

ANNEXE A**Education, Children and Young People
Committee****20 March 2024****Additional Support for Learning****Introduction**

This briefing is for the Committee's fifth and final meeting of its inquiry on Additional Support for Learning. The Committee will hear from the Cabinet Secretary this week.

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 had been provided extensive briefings over the past weeks reflecting the evidence and policy framework. Necessarily, this paper will cover similar ground.

The Scottish Government and COSLA's response to the Morgan Review included developing an ASL Action Plan. This was explored in an evidence session with members of the [Additional Support for Learning Project Board](#) in June 2023. The Government has not produced an update on the action plan since that meeting, a summary of the actions in the plan produced for that meeting is included as an Annexe to this paper.

Implementation of the presumption of mainstreaming

Implementation

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 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.

However, the Committee has heard 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.

In 2019, the Scottish Government published [guidance on the presumption to provide education in a mainstream setting](#). This guidance says that mainstreaming “must be delivered within an inclusive approach.” The guidance reiterates the “four key features of inclusion” which are—

- Present;
- Participating;
- Engaged; and
- Achieving

In 2021, [the Government published](#) a “national overarching vision statement for success for children and young people with additional support needs.” This was developed by a group of young people, the Young Ambassadors for Inclusion. Their vision is that:

- school should help me be the best I can be.
- school is a place where children and young people learn, socialise and become prepared for life beyond school.
- success is different for everyone.
- but it is important that all the adults that children and young people come in to contact with in school get to know them as individuals. They should ask, listen and act, on what the young people say about the support that works best for them.

There is an action within the national ASL Action Plan to promote this vision. The Government [recently published research into the provision for pupils with complex additional support needs](#). The report concluded that “policy alone cannot deliver positive outcomes for children and young people”. The report said that it had

found “many examples of good practice that have enabled children with complex additional support needs to flourish”. These examples were found across different settings and “notable examples include where specialist provision was co-located with a mainstream setting, and integration was consistently occurring between these settings.”

The report argued for a tailored and flexible approach to meet the needs of children with complex needs. The report identified four themes that are integral to delivering such an approach. These were:

- Resourcing, in particular in relation to staffing;
- The brilliant, committed and supportive nature of staff surrounding pupils;
- Where children are placed for their schooling; and
- Robust training for all providers who interact with children with complex additional support needs.

The Government has not formally responded to this report, as yet.

Resources

A common argument in the Committee’s evidence is that insufficient resources have been directed to support inclusive education. 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)

As noted in last week’s paper, real terms spend per pupil in the primary and secondary sectors has increased between 2017-18 and 2022-23. In addition, [statistics show that the numbers of pupil support assistants](#) has increased (at least) since 2018. Average Pupil Teacher Ratios overall have decreased between 2017 (13.6) and 2023 (13.2).

The numbers of specialist ASL teachers in primary schools have been reducing over long term. The number of specialist ASL teachers in the secondary sector have increased between 2017 and 2022, but remain at lower levels than in the early 2010’s. (See Tables 2.8 and 3.9 of [Teacher census supplementary statistics 2022](#))

While the inputs into school education are, on the whole, increasing the number of pupils reported as having an additional support need has increased at a higher rate.

In 2013 19.5% of the school roll had an identified ASN; in 2023 this figure was 37.0. A common theme in written responses from local authorities was reports of 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 dysregulated behaviour.

Tracking the spending on ASL is complex. One reason is that ASL is the responsibility for a wide range of staff – most if not all teachers for example. Antony Clark from Audit Scotland told the Committee last week—

“It is also important to recognise that this is not just a local authority question: health services, the third sector, housing services and other partners also have important parts to play. It is really important that we try to understand what those contributions are, but how budgets are allocated and accounted for does not allow that to happen. There is a real challenge in understanding what resources are being deployed in complex services that involve several partners.” (13 March 2024, Col 40)

Specialist settings and specialist support

Special schools

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)

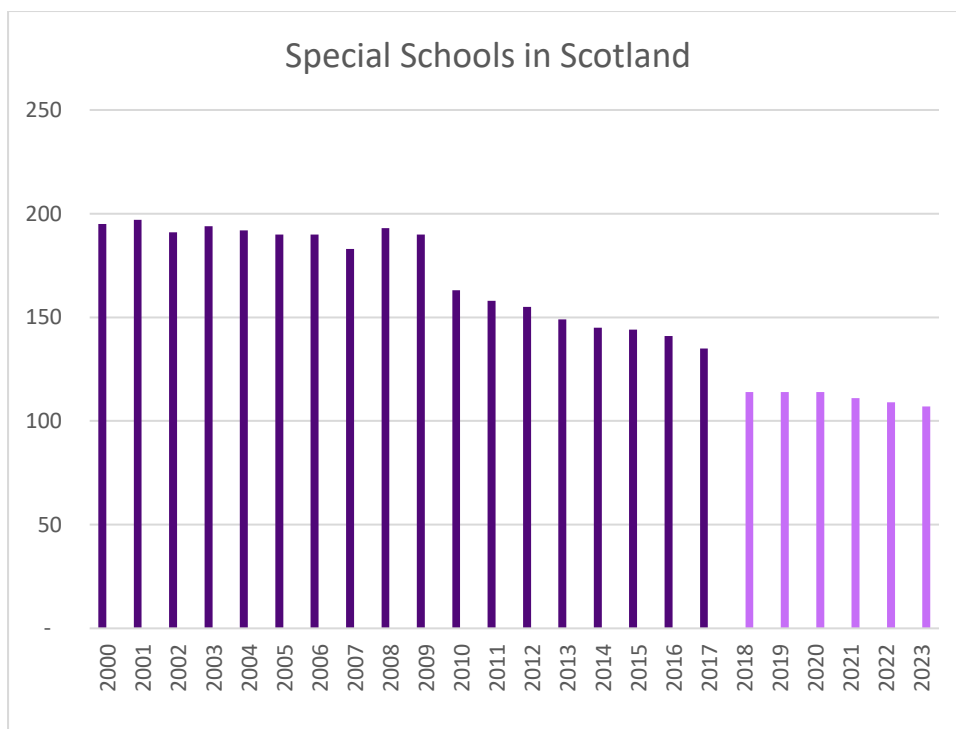
The Committee has been told that an increase in the number of pupils with complex needs has not been mirrored by the number of places available for those children and young people. This can have an effect across the system. ADES’ submission said “mainstream schooling and, where relevant, specialist provision 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.”

Parents/carers are entitled to make placing requests for their child to be educated in schools other than the one allocated to them by their local authority. Should this placing request be to a special school and the request not granted, the parent/carers may appeal this decision to the ASN Tribunal. The growth of ASN units within mainstream schools makes the concept of the presumption of mainstream education more complex. 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.

Marie Harrison from Children in Scotland said—

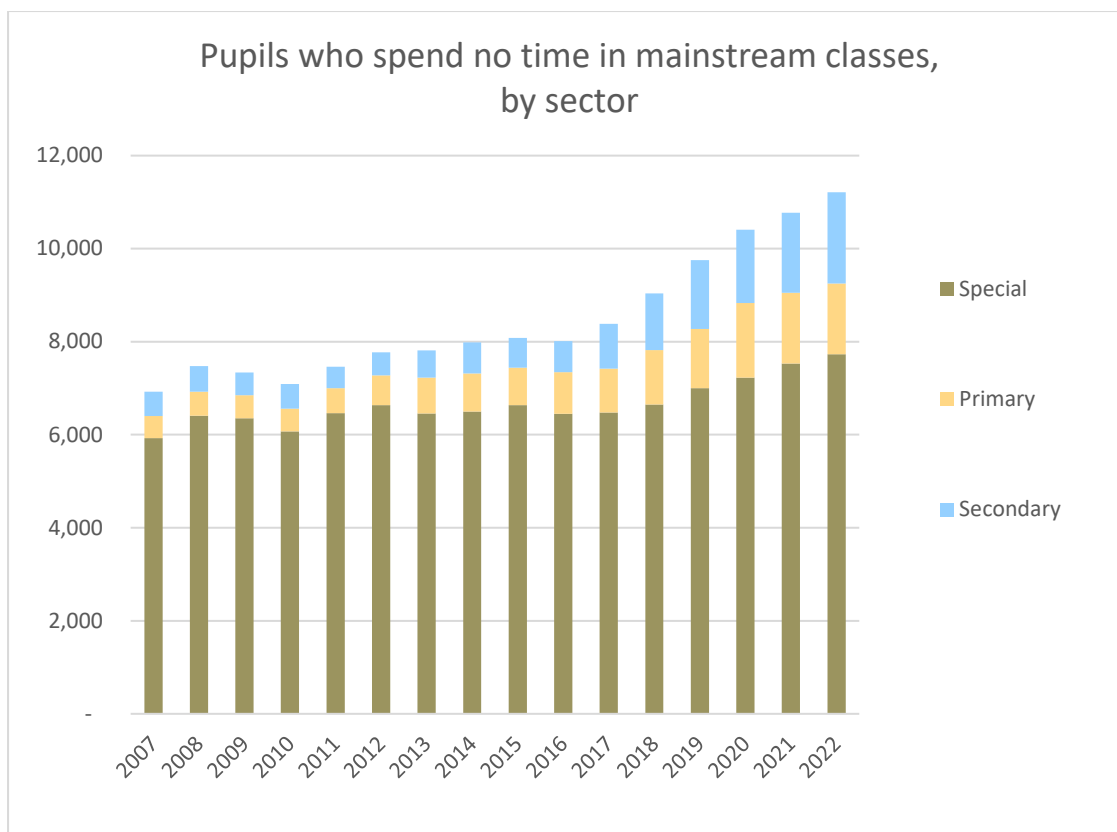
“We see that confusion among parents. We quite often hear that parents have made a placing request for a mainstream school that has an ASL hub attached to it, because they feel that that will give their child the chance to do mainstream but get support from the ASL provision. However, that is not how it works. A placing request often has to be for the ASL provision. On top of that, there are learning hubs that are not necessarily ASL provision. Parents sometimes think that they can make a placing request for those, but they are readily available for all children.” (13 March 2024, Col 14)

The charts below show the number of special schools in Scotland and the number of pupils who spend none of their time in mainstream classes. Members should be aware that the more detailed data on pupils in 2023 is due to be published on 19 March.



Scottish Government, Pupil Census

*Special schools with no pupils have been excluded from these figures from 2018 onwards. Figures for previous years have not been revised to reflect this change.



Scottish Government, Pupil Census

In considering these data we should note that the Government cautions that “there is not always a clear distinction [in the data collection] between special schools and special units or classes within a mainstream school.” There is long term decrease in the number of special schools reported in the national statistics and at the same time an increase in the number of pupils who spend no time in mainstream classes in all three sectors.

The Scottish Government [has a strategy for the learning provision for children and young people with complex additional support needs](#). There is also a [national commissioning group](#) which, among other things, provides advice to ministers on “proposals for commissioned services, including their funding, that are aligned with related policy developments across education health and social care”.

Specialist provision

[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”.

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)

The Committee has been told that often education services are expected to co-ordinate and this can increase workload. Vivienne Sutherland from Fife Council told the Committee last week—

“We work hard at a strategic level to have very good and strong partnerships with health, social care, social work and family support. We have very good links in most local areas, too, but there are barriers to that that we are working hard to resolve ... One of the issues that we are dealing with is the workload on schools to complete multiple referrals for multiple services. We are trying to tackle that directly in Fife, and we have great buyin from our partners about the need to resolve that.” (13 March 2024, Col 48)

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. Last week, the Committee was told that good quality multi-agency working can be dependent on the relationships between individuals in different services. Antony Clark from Audit Scotland said—

“Our observation, based on the work that we have done on partnerships, is that a lot of what is done is dependent on good relationships and trust, and a shared understanding of where people are coming from. Inevitably, there are potential tensions between the priorities of different partners, given resource pressures and so on, but I think that people recognise that and work together on it.” (13 March 2024, Col 49)

The necessity of statutory provision

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. 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.”

The Tribunal 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.”

Physical environment

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”.

Dr Lynne Binnie from ADES told the Committee—

“We could do more nationally, through ADES or with other partners, to look at research and evidence on making our buildings more inclusive and meeting the needs of children and young people. The design of buildings is often determined at local authority level through different approaches, perhaps involving professionals such as architects, who might not always understand or know about the complex needs of the children we see in the current system and project in the future of our buildings. That needs much more attention to ensure that we are getting it right ... We are very aware that some of our schools are not adaptable. Some cannot be adapted, given their age—some schools are listed, for example—and there are still schools where we struggle with wheelchair accessibility. It is increasingly difficult to make the amendments that are required, and that has perhaps become more pronounced as a result of the pandemic and issues around costs, building supplies and access to a workforce.” (13 March 2024, Col 55)

The Committee has written to the Scottish Futures’ Trust to seek information on how that organisation is supporting local authorities to ensure that schools support the learning of pupils with ASN.

Training and capacity

Initial Teacher Education

Several witnesses have suggested that Initial Teacher Education should include greater focus on supporting pupils with ASN.

The [ASL Action plan](#) includes several actions in relation to ITE. These include:

- The Scottish Government will explore with GTCS and the Scottish Council of Deans of Education (SCDE) the viability of a new qualification.

This action is marked as ‘complete’ and the commentary stated—

“The Scottish Government have discussed with both GTCS and SCDE the viability of a qualification in additional support for learning. Both stakeholders agree that this type of qualification would not be attractive to those considering a career in teaching. Student teachers need to experience the full spectrum of school teaching during initial teacher education and probation. Only at this stage will they be able to make an informed judgement on specialising in additional support for learning.

“The recruitment of Lead Teachers is a matter for individual local authorities. Numbers are currently small, however a number of local authorities are considering further introduction of lead teacher posts from August 2022.”

- The Scottish Government and Education Scotland will work to ensure teacher education and practice learning are informed by teacher feedback.

This action is also marked as ‘complete’ and the commentary stated—

“A new self-evaluation framework for Initial Teacher Education to support universities to demonstrate the quality of their existing initial teacher education provision has been developed by Education Scotland and the Council of Deans of Education. This Framework is supported by analysis from the Measuring Quality in Initial Teacher Education (MQuITE) project which is tracking teachers through initial teacher education and into the early years of their teaching career.”

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.

Teachers’ CLPL

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.” The ASL Action plan includes the following action:

- The Scottish Government and COSLA/ADES will work with the Scottish Negotiating Committee for Teachers (SNCT) to ensure there is appropriate career progression and pathways for teachers looking to specialise in Additional Support for Learning, with the intention that this will result in an overall increase to the number of teachers who specialise in ASL in Scotland’s schools, with particular emphasis on ensuring that the Lead Teacher structure delivers on this outcome.

This is marked as ‘ongoing’. The progress update for this action stated—

“The Scottish Government will engage with the Project Board to understand current local authority planning in this area. The Scottish Government and partners, including professional associations, will consider how any barriers to specialising can be addressed and how uptake of this pathway can be incentivised. The Scottish Government is also working with partners to update existing guidance on the qualifications required to teach children and young people with sensory impairments.”

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.”

Classroom Assistants

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. ... 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. Education Scotland have held a number of events and have developed training resources which pupil support staff can access.”

Culture and a universal design

The Morgan Review argued for a focus on values and culture. This was a theme which was picked up by several submissions, often in relation to training and capacity. The Commission for School Reform's submission argued that "there have been significant inadequacies in staff development which limited the necessary change in professional attitudes and, crucially, the culture of many individual mainstream schools across the system."

Marie Harrison from Children in Scotland said that there should be a culture shift and schools should "focus on the culture and the structures and why they are not working for the child, rather than looking at the child and the family as the ones who need to change." (13 March 2024, Col 5)

Identification and diagnosis

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)

Last week, Megan Farr suggested that some of the behavioural issues in schools may be due to the needs of young people not being fully understood. She said, "diagnoses are useful because they tell professionals what kind of support is needed". (Col 23)

Vivienne Sutherland from Fife Council said that they work on the principle that "it is not necessary to have a diagnosis of any kind of need in order to access support." She said that some families may find it useful to have formal a diagnosis, and others would prefer not. Dr Lynne Binnie noted that while education services may not require a formal diagnosis to access support, post-school services do. (13 March 2024, Cols 59-60)

Part-time timetables and inclusion

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)

Chloe Minto from Govan Law Centre said—

“We are seeing and hearing about a current trend for many more exclusions, both formal and, more concerningly, informal—and therefore unlawful—exclusions.” (13 March 2024, Col 23)

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.

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”.

Dr Lynne Binnie from ADES said that attendance is a focus across local authorities. She said—

"Some of the solutions that are in place are a positive result of the pandemic. Local digital education offers are now in place, which is helping children and young people who are struggling to access the school building to continue to access their education. I would direct you to the national programme, e-Sgoil, which is having great and to attain and achieve. A number of other interventions are in place ... we are seeing initiatives such as walking buses, breakfast clubs and pupil support officers trying to build a relationship with staff and ensure that pupils see the importance of education and returning to school. There are a number of adjustments in place. I think that this is something that we might struggle with for the next few years, if not beyond. We will need to be more flexible around how we see education. Covid led to a disruption in the education system for families, children and young people. There is increasing evidence of families, children and young people not necessarily feeling that the current education system meets their needs or that they do not wish to engage in it. They see learning as being able to take place in a broader way, perhaps through digital learning. We are yet to understand the full nature of that." (13 March 2023, Col 64)

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.

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)

Statutory remedies and parental involvement and engagement

Two (of the four) themes in the ASL Action Plan are:

- Children and Young People’s Engagement, Participation & Rights
- Parent and Carer Engagement, Participation & Rights

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 stated highlighted the importance of good communication between families and schools, especially at particular pressure points, such as transitions.

Plans and 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. While the legislation on CSPs is relatively clear, Ms Dunsmuir told the Committee that navigating the legal tests for CSPs can be challenging (6 March 2024, Col 25). 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 and the quality of outcomes from those plans. 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)

Last week the Committee was told that in one local authority, often the reason a CSP

was not made for a child was because the non-education service did not agree that the child or young person requires longstanding significant support. The panel also suggested that bringing in counselling to the education service, and services such as SLT taking a consultation and advice approach, rather than providing support directly, has affected the level of involvement of non-education services and therefore the eligibility for CSPs.

May Dunsmuir said that CSPs can also benefit children and young people by providing them certainty about their support (6 March 2024, Col 24). 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)

Last week the Committee explored whether routes to access the Tribunal could be widened, potentially by removing the necessity of a CSP (or potential requirement of a CSP) to be able to make references to the Tribunal. Megan Farr from the Commissioner's office stated—

“There needs to be some form of right to remedy if a child is not getting the additional support to which they are entitled. Regardless of whether they meet the criteria for a CSP, in whatever way that is interpreted—in that regard, the code of practice is being reviewed and there is an opportunity for the guidance to make clear how it should be interpreted, which could broaden the approach—there has to be an avenue through which that right to remedy can be accessed by children and their families. However, that is not there.” (13 March 2024, Col 31)

Access to 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 disputes 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". ADES' submission suggested that local authorities managing limited resource can lead to tension. 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.

The Committee has heard that the independent adjudication process is little used. 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."

These regulations were made under [Section 16 of the 2004 Act](#). Section 16 is drawn fairly broadly and Ministers could use these powers to develop additional routes for dispute resolution between local authorities and parents/carers or children and young people in relation to the local authorities functions under the 2004 Act.

**Ned Sharratt, Senior Researcher (Education, Culture), SPICe Research 14
March 2023**

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