



## Briefing to the Education Committee

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### **Children's Law Centre**

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## **Introduction**

The Children's Law Centre is an independent charitable organisation established in September 1997 which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and every child can achieve their full potential.

Our organisation is founded on the principles enshrined in the United Nations Convention on the Rights of the Child (UNCRC), in particular:

- Children shall not be discriminated against and shall have equal access to protection.
- All decisions taken which affect children's lives should be taken in the child's best interests.
- Children have the right to have their voices heard in all matters concerning them.

We offer training and research on children's rights, we make submissions on law, policy and practice affecting children and young people and we run a legal advice/information/representation service. We have a dedicated free phone legal advice line for children and young people called CHALKY and provide legal information through an online platform known as 'REE' and legal advice through 'REE Live Chat'. We also undertake strategic litigation to vindicate children's rights.

From its perspective as an organisation which works with and on behalf of children, both directly and indirectly, the Children's Law Centre is grateful for the opportunity to engage with the Education Committee on the issue of special educational provision for children who have dyslexia.

1. CLC, through its legal advice work and casework, has consistently sought to uphold the legal rights of children with literacy difficulties over many years. We have taken cases to SENDIST as well as issuing pre-action correspondence to the EA and taking High Court action to try to vindicate dyslexic children's rights.
2. CLC holds the view that the EA's Literacy Service is a highly valued, much sought after service which we have seen through our work can make a significant positive difference to the literacy attainments of children with dyslexia. We have observed, that through provision of direct specialist teaching support, this service is able to produce positive outcomes which are objectively measurable by recording literacy scores and the child's presentation at the baseline and then monitoring improvements. The issue in our view, is the dilution of a valuable direct service and a long-standing failure to resource it adequately to meet the level of demand.
3. Failure of early intervention is the key issue that we are asked to assist with, and in particular, prolonged delay in access to direct support from qualified specialist literacy teachers at the point of need.
4. The statutory Code of Practice on the Identification and Assessment of SEN states at paragraph 2.14 that:

**"It is important that children's special educational needs are identified at an early stage. The earlier that action is taken, the more responsive the child is likely to be."**

5. The impact of long-term failure to resource a service which is known to produce such positive impacts, is that some children with specific literacy difficulties who are able to learn to read and write are knowingly and purposefully being left by the authorities for prolonged periods facing the terrible reality that they cannot move forward with their learning no matter how hard they try, while all around their class-mates progress with relative ease. Short terms financial costs from

an overstretched siloed budget are avoided, whilst longer term costs, including the potentially life-long human costs, are much higher. The cost implications run beyond the education arena, into health and potentially justice.

6. When parents contact us for help, they will typically report that they have begun to raise concerns in Primary 2 when their child has seemed to struggle with literacy tasks. As the child moves out of foundation stage and through the year groups from P3, the work becomes more demanding in terms of literacy skills required. There are reports of tears and distress during home-works and reluctance to go to school in the mornings. Children start to notice they cannot carry out tasks that their peers seem to complete with ease. Signs of anxiety, avoidant behaviour, fear of failure and impacts upon self-esteem may start to emerge.
7. Parents will often will have pursued help throughout the primary years only to find that there are barriers placed in the way of progress with a “wait and see” approach. These include, inability to access Educational Psychology assessment, wrangling over whether a child meets rigid criteria for support or delay in accessing the EA’s specialist literacy support service after screening and identification of dyslexia.
8. By Primary 4 or 5, if the child has not received the intervention they need, parents will be reporting increasing issues with academic progress and escalating wellbeing issues, with regular emotional upset, comments such as “I hate school” or “I am stupid”. There may be bedwetting, sleepless nights and anxiety about leaving the house to get into the car in the mornings or meltdowns on the return home. Some children display behavioural outbursts or avoidant behaviours in school which may attract some form of priority for their case, and then perhaps help for “behaviour” will follow when the source of the issue is literacy difficulties. Some children sit quietly and struggle in silence, internalising their anxiety and panic at not being able to do the work every day.

9. Throughout the years of waiting for help and as they get to P5 or P6, parents may be told that the child will be eligible for direct specialist literacy support “next September” as one academic year melds into the next.
10. In some of the cases that we advise upon, children who haven’t been able to receive early, direct intervention from the EA’s Literacy Teaching and Support Service (LTSS) teachers, when they have needed it, will have increasingly complex and entrenched needs, to the point of requiring a statement of special educational needs. During this time, they may have been on a waiting list for EA direct support.
11. In other cases, the literacy difficulty has not been identified at all. It has been reported to CLC that children have had to attend CAMHS suffering from anxiety and depression as a result of academic performance issues arising from undiagnosed learning difficulties and that such children may instead have been perceived as underachieving due to “laziness”.
12. Returning to those who have been identified, at the point of issuing a statement, in our experience, the child having waited for potentially years to get direct LTSS, the EA will say that the child is now moving to Stage 5 (a statement of SEN) and that LTSS is a Stage 3 service for which they are ineligible and that they will have a classroom assistant instead. CLC’s view is that if a child needs specialist literacy support from a qualified specialist teacher, then that is what they should receive. By this point the child may well require a classroom assistant as well as LTSS and access to assistive technology. We have encountered cases where the EA has told us they cannot have this combination of help. In such matters we have successfully supported SENDIST appeals.
13. In every case in which CLC has taken a SENDIST appeal on the content of a statement involving specialist literacy support, we have been successful. The same is true of cases on refusals of statutory assessment. SENDIST panels, made up of people with relevant expertise, would be familiar with the distressing and avoidable pattern of hindrance to the progress of children which we

describe and they apply the law to the facts and evidence, as does CLC when assessing cases. Orders made to insert specialist literacy teaching support in statements simply reflect the meeting of identified and evident SEND.

14. Similarly, there has been a trend in CLC's casework over the years that EA will refuse a statutory assessment in a "dyslexia" case on the basis that LTSS is the appropriate Stage 3 service, while failing to provide any direct service in a reasonably timely fashion. While CLC would agree that LTSS should be the first port of call in such cases, it simply has not been available and as the child's needs escalate towards the statutory assessment threshold, statutory assessment becomes the only available option.
15. Schools report to CLC that they have put in place all the recommended strategies for a dyslexia-friendly approach generally and for also for individual children with entrenched difficulties but that they are unable to gain access to timely specialist support for the children that need it, at the time when they need it. This results in children falling further and further behind their peers and being very unhappy and unsettled in school and at home. Parents in these cases are typically also highly distressed, feeling powerless to prevent the harm they can see being caused to the development of their child's personality, talents and abilities (Article 29, UNCRC). They express feelings of guilt, though they are not at fault. Often, in cases we deal with, parents of dyslexic children are dyslexic themselves and have feel unable to help teach their child. Those who can afford it, may self-fund some teaching or tutoring support. Those who cannot afford it simply wait, as they have no other option.
16. Training courses have in recent years been rolled out to enable some screening of children by persons other than Educational Psychologists, to try and free up psychology time and enable earlier identification. Recent CLC casework has included a child who had been screened in and identified as meeting the criteria for peripatetic teaching support mid-way through P3. One year later, the child's parent contacted CLC as no help had been given.

17. CLC was informed by the EA that essentially it was school's responsibility to teach and support the child and that advice and strategies had been given to school and new CPD resources were being rolled out which schools had been very positive about in their feedback. It was then stated that subject to resources and referral rates the child may receive the direct support the following September (in P5) if the child should still require it (over one and a half years after being identified as requiring this in P3). The school was able to provide an extensive list of the strategies it had used, exhausting all school-based options. It is clear to CLC from this case, while we do not object in the slightest to schools' improvement of their dyslexia-friendly practices, receipt of advice on differentiation of the teaching methods as required and additional CPD, that the peripatetic teaching service is still not adequately resourced, when a child assessed as needing EA peripatetic teaching support did not receive it when the need was identified.

18. In a recent SENDIST appeal, CLC provided legal representation for a child with severe dyslexia and social/emotional difficulties whose needs had been unmet for a prolonged period. The EA refused to place specialist literacy support (which had eventually commenced) in Part 3 of a statement, saying instead that the literacy support, would cease when the statement was finalised. This was not based on an assessment of the child's progress, but simply on the fact that a statement would issue. Notably the statement was only made after the EA conceded an appeal against a refusal of a statutory assessment which CLC had been advising about. After a contested hearing on an appeal against the content of the statement, the SENDIST ordered that the child should receive classroom assistance, two sessions of literacy support per week and access to assistive technology. It took 2 years and several legal processes supported by CLC for this parent to access the full package of support for her child which he evidently needed.

19. In the past, due to the continuous occurrence of this issue, CLC has tried to deal with the systemic issue of delayed access to specialist literacy support from the EA through High Court proceedings in the case of **JR62 [2013] NICA**

**51.** In this case we were successful in the High Court in challenging for a very vulnerable child who was on a lengthy waiting list and it was evidently going to be a lengthy period before he would move to the priority level to receive direct support. The EA had requested additional funding from the Department of Education due to inability to provide the literacy service to children waiting, but had been refused the funding. The child then received the necessary intervention due to the legal challenge. However, the EA was successful in appealing this decision to the Court of Appeal on the basis that Stage 3 provision is non-statutory in nature and the then ELB had been left with insufficient resources to enable it to do anything other than devise a priority order in which to apply the extremely long waiting list so that all children would receive some form of specialist help before the end of P7. Here is a link to the Court of Appeal decision: <http://www.bailii.org/nie/cases/NICA/2013/51.html>

20. Notably the Court of Appeal recorded in its judgment that:

“During the course of the hearing of this appeal we were struck by the absence of any contribution from the Department. This is the third judicial review to have been instituted in this particular area and each of these cases has highlighted delays and difficulties encountered by Boards in seeking to make provision for special educational needs, consistent with the Code and Strategy of the Department, when working within the restricted financial resources made available by the Department. At paragraph 7 of his affidavit, Mr Shivers referred to the failure by the Department to make clear any reasons for the new RAP (Resource Allocation Plan) related to special education need provision and how it was apparently left to the Board to deduce that it was intended to be a mechanism for implementing the objectives of the Department's strategy. When the inadequacy of funding for places at the reading centres was raised with the Chief Executive of the Board, it appears that additional funding was refused. Education is fundamental to the fulfilment of personal, social and career potential and in any just and fair society every reasonable and practicable effort should be made to ensure that those with special educational needs are not disadvantaged thereby. In the absence of any informative contribution, this



court could not presume to express a view as to how a department of the Executive should allocate funds for social/educational purposes but it must be a matter of some concern that there appears to be a lack of communication and rational debate between the Department and the Board and that is unlikely to inure to the benefit of either the Board or the public.”

21. During the running of the case of JR62, CLC observed the closure of ELB sites which children would have traditionally travelled to during the school day for specialist teaching support. The ELBs had devised a two-pronged service where some children were diverted to “advice and strategies to school” as “intervention” while others were prioritised to receive either part-time or full-time direct support at a future point in small groups in school by a peripatetic specialist teacher over a set period of time. In our view this created a mere appearance of providing a literacy service to all children who needed it.
22. The EA later reviewed the LTSS Service, in order to ensure regional consistency on the move from 5 Boards to one Authority and did present information to a group of CDSA members with an interest in education. The most notable change was the removal from one EA office area of support that was being provided for children with MLD to receive specialist literacy support as this did not fit the EA’s resource allocation model.
23. It is clear from the above analysis that the issue at hand is the resourcing of the EA’s Literacy Service and in particular the enabling of timely direct specialist teaching support when it is required. This is extremely important in the context of the ongoing EA improvement process. It is CLC’s view that it is recognised by the EA that early intervention is the key to resolving many of the deficiencies in the operation of the current system. However, resources and governance systems have not been sufficient to enable early intervention for children with SEND.
24. Funding of EA improvement projects by the Department of Education, which could enable early direct intervention, will be critical to the resolution of the longstanding deficiencies in provision for children with literacy difficulties.

Scoping the actual level of need for the EA Literacy Service would be essential to enable the correct level of funding. Importantly, early intervention is also the cornerstone of the revised SEND Framework which the Department hopes to implement.

25. It is important to note that failure to enable educational access for children with dyslexia is potentially educational negligence, which could attract damages in the event that neglect of duty causes damage (such as failure to achieve examination accreditation) and may potentially amount to unlawful disability discrimination, since dyslexia is capable of meeting the legal definition of disability.

26. We note here that some children with specific learning difficulties are diagnosed with dyscalculia, which is a difficulty in working with numbers. CLC is unaware of any EA service which supports this particular special educational need.

27. Barriers to access to early intervention have in CLC's long experience been consistently placed in the way of dyslexic children and remain problematic. For instance, the EA's Provisional Criteria for Statutory Assessments and Statements seem to CLC to be excessively restrictive and rigidly applied in cases of dyslexia. These criteria have no legal force whatsoever and introduce a layer of bureaucracy which makes it more difficult for children to receive the help they require and may legally be entitled to. One aspect of this is that a child must have an IQ of 90 or above in order to receive specialist intervention from the EA. Where does this leave a child with an IQ of 89 who with support would be able to make substantial progress? Rigid application of such criteria is likely to be unreasonable and therefore unlawful. The Provisional Criteria are here for information:

[EANI Provisional Criteria](#)

28. There are resources available to schools which sit alongside the Provisional Criteria including [EANI Good Practice Guidelines](#) and the [DE Resource File](#). Schools can access training and CPD on literacy support strategies as well as advice and strategies from the EA's Literacy Service. Assistive technology is

available to some children and C2K supports a number of applications which may be helpful in addition to a variety of other online tools. The pandemic experience may have opened up the use of technology as a support which may prove useful to some children who have access to it.

29. Despite all of these resources and sources of advice, there is a cohort of children without statements and with statements who require direct specialist teaching support from appropriately qualified and experienced teachers in order to progress to their full academic potential and to maintain health and wellbeing. For these children, adjustments in the classroom will have limited effect as they need to be taught literacy skills by a specialist and to have the foundations laid down upon which they can then continue to build their progress. CLC is concerned that not all of these children are being identified early enough and when they are identified they are not accessing the required direct support quickly enough. Delays in provision for literacy difficulties can be very traumatic and damaging to children and families.

30. CLC is concerned about whether the EA and/or the Department of Education collects sufficient or any data, including Section 75 disaggregated data, to enable proper planning of specialist literacy support services and to promote equality of opportunity for children with literacy difficulties, particularly in the “pre-statement” stages.

31. CLC is worried that there is no systematic data collection at school level or at EA level to scope the level of unmet need or to forecast upcoming levels of need in terms of literacy support within the school population.

32. CLC wonders whether the waiting lists that we had discovered through affidavit evidence in JR62 are now visible or easily accessed by those with an interest in literacy support provision? Are children receiving “advice and strategies” counted? For what length of time should the “advice and strategies” be implemented? How is the effect of the support measured? Is it clear how many

children are now waiting for direct literacy support and how long they have been waiting? Who gets priority?

33. CLC questions the EA's approach that children who receive statements of SEN should not access literacy support that they have waited to receive or have begun to receive. It is not clear how many children may have dropped off the waiting list or have had support removed upon receipt of a statement of SEN.
34. CLC queries whether the outcomes of the current regional model of delivery should be independently evaluated with a critical eye in terms of the entry criteria and the outcomes of the various approaches, which ought to be measured in order to enable evidence-based and child-centred policy making (rather than resource-driven dilution of provision). What measurable progress has been evidenced from the provision of "advice and strategies" as an intervention for individual children? What measurable progress has been evidenced from the provision of direct LTSS teaching support to individual children?
35. It is clear to CLC that the longstanding issues facing dyslexic children and their families are still in need of significant attention and public scrutiny. The mere appearance of providing a service for reporting purposes is not enough. We know that the provision of the right type of service at the right time produces objectively measurable success for children who have dyslexia. We cannot excuse the diminution of a service staffed by dedicated specialist teachers that has potential to be highly effective. The service requires to be properly costed and funded.
36. CLC believes it is necessary to ensure the creation of clear, efficient pathways to direct specialist literacy support for all children who need it and to enable early identification and early intervention at the point of need, with removal of unnecessary barriers and creation of fair, child-centred access criteria. Early baseline assessment is essential alongside continuous monitoring and evaluation of inputs and outcomes. Evaluation of outcomes should involve

significant input from affected children, young people and their parents and carers. An intervention can only be judged to be in a child's best interests if it is timely support which works in favour of the child and enables them to reach their full potential.

## **Conclusion**

CLC is grateful to have the opportunity to brief the Education Committee in relation to our casework experience in the area of dyslexia. If any further detail or clarification is required, we would be pleased to assist.