

Legal reform (England/Wales) & UK wide recommendations

1. UK Concluding Observations 2023

The current legal system (England/Wales) is not sufficiently adequate to protect children's rights or adequate in identifying, preventing and tackling child criminal exploitation (CCE) and in supporting its victims. Evidence of necessary legal reform in relation to CCE was submitted in all alternative reports to the UN Committee on the Rights of the Child as part of the 6/7th reporting process to the UN Committee on the Rights of the Child. The United Nations Convention on the Rights of the Child (UNCRC) is clear that children cannot consent to their own exploitation and that CCE demands a child protection response.

In the [UK Concluding Observations 2023](#), the UN Committee on the Rights of the Child, has called for raising the minimum age of criminal responsibility to at least 14 years (para 54 (a)) which will have a positive contribution towards decriminalising children. The UN Committee also called for the UNCRC to be directly incorporated into law which will also support the decriminalisation of children across the UK (para 8 (a)). In addition, the Committee urged the UK and devolved administrations to:

- Ensure that the Victims Bill (England and Wales) clearly defines the criminal exploitation of children, protection for children who are victims of violence and the roles and responsibilities of domestic and sexual violence advisers (para 33(b)).
- To strengthen measures aimed at tackling violence against children, including by implementing the recommendations of the UK Independent Inquiry into Child Sexual Abuse in England and Wales (para 33 (d)).
- To strengthen efforts to train professionals working with and for children, including social workers, law enforcement authorities and the judiciary, to

identify and effectively respond to cases of violence, including sexual exploitation para 33 (i)).

- Amend the UK Modern Slavery Act 2015 to clarify that children can never consent to their own sale or exploitation; (para 55(b)).

2. Jay Review

We also welcome the findings of the recent UK-wide Jay Review of Criminally Exploited Children- (which we submitted evidence to via our membership of the [UK Child Law Network](#)) – we recommend that consideration is given to this report. See report [here](#).

Wales specific law, policy and practice

3. UNCRC Incorporation

As you are aware, in 2011 the National Assembly for Wales (as it was) passed a law which means Welsh Ministers have to have due regard to the UNCRC when exercising their functions. This groundbreaking legislation has been pivotal to ensuring children’s rights are taken into account in the policy-making by Welsh Ministers, but it does not go far enough to secure compliance and accountability for children’s rights in Wales. In January, legislation in Scotland made the UNCRC part of Scot’s law. The Scottish legislation goes further than our law in Wales by requiring public authorities to act compatibly with the UNCRC when exercising devolved functions, and provides children or their representative with court-based remedies available to children where they fail to do so. We believe children in Wales should be entitled to the same level of protection and Ministers should introduce a Bill to secure better compliance and accountability for children’s rights in Wales. In our view, if this were to happen it would lead to closer attention to how to secure children’s rights in all areas of public policy, including in relation to children who are criminally exploited.

4. Youth Justice

Welsh Government are in the process of making preparations for the devolution of youth justice and policing, we welcome this, as we believe that having two systems of accountability serves to weaken progressive work on youth justice that has been happening in Wales since early devolution. Wales has embraced policies that are [directly underpinned by the UNCRC and Child First approach](#) as early as 2004. The most recent Youth Justice Blue print (2019-23) continues this commitment. The Youth Justice Blue-Print is currently in the process of being updated with a new Blueprint due imminently. Youth Justice policy and practice over the last decade in Wales has evidenced significant success in diverting children from having contact with the law/becoming criminalised. We emphasise that it is of critical importance that youth justice policy actively prevents exploited children entering the criminal justice system, treats them as children first and not criminals and continues to use diversion practices wherever possible.

As the [Welsh Government](#) acknowledge, children who have contact with youth justice system, are some of the most vulnerable, with the most

complex needs in society. We are concerned that children do not have the same or equal opportunity to live a life free from CCE and that [certain groups of children](#) are at greater risk of CCE than others – and this must be addressed with urgency. Disaggregated data must be collected so we fully understand the needs of different groups of children. Like many children's rights issues in the Welsh context, there is a lack of data on CCE – appropriate data on CCE must be collected, so agencies are able to successfully identify, prevent and respond to it.

It is also of great importance that investment in early intervention, prevention and diversion, is a priority, and we would like to see clear evidence of this in future budgets. The next draft Welsh Government Budget must transparently evidence how spend on children will be linked to better outcomes for children who are most at risk of criminal exploitation across all relevant budgets. We have for some time like your Committee, called for a Children's Rights Impact Assessment on the draft budget and would like this to be again recommended to Welsh Government. It is recognised that early investment in CCE, will make considerable cost savings in the long term to society.

5. Wales guidance on safeguarding children from Criminal Exploitation and a Children's Rights Approach

We welcome that children in the youth justice system in Wales are entitled to the same safeguarding response as their peers under the Social Services and Well-being (Wales) Act 2014 and the Wales Safeguarding Procedures. These entitlements are set out in the Part 11 Code of Practice issued under the Act. We also welcome that Wales has its own specific Practice Guide for Safeguarding children from Criminal Exploitation, to be read in conjunction with Wales Safeguarding Procedures. It is positive that the practice guide states that, 'Child Criminal Exploitation is a safeguarding issue. Children who are abused through CCE should be considered as children first and their care and support needs should be considered in the same way as for any child. CCE can and does cause significant harm to children.' The Wales Safeguarding Procedures are designed to support individuals and agencies across Wales to understand their roles and responsibilities in keeping children safe. It is important that practitioners are also fully aware of the statutory Duty to Report Children at Risk on relevant partners under Section 130 of the Social Services and Well-being (Wales) Act 2014. We also welcome that professionals working in public bodies in Wales are advised in guidance on CCE that they 'should adopt [A Children's Rights Approach \(CRA\)](#), as outlined in the Children's Commissioner for Children's, [The Right Way](#), and in line with the duty of due regard to the (UNCRC) and follow the National Participation Standards. However, this principled and practical framework could be better applied to CCE across agencies, to encourage a systematic and holistic response to CCE that considers all of the rights of a child.

6. Criminalisation of Care Experienced children Protocol

Welsh Government has published the 'All Wales Protocol – Reducing the criminalisation of care experienced children and young adults' in recognition

of the over representation of care experienced children in the youth justice system. However, even though this protocol has been in place for a number of years – we are aware that there is still an over representation of care experienced children [committing offences and spending time in custody](#). We believe there needs to be greater understanding as to why care experienced children in Wales are more likely to have contact with the law and data collected and evidence shared with regards to what are the reasons, including CCE. There needs to be a stronger response to addressing their rights.

The rights of these children could be more strongly protected in law if ‘care experience’ was considered as a protected characteristic. We support [recommendation 3](#) of your report on care experienced children.

We are also concerned, and as is also evidenced within your [report](#), social worker caseloads are too high to effectively support these children and the problems care experienced children face with many different placements. Also, only 1% of care experienced children have access to their statutory right to an [Independent Visitor](#) and not all children have access to or are aware of their entitlement to [advocacy](#). If there is not continuous and cohesive support around these children throughout their life course, [evidence](#) suggests care experienced children may be vulnerable to CCE.

7. Deprivation of Liberty Orders

In relation to your Inquiry on care experienced children, we expressed our concerns in relation to Deprivation of Liberty Orders (DOLs) for children, (access briefings [here](#)) in the context of this new Inquiry we reiterate our concerns that depriving children of their liberty should be a matter of absolute last resort. The [Jay Review](#) acknowledged when children involved in, ‘county lines come to the family court in England and Wales it is because the risk has escalated beyond what is manageable by the local authority, and an application is made for a secure accommodation order, a deprivation of liberty or an interim or final care order’. In Wales, there is limited understanding of the number of DOLs on children or why children are put on a DOL because no data has been collected. In response to your Inquiry, the Welsh Government has now agreed to carry out a data analysis and to respond to the needs of children affected as part of their transformation of children’s services. We recommend as part of the data analysis; it is recorded how many children are put on DOLs due to CCE. We also recommend a more urgent response to reducing children subject to DOLs.

8. School exclusions

We echo the findings of the [Jay review](#) that school is an essential protective factor in children’s lives and we also share concerns regarding school exclusion as it is well recognised as a [high-risk factor](#) for children being criminalised. This is particularly concerning given the increase in [school](#)

[exclusions](#)¹ as well as increasing concerns regarding reduced time-tabling and off-rolling.

Research in England, indicates that children who are care experienced are 3 times more likely to be excluded from school. However, the Welsh Government stopped collecting data on the numbers of care experienced children who are excluded. It is so important that data is re-collected so it can be monitored whether this group of children are disproportionately at risk of exclusion and appropriate policy responses can be developed.

The links between school exclusions and criminalisation need to be more strongly acknowledged, it is not only care-experienced children who are disproportionately impacted, [children with additional learning needs](#)/neurodivergence are more likely to be at risk of [school exclusion](#) and of [CCE](#). As Prof Kirby has laid out in detail, in her report Neurodiversity – a whole-child approach for youth justice ‘at least one in three people moving through the justice system are thought to be neurodivergent’. Children who are neurodivergent face many barriers along their life course, this often begins with a lack of recognition of their condition, delays in assessment or inappropriate support when they are actually diagnosed. We are aware that neurodiverse children are having to wait too many years in the Wales for appropriate assessment and support (See Children’s Commissioner for Wales report, Autism Cymru etc, Prof Kirby Evidence to Senedd Health, 8th June 2022).

Those from [poorer backgrounds](#)² (see Pt 9) are also at higher risk of being excluded from school as well as children from [certain ethnic minority groupings](#). (Please see research briefing from our partners at [EYST on School Exclusions and Ethnic Minority Children](#)). The [Jay Review](#) has also made clear that black children continue to be over-represented across all forms of exploitation.

We welcome that Welsh Government is soon to be consulting on guidance on school exclusions, we hope there will be strong cross-departmental read across on this issue. There must be a clear understanding that children who are exploited are also victims, and this can perpetuate harm and hinder appropriate intervention and support. The new exclusion guidance should include appropriate protections for young people who have been victims of, or are vulnerable to becoming victims of, CCE. Children should not be punished for being exploited, a child rights, child first and safeguarding response is more appropriate. We also recommend that the Concluding Observations 2023 are responded to in relation to the School Exclusions Guidance ([see Observations 47 a-e](#)).

¹ The most recent available data for the academic year 2021/22 shows the highest recorded rate of school exclusions since 2013, across all types of exclusion: permanent, fixed term (more than 5 days), and fixed term (5 days or less) (Welsh Government, 2023).

² The rate of school exclusions was “almost 4 times higher for those eligible for free school meals (FSM) than those not eligible for FSM for fixed term and permanent exclusions in 2021/22” (Welsh Government, 2023).

9. Cost of Living Crisis, Child Poverty, Ongoing Austerity

[28% of children live in poverty in Wales](#) – and the [Jay review](#) made it absolutely clear that the cost-of-living crisis has exacerbated all forms of exploitation and children living in ‘circumstances where the legitimate economy is not a way that they can see to earn the kind of status and living that they wish to earn’. The review noted that poverty lowers the threshold for exploitation indicating that even minor financial debts can become entry points for exploitation. Tackling child poverty and ensuring there is a financial safety net around children, will help to prevent children from being exploited. There are also the ongoing concerns regarding austerity and budget cutting to essential services. We need evidence of investment (see pt.4) in strong services across sectors providing a holistic response, that in the words of the [UN Committee on the Rights of the Child](#) are available, acceptable, accessible and of good quality and prioritise realising children’s rights.

10. A Guardianship Service for Unaccompanied Asylum Seeking Children

The UK Illegal Immigration Act threatens the human rights of young asylum seekers (see Briefing [here](#)) and places them at risk of criminalisation or exploitation. Hundreds of children have gone missing from asylum hotels and the pressure to abscond, and the risks of grooming and radicalisation will grow significantly when adulthood, and therefore prospective detention and deportation, is pending.³ Unaccompanied children and young people are some of the most vulnerable members of our society, who are at risk of criminalisation and exploitation and are also required to engage with the complex process of seeking asylum, while experiencing trauma and upheaval. They should be able to enjoy all of their rights set out in the UNCRC (under the Rights of Children and Young Persons (Wales) Measure 2011 and Social Services Act and Well-Being 2014) accorded the same protection as any other child permanently or temporarily deprived of their family environment.

The UN Committee on the Rights of the Child has been calling for a Guardianship Service since early devolution ([see recent Concluding Observation \(50 \(para g\)\)](#)). We believe there should be a National Guardianship Service for Unaccompanied Children, that aligns with the Welsh legislative and policy environment that supports a nation of sanctuary and a children’s rights approach and is made available to *all* unaccompanied asylum-seeking children in line with the approach that has been taken in Scotland. In Scotland, their Guardianship Service has been supporting unaccompanied children since 2010. The Scottish Guardianship program has been proven to be helpful in preventing asylum seeking children becoming [criminally or sexually exploited](#).

³ An Unaccompanied child in Northern Ireland has secured High Court permission to challenge the Illegal Migration Act. It was argued that the legislation could provide Unaccompanied Children with an incentive to run away in a bid to avoid removal once they turn 18 creating opportunities for them to be exploited by traffickers.
<https://www.msn.com/en-us/news/world/teenage-asylum-seeker-secures-high-court-permission-to-challenge-illegal-migration-laws/ar-BB1idaov>

We draw your attention to a research-briefing from ourselves, the Bevan Foundation, The Children's Society and British Red Cross, calling for a Guardianship Service for Unaccompanied Children in Wales. Please access the briefing and recommendations [here](#)

Contact Details: Dr Rhian Croke, rhian.croke@swansea.ac.uk

Children's Legal Centre Wales, March 28th 2024