

## **Developing inclusive education policy and practice for looked-after children**

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### **Introduction**

Inclusive education is not a reality for all and it is vital that those charged with providing a quality education to children who have different abilities or face a range of challenges know what is likely to prove effective in helping all pupils within the education system to succeed to the best of their ability (Sebba and Sachdev, 1997). Given all the evidence that looked-after children have extraordinary educational needs (Dixon and Stein, 2002; 2005; Francis, 2000; 2007; Goddard, 2000; HM Inspectors of Schools and the Social Work Services Inspectorate, 2001; Jackson and Sachdev, 2001) and the belief in some quarters that looked-after children in general require special education measures, it is important to consider whether a broader interpretation of the current statutory requirements relating to inclusive education for children with 'additional support needs' might enhance the education of this vulnerable group.

In the context of earlier legislation the discourse concerning inclusive education related to those children and young people who were regarded as having 'special educational needs'. The term, 'special educational needs', was used in relation to individual children with specific learning difficulties that arose from innate characteristics. Research evidence, however, about the poor educational performance of children in public care was sufficiently established in the 1990s for some to suggest that the term, and therefore the measures and provisions that came with it, should also have been broadly applied to looked-after children (Fletcher-Campbell, 1997).

Under previous legislation, service providers tended to address the 'special educational needs' of children within tightly-drawn parameters. They did so by adopting an individualistic approach to assessing children's needs and by resisting the notion that certain groups or categories of children, such as 'looked-after children', might fall into the definition. While it is acknowledged that adopting such a wholesale approach may not have been entirely desirable, examination of the relevant statutory provision suggests that the architects of the legislation held a much broader vision of how the term 'special educational needs' might have been defined in practice.

The potentially stigmatising impact of widening the use of the term, to incorporate young people in public care may be taken as a valid reason for rejecting such an idea in principle. Some groups of children in the United States, however, are recognised as being at risk of educational failure, and this categorisation may stem from adverse social circumstances as well as academic assessment of learning ability. Jackson and Sachdev (2001) argue strongly that the concept of 'educationally-at-risk' children could usefully be adopted to support the development of measures to compensate for these risks and to promote better educational outcomes for looked-after children.

It is important to consider whether the scope of current statutory responsibilities for children with 'additional support needs', and the measures that have been attached to these responsibilities, are being fully utilised to serve the needs of looked-after children. The view adopted in this paper is that it is better to countenance the possibility that the term should be applied to all children looked after away from home, if it leads to an overall improvement in the quality of educational experience, than to reject it out of hand.

## **The legal background**

### *The Education (Scotland) Act 1945*

The Education (Scotland) Act 1945 placed responsibility for the provision of effective and efficient primary and secondary education firmly within the duties of the local education authorities. Interestingly, considering the current rhetoric about social inclusion, it was viewed as a landmark piece of legislation that was intended to promote educational opportunity for all and it established a vision that all children would be catered for in mainstream schools (Part II, section 40-42). The 'inclusive' nature of the legislation was such that it incorporated children with specific needs such as children with social, emotional and behavioural problems, as well as children with disabilities.

### *Special education – The Warnock committee*

Such was the impact of the 1945 Act that, following its implementation, unease grew about the use of special schools for certain categories of children and the philosophy of segregating children from mainstream education became increasingly questioned until, in 1973, the Warnock Committee was established. The remit of the committee was to review the provision of education in England, Wales and Scotland for children with particular educational needs. When the report of the committee was published in 1978 it proposed the use of the term 'special educational needs' for such children and contained more than 220 recommendations about appropriate educational provision (Warnock, 1978).

The committee formed the view that these 'special' needs might take a variety of forms and occur over a range of severity, thus defining special education more widely than it had previously been defined. Indeed, the report proposed that education provision should be delivered on a more flexible model and that special education should no longer be synonymous with special schooling. Rather, the committee envisaged a more inclusive policy with the maximum integration of children with special educational needs into mainstream schools, though recognising that for some children whose integration was impractical, special schools would still be required. A variety of levels and types of integration were envisaged including, locational, social and functional, and academic. Despite the breadth of definition of the term 'special educational needs', there was resistance in practice to the idea of encompassing certain categories or groups, like children in public care.

Notwithstanding this reluctance to apply the term more broadly, the report nevertheless highlighted a number of important principles that, based on the evidence concerning the educational performance of looked-after children, would have had merit in addressing the educational needs of this group. For example, one of the main features of the report is that it emphasised the importance of identifying and responding to children's special educational needs at the earliest opportunity. Additionally, the important role that parents play in educating their children was acknowledged and the principle of partnership between parents and schools, with parents having the right to participate in decisions about their children's education, was stressed. Another of the important proposals was that parents should have the right to request an assessment of their child's educational needs and that the education authority should have a duty to provide one, if it was felt to be in the child's best interests. These measures, if applied to looked-after children, would undoubtedly have established a sound basis for effective practice.

While for many the Warnock Report represented a positive forward step, in the eyes of others it did not achieve enough in altering the balance of power between parents and professionals (Kirp, 1982). Critics also argued that the report failed to recognise the underlying social factors that were significant influences on the educational experiences of children (Wedell, 1990).

Despite the criticisms, the report was extremely influential in the drafting of new legislation, the Education Act 1981 in England and Wales and the Education (Scotland) Act 1981. These Acts allowed for the assessment of a child's educational needs, leading, where appropriate, to a 'Statement' in England and Wales or a 'Record of Needs' in Scotland. The Record of Needs was intended not only to identify the nature of the child's needs but also what measures the education authority proposed to take in order to meet these needs. While the legislation in England and Wales included a commitment to integrating

children into mainstream schools, the Scottish legislation did not make such a commitment (Riddell and Brown, 1994).

### *The Education (Scotland) Act 1981*

The Education (Scotland) Act 1981 stated that a child has a 'learning difficulty' if he or she has significantly greater difficulty learning than the majority of children or if he or she suffers from a disability which either prevents or hinders him or her from making use of educational facilities of a kind generally provided for children of his or her age (Section 1 (5)(d)). This definition was critical in terms of determining the statutory duties of the education authority and was particularly relevant to the needs of children looked after away from home. Crucially, however, it relied upon interpretation at both individual and policy levels. Such interpretation tended to focus on the inherent factors that constrain an individual's learning rather than their socio-economic circumstances, which, in the case of looked-after children, are often equally debilitating.

The Warnock Report (1978) had extended the definition of the term 'special educational needs' to include the large number of low-achieving, mainly working class, pupils – in fact, those pupils who often live in the kind of disadvantaged circumstances that are most likely to lead to episodes in care. Many professionals, however, argued that far from being special, these children's needs are completely normal. Thus the concept of special educational needs was not applied per se to looked-after children and it was the focus of much criticism since it was central to the question of duties and responsibilities (Goacher et al., 1988).

### **The failure to apply 'special education' legislation to looked-after children**

The issue of whether a child may be suffering from educational disadvantage or poor performance as a consequence of stressful home circumstances has always been a particularly complex point when viewed in relation to looked-after children. While it may be true that such circumstances can have implications for the child's school performance in terms of motivation, behaviour or schoolwork, for some it was felt to be misleading to equate these with special educational needs. Thus the criteria for using the term were confusing, leading some commentators to conclude that it was one of the most problematic areas in education legislation (Adams, 1986; Galloway et al., 1994). Norwich (1990) argued that there was a need for more effective national and local criteria to allow the latter to specify appropriate thresholds for meeting local conditions without excessive constraints being imposed by the former and that the primary emphasis should be on assessing the child's individual needs and functioning in context.

While many argued that the education arrangements for looked-after children should be no different to those for any other children, the notion of applying positive discrimination and discrete support gained ground in other quarters in the late 1990s. Fletcher-Campbell (1997) proposed, with some considerable justification, that children coming into care experience fragmentation and disjunction, not only in their family circumstances but also within the care system itself. While she did not suggest that looked-after children necessarily have special education needs within the typical terms of the definition, she proposed that they do have special needs that arise from their care environment rather than the learning environment.

Of course, within the looked-after population there is a range of ability - from those who may have particular learning needs within the traditionally accepted definition, to others that are academically able and have the capacity to go on to further and higher education. Notwithstanding this, Fletcher-Campbell (1997) has argued that, as a group, they merit special consideration by virtue of their looked-after status and the fact that they suffer disadvantage by the very nature of the consequences of being looked after. When young people become looked after, by whatever route and for whatever reason, they may not be able to make 'normal' responses due to the instability and fragmentation they experience in their lives. Consequently, it can be argued that many of the provisions of 'special education' were relevant to their circumstances and that using these provisions could have been a means of ensuring entitlement and restoring what would 'normally' accrue to them in different circumstances. For some then, failure to apply the concept of special education needs, and the attendant provision, has prolonged the educational disadvantage experienced by looked-after children.

Under the Education (Scotland) Act 1981, education authorities in Scotland were required to put in place strategies for identifying children with special educational needs. The aim, however, was not simply to assess and identify need but also to ensure that suitable forms of education were provided for children with those needs and, thereafter, to monitor their progress. Had such measures been applied to looked-after children, the advantages could have had a substantial bearing on their future educational progress and outcomes.

Other aspects of the legislation could also have been usefully applied to children in public care. Section 61(b) of the 1981 Act, for example, provided for a parent to request an assessment from the education authority to determine whether his or her child required a 'Record of Needs' and the authority was required to provide one unless satisfied that the request was unreasonable. The process of observation and assessment, where agreed, had to include educational, psychological and medical assessments and, in some cases, advice from social work authorities. Whether or not a 'Record of Needs' was opened for the

child, the underlying principle of the legislation was that he or she would have a better chance of receiving the appropriate quality of education if his or her needs were assessed thoroughly. It is clear that the advantages of adopting such an approach for looked-after children could have had a significant impact on their performance and attainment.

More recent legislative changes in Scotland reflect many of the 'inclusive' underlying principles that were first promoted by Warnock and suggest that the debate about widening the scope of 'special needs' measures has finally resulted in a significant shift. The Education (Additional Support for Learning) (Scotland) Act 2004 heralded the introduction of a new definition of special education needs and adopted new terminology which reflects the more inclusive nature of the policy agenda.

### **Education (Additional Support for Learning) (Scotland) Act 2004**

The concept of 'additional support needs' in the new Act encompasses a broad group of children and young people whose needs have to be identified, understood, and addressed. Section 1 of the Act sets out the definition of additional support needs as:

- 1 A child or young person has additional support needs for the purposes of this Act where, *for whatever reason*, the child or young person is, or is likely to be, unable without the provision of additional support to benefit from school education provided or to be provided for the child or young person. (italics added)

The change in terminology, from 'special educational needs' (SEN) to 'additional support needs' (ASN) marks a major watershed in the development of education policy. The new term is undoubtedly more inclusive, less stigmatising, and should help to avoid negative labelling because it recognises that many children need additional support at some time or other and that some additional support needs may be transient while others are much longer term.

Given the scope of the definition, the additional support needs framework could appropriately be applied to *all* children who are looked after away from home - particularly since it is acknowledged that there is a wide range of factors and circumstances which may lead to some children and young people having a need for additional support, including:

- **Family circumstances** - for example, where a child's home life is disrupted;
- **Children in need of care and protection** - for example, looked-after children

or children at risk;

- **Social and emotional** – for example, children who have experienced bullying, or experience difficulty forming social attachments;
- **Behavioural difficulties** - for example, where it is felt that a child may respond to approaches to develop positive behaviour, may be involved in offending, or who is at risk of exclusion.

Clearly, the above categories encompass the range of needs and circumstances affecting looked after children. Education authorities must make arrangements for identifying those children and young people who have additional support needs and what those needs are (s 6 (1)). Identifying additional support needs is about identifying difficulties with learning and how these might best be overcome. Some children and young people may have physical or sensory impairments, or significant emotional difficulties, or face extremely challenging circumstances in their home lives. Assessment has to consider the child, his or her circumstances, and how these have an impact on learning. Among other things, under the Act, education authorities must:

- make adequate and efficient provision for each child or young person with additional support needs for whose education they are responsible;
- make arrangements to identify additional support needs;
- provide those children or young people who need it with a Co-ordinated Support Plan (CSP) and keep this under regular review;
- provide independent and free mediation services for all parents of children with additional support needs and publish information on these services;
- provide access to dispute resolution services for all parents of children with additional support needs;
- request, and take account of, information and advice from agencies likely to support the child when he/she leaves school;
- provide information to whichever agencies will be responsible for supporting the young person once they leave school, including further education colleges, if the young person agrees.

A need for additional support should not imply that a child or young person lacks abilities or skills and an education authority must prepare a CSP for a child or young person when the child or young person has additional support needs arising from one or more complex factors, or multiple factors, and those needs are likely to continue for more than a year.

### ***Complex and multiple factors***

The Act states that a complex factor is one which has, or is likely to have, a significant adverse effect on the school education of the child or young person. A complex factor will affect most aspects of learning and may be a long-term educational, medical or other factor. For example, a complex factor could arise from severe learning difficulties, a sensory impairment such as blindness, or a physical disability such as cerebral palsy or other conditions such as autistic spectrum disorder. More than one complex factor may be present. A proportion of looked-after children will fall into this category.

### ***Multiple factors***

These are factors which are not by themselves complex factors, but taken together, have or are likely to have a significant adverse effect on the school education of the child or young person. In all cases it is how these factors impact on the child's learning that is important. Those best placed to decide whether or not factors are complex or multiple are those working with the child or young person, as well as the parents, and of course the child or young person.

What may be complex, or multiple, factors for one child may not be for another. It is the effect of the factor(s) on school education that is important, not any diagnostic label alone and every child or young person should be considered on an individual basis.

### ***Monitoring and review***

Education authorities must make appropriate arrangements for keeping under consideration the additional support needs of, and the adequacy of additional support provided to, each child and young person for whose education they are responsible and the adequacy of additional support provided for each child and young person with additional support needs (s4 (1) (b)).

Education authorities, with other appropriate agencies, should monitor the progress of children and young people who have additional support needs to ensure that they are learning effectively and making adequate progress. Where children and young people are not making adequate progress as expected, the child's needs should be re-assessed and appropriate support provided.

### ***Assessment***

Under the legislation parents can request that a detailed specialist assessment is carried out and the education authority must comply unless the request is unreasonable. The Act requires that a request must be in writing and must



contain a statement of the reasons for making the request. Once an assessment request has been made the process should be managed by appropriate staff within the school or other appropriate agencies (s28).

The assessment process should seek multi-agency consultation and/or collaborative working. The assessment process should ensure that links are made amongst other professionals involved and include discussion with parents and professionals involved with the child or young person. Moreover, the authority should always endeavour to seek the views of the child or young person and should build on other assessment information already available.

### **Conclusion**

For good reasons, many professionals have resisted the argument that the term 'special needs' should be applied as a blanket category to all looked-after children. For some, however, this stance resulted in a lost opportunity to take advantage of the available measures and provisions to promote better educational outcomes for looked-after children. The continuing evidence of educational disadvantage and poor outcomes of looked after children (Allen, 2003; Dixon and Stein, 2002) suggests that it is time to reappraise this stance.

The measures contained within the Education (Additional Support for Learning) (Scotland) Act 2004, if applied to looked-after children, have the potential to be of great benefit to their educational performance. Early comprehensive assessment of educational needs, closer collaboration between social work and education services, greater parental participation and clearer definition of roles and responsibilities are all key elements of the policy relating to children with 'additional support needs'. In light of the catalogue of obstacles and problems that beset the educational performance of young people in public care, it does not seem unreasonable to suggest that the basic requirements and duties associated with the current legislation could, indeed should, be applied to all looked-after children. The potential benefits accruing from such measures appear to greatly outweigh the short term hazards that may result from the stigmatising effect that some suggest would follow.

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