

## Comisiynydd Plant Cymru Children's Commissioner for Wales

Keith Towler

### COMMUNITIES, EQUALITIES AND LOCAL GOVERNMENT COMMITTEE INQUIRY GENDER-BASED VIOLENCE, DOMESTIC ABUSE AND SEXUAL VIOLENCE (WALES) BILL 2014 CHILDREN'S COMMISSIONER FOR WALES RESPONSE

**Submission Date:** 5<sup>th</sup> September 2014

The Children's Commissioner for Wales is an independent children's rights institution established in 2001. The Commissioner's principal aim is to safeguard and promote the rights and welfare of children.<sup>1</sup> In exercising this functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC).<sup>2</sup> The Commissioner's remit covers all areas of the devolved powers of the National Assembly for Wales insofar as they affect children's rights and welfare. They may also make representations to the National Assembly for Wales about any matter affecting the rights and welfare of children in Wales.<sup>3</sup>

The UN Convention on the Rights of the Child (UNCRC) is an international human rights treaty that applies to all children and young people aged 18 and under. It is the most widely ratified international human rights instrument and gives children and young people a wide range of civil, political, economic, social and cultural rights which State Parties to the Convention are expected to implement. In 2004, the Welsh Assembly Government adopted the UNCRC as the basis of all policy making for children and in 2011, Welsh Government passed the Rights of Children and Young Persons (Wales) Measure<sup>4</sup>.

### Contact details

Organisation Children's Commissioner for Wales  
Name: Keith Towler  
Title Children's Commissioner for Wales  
Address: Oystermouth House, Charter Court, Phoenix Way, Llansamlet, Swansea  
Post code: SA7 9FS  
Tel: 01792 765600  
e-mail: commissioner@childcomwales.org.uk

### This response is not confidential

---

<sup>1</sup> Section 72A Care Standards Act 2000

<sup>2</sup> Regulation 22 Children's Commissioner for Wales Regulations 2001

<sup>3</sup> Section 75A (1) Care Standards Act 2000

<sup>4</sup> <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislationmeasures-rightsofchildren.htm>

**Q1. TO CONSIDER THE GENERAL PRINCIPLES OF THE GENDER-BASED VIOLENCE, DOMESTIC ABUSE AND SEXUAL VIOLENCE (WALES) BILL AND THE NEED FOR LEGISLATION TO IMPROVE THE PUBLIC SECTOR RESPONSE IN WALES TO DOMESTIC ABUSE, GENDER-BASED VIOLENCE AND SEXUAL VIOLENCE, INCLUDING:**

- the publication of national and local strategies
- the appointment of a ministerial adviser on gender-based violence, domestic abuse and sexual violence

**GENERAL PRINCIPLES**

It is clear that the Bill is seeking to provide redress to concerns relating to issues surrounding gender-based violence, domestic abuse and sexual violence in Wales. A central focus has been placed upon improving the multi-agency response to further protecting and promoting the wellbeing of victims and people affected by gender-based violence, domestic abuse and sexual violence. I welcome the duty to introduce the publication of national and local strategies to improve the leadership and coordination of local and national services. I do, however, have significant concerns about the omission and lack of consideration given to the United Nations Convention on the Rights of the Child (UNCRC) within the Bill and how this may result in the specific needs and vulnerabilities of children and young people being overlooked.

Whilst I recognise the important need to ensure that provisions set out in this Bill complement existing child protection and safeguarding procedures and processes, I am concerned about the lack of status given to children and young people in the Bill and how it fails to respond to the detail of their situation, for example:

**a.) Gender-Based Violence and Sexual Violence**

Gender-based violence is a significant issue affecting many children and young people in Wales. In a research report, jointly commissioned by my office, the NSPCC and Cardiff University, our *Boys and Girls Speak Out*<sup>5</sup> report found that many children and young people are facing significant challenges relating to gender-based discrimination and violence when negotiating the understanding of their own and their peers' genders, sexual identities, relationships and cultures. The research found that children and young people are faced with conflicting

---

<sup>5</sup> Cardiff University (2013) *Boys and Girls Speak Out Report: A Qualitative Study of Children's Gender and Sexual Cultures (age 10 – 12)* Available online at: [http://www.nspcc.org.uk/Inform/research/findings/boys-and-girls-report\\_wdf100416.pdf](http://www.nspcc.org.uk/Inform/research/findings/boys-and-girls-report_wdf100416.pdf)  
Accessed on: 19/08/2014

pressures to express their own gender-based and sexual identities whilst trying to fit in with their peer groups. The research highlights the significant position of children and young people who are facing challenges involving bullying, gender inequality, violence and risky sexual behaviours. This is further evidenced by the NSPCC who detail that:

*“1.2 per cent of under 11s, 16.5 per cent of 11–17s and 24.1 per cent of 18–24s had experienced sexual abuse including non contact offences, by an adult or by a peer at some point in childhood.”<sup>6</sup> (p.9)*

The *Boys and Girls Speak Out* report highlights the diversity of children’s views and experiences and emphasises equality, well-being, power, ‘voice’ and choice. Children and young people, themselves, recognise the difficulties they face in negotiating these complexities and call for progressive sexual and relationship education within the curriculum.

The research, however, found fundamental disconnects between adults’ and children’s perspectives on identity, gender and sexuality. This has subsequently impacted on how policy and practice has developed detached from the realities of children and young people. While there is much good practice to support children and young people in negotiating their gender-based and sexual identities it can vary considerably across local authorities. Findings from this research suggest that ‘starting from where children are at’ is essential in meeting and supporting children’s needs and experiences and the everyday realities of children and young people’s relational, gendered and sexual cultures (online and offline). This will involve challenging many of the assumptions adults bring to children and young people’s social worlds: for example, that boyfriend-girlfriend cultures might be drawn upon by children to ‘just be friends’ rather than evidence of ‘premature sexualisation’ or mimicking ‘older’ relationships. I would expect that provisions within this Bill to build upon this position and further support the protection and promotion of children and young people’s wellbeing.

Research conducted by FORWARD in 2007 described female genital mutilation (FGM) as a significant issue affecting women and girls across the UK. The study suggests that over 20,000 girls under the age of 15 are potentially at risk of FGM in England and Wales. It also suggests

---

<sup>6</sup> NSPCC (2011) *Child abuse and neglect in the UK today* [.pdf] Available online: [http://www.nspcc.org.uk/Inform/research/findings/child\\_abuse\\_neglect\\_research\\_PDF\\_wdf84181.pdf](http://www.nspcc.org.uk/Inform/research/findings/child_abuse_neglect_research_PDF_wdf84181.pdf) Accessed on: 08/08/2014

that the practice is on the increase<sup>7</sup>. The practice is recognised internationally as a violation of human rights and is an extreme form of discrimination against women and girls. FGM is nearly always carried out on children and young people<sup>8</sup> and breaches the significant harm threshold for state intervention to protect them<sup>9</sup>.

It is possible that, due to population growth and immigration from practising countries since 2001, FGM is significantly more prevalent than these figures suggest. There is likely to be an uneven distribution of cases of FGM around the country, with more occurring in those areas of the UK with larger communities from the practising countries – found by the same study to be London, Cardiff, Manchester, Sheffield, Northampton, Birmingham, Oxford, Crawley, Reading, Slough and Milton Keynes<sup>7</sup>.

It is disappointing to see that, on the basis of general principle, the Bill does not sufficiently reflect the specific needs and vulnerabilities of children and young people in relation to FGM and other gender-based issues nor does it offer provisions for a comprehensive framework to support children and young people to learn about, to receive support on and to speak out about the cultural gender-based inequalities affecting them and their communities.

## **b.) Domestic Abuse**

The All Wales Child Protection Procedures: Safeguarding Children and Young People Affected by Domestic Abuse recognises the deep connectivity between domestic abuse and the negative impacts it has on children and young people and the ability to parent children effectively<sup>10</sup>.

Again, it is disappointing to see that the Bill gives little consideration to the unique perspectives of children and young people. It presents a lack of provision to effectively respond to the specific needs and vulnerabilities of children and young people who have been directly and indirectly exposed to gender-based violence, domestic abuse and sexually violent behaviour.

---

<sup>7</sup> Dorkenoo, E., Morison, L. and Macfarlane, A. (2007) *A statistical study to estimate the prevalence of female genital mutilation in England and Wales* [.pdf] Available online at: <http://www.forwarduk.org.uk/download/96> Accessed on: 19/08/2014

<sup>8</sup> Griffith, R. (2010) 'Female genital mutilation and the law' *British Journal of Midwifery*, 18(1): 58 – 59

<sup>9</sup> All Wales Child Protection Procedures Review Group (2011) *All Wales Protocol: Female Genital Mutilation (FGM)* [.pdf] Available online at: [http://www.ssiacymru.org.uk/resource/h\\_a\\_FGM\\_All\\_Wales\\_Review\\_June\\_2011\\_-\\_pdf1.pdf](http://www.ssiacymru.org.uk/resource/h_a_FGM_All_Wales_Review_June_2011_-_pdf1.pdf) Accessed on: 19/08/2014

<sup>10</sup> All Wales Child Protection Review Group (2011) *Safeguarding Children and Young People Affected by Domestic Abuse: All Wales Practice Guidance* [.pdf] Available online at: <http://www.rctcbc.gov.uk/en/relateddocuments/publications/news/domestic-abuse-protocol---final-27-04-11---pdf.pdf> Accessed on: 19/08/2014

Using evidence published by the Office for National Statistics on Violent Crimes and Sexual Offences 2012/13<sup>11 12</sup>, the Explanatory Memorandum clearly sets out the detailed need for improving the collaborative public sector response to circumstances of gender-based violence, domestic abuse and sexual violence affecting adults. The Explanatory Memorandum omits pertinent evidence detailing the situation of children and young people. Within the same Office for National Statistics publication on Violent Crimes and Sexual Offences 2012/13, used by Welsh Government to present the case of adult victims, is the detailed situation of children and young people. The research presented evidence which included:

*“The 2012/13 CSEW estimated there were 465,000 violent offences against children aged 10 to 15 in England and Wales in the previous 12 months. This equates to 6.1% of children being a victim of violent crime in the past year; with 4.2% having experienced violence with injury”<sup>11</sup> (p.4);*

*“Boys were over twice as likely as girls to be a victim of violent crime (8.9% compared with 3.2%); and children with a long-standing illness or disability were also more likely to have been a victim as those without one (15.0% compared with 5.3%).”<sup>11</sup> (p.18);*

*“In 97% of violent incidents against children aged 10-15 the victim was able to say something about the offender. Incidents of violence were most likely to be committed by someone ‘known well’ (56% of incidents). In 68% of incidents the offender was a pupil at the victim’s school and in 14% of incidents the offender was a friend (including boyfriend/girlfriend). Where something could be said about the offender, 18% were committed by a stranger, compared with 43% in violence against adults in the 2012/13 survey”<sup>11</sup> (p.23)*

The research also found that:

*“With the exception of those aged under one year, adults generally had higher victimisation rates than children, with adult homicide rates peaking at 14 per million for those aged 30 to 49. For children aged one or over, homicide rates were higher for one to four year olds (8 per million) than for five to fifteen year olds (3 per million)”<sup>12</sup> (p.1)*

*In 2012/13, there were 67 homicide victims aged under 16 years. In line with previous years, the majority of these victims were killed by a parent or step-parent (60%, or 40 offences) and 8 (12% of victims) were killed by a stranger”<sup>12</sup> (p.2)*

---

<sup>11</sup> Office for National Statistics (2014) *Chapter 1 – Overview of Violent Crimes and Sexual Offences 2012/13* [.pdf] Available online at: [http://www.ons.gov.uk/ons/dcp171776\\_352364.pdf](http://www.ons.gov.uk/ons/dcp171776_352364.pdf) Accessed on: 08/08/2014

<sup>12</sup> Office for National Statistics (2014) *Chapter 2 – Homicide* [.pdf] Available online at: [http://www.ons.gov.uk/ons/dcp171776\\_352260.pdf](http://www.ons.gov.uk/ons/dcp171776_352260.pdf) Accessed on: 08/08/2014

*“Previous analysis of Homicide Index figures has consistently shown that children under the age of one have the highest rate of homicide per million population.”<sup>12</sup> (p.17)*

It is clear to me from these Welsh Government statistics the unquestionable need for children and young people to be given equal protection and status within the provisions of this Bill.

National research conducted by the NSPCC in 2011, also demonstrates that:

*“that 12 per cent of under 11s, 17.5 per cent of 11–17s and 23.7 per cent of 18–24s had been exposed to domestic violence between adults in their homes during childhood. 3.2 per cent of the under 11s and 2.5 per cent of the 11–17s reported exposure to domestic violence”<sup>6</sup> (p.11)*

Whilst it is clear that the Bill is clearly directed at promoting the Minister’s intention that everyone in Wales has the right to live in a safe community, free from violence and abuse, the lack of status given to children and young people in the Bill sends a confusing message to children and young people around their right to protection. There is significant evidence which points to the ‘reasonable punishment’ or smacking of children leading to an escalation of violence against children and young people and that smacking, as an act of violence however light, should be considered as domestic abuse<sup>13 14</sup>. On 2<sup>nd</sup> May 2013, I presented evidence to the Health and Social Care Committee and articulated that Welsh Government should take the earliest legislative opportunity to prohibit the smacking of children in Wales. With this in mind, Welsh Government must take action on the issue of equal protection for children and young people if it is to provide a clear message that they too have the right to be safe.

In their UK Concluding Observations 2008, the UN Committee on the Rights of the Child expressed:

*“The Committee, while noting amendments to legislation in England, Wales, Scotland and Northern Ireland which restrict the application of the defence of “reasonable chastisement”, is concerned that this defence has not been removed. The Committee welcomes the commitment of the National Assembly in Wales to prohibiting all corporal punishment in the home, but notes that under the terms of devolution it is not possible for the Assembly to enact the necessary legislation. The Committee is concerned at the failure of State party to explicitly prohibit all corporal punishment in the home and emphasizes its view that the existence of any defence in cases of corporal punishment of*

---

<sup>13</sup> Phillips, B. and Alderson, P. (2003) ‘Beyond ‘anti-smacking’: Challenging violence and coercion in parent-child relations’ *The International Journal of Children’s Rights*, 115: 175 – 197

<sup>14</sup> Whiting, L. and Whiting, M. (2004) ‘Smacking: a family perspective’ *Paediatric Nursing*, 16(8): 26 – 28

*children does not comply with the principles and provisions of the Convention, since it would suggest that some forms of corporal punishment are acceptable.”*

In response the UN Committee on the Rights of the Child stated that:

*“The Committee, reiterating its previous recommendations (CRC/C/15/Add.188, para. 35), in the light of its general comment No. 8 on “the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, as well as noting similar recommendations made by the Human Rights Committee; the Committee on the Elimination of Discrimination Against Women; and the Committee on Economic, Social and Cultural Rights, recommends that the State party:*

- (a) Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, in England and Wales, Scotland, and Northern Ireland, and in all Overseas Territories and Crown Dependencies;*
- (b) Ensure that corporal punishment is explicitly prohibited in schools and all other institutions and forms of alternative care throughout the United Kingdom and in the overseas territories and crown dependencies;*
- (c) Actively promote positive and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, with a view to raising public awareness of children’s right to protection from all corporal punishment and to decreasing public acceptance of its use in childrearing;*
- (d) Provide parental education and professional training in positive child-rearing.”*

In England and Wales, Section 58 of the Children Act 2004 removed the defence of ‘reasonable chastisement’ for those with parental responsibility but replaced it with one of ‘reasonable punishment’. While Section 58 prevents the use of the defence in relation to serious assaults, it may be used in relation to charges of common assault. The Children Act 2004 therefore fails to prohibit all physical punishment in the family. Where a parent hits a child, they are able to claim a justifying defence – one that would not be available where the victim is over the age of 16. As such, children are denied the equal protection of the law. It is lawful for parents to use ‘reasonable punishment’ as long as it does not leave more than a ‘transitory mark’ on the child. This legal provision contradicts a child’s rights to freedom from all forms of violence (Article 19), including corporal punishment:

*“17. **No exceptions.** The Committee has consistently maintained the position that all forms of violence against children, however light, are unacceptable. “All forms of physical or mental violence” does not leave room for any level of legalized violence against children. Frequency, severity of harm and intent to harm are not prerequisites for the definitions of violence. States parties may refer to such factors in intervention strategies in order to allow proportional responses in the best interests of the child, but*

*definitions must in no way erode the child's absolute right to human dignity and physical and psychological integrity by describing some forms of violence as legally and/or socially acceptable.” (p.8)<sup>15</sup>*

*“24. **Corporal punishment.** In general comment No. 8 (para. 11), the Committee defined “corporal” or “physical” punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, caning, forcing children to stay in uncomfortable positions, burning, scalding, or forced ingestion. In the view of the Committee, corporal punishment is invariably degrading. Other specific forms of corporal punishment are listed in the report of the independent expert for the United Nations study on violence against children (A/61/299, paras. 56, 60 and 62).” (p.10)<sup>15</sup>*

Welsh Government must make provisions within this Bill to ensure that the failures of Section 58 of the Children Act 2004 are addressed. The current lack of equality of protection with adults cannot be justified because:

- even the mildest smack sends children the message that hitting people is acceptable behaviour;
- research shows that escalation from mild smacking to serious assaults is an inherent (albeit not inevitable) feature of physical punishment;
- physical punishment invades children’s physical integrity, making it a potential pathway to sexual abuse;
- professionals working with families are unable to deliver clear messages that hitting and hurting children is not allowed;
- children do not complain about something they are told is permitted and justified;
- those witnessing violence to children have no confidence in either intervening themselves or reporting it to the authorities;
- parents are receiving confusing messages about the legitimacy of hurting their children;
- Section 58 of the Children Act 2004 fails to protect children from painful, dangerous, humiliating or frequent assaults;

---

<sup>15</sup> United Nations Committee on the Rights of the Child (2011) *General Comment No. 13 (2011): The rights of the child to freedom from all forms of violence* [.pdf] Available online at: [http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf)  
Accessed on: 21/08/2014



- It is a human rights obligation to respect the physical integrity and human dignity of children. To fulfil those obligations properly, children must be given the protection of the law against assault

In concluding my submission on the general principles of the Bill, I am unclear about the extent to which (despite a Children’s Rights Impact Assessment being carried out) due regard has been paid to the United Nations Convention on the Rights of the Children and as to how the Bill seeks to safeguard and promote the best interests of children and young people (Article 3). Gender-based violence, domestic abuse and sexual violence are significant cross-cutting issues which affect the lives of many children and young people, particularly our most vulnerable. There is a large amount of evidence available demonstrating that circumstances involving cross-cutting issues such as poverty, unemployment, disabilities and substance misuse significantly increases the likelihood of children and young people becoming exposed to gender-based violence, domestic abuse and sexual violence<sup>16 17</sup>.

I am concerned the Bill has not fully considered gender-based violence, domestic abuse and sexual violence from a child’s point of view and their long-term impacts on children and young people. It does not consider what preventative, protective and supportive provisions it can put in place to meet the specific needs of children and young people - simply stating the Bill should ‘complement’ existing child protection and safeguarding procedures. The Bill does not go far enough to provide a comprehensive framework to protect and promote the UNCRC.

From the perspective of child protection and safeguarding, children and young people’s exposure to sexual violence, domestic abuse, and gender-based violence has substantial upheaval on their emotional and mental wellbeing and their overall quality of life<sup>18</sup>. I am concerned that although a child or young person may not be a direct victim of gender-based violence, domestic abuse and sexual violence in some cases, the Bill does not go far enough to

---

<sup>16</sup> UNICEF (2006) *Behind Closed Doors: The Impact of Domestic Violence on Children* [.pdf] Available online at: <http://www.unicef.org/protection/files/BehindClosedDoors.pdf> Accessed on: 11/08/2014

<sup>17</sup> Devaney, J. (2008) ‘Chronic child abuse and domestic violence: children and families with long-term and complex needs’, *Child & Family Social Work*, 13: 443 – 453

<sup>18</sup> Worrall, A., Boylan, J. & Roberts, D. (2008) *Children’s and young people’s experiences of domestic violence involving adults in a parent role: Research Briefing 25* [.pdf] Available online at: <http://www.scie.org.uk/publications/briefings/files/briefing25.pdf> Accessed on: 08/08/2014

outline provisions for children and young people who are victims as a result of indirect exposure<sup>19</sup>.

As Children's Commissioner for Wales I have consistently called for improvements to be made within Wales' child protection and safeguarding procedures by ensuring that their implementation includes the voices of children and young people<sup>20</sup>. In circumstances of domestic abuse, children and young people are often considered as *"passive victims' or 'silent witnesses'"* (p.2)<sup>18</sup>. It is disappointing that with the lack of focus and equal protection given to children and young people this notion is reinforced within the provisions of the Bill. As a result of the provisions made within this Bill, I would like to see that the national and local strategies (along with any subsequent regulations and guidance) significantly reflects the impacts that domestic abuse can have on children and young people, and to set out provision which supports children and young people to understand what is happening to them, to be helped to develop resilience and capacity to cope with the challenges, to be listened to and to have their accounts inform the planning and delivery of services<sup>21 22</sup>.

**I would expect Welsh Government to ensure the United Nations Convention on the Rights of the Child is included on the face of the Bill and is used to demonstrably underpin the provisions outlined in the Bill and take in to consideration the specific needs and vulnerabilities of children and young people.**

**I would expect Welsh Government to take action to redress the lack of equal protection and status given to children and young people in the Bill. I am, therefore, expecting Welsh Government to introduce provisions that address the failures of Section 58 of the Children Act 2004 and prohibit the smacking and 'reasonable punishment' of a child or young person as part of this Bill.**

---

<sup>19</sup> Early Intervention Foundation (2014) *Early Intervention in Domestic Violence & Abuse* [.pdf] Available online at: <http://www.eif.org.uk/wp-content/uploads/2014/03/Early-Intervention-in-Domestic-Violence-and-Abuse-Full-Report.pdf>  
Accessed on: 21/08/2014

<sup>20</sup> <http://www.childcomwales.org.uk/uploads/publications/400.pdf>

<sup>21</sup> Mullender, A., Hague, G., Imam, U., Kelly, L., Malos, E. & Regan, L. (2002) *Children's perspectives on domestic violence*, London: Sage.

<sup>22</sup> Welsh Women's Aid (2012) *You've given us a voice, now listen'* [.pdf] Available online at: <http://www.welshwomensaid.org.uk/images/CYP.Research.christinaTh.pdf> Accessed on: 08/08/2014

## THE PUBLICATION OF NATIONAL AND LOCAL STRATEGIES

I welcome the duty to introduce the publication of national and local strategies to address evidence-based concerns surrounding a lack of leadership and coordination of services tackling gender-based violence, domestic abuse and sexual violence. I do, however, have a number of concerns.

The Bill makes provision to ensure that the strategies must be informed by the latest needs assessment under the Social Services and Wellbeing Act 2014, I am unclear what minimum requirements of content is required by the Bill within local strategies. This lack of clarity is further exacerbated by the fact that the needs assessment process under the Social Services and Wellbeing Act 2014 has yet to be designed. Throughout the consultation process of the Social Services and Wellbeing Bill, I raised significant concerns about the 'people' model used to underpin its development. With this in mind and the lack of detail surrounding this Bill and a lack of clarity on the needs assessment processes required by the Social Services and Wellbeing Act 2014, I am concerned about how the position of children and young people will be used to inform the development of the national and local strategies.

I would like the Bill to set specific provisions that ensure that children and young people are able to participate in the development and design of local and national strategies, and therefore contribute their views to the implementation of child protection and safeguarding procedures<sup>20</sup>. The strategies need to address the deep connectivity between gender-based violence, domestic abuse and sexual violence, and child protection, and should not reinforce the position that children and young people are the *"passive victims' or 'silent witnesses'"* (p.2)<sup>18</sup> of gender-based violence, domestic abuse and sexual violence. The Bill should set out provision which supports children and young people to understand what is happening to them, to be helped to develop resilience and capacity to cope with the challenges, to be listened to and for their accounts to inform the planning and delivery of services<sup>21 22</sup>.

Within my previous consultation response to the White Paper on Legislation to End Violence against Women and Domestic Abuse (Wales) 2013, I welcomed proposals to introduce healthy relationships education. Whilst I did raise hesitation about how the approach would achieve the

intentions outlined in the White Paper and expressed the need to develop a rights-based approach. I am concerned that, despite overwhelming support for the proposal to introduce healthy relationship education, the Bill has removed such provisions in light of the National Curriculum and Assessment Framework review currently being undertaken. What is of deep concern to me is that Welsh Government is under no obligation to commit themselves to any recommendations of the review, and that in potentially deciding against the implementation of such recommendations, children and young people will be left without a comprehensive and robust healthy relationships educative offer within the curriculum if such provision is omitted from this Bill.

Schools have a vital role to play in educating children and young people in relation to healthy relationships. The Task and Finish Group report (2012)<sup>23</sup> presents a robust evidence base in relation to the need to improve education and awareness. Further evidence is available which points to the key role of education (in collaboration with other services including health and social services) in developing a long-term approach to preventing domestic abuse, gender-based violence and sexual violence, and instigating early interventions of support for those children and young people affected<sup>24 25</sup>.

I have received representation in the past from those leading in the areas of child sexual exploitation and sexually harmful behaviour on the important role education on healthy relationships can play in reducing risks for children and young people. Again, I am reiterating my concerns that the Bill does not go far enough or present a rights-based approach in line with the UNCRC and a human rights approach<sup>26</sup>. The Bill should be aiming to promote an understanding of every child's right to be safe (Article 19, UNCRC) and provision should be made within the Bill, subsequent national and local strategies and guidance to deliver on the general obligation

---

<sup>23</sup> Task and Finish Group report, (2012) *The Welsh Government's proposed 'Ending Violence Against Women and Domestic Abuse (Wales) Bill' Recommendations from the Task and Finish Group*, Cardiff: Welsh Government

<sup>24</sup> Radford, L., Aitken, R., Miller, P., Ellis, J., Roberts, J. and Firkic, A. (2011) *Meeting the needs of children living with domestic violence in London: Research Report* [.pdf] Available online at: [http://www.nspcc.org.uk/Inform/research/findings/domestic\\_violence\\_london\\_pdf\\_wdf85830.pdf](http://www.nspcc.org.uk/Inform/research/findings/domestic_violence_london_pdf_wdf85830.pdf) Accessed on: 21/08/2014

<sup>25</sup> Welsh Assembly Government (2011) *A review of preventative work in schools and other educational settings in Wales to address domestic abuse* [.pdf] Available online at: <http://wales.gov.uk/docs/caecd/research/110315schoolbasedworktoaddressdomesticabuseen.pdf> Accessed on: 21/08/2014

<sup>26</sup> Humphreys, C., Houghton, C. and Ellis, J. (2008) *Literature Review: Better Outcomes for Children and Young People Experiencing Domestic Abuse: Directions for Good Practice*, Edinburgh: Scottish Government

contained in Article 12 of the Council of Europe Convention on preventing and combating violence against women and domestic abuse:

*“1. Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.” (p.11)<sup>27</sup>*

**I would expect Welsh Government to set out within the provisions of this Bill a minimum schedule of content that is required within the publication of national and local strategies. I would expect the national and local strategies (any subsequent guidance) to ensure that a clear and collaborative approach to the protection and promotion of children’s rights and the United Nations Convention on the Rights of the Child is central to focus.**

**I would expect Welsh Government to set out provisions in this Bill that provide children and young people with a comprehensive and robust framework for healthy relationships education to be included within the education curriculum, and to view the recommendations of the Education in Wales Review as opportunities to add value to such a framework.**

- **The appointment of a Ministerial Adviser on Gender-based Violence, Domestic Abuse and Sexual Violence**

I am in favour of the proposal to introduce a position of national leadership for the issues discussed by the Bill. Within my response to the White Paper in 2013, I expressed concerns that the proposed provisions would introduce an appointment that appeared to replicate many of the functions already associated within the Children’s Commissioner for Wales and its supporting office. The Bill, however, proposes the appointment of a Ministerial Adviser and outlines functions that are comparable to the model and functions of the Wales’ Anti-Slavery Coordinator.

It is not clear within the Bill, however, how the lack of independent status might affect the impact of the proposed appointment in terms of holding Welsh Government to account should

---

<sup>27</sup> Council of Europe (2011) *Convention on preventing and combating violence against women and domestic violence* [.pdf] Available online at: <http://www.coe.int/t/dghl/standardsetting/convention-violence/convention/Convention%20210%20English.pdf>  
Accessed on: 21/08/2014

issue arise. I would expect formal arrangements to be put in place between the Ministerial Advisor and the Children's Commissioner for Wales to support the development of a constructive and positive relationship as we address overlapping areas of concern.

## **Q2. TO CONSIDER ANY POTENTIAL BARRIERS TO THE IMPLEMENTATION OF THESE PROVISIONS AND WHETHER THE BILL TAKES ACCOUNT OF THEM**

### **Differing Footprints**

As the Explanatory Memorandum suggests issues cut across agencies including social services, health, education and the police. Therefore any regional operating model will need to be flexible enough to engage across the different footprints of public sectors. Consortium arrangements in relation to programmes such as the Integrated Family Support Service and Regional Safeguarding Board arrangements should also be key to decisions on the best regional approach. It is not clear within the Bill or Explanatory Memorandum how the requirement to develop and implement strategies at a local level will be discharged. There will need to be strong links with Local Service Boards to ensure this agenda is also adequately reflected in Single Integrated Plans.

### **Needs Assessments and Statutory Guidance**

The Bill makes provision to ensure that local strategies must be informed by the latest needs assessment under the Social Services and Wellbeing Act 2014, I am unclear what minimum requirements of content is required by the Bill within local strategies. This lack of clarity is further exacerbated by the fact that the needs assessment process under the Social Services and Wellbeing Act 2014 is still being designed. Whilst I acknowledge the intentions of this Bill to recognise its connectivity with existing legislation, I remain unclear about how the assessment process under this Bill will dovetail with those of the Social Services and Wellbeing Act 2014. Throughout the consultation process of the Social Services and Wellbeing Bill, I raised significant concerns about the 'people' model used to underpin its development. With this in mind and the lack of detail surrounding this Bill and a lack of clarity on the needs assessment processes required by the Social Services and Wellbeing Act 2014, I am concerned about the recognition of the particular needs of children and young people in relation to the development of national and local strategies.

It is also unclear as to how local strategies will be informed by the most recent strategic assessment prepared in accordance with regulations under section 6 of the Crime Disorder Act 1998 (c.37). I would like for the Bill to ensure that stronger provisions are made with Community Safety Partnerships and the Local Service Boards in respect of this.

**I welcome the introduction of powers for Welsh Government to publish statutory guidance. I am, however, expecting Welsh Government to issue a minimum schedule of content for local strategies that includes the promotion and safeguarding of children and young people through the implementation of the United Nations Convention on the Rights of the Child. Child and young person-friendly versions of the guidance and local strategy must be published as part of this duty.**

### **Sharing Information**

One of the key principles embedding best practice in relation to safeguarding is ensuring that information relating to concerns is shared with/or between relevant bodies in order to protect potentially vulnerable children and young people. Serious case reviews/child practice reviews consistently highlight concerns surrounding poor communication between agencies, and will often include recommendations to address and improve communication and information sharing as the basis of effective safeguarding practice. The proposed detailed guidance to support the implementation of the duty to share information will need to include measures to ensure information is shared with relevant family support services to support the best interests of the child where a case involving an individual with children is considered. A family-centred approach needs to consider the impact on any children as well as the situation for victim and perpetrator. We know that domestic abuse has a serious impact on the emotional wellbeing of victims and it is important to recognise the impact this may have on parenting capacity<sup>28</sup> Sharing information as soon as possible to support early intervention and prevention is a central focus of Welsh Government initiatives for family support. Opportunities to provide support to families before situations reach a point of crisis triggering child protection procedures should not be missed.

---

<sup>28</sup> E.Farmer and S.Callan (2012), *Beyond Violence: Breaking cycles of domestic abuse*, Centre for Social Justice

## **The Role and Voice of Children and Young People**

In order to ensure that national and local strategies respond effectively to the specific vulnerabilities and needs of children and young people, I would expect this Bill to ensure that children and young people's voices are placed at the heart of design and delivery services. I am, however, becoming increasingly concerned about the position of children and young people's participation within such decision-making processes. I would like to see provisions placed upon the LSCBs, in their role of improving child protection and safeguarding practices, to coordinate and support the development of this approach in line with Children and Young People's National Participation Standards for Wales.

## **Workforce Development**

Evidence published by the Centre for Social Justice in 2012 suggests that social work courses differ markedly in how much attention they give to domestic abuse and that once qualified the opportunities for social workers to gain knowledge and skills on domestic abuse may be limited<sup>28</sup>. The NFER report (2011)<sup>25</sup> highlighted the fact that teachers have insufficient domestic abuse training to deal with disclosures of domestic abuse. All professionals working with children and young people and their parents have a duty to safeguard children and young people and I welcome the proposals for a National Training Framework. Training at level 2 of the proposed framework in particular should include professionals who work with children and young people to ensure they are equipped to fulfil their duty of 'asking' and 'acting'.

Whilst I broadly welcome the idea of delivering at level 1 e-learning opportunities I am cautious of its potential impact. For example, the UNCRC Media Toolkit is a comprehensive resource developed to challenge the negative perceptions of children and young people in the media. Our extensive work with organisations on this subject suggests that very few are aware of its existence. The Framework will need to include a robust dissemination plan for level 1 training opportunities.

Work is needed to set out how the proposed National Training Framework will link with professional development programmes across other policy areas – for example work currently taking place in relation to the social care and education workforces. Evidence published by the



NSPCC<sup>29</sup> suggests that police officers attending domestic incidents are ill equipped to engage with or respond to any children and young people in the household. There will need to be a need for careful consideration of how local multi-agency training opportunities will be maintained under new regional safeguarding board arrangements.

**Q3. TO CONSIDER WHETHER THERE ARE ANY UNINTENDED CONSEQUENCES ARISING FROM THE BILL**

I am concerned about the lack of equal status given to children and young people in this Bill. The omission of the UNCRC to inform this Bill and for it to be placed on the face of it may result in the specific needs and vulnerabilities of children and young people not being taken into account in the development of strategies and services. Again, I would like to see this being provided in line with Article 12 of the UNCRC.

Despite the overwhelming positive response to introduce healthy relationships education within the White Paper, the Bill has not included this proposal within its provisions in light of the Education in Wales review. Whilst I understand this position, I am concerned that if Welsh Government decide not to implement the recommendations of this review, when they are published, children and young people will not be provided with healthy relationships education as part of the wider curriculum offer.

**Q4. TO CONSIDER THE FINANCIAL IMPLICATIONS OF THE BILL (AS SET OUT IN PART 2 OF THE EXPLANATORY MEMORANDUM)**

Considering the preferred options of the Bill, I am happy with the financial implications set out in the Explanatory Memorandum.

---

<sup>29</sup> N.Stanley et al, (2009) *Children and families experiencing domestic violence: Police and children's social services' responses*, London: NSPCC

**Q5. TO CONSIDER THE APPROPRIATENESS OF THE POWERS IN THE BILL FOR WELSH MINISTERS TO MAKE SUBORDINATE LEGISLATION (AS SET OUT IN CHAPTER 5 OF PART 1 OF THE EXPLANATORY MEMORANDUM).**

I agree with the powers in the Bill for Welsh Ministers to make subordinate legislation.

A handwritten signature in black ink, appearing to read 'Keith Towler', with a horizontal line underneath it.

**Keith Towler**

**Children's Commissioner for Wales**