



UNIVERSITY OF
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Children, Disability and Service Provision: A Liverpool/Merseyside Perspective

Policy Report

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1. Introduction

1.1. Legal and Policy Background

Children with special educational needs represent approximately 14.9% of the total pupil population in England.¹ As of January 2019, there were 354, 000 people with an Education, Health and Care (EHC) Plan maintained by local authorities.² Demand for such support has increased over the last number of years with the number of children with an EHC plan rising by 16.8% from 2014.³ Children with special educational needs also represent one of the most vulnerable population groups within the English education system. In 2018 for example, children with a SEN accounted for 45% of all children who had been permanently excluded and 43% of all children who had been subject to a fixed term exclusion from all state-funded primary, secondary and special schools.⁴ Similarly, recent governmental figures illustrate that children with a SEN are 25% less likely to be in sustained employment by the age of 27 in comparison to their non-SEN peers.⁵

However, recent legislative changes have substantially overhauled the statutory framework governing children with special educational needs. The introduction of the Children and Families Act (hereafter ‘CFA’) 2014 signified a clear governmental commitment to reforming the delivery of children’s services across a number of important areas. Central to those reforms has been the increased recognition and instillation of children’s participatory rights as integral to the effective implementation and delivery of children’s services. Harris and Davidge argue that this “appears to evince an increased willingness to recognise and support the developing autonomy of children and young people with SEN”.⁶ One area where the CFA has exerted considerable change is in the delivery of services for children and young people with special educational needs or disabilities (SEND) in England and the role of local authorities in providing such services.⁷ Specifically, Part 3 of the CFA 2014 replaced the old system whereby

¹ See Department of Education, *Special educational need in England: January 2019*, 4 July 2017, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814244/SEN_2019_Text.docx.pdf

² Department of Education, (2019) *Statements of SEN and EHC Plans: England 2019*, 30 May 2019.

³ National Audit office (2019) Department of Education, *Support for pupils with special educational needs and disabilities in England*, (11 September 2019).

⁴ Department of Education (2019) *Permanent and fixed period exclusions in England: 2017 to 2018*. (25 July 2019)

⁵ Department of Education (2018) *Outcomes for pupils eligible for free school meals and identified with special educational needs*, Ad-hoc statistics.

⁶ Harris, N & Davidge, G., (2019) The practical realisation of children and young people’s participation rights: special educational needs in England, *Child and Family Law Quarterly*. 31, 1, pp. 25-45.

⁷ See Part 3 Children and Families Act 2014.

Statements of Special Educational Needs were issued to children and young people⁸ and introduced a new system of Education, Health and Care Plans⁹ (EHCPs) which are further underpinned by children's participatory rights. This is clear from section 19 which firmly embeds children's participatory rights within the legal objectives of the Act. It mandates local authorities (LA's) to respect children's participatory rights within the EHC planning process, to provide them with the necessary information to enable that participation to take place and to support children and young people's development to enable them to achieve the best possible outcomes in life, whether that be educational and otherwise.

This new approach was designed to both consolidate and unify service provision across all relevant statutory and local government agencies so that children and young people aged between 0 – 25 years would have their educational, health and social care needs supported, and their learning and life outcomes accommodated for across all applicable sectors.¹⁰ Supplemented by a new SEND Code of Practice¹¹ to guide and frame these changes, the stated purpose of EHC plans was to “to meet the special educational needs of the child or young person, to secure the best possible outcomes for them across education, health and social care and, as they get older, prepare them for adulthood”.¹² Thus, at their core, EHC plans comprise a statutory document which outline and specify the nature and extent of service provision required to meet the needs of the child or young person concerned. As Ganoa et.al., state:

“The development of EHC plans fosters multiagency collaboration to learn and discuss the best ways to meet the needs of the child or young person, and to make joint decisions about resourcing, resulting in an ecological, participatory, and person-centred approach to special educational needs and disability”¹³

However, despite these legislative reforms, recent evidence has indicated that children's access to special educational needs and disability services has not been a straightforward process. While the new system permitted a period of transition so that all children with a Statement of a SEN would be transferred onto to an EHC plan by April 2018, the transitional period itself

⁸ Section 324 Education Act 1996.

⁹ Sections 37 – 50 Children and Families Act 2014.

¹⁰ See Department of Education, Support and aspiration: A new approach to special educational needs and disability, Cm8027, March 2011.

¹¹ Department of Education (2015) Special educational needs and disability code of practice: 0 – 25 years, January 2015.

¹² Ibid at p. 142.

¹³ Carolina Ganoa, Susana Castro & Olympia Palikara (2019) The views and aspirations of young people with autism spectrum disorders and their provision in the new Education Health and Care Plans in England, *Disability and Rehabilitation*, at p. 2.

was characterised by delay such that the Local Government and Social Care Ombudsman reported that “by January 2017, just under one third of children with a Statement of SEN in place twelve months earlier were transferred to a EHC Plan”.¹⁴ Additionally, a 2018 survey by the National Association of Head Teachers (NAHT) revealed that 94% of the teachers surveyed were finding it harder to resource the support required to meet the needs of children with SEND than they did in the two years prior to the survey, while 73% of the respondents accredited such difficulties to broader financial cutbacks in the education sector. However, research by Adams et.al., in 2017 projected a more positive tone in finding that two thirds of parents and young people were satisfied with the overall EHC planning process, but observed nonetheless that many respondents felt that the plans had not been finalised within the relevant time frame.

Further research by Adams et.al. in 2018 on behalf of the Department of Education additionally highlighted several distinct factors which generated parental dissatisfaction with the EHC planning process. These included unsatisfactory communication by local authorities, the absence of accessible support and information throughout the process, a lack of transparency regarding delays within the process, the absence of familial involvement within the process, the absence of detail within the ECH plans themselves and the general lack of cooperation with other parties including schools.¹⁵ More recently, the House of Commons cross-party Education Committee concluded that the current framework was characterised by confusion, unlawful practices, bureaucratic nightmares, buck-passing, a lack of accountability, inadequate resources and an overly adversarial process for parents.¹⁶ The most recent annual Ofsted Report concluded that by the end of August 2019, of the 100 (out of 151) LA inspections which had been carried out, 50 LA’s had been required to produce a Written Statement of Action on account of weaknesses in their SEND arrangements.¹⁷ Thus, on balance, while the new system is to be welcomed, the bulk of the evidence suggests that many issues are hindering its smooth delivery for parents, children and young people.

1.2. Research Aims and Scope

¹⁴ Local Government and Social Care Ombudsman (2017) Education, Health and Care Plans: our first 100 investigations.

¹⁵ Department of Education (2018) *Education, Health and Care Plans: A qualitative investigation into service user experiences of the planning process*, Research report, January 2018.

¹⁶ House of Commons Education Committee (2019) Special educational needs and disabilities, First report of Session 2019 – 20.

¹⁷ OFSTED (2020) The Annual Report of Her Majesty’s Chief Inspector of Education, Children’s Services and Skills 2018/19, at para. 240.

This report outlines the key findings from an examination into the level and quality of service provision for children with a SEND in the Liverpool and Merseyside Area. By drawing on parental experiences of the EHC planning process, this report identifies the primary obstacles which are negatively affecting SEND service provision. It therefore generates new insights into how local authorities in the Liverpool and Merseyside area can better improve and synchronise their approaches to service provision and better comply with their legal obligations under the CFA 2014.

An examination of the current state of affairs in the Liverpool/Merseyside region is necessary for two primary reasons. Firstly, over the last ten years, cities in the North of England have been the hardest hit by austerity, with Liverpool, on a per capita basis, experiencing the largest financial cuts. According to the Centre for Cities, Liverpool has experienced a £441 million reduction in spending which roughly equates to cuts of around £816 for every city resident.¹⁸ Therefore, in view of the sustained financial cutbacks which Liverpool has experienced, an examination of SEND provision further highlights the wider impact which austerity is having for children and young people, and specifically for children with a SEND.

Secondly, recent inspection visits by OFSTED and the Care Quality Commission to the Liverpool area in February 2019 identified “significant areas of weakness” in local area practice. This included weaknesses in the EHC planning process which included problems with the quality of the EHC plans when produced and also the timeliness of amendments being made to the plans. Other issues of concern included the “inequity of provision for children and young people across services” and the broader recognition that many children and families were not having their needs adequately met.¹⁹ Accordingly, Liverpool City Council and Sefton Council were both required to produce a ‘Written Statement of Action’ to set out their objectives and strategies moving forward regarding how to better deliver SEND services.

1.3. Methods

The report adopted a predominantly qualitative methodological approach. 17 semi-structured interviews with parents of children with SEND in the Liverpool/Merseyside area and 5 case-file reviews from the University of Liverpool Law Clinic were carried out to ascertain the on-the-ground experiences of parents in relation to SEND service provision. Of the 22 respondents who were involved within this study, 17 were within the Liverpool city council local authority

¹⁸ Centre for Cities, (2019) Cities Outlook 2019.

¹⁹ <https://files.ofsted.gov.uk/v1/file/50060774>.

area, 2 were under the control of Wirral Borough Council and the remaining 3 were under the control of Sefton, Knowsley and St. Helen's local authorities respectively. Ethical approval was granted by the School of Law and Social Justice at the University of Liverpool. Semi-structured interviews were selected as this allowed for a deeper assessment of parental experiences, while the case file reviews were conducted as these represented actual cases where parents had sought legal advice through the University of Liverpool Law Clinic in relation to their children's care. No identifying features were revealed from the casefiles to protect and preserve the anonymity of the clients and to uphold their confidentiality. Participation was voluntary, and the information was provided on the basis of full, free and informed consent. Respondents were recruited from online social media adverts on Twitter and Facebook and therefore volunteered themselves to be part of this investigation.

Of the 17 respondents who took part in the semi-structured interviews, 14 were female, 2 were male and one comprised both a husband and wife. In addition to the five parents whose casefiles were reviewed, 22 parents were altogether involved within this study. Both the interviews and the casefiles focused on parental experiences of engaging with the local authority in order to obtain the appropriate SEND services and care for their children. Overall, 26 children were implicated within this study from both the interviews and casefiles, as some parents had more than one child who they were seeking support for. 18 of the children were male (69%) and the remaining 8 (31%) were female. 20 children were implicated from the semi-structured interviews, of which 14 were male (70%) and the remaining 6 females (30%). From the 6 children involved from the 5 casefiles, 4 concerned males (66%) and the remaining 2 females (34%). In substantially outnumbering girls, the statistical prevalence of boys within this investigation is in keeping with national trends which clearly suggest the numerical prevalence of a SEND among boys.²⁰ In relation to the actual and specific needs of each of the children within the study, these can be broken down as follows:

- 20 children had a diagnosis of Autism Spectrum Disorder or Autism Spectrum Condition (ASD/ASC)
- 2 children were on the ASD/ASC pathway
- 1 child had a diagnosis of Down Syndrome
- 1 child was dyslexic and also had a speech delay
- 1 child was a Type 1 Diabetic and a celiac
- 1 child suffered from severe anxiety and was under the care of the Community and Adolescent Mental Health Services (CAMHS)

²⁰ See Department of Education (2019) *Special educational needs in England: January 2019*, 4 July 2019.

- The number of children who possessed a primary diagnosis of autism, or who were on the pathway, also suffered from either ADHD, Oppositional Defiance Disorder, Pathological Demand Avoidance, Sensory Processing Difficulties and broader communication and behavioural issues.

2. Key Findings

The following section outlines the key findings from this study. Overall however, six significant themes were arrived at from an examination of the interviews and the casefiles.

These included:

- Delay on the part of the local authority to assess, identify and provide the necessary SEND provision for children within the prescribed timeframe of 20 weeks. The evidence adduced as part of this investigation is that the issue of delay is a systemic and ubiquitous aspect of the SEND process in the Liverpool/Merseyside area.
- A clear lack of specificity and quantification within the EHC Plans when produced by the local authority. Clear evidence of failure to abide by the principle of specificity regarding the formulation of EHC plans was a common parental experience among the participants within this study.
- The absence of social care and/or break from their caring role for parents of children with a SEND. The absence of such support was widespread. Furthermore, the lack of reference to social care among the participants indicated that a broader unawareness and unfamiliarity with broader social care provision entitlements.
- Evidence among parents of personal and familiar stress and anxiety as a result of the process was extensive. Strong evidence of the negative impact which the process was having on parents; their health, livelihoods and wider family was a distinct and prevalent reality among the respondents within the study.
- Evidence of schools not supporting children's needs and engaging in unlawful school exclusions was a frequent aspect to parent's experiences of the SEND process.
- A broader systems-wide failure, the cumulative consequence of the forgoing, which is characterised by a lack of communication and transparency, was evident from this investigation.

While this report does not seek to make broad-based generalised assertions or claims about the level of provision within the Liverpool and Merseyside area, it does however point to common themes and experiences among the parents who participated in this study.

2.1. Delay

Key Findings

- Out of the 17 semi-structured interviews, 16 respondents had formally applied for an EHC plan to the local authority. Out of the 16, only 2 (12.5%) had their plans finalised within the relevant time period. One respondent was refused an assessment on the basis that top-up funding would be provided.
- Delay was found at each stage of the process: in determining whether a child will be assessed, in sending a draft EHC Plan for comments and a school to be named by the parent, to issuing the final EHC Plan and in conducting an annual review.
- The causes for the delay were varied and included the parties waiting for an expert report, the LA on occasion trying to persuade parents to accept a school they did not name and sometimes the school failing to provide information to the LA when requested.
- Participants also reported delay in entering the statutory process, often because of information provided by a school, or the belief that they must obtain evidence before a child would be assessed under the Children and Families Act 2014.

Delay

Of the 17 interviewed participants, the vast majority described experiences of delay at some point in the process. While 16 out of the 17 respondents had formally requested support for their children, only 2 respondents had their applications dealt with within the prescribed timeframe. The findings therefore suggest that delay in the Liverpool/Merseyside area is a systemic feature of the process, found at nearly every stage of seeking educational and health care support for a child with SEND.

However, data from other sources indicate that this is not an issue faced exclusively by parents and children in the Merseyside area. Reports show that nationally when responding to EHC Plans, local authorities are failing to meet their statutory deadlines. A BBC report in January 2019 following freedom of information requests to 152 councils, showed that four in ten plans

take longer than the 20 weeks deadline to be finalised.²¹ Indeed, a recent report from the Local Government and Social Care Ombudsman (LGO) in October 2019²² revealed that delay was a factor in most of the complaints they investigated and that they were in fact upholding 87% of complaints in relation to EHCPs. More broadly, the number of complaints to the LGO is also rising. In 2018-19 for example, they received 45% more complaints than in the two years previously. Moreover, the issue of delay has also been captured by the National Association of Head Teachers (NAHT), who in a survey in September 2018 revealed long delays in students being assessed for their needs. Of their 637 responses to the survey, 15% reported that they waited over 6 months from referral for an assessment and 39% over 6 months to receive the plan.²³

Legal duties in relation to timescales

Local authorities have specific obligations pursuant to the statutory framework and accompanying guidance in the field of SEND. Firstly, when a local authority decides not to assess a child or young person, it must notify the parents of the child or the young person within 6 weeks of the request for an assessment.²⁴ When a local authority decides, following an assessment, that it is not necessary for special educational provision to be made in accordance with an EHC plan, notification must be given as soon as is practicable, but in any event within 16 weeks of the request for an assessment.²⁵ However, if the local authority decides that special educational provision is required, then they must send the finalised EHC plan to the child's parent, or to the young person and to the school named in the plan, as soon as is practicable and in any event within 20 weeks of the local authority receiving a request for an assessment.²⁶

Evidence of Delay

Delay was a systemic feature of the experiences of the respondents within this investigation and was reported by the vast majority of them. One respondent received the draft EHC plan 5 months after the 20-week requirement²⁷ while another respondent reported that even though the Statement of SEN had transitioned to an EHC plan on the date required by law, this was done without any review of updated evidence. Simply put, the old plan/statement was renamed

²¹ <https://www.bbc.co.uk/news/education-46658243>

²² Local Government & Social Care Ombudsman (2019) "*Not going to plan – education, Health and Care plan two years on*", October 2019.

²³ NAHT "*Empty Promises The crisis in supporting children with SEND*" September 2018.

²⁴ The Special Educational Needs and Disability Regulations 2014, 5(1)(a).

²⁵ *Ibid* 10(1).

²⁶ *Ibid* 13(2).

²⁷ Respondent 13.

an EHC plan. This parent was subsequently embroiled in a post transfer discussion to try to amend the plan and obtain all the necessary reports needed to properly inform it.²⁸

In another case, the LA agreed to changes to the plan a few days before a tribunal hearing, but it then took six months for those changes to be put in place.²⁹ Similarly, another respondent reported that a meeting to discuss her child's transfer to secondary school was 3/4 months later than expected and by the time of the interview in June, amendments to the plan following review were still outstanding because the LA were waiting for expert evidence, despite having been told that it would be ready by 15th February (statutory deadline for transfer of plans).³⁰ Another participant was told that the EHC plan could not be finalised before the summer and school transfer, because the professionals were not available over the summer. The respondent stated:

"I was starting to get really angry and really cross and I said to him we are now I think at this point it was nearly 62 weeks into a 20 weeks EHCP process and still hadn't been finalised and nothing had been decided and I was still waiting".³¹

Another participant reported that the process took approximately 18 months. The respondent's initial application for an assessment of her child had been refused, but the LA later agreed to assess when the participant indicated their intention to appeal to the tribunal. At the time the child was at risk of exclusion and was permanently excluded from their placement a couple of weeks after the plan was finalised.³² She stated: *"it took 18 months from start to finish to get it".³³*

Delays originating at school

Delays at the beginning of the process were also a feature of the evidence gathered within this study. It is important also to recollect that the CFA 2014 allows either a parent, or the school itself, to apply for an EHC assessment for a child with SEND.³⁴ A number of respondents told us that their child's school had actively discouraged them from applying for an EHC Plan. One respondent reported a *"wait and see approach"*³⁵ while other parents reported generally that

²⁸ Client File 2.

²⁹ Respondent 8.

³⁰ Respondent 12.

³¹ Respondent 7.

³² Respondent 3.

³³ Ibid.

³⁴ Children and Families Act 2014, s.38(1).

³⁵ Respondent 13.

schools were reluctant to apply for an EHC Plan, or to indicate that they would support the parent's application. It was reported by one parent that they understood that there is "*a better case if you go with the school for an application, because then you've got school on your side and their evidence, rather than just trying to do it*".³⁶

Delays whilst evidence or reports are being obtained

Local authorities must seek information and advice when assessing a child's needs.³⁷ A local authority must always seek advice and information from an educational psychologist³⁸ and they must seek advice and information from "any person the child's parent or young person reasonably requests that the local authority seek advice from".³⁹ However, a reluctance to apply for an assessment of a child's needs without already having independent expert evidence either initially, or during the assessment, or drafting process, was a feature of a number of interviews.

One respondent said they had to wait for two (school) years for an educational psychologist report and felt they could not apply for an EHC Plan without it to support their application, as they feared the application would be refused. The respondent stated:

*"It's all about processes, not about the need, it's about processes and procedures, so because there's not enough evidence then it will get refused, then if we ask for tribunal or appeal then it's a battle and you know I need the energy for..."*⁴⁰

Another respondent told us that a request for an EHC assessment had been refused twice. They had obtained an independent educational psychologist report, but the local authority still refused to assess following mediation. When the parent then notified the LA of her intention to appeal to the Tribunal, the local authority agreed to assess. The parent had also commissioned her own privately funded independent occupational therapist report and it was only after this that the LA commissioned one from their own experts. Another participant told us that despite her child being non-verbal, the local authority refused to include speech and language support in the plan, which caused delay.⁴¹

³⁶ Respondent 13.

³⁷ Special Educational Needs regulations 2014, s.6(1).

³⁸ Ibid (6)(1)(d).

³⁹ Ibid (6)(1)(h).

⁴⁰ Respondent 10.

⁴¹ Respondent 12.

Overall, the evidence gathered within this investigation suggests a level of confusion surrounding the EHC planning application process. For instance, about *how* to apply for an EHC plan, including whether a parent can only apply for a plan with the school's support. There was also uncertainty about *when* such an application should be made, for instance must a parent whose child is on the ASD pathway await an official diagnosis (which can often take up to two years) and whether they needed supporting evidence of SEND via independently commissioned / privately funded reports.

Despite this confusion, local authorities must assess a child or young person if they have, or may have, special educational needs and it may be necessary for special educational provision to be made for them in accordance with an EHC plan.⁴² Statistics⁴³ show that the Liverpool and Merseyside area almost leads⁴⁴ the region in the rate of refusal of assessments for 2018. Of the 996 requests that were made in the Calendar year 2018, 37.8 % of requests were refused in Liverpool. By way of comparison, Manchester's rate of refusal was 9.3% from 885 requests.

Funding of special educational needs in school is also regularly raised by school leaders. For example, the NAHT's report in September 2018 highlighted that funding of SEN in schools is in 'crisis'. Local authorities must provide resources to enable schools to make the provision in a child's plan and meet the child's needs. Despite this, of the 637 responses to the NAHT's survey only 2% of respondents said that the top up funding they received was sufficient to meet individual EHC plans. It is likely, therefore, that funding worries are a feature of the reluctance of schools to apply for EHC plans, but further investigation of this specific issue within the Liverpool and Merseyside area is required.

Some schools also appear to be reluctant to support an application, or apply for, an EHC assessment. As school leaders were not interviewed during this study, we are therefore unable to ascertain the reason for any perceived reticence on the part of schools to apply for, or support parents in their application for an EHC assessment/plan. However, what is clear from the findings is that once an assessment is requested and the assessment process is underway, parents experience significant delays in having their children's EHC plans finalised. The corollary of this delay is that many children are having their educational, health and care needs unmet for extended periods of time, which as discussed below, is also having an enormous impact on parents' health and well-being. Merseyside is not alone in seeing significant delay,

⁴² s.36(8) CFA 2014.

⁴³ <https://www.gov.uk/government/statements-of-sen-and-ehc-plans-england-2019>

⁴⁴ Cheshire West and Chester refused 47.4% of requests.

but government statistics published in 2019 show that including exceptional cases, Liverpool have issued only 46.4 % of new plans within 20 weeks. Figures also show the following: Knowsley 85%, Halton 68.1%, Sefton 13.8% and Wirral 59.7%.⁴⁵

2.2. Lack of Specificity and Quantification in EHC Plans

Key Findings

- Out of the 17 semi-structured interviews, 16 parents had formally applied for an EHC plan to the local authority. As previously stated, only 2 participants (12.5%) had their plans finalised within the relevant time period. Just over one third of the respondents, 6 out of the 16 participants (37.5%) reported that their plans were vague, imprecise and lacked specificity.
- 2 out of the 5 casefiles reviewed also revealed parental dissatisfaction with the wording and provision of the EHC plans on the basis of their elusiveness.
- Many parents reported that they felt the vagueness and imprecision of the plans was intentional and deliberate. They noted the frequent use of phrases such as ‘access to’ and ‘benefit from’ within their children’s plans.
- Parents reported that the vague nature of plans was a contributory factor in the delay in finalising them, while some participants reported that the local authority told them that they would have to check with schools whether a plan could be made more concrete, or not.

Lack of Specificity and Quantification Within Plans

While no standard single template for an EHC Plan exists, the regulations nonetheless set out what an EHC Plan must contain. Guidance about the contents of plans is provided in the SEN Code of Practice. EHC plans must specify the special educational provision required to meet each of the child or young person’s special educational needs.⁴⁶ The Code explicitly states that:

“Provision must be detailed and specific and should normally be quantified, for example, in terms of the type, hours and frequency of support and level of expertise.... Provision must be specified for each and every need specified in

⁴⁵ *Op Cit 43.*

⁴⁶ SEND Code of Practice.

section B. It should be clear how the provision will support achievement of the outcomes.”

Out of the 17 semi-structured interviews, 16 respondents had formally requested assistance from the local authority and out of those, 6 respondents (37.5%) reported that the ECH plans which they received were vague, imprecise and lacking specificity. Many also felt, that such imprecision was a deliberate and intentional approach to allow a level of latitude in its application. An examination of the casefiles revealed that 2 out of the 5 parents (40%) also complained about the absence of clarity and specification within the plans. It was also clear that this lack of specificity caused delay for many of our participants and had significant impact on the overall experience of obtaining a plan.

Lack of clarity

A lack of detail and clarity was one of the main issues which parents reported in their criticism of their children’s EHC plans. Many respondents reported that their children’s plans were vague and unquantified. This was evident from one of the casefile reviews wherein the parent of an autistic boy stated that the plan was very “vague” and “very late”.⁴⁷ Another parent said of the plan she received:

*“When it came through ... I didn’t think it had any substance. I didn’t think it was going to be the golden ticket do you know what I mean that your going to get the support you need etc. But it was very bland erm unquantified and it gave the school so much room to not tighten up what they were doing ...”*⁴⁸

The respondent stated that the lack of clarity within the plan “leaves school room not to be pinned down”.⁴⁹ Similar concerns regarding the imprecision, the clarity and coherence of plans were further recounted by many parents. Evidence included:

“...in all honesty the plan was not worth the paper it was written on, it had no accountability whatsoever”.⁵⁰

“...well I can’t make head nor tail of it, it’s supposed to be from what I’ve read, it’s supposed to be clear and easy to understand ... I haven’t got a clue. I’ve looked at it about 5 or 6 times and then I sat down and looked at it properly to try and

⁴⁷ Casefile review 5.

⁴⁸ Respondent 13.

⁴⁹ Ibid.

⁵⁰ Respondent 17.

*have a look on sites to see whether I can match it to what it should be like. and basically, it uses all of the expressions and the words that you're not supposed to say, like access to ...".*⁵¹

Similarly, one of the respondents explained that as she became more familiar with EHC plans and with how they should be drafted, she consequently questioned the content and the wording of the plan she received. She queried “*why hasn't he got speech and language in, why haven't OT been to see him*”⁵² and further stated: “*I noticed it was “as required, when required, access to, opportunity or benefit from which means they don't have to support the child in any way. It's very vague.*”⁵³

Another respondent described the plan as poor in quality overall, the plan “*was full of typing errors, spelling mistakes, inconsistencies, vague, not specified, not quantified, contradictions.*”⁵⁴ When she received the draft, she said “*We spent hours upon hours amending everything, putting a line through it, we followed the same code that they do for the tribunals highlighted and strikethrough*”.⁵⁵ But when she received the final plan it “*was exactly the same as the first*”.⁵⁶ Similar frustrations were expressed by other respondents. One parent of a child transferring from nursery to primary school informed us; “*The plan was very vague and so nursery had to tell school what needed to be done.*” Indeed, one of the overarching concerns expressed by the respondents was the link between the lack of specificity within the plans and the consequential impact this would have on the quality and extent of the provision which schools would subsequently have to provide. Such concerns were aptly summarised by one of the respondents who stated:

*“I felt like the first plan was deliberately vague to allow you know a broad interpretation. There was lots of, erm, phrases like may benefit from or could benefit from.”*⁵⁷

Expert evidence

Some respondents reported that the lack of specificity was because the expert reports on which the plans were based were themselves vague. These were reports commissioned by the school

⁵¹ Respondent 15.

⁵² Respondent 3.

⁵³ Ibid.

⁵⁴ Respondent 9.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Respondent 2.

or the local authority, not the parents themselves. Some respondents further reported a reluctance on the part of the local authority to obtain expert evidence or to identify that a particular report might be required (even when it was clear from the request that a child had an issue). This was evident from one of the participants who, after having sight of the plan stated “*why hasn't he got speech and language in, why haven't OT been to see him*”.⁵⁸

In a similar vein, one of the respondents reported a trade-off in relation to the formulation of the plan in question. She stated:

*“...so the agreement at the time We'll discharge him from speech and language because they basically haven't got the staff in Liverpool or the funding in Liverpool to maintain this. They're trying to discharge everyone so the report did say that [he] needed speech and language but we agreed not to have it that and agreed to have the ABA therapy. But we can't get back on the speech and language.”*⁵⁹

Another respondent told us that they felt a sense of worry that what was in the plan might be taken away if they insisted something else be provided and expressed that that they “*didn't want to rock the boat*”.⁶⁰ Similarly, another respondent stated that: “*Even though non-verbal he has no SLT, they discharged 2 years ago. There was SLT in his Plan but has been told that it is health and so they can't amend that part of the Plan.*”⁶¹

Similar obstacles regarding the difficulty in obtaining the relevant educational, clinical and psychological evidence to underpin the subsequent provision required to meet the child's needs was expressed by parents. In one instance the respondent:

*“...hired my own EP and my own SLT because the Council has refused a SLT assessment because school had said that he'd made progress. Even the EP referred to his difficulties though and we had raised it right at the beginning of the process”.*⁶²

Another respondent who had been home-schooling their child and who was now seeking to send him to school stated that although his child had sensory needs and they requested that a report be obtained, this was refused because the child was not known to the service.⁶³ Another

⁵⁸ Respondent 5.

⁵⁹ Respondent 8.

⁶⁰ Respondent 8.

⁶¹ Respondent 12.

⁶² Respondent 9.

⁶³ Respondent 2.

respondent also commissioned her own independent educational psychologist report which the Local Government Ombudsman subsequently recommended that the cost of it be reimbursed to her by the local authority.⁶⁴

The above-mentioned vagueness is problematic as it runs counter to the well-established principle that provision for children's SEND services be explicit and detailed. Given further that the principle of specificity is so widely known, it is unlikely that authorities in the Liverpool and Merseyside area are unaware of this important requirement.⁶⁵ It was unclear why the local authorities were reluctant to comply with the code of practice, but the evidence adduced by this investigation and as expressed by the respondents suggests that it is likely linked to a sense that schools require some flexibility. In other words, the lack of specificity permits the delivery of ad hoc and indeterminate provision, while simultaneously protecting the authority from challenge.

More fundamentally, if an EHC plan is unquantified, then it is difficult to know how funding arrangements are made. Vague phrases such as "access to" or "benefit from" are so imprecise, that it seems unlikely that the provision is adequately costed, if it is costed at all. This may mean that schools are not properly funded to implement the plan and that therefore children are not receiving provision to meet their identified need, which is required. The long-term consequence of this is that ultimately children's educational prospects are undermined and limited.

2.3. Social care

Key Findings

- Very few of our participants were in receipt of support from social services, though a number had requested it. In sum, only 5 out of the 17 participants in the semi-structured interviews referred to such support.
- None of the casefile reviews raised any issue concerning social care or additional support. This may be due to the very specific focus of the legal query underpinning the case itself.
- The type of support our participants requested from their social services departments was to give them a break from their caring role
- Those who were accessing support told us about significant delay

⁶⁴ Respondent 14.

⁶⁵ See case of *B-M and B-M v Oxfordshire County Council (SEN)* [2018] UKUT 35 (AAC).

Local authorities have duties towards children in need in their area⁶⁶ and disabled children constitute children in need.⁶⁷ Parents and carers of disabled children are entitled to be assessed as carers.⁶⁸ The majority of the participants within this study reported mental health difficulties and/or stress on their finances and family life and are accordingly entitled to an assessment.

Furthermore, EHC plans are designed to be holistic. Therefore, health and social care needs and the corresponding provision to meet such needs should be recorded.⁶⁹ The evidence from this study is that the few respondents that requested support, received it. When families were given support it was in the form of some sort of a short break – usually delivered via Fusion.

Request for support from social services

It was reported by one of the respondents that there “*there was nothing else out there we could tap in to*”⁷⁰ that was appropriate for their children’s needs. Another respondent reported that after she had requested support, there was a lack of communication which subsequently delayed the provision of support. She stated:

*“..got an assessment from Fusion but just didn’t phone back, I phoned 5 or 6 times and they kept promising ...he’ll ring back and he never did.” Fell off the list because didn’t keep pursuing it and then told when someone finally called them that there was a year’s wait because wasn’t on the waiting list because hadn’t contacted for x amount of time automatically come off the list.”*⁷¹

Another told us that they had asked for a break but were simply told that they could not access it. Similarly, another respondent reported that a recommendation was made at Tribunal for a s17 assessment and a carers assessment to be undertaken, while prior to this their authority had refused to carry out these assessments. Eventually this family were given direct payments to access support services.⁷²

While the majority of our respondents reported mental health difficulties and/or stress on their finances or family life (see section 2.4 below) very few of the respondents alluded to or directly

⁶⁶ Children Act 1989 s17(1).

⁶⁷ *Ibid.*, s17(10).

⁶⁸ *Op cit.*, 66, s17ZD.

⁶⁹ *Op Cit.*, 34. s37(2).

⁷⁰ Respondent 10.

⁷¹ Respondent 5.

⁷² Respondent 9.

referred to obtaining social care support. Indeed, one of the respondents highlighted a fundamental unawareness of their rights regarding social care and stated:

*“I only found out recently that there was, erm, a social care package for families, nobody ever told me this and I’ve always been concerned because there’s myself and my husband, we’re older parents and we have no-one, we rely on the good will of a couple of close family friends and my husband suffers from heart issues ... So a friend in passing about three months ago mentioned Fusion so I got in touch with them and they sent a social worker out but I believe it’s a two year waiting list”.*⁷³

Overall, the lack of reference to, and minimal engagement with, social care packages and/or entitlements by the participants within this study appears to suggest a lack of familiarity with their social care rights. The accounts provided suggest that they are likely to be entitled to assessments as carers and also that their children should have been assessed to consider whether they were entitled to any services under s17 Children Act or s2 Chronically Sick and Disabled Persons Act.

However, the majority of the issues underpinning both the casefiles reviews and the semi-structured interviews related to the level and quality of the educational provision being afforded to their children. While this of course reflects the natural concern of parents to ensure their children receive the relevant support and educational provision to enable them transition into adulthood, the general lack of familiarity with social care entitlements would further suggest that many children and families are being denied crucial services they are otherwise entitled to. However, such findings also align with recent research by Boesley and Crane who, after interviewing 16 special educational needs co-ordinators (SENCO’s), recounted their fear that “an over-emphasis on attainment could overshadow other areas of need that may affect the child’s learning”.⁷⁴ Ultimately, they concluded that EHC plans “were still being perceived as *education documents* and were not yet the wraparound care documents envisaged within the SEN reforms”.⁷⁵

⁷³ Respondent 7.

⁷⁴ Boesley, L & Crane, L (2018) ‘Forget the Health and Care and just call them Education Plans’: SENCOs’ perspectives on Education, Health and Care Plans, *Journal of Research in Special Educational Needs*, Vol.18, Number s1, 36 – 47, at p. 43.

⁷⁵ *Ibid.*, at p.44.

Freedom of information requests carried out as part of this investigation reveal that authorities in the Merseyside and Liverpool region do not treat all requests for services by parents as ‘referrals’ for an assessment as a child in need, which would trigger assessment duties. In response to the question: “*are all telephone or on-line requests from parents and or carers requesting services or support at home for their children with additional needs or disabilities recorded as a referral for a child in need assessment?*”, Wirral Borough Council’s response shows that of 336 contacts in a twelve-month period only 156 were treated as referrals for a child in need assessment, while Liverpool City Council reported all of the requests were treated as child in need referrals. Knowsley Council recorded all such requests as children in need referrals for assessments and told us that of the 20 requests they received 15 were dealt with under their single assessment framework.

Local authorities are obliged under the CFA 2014⁷⁶ to publish a local offer of services available to disabled children and their families. This offer should outline the provision of services available within the local authority area which it expects is available for children and young people with a SEND. The offer should include details of education, health and care provision, other educational and training provision, school travel arrangements and provision to assist children and young people with a disability transition into adulthood and independent living. Within this investigation, none of the respondents mentioned the Local Offer, nor did they report accessing it, or identifying services available to them via the local offer pages of their local authorities. Only one agency was mentioned that aimed to provide activities to children and a break to parents but the respondents that did allude to such services told us that either they were unable to access this service, or the waiting list was lengthy. Local authorities are also obliged to provide breaks to parents of disabled children, but our participants did not feel that there were services available for them and their children.

⁷⁶ See s30 CFA 2014; Part 4 of the SEND Code of Practice & Part 4 of the SEND Regulations 2014.

2.4. Impact on Family and Personal Life

Key Findings

- **15 out of the 17 respondents (88%) in the semi-structured interviews reported that the process of applying for, and obtaining, the relevant care and provision for their children had directly impacted their health, family and personal lives.**
- **This impact ranged from directly affecting the parental relationship itself to causing stress and anxiety among parents.**
- **14 out of the 17 respondents (82%) in the semi-structured interviews reported having to pay for either privately commissioned expert evidence to support their applications for an ECH plan or had to obtain external legal and advisory assistance to enable them succeed in their applications for support.**
- **Many respondents also reported that the process had a direct economic impact on their lives with 7 out of the 17 respondents (41%) reported having to give up work, close down their business or drop to part-time hours.**

One of the major findings from this investigation was the unanimously negative and debilitating impact which navigating the current SEND framework was having on parents. Many respondents reported that they are suffering from increased levels of stress and anxiety, either as a direct result of seeking and applying for the relevant support for their children, or looking after their children's needs in the absence of such support. While the EHC planning process is envisaged to be collaborative and person-centred, many of the respondents within this study reported being ignored or lost in the system and of decision makers having very little understanding of their lives, which caused them considerable stress and anxiety. Such findings clearly align with previous research carried out by Holland et.al., which also revealed clear evidence of emotional strain among parents from a study carried out in the Hull and East Riding Areas of the UK.⁷⁷ In this present study, 15 out of the 17 respondents (88%) from the semi-structured interviews reporting that the process had a direct and negative impact on their health, personal and family life.

⁷⁷ Holland, J & Pell, G. (2018) 'Children with SEND and the emotional impact on parents' *British Journal of Special Education* Vol. 45, Issue 4, pp. 392-411.

One respondent who was home educating his child who had a diagnosis of ASD and communication and sensory difficulties and who had asked the local authority for support in September 2018, reported that the process of applying for an EHC plan and finalising the provision therein was having a clear impact on both his and his wife's health.

"...it's definitely had an impact on both mine and my wife's mental health, you know, home educating isn't easy ... Erm it has meant that we've had to take responsible for every element of [child's] care, education, upbringing over a very long period of time erm because there's very little support available".⁷⁸

Another respondent whose child had ASD and sensory processing difficulties and who received their draft EHC plan 23 weeks after applying for one stated that the process had caused:

"...massive stress overload, I ended up being off sick for 7 months with stress from my workplace ... and my sickness record was zero before that and I've worked there for 15 years".⁷⁹

Another respondent noted that the stress and anxiety caused by ensuring that their daughters were receiving the appropriate provision at school was *"affecting our relationship as well"*⁸⁰ while another parent whose son had ASD stated that the entire process, which included a delay in the initial diagnosis of autism, to securing the EHC plan was a negative and stressful experience which she said was dark time in her life.

"But it hasn't been easy and there have been times when it's definitely affected me and it's affected me and my husband because we've just felt like we were banging our heads against brick walls and I felt really lonely at times. Like, like, I just don't really know where to turn to or who to talk to about it erm, I think we're through the kind of dark times in the sense that we've got the diagnosis and, we've got the EHCP".⁸¹

⁷⁸ Respondent 2.

⁷⁹ Respondent 9.

⁸⁰ Respondent 10.

⁸¹ Respondent 16.

Additionally, a single parent of a child with ASD in addition to ADHD, oppositional defiance disorder and sensory processing disorder described the impact which the process of seeking and attempting to secure appropriate care and support for her teenage daughter as follows:

*“...so they’ve refused the plan ... she’s... I’m going to end up going off sick ... But, erm, there’s only so long that you can do that for because, erm, its just cruel doing it if the school don’t want her there and they’re not doing what they need to do, erm, you have no choice but to sort of withdraw from employment or go off sick until I can try and get the appeal done, assessment done, maybe go to tribunal”.*⁸²

In recounting the impact on her own personal health, she continued:

*“I struggle now ... I suffer horrendous migraines. I’ve got irritable bowel, erm, you know I don’t particularly... because we don’t go out in the evening and I don’t get to really go out”.*⁸³

Economic Impact on Families

Aside from the personal and emotional strain which many of the respondents reported, the study also found evidence of a widespread practice of parents having to privately pay for, commission, or fund external expert and legal advice to assist them in securing the relevant SEND provision for their children. Indeed, the evidence spoke to an underlying assumption and belief that the appropriate provision could otherwise not be obtained in the absence of such external support. With 14 out of the 17 respondents (82%) from the semi-structured interviews availing of external legal and professional services, the financial impact of obtaining SEND provision for their children presents as a worrying and normalised reality. Some parents spoke about being “*in debt*”⁸⁴, while another parent expressed her fears that she would have had “*to re-mortgage the house to afford a solicitor*”⁸⁵ if she was unable to obtain the necessary support for her child who had a diagnosis of ASD.

⁸² Respondent 11.

⁸³ Ibid.

⁸⁴ Respondent 5.

⁸⁵ Respondent 7.

One parent highlighted the fact that she had to commission a private speech and language assessment for her child costing £900 owing to her concerns that the school and local authority were not heeding her worries about her child's speech and language development.

*“So then I had to also get a private speech and language assessment done ... they [school and local authority] just discharged him again and I'm saying he been dis-applied for SATS down to the fact that he's got no understanding of language but your speech and language therapists are saying he's absolutely fine and he's not”.*⁸⁶

Another parent of a non-verbal autistic child, spoke of the costs incurred in commissioning a private educational psychologist report at £1200, the self-funding of Applied Behavioural Analysis (ABA) for her child for six weeks and solicitor fee's in the region of £1600, all to secure the appropriate educational outcomes for her child. In relation to the impact this had, she stated:

*“It was... it just stops you from living a normal life, it does give you anxiety, and as I say, when it comes to the money its all just spent on like professional to try and help you... you know get the right education for your son”.*⁸⁷

Many respondents emphasised the importance of legal advice in enabling them to secure the necessary support for their children. Be it through direct legal channels or through charitable, support or non-governmental organisations, the centrality of legal advice was a key determinant of parents obtaining the essential support for their children. As one parent noted:

“I think that the use of the law to be able to showcase the rights of the child means that school then realises that they've got somebody that's knowledgeable, that's going to challenge them ... it's such a complex environment table to say that hat when I started to be able to say that erm there shouldn't be this passivity it should be proactivity and that he legally should have access and rights and that you [the

⁸⁶ Respondent 5.

⁸⁷ Respondent 12.

school] should be telling me why you're not putting in this because he's erm able erm and that it should be all this it should be done in a timely manner".⁸⁸

However, the issue of external expenses raises the connected issue of those parents who simply cannot afford to commission expert evidence or pay for professional advice. In those instances, the question of whether their children are obtaining the proper and necessary services to ensure their educational, health and care needs are being met becomes a critical concern. If an awareness of legal knowledge including the rights of children and the correlative duties of schools and local authorities to meet the needs of the child are fundamental prerequisites, or influential factors, in obtaining the relevant statutory provision for children, then this creates the real possibility of a two-tier system emerging regarding SEND provision. In other words, if the realisation of children's statutory entitlements is dependent on, or becomes substantially aligned with, the economic purchase power of parents, then many children will have their educational, health and care needs denied. As one parent of a child with ASD in this study noted:

"we paid privately for [child] to have counselling on two separate occasions because we just weren't willing to get in the queue for the school ... But again we're very lucky that we can afford to do that erm you know not many families couldn't afford 50 pound a week for their child to go and see you know a private counsellor".⁸⁹

In addition to the forgoing, 7 out of the 17 respondents (41%) in the interviews also reported having to either give up work, reduce their working hours and even close their business to attend to their children's needs and ensure they were receiving the relevant provision. One parent noted:

"It's a lot of pressure on me, there's a lot off meetings that I go, got to go to, I only work part time because I can't go back fulltime because there's always something that I've got to do at meetings or what have you".⁹⁰

⁸⁸ Respondent 13.

⁸⁹ Respondent 14.

⁹⁰ Respondent 8.

Similar sentiments were expressed by another parent who reported that the stress and anxiety associated with the process of obtaining the relevant care and provision for her autistic son was “a contributory factor”⁹¹ in her leaving work.

*“Because my husband, erm, he had his own business and we got to the point where because we were getting called to the school more or less every day and if I was in work, I’d get calls from the school as well. But we were getting called to school more or less every day because of an incident or to come pick him up or to come in and see them .. in the end I wasn’t able to carry on with work”.*⁹²

Legal Advice

In addition to the foregoing, several of the respondents stated that the ability to understand and use the law or to access professional or legal advice was transformative. None of the respondents reported receiving free legal advice under the Legal Help scheme⁹³ and so advice was paid for privately. Where parents obtained expert reports, this was also paid for privately, as noted above. The positive impact of obtaining legal advice was evident from the responses given by the respondents. These included:

*“Then I got solicitors involved and suddenly I get home schooling. Solicitors chasing the Plan which she rejected 2 years ago and asked for amendments to”.*⁹⁴

*“Threat of legal action was enough for them”.*⁹⁵

Similarly, another participant reported that she had legal advice at the beginning of the process and that getting the plan was “straightforward”.⁹⁶ There is no question that overall the respondents within this study found the process to be extremely difficult. They seemed unable to hold the local authority to account for delays or felt powerless to force changes and when they achieved any changes it was only following a difficult and time-consuming process. Parents felt that they were unsupported and that they had to fight for services for their children.

⁹¹ Respondent 16.

⁹² Ibid.

⁹³ Legal Aid is available for appeals to the Tribunal provided the means criteria are met, though representation at the Tribunal is not covered.

⁹⁴ Respondent 4.

⁹⁵ Respondent 5. She had obtained advice from a charity and had paid a small hourly amount. Got advice at 28 per hour. The total cost was around £1200.

⁹⁶ Respondent 6.

This clearly had an impact on most aspects of their daily lives, and in some cases continues to do so.

Legal aid is - however - available in education cases to appeal to the SEND Tribunal against a decision of the local authority, provided eligibility criteria are met, though not available for representation. The majority of the respondents in this study recounted difficulties *prior* to decisions being made by the local authorities and thus before appeal rights are triggered. At this stage advice is available from third sector organisations or from solicitors/advocates for a fee. Merseyside authorities, like all local authorities, are under a duty to arrange for advice services. Liverpool City Council and Knowsley Council provide this jointly. Other authorities provide their own. None of the respondents in this investigation reported receiving advice from their local agencies. Those who managed to access advice from a professional (though not necessarily a legal professional) saw this advice as very useful.

Overall, the findings demonstrate the enormous toll this process has on parents. It further evidences a reluctance by the local authorities to comply with the legislation and the accompanying code of practice. The findings further indicate that an increase in access to advice and support may well benefit families and lessen the detrimental impact which the current process is having on them. Currently, some parents access this at a significant financial cost to them and their families.

2.5. Failures at School Level

Key Findings

- **The accounts given by the respondents revealed clear variable practices regarding SEND provision within schools. In some instances, parents reported outright failures on the part of the school itself to assist, develop or support their children’s needs.**
- **16 out of the 17 respondents in the semi- structured interviews directly referred to the role of the school regarding their children’s SEND provision with 15 out of the 17 respondents (88%) reporting instances where they felt the school were unhelpful towards and/or unsupportive of their children’s needs.**
- **In some cases, parents reported conduct which amounted to schools engaging in illegal behaviour with 5 out of the 17 respondents (29%) conveying examples of unofficial and illegal school exclusion.**
- **An examination of the 5 casefile reviews revealed that children 3 out of the 5 parents (60%) had experiences of their children being excluded from school. In some cases, children had suffered multiple exclusions while in one instance, a child was told not to come back to school, otherwise a permanent exclusion would follow.**
- **The case-file review also revealed that 4 out of the 5 parents (80%) expressed negative feelings about the school’s ability to assist their children’s need while the remaining parent conveyed a tentative and lukewarm approval of the school’s support.**

Education plays a critical role in the development of children’s skills, abilities and potential. Fortin contends that the “right to be educated is probably one of the most important of children’s moral and legal rights; without it they may be unable to develop their ‘personality, talents, and mental and physical abilities to their fullest potential’”.⁹⁷ Therefore, its unique status as a ‘multiplier’⁹⁸ right, meaning one which activates the operation of other human rights, comes as no surprise. For children with disabilities, the right to education plays a crucial role in equipping them with the skills to live full, free and independent lives. Indeed, those aims, in addition to enabling children and young people with disabilities to transition into adulthood, either in terms of employment, training or further and higher education are a central objective

⁹⁷ Fortin, J., (2005) *Children’s Rights and the Developing Law*, Cambridge University Press, p 162

⁹⁸ Annual report of the Special Rapporteur on the right to education, Katarina Tomaševski, submitted in accordance with Commission on Human Rights resolution 2000/9, 11 January 2001, E/CN.4/2001/52, at para 11.

of the new legislative framework in England.⁹⁹ In that regard schools assume a central role in those endeavours and have specific obligations which they must follow. According to the SEND Code of Practice, schools must;

- Identify and address the SEN of the pupils they support.
- Use their best endeavours to make sure that a child with SEN gets the support they need – this means doing everything they can to meet children and young people’s SEN.
- ensure that children and young people with SEN engage in the activities of the school alongside pupils who do not have SEN.
- Designate a teacher to be responsible for co-ordinating SEN provision – the SEN co-ordinator, or SENCO (this does not apply to 16 to 19 academies).
- Inform parents when they are making special educational provision for a child.¹⁰⁰

Aside from the foregoing, schools also have responsibilities under the Equality Act 2010 to not unlawfully discriminate, either directly or indirectly, against pupils on the grounds of disability and further to make reasonable adjustments so that all disabled children can fully participate in their education.¹⁰¹

However, despite these obligations, the evidence gathered from this localised investigation revealed clear divergent and variable practices regarding SEND provision within schools in the Liverpool Area. Overall, the unanimous feeling from parents was that the schools were either not meeting the needs of their children, or were unsupportive and unhelpful in their efforts to provide such support. In sum, 15 out of the 17 parents (88%) responded in negative terms about the help and assistance their children had received at school, thus painting a bleak picture concerning the ability of schools to meet and support the needs of children with a SEND. Such evidence also points to schools deviating from their prescribed obligations to engage with and do everything they can to support children with SEND.

On parent of an 11 year old child with autism, in addition to complex learning difficulties and neurodevelopmental delay, reported completely different levels of assistance which was provided to her child between two different schools. In the first school it was reported that;

⁹⁹ Part 6, SEND Code of Practice.

¹⁰⁰ Ibid., 6.2.

¹⁰¹ Equality Act 2010, s.20. See also Equality and Human Rights Commission (2015) TECHNICAL GUIDANCE Reasonable Adjustments for Disabled Pupils, Guidance for Schools in England.

“at the end of the infants erm he was struggling a lot ... we weren’t getting the support from the SENCO and he was getting bullied quite considerably which was affecting his confidence and he had a tremor as well and erm he was getting made fun of quite a bit”.

While in the second school, it was reported:

*“Se we decided to move him to another mainstream school after erm seeking advice from that mainstream school that they would be able to support him more appropriately ... we had a lot of support from her [THE SENCO] and we got the plan quite quickly within the first year of him attending that school”.*¹⁰²

Another parent of an 11 year old boy with autism spoke about her fears of her son’s educational development regressing, citing the fact that *“he’s non-verbal and he’s been discharged from speech and language”*.¹⁰³ This was in addition to the fact that there was clear uncertainty about his transition to secondary school on account of the failure of the authorities to carry out Educational Psychologist and Occupational Therapist assessments within the necessary timeframe to ensure all relevant paperwork was completed to enable transition to secondary school. On the issue of whether her son would be going to secondary school in September, at the time of interview on the 5th June 2019, the respondent stated that *“we don’t know it’s on hold its on hold”*.¹⁰⁴

Another parent of a 9 year old autistic boy with speech and language difficulties, social interaction issues and an aggressive form of absence epilepsy where he could have *“20 or 30 episodes a day”*¹⁰⁵ also expressed concern about whether the school was doing everything they could to assist her son. She stated:

*“...we’re pushing the school to look at top up funding to try and get more dedicated support ... School was just saying watch and wait ... so that seemed very much to be a delaying tactic”.*¹⁰⁶

¹⁰² Respondent 16.

¹⁰³ Respondent 12.

¹⁰⁴ Ibid.

¹⁰⁵ Respondent 13.

¹⁰⁶ Ibid.

While additional funds were subsequently deployed for her son's education, the respondent reported that this *"was a massive, massive fight"*¹⁰⁷ and further reiterated her concerns that the school was not doing everything they can to support and develop her son's education by stating that *"he's at the end of year and he can't read and write"*¹⁰⁸. Other examples given by the respondents within this investigation and which speak to their concerns about the failure of schools to support their children's SEND needs include situations where children were *"dropped down to lower sets in certain subjects"*¹⁰⁹ even though their parents felt they *"could do better"*¹¹⁰, an example where the school explicitly told one parent of an autistic boy with ADHD that there was *'no point'*¹¹¹ in applying for an EHC plan because *"we haven't applied for higher funds yet"*¹¹² and another example where the respondent stated that the SENCO in the school where her daughter with ASD, dyslexia and irlen syndrome attended was neither supportive nor approachable.¹¹³

Indeed, similar concerns were expressed by other respondents pertaining to the quality of the support and assistance which the school's SENCO was providing. In one case where the respondent was intending to formally request assistance for his ten-year daughter with ASD, he reported that:

*"...the school didn't have a clue the school really didn't have a clue they didn't have a substantive SENCO in place to be able to do it ..."*¹¹⁴

However, given the centrality which SENCO's play within the provision of SEND support for children and young people within schools, the variable expressions of confidence in the ability of schools and their SENCO's to discharge their responsibilities within this study becomes apparent. While this investigation did not ascertain the views of school leaders or indeed SENCO's in relation to the management of their duties, it is important to set these concerns against the wider national educational canvas, as recent research by Curran et.al., into the ability of SENCO's to fulfil their role's effectively presents an austere picture of the current

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Respondent 10.

¹¹⁰ Ibid.

¹¹¹ Respondent 15.

¹¹² Ibid.

¹¹³ Casefile 4

¹¹⁴ Respondent 17

state of affairs.¹¹⁵ Specifically, Curran et.al's, findings that 74% of SENCO's do not have enough time to ensure that children and young people with SEN are able to access the supports they need, and that only 23% of them felt that they had enough time to ensure that pupils with an EHC plan accessed the provision they require points to wider institutional and resource issues which are directly impeding children's SEND services. Thus, in view of such realities, further research into the ability of SENCO's to perform their critical functions within the Liverpool and Merseyside area is required.

Unlawful School Exclusions

Numerous respondents within this study also reported situations whereby their children had been excluded from school in circumstances which are in direct breach of the legal regulations governing school exclusions.¹¹⁶ Although exclusion from school in certain circumstances is a permissible feature of English educational law and policy, its deployment as a punitive sanction is tightly regulated and subject to specific and identifiable obligations which are expected of the school in question. In this regard, schools can only exclude children for persistent breaches of the disciplinary code and the decision to exclude must be lawful, rational, reasonable, fair and proportionate. An exclusion of a child from school on the grounds of disability can also potentially give rise to a claim of discrimination under the Equality Act 2010. Moreover, all exclusions must be recorded and should only be used as a measure of last resort.

However, in this study, 5 out of the 17 respondents (29%) reported schools requesting them to remove their children from the school itself in circumstances which amounted to unlawful school exclusions. For these parents and their children, the prevalence of this illegal behaviour was deep-rooted and extensive. One parent of a 10year old autistic child who had already been subject to three fixed term exclusions stated that after the third exclusion, her son's education was reduced to a half day of instruction.

“...after the 3rd erm fixed term exclusion we had to sign, at that point they said that the Council had brought in erm something that a child would just be able to attend

¹¹⁵ Curran et.al. (2018) *It's about Time: The impact of SENCO workload on the professional and the school*, <https://www.bathspa.ac.uk/media/bathspaacuk/education-/research/senco-workload/SENCOWorkloadReport-FINAL2018.pdf>.

¹¹⁶ See s52 Education Act 2002; Department of Education (2017) *Exclusions from maintained schools, academies and pupil referral unites – A guide for those with legal responsibilities in relation to exclusion*; School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 & The Education (Provision of Full Time Education for Excluded Pupils) (England) Regulations 2014.

*the school half a day. So for the last half term that's all he did, he was escorted into the school and I would you know escorted out of the school for half a day and that was dreadful for him absolutely dreadful".*¹¹⁷

Another parent of a 5year old with autism who was excluded at the age of five believed that he “got excluded for autism behaviours basically in crisis, he was in crisis he's hit out”.¹¹⁸ Following the exclusion, the parent reported that “he hardly ever did a full day in school”.¹¹⁹ and that “they'd send him home meant to be sick erm”.¹²⁰ Similarly, another parent of a 10year old autistic boy who was excluded from school and who has been out of school for two years stated that her son's initial fixed term exclusion was subsequently changed into a permanent exclusion. She stated that “it changed within like a few days to permanent ... it just changed because they said they didn't feel like they [the school] could protect [child's] safety or everybody else's”.¹²¹ Prior to the exclusion however, the respondent stated that she “had loads of times where I've been called in and I had to get him”¹²² and that “the first two years he was there he never ever did a full day he only ever did half days”.¹²³

Additionally, another parent stated that her 9-year-old autistic son with autism had been illegally excluded from school 5 or 6 times within a three-moth time timeframe “between November and January”.¹²⁴ She further stated that:

*“...there'd be times when they'd say oh he's not, you need to pick him up because he's quite stressed today and it might be because, I remember one period they'd changed the classroom round and he was just was quite whingy and quite sort of but you know it's not that he'd ever go absolutely ballistic”.*¹²⁵

These direct personal testimonies of multiple and extensive illegal school exclusions strike right at the heart of the child's right to education. Given that all of the children involved possessed a diagnosis of autism, which itself has a complex pathogenesis, the prevalence and intensity of illegal exclusions raises a number of legal and accountability questions, not least the duty to provide alternative suitable education for these children. Although the practice of

¹¹⁷ Respondent 16.

¹¹⁸ Respondent 5

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ Respondent 4.

¹²² Ibid

¹²³ Ibid.

¹²⁴ Respondent 7.

¹²⁵ Ibid.

illegal school exclusions has been highlighted repeatedly with consistent calls for such behaviour to cease,¹²⁶ the evidence gathered within this study highlights the practice is very much an active, and extensive reality in certain parts of the Liverpool and Merseyside area. Illegally excluding children from school in direct contravention of the statutory and legal framework should not occur but rather schools should follow their obligations to ensure that everything is being done for children on SEN support or those in possession of an EHC plan. Put another way, children with a SEND should not have their right to education summarily dismissed on account of their SEND. Moreover, the evidence of illegal school exclusions also corroborates wider national research which demonstrates that the official school exclusions figures are themselves only “the tip of the ice-berg in terms of the full extent of exclusion”.¹²⁷

In addition to the interviews, an examination of the five casefiles revealed that 3 out of the 5 parents (60%) had experienced their child being excluded from school. Two of these children possessed a diagnosis of autism while one was on the autism pathway. All three had also experienced multiple cases of school exclusions. In one instance, the parent of a 10 year old boy who had two fixed term exclusions was told that he was going to be permanently excluded, thereby effectively translating a fixed term exclusion into a permanent exclusion. Another parent reported that her 14-year-old son who was on the autism pathway and who had already been excluded numerous times was told after the latest exclusion to not come back to the school and to attend a different school, or otherwise face expulsion. Similarly, another parent of a 14 year old girl with a diagnosis of autism and who had already been excluded from school six times, felt that the school did not understand her daughter’s condition and failed to appreciate the behavioural dimension to autism.

The high rate of multiple school exclusions in this study among children with a SEND, and with autism in particular raises several issues which warrant consideration. Chief among these is the level of understanding displayed by schools that certain types of behaviour are intimately connected and interwoven with underlying conditions and the extent to which that understanding informs and influences the head teacher’s decision to exclude. The evidence gathered as part of this investigation reveals two key points. The first is a worryingly high correlation between children with autism and their susceptibility to being illegally excluded

¹²⁶ For example, see Office of the Children’s Commissioner (2013) “*Always Someone Else’s Problem*”, Office of the Children’s Commissioner for England (2017) *They Never Give up on You*, Office of the Children’s Commissioner for England, (2019) *Exclusions: Children excluded from mainstream schools*, (May 2019).

¹²⁷ See Gill K (2017) *Making The Difference: Breaking the link between school exclusion and social exclusion*, IPPR. <http://www.ippr.org/publications/making-the-difference>, at p.7.

from school and the second is the clear belief by parents that the behaviour underlying the decision to exclude is connected with their child's autism.

2.6 Systems-Wide Communication and Transparency Failures

Key Findings

- **The accounts given by the respondents within this study revealed clear systems-wide communication and transparency failures in relation to the overall process to obtain the relevant SEND provision for children. These failures ranged from examples of the school and local authorities misinforming parents, not responding to phone calls and emails to instances whereby communication between parents and the school and/or local authority had either broken down or was severely strained.**
- **Of the 17 respondents who took part in the semi- structured interviews, 16 had formally requested SEND provision. Out of these 16 respondents, everyone reported some evidence of systems-wide failings which either prolonged the delay in obtaining the relevant support for their child or exacerbated the stress and anxiety attached to the process.**
- **An examination of the 5 casefiles revealed that 4 out of the 5 parents (80%) had experienced some level of communication difficulties with the school and/or local authority in relation the SEND provision for their children. This ranged from tension between the parents and the school and/or local authority to the outright refusal of the school to talk to the parent in one particular instance.**

In addition to the preceding findings, this localised investigation also found clear indications of broader systems-wide failures in relation to the provision of SEND support for children. In particular, the evidence adduced as part of this study paints a picture of a system whereby many parents are left in the dark regarding their children's provision which is further compounded, in many instances, by the failure of the school and/or local authority to communicate with and respond to the concerns of parents. The net effect of this is that it contributes to the prolonged delay and denial of important support for children and/or the aggravation of the parental anxiety and stress which has been shown to accompany the process. In some cases, parents reported that the application and navigation of the system governing SEND provision "*was definitively not a straightforward process*"¹²⁸ while another parent expressed concern that speaking up, raising questions and seeking answers generated a "*fear of being a problem mum*".¹²⁹

¹²⁸ Respondent 16.

¹²⁹ Respondent 13.

Additionally, one of the respondents reported that the local authority directed that she obtain the necessary evidence herself to support and inform her child's EHC plan. She stated:

"...we asked the local authority for all these things in the EHC and they basically said no erm, for us to get that in his EHC we needed evidence so we've had to go out then and pay for additional reports to support ...".¹³⁰

In sum, 16 out of the 17 respondents in the semi-structured interviews had formally requested SEND assistance from the local authority. The respondent who did not formally apply for assistance revealed that the failure to do so was borne of pre-existing concerns about the perceived intractability of the process and stated that:

"I've avoided it because I've raised it with the school a couple of times ... I know that it would be a battle and I actually haven't got the energy to fight that one yet".¹³¹

Of the 16 respondents who had formally requested SEND assistance and provision, all expressed some concerns about the lack of communication and transparency underpinning the process. Indeed, the sole respondent who had their request for provision dealt with within the relevant timeframe did nonetheless admit that their application was not only supported by an external expert but also that it took three separate emails to the local authority, the last of which contained a threat of legal action, to confirm whether they were going to agree to an EHC plan.¹³²

One of the most common indicators of the systems -wide failings within this investigation was the lack of communication between the council and/or school and the parent concerned. One parent of an 8 years old boy with autism who had been waiting 62 weeks for his EHC plan to be finalised and who had complained to the Council stated that:

"Well I sent the email and I had a response within 2 hours you know not an apology as such basically erm again a little bit of a fob off blaming cuts".¹³³

Another parent noted that despite her request to avoid naming a particular school on her son's EHC plan owing to concerns about the inability of the school to meet her son's needs, the council named the school on the plan, nonetheless. The parent noted: *"I got the EHCP through*

¹³⁰ Respondent 8.

¹³¹ Respondent 10.

¹³² Respondent 6.

¹³³ Respondent 7.

*she'd put [said] school on it after me asking her not to and then she ignored my calls for 13 months". Another parent noted that when the issue of her son's school placement was the subject of an annual review which itself was overdue "the education officer didn't turn up she gave us a phone call 10 minutes before ... Despite the fact she'd spoke to me the day before confirming she was going to be there and it was based around her availability.".*¹³⁴ As a result no council or local authority representative was present at the review stage. The same respondent was also told that her son could not be educated in an out of borough school and that *"you can only have in Borough"*.¹³⁵ However, after freedom of information requests, the respondent found out that that this was incorrect. She stated:

*"At the time there was 33 being educated out of Borough, there was 99 with an ASC diagnosis being educated out of Borough and 17 out of the 99 erm were going to private independent schools".*¹³⁶

Aside also from such misinformation, much of the evidence gathered within this study spoke to the absence of a lack of communication between the local authorities and/or school and the parents concerned. In one case, a managed transfer of a 17year boy with autism and ADHD to another secondary school never materialised and both the child and parent were left with no clear indications as to why this was the case. The respondent stated:

*"They never even had the decency to sit with him and say [X] look we can't do this they never even met, we asked we asked for a meeting with them with [X] so they could say to [X] you've done this and we can't, but non f that. They wouldn't even give him the decency and the closure he needed and they just left him and you think how dare they play with kid's lives ...".*¹³⁷

In another case, the parent of a 7year old autistic child who was being home educated but who now wanted him to go to school and to receive the appropriate support and provision for his needs spoke of the lack of communication and assistance from the council. The respondent stated:

"I've got tired of ringing them and not getting a response ... At one point, having, it took over 3 weeks to get a response. I emailed and then phoned every few days 3

¹³⁴ Respondent 5.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Respondent 1.

weeks before I finally got a response to my email which was basically telling me nothing's happened ... I was told that the Commissioner had made the decision about this new school, I asked to speak to her, she wasn't available so I asked if she could call me back. When I rung back a week later I was told she refused to call me back because she had nothing more to say. I then asked for the most senior person in the office to call me and she hasn't done that either, so they're just refusing to talk to me."¹³⁸

Similar communication deficits were also recounted by the other respondents. These were varied in nature and included:

*"...so there was this massive breakdown of communication with school erm communication was non existent erm they said, we had a meeting with the local authority in school, because I then reported that school were not meeting needs of the current final plan."*¹³⁹

While local authorities are of course operating under increased workloads and within ever constricting financial parameters, the failure to communicate with and respond to parents in relation to their children's educational, health and care needs has a direct derivative impact on the child herself. The abundance of evidence relating to the above-mentioned communication deficits arguably also, by extension, possess the capacity to nullify transparency and parental confidence within the system. If parents are, in the words of one of the respondents "*just constantly getting fed doss and fed doss*"¹⁴⁰ then the very integrity of the legislative framework which seeks to ensure children have their SEND needs met is compromised. Moreover, the importance of effective, transparent and timely communication was highlighted by Adams et.al., who stated that one of the factors which caused parental dissatisfaction within the EHC planning process was the lack of communication on the part of the local authority and which included the failure to respond to the emails or telephone calls.¹⁴¹ Indeed, the urgency to remediate the current problems within the system is captured and reflected by the words of one of the respondents within this investigation.

¹³⁸ Respondent 2.

¹³⁹ Respondent 9

¹⁴⁰ Respondent 7.

¹⁴¹ Adams et.al. (2018) Department of Education, *Education, Health and Care Plans: A qualitative investigation into service user experiences of the planning process*, Research report, January 2018.

*“It’s not right that we’re in a system where ... the only way or potentially the only way that you get the result you want is to just go for it every day and fight and fight and fight and that seems to be very unfair when your daily life is looking after a child and loving someone so much and just waiting the best for them”.*¹⁴²

3. Conclusion and Recommendations

In conclusion, the findings within this investigation into SEND service provision for children and young people within the Liverpool and Merseyside area reveal several distinct issues. Overall, parental experience of navigating the SEND system to obtain the necessary support for their children, within this investigation, was negative. Many complained of a system which was unhelpful, unsupportive, overly antagonistic in practice and one which was hugely demanding on their personal, familial and economic well-being. Considering the findings as outlined in the preceding sections, this report makes a number of recommendations in order to improve SEND service provision in the Liverpool and Merseyside area to enhance children’s SEND provision and restore organisational confidence to a critical aspect of children’s services.

Recommendations for Reform

- I. Given the complexity of this area of law, the local authority should appoint a specialist lawyer with knowledge of, and responsibility for, SEND law. This lawyer should ultimately manage and oversee the local authority SEND caseload and liaise directly with the Director of Children’s Services to report the progress made regarding meeting their statutory responsibilities to meet children’s needs.

- II. Local authorities should take steps towards genuinely adopting a holistic approach to Health, Education and Social Care. In this regard, active consideration should be given to whether the child or her family require social care services. This should be formally assessed by the local authority and the outcomes of the assessment directly communicated to families.

¹⁴² Respondent 14.

- III. Social Care services should be publicly advertised and made more accessible to families. This could form part of an information package which would be given to families who request SEND support for their children.
- IV. Increased oversight of school behaviour in relation to illegal school exclusions must take place as a matter of urgency. In this regard, a confidential system should be put in place permitting school staff to report instances of unlawful school behaviour to the local authority.
- V. Independent legal advice should be made more freely available by local authorities through the statutory advice service. This should include more effective signposting to legal advice services when a decision is made which can give rise to a right of appeal.
- VI. The local authority should introduce a system to ensure that their SEND officers are aware of and comply with approaching time limits (including taking responsibility for annual reviews). This should and would form part of the professional remit of the specialist lawyer recommended above.
- VII. The local authority should ensure that it's SEND officers communicate with parents and young people in an honest, open and understanding manner. A record of such communication should be kept on file to ensure this.
- VIII. The local authority should actively engage with parents' requests for expert reports, rather than obtaining them only to challenge the reports of parents.
- IX. The local authority should ensure that the expert reports which they obtain should comply with the SEND code of practice in relation to specificity and avoid general, nonspecific recommendations. This should include a direction, at the point of commission, that the report identifies and specifies the manner in which the child's needs should be met.