

### **Background information about the Children's Commissioner for Wales**

The Children's Commissioner for Wales' principal aim is to safeguard and promote the rights and welfare of children. In exercising their functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner's remit covers all areas of the devolved powers of the National Assembly for Wales that affect children's rights and welfare.

The UNCRC is an international human rights treaty that applies to all children and young people up to the age of 18. The Welsh Government has adopted the UNCRC as the basis of all policy making for children and young people and the Rights of Children and Young Persons (Wales) Measure 2011 places a duty on Welsh Ministers, in exercising their functions, to have 'due regard' to the UNCRC.

This response is not confidential.

### **United Nations Background**

The human rights of all children to receive an education are laid out in the United Nations Convention on the Rights of the Child<sup>1</sup> (UNCRC) through Articles 23, 28 and 29 and also the United Nations Convention on the Rights of Persons with Disabilities<sup>2</sup> (UNCRPD) through Article 24. General Comment No 9 (2006): the Rights of Children with Disabilities<sup>3</sup> and General Comment No. 1: The

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<sup>1</sup> <https://ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>

<sup>2</sup> <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>

<sup>3</sup> <https://www.refworld.org/docid/461b93f72.html>

Aims of Education (article 29) (2001)<sup>4</sup> further articulate the rights to education guaranteed by both Conventions. It is these entitlements, by which we must assess the strengths and weaknesses of Education other than at School (EOTAS) provision in Wales.

### **Overview of response**

The most recent data from Welsh Government (2018)<sup>5</sup> shows that the number of pupils receiving EOTAS has risen almost every year over the past six years. In the school census week of January 2018, the total number of pupils reported as receiving EOTAS funded by their local authority was 2,188, or a rate of 3.4 pupils per 1000, which is an increase from 2.6 per 1000 pupils in 2013. This rate of 3.4 pupils per 1000 is the highest rate since 2009/10. Of these pupils, 86.8% had special educational needs, 4 out of 10 were entitled to free school meals and 7 out of 10 were boys.

My response is primarily based on the case work I have received over the last four years relating to EOTAS provision. An analysis of these cases shows the value and importance of EOTAS provision for many children and young people, and illustrates that when provision is timely and high quality it can be of huge benefit. However, these cases also highlight some poor practice and failings within the wider support system for children. Common themes between cases also raise questions about potential gaps in policy and provision. Individual cases highlight the complexity of the lives of some children in Wales, and the difficulties some children have in receiving the appropriate cross-agency support to enable them to access education. Therefore, in addition to drawing out key themes, where appropriate I share anonymised details of cases as a means to illustrate issues and challenges. It is worth noting that several of these challenges are those that were also identified in the 2014 report about Pupil Referral Units<sup>6</sup> published by my predecessor as Children's Commissioner for Wales, and I have highlighted where problems continue. I have one general concern unrelated to case work received by my office: this concern is around the registration status of some EOTAS providers and this I describe at the outset of this response.

### **Unregistered providers**

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<sup>4</sup>[https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a\)GeneralCommentNo1TheAimsofEducation\(article29\)\(2001\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a)GeneralCommentNo1TheAimsofEducation(article29)(2001).aspx)

<sup>5</sup> <https://gweddill.gov.wales/docs/statistics/2018/180725-pupils-educated-other-than-at-school-2017-18-en.pdf>

<sup>6</sup> [https://www.childcomwales.org.uk/wp-content/uploads/2016/04/Right\\_to\\_learn\\_eng-F.pdf](https://www.childcomwales.org.uk/wp-content/uploads/2016/04/Right_to_learn_eng-F.pdf)

I am concerned that in 2016 some local authorities in Wales maintained unregistered units that educate pupils of compulsory school age. Estyn reported on this in 2007<sup>7</sup> and reiterated that this is still the case in 2016<sup>8</sup>, noting that the majority of these units are *'community-based centres where pupils attend for 'home tuition''* and that in addition, local authorities commission EOTAS from unregistered providers operating as independent schools, as defined under the Education Act 2002. Estyn report that, *a minority of local authorities commission full-time EOTAS for large groups of pupils from providers that are not registered as independent schools. The majority of local authorities visited maintain unregistered PRUs. They operate tuition centres and other non-registered centres to provide education for up to 25 hours a week.*" Whilst some of these unregistered providers may be offering excellent education and support to children and young people, the fact they are unregistered creates a safeguarding risk, as they do not fall under the regulations governing independent schools<sup>9</sup>. These regulations include some safeguarding requirements such as ensuring disclosure and barring checks when recruiting staff working with children and young people. This situation also raises a quality assurance risk as these unregistered settings will not be subject to the same external inspection of their provision. I am aware that following Estyn's 2016 report Government wrote to all local authorities across Wales setting out that providers should be registered, and that subsequently there has been an increase in the registration of settings. I also anticipate that Welsh Government's forthcoming review of EOTAS commissioning across Wales will identify any persistent use of unregistered provision. In addition, this review should highlight any scope to improve commissioning arrangements so that there is greater clarity first about which pupils are in receipt of what provision across Wales, and second, more transparency about the quality of this provision. I will also raise this issue in my annual meeting with Her Majesty's Chief Inspector of Education and Training in Wales to discuss Estyn's findings around EOTAS provision since the 2016 thematic report.

### **Investigation and Advice Casework**

Since I have become Commissioner I have received a number of cases through my Investigation and Advice Service relating to children and young people receiving or seeking EOTAS provision.

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<sup>7</sup> Estyn (2007) Local education authority practice in monitoring the location of pupils being educated outside the school setting and those missing from education. Cardiff: Estyn. [Online].

<sup>8</sup> <https://www.estyn.gov.wales/sites/www.estyn.gov.wales/files/documents/EOTAS%20remit%20report.pdf>

<sup>9</sup> <http://www.legislation.gov.uk/wsi/2003/3234/introduction/made>

Following a review of all potentially relevant case records from our care management system, I have identified 25 relevant cases, all received since 2015, to analyse in relation to this inquiry.

### **Examples of good practice**

Invariably when young people, families or professionals contact my casework service problems have arisen. However, through this casework, and also through the participatory work of my office my team and I have noted several examples of good practice in EOTAS provision. I list some of these examples as follows:

- Providing dual placements, for example a reduced timetable in school supplemented by home tuition, can be a helpful course of action. This can support children and young people to stay engaged with mainstream education in a way that they can manage whilst not missing out on learning.
- Flexi-schooling can enable children and young people to stay engaged in a mainstream setting in a way they can manage. Some Head teachers are happy to enable flexi-schooling but others will not due to concerns that this will reflect badly in their school attendance figures. The forthcoming review of Guidance on school attendance codes<sup>10</sup> is an opportunity to reflect this and could result in more Head teachers feeling able to offer this choice to families as a way of ensuring more children and young people stay in mainstream education.
- Home tuition can offer an important bridge for children and young people who are between settings, can mean that children don't experience gaps in their education and can offer a second chance to succeed, as noted by Estyn.<sup>11</sup>
- 14-19 pathways, combining learning in school and college, can help young people stay engaged in education, and to develop new skills and set targets and aspirations for the future. This reinforces Estyn's observation that vocational courses offered through EOTAS provision can enable young people to have meaningful learning experiences and gain qualifications.<sup>12</sup>
- Nurture groups offer essential support to many children and young people. I have recently visited nurture units in Fitzalan Comprehensive School (Cardiff) and Lewis Girls' School (Caerphilly) both of which are located in former caretakers' houses on the school

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<sup>10</sup> <https://gov.wales/sites/default/files/publications/2018-03/guidance-on-school-attendance-codes.pdf>

<sup>11</sup> <https://www.estyn.gov.wales/sites/www.estyn.gov.wales/files/documents/EOTAS%20remit%20report.pdf>

<sup>12</sup> [Ibid](#)

grounds, and provide places for vulnerable pupils before school and during breaks, as well as providing one-to-one and group support. Pillgwenlly (Newport), Glancegin (Gwynedd) and Monkton Priory (Pembrokeshire) primary schools have established nurture classes within their schools for children to attend on a part-time or full time basis. These cater for children with challenging behaviour or who need support to develop the skills needed to take part in a mainstream classroom. In all of these settings, of which there will be many more examples across Wales, schools are enabling children to be included and preventing exclusions and non-attendance. Children, young people and their families have described to my officers how these groups in school have enabled families to build strong, trusting relationships with professionals.

- More generally, supportive, trusted professionals who listen to children, young people and their families play an invaluable role both in EOTAS settings, and in schools. Relationships between children and learning support assistants are crucial and important to invest in, families have described to my office that these relationships have kept a child in mainstream school.
- Supporting children and young people to make gradual returns to mainstream education can be beneficial, with small group units often playing an important part.
- Cross agency approaches can be hugely valuable in supporting children to stay in and to thrive in mainstream settings, these include team around the family (TAF) and team around the child (TAC) meetings.
- Intensive person-centred interventions working with young people and their families can support children and young people to re-engage with education settings. An example of this is the asset-based approach taken by Sylfaen Cymunedol, a community development charity in Gwynedd and Ynys Mon. This project, funded by charitable trusts, Children in Need and the Big Lottery, works intensively with around 40 young people a year and their families. This programme supports young people at risk of de-registration or recently de-registered and looking to come back under the responsibility of the local authority to access education in school settings or through EOTAS provision. Some Pupil Referral Units in Wales are developing children's rights approaches and embedding these across their settings, often with support from my Ambassador schemes. The Bridge Alternative Unit in Bridgend is one such example. In this setting young people are being enabled to take an active part in decision making and to understand and experience their rights as guaranteed by the UNCRC.

## **Overview of central issues**

In numbers, an overview of central issues presenting in my Investigation and Advice cases shows the following:

- 10 cases involve children or young people whose EOTAS provision was insufficient, or where they were not accessing any educational provision at all.
- 7 cases (at least) are related to children or young people with a statement of Special Educational Needs (SEN)
- 5 cases involve children or young people receiving or waiting for mental health support from CAMHS
- 3 cases involve children or young people that have been excluded on a permanent or fixed term basis
- 3 cases involve children or young people waiting for or refused statutory assessment for SEN
- 3 cases related to children or young people that were looked after
- 2 cases involved young people who had received the same EOTAS provision without active review.
- 1 case involved a young person receiving home tuition as there was no place available in the specialist unit that had been recommended to them
- 1 case involved a young person receiving home tuition due to bullying in a previous setting
- 1 case involved a child receiving EOTAS provision due to complex medical needs
- 1 case concerned a young person's lack of participation in decision making about their place of education
- 1 case involved a young person unable to access Welsh medium education through EOTAS provision
- 1 case involved a lack of information given to the child and family

## **Insufficient or no provision**

I will describe two cases related to this issue to outline the some of the complexities and issues for children and young people accessing EOTAS.

In one ongoing case a young person in their early teenage years is not currently accessing any education. This young person has social, emotional and behavioural needs which have not been met in mainstream settings in the past. Specialist placements in the past have also failed and most recently this young person was provided with an alternative EOTAS placement focusing on outdoor and practical learning. Although this placement is described as including education in literacy and

numeracy the young person felt that this element of their education was being missed and they were concerned how this would impact them in the future. The young person also found the placement highly repetitive, as over an extended period the same course of learning was undertaken several times and there was a lack of flexibility to enable other learning to take place. The young person disengaged from the provision requesting a return to school but for several complex reasons this was not considered appropriate. The authority is currently looking for an interim EOTAS provision and my office continues to press for another suitable placement to be found quickly.

In another case, which has now been resolved, a child of upper primary age was refusing to go to school and was missing education. This child had an ASD diagnosis but had been refused statutory assessment. The child also had a high level of anxiety and was being supported by CAMHS. Intervention from my office ensured that statutory assessment took place and that tuition was provided at home. Continued investigation from my office led to this child being provided with a place at a pupil referral unit where the child is thriving, and has now increased to almost full time hours. However, it is important to note that there was a high level of resistance from the authority to offer this place and securing it not only required two years of sustained intervention on behalf of my office but also reflects the persistence and tenacity of the family.

These two cases point to a number of issues which I outline below, many of which are reflected in other cases of this nature responded to by my office.

### **Gaps in provision**

The cases above in which the child was experiencing a gap in educational provision, a situation that has also arisen in other cases, is reinforced by Estyn's finding that a minority of pupils '*do not attend school or any other provision for long periods before they commence EOTAS*'<sup>13</sup>. That this has arisen in recent cases shows that Estyn's 2016 recommendation that local authorities should '*provide pupils with suitable education within 15 days of a decision being made that they should receive EOTAS*', is still not being met in every instance. In the census week of January 2018, 32 pupils were recorded as not having any educational provision.<sup>14</sup> This must be addressed to meet the duties of local authorities to provide a suitable education for children of compulsory school age who, by reason of

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<sup>13</sup> <https://www.estyn.gov.wales/sites/www.estyn.gov.wales/files/documents/EOTAS%20remit%20report.pdf>

<sup>14</sup> <https://gwedhill.gov.wales/docs/statistics/2018/180725-pupils-educated-other-than-at-school-2017-18-en.pdf>

illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them. Under section 19(6) of the 1996 Education Act suitable education is defined as 'efficient' education suitable to the age, ability, aptitude, and to any special educational needs (SEN) the child (or young person) may have. A significant gap in provision clearly does not meet this obligation, nor our obligations to the rights of children to receive education highlighted at the outset of this response. However, as illustrated below, these cases also illustrate that even when placements are provided, these obligations are not always met.

### **Broad and Balanced Curriculum**

Educational provision in EOTAS settings does not always seem meaningful to young people: this was apparent in the first case outlined above but has also applied in several other cases received by my office. Young people do not value repeating a fixed curriculum of activity. Some EOTAS provision is designed for young people to undertake for a short period but when young people are experiencing this provision for an extended period of time providers need to make sure that there is flexibility within learning for children and young people to develop and progress. My case work does indicate that some alternative settings such as that described (and others) do not readily make such opportunities or qualifications available to young people and this is supported by Estyn's 2016 report which found that, *'Overall, EOTAS provision does not give pupils the same access to their education entitlements as their peers. A minority of pupils have to wait for more than 15 days to access provision, receive a restricted curriculum, or follow courses that are not challenging enough.'*<sup>15</sup> This is unacceptable and is a clear violation of children's human rights under the UNCRC, notably Articles 28 and 29, which lays out the right of every young person to develop their talents and skills to their optimum potential.

The consultation document for Our National Mission: A Transformational Curriculum<sup>16</sup> specified the following related to Pupil Referral Units:

*'Pupil Referral Units (PRUs) do not have to deliver the entirety of the new curriculum. Nonetheless PRUs are required to deliver a 'broad and balanced curriculum' and this requirement will continue in relation to the new curriculum arrangements. The Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007 applies one element of the basic curriculum to PRUs – this*

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<sup>15</sup> <https://www.estyn.gov.wales/sites/www.estyn.gov.wales/files/documents/EOTAS%20remit%20report.pdf>

<sup>16</sup> <https://gov.wales/sites/default/files/consultations/2019-02/consultation-document-transformational-curriculum-v2.pdf>



*requires sex education to be taught to pupils of secondary school age. This will also continue to be the case.'*

Whilst I am not in disagreement that it is not always appropriate for Pupil Referral Units to deliver the entirety of the curriculum, all EOTAS provision should be working towards ensuring that the 'broad and balanced' curriculum they provide mirrors as far as possible the entitlements of other children and young people, and I would hope that the requirements around 'sex education' in Pupil Referral Units are updated, in line with the new curriculum proposals, so that young people receive a statutory entitlement to relationships and sexuality education. Current evidence shows that more needs to be done to ensure that EOTAS settings are meeting their duties, and a national and local focus on this should be considered integral both to the Additional Learning Needs Transformation programme, and to the professional learning undertaken to embed the new curriculum.

### **Meaningful Qualifications**

In addition, young people and those that support them can have understandable concerns about what qualifications are available through EOTAS settings. Estyn's investigation found that generally, pupils receiving EOTAS work towards attaining level 1 and 2 credit-based qualifications that have GCSE equivalency. These enable pupils to gain the equivalent of up to four GCSEs.<sup>17</sup> However, changes to the qualifications framework will reduce this to the equivalent of two GCSEs, and I hope that settings are considering how to best enable young people to attain additional qualifications as a result of this change. It is important that all young people have the opportunity to have experiences and take qualifications that will enable them to continue in education, employment or training after compulsory school age. My case work does indicate that some alternative settings such as that described (and others) do not readily make such opportunities or qualifications available to young people and this again is supported by Estyn's report which found that, *Pupils receiving EOTAS do not usually have access to a broad and balanced curriculum that enables them to gain qualifications that meet their needs and potential. Only a very few pupils are taught by subject specialists. A lack of resources and facilities for subjects such as science limits the curriculum for too many of these pupils. This shortfall means that pupils miss out on important aspects of education, which can impact on their future chances of employment and training.*<sup>18</sup> More must be done to address this at both a national and a local level.

### **14-19 Pathways**

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<sup>17</sup><https://www.estyn.gov.wales/sites/www.estyn.gov.wales/files/documents/EOTAS%20remit%20report.pdf>

<sup>18</sup><https://www.estyn.gov.wales/sites/www.estyn.gov.wales/files/documents/EOTAS%20remit%20report.pdf>

Under the Learning and Skills (Wales) Measure 2009, as amended by the Education (Local Curriculum for Pupils in Key Stage 4) (Wales) (Amendment) Regulations 2014, local authorities have a duty to form local curricula for learners in key stage 4. Across Wales some children are still supported on 14-19 pathways, where they participate in a dual placement between a school and a college: developing literacy and numeracy at school and developing skills through college tuition. This is valuable for many young people as it enables them to achieve GCSE qualifications alongside learning vocational skills, and also provides experience of the type of courses available in post-16 settings, which is invaluable for young people planning their future after compulsory school age. However, my office has noted that in recent years fewer young people in contact with my Investigation and Advice Service are being offered the opportunity to pursue 14-19 pathways and information about this as an option is not being communicated to families in contact with my casework service when their children are struggling with school or have been excluded. This is echoed in a policy context in which 14-19 pathways seem largely neglected in the educational policy landscape, not featuring in the draft guidance to the developing curriculum<sup>19</sup> or in the wider education policy described in Our National Mission<sup>20</sup>. Estyn also report that young people and their families are presented with limited options about future placements and that learning opportunities are too often limited by what happens to be on offer through a local provider, rather than as part of a planned pathway.<sup>21</sup> I would urge Government to include consideration around these pathways in the development of assessment and qualifications that is currently taking place to support the new curriculum arrangements.

## **Participation**

Another element in these cases, which is echoed in many others I have received, is the participation of children and young people. All children and young people have participatory rights guaranteed by the UNCRC. Participation is a cross-cutting principle of the Convention which is essential for all other rights to be realised. The key participatory right is Article 12, the right of a child to express an opinion about a decision that affects their life and for that opinion to be given due weight in decision making. Other participatory rights include the right to accurate information and freedom of expression (Articles 13 and 17), the right to participate in groups and meet friends (Article 15), and the right to participate in cultural activity, religion, sport and play (Articles 14 and 31).

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<sup>19</sup> <https://hwb.gov.wales/draft-curriculum-for-wales-2022/a-guide-to-curriculum-for-wales-2022/>

<sup>20</sup> <https://gov.wales/sites/default/files/publications/2018-03/education-in-wales-our-national-mission.pdf>

<sup>21</sup> <https://www.estyn.gov.wales/sites/www.estyn.gov.wales/files/documents/EOTAS%20remit%20report.pdf>

Professionals working in EOTAS provision, for example home tuition, have informed my office that often children and young people do not feel that they are listened to or able to participate in decision making. For example, when tutoring provision is being reviewed by a panel the young person and the tutor are invited to share their opinions about the provision and express what they would like to happen next. But following the meeting neither the tutor nor the young person are given feedback: they are not informed as to what the decision has been taken or why it has been taken and the provision carries on unaltered. Professionals have informed my officers that they will then provide exactly the same information at the next review and again not receive feedback after the meeting. My casework has also included examples of families lacking information and being very unclear as to decisions and next steps. Providing accessible information after decisions is a core part of the National Participation Standards<sup>22</sup> and is essential to ensuring the participatory rights of children and young people. This practice is poor and will not serve children or young people well.

### **Need for ongoing review**

It is also important that where children and young people are in receipt of home tuition on a one-to-one basis this is kept under active, ongoing review in which the views and experiences of the young person form a key consideration. Individual tuition is a valuable part of the overall EOTAS offer, and for some children and young people it offers an essential way to make sure they don't miss out on education. However, individual tuition does create potential barriers for young people to access those other, important participatory rights of play, culture, and meeting friends. Not having access to these has immediate, medium term and long-term impacts for the child. Any provision (such as individual tuition) in which children are isolated from other children must be under constant review and other options, such as group tuition, or joining a setting on a reduced or flexible basis should be regularly considered and discussed with the child or young person. Estyn's report found that '*Pupils receiving EOTAS do not always receive the full-time education (usually 25 hours a week) to which they are entitled. Most pupils for whom local authorities provide home tuition are educated for a maximum of 10 hours a week.*'<sup>23</sup> This echoes the experience shown in my casework in which home tuition is generally offered on a far more restricted basis than children's entitlements. Sometimes this is for good reason, for example, this is all that the child can manage for medical reasons. But it further underlines the need to review home tuition regularly to ensure it accounts for ongoing changes in children and young people's lives.

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<sup>22</sup> <http://www.childreninwales.org.uk/our-work/participation/participation-standards/>

<sup>23</sup> <https://www.estyn.gov.wales/sites/www.estyn.gov.wales/files/documents/EOTAS%20remit%20report.pdf>

In the case outlined above it took two years to secure a placement in a setting. In another case a child had been out of a setting for two years but following investigation by my office was then offered a place in a setting within nine weeks. Where a child or young person is not in any setting with other children there must be regular and active decision making about their provision that has the best interests of the child at heart.

### **Need for appropriate SEN / ALN support**

These cases also underline the importance of early assessment of SEN and the securing of appropriate additional support, and highlight the challenges faced by some children, young people and their families in even getting a statutory assessment. I develop this in my section below around the needs of young children but it is important that at any age there is a needs-led, timely response to ensure children and young people get the right support. This is as essential in EOTAS settings as it is in other education settings. My case work shows that too often children and young people in receipt of EOTAS are not receiving adequate support for ALN and this is again reinforced by Estyn's review, *Pupils with additional learning needs do not often receive the specialist support they need, even when this is set out in a statement of special educational needs. They do not consistently receive the specialist multi-agency support they need.*<sup>24</sup> Again, this is not a new finding but reiterates the 2014 Children's Commissioner's report into Pupil Referral Units<sup>25</sup>, which indicated that PRU settings found Meeting the range and depth of additional needs of learners challenging, and that there was a lack of staff capacity and access to appropriate training. The ALN Transformation programme must ensure a focus on EOTAS settings to ensure that this is addressed.

### **Lack of timely provision across services**

Two of the children in my listed cases were awaiting statutory assessments for Special Educational Needs, and many others later requested statutory assessment on the advice of my officers. Two of the cases listed above involved children who had been referred to CAMHS and were waiting to be seen by the service. The family of one child has been informed there was a 14 month wait for a neurodevelopmental assessment. Another family was informed their child was number 447 on the waiting list for the ASD Pathway for assessment for autism. One young person with severe anxiety had been recommended a place in a specialist unit that was oversubscribed and as a result was receiving home tuition.

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<sup>24</sup> <https://www.estyn.gov.wales/sites/www.estyn.gov.wales/files/documents/EOTAS%20remit%20report.pdf>

<sup>25</sup> [https://www.childcomwales.org.uk/wp-content/uploads/2016/04/Right\\_to\\_learn\\_eng-F.pdf](https://www.childcomwales.org.uk/wp-content/uploads/2016/04/Right_to_learn_eng-F.pdf)

These figures highlight:

- Delays in the wider support services mean that appropriate early intervention is made more difficult: education professionals are not always able to meet mental health needs without external specialist advice;
- Specialist units are not always well-enough resourced to meet the needs of the local population;
- Education provision must be needs-led and not dependent on diagnoses. In these circumstances it is particularly unfair that families are given the message that they need to wait for a diagnosis before any statutory assessment of educational need. Families have also explained to me that they can be further frustrated in these situations as they will sometimes seek private assessment to speed up processes, only to discover that privately obtained diagnoses are not recognised local authorities.

This reiterates findings from my predecessor's 2014 report on Pupil Referral Units (PRUs) that *"Too many children and young people with additional needs are arriving at the PRU at a point where their issues have gone unsupported and have escalated to a point where engaging in education is particularly difficult."*<sup>26</sup> Estyn also reported that nearly all local authorities experience difficulties ensuring that pupils receiving EOTAS access the expertise of the Child and Adolescent Mental Health Service (CAMHS). *Staff do not get the specialist advice and guidance they need to support pupils' needs.*<sup>27</sup> As well as highlighting the need for adequate resourcing of CAMHS this also highlights that EOTAS settings should be included in work of the Ministerial Task and Finish Group on the whole school approach to mental health and wellbeing. EOTAS settings are mentioned in the introductory section of the draft whole school approach framework but need to be more prominent throughout the framework and the thinking behind this work. Although I appreciate that the whole school approach guidance will be primarily aimed at maintained schools, EOTAS settings should also be considered as an intended audience and all efforts should be made to engage EOTAS settings in this work. I have asked Welsh Government to share with me how this guidance will be shared with non-maintained settings to encourage sufficient effort to make these settings aware of the approach.

### **Welsh Language Provision**

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<sup>26</sup> [https://www.childcomwales.org.uk/wp-content/uploads/2016/04/Right\\_to\\_learn\\_eng-F.pdf](https://www.childcomwales.org.uk/wp-content/uploads/2016/04/Right_to_learn_eng-F.pdf)

<sup>27</sup> <https://www.estyn.gov.wales/sites/www.estyn.gov.wales/files/documents/EOTAS%20remit%20report.pdf>

One of my cases involved a Welsh speaking child unable to access any EOTAS provision through the medium of Welsh. However, this is a far wider problem. As noted by Estyn<sup>28</sup>, there is a nationwide lack of Welsh-medium EOTAS provision. I was disappointed that the recent Welsh in Education Strategic Plans draft regulations and guidance did not reference EOTAS settings and my consultation response highlighted this oversight. It is essential that children and young people who are already facing challenges in education do not have the additional barrier of being unable to access an education through their language of choice. This situation also breaches Article 30 of the UNCRC which protects the rights of those who speak indigenous languages to receive an education through their own language. Estyn's report also highlighted a crucial need to provide Welsh medium education in EOTAS settings. Estyn also note that an inconsistent access to core subject teaching means that there was not one example in their 2016 investigation of a pupil following an accredited course in Welsh and that in some settings no Welsh learning was enabled, in breach of the bilingual language policies of the local authority concerned. This points to a need to also provide access to Welsh learning in English medium EOTAS settings to avoid an inequality of opportunity.

### **Casework involving young children (8 and under)**

In addition to the cases related to EOTAS listed above I have had over 20 cases in the past eighteen months relating to children of 8 years or under where there has been significant concerns raised about whether children are being appropriately supported in their education provision. I am raising these as a separate group as these relate to children in Foundation Phase years (although the 8 year olds were in key stage 2 at point of contacting my office, each of them had difficulties that had persisted for years). There are particular issues raised by this group of young children: first, that EOTAS provision is not made generally available for this age range as shown through the latest Government data<sup>29</sup>; second, these cases highlight some of the reasons why children require EOTAS provision later in school, and third, that these cases illustrate a need for very early interventions to best support these children. Crucial in this is the need for early identification of Additional Learning Needs, and the provision of immediate and needs-led support.

### **Experiences of young children**

In several of my cases involving young children there have been concerns that children will cause significant harm to themselves, other children or adults. These concerns are often founded on previous incidences in which other children or adults have been hurt. In one of these cases this had

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<sup>28</sup> Ibid.

<sup>29</sup> <https://gweddiill.gov.wales/docs/statistics/2018/180725-pupils-educated-other-than-at-school-2017-18-en.pdf>

led to injury that had required hospital treatment and in other cases police had been involved. Many of these young children have also run away from school settings. As a response, some of these young children have been completely isolated from their peers in school, or have been repeatedly excluded. The most recent data available around exclusion does not show repeated exclusions but does reveal a number of fixed term exclusions for young children (some of which will be repeated incidences): in 2013, for example, there were 126 incidences of exclusion for Reception age children.<sup>30</sup> Some young children have also experienced 'unofficial' exclusions, which are in breach of law and guidance<sup>31</sup>. In one case received by my office a family was repeatedly requested to collect their child just after the start of the school day without any exclusions being recorded by the school.

### **Approaches taken with young children**

In many of the cases brought to my office my officers have been able to support professionals to implement appropriate approaches to meet the child's needs, these were within mainstream settings or sometimes through securing a place in another setting (such as a resource base) if more appropriate. Several cases have included children awaiting or being refused statutory assessment for SEN and my officers have assisted by ensuring appropriate assessment takes place. Other approaches have included referrals to the neuro-development team; Team Around the Family or Team Around the Child meetings; Play Therapy; CAMHS referrals; and intensive family support by social services. Some schools put in place reduced timetables in which the child was better able to manage, but in which they did not have additional support to access their full education. Only in one case was the approach taken for the child to have a reduced timetable in school that was supported by EOTAS home tuition. This highlights that it seems only rarely is EOTAS provision made available to this age group.

In each of these cases my officers have sought to ensure the child benefits from a needs-led approach, and the need for intervention suggests that there is still work to do across Wales to ensure needs-led provision. I am concerned the definition of Additional Learning Needs for children

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<sup>30</sup> <https://statswales.gov.wales/Catalogue/Education-and-Skills/Schools-and-Teachers/Exclusions/PermanentAndFixedTermExclusions-by-YearGroup>

<sup>31</sup> "6.2.6 Influencing or encouraging parents/carers to 'voluntarily' withdraw their child from school as a way of dealing with difficult or challenging behaviour, is not an appropriate response. Schools acting in this manner could potentially be considered as acting contrary to educational law.  
6.2.7 'Voluntary withdrawals' bypass the formal exclusion process and therefore deny parents/carers and pupils the right to appeal against decisions to exclude. This type of unlawful exclusion can also lead to young people being lost to education and training and significantly increases their risk of being socially excluded."  
<https://gweddill.gov.wales/docs/dcells/publications/160318-inclusion-and-pupil-support-en.pdf>

under compulsory school age in Section 2.3 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018<sup>32</sup> may enable this problem to persist under new legislation. The Act defines Additional Learning Needs to be present if the child is likely to have greater difficulties learning when they reach compulsory school age. Subsequently, the draft Code, issued for public consultation last spring, directed practitioners to anticipate what the needs of the child will be in the future in deciding whether a child had additional learning needs. As stated in my response to the code, the risk of this separate definition is that practitioners could delay a decision about ALN (as is happening currently when children are being refused statutory assessment) until the child reaches compulsory school age. This can mean that children do not receive the support they need during the crucially formative stages of early years and the first part of the Foundation Phase. This approach also contradicts the importance of early intervention emphasised in the 2018 Act. I would urge that the response of practitioners to children under compulsory school age should be needs-led and I hope that the revised code directs decision-making so that practitioners respond to the needs with which a child presents, meaning that a child of pre-school age that would benefit from an IDP or ALP at that point in their development receives this support, regardless of what their needs may be in the future.

### **Challenges in finding suitable approaches for young children**

In one ongoing case it has not proved possible to identify a suitable approach in a mainstream setting and there is no specialist setting for children with Social, Emotional or Behavioural difficulties available in the authority before Key Stage 2.

This case involves a five-year old child and there have been significant worries this child would harm themselves or other children. As a response the child was being taught in isolation with one teaching assistant. This child had no interaction with other children. My office challenged the local authority who stated that no specialist provision could be made available due to the age of the child and within six months the authority agreed to provide a bespoke EOTAS provision for this child and one other. This unit of two children is staffed by one teacher with four Learning Support Assistants. There are ongoing issues with this case, with the family unhappy with provision and a clear lack of social opportunities for this child to learn alongside and interact with other children.

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<sup>32</sup> <http://www.legislation.gov.uk/anaw/2018/2/section/2/enacted>



In another case, which has now been concluded, a school governing body and staff had concerns about their ability to keep a child in Foundation Phase safe: this child had a history of running away and the school is next to a busy road; the child had also caused harm to themselves and others. The school reported to my office that the Local Authority informed the school that there was 'no way' this child would not be in a Pupil Referral Unit when they got into Key Stage 2 but as there was no PRU provision available before Key Stage 2 the school needed to make a place available for the child. This case was resolved with the school making changes on site, and through funding staff training and additional support. However, the school felt unsupported by the authority and felt as if they were being asked to 'babysit' a child to make up for a lack of specialist EOTAS provision for younger children. I am particularly concerned by the attitude of the local authority in this case, as it seems perhaps to indicate an acknowledgement that the setting offered to the child was not the best way to support the child's needs. It also indicates a lack of willingness to work together with the school to find the right provision within the school setting. While every child's needs are different, some schools (such as the examples listed at the start of this response) have been able to provide nurture provision that has been effective in dealing with challenging behavior and the local authority could have been much more cooperative and supportive in their response to the school's concerns

In addition to continuing to press for a resolution on any ongoing cases, my office is currently undertaking a piece of scoping work to determine more information about how young children with significant behavioural and emotional difficulties in the Foundation Phase are currently supported across education settings in Wales. We are seeking more information about the extent to which appropriate provision for young children is perceived as a problem by settings and authorities, and more information about what support is provided by each authority to support children presenting with significant behavioural and emotional difficulties. We do not currently have sufficient information as to these questions to understand the extent of the problem or make specific recommendations as to how young children could be better supported. Our cases strongly suggest a pressing need for ensuring a range of professional expertise offering immediate and supportive interventions is available early in Foundation Phase, or even before in Early Years provision in order to support children's needs. It may also be the case that extending the availability of EOTAS provision to young children could be considered as one way by which young children may be better supported in education. I would be happy to share the outcome of this work with the Committee when this has been completed, but note that this will be outside the timescale of this Inquiry.