

### **1. Information and working context of Barnardo's Cymru**

Barnardo's Cymru has been working with children, young people and families in Wales for over 100 years and is one of the largest children's charities working in the country. We currently run 85 diverse services across Wales, working in partnership with 16 of the 22 local authorities. In 2015–16, we worked with 8,884 children, young people and families directly and many more through less direct work; including open groups and outreach work. Barnardo's Cymru services in Wales include: care leavers and youth homelessness projects, young carers schemes, specialist fostering and adoption schemes, family centres and family support, parenting support, community development projects, family support for children affected by parental imprisonment, domestic abuse and parental substance misuse, short breaks and inclusive services for disabled children and young people, assessment and treatment for young people who exhibit sexually harmful or concerning behaviour and specialist services for children and young people at risk of, or abused through, child sexual exploitation, and young people's substance misuse services.

Every Barnardo's Cymru service is different, but each believes that every child and young person deserves the best start in life, no matter who they are, what they have done or what they have been through. We use the knowledge gained from our direct work with children to campaign for better child and social care policy and to champion the rights of every child. We believe that with the right help, committed support and a little belief, even the most vulnerable children can turn their lives around. Our work aims to support stronger families, safer childhoods and positive futures for those we work with in order to secure better outcomes for more children.

## 2. General comments

- **We believe that the Bill should include provision for a duty of due regard to the United Nations Convention on the Rights of the Child and the United Nations Convention on the Rights of Disabled People on the face of the Bill.** Given the objectives and principles of the Bill, it appears incongruous that the Bill was tabled without these duties.
- **Maintenance and delivery of ALN assessment, review and support to detained people.** There appears insufficient requirement to ensure the proper provision of ALN support to detained children and young people.
- **Support for young people above compulsory school age.** We are concerned that there is insufficient provision for young people aged 16 years and above and that this will negatively impact on them and fail to address the over-representation of young people with additional learning needs in the NEET population.
- **Resource.** We are concerned that the welcome provisions of the proposed legislation require adequate resourcing or the policy intents of the Bill will not be realised, and related improvements in outcomes for children and young people may be jeopardised.

## Consultation Response

### 3. Whether the Welsh Government's three overarching aims are the right objectives and if the Bill is sufficient to meet these:

Overall, we support the three overarching objectives within the Bill; however, we would question the wording of the first objective. We would also query whether the Bill is entirely sufficient to achieve all three of the objectives.

**3.1. First objective:** *“a unified legislative framework to support all children of compulsory school age or below with ALN, and young people with ALN in school or further education (FE).”*

We believe this could be changed to include not just young people within school or further education, but also those on training placements, work based learning and apprenticeship schemes. This would reflect the current

options available to young people who have reached an age above compulsory school age. This would in turn necessitate the need to widen the span of responsible parties in terms of providing additional learning provision to include other training providers. Consultation with our services that support young people has identified concerns around those who are no longer engaged in education, and how their learning needs will be met moving forward, to support them in their post-16 choices. This is particularly important in the context of changes to Careers Wales that have limited the capacity for work with individuals.

The first objective appears appropriate and achievable for those of compulsory school age or below. However, the Bill could be strengthened for young people. The Bill already provides for looked after children with additional learning needs to have an IDP considered within their Care and Support Plan; we suggest that IDPs should also become part of Pathway Plans for care leavers with ALN. Education forms a key component of the Pathway Plan and is essential to the development of young people into adults. When considering the ambition within this Bill for all young people with ALN to have high aspirations for their future, a statutory requirement to ensure the inclusion of IDP within a Pathway Plan is essential. This should be reviewed in line with the Pathway Plan, as it would be for a Care and Support Plan. Arrangements for information sharing and cross sector working between professionals will need to be considered in order to provide for a holistic plan for individual young people.

We also believe that in order for the policy intent of the Bill to be realised, there is a strong case for IDPs to become an integral part of any Care and Support Plans which may be present for different groups of children and young people with additional learning needs, who have also been assessed as having care and support needs under the Social Services and Well-being (Wales) Act 2014.

This objective should be further strengthened for young people who are detained. This could be achieved through provision placing responsibility on the relevant body, to engage with the institutions in which young people are detained, to not only keep, but maintain an IDP and incorporate it into any

welfare plans in situ whilst they are accommodated, or detained, as part of the process of planning for release back into the community.

A process should be put in place, whereby the information held on ALN is routinely gathered and shared by the home local authority with the institution in which the young person is detained. This should be possible with a secure structure in place to ensure that the information is searchable, without breaches of privacy. Furthermore, we would strongly advocate for the legislative force to be in place to ensure IDPs are maintained for the young person whilst they are detained and not just upon release. This process would need to be considered as part of arrangements included in Part 11 of the Social Services and Well-being (Wales) Act.

**3.2. Second objective:** to create *“an integrated, collaborative process of assessment, planning and monitoring which facilitates early, timely and effective interventions.”*

This objective is central to implementation of the policy intent of the Bill and to effective support and better outcomes for children and young people. However, there will need to be a clear recognition of the cost implications of providing a considerably larger cohort of people with Additional Learning Provision, than those who currently hold a statement. We recognise the need for staff training and development to coincide with the implementation of the Bill as well as a need for processes to ensure increased portability of records and plans, including consideration of how this information can be stored and shared securely.

**3.3. Third objective:** to create *“a fair and transparent system for providing information and advice, and for resolving concerns and appeals.”*

We strongly support those provisions within the Bill which call for more person-centred planning and give children, parents and young people a place in decisions which are made about them. We feel that the inclusion of a duty of due regard to both the UNCRC and UNCRDP on the face of the Bill will strengthen this objective, offering accountability and a further scrutiny opportunity at tribunal.

Further, it should be stated upon the face of the Bill, that it is the responsibility of the body which will prepare and maintain the IDP to ensure that the information held within the plan is fully understood by those children, parents and young people subject to it. Although the explanatory memorandum suggests that a mandatory code will provide more detailed requirements in terms of how IDPs are to be created, maintained and reviewed, we believe placing on the face of the Bill a requirement to ensure that all plans are understood by those affected by them, will ensure this process is more robust.

We welcome the inclusion within the Bill of provision for children and young people with ALN to have access to an independent advocate. However, it will be important that all children, parents and young people with ALN are informed and regularly reminded of their entitlement to independent advocacy from the start of the process and not just upon their request. Although again there is an indication within the explanatory memorandum that the parameters around how advocacy is delivered will be included within mandatory codes, there is a need to strengthen provisions on the face of the Bill to support a consistent response from duty bearers across Wales. We are aware that the current provision of independent advocacy across Wales has been the subject of concerns in terms of how well entitled children and young people understand their right to an independent advocate and are able to access such support. These concerns have been highlighted by the Children's Commissioner for Wales. We are also aware through our practice of the current high level of demand on existing independent advocacy providers. We believe a stronger message around the advocacy entitlements for children and young people with additional needs, is needed to realise the policy intent of the Bill and secure a sufficient offer.

We recognise the need for a robust statutory tribunal body to be in place for many issues relating to other aspects of school life, such as admissions or exclusions, as has been recommended in the past.<sup>1</sup> Additionally, the widening of rights to all children and young people identified as having ALN is a positive move. There is a need, however, to ensure that the widening of the remit for the Education Tribunal for Wales and indeed the name change

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<sup>1</sup> Administrative & Tribunals Council Welsh Committee (2010) *Review Of Tribunals Operating In Wales* - [http://ajtc.justice.gov.uk/docs/RTOW\\_English\\_t.pdf](http://ajtc.justice.gov.uk/docs/RTOW_English_t.pdf)

from SENTW, does not dilute the service which is offered to those bringing disputes forward in relation to ALN.

We are concerned about the undue stress that may be caused where children, young people and their parents may have to engage in separate education and health tribunal systems. We believe that consideration should be given to ways in which the tribunal system, as it relates to issues such as IDPs, could be streamlined to consider education and health issues – where they impact on one another – through a single process.

#### **4. Core Aims:**

##### **4.1. Introduction of the term Additional Learning Needs**

We welcome the new use of language and find it to be more inclusive and potentially less stigmatising for children and young people with additional learning needs. We also welcome the commitment to supporting more children and young people under the same umbrella, rather than the separation which was apparent under the SEN, school action and school action plus schemes previously. However, the additional cost and resource implications of supporting a larger group of children and young people must be recognised or this will seriously hinder implementation of this core aim.

##### **4.2. A 0–25 age range**

We welcome the expansion of the age range to 0–25 years, which should contribute to earlier recognition of the need for support and reduce the ‘cliff edge’ at end of support which many young people feel during the transition period into adult services.<sup>2</sup>

However, we would question whether the Bill is sufficient to meet the needs of those over compulsory school age, particularly if they do not stay in school or further education, as legal requirements within the Bill seem to diminish for this group of children and young people at this point.

We would also question whether the correct level of support is available for care leavers with additional learning needs, considering the absence of any

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<sup>2</sup> Holland, Sally (2016), *A Plan for all Children and Young People: 2016–19 Championing children and young people’s human rights*. Children’s Commissioner for Wales. <https://www.childcomwales.org.uk/wp-content/uploads/2016/04/Strategic-Plan-English.compressed.pdf>

reference to the Pathway Plan and how that would work with the ALN process and IDP.

Additionally, we have concerns about the intention to “keep” IDPs for detained young persons, to be maintained again upon their release, rather than the continuation of maintaining the plans whilst they are detained. We would question whether this will ensure that detained children and young people with additional learning needs consistently receive the support they require during their detention. This appears to be in direct conflict with intentions of Part 11 of the Social Services and Well-being (Wales) Act. It is also of particular concern when considering the disproportionate population of detained young people with additional learning needs, compared to the general population.<sup>3</sup> Although we would not support the criminalisation of children and young people, if they are to be detained, this would arguably be a critical time for rehabilitation, with education being a key component of improving life chances and reducing recidivism.<sup>4</sup>

As well as ensuring that IDPs are maintained rather than just kept for young people whilst detained, we believe it is also important to place a duty on professionals to undertake an assessment for ALN upon entry into the secure estate. This will ensure that the significant proportion of young people who have been detained and have additional learning needs that have not previously been recognised,<sup>5</sup> will receive the appropriate support at an earlier stage.

### **4.3. A unified plan**

We welcome the introduction of a unified plan, particularly as this has the opportunity to help support more children and young people with additional learning needs.

However, the full cost and resource implications of supporting a larger cohort of people must be given proper consideration or the policy intent of the Bill will not be realised.

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<sup>3</sup> Houses of Parliament (2016), *PostNote Number 254: Education in Youth Custody*.

<sup>4</sup> Elwick, A.; Davis, M.; Crehan, L. & Clay, B (2013). *Improving outcomes for young offenders: an international perspective*. CfBT Education Trust.

<sup>5</sup> Bryan, K and Mackenzie J (2008), *Meeting the Speech, Language and Communication Needs of Vulnerable Young People*.

We would strongly advocate the need to ensure that all children, their parents and young people subject to a plan fully understand the contents of the plan. This should include a clear understanding of the nature of their additional learning needs and the provision which will be put in place, as well as of what they can do if they are not happy with any part of the process and the provision available to them in terms of case friends and independent advocacy.

There is also a need to consider resource implications for multi-agency input. Clear guidance and aligned training will be needed to ensure that IDPs are portable and can be used by many different professionals in the children and young people's lives, as well as the children, young people and parents themselves.

We believe a statutory template for IDPs could enable a more cohesive approach to multi-agency working, in this area.

#### **4.4. Increased participation of children and young people**

We see the participation of children and young people as a crucial part of ensuring they enjoy good well-being and so that their development needs are met. Therefore this objective is welcome; however, we would strongly argue that the inclusion of a duty of due regard to the UNCRC and the UNCRDP is critical in achieving this principle.

We would suggest that it is important that the correct procedures are in place to ensure that children and young people's participation is meaningful and continuing, rather than seen as a tick box exercise. We believe that in every part of the process of providing support for children and young people with additional learning needs, the voice of the child should be paramount. This includes, in assessment, implementation of IDP, review of IDP and any conflict resolution and decision made by the tribunal.

There is also a clear need to ensure that all children understand the process, if they are to be meaningfully involved. This potentially emphasises a need for modes and methods of communication which will be understood by the individual, including where appropriate, language support for children and



young people with additional learning needs whose first language is neither English nor Welsh.

Further, given the desire to ensure proper inclusion of children and young people with ALN in the assessment, development and review of IDPs, we see no recognition in the Bill of the need to ensure processes enable the proper time required to achieve this subject to the needs of individual children and young people.

#### **4.5. High aspirations and improved outcomes**

We strongly support this aim, and are very concerned at the stark unemployment statistics for people with additional learning needs in the UK,<sup>6</sup> particularly within Wales.<sup>7</sup>

We believe that a widening of the scope of additional learning needs provision to include those who decide to pursue more vocational based learning post 16, rather than just for those in further education or school, would ensure that a wider set of aspirations can be considered, and improved outcomes achieved.

We would welcome a strengthening of the support offered to those leaving care, with the inclusion of the IDP within their Pathway Plan, along with increasing levels of support offered to detained children and young people with additional learning needs, to ensure that all children and young people enjoy their rights to development.

#### **4.6. A simpler and less adversarial system**

Overall, we welcome the new ALN approach. We are very aware through our practice of the limitations and complex nature of the SEN systems which were previously in place.

#### **4.7. Increased collaboration**

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<sup>6</sup> Beyer, S.; Meek, A. and Davies, A. (2016). Supported work experience and its impact on young people with intellectual disabilities, their families and employers. *Advances in Mental Health and Intellectual Disabilities* 10 (3) , pp. 207-220

<sup>7</sup> Allen, J. (2011). *Disability Poverty in Wales*. Leonard Cheshire Disability

Increased collaboration among different professionals is crucial to avoid the duplication of work and improve the experience of support for children and young people.

However, we also call for the resources to be put in place to enable this increased collaboration and multi-agency working. This should include investment in practice tools and aligned training. These new duties cannot simply be passed on to services which are already operating under conditions of high caseloads and strained human resources.

#### **4.8. Avoiding disagreements and earlier disagreement resolution**

We are encouraged by the widening scope of the current tribunal to include all children and young people with additional learning needs. It is also encouraging that there will be provision of independent advocacy and case friends where necessary, although we feel that the availability of these provisions needs to be made explicit at each stage of the ALN process, to ensure children's voices are heard and to avoid conflict where possible.

We would also question whether the power of the NHS, to decline a tribunal order to revise an IDP in order to secure the revised additional learning provisions, undermines the power of the tribunal.

In addition, we would seek assurance that the welcomed widening scope of the tribunal process does not impact negatively on those cases which would currently be subject to the SENTW system.

#### **4.9. Clear and consistent rights of appeal**

In order for the rights of appeal to be clear and consistent, we would argue for children, young people and parents to be made aware of the provisions available for independent advocacy and case friends.

Again, there would need to be an assurance that the information is understood, and that children, young people and families know exactly how they can appeal, and the process which will take place, should they decide to do so.

It has been the experience of children and young people who use our services, that they have felt very nervous about the process of appeal. They told us that they would appreciate clear information and would like to know what to expect.

#### **4.10. A mandatory code**

The Code will not only have a pivotal place in delivering duties and functions of the Bill, but also should be produced in a way that is clear, understandable and available in different formats to children, young people and families where ALN is or may be present. A mandatory code of robust nature will be a welcome addition to the Bill.