

# Education, Children and Young People Committee

13 March 2024

## Additional Support for Learning

### Introduction

This briefing is for the Committee's fourth formal meeting in its inquiry on Additional Support for Learning. The Committee will take evidence from two panels; the first comprising of organisations with particular interests in supporting individuals' rights; the second comprising of local authorities' representatives and Audit Scotland. This is the penultimate formal meeting during this enquiry. On 20 March, the Committee will take evidence from the Cabinet Secretary.

The Committee agreed to focus on the following themes during this inquiry—

1. the implementation of the presumption of mainstreaming
2. the impact of COVID-19 on additional support for learning
3. the use of remedies as set out in the Act

This paper covers all three of those areas.

The Committee asked specific questions of local authorities separate to its call for views. A [summary of the responses from local authorities was produced](#) as was a [summary of the main call for views](#).

## Implementation of the presumption of mainstreaming

Section 15 of the [Standards in Scotland's Schools etc. Act 2000](#) provides that education authorities will provide school education to all pupils "in a school other than a special school" unless one (or more) of the following circumstances arises—

- (a) would not be suited to the ability or aptitude of the child;
- (b) would be incompatible with the provision of efficient education for the children with whom the child would be educated; or
- (c) would result in unreasonable public expenditure being incurred which would not ordinarily be incurred,

The 2000 Act says that “it shall be presumed that those circumstances arise only exceptionally”. If one of the circumstances listed above is true, the education authority may provide education to child in mainstream education, but it “shall not do so without taking into account the views of the child and of the child’s parents in that regard”. The 2000 Act applies to all children for whom the education authority is providing school education. The [policy intention](#) as set out in the Explanatory Notes to the 2000 Act was to “strengthen the rights of children with special educational needs to be included alongside their peers in mainstream schools.” The benefits of an inclusive education system are considered to be broader than this. For example, a [2017 UNICEF document](#) stated that inclusive education—

- Improves learning for all children – both those with and without disabilities.
- Promotes understanding, reduces prejudice and strengthens social integration.
- Ensures that children with disabilities are equipped to work and contribute economically and socially to their communities.

Witnesses on 21 February also noted that for pupils with complex needs, attending their local school supports them to be part of their own community.

A key theme of the submissions the Committee received for this inquiry was that there is broad support for the principle of an inclusive education where all children are educated together. Equally, a very common theme was that, in practice, these benefits are not being realised for everyone. Some of the reasons highlighted in submissions are: lack of resources; access to specialist services in both the public sector and the third sector; training for school staff; culture; and inappropriate physical environments.

The Enquire/My Rights My Say joint submission stated—

“We feel the key issues around additional support for learning in Scotland are not at their core about the presumption of mainstreaming. Based on our work with children, young people, their families and professionals, we firmly believe that, in most cases, issues that are related to the presumption of mainstreaming are symptomatic of broader challenges in the delivery of additional support for learning, rather than inherently being issues with the presumption of mainstreaming itself. We have some reservations that focussing on the implementation of the presumption of mainstreaming in this inquiry may not get to the root cause of some of the issues that children and young people with additional support needs are experiencing.”

## *A rights-based approach*

The SHRC says that one way of setting out what a human rights-based approach means in practice is through the PANEL principles. These are—

- Participation  
People should be involved in decisions that affect their rights.

- **Accountability**  
There should be monitoring of how people’s rights are being affected, as well as remedies when things go wrong.
- **Non-Discrimination and Equality**  
All forms of discrimination must be prohibited, prevented and eliminated. People who face the biggest barriers to realising their rights should be prioritised.
- **Empowerment**  
Everyone should understand their rights, and be fully supported to take part in developing policy and practices which affect their lives.
- **Legality**  
Approaches should be grounded in the legal rights that are set out in domestic and international laws.

The submission from the Children and Young People’s Commissioner (“The Commissioner”) stated—

“The presumption of mainstreaming was and still is a positive step towards delivering on international human rights treaty obligations, and a step towards creating a more inclusive education system, community and nation.”

The Commissioner’s response noted that the policy in Scotland seeks to reflect a number of human rights conventions, including article 24 of the [UN Convention on the Rights of People with Disabilities](#) which is concerned with education. Broadly, article 24 says that state parties recognise the right of people with disabilities to education and “shall ensure an inclusive education system at all levels and life long learning”. The Commissioner cited the [Committee on the Rights of People with Disabilities](#) which has set out a list of the kinds of barriers that disabled children face in accessing inclusive education. These were—

- Lack of knowledge about the nature and advantages of inclusive and quality education and diversity ... in learning for all; ...
- Lack of appropriate responses to support requirements, leading to misplaced fears and stereotypes that inclusion will cause a deterioration in the quality of education or otherwise have a negative impact on others;...
- Lack of political will, technical knowledge and capacity in implementing the right to inclusive education, including insufficient education of all teaching staff;
- Inappropriate and inadequate funding mechanisms to provide incentives and reasonable accommodations for the inclusion of students with disabilities...;
- Lack of legal remedies and mechanisms to claim redress for violations.

The Commissioner argued that while special schools or units may be used to meet children’s needs where they cannot be met in mainstream settings, “the long-term policy aim should be towards the inclusion of all children in mainstream education”. The Commissioner quoted the [UNCRPD General Comment 4](#) which said—

“Inclusion involves a process of systemic reform embodying changes and

modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences.

“Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organization, curriculum and teaching and learning strategies, does not constitute inclusion.”

May Dunsmuir from the ASN Tribunal said that she is commonly observing parents/carers who are seeing their children being distressed at home but not presenting issues in school, i.e. [masking](#). She suggested that it can be beneficial for decision makers to put themselves into the place of the child and ensure that their views are understood and particularly that their needs do not single them out in their class.

A key aspect of a rights-based approach is that rights-holders are able to seek remedies. May Dunsmuir said last week that “a right is only a right if you know you have it” and that you can seek remedy. This is the topic of one of the themes of this inquiry and is considered in a section below.

## *Resources*

Susan Quinn from the EIS told the Committee on 21 February that—

“The impact of implementation, as we see it, is that, because of under-resourcing and the challenges that schools face, the needs of the young people who are in mainstream education are not being met as well as teachers and others would want them to be. Large class sizes and the growing number of complex needs that are being addressed mean that, at this time, it is difficult to meet the needs of young people in the mainstream setting.” (OR 21 Feb 2024, Col 3)

At the same meeting, Peter Bain from SLS said that the policy “falls down because of underfunding and a lack of resources and training for staff – ASN staff, in particular.” (Col 3) Later he said—

“To be fair to local authorities, we have to ask how they should decide where the money goes. In discussions between the local authority, central team staffing and school staffing about the individual needs of youngsters in a class or in the school, there will always be a degree of disagreement over the need. For example, a member of staff might try to keep the pot available for 10 schools, but a headteacher or, usually, a deputy will make an argument that is based on the needs of their individual school. There is not enough money to provide the level of support that each individual school will ask for, so that dichotomy goes on all the time. That is why nobody is ever happy. Local authorities have to spread the money increasingly thinly, which does not make them look good, and schools are not getting as much money or staffing as they need to cope with the needs that they see every day, so that is not working either.” (Cols 16-17)

Budget setting can be considered to be about prioritising resources to best deliver

outcomes. Falkirk Council's submission said it had "updated and modernised our ASN processes to ensure transparent and equitable allocation of resources to meet greatest need". Glasgow City Council's submission stated that "additional funding or a significant shift in resources from the specialist sector to mainstream establishments have been difficult to achieve". In relation to the costs of places in special schools, ADES' submission stated—

"Within Local Authority budgets additional support for learning costs cannot be predicted and are often outwith the control of officers leading to significant financial risk and pressure. The increasing demands for outwith authority provision and the inclination of the ASN Tribunal to support parental placing requests to independent schools is increasingly adding additional pressure; costs associated with outwith placements are the main budget overspend in many local authorities alongside transport. Independent school placements can cost anywhere between £70K and £180K per year with children and young people often remaining in placement for over 8 years. These placements cannot be predicted or planned."

Falkirk Council's submission highlighted a different aspect of resources – the time and space to think, problem-solve and plan. It said, "this is partly resource dependent and relies on enough staff, rooms and facilities and the space and time to think and be able to fully embed any specialist advice from educational psychology or speech and language therapy in their day-to-day practice."

The remit of the Morgan Review made clear that the principle of presumption of mainstreaming was not under review and that the relevant issues would be considered within existing resources. Nevertheless, the Morgan Review touched on both of these aspects. The Morgan Review made a recommendation aimed at Audit Scotland—

"Audit Scotland must use the key themes in this report [the Morgan Review] and the associated findings from Audit Scotland's audit of educational outcomes to inform the scope of their national performance audit on outcomes for children and young people with additional support needs. This must include assessing spend on additional support for learning across services, its impact on attainment and outcomes for children and young people at all stages; highlighting good practice and gaps."

Audit Scotland's submission stated—

"We have not carried out audit work that would allow us to answer the specific questions set out in the Committee's call for views. However, we would like to take this opportunity to highlight the AGS and Accounts Commission's interest in additional support for learning.

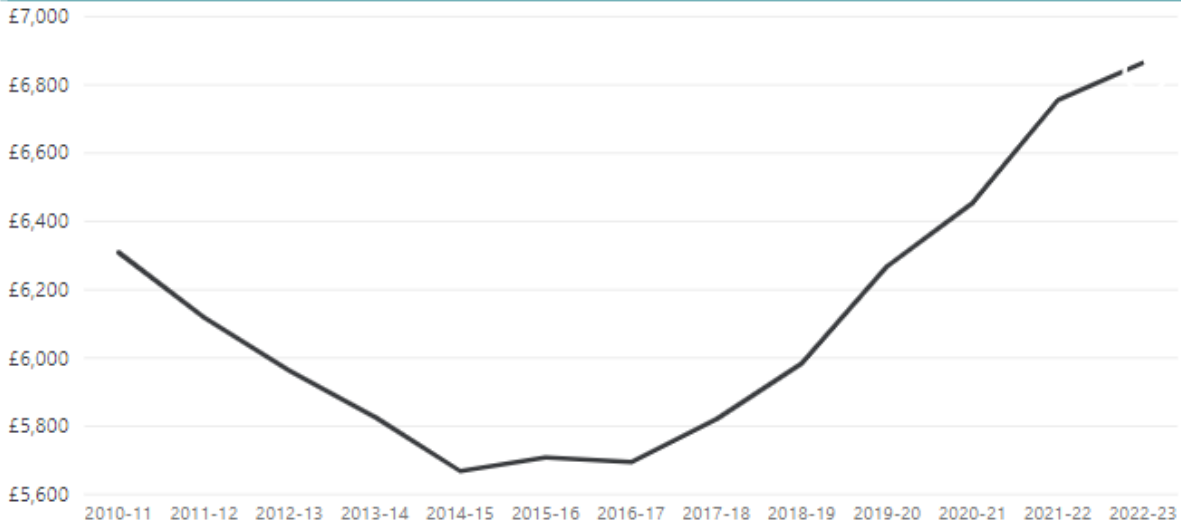
"In May 2022 the Accounts Commission published [a blog on children](#) and young people who need additional support for learning. This commented on some of the challenges these children and young people face to get the support to help them reach their full potential. The blog noted that 'It's distressing and frustrating that we repeatedly hear of the barriers that some families fight against to get the right support to help their child to learn.' It also said that the lack of the right support, at the right time, for children and young people who need additional support – and their families – can exacerbate and intensify the inequalities faced by too many

across Scotland's communities.

"The Accounts Commission and the AGS have identified equalities as a priority area for their work. They intend to carry out further audit work on additional support for learning. We will notify the Committee of the scope and timing of this work when these have been agreed."

The Improvement Service's [Local Government Benchmarking Framework provides data on a range of indicators](#). One of which is average spend per pupil. The charts below show the real terms (2022/23 prices) spend per pupil in Scottish local authorities between 2010-11 and 2022-23 for the primary and secondary sectors.

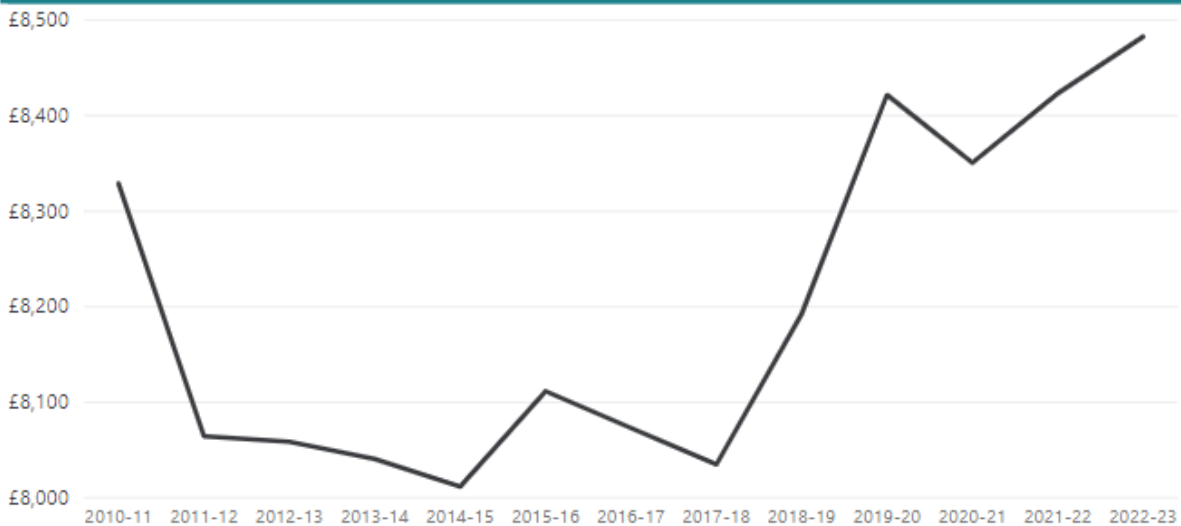
**CHN01 - Cost per Primary School Pupil**



**CHN01 - Cost per Primary School Pupil**

Indicator	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
CHN01	£6,307	£6,117	£5,960	£5,825	£5,666	£5,707	£5,693	£5,819	£5,981	£6,267	£6,451	£6,753	£6,863

**CHN02 - Cost per Secondary School Pupil**



**CHN02 - Cost per Secondary School Pupil**

Indicator	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
CHN02	£8,328	£8,063	£8,058	£8,040	£8,011	£8,111	£8,072	£8,034	£8,192	£8,421	£8,350	£8,422	£8,482

# *Access to specialist services*

## Special schools and units and staged intervention

A common view from witnesses and in submissions is that, for some children and young people, education in a specialist setting can be beneficial. Matthew Cavanagh from the SSTA said—

“Specialist provisions, such as the one that I work in, have staff who work with partners every day and who have greater ability to meet the needs of individual pupils, whom they know better. In a mainstream secondary school, primary school or nursery there is not the ability to provide support to that extent, but that is the strength of settings outside the mainstream.” (21 February 2024, Col 6)

The Committee has been told that an increase in the number of pupils with complex needs has not been mirrored by the number of places available for those children and young people. This can have an effect across the system; Sylvia Haughney from UNISON told the Committee—

“Complex needs pupils who would have gone to a complex needs school have no place to go because the buildings are full to capacity. Those pupils are now in ASN schools or in mainstream co-located units. Their needs are complex, but there is little training for support staff, who are the lowest paid and the least trained. We have been at a crisis point as regards the impact on the children in those establishments.” (21 Feb 2024, Col 5)

ADES’ submission echoed this point, saying “mainstream schooling and, where relevant, specialist provision are under intense pressure as the thresholds between mainstream and specialist provision is now significantly different. This difference is not widely understood or recognised within the legislation or with parents and is leading to a great deal of upset and anger on their part.” Govan Law Centre’s submission stated—

“It seems clear that there are more young people who require specialist placements than there are specialist placements in almost every local authority in the country, quite often by a wide margin. We welcome the Government’s funding of 10 new or improved specialist provisions throughout the country in the second phase of the Learning Estate Investment Programme. It is our hope that these schools are designed to accommodate the highest possible number of pupils without creating a loud and busy environment. The profile of need we feel is most under resourced and would benefit most from an increase in specialist school placements are those who have the academic capacity to access the mainstream curriculum, but struggle to do so in the mainstream school setting.”

Accessing special schools or units can be a point of tension between parents/carers and local authorities. Last week, May Dunsmuir from the ASN Tribunal told the committee that references to the ASN Tribunal about placing requests had increased since the pandemic. Falkirk Council’s submission said—

“Sometimes our barriers are about our staff or parents understanding that the “best” option for the child is their current placement. There needs to be realistic understanding about what actually happens in more specialist provision.

Sometimes, and more often than not, with a few adaptations the current placement can feel a lot better. This approach to tackling adversity feels tricky but usually builds resilience in better ways for the child than simply changing school.”

Peter Bain from the SLS suggested that there has been an increase of pupils with “mid-range” needs and that these are not being catered for. (21 February 2024, Col 8). He said “Teachers and additional support needs staff are most concerned about that group, because there is a lack of suitable staff and training to deal with the ever-increasing numbers in the mid-range.” (Col 16)

Several local authorities set out their staged intervention approaches which are intended to ensure that the correct support is in place. Local authorities have their own frameworks of staged interventions. Broadly speaking these stages range from making small adjustments within the universal setting, through more significant interventions, and to specialist interventions.

Deborah Best from DIFFERabled said, “It seems that it is now almost a requirement that a child must first fail badly before they are seriously considered for a specialist placement.” (28 February 2024, Col 21). She also said—

“We therefore need a model of education that can better differentiate and celebrate the strengths of all our young people and offer consistent support that is not removed when they begin to succeed. They succeed because they have good support, not because they suddenly do not need support any more, yet it is often removed just as it is beginning to work. Supports are regularly removed once the person starts to make some progress. Would we take a ramp away from someone who required to use a wheelchair to access the room?” (28 February 2024, Col 22)

The [statutory definition of a](#) “special school” includes either a school or “any class or other unit forming part of a public school which is not itself a special school” but is especially suited to the additional support needs of pupils. Enquire/My Rights My Say joint submission noted that the [interpretation section of the 2004 Act](#) which includes ASL units as part of the definition of a special school. This can lead to complexity when considering the legal position around, for example, placing requests.

ADES’ submission reported that—

“Children and young people with additional support needs are increasingly staying on in school for longer and nearly always beyond statutory education. This is placing additional stress on capacity in specialist provision. There is a small but steady increase in parents requesting Year 7 places (often pupils aged 18-20 years) to alleviate the need to move their child into adult services. Post school transition planning for children with learning disability and more complex needs is challenging at times due to resource limitations in adult services impacting significantly on education resources.”

## Specialist services

[Section 23 of the 2004 Act](#) also provides that education authorities may seek assistance from other agencies (e.g. a local health board) in supporting pupils with ASN



—examples of this could be Speech and Language Therapy or Occupational Therapy. Those other agencies must comply with such a request unless it “is incompatible with its own statutory or other duties” or “unduly prejudices the discharge of any of its functions”.

The Committee has been told that access to a range of services outwith education has diminished over time. For example, education psychologists, social work, speech and language therapy, occupational therapy, mental health services.

However, ADES’ submission stated—

“Support for learning, staged intervention and GIRFEC child planning processes generally work well. Peripatetic services such as Educational Psychology Services and Additional Support for Learning outreach services are universally available and support schools to develop and sustain inclusive practice.”

A variety of agencies or services are expected to take part in multi-agency approaches and planning. However, the Committee has heard that engagement can be patchy; Susan Quinn from the EIS said—

“Schools will often be expected to attend to things that they are alerted to by social work or health services. We are not always able to get arrangements reciprocated, for a whole variety of reasons.” (21 February 2024, col22)

An example of the complexity of multi-agency working was provided by Glenn Carter from the Royal College of Speech and Language Therapists. He suggested that these services should be jointly funded and that “we should find a way of supporting these children’s needs and not fight over who is paying”. Mr Carter argued that accountability of the outcomes of children’s communication should be held jointly between health and education services and that there should be a “whole-system approach”. (28 February 2024, cols 13-14)

## *Training for school staff*

Training and skills is one of the four themes of the ASL Action Plan. It includes actions around the role of classroom assistants/pupil support, the support provided by Education Scotland, and teachers’ education and continuing professional development.

The [Bute House agreement](#) includes a commitment to “work with the Scottish Negotiating Committee for Teachers to ensure there is appropriate career progression and pathways for teachers looking to specialise in Additional Support for Learning.” Local authorities are responsible for supporting the career-long learning for their staff. Local authorities also have a major role in student teachers becoming fully registered. In a one-year PGDE course at least 50% of the course is on placement at schools. When a student teacher qualifies from ITE, they may gain provisional registration. The main route to full registration with the GTCS is through the 1-year [Teacher Induction Scheme \(TIS\)](#). Local authorities receive funding from the Scottish Government for employing probationary teachers. Local authorities are responsible for supporting probationary teachers working within the TIS towards the Standards for Full Registration. Support is organised differently across local authorities; there are contractual obligations for each inductee’s working week:

- reduced classroom contact time (18 hours)
- 4.5 hours of professional development
- an induction supporter/mentor to guide the inductee through their induction year.

ADES' submission said that "the knowledge and understanding of additional support needs gained by newly qualified teachers during their training can be limited". As a result, local authorities are increasing "learning opportunities focused on inclusive practice, built into the Probationers Programme." ADES also highlighted recruitment and retention challenges.

Fife Council's submission highlighted the "adoption of Fife Core Approaches to relationships, wellbeing, and behaviour: a long-term plan to skill up the whole education workforce in both Trauma-informed and De-escalation skills, supporting schools to effectively implement these in their own establishments and evaluate impact over the long term". Fife also noted, "specific training is provided on the basis of a needs analysis at school level, and identification of priorities through school improvement plans."

Teachers are also expected to engage in CLPL and professional learning is part of the GTCS' standard for full registration. COSLA's submission said—

"Under the McCrone Agreement qualified teachers are responsible for ensuring their individual learning needs and skills are kept updated and evidenced, and they have dedicated time for this. They determine the most appropriate training for their needs, and we would expect that ASL would feature in their choices, but under McCrone schools cannot mandate this."

On 28 February Suzi Martin from NASS said that while there is a need for specialist support with specialist knowledge it is important that all staff "understand the autistic experience, what it means to be autistic, how children and young people might present if they are autistic, and what they might do". (Col 30) She also highlighted a resource for inclusion in ITE courses called *We were expecting you!* Which was piloted by Strathclyde University in 2021. Deborah Best from DIFFERabled said—

"Training is fundamental, and it has to be mandatory, because many neurodivergent children and young people get missed in the first instance. When the evidence from that perspective is requested from the educational environment, many parents are told that their child will not be taken forward for neurodevelopmental assessment, because the nursery or the school does not see what the parents see. If a child or young person is internalising, that is extremely worrying." (Col 39)

While the idea of mandatory training was not supported by the panel of unions, there was support for more time and opportunities to access appropriate career-long professional learning. Susan Quinn from the EIS said—

"We have to strike a balance and deliver training at a time when staff will be working with young people with that need. ... Training needs to be on-going throughout the careers of teachers and child support workers ... There is no one-size-fits-all piece of training that would meet the needs of all our young people and all our staff. We have people who get specialist training and gain

qualifications in additional support needs, but getting up to a particular level takes them four years of night classes at universities and so on. We need to find the means to provide the quality and the level of professional learning that individual teachers and schools need at a particular time.”

The Bute House agreement also said that the Government would explore “the development of an accredited qualification and registration programme for Additional Support Needs assistants” with proposals expected by the end of 2023. Sylvia Haughney told the Committee that classroom assistants do not receive sufficient training and can have very little induction. She said—

“The majority of pupil support staff in Scotland have 27.5-hour weekly contracts. They start at 9 o’clock and they finish at 3 o’clock. There is no non-pupil-contact time or time for them to look at any training. CLPL is for teachers and early years professionals; it rarely exists for support staff. They are not allocated time to go and research training or to do the training, because the work that they do with the most vulnerable children is so valuable that they cannot be allowed out of the classroom to get training. Therein lies the issue with the 27.5-hour contracts. If support staff had more non-pupil-contact time, they could do things such as look at the risk assessments that are produced when a child starts school.” (21 February 2024, Col 18)

COSLA’s submission stated, “work is currently underway looking at training, regulation and accreditation for [Pupil Support Staff] workforce. Education Scotland have held a number of events and have developed training resources which pupil support staff can access.”

## *Physical environments*

During the session on 28 February 2024, the Committee explored how physical environments can contribute to an inclusive education. Suzi Martin from National Autistic Society Scotland said “the trend towards superschools is potentially unhelpful and quite harmful, depending on what those superschools look like.” (28 February 2024, col19)

The Govan Law Centre’s submission said, “it perplexes us as to why schools are becoming bigger, meaning more sensory and social stimuli to navigate” and that the appropriateness of physical spaces should be looked at urgently. ADES’ submission said that “the current metric for allocating funding for new builds may privilege schools with larger number of pupils” and suggested that there could be a “specific focus on specialist provision across Scotland”.

Deborah Best from DIFFERabled said that more thought should be put into the environment such as lighting, she also said “We need to consider whether every school and nursery should have a proper sensory environment where children or young people can go to de-escalate.” (28 February 2024, Col 28). Falkirk Council’s submission reported that many of its “mainstream schools have universal and targeted support and learning zones, including nurture zones and reduced sensory stimulation zones”. Falkirk Council also noted that as some of the settings cannot be adapted, and “this leads to costly Out of Authority placements requests”.

Suzi Martin from NASS made suggestions on how the existing estate can be improved

for neurodivergent children and young people which included the types of furniture available; she also said schools need “direction and resource” to make environmental changes. (Col 35 and 37) Dinah Aitken said—

“The principle of universal design is that we should build a more flexible and adaptable environment from the ground upwards, so that, when someone needs individual specialisation, we can make minimal adjustments instead of having to start from scratch to make adjustments for that person. The environment would be more flexible and the curriculum more flexibly designed to accommodate different learning styles in the classroom more easily.” (Col 36)

## *Curriculum*

One of the aspects of supporting an inclusive education is that the curriculum is accessible and adaptable to individual needs. Some submissions argued that too much focus is placed on formal academic achievement within school education and this can overshadow the achievements of pupils with ASN. The Commissioner’s submission stated—

“For the presumption of mainstreaming and inclusion of children and young people with additional support needs to be successful and overcome the barriers identified there must be alternative systems for assessing, recognising and celebrating the success of all learners. These need to include alternative methods of assessment for those sitting mainstream qualifications and also alternate methods of supporting the achievements of students outwith traditional academia.”

Peter Bain from the SLS and a Headteacher said that in his school in Oban, mainstreaming requires that an alternative curriculum is provided that suits “the needs and desires of young people so that they can make their way in life after school”. He explained that in his school—

“The flexibility of the curriculum for youngsters who are unable to physically or mentally engage in many mainstream classes works very well, with additional or alternative provisions being provided. For example, we have a large number of children with various degrees of autism, and they might do more outdoor learning.” (21 February 2024, Col 7)

The Committee has heard that teachers can find meeting a wide range of needs in one classroom challenging. Matthew Cavanagh from the SSTA said—

“Teachers can face a classroom with a great number of pupils, some of whom are struggling to get the best education that they can get. That can limit the breadth of provision ... Teachers cannot teach at all sorts of levels in the same classroom—that is not fair on the teacher in terms of their workload, and it is not fair on the individual young people in that class. If we have greater flexibility and can support parents to understand that flexibility and the range of qualifications and opportunities that exists, we can provide those young people with the education that they deserve.” (21 February 2024, Col 12)

## *Identification of needs*

A crucial aspect of supporting pupils with additional support needs is identifying those needs so that appropriate support can be put in place.

Duties under the Education (Additional Support for Learning) (Scotland) Act 2004 do not require a formal diagnosis; rather the needs of the child should be assessed and met. However, the Committee has heard that there is a perception among parents that formal diagnoses will lead to greater support for their children. Deborah Best from DIFFERabled said that while the 2004 Act does not require a diagnosis, too often appropriate support is not provided without one. (28 February 2024, Col 39)

Dinah Aitken said that better home-school relationships would help in identifying the types of support that would benefit the child or young person, but that this would take time and resource. (28 February 2024, Col 40)

More broadly on the variation in the numbers of pupils recorded as having ASN across different local authorities, COSLA's submission stated—

“We are aware of variation in figures of children and young people recorded as having additional support needs across local authorities. Schools and local authorities will use their professional judgement and experience to take decisions based on how best to deploy resources. Variation may also exist because of differences in school population, for example in city areas there are more likely to be children with English as a second language. It may also be that due to, for example, small rural schools and low pupil to teacher ratio, significant support for all pupils within a school is provided and the number of pupils requiring support in addition to that will be relatively low.”

## Looked after children

There are specific provisions about looked after children within the 2004 Act. The Statutory guidance explains—

“The Act automatically deems that all looked after children and young people have additional support needs unless the education authority determine that they do not require additional support in order to benefit from school education. In practical terms, this means that education authorities must make arrangements to identify the additional support needs, if any, of every looked after child or young person who is, or is about to be, provided with school education ... In addition, education authorities must consider whether each looked after child or young person for whose school education they are responsible requires a co-ordinated support plan.”

## **Impact of the pandemic**

Enquire and My Rights My Say's joint response said that it “continues to hear about many of the long-term negative impacts” from the pandemic. These include:

- Long term reduction in support/levels of support.
- Delays in identifying needs which can impact immediate support

- Failure to plan support and transitions, impacting pupils' current school placement.
- Lack of attainment still being behind attributed to the coronavirus pandemic.
- Part-time education started following the pandemic still in place.
- School-related anxiety or mental health needs developing or exacerbated during the pandemic continuing to affect attendance.

## *Increased needs*

The Committee sought specific information from local authorities prior to this inquiry. A common theme from these responses was that local authorities are reporting both an increase in the numbers of pupils with additional support needs and an increase in complex needs. Several responses reported an increase since the pandemic, particularly in relation to mental health, dysregulation and speech and language difficulties.

Dinah Aitken from Salveson Mindroom Centre told the Committee that its services had seen a “a surge in demand” and that SMC is “supporting three times as many families as we were in 2019, and the level of distress within those families is much deeper and the issues that they are bringing to us are much more complex.” (28 February 2024, col 4)

The Committee heard that children with unmet need, for example support with language and communication, are more likely to display challenging behaviours. Suzi Martin from National Autistic Society Scotland said—

“Without doubt, Covid-19 will have caused autistic children and young people a lot of anxiety and stress, which has probably resulted in dysregulation and certain behaviours. The removal and withdrawal of services will certainly have exacerbated that. For autistic children and young people, it is all about support. If support and services are there, they are likely to be able to enjoy their school experience and socialising with their peers. However, if support is not there, they will experience dysregulation and will potentially behave in a way that others around them perceive as challenging or problematic.” (28 February 2024, Cols 7-8)

The panel on 28 February suggested that the experience of the pandemic reinforces the argument for early intervention to support better outcomes.

## *Attendance*

One of the ongoing impacts of the pandemic has been changes to attendance. In [November, Education Scotland published](#) a “deep dive” into issues around attendance. One of the groups that this report highlighted as being “more vulnerable to low attendance” is pupils with additional support needs, including:

- children and young people who have experienced care
- young carers

- children and young people who have experienced exclusion
- anxious children and young people

This report suggested that there were four types of factors that may prevent good attendance. These were:

- Individual factors, e.g. mental health, anxiety, disinterest in education
- Peer factors, e.g. poor relationships with peers
- Family factors, e.g. parental mental health, financial issues, low parental interest
- School factors, e.g. the school ensuring that the child is interested in the curriculum and feels supported.

This report stated that the “relationship between attendance, behaviour, and wellbeing are interlinked”.

Another aspect the Committee has considered is the use of part time timetables. Suzi Martin from the National Autistic Society Scotland’s said—

“There is an issue in schools. Schools and teachers are undoubtedly struggling with a lack of resource. Part-time timetables can be a supportive measure and are often used with the intention of being supportive, but in a lot of cases they are a sticking plaster for a lack of support. They can be harmful in that it can be difficult for young people to get back to full-time education once they are on a part-time timetable. Some of the part-time timetables that we are talking about could be three hours a week. I have heard of autistic children and young people who are receiving only three hours of education a week.” (Col 20)

## *Changing practice after the pandemic*

Some pupils experienced some benefits through the experience of learning outwith the school environment. Salvesen Mindroom Centre’s submission noted that for some “not having to cope with the demands of teachers and face to face peer relationships, and not having to cope in unsuitable (sensory) environments” was a benefit. Others may have preferred the autonomy of online learning. SMC continued—

“For some of these learners who have not been able to return to school at all after the schools re-opened or those who are on a reduced timetable- the fact that some schools are still putting class work on digital platforms such as Teams has been really useful-as they can access this work from home. For parents who found in person meetings difficult (due to social anxieties or time constraints), being able to attend meetings virtually was a real bonus and it is positive that this has continued in a lot of schools.”

Suzi Martin from the National Autistic Society Scotland’s said—

“Some autistic children and young people felt that online learning was a more positive experience for them, but a lot of that positive experience will have been because the stress and anxiety that are caused by the school environment were

removed. Therefore, the issue is about making the school environment inclusive rather than assuming that online learning is the answer. Online learning definitely has a role to play, and we do not necessarily feel that there has been sufficient learning around that since the pandemic. Before Covid, there were autistic children and young people who could not go into school and were not getting an education, and then, suddenly, online learning was available and they could engage in education. Since the return to in-school learning, the online option has been removed and, again, they are now not engaging in education.” (28 February 2024, Col 16)

On 28 February, the panel discussed the possibility of a hybrid model being adopted. Deborah Best from DIFFERabled suggested that this may support engagement in learning and attendance. Irene Stove from the Scottish Guidance Association said “although I would love to be able to welcome a hybrid model, I am not sure how schools would be able to cater for it without additional resources.” (Cols 17-18)

The Royal Society of Speech and Language Therapists said that the services that appear to be managing the current need most effectively are:

- a) taking a whole system approach to service delivery; and
- b) have a threshold of resource to meet the need.

## **Statutory remedies and parental involvement and engagement**

### *Parental and pupil engagement*

Involving parents/carers and pupils in the decisions around their education and support is good practice. Enquire and My Rights My Say’s Joint Submission highlighted the importance of good communication between families and schools, especially at particular pressure points, such as transitions. Falkirk Council’s submission noted that in its area there is “ASN Parent Forum led by Parent chair and vice-chair who liaise with ASN Service on events”.

### *Planning*

For children with complex additional support needs, there is likely to be a formal planning process and parents/carers and pupils should be meaningfully involved in that process. In 2022, of the 241,639 children who had an identified additional support need, 1,401 had a co-ordinated support plan, 32,898 had an Individualised Educational Programme (this plan may have another name locally), and 49,200 had a Child’s Plan. Pupils could have more than one plan.

Of those three plans, the IEP is likely to be focused on the support within a school. Both the CSP and the Child’s Plan are likely to be multi-agency plans. May Dunsmuir said that CSPs can also benefit children and young people by providing them with certainty about their support. On 28 February, the panel noted that CSPs are useful in that they allow for greater accountability and potentially recourse to the Tribunal. However, the panel also noted that planning is in the service of creating better outcomes. (Cols 24-25)



Ms Dunsmuir also told the Committee that navigating the legal tests for CSPs can be challenging. ADES' submission said—

“The requirement and criteria for Coordinated Support Plans are complex, unhelpful and require review. The requirement to provide a Coordinated Support Plan in addition to a Child's Plan does not fit in with the aspiration under GIRFEC of one single planning framework and leads to workload and complexity for school staff.”

Peter Bain from SLS told the Committee on 21 February that there are two factors which can influence the use of CSPs. These were “the strength of expertise in [local authorities'] central teams” and the “the strength of the partnership arrangements that sit in each local authority area and which work in each school community”. (Col 19)

## *Advocacy and Remedies*

The Committee is exploring the statutory support and remedies available to families and young people in relation to ASL. These are: access to a supporter, advocacy, mediation, adjudication and recourse to the Tribunal. In relation to these remedies, Enquire highlighted a number of key points, which were:

- Some of the current routes are complex and inaccessible to young people, parents, and carers in distress.
- Many routes to require digital literacy skills and access to a computer, and therefore may not be accessible to all.
- There is a disparity in the availability of advocacy and support services in navigating different types of dispute resolution.
- There are very few advocacy and support services
- There is variability across local authorities in access to mediation services.
- The process for those requesting independent adjudication could be simplified and more accessible.

The Commissioner's submission said that it has heard evidence that “parents with the most resource who can make use of the [redress] system” and this contrasts with the data which shows that “pupils who experience social deprivation have a greater likelihood of being identified as having an additional support need”. A common framing of parents/carers' relationship with local authorities when they are seeking specialist provision is that it is a “fight”.

Govan Law Centre's submission stated—

“We are often approached by parents who have exhausted discussions with the school asking for supports that are not forthcoming. We therefore refer them to contact senior management for ASN within the Local Authority. We are concerned about a culture in education which is preventing teachers and school senior management from asking for help and support from the ASN team within

the authority.”

ADES’ submission suggested that local authorities managing limited resource can lead to tension. It said—

“The overall challenge is that broadly, the ASN legislation requires local authorities to meet every need, however there is a limited resource to meet every need. The result is often tension with parents / carers who want the best for their child but who need to go through a range of processes designed to ensure a fair allocation of resources and that those with greatest need are supported most. Parents / carers are likely to experience this as challenging and so we can operate in an adversarial system. The adversarial part of the system such as appeals, tribunals and legal cases removes resources from the system and ultimately may result in a poorer experience for the child, a challenging system for parents / carers and for the staff involved in trying to deliver the best outcomes possible with the limited resources available.”

May Dunsmuir said that the previous Commissioner had expressed concern about the availability of legal support for families in this area and that there had been a suggestion of an accreditation scheme. Deborah Best from DIFFERabled said that the cost of legal representation at a tribunal can be prohibitive. (28 February 2028, Col 44) ADES’ submission argued that an increase in cases being taken to the Tribunal are evidence that there is a divide between the ambitious legislation and “what can actually be provided and delivered in practice”. It also said that the complexity of the law can be challenging for officers to navigate. Some local authorities’ view was that the ASN Tribunal can contribute to an adversarial relationship between the local authority and their staff and parents/carers.

Fife Council’s submission explained how in its authority school leaders, central ASL staff or mediation services will seek to find “mutually suitable solutions, which meet the needs of children and young people” Fife’s submission continued—

“Unfortunately, if this problem solving is not successful, we have an increasing number of parents, supported by advocacy services, who make Placing Requests to independent educational provision, which often results in a reference to Additional Support Needs Tribunal. Being involved in the process of an ASN Tribunal is enormously expensive to local authorities in terms of officer time and can be expensive in terms of ongoing costs if the ASN Tribunal decision is to place the child in the independent provision. In our experience this decision can often be costly to the child’s education if the placement does not then go well and the child returns to an educational placement in the local authority, having had their education significantly disrupted and interrupted by this process.”

Dinah Aitken from Salveson Mindroom Centre said—

“I know that the tribunals are not meant to be as combative as the courts; nevertheless, local authorities are often supported by legal teams, whereas it is very difficult for families to find skilled legal representation that can take them into the tribunals. I think that there should be much more accessible routes for families to challenge when they are not getting the support and when the child is not thriving.” (28 February 2028, Col 44)

May Dunsmuir noted that the Tribunal is a judicial body and independent. She indicated that, as a forum where disputes are settled and findings of fact are made, there may be tensions.

Very few submissions (and no local authorities) mentioned the independent adjudication process. This process is set out in the [Additional Support for Learning Dispute Resolution \(Scotland\) Regulations 2005](#). The Commissioner's submission stated—

“For children aged 12-15, and their parents or carers can seek independent adjudication where they disagree with an education authority's decision on things like whether the child has additional support needs or failure to provide support for those needs. My Rights, My Say report that many of the children are frustrated by the education authority's refusal to progress the referral under the catch-all “otherwise unreasonable” provisions (Reg 4(3) of the Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005). As this can be exercised entirely at the authority's discretion and there is no right of appeal, it can effectively act as a veto. This creates a barrier to children making use of their rights and can lead to escalation of conflict between families and the education authority. As the exception is contained within regulations rather than statute, it can be removed or amended by Ministers to protect and promote children's rights in line with the Parliament's commitment to incorporate the UNCRC. To better understand how effective independent adjudication is, it is important that data is both collected and regularly reviewed to show rates of requests and refusal.”

**Ned Sharratt, Senior Researcher (Education, Culture), SPICe Research 7 March 2023**

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# Education, Children and Young People Committee

6 March 2024

## Additional Support for Learning

### Introduction

This briefing is for the Committee's third formal meeting in its inquiry on Additional Support for Learning.

The Committee agreed to focus on the following themes during this inquiry—

4. the implementation of the presumption of mainstreaming
5. the impact of COVID-19 on additional support for learning
6. the use of remedies as set out in the Act

This week the Committee will take evidence from May Dunsmuir who is the President of the Health and Education Chamber of the First-tier Tribunal for Scotland. Prior to that she was the president of the Additional Support Needs Tribunals for Scotland before it transferred into the Health and Education Chamber in 2018. While the Tribunal's name has changed it is still commonly referred to as the ASN Tribunal or ASNTS and members will have seen this name being used in submissions and elsewhere.

The intention is that this meeting, the Committee will be focusing mainly on theme 3, and particularly the role of the Tribunal.

## Health and Education Chamber of the First-tier Tribunal for Scotland

Tribunals are specialised bodies which adjudicate on disputes or claims, often in relation to governmental decisions taken in respect of a specific area of law or policy. In comparison to courts, their processes and procedures are often intended to be relatively informal, and they are generally less adversarial. The [Tribunal publishes details of its decisions](#).

One of the aims of this inquiry is post-legislative scrutiny [of Section 15 of the Standards](#)

[in Scotland’s Schools etc. Act 2000](#) (Requirement that education be provided in mainstream schools) and the operation of the [Education \(Additional Support for Learning\) \(Scotland\) Act 2004](#) with a particular focus on access to remedies. The Additional Support Needs Tribunals for Scotland was initially established by the 2004 Act. The Tribunal can hear cases in relation to certain duties under the 2004 Act (known as references) and disability discrimination claims (known as claims) under [Schedule 17 of the Equality Act 2010](#). The Tribunal’s submission commented on the operation of a number of legislative provisions.

## Who accesses the Tribunal and representation

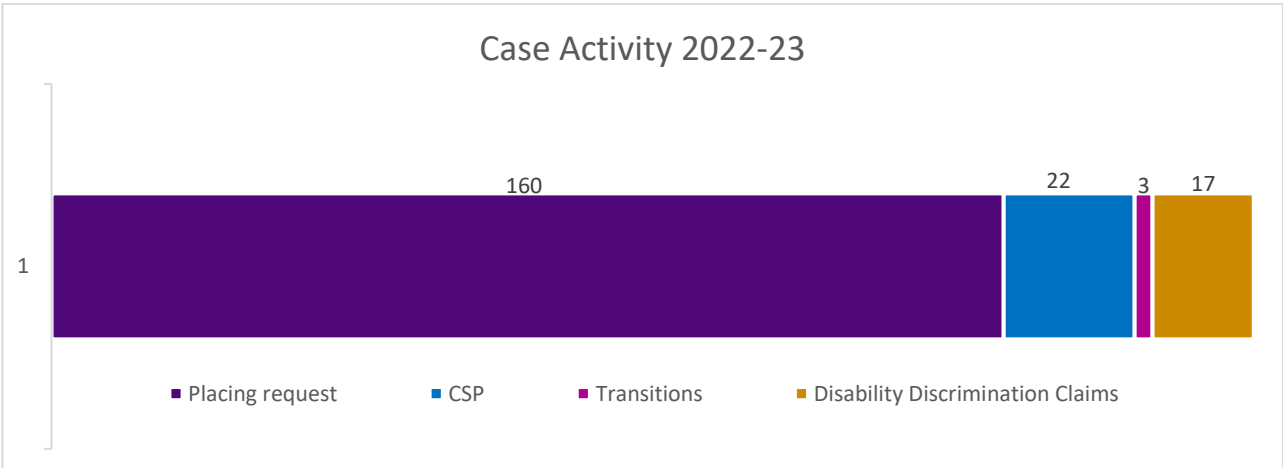
The Tribunal publishes bulletins twice a year on its work and developments within its jurisdiction. The latest was published in October 2023 and this reported that—

“During the first half of this reporting year, the Chamber has again experienced a rapid increase in the receipt of applications. Between 1 April 2023 to 30 September 2023 we have received 151 applications. This can be broken down into 147 references and 4 claims.”

The [Scottish Tribunals Annual report for 2022-23](#) said that in that year, this Tribunal “saw a sharp rise in applications with a total of 202, the highest in any reporting year”. The report continued—

- 193 applications were submitted by a parent or guardian. Eight were submitted by a child, the highest in any reporting year. One was submitted by a young person.
- Nine applications involved a child or young person who is ‘looked after’ by their local authority.
- The majority gender remains male.
- Autistic Spectrum Disorder (ASD) remains the highest single additional support need reported (in a total of 134 applications).
- Disposals of applications have increased month on month - with a total of 183 applications with an outcome in this reporting year

The chart below shows the split of cases in 2022-23.



The [equivalent Tribunal in England](#) covers a wider range of topics. Its case load is over 10,000 a year.

The Commissioner for Children and Young People Scotland's submission said that it has heard evidence that it is "parents with the most resource who can make use of the [redress] system" and this contrasts with the data which shows that "pupils who experience social deprivation have a greater likelihood of being identified as having an additional support need".

On [21 February](#), the committee was told by Matthew Cavanagh from the SSTA and a teacher in a special school that "parents' limited ability to access the available resources, their lack of confidence in relation to the language that is used and their capacity to understand what is available are massive issues in terms of inclusion." (Col 12)

Last week, Deborah Best from DIFFERabled Scotland said that her organisation has heard that parents who do not have access to legal aid found that costs of legal representation is a barrier to challenging local authorities' decisions. Local authorities will typically be represented by lawyers at the Tribunal.

## *References under the 2004 Act*

Under the 2004 act, the Tribunal can hear references around:

- placing request refusals
- coordinated support plans
- school transitions

In addition, the Tribunal can consider a reference in relation to the local authority's assessment of a child's capacity or wellbeing, which is undertaken when the child seeks to exercise one of the rights available under the 2004 Act.

The types of placing requests the Tribunal can consider are where a placing request to a special school (or unit) has been refused and a placing request to a mainstream school has been refused for a child who has a CSP (or if a CSP is being prepared, considered, or a decision not to have a CSP is being appealed).

The Tribunal can consider a wide range of issues around the assessment, contents and delivery of a CSP. In all cases, it is the local authority (more precisely, the education authority) that would respond to the case.

School transitions are around the duties to exchange information with appropriate agencies and consider what support the local authority will be providing to the young person when they leave school.

## *Claims under the 2010 Act*

The Tribunal's submission explains—

"Since 2010, the HEC has heard claims from parents, children and young people

against responsible bodies [e.g. a local authority] in relation to alleged disability discrimination in school education. Examples of types of claim include exclusion, expulsion, the use of restraint or seclusion, classroom provision and assessment process. Any aspect of the provision of school education can attract a 2010 Act claim.”

## *Children and young people’s engagement*

The Education (Scotland) Act 2016 amended the 2004 Act and since 2018, children aged between 12 and 15 years are able to make references to the Tribunal in relation to CSPs and assessment of their capacity. These rights are subject to them having the capacity to make a reference and their wellbeing not being adversely affected by doing so. For claims under the 2010 Act, there are no comparable ‘capacity and wellbeing’ tests for children and young people to make a claim.

The Tribunal has undertaken work to support children and young people to access its processes. This includes the [needs to learn](#) website and the development of sensory hearing suites. The Tribunal’s submission also highlighted the [My Rights, My Say](#) website which provides advice and advocacy for children. The Committee received a joint submission from Enquire and My Rights, My Say which stated it had “worked collaboratively with the Tribunal to ensure that the process is accessible and child-centred”.

The Tribunal has a duty to seek the views of the child during its work. Its submission stated—

“A child/young person may express their views either directly to the Tribunal (at the hearing) or through a report from advocacy services. It is very common for a child/young person who has the capacity to express a view to have that view represented in one of these two ways (or both). In addition, children/young people who do not have the capacity to express their views to an advocacy professional can benefit from a report based on Non-Instructed Advocacy.”

The Tribunal’s submission also noted that where a children or young person is not a party to a hearing, they have no right of representation. It continued—

“Some children and young persons cannot be parties since they have no right to be, for example a child under 12, or a child between 12 and 15 who wishes to challenge a placing request refusal. Others have a right to be, but may not realise that they can be a party or how to go about becoming one. In both instances, the lack of legal representation for children acts as a barrier. Many children have the ability to instruct a solicitor. There are no barriers to doing so in a claim to the [Tribunal] under the Equality Act 2010, where there are no age or subject matter restrictions on who may be a claimant, as long as they have the capacity to instruct a lawyer ...

“Serious consideration ought to be given to the provision of free legal advice to children and young people with additional support needs on their 2004 and 2010 Act rights. One issue with allowing a child to enforce certain rights only through a parent is that the interests of parents and children do not always align.”

## *An “adversarial” process?*

A theme from some local authorities’ submissions has been the view that the Tribunal can contribute to an adversarial relationship between the local authority and their staff and parents/carers. For example, Glasgow City Council’s submission stated—

“Tribunal process can be perceived as adversarial at times by the Local Authority. It is extremely time consuming and stressful for families, officers and practitioners. Professionals and families can leave the process with fractured and unhelpful, working relationships. Partnership working beyond Tribunal is essential to ensure we keep children’s needs at the centre.

“The Tribunal process could perhaps benefit from processes which would allow the revisiting of outcomes and impact on children, families and local authority staff to improve partnership working and support earlier resolution of conflicts.”

Moray Council’s submission stated—

“There is often a perception that statutory remedies are the default position rather than following due process through staged intervention. Places like Govan Law Centre often have the unintended consequence of undermining relationships to the benefit of the young people. Sometimes the processes can cause conflict. The Tribunal system does not appear to be balanced as there would appear to be a bias towards parents/carers rather than LA and encourages confrontational approach rather than resolution. Due to the availability of the processes, reduced officer capacity is often diverted to conflict resolution rather than proactive support. However we do recognise the need for processes in some instances.”

Last week, Deborah Best from DIFFERabled Scotland said that she had challenged a local authority around the support for her child and that this was “one of the most distressing journeys”. Enable’s submission said—

“It is also important that there is an awareness of the right to advocacy for those parents and young people taking cases to an Additional Support Needs Tribunal, but also that further action is taken to ensure these often stressful processes can be avoided through positive engagement between local authorities and parents on the specific needs of children with additional support needs.”

Govan Law Centre said that the Tribunal is working well and the “expertise of the Tribunal is invaluable in terms of determining decisions in relation to children and young people with additional support needs.”

## **Implementation of the presumption of mainstreaming**

The Committee has heard that there is broad support for the principle of an inclusive education where all children are educated together, at least to the greatest degree possible. This approach is considered to have the potential to provide educational and social benefits for all, and to support a more inclusive society in the long run. Equally, a very common theme was that, in practice, these benefits are not being realised for everyone. Some of the reasons highlighted in submissions are: lack of



resources, in school; and specialist services in both the public sector and the third sector; training for school staff; culture; and inappropriate physical environments.

## *Placing requests*

The Tribunal will regularly consider issues around the settings where children and young people are educated and supported. In 2022-23, 160 of the 202 applications to the Tribunal were in relation to placing requests.

Section 15 of the [Standards in Scotland's Schools etc. Act 2000](#) provides that education authorities will provide school education to all pupils "in a school other than a special school" unless one (or more) of the following circumstances arises—

- (a) would not be suited to the ability or aptitude of the child;
- (b) would be incompatible with the provision of efficient education for the children with whom the child would be educated; or
- (c) would result in unreasonable public expenditure being incurred which would not ordinarily be incurred,

The 2000 Act says that "it shall be presumed that those circumstances arise only exceptionally". If one of the circumstances listed above is true, the education authority may provide education to child in mainstream education, but it "shall not do so without taking into account the views of the child and of the child's parents in that regard".

The submission from the Tribunal explained that local authorities commonly rely on this to refuse placing requests. The Tribunal noted that there are twelve other grounds for refusing a placing request of a pupil with additional support needs set out in [schedule 2 of the 2004 Act](#). The Tribunal's submission stated—

The 'presumption of mainstream education' should not be a ground for the refusal of a placing request. Mainstream education is right for some children and young people with additional support needs. For others, education in a special school (as defined in section 29(1) of the 2004 Act) is required to meet their needs. Some recent research undertaken in this area suggests that the type of provision (mainstream or special) is not, in itself, influential on pupil success.<sup>1</sup> A default bias in favour of one or the other is, in principle, therefore, wrong.

...

"The addition of a mainstream presumption ground [to those set out in Schedule 2 of the 2004 Act] not only creates a bias in the mainstream-special school question, it clutters an already crowded field of grounds for refusal of placing requests. It also adds duplication: the three circumstances in which the requirement in section 15(1) [of the 2000 Act] does not apply refer to suitability, impact on other pupils and resources, all of which are already catered for within the other twelve refusal reasons."

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<sup>1</sup> See the papers [Waddington and Reed Comparison of the effects of mainstream and special school on National Curriculum outcomes in children with autism spectrum disorder: an archive-based analysis, Journal of Research in Special Educational Needs 2017 Vol 17 132-142](#) (full text of article available at the link) and [Shaw, Inclusion: the role of special and mainstream schools, British Journal of Special Education 2017, Vol 44 pages 233-369](#) (article abstract linked).

The Tribunal also commented on the interpretation of the 2000 Act's provision that the circumstances where a presumption of mainstreaming should apply only exceptionally. It said that the exceptions in the 2000 Act "are tightly defined already, and another overall test seems misplaced ... it is not clear how to apply the exceptionality requirement."

Overall, the Tribunal argued—

"An inclusive education for those who have additional support needs would be best served by the removal of a bias in favour of a particular type of education. A bias of this type is the reverse of an inclusive approach."

Some local authorities expressed disappointment with some of the decisions of the Tribunal on placing requests. Fife Council stated—

"We have an increasing number of parents, supported by advocacy services, who make Placing Requests to independent educational provision, which often results in a reference to an Additional Support Needs Tribunal. Being involved in the process of an ASN Tribunal is enormously expensive to local authorities in terms of officer time and can be expensive in terms of ongoing costs if the ASN Tribunal decision is to place the child in the independent provision. In our experience this decision can often be costly to the child's education if the placement does not then go well and the child returns to an educational placement in the local authority, having had their education significantly disrupted and interrupted by this process."

The City of Edinburgh Council said—

"Within Local Authority budgets additional support for learning costs cannot be predicted and are often outwith the control of officers leading to significant financial risk and pressure. The increasing demands for [out of area] provision and the inclination of the ASN Tribunal to support parental placing requests to independent schools is increasingly adding additional pressure; costs associated with out-with placements is the main budget overspend in most local authorities alongside transport. Independent school placements can cost anywhere between £70K to £180K per year with children and young people often remaining in placement for over 8 years. These placements cannot be predicted or planned."

Later the City of Edinburgh Council's submission said—

"It is unclear what quality assurance is carried out on these decisions to see if the child's experiences and outcomes are improved as a result. Whilst there can be learning for local authorities from the ASN Tribunals, it is often the case that the child would be better served within their local authority with a review of their needs and supports and in line with the principles of inclusion set out in legislation."

## Special Schools and Units

As noted above, the Tribunal can consider cases where there has been a refusal of a placing request to a special school (or unit) or to a mainstream school (where there is involvement with a CSP). The [statutory definition of a "special school"](#) includes either a school or "any class or other unit forming part of a public school which is not itself a

special school” but is especially suited to the additional support needs of pupils. Enquire’s submission noted that the [interpretation section of the 2004 Act](#) which includes ASL units as part of the definition of a special school. This can lead to complexity when considering the legal position around, for example, placing requests. Enquire said—

“Using [the legal] definition, some of the [ASL units] are legally special schools. However, some would not meet this definition, for example if a pupil would not need to be ‘selected for attendance’ at the unit, but rather has access to it by nature of being a pupil at the mainstream school which has the unit on site. “This leaves complicated scenarios to unpick when considering the legislation on the presumption of mainstreaming, and on other legislation that it interacts with, such as the provisions on placing requests for pupils with additional support needs. ... There are differences in the ways that such units are established and operated across local authority areas. Each may draw different conclusions in how they are legally defined.”

## Co-ordinated Support Plans and multi-agency working

The only statutory plan in school education is the Co-ordinated Support Plan under the 2004 Act and associated regulations. Local authorities have a statutory duty to put in place a CSP if the statutory conditions are met. These are that a child has longstanding ASN arising from one or more complex factors or multiple factors which require significant additional support to be provided by more than one service. The [statutory guidance on the 2004 Act states](#) that local authorities must “seek and take account of the views of children and their parents, and young people themselves” throughout the process of determining whether a CSP is required and then developing the CSP. CSPs must contain (among other things):

- the education authority’s conclusions as to the factor or factors from which the additional support needs of the child or young person arise
- the educational objectives intended to be achieved taking account of those factors
- the additional support required to achieve these objectives
- details of those who will provide this support.

After concerns that CSPs are under-used in local authorities, a short life working group was established and this [reported in November 2021](#). This found “variations in awareness and understanding of the legislation, support and planning process” including in the purpose and statutory requirements on local authorities. In 2022-23 the Tribunal heard 22 cases in relation CSPs. The Tribunal can consider a range of issues in relation to CSPs, including—

- Assessment
- The need for a CSP
- The contents of the CSP

- Providing the support indicated in the CSP in full
- Review of the CSP

The Tribunal has a wide range of remedies open to it when considering cases in relation with CSPs; the Tribunal can determine that a local authority—

- Make a CSP;
- Discontinue a CSP;
- Change the content of a CSP;
- Review the CSP; and
- Provide the additional support specified in the CSP.

The Tribunal’s submission described the criteria for CSPs as “very narrow and restrictive”. It noted [a decision of the Upper Tribunal](#) (appealing the decision of the ASN Tribunal) in September 2023. The submission explained, “it has been confirmed that it is not enough for the child or young person to require significant additional support overall for a CSP to be required; they must require significant additional support of an education type and significant additional support of a non-educational type”. The submission indicated that there is a case for relaxing the statutory criteria for CSPs.

Peter Bain from SLS told the Committee on 21 February that there are two factors which can influence the use of CSPs. These were “the strength of expertise in [local authorities’] central teams” and the “the strength of the partnership arrangements that sit in each local authority area and which work in each school community”. He continued—

“CSPs are dependent on different agencies working together to support the implementation of the actions within them. If there are regular meetings with strong partnership working in a school community—for example, with education staff, health professionals, social workers and educational psychologists; at times, the police come in, too— there is likely to be a more effective success rate for establishing CSPs, because they almost always require interagency support. If strong local partnership working is going on, CSPs are more likely to happen and to be progressed more effectively at the practical level. If such working is not happening locally, CSPs are often not progressed as they should be, because authorities cannot get partners to agree who will do what.” (Col 19)

[Section 23 of the 2004 Act](#) also provides that education authorities may seek assistance from other agencies (e.g. a local health board) in supporting pupils with ASN, examples of this could be Speech and Language Therapy or Occupational Therapy. Those other agencies must comply with such a request unless it “is incompatible with its own statutory or other duties” or “unduly prejudices the discharge of any of its functions”. The Tribunal considers disputes with education authorities, not with other agencies.

Last week the panel noted that CSPs are useful in that they allow for greater accountability and potentially recourse to the Tribunal. However, the panel also noted

that planning is in the service of creating better outcomes. Susan Quinn from EIS told the Committee on 21 February—

“There needs to be some simplification, with consideration given to where the value is in doing something that takes people away from working directly with young people. It is important to have records and the like, so that people know what support has been provided and what support is needed, but that cannot happen to the detriment of actually working with the young person. We cannot have staff saying, “I can’t work with you today because I’ve got to have a meeting with everybody to decide whether you need support.” We know that the person needs support and that we need to work together to get them that support, and having a bit of paper does not necessarily address that. That sort of situation comes through a lot from our members across the country, and there is a need to address it.” (Col 22)

## Other remedies and advocacy

The Committee is exploring the statutory support and remedies available to families and young people in relation to ASL. These are: access to a supporter, advocacy, mediation, adjudication, and recourse to the Tribunal.

In terms of cases at the Tribunal, advocacy services may support parents/carers or the children and young people. The Tribunal’s submission also stated—

“Mediation is common in HEC proceedings and cases are regularly suspended (paused) to allow mediation to take place. Where mediation is successful, that will usually lead to the withdrawal of the reference/claim; where not, the case will resume and move to a hearing.”

**Ned Sharratt, Senior Researcher (Education, Culture), SPICe Research 29 February 2023**

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