

CYPE(6)-02-23 - Paper to note 5

Comisiynydd
Plant Cymru
Children's
Commissioner
for Wales

To:

Dear Jayne

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

Re: Annual scrutiny follow-up

Thank you for your letter dated 14th December. I would also like to thank you and the committee members and clerks for your time and questions in the scrutiny session for my 2021-22 Annual Report and Accounts. I look forward to working with you all during my term as Commissioner.

Via email only

I will answer each of the requests in your letter in turn.

Date: 12th January
2023

- 1) *Provide more information about whether, and to what extent, young people were involved in and consulted about the move of the Children's Commissioner's office from Swansea to Port Talbot.*

Our young person's advisory panel were kept updated throughout the process of planning for and completing our office move, with quarterly updates provided through our regular meetings. In 2018, when we began the process of seeking new accommodation with the expiry of our lease at Oystermouth House, Swansea, we consulted our young person's advisory panel.

Of the responses we received, the following priorities were identified:

- *more important for people to be aware of the existence of the Children's Commissioner, rather than where the office is located*
- *the location of the office cannot simply be deemed more 'convenient' in one location or another, as you represent all children and young people in Wales*
- *most important thing that your office could offer is accessibility, as perhaps the most likely children and young people who need to access your services may have accessibility requirements*



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- *the priority should be to ensure Welsh children are aware of the Children's Commissioner and what the Children's Commissioner does*
- *perhaps this is an opportunity to consider the possibility of having an appropriate centre to raise awareness of the Commissioner and her work. It would be great to have 'The Children's Commissioner for Wales Centre' - where there would be offices for staff, an exhibition of the Commissioner's work so far, meeting rooms (that could be used by the Advisory Panels potentially) and rooms for workshops and school visits and members of the public.*
- *It's accessible to children in Wales*
- *Appropriate facilities that you can make full use of A safe and affirmative atmosphere for children in Wales to be able to share their opinions and feelings if they visited*

These views were taken into account in our approach to the office move.

Critically for us, with a Wales-wide remit, our focus is spending our limited resource on ensuring children across Wales are aware of their rights and our work via various methods including our participation work instead of occupying physical bases, which would need to be scattered across Wales for us to be equitable. What we did want to ensure was that our office base was sustainable and accessible and our premises in Port Talbot meets those requirements. In terms of accessibility to children and young people, a key consideration was that our previous office was around 30 minutes' walk from the nearest train station, and nearly 1 hour walk from the nearest mainline station. The new office is only 5 minutes' walk from the nearest mainline train station.

- 2) *Share with us the child rights impact assessment template you have recently shared with the Welsh Government for their work on eliminating profit from the care of children looked after, and your detailed response to the Government's consultation on that issue.*

I attach my office's response to the Welsh Government's consultation; which includes suggestions for what our office feels a children's rights impact assessment should include for these policy considerations.

- 3) *You also agreed to respond in writing to any questions that we were unable to ask you during the session itself. These are as follows:*

Financial management



▪ *In the Annual Report, your Audit and Risk Assurance Committee noted a risk relating to your office being included in the Government of Wales Act (Budget Motions and Designated Bodies) Order 2018. Can you explain this risk, the measures you had to put in place because of the designation and how it impacts the organisation's budgetary and financial management arrangements?*

We do not object to the principles behind the Order: to simplify systems, improve the consistency and transparency of Welsh Government finance and to provide clearer accountability to the Senedd and public. However, the inclusion of our office in the Order does present a risk as there are potential unintended consequences of these changes in relation to the independence of the office, which we have highlighted to Welsh Government on a number of occasions.

In particular, the new limit to the general fund which can be carried over from year to year to 5% of our annual grant (equivalent to c.£86k) has created an increased risk of us not being able to deliver our statutory function and our ability to act swiftly to undertake urgent additional work (as seen by the office during the Covid 19 pandemic with the 'Coronavirus and Us' work) due to lack of funding.

While we have the ability to draw down additional funds if necessary, to enable us to undertake statutory functions, including the Commissioner's ability to undertake statutory reviews or examinations of Welsh Government, the Order sees us having to request these additional funds from Welsh Government. There is still a lack of clarity about the method by which this may be requested or the rationale for it being granted or how, and I know that my predecessor Sally Holland also expressed her concern about the lack of an agreed method that would enable the draw-down of additional funds that may be necessary to undertake statutory reviews or examinations. This consequently has the potential to compromise the independence of my office.

I concur with my predecessor that this risk could be mitigated if plans were put in place to make my office fully accountable to Senedd Cymru.



As a reminder, the Paris Principles¹ - which establish the minimum standards required for the independence and effective functioning of national human rights institutions - require that a national institution such as the Children's Commissioner for Wales: "Shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence."

Child poverty

- *Given that some of the financial levers to tackle child poverty are not devolved, which policy areas would you want to see Welsh Government focus its resources in order to deliver change for children living in low income households?*

Without a detailed child poverty action plan, we do not currently have the evidence of which levers, within Welsh Government's gift, are having greatest effect on children's lives in Wales. As such, I would argue that no-one can answer with absolute confidence your question about where resources should be focused, without details of the effectiveness of current Welsh Government-led work. Therefore, I would like to see Welsh Government produce a Child Poverty Action Plan which would enable Welsh Government to focus efforts and resources on achieving measurable targets and outcomes through specific and time-bound actions. This would also enable Welsh Government itself as well as stakeholders like myself to measure and track progress towards these outcomes and therefore to hold Welsh Government to account. Whilst I am pleased to hear that Welsh Government have committed to engaging with stakeholders in developing their refreshed child poverty strategy, in my view this process should also set out a clear and detailed Action Plan for the delivery of the strategy. It is also crucial that this process occurs in a timely way, in order that delivery can commence, and I will be watching progress very closely.

Audit Wales estimate in their recent report² that over £1bn is spent by Welsh Government every year on funding aimed at tackling and mitigating the effects of poverty in Wales, and that it is the "single major challenge" facing public bodies in Wales. The report argues that the existing strategy to tackle poverty in

¹ https://www.equalityhumanrights.com/sites/default/files/paris_principles.pdf

² <https://www.audit.wales/publication/time-change-poverty-wales>



Wales is out of date and lacks meaningful targets; and that while the Welsh Government, councils and others have prioritised work on poverty, “the mix of approaches and a complicated delivery landscape mean that ambitions, focus, actions and prioritisation vary widely”. It concludes that there needs to be a refreshed strategy with SMART targets and regular evaluation. I entirely agree with Audit Wales’ conclusions and believe an Action Plan aligned to the refreshed child poverty strategy which reflects and responds to these recommendations is essential.

In terms of specific policy areas, it is fair to say that it is a multi-faceted, complex picture and requires a coordinated approach. However, some key elements to tackling child poverty must be:

- Food Poverty and Child Hunger. Whilst there has been notable progress by Welsh Government on this including the commitment for universal free school meals to primary school children by 2024, this must go further. No child in Wales should go hungry at school and I urge Welsh Government to both accelerate the roll out of universal free school meals in primary schools and expand this into secondary schools. The findings of my national survey *Ambitions for Wales* starkly illustrate the extent to which children are experiencing hunger and worrying about not having enough food.
- Costs of the school day. While there has been some welcome developments in recent years including additional funding for the PDG Access grant, and the upcoming guidance on school uniforms for schools, these must also go further. As my office has previously argued, Welsh government should ensure that all elements of expense related to schools are mitigated, or ‘poverty proofed’ by schools. My office has developed resources³ as part of the 2019 *Charter for Change* report, which includes an assessment tool for schools to run as a lesson plan for learners to engage on costs of the school day and suggest changes the school could make; and materials to inform children about the environmental benefits of recycling uniforms and encourage the use of ‘swap shops’. In the recent consultation on school uniform costs, we responded to urge Welsh government to include these resources in their upcoming guidance.
- A Welsh Benefits System. Another priority must be streamlining access to support, under a Welsh benefits system. To give one example, families in different local authorities within Wales have very different experiences if

³ <https://www.childcomwales.org.uk/a-charter-for-change-resources/>



they are eligible for support through their school for free school meals and the PDG Access Grant. Some local authorities will operate automatic entitlement / enrolment, while others will require families to fill out multiple forms. We understand the situation has improved more recently, but reducing inconsistencies and sharing best practice between local authority provision must be a priority. Again, setting an expectation of the delivery of a single Welsh benefits system as part of a Child Poverty Action Plan would enable us and others to better hold Welsh Government to account.

- Transport. As the cost of living crisis progresses and fuel costs continue to rise, there is growing evidence from families and young people that the cost of getting to school when they are ineligible for free transport or require transport by car can prevent and be a barrier to school attendance. The costs of transport also affect children's enjoyment of their other human rights including the right to play, leisure and socialisation (article 31). I would like Welsh Government to commit to reviewing the Learner Travel Measure within this Senedd term, and also to properly consider a free public transport for under 18s pilot project as an immediate mitigating action.
- Educational Maintenance Allowance – this vital allowance should be reviewed and increased in line with inflation (see <https://www.bevanfoundation.org/views/a-welsh-learning-allowance/>)

Clearly, the cost of living crisis has required and continues to require an immediate response from government. The impact upon children must be a core consideration of Welsh Government's response. That is why I, along with Llamau, Children in Wales and Welsh Government officials worked to ensure young people's voices were heard directly by Ministers in a recent Welsh Government cabinet sub-committee. I continue to urge Welsh Ministers to ensure children's voices are heard directly when considering policy responding to the cost of living crisis.

- *What is your view on the likely impact of the rise in energy prices and costs of living on the delivery of core public services for children such as education and social care? Have you had any discussions to date with Welsh Ministers or Local Authorities about the impact of this on children?*



I am highly concerned about the impact of the rise in energy prices and cost of living on the delivery of core public services for children. We are sadly seeing the impact across our public services, including schools facing extreme pressure on their budgets. I met with teaching unions in November and they shared with me their concerns over the impacts on school budgets, including the possibility of redundancies, particularly of roles such as teaching assistants. Teaching assistants are of course so vital to children with the most educational need.

I was due to meet with the Education Minister in December, but the meeting was postponed by the Minister to the end of January, where we will be discussing these issues. I have, however, discussed these issues with the Director of Education in Welsh Government, on 6th January and my team and I will continue to raise in meetings with officials.

I and my predecessor have repeatedly called for a comprehensive children's rights impact assessment to inform the decision making on the draft budget. I was pleased that in the recent Strategic Integrated Impact Assessment⁴, published in the budget narrative document alongside the draft budget, it was recognised that:

Some of the key impacts that underpinned our considerations included doing all we can to protect frontline services in health, schools and in local authorities. This was on the basis that negative impacts to these services would have a disproportionate effect on some of the most vulnerable in our communities, including children and young people, older people, people with impairments and long-term health conditions. Negative impacts in these services would most likely increase pre-existing health and education inequalities and these would have a disproportionately negative impact on people with intersecting characteristics.

However, a detailed Children's Rights Impact Assessment (CRIA) which considered all relevant decisions against the specific article of the UNCRC would have provided the detail required for us and others to analyse the considerations made.

In addition, I am sure that sadly Local Authorities will be faced with cutting many services which are well used and loved by children. However at the moment the duty imposed by the Children's Measure to have due regard to the UNCRC and

⁴ <https://www.gov.wales/sites/default/files/publications/2022-12/2023-2024-draft-budget-narrative-v1.pdf>



to undertake a Children's Rights Impact Assessment in making any new policy decisions applies only to Welsh Government Ministers and not to Local Authorities. Further incorporation of the UNCRC to expand this duty to Local Authorities would be one welcome way of mitigating the negative impact on children's rights.

I trust that this information is helpful to the committee. Please let me know if you require further information.

Yours sincerely,



Rocio Cifuentes MBE
Comisiynydd Plant Cymru
Children's Commissioner for Wales

Rydym yn croesawu gohebiaeth a galwadau yn Gymraeg. Byddwn yn ateb gohebiaeth a gwladau a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd cysylltu yn Gymraeg yn arwain at oedi | We welcome receiving correspondence and calls in Welsh. We will respond to correspondence and calls in Welsh, and contacting us in Welsh will not lead to delay.



Consultation Response Form

Your name: Rocio Cifuentes MBE , the Children's Commissioner for Wales

Organisation (if applicable): The Office of the Children's Commissioner for Wales

Email / Telephone number: post@childcomwales.org.uk

Your address: The Office of the Children's Commissioner for Wales, Llewellyn House, Harbourside Business Park, Port Talbot

Responses to consultations may be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please place a tick in the box:

Please tell us who you are responding on behalf of. For example is this your own response or is it sent on behalf of an organisation?

This is a response from the Children's Commissioner for Wales, Rocio Cifuentes MBE.

If you want to receive a receipt of your response, please confirm your email address, here:

post@childcomwales.org.uk

Questions on Chapter 1: Eliminating profit from the care of children looked after

There are 12 questions about this chapter.

Question 1.1: Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

As the Children's Commissioner for Wales (CCFW), I support the proposal to introduce legislation that will prohibit the ability for profits to be generated from the care of vulnerable children and young people.

This position is firmly grounded in children's rights. I want confidence that Wales' care system is rights based, with children's best interests – as set out in Article 3 of the United Nations Convention on the Rights of the Child (UNCRC) – being the lead consideration for any decisions made about a child's life and care.¹

Whilst the ability to profit from the care of vulnerable children remains possible in our care system, we can never satisfactorily rule out that financial decisions are not a driver in the decisions made about how or where a child is cared for.

Therefore, introducing legislation that moves away from the current approach to deliver a 'not for profit' service landscape is something I support. This approach would build upon the unique commitments we have in Wales already to upholding children's rights, such as the Rights of Children and Young Persons (Wales) Measure 2011 – which puts a duty on Government Minister's to pay due regard to and uphold the UNCRC, and, in the Social Services and Well-being (Wales) Act which places a duty on all those delivering functions of the Act (eg – any responsibilities relating to the care and support of children) to pay due regard to children's rights.

The Office of the Children's Commissioner for Wales has long been supportive of initiatives to explore how profit making can be removed from Wales' children's care services and have made several recommendations to Ministers on this issue. Under the leadership of my predecessor, Professor Sally Holland, the Office made a call in our Annual Report, 2016/17², for;

¹<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

² <https://www.childcomwales.org.uk/wp-content/uploads/2017/10/A-Year-of-Change-CCFW-Annual-Report.pdf>

“Welsh Government to ensure that local authorities deliver their duties under the Social Services and Well-being (Wales) Act 2014 to involve children and young people in the design and delivery of services, and, increase the range of not for profit services so that money invested in social care services can be spent on improving outcomes for children rather than providing returns for shareholders”.

Despite acceptance of this recommendation, little action was taken to deliver this commitment at the time.

In 2018, the Public Accounts Committee undertook an inquiry³ into the care of looked after children, with concerns about the profit-making ability of some providers being raised by those giving evidence. Whilst strengths were identified in this inquiry, such as the 4C’s Commissioning Framework, concerns were raised in evidence that local authorities were paying high prices for placements for some of the most complex young people in for-profit making settings. This highlighted concerns that finite resources for the care of vulnerable young people were being redirected and not reinvested in to care services. The inquiry also highlighted the commissioning challenges faced by local authorities, with those giving evidence highlighting the struggles they had faced to find placements that suit the needs of the children in their care.

(NB: My Office has undertaken significant work to put forward proposals on how Wales can develop regionally commissioned services for children with the most complex needs through a ‘No Wrong Door’ approach)⁴.

The Office continued to make calls to address profit making in children’s care services in subsequent Annual Reports to Welsh Government, all of which were accepted by Welsh Government Ministers. In summary, these recommendations set out the following;

- In 2018/19 - Welsh Government must commit to taking concrete actions within the next year towards reducing and ultimately ending profit making in children’s care services, without detriment to children and young people’s current care arrangements.⁵*
- In 2019/20 – [The Commissioner] will be asking all political parties to make a commitment to removing profit from children’s social care services in their manifestos for the May 2021 Senedd elections.⁶*

³ <https://senedd.wales/laid%20documents/cr-ld11857/cr-ld11857-e.pdf>

⁴ <https://www.childcomwales.org.uk/publications/no-wrong-door-bringing-services-together-to-meet-childrens-needs/>

⁵ <https://www.childcomwales.org.uk/wp-content/uploads/2019/10/Annual-Report-2018-19.pdf>

⁶ <https://www.childcomwales.org.uk/wp-content/uploads/2020/10/Annual-Report-2019-20.pdf>

- *In 2020 – We published a Manifesto for Children and Young People. We wanted political parties to support calls to stop private companies making a profit from children’s homes and foster care.⁷*
- *In 2020/21 - The Welsh Government must bring forward a roadmap by 1st April 2022 setting out the timescale and actions they will take to safely phase profit out of children’s social care provision.⁸*

In 2020/21, the recommendation formed part of Welsh Government’s Programme for Government. In 2022, the Competitions and Market Authority⁹ study into the functioning of children’s care services further evidenced the need for a shift in approach to the way care services are delivered and commissioned for children in Wales. The CMA report highlighted a poor functioning market for children, where excessive profits were being generated against a back-drop of poor outcomes for children, bringing to light the follow issues;

- *“It is clear that the placements market, particularly in England and Wales, is failing to provide sufficient supply of the right type so that looked-after children can consistently access placements that properly meet their needs, when and where they require them.”*

The report highlighted how many children are living far from where they would call home without a clear child protection reason for this. In Wales 31% of looked after children are placed outside of their LA.

Concerns were raised that children were unable to access therapies or facilities that they need;

- *“While the amount of provision has been increasing in Wales, primarily driven by private providers, this has not been effective in reducing difficulties local authorities face in finding appropriate placements, in the right locations, for children as they need them. That means, in tangible terms, children being placed far from their established communities, or placements failing to meet the needs of children, to a greater extent than should be the case.”*

Despite these poor outcomes and lack of choice of suitable provision, private providers demonstrated significant and steady profit margins, particularly the largest providers. Independent Fostering Agencies demonstrated profit margins of 19.4% and children’s homes (across 3 nation data-set) averaged 22.6%.

⁷https://www.childcomwales.org.uk/wpcontent/uploads/2020/09/CCfWSeneddElectionManifesto2021_FINAL_EN.pdf

⁸ <https://www.childcomwales.org.uk/publications/annual-report-20-21/>

⁹ <https://www.gov.uk/cma-cases/childrens-social-care-study>

Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

The role of the Children’s Commissioner for Wales is to protect and promote the rights of all children and young people in Wales, therefore I will set out how I believe children and young people’s rights and entitlements may be impacted by the proposal, using the Children’s Rights Impact Assessment (CRIA) Approach that my office promotes with public bodies and schools across Wales¹⁰. This is based on the five principles of a children’s rights approach; embedding, equality and non-discrimination, empowerment, participation, and accountability, which was developed with support from Professor Simon Hoffman and Dr Rhian Croke at the Swansea Observatory on Human Rights of Children.

Whilst I acknowledge that a CRIA has been completed as part of the Integrated Impact Assessment, in its draft form it fails to acknowledge any conflicts with children’s rights. Whilst I am supportive of the proposals, as set out above, my Office has always advocated transition to a not-for-profit care system, that places children, and their rights and needs, at the centre. Whilst I agree this policy and change in law will have many benefits for children’s rights (as set out below) remaining live to potential infringements or conflicts is critical. I would urge Welsh Government Officials to revisit the CRIA after this consultation exercise and seek to elaborate on the impacts this policy may have for children’s rights.

<p><i>Embedding Children’s Rights</i></p> <p><i>This links to Wales’ wider commitment to children’s rights, such the Rights of Children and Young Persons (Wales) Measure – which puts a duty on Government Minister</i></p>	<p><i>This proposal has the potential to further embed the due regard duty and support its practical implementation, by working to eliminate profit-making as a factor in the delivery of children’s care services. It has an ambition to ensure children are cared for closer to home, in a care system that retains and reinvests funding for continual improvement, delivering better outcomes for children.</i></p> <p><u><i>Potential positive impacts on the following rights:</i></u></p>
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¹⁰ <https://www.childcomwales.org.uk/wp-content/uploads/2017/04/The-Right-Way.pdf>

to uphold the UNCRC, and also, in the Social Services and Well-being (Wales) Act.

Article 3 – adults should work in the best interests of children. Removing profit making capabilities can further ensure decisions are made on the basis of best interest not profit.

Article 4 – government's do all they can to ensure that children receive their rights. Welsh Government using their devolved competence to deliver for children in Wales.

Article 9 – rights to family life – when a child has been separated from their birth family, contact should be maintained with parents and siblings if in the child's best interest. Supporting children to remain within their communities can support this right, as well as focussing on developing suitable provision for sibling groups.

Article 20 – children should be awarded special protections if they cannot live with parents. These proposals seek to strengthen existing rights commitment to this group, as set out in SSWBA. This also links to the Programme for Government commitment to explore radical reform of children's care services.

Article 25 – the right to regular review of placement when in care. Ensuring children stay closer to home and in regular contact with Social Workers and Corporate Parents can strengthen this right.

Article 27 – to ensure looked after children can access an adequate standard of living to help them reach their potential. Reinvesting and innovating in services can continue to strengthen this right.

Article 39 – the right to recover from trauma. This should be an underpinning principle of the proposal, to deliver a robust care system that can meet the needs of vulnerable young people.

Potential negative impacts:

As stated in the CMA report, there could be a disorderly exit from the placement market. It is therefore critical that Welsh Government and Local Authorities remain live to trends in registrations and closures, and can respond

	<p><i>promptly to concerns. Failure to do so could impact on Article 27 and Article 20.</i></p> <p><i>Children should also be protected from placement moves wherever possible to protect the Article 25 right and rights to education and healthcare (Articles 24, 28 and 27). This is where Welsh Government should list what mitigations will be put in place to address these potential negative impacts.</i></p>
<p><i>Equality and Non-discrimination – how does this impact children with protected characteristics? Will it affect some children differently?</i></p> <p><i>This policy has the potential to lead to the development of a care placement landscape that is developed solely in response to children’s needs.</i></p>	<p><u><i>Potential positive impacts;</i></u></p> <p><i>Article 2 – non-discrimination - all looked after children will have equal rights to be looked after in a way which does not profit from their care. No looked after child should be looked after differently. All placements/homes will be modelled on the same principles.</i></p> <p><i>Services will meet a range of needs, developing services for those with disabilities, promoting access to Article 23 – the right to enjoy the best possible life in society and to remove obstacles for children with disabilities and Article 39 – the right to recover from trauma and neglect.</i></p> <p><u><i>Potential negative impacts;</i></u></p> <p><i>Failure to develop or commission provision under the new model to meet a range of young people’s needs could mean that some children are more adversely affected than others.</i></p> <p><i>Welsh Government and Local Authority risk registers must be live to this and take account of the risks to ensure any impacts can be mitigated.</i></p>

Empowerment – How will this proposal help children take up their rights?

Potential positive impacts

Focus needs to be given to how children will be empowered to share their views at a strategic level on this policy, but also on an individual level, such as ensuring all eligible children and young people are empowered to take up the offer of independent advocacy, should they wish to share any views on proposals. This is an important safeguard for children but also a means of empowerment for children, to become more involved in the decisions that impact their lives and supported to participate.

TGP Cymru have long raised concerns about access to independent advocacy in private residential homes. Through their ‘Out of Sight – Out of Rights’ research, they found that 100% of local authority children’s homes commissioned a visiting advocacy service, in comparison to 5-10% of children’s homes in the independent sector.¹¹ Following this research, TGP Cymru have called for visiting advocacy arrangements to be a requirement for Registration and Inspection with Care Inspectorate Wales, to further embed this entitlement into services for vulnerable children. This is a recommendation I support and believe strengthening access to advocacy should be something that is delivered in tandem with these proposals, acting as a means of ensuring children can reach out to a regular independent adult. With proposals to amend the Regulation and Inspection of Social Care (Act) Wales being set out in later chapters – this provides a good opportunity to explore this change.

Failure to ensure children can share their views strategically and on an individual level will have a negative impact on children’s Article 12 right to have their voices heard and taken seriously in matters which affect them.

¹¹ <https://www.tgpcymru.org.uk/evaluation-of-covid-19-residential-visiting-advocacy-project/>

<p><i>Participation of children – how will children be included in the development of this policy?</i></p>	<p><i>I am aware that plans were in place in September 2022 to engage with children and young people on a range of topics, including the not-for-profit policy proposal, but this was postponed due to the State Funeral. My Office has been clear that it is keen offer support on the day to facilitate conversations.</i></p> <p><i>Ensuring children are involved in the development of this proposal supports their Article 12 right to share their views on issues that affect them and their Article 17 right to access information in a way they can understand.</i></p> <p><i>I am aware that the 4C’s Young Commissioners have undertaken excellent work on developing commissioning principles and values, setting out what they expect and want to see from a children’s home or foster placement.¹² My Office has also supported a range of organisations to develop Charters, coproduced with young people – to set out clearly to children how services will act for children and how they will support their UNCRC rights. There is a clear space here for children and young people to shape expectations on providers going forward.</i></p> <p><i>Failure to involve children would impact their right to participate and share their views as discussed above.</i></p>
<p><i>Accountability – how will you be accountable to children on this policy? How will you report on progress? Is there a mechanism for children to hold us to account for progress?</i></p>	<p><i>It is important that those affected by this decision have an opportunity to engage in discussions around this and to hold decision makers to account. Whilst the Programme Board is supported to do this, I think a focus should be given to how the complex issue can be communicated to young people and where they can go to share views, for example, with the development of resources in accessible language, which can support conversations on the topic. This could support those working in settings to explain, if asked, about the policy.</i></p> <p><i>Consideration should be given to this during the transition but also, post 2026 when the new models have been developed. This would support children’s Article 12 and Article 17 rights – to share views and to receive information in age appropriate ways.</i></p>

¹² <https://www.childcomwales.org.uk/wp-content/uploads/2021/04/Specification-Statement-poster-002.pdf>

Question 1.3: One approach could be for the legislation to define 'not-for-profit' in terms of the types of organisation that would qualify. Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended? What would be the effects and implications of this?

A key principle underpinning my Office's call in this area is to ensure that the money that is currently diverted away from services in the form of profits or dividends, is, under the new approach, re-invested into our services for children and young people. Ensuring there is transparency and traceability of costs is essential, therefore I would be supportive of exploring, via the Programme Board, what models or approaches could be proposed as a means of achieving this.

Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of 'not-for-profit' through subordinate legislation?

Whilst I am supportive of a flexible approach enabling Welsh Ministers to remain live to alter definitions, I do believe there needs to be certainty for providers. Any definition must be clear and unambiguous to avoid misinterpretation. Support should be offered to providers with interpretation when required.

Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

This is an ambitious timeframe, but the need for change is imminent. Confidence in delivery would be aided if Welsh Government could publish greater details on its plan for implementation. As called for by my predecessor, a roadmap of delivery to demonstrate the safe, phasing out of profit from children's care services should be developed to support this change. This would aid the Programme Board in their scrutiny and support of this policy's delivery. It would also support providers in preparing for this change.

Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

Whilst I am in support of the proposals to remove profit, it is critical that focus is placed on developing provision that will meet the new not-for-profit-model. It's hugely important this is communicated early on to providers in order to support a smooth as possible transition. It is also key that resources are directed towards local authorities to develop new in-house provision, working regionally in some regards to offer placements that meet a range of needs. The CMA report highlighted the challenges in commissioning some local authorities face, so it is important that action is taken to minimise any challenges arising or worsening. The most recent data from Stats

Wales indicates that whilst 135 children are placed in residential homes in the LA boundary, 345 are in homes outside of the LA boundary.¹³ Without individual level data we cannot determine the reasons why these children are placed outside of their LA but, it highlights the need for local authorities to work collaboratively, to develop provision on a regional basis to support the breadth of needs if we are to offer homes to children nearer to their communities.

We know that at times, due a lack of appropriate or available placements, children are placed in unregistered settings – these are settings or placements that are operating without registration. They are often services that should be registered in line with the Regulation and Inspection of Social Care (Wales) Act (RISCA) and inspected by Care Inspectorate Wales (CIW) as they are offering ‘care’ and ‘support’ to children. I have raised concerns about the usage of unregistered placements in my annual report, calling on Welsh Government to establish a working group to explore the issue of unregistered placements and unregulated accommodation.¹⁴

Whilst often used as a last resort, children placed in unregistered accommodation lack the protection of the safeguards that a registered placement can offer.

Therefore I welcome the proposals set out in Chapter 4 to strengthen the powers of CIW to identify unregistered services (more is set out on this proposal in Chapter 4).

My predecessor and I have urged for a review to be taken of RISCA to explore how this can be addressed. I urge that this work be progressed in tandem with this policy and legislative proposal to ensure that all children are placed in safe, registered placements, and the proposal to remove profit does not exacerbate this issue. This must involve working closely with local authorities and Care Inspectorate Wales to ensure any trends of this nature are monitored and promptly addressed. Whilst a Practice Direction¹⁵ is in place for placements in unregistered children’s homes, I am mindful that more action needs to be taken to limit the prospects for use, as failure to do so may undermine the policy intention to ensure all children and young people in Wales, who are looked after, are looked after in a setting that is with a registered, not for profit, provider. We would not want to find that children were being placed in unregistered ‘for-profit’ provision, as alternative provision that fits the new model of care hasn’t been developed. New provision does take time to develop, which is why Welsh Government must work closely with the sector to explore transitional support to those who are keen to adapt their models and to continue delivering care.

¹³ <https://statswales.gov.wales/Catalogue/Health-and-Social-Care/Social-Services/Childrens-Services/Children-Looked-After/childrenlookedafterat31march-by-localauthority-placementtype>

¹⁴ <https://www.childcomwales.org.uk/wp-content/uploads/2022/10/Annual-Report-and-Accounts-2021-22-v2.pdf>

¹⁵ <https://www.judiciary.uk/wp-content/uploads/2019/11/PG-Placements-in-unregistered-childrens-homes-in-Eng-or-unregistered-care-home-services-in-Wales-NOV-2019.pdf>

Advocacy:

As mentioned above, I would like to see RISCA amended to strengthen requirements on children's homes to offer visiting advocacy provision. This can act as an important safeguard and participation method for children during the transition phase and ensure that children are being provided with independent advice and support.

Leaving care arrangements:

Developing suitable provision must be a focus of this work. I would not like to see children or young people moved on from placements where they are doing well, to create capacity. Particularly for older young people, who can live independently from the age of 16.

This will be discussed more below in regards to the consultation section on the Regulation and Inspection of Social Care (Wales) Act 2016 and proposals to amend section 3 of the Act.

Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

I support this proposal to help communicate expectations and requirements of providers and those commissioning their services. It will also help reiterate young people's entitlements under this new legislation.

Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only? In particular:

- Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?
- What would be the benefits, disbenefits and other implications of such an approach?
- What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

Above I have set out my concerns about a potential increase in the use of unregistered placements, if the transition to not-for-profit services is not managed effectively.

Local authorities need to be well resourced to be able to offer and commission a range of not-for-profit placements to the children within their care. I am aware that some funding has been allocated to deliver this, but no details are available yet to understand what provision will be developed.

I would urge the focus to remain on strengthening and developing local provision. I would not want to see children placed further afield as placements are not available locally. Therefore I am supportive of exploring with the Programme Board any proposals that could restrict the commissioning from providers that do not meet the not-for-profit models.

Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales? Are there any actions which would guard against such activity?

It's hugely important a robust commissioning framework is developed to support the embedding of this policy, giving local authority commissioners confidence in acting in line with the new requirements.

I would also be supportive of Welsh Government developing spaces to have on-going conversations with the sector as this policy embeds, as well as maintaining a risk-register to monitor trends. I am aware that as part of the Basic Income Pilot scheme, officials have remained tuned in with those delivering the new approach, ensuring issues are monitored and responded to promptly. Adopting a similar open style of communication with commissioners and providers may be welcomed.

I have set out above my concerns that failure to address the use of unregistered accommodation for some of the most vulnerable children could lead to an increase in its usage by LA's commissioning placements from de-registered for-profit-providers.

Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

I believe this policy is likely to have a positive impact on the Welsh language, as more children will be supported to remain in placements in Wales and within their local authority. As highlighted by the Welsh Language Commissioner and others, there is a need to increase Welsh speaking within the workforce so that children can

access services through the language of their choice (in line with their Article 30 right under the UNCRC). Work developing new provision should ensure alignment with the actions of the More Than Just Words 5 year plan¹⁶.

Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

As above.

Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

There are a number of recommended legislative changes that Welsh Government have accepted in response to my Office's previous Annual reports, which are not set out in this consultation. They include;

- 1. Introducing new legislation that would ensure Personal Advisor support is available for care leavers up to the age of 25.** Whilst I recognise that direction has been given by Welsh Government ministers for leaving care teams to deliver this extension, the Social Services and Wellbeing Act (Wales) 2014 has not been amended to secure this extension. Therefore, it is currently an expectation and not a statutory entitlement for care leavers. My office takes an active role through the Investigation and Advice service to uphold this extension but are eager to see relevant legislation amended to secure this right. I have continued to raise this issue in my Annual Report for 2020/21. As this has been accepted by Welsh Government, I would like to receive greater assurances that this legislative change will be timetabled.
- 2. Proposals to extend Corporate Parenting duties.** A key part of reforming children's social care services is to strengthen public bodies' roles and expand Corporate Parenting duties to other important services, such as health, education and housing. I would have expected to see proposals to strengthen these duties included in this consultation, as this is a key commitment of the Programme for Government. My office has expressed

¹⁶ <https://gov.wales/sites/default/files/publications/2022-07/more-than-just-words-action-plan-2022-2027.pdf>

concern that a voluntary approach to strengthening duties will not deliver the change we wish to see. Legislative change to impose new duties to share the responsibilities as Corporate Parents is required.

Questions on Chapter 2: Introducing direct payments for Continuing NHS healthcare

There are 8 questions about this chapter.

Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales. Do you agree or disagree with these proposals? Please explain your reasoning.

I would expect to see consideration given to children and young people becoming eligible for Continuing NHS Healthcare arrangements as they reach adulthood to be involved at the earliest appropriate opportunity. Young people have rights to information (Article 17), to share their views (Article 12) rights to the best possible health care (Article 23) and rights as a disabled young people to be involved in society and have government's remove structural barriers to promote their inclusion (Article 23). These arrangements should meet the requirements of the Welsh Government's Transition and Handover Guidance¹⁷ for health boards, so that they are properly supported well in advance and throughout their transition to Continuing NHS Healthcare arrangements.

I have not responded to the further questions in this chapter because they do not apply directly to children and young people.

¹⁷ <https://gov.wales/transition-and-handover-childrens-adult-health-services>

Questions on Chapter 3: Mandatory reporting of children and adults at risk

There are 11 questions about this chapter.

Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

I am supportive of exploring the implications of imposing a duty to report a child at risk directly on individuals within relevant bodies. It is every body's duty to act in a child's best interest (Article 3) and adults have a duty to pay due regard to children's rights under Article 34 to be protected from sexual exploitation and abuse.

As evidenced in the final report from the Independent Inquiry in to Child Sexual Abuse, many victims of CSA/E do not disclose what has happened to them, and this proposal may be a way to further strengthen confidence in our reporting system.

In my annual report I made a recommendation to Welsh Government that, following the final publication of the Independent Inquiry in to Child Sexual Abuse, Welsh Government must coordinate and publish a Welsh Implementation Plan to ensure its learning and recommendations are implemented by Welsh Government and other public bodies in Wales. Young people themselves should be participants in this work. This will need to be done safely and sensitively.

Before coming to a final position on imposing a duty, I would like further details on the Welsh Implementation Plan to reflect on how a range of measures will be used to strengthen our response to identifying and preventing child sexual abuse. With the final IICSA report published just this October, I am aware that organisations, as well as my own, will still be reflecting on the breadth of the recommendations. Therefore whilst I support the notion of exploring the duty to report, I am keen for further considerations to take place across the sectors on this proposal.

Steps have been taken in Wales to promote the early identification of abuse, such as with the publication of the All-Wales Practice Guides and the CSA Centre for Excellence 'signs and indicators' resources.¹⁸ Building on this practice is essential to give confidence that all those working with children are confident in delivering in line with the All-Wales Safeguarding Procedures. Strengthening existing preventative practice, as set out in the Procedures, can support a move away from placing an onus on children to disclose, towards an approach that identifies early warning signs.

¹⁸ <https://www.csacentre.org.uk/knowledge-in-practice/practice-improvement/signs-indicators-template/>

Therefore in the interim of developing an Implementation Plan, building consistency in practice should remain a focus for Welsh Government.

The new RSE Code being rolled out across Welsh schools provides an important opportunity to communicate messages around safeguarding. Children will be learning in an age appropriate way about bodily autonomy, safe and healthy relationships and privacy. It is likely that children may be more likely to disclose concerns or incidences of abuse, so those supporting children must be confident in their understanding to act on these disclosures.

Therefore, I am of the view that greater consultation will be needed surrounding this proposal to understand its breadth and implications. Nevertheless, I agree with the principle to explore this proposal with the sector.

Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126(1) of the 2014 Act) directly on individuals within relevant bodies?

N/A

Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

My office will respond in more detail should a separate consultation with further details on this proposal be published. I am aware that work has been commissioned by Welsh Government to explore with the sector the potential implications of the IICSA recommendations, as well as exploring what has been achieved through Welsh Government's National Action. I am keen to see this issue consulted on in more detail once this work has been completed.

Questions on Chapter 4: Amendments to regulation of service providers and responsible individuals

Part 2 and Schedule 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') provides the basis on which Care Inspectorate Wales ('CIW') – on behalf of the Welsh Ministers – undertakes functions relating to the registration, regulation and inspection of 'regulated services'.

This chapter of the consultation focuses on proposed amendments to the regulatory regime for regulated services, service providers and their designated responsible individuals. These relate to a range of matters provided for within the 2016 Act, including:

- a) Identifying unregistered services
- b) Publication of annual returns
- c) Publication of inspection reports
- d) Improvement notices and cancellation of registration
- e) Responsible individuals
- f) Definition of 'Care' for children and young people

Questions on proposed amendments relating to each of these matters follow.

There are 21 questions about this chapter.

Question 4.1: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

Yes – I have growing concerns about the use of unregistered placements and am keen to see action taken to support regulators to respond to any concerns relating to its usage. In my annual report I put forward a recommendation setting out what I would like to see:

Welsh Government must establish a working group in 2022/23 to explore the issue of Unregulated Accommodation and Unregistered Placements. The aims of this work must be:

- *To collect data to build an understanding of its usage in Wales;*
- *To consider the needs of affected young people to identify where there are shortfalls in suitable accommodation; and*

- *To explore whether changes are needed in the regulation system in Wales to award young people stronger protections. Work needs to be concluded within this Senedd term including any regulatory changes that are required.*

I believe this recommendation and associated actions should be delivered in tandem with the proposals set out in this consultation, to help identify gaps in current provision, which leads local authorities to use unregistered placements.

I was recently alerted to a concerning case, regarding the use of agency staff to staff unregistered placements. The provider is operating in England and Wales. The provider was operating without registration and using agency staff to staff the placements. This creates a double safeguarding concern, that some of the most vulnerable children are being looked after by staff who may not have been subject to thorough checks and registration with Social Care Wales, and, are not in a placement that is registered as a care home by Care Inspectorate Wales, with the oversight of a Registered Manager. I am aware that CIW have notified local authorities that they are aware of this practice but far more needs to be done to prevent this circumstance arising. In this circumstance, both CIW and myself had limited powers to act. Therefore, any proposal to strengthen CIW's powers are supported by myself and Office.

The case above also raised concerns about my Office's own remit to act and reach children subjected to these types of placements. Unlike the Children's Commissioner for England and the Older Peoples Commissioner for Wales, I do not have a power of entry for the purposes of interviewing a person in relation to their powers to review organisations' discharge of their functions. In addition to these proposals I would recommend consideration being given to how the Children's Commissioner for Wales' remit may be extended to include power of entry into any premises other than a private dwelling at any reasonable time, for the purposes of speaking with a child or young person in relation to their powers to review organisations' discharge of their functions.

In 2021, my predecessor wrote to Welsh Government Ministers and the Children and Young Peoples Branch within Welsh Government, setting out where the Children's Commissioners remit and legal powers could be strengthened in this regard, setting out suggested areas which could be strengthened, such as through the power to access institutions and documentation to support in the investigating of concerns.

Question 4.2: *(a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?*

Yes – we have a clear regulatory framework in Wales. Those offering placements outside of this should be required to provide information on their service and be held to account. Regulated placements are an important safeguard for children, therefore

I am supportive of measures to ensure the regulator is able to access accurate information on a service which is suspected to be operating without registration. As set out above my own remit could be strengthened in this regard.

Question 4.3: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

Yes – I support this proposal to strengthen CIW's powers.

As mentioned above, a review of my own powers in relation to entry for the purposes of investigation and delivery of functions would be welcome.

Question 4.4: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

Yes – as above I support strengthening measures powers of the regulator to help ensure all children who require a care placement are cared for in a registered placement. Any setting offering care and support to young people should be transparent in their operations and be accountable to the regulator for the delivery of those services.

Question 4.17: *(f) Definition of 'Care' for children and young people:* Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

Yes – this has been a long standing issue for my Office. I have concerns that the current definition is too adult focussed and may be contributing to some young people being placed in unregulated accommodation from the age of 16, as they are assessed as not needing 'care' but just 'support' under the current definition.

My office is concerned that some young people from the age of 16, are required to live independently at a much earlier age than their peers and this can put that at great disadvantage for their future.

As set out in my Annual Report, under RISCA, all children needing care under the age of 16 must be in a regulated and registered placement, although as discussed above, we know at times this does not always happen. However, some 16 and 17 year olds do not necessarily have to live in regulated accommodation, as from 16 some can begin the process of leaving care. Young people can be assessed as needing just 'support' and not 'care and support'. This means young people can live

in accommodation that does not provide care, and therefore isn't required to register with CIW as this falls outside of CIW's remit. The accommodation options can vary greatly, from 'When I'm Ready' placements, supported lodgings placements, semi-independent living arrangements or completely independent accommodation, and even places like hostels and B&B's. These come under the umbrella term of 'unregulated placements'. We are concerned that the quality and standards of accommodation can vary greatly, as there is currently no guiding standards or regulations to govern this area of accommodation. Whilst we know of some excellent supportive settings, some young people can become very vulnerable if living in poor accommodation with limited support.

Under this proposal, this may result in those more nurturing settings being required to register, but may leave some of the more concerning types of provisions falling outside of the new definition. This is why I would like to see Welsh Government take a lead on understanding the various types of accommodation options local authorities utilise to support care leavers, as recommended in my Annual Report.

I would urge that young people are consulted on any proposals relating to this issue, as I am aware that young people will have different views on when they are ready to leave care and be viewed as capable of living without parental guidance.

For example, recently I met with young women living in temporary accommodation. Despite many elements of the provision being complimented, they felt that they were not prepared at all for the transition of living independently and were eager to leave the provision to end being what they felt was 'watched over'. I do feel that this group of young people are very likely to share different views, depending on their circumstances and past experiences as to what 'parental type care' looks and feels like at this age.

Questions on Chapter 6: Extending the definition of social care worker to include childcare and play workers

There are 5 questions about this chapter.

Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

Yes – I am supportive of this proposal to register child care and play workers with Social Care Wales. This is another important step in safeguarding children and further strengthening the workforce.