



OFFICIAL REPORT  
AITHISG OIFIGEIL

DRAFT

# Education, Children and Young People Committee

Wednesday 13 March 2024

Session 6



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**Wednesday 13 March 2024**

**CONTENTS**

**Col.**

**ADDITIONAL SUPPORT FOR LEARNING INQUIRY** ..... 1

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**EDUCATION, CHILDREN AND YOUNG PEOPLE COMMITTEE**  
**9<sup>th</sup> Meeting 2024, Session 6**

**CONVENER**

\*Sue Webber (Lothian) (Con)

**DEPUTY CONVENER**

\*Ruth Maguire (Cunninghame South) (SNP)

**COMMITTEE MEMBERS**

- \*Stephanie Callaghan (Uddingston and Bellshill) (SNP)
- \*Pam Duncan-Glancy (Glasgow) (Lab)
- \*Ross Greer (West Scotland) (Green)
- \*Liam Kerr (North East Scotland) (Con)
- \*Bill Kidd (Glasgow Anniesland) (SNP)
- \*Ben Macpherson (Edinburgh Northern and Leith) (SNP)
- \*Willie Rennie (North East Fife) (LD)
- \*Michelle Thomson (Falkirk East) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

- Dr Lynne Binnie (Association of Directors of Education in Scotland)
- Antony Clark (Audit Scotland)
- Nicola Dickie (Convention of Scottish Local Authorities)
- Kerry Drinnan (Falkirk Council)
- Megan Farr (Children and Young People's Commissioner Scotland)
- Marie Harrison (Children in Scotland)
- David Mackay (Children in Scotland)
- Chloe Minto (Govan Law Centre)
- Vivienne Sutherland (Fife Council)

**CLERK TO THE COMMITTEE**

Pauline McIntyre

**LOCATION**

The Robert Burns Room (CR1)



# Scottish Parliament

## Education, Children and Young People Committee

Wednesday 13 March 2024

*[The Convener opened the meeting at 09:00]*

### Additional Support for Learning Inquiry

**The Convener (Sue Webber):** Good morning, and welcome to the ninth meeting of the Education, Children and Young People Committee in 2024. Our first item of business is consideration of the additional support for learning inquiry. This is the fourth formal session on the inquiry, which will consider how the Education (Additional Support for Learning) (Scotland) Act 2004 has been implemented and how it is working in practice, 20 years on from being enacted.

We will hear from two panels of witnesses. We will focus on three themes throughout the inquiry: the implementation of the presumption of mainstreaming, the impact of Covid-19 on additional support for learning and the use of remedies as set out in the act. Today, we will focus mainly on the first and third themes, but I am sure that we will touch on the second theme as well.

On the first panel, I welcome Megan Farr, policy officer for the Children and Young People's Commissioner Scotland; David Mackay, head of policy, projects and participation for Children in Scotland; Marie Harrison, senior policy officer for My Rights, My Say, Children in Scotland; and Chloe Minto, senior solicitor from Govan Law Centre. Thank you for coming, and thank you for the written submissions that you provided ahead of the meeting.

I will move straight to questions from members.

**Pam Duncan-Glancy (Glasgow) (Lab):** Good morning, and thank you for joining us and for sending the information to the committee in advance. It has been hugely helpful.

I have a broad opening question. Why do parents have to fight all the time? What is the root cause of the difficulties that they and their children and young people face when accessing education?

**Megan Farr (Children and Young People's Commissioner Scotland):** I think that there are two things. The first issue, which is resourcing, comes up absolutely consistently every time that there is a review on additional support for learning.

There have been a large number of reviews in the past 10 years, of which Angela Morgan's was the most comprehensive. Resourcing includes people, their time and whether there is enough day-to-day support in the classroom. I am trying not to jump into mainstreaming, but it is difficult not to.

What we are seeing now is the result of 15 years, possibly longer, of austerity and reduced budgets. During the era of austerity, decisions have been made about what resources have been put towards additional support needs and how those resources have been deployed. It is concerning that, sometimes, those needs have not been prioritised or there has been prioritisation which is not aimed at meeting the rights of all children. In human rights terms, there is a duty on the state—which means the Scottish Government, local authorities and other organisations, including health boards and allied health professionals, as well as the United Kingdom Government—to ensure that resources are used to the maximum extent possible to realise children's rights. We are seeing—and our colleagues across the UK in the other commissioners' offices have made similar comments about resourcing and ASN—that it is one area that has not been prioritised. What we are seeing now is the outcome of that.

The other reason why parents have to fight is that there is a massive gap in the right to remedy for additional support needs. We have a really good mechanism—May Dunsmuir gave evidence to the committee last week and was really clear about how her tribunal works—but it is available only to a very small number of people: either those who qualify for a co-ordinated support plan, whether or not they get one, or those who raise a disability discrimination case. I was concerned by the Scottish Public Services Ombudsman's response—this is not a criticism of that service, because I think that it is right—that it would not expect to get complaints on ASL. However, if those complaints are not going to the tribunal and they are not going to the SPSO, which is what the SPSO said in its written evidence, where are they going? I think that that is why parents are having to fight. There is no effective way of challenging decisions around children's additional support needs. That, for me, was a brief answer.

**Marie Harrison (Children in Scotland):** The field of additional support needs is very wide. There might be a tendency for everybody—from the policy level all the way down to the school level—to think about children with additional support needs as a minority or as a very small group of children and young people, and as such, we try to do inclusion as if we are talking to a very small cohort of children, but we are not; we are talking about 37 per cent—I think that that was the last number—or 241,000-plus children with additional support needs in education. There are

so many children and young people with ASN and, for inclusion and education to be meaningful to all of them, we need to acknowledge that ASN is a very wide field. We are not talking about a small number of children; we are talking about more than one third of the children and young people in Scottish schools. We need to consider a cultural shift in which, instead of thinking only about certain children, we are thinking about all the children.

**Chloe Minto (Govan Law Centre):** It is very important that education authorities are aware of their duties and that local authorities train all of their staff to understand what the rights of children with additional support needs are. Although Govan Law Centre can provide free training to local authorities, it is unfortunately not picked up. We are very pleased to be providing training to MSP caseworkers next week, and we hope that that will be a very positive shift in ensuring that duties are understood.

However, we remain concerned that we consistently have to reiterate to education authorities what their duties are. A lot of cases do not end up at a tribunal because it is clear that the education authority simply did not know that it had a duty. Once it has that information, adjustments are put into place. We see that on disability discrimination claims, in particular. Once the authority knows the things that it should be doing, those things tend to happen. That is a big one for us.

**David Mackay (Children in Scotland):** The language—which certainly came across in the Morgan review—is interesting. It is about the idea of parents fighting for their children’s rights. We are obviously not getting it right and the issue is that children and young people are not experiencing their rights under the United Nations Convention on the Rights of the Child, especially articles 12, 28 and 29.

Megan Farr touched on resources, including the amount of funding, staff time and training that is available for staff. Those are key issues. That also links to communication with parents and carers. Tight resources limit the time that teachers or support workers have for communication, planning and working together effectively, and that leads to a culture in which it feels like there is a fight between parents and staff, rather than them working together.

We hear about that a lot through the Enquire helpline. A large proportion of our calls are focused on communication with parents and carers. In many cases, we find that there is a relationship breakdown that has been caused by poor communication. In many cases, the school is doing its best, putting supports in place and supporting children and young people effectively,

but communication and clarity about what is happening in the school environment is not clear between all partners. The young person, the parents and carers and the school should be working together. That is a key challenge that we need to overcome.

**Pam Duncan-Glancy:** I will resist the temptation to talk about CSPs and resources, because other colleagues will talk about those. Why is communication breaking down and what do we need to change to ensure that everybody knows who should be communicating what, at the right point, and to whom?

**David Mackay:** School staff are really stretched because of what they have to deliver. We observe a lack of time for peer learning, discussion with colleagues and making time to reach out to families, which is a time-intensive but important part of the process. Education professionals often feel that they are pulled in lots of different directions and we have heard from some of the previous evidence given to the committee that there is a focus on ensuring that the child in front of them is getting the right support in school and that they are prioritising direct work with the child or young person. It is important for staff to have enough time to take a step back and think about how frequently they are communicating with home and parents and carers and to get the bigger picture of that network. Marie Harrison might want to say more.

**Marie Harrison:** I am sure that this will come up again later, but training on meaningful ways of engaging and supporting children and young people is still lacking. We work very hard on that in the My Rights, My Say service. If you want to build positive relationships with families and parents, you need to start by building a positive relationship with the child. In order to build a positive relationship with a child that has additional support needs, you need to invest a lot of time and you need a level of expertise around how to communicate in positive ways.

That can come down to things such as choice of language. We hear children say that they are being called aggressive, for example. If someone calls a child aggressive, that will be really hurtful and make the child take a stance against whoever said that. Language is still being used that is detrimental to children’s desire to have positive relationships with school staff. We recently spoke to a young person who said, “I’ve just checked out.” There is a lack of trust for some children and young people because they feel that they are being blamed for the issues that they are experiencing in school. It is almost as though the onus is on the child to change to fit into the school box rather than the school box being willing to change around the child.

Again, it is about a culture shift—trying to focus on the culture and the structures and why they are not working for the child, rather than looking at the child and the family as the ones who need to change. A child with additional support needs cannot change their make-up; they are who they are. They have value, they have rights and they can contribute in so many ways but, in order for them to do that, we must be willing to not just ask them questions but actually listen to what they are telling us.

David Mackay touched on resources being stretched; it can be very hard to invest in the children and young people the time and energy that they deserve. If that fails, it is not going to work for the parents either, and then you have a cataclysmic relationship on your hands in which parents also lose trust. That happens a lot. Our local authorities and schools want to do the best that they can for children and young people. I do not think that anyone wants children to fail or to not be happy or to not attain or achieve and feel happy in school, but the landscape is such that there is a lot of mistrust on all sides. Local authorities have to somehow spread themselves very thinly and parents want more than local authorities are willing to give—or are able to give. Then you end up with a working environment—I would almost go so far as to say that it is a hostile working environment—where everybody feels unhappy, teachers feel deskilled and children feel that they cannot trust anyone.

**Pam Duncan-Glancy:** I have a question on that particular point.

**The Convener:** I am very aware of you encroaching into other areas of questioning again—

**Pam Duncan-Glancy:** Okay.

**The Convener:** —if that is okay. Chloe Minto, you want to respond to that question.

**Chloe Minto:** Marie Harrison mainly covered the points that I wanted to make about ensuring that the child is at the heart of things. On communication breakdown, we tend to see masking. Ms Dunsmuir commented on that in her evidence session. We see that in almost every single tribunal case that we take forward. We have questions about why the child is so different at home from the way that they are in school. Why are they stimming at home and not in school? What is the root cause of that? Not enough questions are being asked about that by the education system, which leaves parents feeling very failed. I suppose that that adds to that fight that we see. Parents feel that blame is being apportioned to them and that the issue is something to do with them because they are seeing that behaviour only in the home space.

Masking is a central issue and education authorities need to take more responsibility for that. We should not be settling for a child presenting entirely differently at home from how they present at school.

**The Convener:** Megan Farr, do you have something to add?

**Megan Farr:** Yes, briefly, but I hope that I get an opportunity to come back to comment about school—

**The Convener:** The conversations will be extensive throughout the day, so I can assure you that some of the threads will be picked up later on.

**Megan Farr:** On communication, there is an issue with regard to language and how we talk about children with additional support needs, particularly those who are distressed. That has come through in some of the narrative about behaviour in the past year or so. Exclusion statistics consist disproportionately of children who have additional support needs. That narrative has not been helpful in the relationship between schools and children and probably reflects the way in which some parents are hearing about their children, or are hearing their children being described.

09:15

**The Convener:** I hope that you will find that, as the conversation develops, you will get the chance to make all the points that you are desperately trying to make. I will bring in Michelle Thomson.

**Michelle Thomson (Falkirk East) (SNP):** Good morning, everybody. We have already started to touch on it, but I am interested in how the concept of a rights-based approach can facilitate decisions about how money is spent in order to support all pupils. We have had some good submissions about a rights-based approach. I am interested in how money—the filthy lucre—can start to affect decision making when a balance needs to be struck. Perhaps we can start with you, Megan.

**Megan Farr:** It was inevitable that that question was going to come to me first. I will go back to the point that I made earlier about what the duties in the UNCRC mean. Although the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 has only been enacted this year, the UK Parliament made a commitment to those obligations in the UNCRC when it ratified it in 1991. There are long-standing commitments to realising children's rights and using resources to the maximum extent that is possible in the world's sixth largest economy. That is the context for it.

It comes down to how individual decisions are made. They are made at all levels of government,

by the UK Government, the Scottish Government, in the Parliament and by councils across Scotland. We know that all those bodies are making tough decisions and have been doing so for probably two decades, certainly for 15-plus years. A lot of work has been done in the past few years on taking a rights-based approach to budgeting, and quite a lot of that by our colleagues in the Scottish Human Rights Commission, who are literally upstairs from us. They have done a lot of work around human rights-based budgeting more broadly and our office and others have done further work on children's rights budgeting.

The Scottish Government has the child rights and wellbeing impact assessment—CRWIA—which is a tool that can be used as part of budget setting, although it is difficult to say whether it is being used consistently. We see some extremely good CRWIAs from parts of Government—and not always the departments that you would expect it from. We also see some that lack detail and appear to have been done, or it is very clear that they have been done, after decisions have been made, which is not how it should work. Quite often, we see consultations from the Scottish Government that ask, “Have you got any information for our CRWIA?” There should be a draft CRWIA with a consultation. It sometimes feels as though the Government is asking respondees to do the CRWIA for it, which is not how it should be.

I did a bit of a dip into local government budget setting a couple of years ago as part of this work. It was really inconsistent. I was also concerned about how much information elected members are given. Sometimes, in the budget packs that councils gave councillors, there was simply a yes or no question on whether an equality impact assessment had been done; CRWIAs were much less visible.

The mechanisms are there. It is about doing the impact assessments with a mind on the obligations. When the UNCRC is incorporated in July, there will be legal obligations to deliver an education for children that meets article 28, which is the right to an education, as well as article 29, which talks about

“the development of a child's personality, talents and mental and physical abilities to their fullest potential”.

I think that we are not doing that for far too many children at the moment.

**Michelle Thomson:** I sense that everybody else on the panel wants to say something. [*Interruption.*] Excuse me—I have a bit of a chesty cough, so you will have to put up with that. I would like to bring in the other witnesses on the panel. Megan Farr gave us a very good articulation of the what, but I am also interested in the how. How

does the flow of money affect a rights-based approach?

**Marie Harrison:** Correct me if I am straying here, but in delivering a rights-based approach—not just for funding but in life in general—it is really important to consider the how. We have a lot of remedies for 12 to 15-year-olds under the 2004 act, and we will get the full delivery under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 in July. I am not convinced that I fully understand how the two acts will be compatible. At the moment, delivering the My Rights, My Say service, we are able to support a cohort of children in exercising their rights. We are funded by the Scottish Government to ensure that 12 to 15-year-olds can exercise the 13 rights that they have been given under the 2004 act—the ASL act. The 2024 act—the CRC act—contains 54 rights, potentially condensed into 42, that directly impact on children and young people.

It is really important not to just implement policy or legislation; there has to be some kind of mechanism to provide support in real life, not just for children but for their families and for the professionals who will be dealing with the issues. I am not sure what that will look like or whether the structure will be similar to that of My Rights, My Say. I can only conclude that, through the work that we do under the 2004 act, we can respond to the children concerned. However, there are 241,000 children with additional support needs, and My Rights, My Say has supported around 1,000 over the six years that we have been active. That is not to say that all 241,000 children would have needed our support, as a lot of children with additional support needs cope very well within their education settings, but we are still just scratching the surface and we have to acknowledge that more rights are coming in a few months' time. There has to be some allocation of funds to ensure that those rights are not just about looking pretty on paper or serving as a flag that we can pull out to say, “We have done this.” We sometimes suffer from implementation fatigue and we need to get over that and ensure that rights are achievable and accessible for children and young people, families and professionals.

**Michelle Thomson:** Does Chloe Minto or David Mackay wish to add anything on the concept of the complexity of the existing rights and the new ones coming in that Marie Harrison has pointed out?

**Chloe Minto:** I echo the point that it is extremely important to look at how the measures are to be put in place. Some of our figures highlight that we are only scratching the surface.

Our Government funding is expansive. We are the Government-funded service that allows any parent or young person who has a right of



reference to take their case forward to the First-tier Tribunal. The committee has heard how many children with additional support needs there are, but our service has had only 624 files over the past five and a half years. That is not for the lack of us trying. We have had only eight files for looked-after children over the past two years and that is a matter of extreme concern to us. Rights are not being realised for that group. While I celebrate what is about to happen, and I am hopeful that we will see some fruitful progress in this space for children, I have some concerns and reservations about how children will access their rights.

I have a further point to make about the presumption of mainstreaming and the best interests test, but I will leave that for now. I imagine that we will circle back to that.

**Michelle Thomson:** Yes, we will get a row if we stray off topic.

**David Mackay:** I will come in briefly at this point, as I can see that others are keen to come in, too.

Children in Scotland worked alongside the Carnegie UK Trust and Cattanach a couple of years ago to do some work on child rights-based approaches to budgeting, and I would be happy to share information on that with the committee.

The UN has produced lots of other resources on taking a child rights approach. The important thing is to consider participation, transparency and accountability as part of the process. When we say “participation” we are talking about individual decision making and decisions at an individual level, but also those mechanisms that influence broader policy that are not necessarily just about children’s own lives; they might involve how education is delivered. It is about the meaningful, broad participation of children and young people, not just that of a narrow, targeted group of young people. It is important to consider much wider opportunities for engagement.

**Michelle Thomson:** I keep catching your eye, Megan. Do you wish to make a final point in this area without straying into other territory?

**Megan Farr:** I will say something about participation. I am glad that David Mackay has said most of it already, but I will add that there has been a recent and really concerning example around behaviour in schools, on which there has been very little engagement with children and young people. A lot of effort has been put into engagement with various groups of adults, but we cannot make rights-based decisions if the children are not involved. That applies not only to budgeting, but to all other areas of policy making.

As David Mackay said, that engagement must involve a broad range of children—it cannot be tokenistic. There are groups of children who do a fantastic job—I am sure that the committee will hear about the inclusion ambassadors—but broader engagement is needed. There needs to be consultation with the children who are actually affected by policies. That is another gap in the CRWIA process that we see a lot.

**The Convener:** We have spoken a little about the presumption of mainstreaming. In that context, I am trying to figure out, and I have some questions about the role of specialist school settings in our system. We heard from Matthew Cavanagh of the Scottish Secondary Teachers Association that teachers in such settings have a real opportunity and a

“greater ability to meet the needs of individual pupils, whom they know better.”—[*Official Report, Education, Children and Young People Committee*, 21 February 2024; c 6.]

In your view, what role might those specialist settings play in the presumption of mainstreaming? What are the criteria for when a specialist setting is appropriate, and are those criteria understood and consistently applied? Perhaps Marie Harrison would like to come in first, as she caught my eye.

**Marie Harrison:** I am happy to do so, convener. Primarily in the specialist schools, we see absolutely wonderful practice. We also see a lot of wonderful practice and commitment in mainstream schools, but there could be more use of things like learning exchange. That is about supporting mainstream schools to learn from specialist settings about what it is that they do and what works really well for them, and looking at how we can transfer some of that good learning into mainstream settings as far as that is possible. We could look at whether there is scope to deliver some kind of continuous professional learning in that regard.

We see that mainstream schools still do not have the facilities that specialist provision has. Mainstream schools are different settings and, in some ways, they are trying to deliver on an inclusion agenda for which they are not physically built, whereas specialist schools are built specifically with children with additional support needs in mind.

I do not think that that will bridge everything, but trying to collaborate in some way, and to create opportunities, is important.

**The Convener:** Before I bring in other members, I will unashamedly highlight Currie community high school, which is next door to Woodlands specialist school. My old headteacher, Eric Melvin, had the inspiration to put those

schools close together so that sharing could take place.

Is anyone aware of any other such examples? As we hear evidence from the rest of the panel, there will be other opportunities to comment on how that collaborative approach might work for parents, pupils and staff. I will bring in Megan Farr, and then we will come to David Mackay and Chloe Minto.

**Megan Farr:** I will turn the question on its head a little. The United Nations Committee on the Rights of People with Disabilities uses a definition of disability that the UN Committee on the Rights of the Child has adopted, so it also applies to the UN Convention on the Rights of the Child, and will, therefore, effectively become part of Scots law on whichever date it is in July. The definition refers to “long-term physical, mental, intellectual or sensory impairments which”

—I emphasise this bit—

“in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

With regard to mainstreaming, that means that a large proportion of the 37 per cent of children with additional support needs might not need additional support, were it not for the barriers that they experience in the school. There is something about—

**The Convener:** Can you give an example to help us to understand that?

**Megan Farr:** Yes. Secondary schools, and the newer-build schools in particular, are often very large, open spaces. They are noisy and very bright and, when there are a lot of children moving around, they are very crowded. Children with an autistic spectrum disorder in particular can find that extremely overwhelming and sometimes the adaptation aid is very small, such as taking a child out of the busier bit of the room. However, schools are still being designed like that. A number of primary schools were built around four-class clusters in a block with no walls; those are also difficult environments.

I will give another example. If schools are not physically adapted for disabled children, they may need additional support to get around the school because the school does not have level access. There are a couple of examples—

**The Convener:** We will have questions about buildings later on, so I am straying into other areas.

09:30

**Megan Farr:** Buildings are a factor, but school culture is a factor as well, and sometimes just

fairly minor changes are needed. We visit schools fairly regularly, and in some you can see autistic children absolutely joining in with the rest of the class and not experiencing barriers, because the school meets their needs almost automatically because of the way in which it is run. In other schools, you can see children just not coping with aspects of the school day.

This is flipping mainstreaming a little bit on its head, but we have an issue in that mainstreaming is not meeting the needs of a big chunk of children whose needs it should meet. However, there is definitely still a role for specialist provision. Your example of Woodlands is a good one, because there does not need to be a separate school—there can be a unit or enhanced provision, or there can be a model where a child spends part of their time in mainstream classes and part of their time in specialist provision.

Another issue is that we have highly specialist schools in Scotland that are attended by some of the children with the most complex disabilities, but those grant-aided special schools have been in a sort of limbo with their funding for a good dozen years or so now, since the Doran review. They do an amazing job with that group of children who will never be in mainstream education, because it will never be able to meet their needs. They often have very complex medical conditions as well as disabilities.

Work is being done to share with mainstream schools some of the expert knowledge in those schools. A growing number of children are in that group, which is a good news story. Children are now surviving those medical conditions and living into adulthood. There will always be a place for specialist schools in that area.

**The Convener:** I am trying to drill down into that to find out whether there are specific criteria. I know that it sounds a bit brutal to talk about our young people in that way, but what are the criteria for when a specialist setting is appropriate?

**Chloe Minto:** We deal with placing request refusals when parents have applied for their child to attend specialist provision. Rather than positive criteria, in essence, the local authority can select from 12 grounds of refusal to say why special provision would not be appropriate. That can include things such as capacity or the fact that the school is not suited to the ability and aptitude of the child. All those grounds are on top of the presumption of mainstream education, which is one of the reasons why a request can be refused.

When a local authority issues refusal letters, there is not a lot of information. If a local authority is relying on a ground of refusal such as the special school not being suited to the child due to the ability and aptitude of the other children in the

school, at that stage, it would be helpful to have more of an understanding of why that is. Parents do not want to push their children into provision that is not right for them. We need transparent conversation and dialogue to ensure that we get the child in the right space. We often have difficulties in trying to get parents through the door of a special school to see what their child would experience.

That is essentially how the process works. Sometimes, local authorities will set their own criteria and say that a school is for “complex needs children” or for “children with intellectual disabilities”—those are the terms that they will use. Those are simply the local authority’s criteria. When we are at the tribunal, we will argue about whether the ability and aptitude of the children in the school match those of the child that we are looking at. Rather than any external criteria that the local authority has tried to apportion to a school, what is important is the pupil profile that we have in front of us.

There is a place for special provision. I find the language that we still use to be jarring. The phrase that is in our legislation is “special school”, which is the only reason why I am using it today. That language is jarring for parents as well. We need to think about that as we continue to understand how our use of language impacts on our children and young people.

We see many success stories involving children who have been through the tribunal because they have experienced exclusion through our trying to include them by keeping them in a mainstream school. They may not have been attending school, but we then see them thriving and performing in their new school’s concerts. We build up a rapport with our clients and they feed back to us, because they have been through such a traumatic time with their child. We take a lot of pleasure in hearing those success stories. It is not a tragedy when a child has to be placed in special provision; it is a tragedy when we are not meeting a child’s needs and are trying to fit them to a mould. Integration is not enough. Simply saying that a child is in mainstream education and is physically in the building is not enough. Our children all have the right to achieve their potential and special schools are extremely key in unlocking that.

**The Convener:** I suppose that your comment about each local authority having its own criteria means that they are probably not consistently applied.

**David Mackay:** I agree with a lot of the panel’s points, especially around language and ensuring that we are doing the best for individual learners. There is often a very binary discussion about mainstream and specialist schools. We know that there are a lot of different approaches to how

mainstream settings operate. Many have ASL hubs, which can be very effective for children and young people. It is important to have that kind of broader thinking and to drill down a bit into how ASL hubs operate. As we heard from the My Rights, My Say service, there is not always a consistent approach to the operation of ASL hubs. That can lead to quite a bit of confusion for parents and carers, who are not always sure of the provision that is available in mainstream settings. That can lead to the idea that the support is not available in mainstream schools and that certain needs can be met only in specialist settings. We know that that is not the case and is not what is reflected in law. Again, that is a communication issue. The information flow to parents and carers is really important.

**Marie Harrison:** I echo what David Mackay said. We see that confusion among parents. We quite often hear that parents have made a placing request for a mainstream school that has an ASL hub attached to it, because they feel that that will give their child the chance to do mainstream but get support from the ASL provision. However, that is not how it works. A placing request often has to be for the ASL provision.

On top of that, there are learning hubs that are not necessarily ASL provision. Parents sometimes think that they can make a placing request for those, but they are readily available for all children.

**The Convener:** It sounds like there is a lot of inconsistency and confusion.

**Chloe Minto:** I have one point to pick up on. The way in which the legislation operates at the moment does not allow for a parent to apply for a split placement. If you are looking for a place for your child in a mainstream school for half the time and a special school for the other half, the legislation does not allow parents to do that and have the remedy of the tribunal placing request process. You can try to get that through a co-ordinated support plan. That will probably feed into a conversation later about co-ordinated support plans, which are important because they unlock certain remedies that may not be available elsewhere.

**Ben Macpherson (Edinburgh Northern and Leith) (SNP):** On the choice of language, Spartans Community Foundation in my constituency calls its provision “alternative schools”, which I think is good.

I have two brief questions on advocacy. First, do you have any comments on how the pandemic has affected demand for advocacy and support for families? It would be interesting to hear whether the pandemic has affected demand.

Secondly, I am curious about the consistency of advocacy across the country. If a parent or young person in Glasgow needs support, there is Govan Law Centre, but what about elsewhere? Is that something that we need to consider more deeply?

**Chloe Minto:** What is important is that ours is a national service. We can access any parent or young person across Scotland. There can be a misconception that we are unable to assist a child in the Highlands. That is simply not true—there has to be really clear messaging about that.

One of our concerns is how we ensure that we are accessing all communities. Again, we hope that the session for MSPs' caseworkers will be really helpful in ensuring that that information is disseminated to MSPs' constituents.

**Ben Macpherson:** As well as engagement with MSPs, you talked about training for local authorities. Are there central Government agencies that could and should be supporting you more to raise awareness?

**Chloe Minto:** Absolutely—I think that any awareness would be positive.

We have a strong relationship with—although we are not in partnership with—the tribunal, which will direct anyone who comes through the tribunal process who is unrepresented to our service. Some local authorities include our details, as a free service that parents can access, when they send out their refusal letters, but other authorities do not. There is nothing that requires them to do so. They are required to make parents aware of their right to appeal, but they are not required to make them aware of our free service, and I think that, if they were, that would be extremely beneficial. That needs to be looked at. I have raised that issue at tribunal forums and in spaces where local authorities have been around. I think that that could have a tangible impact.

I cannot comment on every local authority, but far too many local authorities send out refusal letters that are not in the first language of the recipients. Local authorities will have information about people's first language. When someone who speaks Polish receives a refusal letter in English, it is inevitable that they will miss their appeal right. That needs to be looked at. There needs to be awareness of that, and support needs to be provided in that respect.

**Marie Harrison:** I want to pick up on your first question about the pandemic and the effect that it has had on the demand for advocacy. Like Govan Law Centre, My Rights, My Say provides independent advocacy for children and young people across the whole of Scotland. We also have a children's views service that can support professionals to seek out children's views specifically. That is operating nationwide.

The main effect of the pandemic has been that the level of complexity of referrals has increased. Whereas, in the past, we might have seen referrals for autistic children with an attention deficit hyperactivity disorder profile, we now see referrals for children who are autistic and have an ADHD profile, who have not attended school for two years and who have severe anxiety and are still waiting for support from child and adolescent mental health services; they might also be young carers, because their parents have suffered over the past few years.

The complexity is massive, which means that our advocacy service is working overtime. We cannot simply go in and provide advocacy for six weeks and then go away, because that will not solve anything. Our current waiting list for advocacy extends to almost six months. That does not fill us with joy; it is not a good thing that people want our service. We were discussing that before we came into the meeting. In effect, we want to put ourselves out of a job—we do not want to be needed—but the need for advocacy for children and young people is increasing.

My Rights, My Say operates only within the 12 to 15 cohort, but that is not to say that 16-year-olds do not need support. As part of the children's views service, we have a small pilot project with the ASN tribunal, because the tribunal recognises that younger children and children older than 15 really need to be able to share their views in tribunal processes. We have a spot purchase agreement with the tribunal that ensures that all children, regardless of their age and capacity, are able to share their views in tribunal processes. That is massively helpful, and there is great demand for that service. We have heard from the tribunal that it is hugely helpful. That gives us a clue as to the need for wider advocacy support for the cohort of children who did not have rights extended to them by the amendments to the 2004 act that were made by the Education (Scotland) Act 2016.

There is something to unpick there, especially given that the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 will come in fully in July. We need to think very carefully about how we will deliver not just on articles 28 and 29, on the rights and aims of education, but on article 12, on the right for children to have their views heard and for those views to be given due weight. We are doing what we can.

The Scottish Government's commitment to My Rights, My Say and to having that advocacy function, along with Govan Law Centre, is admirable. It is really powerful. A lot of countries do not even reach up to our socks. I am from

Denmark, so I speak from experience, but I think that there is still a long way to go.

09:45

**Megan Farr:** I absolutely agree with everything that has been said. We have colleagues here from two fantastic services, funded by the Scottish Government, that have capacity issues—Marie Harrison has just said that her organisation's advocacy service has a six-month waiting list at the moment. Other services are provided through the voluntary sector—you have previously heard evidence from the Salvesen Mindroom Centre. They all have capacity issues and gaps.

As Marie Harrison said, My Rights, My Say is focused on 12 to 15-year-olds. If a child under 12 wants to make a referral to the tribunal, they technically cannot do that. Thankfully, that has not prevented them from doing so, necessarily. Sixteen and 17-year-olds, who are still children according to Scots law and the UNCRC, do not have access to that service because they are treated as young adults or young people, not children, and are not given the same rights as other children. There are gaps. There is not nearly enough advocacy support for parents. Fantastic organisations are doing small amounts of work with limited budgets.

My biggest concern about ASL relates to the stories that we hear about the tenaciousness of parents who have had to fight the system to get to the tribunal and win. Not all parents have that capacity. Looking after a disabled child is hard, hard work. You are battling on every front. If the child has medical conditions, you are also battling in that regard. How many children fall through the gaps because their parents do not have access to advocacy or legal support?

**David Mackay:** I completely agree with everything that has been said. I am glad that Megan Farr brought up the challenges that parents and carers face. We need to make advocacy and mediation accessible for parents and carers and we must support them through that process.

The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 provides a really good opportunity to address some of that power imbalance. Under the legislation—and under getting it right for every child—the voices of children, young people and families are central to everything. We need to ensure that advocacy and mediation are accessible so that that is made a reality.

**Bill Kidd (Glasgow Anniesland) (SNP):** I thank everyone for their in-depth replies. In order to provide direction to the committee, can the panellists tell us whether, following the pandemic

and the difficulties that everyone, especially children with ASN, has experienced, they have seen good practice in which schools and families are working together to support re-engagement with learning that would act as a guide or a symbol for others in how to carry out their work?

**David Mackay:** We have seen lots of great practice. It is very easy to think in terms of the doom and gloom. We see some fantastic relationship-based practice not only in schools on a one-to-one level but in school communities. That is one of the benefits of the presumption of mainstreaming: it is helping to reduce some of the stigma and tackle some of the taboo around disabilities and additional support needs.

Children in Scotland delivers the inclusion ambassadors, who have run a couple of rounds of the success looks different awards, which show some positive examples of good practice. I recommend having a look at that on our website. There are great relationship-based ways of engaging with children and young people, helping to put the correct supports in place and ensuring that they can access their best education.

A lot of that links to culture change across schools, communities celebrating the success of individual learners and ensuring that we are putting in place individual supports for learners. There is some really positive practice there.

**Megan Farr:** Likewise, we have seen a lot of good practice. In preparing our new strategic plan, we spent quite a lot of time, in the past few months, out and about meeting children and young people. A lot of that involves work done by schools, but a lot of it involves bringing partners into schools, including working with local third sector organisations and community learning and development, where there is still that capacity.

Some of that good practice is to do with culture change and taking more flexible approaches. That is sometimes undermined, particularly in secondary schools, by the concentration on attainment in the senior phase. A pivot happens. That issue has been well rehearsed in this committee previously, so I will not go over it again.

Some schools did a lot of work around wellbeing and returning to school following the pandemic, and they are seeing the benefits of that now.

We were all changed by the pandemic—probably in ways that none of us understand yet—but the impact on children was much broader, because the pandemic covered a much bigger proportion of their lives. The kids who need more support when they come into primary school have spent their entire lives in the pandemic world. They were babies or toddlers at the beginning of the pandemic, and I think that the first kids who

were born during the pandemic will start school this year.

The committee received evidence from the Royal College of Speech and Language Therapists about the role that those therapists and other allied health professionals can play in helping children to catch up after the pandemic. It talked about speech and language therapists being flexible in how they work, as they can change their approach to address some of the issues affecting children that we have seen as a result of the pandemic.

There is lots of really good practice out there. I just wish that there was more consistency.

**Marie Harrison:** I am really glad that Bill Kidd asked that question because, when we discuss ASN and the policy landscape, it is very easy to focus on all the things that are not working. Sometimes, we need to remind ourselves that there is a lot of good practice and commitment and that a lot of people are working very hard daily to deliver.

One thing that has worked well after the pandemic is the extended level of flexibility. One young person told us, "If you ask me to do too much too quickly, I'm not going to do anything at all." That is not for lack of wanting to but, after the pandemic, there was an expectation that everybody would hop, skip and jump out of bed, run into school and give their teacher an apple. That was not the reality. The pandemic provided a lot of the children with whom we are in contact with their first opportunity to engage with learning, to feel safe and to feel able to hunker down and do their work, because all the stressors, all the sensory overload, all the potential bullying and all the conflicts with their peers were taken away. All of a sudden, they were in their safe space. I am not saying that that was true for all ASN learners. We also heard the opposite, so there is no simple fix.

It has really worked when small pockets of schools have used a hybrid model to ease children and young people back into school, rather than asking them to go in full time from day 1. There is a big overhang among children who transitioned from primary school to secondary school during the pandemic. One child said, "I'm part of a lost generation, and we need a recovery plan." That young person said that because everything that they knew—all the structure and stability—disappeared. The enhanced transition, which we know is crucial for ASN learners, disappeared and they were asked to do too much too quickly.

The average age of children who come to My Rights, My Say is about 13 and a half, which pretty much corresponds to the age of children and young people who are transitioning into secondary

school. They fight and try to do their best, but then slowly, through secondary 1 and 2, their attendance decreases and decreases until, eventually, it is too hard for them to go to school and we know that, if children stop attending school, it is very difficult to get them back.

It is crucial to use a hybrid model in which we support children to do what they can and build on that, without expecting them to go from zero to 100.

I will stop there, otherwise I will keep going for another hour.

**Bill Kidd:** That is very positive.

**Chloe Minto:** Unfortunately, given my role, by the time someone contacts my office, things are not great. However, I am under no illusion. When we are at tribunals, we get the benefit of hearing about mainstream provision and evidence about schools.

We hear about some very good practice. That is evidenced by the fact that a lot of children with additional support needs are able to thrive in their primary school. That brings us back to the resource issue. Primary schools are able to put in place more support because they have fewer pupils. It is as simple as that. When children transition to secondary provision, we also unfortunately see the pattern of attendance starting to decrease until the children become school refusers.

I am not the best person to ask about the good side of things, but I am aware that it is there. We are always cognisant of the fact that we look at the issue through a certain lens.

**Bill Kidd:** That is a good, positive attitude to have. Thank you very much.

**The Convener:** I will bring in Willie Rennie, who is joining us online.

**Willie Rennie (North East Fife) (LD):** My question is on the theme that you have just been discussing. What work have you done on the relationship between unmet ASN and the absence from and behaviour in schools that we have been hearing about? I am particularly anxious about making sure that we get it right for every child in the class, and sometimes I feel that we are not achieving that in the round.

**Marie Harrison:** I will try to keep it short because I feel like I am talking a lot. Part of what we are funded to do in My Rights, My Say is support local authorities to develop their commitment to participation and engagement strategies for children and young people. That is a vital part of our service.

My Rights, My Say is delivered by four partners, including Children in Scotland. We work with local

authorities to focus on what is working, what might not be working, and what can be barriers to good participation practice. That could be aspects such as relationship building or the language that we use. When we talk about children's behaviour in schools, we often hear quite loaded language being used. It does not come from a bad place; I think that it comes from a place of not always understanding how it affects the children who are being spoken about. One of the things that we cover in *My Rights, My Say* is avoiding using words such as "challenging", "aggressive" and so on, because they leave a mark. That is part of our next-level capacity-building efforts.

As I said, we also try to build on good participation practice. We talk about issues such as intersecting barriers. We know that inequalities and barriers to learning are cumulative. I gave an example of a child being autistic, having ADHD and also potentially being a young carer who is looking after a poorly parent. The more barriers that you face, the further removed you are from your rights. Unfortunately for our services—I think that Chloe Minto would agree—the further you are removed from your rights, the less likely we are to get in touch with those families. It is important that local authorities understand that and know about how intersecting barriers affect children and young people and, in turn, that they spread the word about our services and say that we are here to help.

**Willie Rennie:** Without giving names, will you give me some specific examples of when things have changed for young people you have seen and therefore things have also changed for the rest of the class?

**Marie Harrison:** I need to be careful, because I do not want to give examples that could lead back to a specific young person. Through our advocacy service—again, our cohort of children will usually be secondary school children—we can see that children are finding it hard to access the support that they really need. However, once they are provided with the opportunity of advocacy involvement, they can share their views with an adult who is not their mum, dad or carer and who is not someone from education. Advocacy is a wonderful blank canvas where nobody has any expectations and nobody takes anyone else's side, so the child gets the opportunity to say what they want.

Very often, children do not want to upset anyone or make anyone sad. They do not want mum and dad to be disappointed and they do not want the school to think that they are not grateful. When we get the child on a one-to-one basis, we can sit down and find out what works for them. Sometimes that involves us being covered in glitter glue or playing *Minecraft*—we do not really

care what it takes to make that child feel comfortable, and we invest a lot of time and energy in getting it right.

Once the child gets the chance to share their views in a safe space and realises that those views can be communicated onwards to school in a safe space and that the school is not just asking but listening, we see a real sense of agency in that child. We almost see them growing a couple of inches. We need to facilitate that right to share their views, because when we do that, we can avoid the adversarial dispute resolution processes that come later.

The aim of *My Rights, My Say* is always to get in there as early as possible. Like I said, nobody wants a tribunal; it is not a very nice process. As much as the tribunal does a wonderful job of being inclusive, the ideal would be to avoid getting to that point.

We have a lot of real-life examples of children who have accessed advocacy and have seen that their voices and their views matter and that they are valued by education professionals and by their parents. You need an independent service to provide that; otherwise, there is a risk that the child does not feel that the service is entirely unbiased and impartial. Through the remedy of advocacy, we are getting somewhere.

10:00

**Megan Farr:** I will speak about the links between behaviour and additional support needs, and I will bring in the further topic of the work that we have done, and continue to do, around restraint.

Daniel Johnson has also proposed a bill on restraint. There is undeniably a link, and we can see that when we look at Beth Morrison's work around restraint. That group might not be coming through in some of the other forums because restraint almost always involves very young children. I think that eight is the upper age limit in the case studies that Beth has gathered. A child ends up being restrained often as a result of what gets labelled as violent behaviour. That is generally what is behind the reason why a child is restrained, so there is a strong link there.

We also see that link in the number of children who have additional support needs who are excluded. Disabled children are disproportionately likely to be excluded. Of the children with additional support needs who are excluded, by far the largest group—in the most recent statistics, which are from two years ago, it was around 4,000 children—was those listed as having social and emotional behavioural difficulties. That label concerns me because, given the extent to which the behaviour of those children affects their school

life—they are being excluded and you cannot get a much bigger impact on your school life than not being allowed to go to school—there is probably an unrecognised other additional support need category that somehow has not been identified.

There is therefore an issue with not recognising specifics about additional support needs and not recognising that a child has an additional support need because they have an autistic spectrum disorder or another condition. Although you do not need a diagnosis to be given the support, diagnoses are useful because they tell professionals what kind of support is needed. We know that access to diagnosis is a big issue. Therefore, there is a big link between all those things, particularly with regard to very young children and particularly around restraint.

**David Mackay:** Willie Rennie's question was about unmet need in schools, and I want to highlight the value of pupil support staff in helping to identify some of the individual needs of children and young people in schools. We have done lots of work with the inclusion ambassadors about what it looks like when you have good pupil support staff. We are also involved in the Scottish Government's pupil support staff advisory group, and lots of work is being done around that, including on learning frameworks. That is a big discussion, which the committee has touched on in the past and which we would like to come back to. However, individual support in schools is crucial to achieving the best outcomes and identifying needs in the classroom.

Since the pandemic, we have seen a lack of one-to-one support in classrooms. If that support is withdrawn or there are challenges to delivering it, more young people will slip through the net.

On behaviour and violence in schools, Children in Scotland has been involved in the summits. However, what Megan Farr said about reframing the discussion on that is important. We need to shift the dial from looking at it as bad behaviour to looking at it as distress behaviour. The inclusion ambassadors also identified that as an issue towards the end of last year, and they will be doing a bit of focused work on behaviour and violence in schools, which we will be happy to share with the committee in the coming months.

**The Convener:** That is excellent. Thank you.

**Chloe Minto:** With regard to how we remedy some of the unmet needs that we see, our service includes a strategic litigation aspect. We look at the data that we gather for trends, whether that is in an area such as a local authority or with regard to a particular issue that we are seeing. We are seeing and hearing about a current trend for many more exclusions, both formal and, more concerningly, informal—and therefore unlawful—

exclusions. As a result of what we hear from people about exclusions, our inquiries have almost doubled since 2018.

What we can do is decide that, when we are gathering information from parents, we will be sure to ask them whether their child has ever been asked to go and cool off, because that is an unlawful exclusion. We can start gathering that data and working out the best way to get it into a space in which we can make systemic change by raising litigation in that area.

That is where our inquiry helpline is important. Even if a parent is not thinking about going to a tribunal, we have that discussion with them. That allows us to see how things are happening around Scotland and to take action if necessary.

**The Convener:** In the interests of time, Mr Rennie, I need to move on to our next line of questioning. I remind everyone that we hope to conclude the session at 10.30.

**Ruth Maguire (Cunninghame South) (SNP):** I have questions about how to prevent relationships from becoming adversarial. We have covered the things that can be done with communication, as well as the important point about masking.

Chloe Minto, you mentioned the number of files that Govan Law Centre has dealt with and how there are only eight for care-experienced children. It would be lovely to think that that is because their needs are being met, but I suspect that there might be other challenges around that. We spoke about capacity when it comes to challenging local authorities, and if a local authority employee is caring for a young person, it might be hard for that person to challenge their employer. Do you know why the centre has dealt with so few of those children?

**Chloe Minto:** The honest answer is that I do not know. I can only speculate, and I do not want to speculate. We know that we want to find out why, and a big piece of what we want to focus on now is how we can access those children. It might be that their needs are being met. We doubt that that is the reason, although we are sure that some are having their needs met.

The question comes back to some of the responses that we have seen. I was extremely disappointed to see some of the comments from local authorities about when our service becomes involved. Some of the words used about our approach were “confrontational” and “controversial”. I found that very disappointing to read.

The parents who come to us are accessing a legal remedy. Parents do not want to go to tribunal, and we do not want them to have to go to tribunal. We make every effort to negotiate and



resolve cases. It is important to know that we are telling our clients to trust in the local authorities, to have discussions with them and to see what they can do. We try to be very clear that that is our message.

Comments saying that there is a bias in the tribunal system are grossly unfounded, and it is extremely disappointing to see them. I can categorically say that that is not the case. We have lost many cases—if hearing that makes things any better. We do not work in partnership with the tribunal. The process is fact based, and each case is considered on its own merits. I am trying very hard to work on and build on how our service is perceived and local authorities feeling that they can contact us.

Our inquiry line is available for local authority employees, who can phone on a confidential basis to discuss matters. Unfortunately, one of the first things that is often said on our inquiry line when a local authority employee phones is, “I am really worried about my employers knowing that I am having this call.” That is really disappointing. We immediately go into a how-do-we-protect-them space. They are worried about phoning about a child who has additional needs and voicing those concerns.

Also, when it comes to witnesses attending a tribunal, we see a hesitation from individuals who work for a local authority. That is starting to get better, because we are speaking with local authorities to make sure that their employees feel comfortable going to tribunal. Otherwise we will cite them, and we do not want to do that—we would rather that there was that engagement.

**Ruth Maguire:** The independence of the tribunal service came across in evidence last week. Does the Govan Law Centre know the demographics of the parents who are contacting its services? I am curious about who is being missed out and who is not making it to your services.

**Chloe Minto:** Yes, we have an extensive monitoring process to determine who is accessing our services. We report on that to our funder, the Scottish Government, every quarter. I saw some comments about who is accessing the tribunal, and when I reflected on the statistics ahead of today’s meeting, I was pleasantly surprised to see that the majority of our cases are in quintiles 1 and 2 of the Scottish index of multiple deprivation. It is good that we are reaching them. I have a lot of information on the data that we gather, which I could provide to the committee in writing if that would be of assistance.

**Ruth Maguire:** That would be helpful.

**Megan Farr:** I echo the concern that there might be some bias at the tribunal stage, as expressed

in a submission to the committee. That is a concerning statement to have got into the papers. It suggests a wider bias that perhaps we do not know about.

I suspect that we are going to get a question about CSPs at some point.

**The Convener:** You are, so if you do not mind, can you please move on from that, for now?

**Megan Farr:** In case the specific point is raised, looked-after children already receive support from the education authority and the local authority in another guise. The likelihood that they are eligible for a CSP is already higher, yet that does not come through, which is concerning. Effectively, they are in a position of challenging the people who also look after their day-to-day living around their education. Their corporate parent is the person they are challenging, so how low the numbers are is concerning. We would expect them to be higher.

**The Convener:** The conflict between corporate parent and employer is what Ruth Maguire’s question was about.

**Stephanie Callaghan (Uddingston and Bellshill) (SNP):** What we have heard from the witnesses has been helpful. I have a question about local authorities. There has been a bit of talk about when the job has been done well—when local authorities are putting wellbeing at the centre and listening and responding to the views of children and young people, their parents and carers. Are there examples of where that has been done well—probably in the early stages? Are there key things in common in different cases?

**Chloe Minto:** I do not think that I am best placed to comment on that.

**David Mackay:** We have lots of positive examples from across Scotland through the success looks different awards. Positive relationships and communication are key. It is about celebrating success and having regular communication with those at home. We have spoken to parents who said that having a child with additional support needs leaves them feeling constantly ground down. It is about celebrating individual successes and ensuring that they are communicated.

We could share details from the awards of individual schools that have positive relationships with parents and carers. I am happy to provide information in writing following the meeting.

**Stephanie Callaghan:** I want to ask about autism specifically. The number of tribunal applications relating to autistic young people and children has been rising rapidly—134 of 202 cases, which is more than 66 per cent, are of that type. We have already heard some mention of

masking, sensory issues and anxiety. Are there particular challenges for autistic children? Do we need to have strategies and supports in place for that particular group, from which cases seem to come to tribunal often? Obviously, a part-time timetable is not the solution.

10:15

**Marie Harrison:** I will make a brief point on that, as we have touched on it slightly already. One of the main challenges for autistic children and young people in our schools is that the schools are not set up for them. We want children to have the opportunity to be in mainstream education and have an inclusive education where they can connect with their peers and where we all work towards a diverse society in which we realise that everybody has potential. That is a wonderful idea on paper, but there are physical problems with that, which come down to the issue of space in the schools, which Megan Farr touched on earlier.

There are issues with the open-plan layout and details such as busy walls, the lighting, the noise that comes from the lighting, the busy corridors and the mapping of a school. There is also an issue with the fact that a child comes from a primary school where there is the ability to support them and to create safe, small workspaces for them, and then, without particularly big fanfare, they come into a secondary school environment where they have to navigate their way around the school. The school is not wrapping itself around them; they have to wrap themselves around the school. Even with an enhanced transition process and visits to the school, making that transition is a massive challenge for autistic young people, because the physical layout of secondary schools is quite complicated.

Young people in Scandinavia do not start secondary school until they are 15 or 16, so I was quite surprised when I came to Scotland and realised that children here have to make that massive transition at an earlier age. I do not know whether there is learning to be harnessed there. However, the main point is that it is stressful for any child to transition from primary to secondary school and that, for someone who is autistic, it is a thousand times more difficult.

**Stephanie Callaghan:** What could we do in our secondary school estate to create the kind of safe, small workspaces that you said exist in primary schools, which could improve things for young people?

**Megan Farr:** Around 20 years ago, we did some work on how we build schools—the work might need updating now, possibly not by us. It would be valuable to look at the issue again, because, for a

lot of autistic children, there is a big jolt that comes at the transition to secondary school.

People say that there are more autistic children now, but I think it is actually that we are realising that there are more autistic children than we thought there were. I am aware of a trend of parents—particularly women—being diagnosed as autistic after their children are diagnosed. Autism is not something new; we are simply getting better at recognising it. That is good, but now we need to respond to that.

Earlier, I said that 37 per cent of children have additional support needs, but I will now separate out the concept of disability from additional support needs. A young person might have a disability, but if the school met their needs better they might no longer have additional support needs, because they would be getting support automatically. That could involve some of the things that have been lost, such as the use of classroom support assistants to create a breakaway in the same space.

There is an issue with how we lay out our schools and build new schools. A lot of secondary schools are not dissimilar to prisons, apart from a lack of bars on the doors, as they are hard, noisy, loud spaces with bright lighting, which can be quite hostile.

I am not from Denmark, but I went to high school there for a bit, so I agree with what Marie Harrison said. There is perhaps a much bigger discussion to be had about the fact that the transition from primary to secondary school at 11 or 12 is quite a hard jolt for a lot of children—that is shown in the casework that has been talked about today. There is a lot more to look at there, and one of the ways to do it is to talk to autistic children—the ones who are not in school, as well as the ones who are—about what is and is not working for them.

**The Convener:** I invite Ross Greer to ask his questions.

**Ross Greer (West Scotland) (Green):** At various points, everyone on the panel has been keen to talk about co-ordinated support plans, which you will all be delighted to know that we can now do.

Chloe Minto said that co-ordinated support plans are important because they open up the route for legal redress through the tribunal. This is my first question. Given that co-ordinated support plans are as rare as hens' teeth—0.2 per cent of all pupils with a recognised additional need have such a plan—is it an issue that there are no other routes to access the tribunal? You can either fight really hard to get a CSP—the vast majority of children with additional support needs will not get one, though—or you can go for the somewhat

nuclear option of trying to get a placing request and moving the child out of the mainstream school into a special school. Is there an issue, in that CSPs are the only route to access the tribunal while staying in a mainstream setting?

**Chloe Minto:** Yes, they are, unless we are looking at a disability discrimination claim, which would be under a different heading; there are different ways by which people can get a co-ordinated support plan through the disability discrimination route.

With regard to co-ordinated support plan cases, I think that it would be helpful for the committee to hear our figures to get a real idea of what the picture looks like. In the past five and a half years, we have had only 58 cases from our service that relate to co-ordinated support plans going to the tribunal. That includes cases involving failure to implement and the content of the co-ordinated support plan.

We are constantly in a state of wondering where the co-ordinated support plans are and what on earth is going on. Those plans provide rich remedies and rich conversations, and they engage parents and children. We need to remember that they are not discretionary—if a child qualifies for a plan, it must be in place.

However, there still seems to be a discourse that a child's plan can be used instead, for example. Far too often, we hear things like, "We use an individualised education plan" or "We use a slightly different plan." We feel very fatigued with that, because we are not sure how much clearer everyone can make that requirement. The president of the tribunal has made that clear, it is clear in the legislation and we are making it clear. I am not sure what local authorities do not understand about that. If a child qualifies for a co-ordinated support plan, they must have one.

Again, we offer training on that, so we would hope that, if there was any confusion around legislation, we would hear more inquiries. What concerns us is that we do not hear from anyone who says, "We don't understand the legislation."

**Ross Greer:** I can see that Megan Farr is looking to come in. First, however, I want to follow up on that point. The cynical answer to the question why local authorities do not understand that is that they do understand it; they just do not want to implement CSPs.

In general, a child's plan will be less resource intensive or will, at the very least, mean that the local authority is somewhat shielded from potential legal redress through the tribunal system. Is the cynical explanation fair, given the amount of information that has been provided over such a long period of time?

**Chloe Minto:** We need to be realistic when we hear information from parents about what is happening on the ground and the perception of co-ordinated support plans. Those plans bind local authorities to doing certain things. Not only is there a lack of co-ordinated support plans but, once a plan is in place, it can be so broad that it provides barely any enforceable educational objectives.

With regard to the content of the co-ordinated support plan, it is so important to make sure that it is achieving the goal, given that it is the only statutory plan that is in place.

I have heard of a special school where it was clear that there were a lot of children who qualified for a co-ordinated support plan, and information came to light that none of them had such a plan. In that instance, I feel that there was a genuine misunderstanding, but such misunderstandings have fatal consequences for the children who are entitled to that support.

**Megan Farr:** Children have a right to an effective remedy. That is not in the UNCRC, but in the European convention on human rights, which has been incorporated for 16 years—26 years in fact; I cannot count today. The ASL act gives a very good right to remedy to a very small group of children, via the tribunal.

With regard to co-ordinated support plans, the legislation is being interpreted extremely narrowly. There is an interpretation of that legislation that would entitle far more children to co-ordinated support plans. A co-ordinated support plan is important, because it is the only plan for which there is a right to remedy by going to the tribunal.

We could have a second statutory plan system that had a proper appeal process in the way that CSPs do, but we do not. We have IEPs, child's plans, my world plans and other things in some local authorities, but none of them is actually delivering an effective right to remedy. We have heard from the SPSO that those issues are not reaching it as complaints. The SPSO thinks that those issues probably belong in the tribunal, and they probably do, but people are not getting that right to remedy. That is why CSPs are important.

We have had a similar experience to the one that Chloe Minto described. In our case, it involved a residential special school, where I think there may have been one CSP. There were children from a number of local authority areas in the school, and local authorities were paying large sums of money for those children. It is impossible to imagine a scenario in which those children would not qualify for a CSP, yet none of them had one—or perhaps one child did. We have come across that situation as well.

CSPs are an entitlement, but they are not happening. I cannot even comment on their

quality, because we see them so rarely. In the past, when we have had advice calls on the issue, our first question is whether there is a CSP, and the answer is always no.

**Ross Greer:** Does your office have a position on the solution? We are all now incredibly and wearily familiar with how hard it is to get a CSP and how few young people have them, and with the issues about getting a CSP but it still not making a difference. Does your office have a position on the need for the legislation to change, or is it an implementation issue? Alternatively, is it both, or both/and?

**Megan Farr:** Our position is probably evolving because, when we look at the issue, it is always worse than we thought. There needs to be some form of right to remedy if a child is not getting the additional support to which they are entitled. Regardless of whether they meet the criteria for a CSP, in whatever way that is interpreted—in that regard, the code of practice is being reviewed and there is an opportunity for the guidance to make clear how it should be interpreted, which could broaden the approach—there has to be an avenue through which that right to remedy can be accessed by children and their families. However, that is not there.

People could go through the local authority complaints process, but the SPSO tells us that people are not getting as far as the SPSO. People need to know that they have the right. A lot of people ask, “What is a CSP?”—that is something that we hear. Even if people are entitled to a CSP, they do not know that they have a right to one, and they do not know that they have a right to remedy that attaches to it. There is a massive hole in terms of access to the right to remedy.

**Ross Greer:** I think that I saw Marie Harrison looking to come in, convener.

**The Convener:** She is okay—Megan Farr has just made her point, and she was just reinforcing that.

**David Mackay:** I completely agree with Megan, too, so I do not want to waste more time, but there needs to be clarity and accountability for families, children and young people, and there needs to be consistency around parents and carers being equal partners in that.

**Ross Greer:** Convener, can I just—

**The Convener:** Briefly.

**Ross Greer:** I hope that it will be very brief.

Megan, on the point about the revision to the code of practice, can you foresee a scenario in which that would address the issue sufficiently and mean that we would not need legislative change? Alternatively, is something more than changing,

revising or improving the code of practice required?

**Megan Farr:** There needs to be something that provides a right to remedy for children who do not meet those criteria, and there will be children out there who do not meet them.

We need to recognise that children move in and out of eligibility for a CSP over the course of their lives. Someone might have considerable involvement from health for a period, which puts them into the category of having input from one or more appropriate agencies, or they might have input from a third sector organisation. That also meets the criteria, although I am not sure that the provision is being interpreted in that way. In fact, we are sure that it is not being interpreted in that way, because otherwise we would see more CSPs. Children can move in and out of eligibility, so there is a real gap in relation to the right to remedy. That is one of the issues that comes to us most often.

**The Convener:** I will bring in Liam Kerr on the final theme, and I know that he will pick up on that issue.

**Liam Kerr (North East Scotland) (Con):** Good morning. I have two questions, which I will direct specifically to Chloe Minto. What is the availability of legal aid and specialist solicitors in the area? Last week, we heard that the cost of representation at things such as a tribunal is often prohibitive, and there was a suggestion that it can sometimes be a challenge to find skilled legal representation in the area.

10:30

**Chloe Minto:** We are very fortunate in having funding in place. Our service does not have a waiting list, and we cannot turn away any client. We take on anyone who has that right, so there is no restriction on who is able to access our service. If, for whatever reason, there is a conflict of interest, we refer to another solicitor and make our funders aware, and they can contact them directly.

The only things for which we would need to look at legal aid are outlays such as instructing independent reports. However, in the entire two and a half years that I have been at Govan Law Centre, I have never had to do that. That comes down to the fact that the set-up of the additional support needs tribunal and having specialist members on the panel provides rich evidential value and understanding when we are asking questions. The other area for which we would look at legal aid is for translation costs and interpreters, if we needed to get them involved.

I do not see there being a restriction on funds, but that is only in relation to our service.

Unfortunately, I cannot comment on availability otherwise, because we simply do not require to utilise that in order for people to use our service.

**Liam Kerr:** Before I bring in Megan Farr on the same point—I will be coming to her on my second question, anyway—will you explain something that I am struggling with from an answer that you gave earlier? You said that Govan Law Centre covers the whole of Scotland, but, presumably, it is based in Govan. How does someone in my area—Aberdeen—who needs representation or support know about your service? How do they access your support if they need it?

**Chloe Minto:** That comes back to what I was saying about whether local authorities put our information in their letter—that would make things a lot easier for us. Again, our information is on the tribunal's website as the national agency, we have things such as a Facebook page through which we try to get information out, and we offer to go out to as many training events as possible. We try to link in with people such as My Rights, My Say and ensure that we attend as many parent groups as possible—if we get invited to them, we always go. We are very keen to get into the space and make sure that people know about us. We know that people from Aberdeen know about us, because we have a breadth of cases across Scotland.

It tends to be parents who spread the word. Once we have one parent of a child or young person with additional support needs, we tend to find that they are in parent groups and, once our name gets landed in one of those parent groups—in the Highlands, say—we see a sudden flurry of people contacting us from there.

The service is the exact same—we adapt our service to whatever works for each person. The fortunate position that we are in right now is that, by virtue of the pandemic, our working life has changed. Video calls are so accessible now. They tend to work very well for our clients, particularly when they have a child with additional support needs, and it might be very challenging to get to and from the office. Tribunals are also available online.

**Liam Kerr:** Megan Farr might have something to add to that. I will ask you a direct question on your—or the commissioner's—submission, which mentions the independent adjudication process. I am not convinced that that is particularly well used. At the risk of asking a leading set-up, if one wants to avail oneself of that process, one has to apply to the Scottish ministers. Given that, why do you think that independent adjudication is not better used, and how might you change it so that it is?

**Megan Farr:** None of these processes are well used, and it is probably an awareness issue as

much as anything else. I have to admit that you have managed to ask me about the one bit of our submission that I did not write.

Awareness is a consistent problem across all the systems. I am pretty confident that it will be the same issue of people simply not being aware of it. There is something about there being a duty—not a legal duty, currently, but a moral duty—for local authorities to let children and their parents and carers know about the various rights to remedy that are available to them.

It does not help that the rights to remedy are complex, and it does not help that the information that people receive about them is not always accurate. We have heard examples—not specifically about the independent adjudication service, but about others—in which parents have been told that they cannot go to a tribunal because the placing request that they made was not really a placing request. There is possibly some confusion out there, even among professionals, about what the options are and how they are available. Perhaps Marie Harrison could come in—I hope that she will save me slightly.

**Marie Harrison:** I can come in ever so slightly from the children's perspective, because independent adjudication is one of the things that children have a right to request. However, we see that it is very underutilised, and there are several reasons for that. One is that it is quite complex and that it feels like quite a legal process for children and young people—it does not feel like something that is particularly easy to do.

There is also the fact that the process traverses through the local authority, and there is an opportunity for the local authority almost to veto it. For children and young people with additional support needs, to put in the effort to speak to a solicitor or an advocacy worker and put themselves out there in a big way, only for the process to be halted, is painful.

We have barely seen any independent adjudication cases through My Rights, My Say. It is quite a rare occurrence that they come our way, but, when they do, I do not think that we have seen the whole process through.

**Megan Farr:** I want to come back in on the legal aid question that Liam Kerr asked earlier. We have a long-standing position—it has stood for as long as the office has existed, I think—on a child's right to access legal aid independently. Children can be assessed based on their parents' income, but it is really important that children who want to exercise their rights are able to do so and that that is not a barrier. I am just repeating our call on that. It goes across all areas and is not just in relation to education law. Actually, we are in a better position than others.

**The Convener:** Thank you very much. As you see, we always have this canter towards the end of an evidence session where the convener gets a little bit twitchy at the top of the table. You can come in only if it is very brief, David Mackay, because we are way over time.

**David Mackay:** There is also the issue of digital inclusion and the equipment, internet access and skills that parents and carers have to access some of these remedies.

**The Convener:** Thank you for making that point, which we will look into again.

I thank everybody for their evidence. I suspend the meeting for 15 minutes to allow our witnesses to leave and our second panel of witnesses to come in.

10:37

*Meeting suspended.*

10:52

*On resuming—*

**The Convener:** I welcome our second panel. Dr Lynne Binnie is chair of the ASN network at the Association of Directors of Education in Scotland—which, for people who are tuning in, we will probably abbreviate to ADES throughout the meeting; Antony Clark is executive director of performance audit and best value at Audit Scotland; Nicola Dickie is director of people policy at the Convention of Scottish Local Authorities; Kerry Drinnan is education service manager for additional support needs inclusion at Falkirk Council; and Vivienne Sutherland is the principal psychologist at Fife Council's educational psychology service. Welcome, and thank you for giving up your time and coming along this morning and for the written submissions that you provided ahead of the meeting, which have been very helpful.

We move directly to questions from members.

**Pam Duncan-Glancy:** Good morning and, as the convener said, thank you for what you have submitted in advance.

I have a fairly open question to start with. Why do parents feel that they have to fight all the time? What are the root causes of the difficulties that they and children and young people face?

**The Convener:** Who would like to go first on that starter for 10?

**Vivienne Sutherland (Fife Council):** I do not mind making a start. That is a big question. That theme came through in the Morgan review, with families talking a lot about having to fight or go into battle and so on. My experience of working as a

local authority educational psychologist—now a principal educational psychologist—is that, although we work really hard to prevent families from having to feel that they must battle, a small number definitely feel that way. Schools, and the services within schools, do a really good job in trying to intervene early for the vast majority of families who have concerns about how their children's needs are being met, and matters tend to be resolved at a relatively low level. Our principle is always to try to resolve issues at the lowest possible level of intervention.

There are a number of staged approaches that often involve bringing in educational psychologists to help to mediate when there are disagreements about needs. Education managers often get involved in that, too. We are all disappointed and concerned when a disagreement progresses to the point at which families feel that matters can no longer be resolved by the local authority and we end up having to engage in the tribunal system, for example.

From my experience, I do not feel that all families need to battle. We need to listen carefully to families who feel that they have that experience in order that we can see what we could have learned and what we could have done earlier that would have made them feel different. I know that a lot of families talk about resourcing, the need for more staff in schools and so on, but sometimes, if we can work really well and sympathetically with families, we can dig up that there are other things that we could do to ensure that their children have a good experience of school—they like to attend, they go in every day, they have a satisfying experience and they make progress.

To be honest, that is what we find that most families really want, so we tend to set, with families, shared goals so that we can achieve that. We are not always successful and we try to learn when we are not, but in the vast majority of cases we resolve things so that they never get to crisis point. Other witnesses will have additional views, I am sure.

**Dr Lynne Binnie (Association of Directors of Education in Scotland):** I share Vivienne Sutherland's view, in that ADES and our work with our local authority representatives would always be about meeting parents where they are, listening to their concerns and resolving their concerns as early as possible. I think that local authorities are very successful at doing that, given that 37 per cent of children in our schools have additional support needs. Our headteachers and the senior leaders in our schools take responsibility, first and foremost, for discussing concerns with parents and putting in place adjustments and remedies at the school level in order to try to resolve any concerns that they might have.

Of course, a small number of parents and carers do not feel that their concerns are listened to, and local authorities have in place a number of staged interventions that parents can access to have their concerns raised. In my experience, when listening to some of the complaints and tribunal cases that come over my desk day to day, what is often at the heart of the issue is a breakdown in communication and relationships. That came through very much in the Morgan review.

There are things that local authorities could do better, and are trying to do better, to ensure that our communication with parents and carers is written using language that they understand; that they understand their rights and the remedies that are available to them; and that, first and foremost, we put relationships at the heart of all that work.

As Vivienne Sutherland said, listening when we are not getting it right and taking a learning approach to those cases is really important at the local authority level and at ADES level. I could give a number of examples of how local authorities are trying to take aspects of the Morgan review forward.

**Nicola Dickie (Convention of Scottish Local Authorities):** I will add to what colleagues have said. Local government on the whole is committed to the mainstreaming agenda that has been in place for more than 20 years. As Vivienne Sutherland just said, 37 per cent of children—more, in some areas—have additional support needs, which means that the mainstream offer for many children has been augmented and added to in order to make sure that we meet their individual support needs. Therefore, there is a point to be made about communication of how additional support needs are met within the mainstream.

There is also no doubt but that budgets are challenging for local government. Education has been prioritised—I am sure that a different committee will go into that—but that does not mean that all the other wraparound services that support our children and young people to live the best possible lives have not been under sustained pressure. I suspect that we might come on to talk about some of that.

I will also mention communication. Complaints and tribunal cases across the public sector should always be resolved at the lowest level possible. We should not need to get to the point at which we have tribunals that are very adversarial. I am sure that that is what Angela Morgan heard when she spoke to people. We need to make sure that the messaging from the system makes it clear that mainstream education is the best place for as many children as possible. We have to acknowledge that it will take more than schools to ensure that children and young people achieve

their full potential and enjoy their time in our education system.

Lastly, we need to think about the sweet spot around the funding that is available for schools and education support.

**Pam Duncan-Glancy:** Thank you—I appreciate that. That brings me nicely on to my next question. Do you believe that local authorities are taking a rights-based approach? How is that reflected in resource allocations for pupils with complex needs, and in supporting families and young people to contribute to and challenge decisions of the local authority?

11:00

**Nicola Dickie:** Local authorities are incredibly aware of the need to balance the rights of all our children and young people in our schools. One of the issues with mainstreaming of additional support needs—it has been like this for some time—is that it is incredibly difficult to track, through a local government budget, exactly what proportion of spend is going to children who have additional support needs. Although I do not think that that is right—because it is part of the mainstream and we have integrated all the support—it is difficult to track.

Another point to make is that it takes time, training and understanding to make a rights-based approach happen. We recognise that we can do more on that, and I think that we do not always get it right. We need to spend more time thinking about how we build in a rights-based approach.

I am sure that colleagues will be aware of what goes on in individual schools.

**The Convener:** Kerry—do you want to come in on this?

**Kerry Drinnan (Falkirk Council):** A lot of training is going on and there is a lot of understanding. In Falkirk, we have a lot of what we call rights-respecting schools, which ensure that our young people have their voices heard actively and that they are involved in key planning decisions.

That filters all the way down to the planning and assessment of meeting children's wellbeing. We work really hard with the team around the child to ensure that the young person has a voice in the decisions that are happening around them. The process starts with planning and assessment, through which children can talk about their wellbeing needs and comment on whether the plan will meet those needs and whether other things will help them. From the rights-based point of view, it is about putting the child at the centre of all the planning and assessment.

Our schools are very good at and very clear about doing that, but now that it is enshrined in law, more training will probably need to happen and we will need to ensure that all our young people's rights are protected and that young people are empowered to use them. For example, we work a lot with the organisation My Rights, My Say, which we promote among our staff so that they can promote it among our young people. Not many young people are using the service, but those who have done so have found it to be really useful in getting their voices heard at the table and enabling them to ask for the support that they want and which would benefit them most. Although there is probably still a long way to go, we have strong foundations in place to protect and promote our young people's rights.

**Antony Clark (Audit Scotland):** I am not in a position to comment on the operational practices of local authorities or education authorities. However, Pam Duncan-Glancy asked about human rights-based budgeting and allocation of resources.

The evidence that we see is that local authorities are adopting a range of approaches to engage with communities in order to understand the impacts of the difficult choices that they are making on various community groups, which, in some cases, are people with protected characteristics. However, it seems to Audit Scotland that there is still more to do to develop that practice.

The United Nations Convention on the Rights of the Child's coming into our law will pose a new set of particular challenges for local authorities and the Scottish Government. A new area of practice around budgeting and budget allocation seems to be emerging, both at the strategic level and in respect of how resources are deployed in individual local authorities or other public bodies. It feels like a complex area.

**The Convener:** That is a lovely segue into the next theme.

**Ben Macpherson:** I thank Antony Clark for teeing up perfectly my question for him, although I will be happy to hear from others thereafter. We are interested in the challenges for the Accounts Commission and Audit Scotland in understanding spend on pupils with additional support needs and the outcomes for them.

**Antony Clark:** That is, indeed, a difficult area. There is some attribution of spend to additional support needs in the budget papers that you have seen at committee, but it seems to us that that does not really catch what is going on.

It is relatively straightforward to identify expenditure on special schools—whether we use and accept that term, that is what many people

call them—and central support teams, but it is difficult to account for and to understand the cost of the contribution that is made by the many other staff who work with and support children with complex needs.

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

**Ben Macpherson:** Given that the Accounts Commission generally produces its analysis local authority by local authority, getting a holistic view across the country is quite a challenge for you and, I imagine, for COSLA.

**Antony Clark:** That is a challenge. You will know that we are thinking about doing a specific piece of performance audit work on that. Obviously, we want to see what comes out of the committee's inquiry to help us to think about the scope and shape of that work. If we decide to do performance audit work to follow up on the issues that the committee identifies in its inquiry, the level of funding allocation and how funding is deployed will be an important part of that work.

Although I said that that work will be difficult, it is not impossible. When we conduct any performance audit work, we want to try to understand the allocation of resources, not just by local authorities but through the contributions that partners also make.

**Ben Macpherson:** Yes—in particular, the third sector.

**The Convener:** May I bring in Bill Kidd before you move on to your next question?

**Ben Macpherson:** Sure. I think that Nicola Dickie also wanted to answer.

**The Convener:** I think that this will make sense. *[Laughter.]*

**Bill Kidd:** Thank you, convener. I will try to make sense.

We have been told that spend per pupil in mainstream settings is increasing. How do you square that with the common perception among many people—this has been covered a wee bit already—that resources for children with complex needs are diminishing?

**Nicola Dickie:** The answer relates to what I touched on in my first answer. First of all, it is about communication of information. The fact that we cannot look at how the budget is carved up



and say that £X was spent on additional support needs is due to so much of that provision being hard wired in mainstream provision.

Let us think about initial teacher training. We do modules in initial teacher training that cover ASN, but we do not split a teacher's time up when they are in the class working with people and say that they spend whatever amount of time on ASN, so £X is set against that. Therefore, there is a communication issue around exactly what is going on in that regard.

Mr Macpherson's question touched on the idea that the further you zoom out the lens from the child, the more complex the services that are wrapped around the child become. That goes from the teaching resource that is available to the support staff, to the housing staff, to the local authority staff, to the third sector and out to the health service. We have always struggled with tracking that pound because we have integrated services—not just in this field, but in others.

Therefore, there is an issue. I agree with Antony Clark that it is not impossible, but it will require some thinking that is a bit outside the box. Some of the solution, I am afraid, is not going to come down to hard facts and figures, but will be about asking, "How does this feel in a classroom?" and "How does this look when you are doing some of that?" I suspect that that is where our auditors would come at us and say, "That's all very well and good, but—". It is an issue and we are aware of it, but analysis can be done. If we crack it for this area, I suspect that other parts of the public sector will be coming to ask us what we did.

**Antony Clark:** We need to make some assumptions around budget spend and resource allocation, and there will be a high degree of uncertainty around that, but that does not mean that we should not try to do it. As Nicola Dickie said, that could be an important test case for understanding how resources are deployed to deliver complex outcomes, which might be useful learning for the Scottish Parliament, local government and other public bodies.

**Dr Binnie:** We have to take into account the fact that, in Scotland, our additional support needs legislation and definition are very broad and take in a large number of our young people—37 per cent of our children and young people in schools. In my local authority in Edinburgh, 51 per cent of children and young people in our secondary sector have additional support needs: it is tipping into just over half of all the children.

Children can dip in and out of additional support needs, depending on their family, living conditions or health conditions at a particular time. We work across the range of children, from those who have dyslexia, which is difficulty with reading and

spelling, to those with more complex needs who require full-time medical care. Distinguishing aspects of the roles and supports that we have in our school system to meet those needs will be difficult. We have a very progressive and inclusive approach in Scotland that, in essence, makes every part of the workforce that works in and with education have inclusion and equity at the heart of their roles.

It is the responsibility of all our headteachers, teachers, support staff and central staff in education to meet the needs of children and young people, including those with additional support needs. It is always difficult when auditors and external people ask us how much local authorities spend on additional support needs because, in Scotland, we see meeting the broad range of additional support needs as being everyone's responsibility.

**Vivienne Sutherland:** I will own up and say that I cannot possibly answer the question about needs-led budgeting, so I am glad that other people could. However, I whole-heartedly agree with the points that have been made. In education, we see ourselves as working in partnership with other key agencies, including health and family support services, to meet additional support needs. It is tricky to single out the spend that education makes. It would also be complex to look at the wider budgeting issues, but it would be useful to do that.

I will try to provide an answer to the very good question about why there is a message that spend is going up when resources have never been tighter. We are at a really tricky stage at which identification of additional support needs has never been better or more effective. We are very good at identifying young people's needs across the ASL legislation's spectrum. As Lynne Binnie said, some of those needs will be complex and long term and some will be short term. They may relate to, for example, bereavement or family break-up through a parent going to prison. All those things fall under the description of additional support needs. One reason why there are such high proportions of young people with additional support needs in schools is that we now recognise the range of different needs that exist. They do not all require the same levels of intensive support and intervention, but they all need to be recognised.

Something that has become increasingly tricky—I am not blaming Covid, but it has been exacerbated by Covid, which was a trigger point—is that the explosion in needs and families' concerns about their children has largely been centred on schools since Covid, and it has meant that a lot of services have had to work at the high level of crisis intervention. We have talked about

that, working in collaboration with the Association of School Principal Educational Psychologists and ADES, in order to pause, look at what is going on and see how we can move back to a focus on early intervention and prevention.

We know that we need to invest time, resources and expertise in order to intervene early to support families before things become a crisis, and to support children in schools to ensure that they have the building blocks to engage in that environment. To do that, we need to have our partners on board. I cannot speak for them, but I hear from the partnership work that we do locally in Fife that they feel the same pressures to intervene at a crisis intervention level when they really want to get in at the ground floor to intervene before things get to that stage.

The whole landscape is really complex. I am sorry if I have gone beyond the scope of the question.

**The Convener:** Kerry, what are your thoughts on the question from a Falkirk perspective?

**Kerry Drinnan:** I suppose that there are different ways of looking at it. If we take a whole-system approach, the P7 and S6 children who are leaving our schools probably have less need than the children who are coming in at P1 and S1, so I can understand why people feel that there are growing needs at the more complex end of the spectrum while we have the same resource. If we split that equitably and fairly, it might feel a bit reduced. Before the pandemic, we had started to increase our specialist provision spaces, especially the ones that were attached to our primary schools. That was to be based on the projected five-year needs, but we now have a new projection of need.

It is about using your resources creatively. Our schools are amazing at doing that, but they are taking a very individualised learner approach. They are looking at what will best meet the learner's needs, so it is becoming very individual and child-centric, and they will therefore ask for more support and resources. It is about how we manage those requests and that support.

Is the support going to the right places? As the Morgan review said, we have to reimagine our mainstream provision. Certainly, that is where we are now in Falkirk: we are reimagining our stage 3 provision, which is for children who require more complex external agency support. They seem to be growing in numbers, so it is about making sure that the right resource goes to those children at the right time and at the early intervention and prevention stage.

11:15

We have already done that with our specialist provisions. Our stand-alone schools have seen a big shift in the complexity of needs, so they have changed their curriculum and their model. Our mainstream schools are now looking at what needs to change and grow in our curriculum and model that will allow us to meet all the needs of the children that we have coming to us.

That is the position that we in Falkirk are in. The resource is not shrinking; we just need to look at it and help it to become more flexible again.

**Ben Macpherson:** I will move on to a wider question. How does a staged intervention work in practice? I am interested in any feedback that the witnesses want to give us on that. Does a child or young person have to have an unmet need at stage 1 before being considered for greater levels of support?

**Dr Binnie:** Most, if not all, local authorities have a staged assessment model in place. Those models differ across local authorities, as you would expect. They are based on legislation and good practice, and most talk about a universal level of support. They exist to help local authorities to assess and plan resource.

Those models also exist to ensure that the principle of least-intrusive intervention is in place—that is, that small adaptations to the environment, curriculum and learning can meet the majority of our children's needs. We talk about that being universal. There are increasingly intensive interventions as you move through the staged assessment approach in a local authority, often with special schools and provision outwith schools being at the highest level of intervention that we would want for our children and young people.

The principle is that the majority of learners' needs will be met within a universal level—that is, in the classroom through adaptations that the teacher can make through their practice, differentiation and learning environment. The important aspect is that, first and foremost, those least-intrusive interventions should always be put in place before we jump to more intensive interventions, such as removing the child from the classroom, removing the child from school and adapting the curriculum significantly. That is the basis of our staged assessment models.

I disagree that that leads to unmet need in the majority of cases. It should ensure that the majority of children's needs are met in the classroom, through differentiation and minor adjustments and amendments being made to their learning. They need to be put in place, tried, tested and reviewed over a period before the class teacher or the school puts in place more intensive interventions and before we then move to local

authority interventions, such as smaller peripatetic outreach teams, intensive one-on-one support, access to educational psychology support or access to the many third sector partners that we have in our schools to support children.

I hope that that answers your question.

**Ben Macpherson:** For clarity, I was not saying that the child had to have unmet need. The question was whether the young person or child had to have unmet need at stage 1 before being considered for greater levels of support. I take from what you said that the answer to that is no.

**Dr Binnie:** Yes—I would say no.

**Ben Macpherson:** Should I interpret your answer as meaning that the journey to another stage is much more complicated and determined by a variety of factors?

**Dr Binnie:** Yes. First and foremost, those needs are identified and assessed in the classroom by the class teacher as part of their planning for the class.

**Vivienne Sutherland:** I absolutely agree with Lynne Binnie's description. Of course, every local authority does it slightly differently. We have worked really hard to make it so that no barriers are put in place, for example, for moving from universal to additional services. It is a collaborative approach. It is agreed with the family that a need has been identified and we have tried some low-level interventions, some of which have been successful to an extent and some of which have not, but we recognise that there are still further needs to address, so we might put in additional levels of support to do that.

I find that staff in all schools are proactive in assessing young people's needs. They identify any concerns at an early stage and put in place the support that is within their gift before they even reach the stage of necessarily formalising that support in a plan. Classroom teachers will do things in their teaching and will consult with their learning support staff about small interventions to see whether those will make a difference, without there having to be any more intrusive intervention or anything that might make a child feel singled out in the classroom.

However, as soon as there are any such concerns, families are always involved and will know what the school is putting in place. I cannot speak for every local authority, but I know that every local authority does some version of that. We try to have clear, straightforward, simple and understandable paperwork. We write down the needs that we have identified, what the parents' views on that are and what we are doing about it. When we come back together, we review those interventions, using that paperwork and giving the

child and the parent the opportunity to have their say.

That document is carried through: it is used by children with the smallest need and goes right through to children who have very complex needs. The plan can be bigger or smaller, depending on what needs to be in it.

That staged approach is really important, because we need to be able to identify what we have at each level and can put in place. It is also characterised by being very flexible and fluid. We try really hard to make it non-bureaucratic. There is no sense that a child has to have a certain number of points or be failing at a certain level for us to go to the next stage. It is not about that; it is about trying to identify what is working, what is not working yet and what else we can do. I can speak for how we deliver that in Fife, but I would say that that is the approach across local authorities.

**Kerry Drinnan:** The staged intervention is a framework and a tool. It enables consistency and a shared understanding with all our partners, parents and young people, because everyone can access and understand it.

We take a strength-based approach, rather than having a deficit model. That is based on what the child needs to allow them to thrive at this time and will depend on their circumstances and needs. There is no linear journey from universal to stage 4 because so many things can happen to our young people. They might need intervention from a specialist agency, which would be very clearly at stage 3 or 4, for a short or long amount of time. The model is flexible and children can move in and out of those stages.

It is a strength-based model and is meant to look at the child's strengths and at what has gone well for the child. We ask what the child has within them that has gone really well and where we need to offer additional support. It is not about looking for unmet needs or saying that something has gone really badly. We are moving away from that negative language and that way of looking at young people and are instead asking what their strengths are and what they need that would help them. We want to give the right support at the right time at any stage of the model.

We map a lot of information on to our model and map our career-long professional learning on to that. We look at all the training courses that are on offer from all our partners, because it is a partnership approach. Everyone can look at the staged intervention model and say that they have strategies and support that they can put in place for the young person because that is what they require at this time. That is part of the team around the child planning.

Our practitioners find the framework to be a useful tool. It gives consistency of approach across all our schools, wherever our young people may be. It also gives our parents more confidence. We shared the framework with them at a recent parent forum and they were really interested and wanted to know more. It gave them a sense of confidence in the system to know that there is a framework, that there are supports and that things can happen. They can be empowered by knowing about that framework and can ask for it if it is not happening.

**Ben Macpherson:** I thank all three of you for that clarity and those helpful explanations.

**Michelle Thomson:** Good morning, panel, and thank you for joining us. We know that supporting ASN requires a multi-agency approach. I will come to Kerry Drinnan first, for obvious reasons, given that I represent Falkirk East. I am interested in how you ensure that your strategy allows for the inclusion of all key stakeholders—I am thinking of health boards, social work and so on.

**Kerry Drinnan:** We use what we call a locality model or a closer-to-home model, which I will try to explain. We have clusters. In a cluster, there is a high school and all its associated primaries. Each cluster has a named person in an agency to go to. After Covid, we developed our social work teams to map into specific clusters, so that there is always a named team manager that schools can go to, as well as a specific duty worker for social work. The duty worker might attend the team around the child—TAC—meeting if there is not an allocated social worker.

We have a model in which we have a service level agreement with our allied health professionals for speech and language services and physiotherapy. We have named clinicians who are mapped to each cluster, who are there as a first point of call. If a school needs advice, it has a named person whom it can contact immediately, as do the families.

We also extend that to educational psychology. We have a link to every school. In my team, I have what we call additional support needs advisers, and my advisers have two clusters that they look after and work with. There is always a clear link so that a parent knows who to contact, and the school knows who to contact, and so that those people are the first to be invited to the team around the child meeting to offer assistance and support.

That model with our speech and language and physiotherapy partners, which has been brought about in the past few years, has been quite transformative. It has certainly reduced waiting times and increased the expertise of our school staff. We now use the model of therapy partners,

so our school staff are working on the advice of those specialists and delivering the right strategies in school to the young people.

Has that answered your question?

**Michelle Thomson:** It has.

Vivienne, I imagine that there is a multitude of approaches. What can you tell us about how Fife achieves this?

**Vivienne Sutherland:** I agree with everything that Kerry Drinnan said about how we can structure ourselves with our partners to work most effectively together and to get the best and most responsive interventions.

Working across multi-agency partners is tricky. Children are in education between about 9 and 4 every day, but they have lives outwith that, and their needs do not stop when they leave the school gates, so we rely on our partners, whether they are family support or health partners, to provide care and support outwith the school day, even if the need is identified in school.

We work hard at a strategic level to have very good and strong partnerships with health, social care, social work and family support. We have very good links in most local areas, too, but there are barriers to that that we are working hard to resolve. For example, in Fife, we are working hard with our health partners to try to streamline referral paperwork for young people. There are a lot of services out there, and often the requirement to access those services comes back to the school to action. One of the issues that we are dealing with is the workload on schools to complete multiple referrals for multiple services. We are trying to tackle that directly in Fife, and we have great buy-in from our partners about the need to resolve that.

It will not be straightforward or quick to resolve that, because everybody has their own referral paperwork for very good reasons—they have developed it over years because it contains the information that they need. However, we are trying to work together to make sure that we provide the information that schools hold, but in a proportionate way that allows families and young people contact with the health services at the earliest possible opportunity, so that they can start to intervene and gather the health-specific information that they need.

It is a complex landscape, and it always will be. With a complex landscape, there is no quick fix, but it is really important to invest time in the longer-term fixes that will sustain and lead us in the end to better partnership and proper collaborative work with families and our partners. That is a long answer, and I hope that it helps. It is important to highlight that it can be tricky

sometimes, but we do not look away from that. We try to face it and think about how we can work through that trickiness.

11:30

**Michelle Thomson:** Antony, I appreciate that this is a complex area, but what similarities, differences and challenges do you see as you look across local authorities? Obviously, there are, rightly and justifiably, a number of approaches that can be taken to get to the same outcome.

**Antony Clark:** As others have said, this is complex stuff. Our observation, based on the work that we have done on partnerships, is that a lot of what is done is dependent on good relationships and trust, and a shared understanding of where people are coming from. Inevitably, there are potential tensions between the priorities of different partners, given resource pressures and so on, but I think that people recognise that and work together on it—I echo the comments that people have made on that.

**Dr Binnie:** I agree with that, but I want to take us further into the conversation on the tensions. There is inevitably tension when work is going on across different partners with different thresholds. Linked to Vivienne Sutherland's point, some of the frustration that parents feel, which leads to a need to fight the system—for want of a better phrase—results from the complexity of the situation and the thresholds that are involved, and the fact that all of that sits within the school, with the named person or the person who devises and supports the planning for children and the workload on school staff.

Many of our partner agencies can shift their service delivery and their thresholds as a result of the work that they are doing within their service, which can inadvertently affect the impact on school staff. I know that you heard from Glenn Carter in a recent meeting, and speech and language therapy services are essential partners for school staff. They often work in consultation with school staff, advising them on how to deliver the intervention to the child in the classroom to the child, and it is the school staff who now deliver many of those interventions. The same can be said of my colleagues in CAMHS, who offer advice and training to school staff to deliver those interventions in school.

Those are some of the tensions and workload pressures that schools increasingly find themselves facing. I am sure that there will be conversations around CSP criteria, and that tension is directly linked to some of the low levels of CSPs that we see in our schools.

The other thing that makes the work complex is that our clusters and learning communities are all

very different, for good reasons that include the empowerment of schools, certain criteria that the Scottish Government has set around SEF and PEF, and schools and communities having to look for resources in their local area to meet the children's needs in their school. At local authority level, we are not always sighted on the resources that are available to support schools. The onus is on schools to understand their area and the resources that are there, and to communicate that to parents. It is a complex landscape.

**Michelle Thomson:** You have illustrated that perfectly.

**The Convener:** For the benefit of those listening, I note that SEF and PEF are, respectively, strategic equity funds and pupil equity funds. We are in a world of jargon, so I am just making that clear.

Ruth Maguire will ask the next questions.

**Ruth Maguire:** Vivienne Sutherland, in response to one of my colleagues—I cannot remember who it was, as it was a while ago—you spoke about the desire to move from crisis to prevention. You were talking about the post-pandemic period, in particular, but I think that that has been a theme for our public services in Scotland for quite a long time. Can you say a bit more about what needs to happen to create the space to do that?

**Vivienne Sutherland:** That is a good question, and I would be delighted if I had an easy answer to it. It is tricky to say what should happen, because the work is relentless. Schools sometimes feel quite overwhelmed by the need to support the range of pupils that they have. When there is worry about supporting pupils, everybody's thoughts go to those who are at the top end of the triangle—the ones who are most at risk of poor outcomes, who are most challenging to support and so on. That is a natural human characteristic, and it feels natural to focus on those people first.

The ASL inquiry is a helpful forum in which to talk about this, but there is almost a need for us to just pause. Everybody is working extremely hard in the education service, councils and partners, but sometimes we need to stop and think about how we can refresh, reallocate resources and ensure that the worst outcomes do not happen for those who are most vulnerable and that we start to look more upstream.

I am talking not just about early intervention, as in pre-school and early primary, although I do mean that as well. I mean the kind of things that we have talked about, such as intervening effectively, with effective parental and multi-agency support when necessary, when needs are first identified, to prevent situations escalating. I do

not think that there is an easy way to do that, but there needs to be a collaborative will to do it, so that we all agree that it is a step.

**Ruth Maguire:** I am going to press you on the question, although I realise that it would be amazing if we had the answer. We could all probably walk out, implement it and do it, but it is not straightforward. I want to press you a little bit on the notion of pausing. What do we require to pause? As you say, everyone is for early intervention and prevention until we get to the point at which we have to stop doing something. It would be helpful for the committee to understand how the system could pause in that way and what would need to happen. I get that that is quite a big question.

**Nicola Dickie:** I have three threads in my mind about how we should move. We have a massive opportunity in public service reform—I am saying “public service reform”, not local government reform, quite deliberately. We have already heard about some of the tensions from colleagues on the panel. We need to start looking at what we are measuring and whether it matters.

We have had a conversation about spend on additional support needs in a particular line in the local government budget. That means that we are not having a conversation about where else that spend is going and where else we could be using it better. The work that Antony Clark’s office might step forward and do, on following the public pound for children who are in the system, is about working out where we are spending the money. I suspect that what we are doing at the moment with some children who have additional support needs is spending the money too late, when it is much more expensive. We need to have the right workforce available in the health service to deal with low-level issues. We need to have the right workforce available in the schools and in the surrounding communities and so on. It is about understanding what good looks like and understanding the problem, as opposed to saying that we can fix additional support need issues with additional teachers.

We have to be careful not to do what we have always done, which is focus in on specific measures that do not look at outcomes. That is the first thread. The second thread is about following the money and agreeing to move the money into prevention as opposed to crisis intervention. The third thread is about what the future workforce needs to look like. I do not think that we understand why we have seen such a jump. We can guess that some of it is to do with Covid and some of it is about complexity of needs, but some of it might be a knock-on impact from waiting lists in the NHS or the knock-on impact of housing and

homelessness, and we just do not understand that.

I apologise if that was a bit garbled, but for me it is about those three strands.

**Antony Clark:** I am afraid that Nicola Dickie has rather stolen my thunder, to be honest. When Lynne Binnie was responding to Michelle Thomson’s question, she talked about the importance of multi-agency working and the impact of partners on local authorities. That obviously also works in the other direction—local authorities impact on partners.

The only way that we are going to get a shift towards prevention is if we see public service reform as being about a cross-public sector programme. It is about local government, Scottish Government, health and their third sector partners and communities having a shared understanding of what they need to do to change the models and allocation of resources for public services in different areas.

Additional support for learning is an example of how difficult that can be, but it needs to be done not just for additional support for learning, but for health prevention and for preventing crime and disorder. The need to see the child and the family as the point of entry for this, which the panels have been talking about, is fundamental. The only way that we are going to get more efficient, productive and preventative public services is by starting to plan public services around the needs of individuals and communities rather than around particular services or programmes of work.

That was a rather abstract response, but there are no easy answers here. I think that Nicola Dickie implied that.

**Ruth Maguire:** I will stop you there for a second. I do not think that anyone in the room would disagree with the idea that public services need to wrap around children, families or whoever the service users are. My question is about what practitioners need. All of us appreciate the strain that our public services are under in relation to demand and workforce, and we acknowledge how hard everybody is working. Given that that is the case, I imagine that some of the high-level talk about restructuring public services would cause alarm among practitioners. What do people who are working with children on the ground now need in order to be able to make things better for children? That might be a question for folk who are involved in such work.

**The Convener:** Kerry Drinnan looks keen to answer.

**Kerry Drinnan:** The example that I will give relates to the NHS and what it did in relation to mental health and wellbeing. Let us think about

suicide, for example. The NHS had been putting all its resources into that clinical end point. If resources are not put into earlier intervention, a tipping point is reached. Unfortunately, if people do not get the early support that they need, they will need clinical support at the other end. If a tipping point is reached, whereby all the resources are put into clinical support, that means that even less will be freed up for early intervention and prevention.

We must redress the balance. Given the increasing numbers of children with complex needs at stage 3 and stage 4, we need to think about how we can intervene earlier to avoid tipping all the resources towards the end of the continuum that involves the provision of a specialist placement, which is a very expensive resource. In my view—I hear this from my schools and my families—one of the best things that we can do is reduce the child to staff ratio as early as possible. Our nurseries have an adult to child ratio of one to eight. In P1, it is one to 25. In a special school, there is one teacher for every six children. That shows the difference.

The system must change, the curriculum must evolve and the strategies that we use must evolve so that we can meet the needs of the learners who are in front of us. I think that everybody understands that and agrees with that. Given that, in P1, teachers have to meet the diverse needs of a class of 25, whereas in a specialist setting a teacher will have only six children with diverse needs, to whom they are very attached and for whom the arrangements are very bespoke, you can understand why it feels as though there is not enough support in the system.

If we want to get this right, we need to reduce the ratios or, rather, the class sizes. That is one of the first steps that should be taken, along with all the other things, such as evolving the curriculum and making sure that it is person centred. That relates to what the NHS started to do. It put more money into tier 2 resources to prevent the need for tier 4 clinical support. That is the kind of model that I am suggesting. Resources need to be put into the system at an earlier point, and, in my view, they should be put into improving the staff to child ratios.

**Vivienne Sutherland:** I will give another example, because it is important to have concrete examples of things that we could do. One of the bottlenecks for us is created by children coming into nursery and moving into primary 1 who have underdeveloped language skills, which are a lifelong barrier. If children struggle with language, they often struggle to develop literacy skills, and we know that literacy is the key to unlocking the door to the curriculum and achievement in later life.

There are reasons for that, which are linked to the pandemic and so on. Regardless of that, however, we need to tackle the issue now. Five Council and a number of other local authorities are looking at what kind of support we can provide for families when children are very young, before they even come into the school system, to help them to develop their language skills and to help families to understand how to develop those skills. It is also important that we help families to understand how to develop social skills in their children, which come about through their spending time with other children in different play environments. That enables children to learn the important early skills of how to self-regulate when they are in a group with other people. All of those things are prerequisites to coming into school and having a successful experience.

Of course, we want to make the school environment friendly to all kinds of children with all kinds of needs, but schools are learning institutions—all kinds of learning takes place in schools—so, if children come to school ready with language that they can use to listen well and communicate with others, and if they already understand how to cope successfully in a social group, they have a head start in accessing the school curriculum. The family wellbeing fund is looking at all those types of areas.

That is a practical example of how we could shift our resources and expertise, ensuring that they are put in place at an early enough stage that they reduce the number of children coming to school who then struggle because of the barriers that they face.

11:45

**Stephanie Callaghan:** I am going to ask about buildings rather than people. Have new school buildings been designed with pupils with sensory needs in mind? How do local authorities adapt their existing schools to ensure that young people can access the appropriate support?

**Dr Binnie:** The environment in which we teach our young people is very important and, unfortunately, can lead to additional support needs. We heard from the earlier panel about the need of children with autism to be in a low-sensory-stimulating environment, where sound and light adjustments are made.

We could do more nationally, through ADES or with other partners, to look at research and evidence on making our buildings more inclusive and meeting the needs of children and young people. The design of buildings is often determined at local authority level through different approaches, perhaps involving professionals such as architects, who might not always understand or

know about the complex needs of the children we see in the current system and project in the future of our buildings. That needs much more attention to ensure that we are getting it right. That is for our new-build schools—

**Stephanie Callaghan:** Can I ask you about that? Would you say that for architects, for example, ASN needs to be a key principle that is right up there?

**Dr Binnie:** My experience in my previous and current local authorities is that we are around those tables really early to give our advice. We involve children, young people and parents in that, but we could be doing more. In my current local authority, we have worked in collaboration with researchers at the University of Edinburgh on inclusive learning environments and on how we can shift the learning environment to get it right for the majority of our children in schools. It is lovely when you hear children's and young people's views on that. There are lots of projects, lots of really good new builds and amendments to existing builds, but there are still significant barriers in existing estates throughout Scotland, in mainstream and special schools. We could do more work to get it right and ensure that our buildings are fit for purpose.

**Nicola Dickie:** When we are discussing with the Scottish Government how local government capital review programmes are funded, it would be remiss of me, representing COSLA, not to say how important it is that all of that incredible work is done. What we have heard is amazing. We would all like to see our children and young people around the table, telling us what they want from our schools, but that has to be borne out in the capital programmes that come forward to pay for the school estate.

**Stephanie Callaghan:** On the point about existing schools, perhaps Dr Binnie could say a bit more about things like lighting and creating spaces.

**Dr Binnie:** We discuss that at ADES quite regularly. We are very aware that some of our schools are not adaptable. Some cannot be adapted, given their age—some schools are listed, for example—and there are still schools where we struggle with wheelchair accessibility. It is increasingly difficult to make the amendments that are required, and that has perhaps become more pronounced as a result of the pandemic and issues around costs, building supplies and access to a workforce. It is a constant challenge, and there is a constant discussion at local authority level about how we adapt our buildings to meet the increasing needs and to keep children safe. I do not think that we have got it right.

**The Convener:** Would Vivienne Sutherland or Kerry Drinnan like to comment on adaptations to existing buildings in their local authority areas? You do not need to comment if you do not wish to say anything.

**Kerry Drinnan:** Our high schools are modern and adaptable. All our schools are creative about what they do in classrooms. If you were to walk into a primary school classroom now, you would see little nooks and crannies and safe areas, and there would be children with weighted blankets. It is all very soft and sensory.

Our educational psychology service will do what is called an environmental audit. If a teacher has young people with more neurodivergent needs in their classroom, the service will come to support them and say, "This is how you should reduce your wall decorations," "These are the colours that you should use," and "This is what your displays can look like." They try to reduce sensory overload, transitions and unpredictability.

I agree that there are bigger problems with the school estate, which needs to be more modern. However, we can do lots of things in classrooms to reduce such barriers without having to spend a lot of money.

**Stephanie Callaghan:** Is there perhaps a need to learn from primary schools and to take that learning into secondary schools? Am I getting that right?

**Kerry Drinnan:** You would start to see that now. With the transition planning that happens, some of our first-year classes are starting to look more like primary ones. However, that is harder to do in high schools. They tend to have spaces that young people can access by going to them rather than there being such spaces in every classroom, which would be quite hard to achieve. They have zones where young people can go to deregulate or have one-to-one support. They provide a reduced sensory environment where they can go for brain breaks and other reasons.

**Stephanie Callaghan:** Should it be a minimum requirement for all schools to have similar spaces that are accessible throughout the school day?

**Kerry Drinnan:** Yes. We would want to promote that, and we are certainly having conversations about it with our schools. Our educational psychologists have just done that with a couple of schools that have built what we call neurodivergent bases, which are rooms that are geared towards young people with such needs and which offer much-reduced sensory stimulation. The young people can go and learn there and then go back to the mainstream areas.

The other point that I would make is that things evolve. Transition planning is really key to making



all those actions happen and to ensuring that our schools are fit for purpose for learners' journeys as our young children transition from primary school to high school. A lot of learning from primary schools is going into high schools. We even have primary teachers being employed in our high schools because they are really good at offering a blended curriculum for young people who are perhaps at the first-level curriculum and not quite ready to access the high school one but still want to go there.

**Stephanie Callaghan:** That is a really interesting point.

**The Convener:** Vivienne Sutherland and Lynne Binnie also want to come in on that.

**Vivienne Sutherland:** I will talk briefly about secondary schools. We have a wide range of secondary schools, including new builds and older buildings. Over the past year, all our secondary schools have done really great work on describing what they call their "continuum of support" and setting that out in an accessible document. The continuum can be shared with primary schools and families so that they can clearly understand what it includes, from a young person simply being in the classroom with their class teacher, learning a subject, right through to their spending a lot of their day or their week in a supported base, with small numbers and specialist staff who are able to support them to go out into the mainstream school when that is possible, and every possibility in between.

Alongside that, our schools are working on an earlier stage, exploring what our continuum of emotional support is. They ask, "What do we, as a school, have access to in order to support young people's wellbeing and ensure that their wellbeing needs, as well as their learning needs, are being met?" Again, that goes right through from the care of a class teacher who notices things, and of guidance staff, to the most intensive levels of support in the school's gift—for example, counselling, access to sensory rooms, or whatever else might be necessary. Those are a bit different across all our schools. Our broad approach is that we want to have that continuum, with the schools adapting it depending on what their environment allows and supports, what their building can do, and so on.

However, there is a step to make that clearer for parents, young people and primary schools, which are often anxious about their kids with needs who are going up to high school. They need to know what is there, almost regardless of the type of building that there is to meet their needs. Again, that is just a concrete description of an example of something that is in place.

**Dr Binnie:** I am really pleased to hear of the adaptations that local authorities have put into school buildings. I suggest that that be replicated across all local authorities, making our mainstream schools cater for the majority of needs that we have in our local authorities.

The conflict around mainstreaming that often takes place with a small number of parents is perhaps because they perceive the mainstream as being the environment in which they attended school. Local authorities perhaps need to do more work on sharing the adaptations and modifications that have been made to buildings to meet the range of needs.

Although I suggest that there is further work to do to understand how our buildings and spaces can meet the needs of learners, a lot of work is already happening. That is probably a communication issue with parents around the range of supports that are now in our mainstream schools to meet the needs of our learners.

**Stephanie Callaghan:** I want to pick up on that point, Dr Binnie. You are talking about a very small number of parents and their perception of what is going on. However, going back to the question that Pam Duncan-Glancy started out with in this evidence session, there seems to be quite a large number of parents who feel that everything is a fight, all the way through.

Earlier, Kerry Drinnan touched on the framework tool and the fact that, when you spoke to parents about it, they had a kind of understanding and were really keen to know more. Is there a need for things such as the framework tool and perhaps for access to—goodness, what is it called? The organisation was here earlier. I am losing track. It was My Rights, My Say. Is there a need for those things to be discussed proactively as soon as an additional support need is recognised? That would pull together the parents and the young person and make them feel that they had access to the information that they needed, which would possibly help the teachers as well. Would that be helpful?

**Kerry Drinnan:** Yes, definitely. One of the things that we are planning with our ASN advisers is their hosting an event in their clusters to demystify some of our ASN processes and procedures. We have done quite a lot of updating of those to ensure that everything is fair, equitable and transparent, and we need to take that back to the parents. We tried to do that work before Covid struck, but we have done quite a lot of revision since then.

We have worked with Enquire, as well, and have created modules jointly with it that we are delivering to our staff so that they and our practitioners can have the required conversations.

It will mean that they are empowered, understand how it works and can encourage our children and young families to have a voice, know their rights, know how to access their rights and know how to achieve a remedy. We have a handbook that goes out to all our practitioners.

Every school has an additional support needs co-ordinator, and it is their role to ensure that they are getting it right for the young people in their school. We are trying to engage with them more frequently to ensure that they understand the laws and people's rights. They are the ones who can empower parents so that parents do not feel the barriers, do not feel that they have to look for information and do not feel that they have to fight, because they will get answers to their questions in that way.

Another thing that we have put in place is a Parents Plus programme. We are working with groups of parents. We trialled it at transition level because transition is a really difficult time for parents and the young people who are leaving school. It is a peer support programme, so parents help other parents to navigate some of the difficulties and challenges of additional support needs.

Pam Duncan-Glancy said that parents feel that they have to fight. I think that that is because they feel that there are quite insurmountable and institutionalised barriers and they are having to fight all the time. Why would that be any different when they feel that they have to ask at school? We are certainly trying to take the fight out of it. We have ASN advisers, and they can advocate for parents, who have access to their support. Every school has a linked advocacy worker for their young people to whom the ASN adviser can signpost them. We are definitely trying to change the perception, to work with our parents and to demystify the processes.

12:00

**Stephanie Callaghan:** Earlier today, we spoke about the perception that a formal diagnosis can really help to meet young people's needs. Under what circumstances would that be the case? That might be a question for Vivienne Sutherland.

**Vivienne Sutherland:** I am happy to answer that. I have worked as an educational psychologist for more than 25 years and have always worked on the principle that it is not necessary to have a diagnosis of any kind of need in order to access support. That support will be put in place when a need is identified. If it is helpful for parents or for the young person to have a diagnosis, we will support them in seeking that, but the support that they get will not be dependent on that, because

we want to intervene at the earliest possible stage when anyone identifies a concern.

If there is a concern about dyslexia, autism or ADHD-type difficulties, or if a child is having difficulty with literacy, social communication or impulsivity, we want to intervene to try to address that difficulty, regardless of whether a diagnosis is sought or given. Some parents are very keen on diagnosis because it helps them to understand their child's difficulty. That is great, and we will support them along that pathway. Some parents are very resistant to diagnosis because they do not want their child to be labelled. We are also fine with that and will support the parents and the child through their journey regardless.

We also try to look ahead, because we do not want to be in the business of unintended consequences. We know that, if we made the mistake of saying that someone would need a diagnosis of ASD, for example, before they could have access to the right level of support in school, all that that would do is clog up the ASD diagnosis pathway with people who felt that they had to achieve that before they could get support. Our focus is very much on saying, "Tell us what support you feel you need that you're not getting right now." We will tell them what we think might help, on the basis of our assessment of the child's needs, but we want to come together on that, agree what we are going to do and put that in place. If parents wish to pursue a diagnosis, we will absolutely do that, but we do so alongside the primary and important task of supporting the child in school.

I am not saying that diagnosis is irrelevant. If it is important to the family, it is important, but it is certainly not something on which support in school is contingent.

**Dr Binnie:** I have a small point to make. I whole-heartedly agree with that. It shows the strength of Scottish education legislation and of the world that we work in. I do have to note that, although that is the case for education services, it is not always the case for partner agencies, which will require a diagnosis in order for people to access specific post-school services. I must stress that to the committee.

**The Convener:** It is helpful to make that distinction and have it on the record.

We have heard evidence from some parents who told us that some local authorities have been a bit dismissive of their understanding of their children's needs. At last week's meeting, May Dunsmuir said that masking is not being properly addressed by local authorities. Some young people can mask behaviours in the educational environment but, when they get home, can become very challenging. What are local

authorities doing to tackle that? We have heard loud and clear evidence about it. How do you work with parents and carers to identify needs that are not necessarily apparent in the school setting?

**Vivienne Sutherland:** I will come in first on that important and topical issue. I am probably going to be a bit blunt and controversial.

**The Convener:** Please do.

**Vivienne Sutherland:** I apologise in advance.

My own view is that masking, in and of itself, is not necessarily a good or a bad thing. The guidance on masking from the national autism implementation team is very helpful. My view is that everyone in society uses masking to some extent. We do that when we put a face on in a situation that is stressful for us, such as coming here today to talk to a Scottish Parliament committee.

The important thing is to assess the functionality of masking for the young person. Young people often feel that they want to adapt their behaviour to fit in in a situation that would be stressful otherwise. For me, the cutting score is that, if it is causing distress to the young person and we are hearing from the family that it is causing negative impacts at home or becoming dysfunctional for the young person, we will of course wish to address that, discourage it and make sure that we address the underlying factors. However, it is tricky if we just polarise the debate. I know that nobody here is doing that, because we have had a wide-ranging discussion, but if we polarise it and say that masking is always bad or always good, that is a problem.

I know that it is a typical psychologist's response to say, "Well, it depends," but I think that it really does depend. We need to be very aware of masking. It is an important issue, because a lot of young people may well present relatively well in school but there may be significant evidence from the home or other situations that they are in distress. We need to listen to that and dig up what is underneath it so that, if we can address things in the school context to reduce the distress—that is the ultimate symptom and the thing that we want to affect—we do so. A description of what the child is doing to mask helps us to understand that, but I do not think that masking in itself is always a bad thing. My colleagues may disagree with me, but that is the way that we try to dig underneath and get behind that information.

**The Convener:** Before I bring in other members of the panel, what do you do in Fife when a parent comes to you with an assumption of masking?

**Vivienne Sutherland:** I cannot be certain that every parent would have the same experience when they go to their school and say that,

because it might be that not all our staff will respond in the way that we would wish them to all the time, although we are working on that. However, what we would do is to listen carefully to what the parent tells us and their description of the behaviour at home. We would also try to triangulate that with what the young person tells us and we would look at other aspects of their life beyond the school, out in the community, to see how they present at the youth club, when they go to their music lesson or when they are on a trip with a youth worker. We will try to work out from the various contexts what the underlying situations are that allow the child to feel comfortable, to be ready to take in new information and to be equipped to face challenges, and we will consider how we can create that environment in the school. Even if we are not seeing any distressed behaviour in school, how can we adapt the situations that the child experiences day to day to minimise the risk that they have to mask to the extent that their distress comes out in other ways? That is a broad answer.

**The Convener:** That is helpful. I will bring in Lynne Binnie and then Kerry Drinnan.

**Dr Binnie:** I agree with that. I would interpret that as strong, triangulated child-based assessment that puts the child at the centre and looks to move out of the school and include part of their behaviours at home.

In Edinburgh, we have an additional support needs outreach service that will visit the home, meet the child and family there and look to see whether the service can support the family, perhaps to put in place the same structures that are in place in the school—a visual timetable, perhaps, or some adaptations to suit the communication style that the child responds to.

We are becoming more aware of the concept of masking. We are trying to be flexible in our assessments and the approaches that we use in our services. We are trying to see the child as being in school for the short time that they are there but also to understand their world outwith school, which is a key focus of GIRFEC. Some children may find the school environment helpful because the adaptations that have been put in place are successful for them, and we may be able to help to provide them in the home and other environments that they access in order to see whether that will reduce the child's distress.

The work happens at the individual child level, with a team around the child, strong assessment and the views of the family and the child being at the heart of it.

**Kerry Drinnan:** We have definitely had that experience. We try to upskill our practitioners so that they understand masking. They certainly

understand how masking can manifest and the difficulties that that can create for parents at home when they experience emotional dysregulation and do not have any understanding of what has caused it or how they could support it. It is about having constant dialogue and conversation.

We would definitely ask our schools to look at how to reduce the demand during the day, maybe by building in a break right at the end of the day, before the child goes home, so that there is some deregulation before the child goes back to the family home. We would also work with the family. We would tell them that we do not see those behaviours and ask them what techniques they would use if the child was dysregulated. We ask them what kind of strategies they have used that are successful.

I would probably go back to what others have said. Masking is quite difficult for parents to manage. For most of our parents, especially when our children go to high school, a similar thing happens. The child comes home and takes everything out on their parents, but it is magnified for children who mask. We need to ensure that parents feel that they are not being fobbed off and that they are being listened to.

We have put out information. In fact, one of our parents offered training on masking on one of our in-service days. We would suggest listening to the parents. They know the child best. We find out what is happening and we consider how we can work together to support that and reduce it. If there are definitely things happening at school that are overloading that young person, and it is all coming out in their safe space, with their safe adults, how can we give them a safe space and a safe adult before they go home, to reduce the unsettlement for our parents?

**The Convener:** That has been helpful. Thank you.

I am going to change tack a bit. One of the impacts of the pandemic was on attendance. Education Scotland has published a deep dive into issues around attendance, and one of the groups that were reported as being most vulnerable to low attendance was pupils with additional support needs. What are local authorities doing to support children and young people who continue to be anxious about attending school? What are the challenges of developing teaching and learning in a curriculum that is flexible to meet the needs of all learners?

**Dr Binnie:** That is a very current topic. All local authorities have it on their improvement agenda. Education Scotland's work was very helpful. Local authorities have a good understanding of data around attendance, so we are able to identify the young people for whom we need to do more.

Some of the solutions that are in place are a positive result of the pandemic. Local digital education offers are now in place, which is helping children and young people who are struggling to access the school building to continue to access their education. I would direct you to the national programme, e-Sgoil, which is having great success in enabling children to access education and to attain and achieve.

A number of other interventions are in place. As I said in my previous response, sometimes the lower interventions are the things that are having great impact. As a result of the strategic equity fund and the pupil equity fund, we are seeing initiatives such as walking buses, breakfast clubs and pupil support officers trying to build a relationship with staff and ensure that pupils see the importance of education and returning to school. There are a number of adjustments in place.

I think that this is something that we might struggle with for the next few years, if not beyond. We will need to be more flexible around how we see education. Covid led to a disruption in the education system for families, children and young people. There is increasing evidence of families, children and young people not necessarily feeling that the current education system meets their needs or that they do not wish to engage in it. They see learning as being able to take place in a broader way, perhaps through digital learning. We are yet to understand the full nature of that.

ADES feels strongly that curriculum review is necessary—certainly in our secondary schools—and that we need to offer a broad-ranging curriculum that meets learners' needs and gives them skills for life, learning and work.

12:15

We need to understand attendance in that context. Attendance is an outcome of getting it right for our children, meeting their additional needs and having strong teaching, learning and curriculum provision. I cannot distinguish the low levels of attendance that we see for particular groups. Care-experienced children are one of the groups that I would highlight on the subject of attendance, but I cannot help seeing that as part of the wider discussion that we need to have on our schools and curriculum in Scotland.

**The Convener:** Thank you, Lynne. Would Vivienne Sutherland or Kerry Drinnan like to add anything on that?

**Vivienne Sutherland:** I echo everything that Lynne Binnie has just said in that comprehensive overview.

Attendance is an absolute priority for every local authority. The convener highlighted that children with additional support needs are often most vulnerable to poor attendance. We work with our schools to understand and properly assess individual young people's reasons for non-attendance. There is a danger in assuming that there is a one-size-fits-all solution. For example, we could say that we will refer them to the counselling service if they say that they are anxious about coming into school, or that we will reduce the school day because it is too demanding.

We are getting much better at doing more thorough assessments. Usually, a number of complex reasons will impact on poor attendance. They might be factors for the individual young person, such as anxiety or mood issues. However, in my experience, those always interact with factors relating to the school environment, the school day, the curriculum or their peer or staff relationships. There are almost always family factors at play, too. Those three elements go together.

We need to have clarity on what is getting in the way of an individual young person's attendance, so that we can put in place a bespoke plan that will address those issues for them. That will not always mean making significant adaptations to the school environment, but it will usually involve making some. It will often involve their family making changes, too, and our providing support directly to that young person to overcome their internal barriers about attending the school environment. Our schools are really hot on that, on knowing their data and looking at it closely, and on knowing which vulnerable groups need more support.

I hope that this does not seem like a flippant remark, but one of the greatest barriers to our schools improving their attendance figures is often unauthorised family holidays during term time. That is tricky to address, because it is often a financial imperative for families. Despite schools working closely with families to emphasise the importance of attendance, such absences are increasingly becoming a feature across our school estate.

**The Convener:** Thank you. We will move to questions from Ross Greer.

**Ross Greer:** I would like to pick up on a point that is somewhat tangential, but I hope that it will make a neat segue. A moment ago, Lynne Binnie acknowledged that the legislation on additional support needs in Scotland sets out a very broad definition of additional needs that is universally—certainly widely—supported. Not every child or young person with a recognised additional need will require a co-ordinated support plan, but you

will be aware that the committee has heard evidence that only around 0.2 per cent of kids with recognised needs have such plans. I am interested in hearing Lynne Binnie's and Nicola Dickie's perspectives on that. Do you recognise the concerns that we have heard from others that that proportion is simply far too small, or is there a different explanation here? Is it appropriate that there are CSPs for the 1,000 or so kids with the most complex needs—is that the proportion that you would expect?

**Dr Binnie:** I hope that I can answer in a straightforward way. ADES accepts those concerns. We recognise that the CSP gives a remedy to particular rights and we feel strongly that it has to be in place. We frequently talk about CSPs and feel confident that, across our local authorities, we understand the criteria and the process for establishing them.

Undoubtedly, the clear issues here are the criteria for a CSP and the need for education to be co-ordinated across multi-agency partners. For example, in my local authority area, we devolve the assessment of co-ordinated support plans to our headteachers. We ask them to discuss those at child's plan meetings and at reviews for our looked-after children. When the multi-agency team is asked whether a child meets the criteria for a co-ordinated support plan, we ask whether that is the responsibility of the local authority, to which the answer is yes, and whether the child has additional support needs that will be sustained for longer than 12 months, to which the answer is also yes. The answer that is almost always a no on the checklist is to the question whether the child needs intensive support from one or more other agencies outwith education for longer than a 12-month period. The response to that from our multi-agency colleagues is almost always no. We record that on the form and collate that information at local authority level, so we have strong evidence and information on it. I expect that that experience would resonate with stakeholders across other local authority areas.

From an ADES perspective, therefore, we are concerned, and we feel strongly that there should be statutory plans that give legal recourse—of course we do. We feel very clearly that the issue is specifically with the criteria for co-ordinated support plans. We hope that the refreshed code of practice will enable us to have a clearer definition of those criteria. We would also say that the co-ordinated support plan and the workload issues for schools need to be reviewed in light of the multitude of planning documents that our legislation requires.

**Ross Greer:** I will pick up on that point. I am keen to hear Nicola Dickie's thoughts on it, too. Could the point about the criterion for 12-month

multi-agency involvement be addressed—could we resolve that problem—entirely by revising the code of practice or would it require amending the legislation?

**Dr Binnie:** For me, it might be through the legislation. Through updates to the code of practice and guidance we have re-examined whether the code of practice could make that point clearer for local authorities, but we simply have not cracked it. We know that the number of plans is going down. We monitor them at ADES level, so we see that happening. I think that there would need to be a legislative approach.

There is also case law, and the tribunal helps with that. Earlier, the committee heard about that from Chloe Minto from Govan Law Centre. A recent Upper Tribunal decision made the criteria for co-ordinated support plans really clear to local authorities. The tribunal ruled in favour of a local authority on certain points of law. Therefore the evidence tells us that perhaps this should be a point of law rather than part of the code of practice.

**Ross Greer:** Would COSLA concur with that?

**Nicola Dickie:** I would not disagree with what Lynne Binnie, from an ADES perspective, has just said. We have to recognise that we have individual support going on within the mainstream, which is an important point.

My other point is that we are not comparing like with like. We have subsequently rolled out counselling, much of which would have been picked up by external agencies but is now being prepared in school.

There is something to be said for getting underneath the numbers and working out what they tell us. If they tell us that the lack of support plans is preventing people with needs from accessing support, that is one thing. If they tell us that we are dealing with the situation really well and we do not need to provide such support, that is another. I just do not think that we know enough about what is underneath the numbers.

As she is the professional on such matters, I will defer to Lynne Binnie on your question whether changes should be made to the legislation or the code of practice. I will simply say that legislation will take us only so far. We would go back to the conversation about prioritisation of resource and the other services. If we get the legislation changed and we then see more plans being established, we will need prioritisation among our partner agencies to ensure that support is provided.

**Ross Greer:** You mentioned needing to dig into the numbers and understand the context a bit more. A review of CSPs took place immediately

after the Morgan review reported. Should it not have done that?

**Nicola Dickie:** We have some information from that review. I wonder how contextual it remains, though, if we contrast where we are now with where we were then. The review was done in November 2021, when we were probably a bit naive in thinking that the pandemic was finished with us. We understand where we are now, but I would be interested in the contextualisation of that information. We have started to touch on other aspects that are now the moving parts of our system, such as curriculum review. We are always interested in all those aspects, and we do not forget where we have got to, but my sense is that we need to dig into the information a bit more.

**Dr Binnie:** I could give another specific example, which is school counselling. Prior to our new model of delivering counselling in schools, it would largely be delivered by CAMHS. If those services agreed that counselling was required for longer than a 12-month period, that would constitute intensive individualised support, which would then meet the criteria for a co-ordinated support plan. The presumption of mainstreaming and the moving of resources from tiered statutory services to universal services in schools is therefore one of the reasons for our having a reduced number of co-ordinated support plans.

Another example, which I mentioned in a previous conversation, is that the main service delivery model for speech and language therapy now is to consult with and offer advice to school staff. When I started 20 years ago, speech and language therapists would come into school to deliver direct one-to-one intervention with children and if that happened for more than 12 months, those children would meet the criteria for a co-ordinated support plan. We now have consultancy, advice and training being given to school staff, such as pupil support workers, so that they can deliver that one-to-one intervention to children in school, which means that those children do not meet the criteria for a co-ordinated support plan. The evidence tells us that this is an issue of criteria, rather than of any local authority blocking CSPs, which is not the case at all.

**Ross Greer:** Thank you to both of you; that was a really useful way of specifically identifying the barriers.

My next question is for Vivienne Sutherland and Kerry Drinnan. We know that the single biggest advantage of having a CSP is that it gives a route to redress through the tribunal system. Are there any particular advantages to having a child's plan, as an alternative? The child's plan does not offer a route to the tribunal, but is there anything that you know about from your delivery work that makes the child's plan an attractive alternative to a CSP?

If we put aside the issue of having to tick the box of needing 12 months of multi-agency intensive support, are there situations or certain reasons that make a child's plan more suitable?

**Vivienne Sutherland:** The barriers to putting a CSP in place for young people have been clearly described. Local authorities are dealing with two competing pieces of legislation, the GIRFEC legislation and the ASL act, which causes a headache because they do not sit well with each other. GIRFEC means that children need one type of plan, but there are different criteria for a CSP.

The fact that criteria have to be met at all can sometimes be a barrier to having a plan in place. In Fife, we have far more children with child's plans than with CSPs, because you can put a child's plan in place if those in the small team around the child agree that there is a level of planning that they want to record. There are no criteria to meet, other than that they have decided that they want to write down the child's assessed needs and what they will put in place. Those plans are easy to open, are flexible and can expand or contract. The CSP criteria have caused a barrier.

**Ross Greer:** Are you talking specifically about the need for 12 months of multi-agency, intense support, or are there other areas where the criteria do not quite match up with the reality of children's needs?

**Vivienne Sutherland:** I would say that that criterion causes the difficulty, because we are relying on other agencies to come back to us with their description of what they are going to do that would require co-ordination and what that specific support will be. We often do not get that detail, so we cannot agree that the criteria have been met.

However, with a child's plan, we can just write down what that agency's involvement is. It does not have to be specific, intensive or regular: we only have to write down what has been agreed. The child's plan therefore feels like a more functional document that is easier to access. We recognise the need in law for a CSP if the criteria are met, but we often get families saying that they are not sure what the advantage would be if they already have a plan that is co-ordinating the support for their child.

We are keen not to deny any family the option of legal redress, regardless of whether they have a CSP. For example, we have had a number of families go to tribunal and we have engaged in that tribunal process. Very few of those families have had a CSP, although they have had a child's plan. The tribunal process has been accessible to them. We are keen to make the legal options available to families without them having to jump through the hoop of getting a CSP first.

**Ross Greer:** When families have used the tribunal process but have not had a CSP, is that because they have made a discrimination claim under the Equality Act 2010 or is it because they have made a placing request? How have they been able to access the tribunal?

**Vivienne Sutherland:** They have made a placing request to an independent special school.

**Liam Kerr:** You may have heard me ask earlier about independent adjudication. The response that I got was that one reason why the process is little used is that local authorities do not let people know about it. No local authority has mentioned that process in the submissions that the committee has received. What do you believe to be the reason that independent adjudication is used infrequently? Would COSLA welcome easier routes for parents and families to challenge local authority decisions?

12:30

**Nicola Dickie:** It is difficult to comment on why individual local authority submissions did not include independent adjudication. In the public sector in Scotland, we are crystal clear that things should be resolved at the lowest possible level. I do not think that we should be looking for a system that pits parents against local authorities, given that we are looking for good outcomes for children.

I am interested in all the stuff that we heard from the professionals on the panel today about communication. I suspect that local authorities are well used to the independent adjudication point. It is not the only part of our business where we have independent adjudication. We have got our ombudsman and other bits and pieces, so we are well used to it. I go back to the point that I have been making throughout, which is that communication is always the best approach. We need to ensure that people are aware of their rights.

The other thing that we could do with, after independent adjudication, is a bit of follow up. We have heard that parents might feel that that route is the only one open to them to get redress. We probably need to have a bit of a conversation about what that actually feels like. A lot of the time, when we do things like joint visits and dialling into the child's actual needs, we come up with similar results without going to adjudication. I am a big fan of devolving things and sorting problems at the lowest possible level, while recognising that there is a need for independent adjudication and a need to ensure that parents are aware that it is there.

**Liam Kerr:** I cannot not ask Kerry Drinnan a similar question about Falkirk Council. Do you have any idea why independent adjudication was not mentioned by local authorities?

**Kerry Drinnan:** It might be because we signpost to independent advice first. The independent advice and the Enquire modules contain all the information about remedies and parental rights, in a very parent-friendly way. That is probably where that gap has come in to the submission.

Most disputes, if you want to call them that, are to do with parents wanting a placing request decision to be overturned. That is not likely to go to independent adjudication; it is more likely to go to a tribunal, because a tribunal has the powers to overturn the decision. For us, it is about the signposting and advice that are given. We try very hard. A tribunal is rare for us, because we will first try to mediate and resolve the issue at school level, with the parents, before it escalates beyond that. We have probably never got to independent adjudication either, as a result of working closely with our families from the earliest point.

**Liam Kerr:** Dr Binnie, I want to press this point, because My Rights, My Say seems to suggest that it is at the local authority's discretion whether independent adjudication progresses, and that there would be no right of appeal. Is that correct and, if so, does that need to change?

**Dr Binnie:** As an independent adjudicator, recently appointed by the Scottish Government, I think that it is a service that is not used at all within the system. As Kerry Drinnan mentioned, from a local authority perspective, we would signpost parents to independent advice. My hope would be that those independent advisers would advise parents that independent adjudication is an option that is open to them.

I do not see it as a signpost in local authorities. It is probably there somewhere in policies and procedures, but it is not something that we would routinely refer to. If parents were unhappy, we would, in the main, direct them to our stage 2 complaint process rather than independent adjudication. I do not think that local authorities would put up any barriers to access to independent adjudication. However, the onus is on the parent to make that request to the Scottish Government, and on the Scottish Government to contact the independent adjudicator in the local authority. At that point, the local authority would agree or disagree to going forward with independent adjudication. I would not think there would be any situations in which a local authority would not want that. An independent adjudicator would then be appointed and would look at the evidence on each side and give advice.

There are a number of reasons why independent adjudication is not used. The Scottish Government was looking to publicise it more, to ensure that local authorities understood that it was an option. It is not necessarily something that

parents want. I would think that they would want the stage 2 complaint process to progress. We receive a number of stage 2 complaints with regard to meeting learners' needs that we are able to resolve at stage 2. Stage 2 in local authorities is an independent process. An independent reviewer is asked to review the case and make a judgment. The small number of parents to whom I have spoken to feel that independent adjudication would not give them the legal recourse that they seek. It is a complicated picture that should be reviewed.

**Liam Kerr:** I understand. Thank you.

**The Convener:** I thank the panel for their evidence this morning. Our final evidence session in the inquiry will be held next week, when we will hear from the Cabinet Secretary for Education and Skills. We will then produce a report based on what we have heard, with recommendations for the Scottish Government.

That concludes the public part of our proceedings. I suspend the meeting to allow our witnesses to leave. The committee will then move into private to consider our next agenda items.

12:35

*Meeting continued in private until 12:54.*



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