



## **Submission to the Welsh Parliament's Children and Young People Education Committee in advance of the Welsh Parliament's Plenary Debate on Children's Rights**

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With the Welsh Parliament's Children and Young People and Education, National Children's Rights Inquiry report published on 11<sup>th</sup> August 2020 and the Welsh Government's response published on 23<sup>rd</sup> September 2020, we find ourselves in the position where the issues we raised as part of the National Inquiry have not been directly responded to. We still await further evidence regarding whether Welsh Government paid due regard to the UNCRC when undertaking decision making with regards to:

- a, the review and changes made to the Welsh Government Activity Based Funding (ABF) model
- b, allocation of funding to the 2020-2025 Welsh Government Health and Social Care Research Infrastructure

For over 10 years England and Scotland have had centrally resourced paediatric research networks, research facilities and children contributing to the clinical research agenda. This does not currently happen in Wales even though we have a legislative framework that should be ensuring that all children's rights are adhered to, including the right to the highest attainable standard of health and to survive and develop to their maximum potential. For example cancer is the leading cause of mortality in children aged 0-9 years in Wales<sup>1</sup> and yet there is still insufficient funding for research to drive

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<sup>1</sup> Royal College of Paediatrics and Child Health, State of Child Health 2020: Wales (RCPCH 2020) 11

the development of essential medicines for children with complex health conditions. This is in marked contrast to the research infrastructure for adults.

We consider there is some distance to travel before Welsh Government are paying due regard effectively to the UNCRC in relation to decision making regarding child health research. We are however pleased that the Welsh Government has accepted the majority of the Senedd Children and Young People and Education Committee's recommendations and we add further comments below.

**Recommendation 1.** That the Welsh Government restate a demonstrable commitment to give due regard to children's rights in all decisions it makes, informed by a robust Child Rights Impact Assessment unless there is a clear reason for not undertaking one.

WG Accept

Given we are concerned that due regard has not been paid in two critical areas of Welsh Government decision making that impact heavily on children with complex health conditions; this is not just about the Welsh Government "reiterating the importance of children's rights at every meaningful opportunity:"<sup>2</sup>

**it is about Welsh Government Ministers adhering to their legal obligation when exercising any of their functions, to have due regard to the requirements of—**

**(a) Part I of the Convention,**

**(b) articles 1 to 7 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, except article 6(2), and**

**(c) articles 1 to 10 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.**

**Recommendation 3.** That the Welsh Government insert provision in its revised Children's Rights Scheme for all Welsh Ministers to undertake initial and follow up training on the Rights of Children and Young Persons (Wales) Measure 2011's "due regard" duty.

WG Accept

Further to our concerns that due regard has not been paid in two critical areas of Welsh Government decision making that impact heavily on children with complex health conditions:

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<sup>2</sup> Welsh Government Response to the CYPE National Inquiry into Children's Rights Report September 23<sup>rd</sup> 2020 <https://business.senedd.wales/documents/s105741/Welsh%20Government%20response%20-%2023%20September%202020.pdf>

**We believe it is entirely necessary that officials and Ministers have regular and ongoing training to better understand their legal obligation to have due regard to the UNCRC. It should be made clear and explicit when reporting against the Children’s Scheme what training has been undertaken.**

**Recommendation 4.** That the Welsh Government include within the complaints mechanism in its revised Children’s Rights Scheme the right to challenge a decision not to undertake a Child Rights Impact Assessment on any area of policy development.

WG Accept

We welcome the inclusion of a complaints mechanism and we will be utilising the process if our continued request for CRIAs on health research decision making, are not provided. We believe that not having undertaken a CRIA when a CRIA should have been undertaken can result in breaching many children’s rights.

**We request information on what the redress and accountability mechanism will look like.**

**Recommendation 5.** That the Welsh Government publishes all completed Child Rights Impact Assessments, including on non-legislative policy decisions, as a matter of course.

WG Accept

We are pleased that the WG is committed to publishing and sharing CRIAs and we ask that this happens on a quarterly basis. However we still have not seen evidence of CRIA’s in relation to:

- a, the review and changes made to the Welsh Government Activity Based Funding (ABF) model
- b, allocation of funding to the 2020-2025 Welsh Government Health and Social Care Research Infrastructure

**Additionally we request that the reason why a CRIA has not been undertaken in relation to a Ministerial function that impacts on children directly or indirectly should also be shared in the public domain quarterly.**

**Recommendation 6.** That the Welsh Government restate its commitment to ensuring that the legislative requirements in relation to children’s rights are fully and effectively reflected in its financial decisions across all portfolios by swiftly amending its Budget Improvement Plan to make clear the specific steps the Welsh Government is taking to ensure it is complying with the “due regard” duty in the Rights of Children and Young Persons (Wales) Measure 2011.....

WG Accept

We believe this to be a matter of urgency as we have been requesting information for over two years on budgetary decision making that impact on children's rights in the health care research portfolio. We are deeply concerned that compliance with the due regard duty has not been happening as a matter of course.

**We request a retrospective analysis of health research budgetary decision making.**

**Recommendation 7.** That the Welsh Government return to publishing an individual Child Rights Impact Assessment on its Draft Budget to evidence compliance with the Rights of Children and Young Persons (Wales) Measure 2011, until this Committee can be reassured that the Strategic Integrated Impact Assessment accompanying a Draft Budget demonstrates the duty of "due regard" to the United Nations Convention on the Rights of the Child has been exercised.

WG Reject

We are concerned that children's rights and interests are very often neglected in national budgetary decision making. We need to be assured that officials who are proofing the draft budget for compliance with children's rights have undergone rigorous training that requires them to understand all the principles and provisions of the Convention.

**We believe there should be an independent review of the Strategic Integrated Assessment that monitors over a defined period of time whether children's rights are diluted or indeed neglected as part of the overarching Strategic Integrated Impact Assessment.**

**Recommendation 10.** That the Welsh Government include a strengthened and child friendly complaints mechanism in its revised Children's Rights Scheme to empower children and young people to seek redress when necessary and to uphold their rights.

WG Accept

It is critical that children have better access to accountability and redress and are empowered to understand their right to complain at all levels of public body decision making.

**We urgently recommend that teaching on the right to complain is integrated into school curriculum as part of the area of learning on human rights so that children can be empowered to speak out and hold duty bearers to account. It is also critical that all public body officials receive training on children's right to complain, implement child-friendly complaints mechanisms and empower children to complain.**

**Recommendation 12.** That the Welsh Government set out in its revised Children's Rights Scheme a clear strategy to ensure the participation of children and young people in discussions on Welsh Government decisions which affect them

WG Accept

Although Young Wales is an important mechanism this is not sufficient on its own. Children's participation in decision making needs to be embedded throughout all Welsh Government decisions that impact on children directly or indirectly.

The Welsh Government's Prudent Health Care Principles make it clear that all health care decision making should be coproduced. It is also a requirement of the UN Committee on the Rights of the Child that children are able to give their views on all aspects of health provision.<sup>3</sup> This is not happening effectively in child health research. We believe that children should be given mechanisms to influence the development, monitoring and evaluation of health research. This has been happening for the last 10 years in England<sup>4</sup> and Scotland<sup>5</sup> with statutory funded young people research networks influencing the development of research from a children's perspective, but still not happening in Wales.

**We would like to see a Welsh Government publishing a national strategy (with the commensurate resources) on child participation that ensures that all Welsh Government departments engage children on all matters that affect them in compliance with Article 12 of the UNCRC. Children should also be better involved in the CRIA decision making process.**

**Recommendation 13.** That the Welsh Government publish a detailed strategic response to the United Nation's Committee on the Rights of the Child 2016 Concluding Observations within the next six months. This should include details of progress made against all the recommendations and what actions are being taken to address areas of concern.

WG Accept

The Welsh Government's response is certainly over due on the Concluding Observations. We recently drafted a submission for the Wales NGO Alternative Report and it is with much concern that the Concluding Observations we reported against have still not been addressed in 2020.

**We ask the Welsh Government to report on progress and indeed implement the UN Committee on the Rights of the Child's 2016 recommendations with urgency.**

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<sup>3</sup> UN Committee on the Rights of the Child, *General comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health* CRC/C/15/2013, para 19

<sup>4</sup> <https://generationr.org.uk/>

<sup>5</sup> <https://www.scotcrn.org/>

**Recommendation 14.** That the Welsh Government publishes an annual update of progress made against the United Nation’s Committee on the Rights of the Child Concluding Observations, to be laid before the Senedd and scrutinised annually by the relevant committee.

WG Accept

We totally agree that annual reporting is extremely necessary given that the majority of the Concluding Observations 2016 still have not been implemented. This has an impact on many children’s rights being breached and their lives being negatively affected.

**We also request the WG publish a clear action plan regarding how they will set about implementing the UK Concluding Observations 2016.**

**Recommendation 15.** That all devolved public bodies (such as local authorities and local health boards) should be placed under a specific duty to have due regard to the United Nations Convention on the Rights of the Child. The Welsh Government must provide guidance to all devolved public bodies as to what this means in terms of their day to day functions and how compliance will be monitored.

WG Reject

The Wales UNCRC Monitoring Group, the Children’s Commissioner for Wales, the Royal College of Paediatrics and Child Health have been campaigning since the last round of reporting to the UN Committee on the Rights of the Child, for a public sector duty to have due regard to the UNCRC. We agree that to further influence the culture of policy making to have compliance with the UNCRC, that all NHS Bodies, and indeed all public bodies should have due regard to the UNCRC when carrying out their functions and should have their own children’s schemes which compel them to train officials in understanding how to give due regard to the UNCRC. For example:

- in the application of CRIA to all policy and budgetary decision making,
- in laying annual reports that demonstrate compliance with the provisions of the UNCRC,
- to develop corporate wide children’s rights strategies
- and mandatory training on children’s rights.

What is required is that the general legislative measures (article 4, 42. 44.6) of the UNCRC that are included in the Right of Children and Young Persons (Wales) Measure are made applicable to public bodies.

We believe that:

- Having a legal requirement is essential to raising the status of the UNCRC and to ensure that obligations to the UNCRC are better met.
- The duty will help to better embed the UNCRC in decision-making

- It will encourage all public bodies to become more pro-active with regards to their obligation towards realising the provisions of the UNCRC.
- It will help to ensure that senior level management deliver a corporate wide approach to the UNCRC

Implementation of a public sector duty must be given the appropriate resources required so that all officials/staff at public body level understand the principles and provisions of the UNCRC to their work and how to interpret due regard.

We also support direct incorporation of the UNCRC (similar to the duty to not act incompatibly like in the HRA 1998). We believe that public bodies will more likely act in compliance with their duties under the UNCRC, if they know that children whose rights are breached by lack of compliance to the UNCRC can bring an action for a remedy. So we believe that there should be further consideration given to a “compliance duty”.

However this should not be done in the absence of “due regard” because due regard, if effectively implemented encourages changes in the culture of an organisation and a more proactive way of thinking that supports children’s human rights to be better embedded.

**We respectfully request the consideration of tabling primary legislation which includes the duty of due regard and the compliance duty.**