



Date: 12/02/19

Children, Young People and Education Committee
Y Pwyllgor Plant, Pobl Ifanc ac Addysg

Dear Chair

Within the context of the Children, Young People and Education Committee role in critically examining issues such as how the government implements policies and legislation, SNAP Cymru write to you with our serious concerns regarding the interpretation by the Government ALN Transformation team of :

Chapter 4. AVOIDING AND RESOLVING DISAGREEMENTS

68. Arrangements for the avoidance and resolution of disagreements

At the technical briefing on the 30th of January, SNAP Cymru were very concerned with Charlie Thomas' (Head of Additional Learning Needs (ALN) Transformation) assertion that a [Local Authority (LA)] in accordance with their duty to provide independent disagreement resolution pursuant to section 68 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 ('the Act') could provide those services themselves contrary to the legislation's requirement of independence and that this would not preclude DRS being delivered by someone within the same LA , provided they have had 'no previous involvement' with the family and have 'no vested interest in the outcome'.

Section 68 of the Act provides that Local Authorities must make arrangements with a view to avoiding and to resolving disagreements between:



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“(1)(a) education bodies, and (b) children or young people for whom the authority is responsible, or in the case of such children, their parents, about the exercise by the education bodies of their functions under this Part”, and as between “

(2)(a) proprietors of relevant institutions, and (b) children and young people who have additional learning needs for whom the authority is responsible and, in the case of such children, their parents, about the additional learning provisions made for children or young people.”

Section 68(6)(c) includes in its definition of what constitutes an ‘education body’ under this Part ‘a local authority’.

Section 68(3) explicitly states:

“The arrangements under subsections (1) and (2) must include provision for parties to a disagreement to access help in resolving it from persons who are **independent of the parties.**” (emphasis added)

Any mediation or disagreement resolution scheme that is delivered by the Local Authority internally, in an attempt to comply with its duties under this Part would clearly not comply with section 68(3). A local authority is ‘a party’ to the disagreement and therefore *cannot be* independent.

Even if a Local Authority were to purport to dedicate a separate department to this service we feel it would still fail in its duties to provide an independent service as set out by section 68.

It is not only vital that this service be independent in fact, but also in appearance, to promote the confidence and trust of families – both vital ingredients for any disagreement resolution service.

As in the Local Authority’s duty under section 69(1) that they:



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“must (a) make arrangements for the provision of independent advocacy services for the children and young people for whom it is responsible; (b) refer any child or young person for whom it is responsible who requests independent advocacy services to an independent advocacy service provider; (c) refer any person who is a case friend for a child for whom it is responsible and who requests independent advocacy services to an independent advocacy service provider.”

Section 69(3) is explicit in its requirement:

(3) In making arrangements under this section, a local authority must have regard to the principle that any service provided under the arrangements must **be independent of any person who is –**

(a) the subject of an appeal to the Tribunal, or

(b) involved in investigating or adjudicating on such an appeal.

Clearly any disagreement resolution service or advocacy service provided by the Local Authority itself would not be independent as required under s.69(3).

The Local Authority is the ‘party’ who’s decision a child/young person or parents ultimately appeals; they are ultimately the ‘other party’ to any appeal to the First Tier Tribunal – the subject of an appeal to the Tribunal or to the Court in the case of a Judicial Review. The Local Authority is inevitably involved in investigating and responding to such an appeal.

It is SNAP Cymru’s view that the act explicitly prohibits either disagreement resolution services under section 68 or advocacy services under section 69 being provided internally by Local Authorities. Throughout section 68 and 69 the Act sets out that the Local Authority must provide independent services. In section 69(3) independence is specifically defined so as to prohibit the Local Authorities involvement in the provision of advocacy; in section 68(3) the Act is explicit in requiring Local Authorities to provide disagreement resolution services that are independent of the parties, the Local



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Authority being specifically defined as a party under section 68(6)(c) and in reality as the body that is ultimately a party to any appeal to the Tribunal.

The Act is both explicit and implicit in its requirement of independence. On any definition, the Local Authority cannot be independent. To provide these services internally, we believe would be contrary to the law as set out in this part and a failing to children, young people and families who require trust and confidence in the independence of such services.

The definition of independent is someone or something that is free from the influence or control of another. An 'Independent persons' in any definition means persons who are not connected with the company or organisation not dependent on, or affiliated with a larger or controlling entity.

For example;

An 'independent person' for the purposes of the 2011 Localism Act; ' is someone *who is not or who has not* been in the previous relevant five years a *member, co-opted member or officer of the authority.*'

The proposal to arrange independent disagreement resolution within the LA will face fierce criticism by parents. The suspicion that councils would use internal complaints and disagreement services may well be cause for further not less conflict between parents, schools and LA's, involving serious conflicts of interest issues, with the assessor, provider and funder carrying out the independent disagreement resolution function. We feel it would be difficult for LA staff to have an impartial stance as employees. Parents could see this as cynical or at worst unjust.

SNAP Cymru believe that effective independent services, as well as resolving disagreements can also help restore or improve the relationship between parents and the local authority or school and is a cost effective means of reducing conflict and stress.



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When a child has ALN, navigating the assessment and provision process can become contentious and emotional, particularly if there are disputes between parents/carers, LAs and schools concerning ALN decisions and ALN provision.

Whilst the IDP process is collaborative and positive, situations will remain where despite everyone's best efforts the process can result in strained relationships which are never in a child's best interest. Disagreements often occur when parents/carers have expectations of schools and the LA that are either incompatible with resourcing or that do not align with research or local policy. However parents/carers are often accurate in their assessment and their views are upheld through independent arbitration at the ALN tribunal, Judicial Review or the PSOW

As far as possible disputes should be avoided or resolved through dialogue at the earliest opportunity and at the most local level. Early resolution of disagreements significantly benefits the child or young person and can avoid unnecessary stress and expense. Approaches to resolving disagreements can range from relatively informal conversations to formal facilitated mediation meeting, whatever the approach taken and at whatever stage, it is important for everyone to have complete trust in the process.

Dealing with disagreements requires a combination of knowledge about the relevant procedures and legislation, alongside skills for dealing with emotive issues sensitively and effectively. The manner in which the disagreement is handled can have a significant impact on relationships between the school and parents, and an approach that is either dismissive or appears to have bias can cause the disagreement to escalate unnecessarily.

The spirit and the Act itself intends that Local Authorities provide trusted and non-adversarial ways to resolve disagreements from the earliest possible date in the best interests of the child or young person and provided by persons that are independent of the LA



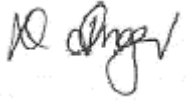
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Independent sources of disagreement resolution and mediation and accurate interpretation of the law and regulations are key to keeping everyone working together in partnership and in the best interest of children. We feel strongly that this issue needs to be considered carefully by the Committee.

Yours sincerely



Denise Inger

Chief Executive Director

SNAP Cymru



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