



Ymateb i Ymgynghoriad / Consultation Response

Date / Dyddiad: 6th June 2022

Subject / Pwnc: Inquiry of the Children, Young People and Education Committee into absenteeism of pupils registered at maintained schools and pupil referral units

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.

Has the current statutory framework for Welsh in Education Strategic Plans (WESPs) improved since the recommendations published in December 2015 in the report of the 'Inquiry into Welsh in Education Strategic Plans' by the Children, Young People and Education Committee of the Fourth Senedd?

Certainly progress has been made, but there are still outstanding issues in relation to some areas, in particular in ensuring an equalities approach to planning, including ensuring a non-discriminatory system for children and young people with Additional Learning Needs.

Additional Learning Needs and Welsh-medium

A lack of access to Welsh medium support for children with ALN is not restricted to isolated instances in some areas; it is a systemic issue across Wales. This is highlighted in the significant gaps in the specialist workforce; a 2018 workforce review showed a majority of SEN specialist services across Wales feel they are not meeting current demand for services in Welsh and many expect not to meet this demand in the future.

A lack of access to Welsh medium support also affects children and young people receiving education in EOTAS settings. Estyn's 2016 thematic review of EOTAS provision showed that across Wales there are extremely limited opportunities to continue a Welsh medium education. The new Regulations and guidance include no reference to EOTAS settings.

Local authorities need to ensure that the development of their Welsh Education Strategic Plans support the mechanism of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 to remove the 'reasonable steps' test so that the duty to provide Welsh medium Additional Learning Provision becomes absolute over time. My predecessor made this point clearly in her submission to the public consultation on the draft Regulations and guidance, and consequently welcomed the increased visibility of these duties in the finalised requirements. Clear reference to the requirements of the 2018 Act are now included in the requirements for the preparation of WESPs.

However, there is a real need to recognise the urgency of this issue: the longer planning cycle means plans will cover a decade but cases from my Investigation and Advice service are evidence of the impact of systemic failings for children and young people and highlight why this issue needs to be urgently addressed to ensure that the Welsh medium sector no longer discriminates against children and young people with ALN.

I include some brief examples of issues received through case work below:

- cases in which children receiving education in Welsh medium settings have statutory assessments for Special Educational Needs, and panels determine the child needs to be placed in an English medium school to meet their needs;
- a case of a young person who received their primary education in a Welsh medium primary school and were instructed by their local authority to transfer to an English medium secondary despite wishing to continue in a Welsh medium setting. The local authority was unable to support the needs of the young person in any Welsh medium secondary setting due to a lack of Welsh language specialist provision. This advice was not given to the family at the outset of the child's primary education but at the point of transition.
- a case of a non-verbal child from a Welsh speaking home who was not able to access Welsh medium provision at statutory school age as no specialist placements were available. This meant this child was only able to have an education in a different language to that spoken in their home.
- a case of a D/deaf child in a Welsh medium primary receiving support from a Welsh Language BSL interpreter needed to transfer to an English medium primary school when this individual left their post, as the authority were unable to fill the post with another Welsh language BSL interpreter.

Although my team were able to offer advice to these families, they have unfortunately been unable to resolve all of the issues raised due to the lack of provision and systemic failings in planning a coherent education pathway for children in a range of different local authority areas. This is a pressing human rights issue. The UN Convention on the Rights of Persons with Disabilities (UNCRPD) is unequivocal in its commitment to equitable educational opportunity, as detailed in Article 24 of the Convention, which states that signatories to the Convention should ensure: "That

persons with disabilities can access an inclusive, quality, free primary and secondary education on an equal basis with others in the communities in which they live”.

Equality and non-discrimination

The guidance also does not set out any specific measures that ensure local policy benefits children and young people equitably, including those with protected characteristics or from low-income families. I am reassured by the inclusion of advice in the guidance around the need for the authority to support family learning and opportunities for families to learn Welsh, which would particularly benefit for children and young people from non-Welsh speaking backgrounds. However, the outcomes along which local authorities must structure their plans do not refer to the need to ensure equity of access and to ensure that local planning includes sufficient mechanisms to ensure schools have a comprehensive intake of pupils, which represents their local community, regardless of the language medium of the school.

Guidance does not require local authorities to conduct an equalities impact assessment on their plans, which means there is no assessment of impact by protected characteristic or for lower income families.

There is an ongoing need for local authorities to address this, which is not currently ensured through requirements.

To what extent do Welsh in Education Strategic Plans contribute to the outcomes and targets set out in the Welsh Government’s Welsh Language Strategy – Cymraeg 2050?

The new Welsh in Education Strategic Plans Regulations (Wales) 2019 and the accompanying 2021 Guidance are driven by a central aim of [Cymraeg 2050](#), which is to develop a statutory education system that further increases the numbers of Welsh speakers. As laid out in this strategy, Welsh Medium immersion is the principal method for increasing Welsh speakers in Wales and this consultation document describes the changes needed to the education sector in order to meet the aims and targets of Cymraeg 2050 as ‘transformational’.

The key issue is pace: as noted in the Regulatory Impact Assessment that accompanied the laying of these Regulations, the main risk of pursuing a status quo option is that the current pace of change in Welsh-medium education is not sufficient to fulfil the aims of Cymraeg 2050. Therefore two key amendments were made to the 2013 regulations: first, a target range for each local authority is prescribed centrally and the local authority must have regard to this when setting their own targets; and second, the requirement for community participation in planning is reduced. In the 2013 arrangements there needed to be an assessment of parental demand at a local level; under the new arrangements there is no need to assess demand and, whilst local authorities are required to consult with organisations and professionals (for example, Head teachers, Governing Bodies and neighbouring local authorities), there are no requirements to consult publicly or with parents, young people and children.

I am supportive of Government’s intentions to realise the ambition of Cymraeg 2050 and acknowledge evidence from Government and Estyn that this will require policy changes. However, in my opinion the regulations and guidance have not integrated mitigations to reduce the possibility that these changes could lead to a deficit in local participation in decision making and

therefore to potential resentment or dissatisfaction with the educational offer. I also consider that new guidance does nothing to prevent the perpetuation of an inequitable system that discriminates against children and young people with Additional Learning Needs. There is also a gap in the current guidance as to how the new system can ensure Welsh medium and English medium settings are equivalently representative of their local communities in terms of protected characteristics and income levels, to ensure both language settings benefit a diverse school population and contribute to integrated, inclusive communities.

How are local authorities responding to changes to guidance on school categories according to Welsh-medium provision, and are they meeting the Welsh Government's ambition to increase Welsh-medium provision in English-medium and dual-stream schools?

Others are better placed to answer this specific question.

What challenges lie ahead in the planning and development of Welsh-medium provision, ahead of a proposed Welsh Language Education Bill?

In addition to challenges outlined above in relation to Additional Learning Needs and wider equity considerations, the challenges include the three areas below:

Participation of families, children and young people

Consultation with the local community has reduced in prominence in the new arrangements due to the removal of the requirement of the parental assessment of demand (Schedule 1 of 2013 Regulations). This is a significant shift, and I question its consistency with the Wellbeing of Future Generations (Wales) Act 2015 and the principle of effective involvement included in the five ways of working. My office has previously been contacted by families concerned about changes to the language of education provision in their area, and there may be an increase in concerns around this as local authorities develop their plans.

Importantly, there is no requirement to include consultation with children and young people, which is essential to uphold their human right to participate in decisions that affect their lives (Article 12 UNCRC).

It should also be noted that wider consultation would not prevent the authority paying due regard to Welsh Government guidance when setting targets. First, consultation can inform the authority as to where within the range specified by the guidance they should set their target. Second, this could also enable community demand to lead to more ambitious targets to increase Welsh medium learners. Last, if consultation shows that the Welsh Government guidance is greatly inconsistent with local wishes then the authority can, while retaining due regard to the guidance, explore a target more reflective of the wishes of children, young people and families in the local community and can evidence the reasons for their divergence from the range in the guidance.

The guidance also directs authorities to create informal opportunities to use Welsh in the community and it is essential that children and young people from a range of educational settings are involved in developing these opportunities so that they are informed by young people from different backgrounds.

Further consideration of links between the two language sectors

Planning and capacity building should be of benefit to children and young people in Welsh medium and English medium settings, and more can be done to ensure the relevance of these proposals to both language settings. This is in line with the key aim of Cymraeg 2050 to increase the proportion of learners competent in Welsh that have been educated through the medium of English. While there is some reference to this, the guidance could more strongly encourage the local authority to create partnerships and skill-sharing opportunities between professionals in English medium and Welsh medium schools, and between children and young people from English medium and Welsh medium schools, including the opportunity for peer-learning.

The guidance does also direct authorities to develop informal opportunities to use Welsh. Local authorities should take opportunities to make these opportunities available to children and young people from both settings, and enable these to be co-developed by children and young people receiving education in both English and Welsh language settings.

Transport

The lack of transport provision to post-16 Welsh medium settings across Wales has been described to my office by professionals as the most significant factor in preventing young people from continuing their education in Welsh and taking qualifications through Welsh.

This is something that has also been considered by the Senedd over the course of the last term, particularly around local proposals to significantly increase the costs of post-16 transport, and the impact this will have on young people choosing Welsh-medium education post-16.

There are limitations of the duties imposed by the Learner Travel (Wales) Measure 2008, which do not ensure provision beyond statutory school age. Changes to the Measure are long-overdue and my office has made repeated formal recommendations to review the provisions of the Measure. Government conducted a review directly in response to concerns raised by my office, specifically as a formal recommendation in the 2018/19 annual report.

An interim measure of the review published at the end of 21/22 year is clear that ‘the option of ‘do nothing’ is not considered appropriate’ and sets out two options: to take forward some limited changes, or; to take forward a wider programme of work that encompasses a complete revision of the Measure.

However, progress has been slow in this policy area. Work was underway on a review of the Measure in 2020 but it was not until March 2022 that Welsh Government published their interim review. At the publication of the interim review, Government did not give any commitment or timescales as to how they proposed to take forward either of the options outlined.

This is a policy area that needs considerable and timely attention if young people are to be offered equitable opportunities to continue post-16 education through the medium of Welsh.

Submitted by:

A handwritten signature in black ink, appearing to read 'Rocio Cifuentes'. The signature is written in a cursive style with a horizontal line underlining the last part of the name.

Rocio Cifuentes
Children's Commissioner for Wales