

Huw Lewis AM  
Minister for Education and Skills  
National Assembly for Wales

10 December 2015

## **Draft Additional Learning Needs and Education Tribunal (Wales) Bill**

Dear Minister

The Children, Young People and Education Committee has undertaken pre-legislative scrutiny of the draft Additional Learning Needs and Education Tribunal (Wales) Bill. I am grateful to you for providing oral evidence to the Committee as part of this process, and your subsequent letter of 7 December 2015.

The Committee very much welcomes the intention to reform the Additional Learning Needs system through legislation. It is vital that reform is undertaken in the right way, and involves those across the profession. Publication of the draft Bill is an important step in delivering the reforms needed, and we welcome your commitment to working with stakeholders in taking the reforms forward.

The pre-legislative scrutiny the Committee has undertaken has highlighted that there is much work to be done before formal introduction of the Bill. There are many areas of uncertainty, including in some key elements of the draft Bill. The financial implications of the Bill also need to be made clearer, as there is currently insufficient detail on costs contained in the draft Explanatory Memorandum.

However, there remains cross-party support for delivering an improved ALN system, and the Committee looks forward to working with you to deliver a Bill that secures reform in the most effective way possible. The Committee believes that pre-legislative scrutiny can help secure real improvements in legislative proposals, and as such we welcome the opportunity to feed into your formal consultation on the draft Bill.



## **Pre-legislative scrutiny**

The Committee considered the draft Bill in light of the draft Code which you published on 30 September. The pre-legislative scrutiny focussed on a number of key themes, which were clearly identifiable within the draft Bill and the Additional Learning Needs system more widely:

**Theme 1:** Multi-agency working and collaboration between local government and health

**Theme 2:** Benefits and challenges of a graduated system of support

**Theme 3:** Dispute resolution and creating a fairer, more transparent system

**Theme 4:** Establishing a 0-25 system

The Committee held informal roundtable discussions with stakeholders based on these themes, and took formal oral evidence from the Third Sector Additional Needs Alliance (TSANA) and SNAP Cymru, WLGA / ADEW and the Aneurin Bevan University Health Board / Royal College of Speech and Language Therapists.

The Committee also issued a call for evidence, to which 23 responses were received. The responses have been published and are available on the Committee's [web-page](#).

Evidence received by the Committee was generally positive about the aims and objectives of the draft Bill. However, all those responding raised some concern on the practicalities of the proposed reforms. Views were also expressed that it must be absolutely clear from the outset what the term *Additional Learning Needs* actually means, and what it covers. The Committee firmly believes everyone involved must have a common understanding of the definition and apply it consistently.

## **Multi-agency working and collaboration between local government and health**

The Committee acknowledges that one of the three main aims of the draft Bill is to provide for an integrated, collaborative process of assessment and intervention. There has been widespread agreement from stakeholders that this is vital to help ensure the successful delivery of ALN provision.



However, strong concerns have been expressed that the draft Bill does not ensure sufficient engagement with or collaboration between the bodies responsible for the delivery of services, and that the statutory duties in the Bill for multi-agency working need to be strengthened. Specific concerns raised include:

- Early years collaboration is vital, but the draft Bill and Code are very vague on what this means and how it will work in practice.
- Assessment capability can be led by a non-professional (eg key worker approach), but the Bill should provide clarity that the person does not need to be from 'education'.
- Needs to be a relationship between the GP and the key worker. The duty on the GP to refer could be stronger.
- A 'Team around the Family' approach should be considered.
- The Bill allows for multiple plans to be in operation at the same time, and there is a need to co-ordinate plans so that there are no delays.
- There was a need to provide for 'progression pathways' to ensure timely assessment from the right 'agency', particularly where some aspects of ALN can be addressed without waiting for other issues to also be resolved.

Evidence received by the Committee also welcomed the introduction of the DMO / DCO role. Again, while this is seen as a positive step forward, the Bill and the Code are not sufficiently clear about what the role actually would be, what the post holder would do, and how this would aid collaboration with education.

There is general agreement that Section 14 of the draft Bill will not work in practice. The concerns raised relates to the implication from section 14 that a Local Health Board or NHS Trust must agree to secure specific ALN provision before that provision can be included in an Individual Development Plan. The Committee believes this could lead to uncertainty in the delivery of ALN provision, should such agreement not be given. There is also a lack of detail within the Bill to clarify how any disagreement between local authorities and health bodies would or could be resolved. The potential lack of clarity within Section 14 should be considered before the Bill is formally introduced.

The Committee accepts that health professionals must decide if there is a specific health need, and believes that where a health need has been identified, that need must be secured and delivered. The Bill should therefore provide a duty on those health bodies to ensure that appropriate ALN provision is secured and delivered in both a timely and effective manner, where such a need has been identified, rather



than only in circumstances where health bodies agree to make the provision. This would address the perceived imbalance in the duties and responsibilities on local government and health respectively, which evidence suggested is present in the draft Bill.

A number of stakeholders also raised the potential cross-over between the assessment of ALN and assessment provisions set out in other legislation, including the Social Services and Well-being (Wales) Act 2014. The Committee believes that coherence and compatibility with other legislation should be fully considered in the development of the ALN Bill.

Due to the time available, the Committee was not able to take evidence from the Minister for Health and Social Services. The Committee has, therefore, written to the Health Minister to seek his views on the provisions of the draft Bill generally, and more specifically about the issue of multi-agency working / collaboration.

### **Benefits and challenges of a graduated system of support**

There was support from stakeholders for the intention behind the provisions in the draft Bill which would create Individual Development Plans (IDPs) as a single statutory plan to replace the existing variety of SEN or LDD plans for each learner identified as having additional needs. There was also general agreement that this could help ensure greater consistency and continuity and protect rights across the board, as long as the new system could retain the benefits of graduated support tailored to meet the level of severity or complexity of learners' needs. However, concerns were raised that there is a lack of detail either within the draft Bill or the Code about how the new system for IDPs and graduated support would work in practice. Greater clarity on this matter must be provided.

A number of concerns were raised about where the statutory responsibility for the IDPs will lie. The main issue seems to be that placing this on governing bodies and school staff may not be the best means of opening up access to other services. This would also have implications on funding and staffing resources, for example drawing up the IDPs, implementing a person-centred approach, and developing relationships. The Bill and Code must contain clarity on where the statutory responsibilities for IDPs will lie.

Respondents also argued that greater clarity was needed over when schools could refer assessments and IDPs to local authorities. It was not clear to respondents or



to the Committee what was meant in Section 11(5) of the draft Bill relating to matters being 'beyond the capability' of a governing body or 'not reasonable' for a governing body to secure. It is also not clear how the balance between schools' and local authorities' responsibilities will compare to the current system, of School Action, School Action Plus and statements. The Committee believes that the draft Bill could be strengthened to take account of the concerns raised in this area.

The new role of Additional Learning Needs Co-ordinator (ALNCo) substantially changes the existing SEN Co-ordinator role. Concerns were expressed by many stakeholders that the responsibilities of the ALNCo appear to be very considerable, and would be very difficult for one person to meet. It was also not clear whether (or how) training / qualifications for the ALNCo role would be delivered. Further detail is required.

Linked to the ALNCo role, some stakeholders also felt more detail was needed on the process for identifying ALN. In particular, concerns were raised that if ALN were to be normally assessed by schools, would they have the specialist expertise to do this, particularly for low-incidence needs.

Almost all those responding to the Committee commented that there should be an agreed template for IDPs. This could, in the first instance provide a more streamlined process for completion of IDPs – reducing bureaucracy and freeing resource. The use of a template would also help ensure consistency, transparency and portability of an IDP, and would make monitoring, for example by Estyn, more feasible. Portability is particularly important where children and young people may move between schools or between local authorities, which may be more often the case for looked after children.

There were, however, views expressed that any such template should be easy to use and not overly prescriptive, and should enable progression pathways. In your evidence to the Committee, you confirmed that you have asked the Code content development group to consider the idea of templates and what these should look like. The Committee welcomes this, and agrees that those in the profession should be involved in the development of any template.



## **Dispute resolution and creating a fairer, more transparent system**

The Committee generally supports specific provisions in the draft Bill relating to dispute resolution, and proposals to extend the right of appeal to include all children and young people with ALN up to the age of 25. However, evidence presented to the Committee suggest that more could be done to strengthen the role and powers of the Tribunal.

Open-access to an independent Dispute Resolution Service at an early stage is crucial and could reduce the number of disputes progressing to the tribunal stage. However, the service appears to be currently underused. It is essential that the service is strengthened and its role clarified and promoted. Effective dispute resolution services, if used effectively, would lessen the demands on the Tribunal.

The Committee also believes that the Bill could be used to provide greater powers to the Tribunal in a number of specific areas, including:

- the ability to deal with persistent offenders and dealing with inaction after tribunal decisions;
  - to promote more focussed multi-agency working;
  - to offer a conciliation procedure following the tribunal decision;
  - to be able to address failures or lack of compliance by health authorities.
- (The draft Bill's lack of provision for this was identified by Estyn as 'potentially a significant shortcoming' and the inspectorate questioned what recourse would be available in such cases.)

## **Establishing a 0-25 system**

The Committee acknowledges the intention of the Bill to provide for ALN from 0-25 years. However, the focus in the draft Bill is very much on schools. Details of specific provision for early years and Post 16 education seems to be missing in the draft Bill and the draft Code.

Evidence suggested that, while the terminology in the Bill has changed from 'Education' to 'Learning', this is not reflected in the draft Bill, as children and young people learn in many ways and settings.



Many different concerns were raised in relation to early years and Post 16 education. There are clearly distinct issues potentially affecting either end of the 0-25 age system. The main concerns expressed in those areas are included separately below. However there were also concerns that covered the whole range of a 0-25 age system.

### Early Years

There should be provision for an independent (from local government) key worker who will support parents and child and work with all the agencies involved. This would be similar to the role of the ALNCo. A scheme funded by the Welsh Government (the [Early Support programme](#)) provided a model, but the momentum and outcomes from that scheme do not appear to be taken forward in the draft Bill.

The 'threshold' for the definition of ALN for those in the early years refers to what they would be like if they were in school – this should be widened to be more holistic and focussed on development and play.

There is no representation from early years in the statutory list of consultees on the Code included in the draft Bill (Section 5(1)) although schools are included. Early years settings are also not included amongst those who are able to make referrals. The Committee believes that early years representation should be included in the list of consultees and amongst those able to make referrals.

### Post 16

The transition from schools to colleges is a time of acute risk for some learners. Stakeholder experience is that practice by some schools is very good, but for others the contact and paperwork passed on is much more variable. In addition, many young people do not have an IDP from their school, so a new IDP will have to be created when they reach college.

Increasing ALN provision to age 25 will introduce new requirements in Post 16 education. Time must be allowed to enable new relationships to be created – for example between FE colleges and local authorities or health specialists.

Post-16 providers help young people with ALN to become more independent – but this can be quite a shock for some young people who need (and are used to in



school) a higher level of individual support than provided in the standard “college environment”. This will be an increasing issue if more young people with ALN stay on in education and training.

It is not clear how the new system would provide for young people aged 16+ undertaking education or training, but not in a further education institution. This could include work-based learning such as apprenticeships, whether straight from school or after college, or indeed higher education. More detail needs to be provided on this, including whether a person’s IDP can be taken with them.

## **The challenges of transition**

### Capacity issues

While the reforms of the ALN system (in the draft Bill) are generally very welcome, they will not work unless the workforce is ready. There is a definite need to ensure the workforce is available in adequate numbers and with sufficient expertise to make the Bill effective. Particular concern was expressed about the viability and sustainability of the ALNCo role.

The Committee notes the work the Welsh Government has commissioned from the People and Work Unit to assess the requirements of the ALN workforce and consider future priorities. However, the study appears to only focus upon school workforce, and key specialist SEN services identified by maintained schools. There needs to be similar focus placed on early years and post 16 education.

Workforce assessment needs to be a continued priority as any new system is likely to fail if there is inadequate capacity to deliver it. This must be revisited and addressed before a Bill is introduced. As a minimum, the Committee believes that a full workforce profile covering all aspects of the 0-25 age range should be undertaken.

### New, substantial training needs

Linked with the point above, it is essential that appropriate training is available to ensure that both new and existing staff are able to develop the skills required under the new system – for example relating to early identification of ALN. Certain staff will require more specialist training, while some staff will be expected to have qualifications.





The Bill and / or Code must provide clarity on what qualifications and experience are required for what roles, including provision for subordinate legislation where required and appropriate. While the detail of training and required qualifications should not form part of the ALN Bill itself, there must be work undertaken in parallel to ensure that a properly trained workforce is in place to enable the provisions in the Bill to be effective.

The Committee notes the extent to which you have linked changes to ALN with other changes within education, including to Initial Teacher Training (ITT) and continuing professional development (CPD) for the education workforce ('The New Deal'). It is essential that the new arrangements for ITT and CPD fully take account of the proposals for ALN and enable the education workforce to acquire and develop the skills required to deliver the new system effectively.

### Costs

Introducing a new system for ALN will inevitably incur additional cost throughout the 0-25 age range. This may be particularly relevant in the cost and resources required to write up IDPs. Staff resources and the additional time needed generally to implement a person-centred approach will also be an issue.

The Committee notes the definition of ALN will be the same as previously for SEN and the Welsh Government's expectation that the number of learners receiving ALN provision will be the same as at present. However, the introduction of a statutory IDP for all learners with ALN, (equating to 22.5% of all school pupils), as opposed to statements for only the most severe / complex of cases (which equates to 2.7% of all pupils) will surely create resource implications. This is because, whereas at present 12,500 learners have statements and the remaining 92,500 have their needs met through School Action or School Action Plus, under the new system all 105,000 will be entitled to an IDP. The resource implications will be both human and financial.

Concern has been expressed that the additional costs of the new system identified within the draft Explanatory Memorandum are not clear. The Committee understands that there is no requirement to provide an Explanatory Memorandum or Regulatory Impact Assessment with a draft Bill, and appreciates that at this early stage it may not be possible to identify precise costs.



However, the Committee believes that the draft Explanatory Memorandum provides insufficient detail to enable proper financial scrutiny of the legislative proposals. The Regulatory Impact Assessment on introduction must contain a clear and accurate breakdown of costs. Information should be clear about how current expenditure will change, and where / how IDPs should be properly budgeted. It will be particularly important to substantiate any projection that the reforms will be cost-neutral over the long-term.

### Welsh Language provision

A number of concerns were raised in written submissions to the Committee in relation to the draft Bill's general treatment of the Welsh language. Of particular concern is that there appears to be inadequate provision for improving Welsh-medium ALN services and the draft Bill fails to take account of the bilingual nature of Wales.

The Welsh language impact assessment, included within the draft Explanatory Memorandum, gives weight to the protection provided by the statutory Welsh language standards. However, the standards do not apply to schools, and the Committee is concerned that the impact assessment could be misleading in this regard.

The impact assessment also refers to a number of points 'the draft Code is likely to include' but generally these are not included within the working draft Code that has been published. Stakeholders found the lack of reference to communicating with families in their preferred language in chapter 4 of the draft Code, to be surprising and disappointing.

It will be important for future versions of the Bill and Code to address these concerns, ensuring the new ALN system fully accounts for the bilingual nature of Wales and meets the needs of children and young people with ALN who learn through the medium of Welsh.

### **Timescale for reform**

As I have already outlined, there is support for ALN reform, and general agreement to the introduction of the Bill from those responding to the Committee. While many respondents understand the reasons for delaying formal introduction of the Bill this year, there was concern expressed that this might have an



unintended impact on local authorities not implementing the current system consistently, as they await the proposed changes.

The Committee therefore urges the Welsh Government to work with local authorities to ensure they continue to fully implement the current system, while proposals to reform the system are considered and implemented.

Yours sincerely

A handwritten signature in black ink that reads "Ann Jones". The signature is written in a cursive style with a large initial 'A'.

**Ann Jones AC / AM**  
Cadeirydd / Chair

