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Y Pwyllgor Plant, Pobl Ifanc ac Addysg | Children, Young People and
Education Committee

Cyllido Ysgolion yng Nghymru | School Funding in Wales
SF 09

Ymateb gan: Comisiynydd Plant Cymru
Response from: Children's Commissioner for Wales

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Subject / Pwnc: School Funding in Wales

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.

This response is not confidential.

Introduction

Education settings in Wales are instrumental in the realisation of children's rights in Wales. Schools do not only allow for the realisation of rights pertaining to education (Article 28 and 29), but should enable the full provisions of the UNCRC through a combination of their own provision and as a gateway to a wider system. When countries ratify the Convention, they must assess

their laws relating to children, and the level of funding for these services. In accordance with Article 4, governments are then obliged to take all necessary steps to ensure that the minimum standards set by the Convention in these areas 'are being met to the maximum extent of their available resources.'¹

In this response I consider whether school budgets are sufficient to meet our obligations under the UNCRC in the context of other public service budgets and available resources. I also consider the way school budgets are determined and allocated, and how this fits with the principles of the UNCRC.

I make the following key points:

- Government has obligations under the UNCRC with regards to budgetary decisions relating to children and young people, including those decisions pertaining to school funding. The principles and processes described in UNCRC General Comment 19 (2016) and General Comment 5 (2003) should inform decision-making, and this should be transparent.
- Children and Young People's budget statements and a Children's Rights Impact Assessment on the budget would enable transparency at a cross-governmental level and would better enable the impact of budgetary decisions that will impact a child or young person's experience of their rights in school and beyond.
- In accordance with their participatory rights under the UNCRC, children should participate in decision-making relating to budgets.
- Inequity across the school funding model should be addressed to avoid the inequitable realisation of children's rights across Wales.
- The on-going pressure on school budgets is negatively impacting the rights and welfare of children and young people.

¹ <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

- Non-discrimination is a key principle of the UNCRC and on-going budgeting for the realisation of substantive equality is an obligation.
- Crucial consideration must be given in particular as to how the needs of children and young people with additional learning needs are met within an education system under budget pressure.

UNCRC obligations and budgeting

Guidance as to how states should allocate funding in order to realise the Convention is given in UNCRC General Comments in order to improve understanding of the obligations of states under the UNCRC. Below I briefly outline two key General Comments as important to consider in light of how we make funding decisions in Wales.

UNCRC General Comment No.5 (2003) on the General Measures of Implementation of the Convention on the Rights of the Child [GC 5]² explains that even with limited resources nations should prioritise the realisation of rights, stating that *“even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.”* It is further explained that, *“with regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources”*. Reflecting the global nature of the Convention, this General Comment is a realistic acceptance that lack of resources can hamper the full implementation of economic, social and cultural rights in some nations of the globe but that even when this is the case, rights should be implemented to the maximum extent possible. Given that on a global scale the UK ranks highly against other nations in terms of indicators of wealth, it is a reasonable expectation that the maximum extent of available resource should enable the full realisation of economic, social and cultural rights for children in Wales.

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<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsiQql8gX5Zxh0cQqS.Rzx6Zd2%2FORsDnCTcaruSeZhPr2vUevjbn6t6GSi1fheVp%2Bj5HTLU2Ub%2FPZZtQWn0jExFVnWuhiBbqgAj0dWBoFGbK0c>

UNCRC General Comment No. 19 (2016) on public budgeting for the realisation of children's rights [GC 19]³ was informed by a global consultation with 2,693 children from 71 countries and provides detailed information to states about their obligations to invest in children. It recommends open, inclusive and accountable budget allocation and spending, stating clearly that nation states must not discriminate against any child in this process. It also recommends that children participate in budget decisions.

It is important to situate an inquiry into school funding decisions within a wider context of how government budgets for children and young people's rights and the extent to which the principles of these GC 5 and GC 19 are implemented. This is in part because the realisation of children's rights in school settings are funded through several mechanisms, including school funding allocated to schools by local authorities, authority-wide services that are available in schools (such as independent counselling services), services that are received through the regional consortia and the receipt of targeted government grants, for example the Education Improvement Grant. But this is also the case because schools work within a system of services for children and young people, which include several sectors (for example social services, the youth sector, health services, the voluntary sector, early years, community provision and so forth) and professionals within education have commented to my office that reduced funding to other services and community provision increases the level of need to which they must respond.

In my written submissions to inform the concurrent Committee sessions on 15th November 2018 about the impact of the Welsh Government's impact assessment for the draft budget, I drew attention to the deficit in transparent budgeting for children's rights. To reiterate, since I became Commissioner I have not seen a single example of a Children and Young People's Budget Statement from the Welsh Government, despite the Government's acceptance in November 2010 of many of the recommendations of the CYPE Committee 2009 report *Children's Budgeting*

³ https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f19

*in Wales*⁴, including that recommending the publication of children and young people’s budget statements and participation. I also echo the concerns of the CYPE Committee in their scrutiny of the 2018-19 draft budget⁵, which stated, “We fear that without a CRIA (Children’s Rights Impact Assessment), resources to support the rights of children and young people may at best be difficult to identify. At worst, the absence of a CRIA could lead to the Welsh Government paying inadequate attention to the rights of children and young people in important financial decisions.”

With this in mind, in any future review of school funding, I would urge Government to inform the development of new models with a CRIA that analyses the impact of this funding model alongside the whole budget, in order to understand the cumulative impact of policy decisions on the rights of children. I also suggest that the newly established Youth Parliament could have an important role in the scrutiny of this budget, thus enabling the participatory rights of children and young people in national decisions that have profound impacts on their lives (Article 12) and giving a national mechanism to the realisation of the principles of GC 19. Participation within budgeting at a national level could also draw on good practice models at a local authority level, such as the Big Budget Conversation held by Swansea, which is described as a case study in my guidance for public bodies, *The Right Way: A Children's Rights Approach in Wales*.⁶

Inequity across the system and the realisation of rights

The need for such a review into school funding has been highlighted by the OECD⁷ with evidence that differences in local funding models are causing unequal treatment of schools in similar circumstances. This is also a concern in our communities: there are parent-led campaigns for fairer funding and it is an issue that has been raised directly with my office by Head teachers,

⁴ <http://www.assembly.wales/Laid%20Documents/CR-LD7749%20-%20Children%20and%20Young%20People%20Committee's%20Report%20on%20Children's%20Budgeting%20in%20Wales-19102009-148251/cr-ld7749-e-English.pdf>

⁵ <http://www.assembly.wales/laid%20documents/cr-ld11301/cr-ld11301-e.pdf>

⁶ <https://www.childcomwales.org.uk/wp-content/uploads/2017/04/The-Right-Way.pdf>

⁷ <http://www.oecd.org/education/Developing-Schools-as-Learning-Organisations-in-Wales-Highlights.pdf>

teaching professionals, young people and children. The OECD advice focuses on equity, recommending, "*Review the school-funding model to realise Wales' commitment to equity and student well-being. The Welsh Government should consider conducting an in-depth analysis of school funding in Wales to explore a funding model that promotes greater equity and efficiency.*"⁸ Addressing this identified inequity is in line with our obligations under the UNRCR, GC 19 instructs that, "*States parties are required to address inequalities among children by reviewing and revising relevant legislation, policies and programmes, by increasing or reprioritizing certain parts of the budget, or improving the effectiveness, efficiency and equity of their budgets.*"⁹ As such, I urge government to review the school funding model, but for the reasons previously explained, I would develop this OECD recommendation to advise that an in-depth analysis of a funding model would include a CRIA, which would situate the proposed model against the wider impact of the Welsh Government budget on children and young people.

Ongoing pressure on school budgets

As highlighted by the OECD in their recent report into the abilities of schools to respond to government priorities, there is a trend of a decrease in the education budget alongside a sustained period of change for which schools must prepare and deliver.¹⁰ Welsh Government statistics¹¹ show that since austerity measures there has been an increasing number of schools with negative or lower level of reserves and a decline in the number of schools with reserves over 10% of expenditure. 146 primary, 79 secondary, 8 special, 1 nursery and 7 middle schools in Wales had negative reserves totalling £25 million. The remaining 1,328 schools had positive reserves, 171 of which had reserves in excess of 10% of their total delegated expenditure. These figures reinforce the inequity within the funding model and point to an uneven picture across sectors, showing that the secondary sector in particular will lose flexibility in school level budgeting: reserves in secondary schools decreased over the last year, as they have done in recent years, and are now in deficit by £2.4 million.

⁸ [ibid](#)

⁹ https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f19

¹⁰ <http://www.oecd.org/education/Developing-Schools-as-Learning-Organisations-in-Wales-Highlights.pdf>

¹¹ <https://gov.wales/docs/statistics/2018/181017-reserves-held-schools-31-march-2018-en.pdf>

The pressure this reveals on school budgets is understood by professionals, young people and families. I am aware of one campaign in which parents, young people, teachers and Heads from across the local authority have held joint meetings with councillors to discuss their concerns that the pressures on school budgets mean that children and young people do not have the opportunity to develop their talents and skills to the full and receive the education to which they have a right (Article 29). In participatory work undertaken by my office the impact of funding pressures for the whole school community also arises frequently. During autumn 2018 my office has held a series of workshops about the impact of poverty on children, the details of which are still being analysed. In one workshop young people attending a secondary school described a 'school fund' to which they must all contribute in order to pay for essential school equipment and to run sports teams. Payment into this fund was described as compulsory, with form tutors keeping lists. As our project develops my office will consider how we best respond to practice like this, which not only increases economic pressure for families but also gives young people the incorrect message that an education that includes opportunities for cultural participation is an added extra, rather than an experience that is guaranteed by the UNCRC (Articles 15; 29; 31).

As outlined in my Spotlight Report on Article 31¹² a number of children and young people have expressed to my office that they would like the chance to access more arts opportunities, including in school time. The Welsh Government Local Government Association has directly linked the contraction of arts opportunities in schools, in this case relating to music, to "the sustained period of austerity over the last 10 years and cuts in local government budgets. Local authorities and their schools are facing further cuts to their budgets in 2018-19 and that is by far the biggest threat to the provision of music services in Wales."¹³A contraction of resourcing for children and young people that has this impact is in contravention of our obligations under

¹² <https://www.childcomwales.org.uk/wp-content/uploads/2018/04/Play-FINAL.pdf>

¹³ <http://senedd.assembly.wales/documents/s80066/Letter%20to%20the%20Chair%20from%20the%20WGLGA.pdf>

the United Nations Convention of the Rights of the Child. General Comment 5 states clearly, “with regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources”.¹⁴

As previously stated, to enable a government and wider society to have a transparent understanding of the cumulative impact of policy decisions on the rights of children, it is necessary to see a CRIA that analyses the impact of school funding models as an integral part of the whole budget. While acknowledging the real pressures on Welsh Government funding levels, it is still the case that decisions should be made with transparency and after assessing the likely impact on children, including potential differential impacts on different groups of children.

Impact on wellbeing of children and young people

The wellbeing of children and young people is also affected by budget pressures in schools. During workshops held in the autumn of 2018 about young people's online lives, many teachers have told my office they recognise the serious impact cyber bullying can have on the experience and education of a young person, but described their lack of capacity and time to respond to incidents. During this series of workshops secondary pupils have at several times expressed that they would like greater access to counsellors or designated staff members: one young person informed my office told me they had been waiting weeks to speak to a counsellor.

In community workshops held by my office in the summer and autumn of 2018 parents have also raised the insufficiency of school funding to meet the wellbeing or mental health needs of individual children. One parent explained their worries that their child had undiagnosed mental health needs after a referral to CAMHS was rejected as inappropriate. The child was struggling to cope in school and the parent felt that though the school were doing their best, they did not have

¹⁴<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsiQql8gX5Zxh0cQqSRzx6Zd2%2FORsDnCTcaruSeZhPr2vUevjbn6t6GSi1fheVp%2Bj5HTLU2Ub%2FPZZtQWn0jExFVnWuhiBbqgAj0dWBoFGbK0c>

any additional funding so were not able to provide the child with the level of adult support needed to for the child to be able to access their education.

Better support for the mental health and wellbeing needs of children and young people is a key strategic priority for my office¹⁵ and I have welcomed the initial government response to the CYPE Committee Mind over Matter report¹⁶. However, I am concerned that several Head teachers have already expressed worries that they do not have the appropriate level of staffing or flexibility within their budgets to respond to the wellbeing needs of young people nor to embed new approaches in their school. The worrying level of deficit currently held by the secondary sector¹⁷ exacerbates this concern.

Non-discrimination and resource allocation

Budget pressures will affect the whole school population but the impact of this can be greater for some children and young people. As an underlying principle of the UNCRC, non-discrimination with regards to resource allocation is explained in GC 19: *"States parties shall not discriminate against any child or category of children through resource mobilization or the allocation or execution of public funds. Spending equitably does not always mean spending the same amount on each child, but rather making spending decisions that lead to substantive equality among children."*

There are a number of children and young people in Wales that need additional funding for the realisation of substantive equality and I welcome Welsh Government's financial commitment to equity that has been expressed through additional funding for groups of children, for example through the Pupil Development Grant. The CYPE Committee 2018 report *On the Money*¹⁸ illustrates that funding is used effectively by the majority of schools but highlights that in order

¹⁵ <https://www.childcomwales.org.uk/wp-content/uploads/2016/04/Strategic-Plan-English.compressed.pdf>

¹⁶ <http://www.assembly.wales/laid%20documents/gen-ld11623/gen-ld11623-e.pdf>

¹⁷ <https://gov.wales/docs/statistics/2018/181017-reserves-held-schools-31-march-2018-en.pdf>

¹⁸ <https://www.assembly.wales/laid%20documents/cr-ld11615/cr-ld11615-e.pdf>

to increase the effectiveness of this grant there is a need for ongoing monitoring and guidance to ensure the fund benefits all the children and young people for whom it is targeted.

The principle of substantive equality must also apply to the ongoing consideration of the Education Improvement Grant and it is important that in the review of this grant to which Government has committed¹⁹ there is an assessment to determine whether it is sufficiently targeted to positively impact the groups of young people that were previously supported by the Minority Ethnic Achievement Grant. In common with the CYPE Committee²⁰ I have concerns that the amalgamated grant may not adequately support substantive equality of children from Gypsy, Roma, Traveller and other minority ethnic backgrounds.

Funding of current and future provision for Additional Learning Needs

Crucially, consideration must be given as to how the needs of children and young people with additional learning needs are met within an education system that is already under budget pressure. There is currently insufficient funding of Special Educational Needs workforce provision, as highlighted by Welsh Government's analysis of the local authority special education needs workforce²¹. This analysis of workforce did not include those staff employed directly by schools but reveals that there are many young people in schools that do not have adequate support. Local authorities overwhelmingly feel that their specialist services are not currently meeting the needs of young people in their areas and they have concerns for meeting future demand. Significantly, the majority of local authorities cited finance as their greatest challenge. This gap in current provision will impact the sufficiency of school funding when it results in schools stretching their own resources, for example, the deployment of staff, in order to try and meet the needs of their pupils. The most frequently identified issue in cases received by my Investigation and Advice Service is around appropriate provision for additional learning needs

¹⁹ <http://www.assembly.wales/laid%20documents/gen-ld11030/gen-ld11030-e.pdf>

²⁰ <http://www.assembly.wales/laid%20documents/cr-ld10943/cr-ld10943-e.pdf>

²¹ <https://beta.gov.wales/sites/default/files/publications/2018-07/local-authority-special-educational-needs-specialist-services-workforce-data.pdf>

and under-resourced schools that do not benefit from appropriate external help will not be able to meet these needs.

In light of this it is also important that there is careful consideration given to the future funding arrangements for additional learning needs provision under the Additional Learning Needs and Education Tribunal (Wales) Act 2018, and the need to ensure funding equity within this system. The latest iteration of the Code of Practice seen by my office in October 2018 indicated that local authorities will make their own decisions for what provision will be funded at a school level and what will be funded at a local authority level. The essential outcome of whatever model is that decided provision is funded and made available to the child without delay. In order to do this the funding model will need to sufficiently enable the implementation of the decided provision, but will also need to account for children moving between schools, and moving between local authorities, with a need for decisions about who is responsible for funding elements of the provision to be made within specified timeframes that ensure a continuous education. Delayed or disputed decisions about funding lead to increased difficulty for children, young people and their families and can also lead to disruption in education provision. It is important that the funding model of the new system is designed with sufficient funds and enough flexibility to meet the needs of children and young people quickly and equitably. The funding deficit currently carried by many schools, particularly in the secondary sector, must be factored into this model as it indicates that some schools have little flexibility in their annual budget to respond to pupils who require additional support joining the school mid-year.

Submitted by:



Professor Sally Holland

Children's Commissioner for Wales