

**A Review of the
Welsh Government's
exercise of its
functions, by the
Children's
Commissioner for
Wales**

February 2021



**Comisiynydd
Plant Cymru
Children's
Commissioner
for Wales**

Foreword

By Professor Sally Holland, Children's Commissioner for Wales

Since my appointment, my approach as Children's Commissioner has been to work with Government as a critical friend; to highlight weakness in systems that should be there to protect children's rights and basing my opinions and recommendations firmly on solid evidence. In very many policy areas that approach has worked to bring about change to benefit children and young people. For the last five years, my team and I have attempted to work with Government to implement what we believe to be critical changes required to make sure children who are home educated are not only protected but also have access to the very best education. In those five years, there has been much activity but no real progress. Sadly, we have reached 2021 with elective home education processes remaining as under-regulated as they were when an eight year-old child tragically died in 2011.

Since hearing first-hand experiences of a young person attending an independent school in 2019, and subsequently highlighting loopholes that have been in existence for almost two decades in safeguarding procedures at these establishments, I have attempted to work with government to implement much-needed changes within these independent establishments.

Yet despite presenting opinions, evidence, suggestions and recommendations, the situation in relation to elective home education and independent schools remains the same.

The decision to instigate this Review, the first of its kind by this office, during a global health crisis was not taken lightly. I was adamant that Government's efforts should not be re-directed from the pandemic, and ensured that the review methodology required minimum resource and action from Welsh Government.



However, the problem with the lack of progress on these two particular policy issues is this: these are not new issues brought to the government's attention recently. They span two Government terms. While I acknowledge the huge diversion of Government resources that have taken place to respond to the pandemic, my concern is that these delays are long-standing and may continue in years to come without concentrated effort to address the issues outlined in my report.

As we approach a new term for Welsh Government, there remained just one more option for my office: to review Government's actions in relation to these matters with the aim of securing an understanding of how these policy areas have failed to progress and a clear roadmap for what needs to happen with urgency during the newly-elected Government's programme of work. By conducting this review I am providing an opportunity for the next Government to have a clear agenda in these matters from the start of what will undoubtedly be a challenging period.

It would be remiss of me not to conclude here with a hugely important message to pupils who may be home educated or who attend independent schools in Wales: my aim with this work is to protect some of your fundamental rights, not only to be kept safe and well but to receive the very best education and to have your views and opinions heard.

I have spoken with many of you who are either home educated or are educated in an independent school, who feel safe, are having fabulous experiences and are thriving — I want to make sure Wales is a country which offers this to every child.

Acknowledgements

In carrying out this Review, we are grateful to the external organisations who have sent us information and documentation to assist us in carrying out this task. We have also benefited from the advice of the Commissioner's adult and young people's Advisory Panels throughout our consideration of the policy and casework issues that this Review covers.

The Senedd's Children, Young People and Education (CYPE) Committee has kept a close eye on these policy areas throughout the fifth Senedd Term and I am grateful to Committee members past and present for their persistence in their inquiries, written and oral questions, and their diligent scrutiny of both the Government and my office in these important policy areas in respect of children's rights.



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Executive Summary

This Review is the first time that the office has used the power to review the exercise of functions of the Welsh Government under Section 72B Care Standards Act 2000. The Review has been undertaken in respect of the Welsh Government's response to the Dylan Seabridge Child Practice Review published July 2016, implementation of their public commitments following this, the basis for decision making relating to the policy areas of home education and independent schools within Welsh Government and the consideration of children's rights under the United Nations Convention on the Rights of the Child (UNCRC) throughout all of this work.

My team and I have reviewed documents in the public domain and in my office's possession, primarily dating back to 2015, although some earlier documents have also been considered as relevant.

Despite a number of actions taken by the Government, I have concluded that very little, if any, substantive progress has been made in either of the two policy areas under consideration (home education and independent schools).

Home education

Consultations on revised guidance for home education in Wales have been under consideration throughout my term as Commissioner.

A lot of work has happened within Welsh Government in relation to this policy area, but this work has been affected by delays, despite pursuit of an approach using existing legislative powers which has curtailed the Government's ability to fully achieve their policy aims. There has also been, in our view, a lack of clarity of those policy aims. This is because the policy work has not always explicitly linked back to the Dylan Seabridge child practice review recommendations, which recommended that all elective home educated children should be seen and spoken to and their wishes recorded on an annual basis.

Further reports and consultation responses highlighted the same issues, so the Government has had a clear roadmap of the necessary changes required. The Government initially chose to make changes under powers in the existing legislation; this Review has shown the deficiencies in this approach. The approach was also intended to achieve swifter changes than would have been achieved by creating new primary legislation.



Unfortunately, the net result is that no substantive change has actually been achieved by any means. The issue will roll over for a third successive Government term to be considered again.

In deciding not to proceed with changes to the guidance and regulations in 2020, the Government failed to consider children's rights as part of that decision. They also do not appear to have considered how this decision affected other policy work, such as revised guidance for children's routine engagement with universal services.

Independent Schools

In respect of safeguarding in independent schools, the Review evidences that the Government has been aware of the need to make changes to strengthen the safeguarding and regulatory provisions that they need to comply with for up to 18 years. The Education Workforce Council (EWC) informed us that their predecessor organisation raised this issue 18 years ago.) However, the Government has failed to make any such changes despite a serious case that arose in 2019 at an independent school in Denbighshire. Professionals involved in that case highlighted how differently the case would have been handled had the behaviours of the head teacher taken place in a maintained school.

Only the Government, as the registrar and regulating body, has the ability to take action in respect of failings at independent schools, as well as to learn lessons and strengthen the legal standards that such schools have to comply with.

Proposals for teachers from independent schools to be registered with the Education Workforce Council were supported in a review undertaken just prior to the end of the fourth Senedd Term in 2016. These proposals were not taken forward by the new Government however, and we now reach the end of the fifth Senedd Term without any progress having been made. The Government has not yet resolved the question of whether primary or secondary legislation is needed in order to make these changes, so there is no clear proposal ready for a new Government to take forward despite the passage of another five-year term.

Findings

I have made findings in relation to:

- Insufficient consideration of children's rights;
- The accountability of the Government's consultations process;
- Lack of focus on outcomes for children in choosing the most appropriate legislative route for policy change;
- The regulation of independent schools by Welsh Government;
- Deficiencies in the procedures for sharing and learning from Child Practice Reviews;
- Ongoing concerns about cross-governmental working; and
- Gaps in the legal framework supporting my own organisation's legislative powers to review the actions of the Welsh Government.



I have concluded that the current Welsh Government has failed to respond adequately to:

- The learning identified following the death of Dylan Seabridge in 2011; and
- The safeguarding concerns related to independent schools that they reviewed between 2014-16.

In doing so, the Welsh Government has not complied with its legal duties pursuant to the Rights of Children and Young Persons (Wales) Measure 2011. The Government is required, by Article 4 of the United Nations Convention on the Rights of the Child to “undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention” and I do not find that this has been the case.

I am expecting the current Government to respond to this report within 3 months, prior to the end of the Senedd term, in accordance with my legislation.



ROLES OF THE CHILDREN'S COMMISSIONER AND WELSH GOVERNMENT

The Children's Commissioner for Wales' office was established by the Care Standards Act 2000ⁱ. The creation of an independent champion for children was one of the recommendations of the Waterhouse Report on the physical and sexual abuse of children in care homes in north Wales, which found that their voices had not been heard, listened to or acted upon. Wales was the first country in the UK to establish such a post, which is now in place in all of the UK Nations and Jersey.

The principal aim of the role, as set out in legislationⁱⁱ is to "safeguard and promote the rights and welfare of children" in Wales, in exercising all of their functions.

The provisions in the Care Standards Act are supplemented by the Children's Commissioner for Wales Act 2001ⁱⁱⁱ and the Children's Commissioner for Wales Regulations 2001^{iv}. The Commissioner is required to have regard to the United Nations Convention on the Rights of the Child (UNCRC) in all of their work^v.

In Wales, the UNCRC has been partially incorporated into Welsh legislation through the Rights of Children and Young Persons Measure 2011. The Measure requires Welsh Government Ministers (and their officials when acting on their behalf or providing them with advice) to have due regard to the UNCRC. One of the primary ways in which the Government demonstrates its regard for children's rights is through the creation and publication of Children's Rights Impact Assessments (CRIA).

However, the CRIA itself is not the start and end of due regard; it is simply one way in which that regard can be demonstrated. In other words, the publication of a CRIA does not in itself equal the discharge of the Government's duties under the Measure.

This Review was undertaken pursuant to the power in the Care Standards Act 2000, section 72B (1):

"The Commissioner may review the effect on children to whom this Part applies of-

(a) the exercise or proposed exercise of any function of the [Welsh Ministers, the First Minister for Wales or



the Counsel General to the Welsh Assembly Government], including the making or proposed making of any subordinate legislation; or

(b) the exercise or proposed exercise in relation to Wales of any function of any person mentioned in Schedule 2A.^{vi}

The Regulations provide for any report created as a result of a Review under this power to be sent to the First Minister and to the libraries of the Assembly (Senedd) and the Houses of the UK Parliament.



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POLICY

BACKGROUND

A. Elective Home Education

Requirements relating to parents

The legal position in Wales is that parents^{vii} may educate their children at home providing they fulfil the requirements of section 7 of the Education Act 1996:

The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable — (a) to his age, ability and aptitude, and (b) to any special educational needs he may have, either by regular attendance at school or otherwise.

Parents are not required to register or seek approval from their local authority nor any other body to home-educate their children. The only exception to this is cases where a child is attending a special school under arrangements made by the Local Authority and parents seek to de-register the child. In this instance, a parent must obtain permission from the local authority before the child's name can be removed from the school register.^{viii}

If a child is registered at a mainstream school when the family decides to home educate, then the parent needs no approval process and can give written notification to the school in order for the child's name to be removed from the school roll.^{ix} The school must notify the local authority of this decision within ten school days.^x

If parents decide to home educate their child before they reach school age, and the child is never entered onto a school register, there is no statutory obligation whatsoever on the parents to inform their local authority, or any other body, of this decision.



When families move from one local authority area to another, there is no duty on the parent to inform their new local authority they are home educating. Home educators should be prepared to assume full financial responsibility for the education and they are not required to follow a particular curriculum or approach. Home-educated children are not required to take any national exams or assessments, though some home-educated young people do choose to take national and indeed international qualifications.

Encouraging families to home educate to avoid exclusion or penalties for non-attendance is a practice sometimes referred to as 'off-rolling'. Schools are given clear instructions not to engage in this practice in statutory guidance to help prevent children and young people missing education published by Welsh Government in 2017.^{xi} This practice also sits outside of the legal framework for exclusion^{xii} and the use of penalty notices for regular non-attendance.^{xiii}

Expectations of local authorities

Currently, local authorities in Wales offer varying degrees of support to home educating families, and this support offer can include home visits, help with entering qualifications and opportunities to network and socialise. However, local authorities are not under any statutory obligation to support the provision of elective home education itself.

In carrying out their statutory duties and in engaging with families who are or who may be home educating, local authorities in Wales should have due regard to Welsh Government non-statutory guidance, issued in 2017^{xiv}. This guidance encourages supportive activities such as those described above, but also states, *'LAs do not receive funding for a child who is home-educated and are not legally obliged to provide any financial support for that child'*.

The guidance also sets out steps a local authority might take when a family decides to home educate, and these non-mandatory steps include making contact with the family and offering to visit the family. There is no obligation for a family to accept this visit. The guidance states that, *'Where a family does not wish to engage with the LA, education officers should consider whether it is necessary to contact other services to enable information to be shared which might highlight any welfare concerns for either the child or family.'* In the absence of information that highlights a concern, the guidance suggests the local authority *'considers writing to the family every 6-12 months'*.

The All Wales Attendance Framework^{xv} states that, in cases where there is existing evidence of cause for concern about a child who is home educated, the local authority, *'should immediately refer these concerns to the appropriate statutory authorities using established protocols. Otherwise, the LA should assume that efficient educational provision is taking place, which is suitable for the child, unless there is evidence to the contrary. There is no express requirement in the 1996 Act for LAs to investigate actively whether parents are complying with their duties under Section 7.'*^{xvi} This guidance appears to more strongly direct action in cases of concern than the 2017 non-statutory guidance, but expressly directs away from action to investigate whether a suitable education is being provided.



However, this statement is contradicted by Welsh Government's 2017 Statutory Guidance to help prevent children and young people missing education^{xvii}. This states at paragraph 7.33 that, *'Case law has established that a local authority may make informal enquiries of parents who are educating their children at home to establish that a suitable education is being provided.'* However, this same guidance also makes clear at paragraph 7.35 that, *'There is no legal framework for the LEA to regularly monitor provision of home education nor an automatic right of entry to the parental home to check the standard of education the child or young person is receiving.'*

An analysis of the shortcomings of these guidance documents is included later in this report.

Identifying children missing education

Section 436A of the Education Act 1996 places a duty on local authorities to make arrangements in their area to enable them to establish (as far as it is possible to do so) the identities of children in their area who are of compulsory school age but:

- are not registered pupils at a school, and
- are not receiving suitable education otherwise.

Local authorities have long argued that they have difficulty in meeting these requirements as there is no duty for parents in their area to inform them they are home educating, and they do not have the requisite powers to assess the education that home educated children receive.^{xviii} In attempting to identify children in their area who are not receiving a suitable education, local authorities must have regard to Welsh Government's 2017 statutory guidance to help prevent children and young people from missing education.^{xix}

This states that if there is *'good reason to believe that parents are not providing a suitable education, local authorities are able to serve a School Attendance Order on the parents. This will allow a period of at least 15 days for the parent to provide the authority with whatever information they require to satisfy themselves about the suitability of the education.'*

This Review includes a very detailed chronology at Appendix B in respect of home education, and a summary version at pages 21-22 within the body of this report. However, to provide relevant context, concerns about the lack of regulation around home education in Wales (and the UK as a whole) have been raised over a number of years. In Wales, a boy named Dylan Seabridge died at age 8 in 2011. Dylan had been educated at home for his whole life, never having attended school. He had not accessed health care services or other universal services since he was a baby.

The Child Practice Review (CPR) undertaken in relation to his death concluded that agencies had acted in accordance with the current legislation and guidance in his case. He was known to the local authority but they were unable to gain entry to the home to see or speak to Dylan about his education and his rights as parents prevented access. The report concluded with a recommendation for the safeguarding board to "[w]rite to the Welsh Government, asking for changes to the legislation and statutory guidance on elective home educated children, to incorporate a requirement that parents and guardians annually register all such children with the Local Authority.



In addition to this, that all such children should have to be seen and spoken to and their views and wishes are recorded annually. The legislation should state that the information held is also to be shared with the family GP and other relevant professionals.”

A 2017 report commissioned by the National Independent Safeguarding Board reached similar conclusions.

Following years of influencing work, as set out within this report and the detailed chronology at Appendix B, in 2018 the Children’s Commissioner for Wales (CCfW) published three tests for achieving suitable policy change in respect of home education.

These tests are as follows:

- Firstly, that all children in Wales can be accounted for and that none slip under the radar of universal services, and society in general.
- Secondly, that every child receives a suitable education and their other human rights, including health, care and safety.
- This cannot be achieved without the third aim, that every child should have the opportunity to be seen and their views and experiences listened to.

This report will analyse progress against these recommendations and tests in detail.

B. Independent Schools

Registration and inspection of independent schools

Section 463 of the Education Act 1996 defines an independent school as any school that is not maintained by a local authority and which provides full time education for:

- i. five or more pupils of compulsory school age; or
- ii. one or more pupils of compulsory school age with a statement of special educational needs, or who is in public care (within the meaning of section 22 of the Children Act 1989).

All independent schools in Wales must be registered with the Welsh Government and an application for registration must be made before a school admits any pupils. It is illegal to operate an unregistered school. Requirements for registering a school are set out in the Independent Schools (Provision of Information) (Wales) Regulations Wales 2003.^{xx}

The Independent School Standards (Wales) Regulations 2003^{xxi} set out the standards that all schools must satisfy to become registered, and to remain registered. Standards relate to the quality of education, the spiritual, moral, social and cultural development of pupils, and the welfare, health and safety of pupils. Estyn, the education and training inspectorate for Wales, inspects independent schools to judge compliance with these standards before an application for registration is approved; subsequently between 3 and 6 months after registration is approved; and thereafter, during regular inspections within six years. Inspection will be more frequent where a school is giving cause for concern.



Additionally, Estyn visits independent schools with pupils with statements of special education needs annually. Inspection reports need to be published as set out in the Independent Schools (Publication of Inspection Reports) (Wales) Regulations 2003.

Welsh Government guidance on the registration and operation of independent schools^{xxii} states that, *'Schools will not be registered unless they meet the standards. If, after registration they do not meet the standards the Welsh Government will require shortcomings to be put right. The Welsh Government may remove a school from the register if it is satisfied that one or more of the standards is not being met or that pupils are at risk of serious harm. It is illegal to operate an unregistered school, so any school removed from the register must close.'*

Amendments to the regulatory framework around independent schools were made in 2007, in part to clarify requirements in relation to criminal records checks, and also to require additional information to be provided about members of a corporate body which is the proprietor of an independent school. Further amendments were made in 2009 to reflect changes arising as a result of the barring provisions in the Safeguarding Vulnerable Groups Act 2006.

As part of the registration application, independent schools must satisfy the Welsh Government of the suitability of the proprietor, and the proprietor (the person or persons responsible for the day-to-day management of the school) must be subject to a check undertaken by the Disclosure and Barring Service (DBS).

Staff in independent schools must also be DBS checked, and Welsh Government 2014 guidance for independent schools states, *'Any school that fails to ensure that staff and/or volunteers are DBS checked, or which appoints a person in contravention of a prohibition or restriction, may have seriously breached standards. The school may be struck off the register of independent schools and forced to close.'*^{xxiii}

There is no requirement for proprietors, staff or volunteers at the school to be registered with the Education Workforce Council (EWC) for Wales.

Independent schools with boarding accommodation

If there is an application to provide new boarding accommodation at a new or existing school, Care Inspectorate Wales will also visit the school to assess provision against the National Minimum Standards for Boarding Schools^{xxiv} before a decision is made about the application.

Thereafter, Care Inspectorate Wales will inspect boarding accommodation and pupil welfare in boarding schools at least every 3 years, but annually in schools with pupils with statements of special education needs or schools also registered as a Children's Home. Care Inspectorate Wales may visit any school providing residential accommodation at any time, announced or unannounced. The standards cover five broad areas as follows: welfare policies and procedures; organisation and management; welfare support for boarders; staffing; and premises.

Where there is an application to provide new residential care, as a Children's Home with educational provision, there will need to be a separate application to register the care element of the provision directly with Care Inspectorate Wales, and the Welsh Government National Minimum Standards relating to residential special schools will apply.^{xxv}



Safeguarding in independent settings

Welsh Government's 2020 Keeping Learners Safe guidance^{xxvi} applies to safeguarding children in independent and maintained education settings and this guidance highlights the legal obligations relevant to all settings. There is a specific section of this guidance for independent settings, and this section notes that '*Proprietors of independent schools have similar responsibilities to those of governing bodies of maintained schools but cannot rely on local authorities to provide advice and support in the same way as they do for maintained schools.*'

Removing a school from the Register of Independent Schools

If the Welsh Government considers that a school fails to meet one or more of the standards or that there is a risk of serious harm to the welfare of the pupils, it may order that the school be removed from the register of independent schools. This process is set out in operational guidance^{xxvii}, which specifies that usually the Welsh Government will first notify the school; and require the proprietor to submit an action plan within a specified period of time. Welsh Government will then reject the plan; or approve the plan, with or without modifications.

At the request of the Welsh Government, Estyn will visit the school to check the progress of an approved action plan. If the plan is rejected, Welsh Government may determine that the school is to be removed from the Register of Independent Schools; or make an Order requiring the proprietor to cease using any specified part of the school premises, close any part of the school's operation, or cease to admit any new pupils as specified by the Order.

If an action plan has been approved but the steps identified have not been taken by the required date, the Welsh Government may: substitute a later date; make an Order as above; or determine that the school is to be removed from the Register of Independent Schools. The proprietor has a 28-day right of appeal.

Under Section 169 of the Education Act 2002, the Welsh Government can also remove a school from the register if a person working there, or the proprietor, is unsuitable to work with children or to take part in the management of a school. Regulations list persons deemed unsuitable to work in independent schools^{xxviii} and these include persons unsuitable on grounds relating to the person's misconduct and on grounds of professional incompetence.

This Review includes a very detailed chronology at Appendix C in respect of independent schools, and a summary version at page 27 within the body of this report. However, to provide relevant context, concerns about loopholes in the regulations have been raised with Government by the Education Workforce Council (EWC). Teachers at independent schools are not required to register with the EWC so they cannot take disciplinary investigations or actions in respect of such teachers. This report sets out a particular case that arose in Wales in 2019 which illustrates why this is a concern, but in fact this legislative gap had been on the Government's radar for a number of years prior to that case.

In addition, the standards in the 2003 regulations have not been amended or updated, whereas changes have been made in England to the corresponding regulations since then. Estyn have previously highlighted some potential areas for the standards to be updated, including revisions to standard 4 to require regular renewal of DBS checks of proprietors and staff, including at any material change of leadership, and enhancement of standards in respect of leadership and management.



This is alongside the concern about teachers at independent schools needing to be registered with the Education Workforce Council as referred to throughout this report and Appendices.

C. Child practice reviews

The Child Practice Review (CPR) process stemmed from the Care and Social Services Inspectorate Wales report published in October 2009: *Improving Practice to Protect Children in Wales: An Examination of the Role of Serious Case Reviews*.

Child Practice Reviews replaced Serious Case Reviews, which had been in place for both England and Wales. The move towards CPRs in Wales was intended to shift the tone towards learning from previous practice matters as opposed to apportioning blame.

Regional safeguarding boards are responsible for undertaking Child Practice Reviews (CPR) in Wales. There are six regional safeguarding boards in Wales^{xxx}, who co-ordinate, and ensure the effectiveness of, work to protect and promote children's welfare and wellbeing in their area. They are responsible for local child protection policy, procedure, guidance and training. Each board includes senior representatives from local public bodies:

- local authority
- chief officer of police
- local health board
- NHS trust, and
- provider of probation services that falls within the safeguarding board area.

Welsh Government guidance^{xxx} sets out when a CPR should be undertaken, and there are two types of review: Concise and Extended. Reviews must be undertaken where abuse or neglect of a child is suspected or known and the child has died or suffered a potentially life threatening injury or sustained serious and permanent impairment of health and development. Concise reviews are undertaken when a child was neither on the child protection register or looked after six months prior to the date of the event. Extended reviews are undertaken if the child was on the child protection register and / or was a looked after child in the six months preceding the date of the event. The guidance also provides for a Multi-Agency Professional Forum to take place where the criteria for a full CPR are not met.

A draft anonymised report and an outline action plan are produced and presented to the Regional Safeguarding Children Board (the Board). Board members consider the conclusions of the review, and identify the strategic implications for improving practice and systems to be included in the action plan.

The final report is approved by the Board, submitted to the Welsh Government and then published by the Board. The action plan is finalised within four weeks of the final report, approved by the Board, and forwarded to the Welsh Government **for information** (emphasis added). The implementation of the action plan is regularly reviewed and progress reported to the Board.

The Chair of the Board will submit the report to the Safeguarding Team of the Welsh Government who will then draw in other parts of the Welsh Government and the health/education/care Inspectorates as appropriate, for information purposes.



The finalised CPR report together with the summary timeline will be published on the Board website for a minimum of 12 weeks. A reference on the website thereafter will indicate that the report may be available on request.

In 2015 Cordis Bright were commissioned to undertake a review of the implementation of Child Practice Reviews^{xxx}. They found that there was universal support for the new CPR process, and stakeholders they had spoken to demonstrated a high degree of commitment to make the process work. Although there was widespread acknowledgement among stakeholders that the new process added a considerable amount of additional work for professionals, there was a genuine recognition and acceptance of the need to get the process right, to support frontline practitioners and managers and to engage families in a more positive way. There was recognition of the differing quality in some parts of the process and how delay had, on occasion, impacted upon quality, but it was felt that quality would improve as more CPRs are undertaken and with increasing awareness of the new process. This could then have a positive impact on the wider level of practice learning across Wales. Finally, stakeholders were keen to be involved in developing a process for national dissemination of the findings.

The Welsh Government undertook a review of all CPR notifications they had received in 2018^{xxx}, as part of the consideration of how safeguarding and education issues should be taken forward.

Where a multi-agency professional forum (MAPF) takes place in lieu of a concise or extended CPR, Welsh Government will be notified of this but there is no requirement for these reports to be shared or published.

The Welsh Government's internal review identified a number of CPRs where the child was electively home-educated, and one where the child was in receipt of home tuition and actions were not followed up to ensure her education or safety. A number of the CPRs noted that parents were demonstrating compliance with the current guidance by producing evidence of their child's education and some engagement with the local authority.

As a result of reviewing these notifications, the Welsh Government resolved to produce information sharing guidance (this was completed in 2019), to include within the multi-agency procedures some triggers for following up on concerns; and to look at the opportunities to ensure children's safety through routine contacts with universal services such as health.

Guidance around contacts with universal services has not been able to be progressed sufficiently due to the statutory guidance not being taken forward.

Welsh Government Statutory Guidance on CPRs was updated in 2019^{xxx}. The Guidance refers to the UNCRC but only in the context that it was ratified by the UK in 1991. It does not refer to Welsh Government duties under the 2011 Measure.

The guidance was updated to reflect the production of the revised All Wales Safeguarding Procedures (formerly the All Wales Child Protection Procedures) but no substantive changes were made.

In 2019 however, the National Independent Safeguarding Board (NISB) commissioned Cardiff University to undertake a Thematic Review of CPRs; the report was published in late January 2020^{xxx}.



This Review made a number of recommendations including the need for CPR reports to be available for longer than 12 weeks, and for the learning to be routinely shared on a pan Wales level, using creative methods of distribution and information sharing have not been implemented

The NISB was set up under the Social Services and Well-being (Wales) Act 2014. Specifically, the National Board has three primary duties. These are:

1. To provide support and advice to Safeguarding Boards with a view to ensuring that they are effective
2. To report on the adequacy and effectiveness of arrangements to safeguard children and adults in Wales
3. To make recommendations to the Welsh Ministers as to how those arrangements could be improved (S.132 (2)).

The regulations made under the 2014 Act set out the way in which the National Board must exercise its functions.



METHODOLOGY

In order to complete this Review swiftly, and for any lessons arising to be responded to by the current Government, we decided to work from existing documentation only. In the context of the Covid-19 pandemic and the fast-approaching end to the five-year Senedd Term, it was neither necessary nor desirable to require additional evidence papers or witness statements to be produced for the purpose of conducting this Review.

In addition, working from the papers that were already in existence allowed us to look at how information and issues were being presented *at the time* by going back to the original documentation. This enabled us to look at the wording used at the time, not the wording that would be used to represent or explain Government actions looking back from 2020, in the context of a statutory Review being undertaken.

On 7th September 2020 we wrote to the Welsh Government to advise of our intention to undertake this Review, and shared with them the draft Terms of Reference. On 25th September, following the formal announcement of the Review in our *Coronavirus and Us* report published on 22nd September, we wrote again to the named contact in Welsh Government to request any or all of the following from 1 January 2015 — until present day:

- Any Cabinet papers and minutes in relation to Elective Home Education or Independent schools;
- Any ministerial instructions and advice received in relation to Elective Home Education or Independent schools;
- Any briefings on Elective Home Education or Independent schools for meetings with the Commissioner or any member of her team;
- All responses to the 2015 consultation on Draft non-statutory guidance for local authorities on Elective Home Education (anonymised as relevant);
- All responses to the 2019 consultation on Draft statutory guidance for local authorities on Elective Home Education (anonymised as relevant);
- All responses to the 2020 consultation on Draft regulations for a database on Elective Home Education (anonymised as relevant);
- Papers from external agencies, where advice has been provided to the Welsh Government Elective Home Education or Independent schools; and
- Any other papers deemed by the Commissioner to be relevant to this Review.



The deadline for receipt of these papers was Friday 30th October 2020.

Welsh Government were unable to meet this deadline. While informal discussions took place about practical arrangements to transfer or view documents, it took 55 working days to receive an official written response from the Welsh Government to our request, on 11th December 2020.

That response indicated that they “estimate that [they] will be able to provide more information on what documentation will be released in the week commencing 21 December”, so simply that an update would be provided in 10 days’ time rather than necessarily providing the documents requested. The response also indicated that our request would now be treated as a Freedom of Information (FOI) request despite it having been made pursuant to our statutory powers.

After considering the response, the timings involved and the weight of evidence already available to us, this request was declined by our office.

We did however receive in late November 2020 redacted/anonymised copies of the consultation responses from the Government’s 2019 consultation on statutory guidance on home education, and the 2015 consultation on revised non statutory guidance.

The difficulties in obtaining some relevant data from Welsh Government are detailed here because they illustrate gaps in the legislation relating to the powers of the Children’s Commissioner to obtain the evidence she requires to perform the type of review of Government (or other public bodies) that was envisaged when the role was originally established. The implications of this are explored further in the recommendations section of this report.

We had also requested papers from other organisations in order to triangulate the information feeding into this Review. We requested papers from the following organisations:

- Association of Directors of Education in Wales (ADEW)
- Association of Directors of Social Services (ADSS) Cymru
- Wales Independent Schools Council (WISC)
- Education Workforce Council (EWC)
- Estyn
- Care Inspectorate Wales (CIW)
- National Independent Safeguarding Board (NISB)
- All regional safeguarding children’s boards in Wales.

Papers were received from all of the above organisations except CIW who, as an arm of Government, were unable to provide a separate response to the papers already requested of them.

The Terms of Reference (TOR) for the Review can be found at APPENDIX A.

The relevant legal power under which this Review was conducted does not require TOR to be produced or agreed but we did so and provided them to Government to comment upon prior to commencing the Review, as a matter of good practice.



No suggested amendments were received in relation to the TOR but Government in their response of 24th September 2020 (after the Review had formally commenced) did seek to clarify one aspect in relation to Independent Schools, namely that “under section 157 of the Education Act 2002 proprietors of independent schools must comply with our statutory guidance Keeping Learners Safe: the role of local authorities, governing bodies and proprietors of independent schools under the Education Act 2002 for the purpose of meeting standards set out in regulations and exercise their functions in a way that takes into account the need to safeguard and promote the welfare of children.”

This position is explored further within this Review as to the extent each statutory provision applies to independent schools.

The main sources of data for this Review are meeting notes (both internal Children’s Commissioner for Wales (CCfW) contemporaneous notes and official meeting minutes), and formal correspondence with the Welsh Government, to reflect where issues have been escalated and how they have responded, rather than presenting every single interaction on each topic.

What we have done, however, in order to ensure coverage of all of the important and published documents alongside the document requests is to search through the following records for key terms related to the Review:

- CCfW emails;
- CCfW internal SharePoint system;
- Welsh Government website;
- Senedd website and records of proceedings.

It should be noted that CCfW has a document retention policy that applies to all members of staff; this may mean that some historic records are no longer available.



CHRONOLOGIES

In order to track the progress of policy and legislative commitments that had been made by Government, alongside the actions and calls of external organisations including CCfW, we have collated two separate chronologies, in respect of elective home education and the regulation of independent schools.

Despite the limitations noted in this report's methodology section, these chronologies are extensive documents, and compiling and analysing these documents formed the main bulk of actions in our Review. We have included an analysis as at end of December 2020, to reflect on the statements and commitments made along the way, and whether or how these have been implemented. In themselves, these chronology documents run to hundreds of pages, so they are appended to this report for ease of reference.

[Appendix B: Elective home education chronology](#)

[Appendix C: Independent schools chronology](#)

I make no apologies for the length and extent of these papers; this being the first time such a Review has been undertaken it was felt to be important to demonstrate how CCfW have approached this work, and to be fully accountable to Government, external agencies, and children and their families in how the team have considered and reached our conclusions.



CONSIDERATION AND ANALYSIS OF GOVERNMENT ACTIONS

As noted by the detailed chronologies that we have considered, my team and I have considered a large volume of documents, running to thousands of pages.

In doing so, I have found limited evidence as to how the Welsh Government has actively considered children's rights in responding to the Dylan Seabridge Child Practice Review (Seabridge CPR).

Meeting notes, correspondence and plenary questions repeatedly draw back to the Seabridge CPR^{xxxv}. However, it is evident that it was almost always CCfW, Members of the Senedd and other organisations that made the links back to the Seabridge CPR during discussions; this rarely came proactively from the Welsh Government. The Welsh Government re-issued non-statutory guidance on elective home education in January 2017^{xxxvi}, just six months after the publication of the Seabridge CPR, but this guidance did not address the concerns that the CPR had raised.

It is necessary in responding to any report's recommendations to consciously take account of the points raised in full, otherwise it cannot be guaranteed that the actions being taken actually respond to the concerns that are trying to be addressed through the details in those recommendations.

It is evident that the Government have undertaken many actions since the 2016 report such as the re-issue of non-statutory guidance and consultation on statutory guidance but it is nevertheless evident that **no substantive changes have been made to any guidance that would reflect the learning from the Seabridge CPR.**

Recommendation 1 of that CPR was for the safeguarding board to *"[w]rite to the Welsh Government, asking for changes to the legislation and statutory guidance on elective home educated children, to incorporate a requirement that parents and guardians annually register all such children with the Local Authority. In addition to this, that all such children should have to be seen and spoken to and their views and wishes are recorded annually. The legislation should state that the information held is also to be shared with the family GP and other relevant professionals."*

Neither the legislation nor the statutory guidance have been substantively altered, and there is no current requirement for all children to be seen and spoken to at any frequency, nor is there a specific information sharing requirement above and beyond general child protection reasons.



Elective home education (EHE)

Below is set out a very high level, summary chronology of key points in the policy journey for home education. A far fuller chronology is set out at Appendix B; this section is included here for ease of reference for the reader.

- Dec. 2011** Death of Dylan Seabridge
- May 2015** WG Consultation on revised non-statutory guidance for elective home education
- July 2016** Child Practice Review for Dylan Seabridge published. Recommendation 1 was for the safeguarding board to *“Write to the Welsh Government, asking for changes to the legislation and statutory guidance on elective home educated children, to incorporate a requirement that parents and guardians annually register all such children with the Local Authority. In addition to this, that all such children should have to be seen and spoken to and their views and wishes are recorded annually. The legislation should state that the information held is also to be shared with the family GP and other relevant professionals.”*
- Oct. 2016** CCfW annual report recommendation for the Government to strengthen requirements for parents to register as electively home educating their children and for every child who is electively home educated to be seen by a professional at least annually so that they can express a view about their educational experiences.
- Jan. 2017** Report on 2015 consultation process published; the outcome was that only minor amendments would be made to the guidance and it would remain non-statutory
- Oct. 2017** CASCADE report (commissioned by NISB) published. Recommendations include a significantly enhanced support service for home educated children, and clearer assessment of the needs and well-being of home educated children, which requires:
- a register of home educated children in a similar way to the school register
 - a more holistic assessment of the well-being and education of children educated at home undertaken at regular intervals and in the home as their place of education
 - consideration of a legal expectation on parents, as a voluntary scheme “would be unlikely to have protected Dylan Seabridge or other children known to have suggested serious abuse or neglect”.
- Oct. 2017** CCfW annual report recommendation that the Welsh Government still needs to amend the guidance to give it statutory force and include a compulsory register for all home educated children to ensure they do not end up “off the radar” from even universal services. It is also important that the revision of the guidance includes clear powers for local authorities to ensure that they are seeing children and speaking to them directly about their own education.



- Jan. 2018** Following continued lobbying and discussions, WG ministerial statement with a commitment to consult on statutory guidance on home education, and a database
- Oct. 2018** CCfW publish three tests for the WG policy in annual report 2017/18
- Firstly, that all children in Wales can be accounted for and that none slip under the radar of universal services, and society in general.
 - Secondly, that every child receives a suitable education and their other human rights, including health, care and safety.
 - This cannot be achieved without the third aim, that every child should have the opportunity to be seen and their views and experiences listened to.
- July. 2019** WG Consultation launched on new statutory guidance and a parents' handbook
- Oct. 2019** CCfW annual report recommendation - 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. (*note: although the consultation was live at this point, this recommendation was made against previous experience of delays or lack of implementation of consultation outcomes)
- Jan. 2020** WG Consultation launched on database and information sharing proposals
- June 2020** WG Education Minister advised CCfW that above proposals will not be taken forward
- Sept. 2020** CCfW launched review of WG actions and decision making

The EHE legislative changes have unfortunately stalled at every turn. It is evident from the meeting notes and correspondence detailed in Appendix B that the Government's work was delayed on a number of occasions, for various reasons including competing work priorities, lack of time and availability for officials and lawyers, and needing to respond to large volumes of correspondence or responses to consultations^{xxxvii}. Questions such as how to reflect the expectation to see and speak to home educated children are posed by CCfW, Members of the Senedd and local authority representatives on many occasions, but no firm conclusions are reached by Government on key points such as this. This led to a lack of clarity in the true policy intent of Government, and, without going back to the original purpose of making changes (the Seabridge CPR and related recommendations), it was never going to be possible to ensure that their response to these issues was sufficient and robust.

Following a series of influencing work by CCfW including meetings, correspondence and annual report recommendations, it took until the end of January 2018 for the Welsh Government to signal their policy intent in respect of legislative change with a written statement that set out a commitment to develop proposals to better identify children not receiving a suitable education. This was reiterated in a plenary statement of the same date, in which the Cabinet Secretary for Education^{xxxviii} expressed a clear view that seeing a child would be necessary to assess the suitability of education^{xxxix}. However, it is evident from several subsequent meetings, discussions and written reports and correspondence in Appendix B that the exact details of the policy intent were yet to be properly worked through^{xl}.



The Government position on seeing children remained unresolved and appeared to fluctuate, with conflicting information being given about the extent to which the developing policy could fulfil this aim. The Government's policy aims behind the operation of the database proposals also appeared unresolved. The chronology details contradictory information about the extent of data capture intended by the proposals.^{xli}

A further key issue in the current Senedd term has been the insistence by Welsh Government that there was not sufficient time, and it may be disproportionate, to pass primary legislation in this area^{xlii}. Unfortunately attempting to make change linked to existing legislation has not led to a swift route forward. The difficulties in introducing some requirements, due to the limitations of existing legislation has been a continued argument made by Welsh Government.

The extent to which the existing legislation permitted the Government to make the changes highlighted by the Seabridge CPR and the CASCADE report appeared not to have been fully worked through, or if they had been, it may have already been evident to the Government that their actions would be limited particularly in relation to seeing the child. This has meant that, despite Government assurances, their policy aims, and acceptance of successive CCfW annual report recommendations, ultimately progress has been hampered by a lack of clarity and decisiveness in this regard. It has emerged through this Review that despite accepting CCfW recommendations, the lack of clarity as to their ultimate policy intent and the changing positions as to what the proposals would seek to achieve have meant that these acceptances may have inadvertently masked aspects that ultimately were not fully accepted by Government. This includes whether and how all children educated at home would be identified, seen and spoken to, to discuss their education and rights.

A meeting of Welsh Government Cabinet in January 2018 considered a paper which highlighted the actions that the Government could take to reduce opportunities to prevent children from being concealed from public services, and the importance that many attached to the Government in taking these actions forward. However, the Plenary statement that followed later that month reflected proposals for a "reasonably complete" database that would give the "best possible chance" of identifying as many children as possible but the proposals that followed highlighted the remaining gaps with this secondary legislation approach.

There is a clear discrepancy apparent between the acceptance of my annual report recommendation that Government ensure 'all children in Wales can be accounted for and that none slip under the radar of universal services and society in general' and the aim stated in the Government's 2020 consultation that database proposals establish a 'reasonably complete'^{xliii} list of all children and young people held at a local authority level, which is expressly 'not a central all-Wales database'^{xliiv}

A policy with the intention to ensure visibility of children would aim to create a complete list, and therefore would also have mechanisms to account for a moving population and those not known to any services.

As detailed in Appendix B, the Government stated to CCfW at a meeting in May 2018^{xlv} that not every child would be seen as a result of their proposals and this was reiterated at a meeting between CCfW and Government officials in August 2018^{xlvi} when they stated that they could not ask for every child to be seen using the existing statutory powers.



Due to the lack of clarity from Government about their policy intention, my 2017-18 Annual Report, published in October 2018, sought to ascertain a clear policy position, with the following three tests:

- Firstly, that all children in Wales can be accounted for and that none slip under the radar of universal services, and society in general.
- Secondly, that every child receives a suitable education and their other human rights, including health, care and safety.
- This cannot be achieved without the third aim, that every child should have the opportunity to be seen and their views and experiences listened to.^{xlvii}

These tests were first indicated to the Government in a letter of June 2018^{xlviii}, when we were concerned at the lack of progress in this policy area despite the Ministerial statement in January 2018.

In response to this, in November 2018 the Government accepted the CCfW three tests set out in the 2017/18 annual report^{xlix}, which includes every child being seen and spoken to about their education, noting that it was “essential” to get it right for children and their families. This gave the impression that the powers would be sufficient to meet all of the tests in full.

In November 2018 the Commissioner described the process of liaising with Government to ensure the policy changes were being brought forward in line with the three tests as a ‘war of attrition’^l in trying to even secure the basic rights of all children, but there followed a period of renewed Government engagement and action which indicated further actions and steps being taken to secure compliance with the stated tests and policy aims.

In May 2019, Government officials stated in an email to CCfW that they were of the view that the suitability of a child’s education cannot be assessed without seeing the child^{li}. This indicated again clear commitment to meeting the three tests in full. The proposals that proceeded to consultation later that year however did not ensure that all children must be seen, and in fact, in responding to legal advice that was provided to challenge the 2019 consultation, the Government rebutted the assertion that all children must be seen^{lii} on the basis that the challenge was flawed because it states ‘the guidance suggests meetings are statutory and it doesn’t, it states should.’

The extent to which a threat of legal challenge has affected these proposals is unclear, but the Government referred to the potential for challenge via Judicial Review in their letter to CCfW^{liii} in 2020 confirming how they reached the decision not to proceed.

In addition, the Government have reflected at times that the secondary legislation approach would limit the actions they were able to require to be taken^{liv}, while at other points described this approach as proportionate and reasonable^{lv}.

Throughout the current Senedd term, local authorities (individually and collectively) have repeatedly advised Government that the proposals put forward would not be sufficient to address the concerns raised by the Seabridge CPR in practice. It is perhaps unusual to see public authorities overtly asking for *more* duties and powers to be granted to them, particularly in the context of a difficult climate for public services due to Brexit and Covid-19, and yet local authority views have remained constant that the proposals need to go further to properly equip them to meet their legal duties to support and uphold the welfare of all children in their area.



As the chronologies above and at Appendix B show, my call for this Government at the start of their term was to change the law around home education to better protect children. In 2016 I specified that one of the measures needed to do this was for Government to bring about a requirement for parents to register as electively home educating their children, in order for home educated children to be identified by authorities. This recommendation directly drew from the recommendation of the 2016 Seabridge CPR, the CYSUR Mid and West Wales Safeguarding Board, and the calls of ADSS.

As Welsh Government progressed in the policy development around home education, Government's position was that the policy aim of identifying all children would be better met by bringing about secondary legislation to ensure information sharing and the maintaining of databases. Following discussions I accepted this approach by Government on the basis of their assurance that this would be a more effective means of ensuring the visibility of children to universal services, and on the basis that this would bring about more rapid changes within this term, as secondary legislation could be progressed far more quickly than primary legislation. However, my scrutiny of the development of the database through 2019-20 has led me to conclude that secondary legislative change alone is not sufficient protection to prevent children from slipping under the radar of universal services.

The proposed database regulations did create information sharing powers that meant local authorities would have more actively been able to meet their existent duties to identify children missing education, and the proposals also formalised data gathering that to some extent already happens. But the proposals were limited in their ability to protect children as they did not account for a mobile population that moves between authorities, and between England and Wales.

In addition, information sharing was only proposed on an annual basis, which would not allow for swift action to identify if children were missing an education. Importantly, these proposals also entailed a risk that families might not register with health services to avoid information being shared, and this risk was highlighted by home educating families during consultation events. Further work needed to be done post-consultation to ensure that these proposals did not have the unintended consequence of reducing the visibility of some children from universal services.

I recognise that a parental duty to register is also limited, as some families will not comply with this duty as noted by the 2017 Cascade report^{vi}. Therefore, my position now, in the hindsight of extensive analysis to reveal the limitations of both methods, is that the best mechanism to protect the visibility of home educated children is to take a 'belt and braces' approach.

That is, there must be primary legislation that places a duty on parents to register, and to augment this, there must be new database and information sharing regulations, which can be developed as secondary legislation on the basis already proposed.

The next Government must take both strands of this forward, which will not only build on already completed work but will strengthen it so that children are given the best protection possible. Primary legislation is also clearly needed to put in place a requirement that children must be seen and have an opportunity to express their views in person; the 2019 consultation and the legal challenges around it show that this cannot be properly achieved through secondary legislation.



Taking all of this into account, it cannot be said that the Government has responded, as promised, in a suitable and robust manner to the Dylan Seabridge CPR. In July 2016, in the plenary debate^{lvii} responding to the publication of the CPR, the then Cabinet Secretary for Communities and Children said that the Welsh Government would “learn lessons and improve services”, as it could not be said at that point that there were “no more Dylans”. However, there has been no solid progress made on the recommendations that would achieve the goal of there being “no more Dylans”.

In fact, in real terms, as noted above there has been no concrete change achieved in response to its recommendations.

Independent Schools

As with home education (above), below is set out a very high level, summary chronology of key points in the policy journey for independent schools. A far fuller chronology is set out at Appendix C; this section is included here for ease of reference for the reader.

- May 2014** Education Act (Wales) passed without a requirement for teachers at independent schools to be registered with the Education Workforce Council (EWC). This was despite a long history of this having been raised with the Government over many years by the predecessor body the General Teaching Council for Wales. The then Education Minister assured the Children, Young People and Education Committee during passage of the Act that there was no question that the issue would be forgotten.
- March 2016** The outcome of a WG review promised during passage of 2014 Act showed that a large majority of respondents were in favour of further regulation by the EWC, to include teachers in independent schools. It would be a matter for the next Government however as the Assembly election was taking place in May 2016.
- May 2016** Post election, WG official indicated that there are no plans to make any changes to the independent schools legislation.
- Sept. 2019** A safeguarding case at an independent school in Denbighshire comes to CCfW attention via a young person contacting the Investigation and Advice team
- Nov. 2019** Multi-agency policy and case meeting convened by CCfW
- Jan. 2020** WG commit to action to bring forward new regulations for independent schools
- June 2020** Minister advises CCfW that such proposals would not be taken forward
- Sept. 2020** CCfW launched review of WG actions and decision making
- Nov. 2020** Independent Inquiry into Child Sexual Abuse (IICSA) two week hearing on safeguarding in residential schools, with several days focused on the 2019 safeguarding case from a Denbighshire independent school



Similarly to the position with elective home education, the legislative changes required for Independent schools to become safer institutions have now fallen in successive Assembly/Senedd terms. I have not found evidence that the changes accepted by the Government as safeguarding loopholes have been progressed as important children's rights issues either.

Following the 2016 election there were apparently "no plans" for the Welsh Government to bring forward the safeguarding issues that they had accepted in the previous Term^{lviii}. This is despite assurances from the then Minister back in 2014 that there would be 'no question' of this issue being 'forgotten'^{lix}

Even following completion of the Government's review into the Proposed Registration of Teachers and Others who support education in the Independent Sector with the Education Workforce Council^{lx} in March 2016, they noted in correspondence that it would be a 'significant shift' in policy direction if they were to require teachers in independent schools to be registered with the Education Workforce Council (EWC); the independent regulator for the education workforce in Wales. This is despite the EWC and others having raised on many occasions the anomalous position of lesser education regulation in comparison to other relevant areas such as private medicine^{lxi}. The Government also stated in a meeting with CCfW in December 2019^{lxii} that this has been on their radar for at least 18 years. It is unclear why the 2016 Review was undertaken if no changes were being considered as a result; a familiar theme seen by our own Review.

The Independent Schools Regulations for Wales date back to 2003. A number of changes to strengthen the relevant Regulations and guidance have been made in England and Scotland since then but the regulatory position in Wales has not moved forward at all, bar some small tweaks in relation to DBS checks and paperwork.

In 2019, an independent school in Denbighshire came to the attention of CCfW in relation to safeguarding concerns about the head teacher of the school and a pupil's belief that the school and other authorities had failed to respond appropriately to the concerns that had been raised.

The young person had been made aware of children's rights and the work of our office during a routine visit the Commissioner had made to a group of young people in north Wales a few weeks' previously.

The contact with the office from the young person began an intensive period of work by the Commissioner and our Investigation and Advice and Policy teams to ensure that children and young people were effectively safeguarded and protected from the inappropriate behaviour of the head teacher.

It also raised a number of policy and regulatory issues regarding the operating framework for Independent Schools.

The case was unfortunately a stark reminder of the impact on children of these safeguarding loopholes. The office took the decision to deal with the case on two levels; firstly supporting the young person and ensuring that her views were being listened to and acted upon through the relevant investigations and process, and secondly in exploring the policy and legislative gaps that had allowed this head teacher to remain in post throughout this time. It was acknowledged that, had similar behaviours occurred with a teacher registered at a mainstream school, that person would have been suspended from their post and the EWC and others would have launched investigative and/or disciplinary action.



The Independent Inquiry into Child Sexual Abuse (IICSA) has a specific strand of inquiry on residential schools and has paid great attention to this case in particular. The Commissioner and the Government, alongside others, have given detailed written and oral evidence to that Inquiry. It was evident from the oral evidence sessions in November 2020 that there is a consensus that the regulation and inspection process for independent schools needs to be updated and strengthened, due to the differing roles and remits of CIW, Estyn and Government. It was also evident, however, that this position has not been adequately considered or resolved between Government, and other relevant partners such as Estyn, EWC and CIW, to indicate how these identified gaps will be filled.

Whilst the Inquiry has not yet reported on this strand and it would be premature to pre-judge the outcome and recommendations, it is clear that significant concern has been raised through that Inquiry in respect of the current legislative position in Wales through this work.

It is positive to note that the Welsh Safeguarding Procedures Board have recently agreed to include Estyn in the list of organisations to consider inviting to professional strategy meetings in relation to staff in independent schools under section 5 of the Wales National Safeguarding Procedures. We look forward to seeing this introduced to the procedures; this will build on the constructive involvement of Estyn in recent years in such meetings where they have been invited.

The case that arose in Wales should have acted as a catalyst to push on with changes that the Government had previously identified as necessary to the regulatory position, and yet the changes to the regulations in Wales have still not been prioritised.

In dealing with this case, it was noted that Welsh Government officials were not in a position to confirm all aspects of their role and powers in relation to the school without conducting further enquiries. This lack of clarity around the role and these settings is also reflected in other areas of Appendix C.^{lxiii} It is accepted that this is a very small sector in Wales but Government duties to uphold children's rights and keep them safe apply to all children in Wales, wherever they are educated or living.

It is also notable that our office only held the ability to examine the issues in the case by virtue of the fact that this independent school was a boarding school. An independent day school would not have fallen within the CCfW's remit as it is the provision of accommodation by a school that makes it as a regulated children's service in Wales^{lxiv} which is what the Commissioner's powers relate to. We are aware that the Older Person's Commissioner (a post created subsequent to the creation of the CCfW) has stronger powers in respect of premises where older people may be, including powers of entry to premises to speak to older people. I make a recommendation for this to be looked at as part of a wider review of my legislation, so that my powers relate to any private settings where children's welfare and rights are affected in Wales in line with the principal aim of my role.

It was reflected by officials during a meeting with CCfW in December 2019^{lxv} that there had been a 'clear instruction' from the Minister to resolve the legal loopholes surrounding the sector, but this has not yet been achieved. Again, it is accepted that Covid-19 will have played a part in this, but assurances were given in February 2020 that changes would be made well before the end of the Senedd term^{lxvi}. This indicated that work was well understood and underway, and yet in late 2020 it was clear from the Government's response to the CCfW annual report recommendation^{lxvii} that the legal requirements had still not been resolved and therefore any progress was being hampered on this basis.



In a letter to proprietors of all independent schools in Wales in October 2020 regarding safeguarding and operational matters at the outset of a new academic year, the Government made no mention of any proposed changes to the regulations, nor of any additional expectations such as voluntary registration with EWC, which is already an option that is open to independent school teachers. This indicates that the work behind this policy area has not been a priority nor has it been well progressed. It also does not, in my view, show a Government taking any and all available actions in order to protect and promote children's rights across Wales as they are required to do in compliance with the UNCRC.

It is unclear what else would be needed for the Government to move on this urgent and important issue, in light of the serious failings arising in a school in Wales and a judge-led inquiry into the legislative background behind these failings, as well as a long history of these issues being directly raised with them.

Child practice reviews

This Review stemmed from the recommendations and learning identified by the Dylan Seabridge Child Practice Review (CPR) which was published in July 2016. As well as considering the policy issues that the CPR raised, the CPR process itself has necessarily come under scrutiny throughout the work on this Review. Key areas for development that have been highlighted by the Government itself, and by my team and I^{lxviii}, are the need to ensure that learning is shared beyond the originating region, and that reports are collated and stored at a national level, rather than published for a limited period of time by the relevant region.

The original Government response to the CPR in July 2016 promised that the relevant CPR guidance would be reviewed and updated^{lxix}. The CPR guidance has not been substantively amended since this time; whilst a refresh was undertaken in 2019, this did not make any major changes to the extant guidance. This could be seen as a missed opportunity to improve the governance and practical issues surrounding the CPR process.

The Government, in their oral evidence to the IICSA residential schools inquiry in November 2020, categorised Part 7 of the Social Services and Well-being (Wales) Act 2014 as the introduction of "strengthened safeguarding arrangements in Wales". However, as noted above, the changes identified in the January 2020 Cardiff University Thematic Review, including the need for CPR reports to be available for longer than 12 weeks, and for the learning to be routinely shared on a pan Wales level, using creative methods of distribution and information sharing have not yet been implemented. Such issues were also raised in the 2015 Cordis Bright review of the implementation of CPRs. Government has not provided a formal response to these sets of recommendations, so it is unclear which aspects are accepted and will be taken forward.

The Cardiff University Thematic Review was commissioned by the NISB, as was the 2017 Cascade report on elective home education. There is no mechanism within the relevant legislation or guidance for the Government to respond to reports commissioned by the NISB, which creates a grey area in terms of accountability and transparency.



The role of the NISB has evolved since its creation but it may be prudent to set out in guidance how their work and role intersects with duties on the regional boards to produce reports and action plans. In addition, governance around dissemination of CPR findings requires clarification and a role for either the Government and/or the NISB in ensuring this.

The Government has commissioned an independent expert Liane James to work on the single unified safeguarding review which includes work around a national repository and library of all public sector reviews of serious incidents.

We are also aware that some work has commenced with Cardiff University on a central repository of all completed CPRs which is welcome, but there is still not sufficient clarity at this point as to whether this role sits with the NISB, the ongoing Cardiff University project, the third sector or somewhere else. In the meantime, there is still not a central record of all CPRs undertaken in Wales so the learning from these Reviews is not available at a national level.

There are additional recommendations from the Cardiff University Thematic Review that need to be actioned. For example it does not appear that Government have considered any role for themselves in disseminating or ensuring the dissemination of learning from CPRs at a national level. This has been highlighted as an area for further development since the first review by Cordis Bright in 2015. There are systems within the health service for the sharing of learning at a national level but this is routinely not replicated across other sectors. This is because it is not a requirement of the legislation or guidance at present, and therefore it remains a key gap in ensuring that safeguarding concerns are known about and acted upon across Wales. It is acknowledged that the currently commissioned work, noted above, may go some way to remedying this but the extent of this is unclear and it is necessary to ensure that all of the previous recommendations that are accepted are being taken forward whilst changes are being made to the governance and systems for CPR and other serious incident reviews.

Government's approach to CCfW Review

The Government's letter to CCfW of 11th December 2020 indicated that the CCfW formal document request pursuant to the legal powers being used for this Review would be treated as a Freedom of Information (FOI) request.

Firstly, this is beyond the statutory timescale of 20 working days for an FOI request to be dealt with, the original request having been made on 25th September 2020. Secondly, the CCfW has a statutory power of review but such power is significantly curtailed if it is considered to confer no greater access to papers than that which could be afforded to any member of the general public through the FOI framework. If all requests for unpublished documents are treated as FOI requests then all papers released for review are subsequently required to be published under FOI processes.

This means that papers such as advice to Ministers and some Cabinet papers are likely to be heavily redacted before being made available for review. This is a significant barrier to the Commissioner carrying out her statutory responsibilities. It is highly unlikely that when legislators created the role of the



independent Commissioner they expected them to have no more power to investigate the Government's functions in relation to children's rights than any member of the public would have. This is an area for reform that I make a recommendation on within this report.

The powers of the current legislation will require review and revision as set out above. A further flaw in the legislation can also be corrected by a comprehensive review. The Government, as the body that appoints and funds the Commissioner's office, is able to effectively block and delay the legitimate attempts of the Commissioner to examine their conduct and this cannot be right or acceptable in a democratic society.

Further, this arrangement does not conform to the international standard of the Paris Principles and it is therefore extremely disappointing that, during the course of this Review, the Government rejected the calls of the Senedd Children, Young People and Education (CYPE) Committee in their Children's Rights in Wales report to transfer the appointment and accountability of the office to the Senedd.

The Government has previously responded that, notwithstanding these international standards, the arrangements in Wales work well due to the existing positive working relationships. In short, the arrangements have been considered to work in practice so why change them? It is true that relations are generally co-operative and during the pandemic our office has communicated on a daily basis with officials and ministers to advise and support as well as scrutinise and monitor. Nonetheless, when asked about the appointment of the Commissioner, we have repeatedly pointed out that this does not *prevent* problems from arising due to the inherent flaws in this arrangement. There is now clear evidence that the current legislative position of the Commissioner's office in reviewing the Welsh Government is unsatisfactory and must be amended to address this issue and the many gaps or deficiencies that this Review has identified.

It is hard to avoid the conclusion that the Government's approach to this Review, and the role of the Commissioner's office in carrying out the Review, has been unsatisfactory. It is of course accepted that the Covid-19 pandemic and the requirements arising from the UK's withdrawal from the European Union (Brexit) have drawn significant resources from the Government, but the requests made of Government were specific and limited.

The Government's interpretation of the legislation underpinning the role of the CCfW was that the text of the legal powers was "not sufficient to require Welsh Ministers to release information for your review". The legislation is open ended in this regard; it does not expressly provide for the provision of specific documentation under the Section 72B power, but neither does it say that the Government is not required to release information. A purposive interpretation of the legislation would have indicated that, in order to conduct a Review of the exercise of the Government's functions, it would be necessary to see and review the evidence of that exercise of their functions. Nevertheless, we have completed this Review on the basis of the extensive documentation already available to us and/or in the public domain.



REVIEW FINDINGS

Elective home education

Consultations

It is evident from the large number of consultation responses on every occasion the Government has sought any views in this area, that the majority came from individual families who are ideologically opposed to any state role in respect of home education and that the Government treats every response with equal weighting. For example, the report of the 2019 consultation process^{lxx} summarises how many responses each question received, and includes statements reflecting the majority views, whether these have come from individuals using pre-prepared or stock answers, or an organisation representing many people's views. The report does distinguish where views are held by individuals/service recipients, or national organisations or service providers; but as the report does not set out the next steps or conclusions reached it is not possible to understand how these views and this process have ultimately influenced the outcome and actions taken forward by Government.

On that basis, the Government's consultation system could be considered to be more akin to a petitions system; the existence of a large lobby group could be mobilised to effectively nullify or frustrate proposals that the Government seeks to take forward. It is clear from the Minister's letter of July 2020^{lxxi} that the Government remained concerned at the risk of legal challenge if their proposals were brought forward, a factor which evidently hung over their ultimate decision making.

The Government's summary reports for each consultation do not set out what they have concluded should happen as a result of the responses, and as such it is difficult to see the transparency and accountability in the way the system is currently operating. (This is not unique to these policy areas). In addition, there are some consultations still marked as "awaiting outcome" on the Government's consultations webpage years after having been undertaken. In respect of home education specifically, the 2015 consultation report was not published until 2017 and the database regulations consultation that closed in May 2020 has not yet been reported upon.

Children's rights

At all times the Government is bound to have regard to the UNCRC in all of its work. The Government is required, by Article 4 of the UNCRC to "undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention". By allowing their planned proposals to be delayed or derailed on multiple occasions, it cannot be said that the Government has successfully discharged this duty.



Some of the Government statements in respect of home education do refer to children's rights and the need to balance a range of rights in making their decisions^{lxvii}. However, it is not clear how Government have undertaken such a balancing exercise, and yet proceeded with proposals that fell short of what they were being advised was necessary in order to properly protect and uphold all of children's rights. It is common to see Government referring to the rights considerations that they have made but without setting out *whether or how* these have informed the ultimate decision made.

It is unacceptable that there is a lack of transparency and accountability in respect of Government's exercise of their functions with regard to children's rights. The Government is not demonstrating compliance with a children's rights approach, only selective use of children's rights where these back up the decisions that they have already made.

In reaching the final decision in late spring 2020 to pause work on the strengthened statutory guidance and Regulations for independent schools, **the Government has not complied with their duties under the Rights of Children and Young Persons (Wales) Measure 2011** and the UNCRRC.

As a conservative estimate, there have been at least 20 meetings and 16 letters exchanged in relation to the response to the Seabridge child practice review and home education, between the Children's Commissioner and Welsh Government alone. This is in addition to all of the additional engagement as documented in Appendix B.

Alongside this there have been sequential Welsh Government responses to four CCfW annual reports, four CYPE Committee scrutiny sessions, seven written questions, four discussions in the Siambr, three external reports and five consultation processes.

Despite this; the guidance remains non-statutory and largely unchanged since I took up post as Children's Commissioner.

Outcomes

Without any evidence to the contrary, it is difficult to understand why the Government has ignored the concerns raised by the Seabridge CPR or the holistic outcomes for children who are educated at home.

In particular, it is evident that despite a statement of Government intent in January 2018, there remained a lack of clarity as to what was possible to achieve using the route of secondary legislation. This choice inevitably limited the options available to the Government, under what powers the existing legislation confers. This is not a suitable way to approach policy and legislative change; if the Government seeks to make certain changes then they need to choose the correct legislative vehicle to achieve that change. Setting out a policy direction but restricting the output to secondary legislation has meant that the Government was not going to be able to go as far as their policy intent had indicated, and therefore this was not an appropriate approach to the issues being tackled.

There is no issue in respect of devolution which would hamper or restrict the actions of Government in this regard; education issues are devolved to Wales.



Independent schools

It is very unfortunate that, approaching the end of the fifth Senedd term, no actual progress has been made on the regulatory position for independent schools, from the conclusion of work undertaken towards the end of the fourth Senedd (then Assembly) term.

It was evident from the commencement of the fifth term that the Government was not planning to progress this work, but I have not been able to find evidence as to *why* the work from the previous term was not actively taken forward following the 2016 election, given the review that had been undertaken between 2014-16.

I recognise of course that there have been some significant reforms to education legislation undertaken this Term, around children with additional learning needs and the wider process of Curriculum Reform. I do not wish to diminish those achievements or the work required in order to progress those pieces of legislation. What I am raising, however, is the lack of priority that has been given to an issue that was already accepted to be a safeguarding issue at the outset of the Government's term and was therefore an issue affecting children's rights.

Similarly to the position with home education, there is no shortage of advice and guidance available to Government from across the sector. Unlike home education however, the clear route forward has been known prior to the commencement of the Senedd term in 2016. There also appears to have been general acceptance of the need for reform in this area, including from the umbrella body representing independent schools in Wales^{lxxiii}. It is therefore even more disappointing and concerning that the acknowledged loopholes have not been addressed.

In what appears to be an emerging pattern, it is also clear that the Government has still not resolved whether primary or secondary legislation is required in order to make the necessary changes including the introduction of a requirement for teachers at independent schools to register with the EWC. In contrast to the situation with home education, this uncertainty has delayed any action from being taken.

We are left in a situation where one policy area (home education) was to proceed on a limited basis using secondary legislation even where this might not have been suitable or sufficient to achieve the policy aims, whereas work around independent schools simply has not progressed at all due to the uncertainty as to the legal route to be taken.

Legal advice and resource generally has clearly been at a premium throughout this Senedd Term, with Brexit, the Covid-19 pandemic and educational reforms all playing a part in this^{lxxiv}. Government have stated that this is the case. But if the Government has identified areas where legislation needs some form of amendment, it is unacceptable to continue with that position of uncertainty. It affects future planning ahead of the *next* Senedd term, as the position remains unresolved in respect of safeguarding and independent schools.

A significant concern in relation to a school in north Wales has played out during this time. Whilst I cannot say that this would definitely have been avoided had regulatory change been made earlier, the reforms proposed in 2014 and updates to the independent schools standards would almost certainly have provided mechanisms for a much swifter conclusion, reducing emotional anguish for the young people



involved and much hand-wringing from statutory agencies whose hands were tied from taking decisive and swift action. It is hugely disappointing that this has happened despite the Government knowing about these loopholes.

Lastly, as noted above, CCfW only held the ability to examine the issues in that case by virtue of the fact that this independent school was a boarding school; the provision of accommodation by a school that makes it as a regulated children's service in Wales^{lxv} which is what the Commissioner's powers relate to. Changes to the Commissioner's legislation are proposed within this report's recommendations, but one change in particular that is required following this case and this Review is the power to review or examine the work of any private settings in Wales that provide services to children, such as independent schools.

Child Practice reviews

Whilst reviews of the Child Practice Review process have been undertaken during this Senedd Term, no substantive changes have been made to the guidance or to the practical and governance arrangements.

Promises made in response to the Seabridge CPR to learn lessons and improve services in relation to CPRs themselves, as well as the related policy issues, have not been taken forward. It appears from my Review that "reviewing" guidance amounted simply to changing the references to updated legislation rather than making substantive changes or additions.

Whilst the Welsh Government can rightly say that they have taken some actions since the CPR was published, these actions have not addressed the core issues identified by the Review and therefore cannot be said to address the shortcomings that Government accepted were in existence.

It is unclear how any of those revisions have been affected or influenced by active consideration of the identified children's rights issues at play. A clear response from the Welsh Government to the January 2020 Cardiff University Thematic Review is required, setting out what action it will take to implement the recommendations, in order to improve the sharing of learning and concerns from CPRs right across Wales and strengthen the CPR system further.

Children's Commissioner for Wales' powers

The process of undertaking this Review of Government using the power in Section 72B for the first time has highlighted some clear limitations in the Commissioner's legal powers. Wales is rightly proud of being the first UK country to create the post of Children's Commissioner, and has also gone on to create other Commissioner posts for Wales since 2000. But the legislation that governs the role has many gaps including a lack of detail on how some of the powers can be exercised.

Powers in relation to case examinations and reviewing the arrangements for whistleblowing, complaints and advocacy are much more developed, setting out processes for documents and witness evidence to be obtained for example. It is perhaps unsurprising that there is clear detail in relation to these powers given that the origins of the Office come from the Waterhouse report dealing with issues of individual children's cases and children not being listened to. It is unclear, however, why the power of review under Section 72B is so under-developed by comparison, and this has been a clear barrier to the workings of this Review.



A review of the Commissioner's legislation would also allow for other recommendations, such as the Senedd CYPE Committee recommendation that the Government should, "at the earliest legislative opportunity, transfer responsibility for the appointment, accountability, and funding of the Children's Commissioner for Wales to the Senedd"^{lxxvi}, in line with the international standard of the Paris Principles. The Government in their formal response^{lxxvii} rejected this recommendation outright, noting that "[a]ny change in appointment arrangements and accountability will require primary legislation; there is no legislative time available in this Senedd term." The next Government must consider this at the earliest possible opportunity in that case, and this Review's findings add further strength to those calls.

Children's rights

Back in 2015 when the consultation on non-statutory guidance for Home Education was issued, the Children's Rights Impact Assessment (CRIA) that was published alongside the guidance indicated that "*No conflict with the UNCRC articles has been identified*".^{lxxviii} This was despite the fact that the proposals did not strengthen arrangements for children to be seen or spoken to about their education. The details of the CRIA only looked at positive aspects of the proposals and not any negatives or omissions. Unfortunately this is often the case with Welsh Government CRIA^{lxxix}; there appears to be a reluctance to identify or recognise any potential negative impacts that may ensue from the proposal being brought forward. It is hard to think of *any* decision that will only result in positive outcomes for everyone, and impose no additional burdens on anyone else as a result; it is therefore incomplete and disingenuous to indicate that no issues arise in respect of the UNCRC. Further, realisation of children's rights should be a progressive aim, so there is always more that can be built upon even where proposals are overall broadly positive for children.

When the 2019 home education consultation proposals were published, the CRIA^{lxxx} noted that the Government would be "*directly implementing Article 4 which calls on states to "undertake all appropriate legislative, administrative and other measures to the implementation of the rights recognized in the present convention"*". By this time it had been recognised that the previous proposals did not sit in line with Article 4 of the UNCRC despite having previously stated that there was no conflict with articles of the UNCRC.

The final decision not to proceed with the two key policy and legislative changes this Review considers was not subject to a CRIA. The impact of not taking these proposals forward therefore has not been fully considered by the Government in taking such a decision, despite their legal obligations under the 2011 Measure. As noted in the Chronologies, a CRIA was *subsequently* published in late September 2020 but the Minister had made clear prior to this that no CRIA had been undertaken in respect of the decision making earlier that year.

Many of the discussions drawn out of meetings with Ministers and officials reflect the fact that Government repeatedly asserted that their work was in relation to children's education only. The receipt of education in any setting, however, can be seen as a gateway right, as it contributes to the realisation of a great many of children's rights under the UNCRC, including the rights to receive information and express their views, to develop their potential, and to understand what they need to be healthy, happy and safe. Developing communication also enables children to socialise and interact with others around them.



In Plenary in January 2018, the Minister stated the following: *“Improving outcomes for all learners, whether electively home educated or in mainstream education, I believe, contributes to article 3, article 4, article 5, article 12, and articles 18, 19, 24, 28 and 29 of the UNCRC^{lxxxj}”,* so at the very minimum the Government must have needed to consider how the realisation of these Articles would be affected by the decision not to proceed with the planned reforms.

Whether or not the end result would have been the same, we cannot say, and the enormous pressures brought about by the pandemic cannot be under-estimated. However, the Government has failed to comply with their legal requirements in this regard, and in doing so has dropped pieces of work that they themselves had identified as important ways to strengthen how children educated at home or independent schools could have access to all of their rights.

Cross government working

The decision not to progress the home education guidance has meant that other related but separate work on safeguarding through universal services (which would benefit all children not just those educated at home) has also fallen. For example, there was work planned on updating the 2017 statutory guidance^{lxxxii} to help prevent children and young people missing education which would have drawn on the strengthened legal duties for home education. Work on improving children’s access to universal services was also proposed, but this would have been dependent on the database proposals around cross checking and sharing information between agencies. Neither of these can be progressed if the home education legislation and guidance is not updated as necessary. It has not been evident from the papers seen by CCfW that this was overtly considered at any point in making this decision.

Government on the one hand will refer to safeguarding as “everyone’s responsibility” but also seek to distinguish between safeguarding and education issues^{lxxxiii}. In a school setting, a teacher can be discussing education matters with a learner and also pick up other personal issues or safeguarding concerns in a natural way through their observations and professional judgement. It is unrealistic to suggest that some conversations are solely about education and some are for safeguarding; any experienced professional will always be thinking about wider issues in any such discussion with a learner or their family and friends. Similarly, children being seen and listened to as part of the home education process would be primarily for the purpose of ensuring and supporting their rights to an education, but it would also contribute to their other rights too, including safeguarding.

This approach has in practice meant that neither safeguarding nor education policy changes have been taken forward, and has damaged the understanding of the role of seeing and speaking to children about their education and access to all of their rights.

It is evident from CCfW meetings and correspondence that there has always been concern about cross-government working during this Senedd Term; with differing responses coming from social services and education officials, and Ministers not always being sighted on the latest Welsh Government positions^{lxxxiv}.



I have not been able to ascertain strong evidence of co-ordinated working across Government on safeguarding in education issues. Assertions that pieces of work are safeguarding issues not education matters noted above have illustrated this^{lxxxv}, and the lack of consideration of related actions when deciding to pause the elective home education and independent schools work is indicative of a disjointed approach.

In addition, so many of the conversations throughout the Senedd term have been dominated by uncertainty as to whether or not primary legislation is required to make changes that the Welsh Government have *recognised, accepted and agreed are necessary and important* in order to close identified loopholes.

In response to the 2015 consultation on home education, many respondents indicated concern that proposals in the guidance went beyond the terms of the existing primary legislation. The Government was therefore on notice that proposals taken forward through secondary legislation would either be open to potential challenge or be insufficient.

Rather than embracing this reality, the Government have lost time pursuing secondary legislation and voluntary measures, in the full knowledge that these **will not be sufficient to make the required changes**. Ultimately, even those secondary measures have not been taken, with the net result that no changes have been made to strengthen safeguarding in education legislation and guidance within this Term.

The Government would, I'm sure, point to the reviews and revisions to guidance that have been undertaken within this Term as actions that they have taken. However, unless those processes actually result in an improvement in the arrangements to protect children's rights and entitlements, this could be considered a waste of precious time and resources that could have been better directed elsewhere.

It is very unfortunate that a key observation from this Review would have to be how much work has been undertaken and yet how little meaningful change has actually been enacted as a result.

I therefore find that the current Welsh Government has failed to respond adequately to:

- The learning identified following the death of Dylan Seabridge in 2011; and
- The safeguarding concerns related to independent schools that they have known about since at least 2014.

In doing so, the Welsh Government has not complied with its legal duties pursuant to the Rights of Children and Young Persons (Wales) Measure 2011. The Government is required, by Article 4 of the United Nations Convention on the Rights of the Child, to "undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention" and I do not find that this has been the case.



RECOMMENDATIONS

Overarching recommendation:

The current Welsh Government must reflect on the findings of this report and make a public, written response before the Senedd is dissolved in April 2021. This response must set out what steps are required to achieve the necessary legal changes to protect children's rights in home education and independent school settings. In light of the pandemic and pressures on Government legal resources, the Government should obtain external legal advice if necessary to achieve this recommendation.

Part one – Policy recommendations

- Legislative change is urgently needed in the sixth Senedd Term, in respect of both home education and independent schools. This should be seen as a priority for the incoming Government based upon this report.
 - In respect of home education, there can be no further missed opportunities. This Review concludes that the time has come to introduce primary legislation in order to avoid the pitfalls around identifying, seeing and speaking to children that the Government has unsuccessfully grappled with throughout this Term.
 - I would defer to legal advice as to whether primary or secondary legislation is required to make the necessary changes in respect of independent schools. However, the Government's aim must be to substantially update the regulatory position in respect of independent schools, and to ensure that teachers are registered with the Education Workforce Council. The former can be done through secondary legislation but it remains unclear if primary legislation is needed for independent school staff to register with the EWC. The Government must therefore clarify the legal position as a matter of priority so that work can be commenced as soon as possible to establish the required route so that these changes can be enacted early in the sixth Term.
- A substantive update of the Child Practice Reviews guidance is required in line with the Government's own commissioned Review to address the following issues:
 - Long term availability of completed CPR reports;



- Role of the National Independent Safeguarding Board (NISB) including accountability structures for ensuring accepted recommendations are implemented at a regional and national level;
 - Role of Welsh Government in disseminating learning on a national basis and acting upon CPR findings that have wider application beyond the originating Board's area.
- Welsh Government must review and decide how best to regulate and inspect independent schools. This affects small numbers of children in Wales but nevertheless requires specific, up to date guidance and support relevant to their individual circumstances. Sufficient resource and expertise is required to ensure that this sector is properly managed and supported.

Part two – Welsh Government working practices

- It is clear that issues that crossed between the safeguarding and education portfolios have repeatedly fallen between the two teams, with the ultimate outcome being a lack of any legislative change. I therefore recommend that the Government establish a Safeguarding in Education team with cross-departmental input and responsibilities, which has sufficient resources to be able to discharge all of their functions in a timely manner that keeps children safe and upholds all of their rights.
- Consultation summary reports should be published in a timely manner and there is a need for greater transparency in how the responses have been treated and weighted. Consideration should be given to setting a required maximum timescale for such summaries to be published. If there are unavoidable delays to meeting such a timescale, these should be set out in writing on the Government's consultation page, indicating the proposed revised timeline for the issues to be resolved, rather than being left open-ended.
- I have noted in evidence to Committees and Government consultations throughout my term as Commissioner my concerns at the lack of quality CRIA being undertaken to inform and drive policy decisions. Instead, CRIA are completed late in the process, to reflect the decisions already made rather than to ensure children's rights are taken forward to the maximum extent. In some cases, no CRIA is completed at all. My concerns in this regard are well documented.

I do not believe that the Government are currently complying with their full legal duties under the 2011 Measure on the basis of this Review. The proposed revisions to the Children's Rights Scheme 2014 provide the perfect opportunity to improve and refine the policy and procedures for CRIA and to shift culture and practices accordingly. I will incorporate this into my written response to the live consultation on the Scheme but would advise the Government to be considering this further before that consultation period comes to an end.



Part three – Children’s Commissioner for Wales’ legislative remit and powers

- 20 years on, the Welsh Government needs to review the Children’s Commissioner for Wales’ legislation and update this in line with the findings of this Review and the Senedd CYPE Committee’s 2020 Children’s Rights in Wales report. This includes looking at:
 - The Commissioner’s powers to obtain documents as part of a statutory Review;
 - The Commissioner’s powers in relation to private settings in Wales including independent schools;
 - The appointment and monitoring of the Commissioner’s role to ensure compliance with the Paris Principles for independent human rights institutions.



NEXT STEPS

The Government has up to three months to respond formally to my report and recommendations.

Whilst the response to the pandemic remains an ongoing challenge, the Government have been expecting the completion of this Report since we notified them of the Review in early September 2020, and have had advance sight of the full document in advance of it being published. As noted, it is the first time that this legal power has been exercised in relation to Welsh Ministers, and as such, I cannot overstate the importance of a clear response from the current Government to this report.

I do not anticipate that the actions recommended within this report can be achieved before the May 2021 election but I do firmly expect the current Government to respond in full. It is necessary for their response to be given, to set the tone for future actions, including actions that relate to the civil service practices that should be unaffected by any changes in the political makeup of the Government.

As this report itself has found, the danger of 'parking' difficult policy actions at the end of a Government term leads to excessive delay and valid concerns not being taken forward. The role of the civil service is to ensure that these sort of concerns, particularly where they relate to safeguarding children, are picked up upon commencement of the new Government term.

This should not impact on future Governments delivering on their manifesto commitments. There simply cannot be a system where each Government essentially has to 'start again' with investigating issues of concern and organisations re-highlighting the need for change every five years. This is not how a mature and responsible system of Government operates and should not be the approach here in Wales, particularly in relation to issues around safeguarding children, which should gain cross-party support.

As well as awaiting a formal response from the current Government, I will ensure that this report is also discussed with the new Government following the May 2021 Senedd election to ensure that its findings continue to be considered and acted upon accordingly.

Children in Wales are entitled to demand better from their public services where their rights are not being upheld. A Government that is fully committed to children's rights must ensure that these rights are not overridden by competing interests or priorities or affected by issues that are seen as 'too hard to do'. As independent champion for these children's rights, I have taken every possible opportunity to reiterate these points at every level within Government and yet this Review demonstrates where successive Governments have fallen short in this regard. Now is the time to move beyond verbal commitments to children's rights and warm words; our children expect and deserve more and I await this Government's fulsome response.



APPENDIX A: TERMS OF REFERENCE

Children's Commissioner for Wales Review of Welsh Government exercise of their Functions

Key definitions

"Elective Home Education" -

Elective home education is a term used to describe a decision by parents, foster carers or guardians to provide home-based education for their children instead of sending them to school. It is not home tuition provided by a local education authority or where a local education authority provides education otherwise than at a school.

"Independent School" —

An independent school is any school that provides full time education for pupils of compulsory school age but is not maintained, managed or funded by a local authority.

"Child" and " children" means a person under the age of 18.

"Parents" —

Parents should be taken to include all those with parental responsibility including guardians and foster carers.

"Welsh Government"-

The Government of Wales Act 2006 provided for the establishment of the Welsh Government, which comprises the First Minister for Wales, the Welsh Ministers, the Counsel General for Wales and the Deputy Welsh Ministers. Throughout this Terms of Reference, 'Welsh Government' should be taken to include these offices collectively.



“UNCRC” —

The United Nations Convention on the Rights of the Child.

“Rights of Children and Young Persons (Wales) Measure 2011” -

This is the law in Wales that requires Welsh Government ministers to have regard to the UNCRC when exercising their functions.

Purpose of the Commissioner’s review (“the Review”)

Section 72B of the Care Standards Act 2000^{lxxxvi} gives the Children’s Commissioner for Wales (“the Commissioner”) the power to review the exercise of functions of Welsh Ministers. The Commissioner intends to exercise this power in relation to Welsh Government’s decision making for children, focusing particularly on safeguarding and education. Full details are set out below.

For the avoidance of doubt, as stated in the Care Standards Act 2000, “Welsh Ministers” includes the exercise of any function of “Welsh Ministers, the First Minister for Wales or the Counsel General for Wales”. The actions of any Civil Servants exercising ministerial functions on behalf of a relevant Minister will be included within this Review.

Background

Every child has a right to a suitable education. Most children in Wales are educated in school, but some parents, foster carers and guardians choose to educate their children at home. There is concern however that a small minority might not be in receipt of a suitable education, and Government and local authorities have a role to play in ensuring that children are not missing education, as well as to support families with education at home.

Some children are educated at independent schools; these include Welsh children as well as children from the rest of the UK and internationally.

The Commissioner and her office, alongside other relevant stakeholders, have made repeated attempts over a number of years to improve the legal framework in relation to both children who are electively educated at home, children missing education, and children who attend Independent Schools in Wales. The Commissioner has also been concerned to ensure a suitable response from Welsh Government to the concerns raised by the case of Dylan Seabridge, in particular the Government response to the Child Practice Review that was published in July 2016 following Dylan’s death in 2011.

The current Commissioner and her team have convened and attended formal and informal meetings with officials and Ministers, attended stakeholder meetings, participated in discussions with external agencies and responded to numerous Welsh Government and other agencies’ consultations.

Repeated attempts have also been made by stakeholders to improve the regulatory framework around Independent Schools but these have not progressed despite recent concerns regarding a north Wales school.



The Commissioner's annual reports for 2016-17^{lxxxvii} and 2017-18^{lxxxviii} and 2018-19^{lxxxix} made recommendations to the Welsh Government to strengthen the guidance and legal position on the topic of Elective Home Education, both to protect children that are electively home educated and to protect those that have not registered with education settings. These formal recommendations have been accepted, in part or in full by the Welsh Government.

The current Welsh Government Elective Home Education guidance for local authorities is non-statutory.^{xc} At present, parents are not required to inform or seek approval from the local authority within which they reside to home-educate their children.

All Independent Schools in Wales have to register with the Welsh Government^{xcj}, but they are not formally required to follow safeguarding guidance and procedures such as the All Wales National Safeguarding Procedures. Enforcement powers of the two inspectorates, Estyn and CIW are limited, as has been evidenced by the 2019 concerns in a school in north Wales. In addition, staff employed at Independent Schools do not have to register with the Education Workforce Council.

The Commissioner's strategic goals for 2019-2022 include a focus on protecting your rights, wherever you are — for Wales to be a country which respects children's rights in all education settings, including those who are educated at home. The Commissioner remains concerned about the rights of children educated at Independent Schools or at home, and in particular with Welsh Government's decision-making in respect of these groups of children.

Scope of the Review

The scope will include, but is not limited to, a review of Welsh Government's response to the Dylan Seabridge Child Practice Review, implementation of public commitments, basis for decision making relating to home education and independent schools within Welsh Government and the consideration of children's rights under the UNCRC throughout all of this work.

The Review aims to draw up recommendations on the next steps that should be taken by the Welsh Government to safeguard the rights of children educated at home or in Independent Schools.

In reviewing the exercise of Welsh Ministers' functions, the Commissioner will focus primarily upon the exercise of functions related to safeguarding and education in relation to the policy areas of home education and independent schools; although wider issues related to children's rights may also arise given that they are related to the primary topic.

The Commissioner's principal aim in legislation is to "safeguard and promote the rights and welfare of children" and the Commissioner must have due regard to the UNCRC in her work.

Welsh Ministers are required to pay due regard to the UNCRC when exercising their functions, under the Rights of Children and Young Persons (Wales) Measure 2011. This will be a key consideration of the Review.

Methodology

A project team including the Commissioner and staff drawn from her team will undertake the Review.



The project team will analyse any papers already available to them or otherwise in the public domain. In addition, to assist in conducting the Review, the Commissioner will also issue a request for copies of some existing documentation, upon commencement. For clarity, this will include existing documentation only; the Government will not be requested to produce any new papers or documents.

Documents shared with the Commissioner for this Review, which are not in the public domain, will not be published by the Commissioner, nor quoted from directly, but will be used to inform the Commissioner's findings. We may also seek copies of documents from other external agencies as relevant to the Terms of this Review. All documents relating to this Review will be held in accordance with relevant data protection legislation and the Commissioner's document retention policy.

The Commissioner may involve a Reference Group to provide their advice. Members of this group would only be in receipt of the draft final report. All personal and sensitive information will be appropriately protected and will be made available only to the Children's Commissioner and her employees. Members of a Reference Group would be expected to comply with the Commissioner's internal policies relating to confidentiality, relevant data protection legislation and the Commissioner's document retention policy.

Following consideration of documents, the Office of the Commissioner may also seek interviews with key Welsh Government personnel, as necessary, to clarify points raised by the documents. At present, it is not anticipated that any interviews or structured conversations will be undertaken but this will be kept under review.

The Commissioner reserves the right to make recommendations on any topic within her statutory remit at the conclusion of the Review.

Timescale

The Review will commence on 21st September 2020.

A formal request for papers will issue to the Welsh Government upon commencement of the Review. The deadline for the Welsh Government to send requested papers to the Commissioner is 30th October 2020.

Analysis of documents already held by the Commissioner will commence at the outset of Review.

During November 2020, any papers received from the Welsh Government will be analysed. Should no documents be provided the review will continue in accordance with the timescale set out within these Terms of Reference using any documents available to the Commissioner.

The Review will culminate in the production of a draft report, containing the Commissioner's findings, conclusions and recommendations.

The draft report will be sent to the Welsh Government who will be given two weeks to provide comments of the draft reports. The final report containing the Commissioner's findings, conclusions and recommendations will be sent to the First Minister two weeks thereafter and published on the Commissioner's website. As this Review is being undertaken pursuant to the Commissioner's formal legal powers, the Welsh Government will be expected to respond within three months of the report^{xcii}.

At the outset of the Review, it is anticipated that the Review will conclude on or before 31st December 2020.



Should the Commissioner conclude that further interviews will be necessary to finalise the Review, the Commissioner reserves the right to extend the timescale of the Review.

Should this be the case the Welsh Government will receive written notification by 17th December 2020 at the latest (2 weeks before the projected end of the review).

ENDS.



Endnotes

- ⁱ [Care Standards Act 2000 \(legislation.gov.uk\)](#) Part V
- ⁱⁱ [Care Standards Act 2000 \(legislation.gov.uk\)](#) Section 72A
- ⁱⁱⁱ [Children's Commissioner for Wales Act 2001 \(legislation.gov.uk\)](#)
- ^{iv} [The Children's Commissioner for Wales Regulations 2001 \(legislation.gov.uk\)](#)
- ^v [The Children's Commissioner for Wales Regulations 2001 \(legislation.gov.uk\)](#) Regulation 22
- ^{vi} [Care Standards Act 2000 \(legislation.gov.uk\)](#)
- ^{vii} The definition of the parent including any person who is the natural parent of the child, any person who has parental responsibility or any person who has care of the child (S.576 Education Act 1996).
- ^{viii} Education (Pupil Registration) Regulation 9(2), 1995.
- ^{ix} Regulation 8(1)(d) of the Education (Pupil Registration) (Wales) Regulations 2010.
- ^x Regulation 12(3) of the Education (Pupil Registration) (Wales) Regulations 2010.
- ^{xi} Statutory guidance to help prevent children and young people missing education Welsh Government 2017 [statutory-guidance-help-prevent-children-young-people-missing-education.pdf \(gov.wales\)](#)
- ^{xii} Exclusion from schools and Pupil Referral Units Welsh Government 2019 [Exclusion from schools and pupil referral units \(gov.wales\)](#)
- ^{xiii} Guidance on penalty notices for regular non-attendance at schools Welsh Government 2013 [Guidance on penalty notices for regular non-attendance at schools \(gov.wales\)](#)
- ^{xiv} Elective Home Education Non-statutory Guidance for Local Authorities Welsh Government 2017 [30384_Non statutory guidance on elective home education \(gov.wales\)](#)
- ^{xv} <https://gov.wales/sites/default/files/publications/2018-03/all-wales-attendance-framework.pdf> This document provides standards and guidance for practitioners to ensure greater consistency of practice throughout Wales. It also aims to enable the Education Welfare Service and schools to deliver services that are consistent, accessible and of a high standard. It is intended to be a practical resource toolkit for use by staff working within the Education Welfare Service and contains a mix of guidance, standards and good practice example.
- ^{xvi} All Wales Attendance Framework An operating toolkit for the Education Welfare Service Welsh Government 2011 [all-wales-attendance-framework.pdf \(gov.wales\)](#)
- ^{xvii} Statutory guidance to help prevent children and young people missing education Welsh Government 2017 [statutory-guidance-help-prevent-children-young-people-missing-education.pdf \(gov.wales\)](#)
- ^{xviii} Welsh Government Consultation Document Home Education — Statutory Guidance for Local Authorities and a Handbook for Home Educators Date of issue: 29th July 2019 [consultation-document-home-education.pdf \(gov.wales\)](#)
- ^{xix} Statutory Guidance to Help Prevent Children and Young People from Missing Education Welsh Government 2017 [statutory-guidance-help-prevent-children-young-people-missing-education.pdf \(gov.wales\)](#)
- ^{xx} [The Independent Schools \(Provision of Information\) \(Wales\) Regulations 2003 \(legislation.gov.uk\)](#)
- ^{xxi} [The Independent School Standards \(Wales\) Regulations 2003 \(legislation.gov.uk\)](#)
- ^{xxii} Independent Schools registration and operation guidance Welsh Government 2014 [Title of Document: Independent Schools Information and Registration \(gov.wales\)](#)
- ^{xxiii} Independent Schools registration and operation guidance Welsh Government 2014 [Title of Document: Independent Schools Information and Registration \(gov.wales\)](#)
- ^{xxiv} National Minimum Standards for Boarding Schools Welsh Assembly Government 2003 [131009nmsboardingschoolsen.pdf \(careinspectorate.wales\)](#)
- ^{xxv} National Minimum Standards for Residential Special Schools Welsh Assembly Government 2003 [130910nmspecialschools.pdf \(careinspectorate.wales\)](#)
- ^{xxvi} Keeping Learners Safe Welsh Government 2020 [keeping-learners-safe-the-role-of-local-authorities-governing-bodies-and-proprietors-of-independent-schools-under-the-education-act.pdf](#)



- xxvii Independent Schools registration and operation guidance Welsh Government 2014 [Title of Document: Independent Schools Information and Registration \(gov.wales\)](#)
- xxviii [The Education \(Independent Schools\) \(Unsuitable Persons\) \(Wales\) Regulations 2009](#)
- xxix <http://safeguardingboard.wales/find-your-board/>
- xxx <https://gov.wales/sites/default/files/publications/2019-06/working-together-to-safeguard-people-volume-2-child-practice-reviews.pdf>
- xxxi [Review of the implementation of the Child Practice Review Framework | GOV.WALES](#); Appendix B entry 4
- xxxii This review was not published but the findings of this work have been shared verbally with CCfW by Government officials
- xxxiii <https://gov.wales/sites/default/files/publications/2019-06/working-together-to-safeguard-people-volume-2-child-practice-reviews.pdf>
- xxxiv [Findings from a thematic analysis of Child Practice Reviews in Wales - Safeguarding Board Wales](#); Appendix B entry 97
- xxxv Appendix B examples: entry 6 urgent question from an AM January 2016, entry 36 question from an AM Dec 2017, entry 52 letter from CYSUR safeguarding board to WG June 2018, entries 59 and 60 CCfW letters to WG Sept 2018, entry 63 CCfW meeting with Education minister Sept 2018, entry 67 CCfW meeting with the FM Oct 2018, entry 68 CCfW letter to FM Nov 2018, entry 91 CCfW meeting with Education Minister Oct 2019, entry 103 CCfW letter to WG June 2020 and entry 105 corresponding CCfW statement, entry 106 WG fail to mention the case in response to CCfW earlier letter, July 2020, entry 108 ADSS Cymru letter to WG August 2020
- xxxvi Appendix B entries 2 and 22 WG 2017 non statutory guidance
- xxxvii Appendix B entries 9, 16, 19, 45, 49, 53, 64, 80, 89
- xxxviii This report refers to the Cabinet Secretary for Education in places and to the Minister for Education also. This is the same Cabinet post; the titles were changed in 2018 but the post holder and responsibilities for these areas remained unchanged.
- xxxix Appendix B entry 41 plenary statement of Minister
- xl Appendix B examples: entry 54 CCfW letter to WG July 2018, entry 57 WG response July 2018, entry CCfW letter to the FM Sept 2018, entry 67 CCfW meeting with FM Sept 2018, entry 69 WG letter response to CCfW Nov 2018, entry 74 CCfW meeting with WG officials Dec 2018, entry 89 CCfW meeting with WG officials Sept 2019, entry 90 CCfW annual report, entry 91 CCfW meeting with Education Minister Oct 2019.
- xli Appendix B examples: entry 41 plenary statement "reasonably complete"/"most complete" database Jan 2018, entry 45 answer to a written question refers to multiple databases as well as "the database" Feb 2018, entry 52 CYSUR letter refers to Government proposals for "local databases" June 2018, entry 74 CCfW meeting with WG officials Dec 2018 refers to confusion over who would own/operate the database, entry 76 Jan 2019 meeting of the stakeholder group — the plan is now for 22 databases (in each LA) rather than one single database, entry 80 April 2019 — work on the database proposals had only recently commenced but "the One Wales database is the way it will go". Still unclear who would own this. Entry 85 WG press release indicates that they will consult on LAs establishing databases, so back to 22 databases. Entry 89 Sept 2019 meeting with WG officials, WG advised that it was actually software and not a database. 22 LA databases is what was brought forward in the 2020 consultation (entry 98)
- xlii Appendix B entry 30 letter from WG official
- xliii Appendix B entries 41 plenary statement
- xliv Appendix B entry 98 WG consultation on database proposals
- xlv Appendix B entry 49 CCfW internal meeting note
- xlvi Appendix B entry 57 letter from Cabinet Secretary for Education
- xlvii Appendix B entry 64 CCfW annual report 17-18
- xlviii Appendix B entry 51 CCfW letter to WG official
- xlix Appendix B entry 64 WG acceptance 'in principle' of CCfW annual report recommendation
- i [Children's commissioner in home education 'war of attrition' - BBC News](#)
- ii Appendix B entry 84 CCfW and WG email correspondence
- iii Appendix B entry 95 notes of home education stakeholder group meeting
- iiii Appendix B entry 94 legal advice of David Woolfe QC
- lv Appendix B examples: entry 36 response to oral questions Dec 2017, entry 49 CCfW meeting with officials May 2018, entry 58 CCfW meeting with officials Aug 2018, entry 74 CCfW meeting with officials Dec 2018, entry 76 EHE stakeholder group meeting.
- lv Appendix B examples: entry 53 Ministerial letter June 2018, entry 57 Ministerial letter July 2018 which noted "it is essential that we get this right".
- lvi Appendix B entry 32 CASCADE report



- lvii Appendix B entry 13 extracts from plenary statement
- lviii Entries 9 and 10 of Appendix C WG correspondence
- lix Appendix C entry 4 summary of Stage 1 CYPE Committee scrutiny of Education (Wales) Act 2014
- lx Appendix C entries 6 and 7 Ministerial statement and published report
- lxi Evidence of this issue being raised/discussed with WG from Appendix C: entries 2, 4, 5, 6, 7, 12, 21, 23, 24, 25, 27, 32, 35, 37, 40, 41, 43, 45, 46, 50, 51, 52, 53, 57.
- lxii Entry 33 of Appendix C meeting note
- lxiii Appendix C examples: Entry 24; notes of a multi-agency meeting in 2019 show knowledge gaps about WG powers as a regulator, Entry 47 correspondence states the expectation of a legal duty that does not strictly apply to independent schools, Entry 67 indicates lack of knowledge of the regulatory position and guidance applicable to independent schools in 2020.
- lxiv [Care Standards Act 2000 \(legislation.gov.uk\)](#) Section 78
- lxv Entry 34 of Appendix C meeting note
- lxvi Appendix C entries 43 and 44 meeting notes and correspondence
- lxvii Appendix B entry 116 CCfW annual report 19-20
- lxviii Appendix B entry 4 Cordis Bright Report 2015, entry 13 plenary statement July 2016, entry 16 analysis of Cabinet Secretary letter August 2016, entry 26 CCfW letter April 2017 and entry 28 WG response June 2017, entry 59 CCfW letter to WG Sept 2018, entry 97 NISB (Cardiff University Thematic Report)
- lxix Appendix B entry 13 plenary statement Jan 2018
- lxx Appendix B entry 87 2019 consultation documents and summary report
- lxxi Appendix B entry 106 Minister for Education letter
- lxxii Appendix B examples: entry 2 CRIA published in 2015 with consultation proposals simply indicated “No conflict with the UNCRC articles has been identified”, entry 20 Cab Sec did not address the express references to children’s rights within the debate in July 2016, entry 32 CASCADE report indicated lack of compliance with UNCRC by Wg Oct 2017, entry 41 plenary statement just lists UNCRC articles considered, entry 57 2019 consultation integrated impact assessment only refers to Article 4 and being ‘mindful’ of the UNCRC (it is acknowledged that CCfW gave advice in respect of this CRIA but did not contribute to the contents), entry 80 it was CCfW that suggested adding references to UNCRC to the draft guidance April 2019, entry 93 legal advice queried WG consideration of the UNCRC, entry 106 **No CRIA was conducted in respect of decisions not to progress policy work** as indicated in the Education Minister’s letter July 2020.
- lxxiii Appendix C entry 45 correspondence between WG and WISC
- lxxiv Appendix B examples: entry 57 WG letter to CCfW July 2018, entry 62 FM letter to CCfW noting time intensive work ongoing Sept 2018, entry 91 CCfW meeting with Education Minister Oct 2019, entry 95 email correspondence following stakeholder meeting November 2019, entry 101 CCfW meeting with WG officials May 2020, entry 102 CCfW meeting with Education Minister June 2020, entry 104 WG written statement June 2018, entry 109 NISB meeting with WG Aug 2020.
- lxxv [Care Standards Act 2000 \(legislation.gov.uk\)](#) Section 78
- lxxvi <https://senedd.wales/laid%20documents/cr-ld13405-r/cr-ld13405-r-e.pdf>
- lxxvii <https://business.senedd.wales/documents/s105741/Welsh%20Government%20response%20-%2023%20September%202020.pdf>
- lxxviii Appendix B entry 2 CRIA for 2015 consultation
- lxxix This issue is explored at length in the Senedd CYPE Committee report on Children’s rights in Wales <https://senedd.wales/laid%20documents/cr-ld13405-r/cr-ld13405-r-e.pdf>
- lxxx It should be acknowledged here that CCfW had the opportunity to discuss a draft CRIA with policy officials through the Children’s Rights Advisory Group (CRAG) process.
- lxxxi Appendix B entry 42 plenary statement
- lxxxii [statutory-guidance-help-prevent-children-young-people-missing-education.pdf \(gov.wales\)](#)
- lxxxiii Appendix B examples: entry 2 report of 2015 consultation, entry 48 meeting note of stakeholder group May 2018,
- lxxxiv Appendix B examples: entry 63 the then children’s minister has not seen CCfW correspondence with the FM and still needed to assess whether the proposals would respond sufficiently to the Seabridge case at Sept 2018, entry 70 refers to the ‘war of attrition’ in progressing matters across WG Nov 2018, entry 102 CCfW meeting with Education Minister indicates cross governmental work that will fall due to home education work not progressing, entries 106 and 110 Education Minister expressed disappointment not to be progressing these matters which sit within her portfolio,
- lxxxv Appendix B examples: Entry 2 2015 consultation responses report, entry 48 EHE stakeholder group meeting, entry 74 CCfW meeting with officials December 2018, entry 89 CCfW meeting September 2019
- lxxxvi <https://www.legislation.gov.uk/ukpga/2000/14/section/72B>
- lxxxvii <https://www.childcomwales.org.uk/wp-content/uploads/2017/10/A-Year-of-Change-CCFW-Annual-Report.pdf>



lxxviii <https://www.childcomwales.org.uk/wp-content/uploads/2018/09/Annual-Report-2017-18.pdf>

lxxix <https://www.childcomwales.org.uk/wp-content/uploads/2019/10/Annual-Report-2018-19.pdf>

xc <https://beta.gov.wales/sites/default/files/publications/2018-03/elective-home-education-non-statutory-guidance-for-local-authorities.pdf>

xcii https://gov.wales/sites/default/files/publications/2018-05/handbook-independent-schools-registration-and-operation-guidance_0.pdf

xciii <https://www.legislation.gov.uk/wsi/2001/2787/regulation/14/made>



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