

Senedd Cymru  
Y Pwyllgor Cydraddoldeb a  
Chyfiawnder Cymdeithasol  
Gofal plant a chyflogaeth rhieni: y  
pandemig a thu hwnt  
CPE(09)  
Ymateb gan Comisiynydd Plant Cymru

Welsh Parliament  
Equality and Social Justice Committee  
  
Childcare and parental employment:  
the pandemic and beyond  
CPE(09)  
Evidence from Children's  
Commissioner for Wales

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## Background information about the Children's Commissioner for Wales

The Children's Commissioner for Wales' principal aim is to safeguard and promote the rights and welfare of children. In exercising their functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner's remit covers all areas of the devolved powers of the Senedd that affect children's rights and welfare.

The UNCRC is an international human rights treaty that applies to all children and young people up to the age of 18. The Welsh Government has adopted the UNCRC as the basis of all policy making for children and young people and the Rights of Children and Young Persons (Wales) Measure 2011 places a duty on Welsh Ministers, in exercising their functions, to have 'due regard' to the UNCRC. This response is not confidential.

Whilst I note that the terms of this inquiry relate primarily to parental employment, due to my statutory role as independent champion for children's rights I have covered in my response the child development considerations and children's rights arguments in relation to the Childcare Offer. Others will be better placed to comment directly on employment access and retention, or workplace productivity.

I have used the published terms of reference for the inquiry to structure my response.

My response covers:

- The need for a child-centred childcare policy;
- The need to review the terms of the existing Childcare Offer; and
- A recommendation to undertake a full Children's Rights Impact Assessment (CRIA) whilst reviewing the policy.

The extent to which current childcare provision in Wales sufficiently supports parents, particularly mothers, to enter, remain and progress in employment, and what changes might be needed to improve the effectiveness of childcare provision in doing this.

The criteria for the Childcare offer in Wales<sup>1</sup> at present are very specific; this was something that I raised concern about during the passage of the Childcare (Funding) Bill which brought the Offer into force. In my written evidence<sup>2</sup> and my Annual report for 2016-17<sup>3</sup> I expressed concern at the exclusion of children from non-working households from the Offer, as it was likely to increase the school readiness gap between this group and those with working parents. While childcare provision offered in Flying Start areas meets some of this need, not all children of non-working parents live in Flying Start areas. Research commissioned by Save the Children suggests that on average 44% of children living in income deprivation in Wales are not eligible for Flying Start<sup>4</sup>.

In my oral evidence session on the Bill with the CYPE Committee,<sup>5</sup> I was challenged on this, on the basis that it was a specific Labour party manifesto call and was being implemented in the terms promised. However, the Government has a legal duty to have due regard to children's rights when exercising any of their functions, and I did not believe that they had done so sufficiently, by bringing forward such an adult-centred policy.

The requirement to work a minimum of 16 hours per week and for both parents in a couple to be working mean that low income households may be excluded from accessing the Offer.

There are some schemes that provide childcare for those seeking employment, but these do not apply if you are in part time work (less than 16 hours) or if you are in education or training. Education or training might be key ways for parents to upskill or diversify their qualifications in order to re-enter the labour market but the lack of childcare availability is a real barrier for many in pursuing this option. This was pushed hard by members of the CYPE Committee during stage 1 scrutiny of the Bill but this was not amended in the final version that was enacted.

The Government's 2019 evaluation report<sup>5</sup> of the Childcare Offer pilot phase noted that 92% of parent respondents to the survey continued to use the same childcare provider as they had done prior to the Offer being implemented. The majority of families taking this up had heard about the Offer through their existing provider. In addition, one of the main benefits noted was an increase in disposable income

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<sup>1</sup> <https://gov.wales/childcare-3-and-4-year-olds>

<sup>2</sup> [https://business.senedd.wales/documents/s75785/CCF%2002%20Childrens%20Commissioner%20for%20Wale\\_s.pdf](https://business.senedd.wales/documents/s75785/CCF%2002%20Childrens%20Commissioner%20for%20Wale_s.pdf)

<sup>3</sup> <https://www.childcomwales.org.uk/wp-content/uploads/2017/10/A-Year-of-Change-CCFW-AnnualReport.pdf>

<sup>4</sup> Little pieces, big picture, Save the Children, 2018, page ix. <sup>5</sup>

<https://record.assembly.wales/Committee/4798>

<sup>5</sup> [https://gov.wales/sites/default/files/statistics-and-research/2020-02/evaluation-of-the-earlyimplementation-of-the-childcare-offer-for-wales-year-two\\_0.pdf](https://gov.wales/sites/default/files/statistics-and-research/2020-02/evaluation-of-the-earlyimplementation-of-the-childcare-offer-for-wales-year-two_0.pdf)

(84% of participants reported this) rather than an increase in childcare take up or in the ability to sustain or take on new employment. Additional disposable income is of course an important positive contribution to families in potentially tackling child poverty, but the high income thresholds for the childcare offer would suggest that this would not be the most efficient way of achieving this goal.

Any state funded childcare provision should be of good quality and help children to realise a range of rights including having extra support where they have a disability (Article 23) and being protected from harm (Article 39).

Article 2 of the UNCRC explicitly states that state parties have a duty to ensure the rights of all children without discrimination of any kind including the status of their parents. The current policy is drawn primarily on the status of parents and is therefore arguably not compliant with children's rights.

**What impact the Childcare Offer in particular has had in achieving the Welsh Government's objective of "helping parents, particularly mothers, to return to work or increase the hours**

My Office does not monitor or collect data on the impact of policies on parents, but I note in the 2019 evaluation report that only 14% of parents responding to the survey had been able to increase their working hours. Of these, there were more women than men that were able to increase their hours, but overall the increase indicated is at the low end.

**The impact of limited childcare availability on Wales' productivity levels**

I would not have the relevant data or information available to answer this question.

**How childcare arrangements have affected parental employment during the coronavirus pandemic, particularly in relation to mothers. What lessons might be applied to provide better support during any future lockdowns or increased restrictions**

During the pandemic my Office was contacted by parents concerned about having to continue to pay for childcare places that they were prevented from accessing during the lockdown periods.

In the first lockdown period particularly, both parents had to be employed in specific sectors in order to qualify for 'key worker' school hubs or childcare provision. This had an impact on parents' ability to care for their children and continue to meet their full employment hours consistently and reliably. Anecdotally we heard of parents having to change or reduce their working patterns in order to manage this, particularly with the inability to access informal family childcare options either at this point.

A particular issue during this period was access to provision for children with additional learning needs. Settings were concerned at their ability to meet

children's needs but it is these children that especially benefit from regular and specialist support and provision.

It is welcome that the key worker criteria were 'flexed' during subsequent lockdown periods although this may not have been the experience for every family. We found through our independent case work service that it was often necessary for our office to intervene and speak to settings or local authorities in order to access provision that families were entitled to. There were pressures on childcare hubs with high demand for places which led to some of the access difficulties that families brought to our office during this period.

In addition, the suspension of new applications for the Offer caused uncertainty for parents as there is usually a requirement for at least 6 weeks' lead in time for applications to be processed. Parents had planned their working arrangements expecting to take up the Offer and therefore were concerned as to how they could make and fund alternative arrangements if this was not going to be available to them. When we raised this with the Welsh Government, we were however pleased to see that the Deputy Minister published a statement<sup>6</sup> clarifying some of the arrangements, in response to parents' concerns.

### Whether Welsh Government-funded childcare provision is flexible enough to support employment of parents, particularly mothers, in different demographic groups and experiencing different circumstances

am aware of difficulties for some parents in navigating the crossover between the Childcare Offer and other provisions such as the foundation phase 10 hours nursery provision. Ensuring that the funded Childcare Offer coincides with other childcare options will be an important aspect to encourage take up of this important provision for children and ensure that wrap around provision is in place for every child that requires it.

Continuity of childcare provision for children is important for the child's experience, with as few changes in settings as possible in any one day being desirable, and no changes being ideal. Currently many parents have to arrange more than one setting for their child to attend in one day.

### The impact of high-quality formal childcare provision on reducing the attainment gap, and the potential benefits of extending childcare provision to tackle inequalities

We know from the Millennium Cohort Study that children from the poorest families are already around 10 months behind those from better-off backgrounds in terms of development by the age of 3.

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<sup>6</sup> <https://gov.wales/written-statement-childcare-offer-and-coronavirus-childcare-assistance-scheme>

A 2021 Estyn Thematic report on the teaching of English language and literacy skills in English medium schools<sup>7</sup> found that “poverty and disadvantage remain barriers to learners developing secure language and literacy skills.” Whilst the cohort currently in schools will not have all been through the Childcare Offer pilot prior to starting school, my concern would be that this situation will be further exacerbated by a continued offer targeted at working parents rather than children’s developmental needs.

wrote in my 2016/17 Annual Report that “I am aware of concerns amongst the current childcare workforce in Wales in relation to capacity and sustainability, including Welsh Language provision.” Government data and plans for the future of the Offer must consider Welsh language provision and provision for children with additional needs, and work with providers in the sector to ensure that there is sufficient capacity to deliver the required provision in every area.

**What Wales can learn from other models of childcare provision operating in the rest of the UK and internationally and emerging practice in terms of supporting parental employment, and the extent to which these models might be transferrable to the Welsh context**

The offer in Scotland is being extended on a phased basis, to eligible two year olds as well as all 3 and 4 year olds<sup>9</sup>. The focus is on children who would most benefit from the offer, including all looked after children and children whose family receive a qualifying benefit, including those eligible for free school meals. This child-centred policy is well focused and ensures that the primary benefit of the funding is children’s learning and development. Given concerns at the levels of child poverty in Wales including ‘in-work’ poverty, and the impact of benefits cuts and caps, framing a childcare offer in these terms is far more consistent with children’s rights and my related calls in this area.

It should be noted that the Children’s Rights Impact Assessment (CRIA) for the 2019 Childcare Funding Bill only highlighted the positives for those children within the offer and did not consider the rights of all children. It was therefore a flawed assessment and should be revisited now that the policy is in place. The policy was also intended as a pilot so it is timely to consider lesson learned from this in order to better target the support and benefits of the funding to support children’s rights.

In addition, it is notable that the Scottish Parliament unanimously passed a Bill to incorporate the UNCRC fully in to Scots law. This would make children’s rights enforceable and require public bodies including the Government to act compatibly with children’s rights. Such a move in Wales would also further enhance the ability to hold decision makers to account on children’s rights. I

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<sup>7</sup> <https://www.estyn.gov.wales/system/files/2021->

<sup>8</sup> [/Estyn%20English%20language%20and%20literacy%20E%289%29.pdf](https://www.estyn.gov.wales/system/files/2021-08/Estyn%20English%20language%20and%20literacy%20E%289%29.pdf)

<sup>9</sup> <https://www.gov.scot/policies/early-education-and-care/early-learning-and-childcare/>

strongly criticised the limited CRIA that was undertaken by the Government for the Childcare (Funding) Bill, because the analysis only considered the positive impact for those children who fell within the Offer and not how the policy was excluding other children who might benefit more from receipt of such provision.

Because the Government had published a CRIA document, they had complied with their legal duties and as such I was unable to directly challenge them on their due regard for children's rights. Full incorporation of the UNCRC in Wales would allow for policies enacted by Government to be directly challenged on the basis of children's rights. Government would have to demonstrate that their actions were compatible with all children's human rights, and not just that they'd done some thinking about some of the potential impacts under the due regard model. Families may also have been able to take forward a legal challenge to the Bill on the basis that it had been introduced without full attention to their children's rights and the Government could then have been ordered to make adjustments to their policy and guidance to be compliant with the UNCRC.

I continue to call for the Government to take the necessary steps to fully incorporate the UNCRC into Welsh law as the current Rights of Children and Young Persons (Wales) Measure 2011 only amounts to partial incorporation.

#### How financial and practical implications such as availability of childcare would need to be considered by the Welsh Government in any future policy developments to extend childcare provision

The Committee may find it beneficial to ask the Welsh Government for the latest data on take up of the offer across different communities, focusing particularly on equalities considerations like households in poverty and access to Welsh language provision or support for children with additional needs. This could look at both the families eligible and the hours they are choosing to take up. This should be used to inform the future direction of the policy, along with a revised Children's Rights Impact Assessment which takes account of this data and sets out the intended approach which would mitigate any negative impacts identified or groups that are currently missing out.

Currently the childcare offer would be available to families where two parents could have a joint income of up to £199,000. Children of higher earning parents were likely to have been already accessing high quality childcare. If the childcare offer is not to be a universal one, then I believe it should be offered to the children of lower income families (working and non-working). Again this was something that I strongly raised during the passage of the Bill.

Such a large-scale investment by the state in early years' provision should not exclude the children of non-working parents completely from the benefits. This is likely to reinforce inequalities in outcomes for different social groups and therefore requires rigorous analysis to mitigate any adverse consequences.

I would recommend that the Offer should be redrawn, following reference to any data from Government on current take up levels. Should a simple extension to a

more universal offer be deemed unaffordable, options to reframe the Offer could include:

- Provision for younger children;
- Support being targeted at the child and not the parents. This can still help get parents in to work but ensure that all children who would benefit from early childhood education and care;
- Lowering the earning threshold, in terms of minimum hours worked to access the offer as well as the upper earnings threshold, to bring the Offer down to target lower and middle income families;
- Flexing the number of hours made available, either in terms of the total weekly hours or the number of weeks available each year, to enable to offer to be drawn more broadly;
- A means tested additional provision for working parents on lower incomes, beyond a more universal offer.