

## **Response to Scottish Government consultation on 'Excellence and Equity for All: Guidance on the Presumption of Mainstreaming'**

**January 2018**

CEL CIS (Centre for excellence for looked after children in Scotland), based at the University of Strathclyde in Glasgow, is committed to making positive and lasting improvements in the wellbeing of Scotland's children living in and on the edges of care. We welcome this opportunity to comment on the draft 'Guidance on the Presumption of Mainstreaming', with particular consideration of how the guidance reflects the needs of looked after children and those on the edges of care.

As of July 2016, there are 15,317 looked after children in Scotland (1.5% of the 0-18 population), 5,659 of whom are primary school aged (5-11), and 6,330 are secondary school aged (12-17). Over half of all looked after children live with their own family – either in kinship care or 'at home' - and approximately 35% with foster carers. Nearly 10% (1,477) live in residential homes or schools.<sup>1</sup>

This guidance has particular relevance to looked after children, who often require additional support to benefit from their education. The [Education \(Additional Support Needs\) \(Scotland\) Act 2009](#) (s.8) clarifies that it should be assumed that a looked after child will have additional support needs (ASN) unless the education authority, after assessment, determines they do not. On 31 July 2016, 1,797 (12%) of looked after children were recorded as having a disability, 10,994 (72%) had no disability recorded, and for 2,489 (16%) the disability status was not known. Due to changes in the statistical return requested from local authorities, the data for 2015-16 is not comparable to that collected in previous years. Previous statistical returns asked local authorities to report on the additional support needs of looked after children; which resulted in wide variance in the numbers reported between local authorities (due to differences in how 'additional support need' and 'disability' are understood, assessed and recorded). In 2014-15, 13% of looked after children were reported to have an 'additional support need', with one local authority reporting 3% and another 44%.<sup>2</sup> These significant discrepancies, in a context when every looked after child in Scotland is considered to have additional support for learning needs unless assessed otherwise, raises questions over the reliability of such findings. Data for English looked after children identifies 57% (20,220) have 'special educational needs'.<sup>3</sup>

The factors giving rise to additional support needs for looked after children are varied and can be complex in nature, encompassing physical and learning disability, emotional and behavioural difficulties, and the impact of developmental trauma. Their backgrounds and experiences are diverse, but many have experienced multiple, serious adversities, including parental drug and alcohol misuse, and domestic violence.<sup>4</sup> Looked after children are significantly more likely to have particular physical health conditions, poorer mental health, and face multiple barriers when it comes to addressing such difficulties.<sup>5</sup> Educational outcome indicators show that the gap between looked after children's attainment and achievement, and that of all children, remains unacceptably large.<sup>6</sup> Scottish Government statistics continue to highlight the concerning fact that children who are looked after are much more likely to be excluded from school than children who are not looked after. The most recent statistics indicate looked after children are excluded at a rate eight times higher than their non-looked after peers.<sup>7</sup> It is not known how many of these children have additional support needs.

In recognition of the vulnerability of this group, and the state's responsibility to safeguard, support and promote their wellbeing, schools, local education authorities, NHS Boards, Scottish Ministers, and a wide range of other public bodies are all considered 'corporate parents' within the terms of [Part 9 of the Children and Young People \(Scotland\) Act 2014](#) (the 2014 Act). This means they are under explicit statutory duties to assess and promote the wellbeing of all looked after children.

### **Question 1: Do you agree with the vision for inclusive education in Scotland?**

Yes. We welcome this vision, particularly its appreciation of diversity; and the recognition of education as a right, a foundation for a just society. Article 28 of the [United Nations Convention on the Rights of the Child](#) (UNCRC) sets out the rights of children to education, and for education to be accessible for all.

The overall introduction section would be improved by:

- A clear acknowledgement that a child (whether having additional support needs, or who is looked after (or both)) should be regarded first as an individual, with capacities that are not fixed, aspirations waiting to be encouraged, and views to be heard.
- Making particular reference to Part 9 of the 2014 Act, given the relevance of the statutory corporate parenting duties this places on Scottish Ministers, local authorities and other public sector bodies to ensure the needs of looked after children and young people are assessed and met across all agencies.
- Making the reference to looked after children in paragraph 6 into a separate bullet point to make clear the, often misunderstood, entitlement

of looked after children to have their additional support needs assessed, unless the local authority can show that such assessment is not required.

- Expressing the introduction from the point of view of a child or young person, or their caregivers. Aside from the definition itself, the current tenor of the remainder of the introduction is somewhat abstract.
- Adding "(Scotland)" to the 'Children and Young People Act 2014' listed on Page 4 for completeness and clarity.

### **Question 2: Do you agree with the key principles that underpin the guidance?**

Yes. Whilst we agree with these principles, they would be strengthened by an exposition of the purpose of education and how this is influenced by the principle of equity, and therefore the importance of schools being prepared to adapt to be inclusive. Such an omission appears starker when the first principle listed is: 'improve outcomes and support the delivery of excellence...' That would be unlikely to come high on many parents' or carers' lists of key principles. The use of the word 'delivery' here (and elsewhere in the guidance) appears to reduce education to the status of a commodity. The guidance should emphasise the purpose of education as encouraging social, cultural and intellectual development and inquiry; supporting children to feel secure in the learning environment; and providing children with opportunities to have good relationships with trusted adults.

### **Question 3 - Are the expectations set out under each of the 'present, participating, achieving and supported' principles the right ones?**

Yes.

Specific comments:

- The concept of 'presence' could be usefully expanded upon in paragraph 10. It should be clear that this includes the need to feel welcome in school, and to have one's culture and individual identity respected. Schools can be supported to further children rights in schools through programmes such as Unicef's the '[Rights Respecting Schools Award](#)', which uses the UNCRC to embed values such as respect, nurture and responsibility within UK schools.
- Specific reference in para 11 to the particular risk of looked after children being excluded from school and receiving part-time education is required. The most recent statistics indicate looked after children are excluded at a rate eight times higher than their non-looked after peers.<sup>8</sup>
- The final sentence in paragraph 11 is ambiguous. If an act is unlawful, the notion of a formal planning process surely does not apply.
- The Wellbeing diagram (p.7) would benefit from some explanatory text or hyperlinks to further information to be helpful to the widest audience. It is not intuitively obvious how this is useful for assessing wellbeing.
- The [Education \(Additional Supporting for Learning\) \(Scotland\) Act 2009](#) promotes the interests of looked after children by stating that they are presumed to have additional support needs unless assessed as otherwise.

The implementation of this legislation is inconsistent between local authorities, with varying practice in assessments taking place, the outcomes of these assessments, and the provision of co-ordinated support plans. This is relevant to the 'Supported' section of the guidance, and an opportunity to clarify what is required to meet the needs of looked after children.

#### **Question 4 - Are the entitlements and options for provision clear?**

No. The presentation is not particularly clear, with the graphic being split between p.8 and Annexe B, and the sole reference to Annexe B coming at the end of the section (p.9). A clearer option would be to have the text first, and end the section with a summary graphic.

The purpose of this section is somewhat unclear. The title is 'options for provision' and yet the means of distinguishing provision used is the legislative distinction between mainstream and special schools. The guidance goes on to recognise the limitations of this distinction in the use of the term 'flexible provision' and the number of examples given in para 21.

Furthermore, the section does not acknowledge two other important realities in special provision that over the years have posed particular difficulties. One is the use of the independent sector (residential schools and the secure estate) for the education of looked after children with very particular needs. These schools are outside the local authority networks (e.g. education management systems) and this poses difficulties in sharing information about attendance and attainment, ensuring continuity of the curriculum, and in planning transitions into special schools and return to mainstream provision. The other consideration is where a child looked after by one local authority attends school in another local authority area (e.g. when a child moves to a foster care placement outwith their original local authority). It may not be appropriate to provide detailed guidance for 'out of authority' placements in this guidance but it would be useful to provide a cross-reference to another source.

Specific comments:

- On the graphic: 'Entitlement to Wellbeing' – local authorities also have particular corporate parenting duties in respect of the wellbeing of looked after children which should be recognised here.
- In paragraphs 19 and 20, where it is noted that mainstream and special schools are defined in law, the relevant statutes should be cited.
- There is a grammatical error in para 20 – 'schools who'

#### **Question 5 - Is the commentary and the reflective questions on each of the exceptions helpful?**

Yes. It is somewhat helpful, though improvements could be made, specifically:

- Inclusion of greater detail in paragraph 24 about the expectation that schools will adapt their provision and alter approaches to teaching to provide a culture of inclusive learning.

- Inclusion of an explicit challenge to assumptions inherent in particular terminology, which could be achieved through a modification to the wording at the beginning of paragraph 28. Although the terms 'ability and aptitude' are explicitly used in the [Standards in Scotland's Schools etc. Act 2000](#), they suffer from the implication that such qualities are determined and fixed for the individual. The guidance does implicitly recognise this issue in its references to enabling children to achieve their full learning potential and having a personalised learning pathway. Nevertheless, references to a child's 'ability' are commonplace, particularly in respect of the most disadvantaged children.
- In the reflective questions, there is inconsistency in referring to carers (included in bullet 5, omitted in bullet 3 and in paragraph 24).

**Question 6 – Are there any areas missing, requiring strengthening, or which are not required and could be removed?**

Yes. The most obvious omission, from the point of view of looked after children, is any detailed guidance for corporate parents and carers, despite the heading 'parental and carer engagement'. It is not clear if 'partners' includes carers, social workers and others who parent or share parenting responsibilities of looked after children.

There is particular need for clear guidance to cover situations where officers of the same local authority providing education effectively represent or advocate for looked after children in relation to the protection of their rights to mainstream provision or to access specialist provision, and to articulate their views about such things effectively. For example, this could include reference to the importance of having local policy to cover such circumstances, and the involvement of independent advocacy.

Additionally, it would be helpful to include a brief section explaining the role and functions of the Additional Support Needs Tribunals (First Tier Tribunals for Scotland) so that school staff are aware of the procedures involved, and potentially their role in supporting looked after children accessing and preparing for a Tribunal. There is potential that looked after children will be at a disadvantage where the local authority is both the provider of education, and acting in a parental capacity to represent a looked after child's interests or support a looked after child to exercise their rights.

**Question 7 - Were the case studies helpful?**

Yes. Case studies can be very effective, and we acknowledge that they are not easy to write. The Cardinal Winning case study (p.15), for example, is very brief, and therefore is not particularly revealing.

Specific suggestions:

- Reference to '...the ASD traits and difficulties...' may not be widely understood and would benefit from further explanation.

- In paragraph 50 there should be a reference and commitment to training for all staff (not just teachers).
- In the New Stevenson case study on page 18, the reference to parents feeling they 'had to fight' to get a placement for their child is not a good example of an inclusive approach to education within the local authority.
- Given the importance of early intervention, prevention, strong relationships, and removal of barriers to learning, more detail and attention should be paid to paragraphs 62, 63 and 64. These are important sections, yet there are no case studies in any of these sections (all the others sections have at least one).

### **Question 8 – Overall, is the guidance helpful?**

Yes, with reservations, because some text needs revision as indicated in our comments.

More generally, further recognition in the guidance of the particular circumstances of, and legal obligations towards, looked after children and children with experience of the care system (e.g. adopted children) is required in this guidance. For example, while The Legal Basis (Appendix A) refers to the Children and Young People (Scotland) Act 2014, this is only in relation to the UNCRC, but not the corporate parenting requirements specified in Part 9 of the Act. Since the assumption is that looked after children have additional support needs and in reality, most have varying and sometimes complex needs to support their learning, this omission is a weakness in the guidance. We also draw attention to the need for specific guidance about 'out of authority' placements, and advocacy where the local authority is both the provider of education, and acting in a parental capacity to represent a looked after child's interests or support a looked after child to exercise their rights.

We have identified the particular issue of the relationship between the independent special school sector and mainstream schools and the problems posed for monitoring children's progress, maintaining choice in the curriculum, effective transitions and sharing management information (e.g. via SEEMIS). This requires further attention.

Finally, there is no title page in the draft document. Our advice is to avoid use of 'Presumption of Mainstreaming' as the title. The term 'mainstreaming' implies a process applying only to a subset of children. In reality, the right to an education in a mainstream school applies to all children. We suggest using a title derived from the explicit purpose of the document: guidance on the statutory requirement on education authorities to provide education in a mainstream school. This comment also applies to the use of the term 'mainstreaming' throughout the document.

**Thank you for providing us with this opportunity to respond. We hope the feedback is helpful; we would be happy to discuss any aspect in further detail.**

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<sup>1</sup> Scottish Government (2017). [Children's Social Work Statistics Scotland 2015/16](#). Edinburgh: Scottish Government.

<sup>2</sup> Scottish Government (2016) [Children's Social Work Statistics Scotland 2014/15](#). Edinburgh: Scottish Government

<sup>3</sup> UK Government (2017) [Outcomes for children looked after by LAs: 31 March 2016](#); Table 4a: Number of children who have been looked after continuously looked after for at least twelve months, children in need and all children with special educational needs

<sup>4</sup> SWIA (2006). *Extraordinary Lives: Creating a positive future for looked after children in Scotland*. Edinburgh: Social Work Inspection Agency.

<sup>5</sup> Priestly, A. and Kennedy, L. A. (2015). *The health of looked after children and young people: a summary of the literature*. Glasgow: University of Strathclyde

<sup>6</sup> Scottish Government (2017) [Education Outcomes for Looked After Children 2015/16](#), Edinburgh: Scottish Government

<sup>7</sup> Scottish Government (2016) [Education Outcomes for Looked After Children 2014/15](#), Edinburgh: Scottish Government

<sup>8</sup> Scottish Government (2017). [Children's Social Work Statistics Scotland 2015/16](#). Edinburgh: Scottish Government.