



Comisiynydd Plant Cymru Children's Commissioner for Wales

Ymateb i Ymgynghoriad / Consultation Response

Date / Dyddiad: 15th November 2016

Subject / Pwnc: National Assembly for Wales' Children, Young People and Education Committee Inquiry into Statutory Advocacy Provision

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 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.

This response is not confidential.

1. Introduction

The statutory remit of the Children’s Commissioner for Wales includes the review and monitoring of arrangements for safeguarding and promoting the rights and welfare of children, which includes the provision of statutory advocacy¹. Reviews of advocacy arrangements have been undertaken by the office on a number of occasions. Advocacy provision remains a key theme of our core work as the realisation of Article 12 of the UN Convention on the Rights of the Child (UNCRC) enables the full involvement of children and young people in the decisions and processes that affect them directly. The Children, Young People and Education Committee has been provided with the previous reports of my office in relation to Advocacy as follows:

Telling Concerns (February 2003)²

Missing Voices (March 2012)³

Missing Voices, Missing Progress (May 2013)⁴

Missing Voices: Right to be Heard (July 2014)⁵

I do not intend to repeat all of the recommendations made in those reports, or the reports that have been undertaken by several other groups during the same time period. Across all of the written reports, evidence provided and inquiries undertaken to date however, there are some key themes that are still of relevance but remain to be addressed, as follows:

- Maintaining a fully independent and high quality service for all those entitled to it;
- Promoting awareness and universal access to advocacy provision, including self-referrals;
- Instilling confidence and consistency in service provision across Wales;
- Difficulties with commissioning arrangements, stability of funding and the content of contracts.

My vision as Children’s Commissioner is for a Wales where all children and young people have an equal chance to be the best that they can be. Advocacy can be an important tool to redress the imbalance faced by children and young people who are experiencing barriers to full participation in decisions about their lives. It is important for services to be consistently offered and accessible across Wales to enable all children and young people to achieve the best possible

¹ <http://www.legislation.gov.uk/ukpga/2000/14/part/V> Section 73 Care Standards Act 2000

² <http://www.childcomwales.org.uk/wp-content/uploads/2016/04/Telling-Concerns.pdf>

³ http://www.childcomwales.org.uk/wp-content/uploads/2016/04/Missing-Voices_E.pdf

⁴ <http://www.childcomwales.org.uk/wp-content/uploads/2016/04/missing-voices-missing-progress-2013-draft04.pdf>

⁵ http://www.childcomwales.org.uk/wp-content/uploads/2016/04/MV_FINAL_E.pdf

outcomes. Advocacy is a fundamental safeguard to ensure that children and young people's concerns are listened to and acted upon in a fair and transparent manner.

From as far back as the Waterhouse Report "Lost in Care"⁶ in 2000, advocacy has featured as an area of concern in reports and inquiries on many separate occasions but I regret to say that meaningful and lasting change for children and young people has yet to be achieved. The opportunity presented by the implementation of the national approach is one that should be grasped, to improve children's outcomes. However I am frustrated by the lack of progress despite sustained efforts by my office and others to ensure this essential safeguarding service is available to everyone who is entitled to it. I welcome the Committee's involvement in this policy making process.

2. What are your views on the effectiveness of the Welsh Government's approach to the delivery of statutory advocacy provision? If this is a concern to you, how should this be addressed?

The collaboration between the Welsh Government and local government has taken a lot of time and resource to get to the present position. Since an agreement being made to implement the national approach and active offer in late 2015, the work has reached a stalemate as the Association of Directors of Social Services (ADSS Cymru) and the Welsh Local Government Association (WLGA) have not matched the resource allocated for implementation by the Welsh Government, nor do they have a robust implementation plan in place.

That said, it should be recognised that a lot of work has been undertaken around statutory advocacy in the last few years, culminating in Part 10 of the Social Services and Well-being (Wales) Act 2014 ("the SSWB Act") specifically relating to advocacy and the regulation of advocacy services through the Regulation and Inspection of Social Care (Wales) Act 2015. These two 'sister' Acts emphasise the importance of voice, choice and control for all citizens including children and young people and advocacy is an important tool to enable people to participate in decision making about their care and support needs.

Alongside these Acts, there have been a number of different groups convened by the Welsh Government, tasked with developing guidance and addressing practice issues in relation to advocacy, partly in response to the recommendations contained within my office's reports. My office has been part of these groups including the Ministerial Expert Group on Advocacy (MEGA), the Strategic Leadership Group and Task and Finish Groups undertaken from 2014-15 and the Technical Group on Advocacy under Part 10 of the SSWB Act.

⁶ <http://tna.europarchive.org/20040216040105/http://www.doh.gov.uk/lostincare/20102a.htm>

In general there has been an overarching acceptance of our recommendations and the need to take action in order to ensure consistent and high quality provision of advocacy across Wales. It has however required a lot of input and follow up from my office and others due to fluctuations in the momentum of this work. The overall pace of progress has been slow to date and despite looked after children and those in need of care and support being eligible for statutory independent professional advocacy, I still do not think there is consistency with regard to the availability and access to advocacy for all eligible children across Wales.

3. What are your views on the latest position in relation to the implementation of the National Approach to Advocacy Services?

I am frustrated at the length of time it has taken for this work to be undertaken and the resultant standstill in the progress of the National Approach.

The Task and Finish Group referred to above undertook work during 2014-15 around a National Approach to Children's Statutory Advocacy, including analysis of the likely numbers of children being eligible for a service and the likely costs of delivering such a service based on those projections. There was also work on monitoring commissioning arrangements and reporting outcomes for children against agreed standards. Scotland and Northern Ireland also monitor their advocacy arrangements against agreed principles, standards and outcomes, although the delivery models do vary slightly. The final business case which was produced in November 2015 included the Service Specification, the Range and Level Mechanism, the Standards and Outcomes Framework and the Management and Performance Reporting Templates. Despite the efforts of my office and the other group members, the national approach still has not been implemented.

An implementation plan is awaited from WLGA and ADSS in order to understand how the national approach is to be taken forward and when. WLGA and ADSS were part of the Task and Finish Group throughout but at the time of submission have yet to produce the necessary plan to move towards implementation. I wrote to the WLGA and ADSS representatives on 12th October 2016 to request that the implementation plan be made available in advance of the next meeting of the Senior Leadership Group. I have not received any acknowledgment or response to this letter at the time of submission. Throughout the work of developing a national approach, it has been reiterated that the approach has to be considered to be a single overarching entity, made up of the component parts as above. To pick and choose from the available tools would not be following a consistent National Approach and would not result in the delivery and monitoring of the Active Offer of advocacy that we have repeatedly called for, most recently in my annual report published in October 2016⁷. The Active Offer is an important part of the national approach as it is designed to make sure all eligible children are informed about statutory advocacy provision and how to access it, whether now or in the future.

⁷ <http://www.childcomwales.org.uk/wp-content/uploads/2016/10/Annual-Report-1516-Adroddiad-Blynyddol.pdf> Page 55

The Task and Finish group produced costings in their business case for either regional commissioning or national commissioning arrangements. Neither option has been successfully taken forward yet, due to a lack of agreement at a local government level over how the commissioning arrangements might operate in practice. The Welsh Government has promoted the regional approach as the first option in recent months but so far neither model has progressed to a clear implementation plan and timetable.

I understand there is also funding available from the Welsh Government to support the implementation of new commissioning arrangements but this has not to date been accessed due to the lack of progress in agreeing the approach. Without delivery of the Active Offer and the National Approach, I am concerned that advocacy will continue to be viewed as something of an 'optional extra' to aid participation, rather than a fundamental safeguarding provision and enabling mechanism for realising rights and entitlements.

What impact has Part 10 of the Social Services and Well-being (Wales) Act 2014 had on advocacy provision?

As noted in response to question 2, I recognise the work that has been undertaken to ensure the visibility and importance of Advocacy within the SSWB Act. Paragraph 100 of the Part 10 Code of Practice states in clear terms the importance of Advocacy for entitled children as follows:

“Advocacy empowers entitled children and ensures their rights are respected and that their views and wishes are fully reflected in decision making about what is happening in their lives. Advocacy is also an additional safeguard to protect from the risk of abuse. Advocacy can ensure assistance and support is provided enabling concerns to be listened to and dealt with effectively. Advocacy supports active participation in the decision-making processes and ensures views and wishes are heard at all times.”

Section 22 of the Code of Practice refers to commissioning arrangements under the heading “Securing an effective service”. The original draft of the Code referred to parallel work that was being undertaken specifically in relation to children’s statutory advocacy and a National Approach. My response to the draft Code encouraged the Welsh Government to align the work streams so that the ongoing work on a national approach could be reflected in the final wording of the Code. The business case was concluded by the Task and Finish Group in November 2015 and approved by the Senior Leadership Group in December 2015. There followed a period of inactivity and the Code of Practice was subsequently finalised without any details of a National Approach or the Active Offer of advocacy to entitled children.

The National Approach includes the tools to measure the making and acceptance of the Active Offer of advocacy as part of the overall monitoring package. Implementation of the National Approach would allow for the impact of Part 10 for

children to be monitored and assessed directly and to inform the funding levels and strategic direction for children's statutory advocacy in the coming years. Without these tools it will not be possible to directly monitor the take up of Advocacy and the Active Offer for these children and, perhaps more importantly, the outcomes sought and achieved.

4. Which priority areas in relation to advocacy provision for children and young people do you believe the Welsh Government should address? What do you think is needed to achieve that progress?

The Welsh Government needs to show strong leadership for the National Approach and the Active Offer to be implemented. Whether this is achieved by regional commissioning or a national commissioning framework, the delivery of the Active Offer on the ground and improved involvement and outcomes for children are what is important.

I am reminded of the words of Dr Mike Shooter in a letter to the Welsh Government dated 11th September 2013, in his role as Chair of MEGA, in which he said: *"the important issue is whether the LAs are discharging their statutory duties satisfactorily, whatever the model of commissioning-provision."*

At the time of writing, an implementation plan for regional commissioning arrangements is awaited from WLGA and ADSS. Should this plan not be forthcoming or not satisfactory in putting into practice the full National Approach, the Welsh Government will need to move swiftly to implement a national commissioning model. Establishing a national co-ordinating service, such as the National Adoption Service, provides a successful precedent to deliver the necessary changes for children and young people.

The implementation plan, whilst an important document, will not in itself achieve the National Approach coming into effect. What will be needed alongside this is continued support and buy-in from the regions, their component local authorities and the Welsh Government to drive it forward and bring it into force. The Committee's inquiry is likely to focus the minds of all those involved at the current time but ongoing follow up and monitoring will be necessary to ensure that full implementation is achieved in the coming months.

5. If you could recommend one thing to the Welsh Government that it could do to improve statutory advocacy services provision, what would it be?

Following the extensive series of reviews conducted by my office and others, I am absolutely certain that the consistent delivery of statutory advocacy services across Wales will not be achieved without an agreed national approach to delivery and service provision. The Welsh Government should show further leadership in delivering the national approach as soon as possible. I acknowledge that the national approach will require time to fully implement due to the complexities of

moving across from the existing commissioning arrangements in each local authority. The Business Case anticipated implementation over a period of 15 months to March 2017 to align with existing commissioning cycles. This reinforces the need for leadership and urgent action in agreeing the approach to be taken, as there are existing contractual and commissioning arrangements that will need to be dealt with before the national approach can be implemented properly.

6. Finally, are there any other issues relating to the terms of reference that you would like to draw to the Committee's attention?

I would also like to see progress on advocacy in other areas that affect children and young people, particularly where it is clearly identifiable that they are likely to face barriers to full involvement in decision making and in representing their views directly to professionals. Two clear areas that would benefit from consistent advocacy provision would be mental health and children with additional learning needs. In my submission in respect of the Additional Learning Needs and Education Tribunal (Wales) Bill in December 2015 I highlighted this issue and I await with interest the revised Bill which is due to be published in December 2016. Children under the age of 18 who are detained or received into guardianship under the Mental Health Act 1983 also have a statutory right to an Independent Mental Health Advocate (IMHA)⁸ but there may be many other situations where children, by virtue of their age, require additional assistance to understand and engage with treatment plans and decision making in health matters.

The National Assembly for Wales' inquiry into Advocacy Provision in 2008 also noted in recommendation 1 that "in addition to standard locally commissioned advocacy services, there should also be national commissioning of the more specialist types of advocacy such as asylum seeking children." This is something that I would also support given the current situation faced by many unaccompanied asylum seeking children from across the world.

Submitted by:



Professor Sally Holland

Children's Commissioner for Wales

⁸ <http://www.legislation.gov.uk/ukpga/1983/20/part/X/crossheading/miscellaneous-provisions> Section 130A Mental Health Act 1983.