

SNAP Cymru welcomes the aspirations and intentions of the Draft Additional Learning Needs and Education Tribunal (Wales) Bill. We accept that the weaknesses in the current system make it unnecessarily adversarial and that many children and young people lose out in the struggle to get needs identified and met. We welcome that this draft bill encompasses the age range 0-25 and gives more rights to both parents and young people to appeal decisions made about their access to provision. In the explanatory Memorandum the bill is supposed to address perceived inadequacies in the current system:

Terminology – we welcome the change in terminology as more descriptive and more inclusive but do not think it will have any more than a temporary effect on reducing the stigma attached to any labelling of difference in children and young people. Successive terms have been utilised and over time they all acquire the same patina of stigma. This is inevitable.

The unclear divide between those having and those not having statements – SNAP Cymru welcomes the removal of the artificial divide between Statemented and non Statemented children. However we are not unaware that elements of this divide will still inevitably be present:

- There will be less complex and more complex levels of need
- There will be school held and LA held IDPs
- There will be those IDPs naming a placement and those which do not

The gains in the new legislation are that all children and young people with ALN:

- will have a person centred planning approach ensuring that young people and parental voices are heard
- will have the right to appeal, (albeit that those with school IDP's will have a more convoluted route,)

However families in our face to face consultations raised concerns that if the requirement to be detailed, specific and quantifiable is no longer part of the proposal this right would be significantly watered down.

The lack of clear criteria about when and for whom a statement of SEN should be made results in an inconsistent approach between local authorities. – SNAP Cymru agrees that LAs have been highly inconsistent about which children get a statement and how they decide this. This has mainly been because:

- Statements are about provision that is additional to that which is usually provided
- LAs have highly complex methods of funding additional needs in their schools

However the list of significant needs leading to being accepted as having ALN are the same as for the current graduated response.

There is a perception that the existing SEN Code of Practice is not always applied rigorously or is interpreted differently by different local authorities – there is clear evidence of the fact that LAs interpret the CoP for meeting SEN differently which gives rise to this general perception. Families and professionals are still extremely worried that the new CoP will simply give LAs and schools and Colleges of FE too much leeway to interpret what needs to be shared. Their concerns are clear that they see the current proposals as enabling the provision holders to deny families and young people the information and advice they need to enable them to understand their rights and responsibilities.

For example in our online survey around 80% of respondents said they wanted an advocate or a case friend but when informed that this person might not have educational knowledge or expertise this fell to around 18%. Overwhelmingly families wanted advice and guidance from a person with knowledge, expertise and independence.

It is unfair that the provision necessary to address more complex needs is protected through the issuing of a statement but the provision required to address less complex needs is not statutorily protected. – SNAP Cymru welcomes the right to appeal within this draft bill. We are concerned about the criteria for appeal and how this will work at less complex levels of need. The specifications for the IDP, the criteria for having ALN and the provision pathways detailing the amount and type of provision for meeting different levels of need should be clearly explained and exemplified in the code of practice. Statutory assessment is currently codified in the Ed Act and detailed in the regulations we would like to see this. This should enable families to have confidence in the system.

Trust between parents and local authorities or schools is often undermined and this leads to dispute. – Consultations with parents and professionals have made it clear that trust is one of the key issues. Families did not see that this Bill would enable them to build trust without independent family support from a service that was both independent from the LA and School/College and also had sufficient levels of expertise to advise of rights and responsibility and ensure that parents and young people had all the information that they need. Parents in particular saw that local authorities, schools and colleges had a vested interest in not providing more than a limited range of options available as they were the gatekeepers of scarce resources.

SNAP Cymru currently deals with around 3000 individual cases each year relating to frontline advice and support about early years, school and college based issues. Only a tiny percentage need to be resolved at a higher level such as independent appeals to Local Authorities or Tribunals. We count this as a highly successful system of avoiding disagreements through empowering both families and professionals to listen to each other and seek solutions. This service is valued and respected because it is both independent and knowledgeable.

Parents felt that they would feel more comfortable having had face to face discussions with those involved with their child but schools and parents all felt that currently annual reviews are allocated only 45 minutes in many areas and that this was not enough time to have PCP meetings.

SNAP Cymru and various parent groups has discussed this in detail and feel that the new CoP will need to exemplify ways of resolving the demands on time. Various ideas have been put forward such as:

- Making person centred planning a part of every school programme for all children where one page profiles were built and reviewed termly throughout the year
- Having a group multi agency meeting where professionals allocate a day in the week or month depending on size of local population and this group meeting in a neutral venue away from schools could meet families and children and take the time needed to explore the issues presenting.

Arrangements for information and advice giving vary across Wales, in terms of both their nature and their effectiveness. – SNAP Cymru would welcome a system of advice giving and information promotion that was independent of local authorities, adequately funded and accessible by any parent, professional or young person across Wales. Families are very concerned that schools and local authorities are either unable or unwilling to do this in a neutral and expert manner.

Parents like the expertise allocated to the agency which will undertake avoidance and resolution of disagreements and felt that this agency should also offer expert advocacy and family partnership so that families could have clear knowledgeable support throughout the process

The current arrangements for disagreement resolution are insufficiently robust to ensure that disagreements are resolved quickly or avoided altogether – SNAP Cymru considers the current arrangements for disagreement resolution **are** fit for purpose and would be strengthened by the additional requirement of having to have education law expertise. The current mechanisms for avoiding disagreements are clear and available to schools, LAs and families **where funded**. SNAP Cymru’s experience is that these work extremely well and disputes are either avoided or sorted in the vast majority of cases through the current Parent Partnership model. However, the patchwork nature of funding and the ability of Local Authorities to take these in-house or chose an independent, cheaper but less qualified option means there is a patchwork of funding, and therefore availability of this service across Wales. Currently the majority of SNAP Cymru’s work is involved in informing, advising and resolving disagreements before they get to appeal or complaint. While other advice givers mark their success in how many appeals they have taken on and won, we mark ours in how many we avoid. In the main it is the funds, not the approaches, which are not robust. SNAP Cymru welcomes that this service must be independent and expert. We would like to see that the provider should hold the Community Legal Services Specialist Quality Mark in Educational Advice Giving or equivalent in order to maintain a trustworthy service throughout Wales.

It is difficult to adopt a flexible approach to the delivery of special educational provision. – SNAP Cymru agrees that the PCP IDP approach has the ability to offer more flexibility particularly for those students currently at school action and school action plus. However as this approach is for those with more complex and less complex needs the specificity of the current system appears to be lost and this will inevitably lead to demands to specify at all levels.

The system should be flexible enough to agree a specific programme which may have force for a specific amount of time and then reviewed. Where programmes are not working and the outcomes wanted are not happening the system is flexible enough to change the inputs and provision to better meet the child or young person’s need.

Parents also say that even when their child has a statement, if their needs change, or if a condition worsens or improves, the system can be too slow to adapt – SNAP Cymru agrees that the system is currently unwieldy however the system of emergency annual reviews enable statements to change quickly where all are in agreement, it is where parents and educators and LAs are not in agreement that things become difficult to change. It is as yet unclear if the new system will streamline or speed up the process.

The current arrangements for children and young people with LDD potentially disrupt their smooth transition between school and post-16 education and may make the system of post-16 provision less efficient than it should be. - SNAP Cymru welcomes that this transition will be better supported through the IDP process and that this process will continue into colleges of FE. However, the relationships between FE and LAs is not fully explored, the funding for educational reports and assessments is not fully considered, the acquisition of disability post 16 has not been described nor have methods to support. The role of the designated medical or clinical officer needs to fully encompass transition to adult health services and there needs to be a role within social care services to transition this young person into adult social care. SNAP Cymru expects that the CoP will further explain how the needs of young people post 16 without capacity to make informed decisions will be protected and their right of appeal enacted.

Some parents and families feel excluded from the processes around statements of SEN which they see as impenetrable, bureaucratic and inefficient. – SNAP Cymru agrees that the current system is extremely un-inclusive. However it does have clear guidance that education specialists understand. The concerns of families are that the new legislation may leave them at the mercy of interpretation. SNAP Cymru welcomes that the new CoP will be mandatory.

Evidence from Estyn reports and other reviews of SEN policy have identified that multi-agency working is sometimes weak and ineffective – SNAP Cymru welcomes a collaborative and multi-agency approach to meeting more complex needs. We are very aware that when a child or young person has needs these affect more than education and that teams around the child and the family need to be able to address family needs in order to build resilience and promote good educational habits. We have recently looked at a Families First area where multidisciplinary working is well embedded. Team Around the Family (TAF) meetings usually occur 4-6 weeks from referral date and then further waiting times are set to receive the support advised from that meeting. Disabled TAF (D-TAF) meeting where input for the child's disability is required at the meeting take 6-8 months. There have been suggestions from the health service professionals that they see the designated medical or clinical officer in charge of liaison into the IDP process as the person who will tell them whether they need to be involved with the student or not. At present we do not know how that relationship will work.

Parents do not see that the provision within the draft bill strengthens the child or young person's access to either assessment or health care. They do not see how the designated medical or clinical officer will make multi agency working easier or more accessible.

Families like the idea that the IDP process can start with what we have and add information and support in at the earliest possible date. Schools are worried that this is more meetings with no time to undertake these properly.

Identification and intervention does not always happen at the earliest opportunity. – SNAP Cymru would welcome any measures to identify and intervene in difficulties at the earliest possible stage, however, the IDP does nothing to ensure that this will happen. The identification and intervention has always been possible both with the fact that a child could receive a statement before the age of 2 and with the responsibility falling to schools to identify and intervene at the earliest possible date. Parents report children getting to NCY 5 before a parent evening consultation reveals the extent of difficulty a child is having in school that the school had previously though not significant enough to mention. This process relies on the integrity, experience and resourcefulness of schools and will continue to do so.

The particular support that children and their families require may be put in place needlessly late. – the systems for allocating support are set in place to meet the requirements of the current CoP which require the school to demonstrate activity over and above that required at SA+, and that this has not produced the necessary result, before asking for Statutory Assessment. The new system will require that school based, externally supported interventions are not working and evidence this to LA before the student can move to LA based IDP – probably because they require a change of placement. The suggested timescale for consideration is about 6 weeks shorter than the current system. This does not take account of the fact that LAs can currently place in specialist provision

pending the outcome of statutory assessment or that this does not commonly happen because these places are usually full. IDPs will not alter this lack of specialist provision which is seen across Wales.

The important co-ordination role undertaken by SEN Co-ordinators (SENCOs) is not well-defined and varies considerably – SNAP Cymru welcomes the re-professionalising of the new role of ALNCo. We expect there to be clear guidance on the number of hours' average to be spent on both processing IDP meetings and mentoring staff and monitoring impact. We expect that Welsh Government will look at the additional salary, reduction in teaching and other senior duty time that will have to be covered in different school populations and to have a school impact assessment carried out. We are disappointed that the importance of the co-ordination of IDPs has not been seen as a specific LA role as it is a specific responsibility. We would also expect to see specific amounts of Educational Psychology time referenced to support these students.

The current absence of any appeal process in relation to the support received by children and young people who have SEN but who do not have a statement, potentially places them at an unfair disadvantage. – SNAP Cymru welcomes the ability for families to appeal. The right to appeal, however, is significantly undermined if the appeal process is not supported by an independent agency that is fully expert in the regulations and legislation underpinning the process. SNAP Cymru is an example of an agency which can meet the dual demands of advocacy which is, knowledgeable and experienced in education law.

Increased participation of children and young people – SNAP Cymru welcomes the restatement of this duty in this draft bill.

The UNCRC Article 12 Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.

Has had force in all dealings with children and young people since its adoption by the Welsh Government. It is the requirement for Person Centred Participation and planning that is very welcome in this proposal.

High aspirations and improved outcomes: The emphasis of IDPs will be on making provision that delivers tangible outcomes that contribute in a meaningful way to the child or young person's achievement of their full potential. – SNAP Cymru welcomes the re-statement of our need to always plan for the best outcomes for children and young people. We hope and expect that these aspirations are not merely academic and that behaviours, emotional and social outcomes are included. In particular the generalisation of learning into the wider community and social use of language are highly desirable outcomes that students and schools/FEI should strive for and should be acknowledged by government in league tables and other reporting and praising mechanisms.

A simpler and less adversarial system: The process of producing and revising an IDP should be much simpler than is currently the case with statements of SEN and should avoid the adversarial nature of the existing, overly bureaucratic approach. – SNAP Cymru welcomes this intended outcome of the draft bill. This approach will simplify the current annual review process for statements in that agreement by all parties will enable change to happen. It will complicate the current system for the vast majority of students who currently get an Individual Education Plan (IEP). Many families do not know there is an IEP, are not involved in drafting and IEP and only get to know about it after the fact in their 10 minute slot at parent's evenings. Some families do not know there may be an IEP until asked about it by SNAP Cymru advisors and have the process explained to them. The new process of having a meeting with a family, going through the PCP planning and agreeing an

action plan will be a much more time consuming exercise. However, it will be more inclusive and is more likely to have better outcomes.

Less adversarial – SNAP Cymru introduced the notion of independent advice giving agencies and advocates working in partnership with families for the better outcomes for young people in the 1990's. Since then we have worked with all parties to embed the ethos of partnership and avoidance of disagreement into all our dealings with schools, Local authorities, FEI and families and young people. We know that disagreements and adversarial practices occur when there is a breakdown in trust. The PCP approach brings advice givers and advice receivers into close contact so that questions can be answered and assurances given. This should certainly assuage some fears. The possibility of being able to appeal will enable more families to feel confident in that they have the right to arbitration through appeal. SNAP Cymru believes that provision pathways which indicate clearly how the locally available infrastructure will support the child when needs are at certain levels and how this is fair and equitable across Wales might go some way to ameliorate the high levels of concern from families about the adequacy of school provision.

Increased collaboration: - SNAP Cymru welcomes the intention to provide increased collaboration. We agree that this is essential to drive forward the high aspirations. However the draft bill does nothing to ensure that assessments are made in a timely manner or that once a need is identified it will be met. We would like to see that any agency must meet a need that has been identified and that waiting lists to be seen following referral are the same for all agencies. We would like to see access to second opinions as external assessments often go further in identifying need as they do not feel shackled by the necessity of having to fund the provision. If we think that this process would open up a floodgate of demand for additional provision that we cannot meet then we have already acknowledged the depth and breadth of unidentified and unmet need out there and that the high aspirations will remain just that. If we are honest and say that we can only meet needs – however great, within current budgets we should be open and transparent.

Avoiding disagreements and earlier disagreement resolution: The new system will focus on ensuring that where disagreements occur about an IDP or the provision it contains, the matter is considered and resolved at the most local level possible. – SNAP Cymru welcomes avoidance of disagreement at the most local level and this chimes with our current practice. SNAP Cymru would welcome the opportunity to sit with those drafting the guidance to consider the realistic expectations of demand for this service and consider funding implications. It cannot be left to individual local authorities to decide how much of this families and young people get. It must be a system that is open access to the families and young people to decide how much, of an adequately funded service, they need.

Clear and consistent rights of appeal: - SNAP Cymru welcomes these additional rights and clear guidance on how they will apply.

A mandatory Code: Responding to calls for a far stronger Code that can be enforced, the provisions included in the draft Bill will be supported by a new statutory ALN Code, which will help to ensure a more consistent approach to supporting ALN. The Code will ensure that the new ALN system has a set of clear, legally enforceable parameters within which local authorities and those other organisations responsible for the delivery of services for children and young people with ALN, must act. It will also set out practical guidance on how we expect statutory duties to be carried out. The Code will therefore be a type of subordinate legislation, and confer duties and rights on those subject to it. – SNAP Cymru welcomes the stronger, mandatory code.

The draft Bill replicates the existing legislative presumption in favour of those with ALN being educated in mainstream schools wherever possible (section 29). This not only supports the Welsh Government's general policy on inclusiveness but underlines our view that expectations of and aspirations for those with ALN should be as high as possible. – SNAP Cymru welcomes the aspiration that schools and colleges should strive to adapt and include all learners. However, the needs of the learner everywhere else in this legislation are seen to be paramount and in this part are subservient to the ideology of inclusion and inclusive practice. SNAP Cymru would expect that the legislation would make it mandatory for LAs to provide a range of provision to meet the needs of learners in their area. Further, that the impact on different disabilities should be assessed before placing a learner into any school or college environment. The learner should be fully involved as possible in this assessment process. Where adverse impact is noted the possible reasonable adjustments should be considered and a fresh impact assessment should be drawn up to see if the student now has fair access to education. Where this cannot be achieved the proviso of alternative education must be considered and put in place. There should be timescales for this.

The above concerns stem from the ongoing reduction of numbers of both primary and secondary schools as well as the amalgamation of FEI. These create larger more intractable communities where disability and additional needs can be less easily accommodated for. Mental health needs are increasing and school anxiety issues are prominent across the age ranges. The size and regulation of large student communities must be seen as a factor in these problems and impact assessments on a pupil by pupil basis if necessary should be undertaken.

Avoiding disagreements and earlier disagreement resolution 3.84. The draft Bill (section 37) requires local authorities to make arrangements for avoiding and resolving disagreements between children, young people and parents, and schools, local authorities and others. This includes providing access to help in resolving a disagreement from an independent person. Local authorities will also be required to ensure that children, young people and parents are made aware of these arrangements. The Code will then be used to emphasise that local authorities' first priority should be to avoid disagreements arising by developing ways of ensuring that children, young people and parents are supported to understand and participate in the decisions which are taken that affect them, provided with appropriate reassurance, and offered opportunities to raise concerns and have their questions answered. However, where disagreements do arise, arrangements should focus on ensuring that these are resolved at the earliest opportunity and at the most local level possible. The development and implementation of effective disagreement avoidance and resolution arrangements is key to improving the trust that children, young people and parents have in the system and minimising the extent to which they feel the need to exercise their rights of appeal. –

SNAP Cymru welcomes the understanding that avoidance of disagreement can only be undertaken by a suitably expert and experienced agency. It will be vital to the outcomes of this part of the legislation that the early avoidance work is open to access by families and young people so that they get the reassurance and guidance they need from the outset.

The draft Bill (section 40) enables a child or young person up to the age of 25 years, or a child's parent, to appeal to the Tribunal against: a) a decision as to whether a person has ALN; b) a decision by a local authority whether it is necessary to prepare and maintain an IDP for a young person; c) the description of a person's ALN in an IDP; d) the ALP specified in an IDP; e) the school named in an IDP for the purpose of admission or the type of school or institution specified in the plan; 28 f) if no school or institution is named in an IDP, that fact; g) a decision not to take over

responsibility for an IDP following a request to consider doing so; h) a decision to not revise an IDP; and i) a decision to cease to maintain an IDP.

SNAP Cymru welcomes the extension to age 25. However it will be important that the right to appeal for young people over the age of 16 and without capacity to be protected through having an advocate (who may be a parent) -16-25 to maintain that right to appeal on their behalf.

The draft Bill (section 40) enables a child or young person up to the age of 25 years, or a child's parent, to appeal to the Tribunal against:

a) a decision as to whether a person has ALN;

- a. important to explicitly state that factors in combination may amount to ALN significant enough to warrant IDP even when individual traits do not

B) a decision by a local authority whether it is necessary to prepare and maintain an IDP for a young person;

C) the description of a person's ALN in an IDP;

- that where a need that is deemed significant is described, a referral to an appropriate agency is always considered and only not made if those considering this ALL think it is not in the child or young person's best interests

D) the ALP specified in an IDP;

- without the requirement to be detailed specific and quantifiable parents are concerned that flexibility may lead to disputes over getting provision in a form they can trust

E) the school named in an IDP for the purpose of admission or the type of school or institution specified in the plan; 28

F) if no school or institution is named in an IDP, that fact;

G) a decision not to take over responsibility for an IDP following a request to consider doing so;

- there will need to be a clear set of circumstances in which it would be reasonable for the LA to take over an IDP but this looks as though it could refer to one LA refusing to accept another LA IDP or indeed one School or College not accepting another's IDP. Wales is a small country and the mechanisms for supporting children and young people need to work in all areas. Ensuring that all needs are met fairly will support trust and reduce conflict.

H) a decision to not revise an IDP; and

I) a decision to cease to maintain an IDP.

- There will need to be a clear place to receive and keep copies of IDPs particularly when young people leave school but may wish to return to education before they are 25

On a parallel note – Young people currently who have severe and complex needs may receive education in FEI up to the age of 25 free at the point of delivery. Will all young people have an equal opportunity to have this free education if they have an IDP?

Impact Assessment

SNAP Cymru welcomes that the costs of implementing these reforms will be published alongside the Bill. However parents are very concerned regarding the ongoing funding and monitoring implications of the proposals once implemented.