

To: Nick Ramsay
Chair of the Public
Accounts Committee

Via email only

14 November 2019

Dear Nick Ramsay AM,

Many thanks for your letter seeking my views on the current work for Local Authorities to develop bespoke 'reduction expectation plans' to safely reduce the number of looked after children in care. Your letter seeks my views specifically on the monitoring and enforcement of this policy, which I shall outline below. I also want to reiterate the need for careful consideration of children's rights in the context of this work and for all to understand the balance of rights that are at play in this policy decision. The safety of children must be paramount, but we must recognise the weight and gravity of a decision to remove a child on a statutory basis from their families.

It is vital that we place children's rights at the centre of this policy decision.

Children's Rights:

Children have the right under the United Nations Convention on the Rights of the Child (UNCRC) for their best interests to be a priority when making any decision that affects them (Article 3). Whilst this Article states that consideration must be given to the "*rights and duties of his or her parents, legal guardians, or other individuals legally responsible*", the child's best interest must be a primary consideration. This right sets out how those responsible for making such decisions in regards to a child must consider "*legislative and administrative*" measures to support a child's best interest. Alongside this, Article 19 recognises a child's right to be safe, and for Governments to take appropriate "*legislative, administrative, social and educational measures*" to protect children from all forms of abuse, neglect and violence. I believe these rights should be kept firmly at the forefront of decision making when considering this policy context and reiterate the importance of services being able to offer a broad range of support for children and their families, as well as statutory intervention and separation when appropriate.

The UNCRC also outlines the rights of children in regards to their family environment, and to an extent, the rights and duties of parents and legal guardians to support a child's evolving capacities and to provide guidance and direction to the child (Article 5). Article 8 recognises a child's right to family relationships as a protection and preservation of their identity, whilst Article 9 recognises that a child must not be separated from their parents unless it is in their best interest to do so.



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The UNCRC also sets out duties on Governments to put in place measures to support families to ensure every child has an adequate standard of living to promote their healthy development (Article 27) and for governments to provide social security and financial support to families in need of assistance (Article 26). These rights set out Governments' duties to provide a spectrum of support to families to support their children and ensure where issues such as deprivation or vulnerabilities exist in family networks, Governments support families with this.

In some cases, separating a child from their family will be a proportionate response to serious, evidenced concerns about a child's safety and wellbeing. Where this is the case, children have the right to keep in contact with their family if separated and it is in their best interest (Article 10). For children who are separated from their families, they have a right to have special protection and support (Article 20) and for their care to be reviewed regular reviewed (Article 25).

In light of this, it is important that we recognise the delicate balance that exists between children's rights to safety, family life and the responsibility of services to support children and their families.

The development of expectation plans

In Wales, we have a sophisticated and robust safeguarding framework which enables us to inform decisions about child safety, risk management and the need to remove and accommodate a child or young person, away from their family. However, there is a growing body of evidence, along with the rising numbers of children becoming exposed to care proceedings, which demonstrates variance in practice — within both local authorities and the judiciary. This should give rise to reflection about the consistency of approach by those involved in decisions to remove a child from their family. For example, in Torfaen for every 10,000 children, 216 are looked after by the local authority. This is the highest rate in Wales and England, by some margin, and can be compared to 96 in Wrexham, and 49 in Carmarthenshire.¹ We are seeing an increasing number of new born babies removed from birth mothers, with 83 infants per 10,000 births being removed in Wales, of which 52% are under two weeks old.² Again, there are regional variations in these figures. We are also seeing a significant rise in the number of children who are being placed with their families at the conclusion of care proceedings, but under a care order. In

¹ <https://statswales.gov.wales/Catalogue/Health-and-Social-Care/Social-Services/Childrens-Services/Children-Looked-After/childrenlookedafterat31marchper10000population-localauthority-year>

² https://www.nuffieldfjo.org.uk/app/nuffield/files-module/local/documents/Born%20into%20care%20Wales%20-%20main%20report_English_final_web.pdf



2014, 545 children were living under these arrangements, but this has risen to 1,065 in 2019.³

Whilst I recognise the demographic differences and challenges that can be at play, leading to variation in need for support and intervention, there are other factors at play that are attributable to different approaches and which require further consideration. Whilst placement with a parent under a care order might be the best outcome to care proceedings, to ensure the child's rights to be safe and to live with their family can be promoted, this should not be seen as a long term solution for the child. A care order allows the Local Authority to share parental responsibility with the parent/carer; this is particularly important when pursuing a previously untested placement or where a change in parental circumstances such as drug rehabilitation or the ending of a violent relationship may be relatively recent and could be vulnerable to change in the near future. It should rarely be the long term option for the child however; if such untested circumstances can be successfully navigated, the Local Authority should be actively considering whether that care order is still required or whether it should be discharged. I am aware that the use of placements of this type vary between different local authorities and can be dependent on the views of the local judiciary and children's guardians too.

In light of this increasing variation in approach I support measures for Local Authorities and others involved in supporting families to reflect on practices and to consider collectively how families can be better supported to remain safely together through managed interventions and accessible community support, prior to statutory intervention and removal. Therefore, the development of expectation plans, or strategies in each Local Authority, can go some way in shining a spotlight on current service accessibility and effectiveness. They can raise questions about family engagement, what works well and where services can support differently to help families remain together. They may encourage local authorities to explore how other local authorities are tackling the issue, either within Wales or in other parts of the UK. The Welsh Government has provided funding to Local Authorities to develop their prevention and early intervention family services and has provided recommendations to Local Authorities on how to develop a whole-sector approach to service design to better support vulnerable families. This is how I believe expectation plans can be valuable as they will encourage public services, particularly health and social services to work more effectively for families and potentially increase the provision of early intervention support. I set out my thoughts on this issue in a letter to the Children, Young People and Education Committee in July 2019.⁴

³ <https://statswales.gov.wales/Catalogue/Health-and-Social-Care/Social-Services/Childrens-Services/Children-Looked-After/childrenlookedafterat31march-by-localauthority-placementtype>

⁴ <http://senedd.assembly.wales/documents/s91156/CYPE5-23-19%20-%20Paper%20to%20note%205.pdf>



The requirement of these expectation plans should accelerate the necessary culture change required in public services, to move towards earlier interventions and preventative service provision to support families before they reach a point of crisis. This should also contribute to the aim of rebalancing the spend of public funds towards preventative services and can result in savings for public bodies if these preventative measures are successful. This is entirely consistent with the principles of the Well-being of Future Generations (Wales) Act 2015 and with children's rights under the UNCRC.

Monitoring and "enforcement" of plans

In the conversations I have had with elected representatives and those working within local authorities, I recognise the very real concern that at times, the reasons and decisions surrounding why children may need to come into care are due to factors that are beyond their control. This can include the impact of poverty on families as well as variation in responses from the judiciary in different regions. This can be a particular 'pressure' for smaller local authorities, whose figures may be disproportionately affected by the entry of a large sibling group into local authority care, for example. This is why local authorities must be supported to develop whole sector approaches to reducing the need for children entering care. I also recognise the current financial and workload pressures that exist with Wales' children's services. It is my understanding that the Welsh Government are committed to developing a monitoring group, which shall bring Local Authorities and other agencies together to oversee the delivery of individual plans. I believe this will support Local Authorities to share experience and approaches. My policy officer has attended the workshops with Local Authorities where these arrangements have been discussed, and I will continue to take an active interest in this work.

The Welsh Government Children's Rights Impact Assessment of the Reduction Expectation Plans recognised how some have raised concerns that "*the Reduction Expectation Plans work may present perverse incentives to local authorities: where their focus is switched to reducing numbers without giving full consideration to whether it is safe for a child to remain at home.*" Whilst I understand why some may hold these reservations, it is vital that the Welsh Government and Local Authorities further reiterate that this policy intention is driven by a safety first principle, and decisions are made in regards to a child's best interest, rights and wellbeing, with risks positively managed. It may be beneficial for further measures to be put in place to mitigate any concerns regarding financial decisions or focus on "targets" having any influence on decisions made in a child's best interests. For example, I am aware that the Welsh Government has in the past utilised financial penalties on health boards who have not met their service delivery targets, and it is absolutely vital that the Welsh Government rule out the use of any such measures in this regard. Targets established by each Local Authority must only be advisory and support a strategic vision — they must not be used to penalise local authorities, neither should they be used as comparable measures of success. This does not mean that these expectation plans are not a priority; simply put the protection



of children will always need to come first and financial penalties would not be conducive to achieving the culture change that I believe is needed in this area, where budgets are already tightly stretched.

The Government's language appears to have 'softened' in this regard over the last few months as the policy has evolved. Some local authorities may, however, still require reassurance that they are not being asked to make decisions that undermine the safety of children in pursuit of targets.

Once again, many thanks for inviting me to share my views on this topical issue. I welcome the Committee's decision to revisit this important area of public service and look forward to the Committee's findings in this area. I am aware that Phase 2 of the inquiry will continue to explore the issue of early intervention and prevention work, as well as developing services that are good value for money and deliver good outcomes for the young people they support. It may be of interest to the Committee, that in my most recent Annual Report, I strengthened calls in relation to removing the element of profit from children's care services. In my report, I have called for the Welsh Government to commit to taking concrete actions within the next year towards reducing and ultimately ending profit making in children's care services, without detriment to children and young people's current care arrangements.⁵ I believe taking this step is a key way to releasing money and supporting local authorities to invest in their own services or those in the third sector. I am aware that some local authorities are taking this action and bringing elements of their provision in house, but this is taking place individually in the absence of a national directive.

As always, my team and I are happy to support with evidence where necessary. I have copied this letter to the Chair of the CYPE Committee too, as this was an issue of intense interest during my recent annual report scrutiny session with members on 6th November.

Yours sincerely,



Sally

Sally Holland
Comisiynydd Plant Cymru
Children's Commissioner for Wales

cc. Lynne Neagle Am, Chair of the CYPE Committee

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

