**The death of the 2015 Special Educational Needs Code of Practice - and the parable of the drowning man -Should government have learnt lessons from listening to the voices of history, research and politicians? (Part I)**

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**Abstract**

Through employment of the ‘parable’ of the drowning man - part one of the research examines the systems of SEND management from the Warnock Report through to the operation of the Children and Families Act (CFA). It utilises extant literature to provide a voice from history with a second voice provided by analysing research relating to the CFA’s operation. The research concludes that voices of history and research reveal fault lines that serve to undermine and ultimately overtop government legislation. It is argued that such fault lines will continue to undermine policy and practice in SEND because a piety of government thought renders radical culture change impossible. In part two, a third voice is introduced by way of a thematic analysis of parliamentarian’s speeches since CFA implementation in 2014. A voice that, like those of history and research, attempted to provide wisdom and perhaps salvation of government legislation.

**Key Words: SENCOP 2015, Multi-Agency Working, SEND**

*By way of an introduction* **. . .**

‘A storm descends . . . as the waters rise, the preacher kneels in [prayer](https://rationalwiki.org/wiki/Prayer) on the church porch, surrounded by [water](https://rationalwiki.org/wiki/Water). By and by, one of the townsfolk comes up the street in a canoe.

"Better get in, Preacher. The waters are rising fast." "No," says the preacher. "I have [faith](https://rationalwiki.org/wiki/Faith) in the Lord. He will save me." Still the waters rise. Now the preacher is up on the balcony, wringing his hands in supplication, when another guy zips up in a motorboat. "Come on, Preacher. We need to get you out of here. . ." Once again, the preacher is unmoved. "I shall remain. The Lord will see me through."

After a while . . . the flood rushes over the church until only the steeple remains above water. The preacher is up there, clinging to the cross, when a helicopter descends . . . and a state trooper calls down to him . . ."Grab the ladder, Preacher. This is your last chance." Once again, the preacher insists the Lord will deliver him. And, predictably, he drowns.

A pious man, the preacher goes to heaven. . . he asks the Almighty, "Lord, I had unwavering faith in you. Why didn't you deliver me from that flood?"’

God shakes his head. "What did you want from me? I sent you two boats and a helicopter.’

(See Du Frane, 2009)

In the ‘parable’ above a pious man listens to but fails to hear three voices that would bring forth salvation. Despite a conspectus of evidence, the preacher believes he will be saved by holding onto his principles. Part one of the research formulates two voices which centre on the history and researches into the operation of the CFA 2014, the third voice is, through a thematic analysis of politician’s speeches, detailed in part two. Like the drowning man, it is argued that government, despite continued legislative failures, thinks it will save its systems of Special Educational Needs and Disability (SEND) in England if it believes in them hard enough. Moving forward into a new legislative era, the research argues that if government is to observe success, decades of ‘pious’ thought must be cast aside.

***A cautionary voice from history . . .***

Through critical analysis of extant literature this section details a voice from history which reveals that consistent policy fault lines have undermined government systems of SEND. This review employs the Warnock Report (DfES, 1978) as departure point as it was catalyst to the systems of SEND operating today (Hodkinson, 2020). The review centres on the 1970s, 80s and 90s through to the formulation of the CFA in 2014 to form a base of analysis.

*The Warnock Report and beyond*

In 1973, Margaret Thatcher, the then Education Minister, appointed a committee to, ‘review educational provision . . . for children and young people handicapped by disabilities of body or mind’ (DfES, 1978: 1). The Committee’s 255 recommendations, solidified the terminology of SEN, integrative education, and the Statement of SEN. The Committee also provided guidance to support policy implementation in the future. For example, it detailed that multi-agency working was crucial to SEN provision. The Committee believed that interagency working would be promoted if professionals, from varying fields obtained joint qualifications (DFES, 1978). Furthermore, it observed that frameworks for SEN would ‘inevitably … require substantial additional resources’ (DFES, 1978: iv). The Committee stated,

‘[W]e voiced our strong conviction that necessary resources must be provided to implement the new provision…Parliament having willed the ends; we would expect government to will the means’ (329).

The Committee (DFES, 1978: 35) was also committed to pre- and in-service training believing improvements in special education would not be achieved without advances in training. In summary, they believed,

‘The quality of special education, however, cannot be guaranteed merely by legislation and structural change. The framework provides the settings within which people work together in the interests of children, and the quality of education depends essentially upon their skill and insight, backed by the adequate resources- not solely educational resources- efficiently deployed.’

For Warnock, then, the catalyst to successful policy and practice was multi-agency working, adequate funding and advances in training.

The Education Act of 1981 translated some of the Committee’s recommendations into legislation. Notably, it legitimised the linguistics of SEN and formalised the statementing processes. The Act also reinforced integrative education in mainstream schools. However, whilst the Act was observed as significant (Hodkinson, 2019a) it nonetheless had significant fault lines. For example, the lack of a strong lead from government over children’s placements meant enormous discretion to the development of integrated practices fell into the hands of local education authorities [LEAs] (Jones, 2004). Analysing the Act, reveals other fault lines in that whilst it observed that every teacher was responsible for SEN, pre- and in-service training was not overhauled (Hodkinson, 2009; 2019b). In addition, whilst Warnock championed parental rights, the Act failed to alter the parent/ professional power dynamic (Lamb, 2019). To be specific, parents were given no say in the placements of their child (Hodkinson, 2019a). Crucially, in terms of Warnock’s recommendations, the Act was not supported by extra funding.

Government failure to listen to Warnock seemingly doomed the 1981 legislation to failure. Indeed, by the end of the 1980s integrated education was subject to poor delivery, practice, and wide-ranging regional variations (Dyer, 1995). The Act, therefore, created a postcode lottery legacy of service delivery. In 1987 the House of Commons Education Committee (HoC, 1987) commented that whilst measures contained in the Act were good, legislative implementation had been poor (Lamb, 2019). In 1992, the Audit Commission (1992a; b) found that the legislation lacked clarity over what constituted an SEN (Russell, 1994); lacked accountability and this had led to conflicts with parents (Lamb, 2019). Its Report also stated that ‘statutory assessment is a costly and bureaucratic process which parents find stressful and alienating’ (Audit Commission, 1992a: 131). The Commission further reported a ‘disturbing trend of more pupils gaining statements’ (Evans & Lunt, 1993, pg. 59) with provision of statements growing from 168,000 to 264,850 during 1990-92 (Lamb, 2019). The Commission concluded that services for children had become fragmented and ‘seriously underfunded’ (Madden, 1993: 14). It recommended that multi-agency assessment should become independent of LEAs, that services across health, education and social care should become more unified (Lamb, 2019) and that teachers needed to be better qualified (Evans & Lunt, 1993). It appeared that the lack of training and other policy fault lines meant schools had become less tolerant and more ready to exclude children who required support (Evans & Lunt, 1994). The Commission's overall conclusion was that legislation had not guaranteed better outcomes for children (Lamb, 2019). For parents, then the late 1980s and early 90s had witnessed increasing unhappiness as SEN systems failed to change (Dyer, 1993).

In 1993, the House of Commons Education Committee (HoC, 1993) recommended that statements should only be utilised for a minority of children (Lamb, 2019). Warnock (1993, xix), though, went further, articulating that ‘statements should be abolished’ and that the placement of children with complex SEN into mainstream schools had led to a disastrous legacy (Lamb, 2019). It should be noted that the fault lines which opened in the 1981 Act were ones highlighted by Warnock and others back in the late 1970s. (see Rayner, 1994).

Throughout 1992 and into 1993 the statutory duties of LEAs were tightened (Lamb, 2019). This led to the 1993 Education Act and the first SENCOP in 1994. An Act, the under-secretary of Education said, was ‘radical;’ stating:

‘There has been widespread welcome for the huge step we are taking in the Education Bill …we are introducing many radical new provisions for children with SEN…’ (see NASEN, 1993: 63.)

However, as time would tell, this Act and SENCOP would fail because of fault lines emplaced at the core of the legislation. Fault lines, as we shall observe, that were familiar indeed.

The Act was the longest act ever placed before parliament (Rayner, 1993) with over one third devoted to SEN (Vincent, *et.al*. 1995). This Act and SENCOP were built upon principles which appeared to fix the fault lines in previous legislation (Vincent, *et. al*, 1995). These were that a child and their parents had a right to be heard, a right to information, and a right to work in partnership with professionals in decision-making processes. (Marsh, 1998; Lamb, 2019; Done, *et. al.*, 2021). Moreover, the legislation formalised a system of early identification and assessment of children.

This legislation was observed as innovative in provision and practice (Done, *et. al*. 1993; Simmons, 1993). For example, it introduced Tribunals, Individual Education Plans with the ‘pivot of the new system’ being the Special Educational Needs Coordinator (SENCO) who was responsible for a school’s provision of SEN (Simmons, 1994: 56). For some (Simmons, 1994), SENCOP was welcomed as it brought forth a legal statementing process and gave outside agencies clear statutory guidelines for practice (Dyer, 1995). SENCOP appeared, then, to bring coherence to partnerships between LEAs, schools, and parents (Lamb, 2019). SENCOP though made clear that schools, rather than LEAs, were accountable for how they operated SEN provision.

During implementation of SENCOP people criticised the Code’s principles and, members of parliament were ‘fearful about funding levels’ (NASEN, 1993: 63). Indeed, the Code witnessed early conflict between schools, parents, and LEAs over the lack of resources (Dyer, 1995; Hornby, 1995). Hornby, writing in 1995, stated the greatest challenge to successful implementation of SENCOP was that government had not made additional resources available. Hornby concluded SENCOP, therefore, was nothing more ‘than a cynical exercise by government to save money on children with SEN by placing greater obligations on mainstream schools’ (117). A view that was supported by Coopers and Lybrand (1996) who described the escalating funding issues as a ‘SEN time bomb’ (Marsh, 2021:21).

Others too criticised SENCOP as it did not provide funding for, nor insist on training for SENCOs (Simmons, 1994). Most SENCOs, therefore, had significant demands placed upon them (Hornby, 1995) without any extra remuneration, training or ‘time free from teaching’ (Simmons, 1994: 56). Many people believed that SENCOP could only be successful if professionals had their training needs met (Simmons, 1994; Hornby, 1995). Further criticism coalesced around parental partnerships especially as the operation of SENCOP revealed the government's real aim was to reduce the number of tribunal appeals, not to provide better support to children. Booth (1994: 21) believed the legislation was ‘wholly destructive’ to children's positionality because special education’s terminology and ideology was still framed within the ideology of deficit. Moreover, despite Warnock, and others, arguing against statements, government did not address shortcomings in the statementing process.

From the late 1990s, government’s focus turned to promoting inclusive education. Within such reform, the SENCOP was observed to be out of touch as it promoted segregative practices (Dyson, 2000). Furthermore, SENCOP, with its staged approach, was a top-heavy bureaucratic process (Dyson, 2001; Farell, 2001). The extant fault lines within the legislation quickly opened. For example, multi-agency working was unsuccessful, as professionals had remained stubbornly uni-disciplinary and isolationist in approach (Mc Conkey, 2003). SENCOP was fatally flawed, both in its ‘surface practices’ and its ‘fundamental structure and conceptualisations’ (Dyson, 2001: 101). With resources spread thinly and bureaucratic, time-consuming assessment processes dominating, parents felt that their voices were not being heard (Farrell, 2001). In the late 1990s SENCOP’s fault lines became redrawn as battle lines within, ‘an ill-defined battleground in which different interest groups engage[d] in contests governed only by a vague set of rules’ (Dyson, 2001: 101).

The reforms of the 1990s appeared ‘uncontrolled, ill-thought out and often unexpected’ (Raynor, 1994: 169). Furthermore, earlier ‘cautionary voices had not been heeded’ (Davie, 1993: 83) as government did not re-conceptualise SEN choosing to carry on with its extant processes and practices (Booth, 1994; Raynor, 1994). For Booth (1994: 21) this SENCOP represented a ‘lost opportunity’. Davie, writing in 1993, as president of the National Association for Special Education [NASEN], was scathing in his criticism, indicating the government ‘does not merit more than five out of 10 for this piece of legislation. It certainly “could do better”’.

January 1999 saw government hold consultation exercises and in 2001 the Special Education and Disability Act [SENDA] was enacted with a new SENCOP and associated ‘toolkit’ implemented in January 2002. This Code contained chapters on ‘working in partnership with parents’, ‘pupil participation’ and ‘partnership with other agencies’. With familiar refrain government stated the principles of this SENCOP were a child’s view must be sought, taken into account and parents had a vital role to play. A critical success factor was, ‘LEAs, schools and settings work together and that Special Educational professionals and parents work in partnership’ (DfES, 2001: 1.6). Estelle Morris, the Secretary of State for Education, stated the new Code:

‘promotes a consistency of approach . . . and places the rights of the child with SEN at the heart of the process allowing them to be heard and take decisions about their education’ (DfES, 2001: ii).

She articulated the Code would produce:

‘less paperwork . . . and produce a framework for developing strong partnerships between parents, schools, LEAs, health and social services and voluntary organisations that are crucial to success’ (ii).

With a sense of piety but not irony, Morris stated:

‘I am confident that this Code . . . will build on the success of its predecessor . . .’ (iii).

Despite Morris’ confidence others were more pessimistic. Indeed, with the fault lines still intact, failure appeared engineered into this SENCOP’s geology. For example, whilst there was a ‘long standing dissatisfaction’ (Farrell, 2001: 6) with categorical assessment, government continued its ‘technist approach’ introducing four areas of learning into its assessment processes. Furthermore, policy language did not change, focussing still on ‘special’, ‘need’ and individual deficit (Wearmouth, 2001: 6). For Runswick-Cole & Hodge (2009: 200) the continuance of this language ‘sustained and constructed exclusionary practice’ at SENCOP’s core. Moreover, the technist approach adopted increased bureaucracy (Lingard, 2003; Cole, 2005) within a ‘cumbersome statutory assessment process’ (Farrell, 2001: 8). For Farrell (2001: 8) SENCOP ‘still seemed to be a millstone around the necks of all involved.’ Ofsted (2002) and the Audit Commission (2002) provided further criticisms, determining that Statements were a structural impediment to the Code (Norwich, *et. al.,* 2004) and were at odds with inclusion (Florian, 2003). For NASEN (2001), though, the obstacle to SENCOPs success was that the duty to identify children labelled with SEN had been removed. This they observed was a serious mistake as LEAs could not plan and budget for future service delivery with any specificity.

In terms of the participation of pupils, parents and multi-agency partnerships, the new SENCOP was unsatisfactory because whilst government trumpeted its commitment to participation, SENCOP was not legally binding and so again became undermined by professional interpretation (May, 2004). Additionally, SENCOP did not define participation, nor did it alter existing professional parent/ pupil power dynamics (May, 2004). This led to confusion of the purposes of partnerships, a lack of professional accountability and blurred lines of responsibility (Pinkus, 2003). Concerns again arose quickly over the positionality of parents and pupils within the new system (Farrell, 2001). With a ‘legacy of poor experience’ parents again felt they ‘had to fight’ professionals for statements rather than work in partnership (Pinney, 2003: 119). With no framework for participation and no underpinning guidance (Pinkus, 2003) translation of government rhetoric into practice within schools once again opened fault lines in SEN provision (Pinkus, 2003). In practice, this meant that partnerships created only ‘a dangerous battle’ between parents/pupils and professionals (Pinkus, 2003: 129.) Ultimately, in respect of participation, SENCOP was again found wanting (May, 2004).

The previous iteration of SENCOP had been undermined by the fault line of resources and funding. It is of interest to note, therefore, that in this SENCOP’s first year of operation some 15% of school funding, £3.6 billion, was spent on SEN provision (Pinney, 2003). Of this 68% was employed to support Statements. Such requirements led many LEAs to experience cost overruns (McKay & Neal, 2009). A driver of which was the omission of a register of SEN. As NASEN had predicted LEAs had to resource an unknown number of students (Florian, 2003) within a system where Statements significantly added to cost overruns because they placed unlimited demands on already limited budgets (Norwich, *et. al.*, 2004). Statements, as a means of resource allocation again were ineffective (Pinney, 2003) and like previous SENCOPs, issues were raised over how monies were spent and resources utilised. Indeed, Ofsted and the Audit Commission in 2002 questioned the arrangements for monitoring resource allocation (see Norwich *et. al*., 2004) finding that ‘barely half of LEAs’ had systematic monitoring systems of funding or the outcomes such funding achieved (Pinney, 2003: 120). In summary, SENCOP created an expensive administrative burden which, however unintentional, diverted limited resources away from pupil support (Lingard, 2003). Lack of resources, coupled with ineffective monitoring and timely bureaucracy also led to poor classroom interventions with some children labelled as SEN disengaging and being excluded from mainstream education (McKay, & Neal, 2009). SENCOP, then, with limited budgets, ineffective pupil and parent participation, competition and indeed hostility between its client groups, meant that children's needs were not always observed as paramount (Lingard, 2003).

In relation to the fault line of training, whilst SENCOP 2001 mentioned training 44 times, few references related to the professionals operating the system, Although SENCOP specified that ‘training, advice and support for staff’ must be secured and was needed for consultation with children, government again passed the responsibility for training onto LEAs, schools, and SENCOs (DfES, 2001: 1.44). Furthermore, SENCOP’s language was weak suggesting only that LEAs ‘may wish’ to develop training and resources ‘might be’ employed for staff development (DfES, 2001:3.22 & 4.28). Such language did leave a feeling that for government training was not of importance. Five years into its operation SENCOP was subject to severe criticism by the House of Commons Education Committee, who stated:

‘It is unrealistic to expect teachers and other members of the workforce to be able to meet the needs of children with SEN if they have not received appropriate training’ (HoC. 2006: 278).

Responding to this the Secretary of State announced that training for the teaching of SEN needed to become a national priority (Hodkinson, 2009; 2019b). For many though, given the issues with training had been apparent for decades and government had made statements as to its importance before. It did appear that they were experiencing a Groundhog Day as yet again government failed to hear Warnock’s advice as to the importance of training to the success of SEN systems (Hodkinson, 2009; 2019b).

Looking back on SENCOP 2001, it seems reasonable to argue that the voices of parents, pupils, and academics had had little impact on its creation and operation (Runswick- Cole, & Hodge, 2009). Very early on dissatisfaction had been voiced in relation to statements, the training of frontline professionals, the level of resources and funding, and to the effectiveness of procedures employed by schools and LEAs to manage SEN (Pinney, 2003; McKay, & Neal, 2004). Early in 2002 the Audit Commission and others urged government to reconsider how SENCOP was operating (see Florian, 2003; Pinney, 2003). Pinney (2003, p. 121) accounted:

‘[government] must establish a high-level independent review to consider options for reform. This could allow all voices to be heard . . ..’

In 2003 the DfES responded to the request for a review, stating that its systems, as laid down in its SEN Programme for Action (DfES, 2003), would not be subject to change (Norwich, *et. al.* 2004). Therefore, despite a cacophony of voices, SENCOP continued to widen the fault lines (Florian, 2003). Wringing its hands in supplication government, yet again, refused to listen and its surety of conviction meant that it would be nearly a decade before any changes to SENCOP were considered.

*God shook his head. "What did you want from me? I sent you a canoe . . .*

***CFA 2014: voicing research***

*‘Being on a boat that's moving through the water, it's so clear. Everything falls into place in terms of what's important and what's not’. James Taylor (American musician)*

In 2010, Cameron, stated that schools ‘should end the bias to inclusive education’. This conviction, adopted by the government became catalyst to another overhaul of SEND systems in England (Hodkinson, 2019a). In 2011, the Secretary of State, Michael Gove stated:

‘Successive reports . . . have described a system where parents feel they have to battle for the support they need, where they are passed from pillar to post, and where bureaucracy and frustration face them at every step. . . that is unacceptable. . . we are letting these children . . . down.’ (DfE, 2011: 2)

Following the Green paper of 2011, March 2014 saw the government receive Royal Assent for its Children and Families Bill and in 2015 a new SENCOP. Edward Timpson, the Under-Secretary of State for Children and Families commented:

‘Today’s system for supporting children with SEN is based on a model introduced more than 30 years ago that is no longer fit for purpose. Enquiries and reviews … have identified that the current system is complex, bewildering, and adversarial. The evidence points to an assessment process which is in-efficient, bureaucratic, and costly, as well as in-sufficiently child-centred or user-friendly . . . Families tell us that they have to battle at each stage of the system’. (See Perry, 2014: 333).

Such statements demonstrated that the government perhaps had heard the voice of history which foretold of the failure embedded within the fault lines of funding, multi-agency working, parental partnerships, and the lack of training. However, while government claimed its legislation ‘radically overhauled’ the system (DfE, 2011: 2) analysis of SENCOP 2015 demonstrates that whilst the voice of history may have been listened to, the question that remained was; was it actually heard? Four decades of failure in SEND practices hung over SENCOP at its inception. Frustratingly, it quickly became apparent that the battle that children and their families faced within previous SENCOPs would not diminish, indeed, the battle intensified- as ‘warrior parents’ (Lamb 2019) fought back against the system.

CFA 2014 and its SENCOP aimed to provide a more streamlined process with less bureaucracy (Cochrane & Soni, 2020). At the heart of the SENCOP was the principle of forgingstrong interdisciplinary partnerships between education, health, and social care services (Castro-Kemp & Samuels, 2022) where children were recognised as partners in the planning and commissioning of services (Howell, 2021). To some this policy, with its notion of personal budgets and children as partners represented a step forward in eliciting children's views and aspirations within the construction of an Education Health and Care Plan [EHCP] (Gaona, 2019; Harris & Davididge, 2019). Deeper analysis of SENCOP though still revealed the existence of the ‘fault lines of failure’. For example, this SENCOP still utilised the language of deficit, emplacing it within a normative technist framework of professional practice which had changed little since 1981 (Harris & Davididge, 2019). In addition, as in previous iterations, SENCOP provided little specificity of how collaborative practice would operate on a day-to-day basis (Cochrane & Soni, 2020). Furthermore, the language of participation again was not standardised across the professions (Castro-Kemp & Samuels, 2022) and for Norwich (2014) this code showed more generality in guidance than its predecessors. As in times past, the commissioning, gatekeeping of resources and multi-agency services were placed in the hands of Local Authorities [LAs]. Also of concern was that collaboration was framed within weak policy language which specified that children's views should be listened to ‘as far as possible’(147). As with the last Code, this SENCOP led to significant regional variations in professional practice (Palikara, 2018). SENCOP, therefore, yet again missed an opportunity to afford change as it failed to challenge the parent/pupil professional power dynamic (Hellawell, 2015) as participation was framed in a rules-based system that had strict procedures, deadlines and budget priorities (Gaona, 2019).

SENCOP quickly revealed that systems of collaboration, participation and multi-agency partnerships were ‘functioning sub optimally’ (Harris & Davidge, 2019: 504). As early as 2015, the National Deaf Children's Association reported that only 6% of parents, in their survey, had observed improvements in support. Also in 2015, the National Autistic Society reported that only 23% of parents that had been through the system were satisfied with its operation (see Curran *et. al*, 2017). Later in 2017, the Local Government Ombudsman reported that complaints about EHCPs had doubled between 2015/16 and 2016/17 (see Hoskin, 2019). Whilst Adam *et. al.* (2017) suggests parts of the system were working, reporting that a DfE survey reported that two-thirds of parents were happy with the SEND framework; other evidence demonstrates the system was failing. For example, the same survey denotes that only 44% of children were asked if they wanted to participate in preparing their EHCP with only 19% offered a choice in how they might participate (Adam, *et. al*., 2017). Also, in 2017 Ofsted was critical of the new SEND processes. It found that one third of LAs inspected had expressed significant concerns about how they would meet their duties under the new Code. Ofsted also determined there was a lack of coordinated services, proper assessment procedures and children's voice in the system (Ofsted, 2017). They concluded that the reforms had not sufficiently benefited children and there was limited multi-agency working especially in respect of health and social care professionals (Tyso *et. al*., 2021). Other reports were also very critical. For example, Contact et. al. (2017) reported that 57% of parents were not confident that schools provided good SEND support that enabled children to achieve good outcomes (see Lamb, 2019). In 2019 the House of Commons Education Committee added to the growing criticisms reporting that parents were poorly informed during the statutory assessment process and very often parents were not invited to participate, or that their involvement was observed as problematic (Ahad, *et.al*, 2022). It is a sad fact that in the first six years, or so, of SENCOPs operation, appeals against EHCP decisions rose by over 150% (Ahad, *et.al*., 2022). Analysing the early years of SENCOP details that it was undermined by fault lines it had faced in the past. Such fault lines widened in that its operation was curtailed by the standards and performativity culture embedded in English schools (Williams-Brown & Hodkinson, 2020). For example, Ofsted (2019) became increasingly concerned about the rising rates of exclusion and the increasing practice of ‘off-rolling’ (Lamb, 2019). A process where ‘problematic children’ were taken off a school's roll so that better exam results could be reported. In 2019, the Office for National Statistics reported that children labelled as SEND were seven times more likely to become permanently excluded (Murphy, 2021). The DfE eventually recognised that ‘off-rolling’ and exclusions had become a significant issue in SENCOP’s operation.

Another significant structural fault line in SEND provision is that of funding. Edward Timpson stated that SENCOPs operation in 2013 had cost £5 billion and had not delivered good financial outcomes (Curran *et. al*., 2017). Despite such statements SENCOP 2015 funding formulas were still observed as problematic. In essence, there were three funding streams; the high needs budget, an LA top-up fund and £6,000 per child labelled with SEND coming from a school’s budget (Marsh, 2022). SENCOP 2015 was criticised for including too little guidance on funding, having inconsistent procedures, operating under significant financial constraints (Taberner, 2022), and utilising a funding formula that was opaque (Webb, 2022). However, government did appear to have listened to the voices of the past by supporting the legislation’s implementation with what appeared to be significant extra investment (Lamb, 2019). As before, though, financial planning was devolved to LAs which meant they operated the SEND system and were responsible for school improvement and performativity (Taberner, 2022). Perversely this duality may have incentivised the use of exclusion, mentioned earlier, as a school improvement tool (Taberner, 2022).

From the outset, SENCOP ran into trouble as operating an age range of 0 to 25, witnessed significant extra requests for funding. The government responded quickly with a 37% increase in funding to schools in 2014/15, some £14.5 billion extra, and an increase of £3.5 billion in high needs funding (Marsh, 2022). 2015/6 brought further increases of £61 million with another £195 million in 2017/8 (Hoskin, 2019). Despite these increases funding could not keep pace with demand. In real terms, Wanes *et. al.* (2022) argues funding actually observed a real cost reduction of 17%. Whatever may be said about funding, the DfE identified its priority for reform, for 2015-20, would be resourcing high needs funding (Marsh, 2017). In 2018/19, government implemented a revised, formula and invested a further £250 million in high needs funding (Lamb, 2019). For some though such changes and investments did not address underlying systemic weaknesses, this being the levels of funding itself. Indeed, in 2017/8, the National Audit Office found that 88% of LAs had overspent their high needs budget as compared to 47% in 2013/4 (Marsh, 2021). It is a sad reflection on the system that in 2021 the House of Commons Accounting Committee stated that,

‘while department drags its feet [with funding] more and more children with SEN are progressing through the school system without the support they need’ (see Marsh, 2021: 12).

It appears that the government had either got its sums wrong, or the system, in terms of funding, was simply broken. As with previous codes the system was subject to serious financial pressures as money needed for statutory assessment continually outstripped financial resources (Lamb, 2019; Marsh, 2022). Many LAs therefore were unable to fully implement SENCOP and this left children and their families again facing a postcode lottery of patchy provision (Robinson, *et.al*., 2018). Analysing SENCOP from its conception in 1994 demonstrates that support and procurement existed within finite resources where cold hard and pragmatic approaches to funding took precedence over children's needs. As such Robinson (2017) argues that it was inevitable that teachers, parents, and other professionals would end up engaging in war games over scarce resources which meant SENCOP would always produce winners and losers.

Turning to analyse the third fault line, that of training, despite this being highlighted within the extant literature base (Boddison & Soon, 2022) SENCOP 2015 did not action an agenda of radical change. At its conception this Code did not provide clear guidance and support to teachers to implement the new agenda (Richards, 2021). Furthermore, as early as 2015, the Carter Review concluded that urgent improvements in teacher training, in respect of SEND, were needed (Robinson, 2017). However, although some small training contracts were made (Lamb, 2019) the DfE, in 2019, found that only 57% of trainee teachers felt prepared to teach children labelled as SEND. In a performativity climate and ‘teaching to the test’, the lack of emphasis on training ‘revealed the contradictory goals teacher education had to fulfil’ (Essex, *et. al.* 2021: 1428). Moreover, coupled with the effects of austerity and the subsequent reduction in the LAs budgets meant that in-service training was also curtailed (Lamb, 2019). Analysing the history of this fault line, coupled with examination of research into operation of SENCOP 2015 shows that despite government rhetoric, and some interventions, little had changed in teacher training since the time of Warnock (Hodkinson, 2019b).

SENCOP 2015 sought to address the significant under performance of previous systems of SEND (Hellawell, 2015). In addition, it aimed to avoid adversarial conflicts that had dominated previous SENCOPs. In these aims the new legislation failed as appeals to tribunals more than doubled during its operation (Marsh, 2021) and SENCOP witnessed higher rates of exclusion and ‘off-rolling’ (DfE, 2019). Furthermore, despite the Code supposedly giving parents and children greater agency, these reforms have been described as nothing more than an empty framework (see Tabener, 2022). It appears then that in the harsh reality of practice SENCOP disadvantaged children by its continuance of a deficit model of education (Finkelstein, *et. al.,* 2021). Moreover, research detail that levels of bureaucracy continued to be too high and there remained a lack of resource to meet children's needs (Tyso, *et. al*., 2021). Additionally, the continued employment of the EHCP has led to similar conflict and challenges (Cochrane & Soni, 2022) observed with its predecessor the Statement.

*In* *toto*, this analysis elicited a pessimistic voice which strongly suggests that professionals continue to work in splendid isolation (Castro-Kemp & Samuels, 2022) and that children ‘remain[ed] on the periphery of decision making’ despite constant government rhetoric to the contrary (Sharma, 2021: 51). Sharma (2021) queries whether SENCOP had developed since 2001 as there had been no ‘sea-change’ in the culture of SEND (Harris & Davidge, 2019: 495) as ‘co-production’ of EHCPs was but an illusion created within ‘a mismatch between policy expectation and practical reality’ (Boddison & Soon, 2021: 94). Other researches confirmed no radical cultural change in SEND, arguing that expectations remained the same as children still have to ‘listen to adults and . . . only speak when asked to do so on topics chosen for them’ (Sharma, 2021: 50). Done, *et.al.* (2021) believes therefore that policy discourse has worked only to silence the voices of children and their families. Eight years after this SENCOPs implementation the battles parents have to face and the frustration that they and professionals feel in trying to navigate the systems of SEND have not reduced. (Hoskin, 2019; Lamb, 2019; Cullen & Lindsay, 2019; Cochrane & Soni, 2020; Ahadm, *et. al.* 2022). The voice of research suggests therefore that SENCOP has made little progress in prioritising children's voices (Harris & Davidge, 2019) and that there continues to be ‘structural problems [in SENCOP] which need to be addressed’ (Lamb, 2019: 9.)

*God shook his head. "What did you want from me? I sent you two boats …*

**Conclusions: part one**

A conspectus of the research and analysis of the fault lines in the legislation shows that the operational effectiveness of each SENCOP was undermined from its conception. SENCOP 2015 did not bring about radical reform. Indeed, it continued to be driven by performativity and economic austerity (Curran, 2019) with a SENCOP where the patterns of past difficulties persisted (Ahad, *et.al*, 2022). In 2019, the House of Commons Education Committee called for immediate action to remediate the problems inherent in the SEND system (Finkelstein, *et. al.,* 2021) and so this current framework, like its predecessors, failed as the fault lines widened ever further and government drowned under a torrent of its own rhetoric.

To be continued . . .

References

Adams, L., Tindle, A., Basron, S. Dobie, S. Thompson, D. Robinson, D. & Shepherd, C. (2017). *Experiences of Education, Health and Care Plans: a survey of parents and young people*. London: DfE.

Ahad A. Thompson, A.M. & Hall, K,E, (2022). Identifying service users experiences of the Education, health and care plan process: A systematic literature review, *Review of Education*, 10 (1), 1-24.

Audit Commission & Her Majesty's Inspectorate (HMI) (1992a). *Getting in on the Act*. London: HMSO.

Audit Commission & Her Majesty's Inspectorate (HMI) (1992b). *Getting The Act Together: Provision for Pupils with Special Educational Needs. A Management Handbook*. London: HMSO.

Audit Commission Report (2002). *Policy Focus. Statutory Assessment and Statements of Special Educational Need: In Need of a Review*?. London: Audit Commission.

Boddison, A. & Soon, S. (2022). The Coproduction illusion: consideration of the relative success rates of securing an Education, Health and Care Plan when requested by families or education professionals, *JORSEN*, 22(2), 91-104.

Booth, T. (1994). Continua or Chimaera, *British Journal of Special Education*, 21(2), 21-24.

Castro-Kemp, S. & Samuels, A. (2022). Working together: A review of cross-sector collaborative practices in provision for children with special educational needs and disabilities. *Research in Developmental Disabilities*, *120(S1):104127 DOI:* [*10.1016/j.ridd.2021.104127*](http://dx.doi.org/10.1016/j.ridd.2021.104127)

Cochrane, H., & Soni, A. (2020). Education, health and care plans: What do we know so far?, *Support for Learning*, 35(3), 372-388.

Cole, B.A. (2005). Mission Impossible? Special Educational Needs, inclusion and the re-conceptualisation of the role of the Special Educational Needs Coordinator in England and Wales, *European Journal of Special Needs Education*, 20(5), pp. 287-307.

Coopers and Lybrand (1996). The SEN Initiative: Managing Budgets for Children with Special Educational Needs. London: Coopers and Lybrand.

Cullen, M.A. & Lindsey, G. (2019). SEN: Understanding Drivers of Complaints and Disagreements in the English System, *Frontiers in Education*, 7. Available at:

https://www.frontiersin.org/articles/10.3389/feduc.2019.00077/full

Curran, H. (2019). The SEND Code of Practice has given me clout: a phenomenological study illustrating how SENCos managed the introduction of the SEND reforms, *British Journal of Special Education,* 46(1), 76-93.

Curran, H., Mortimore, T. & Riddell, R. (2017). Special educational needs and disabilities reform 2014: SENCOs perspectives of the first six months. *British Journal of Special Education*, 44(1), 46-64.

Davie, R. (1993). Editorial. The Education Act 1993, *British Journal of Special Education*, 20(2), 83-85.

D.f.E. [Department for Education] (2011). *Support and Aspiration. A New Approach to Special Educational Needs and Disability: A consultation. London:* DfE.

D.f.E.S. [Department for Education and Skills] (2001). *Special Educational Needs Code of Practice.* London: DfES.

D.f.E.S. [Department for Education and Skills] (2003). *SEN: A Programme of Action.* London: DfES.

D.f.E. [Department for Education]. (2019). *School exclusion: a literature review on the continued disproportionate exclusion of certain children*. London: DfE.

Done, E.J., Knowler, H. Warnes, E. & Pidett-Jones, B. (2021). Think piece on parents ‘off rolling’ and wavelength methodology’: issues for Special Educational Needs Coordinators, *Support for Learning*, 36(11), 69-82.

Du Frane, T. (2009.) Two Boats and a Helicopter. Thoughts on Stress Management. Availableat: <https://www.psychologytoday.com/gb/blog/fumbling-change/200905/two-boats-and-helicopter-thoughts-stress-management>

Dyer, C. (1995). The Code of Practice through LEA eyes. *British Journal of Special Education*, 22(2), 48-51.

Dyson, A. (2001) Special Needs Education on the way to equity: an alternative approach. *Support for Learning*, 16(3), 99-104.

Essex, J. Alexiadou, N.& Zwozdiak-Myers, P (2021). Understanding inclusion in teacher education- a view from student teachers in England, International Journal of Inclusive Education, 25(12), 1425-1442.

Evans, J. & Lunt, I. (1993). Special Educational Provision after Local Management of Schools. *British Journal of Special Education*, 20(2), 59-62.

Farrell, P. (2001). Current issues in special needs: Special Education in the last twenty years: have things really got better?, *British Journal of Special Education*, 28(1), 3-9.

Finkelstein, S. Sharma, U, Furlonger, B. (2021) The inclusive practices of classroom teachers: a scoping review and thematic analysis, *International Journal of Inclusive Education*, 25(6) 735-762,

Florian, L. (2003). The More Things Change the More They Stay the Same. A Response to the Audit Commission Report of Statutory Assessment and Statements of SEN, British *Journal of Special Education*, 29(4), 164-169.

Gaona, C. (2019).*The voices of young people with autism spectrum disorder in transition to post-secondary destinations: Following the introduction of the new Special Educational Needs and Disability Code of Practice in England.* Unpublished Doctoral Thesis: University of Roehampton.

Harris, N. & Davidge, G. (2019). The rights of children and young people under special educational needs legislation in England: an inclusive agenda? *Inclusive Education*, 23(5), 491-506.

Hellawell, B, (2015). Cracking the Code: reflections on the implications for teacher education and professional formation in England following the introduction of the Special Educational Needs and Disability Code of Practice 2014, *Research in Teacher Education*, 5(1), 15-19.

Hodkinson, A. (2009) Pre-service teacher training and special educational needs in England 1970-2008: is government learning the lessons of the past or is it experiencing a Groundhog Day? *European Journal of Special Needs Education*, 24(3), 277-289.

Hodkinson, A. (2019a) Key Issues in Special Educational Needs, Disability and Inclusion (3/e). London: Sage.

Hodkinson, A. (2019b) ‘Pre-service teacher training and special educational needs in England 1978-2018. Looking back but moving forward?’ In *Including Children and Young People with Special Educational Needs and Disabilities in Learning and life. How far have we come since the Warnock Enquiry – and where do we go next?* London: Routledge.

Hodkinson, A. (2020) Special needs education and inclusion, moving forward but standing still? A critical reframing of some key issues. *British Journal of Special Education*, 47(3), 308-328.

Hornby, G. (1995) The Code of Practice boon or burden? *British Journal of Special Education*, 22(3), 116-119.

Hoskin, J. (2019). Aspirations, austerity and ableism: to what extent as the 2014 SEND reforms supporting young people with a life-limiting impairment and their families to get the life they want?, *British Journal of Special Education*, 46(3), 266-291.

House of Commons Education Committee. (1987). *Special Educational Needs: Implementation of the Education Act 1981*. London: HMSO.

House of Commons Education Committee. (1993). *Meeting Special Educational Needs:* Statements of Needs and Provision.London: HMSO.

House of Commons Education Committee (2006).*Special educational needs. Third report of sessions 2005–6*. Vol. 1. London: The Stationery Office.

House of Commons Education Committee (2019). *Special Educational Needs and Disability Report of First Session.*

Available at: https://publications.parliament.uk/pa/cm201919/cmselect/cmeduc/20/20.pdf

Howell, H.J.E. (2021). *An exploration of Educational Psychologists perception of enabling and restricting factors affecting children’s involvement in statutory assessment processes and outcomes*. Unpublished doctoral dissertation. University of East Anglia.

Jones, C.A. (2004). *Supporting Inclusion in the Early Years*. Maidenhead: Oxford University Press.

Lamb, B. (2019). Statutory Assessment for Special Educational Needs and the Warnock Report, the first 40 years. *Frontiers in Education*, 4, 5-11.

LGSCO [Local Government and Social Care Ombudsman]. (2017). *Education and Care Plans: Our first 100 investigations into complaints about the new Education Health and Care (EHC) Plans, which were introduced in 2014 to replace Statements of Special Educational Needs* (SEN).London: LGSCO.

Lingard, T. (2003), Does the Code of Practice help secondary school Special Educational Needs Coordinators to improve learning? *British Journal of Special Education*, 28(4), 187-190.

Madden, D. (1993). The 1986 Act: Opportunities Missed. *British Journal of Special Education*, 20(1), 13-15.

Marsh, A.J. (1998). *Formula funding and Special Educational Needs*. Unpublished Ph.D. Thesis. The Open University.

Marsh, A.J. ( 2017) Funding Variations for pupils with SEND in England, 2014. *Educational Management, Administration and Leadership*, 45(2), 356-379.

Marsh, A.J., Gray, P. & Norwich, B. (2022) Fair funding and levelling up for pupils with special educational needs and disability in England 2014 to 2023. Available at:

<https://www.researchgate.net/publication/358867574_Fair_funding_and_levelling_up_for_pupils_with_special_educational_needs_and_disability_in_England_2014_to_2023>

Marsh, A. J. (2021). Special educational needs and disability tribunals in England 1994-2019, *Research Papers in Education*, Online First: DOI: [10.1080/02671522.2020.1864770](https://doi.org/10.1080/02671522.2020.1864770)

May, H. (2004). Interpreting pupil participation into practice: contributions of the SEN Code of Practice (2001), *JORSEN*, 4(2), 67-73.

Mc Kay, J. Neal, J. (2009). Diagnosis and disengagement: exploring the disjuncture between Special educational needs policy and practice, *Jorsen*, 9(3), 164-172.

Mc Conkey, R. (2003). The Gulliford Lecture: Reciprocal working by education, health and social services: lessons for a less-travelled road, *British Journal of Education*, 29(1), 3-8.

Murphy, R. (2021). How children make sense of their permanent exclusion: a thematic analysis from semi-structured interviews, *Emotional and Behavioural Difficulties*, pp. 1-15. Online First: https://www.tandfonline.com/doi/full/10.1080/13632752.2021.2012962

National Austic Society, (2015). School Report 2015: a health check on how well the new SEND system is meeting the needs of children and young people on the autism spectrum. London: NAS.

National Deaf Children’s Society. (2015). One Year on: impact of changes to the SEND system on Deaf Children. London: NDCS.

NASEN [National Association for Special Educational Needs]. (1993). Special Education in Parliament, *British Journal of Special Education*, 20(2), 63.

NASEN [National Association for Special Educational Needs]. (2001). Parliamentary Page, *British Journal of Special Education*, 28(4), 205-6.

Norwich, B. Beck, C. Richardson, P. & Gray, P. (2004). Examining key issues underlying the Audit Commission Report of SEN Policy, Paper 11, (5th Series), *Jorsen*, 4(2), 98-112.

Norwich, B. (2014). Changing Policy and legislation and its effects on inclusive and special education: a perspective from England, *British Journal of Special Education*, 4(4), 403-425.

Office for National Statistics. (2019). *Permanent and fixed Period Exclusions in England:* 2018 to 2019. London: Uk Statistics Authority.

Ofsted [Office for Standards in Education] (2017). *Local Area SEND Inspections: One Year On*. London: Ofsted.

Ofsted [Office for Standards in Education] (2019). The Annual Report of Her Majesty’s Chief Inspector of Education, Children’s Services and Skills 2017/18. London: Ofsted.

Perry, J. (2014). Politics Page. *British Journal of Special Education*, 43(2), 330-337

Palikara, O., Castro, S., Gaona, C. and Eirinaki, V. (2018). Capturing the Voices of Children in the Education Health and Care Plans: Are We There Yet? *Frontiers in Education*, 3(24).pp. 1-9. Available at: file:///C:/Users/ahodk/Downloads/feduc-03-00024.pdf

Pinney, A. (2003). In Need of Review? The Audit Commission’s Report on Statutory Assessments and Statements of Special Educational Need, *British Journal of Special Education*, 29(3), 118-122.

Pinkus, S. (2003). All talk and no action: transforming the rhetoric of parent-professional partnership into practice. *JORSEN*, 3(2), 115-121.

Office for Standards in Education [OFSTED] (2002). *LEA Strategy for the inclusion of pupils with Special Educational Needs*. London: Ofsted.

Olson, S.F. (2012). *Wilderness Days.* University of Minnesota Press.

Raynor, S. (1994). Restructuring Reform: Choice and Change in Special Education, *British Journal of Special Education,* 21(4), 169-173.

Richards, H. (2021). EHCP Implementation in the Early Years: constrictions and possibilities, Support for Learning, 36(2), 204-221.

Robinson, D. (2017). Special educational needs and disability- Categorisation and naming, Contemporary Debate in Education. London: Routledge.

Runswick-Cole, K., & Hodge, N. (2009). Needs or Rights? A challenge to the discourse of special education, *British Journal of Special Education*, 36(4), 198-203.

Russell, D.C. (1994). The Code of Practice: New Partnership for children with Special Educational Needs, *British Journal of Special Education*, 21(2), 48-52.

Sharma, P. (2021). Barriers faced when eliciting the voice of children and young people with special educational needs and disabilities for their Education, Health and Care Plans and Annual Reviews, British Journal of Special Education, 48(4), 455-476.

Simmons, K. (1994). Decoding a New Message, *British*  *Journal of Special Education*, 21(2), 56-9.

Taberner, J. (2022) “There are too many kids with special educational needs”. Available at:

https://www.researchgate.net/publication/357679505\_There\_are\_too\_many\_kids\_with\_special\_educational\_needs\_Squires\_2017

Tyso, K., Vincent, K., & Boulton, H. C. (2021). Implementing the 2014 SEND reforms in England: perspectives from SENCOs, *Support for Learning*, 36(3), 486-505.

Vincent, C. Evans, J. Lunt, J. & Young, D. (1995). Policy and Practice. The changing nature of special educational provision. *British Journal of Special Education*, 22(1), 4-11.

Warnes, E. Done, E.J. & Knowler, H. (2022) Mainstream teacher’s concerns about inclusive education for children with special educational needs and disability in England under pre-pandemic conditions, Jorsen, 22(1), 31-43.

Warnock, M. (1978). *Special Educational Needs: Report of the Committee of Enquiry into the Education of Handicapped Children and Young People*. London: HMSO.

Warnock, M. (1993). “Introduction vii-xi,” in *Special Education in Britain After Warnock*, eds J. Visser and G. Upton. London: Routledge.

Wearmouth, J. (2004) Learning from James: lessons about policy and practice for school’s special provision in the area of literacy difficulties, *British Journal of Special Education*, 31(2), 60-67.

Webb, C.J.R. (2022). More Money, More Problems? Addressing the Funding Conditions Required for Rights-Based Child Welfare Services in England, *Societies*, 12(9), 1-19.

Williams-Brown, Z. & Hodkinson, A. (2020) ‘What is considered good for everyone may not be good for children with Special Educational Needs and Disabilities’: Teacher’s perspectives on inclusion in England*. Education 3-13*- Online first.