

**Cynulliad Cenedlaethol Cymru | National Assembly for Wales**  
**Y Pwyllgor Plant, Pobl Ifanc ac Addysg | Children, Young People and**  
**Education Committee**  
**Bil Cyllido Gofal Plant (Cymru) | Childcare Funding (Wales) Bill**  
**CCF 02**  
**Ymateb gan: Comisiynydd Plant Cymru**  
**Response from: Children's Commissioner for Wales**

**Date / Dyddiad:** 08.05.2018

**Subject / Pwnc:** The Childcare Funding (Wales) Bill

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

The Children's Commissioner for Wales' principal aim 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). The Commissioner's remit covers all areas of the devolved powers of the National Assembly for Wales that 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. The Welsh Government has adopted the UNCRC as the basis of all policy making for children and young people and the Rights of Children and Young Persons (Wales) Measure 2011 places a duty on Welsh Ministers, in exercising their functions, to have 'due regard' to the UNCRC.

**Introduction**

We are now more aware than ever that early childhood experiences have short, medium and long-term impacts on children's lives. The importance of good quality early childhood experiences are therefore recognised in Wales, with a strong focus on child development through the early years and foundation phase. My response to this stage 1 inquiry for the Childcare Funding (Wales) Bill centres on this principle, and will cover the following key points:

- Childcare should not be simply viewed as a service for parents. It should provide opportunities to support and enhance a child's development in the crucial early years period.

- Such a large-scale investment by the state in early years’ provision should not exclude the children of non-working parents completely from the benefits. This is likely to reinforce inequalities in outcomes for different social groups and therefore requires rigorous analysis from the outset to mitigate any adverse consequences.
- As currently drafted, this provision will provide a large subsidy for some of Wales’ highest-earning families, while not being targeted to assist the country’s least well-off families and their children.
- Removing the words “working parents” from section 1 of the Bill and placing all qualifying aspects for the funding in secondary legislation would create the flexibility to adapt eligibility based on the evaluation of evidence (quantitative and qualitative).
- It is not evident from the Children’s Rights Impact Assessment that the rights of *all* children have been given due regard in shaping this policy and the Bill that brings it forward.

### ***General principles of the Bill***

In my [Annual report for 2016-17](#) I expressed deep concern at the exclusion of children from non-working households from the proposed childcare offer, as it may increase the school readiness gap between this group and those with working parents. While childcare provision offered in Flying Start areas meets some of this need, not all children of non-working parents live in Flying Start areas. Research commissioned by Save the Children also suggests that on average 44% of children living in income deprivation in Wales are not eligible for Flying Start.<sup>1</sup>

The majority of children living in poverty have at least one working parent and I welcome a reduction in childcare costs for those working families on low incomes. However, I do not believe that such a large investment of Welsh Government money, some of which was potentially already available to working families through UK Government childcare subsidies, has been targeted appropriately. There is clear evidence that if you invest in early years’ education and high quality childcare, it makes a significant difference to the life chances of children from the poorest backgrounds and promotes social mobility. It also saves money in the long-term as those who receive early help go on to contribute more to society and need fewer services.

In particular, this substantial investment in early years’ provision will provide a large subsidy for some of Wales’ highest earning families, while not being available to the country’s least well-off families and their children. Children

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<sup>1</sup> Little pieces, big picture, Save the Children, 2018, page ix.

of higher earning parents are likely to be already accessing high quality childcare. Currently the childcare offer would be available to families where two parents could have a joint income of up to £199,000. If the childcare offer is not to be a universal one, then I believe it should be offered to the children of lower income families (working and non-working).

The Welsh Government has been very specific about the eligibility criteria of its proposed offer. In discussion with ministers and officials, I have been repeatedly told that the eligibility criteria are necessary in order to deliver against the commitment of 30 hours of childcare a week, for 48 weeks of the year.

If a universal offer is unaffordable in the current economic climate, then I would urge the Welsh Government to explore options to provide perhaps a lower number of hours or weeks, and therefore extend the provision to a wider group of children. Another option would be to implement a universal offer that increased the current term-time offer of 10 hours per week, plus means-tested additional provision for working parents on lower incomes.

As the independent champion for children's rights in Wales, I cannot support a policy that excludes the children of non-working parents from state investment in early years provision, when those children, on average, start school behind their peers on key developmental indicators. We know from the Millennium Cohort Study that children from the poorest families are already around 10 months behind those from better-off backgrounds in terms of development by the age of 3.

I am also unclear as to how the Government has paid due regard to children's rights under the UNCRC in preparing this Bill, as they are required to do under the Rights of Children and Young Persons (Wales) Measure 2011. I will consider this point in more depth within this response, by directly considering the Children's Rights Impact Assessment (CRIA) that accompanies this Bill.

I also believe that the quality of the childcare provided is fundamental to ensuring that this offer delivers for children and their development in the early years phase. The provision of a childcare offer should be about supporting and enhancing children's development, and should not just be viewed as a place for children to attend for a set number of hours each week. Childcare should not be simply viewed as a service for parents. It should provide opportunities to support and enhance a child's development in the crucial early years period.

### **Detrimental impact on children from non-working households**

According to the [Explanatory Memorandum](#) the stated policy objective of the Childcare Funding (Wales) Bill is as follows:

"3.5 The primary purpose of this Bill is to support the Welsh economy, by helping parents, particularly mothers, to return to work or increase the hours they work. This will both increase the size of the workforce, and improve the employability of parents, especially mothers."

"3.6 The Bill will also support a number of additional purposes, including increasing parents' employment choices, particularly those of mothers and improving the social wellbeing of children and parents, with improvements to the quality of family life and childhood experiences that come with an increased disposable income."<sup>2</sup>

In paragraph 3.9, it is also stated, "It will ensure children have a safe and interesting place to thrive, learn and grow and that home life is better due to less financial pressure on families".

As drafted, this will only be the case for those children whose parents meet the employment and earnings threshold, and not all children.

In his evidence to this Committee on 18 April 2018, the Minister for Children and Social Care reiterated that the policy is intended to get parents into work. This was in response to a question about extension of the offer to parents in 16 hours or more education per week. This indicates that the offer is therefore firmly fixed in the terms outlined above.

In December 2015, Public Policy Institute for Wales (PPIW) published its report "[Childcare policy options for Wales](#)". This report noted that the policy (as set out in the Welsh Labour Party's 2016 election manifesto) would have a "very small" impact on employment and family incomes, "leading to a less than 1 percentage point change in maternal employment among target families; and, at most, a 2 percentage point reduction in poverty levels among target families."<sup>3</sup> Not only is this Bill likely to disadvantage children of non-working household disproportionately, it is also unlikely to achieve its main aim. For those reasons, I strongly urge the Government to revisit the terms of the offer.

The report also highlighted that Welsh Government spending would lead to a reduction in the benefits which families receive (from the childcare element of Universal Credit and Tax Free Childcare), saving the UK Government £20m a year. It is my vision that every child in Wales should have an equal chance to be the best that they can be. One important element of this is ensuring that Welsh Government maximises its available budget to meeting this aim. I am acutely aware of the budget constraints under which the Government is operating. However the Government intends to invest £100 million in this policy during this Assembly term, a proportion of which would have already

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<sup>2</sup> [Explanatory Memorandum](#), April 2018, page 8

<sup>3</sup> [Childcare policy options for Wales](#)

been available to families directly from the UK Government. This major investment is for an early years policy that excludes the most disadvantaged. I am therefore unconvinced that this investment is evidence-based or well-targeted.

The Bill that has now been introduced delivers what the original policy suggested and does not take account of the PPIW research, which the Welsh Government itself commissioned.

### ***Prosperity for All***<sup>4</sup>

Page 23 of the Welsh Government strategy 'Prosperity for All' sets out the Early Years as one of the five cross cutting priority areas. It refers to the importance of the right support for all children, particularly those from deprived backgrounds, and notes the impact of Adverse Childhood Experiences (ACEs) on childhood development. It also outlines the "significant gaps between the educational performance of different groups of children, with persistent under-achievement by those from more deprived and disadvantaged backgrounds". The childcare offer is referred to as one of the commitments to addressing these points, and yet the policy background and legislation being introduced make little reference to this and do not seem to directly address this point. As noted above, in reality this is a policy designed to address employment figures and does little to address the emerging gaps between children of working and non-working households in this critical phase of their development.

### **Long term vision**

The Well-being of Future Generations (Wales) Act 2015 requires public bodies including the Welsh Government to demonstrate compliance with the five ways of working. Two of these principles are particularly relevant to this Bill; long-term and prevention.

I do not believe that the policy behind this Bill shows that the scheme will be suitable for the long-term. There is already discussion about what the 'next step' could be in relation to the Childcare offer once the manifesto commitment has been delivered. This indicates that the proposals are simply designed to fulfil a manifesto commitment rather than meeting the needs of children and their families both now and in the future.

Similarly, prevention and early intervention would require a proactive approach to ensuring that there is no detrimental impact on the children of non-working parents. The current proposals solely focus on employment opportunities and do nothing to demonstrate consideration for preventing the gap in school readiness for children.

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<sup>4</sup> <https://gov.wales/docs/strategies/170919-prosperity-for-all-en.pdf>

The offer will be subject to independent evaluation; the main criteria for evaluation relate to parents' employment and there is nothing in the Explanatory Memorandum about child development and school readiness. It does however, state that "3.16 Alignment of the childcare and early education elements of the 30 hours, and any unintended consequences, will also be evaluated" and I would expect this to expressly consider the impact on any school readiness gap between children of working and non-working parents.

### ***Potential barriers to the implementation of the key provisions and whether the Bill takes account of them***

Any state funded childcare provision should be of good quality and help children to realise a range of rights including having extra support where they have a disability (Article 23) and being protected from harm (Article 39). This relies on a robust well trained and valued childcare workforce which provides an element of choice. I wrote in my 2016/17 Annual Report that "I am aware of concerns amongst the current childcare workforce in Wales in relation to capacity and sustainability, including Welsh Language provision."<sup>5</sup> Analysis of the pilot phase will need to consider Welsh language provision and provision for children with additional needs, and work with providers in the sector to ensure that there is sufficient capacity to deliver the offer in the terms outlined.

### ***Unintended consequences arising from the Bill***

A Children's Rights Impact Assessment (CRIA) has been undertaken for this Bill. However, I do not consider that a full analysis of these consequences has been undertaken or included within that CRIA. On that basis it is not evident that the rights of all children have been given due regard in this policy and the Bill that brings it forward. Article 2 of the UNCRC explicitly states that state parties have a duty to ensure the rights of all children without discrimination of any kind including the status of their parents. There is no reference to this whatsoever within the CRIA and this is a significant omission.

The Statement of Policy explains that the Bill does two things: "gives the Welsh Ministers the power to provide funding for childcare for qualifying children of working parents and to make regulations about the arrangements for administering and operating such funding."<sup>6</sup> However, the analysis section (step 2) of the CRIA focuses attention on the second part of the Bill only – administering and operating such funding, stating that "The main purpose of the Bill is to enable the development and administration of a national online system for checking the eligibility of

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<sup>5</sup> [Annual report for 2016-17](#)

<sup>6</sup> [Statement of Policy Intent](#), page 2

applicants for the Offer.”<sup>7</sup> It therefore misses an opportunity to evidence whether or not specific consideration has been given to the impact that providing funding for childcare of “working parents” will have on children and young people in Wales.

To do this effectively, Step 1 of the CRIA could have:

- Provided data relevant to childcare in Wales: For example: current number of children in receipt of childcare under different schemes, estimate of those who would be eligible under the proposed policy and those that would not, economic data and education data. This would enable detailed consideration of which groups of children could be affected by the policy objectives, paying particular attention to the most vulnerable or marginalised groups (Article 2 of the UNCRC).

Step 2 could have:

- Been used as an opportunity to evidence analysis of the options and impact of providing funding for childcare for qualifying children of working parents. Instead it solely focuses on administering and operating such funding. If included here it could have:
  - used the data included in Step 1 - to identify how the Bill and policy intent would potentially impact on children both positively and negatively;
  - Identified and linked the particular rights that would be affected. Whilst to an extent this is identified at stage 3 there are others which could have been included, for example; the right to rest and leisure, to engage in play (article 31), the right to fulfil your potential (Article 29), the right to use your own language (Article 30), the right of disabled children to special care (Article 23);
  - Considered the Bill’s proposed impact in relation to the following recommendation from the United Nations Committee on the Rights of the Child in their Concluding Observations to the UK<sup>8</sup>:

#### **“Family environment**

50. The Committee acknowledges that there are good practices in the State party and the devolved administrations in providing childcare to those who need it. However, the Committee is concerned about the negative effect of the high cost of childcare on children and their family environment.

**51. The Committee recommends that the State party and the devolved governments conduct a rigorous child rights impact assessment of the recent**

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<sup>7</sup> [Children’s Rights Impact Assessment, Childcare \(Wales\) Funding Bill, Childcare, Play and Early Years Division, Welsh Government, 16<sup>th</sup> April 2018, page 5.](#)

<sup>8</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5&Lang=En)

**reduction of funding for childcare and family support and adjust the family support policy in order to make childcare services available to all those who need it.”<sup>9</sup>**

- included research and evidence - for example attainment gap data, poverty data, stakeholder engagement through the #TalkChildcare campaign,
- analysed how the eligibility criteria and policy intentions could also align with Articles 1 and 2 of the UNCRC;
- Identified mitigating factors to minimise negative impacts wherever possible. In this particular case there were opportunities to demonstrate whether there has been consideration of how existing mechanisms, including other childcare programmes, may have mitigated identified impacts or alternatively created opportunities for alignment. For example, it could have considered what childcare options are available to children of non-working parents, children of other ages.

In order to pay due regard to children’s rights, it would be necessary to consider and analyse the above points when considering the creation and content of the funding powers. It is not possible for Ministers to understand whether or not the wording included on the face of the Bill is appropriate without undertaking this analysis.

***The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum)***

Part 2 of the Explanatory Memorandum is solely concerned with the financial implications of the Bill in respect of the administration and operating of funding under this Bill. I do not intend to consider these provisions in detail as my response focuses on the rights of children and the impact of the policy rather than how the scheme will be administered. However, it is important to make sure that the investment made provides value for money, allowing children to access the childcare provision they are entitled to, by providing their parents<sup>10</sup> with an effective system or process for applications.

***The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)***

While I agree the powers in the Bill for Welsh Ministers to make subordinate legislation are appropriate, I am asking for the removal of the term “working parent” from the face of Bill in Section 1. Chapter 5 of the Explanatory

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<sup>9</sup> Concluding observations on the fifth [periodic](#) report of the United Kingdom of Great Britain and Northern Ireland\*, Committee on the Rights of the Child, July 2016, page 12.

<sup>10</sup> Or other persons defined by the Bill and subsequent secondary legislation

Memorandum states that subordinate legislation would permit a “timely and flexible response”<sup>11</sup> and allow Ministers to review the conditions of funding in light of any new evidence. My concern is that including the terms “working parents” on the face of the Bill reduces the flexibility that is available in making changes and won’t allow for a broader offer to be introduced for children of non-working parents, whether now or in the future. Instead, defining employability status of the child’s parents could be placed in the secondary legislation, with all of the other “qualifying” issues: “regulations will set out the detailed eligibility criteria for the Offer and as such will have significant policy implications.”<sup>12</sup>

Submitted by:



**Professor Sally Holland**

**Children’s Commissioner for Wales**

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<sup>11</sup> [Explanatory Memorandum](#), page 4

<sup>12</sup> [Explanatory Memorandum](#), page 16