Disability Discrimination Act, Education Legislation Pre-16 and Implications for a Single Equality Act

Report to the Disability Rights Commission

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SECTION 1:Background

In February 2005, the UK Government established the Discrimination Law Review (DLR) to address concerns about inconsistencies in the current anti-discrimination legislative framework. In early 2007, the UK Government intends to publish a Green Paper that will lead to a Single Equality Bill following on from the findings of the DLR. As well as considering fundamental principles of discrimination legislation and its underlying concepts, the DLR is considering opportunities for creating a clearer and more streamlined legislative framework, which will be more 'user friendly' for the providers and consumers of services, including education. In this report, we review the operation of the pre-16 educational provisions of the Disability Discrimination Act (DDA) in Scotland. In addition to examining the impact of the DDA, the review considers the impact of the Education (Additional Support for Learning) (Scotland) (ASL) Act 2004 and its interactions with the provisions of the DDA. It should be noted that the ASL Act was implemented in November 2005, and most authorities are still at a relatively early point in this process. Therefore comments on its early impact should be treated as provisional.

Key questions
The overarching question considered in the review is the following:

- How effective are the two pieces of legislation (the DDA and the ASL Act) in ensuring that disabled children are protected from discrimination (i.e. are not treated less favourably and are provided with reasonable adjustments to enable them to participate fully in education)? In what ways might the legislation be tightened up to make it more effective and user-friendly?

Sub-questions include the following:

- What level of knowledge and awareness do professionals and parents appear to have in relation to the DDA and the ASL Act? Are there any obvious points of confusion which might be remedied?

- Do the two pieces of legislation dovetail adequately in terms of ensuring that educational providers are aware of the full range of their duties to pupils and prospective pupils,

including knowing which pupils are disabled under the terms of the DDA, briefing staff whilst respecting requests for confidentiality, informing parents of school policies and practices, putting in place reasonable adjustments and planning at local authority, school and individual pupil levels?

- Given the exemption of additional aids and services from the provisions of the DDA as these apply to schools, is the ASL Act sufficiently robust to ensure that all disabled children have access to the reasonable adjustments which they require?

- More specifically, in the context of the removal of the Record of Needs, are the new arrangements for ensuring that reasonable adjustments and additional support are provided by a range of agencies sufficiently robust? In particular, what are the early indications from local authorities with regard to the proportion of children receiving a Co-ordinated Support Plan (CSP) and what systems are in place to ensure that disabled children deemed not to qualify for a CSP have reasonable adjustments made for them? To what extent are Individualised Educational Programmes (IEPs) able to ensure that reasonable adjustments are made? Are there some disabled children who are deemed not to qualify for a CSP or an IEP and what systems are in place to ensure that the responsible body fulfils its duties to these children?

- Are parents aware of and satisfied with the various remedies provided for by the legislation in case of disagreement between parents and professionals, including alternative dispute resolution and access to more formal legal redress?

- What are the views of the Scottish Executive and local authorities with regard to amending the legislation to make it more effective?

Design of the review

The review is structured as follows:

Section 2: Review of legislative framework

This section provides an overview of the provisions of Part 4 of the Disability Discrimination Act as applied in Scotland, of the Education (Additional Support for Learning (Scotland) Act, and the

way in which these two pieces of legislation articulate with each other. An analysis is provided of the areas where some changes to the legislation might be helpful in ensuring the spirit of the law is applied, particularly existing exemptions in the reasonable adjustment duty with regard to the provision of auxiliary aids and services and adjustments to physical features. The fact that the Additional Support Needs Tribunal, set up as a result of the ASL Act, does not hear disability discrimination cases will also be considered.

Section 3: Views of key informants
Individual and group interviews were conducted with the following:
2 representatives of the Scottish Executive Education Department
3 Principal Educational Psychologists from geographically diverse areas (Highland, North Lanarkshire, Fife).
2 senior officers from geographically diverse areas (Perth & Kinross and Glasgow).
2 focus groups of practising teachers attending an MEd course at Edinburgh University in special and inclusive education. Teachers were from geographically diverse areas (Edinburgh, West Lothian, Orkney, Perth & Kinross, East Dunbartonshire, South Ayrshire, Fife). Four teachers participated in Focus Group 1 and ten in Focus Group 2.

Section 4: Views of Local Authority officers
A short questionnaire was distributed by e-mail to the Directors of Education in the 32 local authorities, who were asked to send it on to the relevant individual. A total of 18 were returned, yielding useful information about perceptions of the articulation of the DDA with the ASL legislation. This was a good response given the relatively early stage in the ASL implementation process, and the fact that questionnaires had to be returned less than weeks after they were sent out.

Section 5: Views of parents
Eight telephone interviews were conducted with parents of children with additional support needs. These parents had attended a consultation meeting organised by Enquire in connection with the Parents' Guide to the Additional Support for Learning Act and indicated that they would be willing to provide commentary on its operation in the future.

SECTION 2: REVIEW OF LEGISLATIVE FRAMEWORK

Introduction

In this section, we consider the implications of the extension of the Disability Discrimination Act 1995 (DDA) to pre-16 education in the light of the Education (Additional Support for Learning) (Scotland) Act 2004. We first summarise the key provisions of Part 4 of the DDA, before considering the way in which they interact with the new legislation.

The DDA has GB wide coverage, since equalities legislation is a reserved matter, reflecting the principle that disabled people should have access to similar levels of protection irrespective of where they live in England, Wales and Scotland. Northern Ireland has separate equalities legislation. In the field of education, implementing disability equality legislation is complicated by the fact that the education legislation for England and Wales differs in many important ways from that in Scotland, not least in provision for children with additional support needs.

Provisions of Part 4 of the DDA

The legislation places two key duties on education providers (referred to in the Act as 'responsible bodies'). These are:

- Not to treat disabled pupils and prospective pupils less favourably on account of their disability; and
- To make reasonable adjustments to avoid putting disabled pupils at a substantial disadvantage.

The second duty is limited in the following ways:

- Reasonable adjustment duties do not require the responsible body to provide auxiliary aids and services;
- Reasonable adjustment duties do not require the responsible body to make alterations to the physical features of the school.

When the legislation was drafted, these exemptions were included on the grounds that existing education legislation in England and Wales and Scotland was likely to be sufficiently robust to ensure that these types of adjustments would be made, and to avoid

duplication. However, these exemptions did not apply to the post-16 sector, where institutions such as universities and FE colleges were required to make adjustments to physical features and provide auxiliary aids and services to enable disabled students to access the curriculum. Given this anomaly between the pre-16 and post-16 sectors, it was acknowledged that there would be a need to review arrangements in the pre-16 sector to ensure that disability discrimination legislation and education legislation were articulating smoothly. The strength of Scottish education legislation concerning reasonable adjustments relating to auxiliary aids and services and physical features is addressed more fully below.

It is important to note that schools in the independent sector as well as the state sector are covered by the DDA. Some schools in the independent sector may have traditionally paid little attention to ensuring disability equality because the existing SEN framework generally did not apply to them. However, from September 2002, like state schools, independent schools have been prohibited from discriminating against disabled pupils or prospective pupils in any of their admissions, teaching or assessment policies and practices. However, the exemption of auxiliary aids and services and alterations to physical features meant that many reasonable adjustments were made by independent schools on a voluntary basis, and it was still lawful to charge for such provision.

The DDA's definition of disability

A key aspect of the way in which the DDA articulates with education legislation concerns the definition of disability as opposed to the definition of additional support needs. Under the DDA, a disabled person is defined as someone who has a physical or mental impairment which has an effect on his or her ability to carry out normal day-to-day activities. That effect must be:

- Substantial (that is more then minor or trivial); and
- Adverse; and
- Long-term (that is, has lasted or is likely to last for at least a year or for the rest of the life of the person affected).

Normal day to day activities include mobility; manual dexterity; physical co-ordination; continence; ability to lift, carry or otherwise move everyday objects; speech, hearing or eyesight; memory or ability to concentrate, learn or understand; and perception of the

risk of physical dangers.

The definition of disability within the DDA is different from the definition of additional support needs in the Education (Additional Support for Learning) (Scotland) Act 2004. A child or young person is said to have additional support needs if he or she for whatever reason, 'is likely to be unable to benefit from school education provided or to be provided for the child or young person'. This is a very broad definition which, in addition to disabled children, may include children for whom English is an additional language, children who are looked after by the local authority, children of refugees and asylum seekers and children with social, emotional and behavioural difficulties. By way of contrast, the definition of children with special educational needs in the Education (Scotland) Act 1980 (as amended) was much narrower and was often interpreted as applying only to children with learning difficulties and physical impairments. A key issue arising from the new definition of additional support needs is whether sufficient legal protection is afforded to disabled children within education legislation, or whether disability discrimination legislation requires to be strengthened to ensure that the interests of disabled children are not elided with those of a much wider group.

Knowing which pupils are disabled

Under education legislation, it is not necessary for schools to identify a separate category of disabled pupils. However, under disability legislation it is expected that schools will know which children are disabled to establish baseline measures and monitor progress over time. Under the DDA, responsible bodies (local authorities and schools) have to ensure that they have taken all reasonable actions to identify which children are disabled and who therefore may require reasonable adjustments. In order to be pro-active in identifying which children are disabled, schools must ensure that there is an open and welcoming atmosphere, ask parents when they visit the school whether their child has a disability and have a space on admissions forms requesting this information. If a parent has informed a school employee about a child's disability, then the school is deemed to have been informed. The Disability Act requires local authorities to publish Disability Equality Schemes, which will include information on the number of disabled pupils and their location. This should ensure that schools become much more adept at identifying and monitoring the placement and progress of disabled pupils, and will encourage

greater awareness of which pupils fall into this category, as opposed to the much woder additional support needs category.

Relationship of the DDA to the existing additional support needs framework

The Education (Scotland) Act 1980, in place when the Special Educational Needs and Disability Act was passed in 2001, placed a duty on local authorities to identify children with special educational needs and ensure that adequate and efficient education was in place for them. Those with severe, profound and complex needs might qualify for a Record of Needs. This was a statutory document which provided a summary of the child's impairments, the measures proposed to meet these needs and a recommended placement. Scottish Records of Need, despite having statutory status, were always rather vague about the additional resources to be provided, whereas case law established that English Statements of Need should be written in a precise manner. The exemption of auxiliary aids and services and alterations to physical features therefore always made more sense in England compared with Scotland. With regard to planning duties, the Disability Strategies and Pupils' Educational Records (DSPER) (Scotland) Act 2002 placed a duty on local authorities in Scotland to publish accessibility strategies, including plans to make buildings fully accessible to disabled people. However, there is no requirement to make a building accessible to an individual pupil, and therefore a local authority could allocate a disabled pupil to a school at some distance from home, on the basis that this was the school selected for particular adaptations.

Since November 2005, the relevant piece of legislation in Scotland has been the ASL Act. This Act established the broader category of additional support needs and placed a duty on local authorities to identify and meet the needs of all children requiring additional support in order to benefit from education for whatever reason. Records of Needs were replaced by a different planning process. Children with multiple or complex needs requiring a high level of co-ordinated additional support from agency or agencies outwith education might qualify for such a plan. The CSP is a statutory document which is intended to specify the additional resources to be provided and the responsible agency, as well as co-ordination arrangements. Other children with additional needs which do not require inter-agency co-ordination may qualify for an Individualised Educational Programme or some other plan such as a behaviour

support plan. These plans do not have statutory status and their main function is to state short-term and long-term learning goals rather than additional resources. It was anticipated by the Scottish Executive that, even though a larger group of children was covered by the new legislation, the proportion receiving a CSP would be lower than the proportion with a Record of Needs, which stood at around 2% nationally but with considerable local variation. The replacement of the Record of Needs with other types of plans has implications for the exemptions from the reasonable adjustments duty, since it may be the case that the education legislation now requires less specificity from local authorities with regard to the additional resources to be provided. This point is returned to in the following sections, which review perceptions of the way in which the new legislation is being interpreted.

Planning duties

Since planning matters are devolved to the Scottish Parliament, the planning duties within the SEN & Disability Act 2001 do not apply to Scotland. However, the Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002 placed a duty on responsible bodies to publish and implement accessibility strategies for the school(s) for which they have responsibility. Accessibility is defined broadly, so that it covers the physical environment, the curriculum and communication methods. From September 2002, local authorities and schools are expected to anticipate and plan for the needs of disabled pupils before they arrive at a school, rather than putting in place emergency measures when a pupil with a particular impairment arrives. An evaluation of the first set of plans (Scottish Executive, 2003a) showed that many authorities tended to focus on the physical environment, and much less progress had been made in planning for access to school information, the curriculum and assessment. Independent schools' plans were rather weak, and suggested a limited understanding of the legislation, with a tendency to favour strategies which might avoid legal action but did little to promote the spirit of the Act.

Mediation, conciliation and redress

The ASL Act has implications for access to legal redress. When the Special Educational Needs and Disability Act was passed, Scottish parents had inferior access to legal redress. In England, since the establishment of the Special Educational Needs Tribunal in 1994 under the terms of the Education Act 1993, a parent with a

dispute regarding the local authority's provision for their child's special educational needs might bring a case to the tribunal, which since 2002 heard cases of disability discrimination. In Scotland, an appeal could be made to the Appeal Committee in relation to the school proposed by the local authority. An appeal might be made to Scottish Ministers with regard to certain aspects of the Record of Needs (but not the measures proposed). If dissatisfied with the Appeal Committee finding or Scottish Ministers' judgements, cases could be referred to the Sheriff Court or, finally, the Secretary of State. Such arrangements were lengthy, complex, possibly expensive and, as a result, very little used. The ASL Act established the Additional Support Needs Tribunal to hear cases related to the Co-ordinated Support Plan. Parents of children whose needs are deemed not to fit the criteria for a CSP are not allowed to make references to the ASN Tribunal. Instead they may seek mediation or adjudication. These routes may be effective in resolving disputes, but do not provide parents with the opportunity to present their case publicly and to have a legally binding decision made by an independent body. In effect, the qualification hurdle for making a reference to the ASN Tribunal in Scotland has been set much higher than in England. During the first year of the ASN Tribunal's operation in Scotland, there have been relatively few references (fewer than 30 references at the time of writing and fewer than 15 hearings).

The ASL Act placed a new duty on local authorities to inform parents of additional support needs and to fund a mediation service.

In comparison with the English Tribunal, which hears education and disability discrimination cases, the latter may not be heard by the ASN Tribunal in Scotland, but are heard by the Sheriff Court. In England in 2003/04, 81 disability discrimination cases were made to the SENDIST, with 69 decisions issued. In Scotland, pnly a handful of disability discrimination cases have been heard by the Sheriff Court.

Review of the education and disability discrimination legislation: Summary points

- The reasonable adjustment duty in Part 4 of the DDA as it applies to pre-16 education exempts auxiliary aids and services and alterations to physical features.

- The argument for this exemption when the legislation was initially drafted was that the education legislation ensured that such reasonable adjustments would be made. In Scotland, Records of Needs rarely quantified additional resources, unlike English Statements which generally did.

- Disabled children in Scotland with a Co-ordinated Support Plan are likely to have auxiliary aids and services clearly stated on their plan. Disabled children who do not have a CSP are much less likely to have their additional resource requirements recorded in the non-statutory IEP.

- The DSPER Act 2002 places a duty on local authorities to draw up accessibility strategies, but these are general plans which do not address individual disabled children's requirement for physical alterations.

- Disabled children who are deemed not to meet the criteria for a CSP are not entitled to access the ASN Tribunal, and the routes of formal legal redress which are available to them are less user-friendly and accessible.

SECTION 3: KEY INFORMANTS' PERCEPTIONS

Introduction

In this section we report the views of key informants (see section 1 for details of interviewees). When the ASL Act was passed, it was not known exactly what proportion of pupils would receive a CSP, a document with statutory status which would document reasonable adjustments and ensure access to the ASN Tribunal. Since the Act has been in force for almost a year, it is timely to investigate the views of a range of actors with regard to the implementation of the legislation.

Use of CSPs

Respondents were asked about the proportion of children with CSPs compared with the proportion who had previously had Records of Needs. Local authorities are still within the two year timeframe for reviewing the position of all children with existing Records of Needs with a view to deciding whether they qualify for a CSP. The majority view was that 'only a handful' of children with existing Record of Needs would have a CSP. A Senior Officer commented that of 400 Records of Needs reviewed, only 27 CSPs had been opened (i.e. about 7% of children with a Record of Needs had received a CSP. Whereas 2% of children had a Record of Needs, in this authority less than 0.2% would have a CSP). In another local authority, the proportion was also very low (of 300 Records so far reviewed, it was decided that CSPs were required in about 10 cases). It was explained that children in special schools would probably not qualify for a CSP because, even though many would receive services such as speech and language therapy from health, these would not require a high degree of co-ordination because they were timetabled.

It was pointed out that the proportion of children with a CSP would not be known for some time, since, for example, children with social emotional and behavioural difficulties and children looked after by the local authority, who had often not been considered for a Record of Needs, might have a CSP. One senior officer said that she expected the proportion of children with a CSP to be fairly close to the proportion with a Record of Needs, although the population would be different. Fewer disabled children might

qualify for a CSP, but more children with social disadvantage would qualify.

A senior officer noted that emerging practice across local authorities appeared to be fairly diverse, with different interpretations of the qualification criteria for CSPs. One local authority had introduced a 'Level 4 Additional Support Plan', which was described as being 'like a CSP but without its statutory force'.

Use of IEPs

The majority of children with additional support needs, including the majority of disabled children, are likely to have an IEP, a Behaviour Support Plan, or a similar document. IEPs are non-statutory documents which focus on short-term and long-term learning goals rather than additional resources. When they were first introduced as part of the Scottish Executive's Raising Attainment strategy (Kane et al, 2003), they tended to vary by school in terms of form and content. Interviewees explained that local authorities intended to establish a common formula within their particular local authority, although variations across authorities would persist. Since IEPs vary greatly with regard to their specificity concerning auxiliary aids and services, there are clearly issues to do with territorial equity, and potentially practical problems when a child moves from one school to another.

Specificity of CSPs and IEPs with regard to reasonable adjustments

Key informants suggested that CSPs were likely to be quite specific with regard to the adjustments to be made and the responsible agency, although a very small proportion of children would have the statutory protection of this type of document. However, it was noted by a Principal Educational Psychologist that local authorities would be careful not to make themselves hostages to fortune. They would avoid phrases such as 'this child requires an appropriate level of support from an adult', which had often appeared in Records of Needs. However, they would be prepared to make statements such as 'health will provide up to 12 sessions of speech and language therapy per term'.

Different views were given of IEPs, with some informants suggesting that there would give some indication of reasonable adjustments , including auxiliary aids and services, and others suggesting that very little, if any mention would be made of

adjustments in this type of plan. A principal educational psychologist commented that at the moment IEPs were not robust enough to ensure that auxiliary aids and services were specified, however they were evolving and improving.

Adequacy of arrangements for reasonable adjustments

Teachers in one of the focus groups described their frustration that additional services which were recorded on plans were often not delivered in practice. Educational psychologists were of the view that in general additional services were being delivered when these were required, and it was important that parents were not encouraged to become too critical and adversarial, since this would spell the end of partnership.

Grounds for failure to make a reasonable adjustment

It was generally believed that local authorities would make every effort to meet an assessed need. However, it was acknowledged that, as in the case of the duty to provide free personal care, there might be difficulties in ensuring that adequate resources were available. On occasion, local authorities might have to acknowledge an inability to meet a particular need during a given financial year, but should then make it a priority to provide additional resources the following year. There was also a recognition that assessment was often influenced by awareness of what could be provided in practice, so that unrealistic expectations were not created amongst service users.

Knowledge and awareness of disability and education legislation

It was widely acknowledged that policy and practice in local authorities and schools was driven by education rather than disability discrimination legislation. Local authorities were knowledgeable about all relevant bits of legislation but practitioners in schools only tended to find out about legislation and policy if it impacted immediately on their job.

The relatively high awareness of recent education legislation was partly as a result of funds allocated by SEED to facilitate the implementation of the additional support for learning legislation (£24 million), which had funded an implementation officer's post in each authority and in-service training programmes for key members of staff. By way of contrast, funds had generally not been allocated to implement Part 4 of the DDA. One senior officer

commented that an in-service programme had been arranged for headteachers on DDA Part 4, but this was not the case across the board. There appeared to be greater awareness of the new duty to positively promote equality for disabled people as a result of the Disability Act. Local authorities were aware that they had to produce a Disability Equality Scheme, and in order to do this would require information from schools on the number of disabled pupils. This would in turn raise awareness in school of the definition of disability under the DDA and which pupils were likely to qualify for protection.

Teachers in the focus groups indicated much better knowledge of the additional support for learning legislation than disability discrimination legislation, although in-service training on the ASL Act had often only been made available thus far to learning support staff. This perception coincides with Cogan et al's (2003) findings that local authorities generally believed they had a good knowledge and awareness of the education and disability legislation, followed by schools, with parents having relatively little knowledge.

Mediation, conciliation and redress

The general view was that new routes to justice were to be welcomed, but principal educational psychologists were slightly concerned that the system might become too conflict-driven and complex. All three educational psychologists who were interviewed suggested that in their authority the emphasis was on resolving disagreements at the lowest possible level to prevent escalation. A senior officer said that the new opportunities for redress meant that local authorities were much keener to communicate directly with parents and encourage trust and dialogue from the start. Scottish Executive staff endorsed these views, and said that local authorities would have to think more carefully about how to reach agreement with parents. However, it would take a little while for parents to become fully aware of their rights to mediation and redress. It was also felt by some respondents that there was a proliferation of routes to justice which was very confusing for parents; one principal educational psychologist suggested that the new system might be regarded as 'a sledgehammer to crack a nut'. Very few were aware of the DRC's conciliation service and believed that most parents were unaware of its existence. Teachers said they were unable to

advise parents on mediation, conciliation and redress because they lacked sufficient knowledge.

Suggestions for changes to Part 4 of the DDA

Respondents were asked their views on whether the exemptions to the provision of auxiliary aids and services and alterations to physical features should be removed from Part 4 of the DDA as applied to pre-16 education. In general, respondents were positive about this change. Given the non-statutory nature of IEPs and their variability with regard to form and content, it was believed that using the DDA to place a clear duty on local authorities to provide auxiliary aids and services and make alterations to physical features would remove an obvious loop-hole. One senior officer pointed out that the physical features exemption gave local authorities too much scope to place a disabled child at 'a school down the road', instead of in their local community. Scottish Executive respondents were slightly more doubtful about whether this was a necessary step. They felt that on balance education legislation was reasonably robust with regard to auxiliary aids and services and alterations to physical features, and placing another duty on local authorities might do little to improve attitudes or provision.

The teacher from the selective independent school felt that for reasons of social justice the reasonable adjustment exemptions should be removed. However, he pointed out that independent schools had made some efforts to comply with Part 4 of the DDA on the grounds that it was cost neutral, since parents whose children required additional support could be charged for services provided. He recognized that spreading the cost out over all children in the school would probably mean only a small increase in fees, but nonetheless felt that it might be opposed by the independent sector on cost grounds. There was insufficient time in this research to interview others from the independent sector, but this is clearly an issues that warrants further investigation.

Views were also sought on the possibility of allowing the ASN Tribunal to hear disability discrimination cases. Most respondents were in favour of this, and Scottish Executive respondents said that it was intended to review the scope and operation of the Tribunal in a year's time once it had settled down. SEED officials were also asked about allowing all parents of children with

additional support needs to access the Tribunal. They were not in favour of such a change, pointing out that parents could seek adjudication or take a 'Section 70' case to the Sheriff Court if they believed that the local authority was failing to deliver adequate and efficient education to a child with additional support needs. A Principal Educational Psychologist also said that he was not convinced that parents of disabled children should be accorded more rights than parents of other children with additional support needs. Also, the concept of disability had connotations of deficit, which the education system found slightly uncomfortable.

Key informants: Summary points

- It was reported that that in some authorities a much smaller proportion of children were receiving a CSP compared with the proportion receiving a Record of Needs.

- Many disabled children would not qualify for a CSP on the grounds that all of their provision was being made by education, or that the additional support being supplied by another agency was unlikely to demand high levels of co-ordination. Many disabled children in special or mainstream schools would be disqualified from receiving CSP on one of these grounds.

- CSPs were precise in specifying the additional resources to be allocated and which agency would provide.

- IEPs, which are non-statutory documents, varied in form and content and focused on learning goals rather than additional resources. Local authorities were trying to standardize the format of IEPs and improve their quality and specificity.

- Practitioners and local authority officers were generally positive about lifting the exemption on the provision of auxiliary aids and services and alterations to physical features from Part 4 of the DDA. The Scottish Executive respondents were not convinced that this would be a positive move, because the key was to improve attitudes and provision.

- Practitioners and local authority officers were in favour of allowing the ASL Tribunal to hear disability discrimination

cases. The Scottish Executive respondents said that there would be a review of the remit and operation of the Tribunal in 2007 where this matter would be considered. SEED was not in favour of widening access to the tribunal to all parents of children with additional support needs since they preferred approaches based on mediation and conflict resolution.

SECTION 4: VIEWS OF ASL IMPLEMETATION OFFICERS

Procedure

The questionnaire was intended to be completed by each Scottish local authority's education officer with responsibility for the implementation of the additional support for learning legislation. Because it was recognised that each local authority may use a different set-up, the questionnaire was sent electronically to the Head of Education (or nearest alternative) in the first instance. All thirty-two Scottish authorities were contacted, and the questionnaire was initially mailed out on the 7th September 2006 – thus each authority was afforded just two weeks to complete and return the questionnaire. Eighteen questionnaires were finally returned, a response rate of 56%. Given the tight deadline, this should be seen as a very good response. However, one respondent emphasized that the responses should be seen as his personal view since the deadline prohibited him from circulating the questionnaire to the rest of the Education Department. In considering these responses, it is important to remember that none should be seen as a 'corporate' response.

Local authorities were asked to identify themselves, but were given the option of anonymity. Three of the eighteen respondents preferred not to identify themselves. The fifteen local authorities that responded and identified themselves were Angus, Argyll & Bute, Dumfries & Galloway, Dundee, East Ayrshire, East Dunbartonshire, East Lothian, Eilean Siar, Falkirk, Fife, Glasgow City, Inverclyde, Midlothian, Renfrewshire and South Lanarkshire.

Current Post of Respondent

Three of the eighteen respondents declined to answer this question. Three local authorities were represented by their Head of Support for Learning, another three were represented by the Development Officer – Additional Support for Learning and one authority was represented by their Head of Service – Special Educational Needs. Two authorities were represented by their Principal Psychologist, and two by their Quality Improvement Manager – Inclusion and Equality. One authority's questionnaire was completed by a Senior Manager, another by a Senior Advisor

– Children and Families, and another by their Operations Manager – Pupil Support.

Use of Co-ordinated Support Plans

Respondents were asked how the proportion of children who have, or are likely to get a CSP compared with the proportion of children with a RoN. No respondent believed that a higher proportion of children would have a CSP. One respondent considered that the same proportion would have a CSP compared with a RoN (6%). Most respondents believed that a lower proportion of children would have a CSP compared with the recorded population (N=14, 82%), and two respondents (12%) said that they did not know. This echoes the views of the key informants.

Prior to the implementation of the ASL Act, around 2.1% of pupils in Scottish publicly funded schools had a Record of Needs, though there was considerable variation between local authorities ranging from 0.7% (East Lothian) to 3.7% (Inverclyde), (Scottish Executive, 2003b). Estimates of the future proportion of children to receive a CSP are shown below:

Estimated proportion of children with CSP	Number of authorities
More than 2.1%	0
0.6 – 2%	7
Less than 0.5%	6
Don't know	5

A number of respondents commented that their policy with regard to CSPs was still being formulated and therefore it was too early to say. It was also noted that initially current Records of Needs were under review, and therefore the proportion being converted to a CSP might not reflect future practice. Two authorities reported that they were actively engaging with other agencies (nurseries for example) to identify potential pupils who would not qualify for a RoN but might benefit from a CSP and therefore were unable to predict how the proportion of pupils with a CSP would relate to the proportion of pupils who had a RoN.

Thirteen respondents (72%) reported that CSPs in their authority specified the auxiliary aids and services to be provided; four authorities said that they did not, and one respondent declined to

answer the question. Interestingly, three respondents queried the definition of 'auxiliary aids'. Another three respondents wrote that aids and services could be specified, but that none of their existing CSPs had done this to date and another respondent reported that it was important to plan and review the provision of auxiliary aids and services with partner-agencies '. . . to avoid tokenism or over-reaction to parental expectation'. Another authority reported that auxiliary aids and services would only be specified if they were going to be provided by an external agency, and were 'directly linked to the educational objectives within the CSP'.

Respondents were asked if CSPs in their authorities specified which agency would provide specific auxiliary aids and services. Fifteen respondents (83%) reported that agencies would be specified; one respondent (6%) said they would not, and two respondents (11%) reported that it would depend on the circumstances of the pupil. Two respondents were clear that agencies would be specified with relation to supplying services, but were unsure about the use of auxiliary aids and this related to the uncertainty about the definition as discussed above.

Respondents were invited to comment on the extent to which IEPs specified auxiliary aids and services. Thirteen (72%) of the sixteen people who responded to this question reported that IEPs in their authority specified the auxiliary aids and services to be provided, three (17%) reported that the IEPs did not specify this information and one respondent (6%) said it depended on the circumstances of the pupil. Additional comments were made by seven respondents, all of whom stated that the IEP was designed to focus on the pupil's development and achievements and auxiliary aids and services would only be specified if they were needed to meet the targets of the IEP.

In the final question of this section of the questionnaire, respondents were asked to consider the question: How satisfactory are the current arrangements for the provision of auxiliary aids and services? Three local authorities declared that current arrangements were 'highly satisfactory':

> Current arrangements for provision are clear and shared among all agencies.

> Very satisfactory – we have adequate budget for chairs and other specialist equipment. Requests for aids are met. Needs for adult support are not always met – financial constraints.

Most (N=10, 55%) of the other authorities that answered this question reported that arrangements were adequate or satisfactory, but two of these cautioned that '. . . demand can sometimes be greater than available resources'.

Two authorities specifically reported that arrangements were unsatisfactory because of the potential input from agencies who were unprepared to follow through with the necessary financial commitment. In both cases the Health Service was named:

> It appears that the education service is left to meet all of the costs of supporting a child with a disability in school. It is totally unreasonable that the health service staff can make recommendations while holding absolutely no budget responsibility.

Mediation, Conciliation and Redress

In accordance with the Act, all eighteen respondents reported using independent mediation services, specifically: Resolve (N=9, 50%); Parent to Parent, Dundee (N=3, 17%); and Govan Law Centre (N=2, 11%). Two authorities specified that they provided parents with a list of independent mediation services and allowed them to select the best and most appropriate, and one authority specified that parents could be referred or self-refer to the service. In addition, two authorities outlined their own strategy which operated in conjunction with independent mediation:

> We have a four-step internal approach to mediation and problem solving.
> 1) Mediation within the school.
> 2) Mediation through our own advice and conciliation manager.
> 3) Mediation through our third tier education manager level.
> 4) Mediation through Head of Service

We have commissioned wholly independent mediation services provided by Parent to Parent – Tayside which are offered to parents at each stage of the above process.

Authorities were asked how many requests for mediation there had been since the legislation was enacted in November 2005. Seven authorities (39%) reported there had been no requests and the remaining eleven respondents (61%) reported that there had been less than five requests.

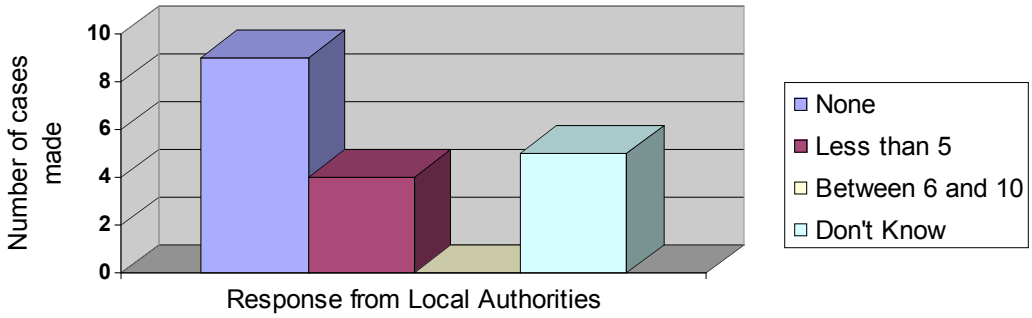
Fifteen respondents (83%) reported that since the legislation was enacted in November 2005, no requests for adjudication had been made, and the remaining three local authorities (17%) reported that there had been less than five requests for adjudication.

Eleven authorities (61%) reported that there had been no references to the ASL Tribunal since the legislation had been enacted, and the remaining seven authorities reported that there had been less than five (39%) references to the tribunal.

Clearly 10 months is a relatively short period of time, but so far there does not seem to be much demand for mediation, adjudication or reference to the tribunal.

Respondents were then asked, 'Since 2002, when SENDA came into effect, do you know how many cases from your authority have been referred for conciliation to the Disability Rights Commission?' The pattern of responses appears in Figure 1.

Figure 1: Number of cases made by local authorities to the DRC for Conciliation since SENDA came into effect, 2002.



One authority who had answered 'none' to this question clarified that one family was known to have sought advice from the DRC, but the matter had not yet reached conciliation.

Respondents were invited to comment on their current arrangements for mediation, conciliation and redress using a short answer format. While four authorities (24%) reported that they were 'very satisfied' with their current arrangements, the largest group (N=8, 44%) felt unable to comment because their arrangements have not yet been used:

> Difficult to say as untested – a great deal of money is being spent on a service that is not currently being used – Resolve is trying to compensate for this by offering training.

Two authorities were cautious about how user-friendly the arrangements were:

> [Arrangements are] Over elaborate. Possibly off-putting for parents.

> The tribunal process looks likely to be a challenging one requiring high levels of preparation. For DDA the arrangements seem satisfactory but the notions of less favourable treatments and discrimination have been stretched a bit in our experience.

Knowledge and Awareness of Legislation

Respondents were asked to rate the local authority's knowledge of Part 4 of the Disability Discrimination Act, and of the Education (Additional Support for Learning) (Scotland) Act. As can be seen from comparing Figures 2 and 3, local authorities were more likely to declare a good understanding of the ASL legislation compared to Part 4 of the DDA.

As noted in the previous section, there has been considerable investment in the implementation of the ASL legislation compared with Part 4 of the DDA. One respondent commented:

> Those [within the local authority] working with the DDA and ASL legislation have a good understanding but those who are not working in education, probably have little or no understanding.

Figure 2: Local authority's knowledge of Part 4 of the Disability Discrimination Act.

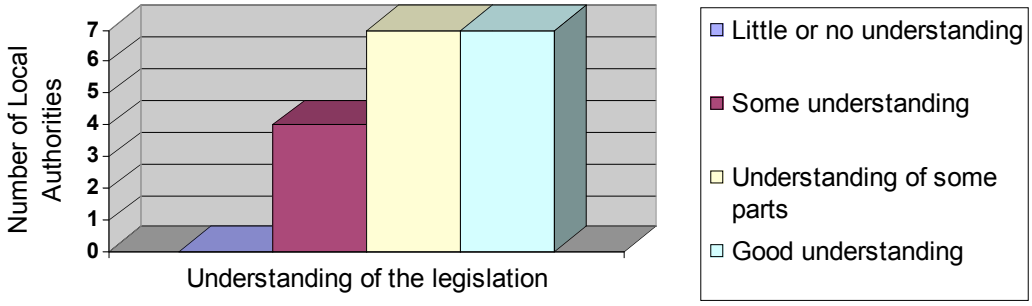
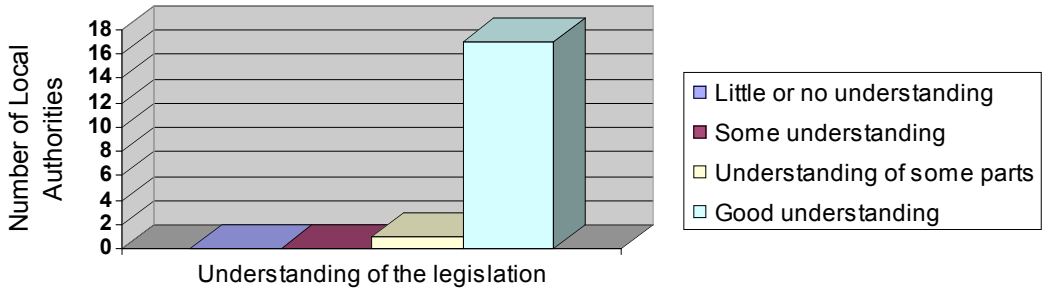


Figure 3: local authority's knowledge of the Education (Additional Support for Learning) (Scotland) Act.



Fifteen local authorities were unable to generate ideas for how Part 4 of the DDA could be improved; one respondent said their lack of response was due to the 'tight turnaround of the questionnaire'. Of the two that did comment, one felt that the legislation was clear, and the second felt that worked examples of best practice would be informative.

There was a much larger response to the next question which asked for suggestions for improving the Education (Additional Support for Learning) (Scotland) Act. Rather than suggesting improvements, most responses identified areas where clarification was needed. These included the following: cross-boundary issues (N=2); timescales for opening a CSP, particularly whether school closures and holidays should be included in the sixteen week period (N=2); the role of ASN tribunals with respect to making decisions about agencies' provision when the agency is not the education department (N=1); appropriate grounds for reference to the ASN tribunal (N=1). It was also suggested that ASN tribunals should be discontinued because they were adversarial and expensive (N=2); the law should be amended to emphasize parental responsibilities (N=1); national exemplars of CSPs would

ensure a degree of consistency between authorities (N=1); timescales were difficult to adhere to (N=1); clearer guidance was required to protect the child where their views conflicted with those of the parents (N=1); and education departments should not be accountable for the responsibilities of other agencies (N=1).

Finally respondents were asked if they had any further comments to make and nine respondents offered further comments. There was some concern about the 'fit' between ASL and DDA legislation (N=2):

> Staff at all levels would welcome clarification regarding the difference which may exist between disability and ASL needs.

A further four respondents suggested that there was a need to slow the pace of change, to delay any new legislation and to ensure current policies were working well together:

> The legislation governing this area of work should be allowed to settle before any further amendments are made.
>
> There should be a rationalization of legislation to integrate the requirements of the DDA and the Education (ASL) Act 2004.
>
> It would be useful if there was a better 'fit' between ASL, DDA (accessibility strategy) and the duty to Promote Disability Equality.

Two respondents appreciated the opportunity to respond to this questionnaire and were encouraged that the DRC was focusing on the issues.

Local Authority officers: Summary points

- Eighteen of the thirty-two Scottish local authorities responded, giving a rate of 56% - considered highly satisfactory given the tight deadline of two weeks.
- At least three authorities appeared to have appointed a senior staff member specifically to develop their response to ASL legislation and all authorities had a clearly designated individual with responsibility for the new legislation.

- Most respondents felt that there would be fewer CSPs than RoN administered within their authority, and most estimates for the proportion of pupils to have a CSP (under 1% of Scottish pupils) was half of the current Scottish average of RoN.
- Some Education Departments were uncomfortable with being accountable, in principle and financially, for the responsibilities and decisions made by other agencies, under CSP mechanisms.
- In the past 10 months, there does not appear to have been much demand from parents for mediation, adjudication or reference to a tribunal.
- All authorities had organised independent mediation/conciliation services for parents/carers, however, many argued that these had not been utilised and so had been an expensive exercise.
- Two authorities questioned the mediation process arguing that it was 'over-elaborate' and could disengage some parents.
- Local authorities were more likely to declare a good understanding of the ASL legislation compared to the DDA Part 4: this may be a function of local authorities having designated ASL Development Officers.
- Suggestions for improving the Education (ASL) (Scotland) Act included the following: clarify cross-boundary issues; discontinue ASN tribunals because they are expensive and adversarial; clarify timescales – should school closures and holidays be included in the sixteen week CSP timescale?

SECTION 5: VIEWS OF PARENTS

Background

This section is based on telephone interviews with eight parents who had attended a consultation meeting organized by Enquire, the national advice and information service on additional support needs in Scotland. The consultation meeting was to discuss the parents' guide to the additional support for learning legislation published by Enquire, and a number of parents indicated their willingness to be contacted in the future to share their views on educational provision for children with additional support needs. Due to their previous contact with Enquire, these parents were relatively well informed compared with many others, and should not be regarded as a representative group.

All interviewees were mothers, who between them had 12 children and young people with additional support needs. Nine children and young people were male (including triplets) and 3 female, aged between 5 to fifteen years with varying levels of additional support needs. One child (male) had cerebral palsy; one (female) had Down's Syndrome; six (male) had been diagnosed as being on the autistic spectrum while one (male) was awaiting formal diagnosis; one young person (male) had ADHD, one child (female) had dyslexia and one child (female) had developmental communication disorder.

Seven young people were in secondary and five children were in primary education. Of the seven young people in the secondary sector, one attended a school for autistic children, two attended an autism unit attached to a mainstream secondary school and four went to their local mainstream school. Within the primary sector, three children attended their local mainstream school, one child attended a language unit attached to a mainstream primary and one went to a school for children with learning difficulties.

Half of the children and young people (6) had a Record of Needs (five had a diagnosis of autistic spectrum disorder and one child had Down's Syndrome. The majority (10) had an IEP, the two children without an IEP were a boy waiting for an assessment for Asperger's Syndrome and a girl assessed as having dyslexia.

No child had a CSP in place yet and only one parent reported that their child (a boy at a school for children with autistic spectrum disorder) was definitely going to receive a Co-ordinated Support Plan. A mother of a child with autistic spectrum disorder thought that he probably would receive a CSP. Four parents were concerned that their children might not get a CSP because the local authority was arguing the case for an alternative local plan, an ASP4 (Additional Support Plan – level 4). All these parents stated that they would be pushing for a CSP principally because it was legally binding whereas as far as they were aware an ASP4 was not.

> I will certainly be pushing for it – but the local authority want to give her an ASP4 which is not legally binding – I want a CSP as she gets input from health and social work as well as different educational input. (Mother of a girl with Down's Syndrome).

All of the parents interviewed were aware of the difference between a Record of Needs, an IEP and a CSP.

The additional support children get in school

The nature and level of additional learning support in place varied. The parents of children in specialised units or schools reported the highest level of additional learning support for their children. Several of them commented that their children received 'total' or 'intense' support, including speech and language therapy, learning support, and auxiliary and classroom assistant support. Physiotherapy and occupational therapy was also provided for the boy with cerebral palsy. These parents also regarded small classes as providing additional support

Two of the children at mainstream primary school had a full-time auxiliary and input from a learning support teacher and speech and language therapist, and another child had support form educational audiology. The parent of the other child at mainstream primary reported that she received no additional support.

Three of the young people attending mainstream secondary had some help from a learning support teacher in the classroom and one of them also attended supported homework classes and had a scribe for exams. Another young person had no additional support

at her secondary school but her mother was hopeful it would be in place soon.

No physical alterations had been made to any school. Five children and young people got additional or adjusted teaching materials, including specialised language materials, visual aids, talking books, a boardmaker and audio aids. Two children received specialised equipment in school, a stand alone computer and an adapted table and chair.

Most parents were satisfied with the types of additional support or auxiliary aids and services provided, however all of the parents of young people in mainstream secondary school felt that their children needed more learning support. In particular, they wanted individual learning support for their children in addition to support in a classroom setting.

> He needs one to one learning support not shared time in class (Mother of boy with ADHD)
>
> My older boy at mainstream needs more learning support, individual rather then in class. (Mother of boy with Asperger's Syndrome)

Some of these parents also wanted their children to be given laptops.

A few parents raised the issue of additional support for their children outwith school. They were concerned that they were excluded from after school activities.

> Additional support in school is fine but difficult to access sports facilities such as swimming for him and for him to go to after school activities. There is a lack of provision. Can't just go along to things – so he misses out. (Mother of a boy with Asperser's Syndrome)

In general, parents felt that additional support was much more accessible in special settings and more difficult to obtain in a mainstream environment:

> I'm really happy for him now – he's doing great and coming on leaps and bounds- but I had to battle and battle for this – it has taken me two years – two years out of his life. For that I'm really angry – the education department has too much power. They should provide more information and help parents instead of us having to fight all the time – can we legislate to make them work in the best interests of our children? (Mother of a boy with Asperger's Syndrome)

There was a general feeling among parents that mainstream schools were reluctant to address the additional support needs of their children and that they had to constantly push to get them the support they were entitled to.

> Schools appear reluctant to address the additional support needs – school has made no mention of a CSP – I will have to go them to begin the process *(*Mother of a boy with Asperger's Syndrome)

> It gets harder to access services in mainstream – teachers either do not understand what inclusion is about or they feel it is just too much trouble*. (*Mother of a girl with Down's Syndrome)

Many parents expressed concern about the lack of inclusion in mainstream schools. One told of how she was asked by the head teacher of her daughter's school not to bring her to school sports day.

> I couldn't believe she actually said that to me. I know I should have taken issue with it but I was so shocked I did nothing, I kept her off. *(*Mother of a girl with Down's Syndrome)

What parents do if dissatisfied with local authority provision

The majority of parents interviewed thought that the school and the local authority did not provide enough information about what would be provided to meet their children's needs. On the contrary, all were extremely negative about the information given to them by the school or local authority. Several laughed at the question. The following comments are typical of the parents' responses.

> Are you joking? We have had to fight all the way to find out what our children are entitled to. (Mother of boy with Asperger's Syndrome)
>
> Definitely not –never have – if anything they avoid giving information. (Mother of triplets with diagnosis of autistic spectrum disorder)
>
> Absolutely not – I have to continually ask for it. (Mother of girl with Down's Syndrome)

Only two parents stated that they were satisfied with the information given to them but both gave qualified responses.

> Now I get good information for one son –yes – but in the past no. (Mother of boy with diagnosis of autistic spectrum disorder)

Another parent said she had had to fight for the information about the provision her son was entitled to.

No parent interviewed reported that the local authority told them what to do if they were dissatisfied. Again the majority of parents thought this question was derisory,

> Definitely not, you have to do everything by yourself, fight all the way to get your child what they are entitled to. (Mother of a boy with Asperger's Syndrome)
>
> If only, then maybe it wouldn't be such a battle. (Mother of a girl with Down's Syndrome)

The majority (6) of the parents interviewed had complained to the school or the local authority about provision for additional support needs. Most of these parents felt that their complaint was not properly addressed at school or local authority level. Two parents had taken their complaints to appeal and won their case.

All parents interviewed had requested help form Enquire and stated it had been very useful. Two parents had used mediation (Resolve) and one of these had found it useful:

> I used Resolve – they were very good – made head teacher enter into a dialogue with me – before then she was always too busy. (Mother of child with Down's Syndrome)

The other felt that Resolve was biased in favour of the local authority:

> I used Resolve but the agenda was set by Local Authority – I feel I should have been sent a copy of the agenda before the meeting – we couldn't discuss what I wanted to. (Mother of boy with Asperger's Syndrome)

One parent had asked for mediation but had been refused and another had thought about it but decided against it because she didn't want to 'make waves' in her already poor relationship with the head teacher of her daughter's school.

One parent is currently in the process of asking for adjudication. The other seven have not asked for it although they are aware of its existence. No parent has made an enquiry or reference to the ASN Tribunal. No parent had contacted the Disability Rights Commission with a view to using its conciliation service. One parent interviewed said she had considered it but it looked too difficult.

Knowledge and awareness of the current legislation

Parents were asked to rate their knowledge of Part 4 of the Disability Discrimination Act and the ASL Legislation. They were much more knowledgeable about the ASL legislation than the Disability Discrimination Act. The majority of parents (6) had little or no understanding of Part 4 of the Disability Discrimination Act. One reported some understanding of it and one reported understanding of some parts. In contrast, the majority (6) of parents responded that they had a good understanding of the ASL legislation, one stated she had some understanding and only one reported little or no understanding.

The parents had no suggestions for improving Part 4 of the Disability Discrimination Act as it applies to pre-16 education as they had little or no knowledge of the Act.

Parents were also asked for suggestions for improving the Education (Additional Support for Learning) (Scotland) Act. Most parents were satisfied with the Act but not with its implementation. Many parents commented on the gap between the legislation and the provision of additional learning support as evidenced by the following responses.

> The legislation is great but there is too big a gap between it and the actual provision – more work has to be done to bridge the gap between what parents expect from the legislation and what schools are able to provide. (Mother of a girl with dyslexia)
>
> Legislation is good – bringing it into practice is the problem – schools need to have a better understanding of it in order to accommodate the additional support needs of children. (Mother of a boy with Asperger's Syndrome)

Several parents made suggestions for improving the Act. The key points raised were:

- A timetable for putting things into place. Timeframes should be established so that schools and local authorities are obliged to respond to parental requests within a specific time period. CSPs and other procedures and services should have to be processed within a given time period. (In fact the opening of a CSP is governed by a legally enforcable timescale, but no such statutory timeframes apply to other plans such as IEPs).

- The onus should be on the local authority and schools to provide all parents with information about what is available for all children with additional support needs. They should have to give out information packs on the rights of children with additional support needs by law. They should take a more pro active role in the provision of additional support.

- There needs to be mandatory training for all school and education authority staff on the legislation and on the principles of inclusion.

- There needs to be national guidelines for local authorities to implement the Act in the best interests of the child.

Guidelines which do not allow for too much differentiation in interpretation.

- Legislation should provide for some sort of liaison service where parents can go to get all the information and guidance they need to ensure their children's additional learning support needs are met.

Parents: Summary points

- Parents felt they had to fight for accurate information from local authorities about their rights and the educational provision to which their child was entitled.

- Every parent commented on their 'battle' with the education department to secure the additional learning support needed for their child.

- While the parents of children and young people placed in specialised units reported satisfaction with the current level of additional support for their children, they all commented on their struggle to get a suitable place for their child.

- Parents of children and young people in mainstream schools wanted the training needs of auxiliary staff to be properly addressed and expressed concern that the people charged with providing additional support, although generally very willing and helpful, lacked experience and knowledge of their children's needs,

- The majority of parents had little knowledge of disability discrimination legislation and while the majority were satisfied with the ASL legislation they all expressed concern vis-à-vis its implementation.

- Parents were willing to complain to schools and local authorities if they felt their child's needs were not being addressed, but were less likely to use more formal routes such as mediation and the ASN Tribunal. However, these have been in place for a relatively short period of time and parents may become more willing to use them in the future.

SECTION 6: CONCLUSIONS AND IMPLICATIONS

Use of CSPs

The ASL legislation has been in place for less than a year, therefore comments on its application must be regarded as provisional. It is believed by local authority officers and other key informants that far fewer children will receive a CSP than had a Record of Needs. This is because the criteria for the opening of a CSP are more stringent than those applied to a Record of Needs; children must have additional support needs arising from one or more complex factors or multiple factors. In addition, the child must be receiving significant additional support from education and another agency which requires a high level of co-ordination. The group of children with a CSP is likely to be different from those who were recorded, and may include a greater proportion of children with social, emotional and behavioural difficulties and a lower proportion of children with physical, sensory and cognitive difficulties. Disabled children in special schools receiving input from health, such as speech and language therapy, may be deemed not to qualify for a CSP because the input is timetabled and therefore does not require a high degree of co-ordination. Some authorities are using Level 4 Additional Support Plans rather than CSPs, although there was some evidence that parents preferred CSPs because of their legally-enforcable status.

CSPs are written with a high degree of specificity with regard to the nature of additional resources and the agency making the provision.

Use of IEPs

IEPs are non-statutory plans focusing on learning goals rather than additional resources (although these may be stipulated in some cases). Children who might have had a Record of Needs in the past are likely in the future to have an IEP or its equivalent. Local authorities are encouraging schools to adopt a common IEP format and to be more precise in their formulation.

Provision of auxiliary aids and services

Local authority and SEED respondents believed that education legislation was sufficiently robust to ensure that reasonable adjustments would be made when required. Parents who were interviewed, on the other hand, felt that it was a struggle initially to

obtain information about their child's assessed needs and rights, and subsequently to get additional support in place particularly in mainstream settings. It was noted that accessibility strategies were couched at a general level, and were not intended to address individual pupil needs.

Mediation, conciliation and redress

Some local authority staff felt that new dispute resolution routes created by the ASL legislation were a positive development and would encourage local authorities to communicate much better with parents. Others felt that the routes were expensive, as yet little used and were in danger of fostering an adversarial climate. Parents were pleased with the new emphasis on discussion and negotiation. Those we interviewed were aware of formal routes of redress, including the new Tribunal, but were reluctant to make a reference due to the perceived effort. There were very low levels of awareness of the DRC's conciliation service amongst all those who were interviewed or who responded to the questionnaire.

Knowledge and awareness of legislation

All respondents had much greater knowledge and awareness of the education as opposed to the disability discrimination legislation. This was partly explained by the Scottish Executive's allocation of considerable funds to assist local authorities in their implementation of the additional support for learning legislation. In addition, there was an awareness that, because of the exemptions to the reasonable adjustment provisions of Part 4 of the DDA, this piece of legislation was relatively weak. Some mention was made of the requirement to develop Disability Equality Schemes by December 2006, and it was felt that this would encourage schools and local authorities to identify disabled children amongst the wider group of children with additional support needs.

Implications for possible amendments to DDA Part 4

Most respondents felt that there were grounds for removing the exemption to the provision of auxiliary aids and services and alterations to physical features from Part 4 of the DDA , since this would strengthen the rights of disabled children and underline local authorities' responsibilities. This was felt to be particularly important in relation to disabled children who did not have the protection of a statutory document stating the additional support they required in order to benefit from education. Scottish Executive respondents, on the other hand, whilst not strongly

opposing such a change, felt that careful consideration was needed to determine whether improvements in provision and attitudes would result.

Many respondents were in favour of changing the legislation to allow the ASN Tribunal to hear cases of disability discrimination. Some local authority staff, however, did not believe that the Tribunal was necessary at all and did not think it was fair that parents of disabled children should have greater access to legal redress than parents of other children with additional support needs who were not covered by the DDA. SEED respondents stated that the ASN Tribunal would be reviewed in 2007.

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