

Inquiry into the Additional Learning Needs and Education Tribunal (Wales) Bill

A Response from D/deaf organisations

February 2017

At present, deaf learners face many barriers to reaching their full potential. Welsh Government statistics reveal significant attainment gaps between deaf learners and their peers.¹ Deafness is not a learning difficulty and with appropriate support deaf learners should achieve on a par with their peers.

The reform of existing Special Educational Need (SEN) systems and structures presents an opportunity to improve the way in which deaf learners are supported and to make a real difference in closing the attainment gap.

While aspects of the proposed Bill are to be welcomed, further amendments are required if it is to operate well and effectively support deaf learners. The following organisations wish to take this opportunity to highlight key concerns. Some of the organisations have also chosen to provide more detailed responses from their respective organisations.



Response

1. The importance of ensuring that deaf learners access the specialist assessments, advice and support required.

The new Bill places a great responsibility at the door of school and Further Education Institution (FEI) governing bodies. They are to become the primary decision-makers in identifying whether learners have Additional Learning Need

¹ See http://www.ndcs.org.uk/professional_support/national_data/index.html for more information.

(ALN) and also how each Individual Development Plan (IDP) is co-ordinated. We are concerned that, due to a lack of deaf awareness and expertise, frontline staff and governors may struggle to make these decisions for learners with a hearing loss.

Deafness is a low incidence need among children and young people and, as such, requires specialist assessment. The expertise to undertake such assessment is most likely to be held at a local authority level. We acknowledge that the Bill states cases covering low incidence needs should be passed on to local authorities, but there is a general lack of deaf awareness and a lack of understanding of the impact that a hearing loss can have on a child's learning needs. Indeed, it is a common misconception that assistive listening devices such as cochlear implants and hearing aids restore typical hearing levels (which they do not.) As such, we are concerned that there are likely to be cases where a deaf child is not identified as having ALN and will not, therefore, be referred to the local authority. Subsequently, the system holds a fundamental flaw in ensuring that deaf learners are able to access any support.

We recommend that:

- **The accompanying Code of Practice places a statutory obligation to include teachers of the deaf in assessments of children with a hearing impairment. ²**
- **Planned disability specific provision pathways, including a pathway for hearing impairment, are placed on a statutory footing on the face of the Bill.**
- **Basic deaf awareness is raised among education professionals and governors in both schools and FEIs. We are particularly disappointed that proposals around changes to Initial Teacher Education (ITE) do not address the need to include disability specific training. Such training is required to ensure that deaf learners are appropriately identified as being eligible for an IDP and referrals to specialist professionals are made. It will also to help ensure that the young person is involved in the planning process in a way that meets their communication needs.**

2. The need for the Bill to be effective for the full 0-25 age range.

The move to an ALN system that operates across the 0-25 age range is warmly welcomed. Many families are not currently supported in the early years and existing systems for supporting post-16 learners are often disjointed and subject to a post-code lottery.

However, we are concerned that the Bill does not include sufficient measures to deliver on its promise of a 0-25 system. On the whole, the Bill lacks detail on how systems will operate within the early years and post-16 contexts.

It is also disappointing that the Bill does not apply to work-based learners.

² There is such a requirement within English ECHP regulations: *The Special Educational Needs and Disability Regulations 2014*, 6 (2), available at http://www.legislation.gov.uk/ukxi/2014/1530/pdfs/ukxi_20141530_en.pdf.

We recommend that:

- **The Bill is extended to cover learners enrolled on apprenticeships.**
- **The Bill and subsequent Code of Practice include greater detail on how the new system will operate within the early years and post-16 contexts.**
- **The same statutory duties placed on maintained nurseries are also placed on those private nurseries in receipt of state funding. Many families access free nursery places through private nurseries and it would be unfair that these providers would not have the same legal obligations to support learners with ALN.**
- **Section 18(2) of the Bill includes the ability for local authorities to refer an early years case to an NHS body.**
- **A programme is required to raise awareness of the new ALN system among key professionals. Professionals such as health visitors, GPs and audiologists will play an important role in identifying ALN cases in the early years and making referrals to local authorities.**
- **Further consideration is given as to how the system will operate in transitional phases of a learner's life. For example, greater consideration is required in relation to the development of an IDP for young people planning and applying for college places. The legislation places the onus of responsibility for developing an IDP on FEIs where a learner attends a mainstream course and on the local authority for specialist college placements. However, this divide is of little help in assisting a young person through the application process before placement decisions are made.**

3. Ensuring that advocacy and dispute resolution systems are appropriate, accessible and robust.

It is essential that services are appropriately accountable, transparent, equitable and accessible. However, we consider the present draft of the Bill to be light-weight in this regard.

We recommend that:

- **The Bill requires advocacy and dispute resolution services to work to national statutory guidelines. This will secure a basic minimum standard and consistency across Wales. Such standards could follow on from work on the National Approach to advocacy recommended by the CYPE Committee in its recent report into statutory advocacy provision. Inspection of these services would also offer quality assurance.**
- **Advocacy services are available to both parents and young people. At present, the Bill neglects to mention advocacy services for parents.**
- **Advocacy services are equipped to meet communication needs.**
- **The Bill states that wherever local authorities/governing bodies are required to provide notification to a family (e.g. intent to cease/review an IDP), they are also required to inform families of their right to appeal and how they may access advocacy services.**

- **It is imperative that advocacy services are explicitly free of charge for families.**
- **The Bill clarifies that information must be provided to families in plain language and in a format that meets any communication/access requirements.**

4. The need for robust support plans that clearly identify a learner's needs and the support available to them.

The viability of the reformed system will depend upon robust support plans that provide transparency, portability and legal protection. The best way to achieve this is to introduce a national statutory template for an IDP.

Indeed research by NatSIP (National Sensory Impairment Partnership) has demonstrated that the absence of a template EHCP in England has proven to be problematic.³

We recommend that:

- **The Welsh Government imposes a national statutory template for an IDP.**
- **The Welsh Government works with third sector organisations in developing such a template.**

5. The duties on health bodies require strengthening.

We acknowledge that changes have been made to the duties placed on health since the last iteration of the Bill. However, we are unconvinced that these changes have strengthened the vital role of health within the IDP process. In some respects, we have grave concerns that the Bill has weakened the legal standing of health provisions. In particular, we are concerned that section 20 (4)-(8) of the Bill diminishes legal protection for learners under the current SEN legislation. This section removes the onus of responsibility on local authorities to provide a service once it is named in the IDP as to be provided by health, and yet the Tribunal would have no means of ordering a health board to deliver such provision. This is of great concern for deaf learners, many of whom will require speech and language therapy as a core support need for reaching their full educational potential.

It is imperative that the new legislation facilitates collaborative multi-agency working for the benefit of learners with ALN.

We recommend that:

- **The Bill clarifies that where a support need is identified to assist learning, it remains the responsibility of local authorities to ensure that service is delivered.**

³ See NatSIP (November 2015), *An analysis of 40 EHC Plans for children and young people with sensory impairment*.

- The Welsh Government considers whether the jurisdiction of the Tribunal could be extended to cover health. We understand that pilots are ongoing in England to consider the role of SENDIST in this regard.
 - Local authorities must be able to request an NHS body to provide information for an IDP for the full 0-25 age range. Section 18(2) is unclear on this point.
 - The duty for health professionals to refer IDP cases on to local authorities is extended to cover the full 0-25 age range.
 - The duty on health bodies to comply with a request for information for an IDP assessment (section 58 (2) of the Bill) should be strengthened.
 - Further detail is required on the role of the DCLO. It is imperative that this role is clearly defined as strategic and that it does not detract from the importance of frontline staff conducting assessments and making timely recommendations on the support a learner requires.
- 6. It will be essential that measures are in place to ensure that, once in place, the new systems are operating effectively.**

Measures to ensure quality assurance are essential.

We recommend that:

- ALN systems and structures form part of Estyn's core inspection of schools, FEIs and local authorities.
- That statistics on tribunal cases are reported to the Welsh Government so that any areas where there may be recurrent issues of a similar nature are identified and acted on.

Thank you for considering this response.