

UK COVID-19 INQUIRY

MODULE 8

WRITTEN CLOSING SUBMISSIONS

ON BEHALF OF THE CHILDREN'S COMMISSIONER FOR WALES

Introduction and the Impact of the Pandemic on Children

1. The Covid-19 pandemic had an immediate impact on all children and young people in Wales and across the UK. That much appeared obvious before Module 8 began receiving evidence. The evidence which the Inquiry has read and heard firmly establishes that statement is unequivocally true. For example:
 - a) As Professor Newlove-Delgado, Expert in Mental Health, told the Inquiry in her oral Evidence, "*Children are developing socially, emotionally and psychologically... so influences on their environment at that time have a greater impact on them than they would do on an adult*" [PHT/4/117/5-12]. Professor Newlove-Delgado also, in her oral evidence, described a "*sharp increase*" in child mental disorders which was above the pre-pandemic trend [PHT/4/126/11-20].
 - b) Professor Catherine Davies, Expert in Child Development, prepared a report¹ for the Inquiry which makes clear that in Wales, after the pandemic, more children were performing below their age expectations, than before the pandemic. She noted in her oral evidence that the principal impacts of the pandemic on children under 5 were lower rates of reaching developmental milestones and that children experienced raised anxiety and poorer infant mental health [PHT/2/173/22-25].
 - c) Professor McClusky, Education Expert, prepared a report for this Inquiry which states that the poverty attainment gap in Wales improved from 2019 to 2020, but in 2024 was back at 2019 levels.²

¹ See data on impact of young children in Wales at §§177-178 (INQ000587957_0054-55).

² INQ000587959_0193, §485.

2. The disadvantage gap caused by race, poverty, and disability in children became more pronounced. Vulnerable children who were at risk in their home lost the protective environment of the school. Children lost many activities we all took for granted in childhood. We are seeing a longer-term adverse impact on children's confidence, school attendance and mental health since the pandemic.³ Whilst the pandemic had an immediate and devastating impact on older generations, the impact on children will be measured for a generation.

3. The Inquiry has already recognised this impact on children in its report following Module 2. The Commissioner agrees, in particular, with the following observations from the Module 2 Report:

[T]he nationwide lockdowns of 2020 and 2021 undoubtedly saved lives, they also left lasting scars on society and the economy, brought ordinary childhood to a halt, delayed the diagnosis and treatment of other health issues and exacerbated societal inequalities.⁴

...

The vast majority of children were not at risk of serious direct harm from Covid-19, but suffered greatly from the closure of schools and requirement to stay at home, and the consequent loss of interaction with friends and family and limited access to play. Children were not always prioritised. No government in the UK was adequately prepared for the sudden and enormous task of educating most children in their homes and failed sufficiently to consider the consequences of school closures for children's education and physical and mental health.⁵

...

The closure of schools to most children did not just expose them to greater harm within the home, but also reduced the role of schools as a vital part of the child protection system. This lack of visibility of children put them at even greater risk.⁶

...

The UK government should have assumed that the implementation of a lockdown would expose significant numbers of women and children to violence and abuse, in circumstances where these would be harder to detect, harder to seek support for and easier to hide. Clear consideration ought to have been given to the

³ See NSPCC statistics on impact of covid on children (prepared Feb 2022): INQ000268039.

⁴ Module 2 Report, Volume I, p.2

⁵ Module 2 Report, Volume I, p.9-10

⁶ Module 2 Report, Volume II, p.82, §10.82.

*numbers of people already known to be at risk of violence or other forms of abuse in their homes, and plans made to mitigate them.*⁷

...

*For most children, the closure of schools, the inability to see friends and the requirement to stay at home were of profound consequence and compounded disadvantages to which they were already subject.*⁸

...

*Access to play and interaction with family and friends in the early years are critical to children's development. If the opportunity to develop early skills is lost, it may be difficult to recover.*⁹

4. It should be noted and recorded that the evidence before the Inquiry is not that these issues were born of the pandemic. Rather, the pandemic exacerbated an already unacceptable state of affairs. Dr Carol Homden, stated as much in her witness statement (INQ000588056_0038 at §153); *"the impact was to exacerbate pre-existing problems"*. For example:
 - a) Professor Davies stated in her oral evidence that before the pandemic, the rates of interventions of children statutory services across the UK was increasing. There are multiple interacting reasons for that, and part of that is disinvestment in early intervention services [PHT/2/130-132/1-25,1-25,1-4].
 - b) Professor Newlove-Delgado's report¹⁰ notes that prior to pandemic, 12% of children between 10 and 17 reported low wellbeing.
 - c) Charlie Taylor, the Chief Inspector of Prisons, told this Inquiry in oral evidence that for years prior to the pandemic His Majesty's Inspectorate of Prisons was concerned about the treatment of children in prisons [PHT/2/62/17-24].
5. An inadequate children's rights framework across the UK combined with long-term under-funding of children's services leading up to the pandemic, greatly contributed to the aforementioned impacts on children.

⁷ Module 2 Report, Volume II, p.83, §10.88.

⁸ Module 2 Report, Volume II, p.84, §10.90.

⁹ Module 2 Report, Volume II, p.84, §10.91 (relying on the evidence of Professor Sally Holland, CCfW, April 2015 to April 2022).

¹⁰ INQ000587958_0010 at §21.

Legal Framework

6. The Inquiry has heard evidence from the Commissioner on the Welsh legislation which brings children's rights to the centre of decision making in Wales in the Rights of Children and Young Persons (Wales) Measure 2011, which requires the Welsh Ministers to have due regard to the United Nations Convention on the Rights of the Child ("UNCRC") when taking decisions.¹¹ Other more discrete legislation, for example s.7 Social Services Well-being (Wales) Act 2014 and s.7 Additional Learning Needs and Education Tribunal (Wales) Act 2018, creates similar due regard duties for any decision makers, principally local authorities in Wales, when taking decisions under those Acts.
7. The Commissioner would in particular highlight that in accordance with article 3 of the UNCRC, the best interests of children must be a primary consideration in decision making and in accordance with article 12, children and young people have a right to be asked and heard on their views about decisions which affect them. Applying the 2011 Measure, the Welsh Ministers must have regard to these rights, and all rights under the UNCRC, in all decisions they make.
8. In order to ensure that the rights and voices of children are considered, the Commissioner recommends to the Inquiry the use of Children's Rights Impact Assessments (or "CRIAs"). In Wales, CRIAs are required by law in decisions taken by the Welsh Government which affect children as a result of the statutory guidance, produced pursuant to s.2 of the 2011 Measure, in the Children's Rights Scheme 2021 and its predecessor the 2014 Scheme.

The impact of a lack of adherence to the due regard duties and a children's rights approach

9. When decision makers in Wales took the rights of children into account they made better decisions. Specific Welsh examples are:
 - a) The liaison between the Commissioner's Office and the Welsh Government during the pandemic, and the willingness of the Welsh Government to learn and adapt was often positive and reflective of good practice and allowed the voices of children to be heard in Welsh Government, both through the Commissioner and through events organised through the Commissioner's Office.

¹¹ Summarised in oral evidence [PHT/16/2-4/21-25,1-25,1-3]

- b) The Shadow Social Partnership Council which allowed ministers, officials, and the Chief Medical Officer for Wales to explain the rules, the latest evidence, and proposed major decisions, and allowed stakeholders to raise issues and concerns and resulted to changes in guidance.¹²
 - c) The evidence of Charlie Taylor on the work of YOI Parc, where the leadership team communicated well with Public Health Wales, focused on children's rights and supporting young people to continue time out of cells and access to education [PHT/2/71/2-17].
10. This is not however the full story. The Commissioner cautions the Inquiry to be wary of a conclusion that the grass was always greener in Wales.
11. The reality of a proportionate and focused Module which was to run for only 4 weeks was that the evidence before the Inquiry developed a natural Anglo-centricity. That meant a number of professional and excellent witnesses gave evidence on positive frameworks which existed in Wales, which are objectively more progressive than other parts of the UK in advancing children's rights, without knowledge of whether those frameworks produced the results they intended. That is not to criticise the choice of witnesses or those witnesses or their knowledge of their own areas of expertise. It is simply to observe that a lack of direct experience on the actual impact in Wales means less weight can be placed on the aspects of those witnesses' evidence which speak to the implementation of the legal framework in Wales. The Commissioner, by contrast, has direct experience of the effectiveness (or not) of the implementation or application of the legal frameworks in Wales.
12. Whilst the Commissioner does commend the legislative and policy arrangements in Wales and the general willingness to listen on the part of the Welsh Government, on occasion and in particular at the outset of the pandemic, the arrangements to protect children and to facilitate children's rights were not sufficiently well prepared or able to stand up to the stresses that came with the pandemic. There was, in short, an 'implementation gap'.

¹² See the Commissioner's Statement, INQ000587975_0007-8 at §24(c).

School Closures

13. The failure/breakdown in the legal framework and observance of children's rights in Wales is strongly illustrated in the first school closures in March 2020.
14. When the decision to close schools in Wales was taken by the then Education Minister for Wales on 18 March 2020, no planning had taken place to prepare local authorities, schools, parents, or children prior to a few days before the decision:
 - a) Professor Gillean McClusky confirmed this in oral evidence, stating that "*Schools across the UK were not prepared at all*" to provide teaching at home. "*There was no scenario planning for a pandemic of this kind. There was no preparation. There was no training for staff. There was no communication with parents about what to do*" [PHT/6/135/18-24].
 - b) Sharon Powell of Powys Council confirmed at paragraph 17 of her statement that the local authority got 3 hours notice of the decision to close schools and, at paragraph 91 that the local authority had no contingency plan in place for a pandemic.¹³
 - c) Ruth Allen of the British Association of Social Workers confirmed at paragraph 71 of her statement¹⁴ that there was no pre-pandemic guidance which could be operationalised for social workers.
15. These observations are in line with the observation the Inquiry made in its Module 2 Report:

*[N]o government in the UK was adequately prepared for the sudden and enormous task of educating most children in their homes or for meeting the challenges and risks this presented. None had envisaged or prepared for the potential, complex ramifications of school closures on children's lives.*¹⁵
16. The lack of insight and planning meant that when it became apparent that schools may have to close, the job and decision making was rushed. The Education Minister, Kirsty Williams, to her credit, accepts this lack of planning and preparedness

¹³ INQ000588062_0004 and 0021.

¹⁴ INQ000650824_0017

¹⁵ Module 2 Report, Volume I, p184, §4.117.

INQ000651701_0009 at §43). That failure meant the Education Minister lacked the scientific advice and modeling she considered she required to inform her decision around education settings.¹⁶ The rushed decision making also meant no legal advice was taken before the decision to close schools was taken. As a result, the Education Minister took the decision when she had no power to do so, the power in fact being vested in local authorities, and without due regard to the UNCRC. The Commissioner was not consulted on the decision. No CRIA was undertaken. That is in contrast to decisions taken on closing businesses, caravan parks and footpaths in Wales, where legal advice was sought.¹⁷

17. As the Education Minister noted in her statement for this Module (INQ000651701_0009 at §42) consultation and CRIAs may not have changed the *decision* to close schools,¹⁸ but that misses the point. They would certainly have informed *how* to close schools. Consultation and/or a CRIA may have spurred on the very action that the Minister states, at paragraph 45 of her statement (INQ000651701_0009), that she would with hindsight have taken, such as data collection on vulnerable children and the needs for support, food, and remote learning facilities. This was a point quite properly accepted by Mr Drakeford in his oral evidence when he said “*There would undoubtedly have been direct benefits if we had been able to do so*” [PHT/15/131-132/10-25,1-10].
18. The result of this is not just a breach of the important rights of and legal duties to children in Wales. It had a practical impact: the lack of contingency planning; the lack of action until so late; and the lack of a voice of the child all led to demonstrable failure to address or mitigate the educational, developmental, and emotional harm which would impact children by being unable to attend school. As Prof. McClusky noted in her oral evidence and at paragraph 466 of her report; “*School closures triggered by the pandemic have had a severely detrimental effect on learning and attainment*”.¹⁹
19. If a CRIA had been done these shortfalls could have been highlighted. If the Commissioner had been consulted, she could have raised these concerns which would

¹⁶ As she states in her statement for this module; INQ000651701_0009 at §42, which cross references and quotes from her Module 2B statement.

¹⁷ See Jeremy Miles MS’s statement for Module 2B which notes, at §102 that legal advice was not asked for on school closures in March 2020. The Inquiry may wish to contrast with §103 on closing businesses and §106 on closing caravan parks and footpaths where legal advice was sought (INQ000389184_0028-29).

¹⁸ Albeit the Commissioner notes and endorses the point made in the Module 2 Report, Volume I, p5 that “*it was only through their own acts and omissions that the four governments had made such a lockdown inevitable*” as well as the Inquiry’s reasoning that leads to that conclusion.

¹⁹ INQ000587959_0182-183 at §466 and in oral evidence PHT/6/186/15-23.

have highlighted the needs of the most disadvantaged. Action could have been taken, mitigating measures which could have been put in place. They were not and so the failure in process, was to the detriment of the children of Wales.

20. The Commissioner hears what the Welsh Government says about the pace of change and the need for expeditious decisions meaning these processes were not followed. There are two points in reply. Firstly, earlier planning, from (at least) February 2020, would have avoided the need for such expeditious decision making. Secondly, it is important that particularly in times of crisis or emergency, existing legal duties, designed to improve policy making, are respected and followed, rather than just abandoned as being too difficult to achieve. The system must stand up to stress or it is an ineffective system.

Face Masks

21. Another example of failures in Wales' children's rights regime was in relation to face masks in the classroom.
22. The Commissioner raised concerns²⁰ over the use of face masks in the classroom in the foundation phase during the return to schools in February and March 2021 and highlighted the impact on children with speech and language difficulties, those with hearing loss, and those whose first language is not Welsh or English. The Commissioner raised concerns over the inconsistency of approach by schools and over unclear messaging and guidance.
23. The Commissioner also raised concerns²¹ that the use of face masks for children had, later in the pandemic, fallen out of step with the rights of adults. When adults in Wales could sit in a pub with friends from six households without wearing a face mask, secondary school pupils were required to wear them in school whilst seated, all day, every day.
24. The evidence, again, is that a failure to listen to what children were saying about face masks, to consider their best interests as a primary consideration, or to conduct a CRIA resulted in prolonged, unnecessary (for some), and detrimental use of face masks in classrooms.

²⁰ See the Commissioner's statement (INQ000587975_0057 at §198)

²¹ See the Commissioner's statement (INQ000587975_0061 at §213).

Guidance for Youth Justice Settings

25. A further example is the Youth Secure Estate in Wales. This was an area where the 'jagged edge' of devolution caused practical difficulties. Youth justice is not a devolved matter whereas public health is devolved. Where bodies were able to navigate the divide between Ministry of Justice prison Policy and Public Health Wales health policy they worked far more efficiently. See the evidence of Charlie Taylor on YOI Parc (above). However, where navigation became difficult it resulted in lengthy, unnecessary periods of protective isolation and difficulty in obtaining testing equipment. See the Commissioner's experiences with Hillside Secure Children's Home.²² These experiences are concerning, especially given the oral evidence of Professor Newlove-Delgado which stated that children in the secure estate experienced an impact on mental health and exposure to isolation of 20-23 hours a day which could have a severe impact [PHT/4/148/5-17].
26. An important footnote to this point is the oral evidence of the then Prisons Minister, Lucy Frazer KC, who confessed to having no knowledge of direct consultation with Public Health Wales in formulation of policy for the secure youth estate during the pandemic, only a "hope" that Public Health England had consulted with Public Health Wales (PHT/12/180/2-5). She also suggested no responsibility of the Ministry of Justice for Secure Children's Homes (PHT/12/179/1-5), which respectfully overlooks the MOJ's formal responsibilities to those children placed in a SCH by way of Court order. The failures at a UK Government level to appreciate the need to support children in SCHs and to feed Welsh public health advice into policy such as it affects children and young people in the secure estate in Wales illustrate how those failures resulted in the detrimental experiences of the children at Hillside SCH.

The Next Steps – The Rights of Children Ahead of and During the Next Pandemic

27. As Kate Anstey of Child Poverty Action Group said in her oral evidence - "*To protect [children] inside a pandemic, [we] must protect outside a pandemic*" [PHT/2/94-95/25, 1-2]. As Sir John Coles said in his oral evidence ""*Young people have played their part... society owes them a debt and it is time to start repaying it*" [PHT/5/116/19-22].
28. 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

²² See the Commissioner's statement (INQ000587975_0127-128 at §431).

to ensure that the rights and protections of children and young people are upheld. The system must be able to withstand the greatest of pressures or it is an ineffective system. On occasion, in Wales, the system failed.

29. The question may be posed; what difference would seeking the views of children, their advocates, and adherence to proper standards of decision making have made? Some form of restrictions was inevitable, but the way in which they were undertaken could have been done more effectively and with greater support for children and young people. The impacts could have been mitigated by better institutional structures and better implementation of existing policies. We must make our institutions and frameworks work for children. Only that way will the UK be ready and strong enough for the next pandemic.
30. Clearly, the Commissioner submits, a recommendation from this Inquiry must be proper contingency planning for school closures at all levels. In addition, to repay the debt there must be a properly resourced recovery plan. It is also important that we recognise social workers as part of the critical infrastructure which keeps children safe and make social workers part of emergency planning systems due to their critical role in safeguarding vulnerable children.
31. We must learn that the impacts could have been mitigated by better "*institutional machinery*" (as Mr Drakeford said in his oral evidence [PHT/15/197/20]).

A Child's Rights Approach

32. The Commissioner respectfully agrees with the host of witnesses from whom the Inquiry has heard advocating for a child's rights approach to decision making.
33. As Alice Ferguson²³ of Playing Out informed the Inquiry in oral evidence, a rights based approach promotes autonomy and a close relationship with stakeholders. The language used which refers to children's rights would have made a big difference to how children and parents felt during the pandemic (PHT/2/105-106/20-25,10-24). She invited the Inquiry to consider recommending direct incorporation of the UNCRC (PHT/2/104/11-17).
34. Kate Anstey of Child Poverty Action Group stated in her oral evidence that we must ensure that children's rights are in the framework of Government, including incorporation of UNCRC, and a Children's Minister in the UK Cabinet (PHT/3/95-96/9-25,1-4).

²³ See also Ms Ferguson's witness statement (INQ000588036_0047 at §206).

35. Anne Longfield, former Children's Commissioner for England, in her oral evidence also recommends incorporation of the UNCRC on the basis that it would bring certainty to children's rights in the UK and make consideration of children's rights a core element of our legal system (PHT/2/94/11-25).
36. Of course, as the Children's Commissioner for Wales has already highlighted, a child rights approach does form part of the legal landscape in Wales via the 2011 Measure and the Commissioner hopes that the Inquiry sees that when this framework is used well, it leads to better decisions.
37. The Commissioner also recognises and again recommends to the Inquiry the approach in Scotland, which has gone further than Wales in directly incorporating the UNCRC into Scottish law in the UNCRC (Incorporation) (Scotland) Act 2024. This approach, would, as the Commissioner for England states, bring legal certainty to the rights, and do much to remove the chances of the implementation gap arising or a recurrence of the failures in the system in Wales.

Consultation and Voices of Children

38. The Commissioner also respectfully agrees with the host of witnesses from whom the Inquiry has heard advocating for greater consultation with the Commissioners and better systems to engage with the voices of children and young people.
39. The Commissioner notes, for example, Dr Carol Homden's oral evidence in support of more consultation with the Commissioner for future pandemics (PHT/2/58/13-17) and the report of Professor Newlove-Delgado (INQ000587958_0055 at §138) which recommends that children and young persons' voices should be represented in all relevant policy including pandemic planning and policy and should not be an afterthought.
40. The Commissioner has highlighted her office's engagement work with children during the pandemic via her office's Coronavirus and Me Survey²⁴, which heard from over 20,000 children and young people, and which was fed back to the Welsh Government²⁵. The Commissioner recommends this engagement work as a model to the Inquiry.
41. The Commissioner also commends the Welsh Government for holding engagement

²⁴ See INQ000191147 and INQ000643966.

²⁵ See the annex to cabinet minutes on children's rights (INQ000048882)

events for children. Respectfully, the Commissioner agrees with the observation made by the Inquiry in the Report for Module 2 that; “[f]urther sessions would no doubt have made communications surrounding the pandemic more accessible to children” and “[i]n future pandemics, the UK government and devolved administrations should take steps to include children and young people in their communications strategies.”²⁶

42. The Commissioner has highlighted the negative impact of the Commissioner not being consulted for school closures. This can be contrasted with scenarios where there was consultation and where better decisions for children were made, for example:

a) Regarding the regime of proposed Additional Learning Needs (SEN in England) easements. As noted by the Disabled Persons Organisations,²⁷ the easements were not brought into force in Wales. This was in part due to consultation with the Commissioner who raised this as a particular concern.²⁸ Consultation and engagement changed the actions of the Welsh Government for the better, which refocused priorities and prevented the harmful impact of a proposed removal of support for those with Additional Learning Needs.²⁹

b) When on 28 July 2020, the Welsh Government decided to exempt children under 12 from social distancing, Mr Drakeford confirmed in his oral evidence (PHT/15/169-170/6-25,1-2) that this decision was influenced by his talking directly to children; and

c) When the Commissioner invited a rights-based analysis for the proposed ‘firebreak’ lockdown which led to a Cabinet Briefing Note setting out considerations and mitigation measures and which led to a decision that the balance of harms meant primary schools should stay open.³⁰

43. The Commissioner would recommend, in order to strengthen these frameworks (as she did in her oral evidence, see PHT/16/43-45/24-25,1-25,1-13):

a) A statutory duty to consult and have due regard to the view of the Commissioner

²⁶ Module 2 Report, Volume II, p186, §§12.103-12.104.

²⁷ See DPO’s statement at INQ000588026_0017 at §50.

²⁸ See the Commissioner’s statement (INQ000587975_0118 and 0125 at §§385 and 423.

²⁹ See also the DPO’s statement (INQ000588026_0050 at §143) which notes that Welsh Government did improve engagement with DPOs after the initial wave of the pandemic which led to developing a education and skills programme tailored to disabled children learning at home.

³⁰ INQ000048882

as well as to hear directly from children and young people in important decisions relating to children in pandemic and national emergency contingency planning;³¹ and

- b) Cabinet level children’s Ministers in all UK Governments to ensure that children have an advocate for their rights at the heart of Government.

CRIAs

- 44. The efficacy and importance of CRIAs has long been recognised and advocated for by the Commissioner. As the Inquiry observed in its Report for Module 2:

*Undertaking a children’s rights impact assessment, when making a decision that affects children systematically, considers the best interests of children – and the potential impact of decisions on them...*³²

- 45. The Commissioner respectfully agrees with that observation, which is in line with the majority of the evidence which the Inquiry has heard in Module 8:

- a) Dr Carol Homden of Coram stated in her oral evidence³³ that “*we need a systematic approach to child impact assessments*” [PHT/2/58/7-12].
- b) Alice Ferguson of Playing Out, stated in her oral evidence that there needs to be greater use of Child’s Rights Impacts Assessment and they should be brought in as a matter of course [PHT/2/102-103/23-25,1-3].
- c) Kate Anstey of Child Poverty Action Group in her oral evidence called for statutory CRIAs [PHT/3/95/16-21].
- d) Anne Longfield, former Children’s Commissioner for England stated in her oral evidence a CRIA at the time of school closures would have allowed a better ability to consider vulnerable children and she considers that “*There is a huge gap in the machinery of Government*” in their absence [PHT/4/89-90/5-25,1-4]).

³¹ This is not to suggest that consultation with the Commissioner should only happen in such circumstances. Consultation may, in any particular case, represent an important part of complying with the due regard duty in Wales under the 2011 Measure. It is, of course, impossible to be prescriptive of when such action is required to comply with the due regard duty.

³² Module 2 Report, Volume II, p.88, §10.104.

³³ See Dr Homden’s statement at INQ000588056_0062 and 0065 at §§256-257 and 270.

- e) Professor Turner of the Royal College of Paediatrics and Child Health in his oral evidence recommended regular children rights impact assessment carried out and published to accompany all legislation and policy decisions which impact children [PHT/7/103/11-24].
46. Much like the practice of consulting with the Commissioner producing positive results for children, an example of why CRIA's are effective tools which can aid positive child-centric decision making can be found in the Welsh Government's CRIA on alert levels and restrictions.³⁴ Informed by the Coronavirus and Me Survey conducted by the Commissioner, the rights based approach informed by the CRIA led the Welsh Government to a different decision on social distancing to that imposed in England which allowed children greater freedoms. The efficacy and importance of a CRIA is clear, and the Inquiry is invited to recommend their use and adoption as a statutory safeguard.
47. Helpfully, the Inquiry has already recommended, in its report for Module 2, "*the use of child rights impact assessments*"³⁵ and the introduction of legislation to put CRIAs on a statutory footing.³⁶ The Module 2 Report also notes:

*Had children's rights impact assessments been conducted, they might have focused greater attention on the impacts of decisions on children's interests and on what could be done to mitigate the potential effects of the rule of six on children. Despite the provision made for children's rights impact assessments in Wales, no assessment as to the impact on children of closing schools was conducted before the decision was made to close them – in spite of the enormity of that decision.*³⁷

48. The Commissioner, respectfully, entirely agrees with this analysis and the recommendation for the use of CRIAs. The Commissioner invites the Inquiry to repeat that recommendation in its report for Module 8, with one additional observation. In the Inquiry's Module 2 Report at Volume I, p.90 and Volume II, p.316, the Inquiry makes this recommendation in the following terms:

Recommendation 7: Placing child rights impact assessments on a statutory footing

³⁴ INQ000048910

³⁵ Module 2 Report, Volume I, p14.

³⁶ Module 2 Report, Volume II, pp.89-90, §§10.104-10.108 (Recommendation 7).

³⁷ Module 2 Report, Volume II, p89, §§10.107

The UK government should introduce legislation to place child rights impact assessments on a statutory footing in England.

The Northern Ireland Executive should consider an equivalent provision.

49. The Commissioner invites the Inquiry to clarify that recommendation in the Module 8 Report by making it clear that CRIAs should be on a statutory footing in all nations of the UK, including Wales. Whilst the use of CRIAs is a requirement of the Children's Rights Scheme 2021 in Wales, this only makes a CRIA a requirement in order to comply with statutory guidance and to evidence compliance with the due regard duty under s.1 of the 2011 Measure. A CRIA is not, currently, a 'statutory requirement' in Wales. This ambiguity was part of the problem in the case of *R (RLQ and SLQ) v Welsh Ministers* (AC-2023-CDF-000107) (see below) which led the Welsh Government to initially argue in that case that a CRIA was unnecessary when taking a decision to end holiday free school meal provision.
50. A clear and direct duty which applies across the UK to undertake a CRIA in all decisions which affect children and young people would remove the ambiguity, ensure children's rights are properly considered, and address the mischief identified in this Module and in the recommendations in Module 2.

Business as Usual

51. The Commissioner has one more note of caution. The evidence the Inquiry heard from Mark Drakeford suggested that consultation with the Commissioner and undertaking CRIAs are "*business as usual*" for Welsh Government [PHT/15/158 & 173/ 17, 17]. The Commissioner is obliged to draw to the attention of the Inquiry, as she does in her statement at INQ000587975_0046 at §158, the case of *R (RLQ and SLQ) v Welsh Ministers* (AC-2023-CDF-000107) where in 2023 the Welsh Ministers ended the holiday free school meal provision they set up in Covid without consultation and without a CRIA. This is a high profile, but not the only example of the implementation gap.
52. The implementation gap does persist. The grass is not always greener. Compliance with the current child's rights regime is still not "*business as usual*". These continuing failures must, it is submitted by the Commissioner, be addressed by stronger and clearer statutory duties on the status of the UNCRC, reinforcement of the need for consultation

and engagement, and to undertake CRIAs.

Conclusion

53. There is much to be admired in Wales with its legal framework which is intended to protect children's rights and the openness of the Welsh Government to consultation and discussion. This said, had the due regard duties of the 2011 Measure or the procedural requirements of the 2021 Scheme and the practice of CRIAs been fully and properly followed in Wales the impact of the pandemic on children and young people would very likely 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 as it has been in Scotland, the impact on children and young people across the UK may have been mitigated even further.

54. 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 and protections for children and young people in the future.

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28 November 2025

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