

Cynulliad Cenedlaethol Cymru / National Assembly for Wales
Y Pwyllgor Cyfrifon Cyhoeddus / Public Accounts Committee
Ymchwiliad i blant a phobl ifanc sydd wedi bod mewn gofal / Inquiry into care
experienced children and young people
PAC(5) CECYP - 05
Ymateb gan Comisiynydd Plant Cymru / Evidence from 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 their 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, which places a duty on Welsh Ministers, in exercising their functions, to have 'due regard' to the UNCRC.

TAKING A CHILDREN'S RIGHTS APPROACH

1. My work is guided by the United Nations Convention on the Rights of the Child (UNCRC) and I strive to ensure that it is implemented fully in Wales, not just by Ministers but by all those whose decisions have an impact in children's lives. I have recently created a guide entitled "The Right Way: a children's rights approach in Wales"[1](#) with expert advice from the Wales Observatory on the Human Rights of Children and Young People (based at Swansea and Bangor Universities) to encourage public services across the country to commit to the UNCRC and improve how they plan and deliver their services as a result. It contains information on ways to embed children's rights in organisations and the benefits of doing so, for organisations themselves as well as for individual children. Also included within the guide are some inspirational practice examples, which illustrate how some organisations are at the forefront of making rights a reality for children in Wales.

2. If local authorities embed this approach into their working practices, it will ensure that children's rights are at the core of their planning and service delivery. It will lead to better decision making, ensuring there's a real focus on the particular needs of children whose voices can be lost or silenced, creating an environment where public services are accountable to all of their service users. The UNCRC needs to be integrated into every aspect of decision-making, through procedures and actions. At its most basic this requires acknowledgement of the UNCRC as a framework for services impacting on children. Children's rights should guide decisions and actions having a substantial impact on children's lives in areas such as education, health or social care, but also in other areas such as planning, transport and the environment. There should be coordination across departments, and with external organisations, to ensure application of the principles and practice of a Children's Rights Approach. This will help ensure that the best interests of the child are a primary consideration in all decision-making affecting the child (as guaranteed by Article 3 of the UNCRC). Policy, procedures and actions, as well as budgets should all be developed and implemented taking into account their impact on children's rights. It should be clear and transparent where children's rights have been taken into account.

3. I am acutely aware of the current climate of budget cuts that local authorities have to work within to ensure statutory services are delivered in a sustainable way for their whole population. Whilst prioritising and investing in children's human rights may not be at the forefront of minds, my guide is intended to bring to life the real, positive impact public services in Wales can have on delivering a children's rights approach – an approach that will have meaningful impact on how Wales responds to and safeguards the long term needs of its children. By implementing such an approach, I remain convinced that we can live in a country where every child and young person can achieve their full potential.

The Rights of Children and Young Persons (Wales) Measure 2011 was a significant milestone on the journey to fully implementing the UNCRC in Welsh public life. The introduction of the Social Services and Well-being (Wales) Act 2014, which brought forward a duty of due regard to the UNCRC for those exercising functions under the Act was also an important step in ensuring that children's rights filter down to

decision makers whose work can have a major impact on the daily lives of the children in their care. This is the clearest way to ensure that children's rights become a lived reality for children in Wales.

4. In relation to looked after children, taking a Children's Rights Approach also ensures that there a common set of values shared by everyone, including children, their families and all agencies, and that looked after children have the same rights to care, health, education and to fulfil their potential as all other children. It avoids using a deficit model that would emphasise what looked after children lack in terms of personal or material resources and also avoids casting them as a problem. In my report "The Right Care; children's rights in residential care in Wales"[2](#) young people actually commented on how they dislike use of the term "LAC" as they are not "lac-king" in anything. This is very important to avoid stigma and ensure shared goals and ambitious outcomes can be pursued.

INEQUALITIES

5. A report recently published by a collaboration of Universities and funded by The Nuffield Trust highlights the connection between social inequality and child welfare interventions. The single country quantitative study report for Wales[3](#) demonstrates that children are far more likely to be on the child protection register and come into care in the most deprived areas in Wales. This appears as a social gradient, with increasing intervention with every level of deprivation. This is broadly in keeping with trends in the other UK nations, but the social gradient is steepest here in Wales. There is also variation in the rates of child protection and children looked after by ethnicity category. It may prove useful for the Committee to consider that report's findings and conclusions further in assessing whether expenditure in public services for care experienced children is being targeted in the right areas and whether prevention and early intervention are seen as a high enough priority in relation to child protection and well-being.
6. Prevention and early intervention is part of the five ways of working under the Well-being of Future Generations (Wales) Act 2015. This autumn I will be publishing a joint resource with the Future Generations Commissioner, aimed at all public bodies and the Public Service Boards in Wales. The resource will include a full guide to the principles of a children's rights approach in the context of the five ways of working and a self-reflective benchmarking tool for

public bodies to be able to assess how well children's rights are integrated into their existing ways of working and identify the opportunities to further embed a children's rights approach across their work. I will be happy to share details with the Committee once this resource is published.

BUDGETS AND PROFIT

7. Whilst there is increasing pressure on public services budgets due to an ageing population, a focus on children and young people and the issues pertinent to them in budget setting will ensure that children's issues are not marginalised and the importance of early intervention, prevention and investment is appropriately considered.
8. Fostering and Residential Care provision are essentially 'marketplaces' and the range of placements available includes provision by private companies alongside local authorities. A placement with a private provider will typically incur a higher weekly cost to the placing local authority. In Scotland, all adoption agencies and fostering agencies must be "not for profit" but this is not the case in Wales.
9. There is no prohibition on profit making in residential care services in Scotland currently, however a report from Audit Scotland entitled "Getting it Right for Children in Residential Care"[4](#) has highlighted the need to know the "true cost" of the service that is being delivered and establishing value for money from a service. It recognises that certain services will cost more if they are put in place to cover higher risk circumstances or particular specialist needs, but that councils need to be aware of the true costs when commissioning services.
10. Sir Martin Narey has also looked at cost and commissioning arrangements in his 2016 report "Residential Care in England"[5](#). He was interested in the opportunities presented by regional commissioning and procurement, and joining together to provide services where there may not be a sufficient need for places within every local authority area but regionally this could address placement shortages. The work of the National Fostering Framework (NFF) is exploring commissioning in Wales and the provision of services at local, regional and national levels. Residential care is not part of the NFF but any shortage of places in foster care will necessarily have an impact on the range of provision in children's homes. My office has also heard a number of examples recently where pressure on places in children's homes has then

created pressure on secure accommodation also. It is therefore perhaps artificial to separate out the different types of placement when the issues are interlinked. In general, placements closer to home will assist in maintaining links to family members through regular contact and identity links to the area where a child is from. This is an important factor in promoting positive well-being for children in care, and in planning for the future when they move on from local authority care.

11. I recognise the need to ensure that all children in care are cared for by suitably qualified carers, and that carers are available to meet any specialist needs of children and young people. Many carers linked to private fostering agencies are experienced and highly trained in dealing with disability, supporting teenagers through difficult periods and transition, and in managing challenging behaviour. I recognise of course that it would not be a viable short term solution to simply prohibit profit making in children's services from a given date as this would create a risk of children in care not receiving the right care and support that they need in order to achieve positive outcomes. However this may provide a useful line of inquiry for this Committee to take forward, perhaps when the topic of placements is explored in more depth.
12. The duties under Section 16 of the Social Services and Well-being (Wales) Act 2014 should ensure that local authorities involve children and young people in the design and delivery of services, including services for looked after children. Increasing the range of not for profit services should mean that money invested in social care services can be spent on improving outcomes for children rather than providing returns for share-holders.
13. Grant funding for new or additional requirements on local authority provision is usually time limited, and money then rolls over in to the Revenue Support Grant (RSG) after the initial period. Ring fencing money for particular purposes will likely require regulatory or legislative changes in order to protect the purpose and the source of money for achieving a particular aim. Grant funding is also subject to reporting requirements to ensure that money is being spent in accordance with the stated aims and outcomes; once the money forms part of the RSG there is no requirement on local authorities to continue to fund that particular piece or work or priority area. Whilst I recognise that elected members at a local level need to retain a level of control over priorities for funding, and accountability back to citizens in their area, there are some

recent policy changes that may be at risk of discontinuance if not backed up by statutory requirements.

14. Examples of current grant funding for care experienced children that will go into the RSG, and therefore cannot be guaranteed past the end of the grant, are:
 - a. Money for the “Active Offer” of advocacy provision under the National Approach to Statutory Advocacy for Children in Wales;
 - b. The “St David’s Day” fund for additional support for care leavers, as identified through my “Hidden Ambitions” [6](#)report published March 2017; and
 - c. Funding for Personal Advisors for all care leavers up to the age of 25, which the Welsh Government has committed to as part of their response to my “Hidden Ambitions” report.
15. Children who are adopted will usually be care experienced, whether this is for a short time or for a number of years, and it is recognised that additional support should be available to adopted children and their families because of their early life experiences. In England the Adoption Support Fund is ring fenced money that can help pay for essential therapy services for adoptive families as and when they need it. It was set up because many families needed some kind of support during and following adoption but may have struggled in the past to get the help they needed. The funding does not replace the services that Local Authorities are required by statute to provide, but is protected to only be used for the specified purposes, and to achieve positive outcomes for these children and their families. There is no such equivalent in Wales and my Investigation and Advice service have been contacted by families struggling to access adoption support and therapeutic services in Wales.

OUT OF COUNTY PLACEMENTS

16. I am aware that the Committee intends to undertake a separate strand of work in relation to placements, but feel that it is important to note the high cost of out of county private placements and the associated problems that this can create when bringing a placement to an end, when considering overall value for money.

17. In my report “The Right Care; children’s rights in residential care in Wales”[7](#) I undertook fieldwork with a sample of 34 young people living in residential care across Wales. A 16 year old girl who took part and is referred to in the report as Sonia, had been placed in an out of county placement, but her home local authority decided to bring her back to a more local placement. She had been expecting to stay where she was living until the age of 18 and felt settled and had a support network and friends in that area. She was acutely aware that this was a financial decision rather than a decision based on her best interests and focusing on outcomes for her. She said “They said I was going to be there until I was 18 but because it was so expensive to school me and everything, cos school is onsite, they had to move me back down... they waited until I got my GCSES, I thought that was fair, but didn’t like a decision about my future based on money given they had put me there in the first place”.
18. This is a familiar picture; when I have engaged with care experienced children at annual engagement events run by my office, or visited projects that support children in care and care leavers around Wales and at other events, I am struck by how often young people are aware of the financial considerations around their placements and how openly and candidly they refer to this. Young people have described to me that they feel like “commodities” and have said that if a placement is ended because it is ‘costing too much money’, this can make them feel that they are not worth that investment and that their wellbeing and outcomes are perhaps not as important as others.
19. My office organised a consultation event with care experienced young people from across Wales in October 2016, and we ran a workshop on housing needs. Young people were asked to write newspaper headlines and bullet points for a story about their experiences. One group’s headline was “I feel I’m for sale” – ‘Auctioning’ children” and their bullet points included the involvement of private companies and the “price tag” on looked after children.
20. Out of county placements can also create problems for care leavers accessing housing lists in that area. Where a young person has lived for many years in an out of county foster placement and wishes to remain living in that area, they do not have the same priority access to the housing list as a young person from care who originates from that area. In other words the only way to achieve priority status is for them to return to their home local authority area,

regardless of how far away this is or how long it has been since they lived there.

21. Here is an illustrative example of a case on this issue, which came through to my Investigation and Advice service in the last year:
 - A looked after child from Authority 1 is placed in Authority 2
 - The child remains in Authority 2 for 12 years, with no connection to Authority 1 and fully regards themselves as a young person from the Authority 2 area. On reaching 17 and wishing to move towards independent living when they turn 18, the young person enquires about accessing supported accommodation in Authority 2
 - The supported housing provision he wishes to access is specifically for looked after children from Authority 2
 - As such the young person is informed they are not eligible for the provision and one possibility is that the young person will have to return to Authority 1 to receive comparable accommodation—something which they do not want to do.
22. Despite the intervention of my office, this young person has not been able to access supported accommodation in Authority 2, and is now having to wait until they turn 18, and hope that Authority 1 will be able to “spot purchase” support for them in the area of Authority 2 through the third sector instead.
23. “Out of county” in this context can simply mean a neighbouring or nearby local authority, just crossing the county boundaries, as opposed to always meaning a child from South Wales being placed a great distance away in North Wales or vice versa. Where a young person has established their life in a particular area but is unable to remain living there past the age of 16 or 18, this may well incur additional public spending costs in the long term, due to the potential risk of experiencing greater difficulties with homelessness, loneliness and depression and lack of other support options. The current guidance under the Social Services and Well-being (Wales) Act 2014 does not make reference to any ‘reciprocity’ between local authorities, whether in providing housing, support, or access to leisure activities. Understandably any local authority will be reluctant to offer services to people from outside of their area if it is unlikely that a reciprocal arrangements would be made in a similar situation.

Whilst each local authority is designated as being responsible for children from their own area, ultimately the question of whether or not the 'state' is recognising and meeting their needs is an issue that goes beyond county boundaries.

OUTCOMES

24. The Welsh Government has set up the Improving Outcomes for Children Ministerial Advisory Group (MAG), which I attend. This is not solely concerned with care experienced children but includes children and families on the "edge of care" also. The MAG has a lengthy and detailed work plan which covers three key themes; Professional Practice, Assessment of Risk and Edge of Care Services, and Permanency Planning and Building Stable Placements.
25. The focus of the group is specifically, and rightfully, about improving outcomes for these children in Wales. Whilst I recognise that policy or societal change does take time to achieve and become embedded, it is important that this work plan contributes directly to improving outcomes rather than just generating information and research. The Committee may wish to look at the work of the MAG around professional practice in relation to Corporate Parenting, and Building Stable placements when those particular stages of the inquiry are reached.
26. The work of the Adverse Childhood Experiences (ACEs) Hub will also be important in measuring outcomes for care experienced children. The 2015 Children in Need (CiN) Census in Wales⁸ noted that experience of ACEs such as domestic abuse, parental substance misuse and parental mental health were primary reasons for referrals being made to social services. Care experienced children are more likely to be disproportionately affected by ACEs and have poorer health or education outcomes as a result.
27. A recently published paper on the School Health Research Network's work comparing substance use, subjective well-being and interpersonal relationships among young people in foster care and private households⁹ notes that young people living in foster care experience significantly worse outcomes than young people not in care. This is likely to be due to a range of care and pre-care factors, which impact adversely on subsequent social relationships. Substance misuse and lower life satisfaction are partially explained by poorer quality social relationships, and so supporting healthy

social relationships should be part of any interventions to reduce substance use and improve well-being.

28. One item of work on the MAG work programme focuses upon the 'Reflect project' in Gwent, which works with mothers who have had multiple children removed from their care. Both the fact that some parents may lose successive children to the care system, and the fact that care-experienced parents are over-represented amongst their number, are social tragedies. I therefore welcome the plan for the Reflect project to be rolled out across Wales. We know from recent research in Wales conducted by [CASCADE10](#) that young people in and leaving care are more likely than the general population to become parents at a young age. There is some emerging evidence of high levels of intergenerational interventions by social services. Using data from the Wales Adoption Cohort Study, researchers have found that more than a quarter (27%) of birth mothers and a fifth (19%) of birth fathers with children placed for adoption were themselves care leavers. There were no significant differences between care leaver and non-care leaver birth parents in terms of their involvement in crime or substance misuse, but care leaver birth parents were distinguishable from other birth parents by their own experiences of abuse and neglect. Care leaver birth mothers were also more likely than their non-care leaver counterparts to have diagnosed mental health problems. The profiles of children placed for adoption between care leaver and non-care leaver birth parents were similar. Further work may be required in light of this research to support care leavers as they become parents and to address the problems of over-representation and stigmatisation of young care experienced parents.
29. It is my view that healthy relationships education should form part of the new curriculum in Wales, as part of a wider focus on children's human rights education. It will be necessary however to look specifically at the needs of care experienced young people in order to ensure that they are not disadvantaged in accessing universal education and improving their own personal outcomes as a result of their early life experiences. This may also be a relevant part of the subsequent strand of the Inquiry looking specifically at the Pupil Development Grant.

- 1 <https://www.childcomwales.org.uk/wp-content/uploads/2017/04/The-Right-Way.pdf>
- 2 <https://www.childcomwales.org.uk/wp-content/uploads/2016/06/The-right-care.pdf>
- 3 <http://sites.cardiff.ac.uk/cascade/files/2017/02/Child-Welfare-Inequalities-Project-Wales-Country-Report.pdf>
- 4 http://www.audit-scotland.gov.uk/docs/local/2010/nr_100902_children_residential.pdf
- 5 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/534560/Residential-Care-in-England-Sir-Martin-Narey-July-2016.pdf
- 6 <https://www.childcomwales.org.uk/wp-content/uploads/2017/02/Hidden-Ambitions.pdf>
- 7 <https://www.childcomwales.org.uk/wp-content/uploads/2016/06/The-right-care.pdf>
- 8 <http://gov.wales/statistics-and-research/wales-children-need-census/?lang=en>
- 9 Long SJ, Evans RE, Fletcher A *et al*. Comparison of substance use, subjective well-being and interpersonal relationships among young people in foster care and private households: a cross sectional analysis of the School Health Research Network survey in Wales. *BMJ Open* 2017; 7:e014198. Doi:10.1136/bmjopen-2016-014198
- 10 <http://dx.doi.org/10.1016/j.chilyouth.2017.06.030>