

**Sense Cymru:** evidence for CYPE Committee consultation on Additional Learning Needs and Education Tribunal (Wales) Bill



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Sense Cymru agrees to this evidence being made available publically

1. Sense Cymru is the national charity working and campaigning for deafblind children, young people and adults.
2. Children and young people who are born deafblind often have a range of sensory needs. For this reason, we tend to use the term Multi-Sensory Impairment (MSI). Much of what we learn about the world around us comes from our eyes and our ears. Children and young people with MSI therefore face significant barriers and require specialist support to enable them to learn and thrive. These barriers can often be different to those faced by children with a single sensory impairment.
3. MSI is a very low incidence condition; there are around 200 children and young people with MSI in Wales (Emerson, 2010). Not all children and young people with MSI have this listed as their major or primary need, though it will profoundly affect how they engage with learning opportunities available to them.
4. Sense Cymru welcomes the opportunity to contribute evidence to the National Assembly for Wales Children, Young People and Education Committee as part of its consultation on the draft Additional Learning Needs and Education Tribunal (Wales) Bill.
5. This evidence primarily refers to the draft bill in question but is also informed by, and makes reference to, the accompanying draft Code of Practice and draft Explanatory Memorandum where this serves to illuminate commentary on the bill.
6. Sense Cymru is part of the Third Sector Additional Needs Alliance (TSANA). This evidence paper specifically focuses on the issues that are relevant to children with MSI and should be read alongside TSANA's evidence with regards broader issues affecting all children with ALN.
7. **Definition of Additional Learning Need (ALN) and Additional Learning Provision (ALP)**
8. The proposed definition of ALN, and related ALP, in Section 2 offer little more than an update of the current definitions of Special Educational Needs (SEN) and Special Educational Provision (SEP). Whilst we accept that this brings about an end to the

separate category of Learning Difficulties and Disabilities (LDD), which operates for post-compulsory school age young people, it does little else to reform the status quo.

9. We support replacing the term SEN with ALN because the term 'learning' has the potential to acknowledge that children and young people learn beyond the boundaries of 'education' in its more formal and statutory sense. However, as currently drafted, the bill replicates the current SEN framework's narrow constraints within the formal education setting, missing out on the opportunity to be truly transformative.
10. This has particular implications for children and young people who are not of compulsory school age and who may not be accessing learning at nursery, school or Further Education (FE) settings.
11. ALN for children under compulsory school age is defined in 2(3) in relation to the expected barrier that the child will face when they are of compulsory school age. We strongly advocate that children 0-3 with MSI face barriers to learning in their own right. Children born with MSI are disabled from learning opportunities many take for granted and this disabling effect will be present from birth. These children must not be required to demonstrate that they are 'likely' to have ALN at compulsory school age to justify their ALN at age 0-3.
12. We welcome 3(2) that states that ALP for a child under compulsory school age 'means education of any kind'. However, we are disappointed and concerned that 68(1) determines that 'educational' is to be interpreted as "education" ("*addysg*") [which] includes full-time and part-time education'. This again collapses the potential transformative use of the term 'learning' into the restrictive sense of education because it suggests that this learning will be in the school setting, which cannot be appropriate for children 0-3.
13. The definitions of ALN and ALP for children 0-3 must recognise the role of learning through play. Children with MSI in the early years will use play to develop use of their available senses and to learn about the world around them. Play is also a vital tool in developing communication for children with MSI. Support to play is therefore essential in ensuring that children with MSI can develop the skills they need to access further learning. Definitions of ALN and ALP must therefore enable children and parents to be supported to access play opportunities in formal and informal settings. This could be implemented through widening the definition of learning to include 'recreational learning' in line with the present definition of training, which includes 'recreational training' at 68(1).
14. **Multi-agency working**
15. Children and young people with MSI who require support to access learning opportunities are likely also to require similar support to access social activities. Often this is through the provision of an Intervenor, who is specially trained to enable

children and young people with MSI to access and learn about the world around them. Moreover, children and young people with MSI often have a range of disabilities and health needs. This can mean input from several specialist services across health, social care and education at any given time.

16. The draft Explanatory Memorandum lists amongst the purpose and intended effect of the legislation:

Increased collaboration: The new system should support a strong focus on collaboration. All services involved in working with children, young people and their families, including education, health and social services, will have a crucial role to play in working together to deliver efficient, effective, child-centred support for learners with ALN. (3.11)

We welcome this aim. It is therefore with disappointment that we read further in the Explanatory Memorandum that bodies other than the local authority will have functions under the act but

Most of these functions will be the same or similar to functions exercised by these bodies under existing legislation. (3.43)

This is a missed opportunity to legislate for greater joint working between statutory bodies for the benefit of the child or young person.

17. Whilst we welcome Section 16 that enables the local authority to prepare the IDP at the same time as any other plan the child or young person may have, which will reduce the burden on children, young people and parents to attend multiple meetings, this will still result in multiple statutory plans for the child, young person or parent to oversee. Sense Cymru believes that this is a missed opportunity to truly integrate provision for children and young people in a holistic way.
18. The draft bill and Code of Practice must also recognise that effective multi-agency working goes beyond the mere ability to share information between agencies efficiently.
19. **Health**
20. In addition to ongoing support from audiology and ophthalmology it is common for children and young people with MSI to have support from health to address their specific health needs, which are likely to contribute to their ALN.
21. We therefore welcome the bill's introduction of the Designated Medical Officer/Designated Clinical Officer as the single point of contact leading on Local Health Boards' (LHB) contribution to ALN, as set out at Section 47.
22. However, we are disappointed that this bill does not place sufficient duties on LHBs to contribute to meeting a child or young person's ALP. 14(1) states:

If a Local Health Board or NHS trust in Wales agrees, an individual development plan maintained by a governing body or a local authority for a child or young person may specify that additional learning provision described in the plan is to be secured by that Local Health Board or NHS trust for the child or young person.

For a duty to provide ALP to apply to the LHB or NHS Trust, that LHB or NHS Trust must first agree to provide this. This makes it all too easy for LHBs and NHS Trusts to avoid committing to being partners in meeting a child or young person's ALN. In real terms this could mean an LHB refusing to agree to fund and provide Speech and Language Therapy for a child with MSI who may then go without, or face a significant delay in receiving, the crucial communication development required to meet their ALN.

23. 48(4) states that the LHB 'may bring it [a child or young person's ALN or suspected ALN] to the attention of the appropriate local authority if the health body is satisfied that doing so would be in the best interests of the child.' We would urge that the Code of Practice makes clear that, other than in exceptional circumstances, it will always be in the best interests of the child or young person for the local authority to be made aware of their ALN. This is particularly true for children aged 0-3 with MSI, where early identification leading to early intervention and support is crucial.
24. **Duty to involve and support children, their parents and young people**
25. We strongly welcome that the bill places a duty at Section 6 on persons exercising functions under the act to have regard to the child, young person or the child's parents' views, wishes and feelings and the importance of their ability to participate in decisions about their ALN and ALP. We hope this will lead to a more person-centred approach to assessment, planning and review. The Code of Practice is clear in its support for this approach.
26. Further, we also welcome 6c:

The importance of the child and the child's parent or the young person being provided with the information and support necessary to enable participation in those decisions. (6c)

Children and young people with MSI, or parents who are deafblind, will require specialist communication support and information in an accessible format to participate in assessment, planning and review processes.
27. **Duty to favour mainstream provision**
28. Sense Cymru supports an inclusive education system where this is appropriate. There will be many children and young people with MSI who will benefit and thrive in mainstream settings.

29. However, there will be some who will be able to meet their personal learning outcomes best in specialist settings. Sensory impairments are very low incidence conditions and often require specialist support to access learning. Mainstream schools cannot always feasibly provide the ALP that best meets a child or young person's needs or provide the right environment for them to thrive; for example, a young person who uses British Sign Language (BSL) as their primary form of communication should be enabled to have access to a BSL-using peer group. This learning environment could only be provided at a specialist school.
30. We are extremely disappointed and concerned, therefore, that the proposed exceptions to the duty to favour mainstream provision as set out on the face of the draft bill at 29(1) do not include:

- The provision of education that appropriately meets the assessed needs of the child with ALN
- The views, wishes and feelings of the young person with ALN

29(4) states that 'Regulations may provide for circumstances in which subsection (1) does not apply.' Whilst we agree that further regulation making powers should be made available through the bill in this area for the purpose of future-proofing, we strongly advocate that the above exceptions are included on the face of the bill.

31. It should also be noted that this duty as it is currently phrased, which is also noted as a principle underpinning the ALN framework as outlined in the draft Code of Practice (14), could potentially conflict with the principle of working together in the best interests of the child or young person and the principle of ensuring that the child or young person's views, wishes and feelings should be at the heart of all decision making processes (14).
32. **MSI specialist involvement**
33. As MSI is a very low incidence condition it cannot reasonably be expected that a nursery, school or FEI will have the knowledge or capacity to be able to appropriately assess and meet the learning needs of a child or young person with MSI.
34. The Code of Practice under Part 3 of the Social Services and Well-being (Wales) Act requires local authorities to arrange for an assessment of deafblind children and young people by a specialist who is appropriately qualified in the field of deafblindness/MSI. Children and young people with MSI who are being assessed to determine their ALN and ALP must have the same right to input from a specialist in MSI. This specialist must be suitably qualified by holding the Mandatory Qualification in MSI for MSI teachers. The Code of Practice at 332 must clarify this right.
35. **Individual Development Plans (IDPs)**

36. Children and young people with MSI will always require an IDP to set out the ALP they require to access learning. This must be explicitly noted in the Code of Practice.
37. We strongly urge that local authorities are always responsible for preparing and maintaining the IDP of children and young people with MSI. The very low-incidence nature of MSI and the relatively high level of ALP a child or young person with ALN will require means that it cannot be reasonably expected of nurseries, schools and FEIs to provide this in-house. Moreover, children and young people with MSI will require input from a teacher holding the Mandatory Qualification in MSI, who is likely to be employed by the local authority education inclusion team.
38. We support the move from Statements, School Action and School Action plus to the IDP providing that the IDP does not represent a backwards step in comparison with the Statement. As a statutory document the IDP must outline the child or young person's legal rights and entitlements to specialist support. At present the bill only requires a description of the child or young person's ALN and a description of their ALP (Section 8). The Code of Practice goes somewhat further in fleshing this out but we are concerned that the current guidance will result in insufficiently robust plans that do not sufficiently outline a child or young person's key ongoing support needs, such as the provision of a BSL interpreter or the maintenance of equipment to support hearing or vision.
39. **ALNCo**
40. We support the intention in the draft bill to require all maintained nurseries, schools and FEIs to appoint an ALNCo and for regulations to make provisions about the necessary qualifications and experience needed by the ALNCo (Section 16(3)). ALNCos must receive specific disability and ALN awareness training that includes awareness of MSI. Too often a child or young person's MSI is overlooked as a secondary or additional need in comparison with what is considered their primary or major need. ALNCos must be supported to ensure that they are aware of all sensory needs and can coordinate provision to meet these needs appropriately.
41. The roles and responsibilities of the ALNCo at point 45 of the Code of Practice are vast and expansive. Whilst it is right and proper to be ambitious for the role and to set high expectations, we are concerned that the ALNCo role will be excessive and burdensome. The pressure of making the new ALN framework work should not be shouldered entirely by the ALNCo; local authorities must not be allowed to offload their responsibilities on nurseries, schools and FEIs onto schools through this role.