



The Education, Children and Young People Committee Inquiry into Additional Support for Learning (ASL)

Response to the call for evidence from Enquire and My Rights, My Say

December 2023

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 research¹, 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

¹ Alana Institute, A Summary of the Evidence of Inclusive Education 2017

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 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 classes². 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.

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.

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](#)

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

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

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 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 enquiries). 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.

For more information, please contact:

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