

Clywch Report

3 July 2007

Carwyn Jones, the Minister For Education, Culture and the Welsh Language

It is appropriate, on the third anniversary of the publication of the 'Clywch' report, that I provide the Assembly with a final update on the implementation of the Welsh Assembly Government's response to the Children's Commissioner's recommendations.

In doing so, I want to recognise the significant role played by my predecessor, Jane Davidson, in developing and delivering effective responses to the challenges identified by the Children's Commissioner.

The 'Clywch' report contained 31 recommendations, 16 of which fell within the direct responsibility of the Welsh Assembly Government, together with a further six in which we had a substantial involvement in developing associated guidance or in a sponsorship role.

I have attached a note setting out the action that we have taken to introduce legislation and guidance as part of our determination to improve the safeguards that practitioners put in place to promote the welfare of children and young people.

I should like to draw attention in particular to the latest developments regarding two of our responses, covering whistle-blowing policies and the development of an independent counselling service for children and young people in education.

On the first of these, I am pleased to report that a meeting has been scheduled for 4 July 2007 with the office of the Children's Commissioner to discuss the proposed final post-consultation draft prior to the final whistle-blowing guidance issuing to schools in September 2007.

Consultation on our strategy for developing school-based counselling services ended on 31 May 2007. The key aim of the strategy is to set out a plan for developing school-based counselling services for children and young people across Wales that are independent, safe, accessible and of a high standard. This is a significant undertaking that will require both time and resources if we are to ensure that we develop services that are fit for purpose. The consultation document sets out our proposed timetable for taking this forward. The final strategy will be published later this year, following our analysis of the consultation responses received.

Implementing each of our responses has required substantial development and consultation on both legislation and guidance to ensure the safest possible environment within which our children and young people can grow and develop. In taking forward this agenda, we have ensured that we are not simply focusing on the education, health or social care sectors in isolation. We have taken the opportunity of developing and incorporating substantial advice as part of the 'Safeguarding Children Working Together' guidance under the Children Act 2004. This reflects the multi-agency approach of the new statutory local safeguarding children boards.

Given that responses to all of the recommendations have now been implemented or are being implemented, I do not propose to bring forward further annual updates of this type, although I should of course be happy to answer enquiries on any specific aspect.

The Children's Commissioner for Wales's report of his examination into allegations of child sexual abuse in a school setting.

THE RESPONSE OF THE WELSH ASSEMBLY GOVERNMENT

**An updated response presented to the National Assembly for Wales on
3 July 2007**

PART 1: Recommendations specifically directed to the Welsh Assembly Government.

21.3 I recommend that the Welsh Assembly Government and the General Teaching Council for Wales and the Department for Education and Skills take steps to ensure that teachers receive specialist input in their professional qualifying training programme about the way in which abusers operate and that the findings of this report form part of that training, this recommendation to be implemented within 2 years of the publication of this report.

Current Position

Action on this recommendation has been implemented.

The National Assembly for Wales introduced legislation, the 'Criteria for Initial Teacher Training Accreditation by the Higher Education Funding Council for Wales 2006' on 4 July 2006, which includes requirements for the provision of courses of initial teacher training. The requirements for ITT courses in this legislation specifies that all providers must ensure that trainees are familiar with the most recent national guidance on child protection, including the Children's Commissioner for Wales's 'Clywch' report into child abuse; that training courses include awareness of how abusers might operate; and that the findings of the 'Clywch' report form part of training courses. This meets the Children's Commissioner's recommendation 21.3.

National Assembly for Wales Circular 41/2006 'Becoming a Qualified Teacher: Handbook of Guidance' issued in October 2006 includes coverage of this issue and provides information for ITT providers on particular areas of concern raised in the Children's Commissioner's report.

The legislation came into force on 1 September 2006 on a voluntary basis, and will become mandatory for courses starting in September 2007. The provision for it to take effect from 1 September 2006 on a voluntary basis has allowed ITT providers a transitional year (2006/07) to review course content and materials to reflect the new legal requirements. In the meantime, all ITT providers in Wales have confirmed to us that they are following the principles set out in the recommendation.

We have written to colleagues in the other UK countries to provide details of our measures so that they can take these into account when considering these issues in the future.

Copies of the legislation and guidance can be accessed here:

<http://new.wales.gov.uk/legislation/legislationinforce/210923/EducaWales1/2006/QTSSStandards2006e?lang=en>

<http://new.wales.gov.uk/legislation/legislationinforce/210923/EducaWales1/2006/CriteriaforITT2006e?lang=en>

<http://new.wales.gov.uk/publications/circular/circulars2006/nafwc41-06?lang=en>

21.5 I recommend that the Welsh Assembly Government issues guidance within 6 months of the publication of this report which requires the governors of all schools, whether they be community, voluntary aided, voluntary controlled, foundation or independent schools and further education colleges to have a whistleblowing policy in place and that all teachers and non teaching staff are informed as to its operation.

Current Position

Action on this recommendation is being implemented.

Consultation on the Welsh Assembly Government's guidance for governing bodies on whistle-blowing in schools and a model policy for school staff was undertaken between 18 October 2006 and 14 January 2007.

Officials of the Welsh Assembly Government are meeting the office of the Children's Commissioner on 4 July to discuss the proposed final guidance prior to it issuing to schools and key practitioners as soon as possible in the 2007 school year.

Further education institutions already have whistle-blowing guidance in place.

21.7 I recommend that the Welsh Assembly Government issue guidance within 12 months of the publication of this report on how allegations of child abuse made against teaching and non teaching staff should be investigated. The guidance should consider the:

- (i) Joint NEOST /Teacher Union guidance on Education Staff and Child Protection: Staff Facing an Allegation of Abuse**
- (ii) Practice Guide to Investigating Allegations of Abuse against a Professional or Carer in Relation to Looked After Children**
- (iii) All Wales ACPC Child Protection Procedures.**
- (iv) National Assembly for Wales Guidance 'Working Together to Safeguard Children'.**

Current Position

Action on this recommendation has been implemented.

National Assembly for Wales Circular 45/2004 'Guidance on Staff Disciplinary Procedures' was issued to school governing bodies in November 2004.

The Staffing of Maintained Schools (Wales) Regulations 2006 were made on 21 March 2006 and contain two new provisions requiring governing bodies:

- i. to appoint an independent non-governor member with voting rights on staff dismissal/disciplinary committees and dismissal/disciplinary appeal committees in cases involving child protection matters (which came into effect 1 April 2006); and
- ii. to appoint an independent investigator to investigate child protection allegations against staff (which came into effect on 1 September 2006).

The Dream Group Ltd was appointed on 16 October 2006 to set up, manage and run the Independent Investigation Service on behalf of the Welsh Assembly Government. The

investigations carried out by the independent investigator will take place after the statutory authorities have completed their consideration of the child protection allegations.

We will review and consult on revisions to Circular 45/2004 'Guidance on Staff Disciplinary Procedures' late 2007 with a view to making more of the guidance statutory and including a model disciplinary policy. The revision of Circular 45/2004 will reflect the requirements in the Staffing of Maintained Schools (Wales) Regulations 2006 and will also reflect those parts of the guidance issued by DfES on 'Safeguarding Children in Education: Dealing with Allegations of Abuse Against Teachers' that deal with the non-devolved issues relating to the police and Crown Prosecution Service.

Copies of the legislation and guidance can be accessed here:

<http://new.wales.gov.uk/publications/circular/circulars04/NAFWC452004?lang=en>

<http://www.opsi.gov.uk/legislation/wales/wsi2006/20060873e.htm>

21.8 I recommend:

- (i) that the responsibility for deciding whether to lay charges and to proceed with an investigation and hearing becomes the responsibility of the local education authority, because of its relationship with teachers, non teaching staff and its membership of the Area Child Protection Committees in Wales.**
- (ii) where an investigation is commenced, it should be undertaken by a specialist personnel officer of the local authority who should also present the case unless a solicitor or counsel is instructed.**
- (iii) that four new independent tribunals be established, covering four parts of Wales, chaired by a legally qualified person and having two other members one of whom will be a teachers' trades union nominee and the other a governor nominee to hear the evidence and to make findings of fact on the balance of probabilities. Those chairing such tribunals to be appointed by a process involving both teachers' trade unions and the local education authorities.**

21.9 I recommend that the Welsh Assembly Government establish a task group within 6 months of the publication of this report, with representatives from all interested parties, charged with bringing forward a set of proposals to implement the recommendation I have made in respect of schools' disciplinary tribunals. The interested parties should include:

- (i) all teachers' trade unions**
- (ii) governor representatives**
- (iii) local education authority officials**
- (iv) child protection and legal experts**
- (v) children and young people**
- (vi) General Teaching Council representatives**
- (vii) Welsh Local Government Association**
- (viii) police.**

Matters to be considered by the task group to include the threshold for referrals, appeals, tribunal rules, the interrelationship with police investigations and the recording of investigations on the files of teaching and non teaching staff.

Current Position

Action on these recommendations has been implemented.

The Staffing of Maintained Schools (Wales) Regulations 2006 were made on 21 March 2006 and came into effect 1 April 2006, with the exception of the provision requiring governing bodies to appoint an independent investigator to investigate child protection allegations against staff, which came into effect on 1 September 2006. The regulations also contain provisions requiring governing bodies to appoint an independent non-governor member with voting rights for staff dismissal/disciplinary committees and dismissal/disciplinary appeal committee in cases involving child protection matters.

The Children's Commissioner indicated that he considered these proposals adequate alternatives to his recommendations on this issue.

Copies of the legislation can be accessed here:

<http://www.opsi.gov.uk/legislation/wales/wsi2006/20060873e.htm>

21.12 I recommend that the Welsh Assembly Government, in partnership with the DfES, ACCAC and the equivalent qualifying curriculum and assessment authorities in Scotland, Northern Ireland and England, consider the role of examining bodies across the UK with regard to child protection arrangements within 12 months of the publication of this report.

Current Position

Action on this recommendation has been implemented.

'Safeguarding and protecting children and young people—A guide and good practice exemplification for awarding bodies' issued in April 2006 from the regulatory authorities in Wales, England and Northern Ireland, endorsed by the Scottish Qualifications Authority.

The guidance was developed under the aegis of a steering group with representatives from the education departments and regulatory authorities in Wales, Scotland, England and Northern Ireland. Consultation ended on 30 November 2005.

Prior to full consultation the draft guidance was considered by Social Service Inspectorate for Wales, Estyn, WJEC, the Joint Council for Qualifications and the Executive Committee of the Federation of Awarding Bodies.

ACCAC also wrote to the Children's Commissioner and had a positive meeting with the Assistant Commissioner to discuss the document before its issue for wider consultation.

Copies of the guidance can be accessed here:

<http://accac.org.uk/eng/content.php?mID=717>

21.13 I recommend that the Welsh Assembly Government, in partnership with the DfES, ACCAC and the equivalent qualifying curriculum and assessment authorities in Scotland, Northern Ireland and England, consider the way in which drama is taught and examined in schools and further education colleges, with the aim of producing

practice guidance within 2 years of the publication of this report that will include consideration of the following issues:

- (i) selection of appropriate drama texts in education and examinations;**
- (ii) adult participation in school drama and drama practical examinations;**
- (iii) safe teaching of drama, in particular the teacher's role in pupil improvisation and method acting;**
- (iv) venues and timings for drama examinations and rehearsals;**
- (v) video recording of children and young people in drama rehearsals and practical examinations and the need to obtain parental consent**
- (vi) the practice of involving younger pupils in drama practical examinations of older pupils;**
- (vii) monitoring and sanctions in relation to the late submission of scripts for practical examination to examining boards;**
- (viii) express guidance relating to sexual content and language, intimate physical contact and nudity in drama practical examinations and lessons;**
- (ix) the duties of schools and college management in monitoring the implementation and observance of guidance.**

Current Position

Action on this recommendation has been implemented.

National Assembly for Wales Circular 23/2006 'Teaching Drama: Guidance on Safeguarding Children and Child Protection for Managers and Drama Practitioners' was published electronically on 10 July 2006 and distributed in hard copy in October 2006. Copies have also issued to schools that have subsequently opened. The guidance covered all the issues identified in recommendation 21.13.

The guidance was developed under the aegis of a steering group which included representatives from the education departments and regulatory authorities in Wales, Scotland, England and Northern Ireland and also included representatives of Estyn and Social Service Inspectorate Wales.

The Children's Commissioner's Office confirmed that it was content with the guidance.

Copies of the guidance can be accessed here:

<http://new.wales.gov.uk/publications/circular/circulars2006/nafwc23-06?lang=en>

21.14 I recommend that the Welsh Assembly Government issue guidance, within 12 months of the publication of this report, as to what information can be shared where there are allegations of child abuse whether or not findings have been made. Such guidance should include what information can be shared with the voluntary sector and any other body through which the individual has or may have access to children.

Current Position

Action on this recommendation has been implemented.

National Assembly for Wales Circular 12/2007 'Safeguarding Children: Working Together under the Children Act 2004' was published in April 2007. The draft guidance has been

developed following wide-ranging consultation with local safeguarding children boards, including events for practitioners and follow-up focus groups between May 2005 and November 2005. Advance copies of the final working draft were made available to safeguarding boards in July 2006.

Copies of the guidance can be accessed here:

<http://new.wales.gov.uk/topics/childrenyoungpeople/publications/guidance/1297522?lang=en>

21.17 I recommend the Welsh Assembly Government review the Children (Performances) Regulations 1968 and the guidance thereto so as to address the weaknesses outlined in my report in the current arrangements for safeguarding the welfare of children in Wales when performing in television or other media, within 12 months of the publication of this report.

Current Position

Action on this recommendation has been implemented.

The review is complete. The Children (Performance) (Amendment) (Wales) Regulations 2007 were made on 6 March 2007 and came in to force on 2 April 2007.

The regulations require local authorities, before granting approval of an application for a licence, to be satisfied that the chaperone has;

- been provided with information making them aware of their legal responsibilities particularly the law on performances by children; and
- undertaken relevant child protection training to the level recommended by the Local Safeguarding Children Board.

The regulations also require the local authority to be satisfied that, before granting approval of a chaperone in relation to an application for a licence, the chaperone has:

- been provided with information making that person aware of their legal responsibilities in respect of the child and of the law on performances by children;
- undertaken relevant child protection training to the level recommended by the local safeguarding children board.

Copies of the legislation can be accessed here:

<http://www.opsi.gov.uk/legislation/wales/WSI2007/20070736e.htm>

21.18 I recommend local education authorities to be issued with guidance by the Welsh Assembly Government on best practice to fulfil their current duties and responsibilities under the Children (Performances) Regulations 1968 within 6 months of the publication of this report.

Current Position

Action on this recommendation has been implemented.

‘Children (Performances) Regulations 1968: Best Practice Advice to LEAs in Wales on Discharge of their Current Duties and Responsibilities’ was published in July 2006.

21.25 I recommend that the Welsh Assembly Government’s ‘Guidance on Procedures for Dealing With Complaints to Governing Bodies’ be amended to include clear and unambiguous guidance on the responsibilities of relevant parties if complaints raise child protection concerns.

21.26 I recommend that the Welsh Assembly Government’s Guidance on Procedures for Dealing With Complaints to Governing Bodies is amended to make it clear that the Children’s Commissioner for Wales has powers, under the Care Standards Act 2000 and the Children’s Commissioner for Wales Act 2001, to review complaints procedures in schools and to review individual cases.

21.27 The Welsh Assembly Government’s ‘Guidance on Procedures for Dealing With Complaints to Governing Bodies’ shows an awareness of the difficulties in achieving sufficient independence in all stages of the investigative process of a complaint and in adjudication in schools, especially small schools. I share this concern but remain unconvinced that the remedies proposed will prove practicable and effective. Nonetheless, I feel the arrangements proposed should, amended as I have suggested, be given the chance to be tested and therefore that they, together with ‘Complaints Involving Pupils’ should be issued as statutory guidance without delay and not later than 1 September 2004. My office will conduct a Review of these arrangements after they have been in force for 1 year.

21.28 I recommend that the Welsh Assembly Government takes the necessary steps to ensure that all the proposals within its consultation document ‘Procedures for Complaints involving Pupils’ are placed on a statutory footing.

Current Position

Action on these recommendations has been implemented.

National Assembly for Wales Circular 39/2006 ‘Guidance for Governing Bodies on Procedures for Complaints Involving Pupils’ issued to all schools on 25 October 2006.

Copies also issued to local authority education and social services departments, school teacher and staff unions, diocesan authorities, the Children’s Commissioner, voluntary bodies concerned with children’s rights and local and national education bodies.

To address some of the Children’s Commissioner’s specific concerns the circular emphasises that complaints received in schools involving child protection issues against school staff should be dealt with under the governing body’s staff disciplinary procedures and not as a general complaint.

The guidance in NAFW Circular 39/2006 is supplementary to National Assembly for Wales Circular 03/2004 ‘School Governing Bodies Complaints Procedures’ and should be read in conjunction with the guidance in that circular. NAFW circular 39/2006 therefore has the same statutory basis as NAFW circular 03/2004.

We will be looking at merging the guidance for governing bodies on dealing with complaints involving pupils with the general complaints procedures guidance into one comprehensive document, including a model complaints procedure, in due course.

Copies of the guidance can be accessed here:

<http://new.wales.gov.uk/publications/circular/circulars2006/nafwc39-06?lang=en>

<http://new.wales.gov.uk/publications/circular/circulars04/NAFWC032004?lang=en>

21.29 I recommend that the Welsh Assembly Government devise a national strategy for the provision of an independent children’s counselling service for children and young people in education including provision of appropriate support to children during disciplinary, child protection, complaints and exclusion processes within 12 months of the publication of this report. This national strategy should also consider teachers’ pastoral care skills, training and support and the respective roles within pastoral care of teaching staff, counsellors and educational welfare staff.

Current Position

Action on this recommendation is being implemented.

The national strategy for counselling in schools was presented to the ELLS committee on 16 March 2007 and issued for formal consultation, which ended on 31 May 2007. The final strategy is scheduled for publication later this year. It will be informed by the findings of the comprehensive research project currently under way to assess the level of provision currently available in Wales, its suitability and effectiveness and to gather children and young people’s and other key stakeholders’ views on what they need.

21.30 I recommend that the Welsh Assembly Government within 3 months of the publication of this report require all school governing bodies to ensure that children are informed in their school of the availability and purpose of relevant services, including ChildLine, the NSPCC Child Protection Helpline, social services, the Children’s Commissioner for Wales and advocacy services.

Current Position

Action on this recommendation has been implemented.

National Assembly for Wales Circular 39/2006 ‘Guidance for Governing Bodies on Procedures for Complaints Involving Pupils’ issued to all schools on 25 October 2006.

Copies also issued to local authority education and social services departments, school teacher and staff unions, diocesan authorities, the Children’s Commissioner, voluntary bodies concerned with children’s rights and local and national education bodies.

It contains advice on the purpose, role or principles of a procedure to deal with complaints involving pupils, and offering advocacy support to pupils.

The circular also explains the role of the Children's Commissioner and contains contact details for ChildLine, the NSPCC Child Protection Helpline, the Children's Commissioner and the Children's Legal Centre.

Sources of support for children and young people have been reinforced in the draft model note for pupils within the current consultation document 'Safeguarding Children in Education'.

Copies of the guidance can be accessed here:

<http://new.wales.gov.uk/publications/circular/circulars2006/nafwc39-06?lang=en>

Part 2: Recommendations not directed principally to the Welsh Assembly Government but where we have a substantial involvement with associated guidance.

21.1 I recommend that in any child protection investigation the wishes and views of the child about the conduct of the interview, including their wishes about the nature of the support they prefer, are always sensitively ascertained and recorded and form part of the interview planning process and that the All Wales Child Protection Procedures are amended accordingly within 12 months of the publication of this report.

21.2 I recommend that consideration always be given by the police to informing a child of the outcome of a police investigation, taking great care to explain what has happened and that the All Wales Child Protection Procedures are amended accordingly within 12 months of the publication of this report.

21.21 I recommend to chairs of ACPCs that if a serious case review is undertaken the independent writer for the overview report should participate in the review group meetings.

21.24. I recommend that ACPC chairs ensure that the All Wales Child Protection Procedures are amended within 6 months of the publication of the report to give guidance on the retention and storage of documents which would allow for cases to be reviewed as appropriate over a longer period.

Current Position

Action on these recommendations is being implemented.

The All Wales Child Protection Procedures are currently being re-written to reflect the Children Act 2004 and the change from Area Child Protection Committees to Local Safeguarding Children Boards.

National Assembly for Wales Circular 12/2007 'Safeguarding Children: Working Together under the Children Act 2004' provides advice for Local Safeguarding Children Boards on these particular issues.

Guidance on implementing Recommendation 21.1 and 21.2 is contained within 'Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses,

including Children', published in 2001 by the Home Office, the Lord Chancellor, the Crown Prosecution Service, Department of Health and the Welsh Assembly Government

With regard to recommendation 21.21, we are considering the preparation of separate guidance on the format and preparation of serious case reviews, to guide local safeguarding children boards and to achieve, as far as possible, a consistent standard across Wales.

Copies of the guidance can be accessed here:

<http://new.wales.gov.uk/topics/childrenyoungpeople/publications/guidance/1297522?lang=en>

<http://www.cps.gov.uk/publications/prosecution/bestevidencevol1.html>

21.6 I recommend that, on appointment in any school or further education college in Wales, every teacher and member of non teaching staff should receive written and oral instruction on whistleblowing procedures and how to operate them. This should then be reinforced on a regular basis.

Current Position

Action on this recommendation is being implemented.

Consultation on the Welsh Assembly Government's guidance for governing bodies on whistle-blowing in schools and a model policy for school staff was undertaken between 18 October 2006 and 14 January 2007.

Officials of the Welsh Assembly Government are meeting the office of the Children's Commissioner on 4 July to discuss the proposed final guidance prior to it issuing to schools and key practitioners as soon as possible in the 2007 school year.

FE Institutions already have whistle-blowing guidance in place.

21.31 I recommend that ACCAC within 12 months of the publication of this report review its Personal and Social Education Framework in the light of my report and decide whether changes or additions need to be made.

Current Position

Action on this recommendation is being implemented.

The Welsh Assembly Government's response to the Children's Commissioner explained that the review of the Personal and Social Education (PSE) Framework was being taken forward by ACCAC (now the Qualifications and Curriculum Group in the Department for Education Culture and the Welsh Language) as an integral part of the review of the National Curriculum for Wales.

As part of the Wales Curriculum Review, the then ACCAC established a PSE Advisory Group to assist with the revision of the PSE Framework. This group received a presentation from the Education Adviser for NSPCC Cymru on the Clywch Report and the potential implications for the PSE Framework. Consequently, textual revisions have been made to the PSE Learning Outcomes relating to child protection and information on the availability of

services and the Education Officer for NSPCC Cymru, (an advisory group member) checked the revised text for wording suitability, continuity and progression.

The revised Learning Outcomes for each Key Stage have been submitted to the ACCAC Cross-Phase and additional Educational Needs monitoring group. The PSE Advisory Group has completed the revision and has taken account of stakeholders' views in revising the PSE Framework.

The postal consultation on the revised PSE Framework began on 8 January 2007 and lasted for 12 weeks. Analysis of the 281 responses has been undertaken. A consultation conference for 50 delegates was held in March and officials have also met staff from the Office of the Children's Commissioner to discuss the PSE Framework.

The Welsh Assembly Government will subsequently issue the PSE Framework and guidance to schools to support implementation of the finalised PSE Framework from September 2008.