



**5 November 2020**

**Children's rights inquiry response**

Thank you for the opportunity to share further thoughts and updating information following the publication of the Government's response to your comprehensive children's rights inquiry report.

Although the majority of recommendations have been accepted by the Government I intend to comment on each recommendation in turn rather than simply focus on what is rejected. There are some important points to consider even in response to those recommendations that have been accepted. I will therefore go through the recommendations in order.

**Recommendation 1:**

The Government has accepted the importance of robust CRIA on all policy areas but their response that they will "reiterate the importance of children's rights at every meaningful opportunity" doesn't necessarily address the details of this recommendation. I expect the revised Children's Rights Scheme to make express reference to this recommendation as this is something I had asked officials to consider previously, so I welcome this recommendation and we will follow it up when consulted upon the new Scheme.

**Recommendation 2:**

The Government had stated that they do not wish to have a Cabinet role with responsibility for children and young people and their rights. This is perhaps not a change that can be made at this point in the Senedd Term but I would suggest that this is reconsidered following the Senedd elections in May 2021.

The UN Committee on the Rights of the Child recommended in their 2016 Concluding Observations the need for better co-ordination of the implementation of the Convention in the devolved nations. Ensuring prominence and responsibility at Cabinet level would be one way in which to support this.

**Recommendation 3:**

The Government accepts 'in principle' children's rights training for all Ministers. I led training with over 150 Government officials last month and understand this is part of an ongoing plan to revise

training which I welcome. I expect to have some input into the development of such training materials.

However, the Government's response to recommendation 2 can only hold true if training is therefore provided to all Ministers, their teams and officials in order to understand and fulfil the duties in the 2011 Measure.

**Recommendation 4:**

I strongly welcome the Government's acceptance of the need for their revised complaints mechanism to include the right to challenge a decision not to undertake a CRIA on any area of policy development. This also links to Recommendation 10 below.

I have received some correspondence on this issue during the pandemic period. I believe that complaints about Government's decision making on CRIA are best directed to them as I cannot answer on their behalf. I'd therefore welcome greater clarity on this within the revised Scheme and the public information that accompanies it. This does not replace my scrutiny role but allows for greater transparency and individual access to information and for consideration of their views.

**Recommendation 5:**

The Government response indicates that they decided to publish all CRIAs from January to July 2020. This does not necessarily mean that this will continue though, so I will keep an eye on this in the coming months. I would also expect this to be reflected in the revised Scheme, as the current scheme only commits to publishing CRIA on legislative proposals.

**Recommendation 6:**

The Government have accepted the need to restate the commitment to children's rights in the Budget Improvement Plan and have recently convened a discussion with the Children's Rights Advisory Group regarding the Budget process. However it was made clear through this meeting that there is no intention to amend the impact assessment process for the Budget, and the Budget Improvement Plan currently does not refer to children's rights or the UNCRC. On that basis I am unsure how the Government's acceptance of this recommendation will be achieved in reality.

**Recommendation 7:**

Further to the paragraph above, having rejected the recommendation to undertake a specific CRIA for the Budget, it is unclear how impact on children's rights will actually be assessed specifically in relation to the Budget.

As covered in my previous evidence to this Committee on this and other inquiries around budgeting, it appears that early efforts in Wales to undertake children's rights budgeting have since been lost, and the process is poorer in that regard in terms of transparency and accountability on children's rights.

Individual, policy-level CRIA cannot possibly take into account the balancing exercises required in formulating the Budget, and therefore the Government's arguments in this regard do not stand up to scrutiny.

Section 12 of the UN Committee on the Rights of the Child's 2016 Concluding Observations to the UK contained a number of recommendations in respect of children's rights budgeting as follows:

- (a) Utilize a child-rights approach in the elaboration of the State budget, by implementing a tracking system for the allocation and use of resources for children throughout the budget;
- (b) Ensure transparent and participatory budgeting through public dialogue, including with children;
- (c) Define budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social measures and make sure that those budgetary lines are protected even in situations of economic recessions;
- (d) Regularly conduct child rights impact assessments of budget and economic decision-making processes and outcomes, including austerity measures, in areas that are directly or indirectly related to children's rights;
- (e) Establish mechanisms to monitor and evaluate the adequacy, efficacy and equitability of the distribution of resources allocated to the implementation of the Convention.

I would be interested in the Government's response to this Concluding Observation as part of Recommendations 13 and 14, in light of their rejection of recommendation 7.

**Recommendation 8:**

The Government accept the need to develop and publish a national awareness-raising strategy on the UNCRC. My team and I have, in recent years, encouraged the Government to do this on a number of occasions. I have previously suggested to the Government that they should reconvene their Article 42 advisory group in order to assist with this work. The Article 42 group involved communications officers from Government, my office and Children in Wales meeting to co-ordinate awareness-raising about the UNCRC.

**Recommendation 9:**

The Government has accepted the importance of a human rights education as part of the new Curriculum for Wales. Their response indicates that this forms part of the What Matters Code and the Humanities work. I don't intend to repeat [my evidence to the Committee](#) on the Curriculum and Assessment Bill, but would reiterate that this Code will be amendable and therefore the Government is not protecting this entitlement strongly enough unless it appears on the face of the Bill.

In addition, it is not sufficient for children to simply learn about rights; they need to experience these throughout their education. This means a children's rights approach to how a school's policies operate so that children experience an environment that respects their rights rather than simply learning about rights as an abstract concept. It also requires children's rights to be applied to decisions around disapplication of the Curriculum in certain circumstances for example as allowed by

the Bill. This is why a duty of due regard to the UNCRC must be placed on the face of the Bill; without it those rights considerations won't apply to how children learn or what they all learn.

**Recommendation 10:**

I welcome the acceptance of the need to strengthen the Government's complaints mechanism and make this process child friendly. I will continue to scrutinise this as part of the revisions to the Children's Rights Scheme to ensure that this is carried forward into practice.

**Recommendation 11:**

I support the Government's agreement to write to the UK Government to ask them to ratify the 2014 UNCRC Optional Protocol. This is another of the recommendations from the UN Committee's 2016 Concluding Observations.

**Recommendation 12:**

The Government has agreed to include 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. I very much welcome this but would want to emphasise the need for suitable children and young people's versions of consultations and events to be utilised regularly and effectively as part of this. I will emphasise this as well as the importance of meaningful engagement with children and young people from a range of different backgrounds and experiences, as part of my scrutiny of the revised Scheme.

**Recommendation 13:**

The Government has agreed to publish a detailed strategic response to the UN Committee's 2016 Concluding Observations within the next six months, related to devolved matters. I note that they have not given a date for this but would expect this to be published before the Purdah period for the 2021 election. In addition, I would expect this to cover all relevant areas and not just those where progress has been made. The timing of this publication should enable this to inform the next Programme for Government, as this will indicate the less developed areas that require a greater focus in order to take forward children's rights in the next Senedd Term.

It is notable that some of the Committee's recommendations from this Inquiry reflect the 2016 Concluding Observations, including some areas that have been rejected.

**Recommendation 14:**

The Government has also committed to updating Members of the Senedd 'regularly' on progress against the Concluding Observations. It is unclear how and when this will be undertaken and how this will be communicated to other stakeholders including children and young people themselves. In particular, the ability to scrutinise such updates is vital as otherwise statements may simply follow

the format of the Government's annual statement on the anniversary of the Concluding Observations, which essentially highlights only the areas where positive progress has been made.

**Recommendation 15:**

I am concerned that the Government has rejected the need for all devolved public bodies to be under a duty to have due regard to the UNCRC. The Government, in funding such bodies, may not be complying with their own duties under the 2011 Measure to ensure due regard to children's rights in all that they do. This also links back to consideration of children's rights within the Budget as the funding of these bodies is an example of the Government exercising their functions.

Whilst I am aware that research is ongoing in relation to a range of different UN treaties and international law obligations, as noted above the Government is already subject to duties under the 2011 Measure and needs to ensure that children's rights actually take effect in children's everyday lives, through the services they receive from public bodies. Cases received regularly by my Investigation and Advice team would indicate some difficulties in local authorities and health boards' interactions on complex cases for example, and I am unable to hold them to account directly on children's rights without specific duties on them to act in accordance with the UNCRC. Another example would be in the case of closure of a local authority or health board service for children; a due regard duty would usually come with duties to conduct impact assessments to evidence how children's rights had informed such a decision, but I cannot currently hold bodies to account for failure to do so, based on the current requirements.

In addition, another reason for calling for a due regard duty in the Curriculum and Assessment Bill is due to the lack of a wider duty on public bodies in relation to the UNCRC. While the Government continues to reject calls for greater implementation of the Convention in a systematic way, such calls will continue to be made in respect of specific pieces of legislation, and the Government's own duties under the 2011 Measure are not sufficient to cover this, despite what they assert in this regard.

**Recommendation 16:**

The Government has previously rejected calls to transfer responsibility for the appointment, accountability and funding of my office to the Senedd. I note their latest rejection of this call refers to the lack of legislative time available to enact primary legislation in order to achieve this. The response does not indicate however what the Government's position is on the issue itself. It could be inferred from the response that the only reason for this change not being made is the lack of available legislative time to enact such a change.

I have included transferring the appointment of the Commissioner to the Senedd in my [Happy, Healthy and Safe manifesto document](#) for 2021.

It should be noted that the next recruitment round for the Commissioner post will need to commence in 2021 in order to secure a new appointee ahead of the end of my term in April 2022. On the basis of this response it appears unlikely that this change will be made ahead of the next 7-year term.

Submitted by:

A handwritten signature in black ink, appearing to read 'Sally Holland', written in a cursive style.

Professor Sally Holland

Children's Commissioner for Wales