

**Securing Childcare Sufficiency for Children with SEND**

**in the Early Years**

**Have you Taken Reasonable Steps?**



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1. **Introduction and Background**

This paper has been written by Dingley’s Promise, a registered charity supporting inclusion in the early years nationally. As a provider of specialist early years provision across the country, we aim to support inclusion in mainstream settings wherever possible and appropriate. We also work nationally with local authorities and partners, as well as central government, to drive an inclusion movement for young children with SEND.

As a charity we have been involved in influencing change nationally for a number of years now and in 2021 we secured funding from Comic Relief to improve the sufficiency of early years places for children with SEND. This paper presents ideas developed and built on from our work with our partner Local Authorities on the project and other parts too.

The paper aims to support Local Authorities to focus specifically on securing Childcare Sufficiency for children with SEND and their families and builds on the previous papers create in this series, The Benefits of Early Intervention, (The Business Case for Assessing and Securing Sufficiency for Children with SEND) and, Assessing Childcare Sufficiency for Children with SEND in the Early Years.

We hope that in response to these previous papers we will begin to see a common approach to measuring sufficiency for children with SEND and evidencing the case for change locally and nationally. This paper considers the next steps in supporting LAs to consider the “so what” question, in relation to what we can do to take reasonable steps to secure provision, once we know what sufficiency looks like.

1. **Legal requirements and risk of challenge – have you taken reasonable steps?**

[The Childcare Act](https://www.legislation.gov.uk/ukpga/2006/21/notes/division/6/1)[[1]](#footnote-1) 2006 and 16 sections 6, 7, 8 and 9 require LAs to secure childcare for working parents and the early education entitlements, whilst also outlining the LA powers to do so. The duties specify that provision for children with SEND should be secured for children up to the age of 18.

The Childcare Act requires us to ensure the sufficiency of places as a critical part of both improving child outcomes and reducing inequalities. This involves us considering the childcare needs of families both in terms of the early education entitlements, and childcare which enables families to work and undertake work related activity. The two are inextricably linked and the methods and levers used to secure both are the same.

The Childcare Act enables a framework for delivery (and legal challenge) under three key areas:

* The **early years outcomes duties** require the provision of early childhood services and joint working between agencies to reduce inequalities, improve outcomes and narrow the gap. The outcomes duties also enable pooled budgets to support joint delivery, with the aim of supporting easy to access services from pre-birth to 5, at a universal and more targeted level.

* The **sufficiency duties** require LAs to ensure sufficient early education and childcare. Our least advantaged families are (at the time of writing) legally entitled to the early years education as children turn two, and all families of children aged 3 and 4. Working families are entitled to additional hours for 3 and 4-year-olds and the entitlements aim to support child development whilst also removing a barrier to employment by supporting access and affordability.

The sufficiency duties also require LAs to secure childcare for children aged 0-14, (or 18 for children with a disability) with the aim of enabling parents to take part in employment and employment-related activities. The role of the LA in securing sufficient places requires the use of data and a market management approach which uses parental demand, encouraging new start-ups and providing the workforce with training and business support.

* The **information duties** require LAs to ensure information is provided to both childcare providers and families, in order to meet their other childcare duties.

These legislative requirements are interdependent on each other. For example, improving the well-being of young children is reliant on securing integrated early childhood services, which support access to early education and childcare. Securing sufficient childcare requires information, advice and assistance to parents and prospective parents, in order that they may demand (ask for) a high-quality supply.

1. **Market Managing for Inclusion (the “so what?” question)**

The purpose of any sufficiency assessment is to enable an action plan to be published locally which details steps the LA a will take to ensure sufficient provision as far as is reasonably practicable. The range of information gathered will inform a detailed plan potentially covering the following areas for market development for example:

* Information to be shared with families to enable demand-led change in the sector.
* LA approaches to the development, commissioning, and direct delivery of provision
* Workforce development activity to support the recruitment and retention of staff in the sector.
* Business support activity to facilitate sustainability through information sharing, training and peer support.

Remember the role of the local authority in securing sufficient provision is to signpost, develop, and commission provision, only delivering directly as a last resort. The issues and challenges impact on all concerned so finding collaborative solutions with families, providers and the local authority is key.

**3.1 Establish What You Want and Need Your Provider Market to Look Like**

Your CSA will give you information about unmet need. But what are your key principles which ensure your market is diverse, inclusive, and high-quality? Most LAs, families and settings we work with say they would like our early years sector to reflect a welcoming, inclusive, and diverse society.

Many areas identify a small number of providers who will be brilliantly inclusive. Often those providers develop a good reputation locally and parents, professionals and even other providers frequently refer families of children with SEND to them. The impact of this can be high numbers of young children with SEND in a small number of settings, and some settings becoming ‘specialist’ by default. We refer to this as the honeypot effect. If our aims are to promote inclusive practice across the mainstream wherever possible, then celebrating every setting who operates inclusively and changing up our champions will be key to achieving a fully inclusive early years.

The first step in developing your childcare sufficiency action plan will be to articulate your vision for an inclusive, high quality sector for all families.

**3.2 Using Data to Drive Change Through Market Growth and Development**

Your Childcare Sufficiency Assessment provides the evidence base for what you need to do to achieve your vision. Regularly updating it and using it to inform your existing and potential sector is a key requirement of securing sufficiency.

Every year there will be providers who close and those who open. A dramatic change in demand, such as new entitlements, will magnify change in supply. There will be providers who can meet the new challenge and those who cannot. Continually supporting and encouraging the start-up of provision, which is needed, of high quality, and inclusive, is critical for securing sufficient inclusive provision. Market management can effectively manage the turn over and improvement of a sector, particularly at times of change in supply and/or demand.

These are key actions LAs can take to drive new inclusive provision:

* Publicise your CSA and specifically your SEND data analysis as it is critical business information for potential providers considering setting up, and existing providers to enable them to respond to changes in supply and demand locally. The information shows gaps in the market to support providers business planning.
* Actively recruit new providers to start up sharing examples of inclusive providers and how they are successfully offering places which represent the whole community.
* Provide start up support and normalise high quality inclusive provision. This can be done online or in person, buddying with local connections who already deliver inclusive practice effectively.
* Make a business case to your senior managers if your data shows you are short of assessment centres or specialist support or potentially provision which can support children into mainstream this needs to be raised. These facilities are unlikely to be delivered through market forces alone so the LA may well provide them as a last resort in order to maintain sufficiency.
* Regularly share your data with your existing providers through emails, networks, and business planning support sessions. Showcase examples of different providers who are acting inclusively to create new norms and avoid the “honeypot” effect.
* Support all providers from start-up to business plan for inclusion. For example, are they calculating their income and expenditure on a population with no children needing additional support? Or are they calculating income and expenditure based on a percentage of the population (reflecting their local community as gathered in the CSA) who will always need additional support?
* Proactively promote your Ordinarily Available Provision (OAP) document to underline what is considered standard delivery for all children, and to support new norms forming as new providers come into the market.
* Make sure providers are regularly invited to talk about challenges with inclusion, as opposed to becoming stuck and simply turning families away. Avoiding a blame and shame culture will enable more supportive and productive conversations and lead to more overall inclusion.
* Support and challenge but do not collude! Have the conversation about exclusions and the challenges providers are facing but remember your role as a local authority is to secure provision through market management levers. Your customer is the child and family. Have open discussions about the Equalities Act and risk of challenge to a provider who excludes. Offer all the opportunities you can to support inclusive practice using a coaching approach. Clarify with providers your role in implementing all your levers to support change across the market.
* Identify and promote your funding streams where you know extra resource will make the difference. Do not forget that as well as the DAF[[2]](#footnote-2) and SENIF, your High Needs Funding Guidance[[3]](#footnote-3) also clearly states its purpose is to support young children with complex needs.
* Most providers will be aware of and actively promoting Tax Free Childcare as they know any support with the cost of childcare that families can access, will ultimately benefit them in setting realistic charges. On our travels and through our conversations with providers we have yet to meet any providers who are actively promoting tax free childcare at the higher rate for children with SEND. This is a crucial funding stream for supporting inclusion which needs careful solution-focused conversations.
* Try to avoid the publicising of the honeypot effect, by changing up the providers you are celebrating locally.
	1. **Using Parental Demand to Drive Change - How Supporting Families Can Support Sufficiency**

Many local authorities we work with have excellent relationships with parents and carers locally, it can also however be difficult to engage with families in the early years as they may well still be coming to terms with a new diagnosis and negotiating unfamiliar systems and services. Engaging families can bring about change that other market leavers cannot however, so considering how you use your information duties and inform all parents of what good inclusive provision looks like can bring about huge change. An example of this was the huge degree of initial resistance from the sector when 30 hours was first announced as a policy, however once families were fully aware and choosing provision on that basis, the response from the sector changed dramatically.

Market management is about managing both supply and demand. Here are some steps which can support demand led change.

* Creating a checklist for choosing childcare for parents with children with SEND when selecting suitable childcare.
* Creating a choosing childcare check list for ALL parents which considers inclusion and diversity as the norm and represents how all children benefit from being in settings which reflect an inclusive, diverse, and welcoming society.
* Widely sharing and promoting your OAP document, so parents understand what provision should be available to their child in every setting.
* What does good inclusive practice look like, can you share and celebrate good practice case studies across a range of providers.
* Create a safe and confidential whistleblowing route for families who are turned away. It can be useful to signpost families who have negative experiences into your parent carer group so they can become part of the solution and influence change.
* Do you have parent carer representatives in your local parent carer forum for early years? We know this can be difficult as many families are facing stress, however we have also seen some fantastic parent carers lead dialogue with the sector and support local authority planning. This includes.
* Parent carers meeting with each other to discuss their experiences of choosing and taking up early years to gain support.
* Speaking about their experiences at provider networks, conferences, and webinars. It can be powerful to hear the impact e.g. loss of work, income, mental health, housing.
* Parents and carers who actively promote good inclusive providers on social media can also help create new norms.

Lots of families we have spoken to have had extremely difficult experiences of accessing provision which can lead to frustration, anger, and extremely negative impacts on their family life. Any work with families should therefore be handled sensitively to ensure that negative experiences lead to positive solutions moving forwards. Parents and carers who have engaged with us after having difficulties tell us that being part of the solution for other families to come can help them move from feeling frustrated and angry, to empowered.

It is also important to recognise that when parents are not able to access the right support at the beginning of their educational journey, it is likely that they will want to secure the highest levels of support as they go forward including specialist provision and EHCPs. It is our responsibility to make sure families do not have to fight from the earliest moment for the right support for their children and will over time lead to greater trust in the system, and lower levels of demand for specialist provision.

* 1. **Supporting confidence and skills.**

We have yet to meet providers who do not want to operate inclusively, but so often our workforce is under tremendous pressure and the practicalities can seem impossible. We also fully acknowledge that funding, recruitment, and retention are significant issues at present. An increase in demand for places resulting from the expanded entitlements is likely to create even more pressure on recruitment and retention difficulties.

We do know from our own experience and discussions with settings that by growing levels of confidence and skills it can have a huge impact on inclusion rates in an area. Our own Comic Relief Funded Inclusion Training Programme, which is at the time of writing reaching over 12,000 practitioners nationally, has seen some phenomenal results. At this time 98% of those who have completed our short online Inclusive Practice course alone tell us they believe they can take more children with SEND as a result.

Whilst some areas are able to prioritise spend on training, others may need to evidence need and potential change (your CSA) first. There may be other avenues of free training your workforce can access. Many areas are supported by Stronger Practice Hubs which have access to free training for settings in their area, and in some cases offer free SEND training.

Other avenues for support might be through the Early Years SEND Partnership[[4]](#footnote-4) which includes free webinars and training from Dingley’s Promise, Nasen, Contact, NCB, CDC and Speech and Language UK.

One area of training that many setting leaders have said is currently lacking is core child development knowledge in newly qualified practitioners. This is something that is critical for early identification of needs. In response, the Department for Education has created online training that all settings can access for free[[5]](#footnote-5). It is also worth mentioning that the Early Years Educator qualification criteria has changed, and in currently being rewritten to include a whole section on SEND and inclusive practice, something which was very much neglected in the current course content.

On February 2nd, the DfE announced a recruitment campaign to help combat the current pressures on the sector and support new entrants[[6]](#footnote-6). 20 LA areas will also be able to offer a £1000 bonus to new starters. Inclusion in our minds should be at the heart of all induction and CPD.

* 1. **Reduce paperwork for settings.**

When the EYFS changed in 2021, one of the key differences was that there was a significant reduction in the tracking of children expected by practitioners. This change was made to reduce the pressure on settings and encourage more time spent directly working with an understanding each individual child. While this is in general a good thing, what it meant was that the difference in the amount of paperwork needed for a child with SEND compared to other children was now significantly different. Where settings are under financial pressure, this may mean that they end up turning children with SEND away because they simply do not have the staffing to do the paperwork that secures funding to give the child the best start.

The Department for Education has recognised these concerns and is in the process of creating new guidance on early years SEND assessments, to minimise paperwork and allow practitioners to focus on the child rather than tracking progress. Local authorities need to look at the systems they use to distribute SEND Inclusion Funding (SENIF) and consider whether they need the application process to be as detailed as it is now. In research by Dingley’s Promise, a third of settings reported that too much paperwork is the main barrier to access, and one in five say the main barrier is that the time taken to access the funding is too long.

Local authorities could review their paperwork demands, and ideally shift the emphasis to reporting rather than application. There has been an increasing push for settings to write applications for funding and support rather than health professionals or local authority staff, and this is a disincentive for many from taking children with SEND.

Simple application procedures that get the funding to where it is needed quickly are likely to see a rise in inclusion and inclusive places being offered and reduce the numbers of parents experiencing being turned away by settings is something that is critical for their long term trust in the system.

**3.6 A Word About Carrots and Sticks**

At Dingley’s we advocate for positive change and creating new and exciting norms of inclusion. We have yet to meet a provider who set out wanting to exclude children with SEND and it is for this reason that the leavers we suggest are on the whole about supporting and celebrating potential solutions.

We appreciate the significant pressures there are so many providers at this time, however the interrelated legislation surrounding inclusion in the early years is in place to ensure active discrimination does not occur. Local authorities have the power to remove funding if they feel that their local funding agreement has been breached. Clearly the direct exclusion of children on the basis of SEND cannot be tolerated.

We also include in our Manifesto for Inclusion[[7]](#footnote-7) that we do not believe that an Ofsted grading of Outstanding can or should be reached where there are no children with SEND considered or attending. Delivering high quality provision cannot in our minds be achieved without it also being inclusive as a fundamental principle of working.

1. **Summary and Steps you Can Take**

Securing the funding for training delivery and other areas of market management will require sound evidence to support your business case. In short if you cannot evidence it, you cannot make a case for change. Our hope is that this paper is read in conjunction with our previous two in this series, **The Benefits of Early Intervention**, (The Business Case for Assessing and Securing Sufficiency for Children with SEND) and **Measuring Childcare Sufficiency for Children with SEND in the Early Years**.

Securing sufficiency requires a specific skill set along with consideration of all of the legal functions and duties relating to it. Our experience has been that often the experts with the knowledge and skills to manage change are no longer employed or have a plethora of related roles to juggle. Here are some steps which may help in the immediate and longer term to support you:

1. Do you have a dedicated lead for securing and managing sufficiency? Securing inclusive places is clearly a fundamental part of the legal requirements. Can you use the papers we have created to secure funding if needs be?
2. Audit where the staff are within your LA and partner agencies who carry any of the roles we have described in this paper. Can you bring them together to ensure experience is pooled, roles are understood and are connected eg quality improvement and inclusion are both achieved through market management, for example demand led change drives quality improvement. Establishing a joint plan will be key if you do not have a dedicated post holder(s).
3. Use your CSA analysis to collectively develop a description of what you would like and need your provider market to look like. Use the Childcare Act Framework to ensure you are not straying from your public duties but state your principles too, making sure inclusion is central throughout. If you do not state what you are aiming to achieve it is difficult to plan how to get there. A shared statement based on the legislation can also help secure the right people in ownership and delivery.
4. Can you audit the activities you currently deliver across different roles, to identify gaps using our suggested headings above?
5. Develop (and publish) a detailed action plan (using the information in this paper) with clear timescales and any gaps highlighted as risks. Are you managing the turnover of the market to create positive change for example, or simply working with the market you have now as your totality?
6. Share your plans with senior managers and leaders including your lead members.
7. Engage families of children with SEND in the planning and delivery process. Are you utilising demand led change and supporting families to be part of positive change?
8. Review your training offers locally to support new norms around induction for all staff. Are you making the most of any free training available to support your core activity? Are you incentivising the completion of training using local reward systems?
9. Focus on solutions and celebrate successes to create excitement in meeting children’s needs and counter the negative norms which can be present.
10. Inform your providers of your plans and engage them in a welcomed and ongoing conversation. Ensure you outline your role in securing provision (ie that your customer is both child and family, *and* to work with providers too).

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1. <https://www.legislation.gov.uk/ukpga/2006/21/notes/division/6/1> [↑](#footnote-ref-1)
2. Disability Access Funding is currently linked to DLA take up so promotion will be key <https://www.gov.uk/government/publications/early-years-funding-2023-to-2024> [↑](#footnote-ref-2)
3. <https://www.gov.uk/government/publications/high-needs-funding-arrangements-2023-to-2024/high-needs-funding-2023-to-2024-operational-guide> [↑](#footnote-ref-3)
4. <https://councilfordisabledchildren.org.uk/about-us-0/networks/early-years-send/early-years-send-partnership-resources?gclid=EAIaIQobChMI5t7ds8-thAMVg49QBh3gEgYOEAAYASAAEgIbE_D_BwE> [↑](#footnote-ref-4)
5. https://child-development-training.education.gov.uk/ [↑](#footnote-ref-5)
6. <https://www.gov.uk/government/news/childcare-recruitment-campaign-launched#:~:text=A%20major%20new%20national%20recruitment,more%20childcare%20places%20for%20parents>. [↑](#footnote-ref-6)
7. <https://dingley.org.uk/manifesto/> [↑](#footnote-ref-7)