

A CHILDREN'S COMMISSIONER FOR WALES

The Report of the Health and Social Services Committee

FOREWORD BY CHAIR OF THE COMMITTEE

Members of the Health and Social Committee unanimously identified work on the proposals for an Independent Children's Commissioner as one of their top priorities following the election of the committee last year. All four political parties represented in the Assembly support the proposals.

We have consulted widely in drawing up our proposals, and we have also looked at models in other countries. I am grateful to all those who have responded to our consultation exercise and who made oral presentations. They have played a vital role in providing the evidence on which we have based our recommendations.

The Children's Commissioner will also impact on Assembly Secretary portfolios and committees other than Health and Social Services and I am pleased that the Pre-16 Education, Schools and Early Learning Committee have worked with us on this. Lorraine Barrett represented that Committee at many of our meetings and I am grateful for her contribution.

The Committee's report is not the end of the work, but merely the foundation on which the Commissioner's role will be built. The Committee will be involved further in the development of the post and in monitoring its effectiveness.

We have recommended that children should be involved in the process of appointing the Commissioner and that further consideration be given to their continued involvement through consultation on the Commissioner's work programme. I hope that children and young people will be excited by this and feel that the Commissioner belongs to them. Their involvement must be for real.

As the report indicated steps are already in hand for initial statutory powers for the Commissioner, through the Care Standards Bill. On behalf of the Committee I should like to thank the Assembly Secretary for Health and Social Services and the Secretary of State for Wales for facilitating this.

Finally I should like to thank officials in the Children and Families Division of the National Assembly for Wales, for their hard work and commitment in supporting the Committee's work.

SUMMARY

1. This Committee fully endorses the key principles of the rights of children as defined in the United Nations Convention on the Rights of the Child.
2. The UN Convention informed the overarching context in which we approached this task; which is our commitment to the rights of all children and young people to be treated as valued members of the community whose potential must be fully developed through appropriate policies and services and the meaningful representation of their interests.
3. We believe that the Children's Commissioner, operating within an independent, statutory framework, is essential to, and will be hugely significant in, taking forward these aspirations in Wales.
4. At the heart of our need for a Commissioner is the need for all of us to listen to all children and young people; to have a genuine commitment to reflecting their views and desires; and, in doing so, safeguard the most vulnerable.
5. We want the Commissioner to ensure that children and young people are listened to and enabled to play an active part in determining the services and opportunities offered to them; that their needs and views are taken into account across the range of policy-making, planning processes, and provision for all relevant services.
6. Children and young people therefore must be the prime players in informing the Commissioner's work and agenda. Arrangements must be put in place to ensure that the Commissioner consults with children and young people routinely and on an ongoing basis.
7. Children and young people must feel that the Commissioner really is their champion; the person who always respects their position and fights their corner. Children and young people must see the Commissioner as someone who:
 - fights for and protects their rights;

- makes sure that their views are heard and understood, about *everything* that affects them;
- makes sure that they can complain effectively;
- is always available to offer advice and information or is able to tell children and young people where to find it;
- can assist children and young people directly if the issues involved are complicated or very important, for example by investigating a particular complaint or helping with the costs of going to court.

INTRODUCTION

8. The Health and Social Services Committee is established under the Government of Wales Act 1998 and Standing Order 8. Its remit covers all aspects of health care, health promotion/prevention; food safety; social services and social care. The Assembly Secretary who has responsibility for this area of work is Jane Hutt AM.
9. The Committee's membership from July 1999 to 29 March 2000 was:

Kirsty Williams (**Chair**) Liberal Democrats Brecon & Radnorshire

Geraint Davies Plaid Cymru Rhondda

Brian Gibbons Labour Aberavon

Jane Hutt (**Assembly Secretary**) Labour Vale of Glamorgan

Helen Mary Jones Plaid Cymru Llanelli

David Rhys Lloyd Plaid Cymru South Wales West

David Melding Conservative South Wales Central

Lynne Neagle Labour Torfaen

Peter Rogers Conservative North Wales

Gwenda Thomas Labour Neath

10. Brian Gibbons, Peter Rogers and Gwenda Thomas were no longer members from 29 March; Ann Jones, Labour, Vale of Clwyd, and Alun Pugh, Labour, Clwyd West, became members from that date.

11. The Pre-16 Education, Schools and Early Learning Committee has also been involved in considering the proposal for a Children's Commissioner, and this report takes account of their views.

BACKGROUND

12. The case for the establishment of a Children's Commissioner was made in part by the Welsh Social Services White Paper *Building for the Future*, which promised consultation on the possible establishment of an independent Commissioner as one of the options for strengthening advocacy and complaints arrangements for children looked after by local authorities. There have also been calls for such a development by:

- Children In Wales - the umbrella body representing organisations working on behalf of children;
- the Welsh Local Government Association which, in *Developing a Strategy for Children in Need* (1998), urged consideration of an independent Commissioner, particularly to encourage improved services, and ensure children's advocacy;
- some of those giving evidence in 1997 and 1998 to the North Wales Child Abuse Tribunal, who spoke about the need for a Commissioner in Wales;
- the Welsh Affairs Committee, whose report *Childcare in Wales* (1999: HC156) urged the Assembly to appoint a Children's Commissioner without delay.

13. Assembly manifesto commitments included commitments to:

- "establish an independent Children's Commissioner for Wales, who will advise the Assembly on the delivery of services for children." *Labour*
- "consider the appointment of a Commissioner for Children who would: provide information and advice to the Assembly on children's issues; ensure that policies of all kinds are compatible with children's welfare; and oversee the development of local and national Child Care Strategies." *Plaid Cymru*
- "appoint a Commissioner for Children with powers to investigate the local handling of any complaint about a public or voluntary service made by a child." *Liberal Democrats*

The Conservative party have subsequently supported the principle of a Children's Commissioner.

14. Sir Ronald Waterhouse, in his report *Lost in Care*, also recommended that an independent Children's Commissioner for Wales should be appointed whose role should include:

- ensuring that children's rights are respected through the monitoring and oversight of the operation of complaints and whistle-blowing procedures, and the arrangements for children's advocacy;
- examining the handling of individual cases brought to the Commissioner's attention (including making recommendations on the merits) when he/she considers it necessary and appropriate to do so; and
- publishing reports, including an annual report to the Assembly.

THE COMMITTEE'S REMIT

15. The Committee's remit was to consider and make recommendations to the Assembly Secretary for Health and Social Services on the remit, role and functions of a Children's Commissioner for Wales and specifically:

- the extent of shortcomings in existing arrangements for children's services which a Commissioner might address;
- the extent to which such a post may overlap with other existing or proposed arrangements to deal with children's complaints or promote their interests;
- what a Commissioner's remit, role and functions might be;
- whether a Commissioner could be appointed on a non-statutory basis;
- whether statutory authority would be needed and the form that might take;
- the estimated costs and how they may be met;
- what priority the Assembly might give to the establishment of such a post; and
- to whom a Commissioner would be accountable.

TIMETABLE

16. The Committee was invited by the Assembly Secretary to take on the above remit in July 1999. The Committee conducted a consultation exercise from October to March, with a view to reaching final conclusions and making recommendations to the Assembly Secretary as soon as possible thereafter.

CONSULTATION

17. The Committee invited written submissions and received 94 responses. The consultation letter and a full list of those who responded are at Annex A and B respectively. Copies of the responses are in the Library of the National Assembly. The Committee also heard oral submissions from:

the Welsh Administration Ombudsman (incorporating his other role as the Health Service Commissioner in Wales)

the Commissioner for Local Administration in Wales

the NSPCC

Voices from Care

Barnardos

the Association of Directors of Social Services (ADSS)

the Welsh Local Government Association (WLGA)

North West Wales NHS Trust

Iechyd Morgannwg Health Authority

Royal College of Paediatrics and Child Health

Community Practitioners and Health Visitors Association

18. The relevant Committee minutes recording the Committee's consideration are at Annex C.

19. The consultation identified the following areas of general consensus:

Shortcomings in existing arrangements:

- There is no coherent strategy for providing an overarching view of services; initiatives and funding regimes, leading to fragmentation and gaps in provision.
- There are no mechanisms to allow children and young people directly to influence decisions which impact on their lives, despite the United Nations Convention on the Rights of the Child's recognition of the need for this; and
- There is a lack of sustained, direct support for socially excluded and disadvantaged children and young people, especially in effective advocacy and complaints systems.

Overlaps with other arrangements:

- The post has the potential to overlap with the functions carried out by a considerable number of other statutory and non-statutory arrangements, including the powers and responsibilities of the Assembly, local authorities, the Welsh Administration Ombudsman, the Parliamentary Commissioner for Administration, the Health Service Commissioner, the Commissioner for Local Administration in Wales, the Courts, the planned Care Standards Inspectorate, and a variety of voluntary agencies at both strategic and operational levels; and
- It is therefore vital to establish the scope of the post of a Commissioner within a coherent,

well-defined framework.

Role, remit and functions:

The Commissioner should

- promote and monitor the full implementation of the United Nations Convention on the Rights of the Child, including mechanisms where the concerns and needs of children and young people can be directly expressed;
- consider and comment on the impact of policies on children and young people and promote the co-ordination of government activity at all levels;
- present an annual monitoring report to the Assembly on the position of children and young people in Wales and the overall provision of services;
- initiate research and disseminate information and good practice;
- monitor the accessibility and effectiveness of advocacy and complaints services and ensure individuals have an effective means of redress if their rights are disregarded;
- raise the profile of and improve public attitudes towards children and young people;
- provide a directly accessible point of contact for children and young people, whose services are bilingual and promote equal opportunities in recognising other individual needs; and
- act as a champion, watchdog and whistleblower.

Statutory or non-statutory basis:

- To have credibility the post must be statutory, although there was considerable support for establishing the post on a non-statutory basis initially if it would otherwise be delayed by the need for primary legislation.

The scope of the statutory authority:

- There were different views correlating to the different visions of the role, remit and functions of the post and there was no consensus as to detail. However, there was general consensus that a Commissioner must be identifiable within an independent, apolitical office.

Costs:

- Whatever the costs, they should be covered by new, ring-fenced, money and centrally funded by the Assembly.
- The level of funding needed will depend on the scope of the post and would possibly range from £200k to £740k, but the main principle is that it must be adequate to pursue successfully what is established as the role, remit and functions of the post.

Priority:

- The Assembly should give high priority to establishing the post to affirm its commitment to improving the quality of life for children and young people in Wales.

Accountability:

- The post should be independent and apolitical, although there were differing views on the detail of how that is to be achieved in the context of to whom a Commissioner should be accountable.

THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS

20. The recommendations of the Committee, having considered all written and oral submissions and advice, are as follows.

Shortcomings in existing arrangements

21. We consider that the prime justification for the establishment of a children's Commissioner is the absence of mechanisms to allow children and young people directly to influence decisions which impact on their lives. Their voices are frequently not heard because they do not have the vote and are all dependent, to varying degrees, on the adults around them. The greater the degree of disadvantage suffered by the children and young people, the less their voices are heard. This was shown at its most extreme in the cases of the abused youngsters in care whose stories are graphically told in the Waterhouse Report. The Commissioner offers the prospect of giving young people a voice, in line with the UN Convention on the Rights of the Child.

Overlaps with other arrangements

22. The Committee recognises that the overarching role of the Commissioner could lead to a perception of overlap with the functions of a wide range of other posts and bodies. We believe that the Commissioner should not seek to take the place of existing complaints systems or routinely to investigate cases directly; rather to ensure that these systems work effectively. The post-holder will wish to co-operate with existing offices, such as the Welsh Administration Ombudsman.

23. Equally, while there should be a mechanism to ensure that the Commissioner's recommendations have maximum impact, it is important that lines of accountability are not blurred by the existence of the Commissioner.

24. The mechanism to ensure that the Commissioner's recommendations would have to be considered could take the form of a 'compliance notice', which was favoured by many of the consultation responses. Compliance notices could be issued by, and as, the Commissioner thought fit as a result of his/her report recommendations. The following arrangements could apply:

- the body/person to whom the recommendation is directed must consider it and notify the Commissioner within a prescribed time of the action taken or to be taken in response; and provide verification of the action or intended action as considered necessary;
- if such a body/person intends not to comply with a recommendation, he must advise the Commissioner why;
- if the Commissioner does not consider the reason to be valid, the Commissioner must then give warning to the body/person that the failure to comply will be publicised; and
- the Commissioner should keep a public register of recommendations and non-compliance.

25. We consider that such a mechanism needs to apply equally as a duty to all the bodies and persons to whom the Commissioner may direct his/her recommendations, including the Assembly.

26. We suggest, in parallel with the non-compliance procedure outlined above, the Commissioner could also have the power to formally request bodies, such as the Assembly and local authorities, with appropriate enforcement powers, to exercise them in respect of his/her recommendations. Again, reasons for not using the powers would have to be made public.

27. We also recommend that the appropriateness and feasibility of investing the Commissioner with further enforcement powers, such as the ability to pursue non-compliance in the Courts, is explored. We recognise that this would require discussion with the UK Government.

Role, remit and functions

28. We believe that the Commissioner should:

- exercise his/her functions with the overarching aim of promoting and upholding the United Nations Convention on the Rights of the Child;
- promote children's rights, raise the profile of children's issues and take an overview of the impact of policies and procedures on children across all services in Wales affecting children, with a view to making recommendations and developing good practice guidance and models, including for cross-sector working. This means that the Commissioner's functions should cover not only services normally associated with children, such as schools and care arrangements, but should also be capable of encompassing, for example, transport arrangements and anti-pollution measures insofar as they affect children.
- represent the views of children;
- monitor and oversee complaints and whistleblowing procedures and arrangements for

children's advocacy; and consider the merits of securing such procedures and arrangements in so far as they do not exist;

- be a source of advice and information for children about how to use existing complaints procedures, and for practitioners about good practice in the production and implementation of complaints procedures;
- undertake formal investigations if a matter of principle is at stake – for example, if there is evidence of a systematic breach of children's rights in a particular area – or the circumstances of a case fall outside any existing complaints procedures. In this respect, the post-holder would be acting in a mode similar to that of the Equal Opportunities Commission or Commission for Racial Equality. Although the Assembly should have the right to request an investigation by the Commissioner, the Commissioner should have the right to decline to protect the independence of the office;
- have a power to assist, including financially, with proceedings in respect of a breach of the rights of an individual child if there is a matter of principle at stake. We envisage that the Commissioner should use such a power sparingly and should take into account any Assembly guidance on the issues; and such assistance should be subject to any Legal Aid assistance available;
- observe if he/she chose any child abuse investigations in Wales, although such a power would need to be exercised in the context of confidentiality considerations. We recognise that consultation with other agencies will be needed on this;
- have the power to require the provision of information and the disclosure of documents in connection with these functions and initiate enforcement action to obtain information if necessary;
- make reports, including an annual report to the Assembly.

29. We have given consideration as to whether the Commissioner's remit should include policy and services that affect children in Wales but for which responsibility has not been devolved to the Assembly, such as the benefit system. We believe that such jurisdiction would be desirable to promote the rights and welfare of children in Wales. The widest possible functions in respect of non-devolved policies and services should be explored and, as a minimum, the Commissioner should be able to consider and make representations in respect of any non-devolved matters affecting children in Wales in a way similar to the Assembly's right under section 33 of the Government of Wales Act, which it can exercise in respect of non-devolved functions. However, we recognise that such a proposal would be subject to negotiation with the UK Government.

30. We have also given consideration as to whether the Commissioner should have jurisdiction over services provided in England for children normally resident in Wales – 'cross-border

provision'. Again, we believe that such jurisdiction would be desirable to promote the rights and welfare of children normally resident in Wales, especially in the context of commenting on why the services may not be available here. Therefore we also recommend that the widest possible functions should be explored in respect of cross-border provision, with at least a power similar to the Assembly's under section 33 of the Government of Wales Act but, as with non-devolved issues, recognise that this matter would be subject to negotiation with the UK Government.

31. We have considered whether the Commissioner's functions should be extended to persons beyond the age of 18 in particular circumstances. We note that the definition of a child in the Children Act 1989 is a person under the age of 18, with the only exception being where a person over the age of 18 has applied to the courts for parental maintenance, usually as a result of the person continuing in education. The Care Standards Bill, under which the Commissioner will be established initially, defines a child as a person under the age of 18 without exception.

32. There is logic in restricting the Commissioner's role to those under the age of 18 in almost all cases, given that one of the primary reasons for establishing a Commissioner is to reflect the fact that children have no right to vote and therefore find it difficult to influence the democratic process. However, we also note that the Children (Leaving Care) Bill reflects the importance of ensuring that young persons who leave care continue to receive help and support into young adulthood.

33. The main purpose of the Bill is to create new duties for local authorities to support young people who have been looked after, to help them move from care into living independently in as stable a fashion as possible. The measures cover support for care leavers up to the age of 21 (or up to 24 if they continue in education or training); and the Bill will also establish a representation and complaints framework at local authority level for young persons who qualify for such help.

34. The Committee therefore considers that the Commissioner's functions should extend to young persons up to the age of 24 who qualify for advice and assistance from local authorities as a result of the Children (Leaving Care) Bill.

Statutory or non-Statutory Appointment

35. The Committee strongly recommends that, in order to achieve the necessary status and independence, the Commissioner should be established as an independent office by statute. We welcome the proposal, as a first step, to amend the Care Standards Bill to provide initial statutory cover for the Commissioner. The Commissioner's functions under the Bill will reflect the recommendations made in Sir Ronald Waterhouse's report *Lost in Care* on a Commissioner – see paragraph 14 above.

36. The Commissioner's functions under the Care Standards Bill will cover children's homes, residential family centres, fostering agencies, voluntary adoption agencies, local authority fostering and adoption services, domiciliary care, day-care and childminding services for the under-eights, private and voluntary hospitals and clinics, and boarding schools. But the wide

range of functions excludes others which are central to the lives of all children in Wales, including particularly those receiving support from local authority children's services for children in need. We therefore believe it is necessary to seek to extend the scope of the Commissioner at the earliest opportunity, to cover all services which affect children in Wales.

37. We believe that the Assembly should seek an early legislative opportunity to extend the statutory role, functions and powers of the Commissioner in line with our conclusions and recommendations. In the meantime, the Assembly should explore the feasibility of using its powers under the Government of Wales Act to consider asking the Commissioner to undertake tasks relating to any function concerning children. This Committee, in conjunction with the pre-16 Education and Children Committee, will explore the detail of these potential tasks.

38. Our view is that the appropriate status for the Commissioner is a corporation sole, which means that the office would have a separate legal identity from the individual concerned and rights and liabilities would remain with the office notwithstanding changes from time to time in the individuals holding the office, and that there should not be more than one Commissioner. In order to emphasise the Commissioner's independence, he/she should not be regarded as a servant or agent of the Crown. It is not intended that service as the Commissioner should be service in Home Civil Service.

39. The Commissioner should have the power, after consultation with the Assembly, to appoint such staff as he/she considers necessary to assist in the exercise of his/her functions.

Costs and how they might be met

40. The office and expenses of the Commissioner should be funded by the Assembly. We anticipate that the budgeting arrangements will be similar to those of the Welsh Administration Ombudsman – the Commissioner preparing and submitting an estimate of the income, costs and other expenses of the office to the Assembly for each financial year. This would take into account anticipated costs of any investigations and financial assistance with proceedings.

41. The costs of Commissioner offices in other countries range from around £200,000 to £600,000 per year, depending on the functions undertaken. We are recommending wide-ranging functions for a Commissioner in Wales, and therefore consider that the annual cost of the office will be at the top end of that range. As part of the consultation process on the Commissioner, Children in Wales estimated an annual cost of around £739,000 for an office undertaking such wide-ranging functions. This was based on a staff complement to include assistant commissioners and legal, publicity and administrative support, and covered accommodation and other office costs.

42. We consider that this is a reasonable estimate on which to base the core costs. However, further detailed work is needed on funding, especially in respect of additional funding for investigations and assistance with legal proceedings.

What priority the Assembly should give to the establishment of such a post

43. Since we were given our remit, this question has been answered; action is already in hand to give initial statutory functions to the Commissioner.

44. We urge for the appointment of the Commissioner as soon as possible following the enactment of the Care Standards Bill. The original intention was to appoint the Commissioner by the end of this year. We understand that Royal Assent to the Bill may not now be given until the Autumn, which would delay the appointment. However, we would not expect a delay of more than 2-3 months.

To whom would a Commissioner be accountable

45. The Commissioner should be appointed by, and accountable to, the Assembly as a whole. However, the procedures will need to include safeguards to ensure the Commissioner's independence. We therefore suggest that the Commissioner should be appointed on a 7 year, non-renewable basis, although the Assembly should be able to terminate the appointment before its expiry on the grounds of incompetence or misbehaviour.

46. We consider that the appointment procedure should involve the Assembly using its powers under the Government of Wales Act to establish an ad hoc committee to advise on the appointment. A selection and interviewing panel could be formed from the ad hoc committee; and could retain external expert advice as considered necessary. The final decision should be subject to a majority vote of the whole Assembly. Similar procedures could be adopted were it ever necessary to contemplate premature termination of the appointment on grounds of incompetence or misbehaviour.

47. The Committee considers that the opinions of children and young people should be taken into account in the appointment process. The remit of an ad hoc committee could include taking the opinions of children and young people into account in the appointment process. This could be achieved through separate interviews by children and young people, with reports back to the appointment committee, or participation in the committee's interview by children and young people.

48. Other than the process for appointment and termination, the main accountability of the Commissioner to the Assembly will be through the Commissioner publishing reports. Decisions as to the subjects of investigations should generally be for the Commissioner. However, we believe that the Assembly could request the Commissioner to report on specific issues but whether or not to do so should be the Commissioner's decision – subject to his publishing the reasons for any refusal.

49. The Commissioner will need to be in touch with a wide range of organisations in order to carry out his/her functions. However, the most important relationship will be that with children and young people themselves. It is they, and not providers of services, who should set the agenda for the Commissioner's work. Specific arrangements need to be set up to allow participation by children and young people. We expect the Commissioner would want to set out specific mechanisms for achieving this involvement as a priority. The arrangements must encourage the involvement of *all* children and young people in Wales, and especially children and young people who are being looked after by local authorities, who are from ethnic minorities, socially and economically disadvantaged backgrounds and disabled children.

50. We understand that Children in Wales will be holding a conference for children and young people in September and suggest that this event may be a good opportunity to find out from children and young people themselves how they would like to be involved; both in the appointment process and setting the Commissioner's agenda.

CONCLUSION

51. We have given the highest priority to exploring the role, remit and functions of the Children's Commissioner. We are pleased to have played such an integral role in this important process and look forward to continuing to do so.

52. We consider that the establishment of a Children's Commissioner in Wales is a hugely significant and innovative development in allowing children and young people directly to influence decisions which impact on their lives. We feel gratified and proud that Wales has led the way in this field, and hope that the rest of the UK will follow.

Acknowledgements

53. We would like to thank warmly all the organisations and individuals who responded in writing to our consultation exercise and those who gave oral evidence. Your contributions were invaluable in helping us undertake this task.

Annex A



07 October 1999

To whom it may concern

PROPOSED CHILDREN'S COMMISSIONER FOR WALES

The Health and Social Services Committee of the National Assembly for Wales is considering the remit, role and functions of a Children's Commissioner for Wales. The Committee intends to make recommendations to the National Assembly after considering views from those with an interest.

You are invited to submit views to the Committee about the proposed Children's Commissioner for Wales, in writing, (preferably by e-mail), or on tape, by 12 November 1999. In particular, views are invited on the following:

1. the extent of shortcomings in existing arrangements for children's services (which the Commissioner might address);
 2. the extent to which such a post might overlap with other existing or proposed arrangements to deal with children's complaints or promote their interests;
3. what a Commissioner's remit, role and functions might be;
4. whether a Commissioner could be appointed on a non-statutory basis;
5. whether statutory authority would be needed and the form that might take;
6. the estimated costs and how those could be met;
7. what priority the Assembly might give to the establishment of such a post; and
8. to whom the Commissioner would be accountable.

Replies should be addressed to Miss Laura Williams, Deputy Committee Clerk, Health and Social Services Committee, National Assembly for Wales, Cardiff Bay, Cardiff CF99 1NA. E-mail address: health-socserv.comm@wales.gsi.gov.uk

To help us analyse all the responses fully in the time available, please keep responses as succinct as possible and indicate clearly the question to which you are responding.

It would be helpful if you could make it clear if you are responding as an individual or on behalf of an organisation; whether you are content for your evidence to be published; and if you would be willing to give oral evidence to the Committee.

Yours faithfully

Jane Westlake

Committee Clerk

Annex B

Children's Commissioner for Wales Consultation Responses

Health Sector

All Wales Children's Senior Nurse Forum

Association for the welfare of children in Hospital

British Medical Association

Bro Taf Speech and Language Therapy Dept

Chartered Society of Physiotherapy

Community Practitioners & Health Visitors Association

Dept Child Health, University of Wales College of Medicine

Directors of Public Health

Dyfed Powys Health Authority

Gwent Healthcare NHS Trust

Iechyd Morgannwg Health Authority

North Wales Health Authority

North West Wales Trust - Children's Nurses

Royal College of Nursing

Royal College of Paediatrics & Child Health

School Nurses of Ceredigion & Mid Wales NHS Trust

Ty Hafan - The Children's Hospice in Wales

Local Authority Sector

Association of Social Services Directors

Blaenau Gwent County Borough Council Social Services Dept

Blaenau Gwent Early Years Development

Caerphilly County Borough Council Social Services Dept

City and County of Swansea Social Services Dept

Gwynedd County Council

Monmouthshire County Council

Neath Port Talbot County Council Social Services Dept

Newport Early Years and Childcare Partnership

Partneriaeth Plant Ceredigion

Powys County Council

Powys County Council, Leisure and Recreation Youth Services

Powys Early Years Education

Rhondda Cynon Taff Early Years Partnership

Welsh Local Government Association

Wrexham Childcare Partnership

Wrexham County Borough Council

Wrexham Early Years Forum

Voluntary Sector

Access for Black Children with Disabilities or Chronic Illness. (ABCD)

Barnardos (Wales)

Bobath Children's Therapy Centre Wales

Care for Wales

Childline Cymru / Wales

Children in Wales

MENCAP

Mudiad Ysgolion Meithrin

National Foster Care Association

National Playing Fields Association

National Youth Advocacy Services

NCH Action for Children Cymru (North Wales)

NCH Action for Children Cymru (South Wales)

NSPCC - Cymru

Save the Children Fund

Special Needs Advisory Project

Swansea Young Single Homeless Project

TACT - The Adolescent & Children's Trust

The Buttle Trust

The Children's Society

Voices from Care

Wales Assembly for Women - Gwent branch

Welsh Women's Aid

Y Bont

Young Minds

Other Sector

Association of Lawyers for Children

Central Council for Education and Training for Social Workers/Training Organisation for the Personal Social Services Cymru

Chief Constable's Officer - North Wales

Children and Young People's Assembly Initiative

Churches National Assembly Centre

Clover Care Consultancy

Commissioner (Welsh Administration)

Equal Opportunities Commission

Gwent Police (Chief Constable)

Gwent Probation Services

Justice for Children

National Association of Head Teachers Cymru

National Commission of Inquiry into the Prevention of Child Abuse

National Union of Teachers Cymru

Sir Thomas Picton School

South East Wales GALRO Panel

Sports Council for Wales

Welsh Administration Ombudsman

Welsh Language Board

Individual

Professor Ian Butler

Ms Jane Churchman

Dr D Evans (Consultant Paediatrician)

Dr Claire Jenkins

Ms Kate Verrier Jones

Dr J Morgan

Ms Sonia Pelusi

Dr T Rangarajan (Community Paediatrician)

Mrs Sally Rees

Dr Quentin Sandifer

Mr Graham Smith (Consultant Paediatrician)

Mrs Pat Smith

Ms Susan Stevens

Dr Molly Thomas

Peter Watkins (Clinical Psychologist)

Annex C

Extracts of Health & Social Services Committee Minutes

Relating to the Children's Commissioner

HSS-02-99 : 7 July 1999

Introduction

7.1 The Committee was asked to establish a work programme for considering the role and functions of a Commissioner for Children's services. Members were also asked to consider organisations that could be invited to give evidence, to support and assist this process.

Key Points

7.2 There was support from all parties for these proposals. The Committee agreed that it needed to hear views from a range of organisations and also children and young people before they could make recommendations on the remit for the Children's Commissioner. It was agreed that the Commissioner should have the power to take action when required.

Conclusions and Action

7.3 Children in Wales will be invited to address the Committee on 21st July, along the lines suggested in Annex A of the paper. Additionally, they would be asked to say why there is a need for a Commissioner, and how he/she should interrelate with other stakeholders. Their views on how to extend the consultation to schools, youth groups and other relevant organisations will also be sought.

7.4 The Assembly Secretary will provide the Committee with more detailed information about children's commissioners in other countries (outlined in Annex B of the paper), and the problems faced by all children, not just those in care. The Committee would also like to see the Utting Report.

HSS-04-99 : 21 July 1999

Presentation by Children in Wales

Introduction

1. Children in Wales were invited to give a presentation in support of the Committee's proposals for an Independent Children's Commissioner in Wales, as set out in Annex 2 of HSS-02-99(p.4), which was discussed at the Committee meeting on July 7.

Key Points

2. There has been a growing awareness of the rights of children over the last couple of decades. Several countries have appointed children's commissioners, which is supported by the UN Convention on the "Rights of the Child".

3. An Independent Commissioner for Wales should not have statutory powers initially, but a trial period without statute is to be recommended. Statutory powers could be granted at a later date.

4. An Independent Commissioner for Wales would not be the answer to all problems, and it is important that responsibility for services is retained by local authorities.

5. Mechanisms for dealing with children's complaints, especially from those in care, and access to

independent advocacy varies around Wales. However, the Commissioner should not simply be concerned with complaints, but also should take a pro-active role in improving services and conditions for young people.

Conclusions and Actions

6. The consultation process for an Independent Commissioner for Children must include children's views. The Committee should take the opportunity to use the work already being undertaken by the network of youth organisations in Wales and to make the most of the expertise and experience of groups such as Children in Wales.
7. The Committee needs to be aware of those groups of children that are not so easily accessible, such as travellers and be careful that only the views of those with a stronger voice are heard.
8. The Committee will put further questions in writing to Children in Wales. Members were invited to notify the clerk of their questions. Children in Wales were invited to make a further submission to the Committee in the Autumn.

HSS-06-99 : 16 September 1999

Introduction

1. The committee was asked to consider recommendations for taking forward the work examining the need for and role of an independent children's commissioner and how it would like to take evidence in respect of this.

Key Points

2. The Committee should focus on the children's commissioner, rather than anything affecting children such as the licensing of people working with children for instance.
3. The mailing list of organisations to be invited to submit written evidence should also include:
 - UNISON and Children's Care Workers Unions
 - Wales Boys and Girls Clubs
 - Wales Women's Coalition
 - Voices from Care
4. The subsequent report should summarise responses under main headings, with an analysis and explanation of how these have been weighted by organisation
5. It is important that the Committee also talks to the general public and there is a role for

members to go out and meet people in their constituencies. The Chair will consider how this can be taken forward, possibly on Thursday afternoons when there is no conflicting Assembly business.

6. It is more important to make sure the process for collecting evidence and developing the role of the Commissioner is right, than to meet the original end of November deadline for the first report.

7. As well as Children in Wales, other organisations should also be asked to nominate speakers representing children's and youth groups.

8. It would be more meaningful to consider the financial implications when the Committee has decided what the role and remit will entail, and can make more informed calculations of what will be involved.

9. Jane Hutt will meet the Norwegian Ombudsman at a forthcoming conference of Children in Wales.

HSS-13-99 : 8 December 1999

Introduction

5.1 Kirsty Williams welcomed representatives of Children in Wales and Lorraine Barrett who was representing the Pre 16 Education Committee.

Presentation

5.2 Richard Powell made a short presentation to the Committee. He acknowledged that it might not be possible for the Children's Commissioner to have statutory powers from the start. However, this should be the ultimate aim.

5.3 He recommended that the United Nations Children's Rights Convention (UNCRC) should be the central consideration when developing the role and function of the Children's Commissioner. The work of the Children's Commissioner should:

- promote and evaluate the convention;
- develop services and policy based on the convention;
- assess the impact of all National Assembly policies on children; and
- report annually to the National Assembly

Main Points of Discussion

5.4 In response to questions from the Committee, the representatives from Children in Wales made the following points:

- i. Children in Wales had consulted with children on a range of issues to do with the Assembly, including the Children's Commissioner.
- ii. Child impact assessments on policies were an important exercise. Many other countries involve Children's Commissioners from the start of policy development to ensure children's issues are an early consideration.
- iii. Resources and budgets can only be determined after the role and function of the commissioner have been set.
- iv. It was important to maintain momentum and establish a commissioner's office, even if statutory powers were not granted initially. The Welsh Language Board was an example of a statutory body that had started on a non-statutory basis.
- v. It was important for the Commissioner to be independent. If statutory powers could only be exercised through the Assembly, the office would not be independent. Ideally primary legislation should be in a discrete bill, not attached to one dealing with wider issues where the provisions would not be easily identified
- vi. The Commissioner should work in partnership with voluntary organisations and public bodies.

5.5 Elspeth Webb spoke to the Committee about children's health, which, she pointed out, was seldom a matter of health service provision, but more a consequence of their environment. Examples she gave were:

- i. Health and Safety laws protect people in employment, but there are no regulations ensuring that appropriate furniture is provided for children in school and that children do not carry heavy loads of books.
- ii. Child and Adolescent Mental Health Services receive one twentieth of the mental health budget to provide services for one fifth of the population.
- iii. Schizophrenic adults who have killed people are being dealt with in an increasingly enlightened and sympathetic manner. But some children who have killed have been demonised, and their emotional and mental well-being not addressed.

5.6 Jane Hutt stressed the importance of tackling the determinants of ill health and health inequality in improving the lives of children and socio-economic conditions. She reminded the committee that the introduction of a Children's Commissioner was now an all-party commitment and that £100,000 has been allocated within the budget to establish the post.

5.7 91 responses have been received to the consultation on the Children's Commissioner. Many of the responses were in accordance with recommendations from Children in Wales. The importance of the involvement and support of local government in developing this initiative was stressed.

Action

5.8 Copies of consultation letters will be made available to committee members in the members'

library before Christmas.

5.9 The Clerk would write to the Welsh Local Government Association inviting them again to submit their views on the Children's Commissioner.

5.10 Copies of the United Nations Children's Rights Convention to be circulated to committee members.

HSS-03-00 : 2 February 2000

Introduction

2.1 The Chair welcomed Rosemary Butler, Assembly Secretary for Pre 16 Education and Early Learning, and Lorraine Barrett, AM to the meeting.

2.2 The committee was asked to firm up handling arrangements for the remainder of the consultation process on proposals for an Independent Children's Commissioner for Wales, and refine the line of questioning to take with organisations that would be invited to make oral presentations.

2.3 A level of consensus from the responses to the consultation that had already taken place .

Main Points of Discussion

2.4 Members made the following points:

i. There was wide agreement that the Children's Commissioner needed to have statutory powers to make the office worthwhile and credible. However, further work was needed to identify what the statutory powers should be and how to proceed until statutory status was confirmed.

ii. Careful consideration needed to be given to the title to engage older teenagers.

iii. The potential investigative role of the Commissioner needed further development. The high resource implications of undertaking an investigative role would need to be calculated. It was important that the Commissioner should not replace established complaint's procedures.

The Children's Commissioner should be high profile. Children should be able to understand its role and functions to access services. It should not replace or undermine services such as "Childline".

iv. A recommendation was made for Barnardos to be added to the list, particularly in view of their work with black and ethnic minorities.

v. Further consultation was recommended after the role and remit of the Children's Commissioner had been refined.

2.5. Jane Hutt confirmed the Government's acknowledgement of the need for the Children's Commissioner in Wales to have statutory powers. As funding to set this up had been earmarked from April 2000, it was important to make progress.

2.6 While the Commissioner might have a strong advisory role in policy development and scrutiny, the governing executive would always retain the role of policy maker. The fundamental pre-requisites of the statutory basis of the Children's Commissioner must be clarified, before the legislative process could be taken forward.

Conclusions

2.7 The Chair said in summarising the committee's conclusions, that:

the views of those invited to make oral presentations should be sought on the balance between the executive, policy development function and investigative function ;

there was agreement that a statutory basis was essential, but this would need to be considered in more detail;

information was needed on the opportunities for primary legislation;

more detail was required of the resource implications of potential models.

2.8 The committee needed to spend more time hearing oral submissions, including a discussion with the Swedish Commissioner. The Chair advised members that prioritising the Children's Commissioner as an item of the committee's work, would impact on the Forward Work Programme.

Actions

2.9 Joint meetings with the Pre-16 Education and Early Learning Committee were suggested for the oral evidence sessions. The Clerk to consult the Clerk of that committee about the scope for joint meetings to hear oral submissions and would report back to the meeting of party spokespersons. The possibility of a full day evidence session would be considered.

2.10 Members were keen to receive evidence from the Swedish Children's Commissioner, but were concerned about the financial implications of asking him/her to attend the meeting in person. The Clerk would look into alternative options such as a video-conference link.

2.11 Children & Families Division (CFD) would produce a paper identifying the emerging themes of consultation and the committee's discussion. This would form the basis for the next stage and help develop the line of questioning for oral

evidence sessions.

2.12 The paper from CFD would also be circulated for comment to all organisations that responded to the initial consultation.

HSS-06-00 : 8 March 2000

The Assembly Secretary tabled a paper on the scope of the Care Standards Bill which is attached at Annex A.

Written submissions from the presenting organisations are attached at Annex B.

NSPCC

The main points of the presentation were:

- The remit of the Children's Commissioner needed to be broad;
- The Commissioner should be for all children not just "looked after" children;
- An annual report by the Commissioner and child impact statements would be important;
- The Commissioner should be supported by a team of staff. This should include three assistant commissioners covering legal, research and communications advice. Estimated cost would be £700,000 to £750, 0000 a year.

In response to questions from members, the following points were made:

- No incompatibility was seen with the office promoting the child dimension at policy level and in carrying out investigations. These were seen as complementary processes.
- Communication would play an important role in ensuring the Commissioner was answerable to children and young people. There were many ways two-way communication could be developed, e.g. local, regional and national assemblies for children, internet sites, etc.
- The principle role of the Commissioner should be to ensure that the UN Convention on the Rights of the Child was put into practice in Wales. All other activity should be based upon

that.

- The recommendations of the Waterhouse report pointed to the need for complaints officer independent of local authorities.
- It would be preferable for statutory powers to be obtained in a single piece of legislation to avoid confusion.
- There would be an important relationship between schools and the Commissioner.
- The Commissioner should have a high profile and be someone that children could both look up to and relate to.
- The appointment of an Independent Children's Commissioner would be a difficult process, but should involve a panel of young people.
- The Commissioner's appointment should be for five years.

Royal College of Paediatrics and Child Health

The main points of the presentation were:

- Children's health services needed to be dealt with differently from those for adults.
- Under the UN Convention on the Rights of the Child, children had the right to receive effective health services and this needed to be monitored.
- The views of children should be sought in ways to address health care issues.
- Provision of health services to children in Wales was very varied.
- Strategic planning of children's health services was needed, the Children's Commissioner could contribute to this process. The Royal College would be able to provide the Commissioner with professional advice.
- Good quality information was needed. It was hoped that the Health of Wales Information Service (HOWIS) would help fill gaps in existing knowledge bases.

In response to questions from members, the following points were made:

- There could be a role for the Commissioner in the oversight of complaints. Mechanisms were needed to listen to children. There needed to be clear lines of responsibility.

- The Commissioner should have an important role to play in monitoring Health Improvement Programmes.
- The Commissioner should have a role in ensuring that health services for children were appropriate and adequate, whether they were provided in Wales or England.
- It would not be possible for children's health services in Wales to be self-sufficient because of the geography in North Wales. The majority of sub-specialties were provided in Liverpool.
- The Commissioner should be the final arbiter in the complaints process rather than investigating complaints

Community Practitioners and Health Visitors' Association

The main points of the presentation were:

- The Commissioner should have statutory powers to look at the structures within the health service and how they affected children.
- There was a need to consider the language and culture of children when providing services.
- There was not an advocacy service within the health service to help children with complaints.
- The voice of children within the health service was very weak.
- There was no statutory training programme for school nurses.

In response to questions from members, the following points were made:

- The commissioner could help to raise the profile of health visitors and school nurses.
- The Commissioner should head a regional structure and use the experience of individual cases in which his/her staff were involved to influence policy development.
- It was considered important that health workers had someone independent they could turn to with their concerns about children's services.
- The Commissioner should have a role to play in disseminating good practice, especially in relation to children with special needs.

- The Commissioner might need to be involved in cross boundary issues such as services provided for children whose first language was Welsh.
- The Commissioner should ensure that freedom to work within the community was developed and public health was made available for everybody so that marginalised children were brought into the system.
- The Commissioner would play an important part in bringing together the voluntary and statutory sectors to provide one-stop advice to parents of children with disabilities, and publicising the information and services available.
- Lack of resources was no defence against not offering services for children.
- A more strategic approach to children's health services in Wales was required.

Welsh Administration Ombudsman & Health Service Commissioner for Wales and

Local Government Commissioner for Wales

The main points of the presentation were:

- Children could make complaints to the Ombudsmen but rarely did.
- The Ombudsmen/Commissioner was not a policy adviser or advocate.
- Their role was to investigate complaints made by the public where they had suffered an injustice due to maladministration by a public authority.
- There could be a role for the Children's Commissioner to investigate complaints that did not fall within the existing jurisdiction.
- The Ombudsmen were impartial.

In response to questions from members, the following points were made:

- It was thought that children did not complain to the Ombudsmen as they were not aware of the process involved.
- A conflict of interest between the Ombudsmen and the Children's Commissioner was not envisaged
- It was thought to be unlikely that a system could be devised where a child wanting to

complain about a government institution could do so without the help of an adult

- It would be difficult for the Children's Commissioner to be both an impartial investigator and an advocate. It would be important to make clear to the public the role and responsibilities of the Children's Commissioner post, and where a complaint should be directed.
- Although not within their specific remit, any body that was investigated and had a policy which failed to treat children as human beings would be exposed

In consideration of the Assembly Secretary's paper, some members were concerned that the tone and language of the paper was open to misinterpretation by outside agencies. The Assembly Secretary assured them that the Secretary of State for Wales' statement to the House of Commons made it clear that an early opportunity would be sought for further legislation to give full statutory powers to the National Assembly's proposals for a Children's Commissioner.

Action

A copy of the Secretary of State's statement would be circulated to members.

A clear statement on the legislative opportunities within the Care Standards Bill, the statutory basis for wider functions in the immediate future and longer term would be provided in time for the next meeting of the Committee on 16 March.

HSS-07-00 : 16 March 2000

This was the second session in which the Committee received oral submissions. Written submissions from the presenting organisations are attached at Annex A

Dr Quentin Sandifer, Public Health Physician, Iechyd Morgannwg Health

The main points of his presentation were:

- endorsement of the Children's Commissioner having statutory powers, but his/her statutory function should cover more than children looked after by Social Services and those living away from home.
- The Children's commissioner should be independent (not under Executive influence).
- The Children's Commissioner should have 4 main functions:

- to advise and comment on policy, but not to have responsibility for it;

- to have strategic oversight, including the implementation of the Strategy for Children and producing an independent annual report;
- to oversee a wide range of statutory functions; and
- to act as an advocate.

- The Children's Commissioner should not have direct responsibility for policy decisions.
- Any complaints function in his/her remit should not overlap those of the statutory complaints commissioners.
- The Waterhouse report had added urgency, but the development should not be rushed. Pace in extending the scope of the post was important.
- The role of the Children's Commissioner must be properly evaluated.

In response to questions from Members, the following points were made:

- it was important that the statutory authority of the Children's Commissioner should not be weakened as a result of having only limited powers within the current legislative framework.
- The Commissioner should be involved in development of Health Improvement Programmes and other public health strategies affecting children.
- He/she should engage children in policy decisions (Children Parliaments etc).
- The Children's Commissioner should have the stature to be authoritative and to be able to work with government at all levels.
- The Commissioner should be able to challenge and advise on issues such as the allocation of resources to statutory bodies.
- The Commissioner should comment and report on other statutory/voluntary sector strategies, but with sensitivity to the constraints within which the agencies work.
- There would not seem to be any need for the Assembly to pass investigation of complaints to this new and untested post. However, there may be scope for reviewing complaints procedures for children, and considering whether the Commissioner might pursue test cases.

North West Wales NHS Trust

The presentation was from the perspective of nurses working with children. The main points of were:

- Agreement:
 - on introducing the post as soon as possible with full statutory powers;
 - on the Children's Commissioner having a strategic role and acting as a watchdog;

- he/she should not deal with investigation of complaints, but act as an investigator of last resort.

- Inequity of services across across Wales due to:

- the difficulties over geography of the region;

- the differing services given to adults and children; and

- the different levels of children services available in different areas;

- in North Wales some hospitals were split over several sites; and

- also in North Wales, children whose first language was Welsh could be disadvantaged.

- Children seemed to have a low priority and were disadvantaged in health care provision.
- Children's services were increasingly dependent on charity funding
- Continued growth should not rely on a small number of individuals.
- The impact on families when a child was admitted to hospital could be far reaching. It could include family breakdown and mental health problems for which the family might need counselling.
- The Commissioner's role should involve listening to children, and their families, especially those with special needs such as travellers, the sick and needy, and acting as their advocate.

In response to questions from Members, the following points were made:

- On the issue of being an investigator of last resort, the Commissioner should only be seen to be involved where other complaints procedures fail.
- The Children's Commissioner should be involved in the development of policy to prevent the prevention of abuse of children.
- It would be important when acting as advocate in respect decisions that could be challenged in court, for Commissioner to ensure that he / she had acted properly.
- There could be tensions between the wishes of a child and those of his / her family. Then Commissioner should listen to listen to the children and make a balanced decision on the evidence provided.

A further paper from the NHS Trust based on their presentation was circulated to Committee

Voices from Care

The main points of their presentation were:

- the Children's Commissioner should start as soon as possible, but he/she should not have ill thought out powers. It was important that these powers cover all key statutory functions ; Children in care had already been let down by adults and did not trust adult systems. The Commissioner should not be seen as bureaucratic and he/she should a person of trust who can keep links with the young and establish bonds with those in need.
- The Commissioner should have wide enough powers to proceed in the interim, pending completion of the Assembly's consultation and legislative procedure.
- There should be an informal route to the Commissioner for children.
- The Commissioner should co-operate with agencies and partnerships, like Voices from Care, which had credibility with children.

In response to questions from Members, the following points were made:

- The Commissioner should report to the Assembly in the first instance.
- The Waterhouse Report recommendation of establishing local authority complaint officers could be the way of overcoming the constraints of the statutory commissioners for complaints , rather than the Commissioner acting as a "Super-Ombudsman". However, the Commissioner could be a last resort for complaints for those who felt that they had had not received satisfaction from the normal routes.
- Regarding the proposed informal route for children, the Commissioner would need to understand grass-root issues and be extremely approachable. Voices from Care could provide further views on structures and roles.
- There should be a bottom-up approach to the appointment of the Children's Commissioner. Young people should be involved in the selection process, with the person chosen being a child-centred. Most importantly, the Commissioner must not work within a too restrictive environment but adopt user-friendly processes.
- The Commissioner must have a clear image, be credible and be able to use the media to best advantage.
- It would be essential for the Commissioner to respect the confidences of a child.

Tim Brown, Secretary, Association of Directors of Social Services

The main points of his presentation were:

- there were three very important areas to the work of the Children's Commissioner:
 - as a voice for children in decision making affecting them;
 - to bring together effectively new legislation and policies; and
 - as a whistle-blower.

- Other areas should be:
 - Home Office functions such as immigration and asylum;
 - children with special needs, disabled or otherwise vulnerable; and
 - reviews of child protection case reports under Part VIII of the Children Act 1989.
- The Commissioner's functions should be statutory and he/she should be supported by experienced staff, and possibly an advisory group with representation from young people. However, the system should not be bureaucratic.
- The Commissioner should have good links with the Voluntary Sector and other agencies such as Childline.

In response to questions from Members, the following points were made:

- the Children's Commissioner, would probably be better placed to promote the use of the complaints procedure and co-ordinate the work of local authority complaints officers rather than taking on this work directly. However, the Commissioner could also be an investigator of last resort if all other investigative routes fail.
- The Commissioner 's links with local authority complaints officers should transparent and open. He / she could identify themes emerging from the local authority complaints officers' annual reports.
- The Commissioner should report to the Assembly's First Secretary, thus emphasising the importance of this post and the cross-cutting nature of children's issues.
- Children in the care of local authorities should be encouraged to come forward with their problems and the Children's Commissioner should ensure none slip through the net. This is currently an area of some concern within the family placement setting.

Welsh Local Government Association (WLGA)

The main points of their presentation were:

- The Children's Commissioner should have a realistic brief, preferably broader than proposed through the Care Standards Bill, with adequate levels of funding to support his/ her work.
- The Commissioner could advise on policy and scrutinise legislation.
- Any investigative functions would need to be considered carefully, or it could be too time consuming.
- The Commissioner should promote the positive side of the youth scene in Wales.
- The right of a child to have a good education and to access opportunities was important

(especially for the travelling community).

- Schools should "advertise" the Children Commissioner and promote accessibility. This could be done via the Internet and the National Grid for Learning.
- The Commissioner should be involved in the development of community plans that local authorities will be required to produce under new legislation.

In response to questions from Members, the following points were made:

- The WLGA was working with local authorities and Children in Wales about the changing responsibilities of councillors resulting from the modernisation of local government. The Children's Commissioner could advise on the best way of implementing cross-cutting themes.
- The Commissioner might look at the system for special education appeals which was currently on an England / Wales basis;
- The issue of to whom the Children's Commissioner should be responsible would be difficult to determine .
- The Commissioner, should have a broad role across children's issues.
- The Commissioner could be consulted on local authority funding proposals (though this may be time-consuming).

Barnados

The main points of their presentation were:

- There were 4 main areas to be addressed:
 - childrens rights under the UN convention;
 - the independence of the Children's Commissioner;
 - the strategic powers of the Commissioner; and
 - the resources needed to support the office.
- Legislation proposed in the Care Standards Bill would not go far enough.
- There should be a children rights perspective for all children in Wales.
- The Commissioner should be accountable to the Presiding Officer, in view of his political independence.
- The appointment should be on a five year renewable basis. The process should be transparent and involve young people.
- The work programme should be determined by the Children's Commissioner (The Assembly could seek advice from the Commissioner but not impose work on him/her).
- The structures to support the Commissioner should be established from day one and might

include steering groups. Young people from socially excluded backgrounds could be important in these roles.

- The Commissioner should be independent and have an investigating and scrutinising role within Wales. He/she could launch and/or commission investigations, have the power to access documents and question individuals, He / she should be able to ensure the findings are acted upon.
- Additionally the Commissioner might advise on the development of model child impact statements relating to policy changes.
- he/she should liaise with the voluntary sector, agencies and private bodies and be proactively involved with the media.

In response to questions from Members, the following points were made:

- It would be beneficial if the Children's Commissioner could influence UK policy and legislation affecting children in Wales, as well as policy within Wales.
- Although the Commissioner would not be directly involved in financial decisions, he/she could act as an advocate for children's rights, analysing the amounts being spent on certain services and monitor resourcing levels, for example school buildings.
- The Commissioner should only have access to otherwise confidential information (medical records etc) with the child's consent.
- The primary function of the Commissioner should be to promote children's rights.

HSS-08-00 : 22 March 2000

4.1 The Chair welcomed members of the Pre 16 Education, Schools & Early Learning Committee. A paper outlining the key issues for discussion was tabled and is attached at Annex C.

4.2 Jane Hutt said that there would be an opportunity on 5 April for the Committee to look at proposals for an amendment to the Care Standards Bill. The Committee would need more time to refine its own proposals for the full role of the Commissioner. The committee's report would need to go before the Assembly in May or June.

4.3 Rosemary Butler said that the pre 16 Education, Schools and Early Years Committee was not so constrained by the Bill, but would need more time to consider Education and non-Health and Social Services aspects of the Commissioner's role.

Main points of discussion

Functions – Investigative Role

- The Commissioner should not be an 'investigator of last resort', but should have the ability to take up any test case that fell outside existing complaints procedures, or which might have a significant impact on policy.

- The role would be as a first point of contact, offering advice to children to guide them through existing complaint procedures. The Commissioner should have the power to instigate investigations, even if there had not been a complaint, and have power to demand disclosure of information, if appropriate.
- There also needed to be mechanisms in place so that their recommendations could not be ignored.
- The Commissioner should oversee policies and procedures to ensure they adequately represented children's best interests, but not ordinarily get involved in individual cases
- An important role of the Commissioner would be to ensure an effective advocacy system operated throughout Wales, particularly representing the rights of children who do not have parents/people to speak on their behalf.

Other Functions

- The Commissioner should be proactive not reactive.
- While he/she would need to be a figurehead for children, it would not be a role that could be taken on by a celebrity. However a celebrity might be a patron.
- There would be a significant role for schools in promoting the role and responsibilities of the Commissioner.
- He/she should be able to influence policies for children's services and should also ensure joint working between organisations.
- The Commissioner should have the statutory right to sit in on any investigations into child abuse in Wales, if they so wished.
- He/she should not be involved in developing and reviewing child impact statements, but could develop a model of good practice and facilitate training to all organisations involved in preparing them.

Accountability

- There should be an ongoing process of agreeing the priorities of the Commissioner with children of all ages .
- Generally, the Commissioner would represent young people up to the age of 18, but exception may be made in the case of older young people with severe learning difficulties.

- The Commissioner should not be an elected official, and should be politically independent. He/she should be accountable to the Assembly, (although the exact line of accountability needed further clarification), and would provide an annual report.
- Consideration should be given to the establishment of an Advisory Council for Children's Services in Wales, as suggested in the Waterhouse Report. Children and young people should be involved in this. The Commissioner could consult the Council on his/her work programme.

Appointment

- The Commissioner should be appointed by resolution of full Assembly for a term of possibly 7 years. This would provide stability.
- Children should be involved in the appointment exercise, and care taken to ensure equality in that involvement, i.e age, sex, ethnic groups.
- The appointment needed to be made by the end of the financial year.

At its next meeting, the Health and Social Services Committee would discuss the scope of the proposed amendment to the Care Standards Bill.

Action

Officials were asked to provide advice on the following:

- the way in which the Equal Opportunities Commission and Commission for Racial Equality operate, and what powers of direction they have over non publicly funded bodies;
- how the Commissioner might link with other child protection agencies, e.g. Childline;
- what powers the Commissioner might have to represent young people from Wales receiving care or other services in England;
- the provision of financial support to assist a child with a complaint;

- the powers of the Commissioner in respect of non-devolved services, including the implications of the power of requiring disclosure of information;
- links between local authorities, local advocacy schemes and local voluntary schemes to ensure one cohesive route to the Commissioner;
- the procedures adopted by other countries in appointing a Children's Commissioner;
- legal advice on the Assembly's ability to appoint a Commissioner under the Government of Wales Act;
- priorities in qualifications, experience and personal qualities that should be required of candidates.

HSS-09-00 : 5 April 2000

3.1 The Chair thanked officials for their hard work in producing the paper to such a short timescale.

Main Points of Discussion

2. The following points were made in discussion:

- The Commissioner should be closely linked to the Assembly.
- The Equal Opportunities Commission and Commission for Racial Equality provided an acceptable model. However it would be important to protect the independent status of the Commissioner. While the Assembly should be able formally to request an investigation by the Commissioner, the Commissioner should have the right to refuse, subject to his / her formally explaining the reasons for so doing to the Assembly. The appointment or dismissal of the Commissioner should be by resolution of the Assembly.
- The Commissioner should be appointed on a 7 year, non-renewable basis.
- Meaningful input from young people was needed in the appointment process.
- Young adults with severe learning disabilities should not be classified as children and further clarification on the definition of a child was sought.
- The UK Government acknowledged the Assembly's recommendations for the Children's Commissioner and an early primary legislation opportunity should be sought for the full range of powers.
- It was important that all of the necessary powers were built into primary or secondary legislation. The committee did not want future activities to be restricted because of faulty drafting of legislation.
- The intention to appoint a Commissioner by the end of the calendar year was considered reasonable and it was essential that this timetable was not allowed to slip;
- A further discussion on the Commissioner's office would be required at a later date.

3.3 Officials would take on board all of the proposals and then begin detailed discussions with the Secretary of State for Wales, Department of Health and Parliamentary Counsel. It was expected that the amendment to the Care Standards Bill, which would provide preliminary powers, would be brought to the Commons Committee during May.

Action

3.4 Chris Burdett would provide members with the definition of a child, as contained in the Children Act.

HSS-10-00 : 17 May 2000 (*Draft – subject to ratification by the Committee*)

4.1 The Chair asked members to reach decisions on outstanding areas on which further advice was sought, as contained in Annex A of the report, and to comment on the draft report. She welcomed Lorraine Barrett, a member of the Pre 16 Education, Schools & Early Learning Committee, and thanked her for coming to present the Pre 16 Committee's recommendations.

4.2 The Assembly Secretary reminded members of the pressing timescale as the Committee Report is due to be debated in Plenary on 7 June.

Main Points of Discussion

4.3 The following points were made in discussion:

- Members were worried that the appointment of the Commissioner would be delayed if the Care Standards Bill did not receive Royal Assent before the summer recess.
- Members were dissatisfied that the issue of compliance, in particular relating to areas that the Commissioner could be asked to provide advice on under Section 40 of the Government of Wales Act, had not been addressed earlier.
- Consideration should be given to locating the Commissioner's office in North Wales.
- With regard to points in Annex A:

(ii) Status, Other Staff and Funding: Some members felt the estimate for funding of £739,000 could be insufficient; others considered it reasonable in the light of expenditure levels in other countries.

(iii) Person Specification: It would be unacceptable if candidates were rejected because of any past political involvement. Instead candidates should be assessed on their current political activities, if any.

(iv) Involvement of Children and Young People: The wording should be amended so it is clear that children and young people invited to give their opinions "could not be *fully* representative of all children in Wales".

(v) Non-devolved Functions: Most of the services provided for children in Wales have been devolved to the Assembly.

(vi) Cross-Border Involvement: It was suggested that the Commissioner's remit should extend to services provided in England for children normally resident in Wales, especially if the services were not available in Wales.

(viii) Enforcement Powers: Some members disagreed that they had previously given their consent for the Commissioner not to be given enforcement powers. It was accepted that this might only be achieved through primary legislation.

4.4 The conclusions reached by the Pre 16 Committee were:

- The Commissioner should be independent of the Executive and should not have to sign the Official Secrets Act.
- The person specification in Annex A was too tightly drawn and would limit the field of potential candidates. The following amendments were proposed:

The successful candidate should have *an understanding and knowledge* of the human rights of children and of non-discrimination;

should *become respected* in the eyes of the public, including children, by government at all levels, and other bodies;

should have *an understanding and knowledge* of different structures and levels of government which affect children but not be too committed to one service or sector.

- The Pre 16 Committee would like to be represented on the appointment panel.
- An annual report would be needed.
- The consultation of children in the appointment process was vital. They could be contacted through Young Voice and the Young People's Assembly.
- The report was biased towards social services. There should be more emphasis on education.

Members concurred with these conclusions.

Response

4.5 In response to points made by members, the Assembly Secretary said:

- A clear understanding of the role of the Commissioner was needed before the appointment procedure commences. The appointment process should not be started before Royal Assent was given .
- Helen Thomas added that Royal Assent should only be delayed to October 2000 if the Bill slipped into the autumn.
- In the meantime, preparatory work could still be carried out so that the Commissioner's post would be advertised as soon as Royal Assent was given and the appointment process was agreed.
- With regard to non-devolved functions, Section 33 of the Government of Wales Act allowed for appropriate representations to be made on issues that affect Wales. In addition, Mark Partridge advised that under Section 40 of the Government of Wales Act 1998, the Assembly could seek advice from third parties on devolved functions but could not be used so as to confer investigative powers.
- When looking at cross-border cases, it would be reasonable for the Commissioner to comment on why the services could not be provided in Wales, but there might be sensitivities about him/ her investigating the service itself.
- Children should be involved in the appointment process as much as possible. In addition, the children should be as representative as possible and include disabled children as well as those from ethnic groups.
- The person specification as set out in Annex A reflected the suggestions of Children in Wales. More work would need to be done on this subject.
- The report may need amending after the debate in Plenary has taken place.

4.6 The Chair said she would welcome contributions made during Plenary from those not already involved in the report, and suggested that contributions could be encouraged via the Business Committee and Party Groups.

Action

4.7 In light of the discussion, the Assembly Secretary suggested the following amendments to the

report and further points of action:

- It should be made clear in the report of the implications of any delay in achieving Royal Assent to the Care Standards Bill.
- Reference to Section 33 of the Government of Wales Act should be included in the report, and mention should be made of the role in respect of children placed outside Wales where there is an inadequate provision of services for children in Wales.
- A minor adjustment is needed to paragraph 34 of the report. This should now read:

"....Clearly such children and young people could not be fully representative of all children in Wales....."
- The need for the Commissioner to be made subject to the Official Secrets Act 1989 as a crown servant could be reconsidered.
- Helen Thomas and the Office of the Counsel General should provide further written advice relating to the Commissioner's powers of enforcement.
- Work should continue with members outside of the Committee. The report should come back for discussion in the next Health and Social Services Meeting on 25 May.

4.8 The Chair concluded that further advice was needed concerning the Commissioner's enforcement powers. She agreed that there was an obvious need for mechanisms outside of Committee Meetings to discuss this further. Members should make their representations to the Assembly Secretary.

4.9 Plaid Cymru members did not accept the draft report as it stood, or the advice contained in Annex A. If changes were not made, then the party would oppose the report in Plenary.

4.10 The Chair reiterated that the report must be cleared on 25 May if it is to be laid by 31 May.

4.11 The Chair thanked Lorraine Barrett for her contribution and that of the Pre 16 Committee.

HSS-11-00 - 25 May 2000

At its meeting on 25 May, the Committee formally signed off the revised report on the Children's Commissioner. At the time of laying this report, the minutes of the meeting were not available.