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NEW WRITING

Opinion

John Wright

John Wright worked for 18 years for IPSEA* (Independent Panel for Special Education Advice), a national charity which advises parents and carers of children with special educational needs. He currently acts as a consultant to IPSEA and writes on issues relating to special educational needs and disability discrimination in schools.

* www.ipsea.org.uk

Summary

The conflict of interest inherent in Local Authorities' roles as both assessors of children's special needs and providers of special educational provision was highlighted by the House of Commons Education Select Committee in their last report. Although the Labour Government rejected the Committee's recommendation for the separation of duties the issue has been taken up by a Conservative Party think tank and it is likely that it will soon be Party policy, which will mean that in two years' time there may be clear blue water between the main parties on special education for the first time ever at a General Election.

A conflict of interest?

The first person I remember spotting the problem was BBC Education Correspondent Mike Baker, back in the early nineties. Following an interview on some special needs scandal or other, he shrugged, 'What else can you expect if it's the LEA which decides how much extra help a child needs **and** the LEA which has to pick up the bill for providing it?' My answer was that you should be able to expect Local Authorities to obey the law. I was young(er)! Then, in 2006, the House of Commons Education and Skills Committee highlighted the issue. Having received evidence, mainly from parents' organisations, that professional reports and Statements often prescribed provision on the basis of cost rather than children's needs (as required by law), the Committee recommended to the Government that 'the link must be broken between assessment and funding of provision.'[1]

Since April 1983, Local Authorities have had a legal duty both to assess children's special educational needs and, where assessments show that additional or different provision isneeded, a duty to 'arrange' that provision (including, ultimately, the duty to pay for it). The Select Committee rightly describe this as an 'an in-built conflict of interest,' and it is a conflict which impacts not just on parents and children. Special educational needs professionals also

suffer, because of the pressure Local Authorities, as employers, put on them not to record in their assessment advice their full and honest opinions on children's needs and the provision required to meet them.

An early example of this pressure on professionals was the sacking of an Educational Psychologist (EP) by a Midlands Local Education Authority in 1992 for refusing to be 'gagged'. The Authority had ordered its EPs not to record their views on the type of school which might be appropriate for a child in their assessment Advice. In response, this particular professional added an introductory paragraph to his reports, explaining, mainly for parents' benefit, why his reports contained no reference to type of school, i.e. because of the Authority's prohibition. The EP was ordered to remove this explanatory paragraph and when he refused was charged with gross misconduct and sacked.

Further south, in a Home Counties Authority, a parent was recently told by the EP who'd assessed her child, 'I am not allowed to specify hours in my advice as it gives a parent a number to fix on.' A formal request made under the Freedom of Information Act flushed out the Authority's *Guidelines for the completion of Psychological Advice*. These stated, 'It is not expected that the Educational Psychologist will indicate specific amounts of teaching time or Learning Support Assistance.' Challenged on the legality of this, the Authority argued, 'The LEA denies it maintains a blanket policy preventing an EP giving recommendations about the amount of provision. The policy simply suggests that it is not expected that recommendations about the quantity of provision would be made.' Slippery stuff, but what was absolutely clear was that at least one EP in the Authority interpreted the written guidance as prohibiting the mention of hours of support in their assessment Advice.

A common-sense reading of the law suggests that gagging professionals is unlawful. The SEN Regulations place a duty on Authorities to 'seek' professional advice on 'features which appear to be relevant to the child's educational needs' **and** 'the provision which is appropriate for the child in the light of those features'.[2] Obviously this duty is not fulfilled by Authorities which instruct professionals to leave out of their statutory recommendations their views on what type of school and how much help children need. The reason for the gag is equally clear: vaguely written Advice makes it difficult for parents to challenge vaguely worded Statements, i.e. Statements which fail to specify in Part 3 the provision children should receive in terms of numbers of lessons or hours a week, as required by the Code of Practice.[3]

The Select Committee suggested that in order to achieve separation of the duties to assess and provide, the professionals assessing children's needs should not be employed by Local Authorities but instead be part of independent consortia or be employed by the Department for Education and Skills (as it then was). The Government dithered,[4] then ducked the issue and instead set up a Committee of 'experts' to examine the causes of parental anxiety and make recommendations as to how parental confidence in the SEN system can be boosted.

But the danger, when Local Authorities gag professionals and issue vaguely worded Statements, is not just that parents get anxious (they would be letting their children down if they were anything other than anxious in these circumstances) but that children do not receive the help they need and are legally entitled to. Lacking confidence is rational and appropriate, and until the very real problems in the system are tackled it is surely in children's best interests that their parents remain anxious.

In 2002, parallel to the Select Committee's deliberations, the Conservative Party set up a think tank to chew over possible changes in their policy on special education. Early reports (but not yet party policy) indicate great enthusiasm for the separation of duties argument.[5] Worryingly, members of the think-tank also propose that:

- following assessment, a Special Needs Profile will be produced (replacing the Statement)
- children will be allocated to one of twelve levels of support each attracting different funding
- schools will have considerable autonomy concerning how the support funds are spent

If this means that 'Profiles' will not specify the provision required to meet a child's needs and/or that schools will be able to ignore them anyway, the baby will be thrown clean out of the window with the bathwater.

However, if these worrying elements are removed so that the Conservatives' new policy focuses on the separation-of-powers issue, we may see for the very first time in a General Election clear blue water between the main parties on the issue of special educational needs. Which will no doubt interest parents of children with special educational needs (and possibly other family members) and, who knows, may even influence outcomes in marginal seats.

References

1 Special Education Needs. House of Commons Education and Skills Committee. The Stationery Office. 2006.
2 The Education (SEN) (England)(Consolidation) Regulations 2001, regulation 7(2).
3 Special Educational Needs Code of Practice, paragraph 8:37.
4 The Government first rejected the recommendation for separation, then, when pressed in the House by the Committee's Chair, Barry Sheerman MP, agreed to look at suggestions for practical ways in which separation could be achieved. Following a further exercise in consultation the Select Committee provided several examples of alternative means to achieve separation. The Government rejected them all.
5 The Commission on Special Needs in Education. 2nd Report. The Conservative Party. http://www.conservatives.com/pdf/specialneedsreport2007.pdf