



Comisiynydd Plant Cymru Children's Commissioner for Wales

Introduction

This paper explains the Children's Commissioners for Wales' powers and gives examples of how they have been used by the Commissioner to promote change for children since 2001.

Established by the Care Standards Act 2000, the Children's Commissioner for Wales is an independent children's human rights institution. The Commissioner's remit is laid down in the Children's Commissioner for Wales Act 2001, which amended the Care Standards Act 2000. The principal aim of the Commissioner is to safeguard and promote the rights and welfare of children. This must be the Commissioner's overriding objective when undertaking her work.

A child is defined in the 2000 Act as a person under the age of 18, although the Commissioner is able to act on behalf of a young person who has been placed in local authority care ('looked after') who is over the age of 18 in some circumstances.

In carrying out her work, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC) – an international charter which sets out the minimum standards for children and young people wherever they live. The UNCRC underpins all of the Commissioner's work. 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.

Here is a summary of the Commissioner's powers:

- 1) The power to review the effect on children of exercise of functions or proposed exercise of functions of defined public bodies including Welsh Government.
- 2) The power to review and monitor how effective are the arrangements for complaints, whistleblowing and advocacy of defined public bodies in safeguarding and promoting the rights and welfare of children.
- 3) The power to examine cases in respect of individual children in certain circumstances.
- 4) The power to provide assistance to a child in certain circumstances.
- 5) The power to make representations to the Welsh Government about any matters affecting the rights and welfare of children which concern her and for which she does not have the power to act.
- 6) The Commissioner does not have the power to act in a number of defined circumstances:
 - Matters that have not been devolved to the National Assembly for Wales which include immigration and asylum, child poverty, justice and policing, and children in the military.
 - Where CAF/CASS (the Children and Court Advisory Service) is able to act.
 - Where Welsh Ministers have functions in respect of family proceedings.
 - From enquiring about or reporting on any matter that is or has been the subject of legal proceedings.

Further details about these powers and how they have been used are given below.



Strategic Context

Even where the Commissioner has the power to act, the Commissioner should ensure that:

- the exercise of her power is consistent with her policy priorities; or
- if the exercise of her power does not meet a policy priority, it addresses issues which the Commissioner considers should be a policy priority or is of sufficient seriousness that she should act in the circumstances; and
- she has sufficient financial and operational resources to dedicate to properly exercising her power.

The pursuit of social justice for children and young people has seen major pieces of work emanate from the office, as previous post-holders have independently decided to use their statutory powers in response to situations giving cause to concern for children and young people, those who care for them and those who care about them.

Power to review the exercise of functions or proposed exercise of functions of various public bodies including Welsh Government

The Commissioner may only review the exercise of functions in respect of the effect of those functions on children. A "Function" is everything a body is required or permitted to do i.e. its powers and duties and could include decisions on policy, procedure, practices, the provision or the commissioning of services, regulation and enforcement activity.

Power to review and monitor arrangements

The Commissioner has invoked use of powers to review and monitor arrangements on three occasions, twice during the first Commissioner's tenure and once during the previous Commissioner's term of office. *'Telling Concerns'* reviewed Welsh local authorities' arrangements for complaints, whistleblowing and advocacy services, whilst *'Children Don't Complain'* reviewed the arrangements that local education authorities had in place. The second post-holder used his statutory powers in relation to independent professional advocacy: *'Missing Voices'*. *'The Right Care: Children's Rights in Residential Care in Wales'* is a report published by the current post-holder, which included four recommendations made exercising her powers to review.

Power of examination

The *'Clywch'* report was published following the first post-holder's use of powers of Examination, which investigated allegations of child sexual abuse in a school setting, resulting in a range of recommendations being made to avoid such abuse happening again and leading to the setting up of the school counselling service. The Welsh Government's response to *'Clywch'* initiated a three-year programme of work in response to the detailed recommendations and introduced a range of new procedures, training and institutions to improve the safeguarding of children in schools. Local authorities and the WJEC also supported a number of important recommendations. Safeguards were introduced in assessment authorities and examining bodies, including the WJEC. An audit of local authorities undertaken by the Children's Commissioner in 2012 indicated a good or reasonable level



of compliance with many of the recommendations. The introduction of school-based counselling, one of the recommendations of the review has been widely welcomed.

Status of reports

Where the Commissioner reviews the functions or arrangements of a certain organisation the Commissioner must:

- prepare a report setting out her findings and conclusions and if appropriate her recommendations;
- send copies of the report to the First Minister for Wales, the libraries of the National Assembly for Wales and the Houses of Parliament; and
- send copies of the report to the organisation whose functions have been reviewed and / or to the organisations to which the Commissioner has made recommendations.

Where the Commissioner has made recommendations to certain organisations the Commissioner can ask that organisation three months after sending the report whether that organisation:

- has complied with the recommendations made.
- will comply with the recommendations made ; or
- will not comply with the recommendations made (including reasons why it will not comply with).

If the organisation fails to respond in such a manner as she determines is appropriate the Commissioner can publish this failure to respond.

If the Commissioner believes the compliance with the recommendation is inadequate the Commissioner can send a written notice setting out the inadequacies which the organisation must respond to within one month.

If the organisation fails to respond within the month the Commissioner can send a further request giving the organisation a further month to respond.

The Commissioner can state a failure to respond to the Commissioner's satisfaction will result in the Commissioner publishing her dissatisfaction in such a manner as she deems adequate

Provision of Assistance

Our Investigations and Advice service provides free, confidential and independent advice for children and young people and the people who care for them. 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 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 parents /carers in the right direction to another organisation that may be more appropriately placed to work directly with them. Where necessary, the Commissioner and her



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team has the power to look at individual cases to provide direct support and to investigate current matters of concern.

Register of reports

There is a statutory obligation requiring the Commissioner to maintain a register of reports made by the organisation. This register of recommendations is available on request.

Since 2008, in addition to our Annual Reports and other types of publication such as guides and videos, we have published a number of reports on topics including child trafficking, young carers, advocacy, pupil referral units and wheelchair accessibility at secondary schools. All our reports can be found on our website, under ['Publications'](#).