



The Children's Commissioner for Wales response to the Proposed Children and Families (Wales) Measure. Prepared for Legislation Committee 2.

The Children's Commissioner for Wales is an independent children's rights institution established in line with the Paris Principles¹. In exercising his functions, the Children's Commissioner for Wales must have regard to the United Nations Convention on the Rights of the Child (UNCRC).

The Convention defines a child as being someone under the age of 18. The United Kingdom government ratified the convention in 1991 and in doing so committed to bringing all domestic legislation and guidance into line with the Convention. The Welsh Assembly Government (WAG) has adopted this Convention as the basis for all its policy development in relation to children and young people. The Commissioner's remit covers all areas of the devolved powers of the National Assembly for Wales insofar as they affect children's rights and welfare.

Stated Objectives of the Proposed Children and Families (Wales) Measure

Contributing to the eradication of child poverty Child Poverty (Part 1, section 1 – 12)

We agree with the general principle of the proposed Measure, introducing a legislative framework which requires Welsh authorities to demonstrate their contribution towards eradicating child poverty and see the need for this statutory underpinning.

The Children's Commissioner for Wales' Annual Review 2007-08 states:

"It remains unacceptable that more than one in four children in Wales lives in poverty. The task of ensuring that those children at the greatest risk of poverty – including black and minority ethnic children, those in large families, lone parent families, disabled children and children with disabled parents, children leaving care and those in severe and persistent poverty – are prioritised..."²

... Children living in rural areas often face additional barriers in accessing services and their rights. This can exacerbate their experience of poverty, for example, due to a lack of local services and problems accessing essential services and affordable housing, temporary and part-time work and transport."

As a signatory to the UNCRC, the United Kingdom government is required to report periodically to the United Nations Committee on the Rights of the Child on the progress made in implementing the Convention across the UK. In October 2008, the most recent reporting round was completed when the United Nations Committee on the Rights of the Child published its Concluding Observations to the United Kingdom government.

¹ <http://www2.ohchr.org/english/law/parisprinciples.htm>

² <http://www.childcom.org.uk/uploads/publications/18.pdf>

Those Concluding Observations followed the submission of reports from the United Kingdom government, which incorporated responses from the devolved administrations, non-governmental organisations, young people's organisations and a joint report from the UK Children's Commissioners³.

The UNCRC Committee recommended the state party (UK Government) act on a legislative basis in relation to child poverty and the WAG. In its concluding observations, the Committee stated:

"In accordance with article 27 of the Convention, the Committee recommends that the State party:

(a) Adopt and adequately implement the legislation aimed at achieving the target of ending child poverty by 2020, including by establishing measurable indicators for their achievement;

(b) Give priority in this legislation and in the follow-up actions to those children and their families in most need of support;

(c) When necessary, besides giving full support to parents or others responsible for the child, intensify its efforts to provide material assistance and support programmes for children, particularly with regard to nutrition, clothing and housing;..."⁴

The proposed Measure has the potential to address the recommendations of the UN Committee in order to address child poverty. Whilst we have in the past welcomed WAG's many initiatives and publications on this issue, it is a sad fact that implementation has been slow and progress regrettably inadequate⁵.

A legislative framework may also assist in assuaging concerns that have been raised with the Commissioner relating to the transfer of Cymorth funding into the Revenue Support Grant for local authorities. The Measure may have the potential to ensure that services currently funded through Cymorth are maintained.

Child poverty, defined as financial, service and participation poverty impacts on all aspects of children's lives. However the responses of WAG departments, Local Authorities, other public bodies and the third sector are not always coordinated in a way that addresses the issue of child poverty effectively. We therefore hope that Welsh Ministers, the local authorities and other Welsh authorities who are subject to the Measure, will work effectively to tackle this persistent issue.

The provisions which may be placed on local authorities by this proposed Measure are important and will recognise in statute the importance of childcare, parental support and health services in addressing child poverty.

We specifically welcome the broad list of Welsh authorities subject to the duty and also the provision to review and extend in future the bodies listed under section 12.

³ UK Children's Commissioners' Report to the UN Committee on the Rights of the Child (2008) Available from: http://www.childcom.org.uk/publications/UNCRC_report_final_ENGLISH.pdf

⁴ <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

⁵ <http://www.childcom.org.uk/uploads/publications/18.pdf>

This proposed Measure may provide some much-needed focus on this major issue and ensure that there is a coordinated approach to this national priority.

Provision in relation to child minding and day care for children (Part 2, sections 13-48)

We welcome the move towards consolidating and modernising legislation in relation to childcare. Strengthening the regulatory enforcement in these settings is also to be welcomed.

The importance of effective early-years intervention has long been recognised as key to addressing child poverty and as so we welcome the placing of Flying Start child care on a legal basis. This allows for long term planning and also families getting used to the concept.

Establishing integrated family support teams (Part 3, sections 49 – 58)

We welcome the requirement for joint working between local authorities and the health service to jointly contribute to these teams with pooled resources.

We would refer you to the Children’s Commissioner for Wales’ response to the WAG consultation document, *Stronger Families Supporting Vulnerable Children and Families through a new approach to Integrated Family Support Services* which has been included as Appendix A.

We agree that there is a clear role for health authorities and the legislative requirement for the new health bodies to provide Integrated Family Support teams is welcomed.

We have long advocated the need for greater integration between adult and children’s services. As we stated in our report *Somebody Else’s Business*:

*In other areas though, there was little confidence that adult services and children’s services had sufficiently robust procedures for communicating with each other in order to ensure that children were safeguarded. Indeed, except in one or two areas, there was little confidence that GPs had protocols to ensure the safeguarding of children whose parents misuse substances.*⁶

We would suggest that the provisions of the Children Act 1989 that “*the welfare of the child is paramount*” apply equally to those providing services to adults. The proposed Measure may address the need to consider the welfare of the children in any family whenever there is a suggestion that their parents or carers need services.

Provision for play opportunities for children (Part 4, section 60)

The UNCRC Committee noted its concern at:

“...the steady reduction in playgrounds occurring in recent years has the effect to push children into gathering in public open spaces, a behaviour that, however, may be seen as anti-social according to the ASBOs....

⁶ <http://www.childcom.org.uk/uploads/publications/5.pdf>

(b) Children with disabilities continue to face barriers in the enjoyment of their rights guaranteed by the Convention, including in the right to access to health services, leisure and play.”⁷

The Committee recommended that:

“...the State party strengthen its efforts to guarantee the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. The State party should pay particular attention to provide children, including those with disabilities, with adequate and accessible playground spaces to exercise their play and leisure activities.”⁸

This proposed Measure may help WAG to address the Committee’s recommendation. However the impact on children’s experience of play will be the most important measure of the success of this element of the proposed Measure

3. Are the sections of the proposed Measure appropriate in terms of achieving the stated objectives?

Child Poverty

Sections 1 - 5

It is clear that duties to produce strategies alone are not going to achieve the stated objective of eradicating child poverty.

One of the key issues will be how the strategies are placed in an audit / outcome framework. We do not need another 22 action plans. The children and young people of Wales need and deserve real outcomes which will have a positive effect on their everyday lives. The office of the Children’s Commissioner for Wales will closely monitor the way in which the outcome and performance indicators are developed in relation to the stated broad aims / critical factors referred to in section 1 of the Measure.

The WAG will need to be robust in their statutory consultee role in order for this proposed Measure to succeed. The expectations on ‘*other Welsh bodies*’ from WAG will need to be ambitious yet achievable and leave them in no doubt as to their role in addressing child poverty. As bodies who may not be fully aware their role in tackling child poverty, their contribution to tackling child poverty must be made clear to them. Their commitment will need to be reflected in the mainstreaming of this work into their work plans.

Section 4 states that local authorities will prepare and publish their strategy to address child poverty under Section 26 of the Children Act 2004 arrangements. Whilst this appears the logical mechanism, we will be monitoring the Children and Young People’s Partnerships (CYPPs) across Wales to ensure that there is strategic and corporate direction at the highest possible levels of local authorities. If the proposed Measure is

⁷ <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

⁸ Ibid

merely a vehicle to force local authorities to revisit and reinforce their Children and Young People plans in relation to one of WAG's Seven Core Aims, we would suggest that it does not reflect the significance and priority of addressing child poverty as a flagship government policy.

We would ask that child budgeting form a key indicator in preparations for measuring outcomes from the child poverty strategies by WAG and local authorities. The UNCRC Committee stresses the importance of child budgeting when it states:

"...that the lack of consistent budgetary analysis and child rights impact assessment makes it difficult to identify how much expenditure is allocated to children across the State party and whether this serves to effectively implement policies and legislation affecting them.

*19. The Committee recommends that the State party, in accordance with article 4 of the Convention, allocate the maximum extent of available resources for the implementation of children's rights, with a special focus on eradicating poverty and that it reduce inequalities across all jurisdictions. In this endeavour, the State party should take into account the Committee's recommendations issued after the day of general discussion of 21 September 2007 devoted to "Resources for the rights of the child - responsibility of States". Child rights impact assessment should be regularly conducted to evaluate how the allocation of budget is proportionate to the realization of policy developments and the implementation of legislation."*⁹

Sections 6 – 9

Whilst we appreciate that the intention implicit in this proposed Measure of prioritising the most vulnerable children, we are still concerned that there is a need to make sure that child poverty is seen as a children's rights issue and that WAG need to look at solutions that are more than just community or locality focused. Every child, wherever they live, have the same entitlements and the right to access those entitlements.

The prioritising of funding to be pro-poor is a complex issue which relies on accurate data and appropriate formulae to be developed. This is not an easy task as there is always a danger of children missing out due to the configuration of services or allocation. The Communities First / Next strategy is an example of this complexity. For instance, some rural wards score high in relation to the 2008 Wales index of multiple deprivation for income deprivation or housing deprivation but may score low for access to services deprivation as they are deemed 'urban wards', even though it might not be a fair reflection of the provision available¹⁰.

There is certainly a tension between moving towards a more stringent definition of disadvantaged areas using regulation and the need to be able to ensure a level of local discretion for a more sensitive response to local need. There is a danger that looking at concentrations of deprivation when providing services does not serve well the dispersed pockets of poverty.

⁹ ibid

¹⁰ http://www.assemblywales.org/cyp_3_-cb_017_children_s_commissioner_for_walesl.pdf

We would refer you to the evidence the Children’s Commissioner for Wales submitted to the Rural Development Sub Committee inquiry into rural poverty¹¹ which more comprehensively addresses rural child poverty issues.

Whilst we recognise the ongoing review of Professor Ted Melhuish in assessing the impact of child poverty initiatives, we believe it would be fair to say that there are some issues in relation to the implementation of some elements of Flying Start and Cymorth initiatives. These approaches may well change in nature following these assessments, however, we would question having read the explanatory memorandum on sections 6 – 9 whether no additional costs for the provision of services under the new duties would fall to local authorities.

Though targeting inequality based on local need is something that can not be criticised, there appear to be examples of oversubscription leading to pressures on local agencies to redefine boundaries, be they geographical or methodological. This may well mean that there are implementation weaknesses, however there is a suggestion that local authorities will find it challenging to meet any additional duties and questions around how they would fund these in the challenging financial climate.

Of course it is not all down to funding. Our office has advocated as part of the wider child budgeting agenda a cost benefit analysis approach to be undertaken on policies affecting children and young people¹² (i.e. assessing the costs and benefits of the impacts of an intervention or policy). The work surrounding this proposed Measure is an example of this good practice. The WAG needs to be able to justify public finance spend and initiatives need to prove effective. However, if there isn’t the commitment of additional provision above and beyond what is currently delivered by Flying Start and Cymorth it will do little to alleviate levels of child poverty in Wales.

The provisions in section 8 of the proposed Measure which relates to health support services may go some way towards address the following concluding observation in paragraph 55 which states:

“55. The Committee recommends that inequalities in access to health services be addressed through a coordinated approach across all government departments and greater coordination between health policies and those aimed at reducing income inequality and poverty.”¹³

- (b) make provision in relation to child minding and day care for children (sections 13-48), particularly in relation to:**
- **registration provisions (sections 13-27);**
 - **emergency protection provisions (sections 28-29);**
 - **safeguards and disqualification provisions (sections 30-33);**
 - **inspection provisions (section 34-35);**
 - **offences and penalty provisions (sections 38-43).**

¹¹ <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-rd-home/bus-committees-third-rd-agendas.htm?act=dis&id=77137&ds=3/2008>

¹² http://www.assemblywales.org/cyp_3_-cb_017_children_s_commissioner_for_wales.pdf

¹³ <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

We would agree that the provisions in the proposed Measure are likely to meet the objectives.

As noted in question one, we believe that strengthening the regulatory enforcement in children's day care and childminding settings is a positive step which will ensure that standards of childcare and childminding are upheld.

The proposed Measure does not offer any further provision beyond what is currently provided under Flying Start, however it may secure currently provision. We believe that there should be a move towards a direction of extending provision in line with the One Wales agreement commitment to "*additional budget support*" when referring to progression of childcare, be it universal and affordable or free in areas of need¹⁴. This will need to be sufficiently resourced at a future point.

- (c) **establish integrated family support teams (sections 49-58), particularly in relation to:**
- **teams (sections 49-52;**
 - **boards (sections 53-54);**
 - **annual reports (section 56).**

Sections 49-52

Integrated Family Support Teams (IFSTs)

We believe the proposed Measure should explicitly identify the role that schools could play in identifying those children who may be at risk. The role of the family GP could also be crucial in this respect as well as the proposed family nurse service and the police.

Whilst appreciating the positive steps towards integrating services, we would seek assurances that "preventative" and universal services are not given less priority as these are key to address the longer term issues.

In order for the IFSTs to provide services to the proposed groups, adequate measures for assessment and referral will need to be in place and this will depend on the skill of the lower tier staff to make a referral. This will need to be reflected in the make up of the teams and boards.¹⁵

The new framework for children's advocacy will need to address the need for children's advocacy in health including IFSTs.

¹⁴ <http://www.plaidcymru.org/uploads/publications/281.pdf>

¹⁵ CCfW response to WAG consultation: Stronger Families – *Supporting vulnerable children and families through a new approach to integrated family services* (CCfW, October 2008)

Section 54, Section 55

We would agree that local evaluation is important but question how WAG will monitor implementation across Wales and ensure that there is no “post code lottery” in the delivery of IFSTs.

There is a danger of having services based on available resources rather than on assessed need. Eligibility criteria should be assessed and compared nationally to ensure that no single authority has vastly different criteria.

Play

- (d) secure sufficient play opportunities for children (section 60); and
- (e) ensure participation of children in local authority decision making (section 61).

Play is one of the 42 rights that children have under the UNCRC and is essential to their development. The principles of the WAG’s Play Policy are:

- Every child is entitled to respect for their own unique combination of qualities and capabilities;
- The perceptions of the child, their views and opinions should always be respected, for each child is connected to, and a bearer of, a wider culture;
- The child’s free choice of their own play is a critical factor in enriching their learning and contributing to their well being and development.¹⁶

What is clear from the above principles is that consultation will be key in effectively progressing the Play agenda. Opinions relating to concepts of Play are continuously debated as well as community and individual needs and priorities. The link between section 60 and 61 therefore are explicit and the success of the legislative underpinning of 60 is dependent on the implementation of section 61.

In his Annual Review 2007/08, the Children’s Commissioner for Wales noted:

“I am aware of how children’s play opportunities are often reduced because of factors such as lack of transport in rural areas. It is essential that all departments in local authorities, including housing, planning, road traffic and leisure work together to ensure play policy in Wales is realised. Children and young people also play in open spaces and it is essential to map out where children play and to factor this into planning decisions. My staff have supported children and young people to be heard in planning decisions, although it remains disappointingly rare that this happens despite children being recognised as a group of consultees in WAG guidance. It is also concerning that adults can sometimes be hostile when children and young people

¹⁶ Welsh Assembly Government (2002) *Play Policy*, p5

participate. To maximise the use and effectiveness of recreational facilities children need to be heard in the planning and management processes.

As evidenced in our report, A Happy Talent (2008), fully inclusive play has yet to become a reality for some children and young people. The review showed that while disabled children and young people enjoy playing many of the chances they have to play are organised with close adult supervision and they don't always want or need this. There are also difficulties in accessing information, and although we are aware of some excellent work within local areas, many of the play strategies didn't mention disabled children and young people at all."

We welcome the provisions within this Measure, however the implementation of effective local play strategies will be dependent on:

1. Assessment of how the current play provision is meeting local need and whether it is effective
2. How needs are identified and sufficiency defined.

The guidance surrounding section 60 will be an important tool for local authorities as "need" will need to be considered at several levels. They may be relating to geographical and community boundaries, ages, children's interests, choices and preferences, levels of physical ability/ disability, definitions about what is/ is not 'play', ethnic/ cultural distinctions, Welsh language provision amongst other key elements.¹⁷

Participation

Positive steps have been taken with regards to children and young people's participation in Wales such as secondary school pupils' right to appeal their exclusion and steps towards appeal in the decisions of a special educational needs tribunal. We have also seen the development of national participation standards and the guidance on as well as publications of local participation standards. There is however more to be done and examples have been presented to the office of the Children's Commissioner for Wales where local government are not always enthusiastic about including children and young people in decisions making.

Publishing guidance through statute is to be welcomed and can be seen as a constructive step towards the UNCRC Committee's concluding observation in relation to participation:

"The Committee recommends that the State party, in accordance with article 12 of the Convention, and taking into account the recommendations adopted by the Committee after the day of general discussion on the right of the child to be heard in 2006:

(a) Promote, facilitate and implement, in legislation as well as in practice, within the family, schools, and the community as well as in institutions and in administrative and judicial proceedings, the principle of respect for the views of the child;

¹⁷ CRG Research Limited, Swansea Play Review (City and Council of Swansea, January 2009)

(b) Support forums for children's participation, such as the United Kingdom Youth Parliament, Funky Dragon in Wales and Youth Parliament in Scotland;

(c) Continue to collaborate with civil society organizations to increase opportunities for children's meaningful participation...¹⁸

The commitment to participation within education matters affecting children and young people in the proposed Measure is also welcome, especially in light of the UNCRC committee recommendation that the State party:

"(g) Strengthen children's participation in all matters of school, classroom and learning which affect them;"¹⁹

Key to success in implementing this important agenda will be the guidance issued by Welsh Ministers, for instance in the development of Local Participation strategies which should be comprehensive and robust, for instance, in progressing professional training (as referred to in one of the UNCRC Committee concluding observations) about rights awareness etc. It should also be emphasised that children and young people cannot participate fully without relevant and accessible information, in line with Article 13 of the UNCRC.

Participation is a fundamental children's right which should facilitate access to a comprehensive range of entitlements, recognising them as citizens with a full role to play in communities across Wales. This proposed Measure ensures the legislative underpinning of this principle within local government in Wales which has real potential to transform the role of children and young people in decision making processes.

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

April 2009

¹⁸ <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pf>

¹⁹ *ibid*