

# **VOICES AND CHOICES** **CONSULTATION**

## **SUMMARY OF** **RESPONSES**

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# **INTRODUCTION**

This document summarises the responses to the Voices and Choices consultation documents on proposals to give children rights to appeal (Part 1), and make claims of disability discrimination (Part 2) to the Special Educational Needs Tribunal for Wales (SENTW).

## **The Consultation Process**

The Voices and Choices consultation documents were issued in two stages: -

- 23 May 2008 (Part 1: A proposed right for children to appeal to the SENTW) and
- 5 September 2008 (Part 2: A proposed right for children themselves to make claims of disability discrimination to the SENTW)

Version for children and young people were produced for both Part 1 and 2. Additionally, facilitated workshops were held in 3 schools (2 Special Schools and a Mainstream Secondary with a SEN Unit on-site) across Wales to determine children's views about these proposals.

In order to provide alternative response opportunities, two facilitated public workshops were also held in Conwy and Cardiff prior to the end of the consultation period (3rd October 2008).

## **Audience**

We sought a broad range of responses, including those of: children and young people; the Children's Commissioner for Wales; Local Authorities; Diocesan Authorities; Voluntary Organisations; Educational Psychologists; Children and Young People Partnerships; the Public Services Ombudsman for Wales; Children's Services, The Law Society, the Legal Services Commission, the SEN Tribunal for Wales;, Social Services, Teaching Unions, the Tribunals Service, the Welsh Local Government Association; Partners concerned with Special Educational Needs, and a 10% sample of schools.

## **Responses**

In total 98 responses were received, 74 for part 1 (including 20 responses from Young People) and 24 for part 2.

## Breakdown of Responses

<b>Part 1</b>	
Local Authorities	14
Voluntary Organisations	19
Schools	2
Parents	12
Young People	20
Others	7
<b>TOTAL</b>	<b>74</b>

<b>Part 2</b>	
Local Authorities	11
Voluntary Organisations	7
Schools	0
Parents	4
Young People	0
Others	2
<b>TOTAL</b>	<b>24</b>

## **SUMMARY**

A large proportion (48) of responses signalled their agreement with the principles of extending to children the rights to make SEN appeals and claims of disability discrimination. 14 out of 20 children and young people who responded also agreed that children with disabilities should have the right to claim disability discrimination. Only one respondent explicitly opposed the principle.

There was, however, concern about mechanisms, funding and provision necessary for implementing these proposals. Four respondents expressed concerns about the consultation proposals and strongly believed that due to the complexity and pioneering nature of what was being suggested, there would be benefits in piloting the proposals prior to full roll out.

A number of responses (7) expressed the view that children and young people should be encouraged and supported to be fully involved at every stage of the education process (including exclusions and admissions).

### **Competency Test**

The responses on the issue of competency were characterised by their variety: 3 thought that a competency test would exclude those children who most needed the right, 11 thought there should be no test, that a right of appeal should be unqualified, and that a child should be deemed competent unless proved otherwise and that setting a competency test was itself discriminatory.

11 responses stated that due to the nature of SEN it was extremely difficult to set a test and there could not be one test suitable for all. 3 responses raised concerns that the issue of competency could become a matter for legal dispute, and that a formal competency test would also likely add to the bureaucracy of the appeals procedure, delay proceedings and prove stressful for the child. 3 agreed that there should be a test but thought that the level should be set at a low level.

9 adult responses thought a test should be set as per the “Gillick competency”, i.e. based on age, maturity and level of understanding. Of the children and young people who responded to the consultation paper, 13 thought that competence should not be set by age, and that it should be set by the child’s level of understanding, this was echoed in the workshops facilitated in the 3 schools.

9 respondents thought that competence should be assessed at the beginning of the Statutory Assessment process. 7 stated that children’s access to information and advocacy needed to be considerably strengthened in all areas affecting them, rather than just in appeals, and that children and young people should be fully involved at every stage of the education process and at the earliest possible point.

The responses were again broad in their views as to whom should make the decision about a child's competence to make an appeal or claim. 4 favoured SENTW ruling on competency, 23 preferred an independent trained professional or advocate, with input from professionals within school, educational psychologist, parents, doctor/GP. A majority of parental respondents thought it should be someone who knew the child well.

### **Making Children Aware of their Rights**

A number (16) of respondents considered that the school environment was best place to inform children of their appeal/claim rights, via a variety of media and formats including child-friendly posters and leaflets (20). A significant number (27) thought that all correspondence regarding the SEN Statutory Processes should routinely be copied to the child (made available in an accessible format) throughout all stages of the statement assessment, and that the Local Authority decision letter should also be sent to the school and explained to the child by the SENCO or LSA (16) and that children should be able to access a Specialist Advocacy Service to resolve any conflict or misunderstanding within the family.

A significant majority (10) of the 12 parental responses requested the need for better communication throughout the process, with advocates/key workers involved at an early stage. A number suggested encouraging Local Authorities to routinely talk to parents and their child and explain the decision made, and to extend the duty to work in partnership with parents, to ensure that pupils were involved in discussions and decisions (already good practice) with the information provided as appropriate to their level of understanding. It was suggested that the role of the liaison officers could be extended to fulfil this requirement, however, this was also identified as having funding implications.

A number of responses (6) stated there was a need to establish common standards and practices across Wales for dispute resolution system, and that Local Authorities must be more proactive in advising parents and children on the arrangements for, or access to, Parent Partnership and Disagreement Resolution Services.

### **Greater participation**

Many respondents (13) thought the complex nature of many of the issues would mean that it would be difficult for children and young people with SEN to have clear views on these matters and be able to express them.

Respondents identified the following methods for increasing participation

- appropriately adapted hand-outs, information sheets/leaflets and posters in schools and major public places;
- school councils;
- Young people forums, support groups, youth clubs;
- National child-friendly, multi-media campaign;
- independent advice helpline/websites;

- interactive discussion (on MSN, Facebook etc)

Some responses (11) focused on the inequality in power and access to information between the Local Authority, parents/guardian and the child. In terms of primacy of the right to make an appeal, 3 respondents questioned whether this should rest with the child or the parent.

7 respondents thought that the proposals were likely to lead to an increased potential for child/parent, child/school discord and disagreement. They were concerned as to the emotional impact on relationships with parents/teachers, and also the possibility of emotional upset if the appeal is not successful.

Three responses identified that the needs of children are likely to be different from those of parents, that the current system needed to be expanded and adapted to have a more child centred approach, and considerable investment needed to be made into training and development of advocacy services. Many (12) believed that the current system needed to be strengthened and made more robust to ensure that children's views are taken into account from the earliest possible stage and are clearly represented during the statutory assessment process prior to any question of an appeals process.

### **Advocacy**

A small number of respondents (5) expressed a view that national procedures/protocols should be in place to ensure consistency of approach with published guidance and standards. 38 respondents were of the view that advocacy services should be independent of Local Authorities.

Many respondents (7) thought that the advocacy services should be extended to other areas within the SEN framework e.g. at annual reviews of the statement (and that funding would be required to facilitate an increase in service levels). There was a perceived inconsistency in the way, and the extent, to which Local Authorities obtained the views of the child as part of the Statutory Assessment process, and whether this should be part of current review of the SEN Framework.

A large number of respondents (38) identified the need for an independent advocate or litigation friend, and that children would need both a professional advocate/representative and someone of their own choice as a personal support. Continuity of support was deemed important by all 12 of the parental responses received.

### **Training & Resources required**

The majority of respondents who responded to this question (11) thought that training on communication methods to work effectively with children with disabilities was essential for staff at Local Authorities, Parent Partnership, Independent Advocates and the Tribunal. Three believed that the accredited training of advocates must be standardised across Wales. One suggested that training and resource requirements be decided as part of the Integrated

Specialist Advocacy Service in Wales, which are to be commissioned by the Children and Young People's Partnerships.

A number (6) of respondents mentioned the need for adequate funding and made a plea that funding implications for Local Authorities are fully considered. A small number (3) of responses expressed anxiety that funding for advocacy, should not be derived from already stretched frontline SEN services.

The following costs were identified

- providing information to children,
- providing advocacy services
- providing training for children, schools and Local Authorities
- training advocates to independently represent the views of children
- schools and Local Authorities in undertaking additional duties and administering further levels of bureaucracy.
- Costs of additional administration for SENT(W)
- Possible costs of additional appeals to the High Court.

### **Legal Aid**

A number (17) of responses thought that reliance should not be placed on legal aid as children who did not fulfil the criteria would be disadvantaged.

A number (9) thought that those not entitled to Legal Aid must be represented by an specialist independent children's advocacy service and protected funding should be made available.

Three responses thought that the Welsh Assembly Government should explore the scope for establishing hands-off funding initiatives for co-ordinated support networks, such as representation via ISAS, who should be provided with adequate funding to carry out these duties.

Whilst a number of responses argued that a targeted approach was needed, concerns were raised that access to legal support/aid for the child could result in an increase in proxy appeals and legal and advocacy services. More legal involvement could result in the reduction in use of disagreement resolution and mediation services.

### **Proxy Appeals**

Five respondents reiterated the view that it is difficult to identify a solution to the abuse of proxy appeals, without further restricting the entitlement of children to seek independent representation. They believed there would be an increase in "proxy appeals". Seven thought that this could be addressed through the specialist advocate for the child and the independent parent supporter working together, and that very clear guidance be provided in respect of instructions being taken from the child, not the parent(s). Fourteen thought that by improving communication and having an advisor/advocate available earlier in the process, and by rethinking the current parent

partnership service, giving greater access than the cases of children appealing would be very low as appeals are often a last resort.

Three respondents felt that these proposals should be reconsidered in line with the current review of the whole statutory assessment process, that the proposals should be embedded within that process, and that the emphasis should be on effective participation by the child rather than securing an independent right of appeal.

Finally, a number of respondents referred to the positive implications these proposals could have for Looked After Children (LACs), as they perceived there was currently a possible conflict of interest for Local Authorities within the system. A small number identified the need for research to examine why LACs have a higher percentage of statements than non-LACs.

# **LIST OF RESPONDENTS**

## **Part 1**

Children's Legal Centre  
Tribunals Service, Ministry of Justice  
Tribunals Service, Ministry of Justice  
Suzanne Foster, Parent  
Scope Cymru  
National Association of Principal Educational Psychologists (Wales)  
Catholic Education Service  
Caroline Morris,  
Children's Services Division, Caerphilly  
SEN Governor and SENCO Bassaleg School, Newport  
Scope Cymru  
Autism Cymru  
ADEW Inclusion Group, Wrexham CBC  
Children in Wales  
Denbighshire CC  
National Deaf Children's Society  
Pupil Inclusion, Powys CC  
RCT CC  
Learning Education and Inclusion, Caerphilly CCBC  
AJTC  
NUT Cymru  
NYAS  
Flintshire CAB Parent Partnership Service  
Neath Port Talbot LEA  
Merthyr Tydfil CBC  
Practitioners of Inclusion Department, Carmarthen CC  
RNID Cymru  
Royal College of Speech and Language Therapists  
SNAP Cymru  
Senior Educational Psychologist, Swansea CC  
Equality and Human Rights Commission Bangor  
Torfaen CBC  
Estyn  
Susan Uphill, Parent  
Narda Hurley, Parent  
Amanda Loveday-Morris, Parent  
Anita Krill, Parent  
SNAP NPT  
Susan Elizabeth Rayner, Cylch Meithrin Llanbedrog  
Coral Banks, First Steps Childminding  
Bethan Beech, GAP – Cyngor Gwynedd  
Shirley Coldewell,  
Manon Williams , Coleg Menai  
Abi Methley,  
Ruth Bridge, Parent Network  
Karen Mapley, Parent  
Siane Northey, Caerphilly Parent Network

Alexandria Luise McGinn, Coleg Menai, Llangefni  
Llinos Wyn Evans, Coleg Menai  
No Name,  
No Name,  
Ffion Mon Roberts, Coleg Menai, Llangefni  
Sian Lloyd Williams, Coleg Menai  
Sioned Williams, Coleg Menai  
Kelly Anne Jones, Coleg Menai, Llangefni  
Sioned Wynne Roberts,  
Cirsty Williams,  
Rhian Emma Roberts, Coleg Menai, Llangefni  
Lyndsey Aindow, Coleg Menai  
Katie Saunders, Coleg Menai  
Gemma Turner, Coleg Menai, Llangefni  
Laura Chadwick-Roberts, Coleg Menai  
Rebecca Jones, Coleg Menai  
Nia Wyn Jones,  
Skills  
National Bureau for Students with Disabilities  
Kate Wyke, Parent Support Wrexham CAB

A further 8 respondents asked that their response remain confidential

## **Part 2**

Graham Edwards, Wrexham County Borough Council  
Caroline Morris  
Beverly Mills, Children's Services Division, Caerphilly  
Maggie Bowen, Autism Cymru  
Sarah Ellis, Learning Education and Inclusion, Caerphilly CCBC  
John Mitson, Pupil Inclusion, Powys CC  
Catherine M. Lewis, Children in Wales  
Jayne Dulson, Director, Wales National Deaf Children's Society  
Philip Monaghan, National Association of Principal Educational Psychologists  
(Wales)  
Elena Fowler, NYAS  
Chriss Abbott, Merthyr Tydfil CBC  
Brett Pugh, Newport City Council  
K Napieralla, Neath Port Talbot LEA  
M Denholm, Practitioners of Inclusion Department Carmarthen CC  
Denise Inger, SNAP Cymru  
Rosemary Grubb, Monmouthshire Directorate of Lifelong Learning and  
Leisure  
Roger Bishop, Tros Gynnal  
Gaye Sheridan, Torfaen CBC  
Mike Munting HMI, Estyn  
Ruth Bridge, SNAP Cymru – Parent Network Rep  
Sian Northey, Parent Network  
Karen Mapley, Parent  
Sue Scott, Making tracks  
Carly Sheen, AJTC