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The Impact of COVID-19 on Education and Children's Services

Written evidence submitted by Dr Amel Alghrani and Mr Seamus Byrne (School of Law and Social Justice, University of Liverpool). We are both academic lawyers with expertise in children's rights.

Executive Summary

- The evidence presented in this written submission is based on the findings from an online survey which was completed by 234 parents/carers of disabled children, the purpose of which was to ascertain the impact which Covid-19 was having on children with special educational needs and disabilities (SEND). The evidence was collected between the 15th April 2020 and 15th May 2020 and of the 234 responses, 229 were from parents right across England, 4 were from parents in Wales and 1 from Scotland.
- Overall, the evidence reveals that Covid-19 is having a detrimental effect on the education of children with SEND in England. While evidence of good practice does exist, just under half of parents surveyed were dissatisfied with the level of educational provision their children were receiving since the closure of the schools on the 20th March 2020. This ranged from receiving no provision at all to work not being differentiated, too generic or beyond the ability of their children.
- Huge variations in the level of communication between schools and parents was evident with 14.7% of those surveyed reporting having received no contact at all from their child's educational provider. A further 95% of Local Authority's (LAs) had not contacted parents/carers about the child's education during lock down.
- Despite the government guidance on supporting vulnerable children which stated that local authorities, nurseries, schools, special schools, colleges and other training providers should undertake a risk assessment to establish the individual needs of each child or young person with an Education, Health and Care (EHC) plan; the majority of respondents (89.5%) reported that no a risk assessment has been undertaken for their child. Thus, the most vulnerable children in our society are going without vital education and healthcare support during this period.
- 87.8% of respondents revealed the broader devastating effect which Covid-19 was having on the health and well-being of their child and the wider family unit. Declining mental health, increased anxiety, social regression, behavioural breakdowns, and a cessation to essential health and therapeutic services were recurrent themes within the responses received.

Introduction

1. Children with SEND 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 These children also represent one of the most vulnerable population groups within our education system and endure higher rates of school exclusion⁴ and decreased employment opportunities in comparison to their non-SEND peers.⁵

2. The Children and Families Act 2014 (CFA) substantially overhauled the statutory framework governing children with SEND and signified a clear governmental commitment to reforming the delivery of children's services across a number of important areas, including education.⁶ Section 42 of the CFA 2014 requires LA's to arrange the provision as set out in an EHC Plan. This duty is absolute and the contents of an EHC Plan must be implemented fully (see for example, *R (On the Application Of) v London Borough of Camden* [2018] EWHC 3354 (Admin)).
3. Prior to the outbreak of Covid-19, the provision of services for SEND children was already patchy and inconsistent. Research by the cross-party Education Committee determined 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.⁷ Ofsted 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.⁸ More recently, the Committee of Public Accounts expressed concern regarding the ability of the Department of Education to do "what needs to be done to tackle the growing pressures on the SEND system".⁹
4. In January 2020, we published a policy report outlining the findings from an examination into the level and quality of service provision for SEND children in the Liverpool/Merseyside Area. Six significant themes which were negatively affecting SEND provision were identified. These included: (i) Delay on the part of the LA to assess, identify and provide the necessary SEND provision for children within the prescribed timeframe of 20 weeks; (ii) A lack of specificity and quantification within the EHC Plans when produced; (iii) The absence of social care and/or a break from their caring role for parents of children with SEND; (iv) Evidence among parents of personal and familial stress and anxiety as a result of the process was extensive; (v)

¹Department 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). Io0

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

⁶ Part 3 Children and Families Act 2014.

⁷ Department of Education (2018) Education, Health and Care Plans: A qualitative investigation into service user experiences of the planning process, Research report, January 2018.

⁸ OFSTED (2020) The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2018/19, at para. 240.

⁹ House of Commons (2020) Committee of Public Accounts, *Support for Children with Special Educational Needs and Disabilities*, First Report of Session 2019 – 2021, (published 6 May 2020).

Evidence of schools not supporting children's needs and engaging in unlawful school exclusions and; (vi) A broader systems-wide failure characterised by a lack of communication and transparency.¹⁰

5. The enactment of the Coronavirus Act 2020 contained several measures which directly affect SEND children. In May 2020, the Secretary of State made the required notice to bring into force,¹¹ the SEND provisions of the Act which gave rise to the modification of the absolute duty under s.42 CFA 2014 to 'secure' special educational provision and 'arrange' health provision as specified in an EHC Plan. This has been replaced by a 'reasonable endeavours' duty.¹² Problematically, 'reasonable endeavours' is not defined and lacks operational and legal elaboration. Similarly, the introduction of The Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020 (which remain in force until the 25th September 2020) and which relax the timeframes applicable to a range of SEND provision to "as soon as reasonably practicable" further impact SEND children. Such modifications to the legal framework must take account of, and respond where necessary, to the specific effects which Covid-19 is having on children with SEND.

Methodology

6. To ascertain the educational impact of Covid-19 on SEND children, an online survey was created to gather the views of parents. This investigation received ethical approval from the University of Liverpool Ethics Committee in early April 2020. The responses have been collated and form the basis of this submission and the concluding suggestions.
7. The survey asked 11 questions. These included: What LA the family reside under; the age of the child/children for which the respondent was a parent/carer; the nature of their child's SEND; what type of educational setting their child/children attended; whether the child/children had an EHC Plan and whether they were happy with the contents of this plan; what educational provision the child/children with a SEND has received since the closure of the schools; the frequency of contact between the school/educational provider with the parent/carer; whether the LA had been in contact with the parent/carer regarding their child/children's education; if the child/children with SEND has an EHC Plan; whether a risk-assessment had been carried out to determine whether the child/children with SEND can be home schooled or whether they need a place at school/college; and lastly a free text box to comment on what impact Covid 19 has had on the child/children and/or family? The survey was

¹⁰See <https://www.liverpool.ac.uk/media/livacuk/law/4-liverpool-law-clinic/Liverpool,SEND,Report,Jan,2020.pdf>

¹¹See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/882290/CV19_Act_modification_notice_SEND.pdf

¹² This duty remains in force until the 31st May 2020. It may be extended by the Secretary of State.

advertised on social media platforms such as Twitter, LinkedIn, Facebook and Instagram.

8. Overall, 234 responses to the survey were received. Of these, 229 respondents came from England, 4 from Wales and the remaining respondent from Scotland. The respondents fell under a geographically diverse range of LA's from right across the country and thus represent a broad research sample. (LA's included Surrey, Sussex, Hampshire, Liverpool, Trafford, Cardiff, Cambridgeshire, Southwark, Flintshire, Bristol, Manchester, Bury, Isle of Wight, West Sussex, Sefton, Cheshire, Essex, Dudley, Wirral, Sheffield, Haringey, Ealing, Staffordshire, Derbyshire, Durham, Brighton and Hove, London Borough of Harrow & Northumberland).

Results

9. Overall, 243 children and young people were implicated within this investigation. Nine respondents indicated that they had two SEND children while one respondent revealed that they had three SEND children. The age range of the children and young people varied from 3 – 20 years, while the average age was 10.6 years.
10. The range of disabilities that the children and young people had was varied, complex and often multiple in nature. Children with autism accounted for 53% of the responses. Other disabilities included ADHD, sensory processing disorder, dyslexia, dyspraxia, Downs syndrome, epilepsy, deafness, blindness, Williams syndrome, foetal alcohol syndrome, global development delay, asthma, eczema, alopecia, chronic lung disease, chronic fatigue/pain, functional Neurological Disorder, Hypermobility Syndrome, Fragile X syndrome, sleep disorder, medical trauma/dyscalculia, ME/chronic fatigue syndrome and joint pain (possibly fibromyalgia), Cerebral Palsy, Cerebral Creatine Deficiency Syndrome (Creatine Transportation Deficiency), ODD, Tourettes, Hirschsprung Disease, behavioural problems, sleep apnea, profound multiple learning disability, Snijders Blok campeau syndrome, multi-sensory impairment, genetic disorders, violent and challenging behaviour and incontinence.
11. In response to the education setting the child/children attended, the responses were as follows:
 - Mainstream School (55.3%)
 - Specialist School (33.6%)
 - Home Education (0.5%)
 - Alternative Provision (0.9%)
 - Pupil Referral Unit (0.9%)
 - Other (11.1%).
12. Of the responses 74.5% had an EHC Plan while the remainder did not. However, within this cohort, parental satisfaction with the plan varied. Of the 196 responses received on this point, 53.8% of the respondents indicated an overall satisfaction rate

with their child's EHC plan while 21.9% conveyed dissatisfaction with the plan. Reasons underpinning this unhappiness revolved around concerns regarding the specification and quantification of the provision within the plan. Responses included:

"No...not specific or quantifiable. Outcomes not SMART"

"No - lacks specificity and is not adhered to ..."

"No, all needs are not listed in section B, and provision is not specific or quantified. There is also no provision for speech and language therapy or Occupational therapy"

Additionally, 20.2% of the respondents conceded that their child's EHC plan needed to be reviewed and updated, that they were awaiting an assessment or that their application was currently under appeal. Just over 4% of the respondents fell into the 'N/A' category.

13. Since the lockdown, an overwhelming majority (94.9%) stated that their LA had not been in contact about their child's education.
14. Despite government guidance¹³ which suggested that children with an EHC plan fall into a vulnerable category and were therefore entitled to continued educational attendance, if following a risk assessment, it was determined that their needs could be met, either as safely or more safely within the educational establishment, some 89.9 % of respondents whose child had an EHC Plan stated that no SEND risk assessment had been carried out.
15. With regards to the extent of the communication by the educational provider itself, the respondents reported a level of contact which was inconsistent and variable.
 - 14.7% reported no contact at all
 - 13% reported daily contact
 - 42% reported weekly contact
 - 12.1% reported fortnightly contact, and
 - 22.5% reported 'other'.
16. In terms of the level of education provided since the closure of the schools, the responses reveal a pattern of inconsistency and in some instances an outright cessation of education itself. Of the 230 responses received, 46.9% indicated an overwhelming level of dissatisfaction with the education provided. This varied from instances where no provision at all was provided to situations where the work was too generic, not differentiated and not specific to the needs or abilities of the child concerned. Responses included:

"None. My daughter usually has fulltime 1:1 support in school to access a differentiated curriculum and social/behavioural/emotional targets"

¹³ See <https://www.gov.uk/government/publications/coronavirus-covid-19-guidance-on-vulnerable-children-and-young-people/coronavirus-covid-19-guidance-on-vulnerable-children-and-young-people> (last accessed 19th May 2020).

“None. No support, no phone calls nothing. I teach him myself”

Contrastingly, 48.2% of the respondents replied in generic terms about the level of provision their child was receiving. These responses tended to outline the nature of the provision itself with most of it happening online or having been posted home. However, within this parental cohort, a number of parents did however express satisfaction with the education provided. Responses included:

“Brilliant school has provided lessons for home”

“Good support, work pack sent home, chrome book which is great but stumbling across issues as work set. School phones regularly.”

Lastly, 4.87% of the respondents fell into the category whether they were either electively home-schooling their child or where their child was continuing in school.

17. The evidence gathered within this survey suggests that Covid-19 and the resultant closure of schools is having a detrimental and injurious impact on the physical, mental and social health of SEND children. Of the 229 responses received on the question of the wider impact of Covid-19, only 12.2% of the respondent’s answered somewhat positively with the majority stating that either their child’s anxiety had reduced, or that their happiness had improved by staying at home. However, such responses must be considered within the context-specific circumstances that parents and children find themselves in. One parent indicated that she was able to teach her child as she was qualified in British Sign Language (BSL) and despite his education provision not being differentiated, he was *“academically bright with good literacy skills”*.

However, the majority of respondents (87.8%) provided compelling evidential accounts of deterioration, regression and backsliding regarding their children’s overall educational, health and social well-being. Declining mental health, increased anxiety, social regression, behavioural breakdowns, and a cessation of essential health and therapeutic services were recurrent themes within the responses received. These realities converge to paint a bleak outlook for the future well-being of an already vulnerable group of children. Responses included:

“Behaviour is terrible - very violent to self and others, no routine, regressed in food aversion, not sleeping, refusing to get dressed and washed, very controlling. I can’t do housework or anything with my other child or she has a meltdown”

“He is suicidal and deeply disturbed. He doesn't really understand what is happening. The LA don't care at all. His college are being brilliant but the LA are now threatening to take away all the remaining Social Care for YAs in (LA area) and reallocate it to old people in nursing homes - at the minute we still have 2 days a week of a sort of sc....losing that will tip him over the edge. I'm frantic”

Many parents also expressed concern about the withdrawal of essential services and its correlative impact on their children’s well-being. Responses included:

“No respite for 4 weeks. No therapies my son usually receives. His mental health has bottomed. No guidance from local authority. My son’s school have been really good. Checking on us at least twice a week. I’m so grateful he can attend school still even though it’s not full time”

“It is having a devastating impact, young sibling is being attacked, mental health is suffering, and child has become mute. We’ve had no support from camhs despite self-harm. Child has waking day curriculum and should attend a 38 week residential placement, but placement has just closed to pupils.”

“My child is bored and sad with the isolation. She misses her usual routine, and misses going to school and seeing people. We are unable to provide the same level of stimulation at home. She is missing out on important therapies such as physiotherapy and hydrotherapy. She needs total physical care, 24/7, which we as her parents are having to provide without any assistance”

Concerns were also expressed regarding the likelihood of some children falling further behind in their education and the difficulties many will face upon reintegration. Responses included:

“I’m also worried he will be so anxious he will be unable to attend when school opens. It took us 3 years to get him in class at high school. This does not look good.”

“Re-intergration is going to be an enormous struggle”.

“Worried about how much further behind my child will get with no proper support or getting back to the school routine”

More widely, the cumulative effect of the disruption to children’s lives and their routine has also impacted the broader family environment itself. Evidence included:

“We are finding lockdown extremely exhausting physically, mentally and emotionally, our other children are missing out as all our time is taken up maintaining routine and regulation for our kids with additional needs”

“Detrimental effect on our mental health, to the point where both me and my husband have considered walking away”.

“Stressful! Alongside what everyone else is going through - financial worries, anxiety, caring for older family, working from home, pressures of isolation - we are finding it increasingly hard to engage our son in anything. He has a younger sibling and it’s impossible to cater for them both simultaneously. We’re battling with screen time, encouraging physical activity, eating healthily, managing his health issues (TI diabetes), mood swings, etc. Really grinding us down now and some days starting to resent him..

Recommendations

18. The impact of these extraordinary circumstances on this group of children and young people are severe and profound. Without effective future interventions, the disruption to children's educational rights and their wider emotional, social and behavioural well-being will likely endure long beyond Covid-19. The prospect of huge generational harm being inflicted on these children presents as an emerging concern. As signatory to both the UN Convention on the Rights of the Child (CRC) and the UN Convention on the Rights of Persons with Disabilities, the UK government has specific human rights obligations which should guide their approach and response to Covid-19. We suggest the following:

- (i) That the 'reasonable endeavours' obligation be rescinded, and the absolute duty as contained in s.42 CFA 2014 reinstated as the guiding principle underpinning the delivery of children and young people's SEND services. As EHC plans specify only what is reasonably required to meet the special educational needs identified, any diminution in the delivery of those services will likely have a disproportionate and regressive impact on this vulnerable population cohort. In this regard, adherence to the core human rights principles of proportionality and necessity must guide government action as SEND children are already set apart as a disproportionately vulnerable group. Therefore, the legal dilution of the formal obligations owed to SEND children and young people, the practical result of which amounts to retrogressive SEND standards, is disproportionate and unnecessary. The extent of the timeline envisaged for the 2020 SEND Regulations should also be reviewed every month to determine their necessity and proportionality.
- (ii) Considering the evidence presented in this submission, we recommend the following specific actions:
 1. That the Department of Education undertake an evaluation to determine the number of SEND risk assessments, as per government guidance, which have been carried out to date for children on an EHC Plan. Given the minimal uptake of this practice as evidenced by this submission, we contend that such a measure is necessary to properly determine how many SEND children have had their needs met during the lockdown. This information is necessary to determine the ongoing proportionality and necessity considerations underpinning the downgrading of s.42 CFA 2014 and the parallel enactment of the 2020 SEND Regulations,
 2. Given the inconsistent approaches taken by schools in the provision of education, with 14.7% of the respondents herein having received no contact from their child's educational provider, updated guidance should be issued as a matter of priority outlining the necessity for schools to continuously engage with SEND children so that they receive appropriate, adequate and differentiated educational instruction.

3. Given further that 20.2% of those surveyed herein stated that their child was either waiting an assessment or that their EHC plan needed updated or reviewed, coupled with the overwhelming evidence of widespread backsliding in terms of children's overall educational, health and social well-being, we suggest that LA's should now commence a systematic review programme of all children and young people with an EHC plan under their authority. This should be fully resourced and commence as a matter of priority to alleviate future pressures on the SEND system. This review programme should:
 - Prioritise EHC assessments, the finalisation of ECH plans and the review of plans which are due to be reviewed or have had their annual review postponed.
 - Ensure that those who have had services discontinued should have an official recording of this reality on their file and the reasons underpinning it so that future EHC Planning reviews can take account of this and remedial action taken, where necessary.
 - Ensure that LA's account clearly for why they are unable to secure the provision as outlined in EHC plans. This should be formally documented and communicated to parents. To avoid the legal modifications nullifying the rights of SEND children, LA's should account clearly for what they can and cannot do and the reasons for this.

19. Finally, although the full impact of Covid-19 is yet to reveal itself, what is clear is its devastating impact on children and young people with SEND. Without robust evidence-based interventions as suggested above, current progress may come undone and the rights, hopes and aspirations of a particular generation of children and young people will disproportionately suffer.

May 2020