

# UK COVID-19 INQUIRY

## MODULE 8

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### WRITTEN SUBMISSIONS FOR THE PRELIMINARY HEARING ON BEHALF OF THE CHILDREN'S COMMISSIONER FOR WALES

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#### **Introduction**

1. The Children's Commissioner for Wales ("CCfW") thanks the Inquiry for allocating her core participant status in this important Module considering the impact of Covid-19 on children and young persons across the UK.
2. The CCfW welcomes the engagement with the Inquiry team to date in respect of this Module, and has no particular observations on the present proposed scope of this Module.
3. The CCfW considers and hopes that the Commissioner and her Office can assist in understanding the impact and challenges brought by Covid-19 for children and young people in Wales. Some will be similar across the four nations, others unique to Wales.
4. The CCfW anticipates and hopes that the Inquiry will also benefit from the learning and experience of the CCfW on some of the practical arrangements, legislation, and guidance which Wales has in place to protect the rights of young people, and which may have benefitted children and young persons across the UK were the same measures in place. Equally, the Inquiry may consider whether such arrangements, had they gone further or been followed more carefully, would have provided greater protections to children and young people and minimised the harm they experienced.
5. This Inquiry has received written and oral opening and closing submissions from the CCfW when it heard Module 2B in Cardiff. Much of the impact on children and young persons in Wales was discussed in those submissions and with a view to minimising reading for the Inquiry the CCfW respectfully adopts those submissions for this Module, but will summarise them to assist.

## Summary of CCfW Submissions for Module 2B

6. In summary, the CCfW made the following points in the submissions for Module 2B:
- a) 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.
  - b) 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. There is a longer-term adverse impact on children's confidence, school attendance and mental health since the pandemic.
  - c) Wales lacked specific school infections reports. 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.
  - d) School closures had 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, and loss of the protective environment of the school for vulnerable children.
  - e) The CCfW conducted two surveys entitled Coronavirus and Me, with children and young people across Wales as well as a firebreak lockdown listening day. These surveys and interventions showed 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 CCfW knows this because, importantly, the CCfW asked children. The CCfW did her best to ensure their voices were heard by feeding the findings directly to the Welsh Government in real time to inform decisions. Having opportunities to express views, and have their views valued is identified by young people as being beneficial for mental wellbeing and can lead to more effective policy responses.

- f) 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.
  
- g) The CCfW considers that liaison between her office and 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. The CCfW considers that the social partnership model and the willingness of the Welsh Government to listen and learn should be commended. The CCfW 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.
  
- h) 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, 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.
  
- i) CRIA, however, in practice during the pandemic, were often either not completed or completed late and after the decision had already been taken, thus retro fitting children's rights considerations. For some major decisions no CRIA was completed at the time. Four examples are:
  - i) The initial decision to close schools.
  - ii) Considering support for children with additional learning needs during the pandemic.
  - iii) Relating to use of face masks in schools.
  - iv) On the impact of self-isolation on children.

- j) The CCfW is concerned that 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. As such, there can be little hope that this important duty will be complied with fully in the future.
- k) When the decision to close schools in Wales was taken on 18 March 2020, it does not appear that consideration was given to the Rights of the Child (Wales) Measure 2011 or the UNCRC, or the educational, developmental, and emotional harms which will impact children by being unable attend school, or the mitigating measures which could be put in place to support children. The CCfW was also not consulted in the decision.
- l) The decision to close schools in Wales was taken on 18 March 2020 without any legal advice. 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 at that time, it did not have the power to do so. The lack of legal advice also denied the Education Minister the opportunity to be reminded of her legal duties to children under the Rights of Children and Young Persons (Wales) Measure 2011.
- m) It appears there was no (at least adequate) contingency planning relating to school closures taking place in the months of January and February 2020. 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 avoided), 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.
- n) The CCfW raised concerns about the use of face coverings in the classroom in foundation phase of return to schools and concerns over the impact on language development, for children with hearing loss, with speech and language difficulties, and whose first language is not Welsh or English, and also brought the lack of clarity on when face coverings should be used in the Welsh Government's operational guidance to the attention of the Welsh Government.
- o) 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 in Wales, 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.

- p) During the pandemic, public facing guidance was issued from a number of different sources, including the UK Government and both Welsh Government and Public Health Wales. There were increased areas where the 'jagged edge' of devolution caused practical difficulties when implementing the new legislation and guidance in Wales. This often led to children and young people (and their parents) being confused as to which guidance applied to them. One sector in which this became particularly apparent was youth justice; specifically youth custody settings. In Wales there is one Youth Offending Institution (HMP Parc in Bridgend) and one Secure Children's Home (Hillside in Neath Port Talbot). Youth justice is not a devolved matter whereas public health is a devolved matter.
- q) Further, in Wales, it was often difficult for even the CCfW to determine whether the Welsh Government or Public Health Wales held responsibility for taking relevant decisions.

## **Conclusion**

- 7. This Module will no doubt highlight the issues which children and young people across the UK encountered during Covid-19 and, importantly, the continuing impact. That impact was sharply felt by children and young persons in Wales where high poverty rates, large rural areas with stretched services, and where large numbers speak Welsh not English as a first language or attend a Welsh medium school even if their home language is not Welsh, exacerbate that impact.
- 8. Whilst the CCfW does commend the work of the Welsh Government in a number of ways in which it operated during the pandemic, there were no doubt a number of failings in preparedness and process which cost children and young people dearly. There was also a

failure to consider the rights of children and young people which acted to their detriment.

9. The Inquiry may wish to consider the protection of children's rights across the UK. Had the due regard principles of the Rights of Children and Young Persons (Wales) Measure 2011 been properly adhered to in Wales the impact on children and young people in Wales may have been mitigated. Had similar requirements applied and been adhered to across the UK the impact on children and young people across the UK may have been mitigated. Had those protections been stronger, such as by direct incorporation of the UNCRC in similar terms to the Human Rights Act 1998 rather than a due regard duty or no binding duty, the impact on children and young people across the UK may have been mitigated.
10. The CCfW 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 and young persons in the future.

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