



# **Dispute Resolution and Avoidance in Education: Additional Support Needs Scotland and the mechanisms for resolving disputes The experiences of parents**

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# The project

- Funded by the Economic and Social Research Council (Council) for 1 ½ years (January 2008 to September 2009)
- Collaboration between the University of Edinburgh and the University of Manchester which involved:
  - Policy, legislative and literature review
  - Key informant interviews (England – 30; Scotland - 27)
  - Local Authority Questionnaire Survey administered to 150 (England) & 32 LAs (Scotland)
  - Survey of parents of children with ASN (Scotland only)
  - Case studies of 6 Local Authorities (3 in England, 3 in Scotland) which were a central part of the research; 49 case studies

# Broad context of the research



- Increased focus on **parents' and pupils' rights** in the field of SEN (England) and ASN (Scotland) (at least in theory) after new legislation was enacted in 2004.
- It examined the **new mechanisms** for trying to resolve disputes between parents (and children) with the school and the local authority in relation to provision for children with additional support needs (ASN – Scotland) and Special Educational Needs (SEN – England). The aim of these mechanisms was to avoid stressful and costly court proceedings.
- But there were concerns about whether alternative dispute resolution mechanisms (e.g. mediation) are able to safeguard parents' rights

In this presentation I will look at these mechanisms in Scotland and examine parents' views and experiences. The key question is if and in what way the new mechanisms are providing parents (and children) with a better way of addressing their grievances in relation to the educational provision for their children.

# Explanation of terms

- **Local authorities (LAs)**– there are 32 in Scotland (150 in England) – each LA is responsible for the state maintained schools in their area
- **Coordinated Support Plans (CSPs)** – a plan which sets out the support a pupil with ASN is entitled to and which is legally binding; it is only available to pupils who require significant additional support from other agencies such as health.
- **Individualised Educational Programmes (IEPs)** - is a non-statutory document used to plan specific aspects of education for learners who need some or all of their curriculum to be individualised
- **Placing requests** – a parent/carer or a young person aged 16 to 17 can request a place at any state maintained school. It is also possible to request a place at an independent special or grant aided school. There is no guarantee that a placing request will be granted

# Mechanisms for resolving disputes



Prior to new legislation of 2004:

- Section 70 Appeal – parents take the local authority (government) to court over failure to fulfil its legal duty to provide adequate education for a child

New mechanisms after 2004 – intended to be less adversarial

- **Tribunals** – a ‘court’ but intended to be less intimidating than ordinary courts specifically set up to deal with disputes in the provision for children with ASN/SEN – only available to children with complex need requiring – outcome is legally binding
- **Adjudication** (Scotland only) – a written submission about the dispute by parent/carer to the government who has to appoint an independent adjudicator to assess and make recommendations for a solution – not legally binding
- **Formal mediation** – each local authority has to appoint independent mediators whose role is to bring together both parties to seek a solution - outcome is not legally binding

# Case studies and types of dispute resolutions

	Informal	Formal mediation	Adjudication	Placing Request/ Appeal	Section 70 Appeal	Tribunal	Total
Sea City	4	1	0	2	0	3	10
Coalshire	7	0	0	0	0	0	7
Glenshire	4	0	2	0	1	0	7
<b>Total Scotland</b>	<b>15</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>24</b>
Southside	4	0	0	0		4	8
Midshire	6	1	0	0	0	4	11
Northborough	2	1	0	0	0	3	6
Total England	12	3	2	2	1	14	25

# Parents and disputes - Scotland

- Our survey of LAs showed there had been 100-150 requests for mediation; 50-55 request for adjudication; Out of 26 LAs, 2 had between 11-20 requests for tribunal, the most had fewer than 10 and 4 had none.
- At that time the total ASN population was around 36,000 so only a small number of parents raised an issue with the school/LA
- When parents raised issue was most likely to be resolved at the informal level – 15 out of 24 among our case study parents

## LA view of the act

The Act and in particular the guidance/information for parents which supports it, needs to be strengthened in the area of partnerships between parents and LA's/partner agencies. All the emphasis is on the agencies working together **but none on the duty of parents to work with us**, take account of assessments, etc. There is an implied assumption that because parents want the best for their children, they always know what the best is. The resolving disagreements aspects of the Act does not encourage a balanced approach from parents and does not encourage them to recognise the work done by LA's prior to any disagreement going to a formal process.

So what did the parents who had raised an issue say?



# Case Study 1: Mr & Mrs Wilson and Paul – mediation



The family lived in a small village close to a large city. Paul, aged 6, was attending a local primary school. He had been diagnosed with autism and language difficulties and his parents wanted him to attend a language unit in a mainstream primary school. They put in a placing request (with the help of the educational psychologist).

The LA refused the placement request and the parents were offered a place in a special school without telling the parents why they had decided on this option; the parents did not want this placement so they requested mediation with hesitation.

## Case Study 1 continued

*We **couldn't get the information** we wanted to from the PAGS Committee as to why they had chosen for Paul to go to [Special school] ... at that point that mediation was just going to go be in the same building [the Council building] , just going to help us see that we were making it the wrong way round .... But **we had to do something**, so we arranged a meeting with the Advice and Conciliation Manager and **she was very good actually**.*

*The parents were also supported by the educational psychologist: **I steered them through a lot of things that they didn't understand***

**Mediation did not** take place as the LA offered the child a place in the language unit that the parents had originally requested but had been turned down

*emotionally it was tremendously stressful (Mother)*

# Case Study 2: Mr & Mrs Meikle and Graham – mediation and adjudication



The family lived in a rural area and Mrs Meikle was knowledgeable about ASN. Graham was diagnosed with Asperger's Syndrome/autism aged 3. He was academically able and attended a mainstream school but required additional support to access the full curriculum. The dispute arose around the lack of support.

## First step – mediation

Mrs Graham tried to resolve the issue at the local level with the school and then the LA. It did not resolve the problem so she requested mediation which was unsuccessful

*“And it achieved nothing to be quite honest [laughs]. It was two hours of, I haven't got a clue, people weren't saying what they really thought ... no minutes taken, it was really meant to be open and honest and it was, I felt, rubbish. Absolute rubbish”*

# Case Study 2 continued - adjudication



The Independent Adjudicator found in the mother's favour in all areas and made six recommendations for the school/local authority. **The recommendations have only been partly met** by the school/local authority as they are open to interpretation and there is no one to monitor them.

The key issue was around resources - the depute headteacher stated: *There is a dispute between the authority and the school on where that staffing comes from which is key to the whole issue but this has not been **addressed by the Adjudicator.***

Mrs Meikle described the subsequent meeting as 'a farce' and that the whole system was 'a heap of rubbish.

Next step would be Tribunal but mother feels she has *to keep a positive relationship with the school in Graham's best interests.*

## Case Study 3: Mr & Mrs Douglas and John

The family lived in a suburban area of a large city. John, aged 10 had been diagnosed with Autistic Spectrum Disorder aged 4 . He initially attended a mainstream primary school but at the age of 7 started to refuse to go to school. The school disputed his autism diagnosis and the LA blamed part of the problems on ‘bad parenting’. The parents requested a CSP through the school which was refused. They then applied for a CSP themselves. They did not consider mediation an option as they had had several unsuccessful meetings with the school – so opted to take their case to the Tribunal.

*After that meeting we never heard back, they basically... we got a letter saying that we weren't going to get a coordinating support plan and that we could take it to the tribunal and things like that, so that's what we decided to do. (mother)*

## Case study 3 continued

The parents then decided to go to Tribunal in order to secure a CSP.

*We went to tribunal first to get... well near enough a tribunal to get him to a special school, and ... at the last minute the council offered us a choice of three language units and... and they told us in the same letter that he was getting a coordinating support plan ..... we took advice from our advocate, and she said she couldn't... at this point she couldn't guarantee that we would win the tribunal... (mother)*

Mr Douglas described the CSP as a 'joke' with very little detail of John's many needs (such as panic attacks, sensory issues, diet, eye problems). Indeed the parental comment attached to the CSP lists 7 points of dissatisfaction including incorrect home address; an inaccurate profile of John; and sparse information regarding his additional support needs

## Case study 3: Summary

- INT So if I was to ask you if you think the new legislation has increased your rights, what would you say?
- Father Not at all, no rights.
- INT Even being able to go through tribunal or...
- Mother You go through tribunal they just ignore it
- Father The council ignored this twice
- Mother The tribunal is a joke because the council just ignore it

# Summary from these case studies – selected to illustrate problems!



- The new mechanisms provided these parents with a means of addressing disputes when their concerns about their child's education were not being addressed at a lower level

BUT at a cost

- Many of the parents found it a stressful process
- At times the local authority backed down before any formal process began and provided what was asked for
- The schools did not necessarily comply with the outcomes

And in the words of one of the parents the problem does not go away: *It's still there ... I constantly have to be on top of what happens because if I don't it will slide, I know that, and they know that.*"



# Key findings from case studies (1)



- General belief in LAs that parents are becoming increasingly litigious – but evidence suggests that parents pushed to extremes and only use formal routes when everything else exhausted.
- School staff make key decisions on resource distribution – but many have poor understanding of legislation and routes to justice and regard parents who challenge decisions as ‘trouble makers’.
- Disputes rarely resolved. More often a ‘cease fire’ occurs when parents run out of energy to take on the system any further. Parents worry about the impact that the dispute will have on their child’s relationship with the school: *[we have to] keep a positive relationship with the school in Graham’s best interests.*

## Key findings from case studies (2)

- In both countries, most parents who agreed to take part in case studies were middle class - particularly lower professional and managerial occupations, but also some professional & managerial. Raises questions about support for working class parents. Supported by research (Keslair et al., 2009 & Riddell et al, 2009) that statements and CSPs issued disproportionately to children in areas of social advantage.
- Formal mediation used very little. LAs support it in principle, but do not promote it. In Scotland, informal mediation seen by LAs as according with Scottish consensual ethos.



<https://www.ed.ac.uk/education/rke/centres-groups/creid/projects/dispute-resolution-avoidance-edu-england-scotland/dispute-resolution-avoidance-education-overview>