

Kirsty Williams, AM  
Minister for Education  
Welsh Government

22 March 2019

Dear Kirsty

### **Draft Additional Learning Needs Code: Welsh Government Consultation**

Thank you for your letter of 11 December 2018, setting out the details of the Welsh Government consultation on the draft Additional Learning Needs Code (the draft Code), and other regulations.

Section 4 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 requires Welsh Ministers to issue a Code on additional learning needs, and section 5 of that Act sets out the procedure for making the Code. In accordance with that procedure, Welsh Ministers must consult specified persons before issuing a Code – and the Children, Young People and Education Committee is one of the statutory consultees listed in the Act under section 5(1), as the relevant National Assembly Committee.

The Committee is very pleased to be responding to the consultation in that statutory capacity. In responding, I thought it would also be useful to set out some background to the Committee's work in scrutinising the ALN Bill, and the process we put in place to consider the draft Code. We believe this will help set out some added context to our response.

During its early scrutiny of the ALN Bill, the Committee was concerned that the Code should be subject to scrutiny by the Assembly before it was issued. In line with the Committee's recommendation 44, the Bill was amended at Stage 2 to provide for an enhanced procedure to apply to the making of the Code. This included consultation with the "relevant Assembly Committee" and approval of the draft Code by the Assembly.



As one of the statutory consultees, the CYPE Committee considered how best to approach its scrutiny of the draft Code in order to input into the Government's consultation effectively. The Committee agreed to call together a 'working group' to enable direct engagement with expert stakeholders to discuss the detail of the draft Code and to inform the Committee's formal response to the consultation. In doing so, we were mindful not to duplicate the Welsh Government's consultation and proceeded on that basis with stakeholders who we have encouraged to submit their own response to the consultation.

The main purpose of the working group was therefore to gather the views of expert stakeholders on the content of the Code, whether it meets the needs of stakeholders / practitioners and most importantly whether it would help enable the effective implementation of the provisions of the ALN Act in order to support learners with ALN.

Members of the working group included representatives from a number of organisations that had been involved with the work the Committee undertook in scrutinising the ALN Bill during its passage through the Assembly. The Committee wanted to build on this previous scrutiny, and the detailed work undertaken in collaboration with stakeholders. Its considerations were conducted in two parts:

**Part 1** – the working group considered an analysis of Welsh Government commitments made during scrutiny of the Bill. This analysis also took account of issues raised during the technical briefing provided by Welsh Government officials on 30 January 2019.

**Part 2** – the working group members were asked to lead a more general discussion on the draft Code to highlight any areas of concern, or areas where they believed the draft Code would work well.

The Committee also received written comments from organisations who were involved in the working group, but unfortunately could not attend the Group's meeting on 13 February. Written comments received were circulated to the working group in advance and discussed during its considerations.



## The Committee's Response

The Committee's detailed response on the content of the draft Code is set out in the Annex to this letter. This detailed response is based on the table of analysis that formed the basis of the working groups considerations, and contains:

- details of Welsh Government commitments made during the Bill's passage and how these are addressed in draft Code (Part 1 of the table);
- details of other issues raised by stakeholders (Part 2 of the table);
- a summary of stakeholder views on the commitments and other issues; and
- the Committee's view and findings on each of the areas considered.

The Committee urges the Welsh Government to consider carefully the evidence presented by the working group, and the findings made by the Committee. We are fully aware that the drafting of the Code is an ongoing process and that the final Code will need to be laid before and approved by the Assembly before it can be issued. The Committee will therefore consider the Welsh Government's response to the consultation, and may if appropriate, report to the Assembly to inform its decision on whether to approve the Code.

The Committee would like to thank all those who contributed to the working group's considerations, either during the meeting, or through their written representations. Those involved included representatives from SNAP Cymru, Welsh Local Government Association, National Deaf Children's Society, the Office of the Welsh Language Commissioner, Royal College of Speech and Language Therapists, Children in Wales, Royal College of Occupational Therapists, Mudiad Meithrin, Association of Educational Psychologists, NHS Confederation and the Office of the Children's Commissioner for Wales.


This was the first time the Committee has established a working group to consider a specific piece of work, and the contribution of those expert stakeholders helped ensure our scrutiny was as effective as it could be in the short time we had available.

The Committee is fully aware that those stakeholders / organisations who were involved with the group may also be responding to the Welsh Government's consultation in their own right – and we would encourage that. It is vital that the Welsh Government hears from those delivering support for our children and young people – in whatever role they play. The 2018 Act was widely welcomed.



In delivering the new system that fully supports children and young people of Wales with ALN it is vital that we get the ALN Code right so it can effectively underpin the legislation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lynne Neagle'.

**Lynne Neagle AC / AM**  
**Cadeirydd / Chair**



# Draft Additional Learning Needs Code: Children, Young People and Education Committee response to Welsh Government Consultation

## Part 1: Welsh Government commitments during the Bill’s passage and how these are addressed in draft Code

Issue	Detail of commitment	Origin	Addressed in Draft Code?	Reference in Draft Code
<b>Discussion area 1: ALN Definition</b>				
<b>1A) ALN definition: difficulty in learning</b>	Code to clarify that a child is not required to have a significantly greater difficulty in <u>all</u> areas of learning to fall under definition of ALN.	WG accepted Rec. 3a, CYPE Stage 1 report.	Quote: “A child or young person could, however, be more able and talented and have ALN. For example, a child or young person may be very proficient in one part of their education but have ‘a significantly greater difficulty in learning’ than the majority of others of the same age because of difficulties in other parts of their education, or they may be performing well across the curriculum, but still have a disability which prevents or hinders the person from making use of facilities for education or training...”	Para 7.29
<p><b>Summary of stakeholders’ views</b></p> <p>On the wider issue of the ALN definition more generally, the National Deaf Children’s Society (NDCS) and Children in Wales (CIW) both raised concerns that schools might <b>scale back the number of children they regard as having ALN due to the greater amount of work involved</b> (preparing a statutory IDP) under the new ALN system compared to the current system of School Action for low-level SEN. For example, CIW said:</p>				

*"I think there is a danger that those children on just school action aren't automatically going to be transferred to have an IDP, because their needs might be seen as quite low and, whereas they're managing at the moment, to transfer them to an IDP is going to take a lot of work, a lot of time resource for the school, and is just not going to happen. So, I think we're going to see an artificial decrease in the number of children being defined as ALN, even though the definition remains practically the same."*

The prospects of this happening were also raised during the school visits in the Committee's School Funding inquiry, when one school indicated it was likely that (some/many) pupils on School Action would no longer be provided for under the new ALN system due to the greater level of work required and lack of available resources. It was also discussed at the Policy Forum for Wales conference on 20 November 2018 when the headteacher of a special school said a requirement to provide an IDP for every child with SEN/ALN, including those on School Action would "break the system" as mainstream schools "are just not ready for it".

This predicted scenario is not the Welsh Government's intention. The definition of ALN in the 2018 Act **retains essentially the same definition** as currently for SEN and the Welsh Government's intention is that all of the [approximately 100,000](#) pupils currently identified as having SEN will have an IDP and receive the corresponding provision. If applied correctly, the definition should therefore not result in any 'raising of the bar' for ALN and any reduction in the number of pupils supported.

#### **Committee Response (1A – ALN definition)**

The Committee is satisfied that the commitment made by the Welsh Government has been met, and that Paragraph 7.29 of the draft Code qualifies that a child does not have to have difficulty in all areas of learning to fall under the definition of ALN.

However, as highlighted in the summary of stakeholder views above, there is some concern regarding the **application** of the ALN definition more generally with some suggestions that resource pressures will mean pupils have to exhibit a higher level of need to be judged as having ALN and qualify for an IDP. The Committee therefore calls on the Welsh Government to unequivocally clarify in the ALN Code that there is no change to the threshold of what constitutes ALN under the new system, compared to SEN at present.

The Committee is extremely concerned that pupils on School Action may no longer be provided for under the new ALN system due to the greater level of work required and lack of available resources – as this was clearly not the intention of the Act. We call on the Welsh Government to make it absolutely clear in the Code and/or through an awareness campaign that this must not be the case.

	<p>Our specific concerns referred to in this section relate to the adverse effect inadequate resources could have on the way the definition of ALN is applied. We have set out our view on resourcing more generally within issue g in the section on other areas. Whilst not necessarily for the Code itself, the Committee strongly believes that the availability of appropriate resources (whether that is funding or staff) is absolutely essential to enable the successful implementation of the Act. Other concerns in relation to specific discussion areas, and specific resource issues are documented in the relevant sections within the Committee’s response.</p>			
<p><b>Discussion area 2: Early Years</b></p>				
<p><b>2A) Early Years: defining ALN and assessing development</b></p>	<p>Code to clarify that, in the context of children under compulsory school age, the reference to ‘learning’ in the ALN definition includes more informal types of learning, such as learning through play and social interaction.</p> <p>Code to clarify that assessments for ALN in respect of children under compulsory school age must account for how infants develop, including through learning through play, and their needs for stimulation, encouragement and social interaction.</p>	<p>WG accepted Rec. 3b, CYPE Stage 1 report</p> <p>WG accepted Rec. 18, CYPE Stage 1 report</p>	<p>Quote: “In considering what amounts to a ‘significantly greater difficulty in learning than the majority of others of the same age’, it should be borne in mind that learning is about acquiring knowledge or skills, which may be done in many different ways and how it is done can vary according to the age of the learner. For example for young children learning takes place through play and experience, rather than through more formal methods which are more common for older children such as instruction by a teacher or study by a learner.”</p> <p>Quote: “In the case of young children, learning should provide the opportunity to develop their knowledge, skills and understanding of the world through exploratory play and experiences. Children with ALN might require ALP in the form of exploratory play, or other ALP to enable them to access appropriate play opportunities/activities.”</p>	<p>Para 7.21</p> <p>Para 7.68</p>
	<p><b>Summary of stakeholders’ views</b></p> <p>Stakeholders welcomed the references to informal learning and development such as play and experiences in paragraphs 7.21 and 7.68 within the guidance on how a young child in early years is assessed and potential ALN identified. However,</p>			

	<p>the Children’s Commissioner’s Office would prefer assessments for ALN at early years to <b>focus on the child’s development and needs at that age</b>, rather than projecting what needs they would have if they were of compulsory school age:</p> <p><i>“The decision is slightly different than for older children and young people and it’s, if they don’t have additional learning provision at this point, would that impact what they are like when they are of compulsory school age, as opposed to being focused on responding to the needs of the child at that point. (...)</i></p> <p><i>We would like to see it being a needs-led definition of ALN, not guesswork as to what the child may be presenting with in two years’ time.”</i></p> <p>To some extent, this is an issue regarding the definition in the Act. Section 2(3) defines ALN amongst children in early years in the context of whether they would require Additional Learning Provision (ALP) when of compulsory school age.</p> <p>There remains some concern about whether the a child of very young age will be seen by the right professionals to identify ALN. It was noted that <b>parents may not in a position to pick up on any learning or developmental problems</b>, particularly as they may have no baseline expectations of what their child should be able to do at a particular age. CIW said:</p> <p><i>“In terms of a child, they might not see any professionals, so it’s actually up to the parents then to actually pick up on whether their child has got any delay. I don’t know how you can mitigate that. It is really difficult. But it’s sort of raising awareness of all of the professionals that the child might come into contact with. (...)</i></p> <p><i>[Somebody at a Welsh Government stakeholder event] was saying she had a child who was about 12 months old and she said she would only see the health visitor on one occasion maybe. But that is the difficulty. If the parent is not skilled enough to identify the ALN, there’s going to be a gap in terms of the child being picked up, and, as we know, early intervention is key, really.”</i></p> <p>The WLGA referred to the Welsh Government’s <a href="#">Healthy Child Wales</a> programme and suggested that the Code could make greater linkage with this programme and ensure that learning difficulties were part of what health visitors looked out for.</p> <p>The draft Code says that parents’ observations of their child “are often crucial to early identification” and that local authorities and non-maintained nursery providers “should be open and responsive to such expressions of concern”.</p>
	<p><b>Committee Response (2A – Early Years: defining ALN and assessing development)</b></p> <p>The Committee welcomes the references to informal learning and development (such as play and experiences) in paragraphs 7.21 and 7.68 of the Code, relating to how a young child in early years is assessed and potential ALN identified.</p> <p>However, the Committee agreed with views expressed by the Children’s Commissioner for Wales suggesting that assessments for ALN at early years should focus on the child’s development and needs at that age, as well as projecting</p>



	<p>what needs they would have if they were of compulsory school age. The Committee accepts that the Code could only do that within the parameters of the Early Years ALN definition in section 2(3) of the ALN Act – but believes that the Code should refer to the need to consider a young child’s difficulties and needs in the context of their age at that time, as well as projecting whether they would need ALP once they were of compulsory school age.</p> <p>As outlined in the summary of stakeholders’ views, there is concern that Code provides insufficient guidance on the involvement of relevant professionals in monitoring very young children. We believe the Code should more clearly set out the respective roles of practioners, for example health visitors, in being vigilant to signs of ALN and flagging concerns. Whilst being mindful that the Code is not aimed directly at parents, the Code could also set out the information that could be provided to parents to help them be vigilant to the early signs of ALN and what they should do in such cases.</p> <p>The Committee also agrees with the views expressed that the Code should make greater linkage to the Welsh Government’s Healthy Child Wales programme to help ensure that learning difficulties are part of what health visitors looked out for.</p>			
<p><b>2B) Early Years: LA lead officer</b></p>	<p>Code to provide clear routes for referral from professionals in early years. The Act created an Early Years ALN lead post within LAs. Minister, Alun Davies, said the Code would outline what is entailed by this role.</p>	<p>WG accepted Rec. 20, CYPE Stage 1 report, and amended the Bill at Stage 2.</p>	<p>Code sets what LA functions the Early Years ALN lead officer will be expected to fulfil, the requisite experience and expertise, as well as their role and strategic responsibilities.</p>	<p>Paras 8.38 to 8.47.</p>
<p><b>Summary of stakeholders’ views</b></p> <p>Stakeholders welcome this role but are concerned about the level of responsibility and potential workload that could fall on to one individual for the whole local authority area. They stressed that it was vital that the Early Years ALN Lead Officer (ALNLO) has the necessary training and experience. There were also some concerns that amidst funding pressures on local authorities, staff could be “almost shoehorned”, as the Association of Educational Psychologists called it, into the post or have it added to other existing responsibilities.</p> <p>The Code does specify the experience and expertise that an ALNLO <u>should</u> have and that a local authority <u>should</u> only designate an ALNLO if it considers them to be suitably qualified and experienced to deliver the expectations of the role.</p>				

	<p>The WLGA advised that there is an ADEW Early Years ALN Group which is developing a job description for the ALNLO post. The Royal College of Speech and Language Therapists also informed that there is work underway in one particular region to look at what training is required for the ALNLO and what training is required for the underlying workforce.</p> <p>NDCS expressed some concern that there was no reference to the ALNLO’s involvement with specialist professionals, for example teachers of the deaf and the visually impaired, whereas these are mentioned in the professionals school and FEI-based ALNCOs should work with. (Paragraphs 8.44 and 8.46 of the draft Code say the ALNLO should collaborate with health bodies and health practitioners, working with them towards proactive early identification and prevention.)</p> <p>CIW thought that there could be greater reference to the third sector in whom the ALNLO should work with. Paragraph 8.44 refers to “any other agencies or services that work with children or young people”, although the examples given are all public sector-based.</p> <p>The Children’s Commissioner’s Office pointed to a potential conflict of interest for the ALNLO as they would be involved in both the assessment process as well as the financing of provision. They said they were still forming a view as to whether there should be separation of these functions.</p> <p>SNAP argued that one of the first and foremost tasks for an ALNLO should be to map out what expertise and provision currently exists across their local authority area, identifying any gaps, as this can vary considerably.</p>
	<p><b>Committee Response (2B – Early Years ALN lead officer)</b></p> <p>The Committee was pleased that the role of the Early Years Additional Learning Needs Lead Officer (ALNLO) was established in the Act, and that role would have responsibility for co-ordinating a local authority’s functions under Part 2 of the Act. The Committee is generally satisfied that the Code sets out what LA functions the ALNLO will be expected to fulfil, the requisite experience and expertise, as well as their role and strategic responsibilities. However, the Committee agreed with a number of the concerns raised and believe the Code could be strengthened in the following ways:</p> <ul style="list-style-type: none"> <li>• the Code could include more clear reference to the ALNLO’s involvement with specialist professionals, for example teachers of the deaf and the visually impaired. (these are mentioned in the professionals school and FEI-based ALNCOs should work with);</li> <li>• in relation to who the ALNLO should work with, there should be greater reference to the third sector. Paragraph 8.44 refers to “any other agencies or services that work with children or young people” but the examples given appear to be all public sector-based.</li> </ul> <p>We note that the Code specifies the experience and expertise that an ALNLO should have and that a local authority should only designate an ALNLO if it considers them to be suitably qualified and experienced to deliver the expectations of the</p>

	<p>role. It is however important to set the right level of expertise and experience for the ALNLO post and ensuring that necessary training is available for officers to meet the required levels.</p> <p>A further concern raised is that while the Act <b>requires</b> a local authority to designate an ALNLO, the Code states that a local authority should only do this if it considers them to be suitably qualified and experienced. However, it is unclear what would happen if a local authority cannot identify an officer with suitable qualifications and experience, either by designating an existing member of staff or through recruitment. It is also unclear how a local authority would cover any period where the designated ALNLO was absent (especially if this absence is unforeseen and/or long term).</p> <p>The Committee believes therefore that the Code should specify the steps a local authority should take to ensure that a suitable officer can be identified for the ALNLO role (including where this might not be immediately possible), in order that the requirements of the Act (and Code) can be met. We believe this should include the local authority identifying a pool of officers who are suitably qualified and experienced that can take on the role of the ALNLO as a contingency.</p>
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**Discussion area 3: Medical Needs**

<p><b>3A) Medical needs</b></p>	<p>Code to provide clarity about where medical needs fall under the definition of ALN and the relationship between the ALN system and healthcare needs (eg the statutory guidance issued in March 2017).</p>	<p>WG accepted Rec. 48, CYPE Stage 1 report.</p>	<p>Medical conditions are cited as an example of one of the causes of ALN.</p> <p>Expanded upon in para 7.31:</p> <p>“In some cases, healthcare needs (for example, as a result of a medical condition) may have a significant impact on the child or young person’s experiences and on the way they function in school or further education. The impact may be a direct one, in that their cognitive abilities, physical abilities, behaviour or their emotional state may be affected. The impact could also, or alternatively, be indirect, for example by disrupting their access to education through unwanted effects of treatment or through the psychological effects that serious or chronic illness or disability can have on a child or young person and their family.”</p>	<p>Para 7.17</p> <p>Para 7.31</p>
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			<p>The Code qualifies that healthcare needs by themselves do not indicate ALN; the definition of learning difficulty or disability in section 2 of the Act still has to be met:</p> <p>“However, not all children and young people with a healthcare need will have ALN. As with other learners, the question is always whether the child or young person has a learning difficulty or disability which calls for ALP. There will be many instances where a child or young person with healthcare needs does not have a learning difficulty or disability, or if the person does, the learning difficulty or disability does not call for ALP. In these cases, the child or young person’s needs should be met through other means.”</p> <p>The Code also discusses how healthcare needs can lead to an need for the learner to be Educated Otherwise Than At School (EOTAS).</p>	<p>Para 7.32</p> <p>Paras 23.14 to 23.15</p>
<p><b>Summary of stakeholders’ views</b></p> <p>There was some suggestion that the draft Code remains <b>relatively vague about the interconnection between medical needs and ALN</b>. Stakeholders felt that paragraph 7.31 <b>could be strengthened</b> to include words to the effect of ‘including their learning’.</p> <p>However, it was generally accepted that the draft Code reinforces the position of the Act that medical needs do not automatically indicate ALN but they may in some cases, or even often, result in the child or young person having a significantly greater difficulty in learning, thereby satisfying the definition in section 2 of the Act.</p> <p>Stakeholders felt it was important there was sufficient cross-reference between the Code and the Welsh Government’s statutory guidance on <i>Supporting Learners with Healthcare Needs</i> (2017).</p>				

	<p><b>Committee Response (Medical needs)</b></p> <p>The Committee welcomes the fact that the Code includes medical conditions as an example of one of the causes of ALN. However, we agree with some of the concerns raised that the draft Code is relatively vague about the interconnection between medical needs and ALN. We believe that paragraph 7.31 could be strengthened to include words to the effect of ‘including their learning’ to make it more clear that healthcare needs can impact on learning and educational outcomes and, where they do, may indicate ALN.</p> <p>While we acknowledge that this may be covered by the words “the way they function in school or further education”, we believe this paragraph would benefit from such clarification (and more in line with the approach the Committee took during scrutiny of the Bill, which was to ensure such things were explicitly referenced).</p> <p>A further concern is that the Code does not seem to make sufficient reference to how medical needs in young children would be considered when assessing whether they would have ALN, and we believe the Code could also be strengthened in this regard.</p>
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**Discussion area 4: Information / advice and Advocacy**

<b>4A) Impartial information and advice</b>	<p>Code to detail how LAs will arrange for <u>impartial</u> information and advice should be provided.</p> <p>WG amendment to the Act added the term ‘impartial’ to the relevant section, whilst rejecting the Committee’s call for it to have to be independent.</p>	<p>WG committed to this when rejecting Rec. 27, CYPE Stage 1 report, which said information and advice should be independent.</p>	<p>Chapter 6 covers advice and information.</p> <p>Quote: “A local authority may choose to provide advice and information itself. Alternatively, the local authority could work with external service providers, including the third sector, to provide information and advice about ALN. However local authorities decide to provide the information and advice, in making their arrangements to do so, they must have regard to the principle that the information and advice must be provided in an impartial manner.”</p>	<p>Chapter 6 Para 6.5</p>
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### Summary of stakeholders' views

Some stakeholders revisited the question of whether information and advice should have to be independent. The Act requires it to be impartial but not independent. There were some **calls for the Code to define what is meant by impartial**. SNAP were sceptical about whether local authorities could fully meet the requirement to provide information impartially:

*"There's the fundamental thing that, where decisions are made regarding resourcing, it's not in, necessarily, the provider's interest to ensure that a family is fully informed of everything, and I think the reference to leaflets and the reference to websites—have you ever looked at most of the websites that are in existence from local authorities for ALN? They are very poor. I know some are working at it on a regional basis now, but they're so poor, and they are not accessible to families."*

NDCS called for there to be quality assurance over the information were providing, suggesting there might be a role for Estyn:

*"But I suppose this is an issue separate from the code, because I think it's a point that's going to need quality assurance and I really think that it's something that we want to see Estyn being involved in and having a look at what information they're putting out there to families, making sure that it's impartial and making sure that it's sufficiently detailed so that parents really do understand that if they're unhappy, they have these proper rights to appeal, and that children, crucially, do understand that they have rights to disagree with adults. (...) And yes, I think the detail in this section of the code is not going to remedy the issue."*

SNAP argued that the draft Code is "incredibly weak" on information and advice for young people at post-16 and described how in general the proposals for information and advice and interaction with families have been diluted over time:

*"But I just think it's very weak, and I have real concerns. We've been supportive of this from 2004 onwards, but we've gone from a Green Paper that talked about—parent partnership in the current code had a whole chapter; it's gone. In the Green Paper, we went to family partnership; it disappeared. We then went to information and advice in the White Paper and we've gone now to it being impartial, and something the local authority and schools are providing themselves. There will always be a need for independent—wherever it comes from; wherever—. This is not about SNAP Cymru. This is about parents having reliable and credible information."*

Paragraph 6.9 of the draft Code gives guidance on how local authorities could arrange for information and advice to be provided by an external organisation, instead of or in addition to, providing this themselves. However, SNAP feel that the draft Code "**suggests that the local authority can be the sole provider of information and advice**" and "**doesn't acknowledge that there are lots of other sources out there**".

	<p>SNAP also called on the Code to include face-to-face support as an example of how information and advice should be provided. However, it is included as such an example in paragraph 6.7.</p>			
	<p><b>Committee Response (Impartial information and advice)</b></p> <p>During scrutiny of the Bill, the Committee had called for the provision of information and advice to be independent of local authorities. This was rejected at that time, but the Committee welcomed the fact that the Bill was amended to provide that that advice was ‘impartial’. While some concern was raised as to whether information and advice should have to be independent, we are clear that this is not a requirement of the Act. To that extent, the Committee is satisfied that the Code should adequately ensure that information and advice provided, or arranged, by local authorities will be impartial.</p> <p>However, the Committee does believe that the Code could be strengthened in this area to ensure there is no presumption on local authorities providing information and advice themselves and to make it clearer that arranging for information and advice to be provided externally is one way of ensuring it is impartial.</p>			
<p><b>4B) Information and advice at key points in education</b></p>	<p>Code to require information and advice be provided at key stages/points within the learner’s education – key transition, entry, exit points.</p> <p>Minister, Alun Davies: “the code will itself build on this with mandatory requirements in respect of notifications at appropriate times.”</p>	<p>WG accepted Rec. 9, CYPE Stage 1 report.</p> <p>When resisting amendment 152 at Stage 2.</p>	<p>Chapter 19 of the Code deals with transition planning. Para 19.16 lists common transitions points, including entry into education, between key stages, and into post-16 education or independent living.</p> <p>Para 19.12 refers to the duty on local authorities to provide information and advice and that this should including learners nearing a transition.</p>	<p>Para 19.16</p> <p>19.12</p>
	<p><b>Summary of stakeholders’ views</b></p> <p>NDCS and CIW raised concerns about the degree to which <b>transition out of compulsory education</b> is covered within the draft Code. NDCS in particular pointed to the <b>lack of reference to careers advice</b> and argued that what is included in the is a backward step:</p> <p><i>“The number of references [to careers advice] is so small; I can’t remember how many—it was like 16 or something, as compared to loads in the old code. So, it’s a big backtrack. (...)</i></p> <p><i>“This chapter of the code [chapter 19, Planning for and supporting transition], it actually contains one of the paragraphs that worries me the most, and that paragraph is 19.54, which seems to be a massive backtrack in terms of careers advice.</i></p>			

	<p><i>So, under the current code, anyone who has a statement of educational needs must have a careers adviser invited to their year 9 review. This paragraph seems to imply that the vast majority of ALN learners can access just mainstream careers advice.”</i></p> <p>Chapter 19 and paragraphs 19.45 to 19.71 of the draft Code in particular give guidance on transition beyond compulsory education.</p>			
	<p><b>Committee Response (Information and advice at key points in education)</b></p> <p>The Committee agrees with the concerns raised by the working group that there is a lack of adequate detail in the Code in terms of transition out of compulsory education. This includes a lack of reference to careers advice and ensuring this is available at key points and relevant and appropriate to learners with ALN. The Committee believes that these are two very important areas for learners with ALN, and that the Code must be strengthened to provide more detail on these areas.</p>			
<p><b>4C) Offer of information and advice, disagreement avoidance and resolution, and advocacy after key decisions, including independence of disagreement avoidance and resolution</b></p>	<p>Code to require that information and advice is offered after each key decision is taken (reviewing, ceasing IDPs etc) rather than solely at the beginning of the process.</p> <p>Cabinet Secretary, Kirsty Williams, said at Stage 3: “code will be used to set out the various points at which information about advocacy services must—and I repeat, must—be provided to children and young people. This will apply especially when notifications of decisions are being made.”</p>	<p>WG accepted Rec, 30, CYPE Stage 1 report.</p> <p>When resisting amendment 5 at Stage 3, which called for information and advice about the availability of advocacy to be provided at key points in education and after key decisions.</p>	<p>Code states that the following must be provided when notifying of decisions that the learner does not have ALN, that their request for an IDP review has been declined, or that their IDP will be ceased:</p> <p>“information about how to access the responsible local authority’s arrangements for providing people with information and advice about ALN and the ALN system.”</p> <p>“details of the responsible local authority’s arrangements for the avoidance and resolution of disagreements and its independent advocacy services.”</p> <p>In terms of disagreement avoidance and dispute resolution, the WG officials indicated that the requirement in section 68 of the Act for this to be available from a person(s) “independent of the parties” would not preclude this being someone within the same</p>	<p>Paras 8.17, 9.16, 16.20, 21.16, 25.8</p> <p>Paras 25.34 to 25.36, discussed in WG</p>



			<p>local authority, provided they have had ‘no previous involvement’ with the family and have ‘no vested interest in the outcome’. The Committee wrote to the Minister for Education seeking confirmation of the Welsh Government’s interpretation of the term “independent of the parties” in this section of the Act, and the explanation given in paragraph 25.36 of the draft Code.</p>	<p>Technical Briefing</p>
<p><b>Summary of stakeholders’ views</b></p> <p>NDCS said it would be useful if each of the relevant paragraphs within the Code should state that notification of key decisions and details about what is available should be in plain language and in a format that meets any accessibility requirements of the family. However, the draft Code’s guidance on information and advice more generally (paragraph 6.8) does state that information should use language that children, their parents and young people can easily understand.</p> <p>The Royal College of Speech and Language Therapists summed up the dilemma of striking a balance between completeness in each individual chapter of the Code and keeping it as a concise and accessible document:</p> <p><i>“I think it’s difficult, isn’t it, because there are some bits—chapters 8 to 12—where it’s written for the different settings, and there’s repetition in there. But then, we don’t want chapter 6 or the content of that written into all of the other chapters as well. It is an incredibly long document already, and all we’ve talked about today is adding things into it rather than taking things away.”</i></p> <p><a href="#">SNAP have written to the Committee</a> about the guidance given in the Code on the <b>application of section 68 of the Act</b>, which requires local authorities to make arrangements for disagreement avoidance and resolution. This must include provision from “persons who are independent of the parties”. The Assembly’s Legal Services are preparing a note for the Committee on this issue, including <b>what is meant by “independent of the parties”</b> and the references in the draft Code to “no previous involvement” and “no vested interest in the outcome” in this context. The Committee has <a href="#">written to the Minister for Education</a> to ascertain the Welsh Government’s understanding of interpretations of section 68 and paragraphs 25.34 and 25.36.</p>				

### **Committee Response (Independence of disagreement avoidance and resolution)**

The Committee welcomes that the Code does, at various key points, set out how information and advice would be provided. We recognise that paragraph 6.8 of the Code states that information made available by local authorities should use language that children, their parents and young people can easily understand. However the Code could go further and include reference in each of the relevant paragraphs to state that notification of key decisions and details about what information is available should be in plain language and in a format that meets any accessibility requirements of the family.

Detailed concerns have been raised about the application of section 68 of the Act, which requires local authorities to make arrangements for disagreement avoidance and resolution. Concerns relate specifically to the interpretation of section 68(3) which states that arrangements under section 68 must include provision for parties to a disagreement to access help in resolving it from “persons who are independent of the parties”. In considering these concerns, the Committee has also considered how independence is interpreted with regard to section 69 on advocacy services.

The Committee wrote to the Welsh Government separately about this. The response from the Welsh Government simply confirms that Paragraph 25.36 of the draft Code deals with the independence of persons helping to resolve disagreements, and sets out the way in which “independent person” should be interpreted for the purposes of s.68(3) of the Act. The Minister, in her response, goes on to say:

“At this stage, I do not feel it would be appropriate for me to provide the Committee with a further interpretation beyond that which has been included in the draft Code for consultation. However, I would welcome the views of the Committee, along with those of other respondents to the consultation, about whether this interpretation is appropriate or sufficient, including views on whether the Code should impose any additional requirements (in accordance with the power to do so in s.4(5)(a) of the Act) in relation to this matter.”

The Committee accepts that the Code cannot contain anything that is contrary to the s68(3) of the Act, but there is uncertainty as to what s68(3) means in practice. The Committee believes that the interpretation in the draft Code is not sufficient or appropriate as it does not add any clarity. We believe the Code must provide clarity on the interpretation of section 68(3) of the Act, in particular to answer the following issues:

- If the family’s disagreement is with the school, and there has been no local authority involvement, would someone within the local authority be considered independent? Whilst a local authority is not at that stage a party to any disagreement, there is potential for them to be a party in the future, for example if a parent asked for a reconsideration of the school governing body’s decision.

	<ul style="list-style-type: none"> <li>If the case has been referred to the local authority, or the local authority is otherwise involved, is the local authority as a whole prevented from being able to act as an “independent person”, or would they be able to satisfy the requirement for independence, by for example, using an officer or department within the authority unrelated to the case?</li> </ul> <p>In relation to independence of advocacy services, the Committee acknowledges that the relevant sections of the Code are based on the interpretation of section 69(3) of the Act. However, we believe the Code should clarify to those involved whether it would be possible for a local authority to provide independent advocacy services, and if so, in what circumstances?</p> <p>The Committee notes that the Minister has powers under section 4(5)(a) of the Act to impose requirements on a local authority in respect of arrangements it must make under sections 68 or 69.</p> <p>As such we consider that the Minister should give consideration to using these powers to clarify (a) the extent to which local authorities are able to deliver avoidance and resolution services themselves; (b) the circumstance (if any) in which a local authority employee is able to act or is prohibited from acting as an “independent person” for the purposes of section 68(3); and (c) the extent to which local authorities are able to provide independent advocacy services themselves.</p>			
<b>4D) Charging for advocacy</b>	Code to ensure that the provisions in the Act for independent advocacy services do not allow the possibility that the end user of the services be charged (ie any charging would only be by provider to LA.)	WG accepted Rec. 28, CYPE Stage 1 report.	Quote: “The local authority must ensure its arrangements for avoiding and resolving disagreements are provided free of charge at the point of delivery.”  “The local authority must ensure its advocacy service is provided free of charge at the point of delivery.”	Para 25.10  Para 25.62
	<b>Summary of stakeholders’ views</b> Stakeholders were <b>content</b> that the draft Code satisfactorily addresses this.			
	<b>Committee Response (Charging for advocacy)</b> The Committee is satisfied that the Welsh Government’s commitments have been met and that no changes are needed to the Code in this regard.			

**4E) Explaining what advocacy means**

(not directly related to a WG undertaking but included here as relevant to this discussion area)

During this discussion area, the working group discussed an issue relating to advocacy that did not concern the commitment or undertaking given by the Welsh Government (which was on the specific issue of ensuring that the learner would not have to pay for independent advocacy services).

**Summary of stakeholders' views**

Stakeholders were concerned that the draft Code **does not convey what is meant by advocacy** and that it indicates it is only about giving advice to the learner. The Children's Commissioner's Office said:

*"It's not enough to just make the provision available, but young people and families need to understand what an advocate is. So, there needs to be more in that around those key decisions—there needs to be more about explaining and ensuring understanding of what advocacy means, because we know that that affects uptake for young people. Also maybe a reflection in here that advocacy is an amplification of the voice of the child or the voice of the family as well, rather than just another step within the disagreement, actually what the role of advocacy is. (...)*

*And I think it could refer to what an advocate is. So, it could include a definition of what this code expects successful advocacy to represent."*

SNAP added:

*"They're quite confused in that role as well, Chair, because they talk about the advocate providing advice. That isn't the role of an advocate. What they've tried to do, because parent partnership has gone, is to merge the role a little, and, interestingly, in the code, originally it was for young people and their parents—'and their parents' has been taken out, so it's just the 'young person' now. But, you know, they are not there to advise; they are there to amplify the voice of the child."*

**What does the draft Code say?**

Paragraph 25.58 of the draft Code gives a **list of the purposes** of advocacy:

- assist the child or young person to communicate their views, wishes and feelings and ensure that the child or young person is heard and listened to;
- speak on behalf of the child or young person where the child or young person is not able to communicate their views, wishes or feelings, or only partly able to express their views, wishes or feelings;
- work with the child or young person and support them by providing information, advice and support;
- support the child or young person to understand their needs, understand the relevant processes, understand their rights, take an active participation in decision making and understand the implications of any decisions made;

	<ul style="list-style-type: none"> <li>▪ give information to the child or young person, help them understand their options and make informed decisions, and support them to challenge the local authority or FEI where they feel their needs are not being met;</li> <li>▪ assist the child or young person to seek resolution to any problems or concerns which have been identified by the child or young person, help the child or young person to clarify the complaint and help them to understand the outcomes they are seeking;</li> <li>▪ provide children and young people with support from any emotional challenges which arise from the process, such as expressing a different view from their parents.</li> </ul>			
	<p><b>Committee Response (Explaining what advocacy means)</b></p> <p>During discussions of the working group, a number of concerns were raised relating to advocacy, and particularly what advocacy meant. The main concern was that the draft Code does not convey what is meant by advocacy and that it indicates it is only about giving advice to the learner.</p> <p>The Committee has considered this, but believes that paragraph 25.58 of the draft Code is sufficient in explaining what it meant by advocacy. However, we call on the Welsh Government to consider the views expressed by stakeholders to establish if any changes to the Code may be necessary.</p>			
<b>Discussion area 5: Low incidence high complexity needs</b>				
<p><b>5A) Low incidence high complexity needs</b></p>	<p>The then Minister, Alun Davies said:</p> <p>“I have commissioned reviews of the evidence for effective interventions for a range of low-incidence, high-complexity needs, and these will be published as accessible guides for practitioners, to ensure they have informed, evidence-based decisions.”</p> <p>Stopped short of saying this would be in the Code but referred to not wanting to put 'code</p>	<p>When resisting amendment 87 at Stage 2, which called for the Code to include clear pathways and guidance on cases of low-incidence high-complexity needs.</p>	<p>In the context of explaining appropriate IDP content:</p> <p>“A child or young person with severe, complex or low incidence needs will likely require specialist input and advice and their IDP is likely to contain contributions from a wide range of agencies and detail a much wider range of interventions”.</p> <p>Also cited as a criterion when deciding whether a governing body or the local authority should be responsible for an IDP.</p>	<p>Para 13.2</p> <p>Para 9.44, 10.42</p>

	<p>content' in primary legislation, therefore it could be expected to have some reference to this issue.</p>			
	<p><b>Summary of stakeholders' views</b></p> <p>NDCS were critical of the <b>use of the term “likely”</b> in whether a child with severe, complex or low incidence needs would require specialist input, arguing that this would always be necessary.</p> <p>NDCS also highlighted a difference between the draft Code and the <a href="#">Code of Practice in England (2015)</a>, which requires assessments of learners with a visual or hearing impairment to include a <b>consultation with a qualified teacher of the visually or hearing impaired</b>. The draft Code includes them in a list of who might be consulted but the NDCS are “really disappointed” that this <b>aspect is not as strong in Wales as in England</b>. The Association of Educational Psychologists (AEP) agreed:</p> <p><i>“You need all the information, not just in terms of reports, but sometimes it’s very helpful, for example, when psychologists are assessing a child with severe hearing impairment, having somebody like a teacher of the deaf there, if signing’s required and so on. That’s really important.”</i></p> <p>Reference was made to the <b>guides commissioned by the Welsh Government</b> on low incidence, high complexity needs. These do not appear to be referred to in the draft Code. CIW highlighted the importance of ensuring that professionals have access to all relevant information that is available, and asked how these guides are to be used.</p>			
	<p><b>Committee Response (Low incidence high complexity needs)</b></p> <p>The Committee was disappointed that its call for the Bill to require that the Code provide clear pathways and guidance on cases of low–incidence high–complexity needs was not accepted. We acknowledge that some reference to this has been included in the Code. However, we agree with concerns raised that reference in paragraph 13.2 to the term ‘likely’ is insufficient, and should be strengthened to indicate that this will ‘almost always’ be necessary.</p> <p>The Committee also agrees that the Code should be strengthened to include clearer guidance on who should be consulted when assessing a learner with specific high–complexity needs. For example, we believe an assessment for a learner with a visual or hearing impairment <u>must</u> include a qualified teacher of the visually/hearing impaired, as is the case in England. This principle should be incorporated into the Code to cover specific needs generally rather than provide a specific list where this might apply.</p> <p>Although this may not be an issue for reference within the Code itself, it would be helpful if the Welsh Government could provide details on the latest position on the <b>guides on low incidence high complexity needs</b> and how they are to be used.</p>			

## Discussion area 6: Responsibility for IDPs

<p><b>6A)</b> <b>Responsibility for IDPs</b></p>	<p>Code to provide clarity on where responsibility for IDPs lies (between LAs and school governing bodies)</p>	<p>WG accepted Rec. 6, CYPE Stage report.</p>	<p>Quote: “A local authority will normally only decide whether a pupil at a maintained school has ALN and prepare and maintain an IDP in instances where the child or young person’s needs are more severe or complex or are of low incidence. The main exceptions are when a child is looked after by a local authority in Wales or the child or young person attends more than one school or other institution (“dual registration/enrolment”) – in these cases, the local authority is usually responsible for decisions and maintaining an IDP irrespective of the needs).”</p> <p>Para 9.19 gives the grounds on which a school may refer a case to the local authority – “not reasonable for it to secure” or it cannot “adequately determine” the ALN. This is in the Act itself.</p> <p>Code lists several criteria which could determine whether it is reasonable or not for a school to be responsible for an IDP.</p> <p>Code says local authorities should establish a ‘set of principles’ that could be used to determine where responsibility should lie.</p> <p>WG officials explained it would be difficult to set a national, uniform threshold as LAs’ delegation of SEN funding varies. This is why they are expecting LAs to devise their own</p>	<p>Para 9.2</p> <p>Para 9.19</p> <p>Para 9.44, 10.42</p> <p>Para 9.45</p> <p>WG Technical briefing, 30</p>
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approach. However, this could be done on a regional basis.

January 2019

### Summary of stakeholders' views

There was general consensus that this still **requires more clarity and guidance** within the Code. SNAP and CIW referred to incorrect messages from some local authorities that there is a distinction between a 'statutory IDP' and 'non statutory IDP', and between a 'funded IDP' and a 'non funded' IDP. The WLGA acknowledged there is some confusion out there.

NDCS predicted that the provision for local authorities to establish a set of principles which they will use to decide whether a school or the authority should have responsibility for an IDP, will be 'different everywhere' and 'end up in a postcode lottery'. The WLGA suggested that **local authorities themselves are not in favour of this and would prefer for the Code to define these principles**, albeit for more specific application at a local level:

*"I must say, local authority officers were really not happy about this, because they were worried, there's a concern, that, as you say, individual authorities might go away and develop their own principles, which would not be legal, which would be challengeable at tribunal, and they don't want that. So, they did say perhaps the code should define these principles, which may be taken away, and kind of—you know, locally, they might be—. But at least—you know, broadly speaking, they would be defined in the code. Welsh Government's response was, 'If you think this won't work in practice, then you need to tell us what you think will.'"*

The **different levels of delegation of SEN funding** were mentioned, with an inference that this would have to be taken into account if defining an all-Wales set of principles or criteria.

The WLGA highlighted the particular difficulties the might be in determining responsibility for an IDP between a local authority and an FEI:

*"Well, I think our biggest issue would be that it's the school, local authority responsibility of the IDP thing, the where, who, how is that decided, how is that going to work, and even more so actually between local authorities and FEIs. Because we've said all along that **local authorities have no responsibility for FEIs**, they have no funding for the post-16 learners attending FEIs, they have **no control over FEIs** and, as you say, we have now this potentially slightly bureaucratic system where local authorities will have to go to Welsh Government Ministers to ask them to tell an FEI to take back an IDP. Potentially, all those decisions are appealable."*

The Welsh Government has powers to make regulations about transferring an IDP from a local authority under 37 of the ALN Act and intervention powers under section 57 of the Further and Higher Education Act 1992. In its response to



	<p>recommendation 8 of the Committee’s Stage 1 report, the Welsh Government said that, in the context of ALN, this could apply to instances where an FEI fail to meet its duties under the ALN Act or was acting unreasonably with respect to its duties under the Act.</p>			
	<p><b>Committee Response (Responsibility for IDPs)</b></p> <p>The Committee welcomes the guidance in the Code about where responsibility for IDPs lies (between LAs and school governing bodies). However, there was general consensus across the working group that greater clarity and guidance on this was still required within the Code.</p> <p>In particular – the Committee agrees with concerns that provision for local authorities to establish a set of principles, which they will use to decide whether a school or the authority should have responsibility for an IDP, will end up with significant variation in practice across each local authority. We believe the Code itself should define the set of principles local authorities should use when deciding whether they, as opposed to a school, take responsibility for an IDP. (In making this recommendation we acknowledge that such an all-Wales set of principles would need to take into account that local authorities have different arrangements for delegating SEN/ALN funding.)</p> <p>The Committee is concerned that there is very real potential for deadlock in cases where an FEI does not take responsibility for assessing a learner and any subsequent provision, and the local authority has no power to direct an FEI in the same way it has in regard to a school. We believe that the Code should set out how Welsh Government would use the powers it has available to ensure there is no such impasse caused by disagreements between local authorities and FEIs over who should take responsibility for an IDP.</p>			
<p><b>Discussion area 7: Use of Educational Psychologists</b></p>				
<p><b>7A) Use of Educational Psychologists</b></p>	<p>Code to set out the mechanics of Educational Psychologists’ role in the new ALN system, including where cases are referred by schools to LAs.</p>	<p>WG accepted Rec. 11, CYPE Stage 1 report.</p>	<p>Referred to a number of times in the draft Code. They have a role in assessment, identifying necessary provision, advising on responsibility between schools and LAs for IDPs.</p> <p>Specifically tasked with advising on:</p> <ul style="list-style-type: none"> <li>▪ “the educational, psychological or other features of the case which appear to be</li> </ul>	<p>Paras 8.9, 9.55, 11.5, 12.9</p>

			<p>relevant to the child’s educational needs (including their likely future needs);</p> <ul style="list-style-type: none"> <li>▪ how those features could affect the child’s educational needs; and</li> <li>▪ the provision which may be appropriate for the child in light of those features of their case, whether by way of ALP or other provision.</li> </ul> <p>Also listed as one of the people an LA must consult when keeping its ALN provision under review.</p>	<p>Para 5.14</p>
<p><b>Summary of stakeholders’ views</b></p> <p>The Association of Educational Psychologists (AEP) said that, while educational psychologists (EPs) have an important role to play in assessment and identifying what provision might be necessary, their <b>involvement should be proportionate</b> to the level of ALN:</p> <p><i>“EPs will only be involved in a certain number of IDPs. We wouldn’t be involved in those that, I suppose, currently would be at school action, or we won’t be involved, certainly, in a lot of those. We would certainly be involved where a child has much more complex needs or where our advice is needed to perhaps clarify for the school where they should go.” (...)</i></p> <p>Referring to the likely greater involvement for EPs with FEIs, the AEP alluded that there will be capacity issues, which the WLGA agreed <b>could potentially log jam the system if there is an overreliance</b> on referring to or consulting an EP. The AEW said:</p> <p><i>“One of my concerns would be the role now with FEIs because we haven’t been so involved, but I can see that that’s going to be a growing demand on our services, and do we have the capacity to deal with that? Right now, we’re being faced with—in certain areas, where there’s been restructuring, ed psych posts have been lost, and that is a major concern, a capacity issue.”</i></p> <p>The WLGA added:</p> <p><i>“I think we’d agree that there’s an overreliance on referring something to or consulting an ed psych before you do something, not least because, as you say, they’re fairly thin on the ground. (...)</i></p>				

*We would probably **query whether it is necessary for all these ‘must consult an ed psych before doing something’ are necessary and appropriate. (...)***

*The **focus needs to be on, as you say, where it is necessary** for an ed psych to be involved in developing the IDP. That’s the key thing, really. There may be other consultations, possibly, that you might need to have before a school referred or asked a local authority to reconsider, or an FEI did, but it may not necessarily need an ed psych.”*

The draft Code says that a school or FEI should consult or must consider consulting an EP, whereas if a local authority is considering a case, it must do so. This is likely to be because cases referred for a local authority’s consideration are likely to be more complex and/or severe. The AEP explained that **‘consult’ would not necessarily mean an EP undertaking a full assessment** in each case:

*“But the word is ‘consult’, and if there’s been prior involvement at whatever level—and usually we do know of the children with the higher level of need—often when we’re going into schools, teachers will ask us about other children as well, perhaps in a more informal way. So, we’ve usually got a good idea of what is happening. But, as I say, when they say that the local authority must consult, to me that would mean getting—you know, we would have certain information, not necessarily that we’ve always got to go out there and do a full assessment, which obviously is time-consuming. Because we could look at what the school’s providing and what other agencies are providing and come to some kind of conclusion based on that kind of information as well as talking to parents and the child.”*

#### **Committee Response (Use of educational psychologists)**

The Committee welcomes the detail in the Code that sets out the mechanics of the educational psychologist role in the new ALN system, including where cases are referred by schools to LAs. The Committee agrees with views expressed that educational psychologists have an important role to play in assessment and identifying what provision might be necessary, but their involvement should be proportionate to the level of ALN. However, the Committee believes the draft Code strikes the right level of input and involvement of educational psychologists.

While this may not be a matter for the Code itself, the Committee is concerned about the availability of educational psychologists, and their capacity to meet any heightened demand should the implications of the Act (and the Code) increase referral to educational psychologists. We urge the Welsh Government to ensure there is appropriate workforce and capacity planning with regard to educational psychologists, as indeed should be the case for any relevant professionals who will have a role in the new system.

The Committee would also like to highlight the view of the Association of Educational Psychologists that in relation to the Code 'consult' would not necessarily mean an educational psychologist undertaking a full assessment in each case.

### Discussion area 8: Individual Development Plans (including transport)

<p><b>8A) Timescales for assessments and IDPs</b></p>	<p>Act requires the Code to stipulate timescales for undertaking assessments and preparing IDPs.</p>	<p>WG accepted Rec. 5, CYPE Stage 1 report.  Bill amended at Stage 2.</p>	<p>Code sets 12 week window for the LA to decide and notify whether learner has ALN from it being brought to their attention and prepare any resultant IDP.</p> <p>For schools, there is a timescale of 35 school days.</p> <p>A NHS body has six weeks from the point of referral to comply with its duty to consider if there is a relevant treatment of service that is likely to be of benefit.</p> <p>(A general exception to these timescales applies when they are impractical or there are circumstances outside their control. However, relevant persons must still act 'promptly'.)</p>	<p>Para 8.16, 8.28</p> <p>Para 9.14, 9.24</p> <p>Para 15.31</p> <p>Paras 1.33 to 1.35</p>
<p><b>Summary of stakeholders' views</b></p> <p>Several stakeholders (NDCS, SNAP, WLGA) felt that the Code should <b>show the timescales more clearly</b>, for example in a diagram, table or incorporated into the flowcharts already in the draft Code.</p> <p>There was also some concern from NDCS and SNAP that the <b>general exception</b> whereby governing bodies, local authorities or health boards could exempt themselves from the timescales might be used as a <b>'get out clause'</b>. (Note that the draft Code still requires them to act "promptly" even where the exceptions apply.)</p> <p>The WLGA did not have a specific view on the timescales but said that local authorities would probably argue they were <b>too short</b>. The 12 week timescale from the point of being made aware of the possibility that a learner has ALN to the completion of an IDP is significantly shorter than the 26 week period at present.</p>				

	<p>The Royal College of Speech and Language Therapists (RCSLT) said, where they had had some prior involvement with the child, <b>NHS bodies would usually be able to comply</b> within the 6 week period that they are afforded, but that this may take <b>longer if it was a completely new case to them</b>. They referred to an NHS referral to treatment target of 14 week which would have to be met in any case. In their written comments, the RCSLT indicated that the NHS’ obligations to the general population and to ‘care for those with the greatest need first’, as well as other Welsh Government targets, may result in the 6 week period <b>not being met in some cases</b>.</p> <p>The WLGA highlighted that if an NHS body took up 6 weeks of the total 12 week period, then this would leave little time for local authorities.</p> <p>SNAP said that <b>families would be very happy</b> with the shorter timescales, although acknowledged that <b>schools</b> (who have 35 school days) were <b>concerned</b> about being able to comply.</p>			
	<p><b>Committee Response (Timescales for assessments and IDPs)</b></p> <p>The Code clearly sets timescales for undertaking assessments and preparing IDPs, but the Committee agrees with views expressed that the Code should show the timescales more clearly, and visually show the applicable timescales, for example in a diagram, table or flowchart. Clear, easy to access information on the timescales is imperative.</p> <p>The Committee welcomes the aspirations of setting shorter timescales for the new ALN system, compared with the SEN system at present. The Committee is also satisfied with the ‘exceptions’ as articulated within the Code, together with the duty to act promptly. However, the Committee has some concerns that if the shorter timescales are not realistic and deliverable, this could lead to the exceptions being used more excessively.</p> <p>Shorter timescales are certainly welcome but only if they can be consistently relied upon. The Committee would therefore welcome the Government’s rationale for setting the timescales, and assurances on their deliverability and for this to be included in the Code as a guide.</p>			
<p><b>8B) IDP Template</b></p>	<p>The Code should provide a mandatory template for IDPs.</p>	<p>WG accepted Rec. 12, CYPE Stage 1 report.</p> <p>Bill amended at Stage 2.</p>	<p>Code provides mandatory template.</p> <p>Also a mandatory template for LAC IDP.</p> <p>Non-mandatory template for NHS contribution to IDP</p>	<p>Para 13.6, Annex A</p> <p>Annex B</p> <p>Para 15.33, Annex C</p>

	<p><b>Summary of stakeholders' views</b></p> <p>Stakeholders are generally happy that the draft Code includes a template for the IDP, in line with an amendment to the Bill during its passage.</p> <p>However, <b>NDCS would like to see</b> the template:</p> <ul style="list-style-type: none"> <li>• include contact details or relevant staff;</li> <li>• Prevent against the use of vague descriptions of provision entitlements;</li> <li>• Reference to transport and accommodation;</li> <li>• Some guidance within the template itself</li> <li>• Make obvious that the text boxes are expandable and users of the template can include as much content as necessary.</li> </ul> <p>NDCS were also concerned that Annex C, the form for health professionals, does not encourage them to outline any support which they believe is likely to be of benefit but they are unwilling to fund, nor to explain why a decision has been made not to provide health support.</p>			
	<p><b>Committee Response (IDP template)</b></p> <p>The Committee welcomes that the Code provides a mandatory IDP template, a mandatory template for LAC IDP, and also a non-mandatory template for NHS contribution to IDP. However, the Committee calls on the Welsh Government to consider if the templates could be strengthened by the additional information as set out in the summary of stakeholder views. We believe there is particular merit in requiring health bodies to include detail of any support that is likely to be of benefit but they are unable or unwilling to fund, as well as an explanation why they have decided not to offer any provision.</p>			
<p><b>8C) Transport</b></p>	<p>Code to consider how travel needs can be incorporated into IDPs. WG said it would explore how the Code could make the necessary links between the two.</p> <p>Cabinet Secretary, Kirsty Williams, committed in writing and confirmed in Plenary (November</p>	<p>WG accepted Rec. 13, CYPE Stage 1 report.</p> <p>Correspondence 17 Nov 2017 and WG resistance to</p>	<p>Code states that an IDP <u>may</u> include additional sections to mandatory sections in the IDP “for example transport”.</p> <p>Quote: “Those preparing or maintaining IDPs for children or young people might find it helpful to record in an additional section of the IDP any arrangements for the child’s or young person’s travel between their home and the</p>	<p>Para 13.8</p> <p>Para 13.74</p>

	<p>2017) “to make the necessary revisions to the learner travel guidance and to include, within the ALN code, an appropriate degree of guidance on the place of transport considerations within IDPs, including the process of producing them”.</p>	<p>amendment 80 at Stage 2 and amendment 54 at Stage 3.</p>	<p>education institution. This may be particularly helpful in some cases, for example, if it informs the delivery of ALP.”</p> <p>Code also states that when preparing an IDP, travel arrangements “might need to be considered”. It refers to the Learner Travel (Wales) Measure 2008 and says that, if so, this should be discussed with the LA’s transport officers.</p> <p>WG officials explained that the Code only gives guidance on functions under the ALN Act and not on other legislation such as the Learner Travel Measure.</p> <p>The consultation document sets out how the WG proposes to revise the Learner Travel Guidance to require that, when LAs assess learners’ travel needs in order to consider providing free or assisted travel, they must have regard to whether they have disabilities or learning difficulties The consultation asks whether this is sufficient.</p>	<p>Para 13.76</p> <p>WG Technical briefing, 30 January 2019</p> <p>Paras 1.60 to 1.68, WG consultation document</p>
<p><b>Summary of stakeholders’ views</b></p> <p>NDCS and SNAP both argued that the Code should do more to ensure transport is considered and provided for, where necessary, in IDPs. NDCS said:</p> <p><i>“This does absolutely nothing to allay the concerns that we had. ‘May’ include additional research—it’s so weak. As far as I can see, if you say, ‘This child cannot access their local school because the provision isn’t adequate, and therefore we have to send them for this specialist provision a couple of local authorities over’, then transport has got to be a part of that, because otherwise you can’t get to the provision. So I have no idea—. It infuriates me, to be honest, as to why it’s not more firmly in the code.”</i></p>				

	<p>The Welsh Government says in its consultation document that it will <b>consult on changes to the <i>Learner Travel Statutory Provision and Operational Guidance (2014)</i></b> ‘in due course’. The intended changes outlined only advise that local authorities <u>may</u> use their <u>discretionary</u> powers, although they <u>must</u> have regard to the needs of learners with learning difficulties.</p> <p>NDCS point out in their written comments that this review/consultation has not yet taken place and that at present there is no statutory duty in the Learner Travel guidance on local authorities to provide free transport for post-16 learners with ALN.</p>			
	<p><b>Committee Response (Transport in IDPs)</b></p> <p>The Committee is pleased that the Code states that an IDP may include additional sections to the mandatory sections in the IDP “for example transport”. However, the Committee agreed with concerns raised that the Code should do more to ensure transport is considered and provided for, where necessary, in IDPs. The Committee therefore believes that the Code should make more concrete, definitive references to transport and that the final version incorporate any enhancements arising from the forthcoming consultation on the revised Learner Travel guidance.</p>			
<p><b>8D) Interim support while IDP being prepared</b></p>	<p>Section 47(3), inserted into the Act during its passage, requires the Code to include guidance on how to meet learners’ ALN in the meantime while an IDP is being prepared for them.</p>	<p>WG accepted amendment 61 at Stage 3.</p>	<p>Quote: “If a pupil at a maintained school in Wales has ALN but an IDP is not being maintained for them, the school must, in exercising its functions in relation to the school, take all reasonable steps to secure that the ALP called for by the pupil’s ALN is made.</p>	<p>Paras 9.27 to 9.33</p> <p>Paras 10.26 to 10.31 (for FE)</p>
	<p><b>Summary of stakeholders’ views</b></p> <p>No concerns raised.</p>			
	<p><b>Committee Response (Interim support while IDP being prepared)</b></p> <p>The Committee is satisfied that the Code includes guidance on how to meet learners’ ALN in the meantime while an IDP is being prepared for them – as required by the Act. No changes are needed to the Code in this regard.</p>			



## Discussion area 9: Proportionality of ALN duties

<p>9A) Proportionality of ALN duties</p>	<p>Code to provide for proportionality where a learner is only enrolled on a course of very little intensity in the way that the duties on an FEI or local authority apply in such cases.</p> <p>The Minister, Alun Davies, said it would not be right “to allow governing bodies to make a subjective judgement that effectively denied a learner their right to receive a statutory IDP and the provision it would set out”. However, he added that the Code would clarify the issue of proportionality.</p>	<p>When resisting amendment 81 at Stage 2.</p>	<p>The Code <b>does not directly address this</b>, although states:</p> <p>“The local authority, when considering the young person’s reasonable needs for education and training and for ALP, may take into account the compatibility of alternative options with the avoidance of unreasonable public expenditure.”</p> <p>The Code also discusses FEIs’ duties to take all reasonable steps to secure ALP for a student with ALN but without an IDP.</p> <p>WG officials explained during the technical briefing that this would apply where a learner was enrolled on a course of limited duration/intensity and it is not practical (or indeed necessary) to complete the full IDP process in order to satisfy the requirement to take all reasonable steps.</p>	<p>Para 12.36</p> <p>Paras 10.26 to 10.31</p>
<p><b>Summary of stakeholders’ views</b></p> <p>NDCS and CIW were concerned that any reference in the Code about duties only being proportionate may provide FEIs with too much of an exemption. Therefore, stakeholders were <b>not particularly concerned</b> that the issue of proportionality is not directly addressed in the draft Code. The Welsh Government’s approach appears to be that any issue regarding proportionality can be <b>covered by the reasonable steps duty</b> under section 47 of the Act and paragraphs 10.26 to 10.31 of the Code.</p> <p>For NDCS and CIW, the issue is more one of ensuring that the appropriate links are made with anticipatory duties to make reasonable adjustments and the <b>Equality Act 2010</b>.</p>				

	<p><b>Committee Response (Proportionality of ALN duties)</b></p> <p>The Committee notes that the Code does not directly provide for proportionality where a learner is only enrolled on a course of very little intensity in the way that the duties on an FEI or local authority apply in such cases. We do, however, welcome the reference to this in paragraph 12.36, and are satisfied that the duty on FEIs to take all reasonable steps to secure the necessary provision for a student who may have ALN but does not have an IDP, enables proportionality in the way FEIs fulfil their duties.</p> <p>Linked to the above, we also agree with the view that the Code should make appropriate links with the duties/obligations of FOIs to make reasonable adjustments under the Equality Act 2010.</p>			
<p><b>Discussion area 10: Health Boards</b></p>				
<p><b>10A) Health board roles</b></p>	<p>Code to provide clarity on the Designated Education Clinical Lead Officer (DECLO) and health co-ordinator roles within each healthn board.</p>	<p>WG accepted Recs. 23 and 24, CYPE Stage 1 report.</p>	<p>Code provides relatively detailed overview of the DECLO role but <b>not on the second ‘health co-ordinator’</b> role, the concept of which the Welsh Government introduced during scrutiny of the Bill and included within the Explanatory Memorandum to the final version of the Bill as passed.</p> <p>The Welsh Government’s express intention was that the DECLO would operate at a senior, strategic level and that day to day functions would be undertaken by a ‘health co-ordinator’. However, this role <b>does not appear to be discussed</b> in the draft Code.</p> <p>WG officials explained following the technical briefing that the second ‘health co-ordinator’ role had been explored as a possible means for health boards to support the DECLO role but it was never adopted as a requirement. WG and stakeholders have since discounted the option,</p>	<p>Paras 15.37 to 15.53</p> <p>WG Technical briefing, 30 January 2019</p>

			or at least are not minded to recommend it within the Code.	
	<p><b>Summary of stakeholders' views</b></p> <p>The Royal College of Speech and Language Therapists explained that the health boards' fulfilment of their duties will be co-ordinated by the DECLO, who has the strategic role established by the Act. It was therefore <b>agreed</b> that, how exactly health boards manage that, whether through a second health co-ordinator role or not, is an <b>operational matter</b> for them.</p>			
	<p><b>Committee Response (Health board roles)</b></p> <p>The Committee is satisfied that the Code provides a relatively detailed overview of the DECLO role but notes that the Code does not appear to contain any detail on the second 'health co-ordinator' role discussed by the Welsh Government during the passage of the Bill. The Committee assumes therefore that there has been a shift away from the second health co-ordinator approach, between the final Explanatory Memorandum to the Act (November 2017) and the draft Code (December 2018).</p> <p>Although the Code does provide details of the DECLO role, it is vital that the Code provides sufficient and appropriate guidance on how health boards can ensure that the DECLO is adequately supported and is able to focus on the strategic nature of the role and is not unduly encumbered by day to day administrative tasks.</p>			
<b>10B) Timescale for providing information and help</b>	Code to set a timescale by which bodies (such as health boards) must comply with a request from an LA for information or other help.	In rejecting Rec. 8 of the CLA Committee at Stage 1, the WG committee said that the Code, rather than the face of the Act, was the best place to specify timescales.	Code states that a relevant person under the Act must comply with a local authority's request for information or other help within 6 weeks unless due to circumstances beyond their control.	Para 15.12

	<p><b>Summary of stakeholders' views</b></p> <p>The Royal College of Speech and Language Therapists said it did not have additional comments to those made under discussion area 8 on the timescales for IDPs. These were that for children and young people whom a health board already knew about, it would probably be able to <b>comply within the six weeks but for others it would take longer</b> (although there is a 14 week referral to treatment target in the NHS).</p> <p>The RCSLT's written evidence expands on their comments that there are several reasons why health bodies may not be able to comply with the 6 week timescale.</p> <p><b>Committee Response (Timescale for providing information and help)</b></p> <p>The Committee welcomes that the Code does set a timescale by which bodies (such as health boards) must comply with a request from an LA for information or other help. However, as with the Committee's response to timescales in section 8, the Committee is concerned that if the timescales are not realistic and deliverable, for example where the NHS does not already have any information or involvement about a learner, this could lead to the exceptions being excessively used.</p> <p>The Committee would therefore welcome the Government's rationale for setting the timescales, and assurances they are deliverable and for this to be included in the Code as a guide.</p>
<p><b>10C) Section 20 duty</b> (not directly related to a WG undertaking but included here as relevant to this discussion area)</p>	<p>This issue does not relate to a specific undertaking given by the Welsh Government during the passage of the Bill, although arose during this discussion area. Under section 20 of the Act, NHS bodies have a duty to consider if there is a <u>'relevant treatment or service that is 'likely to be of benefit'</u> in addressing the learner's ALN. If so, they must secure that treatment or service for the learner.</p> <p><b>Summary of stakeholders' evidence</b></p> <p>The Royal College of Speech and Language Therapists (RCSLT) discussed various wording used by the draft Code in interpreting the phrase <u>'relevant treatment or service that is 'likely to be of benefit'</u>. RCSLT cited the references in the draft Code (paras 1.66 and 15.24) to something 'normally provided' by the NHS as well as the reference to 'evidence-based recommendations on effective interventions' in paragraph 15.46.</p> <p>The RCSLT said they preferred these interpretations of how health bodies would assess what provision should be made to 'likely to be of benefit' which is the <b>term used in the Act</b>. They said without this qualification, <b>'likely to be of benefit'</b> "would be huge and may involve things that would, could and should not be provided by the NHS".</p>

	<p>(This is addressed by the other part of the definition in section 20 of the Act – ‘relevant treatment or service’. The draft Code (para 15.25) states this means something “an NHS body would normally provide as part of the comprehensive health service in Wales”.)</p> <p>The RCSLT state in their written comments that <b>principles of prudent health care</b> require health professionals to base their decisions on ‘<b>clinical need</b>’ not on ‘likely benefit’. ‘Clinical need’ balances positive change outcomes for a patient with resource implication and cost. The Code cannot change the wording of section 20 of the Act, although it can give guidance on how it is interpreted. The RCSLT would prefer an interpretation along the lines of clinical need and would also welcome use of the term ‘evidence-based’. This was discussed with the then Minister during Stage 1 who said that use of the term clinical need was not needed in the Bill as this is already inherent in NHS decision-making.</p> <p>SNAP came from a different perspective to RCSLT, arguing that the draft Code should focus on the learner’s individual needs rather than simply what is normally provided:</p> <p><i>“When we’re talking about low-instance but high-impact things where we don’t normally provide a service within this authority or this health board, it could be that that’s provided elsewhere. So, I think you can’t just have ‘normally provide’, because there are always exceptions. Children are always individuals with individual needs, and education law looks at the child as an individual in context and says, actually, that ‘normally provided’—people can provide beyond that. It’s not good enough that it’s ‘normally provided’ or ‘it’s our policy’; they need to be looking at that individual child and providing exceptions.”</i></p> <p>The RCSLT pointed to the significance of taking evidence-based decisions, which would account for the individual nature of cases:</p> <p><i>“You can read about something that’s been amazing for one person in one case, and is that something that’s the duty to be provided by the NHS? That’s the question, isn’t it? So, then it would be what’s normally provided, and obviously we’re trying to ensure that everything that we provide is evidence-based, which fits in with the intended outcomes, because what we want to say is: there’s an evidence base that says that the outcome that we want to achieve is going to be achieved by this intervention.”</i></p>
	<p><b>Committee Response (Section 20 duty)</b></p> <p>This issue did not relate to a specific undertaking given by the Welsh Government during the passage of the Bill, but concerns were expressed during the working group’s considerations relating to Section 20 of the Act, where NHS bodies have a duty to consider if there is a relevant treatment or service that is ‘likely to be of benefit’ in addressing the learner’s ALN. If so, they must secure that treatment or service for the learner. The specific concerns are highlighted in the</p>

	stakeholders views section above. In considering this, the Committee is satisfied that the Code provides sufficient detail on how a ‘relevant treatment or service that is likely to be of benefit’ is interpreted and applied. However, we draw the Welsh Government’s attention to the concerns raised so they can form part of its consideration of the draft Code.
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**Discussion 11: Welsh Language Provision**

<b>11A) Eleventh aim: Bilingual services</b>	The legislation to adopt the delivery of bilingual ALN services as an eleventh core aim, in addition to the ten core aims set out in the EM to the Bill as introduced.	WG accepted Rec. 36, CYPE Stage 1 report.	<p>The EM to the Act as passed includes ‘A bilingual system’ as an eleventh aim for the legislation and new ALN system (para 3.17).</p> <p>The Code adopts as one of its principles:</p> <p>“A bilingual system where all reasonable steps are taken to deliver ALP in Welsh for children and young people who require support through the medium of Welsh, with scope for increasing the delivery of ALP in Welsh over time.”</p> <p>There is <b>no dedicated chapter</b> within the Code to how Welsh-medium ALN services should be provided. The approach appears to be one of seeking to integrate guidance in this regard into the respective chapters.</p>	<p>Para 3.17, EM</p> <p>Para 2.2 Draft Code</p>
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**Summary of stakeholders’ views**

The **Welsh Language Commissioner’s Office (WLCO)** were unable to attend the Working Group meeting on 13 February 2019. However, they have **submitted written comments** against of the three issues in this discussion area.

The WLCO highlight paragraphs 2.24, 2.25 and 2.26 which outline the requirements in terms of the Welsh language and elaborate on the principle set out at paragraph 2.2.

The WLCO believes that several aspects of the draft Code could be improved but do not give a firm view whether this would be best served by a dedicated chapter within the Code. However, they say that [good practice guidance, produced](#)

[in 2007 and endorsed by the Royal College of Language Therapists](#), for speech and language therapists when working with clients wishing to use minority languages could inform such enhancements of the Code. The Royal College of Speech and Language Therapists later confirmed that it is currently looking to revise this document and develop a version specifically available for the Welsh bilingual context.

The Royal College of Speech and Language Therapists commented on the importance of conducting assessments in the child or young person's first language. In relation to languages other than Welsh and English the Royal College said:

"Absolutely, and the assessments can be a problem, but we book interpreters from a speech and language therapy perspective, and have those in on the assessments. It's a challenge, there's no doubt about it, but yes, absolutely."

The Royal College confirmed later that it would endeavour to provide assessments by Welsh speaking therapists for Welsh-speaking children and young people. An interpreter for Welsh language assessments would be very much the last resort.

The Children's Commissioner's Office suggested that interpreters could be used while the workforce is being developed if capacity is an issue. On this specific point, the Welsh Language Commissioner's Office (in a further written submission) said that it should be made clear that the use of interpreters is not the preferred option – i.e. that the aim should be to have staff with adequate Welsh language ability so that it is not necessary to rely on interpreters. They acknowledged that in the absence of staff with Welsh language skills that this may be necessary – but it is a significant intervention and should be avoided if possible.

**Committee Response (Eleventh aim: Bilingual services)**

The Committee welcomes that the Code has adopted as one of its principles "A bilingual system where all reasonable steps are taken to deliver ALP in Welsh for children and young people who require support through the medium of Welsh, with scope for increasing the delivery of ALP in Welsh over time".

However, the Committee agrees with views expressed that the Code should be clearer on Welsh language provision, and believe it should include a specific chapter containing in one place the guidance on delivering the ALN system through the medium of Welsh.

As suggested by the Welsh Language Commissioner, the Committee also believes that the Welsh Government should consider drawing on the Royal College of Language Therapists' 2007 guidance on minority linguistics (and the revised version being developed when available) to see how it can help improve relevant aspects of the draft Code.

The Committee agrees that the Code should refer to the use of interpreters to facilitate face to face meetings between providers and relevant bodies and learners and their families in their first language. We also agree with the Welsh

	<p>Language Commissioner’s Office and Royal College of Speech and Language Therapists that, if included, the Code should make clear that the use of Welsh language interpreters is not the preferred option – with the aim being to have staff with adequate Welsh Language ability so that it is not necessary to rely on interpreters. While this was raised with the Committee in the context of discussions on the eleventh aim, this could apply more generally to all aspects of the ALN process (see also discussion points 11B, 11C and 11D).</p>			
<p><b>11B) Decisions over ALP in Welsh</b></p>	<p>Code to provide further guidance on what reasonable steps governing bodies, LAs and health boards must take to provide services in Welsh with regard to the learner’s wishes.</p>	<p>When rejecting Rec 33, CYPE Stage 1 report, which called for amendments to the Bill to place a presumption on services being provided in Welsh where this is requested.</p>	<p>The Code, states, in the context of defining mandatory content of an IDP:</p> <p>“A body preparing, maintaining or reconsidering an IDP has a duty to consider whether ALP should be provided in Welsh and if it decides that it should, this must be specified in the IDP and the body maintaining the IDP then has a duty to take all reasonable steps to secure that the ALP is provided in Welsh.”</p> <p>In its guidance on duties on health bodies, the Code states:</p> <p>“If the NHS body identifies such a treatment or service it must:</p> <ul style="list-style-type: none"> <li>▪ decide whether the treatment or service should be provided to the child or young person in Welsh; and</li> <li>▪ take all reasonable steps to secure that the treatment or service is provided in Welsh, if it decides that the treatment or service should be provided to the child or young person in Welsh.”</li> </ul>	<p>Para 13.40</p> <p>Para 15.28</p>



### Summary of Welsh Language Commissioner's views

The WLCO highlights that ALN is “an area where making provision in accordance with the language needs of individuals is absolutely critical to the quality and effectiveness of the provision itself”.

The WLCO refer to the paragraph in each of the chapters regarding duties on local authorities (paras 8.22 and 8.33), schools (para 9.21 and 9.36) and FEIs (para 10.20 and 10.34). The duties, which are founded in the Act, are that relevant bodies must consider whether ALP should be provided in Welsh; if they decide that it should, they must specify that in the IDP; and they must take all reasonable steps to secure that the ALP is provided in Welsh.

The WLCO raise **three issues** in this context:

1) The WLCO believe the Code should provide further clarification regarding **who makes the decision** whether ALP should be provided in Welsh and **on what information they base that decision** on. The WLCO highlights:

*“Neither the Act nor the Code offers instruction to relevant bodies on how to decide upon the language of provision and there is no advice on what should be considered in making such a decision. In making such judgements, it is possible that factors such as the language spoken at home, the medium of education or childcare, and, in the case of very young children, the medium of education which the parents have chosen for the child, should be considered.”*

2) The WLCO reiterate their position that the Act should have stated where it is decided that ALP should be made through the medium of Welsh, providers should have an absolute duty to secure this rather than a “conditional duty”, as the WLCO describe the ‘all reasonable steps’ test. They call for the Code to provide **more guidance on what constitutes ‘reasonable steps’**, and point to undertakings given by the then Minister when resisting relevant recommendations and amendments.

The WLCO write:

*“The problem with this conditional duty is that the relevant bodies are free to interpret what constitutes ‘reasonable steps’ and thus it’s conceivable that some would construe ‘reasonableness’ in terms of their existing capacity to provide through the medium of Welsh. We do not consider it acceptable that those bodies who are under a statutory obligation to ‘take all reasonable steps’ are themselves responsible for deciding whether they have complied with this duty or not.”*

Whilst the WLCO accept that making Welsh-medium ALP may be difficult in some parts of Wales, they believe that setting high expectations through legislation is what drives change. The issue of how to ‘future proof’ the Act and raise the requirements for Welsh-medium provision in accordance with the development of workforce capacity was discussed during debate over amendments during the passage of the Bill. The prevailing position was a Welsh Government amendment to the Bill so that section 89 of the Act requires the Welsh Ministers to arrange a review of the sufficiency of Welsh-medium ALP, publishing reports on the outcomes of these reviews every five years. The draft Code (paragraph 5.6)

indicates that section 63 of the Act, which obliges local authorities to consider the sufficiency of Welsh-medium ALP and workforce capacity as part of its duty to keep ALP under review, will enable the Welsh Ministers to monitor the 'all reasonable steps' clause.

The WLCO acknowledges that the Act "aims to set high expectations ... but not to the extent that it becomes unrealistic". Their understanding is that the **long term intention is to remove the 'all reasonable steps' fallback and move towards a fully bilingual ALN system.** However, the WLCO wish to see "clear guidance in the Code regarding the meaning of 'all reasonable steps' for the period until that long term aim is realised.

3) Section 70(2) and paragraph 26.5 of the draft Code list the matters about which appeals can be made to the Education Tribunal for Wales. Whether or not an IDP states that ALP should be provided in Welsh is listed, although **failure to take all reasonable steps where this is stated in the IDP is not listed as an appealable matter.** The WLCO write:

*"Neither the Code nor the Act outline a clear and accessible process for making relevant bodies accountable for not complying with their duty. It is not clear what avenues are open to individuals if they feel that the relevant body has not taken reasonable steps to provide ALP through the medium of Welsh. In the absence of a clear and accessible process, providers will be less likely to comply with the duty to take all reasonable steps in the first place."*

As it does not appear possible under the Act to appeal to the Tribunal against a relevant body's failure to take reasonable steps, the WLCO call for the draft Code to explicitly state that alternative means of resolving disagreements, including complaints to the Public Services Ombudsman for Wales, complaints to the Welsh Ministers, or judicial review, can be used to challenge providers of whether they have taken all reasonable steps to make ALP in Welsh.

#### **Summary of other stakeholders' views**

NDCS called for more emphasis to be placed on family choice, while SNAP echoed the WLCO's call for more guidance on what constitutes reasonable steps:

*"I think they could put some **examples of what 'reasonable' might mean.** For example, these cases often come to us, and [say] 'My child doesn't speak English. Why would they have an assessment, already by a stranger, to put them at unease?' When we go back to that local authority, I would expect them to go to their neighbouring authorities if they don't have the provision for that assessment there. I would think it perfectly reasonable for them to purchase that from their neighbouring authority or from within their consortia or, in extremis, from elsewhere. I think that could be put in there as an example of what 'reasonable' would mean. Because 'reasonable' could mean, 'Well we've tried, we've looked, we've asked, but there's no availability. We've made our best efforts, but—'"*

	<p>The WLGA suggested that <b>costs may have a bearing</b> on what is deemed as ‘reasonable steps’:</p> <p><i>“you can’t magic Welsh-speaking provision out of nowhere. ... you would expect authorities to attempt to get, buy in provision, borrow provision or whatever, but again there’s potentially a funding element to that as well. Everybody wants the families and children to be able to choose the language—quite right. However, I’m just saying, in practice, there may be, for some while at least, an issue about the availability of that provision.”</i></p> <p>The Association of Educational Psychologists also highlighted <b>resource and capacity implications</b>, whilst referring to the efforts being made to increase the number of Welsh-speaking educational psychologists.</p>
	<p><b>Committee Response (Decisions over ALP in Welsh)</b></p> <p>During scrutiny of the ALN Bill, the Minister gave the commitment that the Code would provide further guidance on what reasonable steps governing bodies, LAs and health boards must take to provide services in Welsh with regard to the learner’s wishes. Although some detail has been placed in the Code, the Committee agrees with a number of the concerns raised in relation to the detail in the Code. The detail of the specific concerns raised is included in the Stakeholders View section above.</p> <p>The Committee believes that the Code should give greater guidance about the grounds on which providers should make decisions over whether provision should be made in Welsh, and at what level (of seniority or expertise) such decisions are made within organisations.</p> <p>We also believe that the Code should give greater guidance on what is meant by ‘all reasonable steps’, which providers must take when securing that provision is made in Welsh, once this is stated in the IDP. Linked to this, but not necessarily for inclusion in the Code itself, the Welsh Government should clarify whether its long term aim is to develop workforce capacity to the extent to which the ‘all reasonable steps’ fall back can be removed.</p> <p>The Committee also believes that the use of interpreters in this area should be explored. Please refer to the full recommendation on this issue in discussion point 11A.</p> <p>The Committee is concerned that, while learners and their families can appeal to the Tribunal if their IDP does not state that ALP should be through the medium of Welsh, where the IDP does state ALP should be in Welsh whether or not a relevant body has taken all reasonable steps to secure that ALP is not appealable to the Tribunal. This appears to be an anomaly or loophole in the Act. We therefore believe that the Code should make clear what options are available to learners/families wishing to challenge what they regard as a failure to take all reasonable steps in this regard.</p>

<p><b>11C) Advocacy services in Welsh</b></p>	<p>Cabinet Secretary, Kirsty Williams, said the Code will provide guidance over local authorities' responsibilities to ensure advocacy services are available in Welsh where requested.</p>	<p>When resisting amendment 66 at Stage 3 which would have meant that any advocacy services should 'normally' be provided in Welsh where requested.</p>	<p>This is <b>not covered</b> in chapter 25, which is the chapter dealing with independent advocacy services. Nor does it appear to be covered elsewhere in the Code.</p>	
<p><b>Summary of stakeholders' views</b></p> <p>The WLCO say that they consistently raised concerns during the Bill's passage regarding the right of individuals to receive advocacy services in Welsh. They refer to the Welsh Government's resistance to amendments and assurances that this would be covered in the Code. They say that, despite this, there is no such guidance in chapter 25 of the draft Code.</p> <p>The WLCO report that the <b>Welsh Government believes the Welsh Language Standards (No. 1) Regulations 2015</b> place an obligation on local authorities to provide advocacy services through the medium of Welsh. The <b>WLCO disagree</b> with the Welsh Government's interpretation as, whilst it is possible that initial arrangements and meetings could be subject to the standards, the advocacy service itself would not be fall under the definition in the legislation.</p>				
<p><b>Committee Response (Advocacy services in Welsh)</b></p> <p>During scrutiny of the Bill, the Cabinet Secretary said the Code would provide guidance over local authorities' responsibilities to ensure advocacy services are available in Welsh where requested. The Committee is therefore disappointed that this does not appear to be covered in the Code.</p> <p>The Committee's notes the concerns from the Welsh Language Commissioner, and agrees that it is not clear whether the Welsh Language Standards (No. 1) Regulations 2015 place an obligation on local authorities to provide advocacy services through the medium of Welsh. We therefore believe the Code should include specific guidance that independent advocacy services should be available in Welsh, as per the commitment made.</p> <p>The Welsh Government should clarify whether this is covered by the Welsh Language Standards and include any appropriate references to these in the Code.</p>				

	<p>The Committee also believes that the use of interpreters when providing advocacy services should be explored. Please refer to the full recommendation on this issue in discussion point 11A.</p>
<p><b>11D) Language medium of assessment for ALN</b></p> <p>(not directly related to a WG undertaking but included here as relevant to this discussion area)</p>	<p>The WLCO raised this issue in its written comments, although it was not the subject of a Welsh Government undertaking given during the passage of the Bill. Paragraph 7.37 of the draft Code lists examples of sources of evidence that could be used to measure a learner’s progress and to inform a decision whether they have ALN. ‘Standardised screening or assessment tools and frameworks’ is one of the examples given.</p> <p><b>Summary of stakeholders’ evidence</b></p> <p>The WLCO report that its internal research and complaints it has received suggests that many of the <b>standardised assessments</b> used to ascertain whether a learner has ALN are <b>not always available in Welsh</b>:</p> <p><i>“Whilst some local authorities have translated the assessments themselves, they were not necessarily validated, which raises significant questions regarding the reliability and validity of those assessments. Many assessments were not available through the medium of Welsh at all, which means some local authorities relied solely on observational assessments. There are also problems in terms of ensuring enough staff have the ability to conduct assessments through the medium of Welsh. It therefore seems that there exists a limited capacity in terms of assessing ALN through the medium of Welsh across Wales. This means that some young Welsh speakers must be assessed in English, which poses a significant risk to the validity and result of those assessments.”</i></p> <p>The WLCO believe that the Code should provide further instruction and share examples of good practice.</p>
	<p><b>Committee Response (Language medium of assessment for ALN)</b></p> <p>Although this was not the subject of a Welsh Government undertaking given during the passage of the Bill, concerns were raised as part of the working group’s consideration of the Code relating to Welsh medium assessment of ALN, including the suggestion from research conducted by the Welsh Language Commissioner’s office that many of the standardised assessments used to ascertain whether a learner has ALN are not always available in Welsh.</p> <p>The Committee is concerned by this and calls for the Code to address this issue by ensuring that assessments are conducted in Welsh where this is the learner’s first language and that any standardised materials used are in Welsh. At a minimum, the Code should qualify that the ‘all reasonable steps’ test applies to assessment as well as to provision.</p> <p>The Committee also believes that the use of interpreters when conducting assessments for ALN should be explored. Please refer to the full recommendation on this issue in discussion point 11A.</p>

## Discussion 12: Additional Learning Provision (ALP) in other languages

<p>12A) ALP in other languages</p>	<p>Code to consider what guidance can be provided on ALP in other languages, for example BSL.</p>	<p>When rejecting Rec. 35, CYPE Stage 1 report, Minister, Alun Davies, said that, rather than an amendment to the Bill, this might be more appropriately dealt with in the Code and he would consider what guidance could be given on this.</p>	<p>Code says that an IDP should state the language of communication with the learner, that this could include British Sign Language (BSL) and that consideration should be given to the need for an interpreter.</p> <p>Appears to relate to language of communication rather than language of provision itself.</p> <p><b>No further references identified.</b></p>	<p>Para 13.15</p>
<p><b>Summary of stakeholders' views</b></p> <p>NDCS do not believe that the draft Code does what the Welsh Government undertook to do:</p> <p><i>"I'm not sure that that paragraph actually addresses the point that was raised, which is for the code to consider what guidance can be provided on ALP in other languages. So, that section relates purely to just recording what the communication need of the child is. It doesn't relate to providing ALP in other languages."</i></p> <p>NDCS would like this section of the Code to also address the <b>communication needs of families as well as the learner</b> themselves in the way that providers and relevant bodies communicate about ALN matters. As NDCS highlighted, it is important that parents and other relevant family members are involved in the process and that their communication needs are met. The Children's Commissioner's Office added that there was a gap throughout the draft Code in support for families to develop their BSL skills in conjunction with their children.</p>				

	<p><b>Committee Response (Additional Learning Provision (ALP) in other languages)</b></p> <p>During scrutiny of the Bill, the Minister stated that it would be appropriate for the Code to consider what guidance could be provided on ALP in other languages, for example BSL. Paragraph 13.15 of the Code says that an IDP should state the language of communication with the learner, that this could include British Sign Language (BSL) and that consideration should be given to the need for an interpreter. But this appears to relate to language of communication rather than language of provision itself.</p> <p>The Committee is disappointed that the Code does not go far enough on this issue, and believes the Code should address the point discussed during the Bill's passage, which related to ALP itself being made in other languages, specifically BSL, in addition to the language of communication with the learner.</p> <p>The Committee also believes the relevant section of the draft Code should include families/parents, as well as the child themselves, in considering whether an interpreter or other forms of communication is needed to support their participation in the ALN process.</p>
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**Discussion 13: Looked After Children aged over 16**

<p><b>13A) LAC aged over 16</b></p>	<p>Cabinet Secretary, Kirsty Williams, said “the Code will be able to contain clear guidance to aid practitioners around the duties and provisions in the Bill for looked after children and young persons to deal with transition from being a looked after child to a young person”.</p>	<p>In resisting amendment 10 at Stage 3, which sought to redefine LAC as under age of 18 for the purposes of the Act, rather than under compulsory school age.  (Children’s Commissioner had concerns on this.)</p>	<p>Code confirms the Act’s definition of a ‘child’ as anyone not over compulsory school age and a ‘young person’ as someone over compulsory school age but under the age of 25.</p> <p>The Code explains that the definition of a looked after child under the ALN Act is narrower than under the Social Services and Well-being (Wales) Act 2014.</p> <p>Where a looked after child with an IDP becomes a young person, i.e. they exceed compulsory school age, the local authority must continue to maintain the IDP – not because they are looked after (section 19) but because they are a young person with ALN (section 14).</p>	<p>Para 1.17</p> <p>Para 1.21 to 1.24.</p> <p>Para 21.6</p>
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	<p><b>Summary of stakeholders' views</b></p> <p>The Children's Commissioner's Office said:</p> <p><i>"Well, we were disappointed that that didn't come through in the Act, and we're aware that we can't change what's in the Act now. So, we're still really considering how we might be able to strengthen the whole provision for looked-after children aged 16 to 18, and it'll form quite a big part of our response. But we're <b>still really considering that issue at the moment.</b>"</i></p> <p>The Children's Commissioner's Office later provided further detail outlining the potential areas their response to Welsh Government would contain, and that this was likely to refer to all looked after children rather than specifically to those aged over 16. No comments were made by other stakeholders.</p>			
	<p><b>Committee Response (Looked after Children aged over 16)</b></p> <p>The definition of Looked After Children was an issue that was considered during the scrutiny of the Bill. While the Committee notes the concerns raised by the Children's Commissioner for Wales, we acknowledge also that the definition is contained within the Act and the Code reflects this definition. The Committee notes that the Children's Commissioner is considering this matter further and that it will be included, alongside any other points regarding looked after children more generally, in her formal response to the Welsh Government consultation. The Committee simply wishes to bring this to the Welsh Government's attention at this stage.</p>			
<p><b>Discussion 14: Advice to young people withholding consent</b></p>				
<p><b>14A) Advice to young people withholding consent</b></p>	<p>Cabinet Secretary, Kirsty Williams, said the Code would ensure that, where a young person did not consent to receiving ALP, that the young person receives all appropriate advice.</p>	<p>When resisting amendments 6, 7 and 8 at Stage 3 that the words 'having been informed of the significance and implications of their decision' be added to the</p>	<p>The Code states that the duty in section 6 of the Act to offer information and advice applies to enable young people to make informed decisions about consent.</p> <p>"The young person should be provided with appropriate support, including information that enables them to make informed decisions. This includes information which explains their rights, the consequences of having an IDP or not having one and that they can change their minds at any time."</p>	<p>Para 3.18</p>



		relevant sections of the Act.	<p>Code also states:</p> <p>“Where the young person does not consent to the decision being taken, this must be recorded. Local authorities should have appropriate procedures in place to facilitate this, which might include the young person signing to confirm that they are withholding consent.”</p>	Para 12.7
<p><b>Summary of stakeholders’ views</b></p> <p>Stakeholders felt this aspect of the Code could be strengthened. The Children’s Commissioner’s Office said that providers and relevant bodies <b>should have to be more proactive in advising young people</b>, rather than just relying on them changing their mind about consent:</p> <p><i>“At the moment, it says that young people should be made aware that they can change their minds, but is there maybe a bit more of a duty to revisit this and have a mechanism to enable young people to change their minds?”</i></p> <p>SNAP said:</p> <p><i>“I know <b>parents</b>, Chair, are <b>very, very worried</b> about this element. These two paragraphs don’t discuss anything about working with a family here about this decision. And we do know that a lot of young people 16 plus don’t want to necessarily have the provision, have the support that they need, don’t make informed decisions, and I just don’t think that an FEI that is lacking in funds is going to necessarily go out of their way to ensure that there’s a proper understanding with a young person about this consent issue.”</i></p> <p>The discussion led to the issue of <b>mental capacity</b> with NDCS commenting:</p> <p><i>“More is needed around capacity to consent because that’s a huge area that hasn’t really been touched upon appropriately.”</i></p>				

	<p>The Association of Education Psychologists</p> <p><i>“It’s a very difficult issue, the one of capacity, especially when the young person’s got additional learning needs, and how it’s going to be defined. I can see that as being a real, real problem.”</i></p> <p>SNAP added:</p> <p><i>“I do think they’re very vague. I think it’s 10 where they say that they can withhold consent, and it’s repeated several times. But it’s very vague; it’s <b>completely unrelated to the Mental Capacity Act</b> at all, and it’s a very subjective decision based on the provider of the service supporting that child to come to that decision.”</i></p>
	<p><b>Committee Response (Advice to young people withholding consent)</b></p> <p>The Committee is pleased that the Code contains some information / guidance, seeking to ensure that where a young person does not consent to receiving ALP, that the young person receives all appropriate advice. However the Committee agrees with stakeholders that this aspect of the Code could be strengthened.</p> <p>In particular, the Committee believes the Code should require providers and relevant bodies to be more proactive in ensuring young people have all relevant information and advice to understand the implications of withholding consent. In addition, the Code should ensure that providers and relevant bodies establish clear processes for young people to access further information and advice if they are considering changing their mind after withholding consent.</p> <p>The Welsh Government must also consider how the Code can give sufficient consideration to issues surrounding capacity, taking adequate account of the Mental Capacity Act 2005. The Code should refer to the 2005 Act where appropriate.</p>

**Discussion 15: UNCRC: Governing bodies’ compliance**

<p><b>15A) UNCRC: Governing bodies’ compliance</b></p>	<p>Cabinet Secretary, Kirsty Williams, said the Code will explain how duties to comply with duty on LAs and health bodies to have due regard to the UNCRC will filter down to school and FEI governing bodies.</p>	<p>When resisting amendments at Stage 3 calling for the duty to have due regard to the UNCRC to be extended to governing bodies.</p>	<p>Chapter 4 deals with duties of due regard to UNCRC and UNCRDP.</p> <p>Paragraphs 4.16 and 4.17 give guidance on how LAs and health board should discharge these duties in practice. Includes:</p> <p>“actions to ensure that leaders and staff involved in the delivery of services relating to ALN are aware of relevant rights under the Conventions of children and young people,</p>	<p>Chapter 4</p> <p>Para 4.17</p>
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			<p>including those with disabilities, for instance through staff training;”</p> <p><b>No further detail identified on how duties will filter down to governing bodies.</b></p>	
	<p><b>Summary of stakeholders’ views</b></p> <p>Children in Wales said they were very pleased that the duty on local authorities and health bodies to have due regard to the UNCRC made its way on to the face of the Act. However, they noted that the draft Code <b>does not explain how these duties will filter down</b> to school and FEI governing bodies, as the Welsh Government said it would. The Children’s Commissioner’s Office commented:</p> <p><i>“We would support that. And the chapter on the UNCRC duties relates to the strategic planning of additional learning of the ALP and then, it’s not referenced, actually, in other key points, for example, around the decision around ALN. It’s not referenced around that, it’s not referenced in the preparation of the IDPs and it’s not referenced in the duties to secure Welsh language and things. So, there are <b>many more ways that it could inform the code as a whole.</b>”</i></p> <p>The Children’s Commissioner’s Office later provided further detail outlining the potential areas their response to Welsh Government would contain, and that this was likely to refer to the Code generally missing opportunities to mainstream rights-based practice into the everyday experiences of children and young people in their education setting.</p>			
	<p><b>Committee Response (UNCRC: Governing bodies’ compliance)</b></p> <p>The Committee is pleased that paragraphs 4.16 and 4.17 of the Code give guidance on how LAs and health boards should discharge their duties to have due regard to the UNCRC. We would like to see greater detail on how these duties will filter down to school and FEI governing bodies (as per the commitment made by the Minister during scrutiny of the Bill). This is especially important due to concerns about the approach of placing duties at a high-level and expecting this to filter down to ground level.</p> <p>The Committee therefore believes that the Code should provide greater explanation of how the duties on local authorities and health bodies, to have due regard to the UN Conventions on the Rights of the Child and the Rights of Disabled Persons, will translate to the actions of schools and FEIs on the ground.</p>			

## Discussion 16: Education Tribunal

<p><b>16A) Tribunal remit over health boards</b></p>	<p>Bill amended at Stage 2 to give Tribunal power to require health bodies to provide evidence regarding a case before it, as well as make non-binding recommendations to the health body on whether/how it should provide services.</p>	<p>Compromise at Stage 2: WG amendments to the Bill in response to recommendation 38, CYPE report.</p>	<p>The Code reiterates the two powers available to the Tribunal in the Act.</p> <p>An NHS body must report back to the Tribunal within 6 weeks of a recommendation being made, giving its response and its reasons.</p>	<p>Paras 26.20 to 26.21.</p>
<p><b>Summary of stakeholders' views</b></p> <p>Several stakeholders, mainly those representing families such as SNAP and NDCS, remain <b>concerned about the two separate processes</b> for seeking redress against education providers (the Tribunal) and against health bodies (the NHS 'Putting Things Right' process). However, this is the position under the Act and there is some encouragement taken from the arrangement for the Tribunal to issue non-binding recommendations to health bodies As SNAP said:</p> <p><i>"I think you have made the best of what we've got here, because I think that NHS boards having to report back is good. I think local authorities having to act on directions within certain times is good, because they don't always, and quite often, parents come to us because even though a tribunal has been upheld in their favour and a direction has been made, it's not necessarily acted on and then they have to go through a whole complaints process again. So, I think with what we've got here, there are some positives."</i></p> <p>However, NDCS pointed to a lack of clarity over which route families should use and warned of <b>possible implications for the eight-week timescale</b> families have to appeal after receiving a decision on ALN (paragraph 26.14 of the draft Code):</p> <p><i>"There's still not much clarity around when you would take one through 'putting things right' and when you would take one through education tribunal Wales, but potentially, families are going to be encouraged to go through the 'putting things right' approach, because it's softer. And my concern is that (1) there's confusion around it, but (2) that could potentially have ramifications and knock-on effects in terms of timescales and ability to lodge an appeal, which I don't feel are very clear."</i></p> <p>Reinforcing this point, SNAP added:</p> <p><i>"It's that thing that if schools and local authorities are pushing parents into the health complaints process, <b>their two-month period will run out.</b> (...) if they do look for mitigation in one area, it shouldn't prevent them from having the two</i></p>				

	<p><i>months at the end of that process, if necessary, but the two months start there ... not the decision.” [The draft Educational for Tribunal Wales Regulations 2019 specify an eight-week period.]</i></p>			
	<p><b>Committee Response (Tribunal remit over health boards)</b></p> <p>During scrutiny of the Bill, the Committee recommended that the Tribunal was given remit to direct health bodies. While this was resisted, we were pleased that the Bill was amended to give the Tribunal power to require health bodies to provide evidence regarding a case before it, as well as make non-binding recommendations to the health body on whether/how it should provide services. This does, however, mean that there remains two appeal processes – The Education Tribunal for Wales and Putting Things Rights – and concerns have been raised in his regard.</p> <p>While the Committee acknowledges the legal position, and does not wish to re-open the argument about the Tribunal having remit to direct health bodies, we believe the Code should give clearer guidance about the relationship between the two appeal processes to help ensure that families receive suitable information and advice so they can make an informed decision on which to use.</p> <p>The Committee is also concerned that it is not clear from the detail of the Code whether the eight-week period which families have to submit an appeal to the Tribunal, under the draft Education Tribunal for Wales Regulations 2019, runs concurrently or consecutively with any complaint a family has made through the NHS process. The Committee strongly believes this should be consecutive rather than concurrent, and that the Code should clarify this.</p>			
<p><b>16B) Tribunal composition</b></p>	<p>WG said in response to Stage 1 report that it would consider how the clinical judgement and expertise could be incorporated into the Tribunal’s membership, in the event of giving the Tribunal powers to direct health bodies.</p>	<p>Response to Rec. 39, CYPE Stage 1 report.</p>	<p>The Tribunal can only issue non-binding recommendations to health bodies and has no powers to compel them to provide services.</p> <p>The Draft Regulations provide for a Tribunal Panel to consist of a Chair (usually the President) and two lay members selected by the Chair from the lay panel.</p> <p>The Draft Regulations require that the Welsh Ministers must be satisfied that sufficient members of the lay panel have current knowledge and experience of children and young people, and ALN or disabilities, or both if required.</p>	<p>Regulation 11, draft Regs</p> <p>Regulation 9, draft Regs</p>

	<p><b>Summary of stakeholders' views</b></p> <p>The Royal College of Speech and Language Therapists believe this is still a relevant issue, even though the Tribunal cannot issue binding directions to health boards:</p> <p><i>"I think it's still relevant. I know that it's the non-binding recommendations to health bodies, but I think it's still appropriate to consider the composition of tribunal, looking at the evidence base, looking at linking it to intended outcomes. I think that's not a bad thing."</i></p>			
	<p><b>Committee Response (Tribunal composition)</b></p> <p>During scrutiny of the Bill, the Committee raised the issue of including relevant clinical expertise on the Tribunal – but this was primarily linked to the recommendation calling for the Tribunal to have remit to direct health bodies. While the Committee acknowledges the position on the Tribunal's remit set out in the Act, we agree with the comments made during the working group's discussions.</p> <p>The Committee recognises that the Draft Education Tribunal for Wales Regulations require that the Welsh Ministers must be satisfied that sufficient members of the lay panel have current knowledge and experience of children and young people, and ALN or disabilities, or both if required. While not necessarily for inclusion in the Code, we believe the Welsh Ministers' consideration of whether the Tribunal panel has sufficient knowledge and experience should include clinical judgement and expertise on health matters where these are likely to be relevant, as this would give strength to any recommendations to health bodies made by the Tribunal.</p>			
<p><b>16C) Compliance with Tribunal orders</b></p>	<p>Code to include sufficient and robust guidance about LAs and health boards reporting back to the Tribunal on actions they have taken to comply with a Tribunal order.</p> <p>In addition to the amendment at Stage 2, the Bill was further amended at Stage 3 to enable the Tribunal to share information with the Welsh Government about whether Tribunal orders have</p>	<p>When resisting amendments at Stage 2, the Minister, Alun Davies, put forward his own amendment 146 requiring FEIs and LAs to report to the Tribunal within 14 days of the date the Order had to be</p>	<p>The Code reiterates the 14 day period governing bodies and LAs have to report to the Tribunal on their compliance with an order.</p> <p>The Code requires NHS bodies to report to the Tribunal on their response to a recommendation within 6 weeks of the date the Tribunal made the recommendation.</p>	<p>Para 26.18</p> <p>Para 26.21</p>

	<p>been complied with, or recommendations followed.</p>	<p>complied with. He said the Code would provide further guidance on this.</p>		
<p><b>Summary of stakeholders' views</b></p> <p>Section 77 of the Act required providers and relevant bodies to report on their response to a Tribunal direction/recommendation. Section 78 enables the Tribunal to share information with the Welsh Government about whether local authorities have complied with orders and health bodies followed recommendations. Stakeholders believe both of these arrangements will be very <b>important to evaluating the effectiveness of the Tribunal system.</b></p>				
<p><b>Committee Response (Compliance with Tribunal orders)</b></p> <p>During scrutiny, the Bill was amended to enable the Tribunal to share information with the Welsh Government about whether Tribunal orders have been complied with. We are pleased that information is contained on the Code regarding the duties of relevant bodies to report to the Tribunal on compliance. While not necessarily for inclusion in the Code itself, the Committee believes that it is important that the Welsh Government closely monitors the level of compliance with Tribunal orders and recommendations in order to evaluate the effectiveness of the Tribunal system, and publishes regular reports on the outcome of such monitoring and evaluation.</p>				

References: [CYPE Committee Stage 1 report](#) (May 2017) and [Welsh Government response](#) (July 2017); [CLA Committee Stage 1 report](#) (May 2017) and [Welsh Government response](#) (May 2017); Stage 2 proceedings, [CYPE 4 October 2017](#) & [12 October 2017](#); Stage 3 proceedings, [Plenary 21 November 2017](#); CYPE Draft ALN Code working group, 13 February 2019 (transcript not published).

## Part 2: Other issues raised by the working group

Issue	What have stakeholders said?	What is the position in the Act/Code?
a) ALNCoS	<p>NDCS are disappointed that the Code does not go further in <b>prescribing the required qualifications and experience</b> of Additional Learning Needs Co-ordinators (ALNCoS).</p> <p>NDCS are also concerned about the demands on the ALNCo role and suggest whether some form of mechanism should be used to determine where a school requires more than one ALNCo. (The Act requires maintained schools and FEIs to designate <u>one or more</u> persons as an ALNCo.)</p> <p>The Association of Educational Psychologists said there would be “tremendous pressure” on ALNCoS and they did not how they would cope. They agreed with NDCS that qualification and training requirements for ALNCoS had been “watered down” which they said was “regrettable” and that there was a “missed opportunity” in how ALN is covered in initial teacher training.</p>	<p>The draft ALNCo regulations, which the Welsh Government is consulting on alongside the draft Code, require that ALNCoS must be either a school teacher or FE teacher registered with the Education Workforce Council (EWC) or a current SENCo.</p> <p>The Welsh Government is taking this approach as it ideally wants a ALNCo to be a qualified teacher and therefore have good access to the senior management team of the school. However, it does not want to preclude the small proportion of existing SENCoS who are not qualified teachers but are well established in their school and are delivering the role effectively.</p> <p>Upon introduction of the Bill in December 2017, the WG’s intention was to use these regulation making powers to require ALNCoS to have a Masters level qualification. During the Bill’s passage it adopted a more <b>flexible approach</b> (partly as a result of this Committee’s recommendations that it not unduly narrow who could fulfil the role).</p>
<p><b>Committee Response (ALNCoS)</b></p> <p>The draft regulations associated with the ALN Act do not appear to prescribe what ALN-specific experience or training a qualified teacher must have to become an ALNCo – this is also unclear from the content of the Code. Welsh Government may wish to include details in the code of the type of training that would meet the requirements, but emphasise these would not be exhaustive or exclusive. In making this recommendation, the Committee is mindful of our earlier position that flexibility should be maintained so that the relevant provisions do not unduly narrow who could fulfil the ALNCo role.</p>		
b) Deaf learners’ entitlement to an IDP	<p>NDCS believe strongly that deaf children and young people should always be deemed to have ALN and therefore entitled to an IDP. They therefore welcome the recognition in paragraph 7.23 of the draft Code that there are some forms of disability which mean it is more likely</p>	<p>The reference to the local authority register referred to in paragraph 7.23 of the draft Code <b>does not replace or supersede the ALN definition</b> in section 2 of the Act. Rather, it states that children or young people on this register are more likely to have ALN as they are more likely to have a disability which inhibits or</p>



	<p>that a learner has ALN (although they would prefer ‘likely’ to be replaced by ‘always’).</p> <p>However, they do not favour linking this with <b>the register which each local authority has to maintain</b> (under the Social Services and Wellbeing Act 2014) of those in their area who are sight or hearing impaired. NDCS say this register is voluntary and indicate that many people who are sight or hearing impaired do not self-identify as such and are therefore not on the register.</p> <p>NDCS would therefore prefer that the draft Code did not refer to the register and instead focused on the definition in the Act.</p>	<p>prevents them from accessing the education and training that is generally available (the second part of the ALN definition in section 2).</p> <p>Therefore, simply because a learner who genuinely has sight or hearing impairments but is not on the register does not mean they would not qualify for an IDP. If they meet the definition of ALN they would be eligible regardless.</p>
<p><b>Committee Response (Deaf learners’ entitlement to an IDP)</b></p> <p>The reference in paragraph 7.23 of the Code to the local authority register is used as an example to highlight the forms of disability where it is likely that learners will have ALN, and the Committee can see the benefit of including such an example in the Code. However, we understand the concerns raised by NDCS that there will be learners with a sight or hearing impairment that are not on the register.</p> <p>We therefore believe that if reference to the register is included in the Code, to avoid any doubt, the Code should also make it clear that the definition in the Act has primacy and local authorities should not simply rely on the register as a means of identifying people with disabilities who have ALN. It is the nature of the disability itself, in line with the ALN definition in section 2 of the Act, that presents eligibility for an IDP.</p>		
<p><b>c) Referral to health services</b></p>	<p>RCSLT emphasise that Speech and Language Therapy services have an <b>open referral system</b> and question whether the table at paragraph 15.25 on page 181 of the draft Code means that only a local authority or FEI can refer a learner for NHS ALP. RCSLT would not support such a restriction.</p>	<p>Paragraph 15.25 of the Code states that: ‘A local authority or FEI may refer a matter to an NHS body, asking it to consider whether there is any relevant treatment or service that is likely to be of benefit in addressing the ALN of a child or young person. It would do this where it considers that an NHS body might be able to provide ALP to meet a child or young person’s needs. A relevant treatment or service is a treatment or service that an NHS body would normally provide as part of the comprehensive health service in Wales.’</p>

	<p><b>Committee Response (Referral to health services)</b></p> <p>The Committee believes that paragraph 15.25 of the Code could be strengthened to further clarify whether it is only a local authority or an FEI who can refer a matter to an NHS body. Although recognising that the Code is not aimed specifically at parents, the Committee believes that the Code should set out the other options a family may have (i.e. making their own request to the NHS). The Committee also believes it should be made clear whether a GP or health visitor can refer a learner to other NHS services for ALP.</p>	
<p><b>d) Definition of early years</b></p>	<p>RCSLT suggest it would be helpful if ‘early years’ could be defined for the purposes of the Code. They say it is <b>defined inconsistently</b> in the draft Code, for example as ‘under compulsory school age’, without qualifying that this is only where they are not the responsibility of a school governing body.</p>	<p>The Act does not define ‘early years’ specifically.</p> <p>Section 62 of the Act means that the scope of the responsibilities of the Early Years ALN Lead Officer is children <b>under compulsory school age (school term after fifth birthday) who are not attending a maintained school</b>. The relevant chapter of the Code (chapter 8) uses this definition.</p> <p>The Code does however refer to ‘early years’ in relation to a number of its provisions outside the role of the Early Years ALNLO.</p>
	<p><b>Committee Response (Definition of early years)</b></p> <p>The definition used in chapter 8 of the Code in relation to the role of the Early Years ALNLO is the same as in Section 62 of the Act. However, the Code also refers to ‘early years’ in relation to a number of its provisions – outside the role of the ALNLO. To avoid any confusion over what is meant by ‘early years’, the Committee believes the Code should explicitly state what is meant by ‘early years’ wherever it is referenced in the Code and use the full definition in each reference. Alternatively, the Code could include a clear statement in a prominent place of what is meant by early years throughout the document.</p>	
<p><b>e) Use of previously established guidance</b></p>	<p>Children in Wales said that the Welsh Government had spent ‘a lot of money’ bringing in programmes such as the <b>early support programme</b> and <b>key workers in transition to</b></p>	<p>The Welsh Government has said that the document is a ‘Code’ rather than a ‘Code of Practice’ as the current SEN Code of Practice. As such, it does not include case studies of best practice (although these will be made available separately) on the basis</p>

<p><b>on good practice</b></p>	<p><b>adulthood</b> but that these appear to have been abandoned. CIW said:</p> <p><i>“There’s no reference to all the good work that those programmes have actually completed, and how they could be put into practice, and the findings from those programmes are still relevant today. From my point of view, it was just a <b>sheer waste of Welsh Government funding</b> bringing in those programmes and then just completely <b>forgetting</b> about them.”</i></p>	<p>that practice evolves over time and the Code is intended to be a long-term, enduring document.</p> <p>This is an issue that Children in Wales have raised before, during pre-legislative scrutiny of the draft Bill in 2015 and in scrutiny of the Bill in 2017.</p>
<p><b>Committee Response (Use of previously established guidance on good practice)</b></p> <p>Although, the Committee recognises that the draft ALN Code is meant to be a ‘Code’ rather than a ‘Code of Practice’ we are concerned that insufficient use appears to be being made of previous good work in programmes such as the ‘early support programme’ and ‘key workers in transition to adulthood’. We believe the Welsh Government should make efficient use of guidance and work that has already been established.</p>		
<p><b>f) Funding</b></p>	<p>The WLGGA highlighted the scale of the challenge in implementing the new system given the level of funding available:</p> <p><i>“And running underneath all of this is funding, because there is no additional money for any extra provision, extra anything. All of the money—the £20 million that the Ministers have promised—is all being spent on the transformation leads and training. If we’re to meet what is effectively a demand-led needs-based system then <b>people have to wake up and realise that costs</b>—if we are to do what the Act wants us to be able to do for all of those children with ALN.”</i></p> <p>The Royal College of Occupational Therapists also raised the issue of resources, including the provision of necessary equipment and how this would be funded.</p>	<p>This relates to the issue in discussion area 1 of whether funding pressures mean that the new ALN system of IDPs might not be deliverable across the full range of learners with ALN (approximately 100,000).</p> <p>The Committee receives quarterly updates from the Welsh Government on the progress of the ALN Transformation Programme (of which the Act is part), which has been given a <b>£20 million budget</b>.</p> <p>During scrutiny of the Bill, the Welsh Government maintained that the legislation would be cost-neutral, as <b>savings from fewer disputes and less conflict would offset</b> the costs of enhanced provision.</p> <p>This is also an emerging theme of the School Funding inquiry where schools and local authorities have highlighted the</p>

		potential difficulties they will have in funding the implementation of the ALN Act.
	<p><b>Committee Response (Funding)</b></p> <p>While the Committee recognises that this is not necessarily an issue relating to the ALN Code itself, we are extremely concerned that there is a risk that insufficient resources (whether that is funding of staff) threatens the successful implementation of the Act and delivery against the Code. The Children, Young People and Education Committee is currently undertaking an Inquiry on School Funding, and this has been raised as a concern by stakeholders during evidence sessions. The Committee will therefore be considering this further as that Inquiry progresses.</p> <p>Please also see the Committee’s specific comments on the effect that inadequate funding / resources could have on how the definition of ALN is applied, which are contained in its response to discussion area 1.</p>	
<p><b>g) Usability of the Code</b></p>	<p>Several stakeholders felt the draft Code would be difficult for practitioners to use due to its length and the way it is presented. RCSLT said it was “long and unwieldy”, the WLGA said it was “not very user-friendly”, whilst the Children’s Commissioner’s Office said that “if it does not change substantially”, it would “utterly <b>disempower most teaching professionals</b> from accessing it”.</p>	<p>The Welsh Government has acknowledged that the draft Code is long and detailed, whilst also stressing it is a <b>document aimed at professional practitioners</b>. Its purpose, therefore, is not to explain the ALN system in lay terms, which is the role of the impartial information and advice local authorities must secure.</p> <p>The Welsh Government has produced an ‘easy read’ version of its consultation document as well as a version aimed at children and young people.</p>
	<p><b>Committee Response (Usability of the Code)</b></p> <p>In order for the Code to be used effectively, it must be clearly understood by those it is aimed at. We note that the draft Code is long and detailed, but accept that it is a document aimed at professional practitioners. As such, its purpose is not to explain the ALN system in lay terms, which is the role of the impartial information and advice local authorities must secure. However, the Committee believes the Welsh Government should ensure the Code is accessible and fit for purpose for the practitioners it is aimed at, whilst remaining sufficiently detailed and comprehensive.</p> <p>The Committee notes the overview in paragraphs 1.73–1.100 of the way the Code is structured but suggests the Welsh Government should consider whether the use of an index would help readability and use of the document.</p>	