



# Comisiynydd Plant Cymru Children's Commissioner for Wales

## Keith Towler

### Ymateb i Ymgynghoriad / Consultation Response

Date/Dyddiad

**April 2013**

Subject/Subject

**National Assembly for Wales' Communities, Equality and Local Government Committee  
Inquiry into the future of equality and human rights in Wales**

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

The Children's Commissioner for Wales is an independent children's rights institution established in 2001. The Commissioner's principal aim, under the Care Standards Act 2000, is to safeguard and promote the rights and welfare of children. In exercising his functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC), as stipulated in regulation 22 of the Children's Commissioner for Wales Regulations 2001. 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.

The UNCRC is an international human rights treaty that applies to all children and young people up to the age of 18. It is the most widely ratified international human rights 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 and young people and in 2011, Welsh Government passed the Rights of Children and Young Persons (Wales) Measure.

This response is not confidential.

## 1. How well are the public sector equality duties functioning in Wales?

1.1 It may be too early to offer a robust assessment on how the public sector equality duty is functioning in Wales. However, as a body which is listed under the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 (PSED) I can offer a perspective on how the duties assist in informing business planning processes from an equalities perspective.

1.2 More generally, the duties add to the patchwork of provisions which contribute to upholding the progressive policy context in post devolution Wales, based on human rights, underpinned by the key notions of social justice, dignity and equality. In the case of my office, it offers an explicit and formal legal link between the UNCRC which underpins my statutory functions and the equality agenda. In being listed under the public sector equality duty, I am obliged to base the way I discharge my functions as Commissioner on the UNCRC and those functions are required to be screened through an equality perspective.

1.3 It is my view that implementing the equality objectives via the PSED has a direct impact on the way in which my office delivers services and also enables me to prioritise particular areas of work relating to equalities within annual work plans.

1.4 By implementing my equality objectives and reviewing them on an annual basis, I am better able to discharge my functions from a robust, evidence based position. It is true to say that there is still significant learning to be done. I recognise we are only starting the process of truly understanding how to utilise the duties to full effect. My office is continually learning and our processes will continue to evolve, however it is my intention that my office will become a standard bearer in Wales and be able to share effective practice in relation to the PSED.

1.5 I have made a commitment to promote the equality agenda in Wales via opportunities such as my annual report and have also committed to engage with strategic partners to help inform discussions relating to equality. Possible bodies include Welsh Government, the Older People's Commissioner for Wales, the Welsh Language Commissioner, the EHRC, the Public Services Ombudsman and various inspectorates.

1.6 The effectiveness of the duties will always depend on their implementation and on the commitment by the bodies listed to take constructive and imaginative approaches such as thematic reviews by inspectorates. We have seen examples of positive application of the equality agenda in Wales such as equality standards being built into regulatory frameworks.

1.7 I am also aware of the PSED being an instigator for valuable discussions in the education sector, with local authorities engaging with head teachers and governing bodies (utilising the valuable resources developed such as the EHRC guidance to schools in Wales) to discuss utilising the duties and offering support. There are examples (Caerphilly Borough Council being one of which I am particularly aware) where the equality agenda has been aligned with the School Effectiveness Framework, expressing how schools which are community focused with a culture of mutual respect and dignity and where there is a safe and supportive environment can contribute to improved outcomes.<sup>1</sup>

## 2. Accountability for equality and human rights in Wales

2.1 Committee Members should be aware that this section is predominantly taken from my joint submission with the Older People's Commissioner for Wales to the Silk Commission Part 2. The full paper can be accessed from the Commission website.<sup>2</sup>

2.2 I believe that the National Assembly should be given powers to build on the provisions of the Equality Act 2010. The National Assembly for Wales should be enabled to go beyond the minimal provision of the Equality Act. This might include implementing sections of the Act that the UK Government has no immediate intention of implementing and extending the coverage to certain groups.

2.3 Such a development would build on the innovative and highly acclaimed approach set out in section 120 of the Government of Wales Act 1996 and section 77 of the 2006 Act to have '*due regard to the principle that there should be equality of opportunity for all people*'.

2.4 Strengthened competencies in Wales could provide the following benefits for the individuals on whose behalf I advocate:

### 2.4.1 Enhanced support for those with 'protected characteristics'

I was disappointed and angered at the decision of the UK Government at the time to confine the provisions on banning age discrimination in the provision of goods and services to people aged over 18 whilst the duties on the public sector to promote equality applied to people of all ages. This gap still needs to be plugged. The most comprehensive way of doing so should be through an amendment to GB wide primary legislation. However, a power which might enable a change to Section 77 of the Government of Wales Act to extend the 'due regard' principle explicitly beyond Welsh Ministers to cover the functions of all devolved public bodies in Wales, and to authorise Ministers to make such provisions by order

---

<sup>1</sup> <http://www.caerphilly.gov.uk/site.aspx?s=hp3iiE0V5DJ6EVF7Hs0ZnYKMvpIztzPWI6WiCP3mizA=>

<sup>2</sup> <http://commissionondevolutioninwales.independent.gov.uk/search/doc-type/evidence/>

might represent a step in the right direction. Such an approach may also offer more explicit and enhanced provision over and above that of the Equality Act to others such as carers.

#### 2.4.2 Responsibility for the three aims of the PSED should be devolved

This would provide a greater degree of coherence since the specific duties have already been devolved. It appears logical that the legislature in Wales should control provisions relating to the PSED. The Welsh Government has produced very distinctive duties including the requirement for Impact Assessments – a requirement that no longer applies to reserved public authorities in general and devolved listed authorities in England.

The UK Government is currently reviewing the general duties. The legal position is if the general duties are repealed, then the devolved specific duties automatically fall. In such circumstances, children and young people experiencing inequality on account of age have most to lose since their circumstances are covered by having due regard to promoting equality but not the ban on age discrimination in goods and services.

I also believe that the inconsistency of relevant equality obligations between devolved and non-devolved bodies in Wales is unhelpful and that consistency of equality duties across bodies in Wales is preferable. It is not right that a citizen in Wales needs to decipher whether a public service provider was devolved or non-devolved in order to understand their equality obligations and therefore what a citizen may expect.

An intrinsic weakness of the Equality Act 2010 is the way in which powers to introduce specific duties were conferred to Welsh Ministers and not the National Assembly for Wales.

The current arrangements regarding the specific duties in Wales do not appear to be coherent and logical due to accountability issues. The arrangements are certainly in the spirit of devolution. Whilst UK Ministers retain certain functions in relation to an area which has been conferred to Welsh Ministers, the National Assembly for Wales has a peripheral role and the regulatory body (EHRC) has a limited formal role and is accountable to the UK Government.

#### 2.4.3 Equality and Human Rights Commission (EHRC)

I responded to the consultation on reform of the EHRC and stated the need for:

- a strong and distinctive Wales committee, reflecting the distinct social, political, economic and cultural context in Wales. The structures also need to be robust and effective to undertake their regulatory role in relation to Welsh specific public sector equality duties; and

- an information and advice service which is delivered within a clear understanding of both the policy and linguistic context in Wales.

A third statement related to the relationship between the UK Government and the EHRC. Whilst the issue around independence of the EHRC is important, I believe that from a Welsh perspective, efforts should now be invested in investigating the possibilities of clearly defining the role of the EHRC in Wales.

I am certainly of the view that the EHRC should be made answerable to Welsh Ministers for policy areas which are devolved and that the competency to strengthen and more effectively incorporate the EHRC into the governance in Wales through formal links with the legislature should lay with the National Assembly for Wales.

Notwithstanding the suggestions for statutory reform of the EHRC in Wales, there remains significant scope for the EHRC in Wales to engage in the child rights agenda. Whilst there are limitations to the EHRC's scope to exercise its functions due to the weakness of the Equality Act in protecting under 18s against discrimination, there is still significant scope within the EHRC's current remit. They could utilise provisions available to them in relation to application or otherwise of children's human rights.

### **3. Tackling socio-economic inequality: the socio-economic duty**

3.1 Welsh Government's 'Programme for Government' identifies well-being as Welsh Government's 'core organising principle' and identifies the key aspects of well-being as including action on social justice, poverty and equality. The direct link between tackling child poverty and the UNCRC is set out within Welsh Government's 'Tackling Poverty Action Plan' (2012). The Plan states that Welsh Government has based its approach to child poverty on the rights of the children and young people in accordance with the Rights of Children and Young People's (Wales) Measure 'recognising that tackling poverty is as much about improving children's wellbeing as it is addressing income poverty'.

3.2 A person's socio-economic background still remains a key factor in determining their life chances. Article 29 of the UNCRC states that education must develop every child's personality, talents and abilities in full however education provides a clear example of the impact of a child's socio-economic background on educational outcomes. Research suggests that socio-economic factors are a better predictor of educational attainment than ability with less academically able but better off children overtaking able poorer children by the age of 6.<sup>3</sup> Data published last year by Welsh Government indicates that performance of pupils eligible for free school meals is lower than their non eligible counterparts at all key stages and in all performance measures in education.

---

<sup>3</sup> Government Equalities Office, *The Equality Bill: Duty to reduce socio-economic inequalities*, London: HMSO

3.3 At the same time there is a clear relationship between socio-economic disadvantage and protected characteristics. Article 27 of the UNCRC provides that: States Parties recognise the right of every child to a standard of living adequate for a child's physical, mental, spiritual, moral and social development' without discrimination (Article 2 of the UNCRC). However disabled children for example are at greater risk than their peers of growing up in poverty and the experience of poverty will impact on their future life chances in terms of education and employment.<sup>4</sup>

3.4 The socio-economic duty in the Equality Act 2010 was proposed with the intention of 'making clear that tackling socioeconomic disadvantage and narrowing gaps in outcomes for people from different backgrounds and narrowing gaps in outcomes for people from different backgrounds is a core function of public services'. Local authorities and other prescribed public bodies in Wales are already subject to a duty to prepare and publish a strategy for contributing to the eradication of child poverty in Wales under the Children and Families (Wales) Measure 2010.

3.5 The introduction of a socio-economic duty in Wales would strengthen the implementation of the Children and Families (Wales) Measure 2010 and of the over-arching well-being commitment contained in the Programme of Government. More significantly it would contribute to driving forward efforts to reduce the impact of child poverty and to improve equality of outcomes for children and young people in Wales.

#### 4. Human rights

4.1 Section 81 of the Government of Wales Act 2006 sets out that Welsh Ministers are prevented from making any legislation or undertaking action that is incompatible with the rights enshrined in the European Convention on Human Rights. This is more prescriptive than the obligations on the UK Parliament to comply with the Convention. Section 81 has enabled the National Assembly to build United Nations principles into the Welsh legislative framework especially in relation to children's rights in line with the UNCRC through the Rights of Children and Young Persons (Wales) Measure 2011. The UK Commission on a Bill of Rights endorsed the right of devolved administrations and legislatures to introduce additional rights in their area of competence if they felt it right to do so and we are keen to see these sentiments upheld by any legislative changes such as replacing or supplementing the Human Rights Act with a Bill of Rights.

#### 5. Link between the Rights of Children and Young Persons (Wales) Measure 2011 and human rights and equalities

5.1 The underpinning notions of social justice, equality and human rights are easily identifiable within the enactments relating to equality, the UNCRC and human rights. Jane Williams (2013) helpfully offers an example of the common

---

<sup>4</sup> [http://www.cafamily.org.uk/media/381221/counting\\_the\\_costs\\_2012\\_full\\_report.pdf](http://www.cafamily.org.uk/media/381221/counting_the_costs_2012_full_report.pdf)

ground in various enactments via non-discrimination obligations.<sup>5</sup> The obligation of non-discrimination is incorporated in Wales via the Rights Measure, the concept of discrimination encompasses most if not all the ‘protected characteristics’ in the Equality Act 2010 and a number of the articles of the UNCRC serve to restate human rights recognized as held by all, including children. These human rights of course have been incorporated into UK legislation via the Human Rights Act 1998.

5.2 It is questionable whether or not these clear links are coordinated in a way that promotes a coherent approach to implementing social justice, equality and human rights. This is a question posed by the EHRC themselves when they stated the:

*‘...need to look closely at the relationship between equality and social justice. Strategies aimed at achieving equality for people with protected characteristics are often disconnected from strategies to address socio-economic inequality. Bringing them together would create a powerful, coherent and unified agenda for change.’<sup>6</sup>*

5.3 One obvious way in which this agenda can be strategically established is via the obligations of the Children and Young Persons (Wales) Measure. Welsh Ministers are now obligated to pay due regard to the UNCRC when initiating policy and legislation and therefore a child rights impact assessment would have to be undertaken when reviewing or developing any equality duties. There are also provisions under the Measure to review any such duties in order to give greater effect to the UNCRC.

5.4 Whilst under-18s are excluded from protection of specific non-discrimination provisions in the Equality Act 2010, there is potential in Wales to more robustly uphold the rights of children as Ministers give consideration to children’s issues within an equalities perspective.

5.5 As well as the legislative and statutory levers previously referred to, from a policy perspective, there is room to improve the links made between the equality, human rights and children’s rights so that a more coherent approach may be achieved.

5.6 There are examples of good practice, for instance the Welsh Government’s Single Equality Plan<sup>7</sup> does refer to the wider rights agenda and explicit mention of the UNCRC is made. The Welsh Government has also convened a

---

<sup>5</sup> J Williams, (2013) ‘The Rights of Children and Young Persons (Wales) Measure 2011 in the context of the international obligations of the UK’ in J. Williams (ed) *The Rights of the Child in Wales*, Cardiff: University of Wales Press

<sup>6</sup> [http://www.equalityhumanrights.com/uploaded\\_files/Wales/securing\\_a\\_strong\\_equality\\_and\\_human\\_rights\\_agenda\\_web.pdf](http://www.equalityhumanrights.com/uploaded_files/Wales/securing_a_strong_equality_and_human_rights_agenda_web.pdf)

<sup>7</sup> <http://wales.gov.uk/topics/equality/?lang=en>

stakeholder group to build on the networks established during the Universal Periodic Review of Human Rights process and children's issues have featured in these initial discussions.

5.7 On the other hand, the updated UNCRC action plan for Wales 'Getting it Right'<sup>8</sup> has limited reference to human rights as well as equalities. It has no reference at all to the public sector equality duties in Wales which is an opportunity lost considering the UNCRC did feature in Welsh Government's own Single Equality Plan. The actions relating to children in the Plan aren't reflected in the UNCRC action plan.

5.8 The Scottish Human Rights Commission are intending to launch a National Action Plan for Human Rights<sup>9</sup> in December 2013 and there is currently intense consultation being undertaken with a range of stakeholders, including those with specific interest in children's rights. It will be interesting to note the prominence given to children's human rights within the action plan and the Members may wish to monitor those developments generally to see whether or not it is an avenue worth pursuing from a Welsh perspective.

## 6. Conclusion

6.1 I believe that there's great potential and appetite in progressing equalities and human rights agenda in Wales. To fully capitalise the potential and appetite this requires:

- additional powers for the National Assembly for Wales to build on the provisions of the Equality Act 2010; and
- the EHRC to be more effectively incorporated into Welsh governance structures, being accountable to Welsh Ministers on devolved policy areas and having formal links with the National Assembly for Wales.

6.2 I also believe that a stronger link is needed within a policy context which more fully reflects the interface between equality and human rights law in Wales.

ENDS

---

<sup>8</sup><http://wales.gov.uk/topics/childreynyoungpeople/publications/scheme/;jsessionid=817685F2EF7B3F55C84AB00A9118CBC8?lang=en>

<sup>9</sup><http://www.scottishhumanrights.com/actionplan>



Submitted by:

A handwritten signature in black ink that reads "Keith Towler". The signature is written in a cursive style and is underlined with a single horizontal line.

**Keith Towler**

**Children's Commissioner for Wales**

---

Oystermouth House/Tŷ Ystumllwynarth  
Charter Court/Llys Siarter, Phoenix Way  
Swansea/Abertawe SA7 9FS  
T 01792 765600 F 01792 765601

Penrhos Manor/Plas Penrhos  
Oak Drive, Colwyn Bay/Bae Colwyn  
Conwy LL29 7YW  
T 01492 523333 F 01492 523336

[post@childcomwales.org.uk](mailto:post@childcomwales.org.uk)  
[post@complantcymru.org.uk](mailto:post@complantcymru.org.uk)  
[www.childcomwales.org.uk](http://www.childcomwales.org.uk)  
[www.complantcymru.org.uk](http://www.complantcymru.org.uk)