

Independent Provider of Special Education Advice (IPSEA) – Written evidence (PSC0010)

Inquiry: The role of public services in addressing child vulnerability

Summary

Children and young people with SEND are not intrinsically vulnerable because of their special educational needs or disability. They and their families are made vulnerable because of the failure of public services to uphold the law. With the right support, children with SEND can do well and achieve their potential. There is an urgent need for a more robust system of accountability to prevent unlawful decision-making by local authorities, and to ensure that children with SEND receive the support they need early enough to make a difference.

Introduction

1. IPSEA (Independent Provider of Special Educational Advice) was established in 1983 and currently advises more than 4,000 parents and carers of children with special educational needs and/or a disability (SEND) every year.
2. We deliver two free and independent telephone advice services to parents/carers and young people. Our Advice Line provides legally-based next step advice on any educational issue that relates to a child or young person's SEND, such as exclusion from school, discrimination and the process for securing additional support. On our Tribunal Helpline we give next step advice on proceedings in the First-tier Tribunal (Special Educational Needs and Disability) – more commonly known as the SEND Tribunal. This is also the gateway to our Tribunal Support Service through which we represent parents who are making appeals or claims to the SEND Tribunal. The Tribunal hears disputes between parents and local authorities regarding educational support for children and young people with SEND and also claims of disability discrimination against schools.
3. Our helplines and Tribunal Support Service are largely delivered by volunteers, which enables us to provide our services to parents free of charge. The range of services that IPSEA delivers across England places us in a unique position to identify trends and common issues.
4. As well as training parents and carers on the SEND law framework, IPSEA also provides regular training to bodies such as SEND Information, Advice and Support Services (SENDIASS), education professionals and local authorities.
5. **We have noted the Committee's terms of reference. This submission focuses on the experiences of children with SEND and addresses how vulnerability is defined (question 1), the role of central government in ensuring public services meet the needs of children with SEND and their families (question 4), and the extent to which children with**

SEND receive support from early intervention and preventive services (question 6).

6. IPSEA is happy to provide any further information that the Committee would find useful, or to provide oral evidence if required.

Defining vulnerability

7. **The main point to make about defining 'vulnerability' is that children and young people with SEND are not intrinsically vulnerable because of their special educational needs and/or disability. Rather, children and families are often made vulnerable by the way they are treated by the public services that exist to support them.** We know that with the right support, to which they are entitled by law, children with SEND can do well and achieve their potential. But to get that support, families often have to go to great lengths and fight hard to ensure their child's right to special educational provision is upheld. Many families do not have the resources to take on the necessary fight, with the result that there are big variations in the quality of support for children with SEND.
8. 'Vulnerability' has been a central concept in the national response to the Covid-19 pandemic and central to the provision of ongoing educational support for children with SEND. The pandemic, and measures to address it, had a hugely disproportionate impact on children with SEND.¹ When the first lockdown began in March 2020, many children lost the educational support and therapies they depend on, and families increasingly struggled. Children with Education, Health and Care (EHC) plans lost their right to the provision specified in their plan when the legal duties on local authorities set out in section 42 of the Children and Families Act 2014 were temporarily modified.² Children who rely on SEN Support at school fell into a gap in provision and were left without any additional support at all.
9. The definition during the Covid-19 pandemic of what constitutes a 'vulnerable child' changed over time. To begin with, the official definition was unclear, encompassing both children who have a social worker and children with an EHC plan. Many children who have an EHC plan do in fact have a social worker, because their disability automatically makes them a 'child in need' under section 17 of the Children Act 1989. But while every vulnerable child should have had the opportunity to attend school during the first national lockdown, this was not necessarily the case for every child with an EHC plan. While the Department for Education eventually clarified this,³ it could and should have done so earlier, to enable schools to plan provision and families to understand what should be provided for their child.
10. In the most recent national lockdown beginning in January 2021, the definition of 'vulnerable' changed to include every child with SEND who had

¹ [The-Longest-Lockdown.pdf \(disabledchildrenpartnership.org.uk\)](#)

² Department for Education (30 April 2020), Modification notice: EHC plans legislation changes.

³ Department for Education (May 2020), Guidance: Supporting vulnerable children and young people during the coronavirus (Covid-19) outbreak – actions for educational providers and other partners.

an EHC plan. However, the terminology remained problematic, with some parents questioning why the existence of an EHC plan made their child vulnerable.

- 11. We ask the Committee to state clearly that the extent to which children are 'vulnerable' depends on the quality of decisions taken by policy-makers, both nationally and locally, about the support available to them.**

Role of central government in ensuring public services meet the needs of children with SEND and their families

12. The Covid-19 pandemic exposed and intensified problems in the SEND system that already existed and were known about, and have been investigated in detail by the House of Commons Education Committee⁴ and the National Audit Office.⁵ **A fundamental problem is the disconnect between what central government says should be happening, and what children and families actually experience.**

13. The Education Select Committee put it like this:

"We heard countless examples of local authorities not meeting their statutory duties, and of schools deliberately or otherwise off-rolling, excluding and even discouraging parents from sending pupils to their schools. Many parents and carers are engaged in struggles with their local authority. Some of these struggles are by-products of the challenges of the current system, which has led to the experience of an acutely adversarial system. In some local authorities this is particularly problematic, with a minority having acted appallingly, against both the spirit and the letter of the law."

14. Too many children are not receiving the special educational provision to which the law entitles them, with widespread unlawful decision-making and poor accountability for decisions about the education and support provided to individual children. This is demonstrated by the steady rise in the number of appeals to the SEND Tribunal, with 95 per cent of decisions in favour of parents and against local authorities.⁶

15. This pattern of poor local decision-making is further demonstrated by the Local Government and Social Care Ombudsman, who is investigating more complaints about support for children with SEND than ever before. In 2018/19 the Ombudsman received 45 per cent more complaints and carried out 80 per cent more detailed investigations about EHC plans than in 2016/17. In 2019 the Ombudsman upheld 87 per cent of complaints about the .⁷ This compares with an uphold rate of 57 per cent across all other cases

⁴ House of Commons Education Committee (October 2019), Special educational needs and disabilities, First report of session 2019.

⁵ National Audit Office (September 2019), Support for pupils with special educational needs and disabilities in England.

⁶ Ministry of Justice (December 2020), Tribunal statistics quarterly: July to September 2020.

⁷ [A system in crisis? Ombudsman complaints about special educational needs at alarming level - Local Government and Social Care Ombudsman](#)

they look at, unrelated to SEND, suggesting that the system for supporting children with SEND is failing badly.

16. There is an accountability gap between central and local government that the local area SEND inspection programme is not adequately filling. Local area SEND inspections were introduced as a means to find out how well local areas are fulfilling their responsibilities for children with SEND.⁸ Since they began in 2016, Ofsted and the Care Quality Commission have found significant weaknesses across the country in identifying, assessing and meeting children's needs.
17. Before local area inspections were paused in 2020 due to Covid-19, 117 out of 151 local areas had been inspected. Over half of these (60 in total) had to produce a Written Statement of Action (WSOA) addressing the weaknesses the inspection had uncovered. Inspection outcomes have been steadily worsening, with 25 per cent of local areas having to produce a WSOA in 2016 and 60 per cent in 2018/19. Of the 60 local areas that had to produce a WSOA, 22 had received a re-visit by inspectors before the pandemic-related pause. Of these, nine have been 'approved' by inspectors, while the rest still show weaknesses, with the most common unresolved issues being the quality of EHC plans and joint working across education, health and social care. One local authority has been given formal notice that it has to improve, but there is very little information in the public domain about the remainder. The Department for Education has wide-ranging powers it could use. These include issuing the local area with a formal notice to improve its SEND services, removing a local area's control of the service, bringing inspectors back, or running their own improvement programme.⁹
18. The SEND system is failing children not because the law is wrong or non-existent, but because it is not being upheld locally – and there are no real consequences for this.
19. **We ask the Committee to recommend the introduction of a more robust accountability framework to identify when local authorities are not meeting their statutory duties to children with SEND, with clear and significant consequences for unlawful decision-making.**

Extent to which children with SEND receive support from early intervention and preventive services

20. **The earlier a child's special educational needs are identified, the greater the chances that they will be able to achieve their potential – assuming that their needs are met and support is provided.** The principles of the Children and Families Act 2014 and accompanying SEND Code of Practice are based on ensuring timely support to children to help achieve the "best possible educational and other outcomes".¹⁰ In practice, however, this is not what many children experience: "Too often a 'wait and

⁸ [Local area SEND inspection: framework - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/544242/Local_area_SEND_inspection_framework.pdf)

⁹ [SEND 2020: What's the current state of Ofsted local area inspections? - Special Needs Jungle](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/544242/SEND_2020_What's_the_current_state_of_Ofsted_local_area_inspections.pdf)

¹⁰ Department for Education/Department of Health (January 2015), Special educational needs and disability code of practice: 0 to 25 years.

see' approach is taken, or a difficulty is missed completely through lack of understanding."¹¹

21. Local authorities routinely refuse to begin the process of assessing a child's needs, and determining whether they need an EHC plan or whether their needs can be met through SEN Support in schools. Refusal to carry out EHC needs assessments is the most common reason for families to appeal to the SEND Tribunal. The vast majority of these appeals are upheld, with children eventually receiving an assessment and subsequently a plan – but only a small minority of the families whose children are refused an assessment pursue an appeal, meaning that an unknown number of children are left without the support they need.
22. It should not be necessary for parents to appeal to the Tribunal to get what their child is entitled to. Section 36(8) Children and Families Act 2014 could not be clearer that the threshold for EHC needs assessment is low: they must consider whether the child or young person has, or may have, special educational needs, and whether they may need special educational provision to be made through an EHC plan.¹² It appears that local authorities refuse initial requests to assess a child in order to delay the point at which they will need to begin providing additional funding to meet their needs. This may make sense from the point of view of local authority finances, but it has a serious impact on children with SEND who are struggling in school without the support they need.
23. **We ask the Committee to recommend that local authorities carry out EHC needs assessments when the legal test is met for an individual child, so that families do not have to routinely appeal to the SEND Tribunal to get the support their children need.**

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¹¹ [Identifying SEND in the Early Years: Partnership and collaboration is key - Special Needs Jungle](#)

¹² Department for Education/Department of Health (January 2015), Special educational needs and disability code of practice: 0 to 25 years.