

Education, Children and Young People Committee

9th Meeting, 2024 (Session 6), Wednesday 13 March 2024

Additional Support for Learning inquiry

Introduction

1. The inquiry will consider how the [Education \(Additional Support for Learning\) \(Scotland\) Act 2004](#) (the 2004 Act) has been implemented and how it is working in practice. This inquiry will focus on the following themes—
 - the implementation of the presumption of mainstreaming
 - the impact of COVID-19 on additional support for learning
 - the use of remedies as set out in the Act
2. This is the fourth formal evidence session of the inquiry, in which the Committee will focus on the first and third theme as set out above although issues related to impact of COVID-19 may also be discussed. The Committee will take evidence from the following witness—

Panel 1

- Megan Farr, Policy Officer, Children and Young People Commissioner Scotland
- David Mackay, Head of Policy, Projects and Participation, Children in Scotland
- Lucy Johnson, Senior Development Officer, Enquire
- Chloe Minto, Senior Solicitor, Govan Law Centre

Panel 2

- Dr Lynne Binnie, Chair, ADES ASN Network
- Antony Clark, Executive Director of Performance Audit and Best Value, Audit Scotland
- COSLA Nicola Dickie, Director of People Policy, COSLA
- Kerry Drinnan, Education Service Manager ASN (Inclusion), Falkirk Council
- Vivienne Sutherland, Principal Psychologist, Fife Council Educational Psychology Service

Background

3. SPICe has produced a background briefing note which attached at **Annexe A** and the SPICe briefing note for the meeting on the 6 March has been recirculated at **Annexe B**, given its relevance to this week's session. The SPICe briefing notes from our previous meetings on the 21, 28 February and 6 March are also published on the Committee's [website](#).

Participation

4. The Committee was keen to speak to people with lived experience of how the 2004 Act is operating in practice. On 19 February 2024, the Committee held two participation sessions, one with young people and one with parents and carers. The Committee then held a further session with teachers on 4 March 2024. A note of these sessions will be published on the [website](#) in due course.
5. Members are welcome to refer to these sessions in Committee, as long as comments are not attributed to specific organisations or individuals.

Evidence

Oral evidence

6. At its meeting on 21 February, the Committee took evidence from the following panels of witnesses—
 - Susan Quinn, Convenor the EIS Education Committee, EIS
 - Mike Corbett, National Official (Scotland), NASUWT
 - Peter Bain, President, School Leaders Scotland
 - Mathew Cavanagh, ASN Committee, Scottish Secondary Teachers' Association
 - Sylvia Haughney, Education Convener at Glasgow City UNISON branch UNISON Scotland
7. At its meeting on 28 February, the Committee then took evidence from the following panel of witnesses—
 - Deborah Best, Director, DIFFERabled Scotland
 - Suzi Martin, External Affairs Manager, National Autistic Society Scotland
 - Glenn Carter, Head of Scotland Office, Royal College of Speech and Language Therapists
 - Dr Dinah Aitken, Director of Development and External Affairs, Salvesen Mindroom Centre
 - Irene Stove, Deputy Head Teacher and Committee Member, Scottish Guidance Association

8. At its meeting on 6 March, the Committee took evidence from—
 - May Dunsmuir, President of the Health and Education Chamber of the First-tier Tribunal for Scotland
9. A transcript from those meetings will be published on the [website](#).

Written evidence

10. Written evidence provided by the following witnesses is attached at **Annexe C**—

Panel 1 witnesses

- Children and Young People Commissioner Scotland
- Joint submission from Enquire and My Rights, My Say
- Govan Law Centre

Panel 2 witnesses

- ADES ASN Network
- Audit Scotland
- COSLA
- Falkirk Council
- Fife Council

Call for views

11. The Committee issued a call for views on 25 October 2023 which included a BSL version and which ran until 31 December 2023. The Committee received [589 responses](#) to the call for views and [29 responses](#) to the BSL version, all of which can be read on the website. SPICe has produced a summary of the responses received to the call for views which is published on the [website](#).

Local authority position

12. In advance of launching the inquiry the Committee wrote to all local authorities across Scotland seeking a response to a number of questions.
13. Responses have been received from 25 local authorities. These are available in full on the website. SPICe has produced a summary of these responses, which includes a list of those who responded, and this summary is published on the [website](#).

Next steps

14. The Committee will hold its final evidence session on this inquiry on 20 March where it will hear from the Cabinet Secretary for Education and Skills.

Committee Clerks
March 2024

The logo for SPICe, featuring the text 'SPICe' in a white, sans-serif font on a dark purple background.The text 'The Information Centre' and 'An t-Ionad Fiosrachaidh' in a white, sans-serif font on a dark blue background.

ANNEXE A

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."

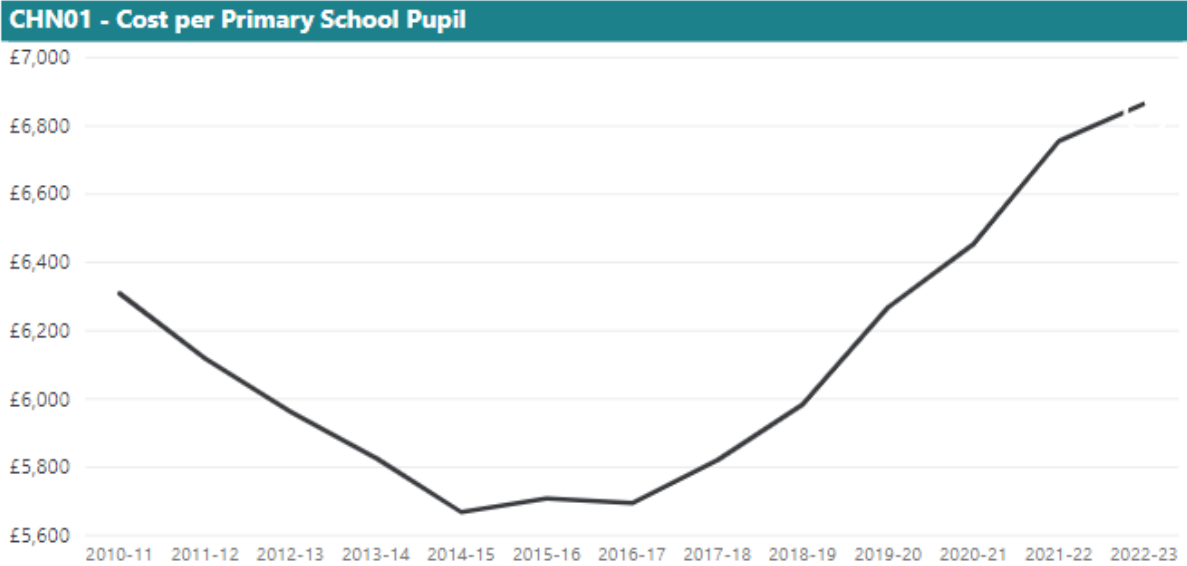
Audit Scotland's submission stated—

"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.

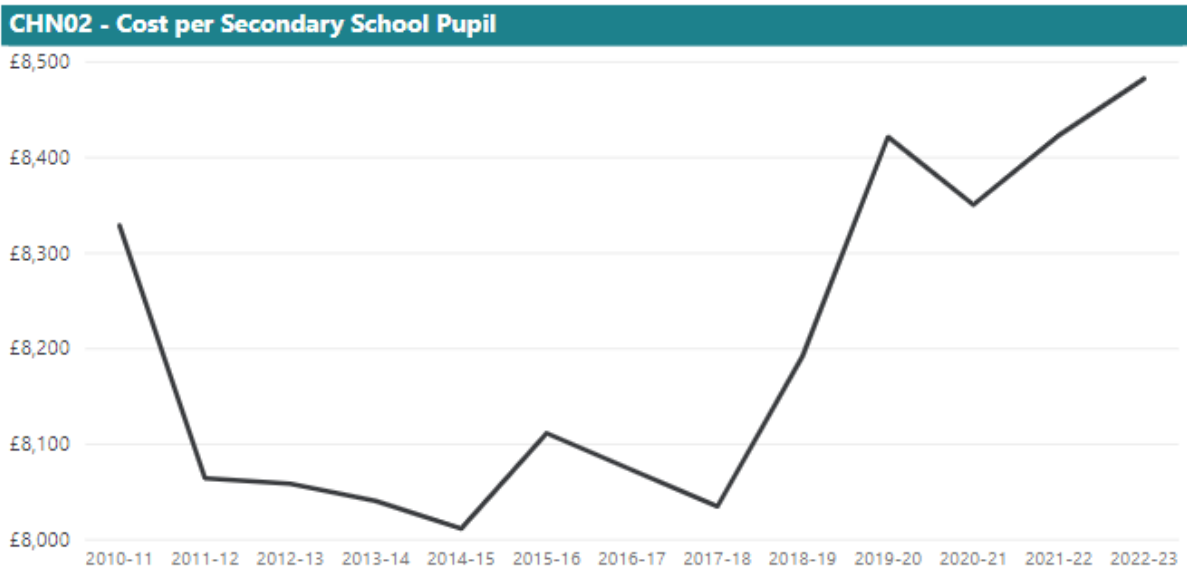
"In May 2022 the Accounts Commission published [a blog on children](#) and young people who need additional support for learning. This commented on some of the challenges these children and young people face to get the support to help them reach their full potential. The blog noted that 'It's distressing 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.



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



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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ANNEXE B**SPICe****The Information Centre**
An t-Ionad Fiosrachaidh

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

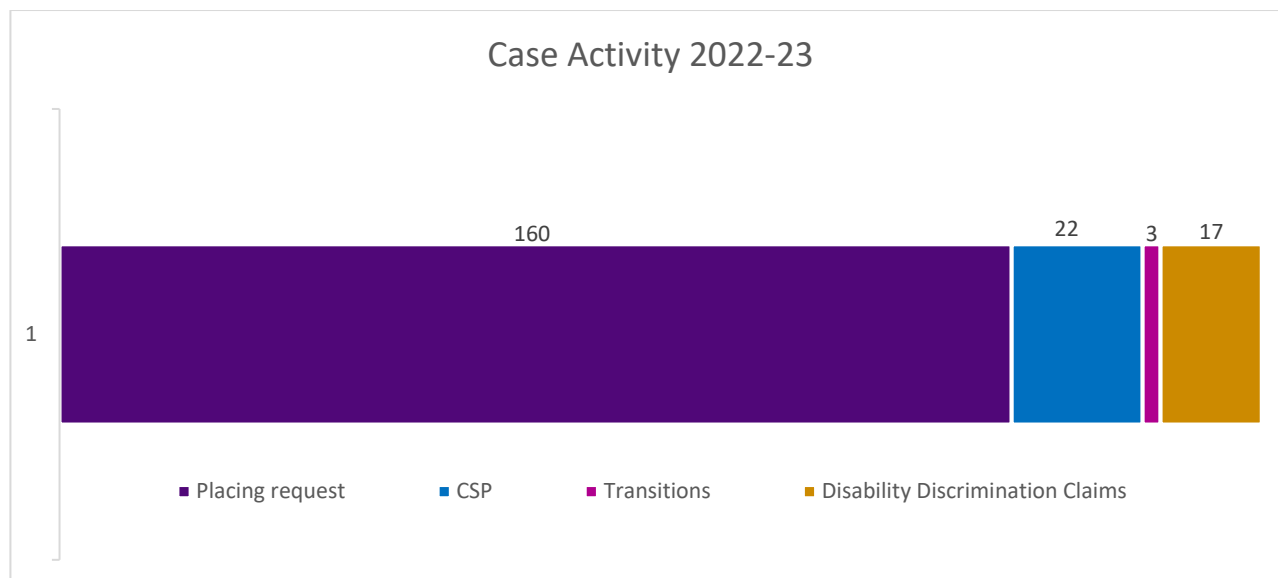
The Tribunal publishes bulletins twice a year on its work and developments within its jurisdiction. The latest was published in October 2023 and this reported that—

“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.¹ 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 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

¹ 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).

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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ANNEXE C

Written evidence from The Children and Young People Commissioner Scotland

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights.

The Commissioner is fully independent of the Scottish Government.

Key points:

- 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.
- Although there has been some investment in resourcing additional support, this has not been sufficient to meet the increased need. Training and system redesign are required to ensure inclusive education systems are created that work for all children.
- Disabled children and young people and children with additional support needs continue to be unfairly subjected to practices that impact negatively on their education, as well as their personal and social development. Because their needs are not being met, they are not always able to access a full curriculum, experiencing part time timetabling and informal school exclusion practices.
- Co-ordinated Support Plans (CSPs) are a critical part of the system, to enable children to access the support they require to have their rights fulfilled – however these are significantly underutilised, not all children entitled to a CSP have one and the criteria is too narrow for them to be effective.
- Parents and carers of children with additional support needs require access to more information to support them to understand their children's rights, and to ensure that entitlements such as CSPs are in place.
- For those children with additional support needs who do not have a CSP, there is little redress available if they think they are not getting the support they want and need. The independent adjudication process needs to be strengthened, including introducing the right of appeal.

Implementation of the presumption of mainstreaming

The presumption of mainstreaming which was introduced in s15 of the Standards in Scotland's Schools Act 2000, was an important step in bringing Scotland's education system into line with the UN Convention of the Rights of the Child (UNCRC). Both the UNCRC (in Article 23) and the UN Convention on the Rights of People with Disabilities (UNCRPD – in Article 24), together with Sustainable Development Goal 4, are clear that disabled children¹ have the right to a mainstream, inclusive education.

In the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) ("the ASL Act"), Scotland chose to extend rights to support to children with other support needs, where:

*"for whatever reason, the child or young person is, or is likely to be, unable without the provision of additional support to benefit from school education provided or to be provided for the child or young person."*²

This has been interpreted broadly to the benefit of many children and young people.

In 2006, the UN Committee on the Rights of the Child CRC, produced a General Comment on the rights of children with disabilities. In this, they adopted Article 1 (2) of the UNCRPD as their definition of disability. This states:

"Persons with disabilities include those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."

This definition is a broad one and complements the definition of a disability in section 6 of the Equality Act 2010 which is

- (1) "A person (P) has a disability if -
 (a) P has a physical or mental impairment, and
 (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities"

For the purposes of the Equality Act, it is not necessary for there to be a diagnosis nor does the impairment have to be the result of an illness.

Discrimination occurs where a disabled student is treated unfavourably, because of something "arising in consequence" of the student's disability unless that treatment is a "proportionate means of achieving a legitimate aim".³

The Equality Act provides protection from discrimination for disabled people in a range of circumstances including education where schools have a duty to make reasonable adjustments for disabled pupils. This means taking reasonable steps to

¹ In this response we use identity first language, i.e. disabled people, to reflect the preference expressed by most Disabled People's Organisations in Scotland. The UNCRPD, however, uses person first language, i.e. people with disabilities and we have preserved in direct quotations. We acknowledge that there is disagreement within the disabled community on preferred terminology.

² Education (Additional Support for Learning) (Scotland) Act 2004 s1(1)

³ Nisbett, Iain. 2022. *Equality Act 2010 – The Additional Support Needs Blog*
<https://additionalneeds.co.uk/category/equality-act-2010/>

ensure that a provision, criterion or practice does not place a disabled student at a substantial disadvantage and to take reasonable steps to provide the auxiliary aid or service needed to mitigate a substantial disadvantage. These duties are designed to correspond with duties under the Special Educational Needs (SEN) framework.

The Committee on the Rights of People with Disabilities (CRPD), in General Comment 4 on the right to an inclusive education, provide a lengthy but non-exhaustive list of the barriers that disabled children face in accessing inclusive education. These emphasise the impact of persistent discrimination against disabled people and the importance of understanding a human rights model of disability “according to which barriers within the community and society, rather than personal impairments, exclude people with disabilities”. These barriers include:

- *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.”⁴*

UNCRPD General Comment 4 also highlights important differences between exclusion, segregation, integration and inclusion:

Exclusion occurs when students are directly or indirectly prevented from or denied access to education in any form.

Segregation occurs when the education of students with disabilities is provided in separate environments designed or used to respond to a particular impairment or to various impairments, in isolation from students without disabilities.

Integration is the process of placing persons with disabilities in existing mainstream educational institutions with the understanding that they can adjust to the standardized requirements of such institutions.

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.

⁴ UN Committee on the Rights of People with Disabilities, 2016. *General comment No. 4 (2016) on the right to inclusive education.* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/263/00/PDF/G1626300.pdf?OpenElement>

Furthermore, integration does not automatically guarantee the transition from segregation to inclusion.

Our view that what many disabled children (and those with other support needs) in Scotland experience is integration, at best, not inclusion and that this is the cause of many of the concerns which are being raised about the presumption of mainstreaming. Anecdotal information suggests that there has been a reduction in the number of classroom support assistants and specialist teachers to support inclusion, however changes to the way information is collected and recorded makes it difficult to establish the facts in relation to this.

A lack of effective support, and insufficient progress in implementing the structural changes outlined in UNCRPD General Comment 4, results in an education system which fails to realise all children's right to an education which develops their "personality, talents and mental and physical abilities to their fullest extent" (UNCRC Article 29(1)(a)). It has an often devastating impact on the child's wellbeing, including their physical and mental health (UNCRC Article 24 and UNCRPD Article 25). It inevitably impacts on their parents and on their interactions at school with peers and staff. In some cases, it manifests as distressed behaviour in school and/or at home.

The drafters of the Standards in Scotland's Schools etc Act 2000 expected the presumption of mainstream to, at times, be more expensive than special school provision. The Act allows, in s15(3)(c), education authorities to refuse a request for mainstream education where it "would result in unreasonable public expenditure being incurred" – but the Act states this circumstance should only be applied exceptionally. The expectation was that the presumption of mainstream would require, at times, substantial additional support.

The ASL Act makes provision for additional support through Coordinated Support Plans if -

- a) *"an education authority are responsible for the school education of the child or young person,*
- b) *the child or young person has additional support needs arising from—*
 - (i) *one or more complex factors, or*
 - (ii) *multiple factors,*
- c) *those needs are likely to continue for more than a year, and*
- d) *those needs require significant additional support to be provided—*
 - (i) *by the education authority in the exercise of any of their other functions as well as in the exercise of their functions relating to education, or*
 - (ii) *by one or more appropriate agencies (within the meaning of section 23(2)) as well as by the education authority themselves."*⁵

A recent ruling by the Upper Tribunal for Scotland noted in paragraph 27:

*[T]he wording of section 2(1)(d) is: "those needs **require** significant additional support to be provided" (bold added). Section 2(1)(d) does not stop at support currently being provided... [b]ut an approach that analyses only support that*

⁵ Education (Additional Support for Learning) (Scotland) Act 2004. Section 2.
https://www.legislation.gov.uk/asp/2004/4/pdfs/asp_20040004_en.pdf

has in fact been provided, rather than what needs “require”, may in some cases be too narrow.”⁶

In evidence to the Education and Skills Committee on the 27th of February 2019 Professor Sheila Riddell made the point that according to the ASL Act, the child has to be getting significant input from agencies other than education in order to have a CSP. She further explained that education authorities report that they cannot get input from social work and health. “Children who need additional support are therefore not getting additional support and they do not qualify for a CSP. As services from other agencies have been taken out of school, children are being deemed not to qualify for a statutory support plan, so the numbers are going down.”⁷

It is imperative that to achieve the presumption of mainstreaming and inclusion for children with additional support needs that they receive the support they require rather than the support that resources can stretch to.

Special schools

Decisions about whether a child should be educated outwith mainstream should be made on a best interests basis, taking account of the child’s views.

We accept that there remain situations where placement in a special school, in a unit in a mainstream school or through mixed-provision, on a temporarily or long term basis, may be necessary. For example, this may be because specialist services cannot be provided in a mainstream school.

However, the long-term policy aim should be towards the inclusion of all children in mainstream education. The CRPD’s General Comment 4, published in 2016, emphasises that States Parties:

*“have a specific and continuing obligation to move as expeditiously and effectively as possible towards full realisation of Article 24. This is not compatible with sustaining two systems of education: a mainstream education system and a special/segreated education system”.*⁸

Where children are best placed in mixed-provision, it is important that this does not restrict their access to an education that develops their personality, talents and mental and physical abilities to their fullest potential as outlined in Article 29. We continue to have families contact our enquiries line outlining the restriction to subjects which children in mixed-provision experience against their wishes.

Children outwith school

Unfortunately, we continue to hear that other groups of children, particularly those not attending mainstream schools, are still not receiving a broad education as outlined by Article 29 and indeed as is expected under Curriculum for Excellence.

⁶ [2023] UT28. <https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/upper-tribunal-pdfs-for-web/2023ut28.pdf>

⁷ Education and Skills Committee. 27 February 2019. *Official Report*. <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/ES-27-02-2019?meeting=11971&iob=10824>

⁸ UN Committee on the Rights of Disabled People. *General Comment No. 4 on Article 24 – the right to inclusive education*. <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-4-article-24-right-inclusive>

Earlier this year we conducted visits to all the secure care units in Scotland. A common theme from young people was that although they did receive education (indeed some commented they received more education than they had previously) what was provided was not, to use the UNCRC's phrasing, directed to "their personality, talents and mental and physical abilities to their fullest extent.

Children with long term health conditions requiring frequent hospital treatments meet the definition of disabled in the UNCRPD. We heard from children with long term health conditions or other disabilities, supported by Children's Health Scotland, who had been out of school for long periods of time. Many reported that they had received little or no education provision and generally provision for interrupted learners seems to focus on English and Maths and often only for an hour or two a day. The young people we spoke to were keen to learn and frustrated by the lack of provision.

For those children with long term health conditions that result in frequent or lengthy hospital stays, Children's Health Scotland's children in hospital survey 2018-19 reported that just over a third of children admitted receive education in accordance with Scottish Government guidance. For children admitted to hospital in another local authority to where they live and go to school, 55% do not receive support from teachers. 75% of children admitted to adult wards do not receive any access to education.⁹

The Mental Welfare Commission for Scotland is responsible for reviewing the inpatient care for children admitted due to their mental health. The inspection reports for the four inpatient facilities in Scotland for children and young people all note that school provides an important structure for their days and note that they all have access to education. It was reported that in one unit access to a wide school curriculum was limited, though it had increased slightly following an appeal by parents to their local educational authority. In another unit the young people raised concerns about their education being affected by only having access to a part-time timetable. For those children admitted to adult wards, in only 10% of admissions was education provided, however it was noted that 50% of admissions were for less than a week¹⁰.

Exclusions

One of the key expectations of inclusive education in Scotland is that "**All** children and young people should receive a full-time education including flexible approaches to meet their needs."

A child or young person should only be prevented from attending their school through use of formal exclusion, which ensures that rights and duties are applied. Legally, although not good practice, it is also possible for the parents or young person to agree with the school that the pupil should not attend school. The exclusions guidance also recognises that flexible packages may be a suitable approach for some pupils. However, this is qualified. It should be following an

⁹ Children's Health Scotland, 2019. *Children in Hospital Survey 2018/19*.
<https://www.childrenshealthscotland.org/wp-content/uploads/2019/10/191016-Children-in-Hospital-Survey-2018-19-FINAL.pdf>

¹⁰ Mental Welfare Commission for Scotland. 2023. *Young people monitoring report*.
<https://www.mwcscot.org.uk/sites/default/files/2023-11/ChildrenYoungPeople-MonitoringReport2023.pdf>

appropriate assessment and still ensure that children and young people attend school or another learning environment for the recommended number of hours. There is allowance for a reduction in hours where there is agreement with the parent and child that this best meets the needs of the child, when it is for a limited period and carefully recorded and monitored¹¹.

National statistics demonstrate that disabled pupils and looked after pupils are disproportionately subject to exclusion: both formal and informal exclusions¹². There are no current statistics on the prolonged use of part-time timetables as another form of limiting children and young people's access to the recommended 25 hours in primary schools and 27.5 hours for secondary schools.

As the 2018 report "Not included, not engaged, not involved: A report on the experiences of autistic children missing school." notes, informal exclusions are a particular problem:

"As well as through formal exclusions from school, instances have been reported of autistic children being excluded from their education in other ways. This includes the use of part-time timetables, children missing school due to anxiety or other health needs, and a lack of suitable school placement or support meaning a child is unable to be in school. There are also concerns that many families are being asked to pick up their child from school early on a regular basis, without the child having been formally excluded – a practice which is unlawful."¹³

Care experienced young people are eight times more likely to be excluded than their non-care peers¹⁴. The Promise commits Scotland to ending the exclusion of looked after children: "The formal and informal exclusion of care experienced children from education will end." Plan 21-24 states that this will happen by 31 March 2024 – less than a year away.

For the majority of disabled or care experienced children and young people who are excluded from school, it comes as the result of behaviours arising from unmet need or a lack of reasonable adjustments. The Additional Support Needs Tribunal for Scotland (now the First-Tier Tribunal for Scotland (Health and Education Chamber)) found in the case of McGibbon vs Glasgow City Council that

"Many disabled or Autistic Spectrum Disorder (ASD) pupils will exhibit behaviour which is as a result of their condition. Reasonable adjustment is required to meet the needs of that pupil. If no such adjustment is reasonably

¹¹ Scottish Government. 2017. *Included, engaged and involved part 2: preventing and managing school exclusions*. <https://www.gov.scot/publications/included-engaged-involved-part-2-positive-approach-preventing-managing-school/>

¹² Scottish Government. 2022. *School exclusion statistics*. <https://www.gov.scot/publications/school-exclusion-statistics/>

¹³ Children in Scotland, The National Autistic Society Scotland. Scottish Autism. 2018. *Not included, not engaged, not involved: A report on the experiences of autistic children missing school*. <https://www.notengaged.com/download/SA-Out-Of-School-Report.pdf>

¹⁴ Who Cares? Scotland. 2018. *Response to Consultation on Empowering Schools*. <https://www.whocarescotland.org/wp-content/uploads/2022/06/WCS-response-to-consultation-on-Empowering-Schools-Education-Scotland-Bill-Jan-18-1.pdf>

*made, the application of the policy to that pupil in the same manner as application to a non-disabled pupil, without differentiation, is discriminatory.*¹⁵

During the hearing the tribunal heard evidence from Dr Gillean McCluskey, an expert on school exclusions. Dr McCluskey noted in her evidence that exclusions are ineffective and potentially makes matters worse for the student, their family and their wider school community.

Regulation 4 of the Schools General (Scotland) Regulations 1975 states that

*“an education authority **shall not exclude** a pupil unless the authority consider that in all the circumstances to allow the pupil to continue his attendance at the school would be likely to be seriously detrimental to order and discipline in the school or the educational well-being of pupils there.”*¹⁶

This regulation is the most common ground for a school exclusion.

In relation to the inquiry question: what impact, if any, does the presumption of mainstreaming have on the education of pupils who do not require additional support? Behaviour resulting from unmet need and its impact on pupils with additional support needs, teachers and other pupils is currently being widely debated in Scotland. A human rights interpretation of the debate should be as a failure to meet the ambition of the Standards in Scotland's Schools etc Act 2000 and realise the rights of all children in the class to an inclusive educational environment, free from discrimination.

Care experienced children and young people

Article 20 of the UNCRC places additional obligations on the state to provide special protection and assistance to children who are placed in care and the 2021 Day of General Discussion on Children's Rights and Alternative Care Outcome Report emphasised the importance of ensuring access to and continuity of education when children are placed in alternative care.¹⁷

The Education (Additional Support for Learning) (Scotland) Act 2004, amended in 2009, deems all looked after children to have additional support needs, unless assessed otherwise. While there have been improvements in the educational attainment of care experienced children and young people, there continues to be disparity in their educational outcomes in comparison with their non-care experienced peers. 31.7% of looked after young people leave school in S4 or earlier, compared with 12.4% of all school leavers. Leaving school early usually means leaving with less qualifications; only 46.1% of care experienced young people leave with one or more qualifications at SCQF level 5 or better, while 86.4% of all school

¹⁵ Equality and Human Rights Commission Scotland. 2018. *School Exclusions and Disability Discrimination – McGibbon v Glasgow City Council*.

https://www.equalityhumanrights.com/sites/default/files/mcgibbon_v_glasgow_city_council_0.pdf

¹⁶ Scottish Government. 2017. *Included, engaged and involved part 2: preventing and managing school exclusions*. <https://www.gov.scot/publications/included-engaged-involved-part-2-positive-approach-preventing-managing-school/>

¹⁷ UN Committee on the Rights of the Child. 2021 *Day of General Discussion. Children's Rights and Alternative Care – Outcome Report*. <https://www.ohchr.org/sites/default/files/2022-06/13Jun2022-DGD-Outcome-report-and-Recommendations.pdf>

leavers achieve this level. In 2021/22, there was a 33.2% gap between the proportion of care experienced young people going on to Higher Education as an initial destination compared to all school leavers.¹⁸

Freedom of information requests, submitted by the Govan Law Centre in 2015, revealed of the 12,533 looked after children with additional support needs only 6,374 had been assessed for a CSP. Of those assessed, only 2.9% were deemed to require a CSP¹⁹. Information from CELCIS suggests authorities are often not assessing looked after children for their suitability for a CSP, sometimes due to not understanding that they have a right to this under legislation and other times, perhaps more concerningly, that they don't have the resources available to meet the needs that a coordinated support plan would identify. Who Cares? Scotland report that young people say that even when additional support needs are identified, this information does not always follow them with the move from one educational setting to another, resulting in a lack of support in the new setting.

The Promise highlighted the lifelong cost that care can have on children and young people and made a series of recommendations for education.

- Care experienced children and young people will receive all they need to thrive at school. Schools will know and cherish their care experienced pupils.
- We will support our care experienced children and young people to remain in school and not be excluded.
- School improvement plans will value and recognise the needs of their care experienced pupils with robust tracking of attendance and attainment so that support can be given early.
- Schools will support and ensure care experienced young people go on to genuinely positive destinations, such as Higher/ Further education or employment.
- Care experienced young people will be actively participating in all subjects and extra-curricular activities in schools.
- Every child who is 'in care' in Scotland will have access to intensive support that ensures their educational and health needs are fully met.²⁰

Clearly much still needs to be done to ensure care experienced young people receive the additional support for learning that they need. The presumption of mainstreaming needs to include the expectation that mainstream education meets the needs of all students. The Children in Scotland report *Pupil Support Staff Engagement Project* notes that having the right support improves children and young people's experiences of school. The children involved also said that they are more

¹⁸ Scottish Government. 2023. *Education Outcomes for Looked After Children 2021/22*.

<https://www.gov.scot/publications/education-outcomes-for-looked-after-children-2021-22/pages/school-leavers-post-school-destinations/>

¹⁹ Govan Law Centre. 2015. *GLC research reveals systemic failure of councils to meet education duties for 'looked after' children in Scotland*. <https://govanlc.blogspot.com/2015/05/glc-research-reveals-systemic-failure.html>

²⁰ The Promise, 2021. *Plan 21-24*. <https://thepromise.scot/what-must-change/plan-21-24>

likely to feel welcome, respected and more independent as a result of receiving the right support.²¹

Young Carers

The Carers Census 2022 -23 reported that young carers made up 15% of the individual carers identified.²² 'Young Carers: Review of research and data' reported that the most accurate estimate of the numbers of young carers was 7% of young people²³. The Carers (Scotland) Act 2016 introduced the right to a young carers statement to identify any support, including in education, a young carer may need as well as who is responsible for providing that support. As at the 2021-22 Carers Census there were 2,360 young carers recorded as having a young carer statement in place or being put in place, representing around 2% of young people.²⁴

Young carers are recognised as needing additional support within the ASL Act. 'Young carers: review of research and data' reports that caring may adversely affect a young person's education, including school attendance, attainment and being the target of bullying.²⁵ Despite this acknowledgement there are no statistics relating to the additional support needs of young carers in the 2022 Summary Statistics for Schools in Scotland.²⁶ Edinburgh Young Carers' *Supporting young carers in schools: good practice guide* has been co-produced with young people and provides a structure to ensuring young carers have their needs met within education. Within the guide the call for a blended learning approach to support young carers learning from home if appropriate and for enhanced transitions between primary, secondary and further education.²⁷ This echoes calls made by other young people supported by My Rights, My Say and other third sector organisations to not lose the learning from Covid which showed the benefit to some young people of agile learning.

Young Carers have raised concerns with our office about the failure to put in place young carers statement, statements that do not properly identify or distinguish their needs and the lack of appropriate support leading to an escalation of need. They felt that a lot of teachers didn't really understand what a young carer does and how it impacts on their day-to-day life.

Assessment and Qualifications

Academic accreditation affects a young person's right to protection of their reputation as it involves the public recognition of the individual's qualities and merits. The failure

²¹ Children in Scotland. 2022. *Pupil Support Staff Engagement Project*.

<https://childreninscotland.org.uk/wp-content/uploads/2022/09/PSS-Report-Aug22-FINAL2-1.pdf>

²² Scottish Government. 2023. *Carers Census, Scotland*. <https://www.gov.scot/publications/carers-census-scotland-2022-23/pages/key-points/>

²³ Scottish Government. 2017. *Young carers: review of research and data*.

<https://www.gov.scot/publications/young-carers-review-research-data/>

²⁴ Scottish Government. 2023. *Adult carer support plan and young carer statement numbers: FOI release*. <https://www.gov.scot/publications/adult-carer-support-plan-and-young-carer-statement-numbers-foi-release/>

²⁵ Scottish Government. 2017. *Young carers: review of research and data*.

<https://www.gov.scot/publications/young-carers-review-research-data/>

²⁶ Scottish Government. 2023. *Pupils Census Supplementary Statistics 2022*

<https://www.gov.scot/publications/pupil-census-supplementary-statistics/>

²⁷ Edinburgh Young Carers. 2022. *Supporting young carers in schools*.

<https://www.youngcarers.org.uk/wp-content/uploads/2022/03/Good-Practice-Document-Space-EYC-Capital-Carers-February-2022-1.pdf>

to protect this right through the provision of a fair reflection of academic progress directly impacts future prospects.²⁸

School leavers in 2021/22 with an Additional Support Need (ASN) were less likely to be in a positive initial destination (93.4 per cent) than leavers without a recorded ASN (97.3 per cent). Leavers in 2021/22 who were declared or assessed disabled were also less likely to be in a positive initial destination (92.3 per cent) than leavers who were not (95.8 per cent). 41.5% of Leavers with an ASN achieved SCQF 6 or 7 compared to 73.3% of leavers without an ASN.²⁹

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 needs to include alternative methods of assessment for those sitting mainstream qualifications and also alternate methods of supporting the achievements of students outwith traditional academia, such as the Success Looks Different Awards created by the Inclusion Ambassadors³⁰.

Senior Phase, Further and Higher Education

Disabled children have the same right to progress in education as their peers. All children have a right to continue in secondary education until the end of S6, if they wish, and beyond the age of 18. This was confirmed in *M v Fife*³¹. We are therefore concerned that we continue to hear of instances where disabled children and those with other support needs (including care experience) are encouraged to leave school at the end of S4, or earlier in some cases.³²

Further and Higher Education must form part of transition planning for disabled children. This requires input from a range of child and adult services, depending on the level of support needed by the child. It will involve education authorities, providers of further and higher education and where appropriate child and adult social work, as well as the active participation of the young person.

There are currently widely acknowledged gaps in the legislative framework, including the Schools (Additional Support for Learning) (Scotland) Act 2004, around transitions. These have been highlighted during the consideration of Pam Duncan-Glancy MSP's members bill on the issue, on which we submitted Stage 1 evidence in 2020³³.

²⁸ CYPCS and SYP. *Scottish Parliament Education Debate: Joint briefing from the Scottish Youth Parliament (SYP) and the Children and Young People's Commissioner Scotland (CYPCS)*. <https://www.cypcs.org.uk/resources/education-debate-syp-cypcs-assessments/#easy-footnote-5-14764>

²⁹ Scottish Government. 2023. *Summary Statistics for Attainment and Initial Leaver Destinations, No. 5: 2023 Edition*. <https://www.gov.scot/publications/summary-statistics-attainment-initial-leaver-destinations-no-5-2023-edition/>

³⁰ Children in Scotland. 2023. *Scottish schools recognised for work to support pupil inclusion*. <https://childreninscotland.org.uk/scottish-schools-recognised-for-work-to-support-pupil-inclusion/>

³¹ [2016] CSIH 17

³² Statistical information about the school leaving stage for those with an identified additional support need has been requested from the Scottish Government's schools statistic division but it was not available in time for this submission.

³³ CYPCS. 2021. *Disabled Children (Transitions) (Scotland) Bill. Stage 1 evidence*. <https://www.cypcs.org.uk/resources/disabled-children-transitions-scotland-bill/>

Impact of COVID-19 on additional support for learning

Our office recognises the wealth of information already provided to the Committee by ourselves, the Scottish Youth Parliament (SYP), Youth Scotland, Young Scot and others in relation to the impact of COVID-19 on those with additional support needs. This includes reporting that young people who needed extra help in school, were also affected more than others by the pandemic, and continue to be severely disadvantaged.

A joint briefing by CYPCS and SYP heard from the families of young people with additional support needs being 'side-lined', their usual support suspended, struggling with online learning designed without considering their individual needs, nor the needs of those who cannot use online learning at all due to their disability or lack of access. One parent reported how their child, who normally did well in their chosen subjects, had been affected by the lack of support for their hearing impairment, but had no way to prove this.³⁴ The Family Fund surveyed families twice during lockdown and 89% said that their disabled or seriously ill child's behaviour and emotions were being negatively affected. A similar majority (82%) reported a negative effect on their mental health. The Alliance Scotland also said people with disabilities that they work with have had issues with technology, including accessing school and schoolwork.

Scottish Government Short-Life Working Group on Co-ordinated Support Plans noted that the pandemic had had an additional impact on both children and young people with additional support needs and the plans needed to support them³⁵. Home learning affected some more than others, particularly in relation to the level of support received. For other young people home learning was a positive experience giving young people more freedom to take breaks when they needed, being able to manage their environment to meet their needs and finding it easier to ask for help from teachers as they did not have to ask in front of others.³⁶

There was evidence about the impact of the Alternative Certification Model (ACM) and the lack of appeal right due to exceptional circumstances, including those covered by the ASL Act³⁷. The Inclusion Ambassadors reported the negative impact the uncertainty around exams and assessments had on young people with additional support needs. They called for consultation with young people on the exam system

³⁴ CYPCS and SYP. *Scottish Parliament Education Debate: Joint briefing from the Scottish Youth Parliament (SYP) and the Children and Young People's Commissioner Scotland (CYPCS)*. <https://www.cypcs.org.uk/resources/education-debate-syp-cypcs-assessments/#easy-footnote-5-14764>

³⁵ Scottish Government. 2021. Short-life Working Group on Co-ordinated Support Plans (CSPs): Final Report. <https://www.gov.scot/publications/short-life-working-group-co-ordinated-support-plans-csps-final-report> section 10

³⁶ Children in Scotland. 2021. *Challenging inequality and leading change: a report on the work of the Inclusion Ambassadors from 2020-21*. https://childreninscotland.org.uk/wp-content/uploads/2021/08/IA_Report2021_Final-pdf.pdf

³⁷ CYPCS and SYP. *Scottish Parliament Education Debate: Joint briefing from the Scottish Youth Parliament (SYP) and the Children and Young People's Commissioner Scotland (CYPCS)*. <https://www.cypcs.org.uk/resources/education-debate-syp-cypcs-assessments/>

going forward to ensure it meets the needs of young people with additional support needs.³⁸

Low attendance or school avoidance

Recent reports highlight that attendance rates across all schools are lower than they were pre-covid. Attendance rates for pupils with additional support needs are lower than for those without (87.5% compared with 91.6%) with the gap particularly noticeable at secondary school (84.9% compared with 89.6%).³⁹ Included Engaged and Involved Part 1: A positive approach to the promotion and management of attendance in Scottish states that: “Schools should recognise that poor attendance can often be related to, or be an indication of, an additional support need and they should use their staged intervention processes to ensure that any barriers to learning are identified and appropriate support is provided.”

REACH is a project in Glasgow delivered by Quarriers. It supports children with emotionally based school low or non-attendance. These children experience barriers to attending school including neurodiversity (both diagnosed and undiagnosed), chronic anxiety and poor mental health. REACH is having success at supporting these children to access learning; however, report being hindered by the lack of access to complimentary services such as CAMHS and the family’s lack of information and advocacy to access their rights. For these children, alternatives for learning such as interrupted learners, EVIP or college can be difficult to access due to the presumption of mainstreaming. REACH emphasise that success for these children must be not just about school, but about finding the right learning pathway. It must be child led and parents need to be supported to navigate a complex system.

My Rights, My Say have reported that many children did better working remotely during the pandemic but the option for accessing the curriculum and learning remotely has largely ended now that schools have returned to face to face. For some children with additional support needs, accessing classes remotely may be the right learning pathway. We note that Argyll and Bute have developed creative solutions to the challenges of providing education across a rural and island community. Through the investment in digital video conferencing resources across all secondary schools, students can now access subjects from other schools and colleges.⁴⁰ Such measures would prove valuable for children with additional needs who would prefer to continue to learn remotely.

The use of remedies as set out in the Act

The ASL Act put in place what should be effective remedies to ensure that children’s right support is respected and realised, through the use of a statutory Co-ordinated Support Plan (CSP) and what should be an effective right to **effective** remedy via

³⁸ Children in Scotland. 2021. *Challenging inequality and leading change: a report on the work of the Inclusion Ambassadors from 2020-21*. https://childreninScotland.org.uk/wp-content/uploads/2021/08/IA_Report2021_Final-pdf.pdf

³⁹ Scottish Government. 2023. *Summary statistics for schools in Scotland 2023*. <https://www.gov.scot/publications/summary-statistics-for-schools-in-scotland-2023/pages/attendance-and-absence/>

⁴⁰ Argyll and Bute Council. 2022. *Argyll and Bute Education Strategic Plan 2022-2024*. https://www.argyll-bute.gov.uk/sites/default/files/migrated_files/Unknown/argyll_and_bute_education_strategic_plan_2022-24_recovery_progress_and_impact_report_2021-22_final_ac.pdf

the First Tier Tribunal Health and Education Chamber⁴¹. The Tribunal also considers references regarding disability discrimination brought under the Equality Act 2010.

Children aged 12-16 are also able to make requests regarding assessment of their additional support needs and make referrals to the tribunal themselves. Our understanding is that this process is currently working well, but that the number of children doing so remains small. The ability for children to make references to the tribunal was introduced via the Education (Scotland) Act 2016. During the Act's passage through Parliament and during the development of the accompanying guidance, we expressed our concern that this legislation was not compliant with the UNCRC and in particular Article 12, due to both the restriction to children aged 12 and over and the tests required to make a referral. We shared these concerns with the then Cabinet Secretary for Education and Skills in November 2017⁴². Our position has not changed.

A CSP is an entitlement for any child who meets the definition contained in s2 of the ASL Act. However, the number of children for whom a CSP in place remains, in our view, unrealistically low when compared with the number of children identified with additional support needs. The Pupil Census Scotland for 2022 reported that there were over 705,000 pupils in Scotland. Just over 241,000 of those pupils had additional support needs recorded. Of the pupils with additional support needs, only 1401 had CSPs, which is about 0.2% of total pupil⁴³. Of concern is the 11,212 pupils who spend no time in mainstream classes, of whom only 4.5% had a CSP⁴⁴.

This has been supported by our discussions with partners supporting children with multiple and complex needs and by enquiries we have received directly where there has been no CSP in place. This includes, for example, disabled children attending residential special schools and looked after children with multiple other education and emotional support needs – our view is that there is no doubt these children meet the threshold for a CSP.

Research by Professor Sheila Riddell in 2019 showed that ASN identification rates increased from 10.3% of the school population in 2010 to 28.7% in 2018. The largest ASN categories in 2018 were Social, Emotional and Behavioural Difficulties, followed by English as an Additional Language and other Moderate Learning Difficulty. Over the same time period the use of CSPs decreased from 0.5% of the school population to 0.3%. In 2018, just under 10% of pupils in special schools had a CSP.⁴⁵

⁴¹ Health and Education Chamber, First-tier Tribunal for Scotland. *About the Chamber*.
<https://healthandeducationchamber.scot/>

⁴² CYPCS, 2017. *Letter to Cabinet Secretary for Education and Skills*.
<https://cypcs.org.uk/wp-content/uploads/2020/02/Extending-Childrens-Rights.pdf>

⁴³ Scottish Government. 2023. *Pupil census supplementary statistics*.
<https://www.gov.scot/publications/pupil-census-supplementary-statistics/>

⁴⁴ Scottish Government. 2023. *Pupil census supplementary statistics*.
<https://www.gov.scot/publications/pupil-census-supplementary-statistics/>

⁴⁵ Gillooly, A & Riddell, S 2019 *Working paper 1 (statistics update): An overview of statistics on SEN in England and ASN in Scotland*:
https://www.pure.ed.ac.uk/ws/portalfiles/portal/84680931/39_ii_ESRC_SENChildren_WP_1_Update.pdf

The Scottish Government Short-Life Working Group on Co-ordinated Support Plans⁴⁶ identified a number of barriers to children receiving CSPs and proposed increasing awareness of them as a solution. It also recommended strengthening guidance to improve consistency. It is also, importantly, noted the impact resourcing had on the ASL planning process.

The Working Group also made positive recommendations regarding an increasing emphasis on early intervention in both support and approaches to planning, including a more collaborative approach with children and their families. We welcome this but it will require changes to practice and culture.

CSPs are the only legally binding plans for those with additional support needs and the Additional Support Needs Tribunal is the body which considers references made in relation decisions such as about CSPs and placing requests. In 2017-18, there were 92 references to the ASN tribunal. The majority concerned pupils with Autistic Spectrum Disorder and were in relation to placement requests.⁴⁷

The tribunal is recognised as being sector leading in relation to child-friendly processes, but it is not the principal decision making body as most disputes relating to ASN never reach the tribunal. At an ASN roundtable hosted by our office in June this year and attended by Iain Nisbet (Education Law Consultant), Professor Sheila Riddell (Director of the Centre for Research in Education Inclusion and Diversity at the Moray House School of Education and Sport, University of Edinburgh), Angela Morgan (Independent Chair of the Review of Implementation of ASL in Scotland 2019 – 2020) and Margaret Orr (Education Consultant) it was noted that it is the parents with the most resource who can make use of the system. This is at odds with the statistics which show that that pupils who experience social deprivation have a greater likelihood of being identified as having an additional support need, particularly when the need is deemed to warrant a statutory plan.⁴⁸ They noted that it is difficult for parents from a lower social class to access support and resources. Poverty is a massive disadvantage for children with ASN. The participants in the round table noted that access to redress is a good thing but increasing access is a further sign of system failure.

In the absence of a CSP, and particularly for children who do not meet the current criteria for one, right to effective remedy is far more limited. Different types of non-statutory plans are used in local authorities, causing confusion and impacting on the ability of advice services to support children and their families through the process. There is limited access to independent review, although parents can make a

⁴⁶ Scottish Government. 2021. *Short-life working group on Co-ordinated Support Plans (CSPs): Final Report*. <https://www.gov.scot/publications/short-life-working-group-co-ordinated-support-plans-csps-final-report> section 10

⁴⁷ Gillooly, A & Riddell, S 2019 *Working paper 1 (statistics update): An overview of statistics on SEN in England and ASN in Scotland* https://www.pure.ed.ac.uk/ws/portalfiles/portal/84680931/39_ii_ESRC_SENChildren_WP_1_Update.pdf

⁴⁸ Gillooly, A & Riddell, S 2019 *Working paper 1 (statistics update): An overview of statistics on SEN*

complaint via the Council complaints process and ultimately the SPSO or a referral to Scottish Ministers under s70 of the Education (Scotland) Act 1980.

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.

The Inclusion Ambassadors are a group of secondary-aged pupils who have a range of additional support needs and attend different types of schools. In the 2020-21 group there were 20 Inclusion Ambassadors who represented 13 local authority areas across Scotland.

Members of the group highlighted the importance of support plans. This was related to both ensuring these are in place but also that they are then followed by staff. Several Ambassadors shared their experiences of support plans not being adhered to in schools and highlighted how this affected their wellbeing.

"During covid, my plans weren't reviewed. I don't know where mine is. I think pupils should have more access to support, you don't know what you should be getting or the plans may need to change. Feels more like a bit of paperwork the school has to be honest. It should be support that is followed through." (Inclusion Ambassador)⁴⁹

They recommended that there should be enough specialist staff to meet the support needs of children and young people and to provide tailored, appropriate and consistent support to pupils. At the previous mentioned roundtable, the point was made that it should be the teachers who are working with the child with additional needs and the Pupil Support Assistants manage the class while this is happening. As it currently stands, there is an expectation on untrained teachers to just be able to deal with the aggression, distress and stressful situations that can come from supporting a child with additional support needs.

The Inclusion Ambassadors made the following recommendation about listening and including them in decisions about their support:

- *All school staff, including the Head teacher, teachers and support staff, should ask young people with additional support needs about the*

⁴⁹ Children in Scotland, 2022. *Inclusion Ambassadors: Let's Talk Education – Our National Discussion*. <https://childreninscotland.org.uk/wp-content/uploads/2022/12/Inclusion-Ambassadors-National-Discussion-on-Scottish-Education.pdf>

support they want. This should take place in a situation and an environment that the young person is comfortable in and feels able to speak out.

- *When talking about support, adults should take notes of discussions to help remember what young people tell them. This simple act shows their voice is being taken seriously and helps young people know they are being listened to.*
- *Ensure the outcome is communicated. Follow up with young people after discussing things with them and explain what you are going to do about what they have told you.⁵⁰*

⁵⁰ Children in Scotland, 2021. *Challenging inequality and leading change: a report on the work of the Inclusion Ambassadors from 2020-21*. https://childreninscotland.org.uk/wp-content/uploads/2021/08/1A_Report2021_Final-pdf.pdf

Written evidence from Enquire and My Rights, My Say

Who we are and why we are responding to this call for evidence

[Enquire](#) is the Scottish advice service for additional support for learning. We provide advice and information to children and young people, parents, carers, and professionals on the rights of children and young people to support with their education.

The [My Rights, My Say service](#) is a partnership between Enquire, Children in Scotland, Partners in Advocacy and Cairn Legal. It is the statutory support service required by Section 31A of the Education (Additional Support for Learning) (Scotland) Act 2004. This includes a Children's Views Service, legal advice and representation service and an advocacy service.

The Enquire and My Rights, My Say services hear every day from children and young people, parents, carers and professionals experiencing the realities of additional support for learning in Scotland. We advise on and support navigation of the current system, and balancing children's, families' and professionals' views are central to all of our decision making and activities.

Throughout our response we have indicated which service a piece of evidence or specific response to a question originates from.

Limitations of this response

We welcome this Inquiry and the questions posed in this call for evidence which relate to issues at the core of Enquire and the My Rights, My Say services' work. We have a wealth of evidence on these topics. However, the deadline set for submitting evidence has come at a significantly pressured time of year for our services. Therefore, to avoid impact on the delivery of our services, we have focused on raising some key points and signposting to where we have previously shared evidence on these issues. Where possible we have shared some additional case studies and comment, but this is by no means a comprehensive summary of the evidence and data our services can share on these issues. We would welcome the opportunity to explore these issues and share further evidence with the Committee in the new year should any opportunity arise.

General comment on questions on the Implementation of the presumption of mainstreaming

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.

From what we hear through our services, we believe that some of the key factors in determining the success of a child's school placement are not necessarily whether it is a mainstream or specialist provision, but instead whether the child feels truly included, listened to and supported.

Questions on the Implementation of the presumption of mainstreaming

The presumption in favour of 'mainstream education' strengthened the rights of pupils to be included alongside their peers, with the four key features of inclusion identified as: present, participating, achieving, and supported.

- **To what degree do you feel the presumption of mainstreaming successfully delivers on inclusive education for those pupils requiring additional support?**

Response from Enquire

In 2018 Enquire responded to the [Consultation on Excellence and Equity for All: Guidance on the Presumption of Mainstreaming](#). We feel much of the evidence we shared in this response is still relevant to today and encourage the Committee to consider it as evidence.

As highlighted in this response, Enquire wholly support the vision, in line with research², that with inclusive practice, ethos, environment and the right support mainstreaming **can** deliver the best form of inclusive education to most children and young people.

However, we also know that there are many pupils with additional support needs in mainstream schools who do not currently feel fully included or supported. We also know that there is no longer such a clear division between 'mainstream' and 'special school' provision as in previous years, for example when the presumption of mainstream legislation was enacted. Our service regularly hears about challenges in the way decisions are made about special school placements and the presumption of

² Alana Institute, A Summary of the Evidence of Inclusive Education 2017

mainstreaming – challenges which we feel could be addressed or at least improved upon without necessarily needing to make any changes to the presumption of mainstreaming legislation itself. We address each of these three key areas below.

In considering all of these areas, and informed by years of hearing from children and young people, their parents and carers, and professionals, we feel some of things which are most important in delivering on the potential of inclusive education are:

- *Providing enough choice in the types of school environment available to meet the breadth of pupils' needs*
- *Ensuring adequate availability of input from those with specialist knowledge and skills, as well as access to specialist resources when needed*
- *Maintaining transparency and clarity in how decisions are made about school placements with meaningful involvement with the child or young person themselves and their family.*

Challenges within mainstream schools

We regularly hear on our helpline from families and professionals who report that there are issues in the delivery of a child's support, including concern around a perceived lack of resources or staff training. This can lead to concerns about whether a mainstream school is able to meet a child's needs and steps being taken to try and move a child into specialist provision. This call to our helpline a few months ago illustrates where lack of resources can lead to enhanced/ specialist provision

sometimes feeling like the best option for pupils:

'Teacher called with P5-7 class (21 pupils) with learning abilities ranging from P2-P7, including many children with additional needs. Teacher is concerned that they have 1 PSA assigned for most of the day, but some gaps where the teacher is alone. The teacher understands that the Head Teacher assigns the hours and believes that hours are allocated using an algorithm at the Local authority which the teacher believes does not account for individual needs. The teacher wanted information on whether there is alternative 'enhanced provision' available for their students with additional support needs.' (Evidence from Enquire helpline)

Some of the key issues we have raised in previous work and consultation responses around the challenges to the delivery of inclusive education are:

- *Specific challenges in the delivery of inclusive education at mainstream secondary schools compared to mainstream primary schools. The curricular pressures and physical environments of secondary schools can cause particular issues for some children and young people with additional support needs. We regularly hear of challenges in ensuring that*

information about a

pupil's support needs is shared with all their different class teachers, leading to them not receiving the support they need consistently across all subjects.

Some perceive a lack of suitable mainstream provision at secondary level for some groups of pupils, for example some autistic pupils, who can find the size of large secondary schools difficult to navigate, sensory overwhelm and challenges in developing sustained and deep relationships with staff members.

- *The physical school environment of some schools is a barrier to the inclusion of some pupils with additional support needs who could otherwise thrive in a mainstream setting.*
- *Positive communication and strong relationships between children and young people, parents, carers and professionals is vital to a child receiving an inclusive school experience.*
- *Inclusion is an ongoing process; it is not a one-off measure, and it is something that must be strived for at every level.*
- *Simply being 'present' in a mainstream setting does not always result in an inclusive experience for a child or young person; it also requires the appropriate culture and ethos and the right support.*
- *Concern around the number of children and young people with additional support needs who are not attending their mainstream school full time. We regularly hear of concerns about the inappropriate use of part-time timetables due to a lack of support in place, regular unlawful exclusions from school, and extended periods of absence from school without education provided and no clear plans to support a return to school.*
- *Concern over the perception that certain needs can only be met within specialist schooling, where we know this is not the case and is not reflected in law. We have concerns this may increase the view that mainstream isn't an option for some children or is failing them. For example, our helpline has heard of parents being told that:*
 - *1:1 support is only available in specialist provisions*
 - *medical or intimate care can only be provided in specialist provisions*
 - *only special schools or units can keep children with self-harming or distressed behaviours safe.*

While much of our work shows the current challenges to inclusive education in mainstream, as families and professionals mainly contact our service when things aren't working well, we also hear about when inclusion in the mainstream works well. The Inclusion Ambassadors' Success Looks Different Awards illustrates that successful inclusion is possible in both mainstream and specialist settings. Applicants across all categories demonstrate that strong leadership and a commitment to inclusive practice can be highly impactful for children. Whether the setting is specialist or mainstream, the key component in success is arguably the collective commitment of a school setting to the culture of inclusion. The following

report shares these successes: [Success Looks Different Awards 2022: Sharing examples of supporting inclusion in schools.](#)

The diversity of provision in Scotland

Many still see a hard line between ‘mainstream’ and ‘specialist’ provision, and the presumption of mainstreaming legislation seems set up with this clear division in mind. In reality, this has become more and more blurred.

Increasingly, we hear that many local authorities have more ‘units’, ‘bases’ or ‘hubs’ (referred to as ‘units’ in the rest of this answer, for simplicity) within or attached to their mainstream schools, especially at secondary level. We have some concerns that the focus of the inquiry being on the presumption of mainstreaming might encourage a conversation about mainstream vs standalone special schools which does not leave room for considering provision and measures in between, which can be very successful.

A significant number of pupils with additional support needs in Scotland attend mainstream schools, but access specialist resources and support via an ASL unit of some description. Some of these units cater to pupils with specific types of support need, others may offer some level of input to any pupil with additional support needs at the school. How these units operate differ vastly across schools and local authorities. How pupils use the units at their schools may also vary, depending on need. This is reflected in the most recent Pupil census data which shows the amount of time pupils spend in mainstream class.² For example, for some pupils all their classes may be held within the unit, whilst some will have some classes taught in the mainstream and some within the unit. Some units provide specialist staff who will assist pupils in their mainstream classes, others have spaces available for pupils to use when they need it, and any number of other options.

In law, the definition of a special school is:

“(a)a school, or (b)any class or other unit forming part of a public school which is not itself a special school, the sole or main purpose of which is to provide education specially suited to the additional support needs of children or young persons selected for attendance at the school, class or (as the case may be) unit by reason of those needs”³

Using this definition, some of the units described above 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.

² <https://www.gov.scot/publications/pupil-census-supplementary-statistics/> (Table 1.6)

³ Section 29(1) of the [Education \(Additional Support for Learning\) \(Scotland\) Act 2004](#)

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. As above, 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.

Many parents and carers are also not aware of the existence of such units at all, with little clear information available about them on many local authority websites or via national search tools like the [School information dashboards](#) or inspection reports. This can make it increasingly difficult for parents and carers to clearly understand what they need to do and what their and their child's rights are with regards to school placement choices and processes.

We feel there would be value in examining whether the presumption of mainstreaming legislation and guidance should be revisited to take better account of the diversity of provision in the current context, and therefore able to reflect and respond to the reality of many pupils' experiences as well as the ways in which many local authorities now think about the provision they have for pupils with additional support needs.

Placement decision processes

We feel that there are practical and significant ways in which some of the issues around school placements in Scotland could be improved that are not about the presumption of mainstreaming in itself. For example, we frequently hear on our helpline about issues in relation to decision-making processes for school placements. These issues can have a massive impact on children and young people's and their families' lives. We feel that there could be improvements made to these processes which would be hugely beneficial for children and young people and their families, and that would also benefit local authorities, school staff, and others who support children and young people. Many of these improvements could be made by working in collaboration with local authorities, without requiring legislative change.

Enquire previously submitted feedback to the Scottish Government Code of Practice Working group on some of the key issues we hear about on this topic. These issues particularly focus on the management of parental placing requests and their interaction with local authority internal placement procedures and transitions timescales. Namely:

- *We are frequently told by parents that they do not know about their right to make a placing request or that they have been given misinformation. For example, many have been told that they cannot make a placing request for a special school, or to a specialist unit or base attached to a mainstream school (where this would meet the legal definition of a special school, as*

explained above). There is not clear information available for practitioners about the rights of families and how they should be expected to share information about this.

- *There is a very confusing interaction between placing requests and internal local authority placement allocation processes, which differ significantly* between areas. There are particular issues, as have been covered in the [Tribunal newsletter](#), related to the legal definition of a placing request. Sometimes referrals for special schools made via a local authority's internal processes may meet the legal criteria of a placing request, but are not treated as such, with no appeal rights offered or without reference to the list of reasons why a placing request can be refused. This causes immense confusion for families and often requires them to seek legal advice in order to continue. There can also be implications around access, including whether a local authority will have a duty to provide transport.
- *There is a conflict between placing request timescales (with decisions made by 30 April for August placements) and transition timescales (which require that transition planning begins for pupils with additional support needs at least 12 months in advance, with information shared with the new placement a minimum of six months in advance).* This is an issue that causes significant stress and anxiety for the families we speak to. This is particularly the case for those who benefit from an enhanced transition, as well as those with needs that require a significant amount of co-ordination and planning time to ensure appropriate support provision will be in place. It can also be particularly difficult for those families who appeal placement decisions, with appeals sometimes running into the summer holiday period or even into the start of the new school year.

It would warrant more detailed discussion than there is appropriate room for within this response to fully explore these issues and some of the possible solutions. However, this is a topic that we would be keen to see addressed and would be happy to speak to further.

Response from My Rights, My Say - Children's views service (Children in Scotland)

Through the My Rights, My Say Children's Views Service we have been in contact with 25 children over the past three months alone, who feel they are not getting the support they need in school. 12 of these referrals were for children whose parents had made a reference to the ASN Tribunal following an unsuccessful placing request to an ASN provision. This trend has been steady over the past few years, and we continue to see a growing number of referrals where children and/or their parents/carers do not feel the child's needs are being met in mainstream settings. From the children themselves we mainly hear that they feel the environment is not suitable for them, with classes being too big and noise and busy common areas

being hard to navigate. Almost all the children we have worked with tell us that they have refused to attend school at some point as a result of this, either consistently or sporadically. Many children also tell us that they do not feel they get the support they need to do well in the school environment.

“I got stuck in the crowds [in school]. I was literally getting pushed to bits. I nearly lost one of my shoes. My doughnuts were getting squished in my napkin. Then I was actually on my own and I was in the one-way system. I couldn't stop crying. Then it was really too much for me. I couldn't really get to sleep that night. I was scared. I didn't get into the taxi the next morning. I was just literally screaming and crying. I get flashbacks from the canteen incident. I hate crowds and I'm not supposed to go in crowds”. – Young person, 14

Some children have told us that they would prefer to be educated in an ASN provision as they feel they would be “safer and less likely to be bullied” (Young person, 12) and it would be easier to make friends with children who have similar profiles and additional support needs.

We have also heard from a small number of children that they would prefer to stay in their mainstream school rather than be placed in ASN specific provision. Reasons for this range from wanting to stay close to friends and worrying about not being able to form friendships in an ASN provision and that they do not feel they need full-time ASN provision and they would prefer more support to be put in place in their current (mainstream) school.

Many children have told us that in order for mainstream education to work for them they need more teachers, not just PSAs. We have also been told that there is a lack of safe or quiet spaces to go to when children feel overwhelmed in the mainstream environment. Frequently, the bases/units provided in schools do not provide this safe and quiet space and can be more intimidating than remaining in class. Bullying and feeling isolated are frequently mentioned as barriers and reasons that could cause children to stop attending school.

Through our Under 12 Tribunal Support Service we support younger children, often with significant barriers to communication, to share their views in Tribunal cases. Our observations of these children, especially younger ones (5-11 year olds) paints a picture of mainstream settings who are working very hard to create inclusive spaces for children with ASN. Practical examples include designated play areas, separate work stations, 1:1 support and flexible curriculums. We do not often see these supportive measures replicated in mainstream secondary school settings which may be a contributing factor for the high number of placing requests we have seen for S1 and S2 pupils over the last few years.

At Children's Views we cannot comment on whether the presumption of mainstream is effective or not, but we can conclude that many children tell us that they do not feel they get the support they need and our stats tell us that references

to the ASN tribunal regarding placing requests do not seem to be slowing.

Response from My Rights, My Say - Advocacy service (Partners in Advocacy)

From the MRMS advocacy part of the service we agree with the above. We cannot comment on the effectiveness of mainstream education for those with ASN and we have seen both sides of the debate with some young people preferring to remain in mainstream and other young people who need and want to be in a specialist provision. There are significant gaps in the resources needed to support some young people with ASN in mainstream as highlighted above. Through the advocacy part of My Rights, My Say we have supported 663 young people (to the end of October 2023) and currently have over 60 on a waitlist.

- **What impact, if any, does the presumption of mainstreaming have on the education of pupils who do not require additional support?**

Response from Enquire

We feel strongly that the inclusion of pupils with additional support needs in mainstream settings has a positive impact on pupils who do not require additional support. Inclusion is not only for the benefit of those with additional support needs, but has wide ranging benefits for all pupils, helping children and young people in Scotland grow up with an understanding of those with different needs and experiences to themselves. It is also important to note that, especially given the latest Scottish Government figures showing that 37% of all pupils now have a recognised additional support need⁴, and that we know the needs of many children will change over time, there will be a huge proportion of pupils who will require additional support at some point in their education. Having inclusive school environments and access to specialist input where needed within mainstream settings is of great benefit to all of these pupils.

We do have some concerns that the posing of this question may be likely to elicit responses that focus on perceived negatives of the inclusion of pupils with additional support needs. We are also aware of the issues within mainstream education regarding the implementation of additional support for learning legislation and related policy which can affect all pupils. We firmly believe that the root cause of issues within mainstream education is not pupils with additional support needs attending mainstream schools, but about relationships, resources and culture, as described above.

For children with additional support needs, in your experience:

- **Can you provide details of how these additional support needs were recognised and identified initially? Was there any delay in the process which followed the identification of additional support needs and formal**

⁴ <https://www.gov.scot/publications/summary-statistics-for-schools-in-scotland-2023/pages/classes-and-pupils/>

recognition which leads to the accessing of the additional support? If so, what was the delay?

Enquire hears from many families experiencing difficulties around the identification and recognition of their children's needs. While no diagnosis is needed to be entitled to additional support for learning, and many children need support for reasons that do not come with a diagnosis (for example those experiencing difficulties at home that impact them at school, those experiencing bullying as well as many other needs), we still regularly hear of families being told, or being given the impression that:

- *Their child needs a diagnosis to be entitled to support.*
- *Only children with certain diagnoses can attend special schools, or access certain types of support.*
- *Children with certain needs are not entitled to support or these needs are not within the school's remit to help with (for example mental health needs, intimate care needs or dyslexia). For example, last month one parent told us that they had been told by their child's school that they "don't do" support for dyslexia.*

For those who would benefit from a formal assessment of their needs, which may result in a diagnosis, we know that waiting times can have a huge impact on the child and their family. In 2022/23, 15% of our enquiries dealt with issues raised relating to a child waiting for or having a lack of a formal assessment or diagnosis. Many of these enquiries were about the lengthy waiting times for CAMHS assessments, particularly for autism and ADHD. These delays, which are several years long in many health boards, can have significant impacts on education, for example where it is felt that a specialist assessment is required in order to fully understand a child's needs and how best to support them. In some cases, it means long delays before a child may be able to access medication that could help them.

Long waiting times and high thresholds for CAMHS support for mental health issues and how this can impact on education has been explored in greater depth in [our response to the Self Harm Strategy and Action Plan](#), submitted earlier this year.

Response from My Rights, My Say - Children's views service (Children in Scotland)

The My Rights, My Say Children's Views service has heard from many children and their families that a formal diagnosis was not given until late primary school years or in some cases not until the child started secondary. For children with dyslexia, we have been told that schools have refused to carry out the assessment which has

caused frustration for children and their parents.

Response from My Rights, My Say - Advocacy service (Partners in Advocacy)

We have also been informed that waiting times for CAMHS is having an adverse impact on diagnoses and support. Some schools still state you need a diagnosis before support can be put in place, which we know is not the case.

- **Where the child is being educated in specialist settings can you give examples of where their needs are being met, and examples of where they are not being met?**

Response from My Rights, My Say - Children's views service (Children in Scotland)

In a previous consultation response, we referred to a child who was being educated in a specialist setting but where staff were struggling to meet the child's medical needs. In the same setting there were issues with wheelchair users not being able to go outside due to a lack of staff.

The majority of the children the My Rights, My Say Children's views service work with are in mainstream settings and often in the process of requesting a place in an ASN setting. As a result, we do not have a lot of data on this.

- **What specialist support does the child receive and what support do you get in accessing this support? Are there any gaps in the specialist support provided either because the prescribed support is not available or extra support not formally prescribed is not being provided?**

N/A

- **On balance, do you view the presumption of mainstreaming as having been a positive or negative development for your child or in general, and on balance, do you view the presumption of mainstreaming as having been a positive or negative development for other children in Scottish schools?**

Please see our above answers.

Questions on the Impact of COVID-19 on additional support for learning

- **In what ways has the pandemic impacted on the needs of pupils with additional support needs and the meeting of those needs, both positively and negatively?**

Response from Enquire

Enquire responded in detail on the impact of COVID-19 on additional support of learning in our response to the Covid recovery: a consultation on public health, services, and justice system reforms. We continue to hear about many of the long-term negative impacts we raised in this response including:

- *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.*

We are also aware that there are pupils who continue to be impacted by Long Covid, which may affect their education.

Response from My Rights, My Say - Children's views service (Children in Scotland)

The My Rights, My Say Children's Views service has seen a sharp increase in children presenting with anxiety and mental health issues such as stress, suicidal ideation and attachment difficulties since the pandemic. We know that for some children with

ASN, home learning provided relief. For others, it made learning almost impossible. Hybrid learning overwhelmingly seemed to work well for many pupils and we have seen a number of requests from children to be allowed to continue learning part-time from home in order to reduce stress, anxiety and sensory overload whilst in the school setting. Many children who have not managed to return to school following COVID tell us that they receive little to no educational input from their schools and would welcome more online learning materials so they can continue to learn while unable to attend.

Response from My Rights, My Say - Advocacy service (Partners in Advocacy)

See Appendix 1 for case studies from the My Rights, My Say Advocacy Service where COVID-19 had a significant impact.

- **How successfully have local authorities and schools adjusted to meet these needs?**

Response from Enquire

The Enquire helpline still hears from families who feel their child developed support needs or their needs were increased by the school closures enforced during the COVID-19 pandemic. We continue to hear mention of the long-term impact the

pandemic has had – through delays in diagnosis, lack of transition planning, deterioration in mental health and some missing out on years of learning as a result of the online offer not meeting their needs.

During the school closures, there was a huge and rapid development in the availability of online learning materials and innovations in the way that school staff taught, engaged with and maintained relationships with pupils while working remotely. For children and young people who had been absent from school before the pandemic due to mental or physical health needs, many saw substantial increases in the learning provision made available to them during this time. Some parents and carers told us that their child felt more included with their peers and by their teacher(s) than they had done previously.

There had been some optimism that this could be a positive legacy from an incredibly challenging period of time – that those pupils who are unable to physically attend school could access learning online and stay connected with their school and their peers in a much more successful and consistent way than pre-2020. However, it has been disappointing to hear that many families feel that the provision available for their child has reverted back to that provided pre-pandemic, resulting in feelings of isolation and being left behind. We believe there is huge potential to build on all of the learning and resources created during and as a result of lockdown in order to benefit children and young people who can have the most difficulty accessing learning and support, which is not being made use of outside of a few pockets of good practice.

Response from My Rights, My Say - Children's views service (Children in Scotland)

We are told from children and families that there is a reluctance from schools to allow online and hybrid learning, despite this having been very effective for some children during the pandemic. Children and families continue to tell us that the disruption in school attendance has caused significant anxiety and many children, especially those who transitioned from primary to secondary during the pandemic, have found it difficult to settle into an education setting. One child told us that there is a need for a “recovery plan” for children who were meant to transition from primary into secondary school but had this transition disrupted by COVID. Children tell us that a staged approach with part-time home learning, followed by a slow increase in time spent in school would help them gain confidence and find their feet again. One child told us “Asking me to do too much too soon has made me unable to do anything at all” (Young person 14)

Questions on the use of remedies as set out in the Act.

- **How are parents/carers and young people included in the decisions that affect the additional support for learning provided to young people**

and could this be better?Response from Enquire

Enquire speak to many parents and carers who face difficulties in feeling included in decisions about their child's learning. In the broad thematic categories that we record enquiries under, 44% of our enquiries in 2022/23 raised issues around 'working together' with the school or local authority (710 enquires). Within these enquiries, 19% highlighted relationship difficulties with the school or local authority and 17% raised difficulties around communication with professionals.

A key part of Enquire's role is providing advice on how families and schools can build and maintain positive relationships, particularly when dealing with challenging situations. We know that there can be particular pressure points when communication is more likely to break down, often coinciding with points in the child's education that can cause particular stress and anxiety for families. One example is around transition times. We hear of frustrations or worries when families do not have clear information at the times they feel they need it or when they do not feel their views are being taken into account regarding what could be best for their child. Often it can make a huge difference to families to feel that they have been heard, and to be given clear expectations about when they can expect certain things to happen and when they will receive important information. With that said, we do recognise and appreciate the immense pressures that school staff are under which can impact on their ability to give the time and space that they would like to these conversations.

In terms of the inclusion of young people in decisions that affect them, we hear regularly of excellent practice in this area, but do also hear of situations where a child's own views could have been better taken into account, particularly in relation to how their support is delivered and in decisions about school placements and post-school transitions. We hope that with the upcoming incorporation of the UNCRC, further work will be undertaken to ensure children's views are meaningfully heard and considered in all decisions that affect them.

Response from My Rights, My Say - Children's views service (Children in Scotland)

As part of the My Rights, My Say network, we are championing children's rights to have their views considered every day. We see that schools are trying but often encounter resourcing issues that relate to the provision of adequate support for ASN learners. My Rights, My Say is only able to work with 12–15-year-old children under the Education Scotland (2016) Act, but we see a desperate need for more options for similar support structures to be available to other age groups, particular with the impending implementation of the UNCRC. It could be considered whether "support to share views in formal, adult led processes" could and should be extended to learners of all ages.

- **Are you aware that there are statutory remedies around the provision of additional support for learning as set out in the 2004 Act, specifically:**
 - **Right to have a ‘supporter’ present in discussions or an ‘advocacy worker’ make representations to the local authority, the local authority does not have to pay for this. (s.14)**
 - **Right to an advocacy service, free of charge, for those taking cases to the Additional Support Needs Tribunal (s.14A)**
 - **Independent mediation, free of charge (s.15)**
 - **Independent adjudication, free of charge (regulations under s.16)**
 - **A Tribunal for certain issues involving Co-ordinated Support Plans, placing requests and disability discrimination cases under the Equality Act 2010.**

Yes, Enquire and My Rights, My Say advise on or provide parts of all services listed above.

- **If you have experience of any of these processes, do you have any comments on your experiences?**

Response from Enquire

Dispute resolution (through formal and informal routes), de-escalation and working together are core parts of our work and advice.

Enquire is often one of the first services to explain to families of children with additional support needs the various legislation and processes they need to be aware of when they want to take more formal steps to help resolve issues with a school or local authority. This gives us significant insight into the experience and difficulties of families navigating the current system.

Based on our experience advising families, the key points we would raise for consideration are:

- *Some of the current routes are complex and inaccessible to young people, parents, and carers in distress.*
- *Many routes - from contacting your school, your local authority additional support for learning contact through to independent adjudication – require digital literacy skills and access to a computer. This disadvantages parents/ carers with additional support needs themselves, families where English is an additional language and those experiencing poverty who may not have easy internet access.*
- *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 in Scotland for parents and carers of children with additional support needs who could provide input that may help avoid the need to use any formal dispute resolution processes.*
- *There is variability across local authorities in access to mediation services. Several local authorities do not commission a specific mediation service, and some of these therefore require parents to directly contact the local authority (whom they often in conflict with) to request independent mediation. This can create a significant additional barrier in some situations, and results in some parents/carers questioning the independence of the process.*
- *It would also be beneficial to simplify the process for those requesting independent adjudication. Our experience is that there are steps (such as parents needing to name the specific section of the ASL Act where they feel there has been a failure) required for this process that are not required to access other forms of dispute resolution such as mediation. This can be an additional and unnecessary barrier to their use. Independent adjudication is a potentially beneficial process that is very rarely used at present. We would hope that changes could be made to the process that might make it significantly more accessible.*

Response from My Rights, My Say - Children's views service (Children in Scotland)

We are aware of these processes as they inform the My Rights, My Say services. We feel that the right to advocacy and mediation are crucial in ensuring the rights of children and their parents/carers are upheld. We are mindful that these processes can be very complex and note that advice and information provided by local authorities is not always consistent around this. We continue to hear from families that they have been told they are unable to make a placing request themselves or have not been made aware of the different processes in place to resolve education disputes, for example mediation and independent adjudication. Regarding children's rights to request adjudication we believe this is used very infrequently due to the complexity of the process and a concern that local authorities are involved, making the process feel biased.

Response from My Rights, My Say - legal advice and representation (Cairn Legal)

My Rights, My Say legal advice and representation provides second tier support for the My Rights, My Say service as a whole, in addition to providing direct legal advice and representation to children whose cases require to be determined by a formal legal process – most commonly the First-tier Tribunal for Scotland (Health and

Education Chamber). The service has worked collaboratively with the Tribunal to ensure that the process is accessible and child-centred.”

Independent Adjudication

Children aged 12-15 exercising their rights under the Education (Additional Support for Learning) (Scotland) Act 2004 by making a reference for independent adjudication have often been 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 it can effectively act as a veto.

This removes an otherwise useful remedy from children who wish to make use of their rights and can lead to matters escalating to even more formal and adversarial forms of dispute resolution unnecessarily. As the exception is contained within regulations, it would be straightforward for Ministers to remove or amend the exception. The number of referrals are so low that it is unlikely to have any significant effect in terms of additional work for authorities or adjudicators. However, it would have a significant impact for the individual children affected.

Tribunal

The Tribunal continues to be sector-leading in terms of making its processes accessible to children bringing references and children involved in their parents’ references. There is a strong case to be made for extending the Tribunal’s jurisdiction beyond the limited type of cases it can currently hear. In particular, appeals against exclusions from schools should be heard by the specialist Tribunal, rather than the education appeal committee. Further, extension of the categories of decision, failure or information which can be considered by the Tribunal should be seriously contemplated by way of bringing Section 20 of the 2004 into force and making the appropriate orders. All of the above can be achieved without the need for primary legislation.

- **Any other comments?**

Appendix 1

Case study 1: Charlie’s My Rights, My Say Journey

Charlie was referred to the service by her mum on 4th December 2020 as an urgent referral ahead of her 16th birthday on 19th December 2020. Charlie had a diagnosis of Autism, Ataxic cerebral palsy, severe life-threatening allergies (anaphylaxis), Meningoencephalitis (an acquired brain injury from birth), Visual impairment,(peripheral and lower field), Dorsal Stream Dysfunction, Nystagmus and Asthma.

Charlie was very quiet and had high anxiety. When speaking to people, she found it

difficult to make eye contact and had difficulty processing things. She was looking for help to use her rights under Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) to have her views heard in school and have effective supports put in place.

The referral was accepted and allocated to an advocacy worker. Initial discussion were held with mum as Charlie was too anxious to speak on the phone.

Advocacy was explained and leaflets sent out to both Charlie and her mum. It was explained that due to the pandemic and associated restrictions, advocacy meetings were not currently taking place in person.

The next day our advocacy worker called and, with the call put on speaker phone, Charlie managed to say she did want advocacy support and understood it was her views only that the advocacy worker could share with school. A mandate was sent for Charlie to sign authorising an advocacy worker to advocate on her behalf.

Meanwhile, Mum had made the decision to apply for an additional support needs school placement. However, as a placing request isn't one of the rights a young person has, it is a parental right, through the My Rights, My Say service Charlie could only have her views expressed to her [current] school and not support making a placing request - although her views should be taken on the process.

As Charlie found it difficult to think on the spot when asked things, often resulting in agreement to things people said to her [even if this was not her own view], it was decided to collate views over a period of time. This would give her a chance to process what was being asked and have time to think about her feelings.

Charlie said she did not know why she had so many difficulties in school. It was explained that she had the right to have her needs assessed. A request was put in on Charlie's behalf for an Educational Psychologist's assessment.

Taking Charlie's views in this way over the course of a few weeks was very successful. An email asking Charlie to describe a typical day in school gave a clear picture of a young person who felt isolated and excluded from her peers with comments such as 'I have no friends' and 'I would like to talk to other young people and not be on my own all the time' and 'I want to get work I can do'.

Subsequent emails asking Charlie to describe an ideal day were also enlightening with her saying 'I want to be included in the class' and 'small and not noisy classes with nobody shouting or throwing things'.

During each of the three meetings with school, held via Google Meet at the Advocacy partners request, Charlie's Advocacy worker read her views in their entirety.

Charlie felt for the first time her actual feelings and thoughts were heard, not just what school staff thought she felt. In addition, there was now a record of her day-to-day experiences at school.

Charlie said taking her views remotely over time was more successful than if we had met face-to-face.

At the time of writing, an Educational Psychologist has recommended some changes but Charlie is still waiting to hear about placing request. My Rights, My Say continues to support her.

Case study 2: Colin's My Rights, My Say Journey

A request for advocacy was received by Colin's mum in December 2020. Colin has Autism and profound sensory processing difficulties. In particular, Colin has difficulty with noise and struggled settling in to secondary school in August 2020 because of this. The school put support in place for Colin which involved access to a learning base when he is overwhelmed and permission to leave as well as early arrival in class to avoid the corridors when they are busy. Colin has had several severe autistic meltdowns in school when he has felt unable to deal with a situation as a result of noise (eg other pupils talking), the teacher giving instructions he does not understand or a general build-up of stress throughout the day.

The advocacy worker spoke to Mum and agreed to send out a letter including information about the service as well as a picture of the advocacy worker. After receiving the letter Colin agreed to speak to the advocacy worker on Microsoft Teams.

During the first video call Colin was visibly nervous and found it hard to focus. At times, he disappeared from view but kept returning saying "I want to do this but I don't know how to get my words out." The advocacy worker agreed with Colin that they would do a follow up call a few days later and she would bring a power point to help scaffold the conversation. Colin was excited about this and asked if the power point could have "techy pictures, cause I love computer stuff".

The advocacy worker set up another videocall and used a personalised power point to explain Colin's rights to him and take his views. The use of a powerpoint ensured Colin had a focus and made it easier for him to understand the duration and flow of the conversation as he could see how many slides there were remaining.

Colin identified the following as the main issues: "The noise – I have sensitive ears. It makes it hard to concentrate. The screaming is the absolute worst. I can't even begin to describe it. I heard it all my life. It makes me want to get out. I hear it in school. I have sensitive ears and Autism. Autism makes you short tempered. It makes me want to rage. The only thing that would stop me is to go to Room x or to an empty classroom. When scary things happen in school I can find it really hard to stop myself doing stuff"

After a follow up call to discuss Colin's views and options, again scaffolded by a PowerPoint, he requested an Occupational Therapy (OT) assessment. Colin said that the school was doing all they could to support him but "it is just not enough". He was

hoping that an OT might be able to support him and the school to find new strategies to help him when the environment is too much for him. The advocacy worker wrote to the local authority to inform them that Colin wished to exercise his rights and that he wished to request an assessment. The advocacy worker also contacted Colin's deputy head teacher and guidance teacher who agreed that he needed more support. The OT assessment request was granted promptly and the Head of education replied to Colin's request personally, assuring him things were moving forward.

A meeting has been planned to support Colin on his return to school following his long absence due to COVID, and hopefully to coordinate the OT assessment. Colin has expressed that he feels "powerful" because he has managed to make the request himself and because he feels that everybody has listened to his views. He indicated that the powerpoint helped him "keep calm and focus" and enabled him to pass on his views.

Written evidence from Education Law Unit, Govan Law Centre

Our Education Law Unit works in partnership with schools, education authorities, parents' groups and charities across Scotland to make pupils' rights and parents' rights in education a reality. It is run by specialist solicitors and education caseworkers. It is funded by the Scottish Government. Our ongoing work with outside organisations, results in them being more aware of the rights of children with additional support needs and those of their families and are better able to assist in securing those rights, even in the face of difficulties and delay.

Implementation of the presumption of mainstreaming

The presumption of mainstream is rooted in sound ideology – inclusion matters. We echo the sentiment that all efforts should be made to ensure that a mainstream environment is inclusive for all children. Indeed, there are instances where meaningful accommodations have been made that enable children to achieve their potential in a mainstream setting – this is a success. That being said, both the amount of cases to appeal refused placing requests to a special school, and the number of enquiries that we receive regarding concerns about education, are increasing at an exponential rate – the figures speak for themselves – something is not working.

There is a distinct gap in terms of how the presumption of mainstream model marries itself with children who have are neurodivergent with a significant sensory profile and are unable to engage in a mainstream environment. Too often, we have seen the fruits of presumption of mainstream meaning that a child is on the face of it accessing a mainstream school but the reality is they are accessing a separate space alone for a significant portion of their education. This concerns us from both a wellbeing perspective and an inclusion perspective. If the presumption of mainstream is to be successful it perplexes us as to why schools are becoming bigger, meaning more sensory and social stimuli to navigate. Many pupils have the academic ability to access a mainstream environment, it is the architectural, sensory and social stimuli that they are exposed to that creates a barrier. In many cases, for those with autism and other neurodivergent profiles, the loud and busy mainstream environment can lead to high levels of dysregulation, this dysregulation means that they are not in a ready to learn state and are significantly disadvantaged as a result - this cannot be considered meaningful inclusion in our large schools.

There are far too many children who are unable to access the physical environment

of a school causing them to disengage from their education and indeed withdrawing socially from those around them - this must be looked at as a matter of urgency. We accept that a lack of appropriate resourcing (physical accommodation, personnel and practical/technological) makes it difficult for schools to effectively meet the needs of all learners, funding requires to be allocated in the correct spaces to ensure that if indeed the presumption of mainstream is to operate then mainstream itself is an inclusive environment – otherwise the veil of inclusion is simply acting as a barrier for children to achieve their potential.

The presumption of mainstream, if used correctly with careful consideration to sensory and environmental factors, could be much more impactful. Arguably, all children benefit from a reduced sensory environment. The increasing number of pupils and super schools gravely concerns us.

What impact, if any, does the presumption of mainstreaming have on the education of pupils who do not require additional support?"

The impact of the presumption on mainstream in terms of other pupils who do not require additional support is very much determined by the effectiveness of the strategies and resources of individual schools.

An individualised approach is critical to ensuring that additional support needs are met within school, this requires time and resources which are not infinite. This can mean that teachers may be stretched in terms of trying to accommodate to the diverse needs and abilities of the class.

Some challenging behaviours that can be exhibited in the mainstream school setting by those who find the mainstream school environment overwhelming can have an impact on all learners in the mainstream school setting. Due to the length of time a young person can wait for a CAMHS referral to be completed, there are countless young people in the mainstream school setting with undiagnosed neurodivergent profiles. This can lead to frustration from the young person and them being grossly misunderstood. When upset and distressed, young people who cannot effectively communicate their frustrations, can often display this through challenging and physical behaviours.

Can you provide details of how these additional support needs were recognised and identified initially? Was there any delay in the process which followed the identification of additional support needs and formal recognition which leads to the accessing of the additional support? If so, what was the delay?

Additional support needs are ordinarily first identified by the parents. Through discussions with parents and with professionals in Health and Social Work, the waiting list for Child and Adolescent Mental Health Services is extremely long, in some cases 3 years. This is a significant length of time, especially at a time of life where experiences are shaping the child's relationships to school, education and staff. Undiagnosed conditions leave ambiguity in how best to support a young person. Early interventions from health professionals allows for appropriate advice to be provided to school staff and for the young person to have a more positive experience of school. Unfortunately, we are not seeing enough early intervention taking place.

There can also be a delay in school staff referring young people to the CAMHS service for diagnoses. An example of a scenario we hear of all too often is as follows (a false name has been used.) Harry was displaying signs of autism from around 3 years old. He was well supported at primary school and neither parents nor school staff felt the need to refer to any services for a diagnosis, as they were managing his difficulties in the mainstream school environment. Once he transitioned to secondary school, the difficulties became more obvious. He was reluctant to go to school in first year, began refusing in second year and by the middle of S3, Harry was not attending school. The referral to CAMHS was made in S1 with a diagnosis confirmed at the end of S3. The Local Authority try to engage Harry in various alternatives to mainstream school, however Harry no longer trusts the education system and will not engage. Harry leaves education with no qualifications, high anxiety and low self-esteem.

Where the child is being educated in specialist settings can you give examples of where their needs are being met, and examples of where they are not being met?

Specialist provisions, be it bases within mainstream school settings and stand-alone specialist provisions, both local authorities run and independent, provide a very different approach to education than the mainstream setting are able to. Specific support needs require specific interventions and support strategies which can be more readily available in the specialist settings designed and resourced to meet those specific

needs.

Focussing again on neurodivergent profiles and the provisions designed to support those compared to mainstream settings, the main area their needs are more adequately met, is in the environment. The specialist settings catering to those with neurodivergent profiles, have smaller school rolls. The small school roll and small class sizes lead to a less sensory stimulating environment. Many young people with autism struggle to disseminate individual sounds. All sounds happening at once, can effectively roll into one sound. In a classroom setting, it is very difficult to focus on what the teacher is saying with all the small sounds like pencils tapping, bags rustling, papers shuffling, chairs moving, people whispering etc. In a smaller class setting the number of intrusive sounds is reduced and it is easier to focus on the teacher and progress academically. Small class sizes lead to a higher adult to pupil ratio. The high level of close adult support can help children remain focussed on their work, can intervene and redirect the child prior to any challenging and distressed behaviours escalating and can help the child implement emotional regulation strategies.

Small class sizes allow for teachers to make a more individualised approach to the academic work the children are undertaking. Many neurodivergent children benefit from dedicated time developing social skills and emotional regulation skills. These skills are not usually specifically taught in the mainstream setting.

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.

Impact of COVID-19 on additional support for learning

The COVID-19 pandemic has had multifaceted impacts on pupils with additional support needs (ASN). The pandemic prompted increased adoption of online learning.

This shift provided opportunities for personalised and flexible learning experiences, catering to diverse learning styles, including those of pupils with ASN. Remote and hybrid learning models allowed for more flexibility in the pace of learning. Pupils with ASN can have more time to process information and engage with content at a pace that suits their individual needs.

However, the closure of schools meant a significant change in routine for children with ASN. For some children this change in routine meant that they could not engage in learning during the time of the pandemic as they did not view their home as a space where they complete school work. Not all pupils with ASN have had equal access to the necessary technology and internet connectivity for remote learning. This digital divide may have widened existing educational disparities. Pupils with ASN may struggle with social interactions, and the isolation caused by remote learning may have exacerbated feelings of loneliness and the lack of social development opportunities. The uncertainty and changes brought about by the pandemic may have increased anxiety and stress levels for pupils with ASN, impacting their overall well-being and ability to engage in learning.

The use of remedies as set out in the Act

Inclusion of parents/carers and young people in decisions that affect the additional support for learning is essential. In our view, information related to additional support should be provided in a clear and accessible manner to all parents at the start of a child's education this would enhance understanding and active involvement.

Most local authorities involve parents/carers and young people in the development of Individualised Education Plans (IEPs). The difficulty with this process is that although the parent's views are noted, parents do not always feel that they are heard. A lot of parents have specific difficulties with their child having meltdowns at home. If the school are not seeing these meltdowns during the school day then a focus must be applied to identify whether the root of the meltdowns at home is masking throughout their school day. Ongoing communication is the only way that the school can identify and target these areas of concern.

Parents often feel intimidated at school meetings due to the number of staff and the formality of meetings. Ensuring that information is in a clear accessible manner would assist parents in being able to better participate. An agenda being issued beforehand may assist parents in terms of being able to adequately prepare for meetings. Online

meetings could be used further to improve accessibility.

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.

It is not typical for educational psychologists to speak with parents prior to giving recommendations on how to best support the young person in education. This leaves parents feeling like a stranger who has no understanding of their child is telling them what is best. If there was increased communication from the ed psych team this would allow for a more transparent and trusted process.

In more rural areas, there are fewer choices for parents and young people. Parents are often coming to us when a young person is in their final school years feeling hopeless. Due to a lack of options the local authority and schools are holding meeting after meeting to discuss very non specific outcomes for the young person which never fully materialise until the young person is disillusioned with school and leaves at 16 without the qualifications they are capable of achieving.

- Right to have a 'supporter' present in discussions or an 'advocacy worker' make representations to the local authority, the local authority does not have to pay for this (s.14). There have been rare occasions when parents have been told they cannot have anyone present with them at meetings.
- Right to an advocacy services, free of charge, for those taking cases to the Additional Support Needs Tribunal (s.14A). As the provider of the government's Let's Talk ASN Service, we can confirm from our caseload that awareness of the service across the country is high. With around 700 enquiries, the number of evidential hearings doubling from one year to the next, 150 cases opened in the past year, the demand placed upon our service is significant.
- Independent mediation, free of charge (s.15). Over 90% of our clients take up the option of independent mediation when we open the files. We almost always strongly advise to use this service. The vast majority (84%) of cases get resolved without the need for an evidential hearing and mediation has a large

part to play in ensuring a resolution is found without the need for an evidential hearing. We advise many enquirers of the right to request mediation also and direct them to the template letter on our website for requesting this. It can often be the case that when communication and trust has broken down through years of inadequate support, parents benefit from a mediator to aid the discussions of future support.

A Tribunal for certain issues involving Co-ordinated Support Plans, placing requests and disability discrimination cases under the Equality Act 2010. The Tribunal functions very well and our service uses it frequently. The expertise of the Tribunal is invaluable in terms of determining decisions in relation to children and young people with additional support needs.

Written evidence from ADES ASN Network

1. Details on what parts of Additional Support for Learning provision are working well and what are not, and any reasons they can provide which might help to explain why aspects are working well or not.

1.1 Details on what parts of Additional Support for Learning provision are working well.

- Scotland should be proud of the strong legislative context that is inclusive, rights based, and child centred. Inclusive education in Scotland starts from the belief that education is a human right and the foundation for a more just society. Within Additional Support for Learning legislation, the ecological and contextual model of additional support needs and the inclusive definition of additional support needs is a huge improvement on its predecessor.
- The combination of a nationally recognised definition, resources allocation based on needs and GIRFEC principles ensure a strong focus on the child and young person's lived experience regardless of diagnosis or levels of complexity of need.
- The message that '*all learners matter and matter equally*' is loud and strong within Scotland's legislative framework. National *Included, Engaged and Involved* guidance, related procedures and professional learning resources have been co-created and developed with education professionals and are appropriate, detailed, and supportive and allow relatively consistent practice across Scotland.
- There is great strength in the collaborative support and networking that takes place nationally through groups such as ADES, ASPEP and ASLO; there is a strong networked collegiality amongst professionals in Scotland that encourages and promotes sharing of effective practice and collaborative problem-solving.
- There is increasing public awareness and understanding of additional support needs, disability and neurodiversity. The younger generation are being supported to grow up with much more inclusive attitudes and behaviours which will benefit inter-generational inclusion as they are our future teachers, education professionals and parents.
- The Standards in Scotland's Schools Act (2000) and the presumption of mainstreaming enshrines the right of all children and young people with additional support needs to learn in mainstream schools and early learning and childcare settings. As a result, the majority of learners with additional support needs and many more learners with a complex level of additional support needs are able to attend school in their local community. This promotes social inclusion, belonging and supports children's inclusion in the wider lifestyle of their area. They are more likely than ever before to build connections and relationships locally with partner agencies, amenities, peers and families.
- Many school staff and leaders work hard to create an ethos of inclusion. In the main, collaborative working with partners to meet children and young people's additional support needs works well. Teams around the child, class, school or learning community are an effective way of enabling this support effectively, involving partners as appropriate. 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.

- The majority of staff in schools embrace the concept of inclusion and are leading effectively in inclusive practice. As a result of the Morgan review, schools are improving their celebration of children's achievements and not just attainment. Some schools are offering a wider range of qualifications and awards that are achievable for children and young people with additional support needs. Initiatives such as dyslexia friendly and autism friendly environments and supports are relatively well established across settings.
- The impact of the PROMISE and the care experience funding is making a real difference to the outcomes of children and young people who are care experienced. Corporate parenting duties are well understood and supporting improved outcomes for our most vulnerable.
- Education Scotland inspections and thematic reviews tell us that the majority of senior leadership teams take strong and effective ownership of inclusion and meeting the needs of their children and young people with additional support needs. Every day we see their creativity and energy in utilising a range of resources and partners. In these situations, the principles of GIRFEC work well and children, young people and families are well supported.
- The staged intervention approach is strong and embedded in all Local Authorities and promotes clarity, consistency and flexibility in meeting the changing needs of children and young people with additional support needs.
- As strong universal services are developed school staff increasingly seek support from skilled and expert staff such as Educational Psychologists and Additional Support for Learning outreach teams to support children and young people with much more complex needs. When schools can access quick and responsive support from partners they can better and more effectively meet the needs of children and young people.

1.2 Details on what parts of Additional Support for Learning provision are not working well.

- Scotland has rights-based legislation that places the needs of children and young people at the heart of service delivery. The principles of the legislation in ensuring the widening of access to mainstream education must be celebrated and protected however, the associated guidance and code of practice are unhelpfully complex and challenging to implement in practice. The underpinning ethos of the legislation is to enable early identification of need and the deployment of strategies and resources to meet those needs early and effectively. However, the key principles are increasingly lost in processes that are required to prioritise needs in order to allocate resources. The increase in Tribunal references across all Local Authorities in Scotland exemplifies the divide between the legislation and what can actually be provided and delivered in practice. Education Officers are routinely being subject to frustration, anger and disappointment on the part of

parents who have high expectations of what should be available to meet the needs of their child.

- 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.
- The increase in Scottish Government funding to advocacy groups and legal advisors is welcomed and allows parents to know their rights under the ASL legislation. However, very little support, advice or resource is being provided to Local Authorities in dealing with such a complex plethora of legislation in an increasingly litigious context. An example of this would be the criteria regarding a Coordinated Support Plan and the associated workload of school staff who are required to assess, implement, and review in accordance with the legislation. Unfortunately, the time and effort involved does not necessarily result in active delivery of support to children and young people. There are added challenges for education staff regarding the support from partners such as CAMHS and Health and Social Care Services in contributing to planning for children and young people with Additional Support Needs.
- GIRFEC is relatively well established in schools, however the interaction with colleagues in partner services can be challenging when different thresholds, understanding of need and principles are at play.
- A further example of frustration would be the details and technicalities (including case law) regarding placing requests for specialist provision and the risks to Local Authorities with regards workload and resource allocation associated with placing requests to independent schools. For committed staff, trying their best to maintain their professional integrity within the complex legislative landscape can at times lead to a culture of blame, frustration, and a lack of trust in Local Authority decision making.
- 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 request 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.
- Within Scotland there is a year-on-year increase in the number of children and young people with additional support needs. These needs are diverse and vary considerably in longevity, stability and complexity and require different types and levels of support from educators and partners. Across Scotland there appears to be an increasing level of need. This is evident in how children and young people demonstrate their needs through communication and behaviour as well as in levels of diagnosis. 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.

- The increased complexity of needs is placing pressure on the learning estate both in terms of capacity and suitability. Many physical school environments are not supportive for children and young people with additional support needs and this is the case within both mainstream and specialist sectors. In many schools there is a lack of physical space and challenges in being able to plan proactively for children and young people with increasingly complex needs. This is only getting more difficult with current budget challenges.
- 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.

1.3 Reasons which might help to explain why aspects are working well or not.

- Where Additional Support for Learning works well pupils, parents and the wider school community play a key role in driving and leading. Overall, there is a good degree of progress, but it is inconsistent and fragile. Inclusive practice needs to be consistent, embedded, and resilient.
- The knowledge and understanding of additional support needs gained by newly qualified teachers during their training can be limited, this does not support preparation for working in schools where the level of additional support needs is between 28.8% and 41.9%. This is being addressed by increased learning opportunities focused on inclusive practice, built into the Probationers Programme.
- The ongoing impact of the pandemic compounded by the cost-of-living crisis is having a negative effect on many staff especially support staff in schools. Staff absence and recruitment are likely to add pressure to the system.
- 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.

2. What are the barriers to supporting this provision?

2.1 Staff

Staff need to be supported with professional learning appropriate to meet the needs of the children they support. There is too much emphasis on information and knowledge acquisition which are necessary but insufficient. Staff need opportunities to learn and practice together informed by implementation science and practitioner enquiry for example. This applies to teaching and non-teaching staff across all sectors. Professional learning is more of an issue now than ever as a result of the wide range and extent of additional support needs in our schools coupled with the increase in expectations of inclusive practice.

Recruitment challenges including staff retention are a major barrier that does not seem to be improving in the medium term. It is often hard to retain skilled support staff due to the relatively low pay and intensive demands and the growing sense that the workforce may be undervalued.

2.2 Estate

The learning estate needs significant investment to meet the changing and complex needs of children and young people with additional support needs and disability. The needs of children with complex additional support needs are not always being prioritised in planning. Many older buildings are not of an appropriate quality or have inadequate facilities (e.g., lack of changing places toilets). There is a need for national investment to meet increased need across all sectors. The current metric for allocating funding for new builds may privilege schools with larger number of pupils. Often specialist schools and bases have smaller numbers and so are relatively more expensive. Consideration needs to be given to a specific focus on specialist provision across Scotland.

2.3 Curriculum

Curriculum for Excellence afford schools much greater flexibility to be able to meet the needs of a very broad range of learners. We need to ensure that national ways of measuring progress and success, such as the NIF and school inspections, take full account of the very broad range of needs and do not force schools down a route of a narrow focus on attainment, literacy and numeracy.

2.4 Resource

Within Local Authority budgets, additional support for learning costs cannot be predicted and are often beyond the control of officers leading to significant financial risk and pressure. Local Authorities cannot often plan for ASN

tribunal decision or children and young people moving into their area with complex needs. Legislatively Local Authorities are required to meet children and young people's needs however, fiscal responsibility also requires a balanced budget.

The ASN tribunal sometimes sends children out of their local authority to expensive out of authority schools and care homes. This requires significant financial resource. 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 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.

3. Any examples of good practice in this area;

As Angela Morgan highlighted there are people who "get it" and we need to amplify that and create more of those people. When staff "get it" so much more is possible for children and families. There are too many examples of good practice in the area of inclusion to note. When learning and teaching take into consideration the needs, interests and strengths of children and young people as well as their areas for development we see improved outcomes and success. The PROMISE has had a positive effect on the language used in education and the motivation and impetus to do better for our care-experienced children and young people. Many Local Authorities are having success in supporting their care experience children and young people are there are signs that this is leading to improved outcomes, attainment, and positive destinations.

4. How does the authority support good relationships with parents and young people, especially where there are disagreements around the provision of additional support for learning and reach collaborative agreement

All Local Authorities endeavour to work in partnership with families to ensure that we are providing the right support universally to all learners and in a targeted way to those children and young people who require additional support. Using staged intervention approaches Local Authorities assess need and focus on planning appropriate and timely support. Local Authorities seek the views of all stakeholders in a variety of ways and actively encourage and involve them in planning, including collaborating with our colleagues from other agencies and services. Communication is key. Messages around positive and supportive engagement with parents/carers are delivered via professional learning and re-enforced at staff meetings across authorities. Work with Parent Council chairs ensures that we share our values and commitment to working in genuine partnership with parents/carers.

Despite the best efforts of all to agree a way forward, there are occasions when agreement cannot be reached. When this situation arises Local Authorities all have in place a mediation service to support further dialogue in terms of seeking a solution which all parties are happy to agree to. Our experience of utilising this service has helped to maintain good working relationships with parents/carers.

Where parents/carers are dissatisfied with the service Education provides all Local Authorities have a complaints process which allows for parents to make a formal complaint if they so choose. Whilst this option is always open to any parent/carer, we would try to maintain good relationships throughout all complaints procedures and avoid any adversarial situations arising.

- 5. How many placing requests have been made over the last 5 years by parents or carers wishing that their children be educated in a specialist Additional Support Needs (ASN) unit or school. And how many placing requests have been made by parents or carers wishing their children to be educated in a mainstream setting as opposed to a specialist ASN setting. The Committee would be grateful for the total numbers, along with the numbers of requests refused and agreed.**

ADES does not hold this data, it is held at the Local Authority level.

- 6. How does the authority ensure that parents and young people are aware of the rights to various remedies under the 2004 Act?**

In line with the statutory duty under the ASL Act all Local Authorities have in place information and signposting to supports and services that can advise them of their rights including the national service Enquire. In most cases, communication is made through:

- Websites
- School handbooks
- Parent councils
- Policies and procedures and guidance
- Publication of key documentation such as policies, accessibility strategy

- 7. The Committee is aware that there can be variations in approaches to identification of ASN across local authorities and between primary and secondary schools. The Committee would be grateful if you could briefly set out how you ensure that children's additional support needs are identified and Seemis records are updated to ensure accuracy of the data.**

Local Authorities provide robust and clear guidance to schools regarding SEEMIS recording. This is an area that is being discussed in relation to the National Measurement Framework and a national review of the categories recorded on SEEMIS is required.

8. How does the authority ensure staff have adequate training on Additional Support for Learning provision?

There are a range of professional learning offers within and across Local Authorities in Scotland that ensures staff across sectors and roles are supported in understanding and applying understanding of additional support for learning provision. This is supported by a strong professional learning offer from Education Scotland.

9. If parents/carers have a concern about the ASN provision in a mainstream school, what process can they follow to try and get it resolved?

Parents and carers are always encouraged and supported to speak to key staff in school about any concerns they have regarding additional support needs provision for their child. If they are not satisfied or their concerns continue all Local Authorities have clear processes in place that will allow a staged escalation of concerns including for example, an education enquires mailbox, stage 2 complaint response process, mediation and dispute resolution and ASN tribunal.

10. Where the provision of ASN is not working in specific cases in schools, what can teachers do about that? Is there support that can be accessed? What happens if the matter cannot be resolved?

Across all Local Authorities teachers are always encouraged to raise concerns by first and foremost discussing them with the Senior Leadership team in schools. There are a range of responses and supports that can be put in place depending on the concern for example, requests can be made to the Educational Psychology Service, ASL outreach service and a range of partners and third sector organisations which are available in Local Authorities. The range of support across the system is vast and very much depends on the nature of the child or young persons needs.

11. In summary

In responding, ADES is aware that some of the information regarding the strengths and challenges of Additional Support Needs legislation and practice is conflicting. The reality is that the situation is both positive, negative and indeed varied across and within schools and individual's experiences. Scotland has come so far, yet we have far to go. Improvement will only be made with greater consistency and equity.

To take forward Additional Support Needs legislation we need:

- a relentless focus on learning and teaching;
- everyone to understand that inclusion is not simply about special facilities or mainstream. That inclusion applies equally in mainstream and specialist sectors; the question is **what** works? not **where** works?

- inclusive practice to be owned by everyone within the education system not by a subset within or inclusion services or specialist roles;
- to continually invest in relationships between local authority officers, staff and parents and children/young people;
- to focus on inclusion for all children and young people and not on specific conditions or areas of need;
- to make inclusion visible so that children, young people, staff and families understand what it is and what it isn't and value the benefit of the approach to Scottish society.

Written evidence from Audit Scotland

1. Audit Scotland welcomes the opportunity to respond to this call for views.
2. Audit Scotland is a statutory body established under the Public Finance and Accountability (Scotland) Act 2000. It is Scotland's national public sector audit agency which provides the Auditor General for Scotland (AGS) and the Accounts Commission with the services they need to carry out their duties.
3. The AGS is an independent crown appointment, made on the recommendation of the Scottish Parliament, to audit the Scottish Government, NHS and other bodies and report to Parliament on their financial health and performance.
4. The Accounts Commission is an independent public body appointed by Scottish ministers to hold local government to account.
5. 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.
6. 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.
7. 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.

Written evidence from COSLA

1. COSLA welcomes the opportunity to contribute to the Committee's Inquiry into Additional Support for Learning. As requested by the committee, this submission will focus on the implementation of the presumption of mainstreaming, and the use of remedies as set out in the Act.
2. COSLA is the voice of Local Government in Scotland. We are a cross-party organisation which champions councils' vital work to secure the resources and powers they need. We work on councils' behalf to focus on the challenges and opportunities they face, and to engage positively with governments and others on policy, funding and legislation.
3. COSLA co-Chairs the Additional Support for Learning Project Board alongside Scottish Government, which was established to progress the recommendations in the Morgan Review. COSLA are also members of a number of related working groups including on pupil support staff training, registration and accreditation, behaviour in schools and the development of a related Action Plan.
4. We have sought within this submission to align our response to the series of questions the Committee posed to all Local Authorities where relevant:

What parts of Additional Support for Learning provision are working well and what are not, and any reasons they can provide which might help to explain why aspects are working well or not. What are the barriers to supporting this provision? Any examples of good practice in this area;

5. The number of children and young people recorded as having additional support needs has increased significantly over recent years and the vast majority of these pupils are educated and supported within mainstream schools where they can make up a large proportion of the cohort. The Standards in Scotland's Schools Etc. Act 2000; presumption of mainstreaming" sets out the presumption that pupils will be educated in mainstream schools based on the belief that being educated alongside children from their local communities is the most inclusive approach. [Guidance on the presumption to provide education in a mainstream setting](#) published in 2019 outlines how the relevant Legislation should be implemented.
6. Processes are in place for identifying children who may have additional support needs initially through health visitors and in early learning and childcare, and schools should be informed and plan early for assessing the most appropriate place for the pupil to be educated, and planning should fully involve parents and carers. Not everyone is educated in mainstream schools as the legislation sets out that this may not be appropriate for all children.

7. There are challenges in implementing the presumption due to increasing numbers of children and young people with more complex need due to a number of factors. Parents and carers may believe support in special and independent schools to be at a higher and more specialised level and therefore wish their child to be placed there.
8. There are known recruitment challenges in more rural, island and remote areas across all groups of staff and this may be felt more acutely for specialist provision.

How the authority supports good relationships with parents and young people, especially where there are disagreements around the provision of additional support for learning and reach collaborative agreement.

9. At a national level COSLA is involved in a number of groups which include representatives of parents and young people and we work with them in developing policy, strategy and guidance.
10. At a school and Local Authority level engagement with parents and young people takes place around planning for and assessing the best types of support and agreeing these. Where there are disagreements, mediation would be offered, complaints processes are in place, and there is the option of making a submission to the ASN Tribunal. School and local authority staff will outline why, in their view, the provision offered is the best option and also fully consider any disagreement and seek to resolve this with parents and pupils before disputes are escalated. This can include pre-enrolment visits to schools by parents and pupils.

How does the authority ensure that parents and young people are aware of the rights to various remedies under the 2004 Act?

11. The Local Authority and schools should be aware of the likelihood of Additional Support being required at an early stage and fully discuss options with parents and carers. School handbooks and websites also provide information on processes and rights under the 2004 Act, they also provide information on sources of independent advice including the Scottish Government service Enquire which has both a website and a helpline.

The Committee is aware that there can be variations in approaches to identification of ASN across local authorities and between primary and secondary schools. The Committee would be grateful if you could briefly set out how you ensure that children's additional support needs are identified and Seemis records are updated to ensure accuracy of the data.

12. 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.

13. COSLA does not have access to Seemis but we are aware information on ASN is recorded annually on it by schools.

How does the authority ensure staff have adequate training on Additional Support for Learning provision?

14. Education Scotland have over a number of years been developing training resources for teachers and pupil support staff. For teachers there is a mixture of resources at both the initial teacher education (ITE) stage and for qualified staff through Continuous Professional Learning and Development. Resources include the delivery of the We were Expecting You Module in ITE, the Dyslexia Toolbox and the Autism Toolkit and a document entitled Introduction to Inclusive Education. Local authorities also provide training resources for staff.
15. 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.
16. Through our participation as members of the Pupil Support Staff Working Group and other areas where we engage with unions representing pupil support staff, we are aware of concerns that training for pupil support staff is less uniform across the country than that for teachers, and trade unions have noted that this is inadequate. Work is currently underway looking at training, regulation and accreditation for this workforce. Education Scotland have a held a number of events and have developed training resources which pupil support staff can access.

If parents/carers have a concern about the ASN provision in a mainstream school, what process can they follow to try and get it resolved?

17. Local authorities and schools look to provide appropriate support at all times. Sometimes parents and carers will disagree with the approaches and level of support being offered and request provision is provided in special and independent schools. The first part of raising any concerns would be to contact the school to ask to meet school staff to discuss, and the school would

seek to address these. A further step could include the use of mediation services which would seek to reach agreement between all parties. There are also complaints processes where formal complaints can be raised and investigated. If there is still disagreement after these processes, the next step would be that the parents and carers can raise their complaint with the ASN Tribunals service. Before reaching those formal processes schools and local authorities may agree with parents and carers that special or independent school placements are the option, or parents may agree that mainstream is the right option.

Where the provision of ASN is not working in specific cases in schools, what can teachers do about that? Is there support that can be accessed? What happens if the matter cannot be resolved?

18. Teachers and other professionals should consider why the provision is not working. This may be due to the original provision requiring to be changed if the pupil requires less or more support over time. Teachers would speak to their colleagues and senior management team within and where appropriate, outwith the school and consider whether other support, for example greater use of nurture approaches may be appropriate. Support from other parts of the system can be consulted such as Educational Psychologists, or other professionals working with the child or young person. Resolution would depend on the individual situation, with potentially alternative types of support or provision being offered.

In conclusion

19. Local authorities remain strongly supportive of the presumption to mainstream. COSLA looks forward to contributing to the Committees Inquiry and will reflect with our members on recommendations the Committee makes. We hope that this submission is useful to the committee in their consideration of mainstreaming.

Written evidence from Falkirk Council

- 1. details on what parts of Additional Support for Learning provision are working well and what are not, and any reasons they can provide which might help to explain why aspects are working well or not.**

Working well

Falkirk Council's refresh of Staged Intervention has helped school and staff work more effectively across the range of provision. It is being increasingly referred to when considering how to support children.

We have examples of strong practice in a number of provisions. This ranges from very inclusive mainstream learning environments right through to our stage 4 – most specialist support centres and schools where highly effective practice has been observed. The key features of this are:

- Child centred
- Appropriate individualisation of learning
- Good quality assessment and intervention
- Sufficient opportunities to build on strengths and success
- Good quality teacher feedback
- When appropriate, a more tailored approach incorporating specific methods
- Good quality engagement with parents about progress and achievement

In Falkirk we have a good range of stage 3 and 4 provisions and resources in mainstream schools and have allocated additional and targeted resource to Primary this session for earlier intervention and to support the presumption of mainstreaming. We have 3 very good standalone settings for children with the most complex needs, Inclusion and Wellbeing school and outreach service 5-18; Windsor Park School and Sensory Service and HI/VI outreach 3-18 and Carrongrange High School for severe and complex learners.

Many of our mainstream schools have universal and targeted support and learning zones, including nurture zones and reduced sensory stimulation zones.

We have Primary teachers working in Secondary to support early and first level learners, team teaching Literacy and Numeracy groups and across Social Subjects and developing the curriculum. Data demonstrates recovery and success of these approaches.

Our High Schools best practice is evidenced through high quality of transition information from Primary schools to enable Secondary resources/provision work for these learners. Devolved funding allows enhanced support to be developed in response to this.

Our ethos places the child at the centre; with transition planning from as early as P3 for some learners.

We have updated and modernised our ASN processes to ensure transparent and equitable allocation of resources to meet greatest need.

ASN leaders and school leaders have commitment to relationships and knowing the children with investment of time from High School to Primaries- this builds trust with parent too, hearing their story, and supporting the transition.

We have an Educational Psychologist targeted to stage 3 and 4 learners from Nursery and Early Years into Primary 1.

Not working well

To continue best practice and flexible response to meeting childrens' needs with the right support at the right time is increasingly challenging when demand increases and resources remain the same. Our devolved support for learning assistant hours are annual, temporary with no contingency budget for supply. With these jobs paid less than other jobs in the marketplace, it is hard to attract candidates to fulltime permanent roles and is almost impossible to secure temporary and supply staff.

Our children with Autism and neurodivergent learning needs are increasing, and they require reduced sensory learning environments and access to small group teaching. Our estate requires modernisation as a result. This requires capital funding.

Some of our settings can't adapt space to allow learning zones, this leads to costly Out of Authority placements requests.

It is a challenge to keep parents on board with mainstream schools when funds compromise bespoke packages and specialist or independent education appears better- more parents are now exercising their right to apply for independent special schooling.

Consistency and communication can be hard to maintain, with children moving from and across schools within and outwith cluster, with changing staffing, and changing leadership priorities.

Pupil Equity Fund (PEF) is often used to prop up ASN resources. There is a risk to all our children with greatest need when the PEF funds end.

Reasons/other comments

Barriers- the time and space to effectively problem solve what to do about our most complex situations for young people. 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-today practice.

Opportunities for employment and training with support often feel much more limited, particularly since Covid-19. Even with excellent practice in schools there can be limited suitable post-school destinations for children with the most significant barriers to learning.

There is an identified need to improve communications and expectations with parents at key transition stages.

For placing requests for Primary 7 into Secondary 1 and into Primary 1, the national legal timescale is too long and doesn't allow for timely transitions. This is creating inequity for some children with additional support needs.

Our current developments to support the presumption of mainstreaming is bringing uncertainty and anxiety to our entire system. It is reliant on additionality from the Scottish Government but these resources are not guaranteed year on year.

Inadequacy of stage 4 resources for mainstream schools- these cases pull on all existing resources in a mainstream school.

For all our settings, lack of funding or staff absences can lose good progress and gains made in improving outcomes for children and young people.

Currently the system is fragile due to threats to funding (PEF, Additional teachers, Local Authority budget decisions)

Our current specialist provisions are not as fit for purpose for the learners we have now. Safe and secure spaces for outdoor regulation and learning are required.

Political themes around funding means it is often ringfenced to different areas eg PEF which has been longstanding and is entrenched in our education provision- when it goes, we lose our investment in people. Too much funding is transient and causes risk in the system for sustainability for supporting learners. What will the future look like?

ASN funding needs to be built/ringfenced into CORE funding. Covid recovery was more complex for ASN learners as their outcomes were impacted more negatively; and as a result, their needs became more complex: ASN is now at 37%, school attendance has been worse for ASN learners.

Supporting learners' needs is a huge challenge- when will creativity and solution focused thinking not be enough in light of needs and funding mismatch?

Lack of resilience in parents and young people, how to parent and boundaries expectations after covid.

2. What are the barriers to supporting this provision? Any examples of good practice in this area;

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.

Parental expectation is a massive theme at the moment. Now we all want parents to have high expectations for their child in education, but it does feel like these expectations are often far in excess of what is possible to achieve within the current resources of the public sector.

Support should be a continuum based on need- it is high level support in special education placements; to try and make resource more equitable in mainstream- budgets don't allow this and this removes early intervention and prevention.

Priority of resource always goes to health/medical or Safety first.

More children with higher level of need that not trained to support at practitioner level- especially Social, Emotional, behavioural needs (SEBN), dysregulated behaviours, National teaching practice and Initial teacher education (ITE) to prepare staff,

Good practise

There are examples of really good practice within our Enhanced Provision settings. In one primary school they offer a bespoke approach to educating children, differentiating and adapting appropriately, using small group and individual teaching approaches. The children are nurtured and cared for. We see examples in many other schools. This includes the dedicated workforce which includes the support assistants.

Classroom teachers working with ASN team members and Allied Health Professionals, we use therapy partners model.

Monthly learners meetings joint action discussion (responsibility of class teacher – but supported space and safe space to talk about it) Peer support and expertise- but time to release staff to support other staff in practice (especially with reduced Senior Leadership Team time in Primaries).

Spotlight- staff giving up free time to undertake special interest activities, link to family needs and involve specialist partners too.

One High School has brought in Exam.net- devices, using technology instead of SLFA time.

One High School has 'The Bothy' interventions in blocks of 6-8 weeks, buy in specialist services and staff using own additional training/expertise, matrix of what's available and refer pupils; eg kitbag training, Mental Health and Wellbeing (MHWB), peer support and small group short term interventions, reduces demand on pupil support staff to cases that require their expertise.

Parent Plus programmes successfully piloted for key transitions for children with ASN.

3. how does the authority support good relationships with parents and young people, especially where there are disagreements around the provision of additional support for learning and reach collaborative agreement

We have an ASN Parent Forum led by Parent chair and vice-chair who liaise with ASN Service on events.

Joint training opportunities being explored with ASN Parent Forum

All schools provide Family learning and engagement

Parent Plus programmes run by ASN/Educational Psychology Service (EPS) /Children With Disabilities teams.

Transition work

School based events all the time to make early positive relationships with families (putting **relationships first**)

Early Years informal – drop off, quick words, home visiting, targeted (Parenting class) Parents as Early Education Partners (PEEP)

Partner agencies eg Family Support

Ethos in Primaries that everybody out at school for arrival and end, massive commitment, engage parents at all times so when need a more focused conversation the relationship is already there.

High Schools host parent events which entails showcasing of school and community/partners

If parents in conflict- flowchart of who would become involved and when, and signposting. They may disengage. Escalation can make this difficult and strain the relationship. Team Around the Child (TAC), good communication, agreed child plans targets; seeking parent and child's voice in all decisions affecting them. Staged Intervention framework.

Summit of how services support schools planned for January 2024. Join up partnership and closer links and therefore share Team Around Falkirk

Promote parents as equal partners in their child's learning,

Parent advocacy. Signposting to ASN Independent information is in every school handbook and at bottom of ASN Service email signatures.

Co-ordinated Support Plans (CSP's)

- 4. How many placing requests have been made over the last 5 years by parents or carers wishing that their children be educated in a specialist Additional Support Needs (ASN) unit or school. And how many placing requests have been made by parents or carers wishing their children to be educated in a mainstream setting as opposed to a specialist ASN setting. The Committee would be grateful for the total numbers, along with the numbers of requests refused and agreed.**

Parents don't require to make a placing request for their child to remain in a mainstream placement, they can attend their catchment school if they wish. We use a placement change application process if a child is moving from stage 4 special education placement provision to mainstream, in 5 years we have had 5 cases agreed to move back to mainstream after parental request.

We also operate an internal process known as our placement change panel which enables us to prioritise our special education placements to greatest need. Team Around the Child assess the level of need and make application for a level of specialist education placement as appropriate to the needs of the child. This is in addition to parents' rights to make a formal placing request to a named specialist education placement provision.

Our forward planning team manage the recording of all formal placing requests but are currently unable to provide us with the information requested for specialist placements as it is not recorded in this way as our 22 special education provisions are within mainstream schools.

We can provide you with the total number of special education placements we currently have. These are effectively requested by parents through our placement change panel process or by having a formal placing request granted.

Provision	Cohort (Nov 2023)
Secondary Severe and Complex School	165
Secondary Additional Support Centres in mainstream schools	108
Secondary School Base for the Deaf in mainstream school	7
Primary Severe and Complex Wings in mainstream schools	83
Primary Additional Support Centres in mainstream schools	72
Primary Enhanced Provisions in mainstream schools	282
Primary School for the Deaf	7
Inclusion and Wellbeing Service 5-18	32
Total	756

We can provide data for placement change requests and declines for the following sessions as the data was not recorded prior to this. A parent who receives a decline may still have submitted a placing request and had this accepted or refused, our data is in individual casework and is too time-consuming to provide in the timescale given.

Placement Change panel requests

Year	Accepted	Declined
19/20	106	46
20/21	98	33
21/22	102	124
22/23	98	104

Known formal placing requests within Falkirk for Specialist Provision

Year	Accepted	Declined
21/22	4	4
22/23	6	13

Out-with Falkirk placing requests for specialist provision

Year	Accepted	Declined
21/22	1	1
22/23	1	8

5. How does the authority ensure that parents and young people are aware of the rights to various remedies under the 2004 Act?

My Rights My Say process, access to Advocacy workers, especially for Care experienced young people.

ASN blog- signposting to Enquire

ASN Enquiries- signpost to Mediation or other supports, ASN Adviser can support parent advocacy

Children and Young People participation group and UNCRC group working on voice and rights

School Handbooks

ASN Parent Forum session

Look at legislation and empower staff- Enquire modules available and co-designed with Falkirk Council. This empowers staff to work with empowered parents.

- 6. The Committee is aware that there can be variations in approaches to identification of ASN across local authorities and between primary and secondary schools. The Committee would be grateful if you could briefly set out how you ensure that children's additional support needs are identified and Seemis records are updated to ensure accuracy of the data.**

We use our Staged Intervention framework. We use assessments of need, eg CAMHS, GIRFEC and Educational Psychology assessments. We provide annual guidance to staff for their annual recording of ASN into Seemis.

- 7. How does the authority ensure staff have adequate training on Additional Support for Learning provision?**

We have created new Enquire modules online and our Staged intervention framework signposts staff to Career Long Professional Learning (CLPL) via our A-Z map of ASN training. We use our Authority wide in-service days and ringfence one per session minimum for all staff training in ASN.

We are in the process of creating a leadership pathway in ASN and have mapped out an ASN pathway for Support for Learning Assistants (SFLA's).

We have an active network for Support for Learning Teachers and participate in the SCERTS practitioners network

We operate our CLPL using Training for Trainers models.

Working time agreement is important to enable this

EPS training

IWS and ASN Outreach training

Participating in learning and events through our ASN Forth Valley and West Lothian Regional Improvement Collaborative (FVWLRIC).

We use our ASN Coordinators Forum to share good practice.

Whole school approaches and training, case conferences,

Some schools piloting Mark Burns- Osiris teaching model, leadership, bought in, cycle of learning including SFLA's (learning imperative) and some schools involved in the John Hattie work of flexible practice

- 8. If parents/carers have a concern about the ASN provision in a mainstream school, what process can they follow to try and get it resolved?**

School first – TAC – partners

Principal Teachers ASN, Pastoral Deputes,

Link ASN adviser / link Educational Psychologist

Enquire

Independent advice

Advocacy

Mediation

Council's Complaints Handling Procedure

ASNTS Tribunal

Head of Service

Some parents go to local Councillors/MSPs, Cabinet Secretary, First Minister

9. Where the provision of ASN is not working in specific cases in schools, what can teachers do about that? Is there support that can be accessed? What happens if the matter cannot be resolved?

Teachers do look for more strategies – however the more effective approach tends to be to revisit the needs that underpin the difficulties or concerns and adapting the existing strategies rather than come up with a new list of approaches to try. This is often done well in consultation with the educational psychologists and other members of the Team Around the Child.

They can undertake further identified ASN training. Staff can access support via in school support from colleagues, ASN coordinators, Allied Health Professionals, and partners, or from their line manager.

They can request additional support or resource within school. If appropriate

The school leadership team may agree to request Authority resource.

If unresolved, they can follow Falkirk Council employee formal processes, and seek union and HR advice, and request mediation.

Written evidence from Fife Council

Fife Council Education Service makes educational provision available to all children in Fife, through Early Learning Centres, primary and secondary schools, and additional support needs provision. It also runs a number of central services to support schools and staff in supporting all children who have the need for additional support.

Implementation of the presumption of mainstreaming

The presumption of mainstreaming is central to children's rights, and to ensuring the ongoing development and improvement of teaching and learning practices which support better access to education for all, including those who do not need additional support and those learners who are academically able and need an extended curriculum.

We have good outcomes in terms of children and young people's progression in learning, attainment, and effective transitions from N-P1, P7-S1 for most learners who have ASL and are supported across our continuum of ASL provision ASL provision. We also have a good level of satisfaction from most parents about how their child's needs are met in our provisions. We have a directorate ASL strategy and workplan building on the recommendations from the morgan review

Both school staff, and central services who support these children and their families, work hard to listen to their concerns, ensure that assessment of educational needs is thorough and relevant, and therefore that plans that are put in place in our provision meet children's needs well.

However, there are challenges, which include

the physical environment – some of our school buildings are limited in their scope to provide the necessary breakout spaces and access to space for play, learning in alternative spaces, and outside areas that many children with additional support needs would benefit from

increasing numbers of children who need additional support, particularly those who are pre-verbal, with social and/or communication difficulties, who may or may not have an identified diagnosis such as ASD, in our early learning and early primary years

providing the support necessary to ensure the development of skills and confidence in local school staff to meet the needs of this increasing population is challenging

more families seeking support for their children both within and outwith school, putting pressures on existing family and school support services

issues of anxiety, social and relationship difficulties which have been exacerbated by the impact of Covid- 19

transition into sustainable post-school destinations for our learners with additional support needs

What are the barriers to supporting this provision?

balancing the needs of an increasing population of children with additional support needs, with finite funding for supports both within schools (e.g. staff training, provision of PSAs, provision of outreach support from specialist provision into local schools) and in central services (Educational Psychology Services, Support for Learning, English as an Additional Language, ASD support etc)

increasing requests from parents to support issues within the family or to complete referral paperwork to access health pathways (e.g. ADHD, ASD) and/or health services (e.g. CAMHS) is demanding of education staff time

recruiting and retaining appropriately skilled and trained staff to work in central services

and/or ASL provision, to directly support these children

recruitment of school leaders with the skills and experience in this area

any examples of good practice in this area;

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

piloting new approaches to supporting families whose children may be neurodivergent, to ensure that support is in place while they are on any assessment and diagnosis pathway

support for our ASL establishments to quality assure their provision and identify what they need; support from central services to work with them to develop their skills and confidence (the Inclusive Practice Team)

A continuum of support including small group enhanced support provision available in every local secondary school and accessed by a local cluster group decision making forum

Impact of COVID-19 on additional support for learning

The impact of Covid-19 on families and young people has exacerbated additional support needs which already existed, and has impacted in terms of increased anxiety in families and yp, disrupted education depending on their learning experiences during Covid, and the extent to which their schools effectively supported their ongoing education and any support needs.

This has led to increase requests from families for strategies to be put in place, and specifically additional adult support for young people in school which is tricky at a time of increasingly diminished resources.

Schools and local authorities have been responsive and have a good awareness of the range of needs, but are limited by the financial resources they can put towards solutions.

The use of remedies as set out in the Act

How does the authority support good relationships with parents and young people, especially where there are disagreements around the provision of additional support for learning and reach collaborative agreement.

School leaders are encouraged and supported to intervene early when parents have concerns about their child's needs and/or how they are being met in school. We encourage schools to fully include parents in the discussions and planning around this, being open to hear their worries and concerns.

We have clear guidance for school staff on Assessment and Planning processes within the authority which emphasises the importance of taking a person-centred approach and involving young people and their families at all stages within

these processes.

Central staff such as Educational Psychologists play a key role alongside school staff in supporting parents to participate, and in supporting schools to problem solve issues that concern parents, building in pupil voice at all times, when this can be achieved.

Despite this, relationships between parents and schools can sometimes break down, in which case the Educational Psychologist and Education Manager are often key in supporting problem solving.

Mediation services are available for parents when any dispute proves difficult to resolve. Parents often also turn to advocacy services, and school and central staff will try to work collaboratively with parents and these services to find mutually suitable solutions, which meet the needs of children and young people.

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.

How many placing requests have been made over the last 5 years by parents or carers wishing that their children be educated in a specialist Additional Support Needs (ASN) unit or school.

We do not have a way of gathering this data over 5 years, and so cannot provide it definitively for this question, but that we have small numbers of parents making PRs for places in Fife Council specialists ASN unit or schools, but much larger numbers making PRs for independent provision such as Falkland House School.

Between November 2021 and November 2023, we have had 23 Placing Requests for ASN provision – 21 of these have been for independent provision such as Falkland House School or Donaldsons etc, and two have been for Fife Council special schools.

And how many placing requests have been made by parents or carers wishing their children to be educated in a mainstream setting as opposed to a specialist ASN setting. The Committee would be grateful for the total numbers, along with the numbers of requests refused and agreed.

We do not have a way of collating this data, but this would be a very rare occurrence and is not a regular issue for Fife Council.

How does the authority ensure that parents and young people are aware of the rights to various remedies under the 2004 Act?

Fife Council provides information for parents about Additional Support Needs on its website. Specifically in terms of informing parents and young people of their rights in terms of the ASL Act 2004, there is a link directly to the Enquire website, which provides excellent and clear information about their rights to support etc.

The Committee is aware that there can be variations in approaches to identification of ASN across local authorities and between primary and secondary schools. The Committee would be grateful if you could briefly set out how you ensure that children's additional support needs are identified and Seemis records are updated to ensure accuracy of the data.

There is a consistent approach to support and planning across all sectors in Fife. The process and documentation are made available to all schools. Clear roles are set out for classroom teachers, support staff, support for learning staff, and school leadership. In addition, every educational provision in Fife has a link Educational Psychologist who will support this process, and there are a number of other central support services who can also work with schools to ensure support for assessment for specific learners, e.g. those with ASD, those from a Gypsy and Traveller community, those who have English as an Additional Language, those with sensory needs etc.

Additional support needs, when identified through contextualised assessment or diagnosed through Health Partners, are recorded on SEEMiS. Comprehensive guidance has been developed and shared as part of an ongoing effort to present an overview, that reflects the school community, on this platform.

How does the authority ensure staff have adequate training on Additional Support for Learning provision?

There is ongoing work in relation to professional learning, and to provide a baseline of knowledge for all staff. This is a specific action within our current ASL Strategy.

Specific training is provided on the basis of a needs analysis at school level, and identification of priorities through school improvement plans. This process is then supported by Education Managers, Quality Improvement Officers, and Educational Psychologists.

There is a range of central and school-based training available, depending on need, and a Professional Learning website for Fife staff. There is a programme of support available for all Probationer Teachers in Fife.

If parents/carers have a concern about the ASN provision in a mainstream school, what process can they follow to try and get it resolved?

Parents would in the first instance raise their concern with the school; the HT of the school would take the lead in supporting resolution of the parents' concern, involving other support staff as necessary e.g. those in the Team around the Child such as Learning Support, Educational Psychology, other support services both within education and in partnership e.g. Social Work.

If this does not resolve the issue, there is a complaints resolution process managed centrally within Fife Council. This is likely to involve the Education Manager for the school in supporting to find a resolution to the concern.

Where the provision of ASN is not working in specific cases in schools, what can teachers do about that? Is there support that can be accessed? What happens if the matter cannot be resolved?

Through the agreed process of assessment and planning, teachers would raise concerns with either Learning Support or a member of the school leadership team. They would work with the teacher to support assessment and identify strategies and resources which could be put in place, and evaluated to identify what is working. If necessary, other services such as the Educational Psychology Service, or Supporting Learners Service etc can be accessed, and/or partner services. Education Managers may become involved in supporting the situation if requested.

by the Head Teacher. If necessary, application can be made to involve one of our ASN support provisions on either an outreach or inreach/placement basis.

Throughout this process, parents/carers would be consulted and kept informed of all developments. Teachers could also access a range of professional learning or support services as referenced above to develop their own practice.