make inquiries where it suspects that a child is at risk.
- 3.4.4 [Welsh Government guidance](#) states that when encountering an unaccompanied child, a local authority must consider whether they are at risk of serious harm. They should assess whether a child has been trafficked.
- 3.4.5 The duty to protect and safeguard children is a permanent duty and applies whether or not the child is in local authority care.

The proposed law:

- 3.4.6 Under Clause 3 of the Bill, the Home Secretary would have the power to remove unaccompanied children from the UK before they are 18.

3.4.7 The UK Government's [Illegal Migration Bill: children factsheet](#) (updated 11/05/2023) makes clear that the intention is to deport some children before they reach 18, and that children will be forcibly held in accommodation (detained) prior to removal. The circumstances in which they can be removed can be amended by regulation.

The impact:

3.4.8 The Home Secretary's power to remove unaccompanied children, coupled with extended detention powers (see 3.5 below), would conflict with the local authority duties of assessment and safeguarding. It would restrict the power of local authorities to meet unaccompanied children's needs through care, accommodation, and support.

3.4.9 In opposition to the Child First, Migrant Second approach, the proposed legislation places a child's position as a migrant and their mode of entry to the UK above their status as a child.

3.4.10 The Bill does not prioritise the welfare of the child or make provision for paying due regard to individual children's needs. It makes no reference to assessment of needs or protecting children's rights.

3.5 Extension of detention powers

The current law:

3.5.1 Detention of unaccompanied children is currently limited, under the Immigration Act 2014, to 24 hours in a "short-term holding facility".

3.5.2 [Home Office Enforcement Instructions and Guidance](#) currently lists unaccompanied children under the age of 18, pregnant women, and victims of trafficking, as among those unsuitable for detention.

The proposed law:

3.5.3 Clause 10 of the Bill gives the Home Secretary the power to detain a person "of any age", "in any place" considered appropriate, including unregulated settings. It removes existing statutory time limits on the detention of families with children, unaccompanied children, and pregnant women.

3.5.4 Clause 11 provides for the detention of unaccompanied children. Children may be detained while a decision on removal is reached, pending removal, or while a decision is made about whether to grant leave to remain.

The impact:

- 3.5.5 The Bill reverses the UK Government’s commitment to end child detention. It removes important safeguards for children and vulnerable adults and allows for the detention of victims of child trafficking and slavery.
- 3.5.6 The Bill does not specify time limits for detention. It gives the Secretary of State powers (though no duty) to specify time limits on detention via regulation rather than by primary legislation.
- 3.5.7 The Bill limits court oversight for detention, with no recourse to the courts for the first 28 days.
- 3.5.8 [The BMA has called](#) on “MPs and peers to oppose the bill on medical and ethical grounds”, particularly in relation to clauses enabling the indefinite detention of children.

3.6 Age assessment

The current law:

- 3.6.1 Age assessment falls under the devolved area of social care in Wales. Local authorities currently have responsibility to assess whether a person is a child and in need of care.

The proposed law:

- 3.6.2 Clauses 55 and 56 relate to the National Age Assessment Board and provide for scientific methods of age assessment, which may include scanning, X-raying, or measuring parts of the body, checking teeth, DNA sampling, and physical examination.
- 3.6.3 The Bill withdraws the right to appeal against an age assessment decision. The decision may be judicially reviewed but a child may be removed while judicial review is in progress. The Bill allows for a child to be treated as an adult if they refuse to consent to scientific methods.

The impact:

- 3.6.4 Treating children as adults is a major safeguarding risk and a flagrant breach of their rights. Traumatized children are more likely to refuse to submit to the invasive methods under consideration.

- 3.6.5 Scientific methods are not accurate in determining age. These measures are invasive and traumatic for children. The British Association of Social Workers (BASW) objects to both scientific methods and the establishment of the National Age Assessment Board.
- 3.6.6 Establishing the National Age Assessment Board in Wales would clash with the existing duty of social workers to assess the age and needs of unaccompanied children.
- 3.6.7 It is unethical to expose children to radiation from X-rays without medical cause or to subject them to unnecessary physical examinations.

3.7 Power to direct local authorities to transfer children from their care

The current law:

- 3.7.1 3.3.1, 3.4.1, and 3.4.3 above outline the duties of local authorities to assess, care for where required, and meet the needs of, unaccompanied children.

The proposed law:

- 3.7.2 Clauses 15 to 18 enable the Home Secretary to override the local authority duties to care for and support children. They give the Home Secretary powers to order local authorities to provide information about a child or to order a local authority to hand over a child. This power could be used to detain children prior to deportation but is not limited to this purpose.
- 3.7.3 These powers will be enforceable through courts regardless of any local authority assessment of a child's needs. This directly conflicts with local authority duties under the Social Services and Well-Being (Wales) Act 2014.

3.8 Power to make regulations to repeal or amend Welsh law

The proposed law:

- 3.8.1 Powers granted to the Home Secretary under Clauses 15 to 18 initially apply only in England. However, Clause 19 enables the Home Secretary to make regulations extending their application to Wales and to override Welsh law.
- 3.8.2 Clause 19(2) enables these regulations to "amend, repeal, or revoke any enactment" and 19(4) clarifies that this includes legislation previously or concurrently passed in the Senedd.

- 3.8.3 Clause 3 gives the Secretary of State the power to make consequential amendments to any Act or Measure of the Senedd.

The impact:

- 3.8.4 These clauses have substantial implications for Welsh law, particularly for the Social Services and Well-being (Wales) Act 2014 and the Rights of Children and Young Persons (Wales) Measure 2011.

4. Children's rights and human rights in Wales

- 4.1 Rights of Children and Young Persons (Wales) Measure 2011 and the UN Convention on the Rights of the Child (UNCRC)

The current law:

- 4.1.1 [The Rights of Children and Young Persons \(Wales\) Measure 2011](#) embeds the UN Convention on the Rights of the Child into Welsh law and places a duty on Ministers to have due regard to the Convention when exercising their functions. Decisions must be informed by a robust Children's Rights Impact Assessment. The Convention prioritises commitment to the best interests of the child and sets out key fundamental rights.

- 4.1.2 Article 2 of the UNCRC clarifies that Convention rights apply to all children. State signatories are required to respect and protect these rights:

“...irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

The proposed law:

- 4.1.3 The Bill impacts on the ability of unaccompanied children in Wales to exercise their right to seek refugee protection. It disregards legal protections afforded to children under international law and commitments made under the Council of Europe Convention on Action Against Trafficking in Human Beings. Clause 2(1) risks breaching a child's right to family reunion.

The impact:

- 4.1.4 The Illegal Immigration Bill is not compatible with the Rights of Children and Young Persons (Wales) Measure 2011 or the UN Convention on the Rights of the Child.

4.1.5 The [Children’s Commissioner for Wales](#) has expressed strong objections to the Illegal Immigration Bill on the grounds of children’s rights:

“Wales is a proud nation of sanctuary. This legislation, if passed, flies in the face of everything we stand for as a nation of sanctuary and is in clear breach of our human rights obligations.”

4.2 Committee on the Rights of the Child

4.2.1 On 2nd June, The UNCRC Committee on the Rights of the Child published the [Concluding Observations](#) (findings) of its combined sixth and seventh periodic report of the UK. The Committee highlights deep concerns about the potential impact of the Illegal Migration Bill on children.

4.2.2 The Concluding Observations call on the UK to “urgently amend” the Illegal Migration Bill”, removing provisions that would violate children’s rights and the UK’s international obligations, particularly:

- the “ban on the right to claim asylum”;
- provisions allowing for prolonged detention and removal of children;
- barriers to acquiring nationality; and
- lack of consideration of “the principle of the best interests of the child”.

4.2.3 The Committee also calls on the UK to:

- end “unreliable and invasive” age assessment procedures, ensure that children can challenge assessment outcomes, and have access to legal advice;
- ensure that age-disputed children are not removed to a third country;
- ensure children’s unqualified right to apply for family reunification;
- ensure child victims of trafficking always have access to relevant services; and
- “develop a consistent, statutory system of independent guardianship for all unaccompanied children”.

4.3 European Convention on Human Rights (ECHR)

4.3.1 Much has been written about the Bill’s negative impact on human rights. The [UNHCR has referred to the legislation as an “asylum ban”](#) and many agencies have raised human rights concerns. [A briefing from the Joint Council of the Welfare of Immigrants \(JCWI\)](#) summarises these concerns.

- 4.3.2 The human rights group [Liberty's response to the Illegal Migration Bill](#) highlights how different aspects of the Bill work together to enable primary legislation to be changed without reference to human rights.
- 4.3.3 The [Equality and Human Rights Commission](#) warns of six areas where the Bill risks breaching the UK's legal obligations and risks placing individuals in danger of increased harm.
- Undermining the principle of the universality of human rights (Clauses 1(5), 2 and 4).
 - Removal of protections for victims of trafficking (Clauses 21-28).
 - Restriction of the right to asylum and penalising refugees (Clauses 4, 11-14 and 29-36).
 - Risk of breaching the ECHR and the principle of non-refoulement under the Refugee Convention (particularly Clauses 37-49).
 - Detention, particularly of children (Clauses 3, and 11-15).
 - Insufficient consideration of the impact on equality.
- 4.3.4 The Commission has also expressed concern at the lack of time allocated for parliamentary scrutiny of the Bill.

5. Recommendations

- 5.1.1 The provisions in the Bill fall within the devolved competence of the Senedd in the areas of social care and children's rights. We therefore recommend that the Bill requires legislative consent from the Senedd.
- 5.1.2 In the Legislative Consent Memorandum laid on 31 March and the supplementary LCM of 26 May 2023, the Minister for Social Justice stated that she could not recommend that the Senedd give consent to provisions within the Bill that lie within the devolved competence of the Senedd.
- 5.1.3 We urge the Committees to accept the Minister's position and to recommend that legislative consent be withheld in respect of these elements of the Bill.

For further information please contact:
Isata Kanneh, Project Lead, Access to Justice

British Red Cross response to the Welsh Government's Legislative Consent Memorandum: Illegal Migration Bill May 2023

Background

The British Red Cross welcomes the opportunity to provide evidence to assist the Senedd's consideration of the Welsh Government's Legislative Consent Memorandum on the UK Government's Illegal Migration Bill. The British Red Cross is particularly concerned about the impact this Bill may have on unaccompanied children and victims of human trafficking where there are existing protections in devolved structures. When considering the matter of legislative competence, the British Red Cross encourages the Senedd to also consider what alternative routes may be available to mitigate risks and uphold protections for those affected by this legislation.

About the British Red Cross

We are part of the world's largest humanitarian network, the International Red Cross and Red Crescent Movement, which has 17 million volunteers across 192 countries. The British Red Cross helps people in crisis, whoever and wherever they are. We are part of a global voluntary network, responding to conflicts, natural disasters, and individual emergencies. We help vulnerable people prepare for, withstand, and recover from emergencies in their own communities.

In Wales, we provide a range of services across emergency response, health and social care and refugee support. We are the largest independent provider of refugee and asylum support in the UK and in 2022 our Refugee Services team in Wales helped 1,533 people. Our work includes supporting resettlement, destitution support, casework, advocacy, and peer led programs as well as international family tracing, family reunion and integration work. This sits alongside work in other nations of the UK where we work within a variety of frameworks and protection mechanisms.

Introduction

The British Red Cross is deeply concerned that the Illegal Migration Bill would punish people seeking safety simply for the way they arrive, when for the very large majority it is not possible to claim asylum in any other way. If successful, the Bill would prevent most people fleeing war

Y Groes Goch Brydeinig

and persecution from claiming asylum in the UK, including when they are from places where nearly everyone is recognised by the Home Office as being a refugee, such as Afghanistan, Syria, and Eritrea.¹

However, it will not stop people coming here. That is because policies of deterrence in destination countries are rarely effective – not least because people on the move often do not know about them. The Home Office’s own research² shows that people seeking asylum have limited to no knowledge of migration policies, and usually come because they have no choice where they end up, or because of family or cultural ties and sometimes because of the language. We believe this legislation would be devastating for the men, women, and children searching for safety in the UK.

At the same time, the Bill could prevent survivors of modern slavery from receiving any support simply because of how they arrived in the UK, including people who have been trafficked here. **Crucially, it would create enabling powers to disapply devolved legislation concerning trafficking and modern slavery.** It undermines the UK’s world-leading Modern Slavery Act 2015 and is likely to increase the risk of re-exploitation as fewer people will seek support.

Summary

The Bill proposes automatic 28 days of detention for anyone entering the UK without a legitimate visa, with no right for bail or appeal, and opens the possibility of indefinite detention. Each year the British Red Cross helps more than 30,000 refugees and people seeking asylum in the UK and many more displaced people around the world. We see the devastating impact that living in detention has on people’s physical and mental health, the emotional strain of being separated from family and the consequences for people living in destitution, including heightened risks of exploitation, and not being able to afford even the most basic of things, like food, shoes or toiletries.³ Besides being unworkable, the Bill risks worsening all of these experiences.

This legislation comes at a time of wider policy change in the migration space, including the full dispersal of people seeking asylum to every local authority in the UK and a move to institutional forms of accommodation for those in the asylum system, including barges and

¹ In the year ending March 2023, the grant rate an initial decision for Afghans was 98%, Syrians 99% and Eritreans 99%. Home Office (2023). Asylum applications, initial decisions and resettlement year ending March 2023. Available at: <https://www.gov.uk/government/statistical-data-sets/asylum-and-resettlement-datasets#asylum-applications-decisions-and-resettlement>

² Home Office (2020). Sovereign Borders: International Asylum Comparisons Report. Section 1: Drivers and impact on asylum migration journeys. Available at: <https://freemovement.org.uk/wp-content/uploads/2022/11/Annex-A-Sovereign-Borders-International-Asylum-Comparisons-Report-Section-1-Drivers-and-impact-on-asylum-migration-journeys.pdf>

³ See: British Red Cross (2018) Never truly free: the humanitarian impact of the UK immigration detention system.

British Red Cross: How will we survive? Exploring destitution in the UK asylum system.

British Red Cross: and UNHCR (2022): At risk: exploitation and the UK asylum system

All available here: <https://www.redcross.org.uk/about-us/what-we-do/research-publications>.

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military bases. We have previously raised concerns with the use of Penally Barracks in Pembrokeshire and are concerned by the use of further inappropriate accommodation where people's needs aren't met⁴. Protections for those in the system living in House in Multiple Occupancy properties have been removed under UK legislation in England⁵ and may be removed for those in Wales in the future too.

These changes are taking place alongside the UK's response to Ukraine. In Wales, the Welsh Government has supported a safe route to protection for displaced people from Ukraine through its Super Sponsorship Scheme and there are opportunities to expand the protection and sanctuary to other refugees and people seeking asylum.

The British Red Cross wants to see a fairer, more compassionate, and effective asylum system.

To achieve this, we believe that the focus of governments across the UK should be to:

- Uphold the principle of being able to claim asylum by ensuring all claims are considered, no matter someone's mode of arrival.
- Ensure more people fleeing war and persecution can reach the UK safely without risking their lives and falling into the hands of smugglers.
- Prioritise a more efficient decision-making process so people's claims are determined quickly and correctly.
- Ensure refugees and people seeking asylum are better supported once they are in the UK so they engage effectively with the process and for those that stay, can integrate and contribute.

Concerns

While the UK asylum system is reserved, there are opportunities for devolved governments to intervene and provide support to displaced people. This includes through integration and access to public services but crucially by creating protections for victims of trafficking and unaccompanied children.

While we accept that the Welsh Government has limited powers in some areas, there is still scope for it to act. The Welsh Government should maximise its legislative competencies as part of protecting trafficking survivors and unaccompanied children. This could be through the establishment of a trafficking survivor identification and decision agency to complete an

⁴ British Red Cross, Far from a home: why asylum support accommodation needs reform (2021) available here: <https://www.redcross.org.uk/about-us/what-we-do/research-publications>.

⁵ <https://homeofficemedia.blog.gov.uk/2023/04/03/accommodation-sites-factsheet-april-2023/>

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anti-trafficking process. The Welsh Government should also safeguard all available legal measures to ensure non-discrimination for unaccompanied children arriving in Wales.

Unaccompanied children

We are concerned about how this Bill would impact unaccompanied asylum-seeking children. The Immigration Act 2014 put a limit on the detention of unaccompanied asylum-seeking children of 24 hours in a short-term holding facility. This Bill removes this provision, giving the Secretary of State the power to detain a person of any age as she considers appropriate. Unaccompanied children are also subject to removal when they turn 18 and the bill opens up the possibility of returning a child before they turn 18, however this is not a duty.

Welsh Government statistics show that there are 110 unaccompanied children in Wales who are looked after by local authorities⁶. This figure may be much larger as many unaccompanied children are often not identified as such due to issues surrounding the effectiveness of age assessments. There has been a significant rise in the number of age disputes as a result of contested age assessments. These disputes have nearly quadrupled between 2019 and 2023, from 798 to 2999 respectively⁷. From the cases that were resolved, 61% of those assessed were found to be children⁸. This is extremely concerning as failure to identify unaccompanied children places them at considerable risk, such as being housed with adults or even placed in immigration detention. The Bill increases the risks of detention due to the aforementioned duties to detain and to remove from the UK.

If a child does remain in the UK, under the provisions in the Bill and the duty placed under Clause 4(2), they will be removed once they reach 18. The impacts of these provisions are significant, placing children beyond the protections afforded in Welsh legislation, notably the Social Services and Wellbeing (Wales) Act 2014⁹ and international law under Article 8 of the European Convention on Human Rights and provisions of the UN Convention on the Rights of the Child. Alongside other areas of devolved competence, this goes against the intentions of the Wellbeing of Future Generations Act 2015 (Wales), where children face detention, the removal of protections and will be barred from becoming citizens and face return.

The Bill gives power to the Secretary of State in Clause 15 to provide or arrange for the provision of accommodation and support for unaccompanied children in England, as

⁶ <https://statswales.gov.wales/Catalogue/Health-and-Social-Care/Social-Services/Childrens-Services/Children-Looked-After/unaccompaniedasylumseekingchildrenbeinglookedafteratthe31march-by-localauthority>

⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1156821/age-disputes-datasets-mar-2023.xlsx

⁸ As above.

⁹ Section 110 of the Social Services and Wellbeing (Wales) Act 2014 recognises the need of young people leaving care for continued support and contact.

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opposed to local authorities. Clause 19 allows the Secretary of State to make regulations enabling Clause 15 to apply in Wales without conferring powers on Welsh Ministers. This would place extremely vulnerable and likely already traumatised children beyond the protection of local authorities.

Children who arrive seeking asylum but without a legitimate visa to enter the UK will have no possibility of having their asylum claim considered, which will automatically be declared 'inadmissible' under Clause 4. This is despite unaccompanied asylum-seeking children having an asylum grant rate of over 80% at initial decision in the year ending March 2023.¹⁰ This will also apply to children who are victims of human trafficking and slavery who have been exploited, including those exploited in the UK.

Consistent with the "child first, migrant second" perspective set out in *Child First, Migrant Second: Ensuring that Every Child Matters*¹¹, organisations such as the Anti-Trafficking Monitoring Group have proposed a focus on child protection, with unaccompanied children to be placed in the children protection system's multi-agency safeguarding hubs for a determination of their trafficking status and the local authority child protection systems for care and protection issues¹². This approach would mean that the immediate needs and safety of a child would be the primary concern, placing concerns around migration and border security as secondary. Others have added to this concept, suggesting that "any reforms should ensure that government departments with responsibility for children lead on the issue."¹³

-We encourage the Welsh Government to consider new practice models which prioritise the care and protection of children such as placing unaccompanied children in the child protection system to support their wider needs, as well as adults too.

Recommendation: The Welsh Government should seek to explore what opportunities may exist to uphold and enhance protections for unaccompanied children arriving in Wales, mitigating negative impacts of this Bill.

Victims of trafficking

¹⁰ Home Office (2023). Asylum applications, initial decisions and resettlement year ending March 2023. Available at: <https://www.gov.uk/government/statistical-data-sets/asylum-and-resettlement-datasets#asylum-applications-decisions-and-resettlement>

¹¹ Crawley, H. (2006) *Child First, Migrant Second: Ensuring that Every Child Matters* London, Immigration Law Practitioners' Association Policy Paper

¹² ATMG - Anti-Trafficking Monitoring Group (2014) *Proposal for a Revised National Referral Mechanism (NRM) for Children* London, Anti-Trafficking Monitoring Group Available at: <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=9c439adf-97ef-45f8-ad4fc73752f2676d>

¹³ Sereni, A. and Baker, C. (2018) *Before the Harm is Done: Examining the UK's Response to the Prevention of Human Trafficking* London, Anti-Trafficking Monitoring Group

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In 2022, over 16,938 people were referred to the UK's National Referral Mechanism as potential survivors of trafficking. 88% received positive reasonable grounds decisions. 89% of just over 6,000 conclusive grounds decisions made in 2022 were positive, confirming that people were survivors of modern slavery.^{14 15} Under the provisions of the Bill, when a survivor of modern slavery who arrived in the UK without permission consents to enter the NRM and receives a positive reasonable grounds decision, their claim will not be considered, and they will not be provided with support. Instead, they will be detained and removed. We know through our work supporting survivors of trafficking, people need immediate access to support, including a safe house, washing facilities, rest and advice after leaving exploitation. Detention is a wholly inappropriate setting for someone in need of support as a result of their exploitation.

There may be avenues for protections to be granted under existing Welsh legislation, which are worthy of consideration. We would support a commitment to protection frameworks which exist in devolved legislation, designed to support and protect adults and children living in Wales.

Recommendation: The Welsh Government should pilot devolved decision-making around trafficking status to explore ways to increase protections for migrant victims of modern slavery and trafficking in Wales¹⁶.

Recommendations

We would encourage the Senedd and Welsh Government to:

- Protect victims of trafficking and those in the asylum system, including children, by safeguarding all available legal measures to ensure non-discrimination for children arriving in Wales and by instructing Welsh agencies, such as social work services, to identify and support those in need of protection.
- Use mechanisms such as the pilot of devolved decision-making power¹⁷ around trafficking status to explore ways to increase protections for migrants arriving in Wales.

¹⁴ Once referred to the NRM, individuals receive decisions on two grounds: reasonable grounds, and conclusive grounds. A positive reasonable grounds decision means the decision-maker believes, based on objective factors but falling short of conclusive proof, that a person is a victim of modern slavery (human trafficking or slavery, servitude, or forced or compulsory labour). A positive conclusive grounds decision indicates that there is sufficient information to consider the individual is a victim of modern slavery.

¹⁵ Home Office (2023). Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, year ending 2022. Available at: <https://www.gov.uk/government/statistics/irregular-migration-to-the-uk-year-ending-december2022/irregular-migration-to-the-uk-year-ending-december-2022>

¹⁶ [Piloting devolving decision-making for child victims of modern slavery - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/piloting-devolving-decision-making-for-child-victims-of-modern-slavery)

¹⁷ [Piloting devolving decision-making for child victims of modern slavery - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/piloting-devolving-decision-making-for-child-victims-of-modern-slavery)

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- Commit to models which prioritise the care and protection of children such as placing unaccompanied children in the child protection system to support their wider needs in line with a “child first, migrant second” approach.
- Enhance the monitoring, inspection, regulation, and enforcement of the asylum system within Wales, especially the use of accommodation. These should be underpinned by comprehensive, cross-government strategies that respond to the increasing vulnerabilities and needs of vulnerable groups seeking protections.
- Consider how to offer the same level of protections for all refugees, people seeking asylum and reunited families, learning from the Ukrainian Super Sponsorship Scheme.
- Work alongside the UK Government to increase safe, regular routes to the UK for those in need of asylum.

Further information

We are keen to continue to support the Welsh Government and Senedd on the impacts of the Illegal Migration Bill and wider policies relating to refugees and people seeking asylum. We would be happy to answer any questions or provide further information in a follow up meeting or in writing.

To - Children, Young People and Education Committee, & Equality and Social Justice Committee

Submitted by Children in Wales

Legislative Consent Memorandum for the UK Government's Illegal Migration Bill

Introduction

We welcome the opportunity to contribute comments to inform the joint Equality and Social Justice, and Children, Young People and Education Committees scrutiny of the Legislative Consent Memorandum for the UK Government's Illegal Migration Bill.

We note that the Committees are not considering the merits or otherwise of the Bill at this point in time, and have requested comments on the specific provisions that require consent of the Senedd. These pertain to Clauses 19 and 20 of the Bill.

To inform our response, we have taken account of the content of the Legislative Consent Memorandum as laid by the Welsh Government; representation made by the Wales UNCRC Monitoring Group to the UN Committee on the Rights of the Child, and our engagement with statements and position papers released by a broad range of UK children and human rights organisations and multi-agency coalitions with expertise in this policy area.

Consistent with our mandate, our response is principally focused on Children's Rights and the implementation of the United Nations Convention on the Rights of the Child (UNCRC), alongside our involvement in the facilitation of the [Wales UNCRC Monitoring Group](#).

Questions & Responses

A very brief overview of your view of the Bill

We share the concerns expressed by the UN Committee on the Rights of the Child in their Concluding Observations (recommendations) to the UK and devolved Governments published on the 2nd June 2023 in respect of -

"The potential impact of the Illegal Migration Bill on children, which includes a ban on the right to claim asylum, allows for the prolonged detention and removal of children, creates barriers for acquiring nationality, and lacks a consideration of the principle of the best interests of the child" (pp18)

In our [recent briefing](#) to the UN Committee on behalf of the Wales UNCRC Monitoring Group to inform their examination of the UK and devolved government progress in implementing the UNCRC, we reinforced the widespread concern and profound uncertainty expressed by human rights organisations and [refugee coalitions](#) regarding the impact of the Bill on the lives of vulnerable children seeking safety, sanctuary and refuge across the UK, and the lack of [pre-legislative scrutiny of the Bill](#). The Bill as proposed, will deny both accompanied and unaccompanied children who arrive irregularly the right to seek asylum (clause 4), and provide UK ministers with the power to remove children when they reach the age of 18 (clauses 2 & 3).

We share the concerns expressed by Commissioners, the United Nations, human rights organisations and refugee coalitions surrounding the content and narrative of the proposals. For example,

- the Children's Commissioner for Wales has described the Bill as being unacceptable and a clear breach of human rights obligations, [calling upon](#) the Welsh Government to provide robust challenge.
- The Council of Europe Commissioner for Human Rights has [expressed concerns](#) that that the Bill will result in significant regression of the protection of the human rights of asylum seekers.
- The UN High Commissioner for Human Rights [said](#) "We have very serious concerns from an international refugee law and from an international human rights law perspective, because it (the bill) would essentially bar people from seeking asylum in the UK if they come through a certain way"

**Any concerns you may have in respect of the impact the Bill would have on:
`separated asylum seeking children in Wales, including whether you have any concerns about existing arrangements for these children; and**

Any anticipated implications of the Bill on the assessment of needs and provision of care and support under the Social Services and Well-being (Wales) Act 2014;

Children seeking asylum, especially those unaccompanied and separated (UASC), are extremely vulnerable, often at greater risk of exploitation, abuse, gender based violence and trafficking. Many will have experienced trauma, been victims of criminal exploitation and will require specialist interventions and support upon arrival in Wales.

Presently, there is an alarming lack of clarity as to where children will be accommodated and what level of 'care' will be provided whilst accommodated, firstly as they await

transfer to a local authority setting after arrival, and secondly, when placed in a local setting pending removal from the UK. It is unclear as to the type and standard of accommodation which is to be provided to children transferred to Wales pending removal from the UK, and the assessment process which is to be followed. As Wales does not have an independent professional guardianship system for UASC (unlike Scotland), it is also unclear how they will get their voices heard and be adequately legally represented.

Children's social service functions delivered by Welsh local authorities are subject to the due regard duty to the UNCRC under Part 1 of the [Social Services and Well-being \(Wales\) Act 2014](#). All persons determined to be children should be granted 'looked after' status, and following an assessment of need, should have access to a range of care and support services from local authorities to aid recovery and the wider statutory entitlements that their status offers, including independent advocacy arrangements. This extends to the added safeguards and protections the UNCRC provides, including the requirement that all decisions made by professionals are always made in the child's best interest.

The Bill does not provide the necessary assurances that children arriving by boats to the UK and subsequently dispersed should and will be subject to robust assessments of need arrangements guided by the best interest of the child principle, or receive the same level of care, support and protection as is currently provided to other UASC through existing Welsh statutory arrangements.

We would not wish to see children denied the care, support and protection they should receive under Welsh law and international conventions, or the creation of a two-tier support and accommodation system, and the significant risk of vulnerable unaccompanied children then being exploited, abducted or going missing from unregulated and wholly inappropriate accommodation, such as hotels.

Whether the Bill is compatible with the Rights of Children and Young Persons (Wales) Measure 2011, including what impact it would have on the 'Child First, Migration Second approach' which underpins the delivery of support to child asylum seekers in Wales.

Wales has shown a clear commitment to safeguarding and furthering children's rights since the inception of the Senedd, with early policy and guidance from Welsh Government testimony to this. The Rights of Children and Young Persons (Wales) Measure 2011 requires Welsh Government to pay due regard to the UNCRC when exercising any their functions, with arrangements clearly set out in the Children's Scheme and an expectation that comprehensive Child Rights Impact Assessment (CRIA) are undertaken and published on decisions which will have an impact on children.

We do not see how the Bill is compatible with the principles of the Measure or the current activity underway in Wales led by a legislative options group overseen by the Welsh

Government to explore further incorporation of the UNCRC and to further children's rights in Wales.

Wales has a proud tradition of taking a 'child first, migrant second' approach and in welcoming refugees and asylum seekers, recognising the valuable contributions they make to our society and to offer safety and security for UASC wherever they have travelled from and by whichever means. This approach is embedded throughout policy in Wales and compatible with the principles of the UNCRC and [General Comment No 6](#) – Treatment of unaccompanied and separated children outside their country of origin. The vision of Wales as a Nation of Sanctuary is to be commended and forms a key strand of the Welsh Governments current Programme for Government, with the [Nation of Sanctuary Plan](#) being endorsed by the UN's High Commissioner for Refugees.

The Bill in its current form runs counter to this approach and has been accused of severely undermining this vision.

Any concerns you may have relating to the Bill and compatibility with Convention rights.

Article 1 of the UNCRC ensures that every child under 18 is entitled to all of the rights as prescribed regardless of their characteristics and circumstances.

Much has however been written in respect of the threat to the rights of children, and the incompatibility of the Bill to obligations as set out in the UNCRC (including the more detailed UNCRC [General Comment No 6](#) – Treatment of unaccompanied and separated children outside their country of origin); the 1951 UN Refugee Convention and the European Convention on Human Rights. There has been widespread concern following the second reading in Westminster regarding any assurances that the Bill is compatible with the European Convention in Human Rights.

In the recent state party examination by the UN Committee of the UK and devolved Governments progress in implementing the UNCRC (18-19 May), one of the Committee members asked UK officials if the Illegal Migration Bill is indeed 'legal', and expressed profound concern with the proposals and their compatibility with the UK Government obligation towards all children. In their set of recommendations (Concluding Observations) published on 2nd June, they called for the Government to -

"Urgently amend the Illegal Migration Bill to repeal all draft provisions that would have the effect of violating children's rights under the Convention and the CRC/C/GBR/CO/6-7 19 1951 Refugee Convention, and bring the Bill in line with the State party's obligations under international human rights law to ensure children's right to nationality, to seek asylum and to have their best interests taken as a primary consideration, as well as to prevent their prolonged detention and removal" ([pp18-19](#))

We await Governments response to the UN Committee's call.

All acts of parliament should be fully compliance with the Articles and key principles of the UNCRC, including non-discrimination (Article 2), best interest (Article 3), protection (Article 19) and participation (Article 12).

We are not aware of any [Child Rights Impact Assessment](#) having been developed or published by the UK Government in respect of this Bill, or any involvement of children and young people in the decision making process or during the detailed drafting.

Conclusion

The Bill as currently introduced should not progress in its present format, and should be significantly amended to ensure that it is fully compatible with international obligations and domestic Welsh law which incorporates the UNCRC and fully adheres to the best interest of the child principle.

A CRIA should be urgently undertaken, published and subject to periodic review to demonstrate compliance with the UNCRC and to safeguard from any regression of existing rights entitlements and protections.

Depending on whether amendments are to be made to the current Bill, the Welsh Government may be required to introduce protective measures to mitigate any negative impact on vulnerable children, and to engage with the UK Government in respect of the implications of many strands applying in Wales to children as discussed above.

NB This response is written from a policy, not a legal perspective.

Jenny Rathbone MS
Chair, Equality and Social Justice Committee

Jayne Bryant MS
Chair, Children, Young People and Education Committee

Welsh Parliament
Cardiff Bay
Cardiff
CF99 1NA



1st June 2023

Illegal Migration Bill – NYAS Cymru letter to Committee Chairs

Dear Jenny and Jayne,

To inform the Committees' consideration of the Legislative Consent Memorandum, please find NYAS Cymru's written evidence regarding our views on the issue of legislative consent below.

Overall views

NYAS Cymru work to protect, support, empower and safeguard every child and young person who we come into contact with. We support the Welsh Government's 'Child First, Migration Second approach' and have worked to improve the 'asylum journey' for unaccompanied asylum-seeking children in Wales through our ['Place of Safety'](#) campaign.

Through our 'Place of Safety' campaign, NYAS Cymru has been instrumental in working with the Welsh Government to strengthen guidance to provide clarification with respect to the appropriate adult role. Guidance focuses on how the role should be independent to protect and advance the rights of children and young people seeking a place of safety.

NYAS Cymru offers an appropriate adult service in Cardiff for unaccompanied children arriving in the UK to claim asylum. Appropriate adults support children and young people during age assessments by making sure they understand what their rights are and what will happen during the age assessment process. As one of our appropriate adults said in relation to support for asylum-seeking children: "If they haven't got the right people, then it starts to fall down."

NYAS Cymru believes the Illegal Migration Bill to be inhumane and in clear breach of the rights of unaccompanied asylum-seeking children and young people. The Bill threatens the Welsh Government's standing as 'nation of sanctuary' for unaccompanied asylum-seeking children to feel safe and supported where they live. We stand alongside other UK children's charities who voiced their opposition in a [joint statement](#) to the Illegal Migration Bill in March 2023.

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Concerns of the impact the Bill on unaccompanied asylum-seeking children in Wales

Clauses 15 to 20 – provision of accommodation for unaccompanied children

Clauses 15 to 20 are the UK Government's attempt to legalise the temporary accommodation of unaccompanied children in hotels outside the care system, which has been Home Office practice since July 2021. Instead of connecting unaccompanied asylum-seeking children with the "right people", these clauses would separate children from the adults who can help them and send many straight into the hands of traffickers.

NYAS Cymru has long been campaigning for a 'do no harm' principle that extends across agencies to recognise and reduce the likelihood of traumatising or retraumatising young people with certain policies and decision-making. As not much is known about the suitability, location, or inspections of the proposed accommodation children would be housed in while awaiting transfer or removal, it is likely that living here would do young people harm.

A worrying number of unaccompanied asylum-seeking children and young people have gone missing from Home Office-run hotels, with many of them still missing. NYAS Cymru appropriate adults have reported that there is no oversight in much of the accommodation for unaccompanied asylum-seeking children housed together when awaiting their age assessments.

Some staff working in these hotels have not even been DBS checked. With reports of emotional abuse of children within hotels by subcontracted Home Office staff, NYAS Cymru is deeply concerned that children may be retraumatised after coming to Wales as a 'nation of sanctuary'.

Clause 15 enables the Secretary of State to ask a third party to provide accommodation for unaccompanied asylum-seeking children and young people from where they are currently accommodated and cared for. This raises serious concerns in respect to the standards of care and experience of staff who will be looking after these children and young people.

Many unaccompanied asylum-seeking children and young people arrive in Wales after experiencing traumatic events and losses, and have the right to be protected from violence (Article 19) and to special protection and help (Article 22) under the UN Convention on the Rights of the Child (UNCRC). With no time limit or particular standards of accommodation specified within Clause 15, children and young people who have faced extreme instability and trauma would be left without care and special protection.

The Home Office wishes to create a two-tier system of care for unaccompanied asylum-seeking children, depriving them of the vital support they are entitled to. As the Home Office has consistently proven itself to be an unfit corporate parent, NYAS Cymru strongly believes that their role in running accommodation for children must not be formalised.

Clause 19 – extension to Wales, Scotland, and Northern Ireland

Clause 19 (to enable the Secretary of State to extend clauses 15 to 18 to Wales without the consent of Welsh Ministers of Senedd Cymru) undermines the Welsh Government's 'Child First, Migration Second approach' and positioning as a nation of sanctuary.

Any attempt by the UK Government to undermine the Senedd's legislative competence would undercut the role of local authorities to make best interest decisions for the care-experienced children they are corporate parents to.

Social Services and Well-being (Wales) Act 2014

Part 6 of the Social Services and Well-being (Wales) Act 2014 provides that unaccompanied asylum-seeking children are treated as looked-after children. This means that local authorities automatically assume a corporate parenting responsibility for unaccompanied asylum-seeking children.

Clause 16 (to allow the Secretary of State to direct a local authority to take an unaccompanied child into care, to direct a local authority to return a child to Home Office accommodation, and vice versa) undermines the Social Services and Wellbeing Act. Giving powers to the Secretary of State to decide that a local authority must cease providing accommodation for an asylum-seeking child would override the local authority's role as their corporate parent and their status as a looked after child.

The Illegal Migration Bill would therefore create a two-tier system of care and deprive children of the care and support they deserve.

Rights of Children and Young Persons (Wales) Measure 2011

The Bill is incompatible with the devolved context in relation to the Rights of Children and Young Persons (Wales) Measure 2011.

The due regard duty established by the 2011 Measure requires Welsh Ministers to make balanced and informed decisions with reference to the UNCRC. Children Right's Impact Assessments (CRIA) are often used as a tool to determine a Bill's impact on children's rights.

No Child Rights Impact Assessment has been undertaken in relation to how the Bill will impact children's rights by the UK Government. The Illegal Migration Bill would however unambiguously fail Welsh Ministers' criteria for the Bill if passed, as these children will be stripped of their fundamental rights to protection and safety.

UN Convention on the Rights of the Child

In all actions concerning children, States should be guided by the overarching principles of non-discrimination (Article 2); the best interests of the child (Article 3); the right to life, survival and development (Article 6); and the right of the child to be listened to and taken seriously (Article 12).

The Bill fails to be child-centred and UK Government have not announced plans as for whether they plan to consult with children and young people with lived experience. NYAS Cymru believes that the following UNCRC rights will be incompatible with the Bill:

- Article 3: The best interests of children and young people should be thought about at all levels of society.
- Article 6: All children and young people have the right to survive and the right to develop.

- Article 12: Children and young people have the right to be listened to and taken seriously:
- Article 19: Children and young people have the right to be protected from violence, just like everybody else.
- Article 20: Children and young people have the right to special protection and help if they can't live with their family.
- Article 22: Children and young people who are refugees have the right to special protection and help.
- Article 39: I have the right to get help if I have been hurt, neglected or badly treated.
- Article 27: Children and young people should be able to have the food and housing they need to reach their full potential.

NYAS Cymru strongly opposes the Bill in its entirety as if passed, the fundamental rights and entitlements of unaccompanied asylum-seeking children would be breached.

As a leading children's rights charity who supports unaccompanied asylum-seeking children, we extend our support to the Welsh Government if they move to refuse consent on the Bill in relation to these provisions.

Best regards,



Sharon Lovell MBE
Chief Executive
NYAS Cymru

Briefing on the issue of legislative consent in relation to the Illegal Migration Bill and its impact on unaccompanied children in Wales

Key points

- The Illegal Migration Bill puts unaccompanied children at risk of deportation before they turn 18, and they become subject to removal from the UK when they turn 18.
- The Bill encroaches on policy areas devolved to Wales and runs counter to decision-makers in Wales' duty to care for unaccompanied children.
- The provisions in the Bill contravene the obligation under international law to provide protection and assistance for refugees, including unaccompanied child refugees.
- **Recommendation:** The Committee and the Senedd should accept the Minister's recommendation in the Legislative Consent Memorandum to withhold consent to the provisions included in the Bill.

The Illegal Migration Bill (the Bill) has serious implications for the safeguarding and wellbeing of children in Wales. The proposed legislation would have an impact on the ability of the Welsh Government and statutory bodies to abide by Wales's obligations under international human rights law and the United Nations Convention on the Rights of the Child (UNCRC). Under the Rights of Children and Young Persons (Wales) Measure 2011, all Welsh Government Ministers must give due regard to the UNCRC and its optional protocols in the exercise of all of their functions. We believe that the Bill is incompatible with the duties on Welsh Government Ministers and also the duty of due regard to the UNCRC placed on Welsh local authorities under the Social Services and Well-being (Wales) Act 2014. Any child, including asylum seeking children, should be able to enjoy *all* of their rights set out in the UNCRC, and should be accorded the same protection as any other child permanently or temporarily deprived of their family environment.

The Bill also runs counter to the Nation of Sanctuary approach that has been taken in Wales. Furthermore, the Children's Commissioner for Wales has publicly stated that the Bill is unacceptable and is a clear breach of human rights obligations.¹

The Bill and its provisions

There are several key issues which the Committee may wish to consider and which we bring to Members' attention:

1. Which children does the Bill affect?

¹ <https://www.childcomwales.org.uk/2023/03/commissioners-statement-in-response-to-unacceptable-uk-government-illegal-migration-bill/>

Clause 2 of the Bill sets out four conditions which will be applied to people entering the UK. Anyone in this group, including unaccompanied children, seeking humanitarian protection in the UK will have any claim deemed 'inadmissible'. The criteria are:

- they arrived in the UK via an 'irregular' route;
- they arrived in the UK on or after 7 March 2023;
- they did not arrive directly from a country in which their life and liberty were threatened; and
- they require leave to enter or remain in the UK but do not have it.

As of 2022, 110 unaccompanied children are looked after by local authorities in Wales.² Since the National Transfer Scheme (NTS) became mandatory in December 2021, numbers have increased and they are set to increase further. All local authorities in Wales must now receive unaccompanied children through the NTS. As of May 2022, "every local authority in Wales now looks after at least one unaccompanied child".³

In 2022, 30% of unaccompanied children making asylum applications in the UK were aged 15 or under.

2. The Bill's impacts on long term care plans, local authority duties, and corporate parenting

a) Removal on becoming 18 years old

The Social Services and Well-being (Wales) Act considers all unaccompanied children as looked-after children. Unaccompanied children have a right to be safeguarded and protected and should receive looked after status upon arrival and receive care and support from the relevant authorities. The approach taken in Wales is 'child first and migrant second' - no child should be discriminated against and should have equal access to support services and provision. Unfortunately, the provisions in the Bill jeopardise stakeholders in Wales' ability to provide care and support for these children and young people. This is particularly the case when they turn 18.

Clause 2(1) of the Bill places a duty on the Secretary of State to make removal arrangements for unaccompanied asylum-seeking children meeting the conditions above, as soon as they turn 18 years old. This includes children with family members in the UK, even where those families have been granted humanitarian protection and are recognised refugees. Under the proposed legislation, unaccompanied children in the care of a local authority will be made to leave placements on becoming 18, placed in detention, and forcibly removed from the UK.

Duties placed on local authorities under Section 110 of the Social Services and Wellbeing (Wales) Act 2014 recognise the need of young people leaving care for continued support and contact. This would be denied to unaccompanied asylum-seeking children, who are particularly vulnerable and traumatised. Pending deportation will inevitably have considerable impact on the emotional well-being of children throughout their period in care.

b) Detention and removal of children (under 18)

² <https://stats.wales.gov.wales/Catalogue/Health-and-Social-Care/Social-Services/Childrens-Services/Children-Looked-After/unaccompanied-asylum-seeking-children-being-looked-after-at-the-31-march-by-local-authority>

³ <https://www.gov.wales/sites/default/files/pdf-versions/2023/1/4/1674144316/forced-migrants-wales-research-adequacy-and-availability-legal-advice-contents.pdf>, p.43.

Under Clause 3, the Home Secretary has the power to remove unaccompanied children from the UK before they turn 18. The UK Government's [Illegal Migration Bill: children factsheet](#) (updated 11/05/2023) makes clear that the intention is to remove some children under the age of 18, and that these children will be forcibly held in accommodation (detention) prior to removal. Clause 10 gives the Home Secretary the power to detain children "in any place" considered appropriate, including unregulated settings. In the Immigration Act 2014, an unaccompanied child may be detained under paragraph 16(2) in a short-term holding facility for a maximum period of 24 hours, but this bill removes that provision. Given the potential difficulty of arranging removals with other countries, children could be detained for very long periods of time.

Furthermore, on the impact of the risk of deportation, Clause 21(2) bars those who meet the conditions for removal from accessing support for victims of modern slavery or human trafficking. This extends to unaccompanied children as they reach 18.

The UK Government has outlined 'very limited circumstances' in which the deportation of children will take effect, including removal to a 'safe country of origin'. The Secretary of State has the power to designate any country a 'safe country' where they conclude that 'there is in general in that State or part no serious risk of persecution of persons entitled to reside' there. However, the designation of a country as 'safe' frequently fails to take account of the risks posed to certain groups. No indication has been given of how or whether such designation will include an assessment of safety for an unaccompanied child.

Additionally, Clause 3 enables the Home Secretary to make regulations that would apply provisions for persons exempted from removal under Clause 2, which could disapply provisions provided under Senedd legislation or guidance. A possible risk presented here is that current services provided under laws in Wales, such as for an unaccompanied child, might be replaced by provisions under regulations presented by the Home Secretary, that might not adequately meet the needs of an unaccompanied child.

The UN Committee on the Rights of the Child in their Concluding Observations to the UK in 2016, were very clear that the detention of unaccompanied children should be ceased and that children are returned only where there are adequate safeguards, including a formal best-interests determination, effective family tracing, including individual risk and security assessments, and appropriate reception and care arrangements. The UN Committee communicated again strongly in their 2023 recommendations that children's best interests must be taken as the primary consideration.⁴

c) Power to direct local authorities to transfer children from their care

Powers granted to the Home Secretary under Clause 16 to direct local authorities to transfer children from their care initially apply in England only. However, Clause 19 enables the Home Secretary to make regulations extending these powers to Wales and to override Welsh law (see 3b below).

Clause 19 enables the Home Secretary to override the duties of local authorities to care for and support children. The Home Secretary will have the power to order local authorities to provide information about a child or to order a local authority to hand over a child, either before or on becoming 18 years old. This power could be used in order to detain children prior to deportation, but the power is not limited to this purpose. These powers will be enforceable through the Courts regardless of any local authority assessment of the child's needs.

⁴ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGBR%2FCO%2F6-7&Lang=en

d) Age assessment:

Clauses 55 and 56 relate to age assessment and the use of scientific methods. These methods may include scanning, x-raying, or measuring parts of the body, checking teeth, DNA sampling, and intimate physical examination. The accuracy of scientific methods is unproven. Both scientific methods and the establishment of the National Age Assessment Board have been objected to by the British Association of Social Workers (BASW). Age assessment falls under the devolved area of social care in Wales and local authorities have responsibility to assess whether a person is a child in need of care.

Clauses 55 and 56 withdraw the right to appeal against an age assessment decision and limit recourse to judicial review. They also allow for children to be treated as over 18 if they refuse to consent to scientific methods. These provisions are very likely to place children in risky adult situations without recourse to legal remedy. They seriously threaten the safeguarding of children, as well as what is in their best interests. Traumatized children are more likely to refuse to submit to the invasive methods under consideration.

The UN Committee on the Rights of the Child in their 2016 recommendations were clear in stating that age assessments should only be conducted in cases of serious doubt through multidisciplinary and transparent procedures, taking into account all aspects, including the psychological and environmental aspects of the person under assessment.⁵

This was reiterated in the newly released 2023 recommendations, calling for:

an end to the use of unreliable and invasive procedures for determining a child's age; develop an age determination procedure that is child- and gender-sensitive, includes multidisciplinary assessments conducted by relevant professionals of the child's maturity and level of development, and respects the legal principle of the benefit of the doubt; and ensure that children have access to legal advice throughout the process and, if necessary, can challenge the outcome of such assessments.⁶

3. Contravention of Welsh Law and international obligations regarding children's and human rights:

a) Children's rights / human rights

Under the Bill, children would be removed from a place of safety and protection and be exposed through detention and deportation to serious risk of irreversible harm, exploitation, slavery, and death. The clauses of the Bill would place vulnerable children beyond the protection of local authorities, in contravention of Welsh law. Children in these circumstances will have no possibility of making an asylum claim, which will automatically be declared 'inadmissible' under Clause 4. This will extend to child victims of trafficking, slavery, and those making a human rights claim.

In consideration of the Nationality and Borders Bill, the Senedd voted to withhold consent on clauses relating to age assessment by the National Age Assessment Board and the use of scientific methods. We refer to the Legislative Consent Memorandum laid by the Social Justice Minister in December 2021, which outlines impacts in the devolved area of social care. It is worth noting that the UK Government's stated position at that time was that refusal to submit

⁵https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhskHOj6VpDS%2F%2FJqg2Jxb9gncnUyUgbnuttBw_eOlyfyYPkBbwffitW2JurgBRuMMxZqnGgerUdpjxi3uZ0bjQBOLNTNvQ9fUJEOvA5Ltw0GL

⁶https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGBR%2FCO%2F6-7&Lang=en

to scientific methods for age assessment would not damage an applicant's credibility. This is reversed under the Illegal Migration Bill, which states that children may be treated as adults if they refuse to submit.

b) Overriding of devolved powers and potential repeal of Welsh Law:

Clause 19 gives the Home Secretary the power to make regulations to apply Clauses 15 to 18 (powers to order local authorities) in Wales. Clause 19(2) enables these regulations to "amend, repeal, or revoke any enactment" and 19(4) clarifies that this includes legislation previously or concurrently passed in the Senedd. This has major implications for the Social Services and Well-being (Wales) Act and raises grave constitutional questions in relation to devolution.

Amendments made to Clause 3 enable the Home Secretary to disapply provisions of legislation. This clause would allow the Home Secretary to make consequential amendments to any Acts or Measures of the Senedd, to align with regulations made in respect of Clause 2.

c) International obligations

Key aspects of the Bill are incompatible with UK's international obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, the European Convention on Human Rights (ECHR) and the European Convention against Trafficking (ECAT) and the UN Convention on the Rights of the Child.

The UNHCR has communicated that they are profoundly concerned by the Bill and have urged the UK Government to pursue more humane and practical policy solutions.⁷

The Council for Europe Commissioner for Human Rights has communicated her concerns in a letter to the House of Commons and the House of Lords. In particular, that the Bill would add to the significant regression of the protection of human rights of asylum seekers in the UK and would incentivise other states to follow the UK's lead in evading and abdicating its responsibilities.⁸

In the recent UN Committee on the Rights of the Child's examination of the UK State party and devolved administrations, UN Committee Members also expressed grave concerns and recommended in their newly published UK Concluding Observations 2023, and called for the UK State Party to:

Urgently amend the Illegal Migration Bill and to repeal all draft provisions that would have the effect of violating children's rights under the Convention and the 1951 Refugee Convention and bring the Bill in line with the State party's obligations under international human rights law.⁹

It is also important to note that no children's rights impact assessment has yet been undertaken on the Bill.

The ECHR is relevant to the competencies of the Senedd. Consequently this Bill, which is in conflict with the ECHR, is of significant devolved concern. The Government of Wales Act 2006, makes compliance with the ECHR a fundamental aspect of Welsh devolution (Section 81 (1))

⁷ <https://www.unhcr.org/uk/uk-asylum-and-policy#:~:text=Illegal%20Migration%20Bill&text=UNHCR%20expressed%20profound%20concern%20in,Bill%20with%20the%20UK%20Government.>

⁸ <https://www.coe.int/en/web/commissioner/-/parliamentarians-should-uphold-the-united-kingdom-s-international-obligations-when-scrutinising-the-illegal-migration-bill->

⁹ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGBR%2FCO%2F6-7&Lang=en

and makes the observation and implementation of international obligations included in the ECHR a devolved matter (schedule 7a).

Guardianship scheme for all Unaccompanied Children

Given the commitment to children's rights in both legislation and policy in Wales, the acknowledgement that unaccompanied children are highly vulnerable, and that children should be treated as children first and migrants second, it is concerning that a guardianship scheme has not yet been implemented in Wales. The establishment of a guardianship scheme has been a clear expectation of the UN Committee on the Rights of the Child in their 2008 Concluding Observations,¹⁰ and their 2016 Concluding Observations, where they stated, in Recommendation: 77 (b):

Establish statutory independent guardians for all unaccompanied and separated children.¹¹

In the examination of the UK State party and devolved administrations (May 18th/19th 2023) the UN Committee on the Rights of the Child asked questions regarding why unaccompanied asylum-seeking children, apart from in Scotland, do not have access to an independent guardian. They reiterated their recommendation for a guardianship scheme in the 2023 UK Concluding Observations stating:

Develop a consistent, statutory system of independent guardianship for all unaccompanied children, and ensure that all unaccompanied children throughout all jurisdictions of the State party are promptly identified and appointed a professionally trained guardian.¹²

They also expressed their concerns regarding unaccompanied children going missing from hotels. As has been recognised in Scotland, guardians provide stability and help children recognise exploitation and trafficking, which are very real threats to unaccompanied children in Wales, and indeed across the UK. The Scottish guardianship scheme has also been demonstrated to offer support, advice, and continuity for all unaccompanied children, helping them through the complex system of asylum applications, appeals, and life in care.¹³

We believe that a guardianship scheme will also help to deliver the UN Committee on the Rights of the Child's 2023 recommendations:

50 (d) Strengthen measures to ensure that all asylum-seeking, refugee and migrant children have equal and prompt access to education, health services, housing, psychosocial support, and social protection including benefit entitlements;

(50 c) ensure that children receive age-appropriate information and legal advice about their rights, asylum procedures and requirements for documentation; that their best interests are given primary consideration in all asylum processes; that their views are heard, taken into account and given due weight; and that they have access to child-friendly justice mechanisms and remedies.¹⁴

¹⁰ <https://www2.ohchr.org/english/bodies/crc/docs/advanceversions/crc.c.gbr.co.4.pdf>

¹¹ <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhskHOj6VpDS%2F%2FJqg2Jxb9gncnUyUqbnuttBweOlyfyYPkBBwffitW2JurqBRuMMxZqnGgerUdpixij3uZ0biQBOLNTNvQ9fUIEOvA5Ltw0GL>

¹² https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGBR%2FCO%2F6-7&Lang=en

¹³ <https://www.scottishrefugeecouncil.org.uk/wp-content/uploads/2022/02/An-evaluation-of-the-Scottish-Guardianship-Service-2022.pdf>

¹⁴ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGBR%2FCO%2F6-7&Lang=en

There have been repeated calls to establish a Guardianship Scheme in Wales to provide wraparound legal advice and support and to complement existing advocacy arrangements.¹⁵ This call was reiterated again in a recommendation in a recent report for the Welsh Government.¹⁶

Given the implications of the Bill for unaccompanied children in Wales and the UK, we believe that its introduction strengthens the case for a guardianship scheme for all unaccompanied children in Wales. In addition to the afore-mentioned support, guardians would provide unaccompanied children and young people support through the added complexity brought about by the Bill to the already complicated process of seeking asylum in the UK.

We will prepare another briefing which will focus on our call for guardians for all unaccompanied children in Wales, and we will share this briefing with Members of the Senedd in due course.

Recommendation

In the Legislative Consent Memorandum tabled in March and May 2023, the Minister for Social Justice stated that she “cannot recommend the Senedd gives its consent to these provisions being included in the Bill because I do not consider that it is appropriate for this provision to be made in relation to Welsh social care in this Bill.” **We urge the committee to accept the Minister’s position and recommendation of withholding consent to the provisions included in the Bill.**

Please contact us if you need any further information or wish to discuss.

Isata Kanneh
Rhian Croke
Tom Davies

6 June 2023

¹⁵ <https://senedd.wales/laid%20documents/cr-ld11012/cr-ld11012-e.pdf>;
https://www.childreninwales.org.uk/application/files/6416/7533/1287/Wales_UNCRC_Monitoring_Group.pdf

¹⁶ <https://www.gov.wales/sites/default/files/pdf-versions/2023/1/4/1674144316/forced-migrants-wales-research-adequacy-and-availability-legal-advice-contents.pdf>