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A response to decentralised governance of human rights: a Children's Rights Approach in Wales

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ABSTRACT

The dominant arrangement for governance in many States which are party to international human rights treaties is decentralisation. This puts implementation of human rights in the hands of institutions which are geographically closer to intended beneficiaries. Decentralisation to different levels of government introduces complexity, risk and opportunity to the governance of human rights. In response, UN Treaty Monitoring Bodies focus on State responsibility for implementation of human rights. The Committee on the Rights of the Child has emphasised the State as the coordinating body responsible for children's rights under the UN Convention on the Rights of the Child (CRC). In this paper, Wales is used as an example of a jurisdiction where decentralisation is a feature of children's rights, which has enabled a progressive approach to implementation. It explains the principled Children's Rights Approach which provides public authorities in Wales with a coherent framework to give effect to international children's rights policy planning and service delivery. As the contours of decentralisation in Wales are typical of arrangements in many States parties to the CRC, insights from Wales will be transferable to other jurisdictions. This experience is also relevant to other areas of human rights implementation in the context of decentralisation.

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Introduction

The dominant arrangement for governance in States that are party to international human rights treaties is decentralisation.¹ Arrangements vary, but decentralisation typically provides for local control over significant levers of public policy which affect how individuals and groups experience human rights. In some cases, this extends to legislative and executive competences transferred from central State institutions to national or regional authorities, often accompanied by fiscal decentralisation.² In many States therefore, it is local authorities rather than State-wide authorities that are best placed to take steps to give effect to international human rights obligations when a State becomes party

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to an international human rights treaty. This may be seen as introducing both risks and opportunities to the governance of human rights. Risks include: low priority accorded to human rights by local politicians; limited resources available to local authorities to support implementation compared with those available to the State; blurred lines of accountability; and, variation in compliance with human rights across a State jurisdiction.³ While there are risks associated with decentralisation there are also potential gains for human rights. Decentralisation is often argued on efficiency grounds as leading to better services and improved accountability.⁴ Where service planning and delivery are in the hands of local administrations, planners are usually closer to users, and non-governmental organisations. This has potential to facilitate participation in policy development by local stakeholders with experience of local need and insights into how to make best use of limited resources.⁵ A further rationale for decentralisation is that close proximity between public authorities and service users provides more opportunities for local stakeholders to hold those authorities to account.⁶

While decentralisation is a feature of the human rights landscape globally, UN Treaty Monitoring Bodies (TMBs) focus primarily on States parties to human rights treaties as the authorities responsible for implementation across the entirety of a State jurisdiction. This is unsurprising as it is the State party which is required by international law to perform its obligations under international human rights treaties; and, it is the State party which is required to report to TMBs on progress made to give effect to its human rights obligations.⁷ Although the precise wording varies, express provisions in each of the core human rights treaties establish the State party as responsible for implementing human rights guarantees.⁸ What is perhaps more surprising, given its potential to support participation and accountability, is that TMBs seem to regard decentralisation as primarily a risk to human rights, and have sought to emphasise the overarching responsibilities of States parties. For example, the Human Rights Committee reminds States that they cannot rely on arrangements for internal governance to excuse non-compliance with human rights obligations;⁹ and, the Committee on Economic Social and Cultural Rights has emphasised the importance of State-wide national planning for the implementation of rights guaranteed under the Covenant on Economic Social and Cultural Rights.¹⁰

In the area of children's human rights, it is a State party to the UN Convention on the Rights of the Child (CRC) which is required to undertake appropriate legislative, administrative and other measures to implement the rights guaranteed to all children aged 17 years or younger within its jurisdiction.¹¹ General Comment No.5, *General Measures of Implementation of the CRC*, published in 2003 by the Committee on the Rights of the Child (the 'Committee') makes it clear that these measures ought to include the judiciary, parliament and government at all levels, and that effective implementation of the CRC requires the development of a 'children's rights perspective' within each of these institutions.¹² As is the case with human rights more broadly, the task of implementing the range of civil, political, social, economic and cultural rights set out in the CRC will fall on different levels of government within individual States. The risks associated with decentralisation of human rights governance apply equally to children's human rights. A study of implementation of the CRC for UNICEF in 2012 identified inconsistent implementation across internal administrations as an issue, as well as dilution of State responsibility for children's rights where implementation takes place largely under

local control.¹³ The Committee is alert to these risks and has commented that decentralisation does not reduce the responsibility of the State government to discharge its CRC obligations across the whole of its jurisdiction.¹⁴ While the Committee acknowledges the important contribution of different government authorities, as well as non-governmental organisations, toward the realisation of children's rights, it nevertheless seeks to emphasise State government control, planning and coordination, and national legal regulation as responses to decentralisation.¹⁵

The Committee's response to decentralisation may be seen as unduly State-centric: not least because the opportunities for participation and accountability suggested by decentralisation are the sorts of opportunities the Committee says should be available to children, or their representatives.¹⁶ With this in mind, the next section discusses decentralisation or devolution of children's rights in Wales to illustrate how this has supported progress on children's rights.

Devolution and children's rights in Wales

Wales is one of three decentralised or devolved government administrations in the United Kingdom of Great Britain and Northern Ireland (the UK).¹⁷ Since 1998, Wales has experienced increasing decentralisation or 'devolution' of legislative and executive competences over public policy from UK State institutions to a Welsh parliament known as the Senedd, and a Welsh Government.¹⁸ The Senedd has competence to enact primary and secondary legislation in many areas affecting children's rights, including: health, social welfare, housing, education, community care, community safety, and some aspects of equality.¹⁹ The Senedd is authorised to exercise its legislative competence to observe and implement the UK's international obligations, which will include human rights obligations.²⁰ Complementary provisions empower Welsh Ministers to take steps to promote social and economic well-being in Wales, including by introducing draft legislation in the Senedd.²¹ However, the transfer of powers from UK State government institutions to Welsh institutions is incomplete. In the context of children's rights a number of powers are reserved to UK institutions (government and Parliament), including competence over youth justice, asylum and migration, and welfare benefits.²² Significantly, fiscal decentralisation to Wales is largely confined to a financial allocation (block grant) from the UK Treasury which the Welsh Government can use to support public policy implementation in Wales, with Welsh Ministers restricted in their ability to increase funding to support implementation as general taxation remains primarily under the control of the UK Government.²³ Despite these limitations, the Welsh Government has sought to pursue a progressive agenda on children's rights.

Since devolution took effect in 1999, Wales has set its own agenda in significant areas of public policy affecting children.²⁴ This has resulted in a stark difference between the UK government and Wales on how children's rights are realised through law and policy. For example, in contrast to the UK Government, the Welsh Government has consistently used the language of children's rights and entitlements in policy documents.²⁵ In the legislative sphere, Wales incorporated the CRC into Welsh Law when the (then) National Assembly for Wales (since 2017 renamed the Welsh parliament or Senedd) passed into Welsh Law the 'Rights of Children and Young Persons (Wales) Measure 2011' (the 'Child Rights Measure') which imposes a legal duty on Welsh Ministers to

have ‘due regard’ to children’s rights when exercising their functions: this duty has since been extended to named public authorities exercising discrete public functions in the fields of social care and education.²⁶ Another key step at national government level in Wales, but also by some other public authorities in Wales, has been the adoption of a Children’s Rights Approach (CRA) as a framework for planning and service delivery.

A ‘Children’s Rights Approach’ for Wales

The need for clear guidance on a CRA in Wales stems from a need identified amongst Welsh Government officials, as well as a number of public authorities, for guidance on steps to be taken to comply with children’s rights in the planning and delivery of public policy and public services. This was in part driven by recognition of the range of rights guaranteed to children by the CRC, the diversity of measures available to implement children’s rights, the multi-faceted ways in which children’s rights may be given effect, and the diverse situations in which children experience their rights. In 2016, the Children’s Commissioner for Wales (CCfW) became aware of the need for principled and pragmatic guidance to give effect to children’s rights in public policy and public services,²⁷ and commissioned the Observatory on Human Rights of Children to develop a CRA for use by public authorities in Wales.²⁸

Any project to develop a CRA inevitably takes place against the backdrop of uncertainty about the conceptual underpinning of either a human rights approach or a children’s rights approach.²⁹ This deficit introduces flexibility when it comes to understanding what a children’s rights approach might require. Although this may be seen as enabling adaptation to context, it also introduces the risk that authorities operating within the same jurisdiction will adopt different priorities, leading to inconsistent experience of human rights for individual children, or groups of children.³⁰ With these issues in mind, the project to develop a CRA for Wales began with a literature review to identify principles rooted in international human rights to provide a robust framework for implementation of children’s rights across the range of public services in Wales. This review was enriched by scoping of children’s rights practice in Wales to secure examples of initiatives, policies, procedures, activities etc to illustrate how each principle might be given effect. A priority during the scoping exercise was to identify practices adopted by public authority practitioners in one area of service delivery (e.g. education or social care), capable of generalisation and application to other areas of service planning and delivery. This approach led to determination of five principles of a CRA, accompanied by numerous examples of how these might be given effect in practice. The five CRA principles are:

- Embedding children’s rights.
- Equality and non-discrimination.
- Empowering children.
- Participation of children.
- Accountability to children.

The following sections discuss each principle in turn, summarising the rationale for its adoption as principle of the CRA in Wales.

Embedding children's rights

The embedding principle requires that children's rights as set out in the CRC should be at the core of planning and service delivery decision-making. There are numerous examples of human rights approaches which prioritise attention to international and/or national human rights as a framework of obligations to inform and shape policy decision-making.³¹ The UN Statement of Common Understanding sets out a human rights approach to development and takes as its first principle:

All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.³²

While the Common Understanding was introduced in the context of development, human rights approaches have been developed in other contexts which refer to human rights as a guiding framework for policy and action.³³ The requirement to integrate human rights into all aspects of policy development and action is referred to by Tobin as a 'core principle' of a rights-based approach.³⁴ Despite the general acceptance that human rights need to be acknowledged as a framework for policy planning and delivery, this is not always clearly recognised in the development of children's rights approaches. UNICEF-UK have posited a 'children's rights-based approach' which does not directly refer to the requirement to use the CRC to integrate children's rights. Rather, under the heading 'Interdependence and Indivisibility' the model asserts that all children should 'enjoy all of their rights all of the time'.³⁵ While this implies recognition of the CRC in policy development and programme action, the requirement is not explicit.

A number of measures of implementation of the CRC put forward by the Committee in General Comment No.5 confirm the importance of action to embed children's rights in policy decision-making. Perhaps most significant is that the Committee 'commends' use of the CRC as a framework for national planning and action and, requires 'subsidiary governments' which exercise legislative powers are delegated to do so within the framework of the CRC.³⁶ While the Committee confines its commentary to delegated legislative powers, it is reasonable to suggest that the same requirement would apply to delegated executive functions such as policy development and implementation.³⁷ The Committee suggests a number of measures to ensure that the CRC is integrated into governmental decision-making. These include ensuring that the State legislative framework is consistent with the CRC, but also the adoption of Children's Rights Impact Assessment (CRIA) as a procedure to ensure that the rights set out in the CRC are 'respected in legislation and policy development and delivery at all levels of government'.³⁸ The Committee also recommends there should be coordination across departments, and with external organisations.³⁹ The Committee also identifies raising professional awareness and understanding of the CRC as vital to embedding children's rights.⁴⁰

A significant step to embed the CRC in Wales was achieved when the Child Rights Measure took effect in May 2012, requiring Welsh Ministers to have due regard to the CRC in the exercise of their functions.⁴¹ Scoping of practice in Wales identified some public authorities that have followed the Ministerial lead and expressly adopted the CRC as a framework for policy decision-making (see case studies below). This may be seen as local-level recognition of the importance of 'incorporation' of the CRC into

the governance framework: something which the Committee has prioritised as a key step toward legal recognition of children's rights and acknowledgement of children as rights holders.⁴² Formal adoption of the CRC as a framework for planning and delivery of services at the highest level of institutional decision-making helps ensure that children's rights are embedded at all levels within an authority, and that they guide decisions and actions across all service areas. Scoping of children's rights practices in Wales also identified the introduction of CRIA by some authorities as a contribution toward embedding the CRC, including as an aspect of broader equality impact assessment (see case studies below). Scoping also identified that public bodies are developing workforce understanding of children's rights through mandatory or voluntary training.

Equality and non-discrimination

The UN Human Rights Committee has described equality and non-discrimination a 'basic and general principle relating to the protection of human rights'⁴³ and by the Office of the UN High Commissioner for Human Rights as 'among the most fundamental elements of international human rights law.'⁴⁴ Equality and non-discrimination is also ubiquitous amongst the identifiable principles which feature in human rights approaches.⁴⁵ The principle is enunciated in the Universal Declaration on Human Rights and in each of the core human rights treaties.⁴⁶ Article 2 of the CRC requires the rights guaranteed to be available to all children within a State jurisdiction without discrimination.⁴⁷ Tobin has described equality and non-discrimination as a basic principle of a human rights approach and an express principle of a children's rights approach (referencing CRC, Article 2).⁴⁸ The equality and non-discrimination principle requires that there should be no discrimination between or against children as individuals or as groups of children.⁴⁹ Authorities must be aware of the damaging impact of multiple discrimination when a child faces discrimination on more than one ground (e.g. a disabled child who is living in poverty).⁵⁰ Public bodies should be aware of the many barriers impeding access to services, including socio-economic, institutional, and cultural, and should be responsive to the situation of children subject to discrimination who will need support and assistance to enjoy their human rights.⁵¹ When exercising their functions the equality and non-discrimination principle demands that relevant authorities should arrange their services so that all children experience the benefits of their human rights, including through the allocation of resources to help ensure equality of provision.⁵²

Scoping during development of the CRA suggested that for many public authorities in Wales the equality and non-discrimination principle has often been indirectly integrated into decision-making through the use of Equality Impact Assessment (EIA). In Wales, UK-wide legislation requires listed public authorities to have due regard to equality objectives which include to 'eliminate discrimination' and to 'advance equality of opportunity'.⁵³ These duties are intended to protect and benefit people with 'protected characteristics' which include the characteristic of age.⁵⁴ However, children under the age of 18 years are excluded from some equality protections afforded to adults in UK-wide law (e.g. in relation the provision of goods and services).⁵⁵ Through the exercise of devolved powers the Welsh Government has introduced regulations to establish Wales Specific Equality Duties Equality Act 2010 which include a requirement for EIA.⁵⁶ While an

aspect of EIA will be to assess the impact of policy proposals on different age groups, the regulations do not require a focus on children, or on children of different age groups; nor do they require any assessment of how policy might impact on children's access to their CRC rights or other human rights. More substantive steps have been taken by some public authorities in Wales to ensure that children and children's rights feature as an aspect of equality and/or other impact assessment: including by expressly requiring attention to children's rights as an aspect of EIA (see CCS case study below); adopting a CRIA procedure which identifies possible discriminatory impacts from policy proposals;⁵⁷ and, including consideration of how a proposal for policy or action affects the human rights of children as a social group and/or with other protected characteristics during integrated impact assessment.⁵⁸ Localised recognition of the importance of equality and non-discrimination as a principle of a CRA in Wales mitigates gaps in UK-wide protection.⁵⁹

Empowering children

Empowerment means that people are entitled to claim and exercise their rights, and have the information, knowledge and understanding to do so. Although the UN Statement of Common Understanding refers to the need for strategies which are 'empowering, not disempowering', the empowerment principle is not universally adopted as a feature of a human rights approach.⁶⁰ In some examples of a human rights approach empowerment is discussed alongside participation:⁶¹ it may be seen as a preliminary to meaningful participation as it requires action to enhance people's capacity to participate in decision-making and in the exercise of power which affects their lives.⁶² In the context of a children's rights approach, empowerment means enhancing children's capabilities so they are able to take advantage of their rights, including by engaging with processes through which power is exercised to influence outcomes, and holding individuals and institutions to account for decisions that affect their lives.⁶³ Children therefore need to be provided with information and support to increase their awareness and understanding of their human rights.⁶⁴ Empowering also means removing barriers to children's access to information or resources that enable them to understand, access and exercise their rights.⁶⁵

The discussion of the participation principle in the next section will confirm the nexus between empowerment and participation. This is also highlighted in the Committee's General Comment number 12, on the child right to be heard (CRC Article 12).⁶⁶ The general comment includes numerous invocations to States to provide children with information so they can participate effectively in decision-making and to allocate resources to develop children's capacity to engage.⁶⁷ It would have been possible in the development of the CRA for Wales to deal with aspects of empowerment, such as the provision of information, under the participation principle.⁶⁸ And developed models of participation will recognise the need for children to be provided with support to 'voice' their views and opinions.⁶⁹ However, children's lack of power and influence within structures and processes which affect their lives draws attention to the need to address 'power relations' between adults and children.⁷⁰ Children do not have the same opportunities as adults to assert their interests and demand accountability.⁷¹ They do not have equal opportunities with adults to access resources, to influence

decision making or exercise their rights.⁷² Empowerment changes the relationship between children and authorities as it promotes the notion that children should be capable, i.e. be equipped with the knowledge, skills and resources, to both influence and make decisions that affect them individually, as well as public policy decisions that have an impact on their lives and on their rights. This can be challenging for adults as it means that the authority to make decisions is either handed over to, or shared with children.⁷³

During scoping of children's rights practice when developing the CRA for Wales it became apparent that there were comparatively fewer examples of empowerment good practice when compared to the other emergent principles. Although projects were identified which set out to enhance the skills and capacity of children to, for example, influence service commissioning,⁷⁴ or to participate as trustees on boards of governance,⁷⁵ these were isolated exemplars. More often, the approach to participation was to follow the Committee's lead and incorporate contributions to empowerment in structures to facilitate participation: most obviously in the Welsh Government's Participation Standards which refer to the provision of support and information.⁷⁶ However, it is far from guaranteed that empowering children to influence decision-making will be expressly recognised as an aspect of participation. For example, when the Welsh Government's Participation Standards were published in 2016 they made direct reference to 'empowering and supporting children' to access their rights under the CRC,⁷⁷ but this reference does not appear in the revised standards published in 2018.⁷⁸ This lack of attention to empowerment in practice confirmed the need to include it as a principle featuring in the CRA developed for Wales.

Participation

Article 12 of the CRC requires States parties to 'assure' that a child who is capable to form their own views, the right to express their views in relation to any matter which affects them; and, that their views are given 'due weight' according to their age and maturity. This provision is a normative grounding for participation in decision-making as a principle of a children's rights approach, but it is not the only CRC article which grounds the participation principle. Article 13 guarantees children's participation in issues of public concern through freedom of expression, as does Article 15 which guarantees the right to freedom of assembly. More broadly, the participation principle is a common feature of a human rights approach, underpinned by express rights in human rights treaties.⁷⁹ These include rights to take part in 'cultural life',⁸⁰ freedom of expression, association and assembly, as well as to take part in 'public affairs', and to vote:⁸¹ although this last opportunity is denied to most children.⁸²

Participation means listening to children and taking their views meaningfully into account: all children should be supported to freely express their opinion; they should be both heard and listened to.⁸³ Children's views will need to be taken into account and given due weight in light of their age and maturity, but young age or relative immaturity is no reason for discounting children's opinions or for giving them less attention in decision-making processes.⁸⁴ Children should be fully informed and given opportunities to be involved in decision making. Participation should not be understood as an end in itself, but as a process, which is safe, enabling and inclusive and supports dialogue

between children and professionals.⁸⁵ Participation is closely linked to the notion of empowerment, as children will need to be capable of engaging with participation mechanisms and opportunities if this is to be meaningful. To ensure the participation is effective to influence decision-making it should be clear how children will and have influenced decisions and how their views have been taken into account, with feedback always given to the children who are involved in the process.⁸⁶

Scoping of participation practice in Wales provided examples of structures and initiatives to enable children to participate in decision-making in different settings. Some of these are discussed in the case studies below. The Participation Standards (above) are the basis for much of the work that takes place in this domain across Wales. Also significant is that many schools have sought accreditation under the UNICEF-UK 'Rights Respecting Schools' programme which establishes a series of incremental awards acknowledging how schools give effect to children's rights. Amongst the standards to be achieved is recognition of 'pupil voice' which (amongst other practices) has been given effect through the setting up of school councils, a regulatory requirement in Wales.⁸⁷

Accountability

Human rights give rise to obligations which demand accountability. There are several routes to establish this principle. Already mentioned (above) is the obligation on States parties to perform their treaty obligations; now commonly expressed as a tripartite obligation to respect, protect and fulfil human rights.⁸⁸ Human rights treaties, including the CRC, articulate the obligation to give effect to the rights they contain using different formulations. But common across all human rights is that States should use the range of measures and resources at their disposal to implement rights.⁸⁹ TMBs also require that human rights treaties should be given effect in the domestic legal order so that rights are directly enforceable,⁹⁰ and so a human rights approach implies mechanisms to review compliance and to provide remedies where rights are not available or are violated.⁹¹ The Committee has called on States parties to incorporate the CRC into national law so that it may be relied on by individuals before a court or tribunal, and to ensure that effective remedies are available for non-compliance with children's rights.⁹² While legal remedies may be seen as prioritised by TMBs, including the Committee, it is recognised that children whose rights are violated face particular impediments to accessing formal court-based mechanisms for redress.⁹³ For these reasons, the Committee has urged States to introduce child-friendly procedures which either support children's access to justice or provide alternative routes to redress, such as complaints mechanisms.

A children's rights approach therefore requires that public authorities should be accountable to children for decisions and actions which affect their lives. To ensure accountability is effective to support realisation of children's rights, children should be provided with information and given access to procedures which enable them to question and challenge decision-makers, alongside effective monitoring of children's rights standards and accessible and effective remedies for non-compliance (which in turn will require public bodies to apply the empowerment and participation principles). Scoping of accountability mechanisms during development of the CRA in Wales suggested limited recognition of the Committee's calls for child-friendly processes

to support children's access to redress where their rights are violated. The flagship enactment to give effect to children's rights in Wales, the Child Rights Measure, led directly to the introduction of a Children's Scheme in Wales setting out how Welsh Ministers will meet the duty to have due regard to the CRC.⁹⁴ The Scheme includes reference to a complaints mechanism, but while this mechanism includes information for children on how to complain, the procedure appears to be an iteration of the Welsh Government's general complaints procedure, with little adaptation to the needs of children.⁹⁵ The due regard duty itself does not provide for direct enforcement of any claim of children's rights-violation, and there have been calls for stronger mechanisms in Wales to support public authority accountability for children's rights; including bespoke complaints mechanisms.⁹⁶ While in general, practice in Wales examined during preparation of the CRA suggested a paucity of child-friendly redress mechanisms across the public sector, there were some relevant examples identified. It was noted that structures and mechanisms which contribute to children's participation will often contribute to accountability, for example, via school councils, or children's participation in health governance (see below, case study SBUHB). It also worth noting that mechanisms such as CRIA or EIA will provide transparency and therefore a degree of accountability.

The next section introduces some examples, including case studies, of how the CRA has supported public services planning and delivery in Wales across a range of public authorities.

The CRA in practice

The CRA developed by the Observatory was used by the CCfW in 2016 to develop guidance on general service policy and planning for use by public authorities in Wales: 'The Right Way'.⁹⁷ This has since been complemented by specific guidance from the CCfW on a CRA in education, and social care, and through the addition of new case studies to illustrate how the CRA principles are applied in practice.⁹⁸ As a National Human Rights Institution (NHRI) the CCfW, a statutory commissioner, has a leading role in promoting children's rights in Wales, and holding public authorities and others to account for compliance with the CRC.⁹⁹ As sponsor of the CRA guidance the CCfW has signalled the importance of adopting a CRA as the basis of all their activities. A report in March 2022 on the operation of The Right Way gives examples of how the CCfW has put the five principles into practice.¹⁰⁰ On embedding, at the level of strategic planning, this is centred on children's rights, and at the individual level, all staff job descriptions make explicit reference to children's rights. On equality and non-discrimination, EIA screening (early analysis) is undertaken for all projects during early planning, with full EIA taking place where appropriate. On empowerment, the CCfW focuses on increasing awareness of children's rights and the role of the CCfW, so that children can access information which enables them to understand and exercise their rights; on participation, the CCfW carries out participation work to gather the views of children in Wales on a range of policy issues and uses this intelligence to inform policy and advocacy work. Finally, on accountability, a Children and Young People Advisory panel hold the CCfW to account on the delivery of their three year and annual work plans.¹⁰¹

In 2022, the CCfW carried out an evaluation of its guidance on a CRA based on its accumulated bank of practice examples, survey data and interviews with professionals

who worked with the CCfW to implement the guidance.¹⁰² The evaluation found that in a complex operational environment the CRA guidance has ‘the potential to provide a consistent and common approach to rights’ and for participants it was seen as providing a ‘framework for measuring rights-based practice and putting action to the pledges and promises that are made with good intention’.¹⁰³

The Welsh Government adopted the CRA principles to structure the 2021 revision of its Children’s Scheme.¹⁰⁴ The Welsh Deputy Minister for Social Services (with responsibility for children) comments in the foreword to the scheme that adopting the CRA ‘provides a strategic framework to integrate children’s rights into every aspect of decision-making’.¹⁰⁵ The Welsh Government has also adopted the CRA principles to report on how the due regard duty has been met: a further requirement under the Child Rights Measure.¹⁰⁶ When the report was last published in 2018 the (then) Welsh Minister for Children and Social Care commented that he had found it ‘helpful to look at our work under [the CRA principles], and we will continue to review our work in these terms to ensure that we are giving proper consideration to children’s rights in what we do’.¹⁰⁷

Other applications of the CRA have taken place beyond Wales. In 2020, the Jersey Children’s Commissioner developed children’s rights guidance for public authorities and other organisations in the States of Jersey. This guidance, *Making Rights a Reality*, applies the CRA principles developed for Wales and has been published by the Jersey Commissioner as a ‘principled framework for anyone working with children, grounded in the [CRC] to help public bodies integrate children’s rights into every aspect of decision-making, policy and practice’.¹⁰⁸ In 2021, the Observatory carried out an evaluation of the impact of emergency measures introduced in response to COVID on children’s rights in European States covered by the European Network of Ombudspersons for Children (ENOC).¹⁰⁹ The research used the CRA principles as the basis for analysing impact, presenting the research findings and arranging recommendations.¹¹⁰ The CRA was then adopted by ENOC to structure its position statement on COVID emergency measures adopted by ENOC member States, and ENOC’s recommendations to protect children’s rights in future pandemics.¹¹¹

The remainder of this section sets out five short case study examples to illustrate adoption of the CRA to support good practice in the public sector.¹¹²

Case study 1: Swansea Bay University Health Board (SBUHB)¹¹³

SBUHB is responsible for planning and delivery of health services in a region in South Wales. In 2017, SBUHB published a ‘Children’s Rights Charter’ to capture and embed priorities identified by children relating to health services and locating these in the context of children’s rights.¹¹⁴ The Charter serves as a touchstone to embed children’s rights in planning and service delivery across all areas of SBUHB health services. As part of the process of seeking to embed the Charter, health professionals have been trained in children’s rights. SBUHB has also established an Advisory Panel of 20 children from across the health board region to participate in the authority’s decision-making by putting forward the views of children and advising on policy.¹¹⁵ Advisory Panel members are provided with training on the CRC and their health rights to empower them to formulate recommendations for change. The influence of the Advisory Panel extends into the practice setting as its findings are transmitted to health professionals to develop

action plans to implement the Advisory Panel's recommendations. For example, SBUHB's largest hospital acted on an Advisory Panel recommendation to introduce practices which require health professionals to view services from the perspective of a child patient to help ensure that children have a positive experience when first admitted to a ward.¹¹⁶

Case study 2: City and County of Swansea (CCS)

CCS was an early adopter of a children's rights approach, including through a cabinet level commitment to have due regard to the CRC in the exercise of policy functions.¹¹⁷ This embedding of the CRC as a policy framework later led to the introduction of CRIA into the EIA template in use by the CCS, and work to embed children's rights into workforce development planning which has resulted in mandatory children's rights training for staff.¹¹⁸ An increased awareness of children's rights led to these being referenced in the authority's Strategic Equality Plan which in turn led to children being supported by staff to participate in decision-making processes to influence budgetary decisions.¹¹⁹ The authority undertakes an 'Annual Big Budget' conversation to give effect to the principles of participation, empowerment and accountability. The conversation seeks to engage children to obtain their views on how the authority allocates its budget; it also provides training so that children have the knowledge and skills (capabilities) to engage with elected members on budgetary decisions. This process has helped ensure that children's views are taken into consideration when budgetary decisions are made in relation to education services, play services, care services, highways and transport services etc.¹²⁰

Case study 3: Ceredigion County Council (CCC)¹²¹

CCC has taken action to enable children to influence and participate in decision-making relating to how the authority works to keep children safe in its area. The authority has established 'Ceredigion Safe Stars' as local junior safeguarding children's board to represent children between the ages of 11–18 across the Ceredigion area. Safe Stars is established to ensure that children's voices are heard and listened to in decision-making processes that affect them at a local level. The influence of Safe Stars is amplified as it feeds into the wider Mid and West Wales Senior Safeguarding Board and meets with other junior safeguarding boards across Mid and West Wales. Safe Stars are also supported to hold adult service providers to account, including through Question & Answer sessions with professionals whose role is to safeguard children across Wales (e.g. the police, health and education professionals, as well as the CCfW).

Case study 4: Wrexham Social Services (WSS)¹²²

WSS, the social services directorate of Wrexham County Borough Council has taken action to empower children to influence accountability for children's rights in the Wrexham area. Adopting a CRA to the development of its Children's Social Care Engagement Strategy, the authority identified the need for a child friendly version of its complaints procedure. Children participated in the process of deciding the content and design, as well as the launch, of a complaints procedure for use by children and

young people. The child-friendly complaints procedure helps ensure accountability for children's rights including by setting out accessible information on the process for making complaints. This information makes express reference to the CRC as a framework of entitlements and includes a link to the convention.¹²³ The complaints process helps ensure that children are aware of their rights when making a complaint, and provides an accessible procedure for children to influence how their rights are put into practice by social care professionals.

Case study 5: City and County of Cardiff (CCC)¹²⁴

CCC is seeking to become a Child Friendly City and has adopted the CRA as its framework for evaluation of current services aimed at children, and for future service planning and delivery. In order to understand the progress it has made toward becoming a Child Friendly City, CCC supported a 'Committee of Experts' comprising children and young people to examine senior leaders from across the authority on how CCC is giving effect to children's rights. Participants in the Committee of Experts were drawn from a range of different organisations and forums representing children and young people in Cardiff.¹²⁵ CCC commissioned independent support for the Committee of Experts to empower participants to carry out the independent evaluation by helping them to understand the CCC Child Friendly programme and how this had been evaluated using the CRA principles. The Committee of Experts examined CCC senior leaders from across the public authority, in-person, to determine the level of compliance with a CRA. The key questions put to decision-makers, a discussion of the proceedings and the recommendations arising from the procedure have been set out in a report delivered to the authority's senior leadership. Applying the CRA principles, the authority has agreed to publish the report and to respond to the recommendations made by the Committee of Experts.¹²⁶ This process created the opportunity for a constructive dialogue between children and senior decision makers, empowering children with the skills and knowledge to hold the public authority to account.

Conclusion

This article began by setting out a principled CRA as developed for use by public authorities in Wales. It is not suggested as a universal model children's rights approach. However, the CRA discussed above is firmly grounded in human rights principles of general application and reflects current good practice across a range of public services in Wales. The Welsh Government's use of the CRA to structure policy planning and delivery, as well as reporting, the adoption of the CRA as guidance in Jersey, its use by the CCfW to inform its work as an NHRI, its application to underpin the ENOC evaluation project and position statement, and the different applications discussed in the case studies, demonstrate how the CRA may be adapted to context. It therefore provides a ready example of a children's rights approach for adoption across different jurisdictions and different practice settings where public authorities and other organisations are seeking to give effect to the CRC. As a children's rights approach is a form of human rights approach, the CRA developed in Wales also provides a ready model to be applied to support implementation of human rights beyond the CRC.

Notes

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17. The others are Scotland and Northern Ireland.
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20. *Ibid.*, schedule 7A, paragraph 10.
21. *Ibid.*, s.60.
22. *Ibid.*, schedule 7A generally.
23. *Ibid.*, schedule 7A, paragraph 15. Since 2014, devolution of tax-raising powers has been enlarged, but limitations remain. For example, the UK government has reduced income tax rates for Wales, but this is reflected in a corresponding reduction in the block grant

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 34. Tobin, *Understanding a Human Rights Based*, 66.
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 40. Ibid., paragraph 53.
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 44. OHCHR, *Principles and Guidelines*, paragraph 42.
 45. See note 31.
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