

The fight for an education



Children with special educational needs are being marginalised and excluded as budgets to support them are slashed. *Sharon Hendry* meets the furious parents taking their battle to the High Court



A

licia McColl didn't realise her son Kian was autistic until he was five. "I just thought he was a little different," says the mother of three from Farnham, Surrey. "He

was really good at spelling and had lots of energy. He was fanatical about cars and used to flick through the Yellow Pages looking for them. At primary school, the teachers told me he didn't like sand or reading books, but neither do lots of children."

That same year, in 2010, Alicia and Kian's father split up. She moved away and had to put her son into a new school. "The change dysregulated him and he began throwing himself on the floor, throwing chairs and walking out of the classroom," she says.

In 2012, aged 7, he was finally referred to an educational psychologist and a paediatrician. Kian was diagnosed with attention deficit hyperactivity disorder (ADHD) — a neurodevelopmental condition characterised by difficulties in paying attention and controlling behaviour. He was given a special educational needs statement — a legal document that gave him "access to" 20 hours a week of learning support. "But I soon learnt that 'access to' does not mean one-to-one support," Alicia says. "It can just mean there is a teaching assistant in a class of 30 children. It didn't help him in mainstream school at all." She also says her requests for Kian to be formally assessed for autism went unanswered. "He kept being excluded from school. I was being called to collect him when he wasn't 'coping' three times a week on average."

Her voice breaks and she dissolves into tears as she recalls her son's eventual transferral to a "harsh" pupil referral unit for excluded children when he was nine years old. "It was full of desperate children using bad behaviour to communicate a message that they needed help. But the state treats them as delinquents. Kian kept being kicked and hurt by other children and the problems with his behaviour escalated," she says.



Eventually, Alicia paid to have Kian's needs assessed privately and a debilitating range of conditions were diagnosed, including autism, hypermobility, dyspraxia (a neurological disorder causing difficulty in activities requiring movement and co-ordination) and expressive-receptive language disorder (difficulty in using and understanding language), as well as ADHD.

She has since paid for a legal team to challenge the original 20 hours' statutory support provision and won Kian a place in a specialist 50-pupil school that is allowing him to flourish. To fund legal costs, she sold their house and they have had to live in rented accommodation.

Kian is now 14. Earlier this month, he and his mother stood alongside a group of other parents who have taken Surrey county council to the High Court to oppose cuts of £21m from its special educational needs and disabilities (Send) budget — a move they describe as "unlawful" and "unfair".

The proposed cuts threaten vital services for thousands of vulnerable children in Surrey, including home-to-school transport, early years support, post-16 support and one-to-one classroom support. At the time of this article going to press, a

"If you can afford a lawyer, you will eventually beat the system — but you'll be left with nothing in the bank"

judge was set to rule on the case imminently.

Alicia, a project manager for the European Medicines Agency who juggles her day job with offering free advocacy to Send parents, describes a "furious special-needs community" rebelling against years of cuts, which she believes have left a generation of vulnerable children ignored and uncared for.

Recent figures reveal that nearly 1.3m children in the UK require additional support to help them participate in state education. But only a little over 250,000 of them had provision that is legally enforceable. For the remainder, the future is bleak. There has been a sharp rise in the number of exclusions from state schools in England — 40 permanent exclusions each day in 2016-17, up from 35 the previous year. Children with Send are seven times more



TAKING A STAND Alicia McColl and her son Kian (second and third from left) at the High Court to oppose Send budget cuts

likely to be excluded. Such "disruptive" but often intelligent youngsters can leave school with no qualifications.

"Support for children in school costs the taxpayer far less than the support they need when they enter the world of unemployment and, for some, criminality," says Alicia, 45. "We represent a new generation of motivated and dedicated parents who are learning the law and simply saying we've had enough of seeing our children treated like second-class citizens. We're not standing for this any

more. The scant provisions on offer are mired in bureaucracy."

She believes the system has created a culture of haves and have-nots. "If you can afford a lawyer, you will eventually beat the system," she says. "But even then, you'll end up with nothing left after years of fighting. I had savings to provide for my children's future, but it has all gone on the fight for Kian's right to an accessible education."

The Surrey parents have been buoyed by a landmark case in Bristol brought before the High Court this summer by similarly outraged parents using legal aid. In August, a judge ruled that Bristol city council had unlawfully slashed its Send budget by £5m and ordered it to reverse the savings. This week, parents in Hackney, east London, are due to go to judicial review to protest 5% spending cuts by Hackney council. ➤➤➤

"It's brutal. Parents are made to feel ashamed"

Former newsreader Tania Tirraoro, 51, from Farnham, Surrey, is one of the UK's foremost campaigners for special educational needs and disabilities (Send). Her website Special Needs Jungle attracts 200,000 visits a month and has 50,000 followers on social

media. Along with her husband, Marco, a City accountant, she fought for years to get their children, Gio, 19, and Luca, 20, appropriate diagnoses and specialist school provision. "No one in their right mind would enter the current process unless their child

was desperate, because it's brutal," she says. "It is a Kafka-esque nightmare. No one gets back to you, and when they do, it's often with the wrong information. Parents are made to feel ashamed simply for asking what provision their child is entitled to."

mentioned in guidelines, but it's not in the statute. It's irrelevant."

Mark Small is a lawyer who sparked outrage in 2016 when he posted a tweet celebrating "a great 'win' which sent some parents into a storm!", after claiming victory in a case on behalf of an LEA against a family seeking Send support for their child. Small was known among parents as "the Terminator" for representing LEAs

"I've had to take loans out on my home and we've never had a holiday." How much has she spent in total? "About £20,000"

before the Send tribunal, an independent appeals process that allows parents and young people to challenge EHCP decisions. He later posted an image of a luxury swimming pool, claiming he was relaxing by it while reading parents' outraged responses to another decision. The director of Baker Small Legal Services, based in Milton Keynes, he was formally rebuked by the Solicitors Regulation Authority and ordered to pay £600 costs.

Now the poacher has turned gamekeeper, helping parents to challenge LEA decisions. Small's unique insight trains a disturbing lens on local government attitudes and tactics. "When I began working for local authorities, it wasn't long before I realised the families of Send children were held in contempt by some of the Send officers and senior managers. 'These families are taking the piss out of the state — go and nail them,' was the unspoken vibe at many of the councils I used to work for," he says.

In 2011, after Small had won 10 Send cases in a row for Cambridgeshire county council, there was a scramble for his services among other LEAs.

"During one year, I calculated that my firm had saved one of our LEA clients £5m. But one of the by-products was that I became hated. I shouldn't have sent those tweets. The process is really awful and, in the end, you become a cynic within it. The one I posted, saying I was by the pool — that wasn't even my pool."

Small says he is now determined to rebuild his reputation through SEN4you, the arm of his firm that now represents parents and children.

"I know of one LEA that is tricking parents by issuing them with something called a MyPlan, which looks like an EHCP but is just conjured up by the council and has no legal status whatsoever. Many of the parents they are dealing with don't know any different," he explains. "Most EHCPs are unlawful ... [they are]

supposed to spell out the support the child is going to get, but I've seen 128-page documents where there is nothing specific, nothing quantified. The reason being that no one wants to pay to deliver it. That's why so many parents end up in the tribunal."

Mum of four Angela Kingston, from Bridlington, Yorkshire, says her battle to get the Send support her children need has cost her her marriage, her job and forced her

to remortgage her home. She grew up in care and says she had a "limited education", but has become a fierce Send advocate while fighting the system on behalf of her autistic son, Curtis, 18, and her daughter, Sienna, 12, who was born with a severe communication and language disorder.

For 16 years, teachers and professionals dismissed Curtis as "naughty", and after

tens of exclusions, one remarked to his desperate mother, "The sooner you accept your son is badly behaved, the better it will be for all of us." Yet Angela fought on and achieved an autism diagnosis and Send statement that granted him specialist support. Sienna, however, has missed out on vital speech and language intervention because the LEA took more than eight months to deliver a relevant EHCP.

"For weeks, I used to do my job as a nursing-home care worker, then stay up all night researching people who could help me understand the statementing process," says Angela, 43, who is now a Send schools governor. "Meanwhile, Curtis's undiagnosed autism meant he was hitting out at other children and unable to focus."

At one point, Angela says Curtis was being "banished to an 'amber room', which was basically a dumping ground for Send children, and he was made to face the wall. At home time, the teachers would hand him over to me. He was never invited to parties."

Eventually, Angela achieved adequate provision for her children. Curtis is now

studying two BTEC qualifications with full-time one-to-one support at a local mainstream college, and Sienna has specialist provision in her local school.

"I had no choice but to educate myself. The system is worse now than it's ever been and I've cried myself to sleep at night," Angela says. "I've had to take loans out on my home and we've never had a holiday. All my money is spent on a Send consultant, fighting to get provision in place for my children."

How much does she think she has spent in total? "A conservative estimate would be £20,000." She referred her case to the local government ombudsman, who recently found in her favour and awarded £300 compensation to each child.

So is there scope for improving the system? The lawyer Mark Small offers a number of suggestions, including providing parents with independent key workers to help them through the process.

And what of Baroness Warnock, whose 1970s vision for Send children's inclusion in society was so full of promise? "What needs to change is that the whole concept of the plan be scrapped and a new start made, which I hope is what the parliamentary select committee will recommend," she says. "It would be wonderful to go back to the days when parents could think of LEAs not as their adversaries, but as their partners in trying to do the best for their children. But as long as the endless financial struggle is constantly covered up, I don't see this change coming about." ■

For advice, visit specialneedsjungle.co.uk



"People don't see autism and ADHD — just bad kids"

Vanessa Bobb, 50, from south London, gave up her career as a videographer to fight for her children's rights. She has been forced to claim benefits and says she is made to feel like a "scrounger" for supporting her children.

After years of trying to get her children's disabilities recognised, her son, Nathaniel, 15, was diagnosed with autism and ADHD in 2008, and now attends a specialist boarding school in Kent. Her daughter, Michaela, 12, was only diagnosed with ADHD last year, and is still awaiting a copy of an appropriate EHCP document. Both her children have experienced numerous exclusions.

"People often don't see special educational needs, they just see bad children," Vanessa says. "For years, my kids have been told they are naughty because I made them that way. I was made to feel as if I was failing my children. Other parents would say, 'My child doesn't do that.' The signs of special needs were there but nobody wanted to see it that way."