

Evidence from the Children's Commissioner for Wales to the proposal for a legislative Competence order relating to the conduct and governance of schools.



The Children's Commissioner for Wales is an independent children's rights institution established in 2001 in line with the Paris Principles¹. My principle aim is to safeguard and promote the rights and welfare of children.² In exercising my functions, I must have regard to the United Nations Convention on the Rights of the Child (UNCRC).³ My remit covers all areas of the devolved powers of the National Assembly for Wales insofar as they affect children's rights and welfare and I may also make representations to the National Assembly for Wales about any matter affecting the rights and welfare of children in Wales.⁴

The UN Convention on the Rights of the Child (UNCRC)⁵ is an international human rights treaty that applies to all children and young people aged 18 and under. It is the most widely ratified international instrument and gives children and young people a wide range of civil, political, economic, social and cultural rights which State Parties to the Convention are expected to implement. In 2004, The Welsh Assembly Government adopted the UNCRC as the basis of all policy making for children.⁶

The convention contains an article that specifies a child's right to education.

Article 28

1. State Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity...,

...

2. State Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

We welcome the general principles of the proposed Order and agree that the competence in the area identified in Matters 5.2A, 5.2B and 5.2C should be conferred on the National Assembly for Wales. We also believe that the terms of the proposed Order, considering the narrow subject area and the aims and objectives outlined in the explanatory memorandum are broad enough to meet the identified needs.

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

² Section 72A Care Standards Act 2000

³ Regulation 22 Children's Commissioner for Wales Regulations 2001

⁴ Section 75A (1) Care Standards Act 2000

⁵ UNCRC <http://www2.ohchr.org/english/law/crc.htm>

⁶ CHILDREN AND YOUNG PEOPLE: RIGHTS TO ACTION

School governors are central to the provision of education and have considerable powers to make decisions that affect the children and young people in the school. We have no doubt that most schools are well governed but there are some examples of questionable practice which have raised serious concerns and suggest that the arrangements for governance, as well as the monitoring of that governance, need to be strengthened.

The Commissioner's office has a telephone Advice and Assistance line and, through the concerns we receive through this, we are aware of decisions made about children's education that are often an infringement of their rights. Importantly, decisions are often taken that are against Welsh Assembly Government guidance⁷. These include:

- Exclusion of pupils who have additional learning needs or special educational needs.
- Exclusion of pupils who are involved in minor drug offences.
- Some schools continue to ask parents to keep their child at home without following the proper procedures for excluding the child or providing extra support.⁸
- Some schools fail to fulfil their statutory duties – for example that of including a summary of their complaints procedure in their prospectus.⁹

In 2005 the Commissioner undertook to review the arrangements for complaints, whistleblowing and advocacy in local education authorities (LEAs – as they were referred to at that time) throughout Wales. The report of this review was published as *Children don't Complain ...*¹⁰. In the course of this review we visited all LEAs in Wales. A common complaint from LEA officers was the poor take up of the training that was arranged for governors. Some also reported occasions when the LEA had given legal advice that was ignored by the governing body.

We would therefore question whether the governance of schools by governors is entirely effective. It would appear that decisions that significantly affect the education and welfare of children are taken in ignorance of government guidance.

The role of the school in promoting the welfare of their pupils is the subject both of section 175 of the Education Act 2002 and the United Nations Convention on the Rights of the Child:

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Further duties of the governors, under Section 176 Education Act 2002, are to consult with their pupils and yet we are aware that, for example in school reorganisation, this is

⁷ Inclusion and Pupil Support *Guidance NAFWC 47/2006*

⁸ Report following investigation into unofficial school exclusions
<http://www.childcomwales.org.uk/uploads/publications/20.pdf>

⁹ Section 29 of the [Education Act 2002](#)

¹⁰ Children don't Complain... <http://www.childcomwales.org.uk/uploads/publications/21.pdf>

not always done – either by the local authority or by the school governors. Whilst a statutory duty will soon be introduced in relation to LEAs there does seem to be a vacuum where governing bodies are concerned. With the advances made since the statutory duty to have School Councils it should be considerably more straightforward to consult with pupils and we are aware of some very good practice in this respect. This, however, is not replicated in all schools.

Governors are also involved in staff disciplinary procedures and for this they should have knowledge of employment law as they are asked to take very serious decisions relating to the employment of teachers.

Clearly school governance would be strengthened if all governors were well trained and yet we have been told that the take up of training by governors is not good. This raises the question of whether the training should be mandatory.

Clearly it is important that schools are governed by governors who are knowledgeable and informed yet under current arrangements this is not always the case and we would agree that there is need for change. We would further suggest that any training provided should include children's rights and the UNCRC.

We consider that inserting Matters 5.2A, 5.2B, 5.2C into field 5 of Schedule 5 of the Government of Wales Act 2006 would represent a positive step towards a coherent approach to education in Wales. Considering that the bulk of powers in relation to education are already devolved, the consolidation of NAFW competence in this area is a logical step.

The powers would have the potential to positively and directly impact upon children and young people's ability to access their rights and entitlements under the UNCRC which is something we would welcome.

Children's Commissioner for Wales
25th November 2009