

P-05-962 An emergency amendment to extend age of entitlement to additional educational support from 25 to 26 and to define within Government guidance the Covid 19 pandemic as an exceptional circumstance – Petitioner to Committee, Appendix A, 31.05.20

APPENDIX A

It is necessary to consider in careful detail the wording of the policy and guidance documents. From these documents we can develop a political case for change not least due to the fact that the both guidance documents are ambiguous, contradictory and unnecessarily complex such that it is difficult to derive any sense of certainty over what would amount to an exceptional circumstance in a particular case. There are of course multiple paragraphs but I will highlight a few which perhaps exemplify the extent of the barriers in the way of disabled learners in Wales;

- a. *The transition planning and/or annual review process must be undertaken in an impartial, unbiased, person-centred way. These meeting(s) for that young person should therefore only involve those as identified within the SEN Code of Practice. The Welsh Government would not normally expect specialist FE establishments to be actively involved in review meetings as it would be difficult to maintain impartiality when discussing appropriate and available options for that young person*
- b. *The specialist FE establishment should consider the information provided and undertake their own initial assessment of the young person in order to establish the provision they can cater for.*

Surely if the college is unable to make all the provision that a learner may need, it should be involved in the critical transition planning and this would involve at the critical transitional review understanding what the learner can and cannot do, what progress needs to be made in what key areas. If needs are likely to be unmet a discussion should be had as to how they can be addressed through perhaps a more bespoke approach. Surely it is not simply a case of trying to force a square peg into a round hole.

- c. *'17.The Welsh Government consider it good practice for mainstream and specialist FE establishments to engage with each other regarding those young people with complex needs who are seeking post-16 education, to ensure the necessary provision to meet their identified education and training needs can be established and realistically delivered.'*

Yet In practice we have seen that the assessment is done at the outset prior to the young person starting at college which indicates that the longer term needs are considered determined as at the age of 16 and rarely, if ever, updated. The guidance states that The Learning and Skills Assessment is *an assessment that should result in a Learning and Skills Plan (LSP) which identifies the following:*

- *the young person's educational and training needs; and*

· the reasonable and realistic provision and duration required to meet those needs, along with any additional holistic support required, where it is needed;"

Contrast that with England where the courts have stated that the education and health care plans are evolving documents. For example, the DfE guidance on transport states:

"The DfE's statutory guidance ('Post-16 transport to education and training (October [2017](#))) sets out: (1) the LA should consider the impact of a learning difficulty or disability on the young person's ability to walk the distance [18], (2) the LA should take account of its duty to encourage, enable and assist the participation of young people with learning difficulties and disabilities up to the age of 25 in education and training pursuant to Education and Skills Act [2008](#) s68

[22], (3) it is good practice to account for the fact a learner with a learning difficulty or disability may take longer to complete a particular programme and should consider extending travel arrangements for that period [23]."

It is misguided to believe that outcomes set for a child at the age of 16 should be carried through without regard to changing needs which may be exposed later. Some children learn at different rates and achieve things later in life that were never previously thought possible. To set the goal at 16 without considering the need to review them again is deeply unfair. The critical role, long recognised in the world of special needs, is that of the Educational Psychologist. The psychologist gives advice to schools and colleges in regard to approaches to adopt, the progress made, outcomes achievable and over what period. Yet the guidance states that the involvement of such expertise in the case of those with special needs should be limited...

- d. [25](#).*In exceptional circumstances, the Welsh Government may specifically arrange for an educational psychologist (EP) to undertake the section 140 assessment of a young person."*

Contrast this with regulation 6 of the English Special Needs Regulations that requires in all cases of assessment up to the age of 25 the involvement of an educational psychologist.

When it comes to determining duration of study the guidance states that those with complex needs have an additional hurdle when seeking support beyond two years of post 16 schooling. They must establish the extent of their disability determined at a frozen point in time without regard to the fact that needs may evolve. They also have the higher hurdle of establishing an exceptional circumstance

(e) Where specialist provision is being sought, this should include consideration of the duration required based on the young person's capability to progress and achieve against a proposed programme of study. For the majority of young people accessing specialist provision, the duration will be comparable with the duration of provision available within mainstream FE establishments. However, the Welsh Government will consider applications for a longer duration than two years on an exceptional basis"

Further at para 92 of the policy document it states:

In certain circumstances it may be necessary for a young person to undertake additional specialist provision over and above, and following completion of, the young person's original agreed programme of study. It is not the Welsh Government's policy to routinely fund continuous education and training up until the age of 25. The Welsh Government will not, therefore, usually fund a second/additional programme of study at any specialist FE establishment unless the previous funded programme of study cannot fairly be said to have afforded the young person effective access to further education, or unless very exceptional circumstances have resulted in the young person being objectively deprived of the educational value of the previous funded programme

Why should the most disadvantaged be treated so unfavourably? Why must they be expected to jump an even higher hurdle than merely demonstrating the difficulties they have encountered and continue to encounter throughout their lives?

- f. *.Where a programme of study lasting more than two academic years is proposed exceptional reasons relating to the individual's capability to learn will need to be demonstrated. Even in these cases, funding is unlikely to be offered for more than two years in the absence of objective evidence demonstrating that the provision identified as necessary to meet the young person's established needs cannot realistically be provided by a study programme of two years"*

This paragraph makes clear that even those who may need the help should not expect it, unless there is "objective evidence". What does that mean? Firstly it gives the impression that college evidence is not impartial, and then goes on to say that educational psychology evidence is only for exceptional cases. So how on earth can a person of moderate means secure any evidence that is objective especially when they are unlikely to secure an up to date learning assessment under section 140. The Act leaves this as a discretionary rather than an obligatory matter. In practice, this means there is no realistic way of achieving it other than by mere good fortune.

If that is not confusing enough let's see the next paragraph:

- g. *"[32.It](#) is the Welsh Government's expectation that 'objective evidence', as referred to in the paragraph above, would be (but not limited to) evidence of how the programme of study would generally be delivered over a two year duration. It is also our expectation that 'exceptional reasons', in this case, would normally relate to (but not limited to) why that young person (for whom the placement relates to) could not undertake that provision within the normal timescales for delivery. The Welsh Government will not normally accept an exceptional reason to justify a duration where the programme is described /considered to be a three year 'standard' offer."*

In other words, unlike a person without a disability who seeks to secure a level of skill in their life that requires them to enrol on a three year programme, the person with complex needs

must generally live with a two year period. Skill development opportunities are thereby cruelly limited by the state.

What if a person with complex needs identifies a new programme because of discovering new talents that they never knew they had? What if they, perhaps, change direction academically to that which they followed when they left school?

The guidance states

- h. *"33.Specialist FE establishments must identify a clear and reasonable programme of study that meets the young person's identified education and training needs, linked to their future aspirations, as part of the section 140 assessment process.."*

Yet this is a college that the Welsh Government promote as potentially lacking objectivity at this stage such that they should not be involved in the critical transition review for the child at 16. How do they derive any clear understanding of the future training aspirations of a young person who they are restricted to getting to know at the annual review? This seems irrational to me.

Some people who enrol at specialist colleges do so with the objective that they may be able to identify the capacity to learn new things or break down some of the barriers that have restricted their desired progress in the past. For those with complex difficulties that might take time. For example, a person with a mental health difficulty, such as acute anxiety, might take a year or longer to resolve the symptoms so as to identify new ideas or new programmes based on academic potential never previously identified as possible. Yet the Guidance expects colleges to identify changes in a programme of study within only the first term of the academic year.

The guidance states

- i. *[64.It](#) is the Welsh Government's expectation that where changes to a young person's provision significantly impacts on the agreed programme of study, e.g. change of programme or course of study, this should be identified as early as possible within their academic year. Therefore, all requests to make a 'significant' change to an agreed provision will need to be submitted within the young person's first term of study in any academic year. The Welsh Government will not normally accept any requests to significantly change a provision if it is received after this time in any academic year. The Welsh Government will however consider minor changes to support provision where it is considered necessary throughout the academic year."*

In the guidance document "securing provision for young people with learning disabilities" no [196/2017](#)

At para 2 it states:

- j. *"The Welsh Government believes, in regards to post-16 education, that all young people who have a learning difficulty (see 'Statutory context' section on page 5 for a definition) should be provided equitable access to further education at a mainstream FE establishment, through the delivery of inclusive options available locally to meet their needs"*

Unlike the case in England where the council is obliged to take into account a placement of the parent or young person's choice (section 39 Children and Families Act [2014](#)) no such right exists in Wales.

The guidance states:

- k. *"22. While the Welsh Government will take account of the wishes of the young person, their families and/or carers, it does not have a legal duty to fund the specialist provision of their choice; nor does it have a legal duty to fund their programme duration of choice."*

How to start the process.

- l. *"24. In order to determine whether to fund a placement, the Welsh Government first needs to understand the young person's educational and training needs and the provision required to meet them. The Welsh Government will generally commission an assessment to be undertaken, and have arranged for Careers Wales to conduct these assessments on their behalf. This usually forms part of the transition process during the last year of compulsory schooling for the young person. In making decisions about securing and funding a placement, the Welsh Government will take the report (LSP) of the assessment into account, together with all other relevant matters, including any information or evidence collated by Careers Wales throughout the assessment process"*
- m. *"27. For young people who are in school, section 140 assessments are carried out on behalf of the Welsh Government by Careers Wales during the last year of compulsory schooling for the young person. Careers Wales will automatically provide an assessment where the young person has a statement of SEN and where a young person is supported by School Action or School Action Plus and has been subject to an annual and/or transition review process consistent¹¹ with that undertaken for those with a statement of SEN."*
- n. *31. Where arrangements for an assessment have been made, that assessment should be completed as quickly as is reasonably possible in order to assist the young person to consider their options for further learning and to ensure appropriate arrangements can be arranged. It is expected that section 140 assessments will be completed by the end of the spring academic term for those young people expecting to commence post-16 education and training at the start of the next academic year, i.e. the following September. "*

Disabled people are not really given any priority to establish life skills beyond the school day in Wales. This is because of the operation of the guidance which states:

(o) "50. The Welsh Government will fund a placement for a young person at a specialist FE establishment on a day basis where they are satisfied that such provision is necessary to enable the individual to participate in education and training. Specialist provision will usually be necessary, in the Welsh Government's view, only where there is no other realistic means of providing the young person with effective access to the provision established as necessary to meet the individual's identified education and training needs.

(p) 51. The Welsh Government will only fund boarding accommodation if without it the young person would be denied effective access to the specialist provision established as necessary to meet the individual's identified educational and training needs."

It is noteworthy that boarding is only considered necessary to enable a person to "access specialist provision" rather than because boarding itself may be considered as constituting specialist educational provision itself. Contrast this with the legal approach seen in various cases. A waking day curriculum (which in practice is likely to lead to a requirement for a residential school placement) may be justified if the pupil needs to "translate into his home and social and indeed all areas of his life and functioning, the skill which he learns within the school and school room": *S v Solihull MBC* [\[2007\] EWHC 1139](#).

To conclude, only politicians can direct the amendment of these guidance documents and thereby influence the decision makers. Only politicians can extend the law to give those with disabilities another chance this year. They have enough hurdles to overcome and I respectfully suggest that now is the time to start removing them. I urge you not to forget what is identified within the freedom of information material provided in 2018.