

CYPE(6)-02-22 - Paper to note 4

Y Pwyllgor Plant, Pobl Ifanc ac Addysg

Children, Young People and Education Committee

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Jeremy Miles MS

Minister for Education and Welsh Language

Dyddiad | Date 12 January 2022

Pwnc | Subject: Implementation of the Additional learning Needs and Educational Tribunal (Wales) Act 2018

Dear Jeremy,

At a recent meeting with the NDCS, they raised some concerns about implementation of this Act. In particular they were concerned about possible misinterpretations which could lead to children and young people not receiving support they were eligible for. These concerns focused on three main areas:

- That if a school makes a reasonable adjustment then the child or young person will become ineligible for an Individual Development Plan;
- Individual Development Plans will only be available for children and young people with the most complex needs; and
- That children who access specialist services within mainstream settings (for example sensory support) will be ineligible for Individual Development Plans.

I understand that clarification is forthcoming on these issues, and would appreciate if you could keep the Committee updated.

Additionally, the NDCS have also been in contact identifying another area where they believe that there is misinterpretation of the Act. I enclose a policy statement with more information.



Senedd Cymru
Welsh Parliament

I look forward to receiving your response.

Yours sincerely,

A handwritten signature in black ink that reads "Jayne Bryant". The script is cursive and fluid, with the first name "Jayne" and the surname "Bryant" clearly distinguishable.

Jayne Bryant MS
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

“Additionality” and ALP provided by the NHS

National Deaf Children’s Society Cymru Position Paper

December 2022



Background

The National Deaf Children’s Society Cymru has become aware of an erroneous interpretation of NHS Additional Learning Provision (ALP) under the Additional Learning Needs and Education Tribunal Wales Act and Additional Learning Needs (ALN) Code.

It has been wrongly suggested that NHS professionals should only record their support as ALP in an Individual Development Plan (IDP) document where that support is in addition to what they would have provided had a request for information for an IDP not been made. This has been described “additionality.”

As such, some NHS professionals are recording support and advice that they provide to schools in section 2C of an IDP without also recording information that should be included on their own direct treatments such as speech and language therapy sessions.

What is our position?

The National Deaf Children’s Society position is that section 2C of an IDP should outline services provided by the NHS which are of benefit to the child/young person’s learning development in light of their ALN. This should include both advice and training provided to schools/other settings as well as direct NHS treatments where they are of relevance to learning development, such as speech and language therapy sessions.

Whether or not the service would have been provided outside of the patient having an IDP is not relevant. Rather, when recording support as ALP, the key consideration is whether the provision is relevant to the patient’s learning.

The National Deaf Children’s Society takes this view for the following reasons:

- The intention of an IDP is to provide a holistic and multiagency overview of a learner’s ALN and the support they will receive to assist their learning.
- Treatments such as speech and language therapy sessions have been outlined in a Statement and the IDP is intended to replace this document.
- The consideration of NHS treatments such as speech and language therapy as of educational benefit is long established in case law.
- The educational importance of speech and language therapy is widely acknowledged. (For example, see [here](#).)
- The Additional Learning Needs Code outlines normal NHS treatments and services as ALP where these services are likely to be of benefit in addressing a child or young person’s ALN.

Relevant references in the Additional Learning Needs Code to support our position on this point include:

Paragraph 21.34: *“If a relevant treatment or service is identified and the NHS body informs the body maintaining the IDP of it, the body maintaining the IDP must then describe the treatment or service in the IDP, specifying that it is ALP to be secured by the NHS body.”*

Paragraph 21.23: *“In addition, under the ALN system, NHS bodies have a role to play in delivering ALP, where the ALP is something they would normally provide as part of the health service in Wales.”*

Paragraph 21.24. reiterates: *“A local authority or FEI may refer a matter to an NHS body, asking it to consider whether there is any relevant treatment or service that is likely to be of benefit in addressing the ALN of a child or young person (but see below for the details of who may make a referral and what it must do first). It could do this where it considers that an NHS body might be able to provide ALP to meet a child or young person’s needs. A relevant treatment or service is a treatment or service that an NHS body would normally provide as part of the comprehensive health service in Wales.”*

This point is again repeated in paragraph 21.28.

Paragraph 23.45 reinforces the need for this support from the NHS to be outlined in the IDP as ALP: *“Where, following a referral to an NHS body, the NHS body informs the body preparing or maintaining the IDP that there is a relevant treatment or service likely to be of benefit in addressing the child or young person’s ALN, the body preparing or maintaining the IDP must describe the treatment or service in the IDP, specifying that it is ALP to be secured by the NHS body.”*

IDPs should not be the only way in which NHS support is provided to a patient

The National Deaf Children’s Society agrees with the above statement. As set out in the identified references, the Code clearly outlines that ALP can include treatment that is normally provided as part of the comprehensive health service in Wales. As such, where NHS services are of benefit to a patient’s learning, they should be recorded in an IDP, but should not be withheld where an IDP is not in place.

NHS professionals should, however, remember that they have a duty to refer cases for consideration of an IDP where they believe the patient has ALN. See paragraphs 21.14-21.18 of the Code for more detail.

Does recording an NHS treatment as ALP in an IDP affect the ability for professionals to use their discretion to adapt this treatment?

The Code is very clear that, although ALP provided by NHS staff should be recorded in an IDP, this provision remains the responsibility of the NHS. Local authority or educational professionals responsible for maintaining the IDP are required to adapt and review ALP outlined in section 2C of an IDP according to NHS staff requests (for example, see paragraph 21.36). As such, the structure of the ALNET Act and accompanying Code allow for NHS staff to use professional discretion to adapt its treatment.

Summary and Next steps

In light of the above, the National Deaf Children's Society disagrees with the suggestion that NHS staff should only be outlining support as ALP where this is above and beyond that which it would support to a patient who does not have an IDP.

We believe the Code is clear that NHS support and treatments should be recorded in the IDP as ALP under section 2C wherever this support is relevant to a learner's progress; regardless of whether or not that support would be given if an IDP were not in place.

Failing to outline these services in an IDP will:

- Mean that families and education staff no longer have a full picture of support for ALN learners
- Lead families to feel concerned as to why services previously outlined in a Statement are not being recorded in an IDP
- Likely lead to tribunal appeals and complaints through the NHS Putting Things Right system.

Given that the ALN reforms are already in place for those newly identified as having ALN and will be further rolled out in January 2022, the National Deaf Children's Society calls on DECLOs across Wales and the Welsh Government to act swiftly to ensure that NHS professionals are aware of their duties under the ALNET Act. This includes the need to record treatment and services relevant to a child or young person's learning as ALP in Section 2C of the IDP.