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Will mediation have to raise the white flag?

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News

Independent mediators have been resolving additional support for learning disputes for a decade, but with demand for their services rising and budgets falling, can they keep up? Emma Seith reports

The boy had been sent home from his S3 class for wearing white jogging bottoms instead of black trousers. He had been warned about uniform previously, but his father was furious. So instead of bringing the boy to school the next day in more suitable attire, he kept him at home.

By the time the mediators were called in, the boy had been out of school for weeks and his father had driven his four-wheel drive at the headteacher in the school car park. The whole incident was captured on CCTV and the police were involved.

"We managed to mediate that and get the headteacher and the dad to agree how they would get the boy back in school," says Morag Steven, director of independent service Common Ground Mediation. "The punchline at the end of the meeting, though, was 'see you in court', because the criminal incident was still ongoing."

For a decade, Scottish councils have been obliged to offer mediation as a means of resolving disputes raised by families over additional support for learning (ASL). Mediators are independent and trained not to take sides; instead, they use a structured process to work towards a solution that is acceptable to everyone.

The dispute over uniform didn't fall into the ASL category but many councils are flexible about referrals, according to Steven. "Most of the authorities that work with us, seeing the benefits, are prepared to take a broad-brush approach," she explains. "These children might not have an additional support need, but in these extreme cases where they are withdrawn from school, clearly there is a barrier to their learning because they are not there."

Disputes on the rise

Seven councils are signed up to use the services of Common Ground and most of its work is connected with ASL, helping to mediate between authorities and parents like Angela*, who has used the service twice in two years to resolve disputes regarding her son Michael* (see panel, page 18).

Demand has risen rapidly over the past 10 years at Common Ground, the second largest ASL mediation service in Scotland, and Resolve: ASL, the largest. Common Ground dealt with just six cases in 2007-08. Now it is more like six a month, Steven says. Resolve: ASL, which works with 13 councils, took on 89 cases in the past year, up from 19 in 2007-08, according to manager Sandra Mitchell.

Steven and Mitchell question whether they will have the capacity to cope if the caseload continues to increase. Mediation services are funded by local government, and cash-strapped councils cannot afford to bankroll an expansion.

Demand is unlikely to wane in the near future. In fact, Steven predicts that initiatives such as the Scottish government's proposal for every child to have a "named person" (a single point of contact, such as a teacher or health visitor) looking out for their welfare may well give rise to more conflicts.

So too could the "single child's plan" – the means by which professionals will be required to coordinate a child's care. As Steven says: "What if a

parent decides they don't like their child's named person or wants to dispute the content of the child's plan?"

Failures in implementing ASL legislation were "widespread", Scotland's commissioner for children and young people Tam Baillie argued in a recent letter to education secretary Angela Constance. He added that "numerous" parents and organisations had contacted his office "troubled by the impacts that cuts in provision are having on the education of their children".

"We do not know the extent of the problem with ASL because there is no systematic monitoring that picks up on unmet need," Baillie tells TESS. "We are currently relying on anecdotal information – and the information reaching my office is that there are added concerns about the impact of cutbacks and reconfigured services, which leaves parents anxious about whether children's needs are being met. I share those concerns and it raises a question as to whether all local authorities are able to demonstrate they are fulfilling their obligations under the act [see panel, right].

"One of the purposes of me writing to [Ms Constance] was to highlight the issue, suggesting that we need more detailed information on ASL implementation so that more resources can be allocated appropriately to this area of provision.

"I would expect that mediation will assist in certain instances, which can save time and energy in seeking resolutions. However, it will not remove the need for local authorities to provide services in line with the needs of all children in their area."

'Finite' budgets

Steven agrees that the financial climate is leading to more ASL disputes. "Budget cuts must be having an impact but it's hard to quantify," she says. "Local authorities try very hard to protect additional support needs budgets but the money isn't infinite."

But both Steven and Mitchell believe that increased awareness is a bigger factor in the rising demand.

"Local authorities are using our services and getting some benefit so they are more inclined to say, 'Let's try mediation,'" Steven says. "Meanwhile, I think parents have been spreading information about mediation through word of mouth so it's just becoming better known."

Where they have really noticed the impact of the cuts is in communication with parents. "There have been a lot of staff cuts at the local authority level," Mitchell says. "These people would have been the front line for parents to phone if they were not making progress with schools. So there are fewer people about now to do the talking."

Steven agrees: "In an effort to protect front-line services, a lot of posts have been cut at the centre. Where previously you had a team of 10, now there are maybe three or four people and everyone is a lot busier. They don't have time for long telephone conversations or to answer emails quickly. That can add to parents' frustration."

The 'lost art' of talking

Modern methods of communication, from texting to emails, are generally unhelpful, Mitchell says. "People are losing the art of talking and communicating and being able to read people in face-to-face meetings," she adds.

One of the ground rules in mediation meetings is that mobile phones are turned off or left outside. Mediators meet the parties involved separately in the first instance and then try to set up a joint session. "Relationships can be in a pretty dire state by the time they reach mediation," Mitchell explains.

However, the ambition of the approach is to be "fairly fast-moving", Steven says. "We aim to be quite quick – that's one of the selling points of mediation."

Over the course of the last school year, the City of Edinburgh Council had five mediation meetings with families about ASL. Issues covered included the refusal of requests for places at special schools and ASN assistants.

"The figures don't reflect the volume of work that Common Ground gets from us; they have lots of conversations with parents that don't proceed to a full meeting," explains Adam O'Brien, the council's ASL parent and pupil support manager.

Meetings are always useful even when agreement is not reached, he adds. "They help to build trust and take a lot of the stress out of things for parents. It's one thing to be unhappy with a decision but it's quite another to be unhappy with a decision and to be labouring under the misapprehension that the council is acting in bad faith. That just adds massive amounts of stress."

And the council also benefits, O'Brien insists. "I can't think of a mediation meeting which did not raise a strategic issue about how we can do things better," he says. "Being clearer about how we allocate resources is one example. Mediation is well-proven and here to stay."

'Mediation is the difference between coping and not coping'

Mediation has made a "huge" difference to the family of Michael*, a 10-year-old from the east of Scotland. Michael has Asperger's syndrome and used to find school so difficult that he would often run out of classes.

In 2013 his parents, who also have a younger daughter, tried to get him a place at a specialist unit that helps to smooth the way into mainstream education. But the local authority said this wouldn't be possible. In other circumstances the dispute might have led to an appeal and a tribunal. Michael's mother, Angela*, wanted to avoid this "confrontational" process, however, because she felt it often failed to achieve the best result for the child.

"We didn't want to get into a situation where people didn't communicate because they were too angry," Angela says. Instead, discussions with

the council took place through a professional mediator, who was “objective and not emotionally involved – it was a lot more constructive than it might have been if we hadn’t had her with us”.

That process got Michael a place in the unit. And when a dispute over transport to school arose the next year, mediation again helped to achieve a result that made school a less daunting prospect for the boy.

Michael went to school only part-time until he was 8 and Angela couldn’t envisage then that he would become as settled as he is now. He has been itching to get back into the classroom after the summer holidays and “absolutely loves school now”, she says.

Angela says that mediation has been crucial in making that possible: “It’s the difference between coping and not coping for him – and for all of us.”

*Names have been changed