

Cafodd yr ymateb hwn ei gyflwyno i ymgynghoriad y [Pwyllgor Iechyd a Gofal Cymdeithasol](#) ar [Flaenoriaethau'r Chweched Senedd](#)

This response was submitted to the [Health and Social Care Committee](#) consultation on [Sixth Senedd Priorities](#)

HSC PSS 109

Ymateb gan: | Response from: COVID-19 Review Observatory

Blaenoriaethau cychwynnol a nodwyd gan y Pwyllgor **Initial priorities identified by the Committee**

Mae'r Pwyllgor wedi nodi nifer o flaenoriaethau posibl ar gyfer ei waith yn ystod y Chweched Senedd, gan gynnwys: iechyd y cyhoedd a gwaith ataliol; y gweithlu iechyd a gofal cymdeithasol, gan gynnwys diwylliant sefydliadol a lles staff; mynediad at wasanaethau iechyd meddwl; arloesi ar sail tystiolaeth ym maes iechyd a gofal cymdeithasol; cymorth a gwasanaethau i ofalwyr di-dâl; mynediad at wasanaethau adsefydlu i'r rhai sydd wedi cael COVID ac i eraill; a mynediad at wasanaethau ar gyfer cyflyrau cronig tymor hir, gan gynnwys cyflyrau cyhyrysgerbydol.

The Committee has identified several potential priorities for work during the Sixth Senedd, including: public health and prevention; the health and social care workforce, including organisational culture and staff wellbeing; access to mental health services; evidence-based innovation in health and social care; support and services for unpaid carers; access to COVID and non-COVID rehabilitation services; and access to services for long-term chronic conditions, including musculoskeletal conditions.

C1. Pa rai o'r materion uchod ydych chi'n credu y dylai'r Pwyllgor roi blaenoriaeth iddynt, a pham?

Q1. Which of the issues listed above do you think should be a priority, and why?

1. We welcome the priorities identified by the Committee. They are broad enough to encompass the most significant issues that Wales faces in the Covid-19 context which fall within the remit of the Committee. Our submission focuses on the question of how the Committee might address these issues. We respectfully submit that the Committee ought to put human rights at the centre of its work, and to employ them as standards to scrutinise the Welsh government's response to the pandemic.
2. Human rights, including social and economic rights and the obligation to ensure equality and non-discrimination, serve as a critical lens through which to identify and assess the short and long-term impact of the pandemic, and the Welsh government's response to it.
3. In respect to the Covid-19 emergency response, human rights play four important roles:



4. First, human rights impose a number of positive obligations on the State. That is, they require the State to take certain actions in order to secure the practical and effective protection of rights. In the pandemic context, these include an obligation to protect life by taking steps to address clear health threats.⁽¹⁾

4. Second, human rights constitute limitations on the actions that the state may take in response to the virus. Some rights cannot be limited at all; they are absolute rights. Other rights may be limited, but only where such limitations are necessary and proportionate. Human rights compliance requires rigorous engagement with questions of necessity and proportionality in respect of responses to the pandemic. It also requires regular revisiting of these questions in order to assess whether, against changing epidemiological and other evidence, measures remain necessary and proportionate, and whether the measures in place constitute the minimum intrusion with rights possible while pursuing a legitimate objective (i.e. the protection of public health).

5. Third, human rights constitute 'design principles' for longer-term responses to the pandemic. A human rights approach requires us to identify and understand the longer-term rights-related impacts of the pandemic, and to design responses to those impacts that operate to enhance, and do not unlawfully limit, the enjoyment of rights.

6. Fourth, human rights play an accountability role in respect of pandemic responses, ensuring that where rights have been violated in the response to the pandemic one has access to justice and to an effective remedy, and requiring the state to take steps to ensure non-repetition of such violations in this or any future analogous situations.

References:

(1) UN Human Rights Committee, General Comment No. 36: Right to Life UN Doc. CCPR/C/GC/36, esp. para 26; *Stoyanovi v Bulgaria* App. 42980/04, Judgment, 9 November 2010, [61]

Blaenoriaethau allweddol ar gyfer y Chweched Senedd

Key priorities for the Sixth Senedd

C2. Yn eich barn chi, pa flaenoriaethau allweddol eraill y dylai'r Pwyllgor eu hystyried yn ystod y Chweched Senedd mewn perthynas â:

- a) gwasanaethau iechyd;**
- b) gofal cymdeithasol a gofalwyr;**
- c) adfer yn dilyn COVID?**

Q2. In your view, what other key priorities should the Committee consider during the Sixth Senedd in relation to:

- a) health services;**
 - b) social care and carers;**
 - c) COVID recovery?**
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Gwasanaethau iechyd

Health services

1. We respectfully submit that, in considering issues related to health services, the Committee ought to employ key human rights obligation as critical analytical lenses.

2. All people have a right to the highest attainable standard of physical and mental health ('the right to health'). The UN's Committee on Economic, Social and Cultural Rights has confirmed that guaranteeing the right to health obliges states to ensure that services, goods and facilities are available, accessible, acceptable and of good quality. While the right to health is progressively realisable, it imposes some immediate obligations on states including that there is a system of health protection that provides equal opportunity for everyone to enjoy the highest attainable level of health, access to essential drugs, equal and timely access to basic health services, and health-related education and information.

3. The right to life obliges the state to take appropriate steps to safeguard the lives of those within its jurisdiction.⁽²⁾ This includes implementing operational measures to protect those whose lives are at risk,⁽³⁾ and taking steps to reduce transmission including by providing financial assistance in order to reduce risks of persons having to undertake higher-risk activities out of economic necessity.⁽⁴⁾ The response to the pandemic clearly raises questions of compliance with the right to life. These includes questions relating to the right to life of persons resident in care homes, patients in hospital settings, persons in the community, and frontline health and social care professionals. Relevant issues include, for example, appropriateness of testing and protection measures in residential healthcare settings, and the provision of appropriate personal protective equipment.

References

(1) CESCR, General Comment 14: The Right to the Highest Attainable Standard of Health (Article 12), UN Doc. E/C.12/2000/4

(2) UN Human Rights Committee, General Comment No. 36: Right to Life UN Doc. CCPR/C/GC/36, esp. para 26; Article 2 of the European Convention on Human Rights

(3) *Stoyanovi v Bulgaria* App. 42980/04, Judgment, 9 November 2010, para 61

(4) Written evidence of Fiona de Londras, Alan Greene and Natasa Mavronicola to the Joint Committee on Human Rights (2020) COV0012, para. 2.1.

(<https://committees.parliament.uk/writtenevidence/920/pdf/>). See also Elizabeth Stubbins Bates, "Article 2 ECHR's Positive Obligations—How Can Human Rights Law Inform the Protection of Health Care Personnel and Vulnerable Patients in the COVID-19 Pandemic? *Opinio Juris*, 1 April 2020 (<https://opiniojuris.org/2020/04/01/covid-19-symposium-article-2-echrs-positive-obligations-how-can-human-rights-law-inform-the-protection-of-health-care-personnel-and-vulnerable-patients-in-the-covid-19-pandemic/>)

Adfer yn dilyn COVID

COVID recovery

1. We respectfully submit that there is a difficult balance to be made between short term challenges and medium- to long-term consequences arising from the pandemic. While there is a temptation to focus on the Covid-19 recovery, not least on account of the significant progress made in tackling the immediate health crisis, the scientific evidence suggests that the pandemic is far from over. We call the Committee's attention to the Welsh government's official data, which indicates that new weekly Covid-19 cases are rising to levels similar to those of January 2021. While Covid-19 deaths and hospital admissions remain low, they have been rising slowly but consistently since June and July.

2. It is, thus, clear that there are both short-term (pandemic management) and longer-term (post-pandemic recovery) concerns for the Committee to address. In this respect, and as we move into the autumn and winter months, the Committee may want to scrutinise any new "control plan" that the Government publishes, and to take evidence from the Minister for Health and Social Services, Chief Scientific Advisor, and Chief Medical Officer on the shorter-term plans for pandemic management.

3. In respect of medium and longer-term issues, the Committee will benefit from taking stock of the work of other committees during the fifth session of the Senedd. In particular, when addressing the human rights' dimension of the pandemic, the committee may want to look closely at the two reports published by the Equality, Local Government and Communities Committee into "inequality and the pandemic".(1) The first report has a clear focus on inequality and the disproportionate impact of the pandemic on particular groups of people, noting the role that pre-existing inequalities in the uneven distribution of the pandemic effects. The report also stresses the need for consultation with those most affected. The report contains a total of 44 recommendations ranging from short to medium term actions to make a post-Covid-19 Wales a

fairer country. It also includes recommendations to improve the quality of data regarding protected characteristic, internal procedures, and the monitoring of ongoing issues.

References

(1) Equality, Local Government and Communities Committee, Into sharp relief: inequality and the pandemic, August 2020, available at:

<https://business.senedd.wales/documents/s103882/Report%20Into%20sharp%20relief%20inequality%20and%20the%20pandemic.pdf>

Equality, Local Government and Communities Committee, Impact of Covid-19 on the voluntary sector, February 2021, available at: **<https://senedd.wales/media/d4jh52zz/cr-ld14075-e.pdf>**

Unrhyw faterion eraill

Any other issues

C3. A oes unrhyw faterion eraill yr hoffech dynnu sylw'r Pwyllgor atynt?

Q3. Are there any other issues you wish to draw to the Committee's attention?

1. There are now five committees looking at various aspects of the Covid-19 pandemic in the Senedd. We respectfully submit that the Committee may want to engage with the work of these committees, especially with the work developed by the Children, Young People and Education Committee, the Legislation, Justice and Constitution Committee, and the Culture, Communications, Welsh Language, Sports, and International Relationships Committee. We also envisage the Equality and Social Justice Committee engaging with human rights matters arising from the pandemic, and respectfully submit that the Committee may want to follow up closely their work. Coordination and collaboration between committees might also be appropriate to avoid duplication of work for committees and for persons and entities providing evidence. This might include joint consultations or, if useful and productive for Committees, the holding of joint sessions, including joint evidence sessions, in order to avoid fragmentation in the parliamentary consideration of pandemic management and recovery.