

Learning Disabilities, Autism and Neurodivergence Bill – Colleges Scotland Response - May 2024

Introduction

Colleges Scotland is the voice of the sector, supporting the delivery of thriving colleges at the heart of a thriving Scotland. When Colleges Thrive, Scotland Thrives. As the membership body, Colleges Scotland represents all 24 colleges in Scotland, which deliver both further education and around 13% of the provision of all higher education in Scotland.

Colleges across Scotland offer opportunities for the most vulnerable learners, to ensure they can achieve their full potential and providing equality of access to both Higher and Further Education, whilst creating learner pathways for those furthest from the workforce. From the latest set of statistics 24% of students have a recorded disability, out of a total college student cohort of 236,730 college students.

Colleges Scotland welcomes the opportunity to provide views on the Learning Disabilities, Autism and Neurodivergence Bill consultation on behalf of the college sector, and in doing so has consulted with sector leads and those with close knowledge and understanding of supporting vulnerable learners.

Key Themes

Reach and Definitions: Who Should the Bill Include?

Sector leads were unanimous in their view that 'People who are Neurodivergent'/'Neurodivergent People' is the most appropriate terminology to be adopted, as this definition embraces a wide range of individuals without being too broad.

In comparison, sector leads were generally of the view that 'People who are Neurodiverse'/'Neurodiverse People' was too broad and would therefore make it challenging to identify appropriate individuals and meet the expectations that come from any introduced Bill. It was also felt that including specific conditions only in the Bill would not be appropriate as this would be exclusionary and therefore detrimental to those individuals with a condition that was not specifically named within the Bill.

However, there were also concerns that creating a new 'label' for specific individuals could have unintended consequences around people's attitude and behaviours towards individuals facing barriers to a range of services. As a potential solution the Scottish Government should consider providing opportunities within any legislation to highlight specific conditions and barriers without unnecessarily limiting access.

Statutory Strategies for Neurodivergence and Learning Disabilities

There was general agreement with the proposal of a national strategy, noting that this needs to lead local and contextual work, with clear guidance, direction, and support. Implementation guidance should be provided alongside the national strategy to assist local authorities and other public bodies to implement the strategy effectively. The importance of suitable funding for the agencies who have responsibility for implementing the strategy was also highlighted.

Sector leads agreed with the proposal that strategies are required to be reviewed regularly, as is best practice with any strategy, whilst also being supportive of the proposal that people with lived experience should be involved in the development of the strategies. It was suggested that these individuals must play a key role in shaping the strategy.

There was some concern from sector leads that the proposal to introduce a requirement for local strategies to be produced by some public bodies could lead to a variation in approach and provision across different local authority areas, meaning individuals would potentially need to navigate different systems, which would create further barriers. One sector lead also felt that this could unintentionally divert colleges' resource towards the creation of the strategy, rather than focusing on individualised support for learners.

We would suggest on this basis that contextualising the drive of a national strategy to local delivery and individual learning needs would better address individual learning support, whilst ensuring that there is clear support around local strategy implementation and achieving outcomes.

It was also felt that the proposal to introduce guidance that could cover a range of topics to be included in national and local strategies was too vague, and that a national approach is required.

Some sector leads felt that the proposal to consider whether any new accountability mechanism introduced by the Bill should have a duty to review national and/or local strategies and their effectiveness would create unnecessary work. There is already significant governance within the college sector, and this could be addressed with existing review mechanisms.

The point was also raised that these strategies must align to other strategies and legislation, as there is a risk of causing confusion for the individuals the strategy is aimed at on their rights, and services on their responsibilities, as there are other legislative matters that pertain to them, i.e. Getting it Right for Every Child (GIRFEC).

Mandatory Training in the Public Sector

Most sector leads supported the proposal that there should be mandatory training for public services. This places emphasis on public services to upskill staff and increase shared understanding of where barriers and opportunities exist. This proposal also supports professionals and service providers to be knowledgeable and confident when communicating with a range of neurodivergent people and people with learning disabilities.

One sector lead was of the view that it would be important for national bodies like Colleges Scotland and College Development Network to develop a standardised approach to training, rather than individual colleges developing their own approaches, at a time when resources are very scarce.

Another view was that mandatory training should be extended beyond the public sector, if the Bill is to meet its aim of ensuring all individuals are respected, supported, and valued. If training is only covered in the public sector there is a risk this aim will not be fulfilled.

However, it was also cautioned that enforcing mandatory training could place unnecessary burdens on some organisations to create or source training at a time when public sector resources are extremely limited, and when the existence of this training would not necessarily lead to the improvement on knowledge, skills and enhancement of practice.

In response, it was suggested that if the Scottish Government pursues mandatory training, it should commission and fund the development of training and make this publicly available. Related to this, it was suggested that it would be more appropriate for mandatory training to be a requirement only for those professionals who are regulated, or for training to be contextualised to individual sectors by professionals who understand the sector and the student population.

Inclusive Communications

Sector leads were supportive of proposals around alternative means of communication, easy-read materials and neurodivergent and learning disabilities strategies, as they are best at promoting accessible communications, and consideration of practical options that have flexibility to meet individual needs, which would be necessary from a college perspective.

Some sector leads were supportive of the proposal around an enforceable Accessible Information Standard for Scotland, but this has to be flexible to individual needs and the right support would need to be in place to ensure colleges can meet and sustain standards. In terms of the language in this context, the term 'enforceable' was viewed as potentially something that could feed a blame culture, and that lessons should be learned from previous enforceable measures and fitness to practice.

It was commented that colleges already provide individualised support from pre-entry through course engagement to exit point, which is designed for, and agreed by the individual student. Practice examples could be provided by the college sector to inform future Inclusive Communications.

It was also suggested that there needs to be consideration given to advice and support for employers on recruitment practices that unintentionally exclude individuals. Good practice around this could be shared from organisations, such as the NHS.

Data

The college sector perspective in this context is that all the proposals outlined seem appropriate and proportionate to bring the change that needs to happen so that data informs actions that target needs in communities and through services.

It was highlighted that colleges are already collecting data on neurodivergent people and people with learning disabilities to an extent but acknowledged that colleges are all at different stages of their digital journey. However, the proposal to place duties on some relevant public bodies to collect data on neurodivergent people and people with learning disabilities would allow colleges to formalise existing data collection and feedback mechanisms.

Another view was that proposals around public bodies collecting and returning data to the Scottish Government would be best practice in terms of service design and evaluation to know where to target resource and whether those resources were effective. However, organisations would need to consider how they collect their data and know how to analyse this properly, with it being added that colleges are already reporting to a significant number of statutory bodies, and existing reporting mechanisms could be used.

The development of a commission with responsibility for data gathering was seen as a measure that could ensure consistency, and the development of a Scottish version of the Learning Disability Mortality Review (LeDeR) programme, should enable Scotland to benchmark performance and share lessons learned. However, there were questions around the practicality and affordability of this proposal and it was suggested that this may not be required as there is an existing Scottish Commissioner for People with Learning Disabilities, and developing a new commission could create additional, unnecessary work.

The role of GDPR legislation was also raised, with it being deemed that this can sometimes restrict the transition of information between services, which has an impact on individual needs and preferences.

Independent Advocacy

Sector leads were generally supportive of the proposals around independent advocacy, with it being felt that an independent advocacy provision should be established, being free at the point of service use and covering all public sector organisations. However, given the current challenges around resourcing, it was conveyed that any increasing focus upon independent advocacy cannot divert resources from core services, with it being raised whether advocacy could be resourced on a national basis.

Health and Wellbeing

As with Independent Advocacy, sector leads were generally supportive of each of the proposals around health and wellbeing. It was felt that patient passports would prove particularly useful in better understanding learning needs and support. It was commented that colleges work extensively in this area to train future and existing staff and would welcome opportunities to support the development of health and wellbeing staff in relation to neurodivergent people.

Another sector lead highlighted that colleges could work collaboratively with health and social care organisations as the needs of individuals may change and subsequently impact on their learning.

Mental Health and Capacity Law

In this context, sector leads were unanimous in their support of the approach to mental health and capacity law. One sector lead highlighted that colleges play a key role in the development and support of neurodivergent people and people with learning disabilities. The Bill will therefore help reinforce the work already being undertaken by colleges.

The point was made that as language and understanding of neurodivergent people and those with learning disabilities changes, further reflection will be needed on terms previously used and their accuracy in legislation.

It was also highlighted that if learning disability and autism is removed from the scope of mental health and capacity legislation, this has to be fully considered and consulted on more widely.

Social Care

Sector leads were generally supportive of the proposals around social care. One sector lead recommended that if an individual who is neurodivergent or has a learning disability attends college and is known to social services, there should be regular meetings between the college and social services to ensure the individual has a successful transition through, in and out of college.

Another sector lead highlighted that colleges work extensively in this area to train future and existing staff and would welcome opportunities to support the development of health and social care staff in relation to neurodivergent people.

Housing and Independent Living

There was no particular view put forward from the sector on the proposals around housing and independent living, however it was acknowledged that it is important for the college sector to understand the overall support individuals may be receiving.

It was highlighted that it would be important to have a consistent approach to ensure that data is reliable and can be benchmarked between different services and local authorities. This would also support planning and early intervention.

Complex Care – Coming Home

As with Housing and Independent Living, there was no overarching view put forward from the sector on the proposals around complex care, however, the point was made that any panel or

register that is established needs to be dynamic and responsive. It was felt that all these approaches could be time consuming which may lead to delays in service provision.

It was also commented that communication must continue to ensure the educational needs of the individual are maintained where there are health issues that require stays in and out of hospital.

Relationships

Sector leads were in favour of all of these proposals, as it was felt these would provide appropriate support for neurodivergent people and those with learning disabilities to engage in healthy relationships. It was conveyed that this support, advice, and guidance needs to be lifelong, and include college and Community Learning and Development pathways.

The proposal around data was an area that was deemed to require further development, through a supportive approach between the Scottish Government and services to the planned implementation of the strategy.

It was also suggested that primary and secondary schools should include sex education as part of their curriculum for individuals with learning disabilities, but this is reliant on appropriate training for staff and easy to read materials for individuals.

Access to Technology

Sector leads were generally supportive of all the proposals around access to technology. It was highlighted that colleges are well placed to offer both short and extensive training for individuals with learning disabilities in digital skills and online safety. This could be supported by the Scottish Funding Council through Outcome Agreements, and data would then be submitted on a national basis. Colleges, local authorities and third sector could work in partnership to distribute training materials.

Both the importance of investment in digital training and ensuring individuals had access to technology throughout their learning journeys were highlighted as key prerequisites to ensure the successful use of technology by neurodivergent learners.

Employment

The approach to employment received unanimous support from sector leads, with it being highlighted that colleges recognise the barriers in access to education and how that translates to employment, with approaches that ensure fair transitions and opportunities at all stages being seen as necessary. This approach would be key to reducing the unemployment rate for neurodivergent people and those with a learning disability.

In order to support this approach to employment, it would be important to clearly define the role and services of the national careers body in this space.

Social Security

There was no particular view put forward from sector leads on the proposals around social security, however, it was commented that all the proposals offered advantages and could provide increased employment opportunities that match the needs of neurodivergent people and those with a learning disability.

It was proposed that the Scottish Government should consider the provision of clear guidance for staff in colleges in relation to social security services given the complexity of funding applications in this area.

Justice

Sector leads were content with all the proposals relating to justice. It was suggested that Children's Hearings Scotland panel members should all be required to undertake mandatory training. It was also felt that health checks are especially important for anyone detained within the criminal justice system.

Restraint and Seclusion

Sector leads were unanimous in their support of this approach to restraint and seclusion. Colleges are committed to providing trauma-informed support, so would welcome this approach. It was highlighted that staff training is vital here so that staff have better knowledge and understanding, and the practical tools and strategies to support this approach.

Transport

There was no particular view put forward from sector leads on the proposals around transport. One sector lead highlighted that colleges already provide transport support where appropriate for individual students. The resource considerations of this should be clearly identified and targeted at a local and individual level as appropriate. Another sector lead commented that better regional transport planning would benefit all of society and any improvement would be welcomed.

Education

Sector leads were generally supportive of the proposal around mandatory training for teachers, practitioners, and other educators as it was felt that investing in staff training is key to changing attitudes and approaches to ensuring individuals reach their potential.

With regards to the first proposal around strategies and reporting requirements it was felt there is a risk this proposed Bill will add unnecessary layers of additional reporting and governance to schools and colleges with little impact on individuals.

It was also raised that the challenge of providing resources to support individual students should not be underestimated, and that this Bill should not create more governance for services, as then this will become the focus rather than the importance of training and enhancing services.

Children and Young People – Transitions to Adulthood

Sector leads were generally supportive of the proposal around transitions to adulthood, as this would help to declutter the current landscape, and it would be the right approach to invest in the right bodies who have the skills and mechanisms to support disabled children and young people.

This would be seen as a positive development in enabling services nationally and locally to better understand and measure the extent to which disabled children and young people are experiencing a positive and supported transition to young adult life. To complement this direction of travel it was recommended that the Scottish Government develops a map and diagram for individual services and families explaining the inter-connections of strategies, bills, and legislation, to reduce complexity in this area.

Accountability

Sector leads were generally supportive of all the options outlined around accountability. One sector lead felt these options are not mutually exclusive and a combined approach would increase the chance that neurodivergent people and those with a learning disability lead a rich and rewarding life where barriers in public services are anticipated and removed as far as possible.

It was also suggested that a targeted approach focusing upon existing Disabled People's Organisations would be beneficial, and the levels of expertise within these organisations should be supported and resourced, with colleges already working closely with these organisations.

It was felt that systems approaches are essential and lifelong learning opportunities are needed in all aspects of society. Whilst better resources should provide better outcomes, and enhance Accountability, this would only be the case if staff are provided with suitable training. For example, one sector lead commented that colleges need staff with specific skills and expertise supported by practical resources, with additional resources required to evaluate and enhance college-wide services and environments.

Another sector lead commented that some services rely on year-on-year funding which makes it difficult to plan services and ensure consistent accountability, therefore sustainable funding is recommended to support improvements in this context.

Conclusion

As the Scottish Government receives responses with which to inform and shape the delivery of the Learning Disabilities, Autism and Neurodivergence Bill we would expect that the knowledge and thinking of the college sector is taken into consideration in the next stages of this work.

In doing so, Colleges Scotland would be able to facilitate engagement with college institutional leads for student support services to ensure we can maximise the number of learners able to access education in Scotland's college sector.

Colleges Scotland
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