

## **RESPONSE TO CONSULTATION ON PROPOSALS FOR THE REFORM OF LEGAL AID IN ENGLAND AND WALES**

### **Introduction**

1. SOS!SEN is strongly against the proposals to severely limit the availability of legal aid in education cases. The evidence from our experience is that basic assumptions behind the MoJ document are wrong: that the majority of parents cannot effectively represent themselves, education cases do not differ so much from Community Care, school exclusions do not solely arise from lifestyle choices and it is not true that “education cases never involve life or safety”. What is particularly reprehensible is the disregard for the rights of all strata in society to equal access to justice. If the proposals become law, it is difficult to see how the UK will be able to claim to fully uphold and implement Article 23 of the United Nations Convention on the Rights of the Child which states:

*1). States Parties recognise that a mentally, physically disabled child should enjoy a full and decent life, which ensures dignity, promote self-reliance and facilitate the child's active participation in the community.*

*2). States Parties recognise the right of a disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and the circumstances of the parents or others caring for the child.*

*3). Recognising the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, wherever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to, and receives education, training, health, care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.*

*4). States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventative health care and medical, psychological and functional treatment of disabled children, including access to information concerning methods of rehabilitation, education and vocational services*

### **What is SOS!SEN?**

2. SOS!SEN is a leading charity<sup>1</sup> helping parents and carers of children with special educational needs. We have evolved in a relatively short time from a small charity working with local parents to a much larger organisation with a national profile and a far-reaching

---

<sup>1</sup> Reg. Charity No. 1112475

reputation. We help parents and carers work their way through the complex and daunting special educational needs system to enable them to obtain the appropriate educational provision for their children.

3. Our trustees include leading lawyers and campaigners for children with special educational needs and disabilities. We have a long track record of working in the field among trustees of major charities. Our service is run by a dedicated team of volunteers, many of whom have worked in education or have had first-hand experience of the SEN system as parents of children with SEN. Some of our volunteers also have legal qualifications. We are supported by a number of professionals working in special education, who provide regular and frequent training and advice to our volunteers.
4. We support parents and carers in a number of different ways. Initial contact is usually through our telephone helpline. By providing this free, confidential service we aim to empower parents and carers to work their way through the complex legal special needs system. In many cases additional help is required and we offer a full range of services to those with complex cases or whose circumstances mean they are unable to tackle the special educational needs system on their own.
5. The charity does not have any permanent funding streams. Instead we raise money from running workshops and special events such as raffles, summer balls or others. In addition, we have a charity shop
6. Many parents who are unable to obtain the help of the legal profession and do not qualify for legal aid are forced to tackle the special educational needs system alone. Without the help of charities such as SOS!SEN a large number of parents would simply give up the fight to obtain the right educational provision for their children. Our experience in this regard is well supported by that of other charities.
7. We have a wealth of knowledge and experience gained through working with parents over a number of years. We believe we are very well placed to provide valuable submissions about the shortcomings of the present special educational needs system and to suggest how it should be changed. We have first-hand knowledge of the problems experienced by parents who themselves have special educational needs, as well as children with special educational needs or who are working their way through the statementing process and the SENDIS tribunal system.
8. We offer a range of services, all of which are free of charge:

### ***Telephone helpline***

9. Our helpline is staffed every weekday (other than during the main Christmas, Easter and summer school breaks) from 9.30am–12.30pm and 2pm–5pm. Because of the volume of calls during busy periods and the general increase in calls we are receiving, we are aiming to increase the number of operators on duty at any one time.
10. Calls are received from parents and carers from all parts of England and Wales.
11. There is no such thing as a typical call. They vary in length from a few minutes to over an hour. We may be the first point of contact for a parent baffled by the whole system of special education or, in other cases, for parents with knowledge and experience of the special education process who call to discuss a detailed point relating to their situation. We receive **about 2,500 first-time callers each year** and would receive more were we to be able to expand our number of call operators so more parents could reach us. At any

one time we have 100 or more on-going long-term cases. It is not possible to envisage taking on more work if legal aid were to cease

### ***Tribunals and the statementing process***

12. Requests for help can relate to different parts of the process of helping parents of children with special educational needs. Some may refer to existing statements which many parents find difficult to understand whilst others may wish to begin the process of asking for a formal assessment. We guide them through the assessment process, recommend professionals who could help assess their child and help many of them with writing their own advice. We provide on-going help through emails and follow-up telephone calls, support at meetings with the local authority, and attendance at annual reviews.
13. Many parents would have no prospect of appealing a refusal by the local authority to assess against the contents of their child's statement and/or the school named in Part 4, without the significant level of help provided by SOS!SEN volunteers. We have a limited number of volunteers who guide parents through the whole appeal process, **draft or review reasons for appeal** and other documents, and, in very exceptional cases, act as **representatives at the Tribunal hearing**. This may occur when the parent is doing the whole appeal themselves without legal aid or advice or when a parent has had legal aid. In these cases, whereas the lawyer can help with the whole process, legal aid does not cover representation at the Tribunal so a SOS!SEN volunteer steps in. Volunteers who act as representatives at Tribunals do not themselves have any legal qualifications. Nevertheless, in the majority of cases in our experience, **local authorities themselves regularly retain** barristers to act for them and it can be difficult to argue matters of law with them when they arise.
14. SOS!SEN does not deal with exclusion cases as such. However, many exclusions are inextricably bound up with SEN issues. DCSF statistics for 2007/08 showed that children with SEN are 8 times more likely to be permanently excluded than pupils without SEN. Out of these excluded pupils, 31% of permanent exclusions were due to 'persistent disruptive behaviour' which is consistent with some sign of SEN such as ADHD. Cases where the two issues are present are not uncommon and often result in an appeal for a special school where there is greater relevant expertise and the pupil's frustrations can be reduced. Wherever possible we refer parents to lawyers as there are so many complex issues to be sorted out.

### ***Website***

15. The SOS!SEN website ([www.sossen.org.uk](http://www.sossen.org.uk)) went live in March 2009 and has proved very popular. As well as giving information about what we do, it is a source of practical help to parents trying to find their way through the special educational needs system. There are documents and guidance notes, which can be downloaded to inform parents of their rights and to help them either with obtaining an effective statement of special educational needs or with submitting an appeal to the SENDIS Tribunal. Since it went live the website has had over 300,000 hits. The number of unique visitors (new people looking at the site) varies from month to month – last month it was over 600.

### ***Drop-in advice centres***

16. In February 2010 we opened three drop-in advice centres in **Aldershot, Thornton Heath and Twickenham** which each operate on a monthly basis for one morning. They provide parents with the opportunity for a face-to-face meeting where we can advise them about their situation, review letters or documents, or help them with drafting letters. In many

cases we offer follow-up meetings where more in-depth discussions can take place. It is our intention to open more such centres.

### **Workshops and conferences**

17. We aim to empower parents to help themselves. One way we achieve this is by offering a number of workshops and conferences each year at different locations. They are very well attended and we believe parents gain a great deal from them. We are very fortunate to have close connections with professionals working in special educational needs who speak at our conferences and training sessions. Topics have included: 'How to write reasons for appeal', 'What you should expect from social services', 'How to read an educational psychologist's report.'

### **Assumptions in the consultation document**

18. The proposals set out in the paper have been developed with the aim of providing a substantial contribution to the MoJ's target of a reduction of 23% of its budget. They therefore seek to develop a spectrum to show how more serious some areas are than others, such as where the individual's life, liberty or home is at risk or where they are at serious risk of physical harm. The paper states that whilst many of the education issues for which legal assistance is currently available are of importance to the parents and children involved, they cannot be accorded the same level of importance as the immediate threat to life or safety.
19. But it is not true that education cases never involve any threat to life or safety. **Cases brought to us regularly involve real threats to life and safety, as some of the accounts attached as Appendices to this document describe.** For example, where a child, perhaps on the autistic spectrum, is inappropriately placed in a mainstream school, her/his level of frustration can build up during the day to explode when they get home, or even on the way home when they try to get out of a moving car. At home, people are attacked and some siblings have to move out to live with grandparents for their own personal safety. In other cases, where special educational needs have not been met over a long period of time, there have been instances of self-harming and suicide attempts. There are many cases where, as a result of the daily struggle at school and the fact that children with learning difficulties perceive themselves as inferior and "stupid", they develop serious depression. Certain types of learning difficulty result in children having little or no sense of danger resulting in serious injuries – for example, we have experience of a child who regularly climbed on to the highly insecure roof of his school. Finally, of course bullying results in serious physical and mental harm, and children with SEN are particularly vulnerable to this.
20. **Another wrong assumption in the consultation document is that education cases differ from community care cases in that they do not affect the individual's ability to live an independent and fulfilled life.** Many cases that come to SOS!SEN involve children for whom mainstream education has completely broken down and they may have been out of school for 1, 2 or 3 years. Such is the rejection felt by the child that psychological damage does occur and some become agoraphobic, fearful of leaving their own homes and definitely not developing the life skills needed for independent living. Receiving the right help at the right time may make all the difference for children between achieving independence and the ability to earn a living and being dependent on care for the rest of their lives. Recent cases supported by SOS!SEN include that of a 7-year-old boy, in a mainstream school, autistic and unable to speak or communicate. The only provision is given by an untrained teaching assistant who minds him on his own all day.

He does not receive any teaching from a qualified teacher. Independent assessments have made it clear that he needs substantial combined occupational and speech and language therapy but in time he will develop communication skills. The Local Authority is fighting this so the child remains in the same place until the appeal can be heard.

21. Similar wrong assumptions are contained in the document about the ability of parents or guardians to present their own case. **In our experience, very few of the parents we advise are able to present their own case at a Tribunal. Many are equally unable to represent their child's best interest in meetings in schools or with officers from a local authority.** This can be for a variety of reasons. For some, they do not have the level of education or the functional literacy to understand, for example, the Code of Practice, and apply it to their own case. Some, as the document does acknowledge (but doesn't make adequate provision for), are disabled themselves. Some are exhausted by the daily difficulties and stress of minding their disabled or troubled child. For many the emotional stress engendered by the process of litigation leading up to the Tribunal lessens their capacity to focus within the hearing. The very process of trying to get help which a disabled child needs is extremely stressful and emotional and parents feel desperate not to let their child down. Because a disabled child is involved the experience of a SENDIST tribunal hearing is radically different for the appellant than many other types of hearing. For those who can afford it, they seek legal representation and advice. For those on benefits there has been, until now, some limited help in the form of legal aid.
22. The NatCen Report<sup>2</sup> identified how parents who could not afford legal representation felt about this:

*“Overall, parents who employed legal representation whilst preparing for a Tribunal hearing reported that it eased some of the strain they experienced during this time. Solicitors took over responsibility for contacting professionals and collating reports, and helped parents to feel more in control of the process. They also lent parents a sense that by seeking legal advice, they were doing all they could for their child in this situation and this perhaps took away some of the pressure parents felt about having to win at Tribunal. However, parents who could not afford to hire legal help and were approaching a date for a Tribunal hearing expressed concern that they would not be able to represent themselves adequately and suspected that legal representation would stand them in better stead to achieve a successful outcome. Indeed, those parents who were able to employ a solicitor, and perceived it to be a necessary part of preparing for a Tribunal hearing themselves, questioned the parity of a system where this was the case.”*

23. It is wrong to say that education cases, particularly SENDIS and Upper Tribunal cases are solely fact-based and are not normally legally complex, and therefore legal assistance is not required.
24. Volunteers who first represented parents at the Tribunal soon after the new system was set up after the 1993 Education Act can recall that some of the first hearings did correspond to the description of such hearing given in 4.184 that *“the Tribunal is designed to be accessible to individuals without legal assistance”*. Volunteers could go to the Tribunal with the parents and argue their case using the documentation routinely gathered, such as local authority assessments, NHS speech and language assessments, school reports and Individual Education Plans produced by the school. Parents were regarded as witnesses. For their part local authorities might be represented by a senior SEN officer but not a lawyer. Within a relatively short time, however, this had changed and the original

---

<sup>2</sup> 'Parental Confidence in the SEN Assessment, Statementing and Tribunal System', National Centre for Social Research, 2009, page 51.

intention was lost. Volunteers representing parents without independent reports or witnesses were asked by the Tribunal Chair, "*Where is your evidence?*" and the case was thus lost.

25. Now the process has changed again and extra complexities have developed. Cases to be successful require expert witnesses. Reports provided by the local authorities own employees are weighted towards the stance of the local authority over placement and provision. These do not usually claim that their first loyalty is to the court. Tribunals cannot fill in the gaps for themselves: it is absolutely essential that they have before them proper evidence from experts who have assessed the child and considered all the available evidence and who are able to advise on precisely what the child's learning difficulties are and what help they need to provide for those difficulties. Local authority experts very rarely provide such evidence: in particular, they invariably do not provide detailed and specific recommendations for support which are required by law and which schools need in order to ensure that all staff know what is required for them, and so that support can be enforced if necessary. Further, in our experience local authorities often completely fail to obtain the necessary evidence even where it is clearly required – it is not at all uncommon to find, for example, that local authorities have completely failed to obtain speech and language evidence for a child with clear communication difficulties. Where evidence is produced from NHS specialists, recommendations tend to be equally non-specific and to be tailored to what the relevant service routinely provides rather than what the individual child needs. Just telling the Tribunal that we do not agree with the Authority's reports is very rarely successful without evidence to back it up. Even where local authorities are represented by their case officers, they have an advantage over parents simply because of the fact that they are used to such hearings and are in familiar surroundings. However, in our experience most local authorities have legal representatives; most legal aid cases do not because legal aid does not cover representation. **This unequal access to legal advice, with the local authority having no limit on what legal help it retains, will be further compounded if legal aid is so drastically reduced as proposed.**
26. In giving evidence to the Parliamentary Secretary Committee for the Children's Schools and Family Bill on 19 January 2010, Brian Lamb, together with John Friel (who gave evidence also at request of Parliamentarians on this issue), both agreed that the Tribunal system was beyond a parent's ability to understand if they were unrepresented. It was not the intention that the Tribunal system be so complex that parents could not conduct it unrepresented.
27. **The Tribunal system was changed in 2009 with all Tribunals now being under one over-arching system.** The Special Educational Needs Tribunal became part of a Chamber, the Health, Education and Social Care Chamber dealing with social welfare issues. However, in dealing with vulnerable children with special educational needs, they were placed with a group of Tribunals with little or no connection with children.
- 1) *The Mental Health Appeal Tribunal* deals largely with those with severe mental health problems, who are often a danger to the public; this is the main area of their jurisdiction.
  - 2) *Registered Homes* deals with children and vulnerable persons; this is an economic interest.
28. The other difficulty is that an appeal Tribunal dealing with vulnerable children requires great expertise in that area. The idea that families concur with the system does not fit with complicated new rules which are now obstructive for parents to appeal. In his report, Brian Lamb asked for legal aid to be extended to representation:

*'It is better for everyone if provision is made for children without recourse to the Tribunal. However, the cases going to the hearing are becoming more complex and issues under contention are more likely to be matters of law to be decided, rather than matters of fact to be established. Despite changes in the Tribunal system, many parents are finding appeals too difficult or complex and feel unable to pursue their claim without legal support.'*<sup>3</sup>

29. Currently legal aid is available to support parents in the preparation of their case, including the funding of some independent reports, but not for representation at a hearing
30. In those circumstances we would firstly question as follows:
- 1) The complexity of the system and the relevant law
  - 2) Whether the current arrangement placing this Tribunal, together with other Tribunals which have a very different objective outlook, is appropriate
  - 3) This issue needs to be brought to the attention of the Department of Justice.
31. In addition, there is no clear evidence, other than those trained in the Tribunal, that being a Tribunal judge in other areas of law equips you to deal with vulnerable children. Indeed, there is **very clear evidence that some judges are not used to family and children issues**, are over aggressive, and do not understand the issues fully. The existence of the **family court**, where judges are specifically appointed, trained and experienced, is ample evidence of that fact. This makes such hearing doubly difficult for parents who cannot assume that the judge understands the nature of their child's special educational needs.
32. In addition, the current procedure rules are over-interventionist and frighten parents.
33. The document assumes that charities, support groups and others will be able to support parents with education cases. However, IPSEA and ACE, the two charities cited, were not approached before the document was written and have publicly stated that they are not able to do more than they already do. In fact ACE does not assist with the preparation or representation of SEN cases. **As a charity that does provide representation, neither could SOS!SEN undertake many more than the numbers we currently deal with.** It should be remembered that many of the cases where we do provide representation from our volunteers are often legal aid case. In these we have been guided by lawyers who have prepared the cases and obtained independent witnesses.
34. Proposals for cuts to local authority services include a radical reduction in the size of **Parent Partnerships**, which the MoJ also envisages will be able to help parents. Even if this were true, currently Parent Partnership personnel are unlikely to represent parents against the local authority that employs them.
35. **Cases have become increasingly complex.** One example of this is the way children's social services may become involved. Cases referred to SOS!SEN frequently involve children who are out of school, not truanting but who have become too frightened or stressed to attend - for example, where a pupil has significant medical difficulties that have been undiagnosed or not recognised by a school as a significant impediment to learning. Such cases are described in detail in the Appendices to this document but can also be referred to here. Where pupils have not attended for some time they are routinely referred to the education welfare service, who themselves would refer them on to children's social services. In one local authority it was customary to put them on the Child Protection Register, on the grounds of emotional abuse, rather than ask the education department to

---

<sup>3</sup> Final Lamb Report, 2009

find a school that could deal with the medical difficulties. This has become no easier since the children's services have been combined. Parents then appeared with a volunteer at the child protection meeting to be accused of a fabricated illness (used to be Munchausen). At the same time an appeal was due to be heard against the local authority's refusal to assess. Handling both issues together represented a complex legal situation, best handled by a lawyer. Many of the issues, such as relative costs are too complex for parents or charity volunteers to deal with and assume a good knowledge of the law.

36. Many disabled children inevitably also have serious care needs and these issues are very relevant to SEN and disability cases despite the fact that the Tribunal does not technically have jurisdiction in relation to case issues, Nevertheless, these will be closely bound up with the educational issues since the ability to function independently and to be able to communicate and socialise are all part of education. Preparation of many cases, particularly those where placement at a residential school is being considered, requires therefore consideration of social care as well as education issues which unrepresented parents simply cannot cope with. The arrangement for 'exceptional funding' in complex cases has had little practical effect as the system for applying for it is itself, complex and involves notable time delays

There are also very complex issues concerning children in care where local authorities may be very resistant to allowing parents' experts access to the child in question, or where a local authority is failing to meet the child's special educational needs but is obviously highly unlikely to challenge its own education department. In that situation a foster parent may also feel that it is difficult to challenge the local authority. Action therefore needs to be taken in the child's name and obviously they cannot represent themselves.

### **Context for these proposals: "the double whammy"**

37. The withdrawal of legal aid in education cases hits target families doubly hard because they are exactly the same families Whose other benefits and support are also going to be cut.
38. Over the past year, despite receiving substantial investment through the Aiming High for Disabled Children programme, some local authorities have slashed services for disabled children in an attempt to reduce their budgets. EDCM's<sup>4</sup> report raises concerns that wholesale cuts to local services will result in a long-term increase in state expenditure as families increasingly fall back on expensive crisis support.
39. One parent quoted in the 'Close to Crisis'<sup>5</sup> report told EDCM about a local service providing short breaks which will close in December 2010, saying: ***"As a family we find that this service is a lifeline for all our needs"***. Another parent wrote to EDCM to say that *"to lose this service would just mean another blow for us in coping with the stress that families deal with on a day-to-day basis"*.
40. Many parents raised concerns over lack of information about why the cuts had been made, or consultation about how savings could be made without wholesale loss of services. One parent told EDCM: ***"There was little information other than that the***

---

<sup>4</sup> Every Disabled Child Matters

<sup>5</sup> Council for Disabled Children

***service would no longer be provided***". Another parent highlighted a sense of being powerless due to lack of consultation: ***"We are always made to feel that we have no right to question or argue with these cuts. Whatever we do or say won't make a difference."***

41. The report also provides clear evidence that local authorities are making cuts due to the perception that funding will not be available for frontline services from April 2011.
42. Eligibility for legal aid roughly equates to parents on certain state benefits. These are the very parents who now face cuts to their welfare benefits as well to legal aid. The document makes no reference to the special needs of looked after children or children of asylum seekers, two very disadvantaged groups in our society. This proposed exclusion of so many from access to justice can lead to the need for more intervention later on, when unmet needs are high on the profile of prisoners in jails or who are recipients of welfare benefits during their lifetime. The United Nations Convention of the Rights of the Disabled expressly says there is an obligation to recognise that:

*"The majority of persons with disabilities live in conditions of poverty, and in this regard we should recognise the critical need to address the negative impact of poverty on persons with disabilities."*

## APPENDICES

### Individual responses by parents helped by SOS!SEN

#### Statement 1

*The writer is the lone parent of a Year 10 pupil who was out of school from Year 7 to Year 9 because he was unable to access mainstream education due to his special educational needs and because the legal wrangle with the local authority took that long to complete. He is now in an independent special school.*

1. “at a tribunal you do need legal represent because in my case i am dyslexic and the paper work for me was overwhelming and confusing i did not understand some of the terminology and needed to be able to access legal services to guide me through the mountains of paper work plus the reports from various professionals IE OT, ed spy and psychiatrist.”
2. “the actual tribunal is not an easy process to go through it is quite a stressful environment there are people on the panel they go threw your paper but if you don't know this process you would probably defiantly fail because you properly would not have the right information and evidence to back your case unless you were ofay with the legal system.”
3. “has a parent has a disabled child education is equally important because he's education is his future and having access legal aid will help parents argue for there rights according to the education rights.”
4. “not all parents understand the law and how it works and the danger is children from poor families will be disadvantage by lack of legal aid and representation.”

## Statement 2

*This mother is the lone parent of three children, all of whom needed a Statement of Special Educational Needs. She recounts her life during this time, describing each child in turn according to age.*

### FIRST CHILD

#### Early Years

A beautiful daughter, weight 9lbs 11oz. Very difficult to feed, screamed non-stop but I was encouraged by the midwife not to give up. Eight days after birth I was discharged to my hostel for homeless mothers. Each week the baby lost weight and several visits back to hospital followed but eventually she began to improve. She was very alert but did not like to be held and reached her developmental milestones.

I moved into a one-bedroom flat but at 18 months she had to go to hospital again because of irregular eating habits and she drank pints of milk. Doctors said she was hyper-active and was causing damage. This continued at home. By the age of 2 she could climb on a ridge near the front door and get out unaided. She screamed a lot and banged her head on the floor; she had little control over her bladder and urinated anywhere. She wouldn't join in any activities at the play group and I had to remove her. She never slept more than 4 hours per night,

I returned to full-time employment when she was three and she was placed with a registered Child Minder. At her pre-school nursery she ran under tables, made noises and removed the nursery toys. At home she wet the bed every night.

#### Education

Age 5 she attended school full time. Her disorganised behaviour continued. She tried to pull the boys trousers off, ran around, made a noise, couldn't sit still. On the way to school she would try to rip off her clothing, throw her shoes into the road, splashed in dirty pools of water.

At night she could climb out of her bedroom window, she seemed not to need sleep, and climbed on to the sloping roof below.

I couldn't get the school to help me to find out what was wrong. The Headteacher said she was not prepared to take the blame. I changed school but this did not 'cure' the problem. My daughter then started to attend hospital twice a week and social services, which I had also gone to for help, arranged for some help after school near to my workplace. However the behavioural problems went on and on.

When I went for help, I was told, "She needs boundaries". I would walk away feeling useless. I cannot quantify how depressed I felt at not being believed that there was something wrong. The enuresis clinic told me my child's bedwetting was due to my working full-time.

Every day she wet the bed but on some days she would refuse to bathe. She would throw the Hoover downstairs, china pots, wreck her bedroom.

By secondary school I was desperate. At 12 years of age she still couldn't sit still. She then got a diagnosis of ADHD and possible Asperger's. The school wouldn't keep her and I had to take her out of school to prevent her being expelled. She still had no concept of danger and would walk in the middle of the road. She remained very violent. She said she heard noises in her head, instructing her to throw

herself under cars and trains. I got her into another school but she walked round the classroom barking like a dog. She put cow's hearts from the biology lab to dissect at home. She had no concept of other people's feelings, tears and dismay at any of these incidents. She ran out of school and climbed the fence to get away from teachers. However, she did have a brilliant relationship with a very understanding English teacher who helped her to produce some good work. The school asked her to stay at home if there was an inspection due. Eventually, the placement broke down and once again I had to take her away before she was expelled.

### Statutory Assessment

I put in a request for an assessment supported by my sister. We had the whole might of the LEA against us – their lawyers, psychologists, the whole massive bloated education machine. After months out of school, we were offered the local sinbin. I found out that no-one left with any qualifications, they were allowed to smoke.

My child was sectioned into a local children's hospital, managed to escape and was found by the police in her night clothes sitting on the pavement. She was returned but was badly treated including being dragged along a carpet by her legs causing burn marks. Social Services investigated with the police and the nurse was disciplined. We were asked to keep quiet. My Tribunal hearing took place and I got legal aid. Thanks to the support of my daughter's lawyer and the head of the sinbin, a witness who said his school was not right for my daughter, we got a statement. It still took some time before we could find one that took children with complex mental health problems. My daughter had been diagnosed as bipolar by then.

Eventually a school was found, my daughter became a weekly boarder and I began to think I could walk round unafraid with my two younger children.

One evening a few months later, she was returned home, without warning, to me by two members of staff, with all her clothes and belongings from school. I was handed a letter which said they would not allow the child to stay at school any longer "as she takes up an inordinate amount of resources".

### Adulthood

She was aged 14, her dangerous and violent behaviour continued. I had a nervous breakdown. She was diagnosed with renal failure. She never went to school again and has never worked. Her torment of me continues, although she doesn't live with me now. Her first kidney transplant failed and last August she was given two years to live without another transplant.

This was just the tip of the iceberg.

## **SECOND CHILD**

My second child, also a girl, appeared to develop normally and meet most developmental milestones. But there were some aspects that were concerning: she couldn't walk by leaning against the wall for support, she fell over very easily, she would go into trances, she slept excessively.

Soon after she went to Primary School she was put on Stage 2 (now called School Action Plus). As well as some learning difficulties they also noticed hearing problems. Her balance problems did not improve but her learning did as she had some very small group teaching. She had notable frequent mental 'absences' according to her teachers.

Transfer to secondary was a nightmare. Year 7 was a disaster and my child was anxious and afraid. A psychologist recommended a transfer to an all-girls school. This happened but her health continued to deteriorate: falling over, dizziness, vomiting, fitting, both at school and in the street. She was withdrawn from lessons such as music and PE because she couldn't cope with the sensory stimulus. At home my eldest child was causing mayhem. Eventually she rarely attended school at all.

Eventually I was informed by the Education Welfare Service that they were going to prosecute me for failing to send her to school. At that moment I realised what a corrupt, lying group of so-called educationalists I was facing. I was trying to get her into school whilst at the same time my eldest child was getting no education, despite her statement.

*"Not only has ... had to cope with these medical difficulties but has had to face years of her difficulties not being recognised in school and it even being suggested that she was imagining them...All the pieces of evidence over the years are exceedingly consistent and unless it is somehow being considered that ...is cleverly concocting all these responses, something that the writer does not believe, the very consistency suggests reality and not fiction and a real threat to ... in a normal and busied educational environment."* (M D Consultant Educational & Neuropsychologist)

Worse was to come for I was then told my two youngest children would go on the Child Protection Register and I was summoned to a meeting. I had an aid from a charity with me and it was the equivalent of a kangaroo court with almost every person who had come in contact with the family lined up against me. All this happened the week before I was going to the Tribunal to put my case for a Statement for her. All the papers, including independent expert reports, were known to the council. These included diagnoses of a type of epileptic migraine, a sensory processing disorder. None were referred to in the meeting even though legal services were present. I was not allowed to have legal representation.

I was in a state of shock and depression and just felt totally betrayed by the people I had originally gone to get help.

On the advice of the charity, I was able to get legal aid, vitally necessary in view of the complex legal situation I had got into. We were successful in overturning the Council's refusal to undertake a Statutory Assessment. We were also successful in having my complaints against Social Services upheld, both the process and the judgments were found to be wrong. After several months we eventually got a statement but my daughter should have been in Year 10/11. She was never able to attend again for medical and psychological reasons. The local authority gave her Home Tuition until she was 16. She was entered for English and got GCSE Grade B. She has never been able to go out to work. Until I got some legal aid, my life was in chaos, as was the education of both of my two eldest children.

### **THIRD CHILD**

The pattern of education for my third child, a son, was not dissimilar to that of his sister, difficulties arising from his medical difficulties contained during primary school but complete breakdown when he went into secondary. Little help from either school or the local authority until the summer term of his Year 9. Having been absent from school out of sheer terror, since Year 7, he was then assessed and given a statement and given a statement which provided for him to go to a residential school which specialises in helping pupils whose education has broken down due to psychological, emotional or social reasons and who need to develop independent living skills.

### **Statement 3**

I'm writing from experience how and why legal aid has helped my case against local authorities for my special needs child.

Being a lone single parent and having two special needs children, I was having a few difficulties understanding how to press for a statement for their needs.

With help from a friend and a charitable association, we process the statement for one child. And it wasn't an easy ride; in fact it was a lot of hard work, time and effort.

My child was in mainstream high school at that time, experience difficulties coping. In fact it was so bad that my child was self-harming, school refusing and had low self-esteem. The school wasn't helping in any way and so my child under CAHMS was medically taken out of school and no further education was offered whilst we applied for statement.

We needed to act fast and to get advice from solicitors as we were on a time scaling situation. So we presume to see a solicitor and made an appointment.

At the time on seeing the solicitors, I rely on benefits and didn't have any funds towards the cost of solicitor's fees. So I applied for legal aid to get help towards the solicitor's fees for my case against the local authority and schooling for my child.

With the help of legal aid, the solicitor had written to the local authority to make arrangements for home tutoring and meanwhile proceed with the statement for my child.

My child is in the school now that meets the requirement and stability. We certainly wouldn't be able to do this without the help of legal aid and the solicitor. In fact I don't think we could accomplish where we are now.

Thank you for reading my story.

## Statement 4

I am writing in response to the proposals to reform legal aid in England and Wales, as set out in the White Paper. I am particularly concerned about the proposals to restrict legal aid in education cases. I have three children, two of whom have significant special educational needs and have a Statement of Special Educational Needs. I have first hand experience of the complex special educational needs process and have had to fight the local authority in order to obtain appropriate educational provision for my children.

What concerns me is that the proposals in the White Paper appear to be based on a number of assumptions and statements which do not reflect accurately the current situation. In order to obtain statements for my children I have had to battle with the local authority over a number of years and have submitted two appeals to the SEND tribunal against the local authority. In the first case the local authority withdrew a week before the tribunal and the second involved a one day hearing.

I am a qualified solicitor with a background in commercial law. I still found the appeal process very daunting and complex and needed to instruct an education solicitor to deal with the case. As well as being a costly exercise I found the appeal process both time consuming and extremely stressful even when using a solicitor.

In order to stand any chance of success evidence is required in the form of independent expert's reports. In our case this involved arranging and paying for assessments with an educational psychologist, speech and language therapist, occupational therapist and psychiatrist. Taking a child for an assessment is not simply a matter of turning up to the appointment. Background information needs to be provided. This usually takes the form of detailed family and school questionnaires which need to be completed before the assessment. All previous assessment reports and relevant papers such as school reports need to be copied and sent off. The factual content of the reports has to be checked and the reports explained and interpreted. Much of the terminology used was new to me and had to be explained.

Even when using a legal representative there are still letters and documents to review and decisions to be taken and meetings to attend with teachers, senco's and others involved with your child. At the same time as dealing with the tribunal process I still had to deal with the day to day needs of three young and challenging children. As a result I was constantly tired and sometimes felt completely overwhelmed by the whole process.

Whilst it might have been the intention to design a tribunal process that was accessible to *'individuals without legal assistance'* the reality is somewhat different. If I had not have been able to afford legal advice I would have struggled to deal with the appeal process and my children may not have obtained appropriate educational provision. Others are not so fortunate and cannot possibly afford to pay for legal advice and evidence to support their case.

It is not true to say that *'individuals should only need to present the facts to the Tribunal'*. Evidence is needed to support the facts and to demonstrate the extent of a child's needs. In my case the local authority disputed my daughter's diagnosis and it was only because we had an experienced educational psychologist at the tribunal hearing that we were able to demonstrate the severity of her needs and ultimately get the tribunal to agree to an appropriate school being named in Part 4 of her Statement.

When a parent embarks on the statementing process and later an appeal they are up against a local authority with a vast experience and knowledge of the special needs system. It is not a level playing field. Local authorities often confuse parents about their rights and pressurise parents into accepting inadequate provision for their child. I was told I was not allowed to request an

independent school to be named on my son's Statement and after taking legal advice was told this was not correct. I also sought legal advice when I was denied transport for my daughter and as soon as I involved a solicitor the local authority, knowing they were in the wrong, backed down. Often it is only when parents take legal advice that a local authority will take notice of them and comply with its legal obligations.

At tribunals local authorities often engage barristers. Parents should not be expected to appear against them completely unrepresented. During my training as a solicitor I spent some time doing civil litigation and had to attend court with clients or on their behalf for directions appointments. I therefore have some familiarity with the legal process in England and Wales. This did not however enable me to feel confident about dealing with my own children's special education cases. Special Education is a complex and specialised area of law and the SEND tribunal process is far from straightforward.

I am well aware of the existence of charities which provide '*alternative sources of basic help for education issues*'. I am a volunteer for one such charity – SOS!SEN – which helps parents and carers of children with special educational needs. I answer the telephone helpline on a weekly basis and am therefore well aware of the struggles parents encounter in trying to understand the special educational needs system. We take calls from desperate parents who are not only struggling to cope with challenging and very needy children but have the added burden of trying to deal with oppositional local authorities and a very complex legal system.

## Statement 5

Re: Advocacy expenses related to advice and representation at Special Educational Needs Tribunals Para. 4.180 and 4.181

Para. 4.182 RE: Proposed withdrawal of *some legal aid* currently available to parents to:

1. Contest Special Needs Support available to individuals per. se. **and** the scope, level, appropriateness of support available in individual cases.
2. Make clear the absolute necessity of EARLY and EFFECTIVE intervention, for individuals AND their families.

➤ **Quote: 'to prevent future life chances from being jeopardized'.**

Our son's chances of being independent in future life were utterly dependent on his view of himself NOW amongst his peers. (see later quote) \*

➤ **My view:**

**To prevent the break up, under extreme undue pressure, of the supportive family unit.**

Our family has been extremely close to referring our son into Care in order to preserve our marriage and provide adequate care for our teenage daughter, whose needs have had to take second place in the struggle to get through day by day.

➤ **Implications of a failure to involve First Tier (SEND) Tribunal:**

**To ensure that higher long-term costs to the tax payer LATER, both harm to the child and family are *potentially* reduced or avoided completely.**

The proposed legislation regarding the claims for legal aid of 'some' states:

In our view, **they (parents) cannot be accorded the same level of importance as the immediate threat to life or safety, liberty or the roof over their heads faced by litigants in other types of cases.'**

- **Does the Consultation Body not realise that in 'these cases' there is *already a potential 'threat to the life, safety and liberty' as well as to the security of a physical home and a manageable home life***  
eg. Self-harm and contemplation of suicide, as was the case with our son.  
'I feel very different from the others, too different to understand what they're doing'\*  
'I feel like an ant, the smallest thing in the world, so I lash out like one'.
- **They would also do well to consider that the notion of 'monetary compensation' for vague 'lifestyle choices' is nothing more than a 'fluffy' excuse for *choosing to overlook the extreme desperation being endured by many families as a whole throughout this country.***  
eg. In our case 'doing nothing.' to secure a Statement was NOT an option; it was a necessity.

**Para. 4.183** You state: We have considered '*the class of* individuals who are likely to bring cases in this area of law....and funding available to them.'

- **Quote: 'We do not consider that the class of individuals bringing these cases (usually the parents on the child's behalf) is in general likely to be particularly vulnerable, or that those parents involved will necessarily be unable to present their own case, whether before the Tribunal or courts'.**
- **'We consider that legal advice for those applying to the First-tier (SEND) Tribunal is less likely to be justified because the Tribunal is designed to be accessible to individuals without legal assistance, and they can generally present their case without specialist legal knowledge or representation'.**
- **It is a complete nonsense to pretend that children 'of a class of individuals' will automatically be any more able to adequately represented by their parents**

**My view:**

- **We need and expect our elected representatives at national and local level to recognise that they are in employment to facilitate those who are unable to sustain their own employment alongside the intense and exhausting needs of a 'disabled' child.**

eg. Disability respected neither the social class of our son, nor our 'therefore assumed' intellectual capacity. We would not still be a family unit had we not been extremely fortunate in gaining, not only the advice, but the financial assistance of a brilliant charity. The 'information packs', whilst useful, should not be necessary.

- **Parents and tax payers expect NOT to be 'pre-judged financially' when it comes to doing the right thing by their child and every child.**

*Can I presume the 'Every Child Matters - 5 central issues is being respected.*

*Reminder: Be healthy*

*Stay safe*

*Enjoy and Achieve*

*Make a Positive Contribution*

*Achieve Economic Well-being*

- **Every child with specific learning or other disabilities is automatically extremely vulnerable and so is their parent/are their parents and siblings.**

**It would be of the essence to consider responses to the following:**

1. **To whom exactly does the word in Para. 4.183 vulnerable refer? parents? the child? families? and/or siblings?**
2. **Who will define it?**
3. **Who will be qualified to employ the term on a legally equitable basis?**
4. **Is there a mechanism for disputing any decisions made?**

In our opinion, the above proposals can only have been postulated by those whose lives have never been touched by trying to bring up a child with complex special needs.

Our family has been virtually shattered and we have nearly lost both our home, due to the costs we faced. We would not have qualified for legal aid but we had no other option than to pursue and our health in what I can only describe as being a day to day lifetime sentence and struggle to survive.

- The highly regimented but obsessional , oppositional and destructive behaviour of our son from the age of three (with no diagnosis of Autism until the age of nine) has dictated all our lives.
- The seemingly unremitting refusal of educational services to recognise the need for a Statement until the appeal stage of the Special Educational Needs and Disability Tribunal stage had been reached.  
For your information: Appeal dated January 5<sup>th</sup> 2000.  
And the LEA's refusal to re-assess our sons' needs. Until  
Appeal dated May 24<sup>th</sup> 2010
- An initial refusal by Social Services to carry out a Core Assessment

**A litany of reports\*\***, to be compiled constantly, and personally financed mostly from one teacher's salary.

I refused to be labelled as a 'bad parent', in what turned out to be a bitter and unnecessarily debilitating fight to obtain appropriate basic provision for a child whose needs were screaming out to be met.

Nobody listened as long as they thought they could prove we were coping.

This is why funding for Legal Aid to SEN Tribunals should be available to ALL, regardless of **supposed** social and financial status.

The NHS, Social Services and the Education Services with their ring-fenced budgets bled us dry of resources in our desperate bid to prove to them that we, as a family were at emotional and financial breaking point.

Only with moral and financial support from a charitable organisation were we able to gain access to the Statement , which has finally resulted in our sons' needs being met.  
However, in the present political climate even this can no longer be taken for granted.

### **\*\* Litany of reports**

- Independent Occupational Therapist's report
- Independent Educational Psychologist's reports
- Independent Social Worker's specialist report
- Independent Speech and Language Therapist's report
- Legal advice and fees in the preparation of documents for Tribunals
- Hours and hours of private Occupational Therapy
- Hours and hours of Parenting Classes and Family Therapy Sessions at an in-patient Psychiatric Unit (Sutton Hospital)
- Evenings and days of reading through and responding to reports, writing to the LEA, appealing (time and again) to the LEA for an appropriate assessment.

For your information I have listed our personal experiences, which I hope and trust you will read. I cannot easily imagine that the experiences of others would be very different.

**A snap-shot: Our son – 7 years old, finally diagnosed by Richmond Family Services with Aspergers and ADHD at the age of 9 and prescribed Ritalin. When this failed, aged 10 he was admitted to the Adolescent Psychiatric Unit (Sutton Hospital), as an in-patient for six months. He was returned, with an inadequate Statement to a State Secondary.**

**Every-day life in a well-educated middle class family:**

He spits phlegm into the washing up, flings his food and plate at us and it shatters on the floor. But that's OK because 'God told me to do it'.

The food wasn't food. It was poo and was contaminated anyway because mum was wearing mascara. But of course, he didn't throw it; he couldn't have because he wasn't there. Even though he's here now he still didn't do it, because: 'Don't you know you silly old woman, the opposite is always the truth'.

He repeatedly punches, kicks his elder sister (of 4 yrs) and throws her down the stairs, bruising her and damaging her front tooth. He leaves bruises where he has squeezed and hit her.

He trashes the kitchen, grabs a knife and gouges the walls, threatens you with it and has to be disarmed, and the knives hidden.

The eggs are stolen from the fridge and smashed against the garden fence and the cat gets badly kicked 'by someone else'.

He steals the key and locks us out, having 'posted' it in a letter box.

I get called home from school as my son has once again run away and he is beating up his terrified 75 year old grandmother. I get strangled as I struggle on the stairs not to be flung to the bottom of the stairs and I lock him in his room if I can. Once the lock and handle have been destroyed I sit against the door whilst he ritually runs up and down for hours bellowing and chanting out his aggressive intent in low menacing staccato as he runs up and down the room bashing the door.

*Every morning* he shouts repeatedly 'Don't you understand there's a thunderstorm in my head. I get bullied every day it's just bang, bang, bang!'

It takes three hours daily to get him ready for school. I have a video of one such morning because we felt no one believed what we were going through. That's how desperate parents get.

No one can drive or take him anywhere without being hit whilst at the wheel or him opening the doors to escape from the moving car, shouting and throwing things at the windows in order to draw attention to his 'evil mother'.

Waiting to see the psychiatrist he beats up his sister in the waiting room, goes for her and in the consultant in his consultation room, which he tries to wreck by flinging things at random, then succeeds in escaping from.

Family activities are an impossibility because of his unpredictable responses and he is unwilling to join in any social activities with peers. His fears are random, unreasonable and improbable, except to him and this makes the simplest arrangement impossible to keep.

