



Llywodraeth Cymru
Welsh Government

The Welsh Government response to the Annual Report of the Children's Commissioner for Wales 2018–19

December 2019

**RESPONSE FROM THE WELSH GOVERNMENT TO THE ANNUAL REPORT OF
THE CHILDREN'S COMMISSIONER FOR WALES 2018-19**

Foreword by

**Rt Hon Mark Drakeford AM
First Minister of Wales**



and

**Julie Morgan AM,
Deputy Minister for Health and Social Services**



FOREWORD

As a government, we welcome the Children's Commissioner's report for 2018/19 which represents the culmination of her work in this period. In a time of continuing change, we remain steadfast in our commitment to the rights of children in Wales. We recognise the Children's Commissioner's tireless work as an independent champion for children's rights and wellbeing. The Commissioner continues to play a valuable role in ensuring that our children's views are heard and advocating on their behalf.

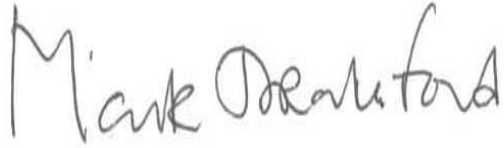
In Wales, we are rightly proud of our record of promoting children's rights and working to ensure that all children have the best start in life. We were the first UK nation to establish the office of the Children's Commissioner for Wales in 2001.

In 2004, the Welsh Government adopted the UNCRC as the basis for our work with children. We have enshrined children's rights in law through the Rights of Children and Young Persons (Wales) Measure 2011. Wales was the first UK nation to make such significant legislative arrangements to ensure the centrality of children's rights and this approach continues to drive progress on children's rights in Wales.

A very practical demonstration of our enduring commitment to children's rights is our work to bring forward legislation to remove the defence of reasonable punishment. This is in line with our commitment to a child's right to grow up in a safe and nurturing environment. The Welsh Government and National Assembly have introduced legislation to ensure that 16 and 17-year-olds will be able to vote in the Assembly election in 2021 and local government elections in 2022. This recognises the importance of hearing the views of our young people in decisions affecting them. It is also fitting that we should be doing so this year, which marks the 30th anniversary of the UNCRC.

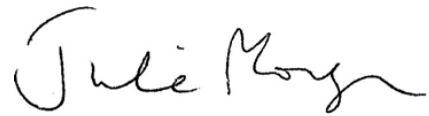
In her annual report for 2018-19, the Children's Commissioner has made 14 recommendations to the Welsh Government. As a government, we are pleased that we are able to accept the majority of these recommendations. The Commissioner's Annual Report has given us another welcome opportunity to review our work on children's rights and to consider how we can continue to improve.

As we celebrate the 30th Anniversary of the UNCRC this year, I am confident that our commitment to Children's Rights will continue to support children and young people to achieve their full potential.

Handwritten signature of Mark Drakeford in black ink.

Mark Drakeford AM

First Minister of Wales

Handwritten signature of Julie Morgan in black ink.

Julie Morgan AM

Deputy Minister for Health and
Social Services

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INTRODUCTION

The Children's Commissioner for Wales published her annual report for 2018-19 on 4 October 2018. The report can be accessed [here](#).

The report sets out some of the key achievements of the Commissioner's office during the year, including achievements in relation to the final year of the Commissioner's 3 year strategic plan for 2016-19 (at page 11 of the report).

This year, the Commissioner has made 14 recommendations for the Welsh Government to consider and respond to. The recommendations cover a wide range of areas across Welsh Government, including:

- Residential care
- Support for care leavers
- Tackling Poverty
- Curriculum Reform
- Elective home education
- Bullying
- Health transitions

The recommendations made by the Commissioner and the headline response from the Welsh Government to each of these recommendations are summarised in Annex A.

The rest of this report sets out the Commissioner's recommendations in turn, followed by the headline response from the Welsh Government and more detail setting out the actions that the Welsh Government is taking to address the recommendations.

FAMILY ENVIRONMENT AND ALTERNATIVE CARE

1. Residential care for children with the most complex needs

Children's Commissioner's recommendation:

- a) Welsh Government should ensure new ring-fenced funding specifically for the purposes of jointly commissioned mental health and social care residential provision for the small number of children and young people with the most complex needs in Wales.
- b) Welsh Government should also act to ensure that the existing mental health in-patient units in Wales make changes necessary to extend the range of young people who can be safely cared for there.
- c) Welsh Government should take action to develop secure mental health provision in Wales for the very small number of children who require this care.

The Welsh Government Response:

- a) Accept in principle - Work is underway and will continue during 2020 to develop solutions for joint commissioning arrangements. Funding implications will need to be considered but at this stage it is unclear if additional funding is required and what the mechanism would be.
- b) Accept - Work is already underway which will extend the current provision where admission criteria has previously been tightened, and the Welsh Health Specialist Services Committee is consulting on new service specification for Child and Adolescent Mental Health Services (CAMHS) in-patient units. Of course, the specification will extend only to those children whose needs can only be met in an inpatient mental health hospital setting.
- c) Accept – We agree Wales needs a form of suitable and safe environment for young people. Work is underway to understand the nature and type of provision required and options of delivery to best meet the young people's needs. This includes input from the Children's Residential Care Task and Finish Group, Child and Adolescent Mental Health Services, Eating Disorder Network review of Tier 4 Inpatient Units and the extended Together for Children and Young People's Programme. The third and final Together for Mental Health Delivery plan will include actions to undertake an audit of secure inpatient provision and to develop a secure inpatient strategy for mental health.

2. Leaving care

Children's Commissioner's recommendation:

- a) Welsh Government should amend legislation and guidance for the Social Services and Well-being (Wales) Act 2014 to secure all care leavers entitlement to a Personal Advisor up to the age of 25.
- b) Welsh Government should make more definitive progress on extending the entitlements of the 'When I'm Ready' scheme to provide an equivalent level of support for young people leaving residential care. This should be secured on a statutory basis.

The Welsh Government Response:

- a) Accept - The Welsh Government recognises the value of Personal Advisors in providing advice and support for care leavers. We will legislate to make Personal Adviser support up to age 25 an entitlement for care leavers when we have an appropriate legislative vehicle.

In 2017-18 we provided £9m recurrent funding for Children's Services, of which £1m was designated for the purpose of enabling local authorities to extend personal advisor support.

In 2017/18, this funding paid for an additional 20 Personal Advisers across Wales, resulting in over 500 care leavers taking up the extended offer of support up to age 25.

- b) Accept in principle - The key entitlement of the 'When I am Ready' scheme is that a young person leaving foster care can continue to live with their foster carers once they reach the age of 18. Although circumstances are different for young people leaving residential care, many of the aims and objectives of 'When I am Ready' will also apply to them.

We are committed to ensuring that all care leavers have greater choice and control over their transition from care; have continuity of practical and emotional support; are able to live in a supportive and safe environment; and are helped to develop their independent living skills and confidence.

This issue is being taken forward by the new Task and Finish Group on Accommodation Options for Care Leavers. This joint housing and social care group will have a particular focus on those who are most vulnerable, including those leaving a residential setting at 18 and those at risk of homelessness. It

will build upon work already undertaken by the Children's Residential Care Task and Finish Group.

3. Removing the element of profit from children's care services

Children's Commissioner's recommendation:

- a) Welsh Government must commit to taking concrete actions within the next year towards reducing and ultimately ending profit making in children's care services, without detriment to children and young people's current care arrangements.

The Welsh Government Response:

- a) Accept - Re-balancing the social care sector towards greater public sector/social not for profit enterprise provision is one of the First Minister's priorities. The Welsh Government is currently working with the Association of Directors of Social Services and other partners to scope out an approach to rebalancing.

As part of our efforts to rebalance the sector, work is being progressed under the National Fostering Framework to recruit more local authority foster carers. Welsh Government has provided £100k in 2019-20 to develop resources to promote a new 'Foster Wales' brand for local authority fostering, which will act as a marketing and recruitment portal for local authority fostering services. Local authorities currently provide two-thirds of foster carers, and the aim is to increase both the number and proportion of foster carers within the public sector.

EDUCATION, CITIZENSHIP AND CULTURAL ACTIVITIES

4. Elective Home Education

Children's Commissioner's recommendation:

- a) Welsh Government must implement statutory guidance giving effect to my three tests in full in 2020, to ensure children's rights are being respected wherever they are educated.

The Welsh Government Response:

- a) Accept - The Welsh Government accepts the Commissioners recommendation.

New statutory guidance for local authorities on home education was out to consultation for 12 weeks from 31 July to 21 October 2019. The purpose of the proposals is to ensure that children who are home educated receive a suitable education and the guidance reinforces the options available to local authorities if they believe this is not the case. This will strengthen the Welsh Government's commitment to ensuring children and young people are given the chance to thrive and fulfil their potential.

471 responses were received to the consultation which will require detailed consideration by officials. The intention is to publish in the Statutory Guidance along with Regulations in 2020.

5. The UNCRC in the Curriculum for Wales

Children's Commissioner's recommendation:

- a) To ensure an enduring commitment to the human rights of children the Welsh Government should introduce a duty upon all relevant bodies to pay due regard to the UNCRC in the delivery of the curriculum. This duty should be placed on the face of the Curriculum and Assessment Bill.

The Welsh Government Response:

- a) Reject - The UNCRC already has a statutory status through the Rights of Children and Young Persons (Wales) Measure 2011, which places a duty on the Welsh Ministers to have due regard to the UNCRC when exercising their functions. This includes when developing legislation, such as this Bill. The Welsh Government's position is, as far as is practically possible, not to replicate what is already on the statute book. Therefore, there is no proposal

to include a Due Regard Duty in the UNCRC on the face of the Curriculum and Assessment (Wales) Bill. The due regard duty in the Measure was pitched at the right level and need not be repeated in subsequent legislation. Rather, the Welsh Government's and the Assembly's focus should be on meaningful actions for the benefit of children and young people.

Children's rights are at the forefront of our ambitions for the new Curriculum for Wales, and the office of the Children's Commissioner have been closely involved in the development of the Health and Well-being Area of Learning and Experience (AoLE). The intention is to make the Statements of What Matters statutory, and the accompanying rationales will make reference to children's rights. The overarching guidance is also being refined to enhance the guidance provided on human rights education and will include explicit reference to children's rights and the UNCRC.

6. Bullying

Children's Commissioner's recommendation:

- a) Welsh Government should ensure that schools' self-evaluation incorporates a record of all incidences and types of reported bullying. Schools should be expected to use this information to plan, monitor and evaluate their preventative and responsive anti-bullying work, in line with the approach described in the re-drafted Respecting Others, and the impact of this should be assessed as part of school inspection.

The Welsh Government Response:

- a) Accept - New anti-bullying statutory guidance, "Rights, Respect, Equality" for governing bodies of maintained schools and local authorities was published on 6 November 2019 and includes reporting and monitoring responsibilities. As part of all inspections Estyn always considers the school's approach to anti-bullying.

7. Additional Learning Needs

Children's Commissioner's recommendation:

- a) The Additional Learning Needs and Education Tribunal (Wales) Act 2018 applies to young people up to the age of 25. Welsh Government must ensure that there is a statutory duty that requires all children and young people

covered by the Act to be provided with safe transport to their place of education.

Welsh Government should therefore reconsider their response to my 2015/16 annual report recommendation to review the Learner Travel (Wales) Measure 2008 and associated statutory provision and guidance.

The Welsh Government Response:

a) Reject - The Welsh Government is aware of the Children's Commissioner's concerns and acknowledge that this is a cross-Governmental subject. A cross-government group with representatives from education, social services and transport are considering how transport of children and young people is provided in a suitable, sustainable and appropriate way to meet individual needs.

Lee Waters AM, Deputy Minister for Economy and Transport, Kirsty Williams AM, Minister for Education, Eluned Morgan AM, Minister for International Relations and Welsh Language, Julie James AM, Minister for Housing and Local Government issued a [Written Statement](#) on November 13 noting that the current learner travel legislation that places duties on local authorities to make transport arrangements for learners of statutory school age based on distance, aptitude and safety are generally working well. However, they recognise the concerns for post 16 learners where local authorities have discretion over travel arrangements.

The Ministers have agreed to take forward a review to identify the issues involved and how to resolve them in a cost effective and sustainable way.

The review will be cross-departmental and the Welsh Government is currently developing a programme of work for this.

ADEQUATE STANDARD OF LIVING

8. Poverty

Children's Commissioner's recommendation:

- a) Welsh Government need to take account of the recommendations of the Charter for Change report, and publish a delivery plan setting out in detail how departments across Government will take practical steps to mitigate and tackle the impact of child poverty.

The Welsh Government Response:

- a) Accept – we have recently set out the actions being delivered across the Welsh Government to mitigate and tackle the impact of poverty and child poverty. Work is currently underway to inform our approach to tackling poverty and reducing inequality in the future.

It is timely for the Welsh Government to review our current approach and consider how we can deliver a more compassionate, citizen-centred approach to tackling poverty. There are a number of inter-related activities underway underpinning this approach:

- We have recently produced a fact sheet providing details of our current investments in delivery programmes across the Welsh Government which help to tackle poverty in Wales and outlining the impacts achieved - this has been sent to the Cross-party Group on Poverty.
- The Minister for Housing and Local Government will shortly be publishing the Child Poverty Progress report as required by the Children and Families (Wales) Measure 2010.
- Looking ahead, the Minister for Housing and Local Government is leading a review of Welsh Government funding programmes to ensure that they have maximum impact on the lives of children living in poverty.
- The review will last six months and will seek to identify those policies and programmes that are working well as well as those areas where we should be doing more.
- This work will help to inform how we prioritise our funding to support programmes in the future.

- In relation to future delivery planning, we will have a better understanding of how best to take forward and share the priorities identified by this work once it has been completed.
- The Minister for Environment, Energy and Rural Affairs is Cabinet lead for the cross-cutting theme of poverty in relation to our 2020-21 budget planning process, and this work is linking and informing the activities outlined above.

9. Mental Health and Wellbeing

Children's Commissioner's recommendation:

- a) Welsh Government works as a matter of urgency to establish continuation arrangements for the important work currently being delivered through the Together for Children and Young People Programme.

The Welsh Government Response:

- a) Accept - Welsh Government have been working with the programme for several months to support this process, particularly in the context of the new arrangements that have been established since the inception of the Together for Children and Young People Programme for instance the Mental Health Network Board and the Whole School Approach programme. The Whole School Approach programme is a joint programme of work to develop a whole school approach to the emotional well-being of children and young people.

We have agreed in principle to the continuation of a refocused programme.

10. Health Transitions

Children's Commissioner's recommendation:

- a) Welsh Government should ensure that health boards have effective guidance that will lead to children and young people having access to coherent multi-agency pathways for transition to adult services. Children and young people should be directly involved in the creation of their care plans.

This guidance should also ensure that 16 and 17 year olds accessing health services for the first time, including emergency care, have a clear pathway to age-appropriate care.

The Welsh Government Response:

- a) Accept - The Welsh Government is currently producing revised guidance on transition and handover between children's and adult health services, with a view to undertaking a 12 week public consultation starting in January. The guidance will be formally published under a Welsh Health Circular in Spring 2020.

The guidance will cover children and young people who have been receiving healthcare for some time as well as those who need to access healthcare services for the first time aged 16-17 and will be co-produced with input from clinicians, youth groups and the Children's Commissioner's office. The consultation will include a version for children and young people of the draft document and the intention is also to publish a version for children and young people of the final document.

11. Health Advocacy

Children's Commissioner's recommendation:

- a) Welsh Government should establish national standards for health-related advocacy for all children and young people who require it and monitor health boards' progress towards commissioning sufficient advocacy, and their promotion of it.

The Welsh Government Response:

- a) Accept - Officials are establishing a task and finish group to produce a set of high-level principles for advocacy in the health setting, with which all health boards will be expected to comply. Membership of this group is being finalised, but will include representatives from health boards and various advocacy groups, as well as the Children's Commissioner's office and youth groups.

Annex A - Summary of Welsh Government Response

No.	Recommendation	Welsh Government Response
1(a)	Welsh Government should ensure new ring-fenced funding specifically for the purposes of jointly commissioned mental health and social care residential provision for the small number of children and young people with the most complex needs in Wales.	Accept in principle
1(b)	Welsh Government should also act to ensure that the existing mental health in-patient units in Wales make changes necessary to extend the range of young people who can be safely cared for there.	Accept
1(c)	Welsh Government should take action to develop secure mental health provision in Wales for the very small number of children who require this care.	Accept
2(a)	Welsh Government should amend legislation and guidance for the Social Services and Well-being (Wales) Act 2014 to secure all care leavers entitlement to a Personal Advisor up to the age of 25.	Accept
2(b)	Welsh Government should make more definitive progress on extending the entitlements of the 'When I'm Ready' scheme to provide an equivalent level of support for young people leaving residential care. This should be secured on a statutory basis.	Accept in principle
3	Welsh Government must commit to taking concrete actions within the next year towards reducing and ultimately ending profit making in children's care services, without detriment to children and young people's current care arrangements.	Accept
4	Welsh Government must implement statutory guidance giving effect to my three tests in full in 2020, to ensure children's rights are being respected wherever they are educated.	Accept
5	To ensure an enduring commitment to the human rights of children the Welsh Government should introduce a duty upon all relevant bodies to pay due regard to the UNCRC in the delivery of the curriculum. This duty should be placed on the face of the Curriculum and Assessment bill.	Reject
6	Welsh Government should ensure that schools' self-evaluation incorporates a record of all incidences and types of reported bullying. Schools should be expected to use this information to plan, monitor and evaluate their preventative and responsive anti-bullying work, in line with	Accept

	the approach described in the re-drafted Respecting Others, and the impact of this should be assessed as part of school inspection.	
7	<p>The Additional Learning Needs and Education Tribunal (Wales) Act 2018 applies to young people up to the age of 25. Welsh Government must ensure that there is a statutory duty that requires all children and young people covered by the Act to be provided with safe transport to their place of education.</p> <p>Welsh Government should therefore reconsider their response to my 15 16 annual report recommendation to review the Learner Travel (Wales) Measure 2008 and associated statutory provision and guidance.</p>	Reject
8	Welsh Government need to take account of the recommendations of the Charter for Change report, and publish a delivery plan setting out in detail how departments across Government will take practical steps to mitigate and tackle the impact of child poverty.	Accept
9	Welsh Government works as a matter of urgency to establish continuation arrangements for the important work currently being delivered through the Together for Children and Young People Programme.	Accept
10	<p>Welsh Government should ensure that health boards have effective guidance that will lead to children and young people having access to coherent multi-agency pathways for transition to adult services. Children and young people should be directly involved in the creation of their care plans.</p> <p>This guidance should also ensure that 16 and 17 year olds accessing health services for the first time, including emergency care, have a clear pathway to age-appropriate care.</p>	Accept
11	Welsh Government should establish national standards for health-related advocacy for all children and young people who require it and monitor health boards' progress towards commissioning sufficient advocacy, and their promotion of it.	Accept