

Comisiynydd Plant Cymru Children's Commissioner for Wales

Sally Holland

First Minister
Rt. Hon. Carwyn Jones AM
Welsh Government
Cathays Park
Cardiff
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Dear Carwyn

Thank you for replying to my letter of 31st of March in some detail. It seems that while we share the same desire to improve the experiences and outcomes for children with additional learning needs, we differ on some aspects of how to go about this. I agree with you that many aspects of the Bill as it is currently drafted fit with articles of the UNCRC, but I feel strongly that it would be a missed opportunity for Wales if a stronger duty on those exercising duties under the Bill was not included.

I am convinced that a legal duty will consistently promote and underpin the cultural change and innovative practice that is required to secure improved outcomes for children, explicitly setting the Bill within a coherent, politically neutral and internationally agreed set of values.

I met with your officials, Emma Williams and Ruth Conway, from the ALN Bill team last week for a constructive discussion about the potential benefits and risks of strengthening Wales' implementation of the UNCRC through this vitally important Bill. We have agreed to continue to work together to find ways forward on this issue, and we will be providing the team with a technical briefing on the legal implications of the Due Regard duty and service providers.

Whilst detailed discussion about the Bill and code of Practice will continue between my team and both the Welsh Government legislative team and the Assembly's Children, Young People and Education Committee, I do wish to briefly respond to some of the concerns you raised in your letter about placing a Due Regard duty on service providers, as this is an issue that is likely to apply to a number of pieces of new legislation in the future. I also have a statutory obligation to comment, and on occasions review, how government treats children and respects their rights.

For clarity, I have picked out the four key concerns that you raised in your letter and provide my brief response to these. I discussed these in more detail with the legislation team during our recent meeting.

1. The Convention is not targeted at frontline providers of services

While the State and devolved government is responsible for taking legislative and administrative measures to fulfil its obligations, very many children's rights are fulfilled or denied through children's direct experiences with frontline providers. The government needs to ensure that frontline services are being delivered by institutions and practitioners who understand and are committed to advancing children's rights. The most effective way of doing this is by placing a duty on service providers to pay due regard to children's rights under the UNCRC in their policies and practice.

2. It will not lead to improved outcomes

In my work and publications, I am aware of many examples where schools state that incorporating a children's rights approach has led to clear improvements in their pupils' experiences and outcomes. This includes children disclosing that they are not safe at home or in the community after discussing their right to be safe in school, increased confidence among children with additional learning needs who understand that they are rights-bearers, and improved attendance and reduction in fixed term exclusions when children have been involved in policy-making.

Unfortunately not all schools take this approach and by incorporating it as a duty in primary legislation we will achieve a more universal implementation of a children's rights approach. My recent publication: *The Right Way: A Child Rights Approach for Education in Wales* provides practical help for schools on how to achieve this and highlights a number of case examples where such an approach is having a significant, positive impact on the lives of pupils in Wales.

3. It will distract frontline practitioners from supporting learners by creating layers of red tape and bureaucracy.

Under the ALN legislation, practitioners will be compiling IDPs with and for children. I have suggested to the Bill team that the guidance and paperwork is simply framed within a children's rights approach throughout. Therefore instead of creating an additional procedure, the assessment questions and analysis will be overtly linked to the UNCRC. This will give a principled coherence to the processes without adding to the paperwork, and make the purpose of the process more understandable to children and their parents. I would contend that rather than distracting practitioners it will help them and their partners in the process (other professionals, families and children) *focus* on the task using a shared language and set of values.

4. It puts schools and colleges at risk of litigation. Protecting against this takes time and resources away from providing resources.

As you state, the Bill already places a number of duties on governing bodies that may be challenged by a tribunal. I do not believe that the duty of due regard would add to this risk. As you note, many of the new provisions are related to children's rights. Therefore any challenge by children or their families on the grounds of Due Regard to the UNCRC may also be open to challenge through other duties in the Bill. Indeed I would contend that by explicitly following the principles of the UNCRC, governing bodies may be less liable to face challenge because hopefully they will have considered the most important rights of the child during the process of assessment and provision.

Whilst we await the formal evaluation of the implementation of the Social Services and Well-being (Wales) Act 2014, I am not aware of any reported increase in bureaucracy within social services, nor any increase in litigation as a result of the Due Regard duty included on the face of the Bill. Indeed as a social work educator when the Act was passed, I noted a clear difference in students' thinking and approaches to practice, and students were keen to consider how children's rights could be incorporated into their everyday work from the outset.

I am the first to acknowledge the Welsh Government's commitment, historically and currently, to children's rights. In Wales we have the advantage that this commitment enjoys cross-party support, as was evidenced by the recent backing of my call for a Due Regard duty in the ALN Bill by the Children, Young

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People and Education Committee. This means that Wales has the opportunity to be, again, world-leading in its implementation of the UNCRC, with far more potential benefits than risks.

As your independent Children's Commissioner I am duty-bound to challenge where I feel that the Welsh Government is missing opportunities to take concrete steps forward in realising the potential of the UNCRC to improve children's experiences and outcomes. However, I do not wish to simply criticise from the side lines and continue to be committed to finding constructive, practicable solutions with Government and service providers. That is why I am committing much of my current resource to producing materials and support to public sector providers and policy makers in the areas of curriculum, social services and mental health to aid them to implement a Child Rights Approach throughout our public services that will drive long-term, positive change to current and future generations.

In keeping with our previous correspondence on this matter, I am copying in Lynne Neagle as chair of the aforementioned Committee, and relevant Ministers.

I look forward to continuing to work with Government and the public sector to improve children's experiences and outcomes.

Yours sincerely

Sally Holland
Children's Commissioner for Wales

cc Carl Sargeant AM, Cabinet Secretary for Communities and Children
Kirsty Williams AM, Cabinet Secretary for Education
Alun Davies AM, Minister for Lifelong Learning and Welsh Language
Lynne Neagle AM, Chair of the Children, Young People and Education Committee
