

## CYPE(5)-28-19 - Paper 4

Cynulliad Cenedlaethol Cymru  
Y Pwyllgor Plant, Pobl Ifanc ac Addysg  
Ymchwiliad i Hawliau plant yng Nghymru  
CRW 11  
Ymateb gan: Comisiynydd Plant Cymru

National Assembly for Wales  
Children, Young People and Education Committee  
Inquiry into Children's rights in Wales  
CRW 11  
Response from: Children's Commissioner for Wales

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### CYPE Committee Inquiry on Children's Rights in Wales

#### 1. The extent to which the Rights of Children and Young Persons (Wales) Measure 2011 ("the Measure") has influenced the Welsh Government's decision making, including its financial allocations and whether it has fulfilled the Convention's 'general measures' of implementation

The introduction of the Measure made Wales a leading nation across the UK, in directly incorporating the rights of the UNCRC into Welsh law. However, it is important to recognise that children in Wales already had all of these rights, by virtue of their age. Their rights are directly derived from the UNCRC and so the Measure does not *grant* those rights, it simply draws them down into Welsh law. By doing so, the Measure is all about how the Welsh Government gives effect to these rights in Wales.

In my annual report for 2017-18<sup>1</sup> I include reflections on the general measures of implementation including the Compliance Reporting process and the use of Children's Rights Impact Assessments (CRIA). Compliance reporting, a due regard duty (for Ministers) and a children's rights scheme are included in the Measure. In this response I'll discuss in detail my assessment of the efficacy of these measures at present.

I provided written evidence to the EHRC's commissioned report on the legal integration on the UNCRC, the report of which was published in March 2019.<sup>2</sup> That report concluded that the Measure has embedded the UNCRC into policy making in Wales via the due regard duty, and also by raising awareness and visibility of children's rights across Government. I would agree with this conclusion, but share the reservations that this hasn't resulted in "consistent good practice" due to the "uneven application of CRIA". I will return to this later in my evidence at point 6 below.

In relation to budgeting, I gave detailed written<sup>3</sup> and oral<sup>4</sup> evidence to the joint Inquiry of three Assembly committees in relation to budgets and impact assessments. Within that evidence I set out my concerns at the lack of consideration for children's rights as a matter of course in the budget setting process, which had resulted in decisions to cut certain budget lines without a real understanding of what that budget provided and its benefit to children, or consideration about whether any budget lines crossover or leave gaps where one department assumes that another will be dealing with that provision. Examples of this include school uniform grants and funding for disadvantaged learners, and money for the All Wales School Liaison Core Programme (SchoolBeat) provided in conjunction with the Police. Whilst I am pleased that those decisions were able to be overturned through the influence of my office and this Committee, as well as others, a detailed CRIA would have been able to identify these crossover areas before the budget decisions had been published.

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<sup>1</sup> <https://www.childcomwales.org.uk/wp-content/uploads/2018/09/Annual-Report-2017-18.pdf>  
pages 35-39

<sup>2</sup> Hoffman and O'Neill 'The impact of legal integration of the UN Convention on the Rights of the Child in Wales' [https://www.equalityhumanrights.com/sites/default/files/the\\_impact\\_of\\_legal\\_integration\\_of\\_the\\_un\\_convention\\_on\\_the\\_rights\\_of\\_the\\_child\\_in\\_wales\\_eng.pdf](https://www.equalityhumanrights.com/sites/default/files/the_impact_of_legal_integration_of_the_un_convention_on_the_rights_of_the_child_in_wales_eng.pdf)

<sup>3</sup>

<http://www.senedd.assembly.wales/documents/s80336/Written%20evidence%20Childrens%20Commissioner%20for%20Wales%20-%20Impact%20assessments%20in%20relation%20to%20the%20draft%20bu.pdf>

<sup>4</sup> <http://senedd.assembly.wales/ieListDocuments.aspx?Cid=440&Mid=5398&Ver=4>

I welcome the joint committees' report following this scrutiny but was disappointed to note the Government's response to that report, as noted in my follow up correspondence from June 2019<sup>5</sup>. The Government view appears to be that publication of impact assessments in a central location would be confusing if they have already been published in relation to individual policy decisions. Not only does this lack transparency, but it does not address the wider issue of drawing together individual policy decisions to be considered *jointly* rather than simply alongside each other. I would also note that my office is yet to see consistency and transparency in the publication of these impact assessments in respect of individual policy decisions particularly at the point of public consultation.

I am due to meet with the Finance Minister on 23<sup>rd</sup> September 2019 ahead of the publication of this year's budget. I understand that a different, cross government approach is being taken to the budget setting process this year and I look forward to hearing more about this when we meet. I'll be happy to return to this in oral evidence either for this inquiry or any further budget scrutiny later in the year.

One key aspect of implementation of the UNCRC is to have an independent human rights institution that can hold duty bearers to account; this is the foundation of the creation of my role. During summer 2019 the Welsh Government held a consultation with funded public bodies, in respect of changing the ways in which funding is provided (Amending the Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2018 Consultation). The proposal included changes to how funding would be drawn down from Government and the organisation's reserves, there in our case predominantly to enable the exercise of my powers at any time.

As Accounting Officer in receipt of public money, I had no objections with plans contained in the consultation document to "simplify systems, improve the consistency and transparency of Welsh Government finance and providing clearer accountability to the Assembly and the public." Nevertheless, the lack of detail within the consultation around any new processes raised concerns around the implications – or possibly unintended consequences – of these changes on my position's independent status.

For example, in my response to the consultation I raised concerns that the lack of ability to hold reserves might result in my office having to formally apply to the government for funding in the event that I planned to use my powers to review the Government's functions. I, and the other Commissioners in Wales, await the results of the consultation.

The Paris Principles<sup>6</sup> – 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."

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<sup>5</sup> <http://www.senedd.assembly.wales/documents/s90681/CYPE5-21-19%20-%20Paper%20%20-%20Childrens%20Commissioner%20for%20Wales.pdf>

<sup>6</sup> [https://www.equalityhumanrights.com/sites/default/files/paris\\_principles.pdf](https://www.equalityhumanrights.com/sites/default/files/paris_principles.pdf)

As the sole source of revenue since this institution's inception in 2001, the Welsh Government (including the previous First Minister) has been clear with all post-holders there should not be – and has not been, to date – any interference with how we determine our priorities and activities. I would like to acknowledge that to date I have experienced no interference from Government in how I conduct my work. Nonetheless, this recent consultation led me to raise some concerns on this matter with Government.

There should not be an “appropriate degree of independence from Welsh Ministers” as the budgets consultation document suggested, but instead this national human rights institution should be treated as wholly-independent from Government and Welsh Ministers. If not, there's a danger this post-holder could be restricted by the very public bodies they've been set up to oversee and challenge. I note the previous First Minister's view, when we raised this issue with him previously, was that there had never been a problem with independence so he did not consider this to be a priority. Whilst I acknowledged that there hadn't been an issue, there was nothing formal in place to protect the status of the Commissioner's role should there be a change of approach by any future Government.

The Public Service Ombudsman is appointed by the National Assembly for Wales; the legislature rather than the executive. This allows for full independence but also regular scrutiny opportunities on budget and influencing work. I would encourage the Committee to consider whether this Inquiry presents the opportunity to suggest changes in relation to my role to preserve and protect its independence and to avoid the unintended consequences of Government's latest developments. This is a matter I've previously raised, for example in response to the Shooter review of my office's functions.<sup>7</sup> My response to that review also suggested broadening of my remit to all matters affecting children's lives, not just devolved areas, as children's experiences cannot be neatly split into devolved and non-devolved issues.

In summary, the existence of the Measure has undoubtedly been a positive step towards introducing children's rights to the discussions of policy and decision makers. However I am not yet certain that this has been sufficiently embedded across the Government, nor that the general measures of implementation including children's budgeting, have progressed far enough to be seen as happening as a matter of course in every department. This leads on to the next question where I consider how well the Measure relates to improved outcomes for children.

## **2. Evidence of whether the Measure has led to improved outcomes for children and young people**

I believe that the existence of the Measure and the resultant discourse around children's rights have helped to pave the way for policies such as the removal of the defence of reasonable punishment, which is currently passing through the Assembly. The policy intent and accompanying documents for the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill are clearly framed in children's rights, and the evidence received by this Committee at Stage 1 reflected the importance of the Bill in upholding and taking forward children's rights to protection and a safe family life.

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<sup>7</sup> <https://www.childcomwales.org.uk/wp-content/uploads/2016/04/Response-to-CCFW-Independent-Review.pdf>

It is too early to identify whether this will be the case in practice of course although I note this Committee's recommendation to agree the general principles of the Bill. This is the sort of policy that will benefit from follow up evaluation, as recommended in the Stage 1 report, to assess and analyse what works to improve children's outcomes. The existence of the Measure and its effect on policies and guidance is being seen slowly, and I acknowledge that it takes time to change approaches and mindsets, but I would argue that the Measure has already done this to some degree at the policy setting stage. Where I'm less sure or haven't yet seen as much change is in relation to outcomes for children and this may in part be attributed to the lack of focus on the achievement of outcomes in either the Measure or the Scheme as it presently stands.

Other relevant areas that would benefit from such ongoing scrutiny would be the Additional Learning Needs and Education Tribunal (Wales) Act and the new curriculum proposals. Neither of these is in force yet but these are clear examples of child specific policies that *should* be grounded in rights and lead to improving outcomes.

It is unclear to me at present whether or how the Welsh Government systematically monitors the outcomes of policy decisions for children. Many CRIAs will recommend a review after a year to monitor progress against the assumptions made at the policy development stage, but I cannot recall seeing an updated published CRIA that has done this.

My feedback on a revised draft Children's Rights Scheme in May 2019 asked Government officials how a revised scheme would shift the focus from numerical data to monitoring outcomes, and whether or not targets or aims could be included in order to seek progression. This was one of the primary stated aims of their 2018 Compliance Report. More detail is included on this at point 7 below.

Section 6 of the Measure allows the Government to make changes to legislation if it "concludes that it would be desirable, for the purpose of giving further or better effect to the rights and obligations" of the UNCRC. However, the wording of this Section means that the Government may only do so if they have already concluded in their own report, including the Compliance Report, that this would be worth doing. The Compliance Report has not previously considered individual policy areas and I have not seen any such identification of potential law changes arising from such a report. It is often mistakenly assumed that Section 6 would allow others, including myself, to suggest changes to laws, as I do through the recommendations of my thematic policy reports and Annual Report. Although it is open to any person to take a judicial review of the Government's exercise of the due regard duty in creating or amending policies, this is not a straightforward or quick process. Section 6 was considered an avenue to bring forward such ideas but its current wording does not make it particularly open to achieving policy change that could lead to improved outcomes for children. At present this means that there is a potential gap in the accountability of policy making to children and young people; this is further exacerbated by the lack of a generally applicable duty on public bodies in relation to children's rights, which I will cover in more detail at point 4 below.

### 3. Whether the duties within the Measure have been embedded effectively across Welsh Government cabinet portfolios and policy

Despite calls to do so, the Government has missed an opportunity to portray its absolute commitment to children's rights through its omission from *Prosperity for All*<sup>8</sup>, as it does not overtly refer to children's rights under the UNCRC. When policies or consultations are brought forward, this strategy is then referred to as the originating reason or background for bringing forward particular pieces of work. Unfortunately, in the absence of clear links to children's rights throughout this strategy, the subsequent policies are therefore not being framed within a children's rights approach. By far the clearest example of this would be the terms of the Childcare Offer, and the committee will be very familiar with my calls around the lack of consideration of children's rights and equality duties in taking that policy forward<sup>9</sup>.

The Well-being of Future Generations (Wales) Act, which features prominently in many strategies including *Prosperity for All*, makes no reference to human rights on its face. The statutory guidance that accompanies the Act notes that the principles of the Act "support" existing commitments to the Welsh Language, equalities and the UNCRC. The offices of the Children's Commissioner and Future Generations Commissioner have developed resources which illustrate the compatibility between the two<sup>10</sup>. Whilst this demonstrated how a children rights approach support progress towards wellbeing goals, it does not mean that the well-being principles can supplant children's rights as the language and scope are entirely different. Well-being takes an all age approach and does not protect the inherent rights of children in the same way as a distinct children's rights approach.

The existence of the due regard duty in the Measure *should* result in children's rights being embedded and considered from the outset of policy development. However, the practice of completing CRIA towards the end of the development phase, to reflect decisions already taken, is not uncommon and means that in reality rights are being fitted around the decisions rather than being used to drive policy development and intent.

I have repeatedly called on the Government, via written reports and in face to face meetings, to introduce a sub-Committee of Cabinet to consider children's issues. I last discussed this with the current First Minister in January 2019; whilst he was still not minded to set up a specific sub-committee, he was proposing to introduce 'themed' cabinet discussions on particular policies or topics, alternately with regular format Cabinet meetings in order to allow for space for cross government discussions. There was a proposal for external attendees to potentially be invited to such meetings, including my office, but I have not been invited as yet.

These discussions had come against a backdrop of my frustration at a lack of 'join up' across Government on children's issues. Whilst a dedicated Ministerial position for children is welcome, there will be relevant issues for children in the majority of portfolios. I meet with a number of ministers on at least an annual basis including the Ministers for Education, Health and Social Services,

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<sup>8</sup> <https://gweddill.gov.wales/docs/strategies/170919-prosperity-for-all-en.pdf>

<sup>9</sup>

<http://senedd.assembly.wales/documents/s75785/CCF%2002%20Childrens%20Commissioner%20for%20Wales.pdf>

<sup>10</sup> <https://www.childcomwales.org.uk/resources/childrens-rights-approach/future-fit-children/>

and Transport. I meet with the Deputy Minister on a quarterly basis, where we get an opportunity to discuss in-depth the most current issues and efforts are on-going to secure a joint meeting with the Minister for Health. The meetings with the Deputy Minister are for a full hour every quarter.

I have had to raise issues such as Elective Home Education, safe accommodation options for young people with complex needs and the support for children's emotional health and well-being with Ministers, the First Minister, the Head of the Cabinet Office and the Permanent Secretary, in order to bring departments and officials together. I have twice in the last year arranged meetings between senior officials from different departments to try to progress multi-disciplinary plans for residential accommodation for children with complex mental health and social care needs.

I am pleased that the Ministers for Health and for Education now co-host a Ministerial Advisory group on a Whole School Approach to well-being, but this followed a year of influencing work including a joint meeting with both ministers where they reflected that they did not recognise the issues around a lack of joint working that I was raising. I am aware that this Minister for Education also expressed this view in oral evidence to the Committee as part of the *Mind over Matter* inquiry. In the absence of formal structures to bring these discussions together, I am not certain that they will happen automatically. While I will continue to do so if it appears to be necessary, it should not require me to call meetings in order for these departments and Ministers to work together.

In summary, the Measure does not appear to be fully embedded across Government; there are other areas within this response where I suggest ways in which this could be achieved, but in relation to this point specifically I believe that a mechanism or range of mechanisms including networks or cabinet committees will be the only way to ensure that this happens routinely and effectively. I welcome efforts being made for example to discuss issues that have been overtly raised such as policies names here and broader topics like the budget, but the Measure itself does not secure that this will happen as a matter of course in future.

#### **4. The extent to which the Welsh Government has sought to ensure that its duties within the Measure are translated into the work of the public bodies it provides funding to, including local authorities and NHS bodies**

At present, there is no due regard duty applicable to all public bodies in Wales. Through lobbying efforts and with the considerable support of this Committee, similar duties have been added to the Social Services and Well-being (Wales) Act 2014, and the Additional Learning Needs and Education Tribunal (Wales) Act 2018 in order to embed rights within the laws that will be applied by public bodies, for the benefit of children across Wales. On both occasions this required amendments to be tabled as the Government was not willing to add the duties to the draft Bills. The forthcoming Curriculum and Assessment Bill will be the next relevant piece of children specific legislation, in which it would make absolute sense for a due regard duty to be included. This would bring it in line with the ALN proposals and avoid creating a situation in which in which some children and young people have the provisions of the UNCRC in domestic legislation pertaining to their education but not others. This step would also make Wales an international leader in terms of rights being experienced in the school environment. I have discussed this at length with policy officials and the Minister for Education, and submitted detailed papers and consultation responses on this. My published position paper can be

found here<sup>11</sup> and sets out a clear and coherent argument for the benefits that embedding rights within the curriculum would have for all of our learners.

In 2018 I presented a paper to officials from the Children's Branch (my link branch in Government) on further incorporation of the UNCRC into Welsh law, following discussions about it with the then Minister for Children and Social Care at our quarterly meetings. At this point, the then Leader of the House announced the intention to commission research on the range of treaties applicable to Wales and the levels of direct and indirect incorporation of these, with a view to exploring potential extensions, and my office is represented on a steering group for this work. This work should include consideration of extending the Measure in order to give greater effect to children's rights. In the absence of a broader due regard duty it remains essential for duties to be added to the relevant Acts in order to translate the Convention into directly applicable implementation and realisation of rights for children in their daily lives.

Overall my preference would be for further incorporation of the UNCRC through a duty on all public bodies to act compatibly with the UNCRC in carrying out their duties. My own role requires me to have regard to the UNCRC in carrying out my functions<sup>11</sup>.

Whilst the Measure was an important step forward, it does not amount to full direct incorporation of the UNCRC. This means that it is not available to members of the public, including children, to make a direct challenge for a breach of their rights under the UNCRC.

The closest example at a UK level is the Human Rights Act 1998 (HRA), where bodies have to act compatibly with the rights that it directly introduces into law. An individual/person can take a case against a body for breaching a particular right under that Act.

The very existence of a legal duty and ability to challenge should itself be enough to change culture and policy approaches. Full direct incorporation is not about increasing the number/frequency of actual legal challenges, but embedding the duties into policy and practice so that people don't have to take such challenges.

England and Wales courts will already refer to relevant UNCRC articles when dealing with HRA cases, but cannot directly rule on a UNCRC breach due to lack of incorporation. At the extreme end particular laws can be declared "incompatible" with the HRA using a case. In Wales, this is very rare but is far stronger than the current section 6 of the Measure, that will only permit the Welsh Government to overturn or revise Welsh law if they themselves have concluded via a report that identifies that law to be insufficient.

The Equality Act 2010 takes a compliance and reporting approach which can be more onerous for governments due to the ongoing monitoring requirements, so direct incorporation is actually less of a burden in that sense.

The Wales Act 2017 sets out reservations around international relations but the Welsh Government is not prevented from "observing and implementing international obligations, obligations under the

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<sup>10</sup> <https://www.childcomwales.org.uk/wp-content/uploads/2018/11/CCFW-Children-Rights-and-Curriculum-Reform-Position-Paper-2018.pdf>

Human Rights Convention and obligations under EU law<sup>12</sup>. It should be noted that the Scottish Government is planning to fully incorporate the UNCRC into Scottish law and has recently consulted on these proposals.

### Practical implications of further incorporation

- It gives a strong message on the status of children, leading to culture change
- It applies to all professionals not just ministers
- It gives potential for the UNCRC to be used in litigation
- The UNCRC allows for progressive realisation
- It enables accountability for children's human rights

In the absence of a proactive duty on public bodies including local authorities and health bodies, I published *The Right Way*<sup>13</sup>, a practical guide to implementing a children's rights approach in their work. Since 2016 I have published a suite of resources including a specific guide for education settings, and interactive documents that allow organisations to self-assess their progress in relation to children's rights. All of the materials include practical examples and advice as to how this could look in each organisation and how other organisations have successfully involved children and children's rights in their day to day business. In addition, my thematic reports such as the *Full Lives*<sup>14</sup> review of wheelchair access in schools and *Don't Hold Back* report looking at transitional support for young people with a learning disability, include applied examples of how a children's rights approach could extend the work of public bodies interacting with these young people. I have also established an annual seminar for all health bodies in Wales, which is driving progress and healthy competition between these bodies, to embed and enact a children's rights approach to their work. As an example of this work, Swansea Bay University Health Board have worked with their Youth Board to make significant practical changes to their provision and also initiated systemic change to the service model. This has led to tangible impacts on the lives of individual children, which the Board are evaluating through patient stories. All health boards and almost all health trusts have either taken steps towards implementing a children's rights approach or have made a commitment to do so.

As an extension of this, I have also offered training and support to a range of organisations including the Public Services Boards in Wrexham and the Vale of Glamorgan and this has led to changes including a more systematic involvement of children and young people in those bodies' work. Wrexham Council has been developing systematic implementation in several of its departments, including social services and education and an early example has been the launch of much more child-friendly access to the complaints system.

South Wales Police will become the first police authority to adopt my 'Right Way', and embed a children's rights approach across the service. With support from my office they are working with children on a children's rights charter and have set included Engagement with Children and Young People as an objective in the Joint Equality Plan, allocating leadership roles to drive their children's rights approach, and developing a strategy, working group and delivery plan.

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<sup>12</sup> <http://www.legislation.gov.uk/ukpga/2017/4/schedule/1/enacted>

<sup>13</sup> <https://www.childcomwales.org.uk/wp-content/uploads/2017/04/The-Right-Way.pdf>

<sup>14</sup> <https://www.childcomwales.org.uk/wp-content/uploads/2018/03/Full-Lives-Equal-Access.pdf>



These are just some of the examples of large public organisations that my office is supporting to implement a children's rights approach. I continue to promote a children's rights approach in two thirds of primary schools, as well as over a hundred secondary schools through my ambassador schemes which include training for children and teachers.

Although these efforts are promoting important culture change, they do not bring formal measures to hold these bodies to account and progress is vulnerable to being lost with changes of leadership. In addition, I would welcome the Government formally adopting the Right Way across its work, to demonstrate that continued commitment and leadership in relation to children's rights. Whilst some document such as the 2018 Compliance Report have used the principles as an outline structure, I believe that formally adopting the approach will allow officials to champion children's rights across government and to move beyond the recognition of rights to a truly embedded approach where children's rights are at the heart of policy making.

It has been a source of great national pride that Wales has led the way on children's rights across the UK, with the first Children's Commissioner and the introduction of the Measure as key focus points. However, other UK nations and Crown Dependencies are now taking steps forward on this, namely Scotland and Jersey. Both jurisdictions have taken the Measure and due regard model as starting points, but are seeking to move beyond this to full, direct incorporation of the UNCRC. In other words, they note the potential deficits of a due regard model, as it does not directly require bodies to act in a certain way proactively and it can be harder to challenge. In addition, they are seeking to require public bodies to act compatibly with the UNCRC rather than just show that they've considered the rights. Although in theory this would allow for legal challenges to be brought by individuals, primarily the introduction of such a duty would be aimed at the *avoidance* of legal challenge, by proactively requiring public bodies to act in this way. For Wales to keep pace with these developments, and to ensure children in Wales can fully access their rights from all public services, it is incumbent on Government to consider how the current duties can be extended here.

## **5. The extent to which the Welsh Government has implemented its duty to promote knowledge and understanding of the UNCRC amongst the public, including children and young people**

Section 5 of the Measure includes a duty on Ministers to "take such steps as are appropriate to promote knowledge and understanding amongst the public (including children) of the Convention and the Protocols."<sup>15</sup>

The National Survey for Wales covering 2017-18 asked participants whether they had heard of and what they understood about the UNCRC. 13% said they had heard of it and that they had a fair idea of the rights it involves, 21% had heard of it but were not sure what rights it involves, and 65% had not heard of it. 66% of people in households with a child under the age of 16 had not heard of it.

The Government are required to make the UNCRC accessible and well known across Wales. This is something I also do as a matter of course throughout my work, but it remains a duty of Ministers to

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<sup>15</sup> <http://www.legislation.gov.uk/mwa/2011/2/section/5>

do so too. This takes forward Article 42 of the UNCRC. There used to be a small advisory group alongside the Children's Rights Advisory Group (CRAG) which specifically covered the Article 42 work; this is no longer meeting. My office has suggested that it should be reconvened at various times to support the development of a comprehensive communications strategy, but this suggestion has not been taken up. A very recent development has been the investment by Welsh Government into a new communications plan to support the 30<sup>th</sup> anniversary of the CRC in Wales. This work has seen Government draw key partners to support the work, including my office. I have been pleased with this approach and the investment and will be encouraging the Government to continue with this way of working to ensure momentum is not lost.

The Regulations<sup>16</sup> governing my office and role require me to take reasonable steps to ensure children know about the Commissioner, the location of the office and ways they can make contact with us. I am also required to make materials for children accessible and appropriate to age and language preferences and to seek children's views to inform my work programme. I do this in a variety of ways and have recently updated my website to make it more accessible and user friendly. I've been extending the reach and content on my 'Ambassador' schemes<sup>17</sup> that support children and young people to learn about their rights and implement them in their school or community. This has involved my team working alongside children and teachers to ensure that our Ambassadors work is accessible to children with additional learning needs and to develop a suite of lessons to enable younger children to learn about their rights in the Foundation Phase.

The Ambassadors Scheme also enables children and young people to directly feed into my work programme. Examples of this include the two large-scale consultations, with tens of thousands of children, that have set my priorities for successive work programmes, our major reports on bullying, *Sam's Story*<sup>18</sup> and our *Charter for Change*<sup>19</sup> work on tackling child poverty.

In the absence of an up-to-date Welsh Government hub for resources on children's rights – I am aware that work is now underway to revise the site - I've also been developing a suite of free resources and content on my website, and most accessible via Hwb, that can be used by teachers, youth workers, participation workers and others to help children learn about their rights, and to use their rights to make their own decisions locally. I've extended the range of accessible resources using British Sign Language and Widget symbols, following feedback from children and their teachers. All of my resources are available bilingually. In addition this year I've launched a Rights Challenge badge for the Scout and Guide movements; again these are freely available on my website for anyone to access and use.<sup>20</sup>

Since late 2017 I've been regularly discussing with the relevant Children's ministers the 30-year anniversary of the signing of the UNCRC, which falls on 20<sup>th</sup> November 2019 (Universal Children's Day). I believe it is important to use this anniversary as an opportunity to celebrate progress on children's rights issues in Wales and to recognise the importance of this to the everyday lives of children. As

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<sup>16</sup> <http://www.legislation.gov.uk/wsi/2001/2787/regulation/22/made>

<sup>17</sup> <https://www.childcomwales.org.uk/our-schemes/>

<sup>18</sup> <https://www.childcomwales.org.uk/publications/sams-story/>

<sup>19</sup> <https://www.childcomwales.org.uk/wp-content/uploads/2019/04/A-Charter-for-Change-Protecting-Welsh-Children-from-the-Impact-of-Poverty.pdf>

<sup>20</sup> <https://www.childcomwales.org.uk/resources/>

noted above, we have worked alongside the Government and members of the CRAG to bring together a campaign of awareness raising and events on the UNCRC this year and the campaign will launch on 19<sup>th</sup> September 2019. My office has played a key advisory role in this over the last year and many of my resources have been utilised as part of the core information pack being created. I'll also be hosting my own events and engaging with children that week and will be inviting children and Assembly members to join me at a lunchtime event in the Senedd on the 20<sup>th</sup> November.

When public consultations are launched by the Government, on occasion specific children and young people's versions or accessible versions have been published. This is not universally the case unfortunately but where they have been included I have taken the opportunity to welcome this in my consultation response. However, even when these versions have been created and some of the introductory language has been simple and straightforward, it has been frustrating that much of the content has continued to use jargon or required readers to also read the full consultation document in order to get the full context and understand the abbreviations that are used. In some cases there has been a young person's explanatory document but this has referred users back to the full list of consultation questions in the main document. In others, the accessible version has been excellent but it offered no method of actually responding to the consultation. I would like to be able to promote Government consultations more widely through my social media channels, which have many schools, teachers, youth clubs and members of the public as followers. It is important that young people have the opportunity to respond directly to consultations as well as their views feeding into responses such as my own. However, I have felt at times unable to strongly promote consultations that are not suitably clear and accessible.

I have raised this issue with my link Branch previously as well as raising it in individual consultation responses. Notably recent examples include the 'Improving Public Transport' consultation. Accessing public transport is an issue that young people all across Wales have raised with me, and one that I have no doubt they would have strong views that they would wish to share in any proposals for change. There was a Community and Youth consultation document published with the main proposals. The introductory sections of that version were clearly explained and laid out, and I welcomed that in my response. However, the questions themselves were still quite technical and referred to complex terminology and concepts such as Joint Transport Authorities (JTA), Enhanced Quality Partnerships, Franchises and specific terms of Licensing. Whilst some attempts were made within that document to explain these terms, it wasn't particularly clear in explaining enough detail of how those arrangements would work. The questions that followed the explanations were still quite technical in language and appeared off putting; the explanations did not give enough information to enable a young person to fully answer the rigid questions.

The youth and community version of the Welsh Government's *Healthy Weight : Healthy Wales* had similar pitfalls around a lack of explanation of terminology, and questions which did not give proper opportunity for children and young people to use their own experiences to respond to individual proposals, which I highlighted in my response to the consultation.

In addition, the consultation on the Code of Practice for the delivery of autism services had an easy read version published with the main proposals. I was pleased to note that children of a range of different ages were depicted within it. However it referred to an easy read response form but I was

unable to locate this and this may have been an issue for others hoping to respond to the consultation. Again I raised this in my response and with my link Branch officials.

The most complete analysis within a CRIA that I have observed to date was for the 2018 proposals around a minimum unit price for alcohol sales in Wales. It was particularly pleasing as this is not an area that you'd automatically think of as relating to children's policy. The CRIA was thoughtfully undertaken, with clear analysis of both positive and negative impacts, and these were cross referenced to recent pieces of leading research. The analysis also looked beyond the immediate issues being considered in the consultation itself, to include related considerations of health and well-being, not only now but also for the future. This meant it had considered not just the impact for key groups such as the Government, retailers and customers, but also services such as counselling, preventative services and those dealing with hidden harms.

The CRIA for the Children (Abolition of the Defence of Reasonable Punishment) (Wales) Bill was also thoroughly undertaken and cross referenced to relevant research, and contained options to mitigate any potential negative impact identified.

The current Children's Rights Scheme contains information for children and young people to "challenge the Minister when they feel that Ministers have not complied with the due regard duty when making decisions that affect their lives".<sup>21</sup> My feedback on the revisions to the Scheme has highlighted this as an area that needs development to be more suitable and accessible to children. The language would need to be adapted and the options available give little information as to how a young person can be supported in this process. My suggestion would be for a separate complaints process/leaflet to be created to allow children and young people to raise any policy matters that they feel the Government aren't taking seriously and to have their voices heard on issues of importance to them. This feedback hasn't been acted upon so far.

Including a due regard duty in the curriculum legislation would be a highly effective mechanism to support Welsh Government to raise awareness and understanding, and to meet its responsibility for requiring full compliance with the Convention. This will have a substantive positive impact on Article 4 (General Measures of Implementation) of the UNCRC.

## **6. How the duty to have 'due regard' to the Convention on the Rights of the Child is being implemented in practice and whether Child Rights Impact Assessments are being used as a meaningful tool**

CRIA is the primary tool by which the Welsh Government *evidences* how the due regard duty has been complied with across Government, when advising Ministers. The CRIA is not, in its own right, the exercise of the due regard duty, it simply draws together the ways in which officials and Ministers have paid due regard through their work. Through the process of completing a CRIA, it may become apparent to officials that there are gaps, perhaps a lack of engagement with children and young people in developing the policy. By completing the CRIA at the earliest stage of policy development and

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<sup>21</sup> <http://www.assembly.wales/Laid%20Documents/GEN-LD9732%20-%20Children's%20Rights%20Scheme%202014-22042014-255569/gen-ld9732-e-English.pdf>

keeping it under review, this allows the CRIA process to inform and guide how the due regard duty is exercised.

I have previously given written and verbal evidence to this Committee on the patchy quality of CRIA, particularly the lack of analysis of the options, and mitigation of any negative consequences. It appears to me that officials preparing CRIA are reluctant to expressly note any potential negatives to a policy decision, in what I suspect to be fear of litigation as a result. What I would prefer to see is acknowledgment of any negatives or deficiencies of a particular policy or decision at that point, but with clear mitigating actions and intentions to keep this situation under review. A balanced analysis of the options, including a cost benefit analysis and realistic assessment of the possibilities within any budget constraints, would show full consideration of all of the children's rights issues.

It would be unlikely that *any* policy would solely have positive or neutral implications for the whole population, so by only mentioning positives it makes the assessment incomplete and potentially misleading in my view. Achieving children's rights will always require careful balancing considerations, on the interaction of different rights and principles such as enabling children's participation against consideration of what may be in their best interests.

The lack of analysis of options in the majority of CRIA seen by my office is a significant weakness in the current format and operation. This may be due to the format which asks about positive and negative impacts but doesn't automatically question the author on their conclusions. Ministers are currently reliant on the conclusion of CRIA as the primary way in which they exercise due regard and should be concerned that the advice being provided to them may not be based on a full consideration of all the relevant issues as part of that broader analysis. My team and I have not always been able to consider the quality of the analysis of impact on children's rights due to CRIAs not always being made available to my team in a timely manner.

Some recent examples to illustrate these points are as follows:

The Curriculum for Wales proposals: my team requested a copy of this in May 2019 as this was not published alongside the consultation. The CRIA was eventually received in August 2019 even though it was dated May 2019 (v3). The CRIA was essentially a description of actions and not an actual impact assessment. I was unable to explore this fully in my response to the consultation as the CRIA was not provided during the period it was open, despite chasing.

The Health and Social Care (Quality and Engagement) Bill: As required, a CRIA was published alongside the draft Bill, and it pointed to a number of potential positive impacts as a result of the proposals. However, the only potential pro-Rights effect described in the Integrated Impact Assessment was termed as 'consequential'. On exploring the proposals in full, I was disappointed to note that the Citizen Voice proposals had not fully explored the possibility for children's participation, which might be why it was only coming up as consequential. Further, the Bill lacked clarity generally on which parts were relevant to children and young people, including any advocacy support. A more thorough CRIA and Integrated Impact Assessment (IIA) would have recognised the potential that these proposals presented to take forward children's rights, and could have been used to inform and drive a more rights friendly and inclusive policy direction. This was a clear example of a major legislative proposal that had only been partly thought through in relation to children.

I was also concerned to learn earlier this year that there is no longer any compulsory training for Government officials who are responsible for policy development and the preparation of CRIA. In addition, officials may have undertaken basic training when they first joined the organisation but there is no requirement to revisit this upon promotion to roles such as Deputy Director, a role which includes the requirement to sign off the CRIA. Similarly there is no training for Ministers on how to exercise due regard to children's rights through their role. Earlier this year I was pleased to take the opportunity to meet with Directors from across the Government at the invitation of the Permanent Secretary. I was able to offer constructive challenge to those present including a quiz on children's rights and the UNCRC to help them consider how well versed they and their staff may be in children's rights and the Government's duties in this area. This was positively received and certainly appeared to cause some Directors to recognise gaps in their knowledge. Without compulsory training however I would remain concerned that this may not translate into improved policy development across Government. This could be an area in which the Committee considers making a recommendation. It is open to the Government to make any changes it wishes to the Scheme such as making training compulsory.

The right to participate is a guiding principle of the UNCRC and as such represents an underlying requirement for children's rights to be realised. There are opportunities to inform better policy making through better participation of children and young people that goes beyond just consultation on already developed proposals. I welcome the establishment of a National Youth Stakeholder Group in the development of the whole school approach to mental health and wellbeing. Other policy areas would benefit similarly from such participation models. As an example, I repeatedly called for the participation of children and young people in the curriculum design, making recommendations to this effect in my Annual Reports of 2015/6 and 2017/8. This 2015/6 recommendation was positively received by Welsh Government and in 2016 a sub-group of the strategic stakeholder group was established to look specifically at participation. However this group was disbanded and despite significant efforts from my opportunity for participation of children and young people until the summer term of 2019. By this time the opportunity for sustained co-construction with children and young people at a national level had passed and this represented a model of participation in which young people are consulted and informed, rather than co-producing policy.

In the last year, the Government has consulted the Children's Rights Advisory Group (CRAG), at which my office is represented, in the developmental stages of some CRIA. This has been a welcome development that has allowed officials to meet with the CRAG and talk through their thinking, and receive advice on any notable gaps or omissions and on how to undertake the balancing exercise in making a recommendation to their Minister. It has appeared to be a useful approach that has been taken up by officials from Education and the Children and Families Division. One thing that has again been clear through these sessions is the lack of *analysis* of options and lack of a concluding paragraph containing the actual advice to the Minister.

The new template/format that feeds into the broader Integrated Impact Assessment does ask the writer to set out both positive and negative impact of the policy, which is a welcome addition. I would note however that even with a new format, the CRIA that I have seen have not consistently followed it, so some have just asked broader questions about impact generally, rather than expressly considering positive and negative impact. I feel a concluding section is still lacking however resulting in an incomplete assessment and advice to the Minister.

I have been working on my own CRIA template in recent weeks, which would take users through the principles of a children's rights approach and prompt the author to consider not only what they've done to date but what other options could be taken forward, how they would do this and how they've involved children throughout. Although intended for a range of public bodies, this work arose following a request from a number of local authorities. I would be happy to share this widely including with Government once completed. I have felt the need to prepare this document due to the varying quality of CRIA and lack of analysis and concluding advice I see too often.

#### **7. The effectiveness of the Children's Right's Scheme and the most recent Welsh Government compliance report, and the extent to which they evidence sufficient action on the part of Welsh Government to ensure full implementation of the Measure**

The Measure requires a Children's Rights Scheme to be maintained, and for a Compliance Report to be prepared every 2.5 years. The last Compliance report was published in March 2018<sup>22</sup>, and it concluded that the Scheme should be revised (a requirement to be expressly considered in any compliance report) and that this would be done by December 2018. My team and I raised this at regular intervals with officials since then, as unfortunately this work was not forthcoming. The Compliance Report was published and laid but was not presented for a plenary debate at the Senedd.

Work eventually commenced with a revised draft being shared in late April 2019, just days before the CRAG meeting on 1<sup>st</sup> May 2019. My office is a statutory consultee for any revisions to the Scheme; we were concerned to be given such short notice in which to respond before the scheme was planned to go out to public consultation.

We were very disappointed to see that very few changes had been made in the revised draft, despite clear commitments within the 2018 Compliance Report. Following the meeting, my team sent detailed follow up feedback to officials, including a revised structure for the Scheme that would include all of the required elements, and also extend the purpose and reach of the Scheme further as intended. The new structure was focused around the five principles of a children's rights approach *The Right Way*, which would be applicable to Government as well as other public bodies in Wales. The team offered to work closely alongside officials and/or attend workshops to assist in the redrafting of the scheme; this offer has not been taken up to date. We also agreed at CRAG that it would be better for the Government to revise the scheme to get it right instead of focusing on an artificial deadline of summer recess.

A redraft was shared with my team on 9<sup>th</sup> September 2019, again just days ahead of the next CRAG meeting on 11<sup>th</sup> September. The consensus amongst members of the CRAG at this meeting was that the revised draft wasn't clear as to *how* Welsh Government officials should be carrying out the due regard duty, and what help, support, training or resources was available to them to do this. It needs to act as a manual to support officials in achieving due regard rather than just ticking a box to say a CRIA has been completed. In addition, the revised draft still doesn't take forward the areas noted in the Compliance Report 'next steps', namely a revised plan for funding external training, a review and extension of the Government's participation strategy, implementing previous report recommendations to improve the quality of CRIA and a move towards focusing more on outcomes for

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<sup>22</sup> <https://gov.wales/sites/default/files/publications/2019-06/rights-of-children-and-young-people-compliance-report.pdf>

children. This revised draft did not follow the principles of the Right Way. A further draft is now expected to be shared in October 2019; my team have renewed their offer of support in rewording and restructuring the draft.

I must emphasise that my office maintains a constructive relationship with our link branch and on the basis of this we are able to provide forthright feedback and engage in robust but positive debate with officials. I welcome this open engagement as it allows me to conduct my scrutiny remit. As the current scheme remains operational throughout this process, I have been clear to officials that I would rather some delay in the revised scheme if that means the final result will be better for children's rights work in Government.

In addition, the 2014 Children's Rights Scheme includes the internal Children's Network, where senior officials from across Government would come together to discuss children's issues. I have presented at the Network more than once and think it is a good arrangement that would promote cross government working. Whenever I've asked about the Network however, it appears to not meet particularly regularly. The revised draft currently omits reference to this Network, which I think would be a significant loss given the issues I've raised above and discussed with the Committee previously around lack of proactive 'join up' across Government.

Any compliance scheme has to include metrics such as the numbers of CRIAs completed and numbers of staff members attending children's rights training. The 2018 report noted a reduction in the number of CRIAs and those accessing training, but did not include any proposals as to how to address that decline. Given that the commitment had already been given to revise the Scheme within that report, it presented an ideal opportunity to extend awareness and understanding of children's rights across Government rather than continue with the status quo. There will have been staff turnover and many role changes in the years since the Measure was first enacted and it cannot be assumed that all those within Government have received up to date information and training.

## **8. How effectively the Welsh Government responds on a strategic basis to the Concluding Observations of the UN Committee on the Rights of the Child**

The Concluding Observations from the UN Committee on the Rights of the Child are formally directed to the UK Government, as the relevant State Party signed up to the Convention. However, there will be areas that relate in part or wholly to devolved areas that are the responsibility of the Welsh Government.

At my suggestion, in July 2017 the then Cabinet Secretary for Communities and Children issued a statement marking a year since the publication of the 2016 Concluding Observations.<sup>23</sup> Whilst this was a welcome step, the statement did not address the relevant recommendations directly, and just highlighted the areas in which the Government already had plans for policy or legislative developments from the previous year's manifesto and the *Prosperity for All* strategy.

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<sup>22</sup> <https://gov.wales/written-statement-marking-first-anniversary-publication-un-committee-rights-childs-concluding>



The then Minister for Children, Older People and Social Care published a statement<sup>24</sup> to mark the second anniversary. This statement was largely similar to the previous year's statement and again did not directly address the recommendations, including those where the Welsh Government has not yet acted.

I am not aware of a statement published on the third anniversary in July 2019 and have not been able to locate anything on the Government website.

Although we have not systematically tested this, when speaking to officials from a range of government departments it does not appear that they are aware of the Concluding Observations relevant to their policy area.

There is no published schedule of relevant recommendations for Wales and the Government's assessment of progress against these. In November 2019 the Children's Commissioners for the UK and Jersey will publish a joint report on the UK's progress against the 2016 Concluding Observations. This will be our own assessment of progress against those recommendations. The report will highlight areas of progress in each of the nations but will also set out areas that persist and where there is work to be done to progress and uphold children's rights under the UNCRC. This report will be shared with the Committee, and my office will be publishing a Wales specific version as well as an accessible version.

Section 2 (4) of the Measure states that Ministers "must, within six months of the Committee making any suggestion or general recommendation under article 45(d) based on a UK report, consider whether to revise or remake the scheme in the light of that suggestion or recommendation." This is a statutory requirement to at least consider whether the Scheme requires revision due to the content of the Concluding Observations. For example, if the UN Committee raised a point around access to complaints mechanisms and judicial remedies, the Scheme may need updating. I am not aware of this ever having been done either; if it has it hasn't been discussed or shared with my office, nor has it been published.

## **Conclusion**

I warmly welcome the Committee's scrutiny of the impact of the Measure and the opportunity to provide my views in relation to this.

I am proud of much of Wales' record on children rights and am well aware that to date the Measure has been the strongest legal measure implementing children's rights in the United Kingdom. However, I do not feel that measuring ourselves against the rest of the UK is an ambitious enough target and I would like to see Wales reaching the very best international standards. I will continue to recognise good work by the Welsh Government and other public bodies but also press for more systematic implementation of children's human rights.

In summary, whilst the Measure has been a welcome addition to the Welsh legal landscape, in my view there is clearly more to be done to extend its reach and impact in order to ensure that children's

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<sup>23</sup> <https://gov.wales/written-statement-marking-second-anniversary-publication-un-committee-rights-childs-concluding>

rights are directly applied and accessible across Wales. I feel that the current Children's Rights Scheme, that translates the duties of the Measure into the day to day work of Government, does not make the most of the opportunities to develop and extend the application and realisation of children's rights across all areas of Government's work, and action by Government is needed in order to achieve this. Whilst the current scheme requires actions such as CRIA to take place to evidence the due regard duty, there needs to be far more detail and requirements contained within the revised Scheme to combat the quality and timeliness issues identified in this response. In addition, I am not yet certain that the Measure is sufficiently embedded across Government to be having greatest possible effect for policy and decision making on any issues relevant to children.

Embedding the UNCRC across Government practice and procedure does not start and end with the introduction of the Measure. As noted within this response, it is one way in which the Government can be held to account on due regard for the UNCRC, but there are many other ways that this could be progressed and implemented further, including further incorporation of the UNCRC to apply duties to all public bodies in Wales. Implementation of the UNCRC is expected to be a process of 'progressive realisation' and there is plenty more that could be done in Wales to continue with this journey, including the potential extension of my role and remit as the independent children's rights institution in Wales.

Submitted by



Sally Holland

Children's Commissioner for Wales