

Response of the Children's Commissioner for Wales to the National Assembly for Wales Mental Health LCO Committee Scrutiny of the The National Assembly for Wales (Legislative Competence) (No 6) Order 2008 (Relating to Provision of Mental Health Services)



Introduction

The Children's Commissioner for Wales is an independent children's rights institution established in 2001 in line with the Paris Principles. In exercising his functions, the Children's Commissioner for Wales 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 National Assembly for Wales insofar as they affect children's rights and welfare.

The Children's Commissioner for Wales has spoken out very strongly regarding Child and Adolescent Mental Health Services (CAMHS) in a number of annual reports. The Commissioner's statements are reproduced at Annex A.

Further to these statements in the annual reports, in autumn 2007, the Commissioner produced a report, entitled *Somebody Else's Business*, on the implementation of Everybody's Business, the CAMHS strategy for Wales.

That report is available, at the following web address:

http://www.childcomwales.org.uk/publications/Somebody_elses_business.pdf

That report highlighted a number of issues in relation to CAMHS across Wales and made a series of key findings. The foreword and key findings from that report are reproduced at Annex B.

Response

It is unclear in the proposed LCO and accompanying memorandum whether children and young people would fall within the definition of 'person' in the LCO.

CAMHS is currently subject of considerable scrutiny, with a joint review being led by Healthcare Inspectorate Wales and the Wales Audit Office scheduled to report later in 2008. In response to the Children's Commissioner for Wales' latest Annual Report, the Welsh Assembly Government stated:

The Assembly Government awaits the report of the review of CAMHS provision at all levels and through all agencies which is being undertaken independently by the Wales Audit Office and the Health Inspectorate Wales. This should be completed in 2008. The review will assist the Assembly Government in planning future services for vulnerable children and young people.

We would question whether possible reforms of adult mental health services under this proposed LCO and associated Measures may mean that reform of CAMHS would move at a different, possibly slower, pace. Given the importance of ensuring a smooth transition between child and adolescent and adult mental health services,

this could compound existing problems. The gap between the funding of CAMHS and adult mental health services would only widen if children and young people are not included in this legislative competence order. . We would seek assurances that child and adolescent mental health services are included within the scope of the LCO so that effective interfaces between adult and child and adolescent mental health services can be strengthened

The Children's Commissioner for Wales has highlighted the situation of 16-18 year olds who are not in full-time education and are excluded from receiving CAMHS under the current commissioning policy. A similar exclusion applies to children and young people who have a primary diagnosis of learning disability.

The Memorandum accompanying the LCO refers directly to adults at various points but does not refer **explicitly** to children at any point. For example:

*12. Accordingly, Wales has its own Mental Health Strategy and National Service Framework for **adult mental health services** which are well regarded by many users and service providers but which are poorly served by current mental health legislation in England and Wales.*

It is against this background that we respond to the request for evidence. Please note that not all questions have been addressed.

2. Is the scope of the proposed Order appropriate, too narrow or too broad to allow the Assembly to bring forward the Measures to address issues you believe should be addressed via legislation in the field of Mental Health in Wales? If necessary, how should the proposed Order be re-drafted and why?

We would argue that, if children do not fall within the definition of 'person', then the scope of the proposed order is not sufficiently broad.

3. The proposal is to impose duties on the Health Service to provide assessment of and treatment for mentally disordered persons. Should it cover duties on other bodies?

Social care support for people with mental health needs and support in the community is acknowledged in the research as being one of the key issues for those people with mental health needs. Within the medical model, treatment and therapy may be of relatively short duration. However, even after treatment, there may be longer term social care needs and there is a need to consider whether duties could be imposed on local authority social service and housing departments within the scope of the LCO.

4. The parts of the proposed Matter which relate to assessment and treatment (paragraphs (a) and (b)) are limited to "the health service in Wales". Would this deal appropriately with any cross-border issues?

We would welcome clarification on the term 'the health service in Wales'. Would that mean only health services physically provided in Wales or those funded/commissioned by the Welsh Health service but which could be provided in England?

A substantial element of the specialist CAMHS provision for Welsh children is commissioned from providers in England, for example, the Priory clinic in Bristol for eating disorders and other units such as those providing secure placements. The

Welsh Affairs Committee is currently reviewing cross border issues and health services were included within that review.

We would consider that, if children are included within the definitions of 'person', further consideration needs to be given to cross border issues due to the current configuration of CAMHS and specialist CAMHS services in Wales.

We welcome this opportunity to engage with the committee on this key piece of legislation. Mental health is a subject which concerns young people in Wales today and it is essential that any new mental health legislation addresses children's and adolescents' needs.

Children's Commissioner for Wales
April 2008

Annex A

CHILDREN'S COMMISSIONER FOR WALES' ANNUAL REPORTS COMMENTS FOCUSING ON CAMHS

ANNUAL REPORT 2002-2003

Priority issues 2002-03

Child and Adolescent Mental Health Services (CAMHS)

The publication of Everybody's Business – the all-Wales strategy for child and adolescent mental health services - was welcomed by many practitioners and commentators. It set out a clear strategic direction designed to ensure that adequate and appropriate emotional and mental health services were available for young people in Wales. It made prominent mention of a child centred approach which was welcome, although other elements of the strategy did not display as explicit a commitment to participation as they should. Nonetheless, the strategy was a bold and imaginative attempt to put mental health services for young people on the right track.

It is therefore all the more surprising that no funding has been identified and ringfenced to implement the strategy by the Welsh Assembly Government (WAG), who commissioned the report in the first place and action must be taken in order to address this.

The consequences are all too clear. I have been approached directly by professionals and their associations, and by individuals acting on behalf of young people. Their message is the same: They speak of a service in crisis, with poor and patchy provision, and a worrying drain of skilled and professional workers. Those remaining talk of low morale. Some of the particular service deficiencies include:

- a lower number of adolescent inpatient beds per head of population in Wales than anywhere else in the UK
- no children's inpatient beds in Wales
- no adolescent forensic service in Wales
- no eating disorder beds in Wales
- virtually no service for children with a learning disability
- no emergency adolescent beds in Wales

This last point means that some young people have to be admitted to adult psychiatric wards or children being placed hundreds of miles from home away from their families and their country, and that is wholly unacceptable. We have also been made aware of consultants with waiting lists of well over 12 months, and of significant staff vacancies in psychiatric and psychological services.

The lack of appropriate and timely help to young people with mental health problems can blight their entire lives. WAG is now working on National Service Frameworks including mental health. There seems little point in this further refinement of intention without a commencement of realisation. I am

aware that in England £80 million was allocated to CAMHS with a further £140 million promised over the next 3 years.

It is about time the WAG either directly funded its much applauded strategy or gave up the pretence that it was committed to it. Without a clear, immediate and funded way forward for CAMHS many of its other statements of commitment to children's wellbeing ring a little hollow.

Annual Report 2003-4

Quote: *'Children and young people can become lost within the CAMHS tier system, which puts people into boxes.'*

Child and adolescent mental health services (CAMHS)

I regret to say that I am far less impressed with progress in the area of Child and Adolescent Mental Health Services. While the Health and Children's Minister's announcement of an additional £700,000 for these services after my last year's report was welcome, it is totally inadequate in the face of the continuing crisis in provision. In all areas of service for children I am hearing how the absence of proper mental health support is undermining real progress.

As I write this report there are many children and young people in Wales experiencing high levels of distress that could be lessened if the right resources were in place. Timely intervention is crucial for these children, and its absence will mean some of them will struggle far into their adult lives when they need not do so. Welsh Assembly Government is now requiring that Local Health Boards and Trusts develop costed plans, but our children in Wales are still left as the poor relations to their peers in England where almost £300 million is being invested over a three year period, the development of a comprehensive CAMHS by 2006 has been identified as an aim and a team of nine CAMHS Regional Development Workers has been recruited to provide guidance and assistance to local staff. While I welcome the emphasis placed on CAMHS with the National Service Framework, I find the difference with England especially hard to accept as Wales has a well respected and comprehensive strategy that should have made us a leader in this area of services. As one would expect of a strategy, Everybody's Business, considers the whole range of services, provided by both statutory and voluntary agencies, and, as is often the case, the whole is more than the sum of its parts. Consequently the piecemeal allocation of relatively small amounts of money towards aspects of the strategy is not likely to be as effective or efficient a remedy as careful consideration of the funding and budgetary implications of Everybody's Business as a whole. I therefore repeat my plea of last year that the Assembly commit the necessary resources or publicly accept that it has abandoned its strategy.

Annual Report 2004-2005

Child and Adolescent Mental Health Services (CAMHS)

My anxiety regarding a strategic approach to eradicating child poverty in Wales – and also around the implementation of the NSF – is of course rooted in the experience of observing the slow progress made in implementing the CAMHS strategy, *Everybody's Business*, about which I have written in previous reports. While there is no doubt that the additional funding announced has been of benefit, concerns about the continuing failure in Wales to provide an adequate CAMHS response are still being brought to me by professionals working in the field.

Individual cases dealt with by my Advice and Assistance service confirm that there is still a long way to go. Professionals working with children and young people often express their frustration to me, as do parents and their children who suffer as a result. Among the positive developments during the past year are that early identification work is being developed through Primary Mental Health Workers undertaking preventative work. Experienced professionals tell me that we need to strengthen these teams across Wales to prevent unnecessary referrals and enhance the life chances of children. They also believe that to have three primary health workers per 100,000 children would ensure that children's mental wellbeing is safeguarded.

I am also pleased with the development of a forensic consultation and treatment service (FACT) for young people. Although limited at present, it is a good start. It is essential nevertheless that professionals trained specifically to work with children and young people are employed within these services. At present there are specific concerns around access to appropriate services for 16-18 year olds since CAMHS is commissioned for children and young people up to 16 years of age unless they are still in full time education. Adult Mental Health Services are commissioned for 18 years and over, resulting in a gap in mental health services for many 16-18 year olds and patchy and problematic provision. I recommend that CAMHS be commissioned and resourced to see all young people up to their eighteenth birthday.

I also await with considerable interest Health Commission Wales' costed plans regarding Tier 3 and Tier 4 CAMHS. It is a disgrace that sick children and young people have to be placed so far from home, out of Wales, and usually detained under the Mental Health Act in order to receive treatment, therapy and services. These children are probably the most vulnerable in Wales and yet are probably the least safeguarded.

Annual Review 2005-2006

Child and Adolescent Mental Health Services (CAMHS) and other health services for children and young people

I have made comments previously about the funding of CAMHS and it has become clear that provision of many services across Wales are unequal and so not all children may be able to access the services that they need. As mentioned earlier in this report, my office is continuing to deal with issues around the provision of mental health services for children and young people. It is clear that my concern over the lack of financial backing for the WAG strategy was legitimate. Indeed, it would seem that very little has changed since I last highlighted this issue. To date the funding made available has been insufficient to take forward the strategic and service delivery proposals outlined in Everybody's Business and the National Service Framework for Children, Young People and Maternity Services (Children's NSF). The relatively small increase in funding has only addressed a tiny proportion of the need. I would remind WAG that the CAMHS implementation group estimated that an additional £10m per year would be needed for the first three years of delivering on the strategy outlined in Everybody's Business. Despite the commitment made in that document and in the Children's NSF, CAMHS provision is in crisis across Wales. My advice and support service has been involved in a range of cases that have substantiated that Wales has insufficient adolescent inpatient beds. Within a two-week period the service dealt with three cases – two of young people with eating disorders and one where there was self-harm – where Health Commission Wales refused to fund the placements CAMHS professionals considered to be appropriate for their needs. Young people in dire need of specialist treatment are experiencing weeks of delay before they are admitted. Adolescents are also being treated on adult mental health wards, which are not attuned to providing services for this age group and where the experience can be a frightening and damaging one for young people. Through the advice and support service I have also become aware that the one inpatient bed for CAMHS in West Wales was closed by the trust without consultation.

During the year my team has had considerable contact with health professionals. I am aware that there is some innovative and good practice and we were pleased that many health settings now recognise children's rights and welfare to a greater extent. Nevertheless, professionals have expressed considerable concern about the lack of funding for many of the new developments within the health service for children and young people.

For example, we are aware of projects that aim to tackle the issue of self-harm and 'hidden harm'. These are short-term projects which may only last for a few years and in some cases are being funded by Lottery money. The National Assembly for Wales must end this situation whereby important services are being run with short term funding. The Children's NSF has raised expectations but has not received sufficient resources to enable it to deliver all of its targets.

There are considerable differences in terms of guidance and funding for children's health when compared to adult health. Professionals tell us that guidance materials from Welsh Assembly Government are incomplete and that funding to make changes for adult services is not replicated for children's services. A further concern for professionals is that many needs are identified for children, but the means to meet these needs are not available and current funding formulas increase the inequalities of service provision.

Not all the targets that were flagged in the Children's NSF and due to be put in place by March this year have been achieved. However, instead of reinforcing a commitment to achieve the targets set by WAG in their Service and Financial Framework Document (the SAFF), those targets are now dropped for the next financial year. Indeed the SAFF contains no targets for achieving the standards laid down within the Children's NSF. I am unclear how exactly, if there is no financial commitment, implementation will be achieved.

2005-2006 Annual Review Case example involving CAMHS

A foster carer called us about a boy with behavioural problems who had been placed with her out of his home county for 4 years. He had problems dealing with anger, was hearing voices, having morbid thoughts, had self harmed and had started a fire deliberately. While he had been assessed as needing specialist CAMHS support, a dispute between two local health boards over who should foot the bill meant that he had been waiting two years for treatment. The foster carer was at the end of her tether and the lad had become involved in criminal activities and was excluded from school. We intervened and brought the situation to the attention of the Minister for Health and Social Services. The LHB in the county where he was placed agreed to pay for his treatment. Clearer guidance will be issued from Welsh Assembly Government to ensure that it is clear that the placing LHB is responsible.

Annex B

Foreword from Somebody Else's Business & Key Findings

Whilst Everybody's Business was widely applauded as a comprehensive strategy when it was launched in 2001, we have repeatedly listened to the negative experiences of children and young people with mental health problems which prompted the Commissioner to repeat, in successive Annual Reports, that Child and Adolescent Mental Health Services (CAMHS) as a whole are "*in crisis*" in Wales.

To try and understand the issues facing children and young people who need to access mental health services, we conducted face-to-face structured interviews with key personnel about the implementation of Everybody's Business at a local level. We were fortunate in having previously forged good working relationships with many of the attendees in their role of Designated Liaison Officers with this Office from Local Health Boards (LHBs) and National Health Service (NHS) Trusts– as recommended in the Carlile report *Too Serious a Thing*.

We were aware from the outset that much of the implementation of Specialist CAMHS (Some Tier 3 and all Tier 4 Services) at a local level is heavily dependent on the published national commissioning policy and guidelines contained within Welsh Health Circulars and we took these into account in evaluating services and preparing this report.

The aim of the interviews was to take a snapshot of chosen areas of mental health services at the time of the scoping exercise in early 2007. We are aware that since that time there have been developments in the recommissioning of inpatient units in both North and South Wales and changes in the functioning of FACTS teams. Nevertheless, most of the findings of this scoping exercise remain valid.

We are also aware that the Wales Audit Office and Health Inspectorate Wales have embarked upon a joint review of CAMHS and we have regularly met with them and have shared our findings. The NSPCC and other organisations have also published reports into the experiences of service users.

Following the writing of the report, the findings were shared with Designated Liaison Officers at three regional seminars held across Wales in late September 2007. During these seminars, the following points were highlighted as areas of further concern:

- Access to CAMHS, described in the report as being problematic for 16-18 year olds, is also an issue for younger children, this was highlighted by the case of a young girl who is just 10 and has a severe eating disorder. It was described as "a battle" for her to access provision.

- “Non-recurrent” funding has been provided for CAMHS for each of the last three years. Despite being intended to promote the development of new services and projects, this funding is often used to shore up existing core services. A similar concern was expressed about the lottery funded Inspire project which aims to support children and young people who have self-harmed. The initial evaluations shows that the project is actually plugging gaps in core services and so is not able to offer additional services.
- Disputes around commissioning, funding and access to services are common to all areas of Wales. However, it appears lessons are not learnt and solutions not shared. Procedures and guidance are not revised. This leads to the inefficient use of professionals’ time and delays in treatment for children and young people.
- Liaison officers reported that Health Commission Wales’ (HCW) stance on funding treatment retrospectively has hardened during 2007 and HCW are more reluctant to engage with LHBs and others in discussion. When they do it can take up to 10 days to get a decision and this places children at risk.
- HCW are only funding eating disorder services for 6 weeks but this is not considered to be sufficient time to carry out assessments and treatment of the child. Many of the centres that offer these services will not accept children and young people unless they are provided with 12 week funding.
- Children’s nurses are very concerned about the placing of CAMHS patients on paediatric wards where staff may not have the necessary skills to deal with children who have mental health problems. There were concerns that CAMHS patients may be in side wards but still very close to very young children.

Finally, we hope that this report will be of use to all those who commission and provide mental health services to children and young people in Wales. We are very grateful for the help we have received from our designated liaison officers within LHBs and NHS Trusts across Wales and we will continue, with their help and the feedback we get from children and young people, to scrutinize the development of CAMHS over the coming years.



Maria Battle
Deputy/Acting Commissioner
Children's Commissioner for Wales

Key Findings and conclusions

In this section we present the key findings from the scoping exercise. Whilst it is recognised that the scoping exercise was carried out with designated liaison officers and not specialist CAMHS workers, it is important to recognise that the liaison officers are frequently the key local personnel in terms of commissioning CAMHS.

We recognise also that there is an ongoing Health Inspection Wales and Wales Audit Office review of CAMHS and a review of adult mental health services which is addressing issues of transition between adult and CAMHS.

It is expected that Welsh Assembly Government and HCW will respond directly to the concerns outlined in the key findings and conclusions below.

HCW is an executive agency of the Welsh Assembly Government, and is therefore only delivering and adhering to the policies and directives of Welsh Assembly Government. It is not therefore solely HCW that decides upon the commissioning policy it promotes.

There is a need to review the policy and rationale for CAMHS in Wales coupled with reconsideration and appraisal of the level of funding required.

The variable practice in terms of access to CAMHS for 16-18 year olds not in full time education demonstrates an inequity of service provision to some young people in Wales. Those areas where this group of young people can access CAMHS, have made this change in practice despite clear policy guidance from HCW to the contrary. All young people between the ages of 16 and 18 should be able to access CAMHS in their area.

CAMHS should be commissioned and resourced to provide services to all children and young people up to their 18th birthday.

All 16-18 year olds should have access to CAMHS regardless of their educational status and the Welsh Assembly Government should change policy to make this clear.

When a child requires inpatient treatment in a Tier 3 or Tier 4 facility, the additional need for specialist CAMHS staff to re-assess the child often results in delays in the child or young person's care. Health professionals were unable to exemplify any areas where a second opinion for specialist treatment would be required within adult services. Some LHBs felt that the denial of specialist CAMHS could mean that young people's health may suffer.

Current referral criteria and practice, whereby an additional assessment by Specialist CAMHS staff is required before children and young people can receive Tier 3 or 4 inpatient treatment, should be reviewed

The use of non-recurrent funding means that the core CAMHS is being given less priority whilst LHBs concentrate on bidding for project money. This project based approach leads to small isolated pockets of effective practice which LHBs and other providers find challenging to sustain. This in turn leads to a loss of confidence in services from service users, their families and professionals.

Welsh Assembly Government must end the practice of funding important CAMH services with short term non-recurrent funding. There must be stability in the funding of CAMHS in Wales as in adult mental health services.

It would appear that resources and their scarcity are driving the provision of CAMHS rather than the needs of individual children and young people. The number of gatekeeping procedures and arbitrary decisions appears to place the mental health of young people at risk. Children often spend several weeks in the paediatric ward when their physical medical needs have been resolved before an appropriate CAMHS bed can be found for them. Adolescents are often being treated on adult mental health wards, which are not attuned to providing services for this age group and where the experience can be a frightening and damaging one for young people.

There should be a review of the funding arrangements and commissioning to ensure there are:

- **sufficient adolescent beds to avoid the need for the current practice of placing children and young people on adult wards**
- **sufficient child and adolescent mental health emergency placements**
- **forensic and eating disorder services in Wales.**

There is a broad consensus that the treatment of sexually harmful behaviours in young people requires a specialist component addressing this aspect of behaviour. It is also crucial that such interventions consider the young person's social and cultural factors, their cognitive and developmental level and their experiences of victimisation.

The provision of specific and specialist services for the assessment and treatment of children and young people with sexually harmful behaviours is a right. We have seen substantial progress in English local authorities following the mapping of current services initiatives commissioned by the Home Office and conducted solely in England. It is hard to understand why this initiative did not stretch beyond Offa's dyke.

A coherent, strategic response is needed to meet the needs of children and young people with a sexually harmful behaviour that will lower the level of child sexual abuse and help these children from developing their behaviour into adulthood.

Funding that is ring fenced for the South Wales FACTS should be released.

Most LHBs were unaware that the HCW responsibilities for commissioning Tier 3 and 4 services did not apply where there was a prior diagnosis of learning disability. The exclusion of young people with a learning disability from CAMHS, which was described as '*dangerous*' by one liaison officer, could have a massive impact on the development of those young people. All young people, regardless of their additional needs, have a right to receive the CAMHS they require.

There is a definite need to develop Care Pathways for children and young people with a learning disability who may also need CAMHS.

The varying levels of understanding are a major cause for concern given that LHBs are the primary commissioners of CAMHS in their local areas. LHBs clearly find it challenging to work with HCW in situations where a child or young person's care may be interrupted because of funding disputes. The new commissioning policy produced by HCW with little or no consultation with participants in the research is unhelpful and it was astonishing to find that many of these colleagues reported that they had not received this new policy from HCW. Some LHBs are unclear as to their specific commissioning responsibilities and this impacts on children and young people's treatment. The wishes of the child or young person should also be taken into account.

The commissioning policy should be reviewed to ensure:

- **it unambiguously clarifies the responsibilities of all partner organisations**
- **all LHBs and NHS Trusts understand and are able to follow the commissioning policy**
- **that the views of children and young people who use the service are taken into account in the review of the policy.**

There is an urgent need for clear, effective dispute procedures for a quick resolution when there is disagreement between LHBs, NHS Trusts and HCW.

Liaison officers reported that the use of the tight referral criteria into Specialist CAMHS means that some children and young people are not receiving services which could be of benefit to them. The inadequacy of funding means that LHBs and health providers may be required to provide health care for children and young people without the necessary expertise or funding. There were genuine concerns that this situation could place the emotional health and well-being of some young people at considerable risk.

There is a need to review the statement in the current commissioning policy that a child receiving an inpatient service will only be funded for 3 months.

According to designated liaison officers the funding of CITTs is a mixed picture with no clear reasoning as to why neighbouring LHBs have completely

different funding arrangements for the CITTs. The lack of funding for CITTs in areas distant from inpatient units is incomprehensible.

Community Intensive Therapy Team provision should be equally funded across all LHBs.

Designated liaison officers reported that, to date, CAMHS has yet to become Everybody's Business and it has to gain importance within the local structures. However concerns were expressed that these bodies are configured in such a way that CAMHS staff and health professionals generally do not feel that they can positively influence the agenda.

Children and Young People's Framework Partnerships need to include statements about local CAMHS in their Children and Young People's Plans and CAMHS should be identified as a priority service area.

The tight referral criteria into specialist CAMHS are seen as a cause for frustration for designated liaison officers and other professionals. Whilst recognising the need for criteria to ensure that resources are used most effectively there is a need for criteria to be clearly explained to front line health professionals. A concern is what happens to a child who is unable to meet the referral criteria. The difference between the medical and social models of assessment is shown starkly here. The medical model completely denies services to those who don't meet the referral criteria. A social model, on the other hand, would assess need on a spectrum and provide services to meet the needs. It is to be hoped that with an increase in multi-agency working these different approaches can be reconciled.

Some areas, but by no means all, had developed care pathways for use by both GPs and hospital staff. In general, under 16s who had self harmed and presented to A&E would be admitted to a paediatric ward and, once their physical condition had been stabilised, they would be assessed by the CAMHS team prior to their being discharged. There were however several variations on this. Some areas reported that due to resource limitations the assessment by CAMHS would only be available 3 days a week and therefore some children and young people may not be assessed prior to discharge. Others suggested that in some cases, especially for over 16s, children and young people may be placed on adult wards and therefore may not be assessed by the CAMHS team before their discharge.

All children and young people who have self harmed have a right to a specialist assessment before their discharge regardless of whether they have been placed on an adult or paediatric ward.