



Comisiynydd Plant Cymru Children's Commissioner for Wales

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Ymateb i Ymgynghoriad / Consultation Response

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Subject/Subject

National Assembly for Wales' Children and Young People Committee's Inquiry into Attendance and Behaviour

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.

1. Strategies and support in place to address behaviour and attendance

The National Behaviour and Attendance (NBAR) report (2009) sets out the importance of a whole-school approach supported by strong leadership. There is considerable evidence that a whole school approach is essential for effective approaches to improve school attendance and behaviour. Welsh Government's Circular on Inclusions and Pupil Support (2006)ⁱ sets out the benefits of such an approach and a recent review of international evidenceⁱⁱ provides clear evidence on the positive impacts of such approaches. The research review, undertaken by the University of Leicester on behalf of the National Council for Special Needs concludes that whole-school behaviour management programmes can act as a universal programme for all students, but can also enhance the abilities of those with additional needs to engage with learning in a safe environment. An evaluation of the first three years of the RAISE programme was published by Welsh Government in 2012ⁱⁱⁱ and suggests that the programme has been most effective in *'schools with strong leadership, which know their pupils and families well and understand what they as a school can do and how they can work with others to tackle the link between socioeconomic disadvantage and poor educational attainment'*. The report also notes that schools that were less effective and had a less holistic analysis of need and a narrower view of their role used the funding opportunity offered through the RAISE programme less effectively.

Bryngwyn Comprehensive School in Llanelli has been identified as a best practice case study in relation to the RAISE programme.^{iv} The school has adopted a 'Triple A' strategy (attendance, attitude and achievement) with a clear focus on pupils wellbeing, engagement with parents/carers and making pupils feel valued.

As part of my role I regularly visit schools across Wales. I have visited a number of schools where I have witnessed the positive impact that whole school approaches with a focus on pupil wellbeing can have on education engagement. I visited Goetre Primary School in the summer term of 2012. The school serves a community where there are high indicators of multiple deprivation, and where a lot of parents are young parents, many of whom have basic skills issues themselves. There are currently six mainstream classes and three Learning Resource Base Units catering for pupils with additional learning needs in the Junior Department. In the Infants Department there are Lower and Upper Foundation Phase Units and two Learning Resource Bases catering for the needs of approximately 350 children. The school has employed an Education Family Support Officer who is driving forward action on working with families and the community to ensure that children are accessing and benefiting from an education. The decision to create this post is part of the wider ethos of a school that is truly community focused. The work has a clear focus on promoting a strong and positive relationship between the school, families and the community. The school is a hive of activity that includes practical support as well as work to engage families in education.

The school also participated in an Action Research project introduced as part of the Welsh Government's RAISE programme work in schools in the Pen-Y-Dre school cluster. Goetre School developed a Whole School Approach to SEAL through the project. The school rewrote the behaviour policy with a focus on reward for making good choices and SEAL themes are used to develop motivation through activities to foster the achievement of personal, academic and pro-social goals. The school is able to evidence outcomes in terms of improved Emotional Literacy for pupils.

Townhill Community School in Swansea is a restorative school. Restorative practice empowers teachers to be successful and effective practitioners within their classroom, raising standards and achievement across the school and developing aspirational, motivated and responsible pupils. I attended one of the school's morning 'check-in' circles where pupils are given the opportunity to talk about their feelings and any concerns they have and I was impressed with the ways in which the school works to ensure that the pupils feel happy and comfortable throughout their school day and makes their emotional wellbeing a priority.

Estyn's 2012 report on effective practice in tackling poverty and disadvantage in schools^v also identifies the importance of taking a whole-school approach to tackling disadvantaged. Estyn found that effective schools have a persistent focus on good attendance, punctuality and positive behavior, had suitable sanctions in place but found that reward systems work particularly well.

In 2001, the United Nations Committee on the Rights of the Child published its General Comment on education^{vi}. Within the comment, the Committee states at Paragraph 8 that:

Compliance with the values recognised in Article 29 (1) clearly requires that schools be child-friendly in the fullest sense of the term and that they be consistent in all respects with the dignity of the child. The participation of children in school life, the creation of school communities and student councils, peer education and peer counselling, and the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning and experiencing the realisation of rights.

In 2009, the Committee published a General Comment on Article 12 entitled 'The right of the child to be heard'^{vii}, and made the following statements about the right of the child to be heard in school:

- *Respect for the right of the child to be heard within education is fundamental to the realization of the right to education (para 105)*
- *Children's participation is indispensable for the creation of a social climate in the classroom, which stimulates cooperation and mutual support needed for child centred interactive learning. Giving children's views weight is*

particularly important in the elimination of discrimination, prevention of bullying and disciplinary measures. (para 109)

- *Steady participation of children in decision-making processes should be achieved through, inter alia, class councils, student councils and student representation on school boards and committees, where they can freely express their views on the development and implementation of school policies and codes of behaviour. (para 110)*

There is strong evidence to support the validity of a whole-school approach with a clear focus on pupil wellbeing where pupils feel listened to and valued as the best solution to the issues raised through the NBAR enquiry. There is a clear need to support schools in the adoption of evidenced whole-school approaches.

Case example 1

My office supported a child receiving exclusions related to their behaviour where the school struggled to manage and were aware that additional intervention from external agencies was required. However the local authority was reluctant to provide any additional support until school could evidence that all avenues had been exhausted. The school identified that they did not have the necessary resources to support. Contact with local authority confirmed to my office that additional support would not be forthcoming until school had exhausted the process. This case also highlighted that educational psychology intervention is not always forthcoming as children are put on a waiting list in order of priority due to resources.

This case also highlighted the difficulties in supporting parents and child. The parent was intimidated by the head and meetings with the school were difficult. Although the parent was in agreement that the child has issues she was frustrated at a process driven mechanism for support rather than a needs or rights led mechanism.

1a. Teacher training and development

The NBAR Review 2008^{viii} identified evidence to suggest that large numbers of education professionals had received little or no training in their roles in managing attendance or behaviour. The Welsh Government's NBAR Action Plan was published in 2009^{ix} and committed to the development of an overarching Professional Development Framework for teaching staff covering knowledge and skills on aspects of promoting positive behaviour and attendance.

A handbook on practical approaches to behaviour management in the classroom for secondary schools was published by Welsh Government in 2010 while a handbook for primary schools followed in 2012. These appear to be useful resources aimed at positive behaviour management practices within the classroom however there does not appear to be any clear framework through which these resources are disseminated and promoted among teaching staff.

Welsh Government published a behaviour and attendance Action Plan in 2013^x to reflect the Minister's priorities and with the aim of embedding behaviour and attendance in initiatives around education improvement. The Plan sets out actions to develop training modules on behaviour management and attendance to be delivered through Initial Teacher Training, Induction and Continuing Professional Development and funding in well evaluated behaviour management programmes. The Welsh Government has also launched the Learning Wales website to provide information, guidance, case studies in relation to improvement areas. I welcome the fact that behaviour and attendance have been included as one of the first improvement areas to be covered on the website. However it is disappointing that the Welsh Government's recently launched virtual learning 'Hwb' that provides classroom based resources appears to be clearly focussed on curriculum issues and does not cover positive behaviour management and attendance issues.

Evidence from research on illegal school exclusions commissioned by Welsh Government and published in 2011^{xi} found that parents reported that teachers lacked knowledge to successfully manage behaviour and discussed how teachers struggled to meet the needs or offer appropriate support to children who had disabilities, poor mental health or a physical condition. Parents reported concern over a lack of coherent behaviour strategies within school. These issues are mirrored in some of the cases that have been brought to the attention of my independent advice and support service. My office has dealt with cases where teaching staff are not equipped to deal with challenging behaviour from pupils (including primary school children) leading to escalation of problems for both child and school over a period of time.

There is clearly a strong case for the current measures in place to be maintained and I would like this supported by a programme of training on positive behaviour management programmes as part of the work of the new education Consortia. Estyn's inspection of arrangements in pupil referral units (2012)^{xii} found that units that had adopted behaviour management strategies, restrictive physical intervention and restraint methods accredited by the British Institute for Learning Disabilities were most effective. This was linked to the units having staff that were well trained and confident in using techniques to defuse potentially challenging situations. The Welsh Government review of 'Education Otherwise Than at School and Action Plan' (2011) sets an action to ensure that those delivering EOTAS are included in the implementation of new elements on behaviour and additional learning needs within the Welsh Government's new approach to the continuing professional development of practitioners. I am not aware of any recent update from Welsh Government in relation to progress against the Action Plan (2011-13) - a statement on progress could usefully inform scrutiny of these issues.

Equipping teachers with the knowledge and skills they need to support behaviour in the classroom positively and to handle challenging behaviour effectively will benefit pupils, teachers and schools. Further it will progress work to realise the right to education of children and young people in Wales under the UNCRC.

Case example 2

My office was involved in the case of a child with behavioural difficulties who was placed in an assessment unit following temporary exclusion where he did well. Following assessment the child returned to mainstream school where the placement broke down rapidly as no reintegration strategy had been put in place and a request was made for by the school for the child to return to the assessment centre. The school was ill-equipped to meet the needs of the child whereas the staff at the assessment centre were trained and able to manage the child's behaviour.

1b. Provision to pupils who are Educated Otherwise than at School (EOTAS) including pupil referral units.

The NBAR Report (2008) identified issues related to limitations in EOTAS in terms of provision of an adequate education offer to children and young people. The Welsh Government Action Plan (2009) committed to carrying out a review on provision of EOTAS, including pupil referral units. This review was published in 2011 and highlights a number of issues of concern:

- wide variety in the type and level of EOTAS provision across Wales;
- the need to improve information on children and young people educated outside school and to relate this to performance frameworks for local authorities;
- the lack of minimum standards of provision for those receiving EOTAS in terms of hours of provision, variety of curriculum and inequity of provision; and
- the need for new guidance on commissioning alternative provision.

I am concerned that this provides a grim picture of the education offer provided to children and young people EOTAS. Every child has a right to an education that will develop their abilities and talents to the full (Article 29, UNCRC) and evidence according to the Welsh Government review suggests that we cannot have confidence that children who are EOTAS will have this right realised.

Estyn's report on a survey of arrangements for pupils' wellbeing and behaviour management in pupil referral units found that: *staff do not do enough to monitor and evaluate for themselves the impact of their day-to-day practice on pupils' wellbeing and behaviour* (2012:2). While pupils felt cared for and treated with respect they also reported being physically and forcibly taken to 'time out' spaces which they disliked and described as poor environments and viewed as a punishment'. This is of great concern to me, as is the fact, reflected in the report, that complaints by parents and pupils against staff following restraints were not always recorded, reported or investigated in a timely manner.

Welsh Government's guidance on exclusion from schools and pupil referral units (2012)^{xiii} suggests that individual tuition, particularly in the learners' home is not usually well suited to meeting the needs of learners except in the short term as part of a carefully coordinated package. However in 2010/11,^{xiv} 30% of permanently excluded pupils were given home tuition as their education provision. This individual tuition was the most frequently used provision for pupils whose main education is other than at school. At the same time evidence from research in relation to exclusions (2011)^{xv} found that few pupils who were officially excluded received any tuition or learning support during periods of time spent out of school.

Case example 3

My office became involved in the case of a young person who had been out of education for 12 months. There had been behavioural issues in school he had been excluded and the school refused to take him back. This young person had also been in trouble with the police and was waiting for a court appearance. During the 12 months that this young person had been without an education placement there had been no work sent home and no alternative placement sought. Neither education nor the YOT had ensured that procedures had been followed that would have ensured that this young person received appropriate education for 12 months. This situation was only resolved when our office became involved.

Welsh Government statistics found that 2,577 pupils were recorded as being educated other than at school, with 1,026 of these receiving their main education outside of school.^{xvi} These children and young people have a right to an education. The Welsh Government must take urgent action to implement and report on the action plan on improving 'Education Otherwise Than at School' (2011), a commitment made in their 'Making a Difference on Behaviour and Attendance Action Plan 2011-2013'. There is also a clear need for Welsh Government to closely monitor and scrutinise progress against the recommendations for local authorities and pupil referral units made by Estyn in its 2012 report.^{xvii}

1c. Use of exclusion (including permanent/fixed term/illegal exclusions)

I welcome the fact that there has been a continued decrease in permanent exclusions from schools in Wales over the past five years. However in 2010/11 there were still 158 permanent exclusions from maintained primary, secondary and special schools and pupil referral units. Research consistently cited in studies^{xviii} strongly evidences the on-going negative outcomes for children and young people who are permanently excluded as they grow into adulthood.

Evidence from the case work undertaken by my independent advice and support service and reported in Welsh Government commissioned research^{xix} suggests that fixed term exclusions are used too often as an ineffective behaviour management tool with continued instances of fixed term exclusions increasing the risks of permanent exclusion in the future. While the number of fixed-term exclusions of six days or more dropped in 2010/11 this was matched by an increase in fixed-term exclusions of five days or fewer.^{xx} The most common reason given for fixed-term exclusions in the period 2010/11 was 'defiance of rules'. The Welsh Government's guidance on exclusion from schools and pupil referral units was released in 2012^{xxi} and is clear that '*a decision to exclude a learner should only be taken: in response to serious breaches of the school's behaviour policy and if allowing the learner to remain in school would seriously harm the education or welfare of the learner or others in the school*' (2012:8). I am not clear what processes are in place to support pupils and their parents/carers awareness and understanding of schools behaviour policies and I am concerned that there is such a high rate of fixed term exclusions for 'defiance of rules'. Evidence presented in Welsh Government commissioned research^{xxii} found that some children and young people were excluded for not having completed homework, for uniform appearance issues or for 'causing trouble'. I would like to see measures put in place to ensure pupils and parent/carers are made aware of the contents of the schools behaviour and attendance policy and of the measures that will be taken in circumstances where the policy is breached.

Although the 2012 Welsh Government guidance on exclusions includes a statement on the use of exclusions in relation to set issues such as breaches of uniform and failure to do homework, the procedure driven nature of the guidance is not helpful in clearly setting out the need to consider the best interests of the child in relation to decisions about excluding a child or young person from school. The guidance includes a section on the UNCRC (2012:24-27) however this presents a list of relevant UNCRC Articles without relating these to the issue of decisions about the exclusion of children and young people. The Children's Commissioner in England published the first year report of her on-going School Exclusions Inquiry in 2012^{xxiii} and this presents its findings through an assessment of compliance with the Articles of UNCRC against exclusions policy and practice in England. This is a useful approach that may be of interest to the Committee. Framing the Committee's deliberations on NBAR issues in this way would enable consistency with the Minister's obligations in relation to the Rights of Children and Young Persons (Wales) Measure 2011. By drafting the

Committee's report findings and recommendations within this context, it would facilitate and enable Welsh Government to respond to the issues with regard to the UNCRC.

The evidence included in the Welsh Government commissioned study of illegal school exclusions (2011)^{xxiv} is of great concern to me. There is clear evidence to suggest that there are cases where children and young people are having their right to an education unlawfully removed.

The report also includes evidence in relation to poor practice in the management of official exclusions as well as illegal exclusions. There a number of key findings that need to be addressed, including:

- a lack of communication and information sharing on procedures or decisions between schools and parent/carers and pupils;
- use of multiple exclusions as a form of sanction or behaviour management; a lack of agreed, shared or consistent behaviour management strategies;
- lack of supportive reintegration processes and lack of knowledge and support for teachers in responding to children and young people with Additional Learning Needs; and
- the reported negative impact of exclusions on the wellbeing of children and young people.

The educational attainment of looked after children and young people remains significantly below that of other children. The Wales Audit Office (WAO) study of the educational attainment of looked after children and young people was published in 2012^{xxv} and found that attendance was similar to that of all children but that many looked after children still experience disruption in their education. The WAO report that the number of permanent exclusions of looked after children and young people has fallen to very low levels partly due to the increased use of managed moves between schools. However, the WAO also report that the number of fixed term exclusions of looked after children has risen in recent years from 232 in 2007-08 to 304 in 2010-11. The average length of each exclusion was 7.6 school days compared to 7.1 in 2009-10. The number of looked after children who are excluded for a fixed period is not known, as a child or young person may be excluded on more than one occasion in the year. The lack of coherent and consistent support to improve the educational attainment of looked after children is identified by the WAO. Welsh Government must provide a robust response to these findings that includes measures on behaviour and attendance.

Case example 4

My office was asked to intervene in the case of a looked after child who had been placed out of county had been excluded and was not receiving any tuition. The local authority advised they had no specialised provision for children with behavioural difficulties in the county. The young person had been placed with the home authority without

consultation with the receiving authority in relation to their educational needs. The young person was receiving a minimum amount of home tuition – 10 hours per week.

I am surprised and concerned that although Welsh Government guidance sets out the nature of unlawful exclusions and the reasons why they must always be considered illegal it also includes a section on 'voluntary withdrawals' (2012:17). The guidance states that 'influencing or encouraging parents/carers to 'voluntarily withdraw their child from school as a way of dealing with difficult or challenging behaviour is not an appropriate response' and states that local authorities will need to consider what action is appropriate where schools are found to be practising 'voluntary' withdrawals. I would suggest that the practice of 'voluntary withdrawals' represents permanent exclusions by another name without any of the safeguards and educational entitlements associated with official procedure. Welsh Government should adopt a stronger position in relation to non-tolerance of 'voluntary withdrawal' practice as it clearly runs contrary to the best interests of the child principle.

There is a weight of evidence to suggest that exclusions are used inappropriately, that children and young people subject to exclusion are not always offered an adequate package of support in the period leading up to an exclusion, during a period of exclusion or during reintegration. These issues must be addressed as they indicate a lack of consideration for the rights or best interests of children and young people. The 2012 Welsh Government guidance on exclusion is clear in setting out procedures but does not go far enough in restating the need for exclusion to be seen as a last resort following a period of planned behaviour management and additional support apart from in exceptional circumstances.

Welsh Government's information on effective managed moves was published in 2011^{xxvi} and I welcome the Government's support for this approach. Managed moves can provide a positive outcome for children and young people who might otherwise have their educational offer restricted through exclusion. My independent advice and support service has been involved in a number of cases where they have advocated successfully for a managed move as a solution in the best interests of the child. However I am aware that the Welsh Government commissioned research on illegal exclusions^{xxvii} found that parents spoke negatively of managed moves which parents perceived were used as a threat or as a means to avoid responsibilities. Parents also reported a lack of engagement or information from the school in terms of discussions or decisions about managed moves. Welsh Government should look at the issue of managed moves in more detail to ensure that they are utilised to provide a positive and appropriate outcome for relevant children and young people and not viewed as a form of sanction.

1d. Education Welfare Services

I welcome the fact that Welsh Government has committed to developing a training, development and career framework for the Education Welfare Service (EWS). My independent advice and support service frequently communicate and work with EWS in relation to cases that come into my office. Commonly my Investigations & Advice Officers are the first people to make contact with the EWS in relation to a case that has come to the attention of my office, it appears that clear systems for alerting the EWS to cases where there are concerns may not be operating effectively. My officers report that relationships with and responses by some Education Welfare Officers are positive and productive, however this is not the case across all areas and they report an inconsistency in response and approach between different areas and in relation to different officers. Welsh Government published the All Wales Attendance Framework^{xxviii} in 2011 to provide standards and guidance for practitioners with the aim of ensuring greater consistency of practice throughout Wales. This is welcomed, however, Welsh Government should outline their intentions to monitor and assess the impact of the Framework in securing consistent good practice across Wales.

2. Support to pupils with Additional Learning Needs in respect of behaviour and attendance

We know that the groups included in the 'Inclusion and Pupil Support' guidance (2006) are more likely to face barriers to educational engagement and achievement than their peers. Evidence that things are not improving fast enough continues to come to my attention. Established research^{xxix} found that 27% of young carers aged 11-15 experience difficulties or miss school, rising to 40% where children are caring for a relative with drug or alcohol problems. In 2009 over a third of young carers participating in my report, 'Full of Care: Young Carers in Wales', reported that the support they received from school/college was 'poor' or 'awful'. Evidence published in 2011^{xxx} in relation to young people detained in custody suggests that 86% of boys and 82% of girls reported having been excluded from school and around half reported that they were 14 years or younger when they were last in education. Estyn reported in 2011^{xxxi} that attainment and attendance remains below expected levels for Gypsy Traveller pupils and that there are 'marked inconsistencies' across local authorities in their quality of provision for Gypsy Traveller children. The Wales Audit Office reported earlier this year^{xxxii} that the attainment of looked after children and young people is improving slowly but that many are not achieving their potential and that there is too much variation in attainment.

My independent advice and support service continues to receive calls about children and young people who are not receiving the educational offer they deserve because their emotional and behavioural difficulties are not being addressed and schools are unable to manage them. Many of these children and young people do not satisfy the criteria for the statementing process but their parents are left feeling that without a statement there will be no opportunity to secure support to meet their additional needs.

In my response to Welsh Government's consultation on proposals for reform of the legislative framework for special educational needs^{xxxiii} I have welcomed the adoption of this revised term as it reflects the wide range of circumstances that can impede a child or young person's ability to learn and to realise the fullest potential of their abilities. As Children's Commissioner for Wales I am very aware of the diversity of ways in which children and young people may face barriers to their right to an education and their ability to learn. The intention to retain 'entitlement protection' for children and young people who already hold a statement of Special Educational Needs (SEN) is also welcomed. Children, young people and their parents and carers should have this clearly communicated to them to help allay the considerable concerns and anxieties they have expressed to my officers. I welcome the intention to introduce a process of integrated assessment and planning contained within the proposed reforms. The development of models of Provision Pathway as an outline of the level of support that providers should aspire to deliver and including benchmarks for measuring the quality of service delivery is welcomed. I would expect the measures on protecting entitlement included in the Pathways to relate directly to the 7 Core Aims for all children and young people, the Welsh Government's representation of the UNCRC.

I would expect Provision Pathways will be provided in a format that is easily accessible to children, young people and their families so that they can have a proper understanding of the support they are entitled to. This will allow for children, young people and those who represent them to evidence the basis of those challenges they may need to make when they do not receive the support they need to realise their potential. However I have called for clarity on the intended legal status of the Code of Practice. I am aware that the status of many current Codes of Practice such as that currently placed for SEN means that it cannot be used to hold agencies to account in a robust manner. I would hope that the Code of Practice proposed in relation to the reforms outlined in this consultation will have the legal standing of regulation and will be fit for purpose as an accountability framework.

The Committee may wish to note that the consultation document on proposals for reform of the legislative framework for special educational needs does not include reference to behaviour and attendance issues. However the introduction of a process of integrated assessment and planning contained within the proposed reforms has the potential to act as a vehicle for the positive management of behaviour and attendance issues for pupils with additional learning needs.

Case example 5

A young person moved back into area with his mother following major family disruptions that had caused a lot of emotional distress. The young person had been diagnosed with Oppositional Defiance Disorder and Attention Deficit Hyperactivity Disorder. His mother attempted to get him back on the school role at the school he had previously

attended – admission was denied as he had known behavioural difficulties. The child was given a place at a school that was not in his catchment area. This case also highlighted the confusion various professional have as to who makes referrals to CAMHS for assessments.

3. Collaborative working arrangements

The policy drive for joint working, pooled resources and integrated services has been with us for some time however implementation is inconsistent. My independent advice and support service is often involved with cases where children and young people are let down while agencies argue over responsibility and funding to meet the needs of the child or young person.

Welsh Government has put in place a number of family support programmes such as Flying Start, Families First and Integrated Family Support Services all of which provide a team around the family approach. I am aware that some local authorities have a clear focus on delivering Families First through a school cluster approach and I will wait with interest to see what impact this has on attendance and behaviour as demonstrated through evaluation.

Welsh Government legislative proposals including the Social Services and Wellbeing (Wales) Bill; Mental Health (Wales) Measure 2010, Carers Measure (Wales) 2010 and proposals for reform of the legislative framework for special educational needs all include proposals to introduce regulation and guidance to make arrangements more robust and to put duties on statutory partners to contribute to the construction and discharge of multi-agency care and support plans. However there is a need to rationalise the means through which the outcomes of integrated working are captured in order to support joint working to a shared purpose and to provide clarity to service users.

I raised concern in my response to the Social Services and Wellbeing (Wales) Bill that the duty to promote the welfare of children and young people as contained in the 2004 Children Act has had limited impact on the lived experiences of children and young people. Robust measures are needed to ensure that there is accountability in relation to the implementation of the wellbeing general duty contained in the Bill. It is important that this general duty is extended to statutory partners including education and I hope that this will assist in developments that are focused on service user needs. It is clear to me that securing good outcomes for individuals is not in the gift of any single agency.

The domains of wellbeing identified in the Social Services and Wellbeing (Wales) Bill could be usefully adopted as policy and delivery drivers across the policy areas that impact on the lives of children and young people. The Welsh Government current working definition of well-being is:

- (a) physical and mental health and emotional well-being

- (b) protection from abuse and neglect
- (c) participation in education, training or recreation
- (d) domestic, family and personal relationships
- (e) contribution made to society
- (f) securing rights and entitlements
- (g) social and economic well-being.

In relation to a child well-being includes:

- (a) physical, intellectual, emotional, social and emotional development
- (b) the meaning of “welfare” for the purposes of the Children Act 1989.

I believe that the application of outcomes clearly directed at the identified domains of wellbeing across policy areas would support a shared purpose and collaborative working between agencies. In this way responding positively to behaviour and attendance issues in order to avoid poor outcomes for children and young people would be a clear and shared aim across agencies. This is particularly relevant for those vulnerable groups of children and young people who are most at risk of reduced education offers because of behaviour and attendance issues.

4. Other evidence of relevance to the terms of reference

4a: Use of physical interventions and seclusion

The current policy guidance in relation to the use of restrictive physical interventions on children and young people is contained across a number of documents, is procedural in nature and emphasis on considerations of best interest or the rights of the child is arguably weak. I was publicly critical of the education guidance when it was published in 2010.^{xxxiv}

In contrast the Association of Directors of Children’s Services in England have produced a ‘Protocol for Local Children’s Services on Restrictive Physical Interventions in Schools, Residential and Other Care Settings for Children and Young People’^{xxxv} that appears to provide a clear set of procedures presented in the context of a focus on regard to the best interests of the child. I am seeking options for dialogue with key agencies as to how best to develop a similar approach for use in Wales and believe Welsh Government are ideally placed to progress this agenda.

4b. Equalities

The Children's Commissioner for England's inquiry into school exclusions^{xxxvi} outlined particular concerns that some groups of learners were more likely than others to be excluded from school. The report suggested that the Department for Education should collaborate with the UK Government's Equality Unit and the Equality and Human Rights Commission to look at how to support schools and other public bodies in interpreting their duties under the Equality Act 2010. General guidance for schools has now been produced in England, however, I believe the guidance for schools on implementing their public sector equality duties in Wales^{xxxvii} is more comprehensive and is a useful source of information for schools.

Similarly with the England analysis, boys in Wales are far more likely to be excluded from school than girls and account for almost three quarters of permanent exclusions.^{xxxviii}

The statistics also show that pupils with special educational needs accounted for about half of all exclusions. These disturbingly strong predictors are concerning and suggests, particularly in relation to SEN, there are steps that need to be taken. The Children's Commissioner for England has suggested that an exclusion should trigger a review of a child's statement. These issues need to be carefully considered as Welsh Government commits to their reform of the statutory frameworks for ALN. It is critical that we monitor statistics relating to protected characteristics so that we can respond accordingly if issue arises.

I believe it is worth quoting an extract from the Welsh guidance for schools on the Public Sector Equality Duties for Wales where it offers an example of how schools could utilise their obligations under the Equality Act:

Under the equality duties, a maintained school carries out regular monitoring and evaluation of its data on exclusions for pupils with protected characteristics, and finds that a disproportionately high number of pupils who are either temporarily or permanently excluded are black boys and pupils with a learning difficulty.

The school behaviour and discipline policies are prioritised for an equality impact assessment (EIA) which uncovers that certain aspects of the policy are discriminating against these pupils. This includes a lack of a differentiated behaviour policy for those on the autistic spectrum and with moderate learning difficulties, and a lack of awareness and training of teachers in relation to how to support black boys in the classroom.

Following the EIA, a new policy is developed, with an action plan and training for staff, and a whole school behaviour and discipline strategy is implemented.^{xxxix}

The initial NBAR report also referred to the importance of equality when it recommended:

The Welsh Assembly Government should ensure that Estyn places more emphasis in its reports upon the ways in which schools' Disability and Equality schemes include responding to the needs of pupils with significant emotional and behavioural difficulties.

Estyn did produce a thematic report on disability schemes within schools in 2009 which evidences the importance of data collection and analysis:

Analysis of data is also used well to inform referral to appropriate outside agencies such as where pupils' attendance and behaviour require additional support from education social workers or behaviour support teams.^{xi}

Bearing in mind the new legislative and policy context in relation to equalities, perhaps it would be timely to look at whether Welsh Government and schools ensured that all NBAR related policies and guidance are up to date and reflect the relatively new Public Sector Equality Duties in Wales under the Equality Act 2010.

An area which I believe would be useful to clarify is defining disability within the education context. The reform of the ALN framework in Wales means that it will be important for children and families to understand potential avenues of recourse. There currently appears to be confusion at times as to what constitutes a disability and therefore which children and young people may be protected under the Equality Act 2010. The Act may be relevant to some learners with additional needs, but not others and schools, parents / carers, professionals and learners would benefit from some clarity in this regard.

I welcome the commitment in the Welsh Government's Strategic Equality Plan to *analyse information and identify issues where interventions are needed to drive up attainment amongst those groups with protected characteristics who are under-achieving*. There is also an associated action to *Commission research to determine what evidence there is regarding differences in attainment, progress and exclusions between the different ethnic groups and the link between attainment and exclusion*.

Revisiting policies would also facilitate a raising of awareness of the specific needs of young carers in education. This would be as a result of provisions regarding 'discrimination by association' which are provisions resulting from the Equality Act 2010.

Continued recording and monitoring by schools is essential to assist the agenda and it is important that each school takes their equalities obligations seriously in relation to attendance and behaviour.

A handwritten signature in black ink that reads "Keith Towler". The signature is written in a cursive style and is positioned above a horizontal line that extends to the right.

Keith Towler

Children's Commissioner for Wales

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- ⁱ Welsh Government (2006) *Inclusion and Pupil Support, National Assembly for Wales Circular No: 47/2006*, Cardiff: WG
- ⁱⁱ P.Cooper and B.Jacobs, (2011) *Evidence of Best Practice Models and Outcomes in the Education of Children with Emotional Disturbance/Behavioural Difficulties, An International Review*, National Council for Special Education Research
- ⁱⁱⁱ Welsh Government, (2012) *Evaluation of the first three years of RAISE: Final Report, Social research: Number 15/2012*, Cardiff: Welsh Government
- ^{iv} <http://learning.wales.gov.uk/resources/improvedattendance/?skip=1&lang=en>
- ^v Estyn, (2012) *Effective practice in tackling poverty and disadvantage in schools*, Cardiff: Her Majesty's Inspectorate for Education and Training in Wales
- ^{vi} [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2001.1.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2001.1.En?OpenDocument)
- ^{vii} United Nations Committee on the Rights of the Child (2009) *General Comment No 12 The right of the child to be heard*
- ^{viii} *National Behaviour and Attendance Review (NBAR) report, An Independent Review conducted on behalf of the Welsh Assembly Government*, (2008) chaired by Professor Ken Reid
- ^{ix} Welsh Assembly Government, (2009) *Behaving and Attending: Action Plan Responding to the National Behaviour and Attendance Review*, Information document No 076/2009
- ^x Welsh Government (2011) *Making a Difference on Behaviour and attendance: An Action Plan for 2011-2013, Improving behaviour and attendance to help raise standards in schools*, Cardiff: Welsh Government
- ^{xi} V.Butler and SNAP Cymru, (2011) *Experience of illegal school exclusions in Wales: a qualitative study*, Cardiff: Welsh Government
- ^{xii} Estyn (2012) *A survey of the arrangements for pupils' wellbeing and behaviour management in pupil referral units*, Cardiff: Her Majesty's Inspectorate for Education and Training in Wales
- ^{xiii} Welsh Government, (2012) *Exclusions from school and pupil referral units: Guidance*, Document no: 081/2012
- ^{xiv} Statistics for Wales, (February 2012) *Exclusions from Schools in Wales, 2010/11*, Welsh Government: SDR 33/2012
- ^{xv} See 6 above
- ^{xvi} Statistics for Wales, (August 2012) *Pupils Education Other than at School, 2011/12 (Experimental Statistics)*, Welsh Government: SDR 140/2012
- ^{xvii} See 7 above
- ^{xviii} J. Evans, (2010) *Not present and not correct: Understanding and preventing school exclusions*, Barkingside: Barnardo's
- ^{xix} See 6 above.
- ^{xx} See 9 above
- ^{xxi} See 8 above

^{xxii} See 6 above

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^{xxv} Wales Audit Office (2012) *The educational attainment of looked after children and young people*, Cardiff: WAO

^{xxvi} Welsh Government (2011) *Effective managed moves: A fresh start a school for children and young people*, Information document No: 096/2011

^{xxvii} See 19 above

^{xxviii} Welsh Government (2011) *All Wales Attendance Framework: An operating toolkit for the Education Welfare Service*, Cardiff: Welsh Government

^{xxix} See The Princess Royal Trust and The Children’s Society, (2012), *Supporting Young Carers: A resource for schools: An Overview-* Updated chapter.

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^{xxxiv} [TES Article, quotes 2010](#)

^{xxxv} [English ADCS Protocol 2009](#)

^{xxxvi} See above 18

^{xxxvii} http://www.equalityhumanrights.com/uploaded_files/Wales/PSED_Wales_docs/education_nsg_wales_-_final.pdf

^{xxxviii} See above 9

^{xxxix} http://www.equalityhumanrights.com/uploaded_files/Wales/PSED_Wales_docs/education_nsg_wales_-_final.pdf

^{xl} <http://www.estyn.gov.uk/english/docViewer/202101.9/review-of-disability-equality-schemes-and-practice-in-schools-and-pupil-referral-units-june-2011/?navmap=30,163>