

## **Written evidence submitted by The Children's Commissioner for Wales' (BSW0016)**

The Children's Commissioner for Wales' (CCfW) principal aim is to safeguard and promote the rights and welfare of children. In exercising their functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner's remit covers all areas of the devolved powers of the Senedd that affect children's rights and welfare.

The UNCRC is an international human rights treaty that applies to all children and young people up to the age of 18. The Welsh Government has adopted the UNCRC as the basis of all policy making for children and young people and the Rights of Children and Young Persons (Wales) Measure 2011 places a duty on Welsh Ministers, in exercising their functions, to have 'due regard' to the UNCRC.

This response is not confidential. The response follows the Committee's Terms of Reference as a structure.

### **What are the key challenges for the benefits system in Wales and how do they differ from the other nations and regions of the UK?**

The devolution settlement provides a key challenge as regards the benefits system, as the current UK and Welsh Governments' approaches to tackling poverty and upholding human rights differ substantially. To illustrate, the Welsh Government has partially incorporated the UNCRC into Welsh law, so that Ministers have to have due regard to children's rights in exercising all of their functions. In addition, the Welsh Government has enacted the socio-economic duty from the Equality Act 2010, alongside the Well-being of Future Generations (Wales) Act 2015.

However, as noted in response to my 2019 report *A Charter for Change*<sup>1</sup>, the Welsh Government does not have all of the levers they would need to tackle persistent child poverty in Wales.

In addition, the remit of my office is restricted to those matters devolved to the Welsh Government. Child poverty is the most significant challenge facing children and families in Wales, with the Welsh Government's own data indicating that 31% of children are living in relative income poverty (after housing costs). The impact of decisions at Westminster in respect of welfare benefits and support for families have a considerable impact on this figure, as "in-work" poverty is a major factor within this. The Commissioner's inability to be able to intervene in issues and court cases in relation to welfare benefits is a significant factor in relation to protecting children's rights in Wales.

A recent report from the Social Mobility Commissioner recognised that "Wales has with England the joint highest child poverty rate in the UK. Some progress made in recent years seems now to have fallen back despite valiant efforts to tackle inequality which have included laws on socio-economic duty and wellbeing."<sup>2</sup>

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<sup>1</sup> <https://www.childcomwales.org.uk/wp-content/uploads/2019/04/A-Charter-for-Change-Protecting-Welsh-Children-from-the-Impact-of-Poverty.pdf>

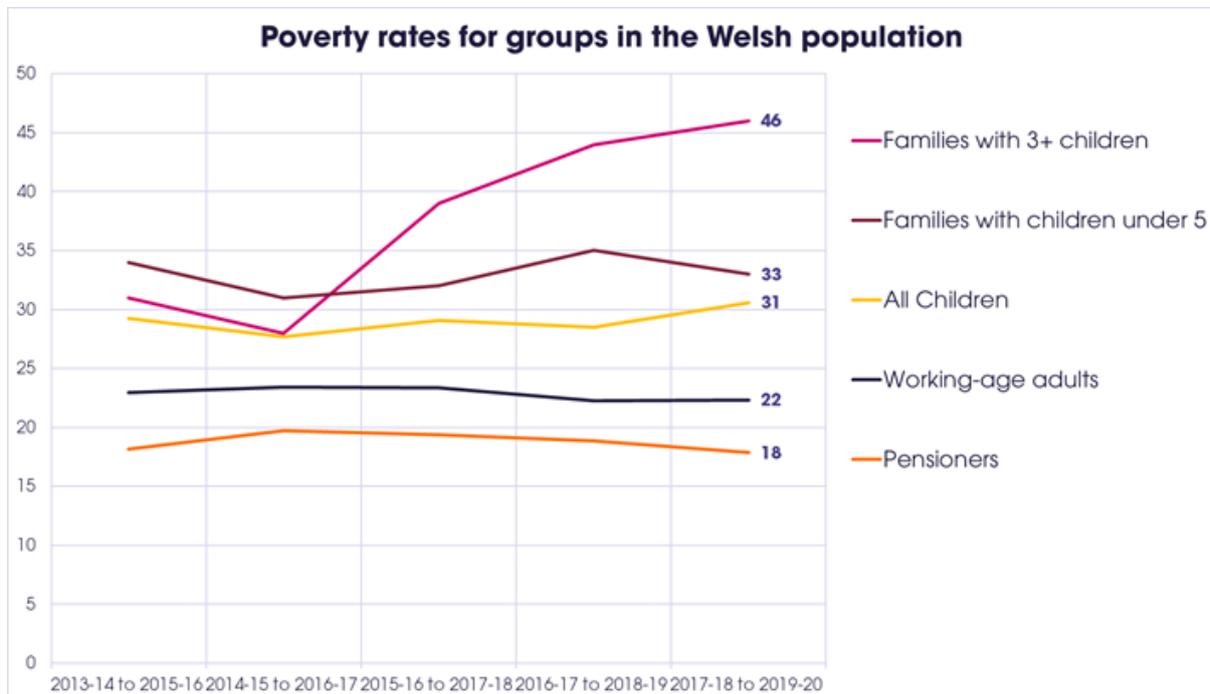
<sup>2</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1003977/State\\_of\\_the\\_nation\\_2021\\_-\\_Social\\_mobility\\_and\\_the\\_pandemic.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1003977/State_of_the_nation_2021_-_Social_mobility_and_the_pandemic.pdf)

## Pre-pandemic, how effectively did the UK benefits system tackle poverty and socio-economic inequalities in Wales as compared to England and Scotland?

As noted in the recent open letter sent to DWP by the four UK Children's Commissioners, a recent paper published by the Child Poverty Action Group estimates that at least 350,000 families and 1.25 million children have been affected by the two child limit policy, on the fourth anniversary of its introduction<sup>3</sup>. This number will increase year-on-year due to the policy applying to children born after April 6th 2017. There is also evidence of disproportionate impact on women as single parent households, those from certain religious or ethnic minority backgrounds and on children in Northern Ireland, where families are larger than the UK average<sup>4</sup>. The CPAG have estimated that if the policy were ended today, '200,000 children would immediately be lifted out of poverty, and 600,000 children would be living in less deep poverty, at a cost of only £1 billion'.

As an illustration, the latest child poverty data for Wales, based on DWP's new Households Below Average Income Dataset, makes it painfully clear that child poverty rates are rising fastest in households with 3+ children and the poverty gap between larger and smaller households is growing:



This is related to the current two-child limit on welfare benefits, which is having a significant impact on families across the UK, but especially in Wales.

We had previously written jointly to the Chancellor of the Exchequer in November 2017 to express our concerns about universal credit and measures under welfare reform including the two child limit, and the benefits freeze but no response was issued from the Chancellor.

<sup>3</sup> [https://cpag.org.uk/sites/default/files/files/policypost/It feels as though my third child doesnt matter.pdf](https://cpag.org.uk/sites/default/files/files/policypost/It%20feels%20as%20though%20my%20third%20child%20doesn't%20matter.pdf)

<sup>4</sup> <https://publications.parliament.uk/pa/cm201919/cmselect/cmworpen/51/51.pdf>

## How has the COVID-19 pandemic changed the type and amount of support needed by people in Wales?

Whilst we do not gather our own data and statistics on these matters, we have been made aware of an increase in families eligible for free school meal provision, due to unemployment or furlough.

According to the Institute for Fiscal Studies, “[h]ouseholds that were in relative income poverty prior to the pandemic (measured between 2016 and 2019) saw the largest rises in deprivation at the start of the pandemic. In comparison, households that were not in poverty pre-pandemic saw little change on most of the measures.”<sup>5</sup>

Families on universal credit are eligible for free school meals if their family income is below £7,400 (before benefits are taken into account). This low threshold excludes over half of children living in poverty in Wales, and can be contrasted with Northern Ireland where the threshold is £14,000. When families reach 17 working hours a week at the national minimum wage they lose their eligibility. So families can end up worse off if their earnings increase, as they lose out on free school meals worth over £400 per child per year. According to the Child Poverty Action Group, in a classroom of 25 pupils in Wales, 7 children are living in poverty, and 4 of them are not even eligible for free school meals.<sup>6</sup>

In Wales, eligibility for free school meals also links to other benefits such as the Pupil Development Grant - Access<sup>7</sup> (PDG-A) which helps families buy school uniform, equipment and sports kit (worth up to £125 a year, and £200 for Year 7 learners). This grant is not available for every school year but is a significant benefit to those who are eligible.

We’ve urged the Welsh Government to review and revise the free school meal threshold. Their 2021 Senedd Election manifesto committed to reviewing the provision but does not contain a firm commitment to an uplift in the threshold.

The costs of the school day was one of the major concerns for families when we undertook our work on *A Charter for Change*. We have published resources<sup>8</sup> to help schools monitor and manage sometimes hidden costs such as school trips and non-uniform days.

Data have been compiled by the Bevan Foundation on the likely costs of extending free school meals in Wales, either to all families in receipt of universal credit or a more universal entitlement<sup>9</sup>. They have concluded that “[t]here are no major barriers to expanding the eligibility criteria for FSM to all children whose families receive Universal Credit. The cost of expanded provision is small in the context of the Welsh Government’s budget whilst many of the practical barriers are easily surmountable. Such a change could therefore be introduced reasonably swiftly, in time for the start of the school year in September 2022 at the very latest”. Although there would be additional capital and revenue costs to expand catering operations in schools to meet the increased demand, there would be economies of scale in doing so and so they found that the “additional costs may not be so significant as to make expanding provision impossible.”

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<sup>5</sup> <https://ifs.org.uk/publications/15512>

<sup>6</sup> <https://cpag.org.uk/news-blogs/news-listings/wales-over-half-children-poverty-missing-out-free-school-meals>

<sup>7</sup> <https://gov.wales/pupil-development-grant-access>

<sup>8</sup> <https://www.childcomwales.org.uk/a-charter-for-change-resources/>

<sup>9</sup> <https://www.bevanfoundation.org/wp-content/uploads/2021/05/Expanding-the-eligibility-criteria-for-Free-School-Meals-practical-considerations-.pdf>

Policy in Practice estimate that the Welsh Government currently spends £38.9m annually on FSM<sup>10</sup>. If eligibility were to be expanded so that all children whose families receive Universal Credit receive FSM this would increase to £49.5m, a difference of £10.5m. To put this into context the Welsh Government's total revenue budget for 2021/22 is £17 billion<sup>11</sup>. If the scheme were rolled out universally Policy in Practice estimate that the annual cost would be £179.6m, an increase of £140.7m on the current system.

### **How effectively has the UK benefits system responded to these needs, and what else should the UK Government do to deliver the right support in Wales?**

The £20 a week uplift in universal credit has been an important step taken to help support families through the Covid pandemic period of uncertainties and financial insecurity. Alongside this, and discussions about the need to increase statutory sick pay to make it affordable to 'do the right thing' when required to isolate, one might observe that there has been a shift in the expectation of what is an acceptable amount of money to be able to live off. Whilst this is a welcome shift in the narrative, it is disappointing that it took a global pandemic for this to be realised and discussed.

The £20 uplift in universal credit must be maintained, but a more fundamental consideration of the policy framework that impacts these families is urgently required. The cap on welfare benefits and the two child limit currently in force serve to have an unequal impact on families living in poverty and is inconsistent with the commitments made by the UK through the ratification of the United Nations Convention on the Rights of the Child.

I would like to see a children's rights impact assessment (CRIA) of decisions such as the ending of the £20 uplift. From an objective standpoint I cannot see how this decision can be justified from a children's rights perspective. Returning to the two child limit, the CRIA related to the two-child limit which has recently been examined in a court case *SC & Ors, R (on the application of) v The Secretary of State for Work And Pensions & Ors* [2019]<sup>12</sup> is not what I would categorise as a children's rights impact assessment, as it simply seeks to justify an economic decision that had already been made, and makes the argument that paying families less is better for them. I found that analysis to be astonishing and unacceptable. The case for breach of families' human rights was not upheld because the aim of the policy was to reduce the cost of benefits to the public purse.

The court observed that "[a]lthough a treaty such as the UNCRC which the UK has ratified is binding on the UK in international law, it is not part of UK domestic law and does not give rise to any legal rights and obligations in UK law unless and until it is incorporated by legislation." "The provisions of the UNCRC therefore have no direct application in this case." The court upheld the DWP policy on the basis that the aims of the two child limit were legitimate, namely (1) reducing the budget deficit (2) ensuring that the benefit system is fair to taxpayers; (3) placing those who receive benefits in a position where they face the same financial choices in deciding how many children to have as those who support themselves solely through work; and (4) incentivising people to support themselves and their families through work.

It is notable that none of these arguments considers the perspective of children's current daily lived experiences of living in a family where basic benefits payments have been reduced below that

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<sup>10</sup> <https://www.bevanfoundation.org/wp-content/uploads/2021/05/Extending-the-provision-of-Free-School-Meals-in-Wales-Policy-in-Practice-final.pdf>

<sup>11</sup> <https://gov.wales/final-budget-2021-to-2022>

<sup>12</sup> [2019] EWCA Civ 615, [2019] 4 All ER 787, [2019] WLR(D) 233, [2019] WLR 5687, [2019] 1 WLR 5687 <https://www.bailii.org/ew/cases/EWCA/Civ/2019/615.html>

deemed the minimum to meet basic needs, a level considered so low for new claimants affected by the pandemic that the payments were temporarily increased by £20 per week.

One key factor that affected the outcome of that particular case was the fact that the UK Government has not incorporated the UNCRC into domestic law. This then prevents holding them to account specifically on children's rights issues such as this. Whilst Wales has partially incorporated the UNCRC via the Rights of Children and Young Persons (Wales) Measure 2011, this does not assist in matters that remain reserved to the UK Government at present such as welfare benefits.

I am aware of the UK Government's ongoing challenge to the Scottish Government's Bill to fully incorporate the UNCRC. The challenge relates to the devolution settlement rather than children's rights as the substantive issue, but it is a worrying development that the UK is seeking to limit the way that children's rights are being applied in public bodies, having shown no intention to take further steps to incorporate the 1989 Convention into UK law. Judgment is awaited in the case but it could have a significant impact on Wales and other devolved nations' ability to take proactive steps to ensure compliance with UN human rights treaties and conventions. Should this happen, the UK Government's review of the Human Rights Act 1998 takes on even more significance in order to ensure public services in Wales and the UK continue to act compatibly with children's human rights.

### **How effectively do the Welsh Government's allowances and grants meet the particular needs of people in Wales?**

In response to my *Charter for Change* report, the Welsh Government has commenced work on maximising the take up of eligible claimants of welfare benefits. For example, a national promotional social media campaign between November 2020 and March 2021 resulted in an additional £651,504 claimed by those entitled to benefits. I have welcomed the Welsh Government taking actions such as this, and think it is important to ensure that take up is maximised as this is the foundation of supporting families in need. The Welsh Government have also belatedly published an Income Maximisation Action Plan and a report on progress.<sup>13</sup> I had called for a more comprehensive Action Plan to address child poverty, but this has been repeatedly rejected by the Welsh Government. They undertook a review of child poverty in 2019/20, employing a member of staff from an external organisation to work full time on this. In the summer of 2020 the review had concluded but it was decided not to publish findings due to the onset of the pandemic and the effect this had on the overall context in which it would land. I disagreed with this and felt it was more important than ever to learn lessons on tackling child poverty; I am pleased to see some progress with the Income Maximisation Plan and associated work.

As noted above, some key benefits in Wales are linked to receipt of free school meals and therefore the low threshold for eligibility is a barrier to many families accessing much needed support. It is accepted that many families do not claim their full entitlements, hence the Welsh Government's income maximisation work. This can be for a range of factors, including lack of awareness of entitlements or perceived stigma in the visibility of claiming benefits and support.

I welcome the fact that the Welsh Government has retained the Educational Maintenance Allowance, removed in England, which provides £30 per week for eligible 16-18 year olds in education.

### **What reforms are needed to the benefits system and should there be further devolution of powers?**

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<sup>13</sup> <https://gov.wales/child-poverty-final-report-income-maximisation-action-plan-html>

As noted in my response to the Senedd's Equality, Local Government and Communities Committee inquiry on Benefits in Wales<sup>14</sup> in 2019, my 2019 report urged the Welsh Government to explore with local authorities how they can help ensure that those children who are entitled to receive support such as free school meals and additional funding for the costs of school uniforms via the PDG access grant, potentially by introducing an opt out rather than opt in system. I point to the example of Glasgow City Council who have awarded payments of their school uniform grant automatically to families on the basis of eligibility for housing benefit and council tax information which local authorities in Wales also hold and use to request that schools contact their parents/ carers to opt-in. Complexity in the system is a key barrier to overcome to ensure families have the support that they need.

We are informed that the UK welfare benefits system itself is a perceived barrier for some local authorities in implementing such a change. The Welsh Government has begun discussions with local authorities on this but at present it feels like they are not being compelled to progress this, just asked to consider exploring the options. This is not sufficient to see the urgent progress needed for children and families and to make the system operate more efficiently.

I have no specific expertise in the administration of welfare benefits, and the welfare system sits outside my legal remit, so I have not commented further on the details of how any proposed changes could work for that reason. I would however welcome the ongoing discussions in Wales to tackle the very real and pressing issue of child poverty

As noted above, there are a number of developments at a UK level that could potentially have a detrimental impact on Wales' children and families. In my view this would strengthen the case for devolution of the administration of welfare benefits to Wales to ensure that Wales can continue to act compatibly with human rights; indeed Welsh Ministers are under a legal duty to do so when exercising all of their functions under the 2011 Measure.

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<sup>14</sup> <https://business.senedd.wales/documents/s87159/BW%2011%20Childrens%20Commissioner%20for%20Wales.pdf>

## **How effectively do the UK and Welsh Governments work together in the delivery of benefits in Wales?**

### **What are the implications of the Universal Basic Income (UBI) pilot in Wales?**

I welcome the proposals to introduce a UBI pilot in Wales. There is little detail available yet as to where and how the pilot will apply. Care leavers have been recognised as a group that would benefit from additional financial security; this is welcome in response to the *Hidden Ambitions* report<sup>15</sup> that I published back in 2017 which highlighted issues around finances and independence. However, there is also the need to ensure a pilot gives sufficient information, data and learning in order to be meaningful.

It is my understanding that the pilot details can't be confirmed until there is clarity around the interaction with welfare benefits; to avoid money being deducted from other sources of benefit due to off-setting of the money received through UBI.

This has also been a related issue with the £500 wellbeing payment made by Welsh Government to health and social care frontline workers in recognition of their efforts during the pandemic; this took an inordinate amount of time to be agreed and processed as the UK Government proposed to tax the payment. Any freedom to the Welsh Government to make changes to benefit lower paid workers and families is currently significantly curtailed by the devolution settlement and impact of a 'clawback' in welfare payments.

The office of the Future Generations Commissioner have undertaken detailed modelling and examination of the potential UBI pilot options and I would recommend seeking their advice or input on this particular point.<sup>16</sup> Public Health Wales<sup>17</sup> have also recognised that introducing a basic income scheme in Wales could be a catalyst for better health and well-being outcomes for all.

*August 2021*

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<sup>15</sup> <https://www.childcomwales.org.uk/wp-content/uploads/2017/02/Hidden-Ambitions.pdf>

<sup>16</sup> <https://www.futuregenerations.wales/news/wales-needs-to-explore-paying-everyone-a-basic-income-open-letter-to-first-minister/>

<sup>17</sup> <https://www.publichealthnetwork.cymru/en/news/adopting-basic-income-scheme-in-wales-could-improve-health-for-all/>