

Thursday 27th September

Eleanor Burnham AM
Chair
Additional Learning Needs LCO Committee
National Assembly for Wales
Y Senedd
Cardiff Bay
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Dear Eleanor

Proposed Additional Learning Needs LCO Committee

Many thanks for inviting the Disability Rights Commission to provide evidence to the LCO Committee last week.

During the session, we undertook to provide the Committee with further guidance on the coverage of transport provision and the issue of definitions.

Transport provision

The Government of Wales Act, Schedule 5, Field 5, Matter 5.10 states that the following matter is conferred:

‘Provision about the travel of persons receiving primary, secondary or further education or training to and from the schools or other places where they receive it’.

As the Minister stated in Committee, most of the concerns expressed about school, college, and transition arrangements for transport should therefore be covered and can be pursued through the existing measure on school transport or any measure introduced thereafter.

However, we have some doubt whether this power will cover two aspects of provision discussed at the meeting.

Firstly, it might be argued that it does not cover the transport of disabled pupils to and from extra curricular activities which take place away from school premises. As we noted in our earlier evidence, Estyn have highlighted transport provision as a particular barrier to disabled pupils accessing extra curricular activities. It would appear that if such activities were not defined as 'primary or secondary education' then the provision of transport would not be within the scope of the matter devolved. This would be a particular problem if the activity takes place away from the school premises as it will require special transport arrangements rather than simply altering the timing of existing transport provision.

Secondly we doubt that Matter 5.10 covers transport provision to and from school or college based work placements within its definition of 'training'?

It is important to note that the reserved powers under the 1944 Employment Act covering Employment Services and under which the Westminster Government has introduced the Access to Work scheme, including its Fares to Work initiative, does not cover support for work placements.

The DRC would suggest that the Committee seeks clarification on both of the above matters from the Minister.

If the latter issue is not covered then we would propose adding the following to the end of 'Matter 5.17';-

“but does include the provision of transport provision for work placements and permits the introduction of measures to assist transport to and from the place of employment over and above the provisions set out subsequent to the 1944 Employment Act”

Regrettably, at this late stage in the DRC's life we do not have the capacity to suggest a suitable amendment to resolve the issue of transport to extra curricular activities.

In addition the Committee may also want to examine the issues raised by Wayne David MP when he introduced his Employment Assistance (Wales) Bill under the 10 Minute Rule Bill procedure in

March 2007. His objective in doing so was to enable the Assembly to have the power to fund initiatives to assist disabled people to travel to and from work over and above the highly limited (and reserved) provision of the Fares to Work element of Access to Work.

Motivated by evidence provided by participants in a summit in his constituency and in particular, the experience of his constituent Anthony Brown, the types of initiatives which Mr David had in mind were:

- Support for initiatives providing loans to disabled people to acquire private transport to travel to work especially when work was located in business parks not adequately served by public transport
- Support for voluntary sector organisations providing lift arrangements to and from work especially when an individual had to travel from mid point in one valley to a workplace in a neighbouring valley.

The issues were also brought into focus by Remploy workers in factories earmarked for merger in Ystragynlais and Brynaman who faced the wholly unrealistic prospect of travel to and from Baglan if they wished to continue their employment in a Remploy factory (the consultation on the closure programme is ongoing as we speak).

I attach a link to Wayne David's introductory speech on his Bill

<http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070328/debtext/70328-0006.htm>

Definition of disability

In the light of the discussion about the definition of disability we suggest that in the penultimate paragraph of the LCO after 'mental impairment' insert:

“which has a substantial and long term adverse effect on his ability to carry out normal day to day activities as specified in the 1995 Disability Discrimination Act 1995 and updated thereafter in the Disability Discrimination Act 2005.”

It has been established through both Schedules to these Acts and clarification in Hansard that this particular definition includes both people with sensory impairments and people who have had a disability in the past and are treated in a discriminatory fashion as if they continued to experience the impairment. The vague definition may have been open to unfortunate misinterpretation.

As you know the DRC will close on Friday 28 September. However Alun Thomas and Gareth Foulkes who worked on our original submission as well as this supplementary evidence will both be joining the CEHR. I trust that the new Commission would be pleased to have the opportunity to provide any further information which the Committee may request.

Yours sincerely

Will Bee
Director, Wales

Cc Liz Wilkinson, Committee Clerk