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# **Needs and rights of children with additional support needs in Scotland: The swarming of conflicting discourses**



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# Introduction: structure of the presentation



**New legislation on the rights of children with ASN in Scotland seen by Scottish Government as the most progressive in Europe in terms of implementing UNCRC – rhetoric or reality?**

## **Structure of presentation:**

- **Competing policy frameworks in the field of ASN**
- **Analysis of official statistics**
- **Competing discourses of rights and needs: key informant perspectives**
- **Conclusions**



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## Glossary of terms



- **Special Educational Needs (SEN):** ‘traditional’ learning, physical and sensory disabilities. Still used in England.
- **Additional Support Needs (ASN):** since 2004 Scotland uses umbrella term to refer to difficulties in learning for any reason including social difficulties and (controversially) English as an additional language.
- Rapid increase in number of categories of difficulty used in official statistics. **Currently 24 categories of difficulty.**
- Also mushrooming of types of plan:
- **Co-ordinated Support Plan** – Only statutory plan. Has common format and summarises multi-disciplinary assessment and actions/resources to be provided by education, social work and health. Qualifying for CSP provides access to tribunal for parent, young person & (since enactment of legislation in 2018)
- Many other plans used at LA discretion e.g. Child’s Plan, Behaviour Support Plan, Looked After Child Plan, Individual Education Plan. None of these has set format or statutory status.



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# **Inherent policy tensions between needs and rights: The Additional Support for Learning (ASfL) Act 2004: reflects **discourses of needs and rights****



**2004 legislation strengthened parents' rights redress – new dispute resolution measures established including tribunal, adjudication and mediation – but used mainly by relatively socially advantaged.**

**2009 & 2016 amendments to ASfL Act strengthened rights of looked after children & those over 12 with capacity.**

**22 new rights accorded to children with ASN, including right to request specific type of assessment, request a CSP, appeal to tribunal etc.**

**However LAs remain gatekeepers in determining needs – decide which children get CSP & have capacity to exercise new rights**



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## Parallel equality legislation located within **rights discourse**



**Equality Act 2010 prohibits discrimination against those with ‘protected characteristics’, including disabled children.**

**Competing definitions of ASN & disability**

**Requires LAs/schools to make reasonable adjustments (policies and services) & avoid less favourable treatment for a reason associated with child/young person’s disability**

**Redress mechanism – complaint to ASN Tribunal (before 2009) to Sheriff Court)**



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# Children and Young People (Scotland) Act 2014 (GIRFEC): **discourse of needs**



**Places duties on LAs to progress implementation of  
UNCRC – but only general duty**

**Places duties on LAs to assess **children's needs using  
wellbeing indicators.****

**Needs to be recorded in Child's Plan.**

**Child's Plan has no set format, no timescales, no routes of  
redress - seen as preferable to CSP by LAs.**

**Many local authority staff believe that GIRFEC has  
superseded ASfL.**



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**Legislation is framed in such a way that child must have statutory document (CSP) to use new rights.**

**What do official statistics tell us about use of CSPs in relation to:**

- (i) type of difficulty and**
- (ii) social deprivation?**

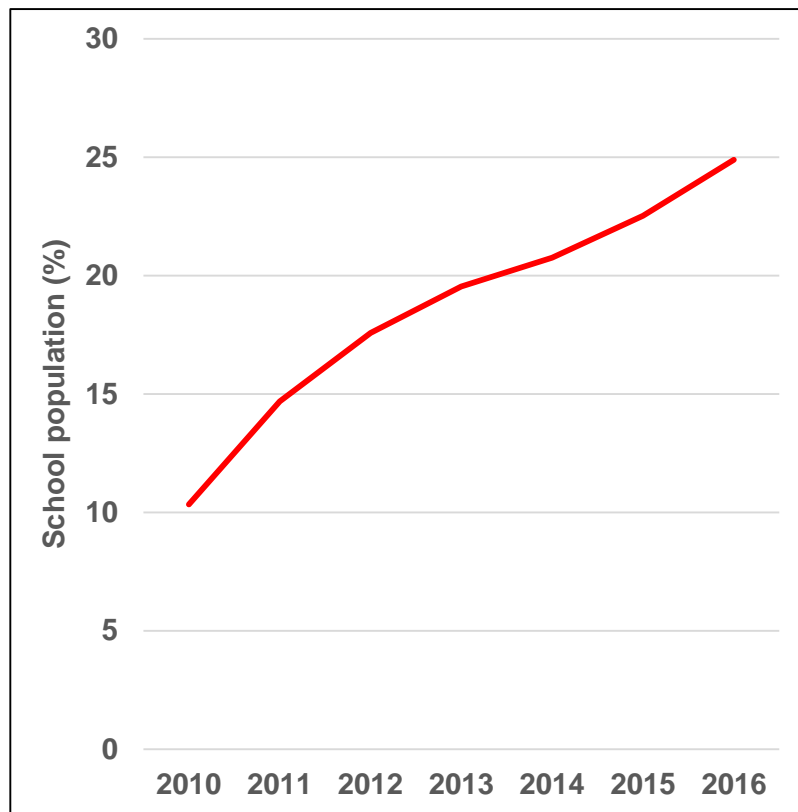


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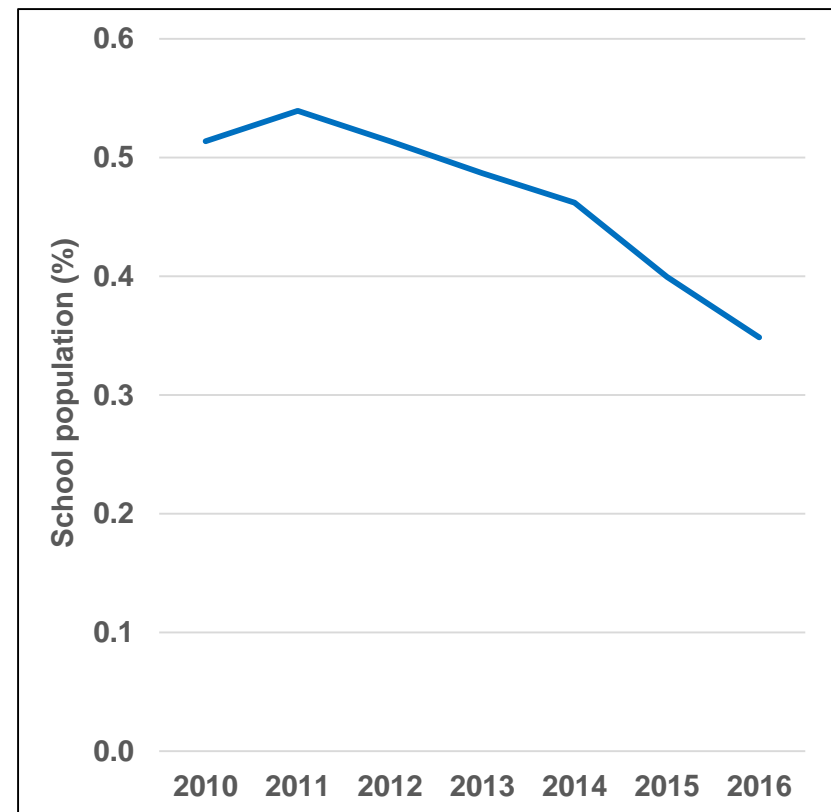
# Increase in identification of ASN over time, alongside decrease in CSP



**ASN increasing..**



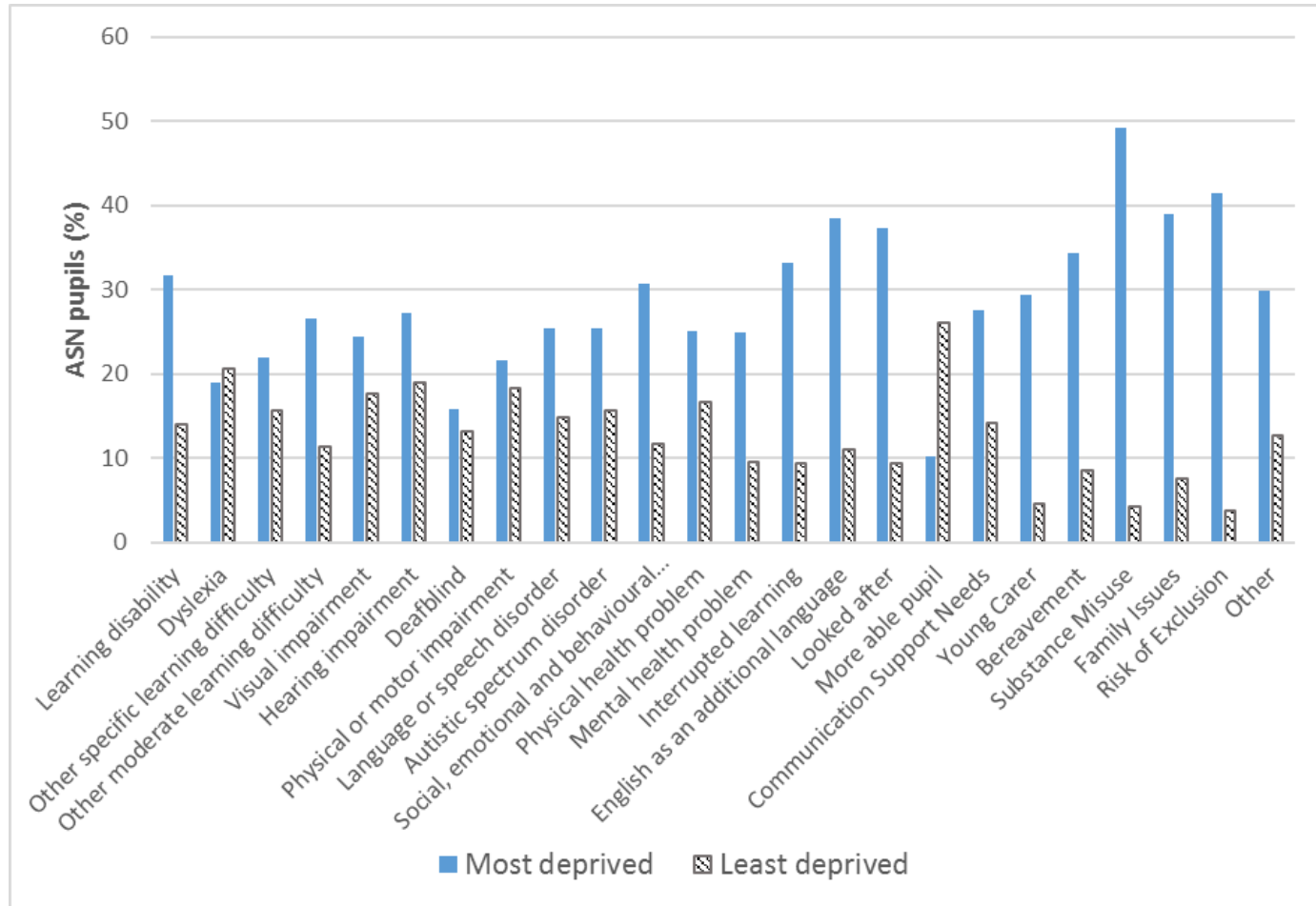
**CSPs decreasing..**





# Percentage of ASN pupils by type of difficulty in most deprived (SIMD1) and least deprived (SIMD 5)

## Strong association between ASN & deprivation



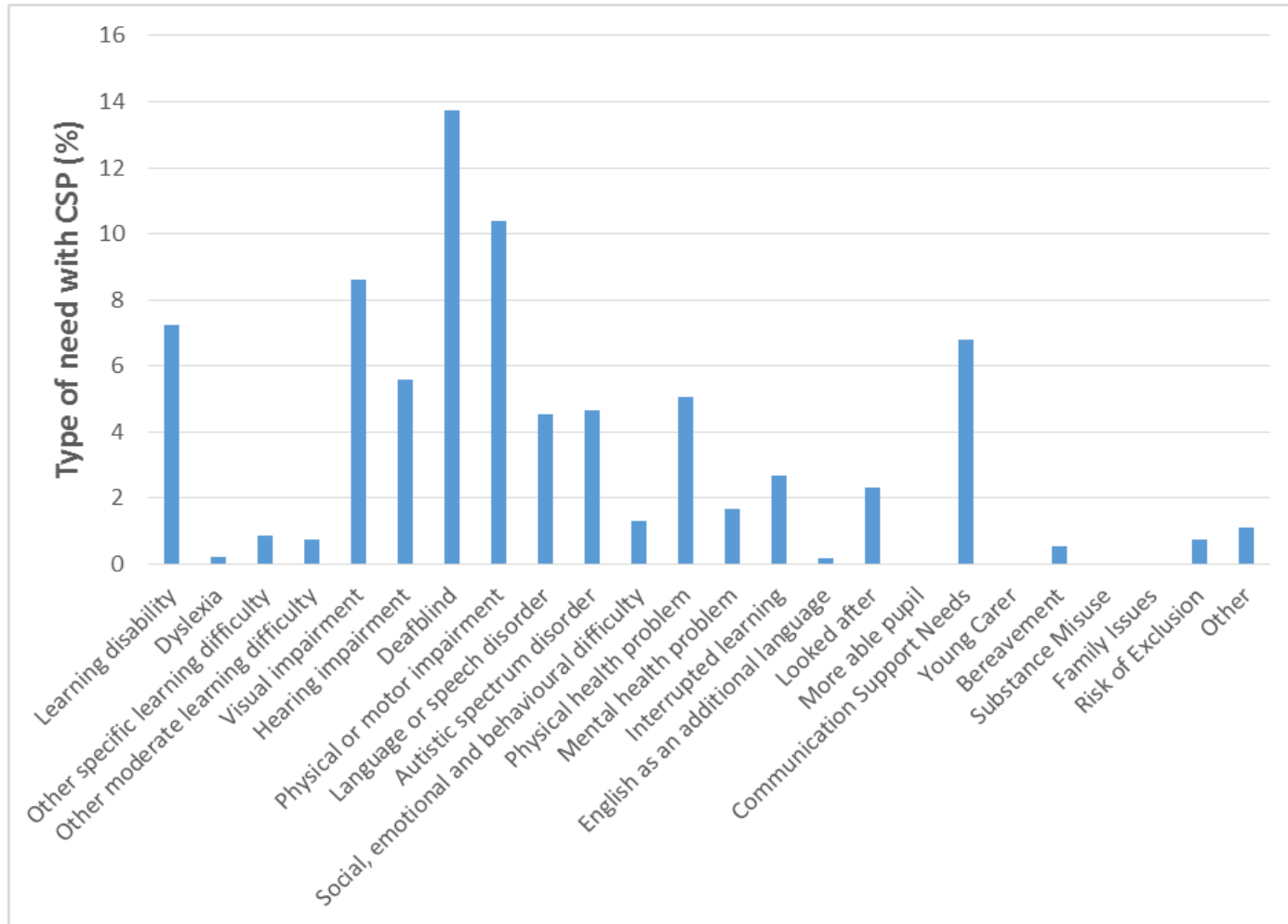
Source: Scottish Government, 2016; special request.

Entries per category are not discrete; a child with multiple needs will be recorded in multiple categories.



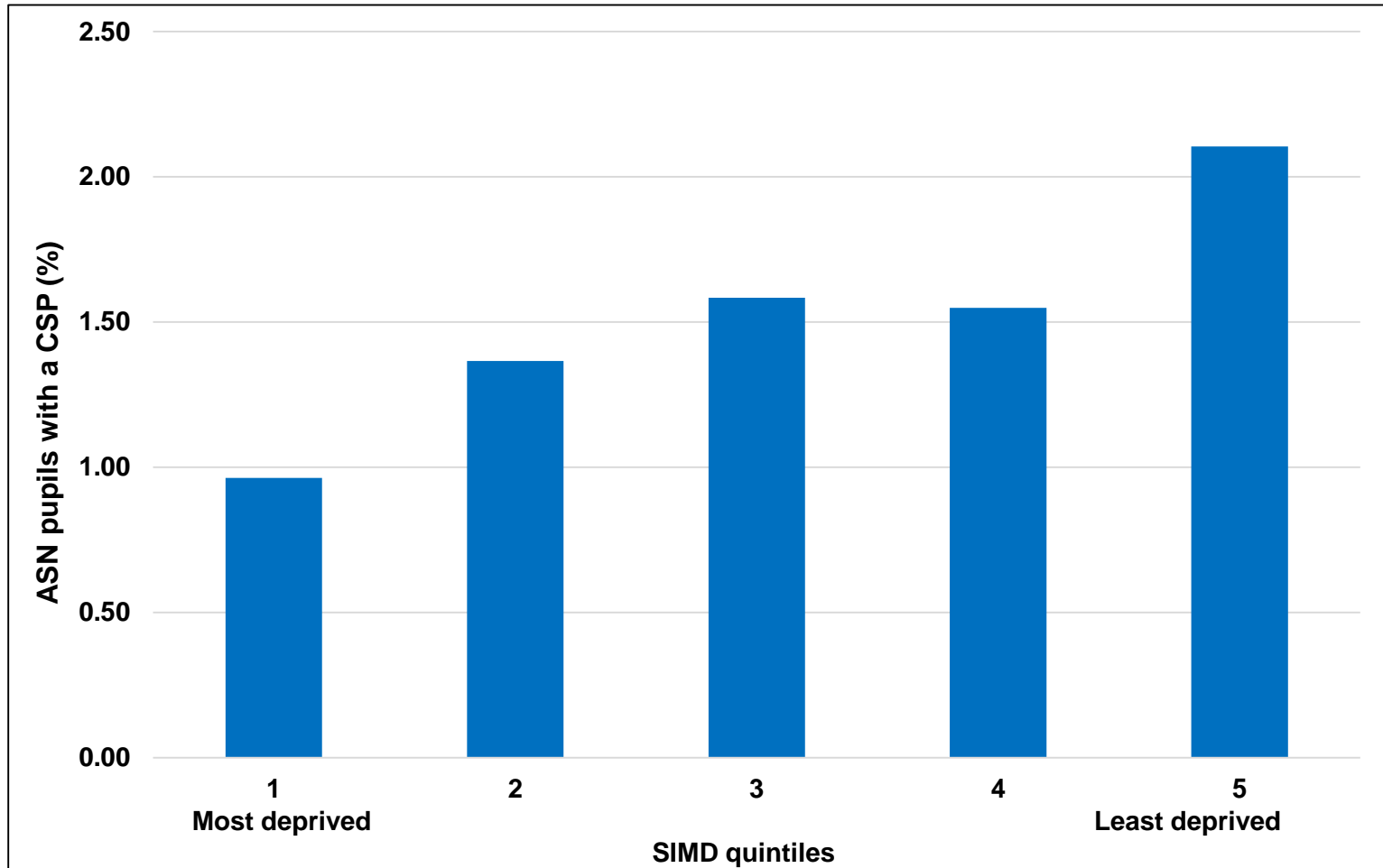
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# Percentage of children with particular difficulty who have a CSP – **Children with difficulties most strongly associated with deprivation (e.g. SEBD) least likely to have CSP**



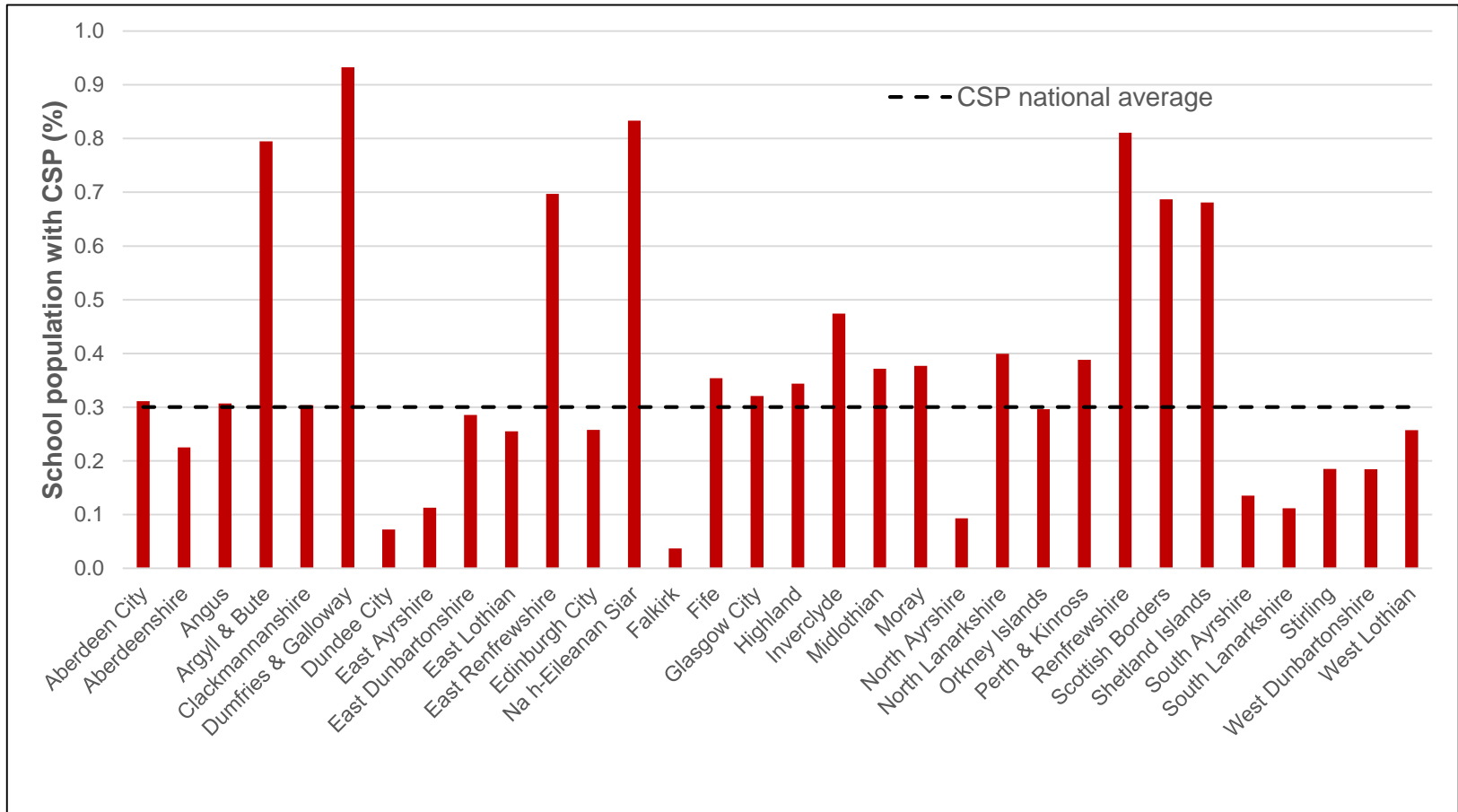


# Percentage of ASN pupils with a CSP by deprivation. **Children in areas of deprivation more likely to have ASN, but less likely to have a CSP**



Source: Scottish Government, 2016; special request.

# Use of CSPs by LA – great variation and no obvious relationship with deprivation





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# 2016 legislation on children's rights: Scottish Government optimism



**It's the biggest extension of rights in Europe at the moment that we can evidence ... So in that sense, in terms of principles, I think it's massive. ...**And so we've gone from one right to twenty two rights which is huge. We don't know yet what the extent of the actual change will be but in terms of ...the numbers of people using the right, we don't know that. But I can already see from discussions we've been having with authorities that **the children's rights agenda has come clean up.** You know, they are thinking about, 'Well actually we now need to ask the child about that. I need to think about how a child's going to respond to that'. And that is a different type of conversation to the conversation we've been having before. So I'm hopeful but I think it may be a shift in focus ... I'm sure children will use them. I just don't have a great sense [of how many]. I don't have a sense that there's a hundred thousand children sitting out there waiting to make use their rights on the 13<sup>th</sup> of January. I suspect it'll be quite a slow grower. We'll need to just see how that pans out. (Scottish Government officer)



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# LA perspective: CSPs are 'too much work' GIRFEC seen as more 'workable'



**We would say the child's plan ... is much more of a working document. And I think the feeling is that the, the CSP is a lot of work for very little outcome for the child. And that sort of decision's been made. I think it's reflected nationally. And our GIRFEC officer is certainly saying, you know, 'Should we be really reviewing this?' So there are a number of CSPs. A lot of them tend to be for more complex young people. (PEP, Council 2)**



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## Education law consultant- parents & teachers don't understand rights agenda



I think there's still a great extent to which **it's not well known or understood, particularly by parents, even where they're going through the system. They might not be aware of, you know, what the legislation is or even if they've heard the name, about what rights it confers or, or anything like that. And I suppose also at the kind of ... school level, that it's not necessarily at the forefront of the staff mind that this legislation is relevant to the work that they're doing.** I think there's an extent to which in many teachers' minds, that really GIRFEC has sort of overtaken this somehow even though it doesn't yet have any statutory basis. (Education Law Consultant)



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## President of the Tribunal – LAs are frightened of CSPs because of statutory duties



I think [the CSP] ought to be used more. I think the resistance to it is unfounded. I don't think people need to be scared of the CSP. I worry that the child's plan, which presumably if it disappeared would succeed it, would not be sufficiently well-equipped to capture the complexities that we deal with when we're dealing with a child with additional support needs. And my worry is if it were to disappear we would be losing the thing that keeps everyone's attention focused, and gives comfort to the child, the young person and the parent that there are duties here that have to be discharged. (President ASN tribunal)





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# Equality and Human Rights Commission - Tests of capacity & well-being make rights meaningless



**There are two preliminary ...tests that children have to pass before they can even get to the door to exercise their rights, which is why I hesitate a bit when talking about children's rights ... Our main argument here is that you're not actually giving children a right to make a reference to the additional support needs tribunal. What you're saying is that they can ask an education authority, or in certain circumstances a tribunal, whether they can exercise the right. And that's not giving children rights at all. (Equality and Human Rights respondent)**



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# Summary



**Three parallel bodies of policy/legislation co-exist – some emphasising needs, others rights.**

**Official statistics reveal major decline in use of CSP - key document which guarantees resources, rights of review and redress. New children's rights contingent on CSP.**

**Statistics also reveal social inequality in use of CSP.**

**Children in more advantaged areas with low incidence disabilities more likely to have CSPs.**

**Radically different perceptions of new legislation by different policy actors .**

**Government sees it as most progressive in Europe, Scottish Children's Commissioner thinks it doesn't conform to UNCRC.**



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# Conclusion: factors impeding promised paradigm shift



- Policy confusion and tension – Parallel bodies of legislation reflecting competing discourses – but discourse of needs trumps discourse of rights
- Power imbalances between central actors (children, parents & professionals)
- Public sector austerity leading to rationing of resources – **children's civil rights increasing but social rights decreasing.**