

10 January 2019

Dear Chair

**Petition P-05-842 Give young people a voice when commissioning local services in Wales**

Thank you for your letter dated 19<sup>th</sup> December 2018, regarding the above named petition.

I note the contents of the petition with interest and that your request is for my views on the following:

- "Current practices in relation to ensuring young people are able to participate in and inform the commissioning of local services; and
- Whether the Rights of Children and Young Persons (Wales) Measure 2011 is effective in ensuring the participation of young people when commissioning local services."

In this letter I discuss commissioning of services within the broader context of implementing a children's rights approach in public services. This is because commissioning should sit within a broader commitment to the involvement of young people, and accountability to them. Commissioning will be more effective if there is a strong foundation of participation practices within a public service organisation, including regular consultation and involvement in decision-making.

The petition refers to my guide "*The Right Way: A Children's Rights Approach in Wales*".<sup>1</sup> This guide sets out the five principles of taking a children's rights approach and is relevant and applicable to all public services. The guide contains examples of where children have been trained as Young Commissioners, directly influencing decisions on how money is spent on commissioned services relevant to them, and in workshops used for setting a local authority's annual budget.

These examples are designed to illustrate how the principles of a children's rights approach can be actioned in reality. Whilst there will be other examples of good practice in relation to involving young people, empowering them and facilitating their participation in commissioning services across Wales, I do not believe that such practice is replicated in every local authority, health board or other public body. I have been working with a range of public bodies including health boards, police forces and Police and Crime Commissioners, museums, sports and arts organisations in order to improve this situation. I am also currently working with two Public Services Boards in order to help them incorporate a children's rights approach into their work, with the expectation that they will act as demonstrator bodies in their regions.

I have also prepared a separate guide for schools on taking a Children's Rights Approach in all of their policies and interactions with pupils.<sup>2</sup> My spotlight report into wheelchair access in schools, published last year, gives examples of how a children's rights approach can be applied to that particular topic.<sup>3</sup>

As noted in the petition however, these documents are just guides and are not binding on public services. I have been pleased with the level of active and considered engagement from a wide range of

services with this work and the pace of change in some organisations, but I am unable to compel organisations to follow this approach. A number of health boards are now working on children's rights

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<sup>1</sup> <https://www.childcomwales.org.uk/wp-content/uploads/2017/04/The-Right-Way.pdf>

<sup>2</sup> <https://www.childcomwales.org.uk/wp-content/uploads/2017/05/The-Right-Way-Education.pdf>

<sup>3</sup> <https://www.childcomwales.org.uk/wp-content/uploads/2018/03/Full-Lives-Equal-Access.pdf>

charters and forming children and young people's panels or boards to directly influence their work but this would not be guaranteed in every health board area.

I would also expect the Welsh Government, as the largest public body in Wales, to embed this children's rights approach into elements of their own work, and this could be an effective model from which other public services and local governments could learn. The Welsh Government has begun to do this, for example their 2018 Compliance Report prepared under the Children's Scheme 2014 was structured under the five principles.

Cases that come in to my office's Investigation and Advice service can often be in relation to public service changes or closures, with concerns raised that any public consultation has not involved children and young people sufficiently. This can even be the case for clearly relevant services such as schools, parks and youth services. Whilst my officers will provide advice on questions that can be asked such as how children's rights, equalities and the Well-being of Future Generations (Wales) Act 2015 have been taken into consideration, public bodies are not under any duty to produce a children's rights impact assessment. This is even the case for bodies that have expressly incorporated the United Nations Convention on the Rights of the Child (UNCRC) into their policies.

The Rights of Children and Young Persons (Wales) Measure 2011 places a duty of due regard to the UNCRC on Welsh Ministers, but crucially this does not extend to wider public bodies. Although laws, policies and guidance that come from the Government will be subject to a due regard consideration, there is no direct requirement on public bodies to have regard to the UNCRC when making their own decisions. There are duties under the Social Services and Well-being (Wales) Act 2014 and Additional Learning Needs and Education Tribunal (Wales) Act 2018 that apply to public bodies *when exercising their functions* under those two pieces of legislation, but this does not extend to everything that those bodies decide upon or provide.

It is for this reason that I believe that there should be further incorporation of the UNCRC, to extend to all public bodies in Wales. The Human Rights Act 1998 applies to all public bodies and requires them to act compatibly with the rights contained within the Act. If they do not do so, an individual or group can directly challenge decisions or processes that are not compatible, and will be entitled to a suitable remedy if a breach is found to have taken place. In order to make children's rights a reality in their everyday lives, further incorporation will be necessary to require public bodies to act compatibly, rather than the current position that only requires "due regard" to rights as one consideration, and only applies to Ministers.

Under section 12 of the Children and Families Measure (Wales) 2010<sup>4</sup> every local authority "must make such arrangements as it considers suitable to promote and facilitate participation by children in decisions of the authority which might affect them." The information about how they do this must be published and kept up to date, but the way in which this is done is not prescribed. Often this will be a youth forum or range of fora for different ages. Every school in Wales is also required to have a school council, so there are opportunities to feed information through engagement at a school level to the local youth forum.

It would be beneficial for more schools and local youth fora to make these direct links to enable school council members also to participate in decision making within the local authority. There are also opportunities for school councils and other young people to link in to their Community Councils in order to enable shared decision making in the local community.

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<sup>4</sup> <https://www.legislation.gov.uk/mwa/2010/1/section/12>

In relation to *Mind over Matter*, which is referred to in the Petition, we sit on the Joint Ministerial Advisory Group and we have encouraged Ministers to broaden out their proposals for youth participation and engagement. It is welcome that there is currently active recruitment for a youth stakeholder group to feed into and inform work in this area, but I have also encouraged the Minister to look at other options for participation and engagement alongside this, to ensure a wide range of views can be captured. It is important that decisions made for children about provision and services that affect their daily lives is informed by their views and experiences. Provided information is shared clearly and in an appropriate format, children enjoy inputting into matters that will significantly affect them. Very often children will come up with alternative solutions that adults may never have considered, or ideas that they would really value that adults may not have realised were so important to them. Having involved young people in commissioning research from external organisations in my own office I can vouch that children bring added value to the process.

I have also considered the letter from the Cabinet Secretary for Health and Social Services dated 21<sup>st</sup> November 2018 in relation to this petition, which states *"We work closely with the Children's Commissioner for Wales, whose key role is ensuring that children and young people have their voices heard, their concerns raised and have someone to safeguard their rights at a national level."*

The principal aim of my work as set out in legislation is to safeguard and promote the rights and welfare of children in Wales, with regard to the UNCRC. In doing so I take account of the views of children and young people, as well as those who care for and about them, and these inform my submissions to inquiries, consultations, meetings and the reports that I prepare. It is important to me that children and young people have their voices heard and listened to, but liaising with me and my office should not be seen by any public body as a substitute for seeking children's view directly.

Young Wales also play an important part in advising Government on their work, as noted in the Cabinet Secretary's letter. The links between county level groups, school groups and individuals need to be strong in order to ensure that consultations and information is shared as widely as possible, allowing a range of young people to engage. Methods, timing and content of consultations are also important factors; it would not be sufficient to say that an all age consultation is publically available and therefore accessible to children, if the language and contents are not suitable and all of the face to face sessions take place at times or in places that make it difficult for children and young people to attend for example.

The National Participation Standards<sup>5</sup> set out clear expectations on children's rights and entitlements, and what children can expect from services. However, these are not mandatory either and require organisations to commit to following them. I hope that the new kitemark approval system may assist in promoting the importance of adopting these standards. I believe that the Welsh Government could also adopt these more overtly in their work to ensure that others follow their lead on this.

It is important also that young people's contributions are recognised and to ensure that participants receive feedback about their involvement and how they have influenced decisions. Without this young people (like adults) can feel that their participation is tokenistic and there is a risk they can be dissuaded from active participation in the future.

The commencement of the Youth Parliament or Senedd Ieuencid next month will be another important milestone for ensuring that children's voices are directly heard and acted upon, and I look forward to seeing how the scrutiny arrangements will operate to ensure maximum impact of their work.

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<sup>5</sup> [http://youngwales.wales/images/ParticipationStandards\\_Poster\\_9.pdf](http://youngwales.wales/images/ParticipationStandards_Poster_9.pdf)

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**Comisiynydd Plant Cymru**  
**Children's Commissioner for Wales**  
Sally Holland

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Finally, I have recently concluded a national consultation to inform my three year strategic priorities from April 2019, which will take me to the end of my appointed term as Commissioner. I am pleased to say that over 10,000 children and young people engaged with this consultation, as well as over 1,000 adults, and I am currently working on my three year strategy and work plan for 2019-20 on the basis of those responses. Participation mechanisms and opportunities is one area that has arisen from that consultation and therefore an area I believe will require greater focus to ensure meaningful engagement with a wide range of children across Wales. I anticipate that there will be a piece of project work for my office on this topic as part of that three year strategy, which will be published in March 2019.

Yours sincerely



Sally Holland  
Children's Commissioner for Wales