

## **The Vale of Glamorgan Council**

### **Cabinet Meeting: 24 April, 2017**

### **Report of the Cabinet Member for Regeneration and Education**

### **Vale of Glamorgan Learning and Skills Directorate Response to the Children, Young People & Education Committee Consultation on the Additional Learning Needs and Education Tribunal (Wales) Bill**

#### **Purpose of the Report**

1. To provide Cabinet with the opportunity to consider and endorse the Learning and Skills Directorate response to the Children, Young People & Education Committee Consultation on the Additional Learning Needs and Education Tribunal (ALN & ET) (Wales) Bill ([Appendix A](#)).

#### **Recommendation**

1. That Cabinet approve the response to the Children, Young People & Education Committee consultation on the Additional Learning Needs and Education Tribunal (Wales) Bill.

#### **Reason for the Recommendation**

1. To enable Welsh Government to consider the views of the Vale of Glamorgan Council in relation to the future development of the Additional Learning Needs & Education Tribunal (Wales) Bill.

#### **Background**

2. The Additional Learning Needs and Education Tribunal (Wales) Bill makes provision for a new statutory framework for supporting children and young people with additional learning needs (ALN). This replaces existing legislation surrounding Special Educational Needs (SEN) and the assessment of children and young people with Learning Difficulties and/or Disabilities (LDD) in post-16 education and training. The Bill also continues the existence of the Special Educational Needs Tribunal for Wales, which provides for children, their parents and young people to appeal against decisions made by the local authority in relation to their or their child's ALN, but renames it the Education Tribunal for Wales. The response that is incorporated in the body of this report has already been issued to the committee. It is reported here for completeness and for endorsement.

## **Relevant Issues and Options**

### **General Principles**

3. The Vale of Glamorgan Learning and Skills Directorate support in principle the aims and objectives of the ALN & ET Bill. We recognise that there is a need to introduce new legislation that ensures that all pupils with ALN receive their entitlement to high quality education.

### **Code of Practice**

4. We welcome a new Code of Practice (CoP) as the current one is out of date. However, sufficient time has not been given to consider fully the latest version of the Code prior to completing this consultation. Initial assessment of the revised Code would indicate that significant additional work is required in order to address concerns expressed in previous consultations. In its current form the Code still does not provide common guidance criteria and thresholds of need. The consequence of this will be to create variation in practice across LAs which is highly problematic. Removing the graduated response system currently in place is seen as a backward step which will increase demand for support services.

### **Unified Legislative Framework**

5. We agree that a unified legislative framework to support all children and young people (CYP) with ALN through an integrated collaborative process of assessment, planning and monitoring has the potential to improve provision and learning outcomes. However, our main concerns are based around the ability of local authorities (LA) to support an increased demand on services, pressure on schools to deliver the provision identified through the assessment process and increased financial demands on LAs and schools at a time when funding is being cut.

### **Post 16 specialist provision**

6. The potential advantage to learners of transferring this duty from the Welsh Government (WG) to LAs is recognised. However, supporting pupils into post 16 specialist provision is based on individual need and as a result can be very expensive. Currently WG has responsibility for this but in the Bill this responsibility transfers to LAs. Funding for these placements will be allocated to LAs through a population distribution formula that does not allow for fluctuations of need over time. The WG recognise that there is an “upward trend” in demand for such placements and an increase in numbers post transfer of funding could have significant financial implications for LAs.
7. Administering this process will also require LAs to fund additional staffing and training which will increase costs. This does not appear to be accounted for in WG financial calculation. Additionally, it will now be possible to appeal decisions made by LAs, whereas decisions currently made by WG cannot be appealed. Preparing for appeals is a lengthy, time consuming process which like many other aspects of the reform will require additional LA resource.

### **Post 16 non-specialist placements**

8. There is still a lack of clarity on the respective responsibilities of LAs and Further Education Institutions (FEIs) both in terms of identifying which young people will need to be supported by LAs into FEIs and the duty on FEIs to develop provision for young people with ALN. The Bill has the potential to improve transition post 16 by encouraging stronger relationships between LAs and FEIs. However, the Bill needs to strengthen the duty on FEIs to develop provision for young people with ALN. Currently LAs receive no funding for and have no responsibility for governance of FEIs. The Bill therefore must clarify the expectations on FEIs more clearly otherwise

LAs could be left with the responsibility for funding provision outside of the FE sector because the development of such provision has not been prioritised by local FEIs. LAs will have no power to influence this.

### **LA's responsibilities for Individual Development Plans [IDPs] in early years**

9. There needs to be clarity around the responsibilities of LAs to support children between 0 – 2. Currently health services have the greatest involvement with these children and their families. IDPs will be required for these children and there needs to be much clearer guidance on who supports these plans, who delivers the provision and how information is shared.

### **Disagreement avoidance/resolution and appeals**

10. The aim of the Bill is to reduce the adversarial nature of the current system by enabling all CYP with ALN to have a statutory IDP. There is concern that the proposed change in the age range from 3 -18 to 0 - 25 will inevitably bring an increase in disagreements and appeals to Tribunal as the Bill expands the numbers of CYP eligible for IDPs and therefore eligible to appeal. WG assumes that expanding the statutory right of all CYP with ALN to have an IDP will reduce the need for parents to appeal to Tribunal. However, increasing statutory entitlement will inevitably increase the risk of disagreements not just for CYP with complex needs but for pupils with less significant difficulties. These disagreements could include refusing to revise or take over a school based IDP or a governing body's decision not to agree an IDP or to cease to maintain an IDP. Rather than reducing the adversarial nature of the current model the Bill increases the likelihood of disagreements at many different levels and not just between parents and LAs as is currently the case. The Bill could have the unintended consequence of increasing conflict between schools and parents, schools and LAs, LAs and FEIs. This has the potential to undermine the aims of the Bill and to significantly increase the workload and costs for all parties, particularly LAs.

### **Additional Learning Needs Co-ordinator role**

11. The Bill will undoubtedly increase the importance of the ALNCo within all educational settings. The need for further professional development of this role is recognised. Introducing a Master's qualification in the long term is a good idea but this will place significant cost pressures on schools. In the short term, current ALNCo's may not wish to take the Masters qualification and this could result in a shortage of appropriately qualified staff willing to take on the role. We agree that ALNCo's should have Qualified Teacher Status [QTS] as this ensures that ALN has the appropriate status in schools, however, all schools, particularly small schools, will find it extremely difficult to fund these posts adequately which may undermine the ability of schools to meet the requirements of the Bill.

### **Collaboration with Health**

12. The attempt to strengthen the duty on the Health Boards to provide provision identified in the IDP is welcome. There is still a need however, to gain a cross agency understanding regarding what is seen as a health need as against an educational need. This particularly relates to therapeutic interventions such as speech and language therapy and occupational therapy which are currently the cause of many appeals to tribunal. The Bill only requires Health to provide provision that it agrees is required which leaves LAs in a position where it is likely that providing and funding the therapies identified above will fall to them. It is still the case that the Bill does not clearly place statutory accountability on agencies other than education with regard to providing specialist provision. This is exacerbated by the fact that the Education Tribunal still has no role in appeals where they relate to the provision of health

services. WG believe that the delivery/non delivery of health provision can be addressed by parents through NHS complaints procedures but how this will work in practice is very unclear and is a major weakness in the Bill as it stands.

13. The creation of the Designated Clinical Lead Officer (DECLO) is welcomed as is the clarification of the purpose of this role in the amended Bill. Concerns remain about how this officer will support the IDP process. It is unclear how one professional will have the capacity to undertake the co-ordination of the Health Boards functions and ensure effective multi agency working in future.

### **Resource Implications (Financial and Employment)**

14. As identified in the report to Cabinet on the 30th of November 2015 the requirements of the Bill are likely to place an additional financial burden on the Council. Welsh Government has identified a sum of money that can be used to implement the Bill, however, this will not meet ongoing costs that will be incurred as a result of the changes.

### **Sustainability and Climate Change Implications**

15. The Council is committed to maximising its contribution to the well-being goals set out in the Well-being of Future Generations Act. The Act places a duty on the Council to exercise the Sustainable Development principle. In doing so, the Council must consider five ways of working to enable sustainable development. The response to the consultation seeks to ensure that Welsh Government decisions are taken which consider the long term impact of the Bill.

### **Legal Implications (to Include Human Rights Implications)**

16. The Education Act 1996 requires a Code of Practice to be produced which provides guidance on how local authorities and schools should exercise their functions in respect of SEN. Following Devolution, Welsh Government published the SEN Code of Practice which applies to Wales, which took effect from 1st April 2002 and is still in place today. The Code sets out procedures which should be followed by schools and the Local Authority to ensure that the needs of pupils with SEN are met.
17. The Bill replaces, when it receives Royal Assent and becomes an Act of Parliament, Part 4 of the 1996 Act, which established the current SEN system for schools and pre-16 education in general. Section 28 amends S.41 and repeals S.140 of the 2000 Act, both of which make provision in relation to LDD and further education. The proposed new provisions outlined in the Bill will provide for the same statutory plan to be provided to learners with ALN irrespective of whether they are in, or are likely to enter, school-based or further education.

### **Crime and Disorder Implications**

18. There are no direct crime and disorder implications associated with this report.

### **Equal Opportunities Implications (to include Welsh Language issues)**

19. As part of the legislative process the Welsh Government has undertaken a thorough equality impact assessment and has identified no adverse impact.

### **Corporate/Service Objectives**

20. The legislative changes relate to the objective 5 of the Council's Corporate Plan: raising overall standards of achievement and specifically to the Corporate Plan

action: "Secure aspirational outcomes for learners with additional learning needs through early intervention and effective collaboration in line with the proposed Additional Learning Needs Bill."

### **Policy Framework and Budget**

21. This is a matter for Executive decision by the Cabinet.

### **Consultation (including Ward Member Consultation)**

22. Not required.

### **Relevant Scrutiny Committee**

23. Learning and Culture.

### **Background Papers**

None.

### **Contact Officer**

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### **Officers Consulted**

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### **Responsible Officer:**

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