

4. Cyflwyniad PYCAG yng Nghyfarfod CCYSAGauC 28 Mehefin 2019:

Sally Holland, Comisiynydd Plant Cymru

Atodiad: Barn y Comisiynydd Plant am hawl rhieni i dynnu eu plant yn ôl o Addysg Grefyddol (AG) ac Addysg Cydberthynas a Rhywioldeb (ACR):

Fel Comisiynydd Plant Cymru, fy swyddogaeth bennaf i yw diogelu hawliau a lles plant a phobl ifanc, ac felly rwy'n cefnogi'r cynnig i gael gwared ar hawl rheini i dynnu eu plant yn ôl o AG ac ACR. Isod ceir y darn perthnasol o'm hymateb ymgynghoriad i'r llywodraeth yn ei gyfanrwydd:

"Ni ddylid cadw hawl rheini i dynnu plentyn yn ôl o AG ac ACR. Mae cadw deddfwriaeth sy'n caniatáu i rieni dynnu person ifanc yn ôl o'r pynciau hyn yn gwrthod eu hawliau eu hunain i blant a phobl ifanc, ac nid yw'n caniatáu i berson ifanc optio i mewn i addysg cydberthynas a rhywioldeb cyn oed cydsynio cyfreithiol.

Gan fod y cynigion a argymhellir yn datgan na fydd ACR ac AG yn elfen orfodol o'r cwricwlwm ar ôl 16 oed, golyga hyn na fydd rhai plant a phobl ifanc yn cael unrhyw addysg cydberthynas a rhywioldeb o gwbl, a gellid dweud yr un peth am AG.

Mae hyn yn anghydnaws â hawliau dynol plant o dan ddeddfwriaeth ddomestig Deddf Hawliau Dynol 1998 a'r Confensiwn Ewropeaidd ar Hawliau Dynol. Mae hefyd yn anghydnaws â'r ymrwymiad yng Nghymru i Gonfensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn (CCUHP) a sicrheir gan Fesur Hawliau Plant a Phobl Ifanc (Cymru) 2011.

Mae'r CCUHP yn darparu ar gyfer:

- *yr hawl i gael eu clywed, mynegi barn a chymryd rhan mewn penderfyniadau (Erthygl 12);*
- *yr hawl i ryddid mynegiant (Erthygl 13).*

Yn ogystal, mae gan blant yr hawliau canlynol o dan y CCUHP sy'n cefnogi darparu Addysg Cydberthynas a Rhywioldeb ac Addysg Grefyddol, sef:

- *yr hawl i beidio â chael eu gwahaniaethu (Erthygl 2)*
- *yr hawl i gyrchu gwybodaeth a fydd yn caniatáu i blant wneud penderfyniadau am iechyd (Erthygl 17)*
- *yr hawl i brofi'r iechyd gorau posibl, mynediad at gyfleusterau iechyd, gofal iechyd ataliol, ac addysg a gwasanaethau cynllunio teulu (Erthygl 24)*
- *yr hawl i addysg sy'n cynorthwyo pob plentyn i ddatblygu a chyrraedd eu llawn botensial a pharatoi plant i ddeall a dangos goddefgarwch at eraill (Erthygl 29)*
- *yr hawl i ddisgwyl i'r llywodraeth eu gwarchod rhag camdriniaeth a cham-fanteisio rhywiol (Erthygl 34).*

Mae'r hawliau cyfreithiol traddodadwy canlynol yn gymwys hefyd o dan y Ddeddf Hawliau Dynol a'r Confensiwn Ewropeaidd ar Hawliau Dynol:

- *yr hawl i ryddid meddwl, cydwybod a chrefydd (Erthygl 9).*
- *yr hawl i ryddid mynegiant (Erthygl 10)*
- *yr hawl i beidio â chael eu gwrthod rhag addysg (Erthygl 2, Protocol 1)*

Mae Erthygl 2 o Brotocol 1 yn cydnabod hawliau pwysig i rieni:

“Ni wadir hawl i addysg i unrhyw berson. Wrth ymarfer unrhyw swyddogaethau mae'n eu cymryd mewn cysylltiad ag addysg ac addysgu, bydd y Wladwriaeth yn parhau hawl rhieni i sicrhau bod y fath addysg ac addysgu'n cydymffurfio â'u credoau crefyddol ac athronyddol eu hunain.”

Yng ngoleuni hyn mae'n bwysig nodi fod canllawiau Llys Hawliau Dynol Ewrop o amgylch Erthygl 2 o Brotocol 1 yn ei gwneud yn glir fod hawliau'r rhiant o dan y ddarpariaeth hon yn ategiad i'r hawl sylfaenol i addysg ac nid yw'n mynnu fod y Wladwriaeth yn cynnig eithriadau cyffredinol. Sefydlwyd hyn drwy gyfraith achos oedd yn ymwneud â darparu ACR, er enghraifft Dojan ac eraill v. Yr Almaen 201121, a ddyfarnodd nad oedd gwrthodiad y Wladwriaeth i eithrio'r plant o ddsbarthiadau a gweithgareddau yr oedd eu rhieni'n ystyried yn anghydnaws â'u hargyhoeddiadau crefyddol, yn torri Erthygl 2 o Brotocol Rhif 1.

Oherwydd y dull cwricwlwm a bennir yn Dyfodol Llwyddiannus, lle mae profiadau dysgu integredig yn cynnwys datblygu gwybodaeth a sgiliau a hynny mewn perthynas â gwahanol feysydd cwricwlwm, bydd tynnu plant yn ôl o ACR ac AG yn gwadu iddynt hefyd fynediad at eu hawliau i addysg mewn meysydd cwricwlwm eraill. O fewn model sybsidiaredd o ddatblygu a chyflwyno'r cwricwlwm, bydd hi'n heriol iawn hefyd i ysgolion bennu pa elfennau o'u darpariaeth sy'n rhan o raglen astudiaeth y Cwricwlwm Cenedlaethol fel y'i pennwyd yn Ndedf Addysg 1996; a pha elfennau nad ydynt.

Rwy'n pwyso ar Lywodraeth Cymru i fod yn gryf yn eu hymrwymiad i'r CCUHP a sicrhau nad yw'r ddeddfwriaeth hon yn gwrthod hawliau plant a phobl ifanc. Mae hyn yn bwysig iawn er mwyn diogelu lles holl bobl ifanc Cymru. Mae'r orfodaeth ddeddfwriaethol i hyn yn gryf iawn yn barod, ond caiff ei chryfhau ymhellach os cynhwysir sylw dyledus i'r CCUHP ar wyneb y Bil.”

Fel y nodwch yn eich llythyr, mae cynnwys hawliau dynol plant a phobl ifanc yn y ddeddfwriaeth drwy ddyletswydd sylw dyledus yn ganolog i'm galwadau ynghylch y cwricwlwm. Eglurir hyn yn fanwl yn fy mhapur sefyllfa, yma:

<https://www.childcomwales.org.uk/our-work/policy-positions/curriculum-reform/>

4. NAPfRE presentation at WASACRE Meeting 28th June 2019:

Sally Holland, Children's Commissioner for Wales

Appendix: Children's commissioner's view on parental right to withdrawal from RE and Relationships and Sexuality Education:

As the Children's Commissioner for Wales my principal role is to safeguard the rights and welfare of children and young people, and as such I am in support of the proposal to remove the right of parents to withdraw their children from RE and RSE. Below is the relevant section of my consultation response to government in its entirety:

"The parental right to withdraw a child from RE and RSE should not be retained. Retaining legislation that allows parents to withdraw a young person from these subjects denies children and young people their own rights, and does not allow a young person to opt in to relationships and sexuality education before the legal age of consent.

As the proposals outlined state that RSE and RE will not be a compulsory element of the curriculum after aged 16, this means that some children and young people will receive no relationships and sexuality education at all, and the same could apply in relation to RE.

This is incompatible with the human rights of children under both the domestic legislation of the Human Rights Act 1998 and the European Convention on Human Rights (ECHR). It is also incompatible with the commitment in Wales to the UNCRC guaranteed by the Rights of Children and Young Persons (Wales) Measure 2011.

The UNCRC provides for:

- *the right to be heard, express opinions and be involved in decision-making (Article 12);*
- *the right to freedom of expression (Article 13).*

In addition, children have the following rights under the UNCRC that support the provision of Relationships and Sexuality Education and Religious Education specifically:

- *the right to non-discrimination (Article 2)*
- *the right to access information that will allow children to make decisions about health (Article 17)*
- *the right to experience the highest attainable health, access to health facilities, preventative health care, and family planning education and services (Article 24)*
- *the right to an education that support all children to develop and reach their full potential and prepare children to be understanding and tolerant to others (Article 29)*
- *the right to government protection from sexual abuse and exploitation (Article 34).*

The following justiciable legal rights also apply under the Human Rights Act and the European Convention on Human Rights (ECHR):

- *the right to freedom of thought, conscience and religion (Article 9).*
- *the right to freedom of expression (Article 10)*
- *the right not to be denied education (Article 2, Protocol 1)*

Article 2 of Protocol 1 also recognises important parental rights:

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

*In light of this it is important to note that the European Court of Human Rights guidance around Article 2 of Protocol 1 makes clear that the rights of the parent under this provision is an adjunct to the fundamental right to education and does not require the State to offer blanket exemptions. This has been established through case law relating to the provision of RSE, for example *Dojan and Others v. Germany* 201121, which ruled that the refusal of the State to exempt the children from classes and activities that were regarded by their parents as incompatible with their religious convictions was not in breach of Article 2 of Protocol No. 1.*

*Due to the curriculum approach specified in *Successful Futures*, in which integrated learning experiences include the development of knowledge, skills and related to different curriculum areas, withdrawing children and young people from RSE and RE will also deny them access to their entitlements to education in other curriculum areas. Within a subsidiarity model of curriculum development and delivery it will also be very challenging for schools to determine which elements of their provision are part of the National Curriculum programme of study as specified in the 1996 Education Act; and which elements are not.*

I urge Welsh Government to be strong in their commitment to the UNCRC and ensure that this legislation does not deny the rights of children and young people. This is very important to safeguard the welfare of all young people in Wales. The legislative mandate for this is already very strong, but will be strengthened further if a due regard duty to the UNCRC is included on the face of the Bill.”

As you point out in your letter, including the human rights of children and young people in the legislation through a due regard duty is central to my calls around the curriculum. This is explained in detail in my position paper, here: <https://www.childcomwales.org.uk/our-work/policy-positions/curriculum-reform/>