

Comisiynydd Plant Cymru Children’s Commissioner for Wales

Response to consultation on an inquiry into the consideration of powers of the Public Services Ombudsman for Wales:

The Children’s Commissioner for Wales is an independent children’s rights institution established in 2001. The Commissioner’s principal aim is to safeguard and promote the rights and welfare of children.¹ In exercising his/her functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC).² 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 and they may also make representations to the Welsh Ministers about any matter affecting the rights and welfare of children in Wales.³

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.⁴

Contact details

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This response is not confidential

¹ Section 72A Care Standards Act 2000

² Regulation 22 Children’s Commissioner for Wales Regulations 2001

³ Section 75A (1) Care Standards Act 2000

⁴ <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislationmeasuresrightsofchildren.htm>

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1. Own-initiative powers

- 1.1 We are broadly in favour of supporting 'own initiative' investigations by the Ombudsman however we would wish to reinforce the need for the Ombudsman to consult with the Children's Commissioner in relation to any investigations involving a child or young person, as outlined in the current Memorandum of Understanding. We would also wish to ensure that 'own initiative' investigations by the Ombudsman do not adversely impact on the scope and remit of the Children's Commissioner for Wales. As an independent human rights institution, it is imperative for the Children's Commissioner for Wales, to maintain his/her independence and to be seen as the organisation to contact in relation to complaints about potential breaches of children's rights.
- 1.2 For example, a possible conflict with the role of independent commissioners could occur if a young person were to make a complaint to the Ombudsman in relation to Social Services without having first made representation to the Office of the Children's Commissioner for Wales.
- 1.3 Our advice and support service provides free, confidential and independent advice for children and young people and the people who care for them through the 'Advice and Support Service'. The service is a source of help and support if children and young people and those that care for them feel that a child has been unfairly treated. Its' main aim is to safeguard and promote the rights of children and young people in Wales, providing independent and impartial advice based on the United Nations Convention on the Rights of the Child (UNCRC). The service is child centred and solution focused and as such seeks to resolve issues at the most appropriate level within a regulated service's organisational structure. In undertaking its role the Investigation and Advice team may signpost young people or their carers in the right direction to another organisation that may be more appropriately placed to work directly with them. Where necessary the Commissioner and his team has the power to look at individual cases to provide direct support and to investigate current matters of concern.
- 1.4 Any extension of powers for the Public Services Ombudsman must take into account potential extensions of powers to existing Commissioners offices, and must ensure that any such extension of powers does not conflict with the role and functions of existing Commissioners. For example, in its written submission to the recent independent review of the Children's

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Commissioner for Wales, the office argued for an extension of the powers of the Children's Commissioner for Wales.

2. Oral complaints

- 2.1 Article 12 of the United Nations Convention on the Rights of the Child (UNCRC) states that 'Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account'.
- 2.2 At present, as we understand, the Public Services Ombudsman for Wales can only accept complaints in writing which, we feel, may deter some children and young people in particular from complaining about issues that may affect their well-being.
- 2.3 We believe that the benefits of receiving and recording oral complaints far outweigh the disadvantages. It could also be argued that the current requirement within the Public Services Ombudsman Act goes against Equality legislation and prevents the Ombudsman from being fully accessible.
- 2.4 At the Office of the Children's Commissioner for Wales, children and young people can make complaints via email, text and answerphone, which ensures accessibility via a range of communication methods.

3. Complaints handling across public services

- 3.1 We agree in principle that a model for advising on complaints handling across public services would offer a consistent approach for public services to adopt. We do however have reservations in so far as maintaining the independent nature of the Commissioner's role and remit should the Public Services Ombudsman seek to undertake a co-ordinating role.
- 3.2 Providing publicity materials and information about complaints procedures in formats that are suitable for children is of significant importance. It may be useful to provide public services with direction on involving children and young people in the development of such materials to ensure that they are accessible and fit for purpose. The complaints booklet on making a complaint about the Children's Commissioner's office was developed directly with children and

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young people and provides a good model for accessible material. We would welcome the adaptation of this resource for use by authorities and the Commissioner's office would be in a position to assist and advice on this.

<http://www.childcomwales.org.uk/uploads/publications/324.pdf>

- 3.3 We would also wish to see staff across public services being encouraged to receive advice and training on handling complaints by children and young people. Such training should include clear information on responsibilities for ensuring that children and young people are made aware of their right to complain and their rights to advocacy. Staff must also be clear on the need to explain to children and young people what these rights and entitlements mean and how they can be exercised. Training should be underpinned by wider children's rights training on the UNCRC and the Welsh Government commitment to the UNCRC through the duty of due regard.

4. The Ombudsman's jurisdiction

- 4.1 We agree that the Public Services Ombudsman for Wales should be allowed to investigate complaints relating to treatment that has involved both public and private health care. This we believe would ensure that failings in any area of health care provision by private providers would be highlighted so that health boards would have to give serious consideration before commissioning these organisations to undertake treatments on behalf of the NHS in Wales.

5. Links with the courts

- 5.1 The laws which set up the Children's Commissioner for Wales' office mean that we cannot become involved with any legal proceedings, including court cases and decisions made by CAF/CASS Cymru. We are concerned that any extension of powers that allows the Public Services Ombudsman for Wales to consider a case that has or had the possibility of recourse to a court, tribunal or other mechanisms for review, has the potential to undermine the role of the Children's Commissioner who currently does not have such powers.
- 5.2 Without knowing the true extent of the proposed developments in relation to strengthening links with the courts, it is very difficult for the Children's Commissioner for Wales' Office to comment further on this matter. We do however feel that any new model may have

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ramifications for other Commissioners and may also present a hierarchical structure which will need to be explored in greater detail alongside the Future Generations Commissioner.

5.3 Under Section 22 the Future Generations Bill makes provision for the Future Generations Commissioner to exercise the same functions and duties that have been placed upon our Office under Section 72B of the Care Standards Act 2000. This is a duplication of the statutory functions of the Children's Commissioner for Wales and could lead to the removal of the functions of the independent human rights institution for children and young people in Wales. This could also have the same impact on the functions of the Public Services Ombudsman for Wales.

5.4 We are also unclear as to the extent of influence that the Future Generations Commissioner will have in relation to holding public service boards and other public bodies to account for issues affecting children and young people. Under Section 2(2) and Section 50 of the Bill and in exercising our functions of a 'public nature', we are concerned about the possible impact of the Future Generations Commissioner upon the independent human rights institution for children in Wales – the Children's Commissioner for Wales. Again, this could also affect the role and remit of the Public Services Ombudsman when considering any extension of powers.



Eleri Thomas
Deputy Children's Commissioner for Wales acting as Children's Commissioner for Wales
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