

The Rights of Children with Additional Special Needs:

Tensions between policy rhetoric and classroom reality

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Policy background



- **The United Nations Convention on the Rights of the Child (UNCRC) has just had its 30th birthday - most signed international treaty of all time – only South Sudan and the US have failed to ratify it.**
- **UNCRC has undoubtedly led to major improvements in the lives of children - but implementation is a work in progress.**
- **In Scotland, the government is committed to ensuring that the principles of the UNCRC & the UN Convention on the Rights of Persons with Disability are translated into domestic legislation.**
- **Our research investigated how successful legislation implementing the new rights has been.**



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Scottish Government wishes to ensure that principles of UN Convention on the Rights of the Child and Convention on the Rights of Persons with Disabilities are reflected in domestic legislation.

Education is principal universal service for children – therefore of major importance. Article 12 particularly relevant:

- States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
- For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Also Article 7.3 of the CRPD calls for participation by disabled people in all matters affecting them and for age-appropriate assistance.



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Children with ASN in vanguard of extension of rights



Relevant legislation:

- Children and Young People Act (2014)
- Education (Scotland) Act 2016, amending Education (Additional Support for Learning) (Scotland) Act 2004

Scottish Government claims that legislation represents **'the biggest extension of rights in Europe at the moment that we can evidence'**.



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New rights accorded to children (aged 12-15) with additional support needs in Scotland (subject to 'maturity and understanding' and wellbeing) post Education (Scotland) Act 2016



Right to ask local authority to:

- Find out if they have ASN
- Request a specific assessment
- Find out if they need a Co-ordinated Support Plan (CSP)
- Ask for a CSP to be reviewed

Rights regarding having their views heard and considered:

- Be involved in decisions about their support
- Access to support and advocacy to have their views heard (My Rights My Say)

Not included: Mediation, placing requests

Right regarding information and advice:

- About their ASN
- Receive a copy of the CSP
- Be told about decisions about their rights
- Be asked if they are happy for information to be shared when they leave school

Right to be involved in resolving disagreements and disputes:

- Ask for independent adjudication
- Make a reference to the first tier tribunal
- Be asked for their views during mediation



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Research Methods

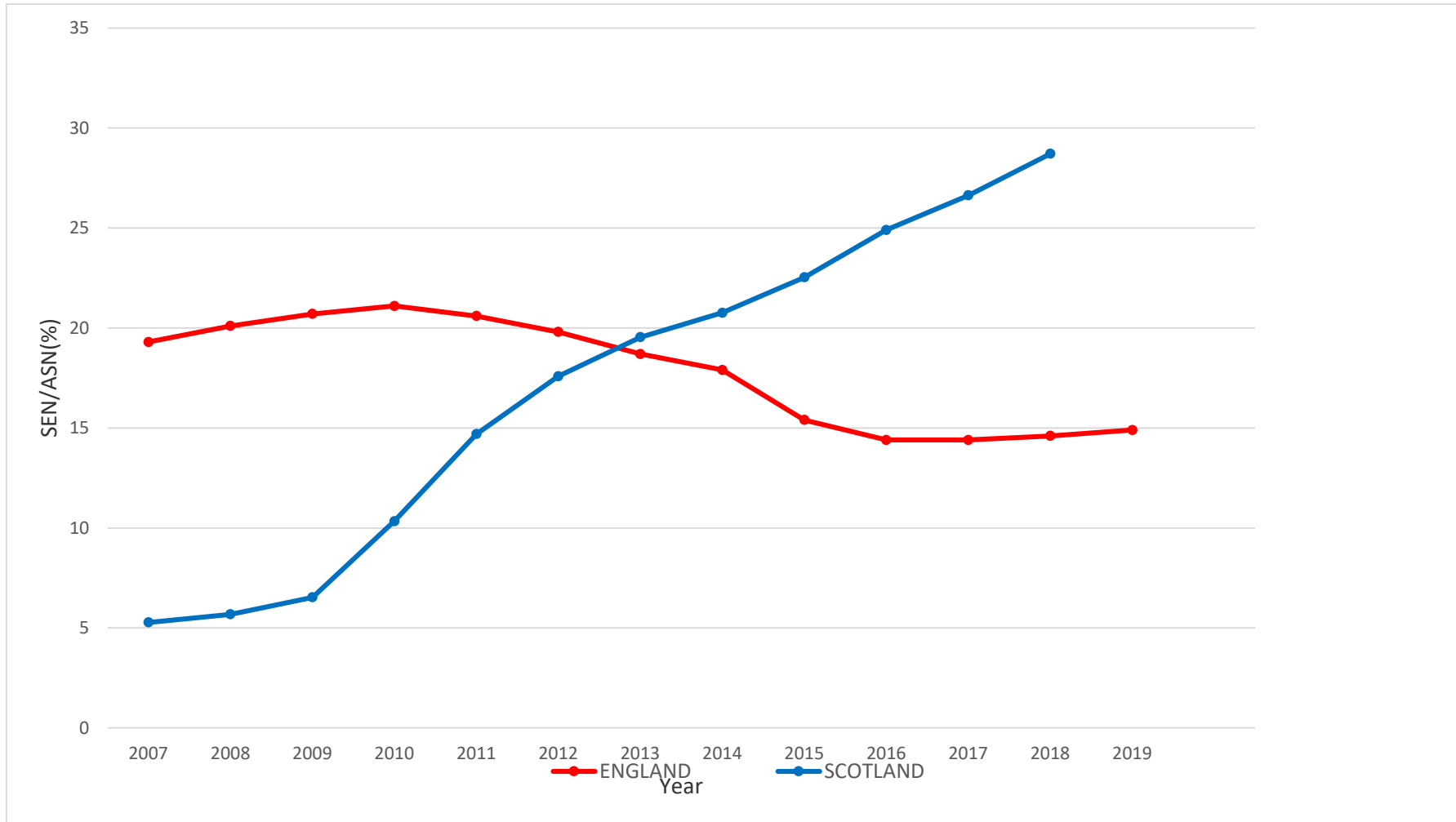


- Reviews of policy, legislation and statistics;
- Surveys of all local authorities in England and Scotland;
- Key informant interviews
- **Case studies of 36 children/young people and their families in six local authorities (18 case studies in each jurisdiction);**
- Each case study involved classroom observation and up to five interviews with child/young person, parent/carer & practitioners.
- Various elements of the research written up as Working Papers and Briefings available at: <https://www.ed.ac.uk/education/rke/centres-groups/creid/projects/autonomy-rights-sen-asn-children>



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Additional rights only granted to those with ASN – expanding group

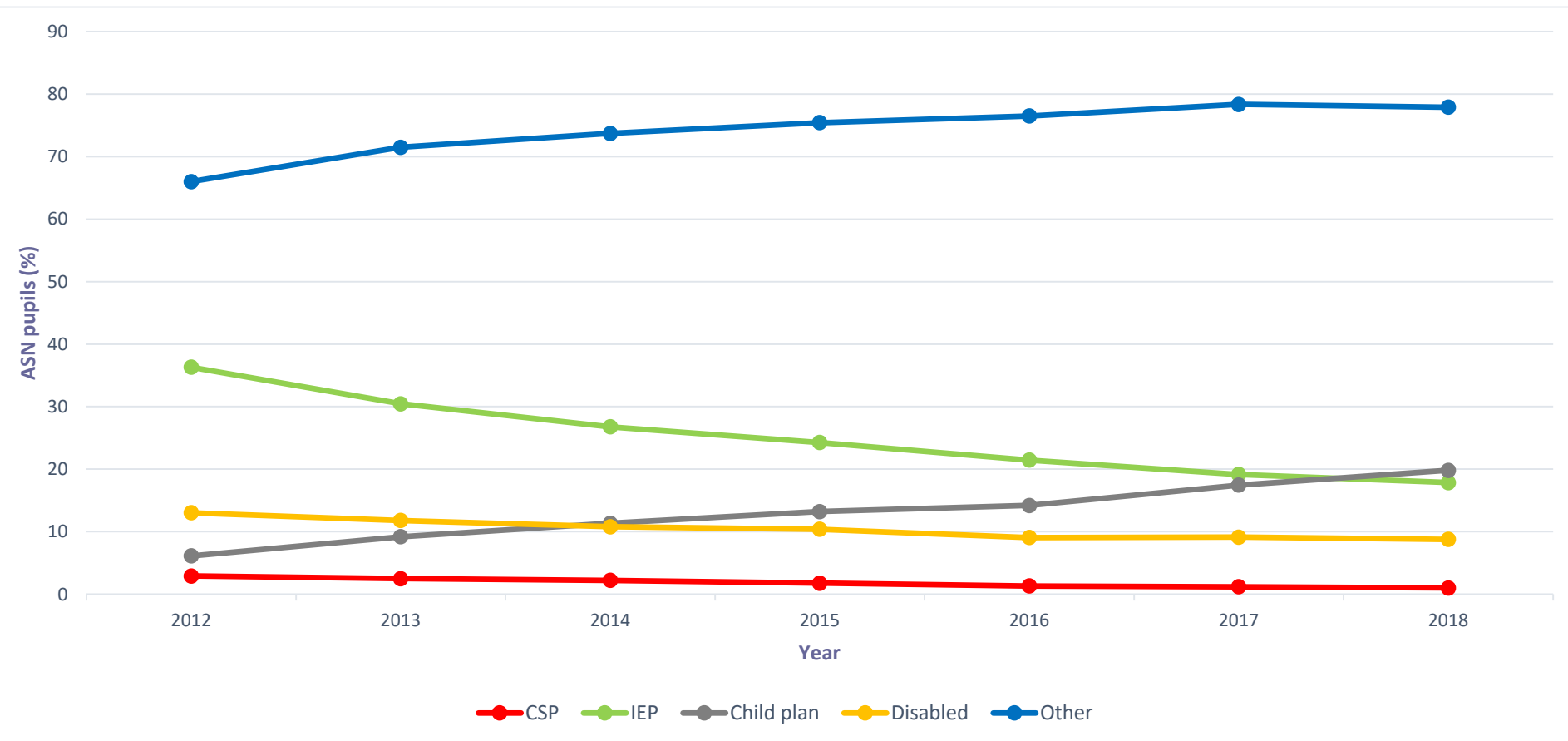




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But declining use of CSPs

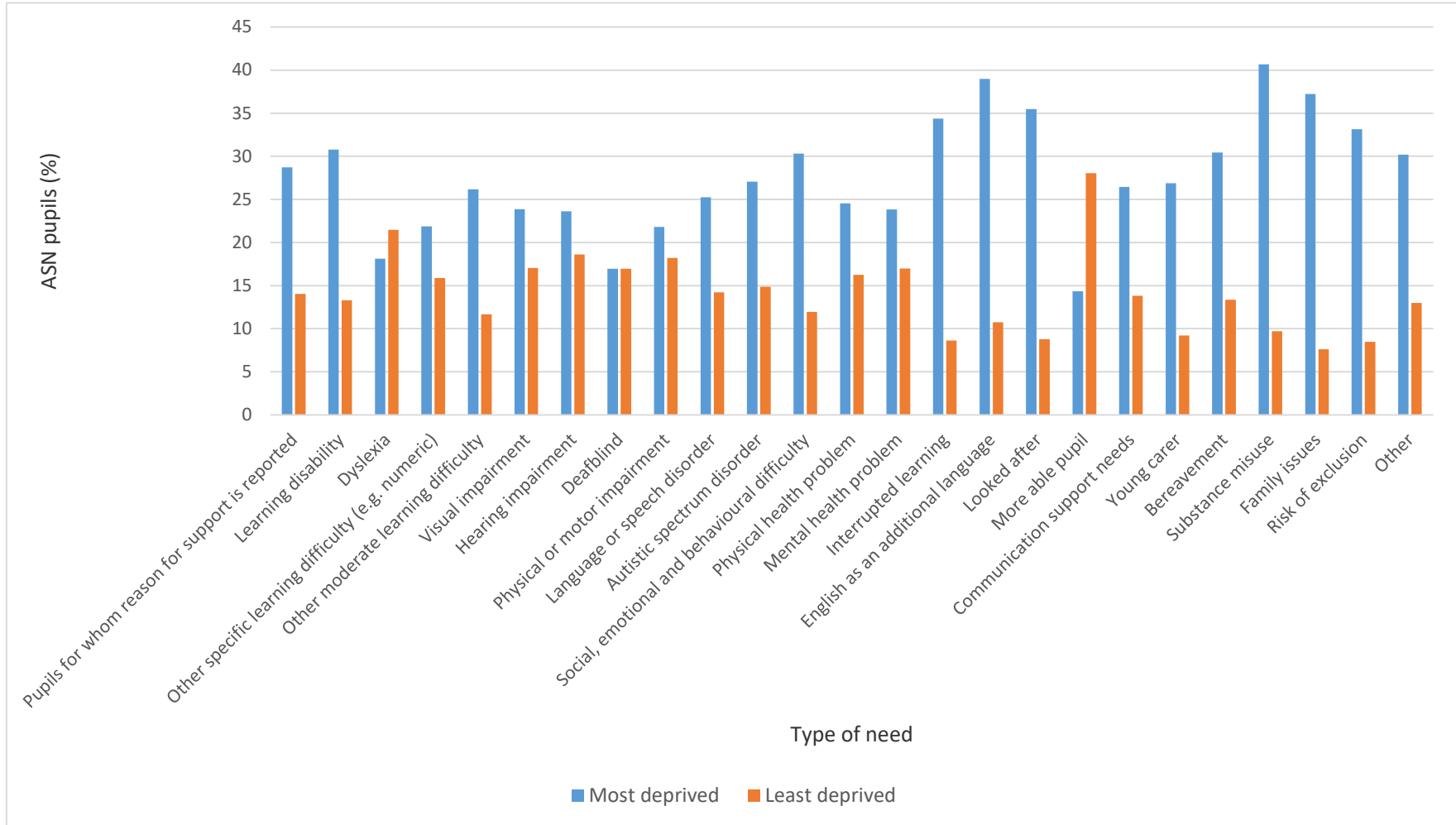




Children from socially disadvantaged backgrounds more likely to have ASN identified



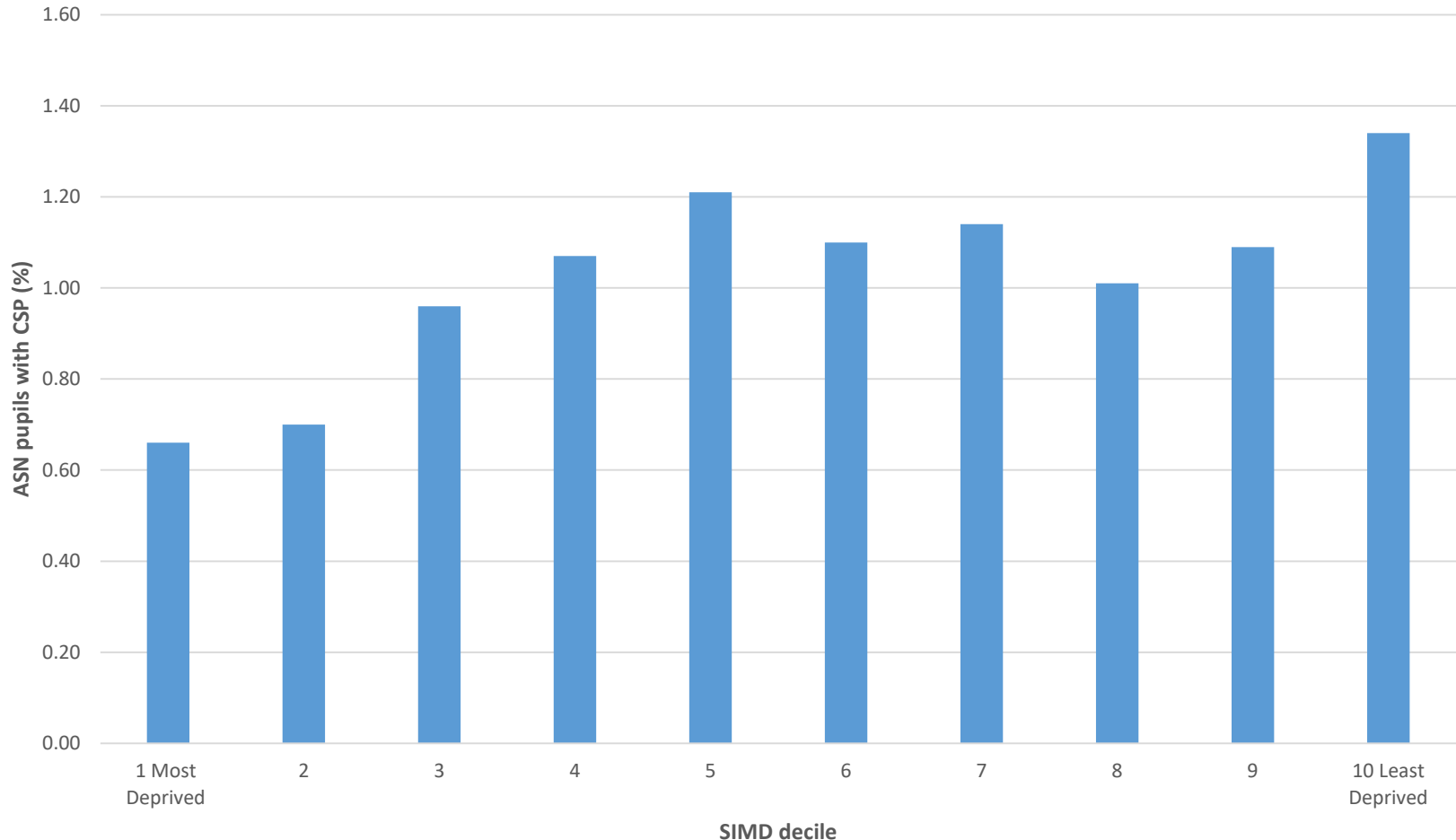
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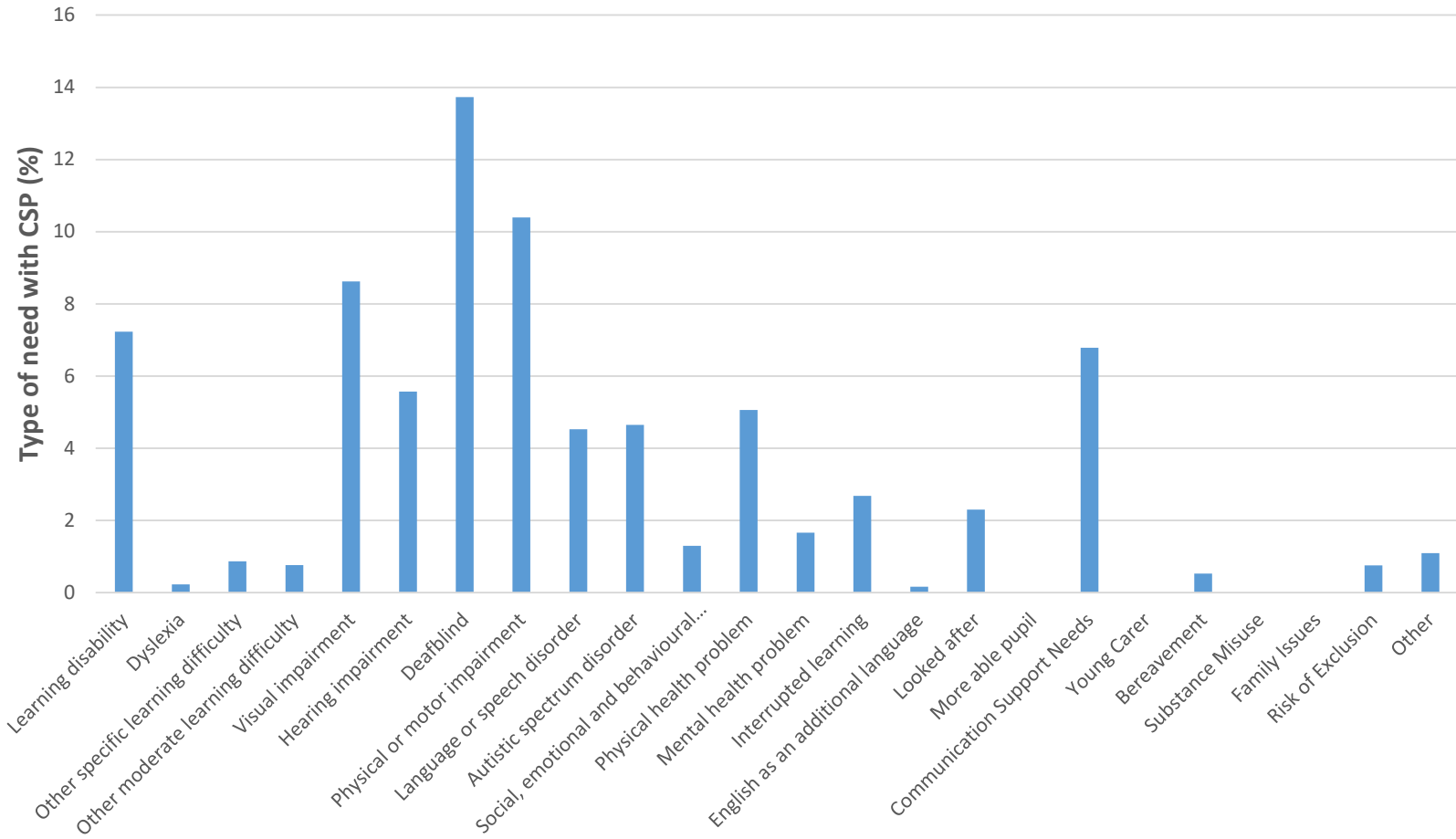
But children in socially disadvantaged areas less likely to have a CSP, associated with additional rights of review and redress





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Some groups of children more likely to have CSPs than others





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Findings from qualitative research



- Broad support for children's rights – but difficulties in ensuring participatory rights of some groups of children – e.g. children with complex needs & those with social, emotional and behavioural difficulties.
- Parents continue to act as children's principal advocates – middle class parents successfully mobilise social, cultural and economic capital to navigate the system.
- Little knowledge and awareness of the new legislation in schools and parental confusion – LAs have done little to raise awareness.
- Some teachers believe that children's rights (and inclusion) have 'gone too far'.



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Conclusions



- New ASN legislation should be seen as part of effort to incorporate UNCRC into domestic legislation.
- More than a quarter of children in Scottish schools now have ASN identified – and are therefore entitled to additional rights
- But declining use of CSPs limits the extent to which rights may be used in practice – particularly rights of review and redress.
- Our research found that children, parents and teachers are all broadly supportive of the idea of children’s rights in theory.
- But there are low levels of awareness of the new legislation, particularly among families living in socially deprived neighbourhoods.
- In order to realise SG’s ambitions, greater efforts needed to support children and parents living in deprived areas, and those with ASN associated with social difficulties – children with SEBD, Looked after children etc.