

UK COVID-19
INQUIRY

CLOSING WRITTEN SUBMISSIONS ON BEHALF OF THE CHILDREN'S
COMMISSIONER FOR WALES PURSUANT TO MODULE 2B

Introduction

1. The voices and rights of children and young people are often forgotten. This is all too easy because children may not have the information or platforms available to them to have their voices heard, including lack of political agency through voting rights.
2. In her oral evidence to the Inquiry, Professor Sally Holland highlighted how the pandemic had an immediate impact on all children and young people. Inequalities caused by race, poverty, and disability in children also became more pronounced. Children lost many activities we all took for granted in childhood. As Professor Holland said, these are not 'nice to haves' but an important part of the development of children (as recognized in article 31 of the United Nations Convention on the Rights of the Child). Professor Holland also highlighted that we are seeing a longer-term adverse impact on children's confidence, school attendance and mental health since the pandemic. Whilst the pandemic had an immediate and devastating impact on older generations, the impact on children will be measured for a generation.

Overall Risk and Impact of Restrictions and School Closures on Children

3. As Professor Sir Ian Diamond informed the Inquiry in oral evidence; "*Mortality in Wales was very much restricted to the elderly.*" Dr Chris Williams informed the Inquiry that the risk from infection to children is low and the risks must be put in context given the relatively low severity, and burden on children and the negative effects of school closures (see his statement at paragraph 118). The risk of child-to-child transmission was also reported to be low, in particular in the under 12s (see Ministerial Foreword, 'Coronavirus Control Plan for Wales', undated (INQ000253729)).

4. Stephanie Howarth's oral evidence to the Inquiry confirmed that there was no Wales specific school infections survey because it was expensive to arrange. As such, decision makers would have had no such data available to them when risk profiling children in schools. This is despite the obvious difference in local demographics and geography which speaks to the desirability of such data (as observed in the Public Health Wales Report, dated 2 December 2020 (INQ000224050)).
5. Nonetheless, on the SAGE data, it appears that schools themselves were not environments driving transmission of covid-19 at particularly great rates. This point was made in the summary of SAGE advice of 16 October 2020 (INQ000385752) and again in the Public Health Wales advisory note ((INQ000056305), dated 1 November 2021 which states (pp3-4) that closures of educational institutions in the 'second wave' only resulted in a 7% reduction in infections, compared to business closures (retail, gastronomy, nightclubs etc), which resulted in a reduction of 35%, and social gatherings, 26%. The advice of TAC, nonetheless (and understandably), was that activities around schools would produce a large network of contacts (and thus increase transmission) (see Dr Rob Orford's statement dated 19 February 2023 at paragraph 107). Prof. Michael Gravenor informed the Inquiry in oral evidence that the exact role of transmission in schools was unknown at the time. He noted, nonetheless, that reducing any contact in any way you are going to reduce infections and deaths, but the extent to which school closures contributes to that is hard to predict. Indeed, as Dr Orford informed the Inquiry in oral evidence, every intervention would relieve pressure on the NHS but would incur other harms.
6. The Commissioner would highlight to the Inquiry an important TAC report, dated 3 June 2020 (INQ000311898), which identifies and would have highlighted to the Welsh Government by June 2020, if it was not already clear and obvious by that point, that school closures were having a significant, harmful impact on children. The impact included severe impairment to learning, adverse impact on those with additional learning needs, the digital gap and exacerbating socio-economic inequality, loss of social engagement, the impact on mental wellbeing, loss of the protective environment of the school for vulnerable children, and highlighting the lack of evidence on what interventions and support is planned. As the report noted, on p2, *"the longer that schools are closed, the more profound the difficulties will be and the greater the cost and challenge to overcome them – it is a fine balance, and*

secondary impacts need to be carefully considered.”

7. These issues were confirmed in the TAG advice of 9 Nov 2020 at INQ000299692 at paragraph 21 onwards of the report, which stated that; *“school closures are very likely to affect the mental health of adolescents, are moderately likely to impair students cognitive, social, and emotional development, outcomes and may also have an adverse effect on children’s physical wellbeing”*.
8. The risks arising to children in pandemic lockdowns was also recognised in the Public Health Wales interim report, *Understanding the impact of covid-19 on Violence and ACEs Experienced by Children and Young People in Wales*, Nov 2020 (INQ000191890) *“... public health measures, such as lockdown and social distancing... has placed children and young people at risk, with potential for increased exposure to adverse childhood experiences (ACE) and violence to have long-term consequences.”*
9. With a view to understanding the impact of the pandemic on children, the Commissioner conducted two surveys entitled Coronavirus and Me, with children and young people across Wales in May 2020 (INQ000191146) and January 2021 (INQ000191147). The Commissioner also conducted a firebreak lockdown listening day with children (INQ000191156). These surveys and interventions show that the impact of covid-19 on children in Wales was indeed profound. Children reported that they were left feeling lonely and isolated by the restrictions which were put in place. Negative feelings were common place. The Commissioner knows this because, importantly, the Commissioner asked children. The Commissioner did her best to ensure their voices were heard by feeding the findings directly to the Welsh Government in real time to inform decisions.
10. There was, however, additional, important information arising out of these interventions. As Professor Holland stated in her oral evidence, many children had a strong sense of fairness. They thought it was fair there were measures being put in place to protect older people, but there was also a sense of injustice linked to the appearance of economic necessities, such as opening businesses and hospitality, being given priority over their long-term educational and social needs.
11. As a group, it was apparent that children and young people were willing to make great

sacrifices not because covid-19 was a threat to them, but because if they did not it was a threat to others. This attitude is to the great credit of our youngest generation. When children and young people said they were willing to make this great sacrifice, the Commissioner asks this Inquiry to consider what we did in return to help them and was it enough?

Role and Experience of Commissioner in Pandemic and Liaison with Welsh Government

12. The Commissioner does consider her experience of liaison with the Welsh Government and the willingness to learn and adapt on the part of the Welsh Government is a different and far more positive experience than that of her counterpart in England, on which the Inquiry has received evidence. The Commissioner considers that the social partnership model and the willingness of the Welsh Government to listen and learn should be commended.
13. Professor Holland confirmed that from mid-March 2020 onwards she did have regular engagement with the Welsh Government ministers and officials, including weekly telephone calls. The Commissioner made it clear that her office should be seen as a resource to help analyse decisions made as they affected children and as a conduit of children's views and experiences. To the credit of the Welsh Government, Professor Holland reported that as time went on officials and ministers saw what the Commissioner could bring and displayed an eagerness and willingness to hear the experiences of children.
14. The Commissioner commends to the Inquiry the model of the Shadow Social Partnership Council which allowed ministers, officials, and the Chief Medical Officer for Wales to explain the rules and latest evidence and major decisions which were to be announced and allowed those stakeholders present to raise issues and concerns. This was an effective way to make sure leaders across all sectors were engaged and had input into vital decisions.
15. Nonetheless, the Commissioner questions how proactive and prepared the Welsh Government was in its decision making and how clearly its messages came across. The Commissioner would respectfully adopt the statement made in oral evidence by Professor Debbie Foster that "*What was lacking in the pandemic was proactivity. There was a lot of reactivity*". Whilst commending the Welsh Government's willingness to engage with key

stakeholders, a fact which appeared conspicuously absent across the border, there is still learning which the Commissioner believes can come from the Welsh Government's handling and consideration of the rights of children during the pandemic, and in particular in the initial days of the pandemic.

Voice of Children and Young Persons

16. Article 12 of the United Nations Convention on the Rights of the Child (UNCRC) provides as follows:

States ... shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

In short, children and young people have a right to be asked and heard in the views about decisions which affect them. This right, and all other rights under the UNCRC, must be given due regard in all decisions taken by the Welsh Government as they affect children by virtue of the Rights of Children and Young Persons (Wales) Measure 2011.

17. As well as adherence to this principle being a legal right in Wales, the practical importance of listening to children is before the Inquiry in evidence in the report *Protecting the Well-being of Future Generations*, July 2022, p9, executive summary (INQ000191887) which states “*Having opportunities to express view, and have their views valued is identified by young people as being beneficial for mental wellbeing and can lead to more effective policy responses*”. The main report (INQ000191886) also notes the negative mental health and wellbeing impact of the pandemic on all children in Wales at paragraph 3.1.

18. At the start of the pandemic, it is clear that the voices of children and young people in Wales were not being sought or considered. When the decision to close schools was taken on 18 March 2020, the corresponding Ministerial Advice, dated 20 March 2020, INQ000145342, questions how free schools meals will be provided and how childcare will be provided, but nothing more. There is no evidence of consideration of the duties under the Rights of the Child (Wales) Measure 2011 or the UNCRC, nor the educational,

developmental, and emotional harms which will impact children by being unable attend school, nor the mitigating measures which could be put in place to support children.

19. The focus of the Ministerial Advice is on infection control. That is perhaps understandable in the unprecedented nature and pace of the required decision making, but where were the voices of children in that decision which would affect them so significantly. As was confirmed by Professor Holland in her oral evidence, the Commissioner was not consulted in the decision. As confirmed by Jane Runeckles in her oral evidence, no consideration was given to whether to consult the Commissioner. To confirm; the statutory advocate of children's rights in Wales under the Care Standards Act 2000 was not consulted in the most significant decision affecting children in Wales since devolution.
20. As Professor Holland commented in her witness statement at paragraph 2.8.3, the original guidance around school closures at the point of the first lockdown failed to take into account fully the needs of vulnerable learners, providing only for children of key workers to be accommodated at school hubs. During subsequent periods of lockdown and school closures, however, this approach was refined following feedback from the Commissioner and others.
21. As the pandemic progressed, the Commissioner consistently requested clear messaging for children and young people, understandable decision making, and the involvement of children and young people through discussion groups.
22. As is noted in Professor Holland's evidence at paragraph 2.8.5, the Commissioner highlighted that the lack of published information worried the children's sector and children and families who did not understand decisions being made about them and whether and how their rights were being considered in such decisions. See for example INQ000280327 where on 16 October 2020, the Commissioner raised concerns as to opacity of decision making around the firebreak school closures and why there was a cut off at year 8, and INQ000191254 where the Commissioner on 23 October 2020 offered to facilitate a closed discussion group between young persons and the CMO and emphasised the importance of clear messaging on why schools had been closed.
23. Indeed, as Professor Ann John highlighted in her statement at paragraph 4.11 "*with respect*

to young people , we found not all drivers of behaviour will be related COVID-19 risk, and this needed to be properly understood. Designing effective communication and interventions with young people will require an appreciation of young peoples’ own understanding of the situation and their losses. Outputs need to be age appropriate and there is a need for simple behavioural instructions framed in a contextually relevant way”.

24. An example of how this can be done is the ‘listening day’ organised by the Commissioner in response to the announcement of the Autumn 2020 ‘firebreak’ lockdown (see INQ000191156 for the resulting briefing document which was shared with the Welsh Government) and use of the ‘Coronavirus and Me’ Survey as organised by the Commissioner (as in fairness the Welsh Government did when considering the firebreak (see annex to cabinet minutes on children’s rights (INQ000048882)).

25. There were other options which, with more effective consideration of children’s rights in decision making, could have assisted. For example, Professor Ann John states in her statement at paragraph 5.25 “... *some but not all of SPI-B advice was followed. For example, in [INQ000273527] we recommended that young people who had been asked to isolate or stay at home should be provided with good financial and other support e.g. free mobile phone data, streaming and gaming. We also suggested communications should avoid giving visibility to non-adherence. I am not aware that either of these suggestions were completely followed”.*

Timing of Initial Action and Welsh Government Preparedness

26. The Commissioner raises a discrete concern related to the Welsh Government’s preparedness and timing for its initial decision making relating to children when, on 18 March 2020, the decision was taken to close schools.

27. In her oral evidence, Eluned Morgan MS candidly stated, “*If we had our time again we recognise that we should have been making earlier preparations*”. The Commissioner considers that an apt reflection which may be adopted for the decision to close schools.

28. Firstly, it is concerning that the action to close schools was taken on 18 March 2020 without any legal advice (as noted in the Ministerial Advice of 20 March 2020,

INQ000145342).¹ It is presumably due to this lack of legal advice that the decision to close schools was taken by the Welsh Government when, in the absence of the Coronavirus Act 2020, it did not have the power to do so.

29. The Commissioner notes the oral evidence of Jeremy Miles MS that the announcement of the decision was intended to be clear messaging of policy guidance to local authorities who did have power to change term times. The Commissioner would highlight that is clearly not what the announcement says and, further, would ask the Inquiry to note that none of the discussions around the decision at the time nor the evidence suggest otherwise. The then Education Minister's published announcement on 18 March reads as follows; *"Today, I can announce we are bringing forward the Easter break for schools in Wales. Schools across Wales will close for statutory provision of education at the latest on 20 March 2020... Today's decision will help ensure an orderly closure."*² It is clear on the face of the announcement, that the Education Minister considered she was taking a decision, which she had no lawful power to take.

30. The lack of legal advice also denied the Minister the opportunity to be reminded of her legal duties to children under Rights of Children and Young Persons (Wales) Measure 2011 (see below).

31. Secondly, it is concerning that the decision to close schools was taken at such a rushed pace. It appears there was no (at least adequate) contingency planning taking place in the months of January and February 2020 despite, as the Inquiry was informed by Vaughan Gething MS in oral evidence, the facts that school closures were a possibility under the Response Plan and discussions highlighting the possibility of school closures had been taking place since at least Mid-February 2020, if not sooner.³

¹ The Inquiry may wish to note Jeremy Miles MS's statement dated 13 December 2023 which notes, at para 102 that legal advice was not asked for on school closures in March 2020. The Inquiry may wish to contrast with para 103 on closing businesses and para 106 on closing caravan parks and footpaths where legal advice was sought.

² The full announcement was published online: [Statement from Minister for Education, Kirsty Williams, on school closures in Wales | GOV.WALES](#)

³ The Inquiry may be assisted by the following observations in Mr Gething's statement on this point. Para 161 – SAGE discussions did take place around school closures on 14 Feb 2020. Para 166 – On 26 Feb 2020, PHE advice was not to close schools. Para 178 – On 4 Mar 2020, at a COBR meeting, it was noted there would be a tipping point where would be forced to close schools. Para 182 - school closures were ruled out on 5 Mar 2020 as there was no scientific case. Para 198 – On 12 Mar 2020, COBR considered SAGE advice and school closures and

32. If proper contingency planning had been undertaken at that time, with the rights and needs of children at the centre of that planning, school closures may have been shorter (or even avoided⁴), they may have been implemented in a smoother way, with legal advice, and putting in place support for children and young people which they would need for a long-period of time away from school, it was after all accepted by Mr Gething in oral evidence that if schools closed in March 2020 that it would be difficult to reopen them before the Autumn of 2020.

33. Further, if proper contingency planning had taken place, the Welsh Government would have had time to assess, understand, and consider the impact on children and their rights by involving the Commissioner in the decision and/or by undertaking a Children's Rights Impact Assessment. Several Welsh Ministers came before the Inquiry to suggest that these oversights were due to the pace at which decisions were having to be made. The Commissioner does not doubt the pressures of that period. Nonetheless, the Commissioner questions whether the necessity to work at such pace is, in part at least, self-inflicted and down to a lack of preparedness and planning.

Considering the Rights of Young People and Children's Rights Impact Assessments (CRIAs)

34. In Wales, there is a duty under the Rights of Children and Young Persons (Wales) Measure 2011 and the Children's Rights Scheme 2021 on the Welsh Government to have due regard to United Nations Convention on the Rights of the Child (UNCRC) in exercising its functions, which in turn requires consideration of the best interests of children as a primary consideration as well as 41 other duties to children. The Children's Rights Scheme, at paragraph 3.1, also requires the Welsh Government to undertake a Children's Rights Impact Assessment (or CRIA), often as part of an integrated impact assessment (IIA), to understand the social, economic, cultural and environmental effects of decisions on children.

decided not to implement at this time as more likely to be effective later in pandemic and would need to be 13-16 weeks. Para 214 – On 16 Mar 2020, at COBR, school closures were 'actively considered'.

⁴ The Inquiry may wish to note the evidence of Vaughn Gething MS in his statement dated 3 January 2024 at para 257 that in hindsight he now believes we should have schools open for longer with protective measures later implemented in secondary schools. Full and proper contingency planning and consideration of the right and needs of children early may have achieved the same.

35. As Professor Holland observed in her oral evidence, a CRIA should be started as soon as a new policy or decision is being considered. It is a tool for thinking about the impact on children and all 42 of the rights of children. It should think about mitigation of adverse impacts which are identified as part of the assessment. It should be an active live document.
36. In oral evidence, Jeremy Miles MS questioned the proportionality of undertaking an IIA or CRIA at times where there was no suggestion of taking steps to ease restrictions. The Commissioner rejects this assertion and asks the Inquiry to do the same. The duty to have due regard to UNCRC rights is a continuing one and remains important. The longer that public health restrictions are in place, the greater the impact on children, and in turn, the more likely that actions will be required to maintain their rights and provide them with support.
37. The CRIA document itself is important, but more important is the substantive consideration of rights and needs of children. The duty under the 2011 Measure is one of substance, not form. There is an obligation to consider UNCRC rights and doing so contemporaneously will lead to better decision making. If this is done contemporaneously in a CRIA or IIA document then that will help assist in evidencing compliance with the duty, but it not definitive. It is the consideration of UNCRC rights and mitigation measures feeding into the decision making at the time that will constitute exercise of the duty.
38. The Inquiry has heard concerning evidence relating to failings in the use of assessments during the pandemic. These are assessments entirely designed to ensure decision makers have in their mind, whilst making decisions, the impact of those decisions on the most vulnerable in our society. Such failures are breaches of the high, and appropriately high, legal standards in Wales designed to produce better decision making and which keeps rights and needs at the centre of decision making.
39. The Inquiry will recall the oral evidence of Professor Debbie Foster that increasingly Equality Impact Assessments (EIAs) have become tick box exercises and they have become much more diluted in recent years. The Commissioner considers the same can be said for many CRIAs.
40. In evidence, a number of Ministers and Officials were asked how in the absence of

undertaking a contemporaneous CRIA they considered their duties under the 2011 Measure and children's rights. They repeated the same point – there was no time to prepare the forms, but they had these issues on their mind. The Inquiry will have to grapple with whether such vague assurances are sufficient. The Commissioner is concerned that such vague consideration of UNCRC rights led to a failure to give proper consideration to the rights and views of children and young people and lost an opportunity to consider whether and how the adverse impact on children's rights and their experiences that came with restrictions imposed in the pandemic could be mitigated.

41. As observed by Professor Holland in her witness statement at paragraph 10.1, there were many times during the pandemic when the Welsh Government made decisions to protect some rights, primarily health, that impacted on children's access to other rights such as education, seeing family and friends, and play. Although making such decisions can be justified in a crisis such as a pandemic, the Welsh Government should also have been assessing the impact on all children's rights at the same time. Decisions and regulations made in Wales should have been subject to a CRIA.
42. We know from the evidence both written and oral before the Inquiry that the Welsh Government failed in their duty to undertake CRIs. For example:
 - a) Evidence from Julie Morgan MS, the Deputy Minister for Health and Social Services to the Senedd CYPE Committee on 5th May 2020 (INQ000280337 at paragraphs 106 and 107) states *“it's been a very difficult time... and it hasn't been possible to do the impact assessments that we would normally do”*.
 - b) Evidence from Andrew Goodall in his statement of 29 September 2023 at paragraph 237 that *“decisions at the start of the Covid-19 pandemic were often made without a formal assessment of the impact on vulnerable people.”*
 - c) Evidence from Shan Morgan that CRIs should ideally be produced contemporaneously, but there are of course circumstances where it's not possible to do that if there are competing priorities and in such circumstances it is appropriate to create them after the event based on other contemporaneous documents. Ms Morgan was in fact only able to point to two CRIs in all of 2020 – the Commissioner would

suggest the Welsh Government made more than two decisions which impacted children in 2020.

43. For some major decisions no CRIA was completed at the time. Four examples are:

- a) The initial decision to close schools (as discussed above and also see Professor Holland's statement at paragraph 2.9.2);
- b) When the Welsh Government was considering support for children with additional learning needs during the pandemic (see 16 June 2020 matters arising note INQ000191234);
- c) Relating to use of face masks in schools (see statement of Professor Holland at paragraph 2.11.19); and
- d) On the impact of self-isolation on children and offered to support the work on a CRIA (see statement of Professor Holland at paragraph 2.19.4).

44. Further, as Professor Holland notes in her statement at paragraph 2.9.5, the Welsh Government's decision of 3 June 2020 that schools would reopen in the Autumn of 2020 was supported by a draft integrated impact assessment which was published after the decision and did not appear to have informed the decision (see INQ000329382, where the Commissioner's Office raised this concern on 4 June 2020).

45. Furthermore, as is noted in Professor Holland's evidence at paragraph 2.8.4, when CRIA were completed they were often completed late; very far removed from the original decisions and reflecting back (see INQ000191239 and INQ000191234, letters from the Commissioner to the Welsh Government, dated 22 May 2020 and 16 June 2020, raising concerns that CRIAs were being completed retrospectively) (and see also INQ000329376, an email from within the Commissioner office, dated 12 May 2020, where a CRIA was requested by the Welsh Government after decisions had been taken).

46. A CRIA should not be about retro fitting children's rights considerations into decisions that never had this in mind. This defeats the purpose of the CRIA, which is to ensure that the

rights of children are at the forefront of the minds of decision makers and may lead them to consider and mitigate the impact of their decisions on children before those decisions are taken and implemented.

47. These failings are important failings which the Inquiry is invited to comment upon for two reasons:

- a) A contemporaneous CRIA is an important procedural safeguard which, had they been conducted at the time, may have mitigated the impact of the pandemic on children.
- b) The failings relating to CRIAs is not simply a feature of the pandemic. Whilst giving oral evidence, Rt. Hon. Mark Drakeford MS stated that Wales introduced a scheme to provide free school meals during school holidays and this ran for longer than any other UK nation. He did not mention that on 27 February 2024, in the case of *R (RLQ) v Welsh Ministers*, case number AC-2023-CDF-000107, the Administrative Court declared that the Welsh Government's decision of 28 June 2023 to end that provision was unlawful because in taking the decision, the Welsh Government failed to consider the rights of children under the 2011 Measure and the Public Sector Equality Duty. When taking that decision, the Welsh Government left the announcement to the last minute, did not consult with the Commissioner, did not obtain the views of any children or young persons or any persons with protected characteristics, and did not undertake an IIA, CRIA or EIA. The complaints sound worryingly familiar and illustrate that the problem is systemic and persists to date.

48. If the Welsh Government did not acknowledge the efficacy of CRIAs or their duty to undertake CRIAs to the detriment of the children of Wales during the pandemic, and it still does not to date, then there can be little hope that this important duty will be complied with fully in the future. The Inquiry is invited to make recommendations commenting on the importance of adherence to this duty and the importance of placing children's rights at the centre of decision making at the time the decision is made.

Face Masks

49. In his oral evidence Sir Frank Atherton expressed his view that the evidence in favour of

face coverings was weak and, as such, his view on mandatory use differed from other CMOs. Whatever the efficacy of the use of facemasks, that efficacy must also be weighed against the potential harm the use of the same may cause.

50. As Professor Holland notes in her statement at paragraph 2.9.27 and 2.9.28, the Commissioner raised the use of face coverings in the classroom in foundation phase of return to schools in February and March 2021, and concerns over the impact on language development, and for children with hearing loss and also brought the lack of clarity on when face coverings should be used in the Welsh Government's operational guidance in August 2021.
51. Further, as Professor Holland notes in her statement at paragraph 2.11.16. the Commissioner raised concerns over the inconsistency of approach by schools, unclear messaging and guidance, and the impact on children with speech and language difficulties and whose first language is not Welsh or English of the use of face masks in the classroom. The views of children on the use of face masks was generally negative (see the views as expressed by the Commissioner arranged Youth Advisory Panel at INQ000329373).
52. The Commissioner also raised concerns, on 30 June 2021, that the rights of children relating to face masks had, without consideration of those rights, fallen out of step with the rights of adults, observing that "*adults in Wales can sit in a pub with friends from six households, without wearing a face covering; while most of our secondary pupils are required to wear face coverings all day, every day, whilst seated, despite known impacts on learning*" (see statement of Professor Holland at paragraph 2.11.20)
53. Whilst it may have been appropriate to prioritise the physical health implications of use or not of face masks, the views and rights of children and the impact on children appeared only to come as an afterthought, if at all, and only thanks to the Commissioner.

Guidance for Children's Homes and Children in Care

54. As Professor Sally Holland commented in her witness statement at paragraph 2.8.3, guidance regarding residential homes tended to be generic as opposed to age specific, and therefore failed to take account of the differing risk profile of a small (2-4 bed) residential

children's home for a child in local authority care, as compared to for example a large residential or nursing home for the elderly or those with complex and/or multiple needs or disabilities. The guidance was highly restrictive on personal freedoms, for example preventing any visitors for lengthy periods of time, longer by far than any self-isolation periods applying to members of the general public, if any case of Covid-19 was found to be linked to a staff member or resident.

55. As Professor Sally Holland commented in her witness statement at paragraph 2.19.3, when the Christmas 2020 lockdown was swiftly introduced in Wales, the Commissioner received a number of enquiries about contact for children in care with their family members. The guidance was clear that contact was still permitted to go ahead, but some local authority public health/ environmental health officers were giving advice preventing contact from taking place. Also, in response to some cases of Covid within children's homes, the homes were closed to visitors for at least 28 days despite regular testing of staff and young people returning as negative. The Commissioner was able to assist with Christmas contact arrangements for many who made contact but there may of course have been others who did not get in touch who were affected by such risk aversion. A clear lesson emerged that blanket guidance for all residential settings was not always suitable for small and lower risk children's settings as opposed to large elderly care or nursing homes.

Conclusion and Lessons to Learn

56. In times of great adversity and significant pressure on decision makers and their advisers oversights may be understandable, but that is why systems must be in place to ensure that the rights and protections of the most vulnerable, including children and young people, are upheld, for they are the ones who will be most impacted by monumental pressures on society.
57. The question may be posed, what difference would seeking the views of children, their advocates, and adherence to proper standards of decision making have when lockdowns were inevitable? Perhaps lockdowns and other restrictions were inevitable, but the way in which they were undertaken could have been done better. Some examples are:
- a) Proper, full, and early consideration of the rights of children at the point of the first

school closure would have reminded decision makers that schools are more than educational. They are a real provision of development and support for all children, but in particular those with additional learning needs, experiencing domestic violence, or living in poverty. There is some doubt (admittedly applying hindsight) whether school closures were necessary at all if proper and full information gathering had taken place at the time and there were effective contingency plans in place. Proactivity would have provided information and may have removed the need to apply hindsight. In any event, there is little doubt that the way in which they were done resulted in harms to children at the time and with which children still live to this day.

- b) Proper, full, and early consideration of the rights of children when considering the easing of restrictions may have led to reopening of schools at a safe time, earlier than they were, and certainly before businesses and hospitality were able to reopen. This would have lessened the educational, developmental, emotional, and mental health harms inflicted.
- c) Proper, full, and early consideration of the rights of children may have considered the digital gap and those children who did not have access to technology which allowed them to undertake remote learning or even to connect with family and friends could have been helped sooner;
- d) Proper, full, and early consideration of the rights of children may have resulted in young people who had been asked to isolate or stay at home being provided with good financial and other support relevant to them, such as free mobile phone data, streaming, and gaming (as was later recommended but not implemented).
- e) Proper, full, and early appreciation of the differences in children, be that based on race, poverty, disability, or age range would have allowed for targeted action, interventions, and messaging. The term ‘children and young people’ isn’t just about those 16+ (the Commissioner notes that much of the behavioural science, modelling, and communications activity targeted ‘teenagers’, thus missing a large cohort of children). Equally, it is not just about children and young people who are a particular race, of a particular socio-economic background, or with or without a disability.

- f) Proper, full, and early consideration of the rights of children in the youth justice institutions (accepting this is a reserved matter, but which the Commissioner was able to affect in HMP Parc YOI) could have resulted in quicker consideration of the ‘bubble systems’ which meant young offenders did not have to spend 23 hours a day in their cells.

58. The Commissioner welcomes the Inquiry and considers this an opportunity for lessons to be learned and recommendations to be made. In particular, the Commissioner recommends to the Inquiry the following lessons:

- a) The impact of school closures is significant and decisions makers must, from the very beginning and continuously, weigh the risk to life against the risks we know school closures pose to children (to mental health, educational engagement, safeguarding, etc). School closures should be a last resort given the known adverse impacts on children and future pandemic plans must make that clear as well as setting out escalating measures which could be taken before school closures are implemented. The plans must also include the detailed steps which should be taken to quickly identify the competing risks of the source of any new pandemic and to quickly and continuously inform and reassure children, parents, and school staff to avoid uninformed, unilateral school closures.
- b) Schools must be ready for online learning (and not just for pandemics but also other emergencies). Digital connectivity for pupils and staff is key and those who do not have it must receive support. There must be confidence of staff in using this tool and clarity on safeguarding measures.
- c) There is a need for CRIAs to be undertaken at the time of decisions and for the voice and rights of children to be considered when decisions are taken relating to children. This action is not simply reflective of legal obligations in Wales; they are a necessary conduit to better decision making around children, and mitigation of adverse measures which may impact them.
- d) There is a need when making decisions about children and young persons and the impact of those decisions to do things differently depending on background, age group

(a 2 year old's needs are very different to a 16 year old), and the setting (such as those in the justice system or those in children's residential homes).

- e) There is a need when making decisions about children and young persons to do things differently depending on living arrangements and existing inequalities.
- f) The Children's Commissioner should be engaged and consulted early and used as a resource in good decision making relating to children. It is not a good use of the Office of the Commissioner to only ask for views after decisions have been taken.
- g) Decision makers, in times of crisis and when considering infection control, must consider which groups are likely to be hardest hit by the source of infection and/or the restrictions and put mitigation measures in place.
- h) The manner of spread of infection should be identified as quickly as possible and mitigation measures should ensure that restrictions fit with this knowledge – for example if infection is less prevalent in outdoor areas, play parks should open before indoor hospitality and businesses.
- i) Cross-disciplinary working methods, within and outwith Government, that were features of the pandemic in Wales, should be extended to tackle non-pandemic matters that have even more impact on the health and outcomes of children; including but not restricted to child poverty and other pervasive inequalities.
- j) Greater clarity is needed in future emergency situations about when clear and consistent national guidance is needed and where local measures could be more proportionate and adaptable to particular population features and needs.

Conclusion

59. The Commissioner thanks the Inquiry for allowing her involvement as a core participant in this module and hopes her submissions and assistance help guide the Inquiry to make recommendations for better decision making and more support for children in the future.

David C. Gardner

No5 Chambers

4 April 2024

For and on behalf of the Children's Commissioner for Wales