

# Legislation Committee No.3

LC3(3)-11-09 Paper 3

## Response to the consultation on the proposed Education (Wales) Measure

SNAP Cymru is an independent organisation, unique to Wales offering a range of services to families, professionals, children and young people. The organisation was established in 1986 and became a Wales national charity in 1996. All services offered are impartial and objective and free at the point of delivery to families, children and young people. These services include Training, Parent Partnership, Pupil Participation, Advocacy, Disagreement Resolution and Representative services at all levels of assessment and including School Exclusion and SENTW. The services are managed by skilled experienced staff regionally based, supporting development teams at outreach offices and detached services across Wales.

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SNAP Cymru is pleased to give evidence to support this important development in support of children's rights. SNAP Cymru have been working with parents, young people and other partners in all stages of discussion throughout the consultation stages prior to the proposed Measure before committee.

We congratulate the Wales Assembly Government on their progressive approach in paving the way for children's rights to become more of a reality in Wales. We believe there is some way to go but this measure is seen as an important step in bringing legislation, policy and practice in line with the UNCRC. It is right and fitting that children and young people's rights are brought to the fore and implemented in practice. The WAG continue to push forward ahead of our counterparts this measure follows other bold steps e.g. The first to appoint a Children's Commissioner, Abolishing SATS known to children as the 'Sit and Trembles', Children's right to appeal school exclusion, (although we believe this right should be extended).

We believe that this Measure will impact on Children's universal rights and look forward to more sweeping reform that puts children as partners in practice within all planning and decision making, particularly when plans and decisions' directly affect them. There is a need for legislation, and SNAP Cymru congratulate the WAG in its approach to putting children and young people first. We specifically wish to draw attention to the desultory manner in which children and young people's views have been sought and acted upon under chapter 3 of the SEN Code of Practice Wales but are confident that this measure will impact on practice.

### **1 Is there a need for legislation to be made to allow children the right to make appeals and claims to the Special Educational Needs Tribunal for Wales and if so why?**

We agree that this is a necessary move to enshrine the rights of the child under the UN Convention on children's Rights

To support and encourage CYP in participation activities

To act as an incentive to good practice in the enactment of the SEN Code of Practice chapter 3 children's participation in ensuring that the voice of the child is central to decision making and planning processes

Ensuring that the UN convention on the Rights of the Child is fully enacted within education will pave the way or strengthen other areas of children's rights particularly those related to safeguarding

For many different reasons, sometimes parents are not always able to act in the best interests of their child with additional learning needs/SEN and this needs to be considered

Some parents are unable or unwilling to enter negotiations on behalf of their children

All children and young people should be fully involved in decision making which directly affects them. Some planning and decision making related to provision and placement have lifestyle and lifetime consequences

Presently decision making at LEA and SENTW is often a paper exercise in relation to the individual child, or at least one that does not take proper and full account of the views of the child.. Too often we rely on individual professional's interpretation of reports and understanding of specific disability as it relates to 'this' child rather than seeking out the view's of children and young people and creating opportunities for them to present themselves, as unique individuals, often not fitting into the square box.

Innovation may be best achieved through discussion with children and young people. Shared planning and decision making is more likely to hail lasting agreement and partnership.

## **2 Are the sections of the proposed Measure appropriate in terms of reforming legislation relating to Special Educational Needs appeals? If not, how does the proposed Measure need to change?**

**In considering this question, consultees may wish to consider, in particular, the nature of the provisions in the proposed Measure that:**

### **a. local authorities must inform children of their right to appeal (Section 4);**

Guidance should make it clear that all LA personnel have a duty to inform children of their right to appeal (not just related to those concerned in education. Multi agency personnel should all understand and be able to inform CYP of their right to appeal

This will have training implications across all disciplines in statutory and third sector providers. Specifically there is a need to further develop tools for involving young people, giving consideration to age, maturity and communication needs.

In the case of children's right to appeal against exclusion there is little evidence of more than a mention in the parents letter, some schools are writing to young people but we cannot highlight good practice here. For this right to be enacted consideration should be given to specific responsibility to ensuring understanding, better still ensuring access to a case friend. This duty of responsibility could be placed with the SENCO.

### **b. local authorities must make arrangements for partnership and disagreement resolution services and inform children about their right to access them (Sections 5 & 12);**

as for (a) and

training and guidance to support the desire for partnership working, low level mechanisms to avoid disagreement and conflict and disagreement resolution, aiming to resolve issues in the majority of cases without the need for arbitration through Tribunal

WAG should consider that too often representatives from LSC do not seek early resolution, more often they are negative about the process of early conflict resolution which in our opinion is detrimental to the child, the family and others involved. Our experience is that in most cases disagreement resolution both informal (low stress mechanisms of partnership and participation at the earliest stage at all levels of identification and assessment) and formal (when appeal to SENTW is sought or lodged) is a successful process resulting in less conflict less stress and anxiety within families and professional teams and earlier resolution i.e. planning and decision making for provision and placement for the child at the earliest possible time.

Our experience is that in a few cases such is the conflict or both parties agree that only arbitration through the SENTW will suffice that Formal Disagreement will not serve its purpose in avoiding Tribunal. However even in these cases there is a need for resolution and the building of trust and partnership to avoid ongoing mistrust or dispute. The role of the case friend needs to be extended here.

LAs should also make arrangements to support and monitor agreements and measures made through dispute resolution and to ensure that the desired impact is in place

SENTW should monitor longer term outcomes and impact of decisions made at Tribunal

SENTW should allow for cases to be heard or reheard where agreements reached at Disagreement Resolution stage or at SENTW are not followed through. The role of the case friend continues here.

### **c. local authorities must provide access to independent advocacy services for children. Advocates will be expected to be able to assist children in resolution processes, appeal/claim case preparation and support or represent them at hearings**

The role of the case friend in supporting the child to make their representations dispute resolution should not stop short of supporting the child to take their case to Tribunal in the rare cases where this will be appropriate.

The role of the advocate, where appropriate and requested should be to support and listen to the child and help make the child's views known. This will not be a reasonable substitute for accurate information, impartial and objective advice available through specialist organisations such as SNAP Cymru.

We note that anyone who meets limited criteria to safeguard, e.g. aunt, grandparent, family friend can be a 'case friend, it will be vital that these people have access to partnership services, Disagreement Resolution, representation, advocacy and training where requested.

It will be vital that all case friends can gain an understanding of related legislation, national and local policy and practice. They will also require up to date information and knowledge of provision and its availability within County, out of County as well as specialism further afield. This information must also be imparted to children and young people.

SNAP Cymru are not confident that one- off advocates, teachers or social workers will be appropriate in the case friend role although we recognise that the parent and teacher are most often the people they will turn to for help and advice. Our experience is that professionals in health, education, schools and social care often feel bound by hierarchy. However we recognise that teachers, teaching assistants, youth workers and other professionals could help in building confidence, ascertaining the views of children and young people, particularly in accessing a case friend and supporting their communication within a lay advocate role.

Where the CYP requests or requires independent advocacy separate to the impartial advice and support given by the case friend it will be important for both parties to work together and for the child in these rare circumstances to have the right to both support and representation at tribunal the support from the independent advocate and the representation from the case friend. This will ensure continuity without the need as happens at present, for a lengthy and costly handover from case friend to advocate at a particularly difficult and trying period in the child's appeal.

Currently where specialist advocates are appointed the advocate spends several hours getting advice on the case, the law and SEN provision before feeling able to support the CYP. The different approaches and provision made in the 22 local authorities makes it impossible to skill the independent advocate sufficiently to realistically operate in the best interests of the child or young person

The current position in SNAP Cymru is that all staff working with families are trained to:

give information and advice

represent

advocate for and on behalf of the best interests of the child sometimes working with the parent but increasingly working directly with the CYP

where the child has severe or complex needs a specialist advocate to support communication between the young person SNAP Cymru and other professionals may be required

**d. the current regulation making powers to in relation to the Tribunal's disability discrimination procedures should be transferred from the Secretary of State for Justice to Welsh Ministers (Section 15); and**

**e. the responsibility for considering complaints about non- implementation of Disability Discrimination Orders should be transferred from the Secretary of State for Justice to Welsh Ministers (Section 15);**

Agreed

**f. there should be an initial pilot and evaluation phase in some local authority areas, before the legislation is implemented throughout Wales (Sections 17-19).**

Agree - SNAP Cymru has been working towards the participation of children in the decision making and dispute resolution processes and welcomes this move. The numbers should remain relatively low as earlier support and resolution is the best practice for children and young people. SNAP Cymru propose that SENTW, through the pilot phase, gather wider information of participation and children's views re involvement throughout the process, access to case friend/advocate, understanding of and access to Disagreement resolution informal and formal and access to or knowledge of SENTW and their rights within the measure.

**3. How will the proposed Measure change what organisations do currently and what impact will such changes have, if any?**

For SNAP Cymru there will be an expectation that schools will make time and space available for meetings between CYP and case friends and or advocates where one has been appointed to support disagreements about SEN provision and dispute resolution

Parents/carers, Schools and LA will need to ensure that CYP will be informed and involved at the earliest stages of all education related planning and decision - making.

Case friends will need to be available to CYP during evenings and weekends where required.

Case friends will represent the best interests of the CYP and act as both information giver and supporter in exploring options at every stage of education from pre-school to FE and higher education ( not just around tribunal)

There is a need to provide a case friend to the CYP and this may need to be additional to support to families

There is a need to undertake a review and plan a re-write of information and ensure this is disseminated, in the first instance to the pilot area. CYP should be involved in the review of current literature and resource.

Undertake a review and rewrite of training materials

Gear up to provide the level off training required to LA staff and other service providers

For SNAP Cymru -

undertake a retraining programme for over 50 staff and a changing population of over 200 volunteers

Negotiate changed service level agreements with LAs in Wales for family and case friend support (presently funded at differing levels across 20 LAs in Wales)

Negotiate and agree dispute resolution services with LAs across Wales to enshrine the new regulations (presently providing access to DRS for 18 LAs)

Approach the remaining LAs to offer the new services to ensure Wales Wide coverage

Anticipate increased purchase of specialist independent advocacy in relation to ALN. SNAP Cymru has been providing occasional one-off advocacy services to LEAs for around 10 years. A service previously developed and funded via BBC Children in Need. More recently there has been an increase in these requests.

Create protocols for liaison with specialist independent advocates which involves a recognition of the time commitment to supporting them in cases which they may take to tribunal

**4. What are the potential barriers to implementing the provisions of the proposed Measure (if any) and does the proposed Measure take account of them?**

Lack of confidence in CYP around belief in that their views, concerns and needs are going to be taken forward and this, in a great part, hinges on the desultory manner in which their views have been sought and acted upon under chapter 3 of the Code of Practice for meeting SEN

Lack of experience of CYP in participation in the ordinary everyday decisions that affect the child directly

Lack of understanding of the whole assessment procedure by most of the professionals with whom the child comes into contact

Lack of necessary skills to hear the voice of the child and offer the full range of options available not just those that the adult thinks are suitable

Lack of will to make this a reality for children by professionals who may feel that this in some way poses a threat and invokes a defensive response

Lack of parental co-operation in the child taking the lead in this are leading to possible further mistrust and deeper levels of conflict between families, the young person and the services that support them. This will be a key area of support need that SNAP Cymru has a breadth and depth of experience to undertake

Ensuring that training in this area is multidisciplinary so that the potential for conflict is minimised

Lack of transparency from schools as to the exact amounts devolved and delegated from LAs and exactly what these amounts are being spent on within the school. It is currently difficult to ascertain this from any source and children and young people will need to have this explained to them if they are to enter into dispute resolution from a position of equal knowledge. This should be to a formula that is clear and consistent across the whole of Wales.

The current stages of SEN provision may act as a potential barrier to getting a case friend appointed at the stage of dispute about the level of SEN support a child receives in school action or school action plus

There is no right of the child to request a formal assessment and therefore limits the rights of the child to appeal to tribunal

There is currently a right of the child to ask for a health assessment or to ask for a social care assessment. These rights may not result in the relevant body taking action but children and young people have this right. Education should not have lesser rights and this measure should make this right clear.

**5. What are the financial implications of the proposed Measure for organisations, if any? In answering this question you may wish to consider Section 2 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the proposed Measure.**

Given the pilot phase and the continuous monitoring and consultation which will result in clearer guidance and protocols, service providers have time to implement change and prepare for new ways of working within current budgets although there are inconsistencies across Wales which do already create a post code lottery in access to information, advice, advocacy and representation.

There will be a cost implication to LAs and VOs to ensure there is a consistent approach to rolling this out across Wales and that every child and young person who requires this service has equal access

There will be a cost implication on all services to revamp and reprint all literature and training materials and develop new information strands

**6. What are your views on powers in section 18 for Welsh Ministers to amend existing, primary legislation, by secondary legislation (by order) such as the Education Act 1996 and Disability Discrimination Act 1995?**

In order to achieve ground breaking ambitions to extend the rights of children and young people it will be necessary to embrace these powers and use them well for the future of Wales, its children and communities. SNAP Cymru would expect that the lessons learned during the pilot phase will be acted upon.

**Section 18 makes provision for:**

**Advocacy services about special education needs or disability discrimination in schools;**

The Case friend is there to provide accurate information and impartial advice about relevant legislation and options available and in many cases will also be the child's chosen advocate. However it may be vital that where the child has a complex life and/or impairment, that there is access to additional independent advocacy, trained to understand the processes of SEN and access to tribunal. Given the

expected low numbers reaching SENTW, advocacy here could help to ascertain the child's view, to facilitate communication, although one-off advocates may not encompass the depth and breadth of knowledge and skill on SEN, local policy, practice, provision, and the options that are available or could be made available. A sound knowledge of what's happening throughout Wales, county by county is important. Just as important as being open to innovative thinking by or on behalf of children and young people.

Services currently available through SNAP Cymru using regional teams of trained, skilled staff and volunteers provide access to information advice and casework, additional advocacy via 'About me' and Disagreement Resolution via 'Datrys'.

There will be a need for cooperation between advocacy providers to meet the very special 'communication' needs of children and young people.

#### **7. Are there any other comments you wish to make about specific sections of the proposed measure?**

SNAP Cymru would welcome a focus on children and young people's participation made throughout the Measure as their participation in the entire process of identification, assessment, planning and decision making in relation to meeting their individual need is the only way that children and young people can realistically access their right of appeal.

During the early pilot phase we may find that the 'child's appeal' will in fact be 'initiated' by someone else in their name, some parents and professionals may think this will, in the end, carry more weight. What is required now is weight from the Wales Assembly Government to ensure the participation of children and young people in all planning and decision making that directly affects them. The Measure could push participation and make a real difference to all children and young people with SEN, particularly those who undergo statutory assessment. We need to focus on real engagement with children and young people to improve participation and make this right a reality.

The measure should be clear that the case friend can also be the advocate, and or the representative. Our experience of advocacy has led to the understanding that while it seeks to represent the views of the child accurately it does not undertake to offer impartial objective advice or put forward and discuss options, a vital element throughout ALN or SEN assessment and statement processes including tribunals where innovation may occur, additional options presented and taken forward at any time during the process.