

Reforming Special Education in Scotland: Tensions between Professionalism and Rights

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Abstract

In 2001, the (then) Scottish Executive embarked on a process of reform of the SEN framework in Scotland. This paper analyses negotiations between different social actors, principally local authority staff and parents, in the formation of the legislation and its subsequent enactment. Data are drawn from an analysis of responses to consultations, official statistics and parent and local authority staff perceptions of the reforms as revealed in questionnaire surveys. It is argued that policy frameworks based on professionalism and bureaucracy have tended to dominate in Scotland, with a rights framework emerging much more recently. The legislation attempts to strike a balance between the different actors, although, in implementing the legislation, local authorities have sought to neutralise aspects which they felt tipped the balance of power too far in favour of parents. Parents have responded by campaigning as citizen-consumers, and appear to be having a growing influence on Government.

Introduction

Over the past two decades in the field of education, the post-war policy frameworks of professionalism and bureaucracy have been challenged by the relatively new frameworks of managerialism, consumerism and rights. The reform of special education in Scotland provides a lens through which tensions between these competing policy frameworks may be viewed. In this way, special education may be seen as a microcosm of the wider education policy arena, as the power struggles of social actors with different interests and agendas are played out.

Throughout the 1980s and 1990s in England, and to a lesser extent in Scotland, there was a ferment of activity in the field of education policy, fuelled by the rise of interest in neo-liberal policy solutions (Tomlinson, 2001). Tomlinson noted that policy development in the field of special educational needs (SEN) proceeded relatively slowly, although the 1993 Education Act in England heralded major changes, establishing a Code of Practice (DfES, 2001) and the Special Educational Needs Tribunal, both designed to regulate professionals and empower parents. Changes to Scotland's SEN framework arrived more than a decade after those in England, with the implementation, in November 2005, of the Education (Additional Support for Learning) (Scotland) Act 2004 (the ASL Act) and a Code of Practice (Scottish Executive, 2005). The concept of SEN was replaced with that of 'additional support needs' (ASN), encompassing children who have difficulty in learning for whatever reason. Records of Needs (RoNs) were abolished and Co-ordinated Support Plans (CSPs) were created, intended to apply to a smaller group of children with multiple or complex needs lasting more than a year and requiring significant additional support from services outwith education. The Additional Support Needs Tribunals for Scotland (ASNTS) were established to hear appeals, although access was limited to a very small group, those qualifying

for a CSP. Unlike England, where the Health, Education and Social Care Chamber of the First-tier Tribunal deals with all SEN and disability cases, the Scottish tribunal has to date not dealt with disability discrimination cases. Since it was envisaged that only a minority of children with ASN would have a CSP, a system of adjudication was set up to deal with disputes between the local authority and parents whose children did not qualify for a CSP. A duty was also placed on local authorities to provide independent mediation, in line with the Government's emphasis on proportionate dispute resolution (DCA, 2004). Overall, the SEN reforms in Scotland mirrored those in England, but bestowed weaker rights on parents by restricting tribunal access to a small minority and releasing local authorities from some of their statutory duties associated with RoNs and Future Needs Assessments (FNAs).

The legislation was heralded by the Scottish Executive as an overhaul of special education legislation and as a major step forward towards inclusion:

The fundamental aim is to recognise individuals' challenges and barriers to learning and to attach resources to them to ensure that they have the best possible chance of being a full part of society. (Minister of Education and Young People, Peter Peacock, Scottish Parliament Education Committee (2003): col. 564)

However, as noted by Newman and Clarke (2009), it is very important to look at 'how grand designs get translated into politics, policies and practices. In such processes we may begin to see the contradictory and antagonistic effect of different social forces, different problems to be overcome or accommodated, different local or national contexts that bend strategies into new forms...' (Newman and Clarke, 2009: 18). The aim of this paper is to examine the influence of different social actors in the formation of the new legislation and in subsequent efforts to define its meaning through subversion and challenge. The following questions are addressed:

- How has the new ASN legislation been shaped by different actors and how does it reflect these competing interests?
- What have been the consequences of the legislation in terms of measurable outcomes such as the proportion of children identified as having ASN or requiring a CSP, and the use of different dispute resolution mechanisms?
- How is the new legislation perceived by a range of actors, in particular, local authority staff and parents, and how has the balance of power between these groups been altered?

Competing policy frameworks and actors

In order to understand policy and legislative changes in the field of SEN, it is necessary to understand the theoretical frameworks of procedural justice which underpin and legitimise each approach. Following Mashaw (1983) and Kirp (1992), research on decision-making in the field of special educational needs in England and Scotland (Riddell et al., 2003; Riddell, 2006) identified six models of procedural justice operating within the Scottish SEN context

(professional, bureaucratic, legal, consumerist, managerial and market). These models operate alongside and in a state of tension with each other, with each having positive and negative trade-offs and receiving support from different interest groups. In the post-war period in England and Scotland, professionalism and bureaucracy were dominant, according a great deal of power to medical officers and administrators and casting parents as 'bit players'. From the 1970s onwards, an increasingly important role was assigned to 'new' professionals such as educational psychologists, and partnership with parents was emphasised. The advent of the Conservative Government's educational reforms of the 1980s cast parents not just as partners, but as drivers of the market, in that their consumer choices, in theory if not in practice, would determine what type of educational provision would flourish or dwindle. Within managerialist regimes, which gained growing currency in the 1990s, parents also occupied an important position, with rights to information on performance and targets set out in a range of charters. From the late 1990s, parents were recast by New Labour as 'citizen-consumers' (Clarke, Newman, Smith, Vidler and Westmarland, 2007), promoting community as well as individual well-being by ensuring that local services were responsive to local needs. The discourse of rights also became stronger as the Disability Discrimination Act was extended to education in 2001, with the notion that disabled people had legal rights to equal treatment, which should be legally enforceable if necessary. As noted above, this paper questions the extent to which the new legislation succeeded in shifting the hegemony of professionalism and rights in Scottish ASN policy, which local authority staff had a strong interest in preserving.

Methods

This paper uses a range of data drawn from an ESRC-funded project (RES-062-23-0803) on alternative dispute resolution in the field of additional support needs (Scotland) and special educational needs (England). The focus here is on the background to the reform of special education in Scotland and the consequences of reform, contrasting the perspectives of parents and voluntary organisations in contrast with those of local authorities. The Scottish Executive set out proposals for reform in a series of documents (Scottish Executive, 2002, 2003; Scottish Government, 2008). Responses submitted to the proposals were analysed using the critical textual analysis techniques described by Bloor and Bloor (2007).

Findings from two questionnaire surveys are drawn upon. In order to investigate local authority officers' response to the legislation, a questionnaire was sent to the person with responsibility for ASN in each of the 32 local authorities in June 2008. Two reminders were issued, and responses were received from 27 local authorities (an 84 per cent response rate). To explore parents' views, three organisations involved in providing information and support to parents of children with additional support needs were contacted (Enquire, the national advice and information service for additional support needs in Scotland, ISEA (Independent Special Education Advice), a voluntary sector advocacy organisation, and the Scottish Dyslexia Association (SDA). About 750 questionnaires were distributed between June and August 2008

and a total of 182 questionnaires were returned, approximately a 24 per cent response rate. This rather low rate of response could be attributed to the fact that some questionnaires were sent to parents whose children were either pre- or post-school, and some of those who received the questionnaire were education professionals and were therefore not eligible to complete it. Forty-two percent of the questionnaires were returned by parents contacted through Enquire, 20 per cent were from those contacted through the SDA and 38 per cent were contacted via ISEA. The questionnaires included both open and closed questions. The quantitative data were analysed in SPSS and a thematic analysis of qualitative data was conducted.

Early development of the ASN legislation

Following a long hiatus in SEN policy after the enactment of the Education (Scotland) Act 1980 (as amended), the Scottish Executive published a consultation document on the reform of assessment and recording of additional support needs (Scottish Executive, 2001). Analysis of the 148 responses to the consultation document (Scottish Executive, 2002) underlined the different perspectives of local authority staff on the one hand and parents and voluntary organisations on the other in relation to problems and remedies. Very few responses were from individual parents, who were only likely to know of the consultation if they were closely involved with a voluntary organisation. Many local authorities were opposed to the existence of separate legislation for children with special educational needs, described by the Association of Directors of Education in Scotland (ADES) as 'anti-inclusive'. Most local authorities argued strongly that the statutory RoN and FNA processes should be abolished, on the grounds that it was inequitable to treat a small group of children differently from others. One council, for example, maintained:

To retain a system which promotes a separate educational category, known as Special Education Needs, would be to distort and undermine the drive for high quality, universal provision. (Local authority consultee)

Local authority officers argued that socially advantaged parents were better at procuring RoNs and additional resourcing for their children, whilst at the same time denying that there was any link between resources and having an RoN. The Association of Scottish Principal Educational Psychologists (ASPEP), the Association of Directors of Education Services (ADES) and individual local authorities also opposed the creation of a Code of Practice, maintaining that this would be 'restrictive and disempowering'. Instead, all these bodies argued for the adoption of an 'entitlement model' (ASPEP, 1999), based on the idea that a local authority should decide on a 'fair, equitable and transparent' system of resource allocation. There was also some negotiation over professional roles, with educational psychologists seeking to escape from the task of managing the RoN. The ADES response, written by a former principal educational psychologist, argued that 'the time of scarce specialised staff, in particular Educational Psychologists, is diverted to the administrative process at the expense of key duties to support pupils'.

In a number of local authority responses, claims were made for the superiority

of the Scottish over the English system. For example, the Code of Practice was dismissed as being based on 'an English model', which would not sit well within a Scottish tradition based on 'dissemination, encouragement and guidance rather than direct legislation'. The ADES and ASPEP papers were circulated to all local authorities, whose responses reflected many of their elements, including copious reference to 'the entitlement model'. The introduction of an English-style special educational needs tribunal was also opposed, with local authorities believing that they should arrange mediation where necessary, and any appeals on placement should go to the local authority appeals committee. Equity arguments were used to justify the abolition of statutory documents and procedures, on the grounds that rights were only enforced by middle class people. Impartial local authority procedures, it was argued, would iron out social class differences in access to resources.

The responses of parents and voluntary organisations, almost without exception, strongly defended separate SEN legislation and the reform, rather than abolition, of the RoN. Their criticisms of the RoN were that it was written in bland and non-specific terms, took far too long to open, and the measures proposed were often not implemented. A statutory Code of Practice and a stronger appeals process were also supported. For example, a large voluntary organisation suggested that:

...children whose disability, medical condition or illness constitutes a disability, as defined by the Disability Discrimination Act (as amended), should be entitled to a Record of Needs. (Voluntary organisation consultee)

This organisation opposed school-level assessment on the grounds that it would exacerbate the 'post-code lottery', and strongly defended a statutory Future Needs Assessment (FNA). The Disability Rights Commission (DRC) also defended the 'legal entitlement' of disabled children and their parents to additional resources and advocated the strengthening of legislation governing the RoN to ensure that the support identified in the document was actually delivered. The DRC supported a Code of Practice and the establishment of a tribunal to hear special educational needs and disability cases, as existed in England.

Responses from parents indicated that local authorities were not seen as honest brokers, but as inflexible bodies which were more concerned with balancing the books rather than meeting children's needs. A parent of a deaf child, for example, commented:

There is a very definite need for separate legislation on the provision for SEN children in Scotland. Without it the disabled child would have no protection from the local authority and their proposed provision. Very often the provision is based on what the professionals deem 'the best' for the deaf child and it is crucial that there is proper legislation in place to enable parents to challenge proposed provision. ...The Record of Need should be upgraded and given more 'teeth' to make it a truly effective tool against poor provision for our disabled children in

Scotland. (Parent of deaf child)

Only one small voluntary organisation argued that it was inequitable to separate out a small group for special treatment:

Education providers should drop the term 'special' altogether, stop focussing on impairment and recognise that all children need different levels of support at different times throughout their school life.
(Voluntary organisation consultee)

At the same time, this group supported a statutory right to assessment and review, independent mediation and the existence of a Code of Practice, but these measures should be available to all, not just children labelled as 'special'.

Overall, the consultation revealed almost diametrically opposed positions between parents and voluntary organisations on the one hand, and local authorities on the other. In the foreword to the consultation, the Minister for Education and Young People described reform of assessment and recording as a 'complex issue'. The Government, she wrote, wanted to create an 'inclusive system' and recognised that legal documents should not always be necessary to ensure that children receive the education they deserve. She continued:

It is clear, however, that legal safeguards are still necessary for children with complex needs, who require additional support (Scottish Executive, 2002: iii)

The proposals for legislation which followed may be seen as a trade-off between the demands of different interest groups. In relation to assessment, it was indicated that a wider group of children should have their additional educational needs assessed at school or pre-school level, and be supported through a staged intervention process. This group would include 'children for whom English is an additional language, refugees and asylum seekers, children with social, emotional and behavioural difficulties and Gypsy/Traveller children; and may also include gifted or more able children'. (Scottish Executive, 2002: 15). The document also stated that the RoN would be replaced by a CSP for 'children with complex educational needs, which are such as require continuous review' where it was clear that the school could not provide for them out of 'existing or easily obtainable resources'. The CSP would be a 'flexible and responsive' document with statutory status and uniform format. Psychological and health assessments would not be compulsory, but should be carried out as required. CSPs should complement other plans, and schools would be required to draw up IEPs for all children with additional support needs 'at an appropriate point within the staged intervention process'. Local authorities should examine with other agencies ways of improving joined up working. The statutory FNA for children with RoNs would be replaced by a broad expectation that local authorities would review transitional arrangements for all children prior to their leaving school. Parents were to be empowered through better provision of information by

local authorities and new dispute resolution mechanisms, specifically independent mediation and a tribunal. Measures to promote greater involvement of children were also seen as a key element of forthcoming legislation.

Clearly, some local authority requests had been met, since RoNs and FNAs were to be abolished. At the same time, the Scottish Executive signalled its intention to establish a statutory CSP and a tribunal in response to parents' and voluntary organisations' anxieties about loss of legal rights. In the following section, we trace the next stage of negotiation, as the draft bill, reflecting the Scottish Executive's outline proposals described above, was published in 2003 and a further round of consultation undertaken.

Responses to the Draft Education (Additional Support for Learning) (Scotland) Bill

The draft ASL Bill was published in mid-January 2003, with comments requested by the end of March. The accompanying letter and notes emphasise that the reform of assessment and recording should be seen as part of a wider modernisation agenda, so that:

Those who come to need additional support must be served by a modern system; one that is less bureaucratic; one that is more streamlined, one that is flexible, one that, crucially, makes a difference to the child. And it is important that we take parents with us in this process (Letter from Minister for Education and Young People to ASL Bill consultees)

Two hundred and fifty two responses were received to this consultation, a greater number than had responded to the initial proposals for reform. In particular, parents of disabled children suddenly appeared to realise that major changes were afoot. The Record of Needs Alert (RONA) a web-based campaign, was set up by parents and voluntary organisations to disseminate information about the changes in the draft bill and encourage parents to respond to the consultation.

A number of parents objected to the secrecy which they believed had attended the consultation. One set of parents apologised for their late response, but explained that they had simply been unaware that any review of assessment and recording was underway. They explained:

...the reason for the delay is our ignorance of the fact that any consultation had taken place over the last two to three years. This came as a bolt from the blue and is a matter of great concern given that we have been in regular contact with our son's school, the LA team, Psychological Services and many other parents, all of whom were equally unaware of what was happening and were as dismayed to find out. We would normally be seen, we would have thought, as articulate, involved, perhaps even demanding parents of a child with a Record of Needs, yet we learned of this consultation and the Bill

through a chance reading of a Sunday Times article on the provision of services in England. (Parent response to consultation on Draft ASL Bill)

In their view, the basic criteria of effective consultation had not been met, and it was astonishing that 'the Scottish Executive chose not to communicate directly with each family of a child with a Record of Needs'. If their views had been sought earlier, they would have advised reform, rather than abolition, of the RoN.

Again, parents and local authorities tended to adopt diametrically opposed positions with regard to whose rights were enhanced or diminished by the legislation. Many parents complained about the erosion of parents' and children's rights, particularly in relation to the criteria for the opening a CSP, which would only be available to children with complex or multiple needs requiring support from services outwith education. For example, one parent wrote:

We have recently heard of the proposals to eliminate the Record of Needs and are horrified! Our son's document was only completed last month, it took 2 years from when it was decided that he should have one to it being finally prepared. This was a period of great anxiety and frustration...The proposed Co-ordinated Support Plan would appear only to be available to children with complex needs in a mainstream school or nursery provision, neither of which applies to our son. ...It would appear that Local Authorities are pressurizing the Executive to relieve them of their legal duty to make expensive special education provision. We were amazed by Scottish Education Minister Cathy Jamieson's comments that 'Everyone agrees that the Record of Needs should go' when in fact the vast majority of the 148 responses to the consultation were in favour of improving the current recording system.

In the report on the consultation, the Scottish Executive noted that 'normal consultation procedures had been followed'. Parents and voluntary organisations also reiterated their opposition to the abolition of the statutory FNA and questioned the fairness of the new Tribunal, since only parents whose children qualified for a CSP could access it, and they would not be eligible for legal aid, whereas local authorities would always be supported by their in-house legal teams or advocates.

Local authorities, on the other hand, expressed disappointment that the entitlement model had been rejected, which would have allowed local authorities to devise their own resource allocation systems. They objected to the statutory status of the CSP on the grounds that qualification criteria were unclear and a hierarchy of needs was implied:

The definition of additional support needs remains unclear, and this authority questions the creation of a three-tier system which identifies children as being 'normal', having 'additional support needs' or 'requiring a co-ordinated support plan'. (Local authority consultee)

Issues were also raised about the criteria for the opening of a CSP, which stated that a child should have multiple and complex needs which required significant additional support from agencies outwith education.

Local authorities also believed that there would be major cost implications as responsibilities were devolved to schools, a point which was echoed by the small number of schools which responded:

The concerns that we express are less about the specific contents of the Bill than the practical and financial consequences that may follow from its introduction. It is very likely that there will be a significantly enhanced demand for CSPs. Correctly, it would appear that the intent of the Bill is to have fewer CSPs than there are Records of Needs currently. However, the publicity, the enhanced expectations and, most of all, the stronger rights of CSP status over the previous Records of Needs are likely to generate considerable traffic towards Tribunals for any refusals of CSPs. (Local authority consultee)

Councils also questioned the emphasis on different forms of redress, including independent mediation and Tribunal on the grounds that:

...it contains an implicit message that confrontation and disagreement are common and inevitable. This can be worrying for anxious parents and may serve to reinforce the unhelpful stereotype of 'battling' parents and 'unsympathetic' education authorities which are incapable of listening and resolving difficulties amicably. (Local authority consultee)

Again, comparisons were made with England, where it was argued that the SENDIST:

...is a very inefficient way of resolving disputes in terms of the cost to education authorities and that one unintended effect is to skew resource allocation in favour of the children whose parents have the motivation and the means to use the Tribunal system. It is difficult to see how similar problems can be avoided by a Scottish equivalent, especially so given the inevitable involvement of solicitors and, for those who can afford it, an array of expert professional advocates. (Local authority consultee)

Local authorities were also concerned that education, but not other agencies, would have to appear at tribunal to defend their failure to provide particular services.

Health boards and other professional bodies indicated some anxiety about being compelled to deliver services to education when their budgets were already over-stretched. One community paediatrician described herself as 'fanatical' about joined-up working and hoped this would be emphasised in the legislation. She also noted parents' anxiety about the removal of the Record of Needs and hoped that, at least for children with severe low incidence disabilities, this would be continued.

In response to the consultation, the Scottish Executive signalled its intention to introduce a number of measures requested by parents, including a Code of Practice, to allow parents to request a medical and psychological assessment, to implement a process of adjudication for parents whose child had additional support needs but did not qualify for a CSP. In the following section, we outline some of the effects of the ASL Act following its implementation in November 2005, first drawing on official statistics from a range of sources and subsequently the findings of recent research.

Outcomes: evidence from official statistics

As indicated above, local authorities were convinced there would be a rapid increase in the number of pupils with CSPs compared with those who had previously had RoNs, whilst parents were concerned that there would be far fewer. In fact, as illustrated by Figure 1, there was a dramatic reduction, with 14,332 RoNs in existence in 2005 (2.2 per cent of the pupil population), compared with 2,630 CSPs in 2008 (0.4 per cent of the pupil population).

Figure 1 about here

The Scottish Executive believed there would be half as many CSPs as RoNs, but in the event, the drop was greater than a factor of five. The reduction in CSPs relative to RoNs varied greatly by local authority, for example, in North Lanarkshire there were half as many CSPs as RoNs, whereas Glasgow had a fifteen fold reduction. HMle (2007), in their evaluation of the ASL Act two years after its implementation, noted that a third of authority-based staff and most parents and staff from voluntary organisations were concerned at the low numbers of CSPs. In most schools, head teachers and classroom teachers also felt that the number of children and young people with CSPs was too low.

As reported earlier, one of the problems with the RoN system reported by both local authorities and parents was the extent of local variation in their use, ranging from 0.8 per cent to 2.9 per cent of the pupil population, a factor of 3.6. However, as illustrated by Figure 2, the degree of variation between local authorities in relation to CSPs was much greater, ranging from 0.15 per cent of the pupil population in South Lanarkshire and Midlothian to 1.2 per cent in Dumfries and Galloway, a factor of 8.

Figure 2 about here.

There was also a large regional variation in children identified as having additional support needs (defined as having an IEP, a CSP or a RoN), ranging from 9.12 per cent of the pupil population in Dundee City to 3.42 per cent in Scottish Borders. Edinburgh was below average in the percentage of children with formally identified additional support needs (3.44 per cent) and CSPs (0.24 per cent), perhaps as a result of having decided to use its own locally devised Additional Support Plans (ASPs) rather than IEPs or CSPs. ASPs do not have any statutory status, do not allow a parent to appeal to the ASN

Tribunal and do not have the same requirements as IEPs in terms of target setting and review. The HMle evaluation noted that the existence and status of alternative support plans caused confusion among parents. They also noted local authority confusion around the criteria for opening a CSP, particularly with regard to what counted as 'significant' support from other agencies and 'multiple' and 'complex' needs.

It is also evident that, to date, only modest progress has been made in extending the definition of additional support needs. In 2005, 34,680 children (4.8 per cent of the pupil population) were identified as having ASN (having a RoN, IEP or being based in a special school). In 2008, 38,716 children were identified as having ASN (5.6 per cent of the pupil population). In addition, the vast majority of children identified with ASN continue to fall into the traditional categories of learning difficulties and disabilities, with very small numbers of children identified as having ASN as a result of mental health problems, interrupted learning, English as an additional language, being looked after by the local authority or being a more able pupil (see Table 1). Traditional gender divisions were also evident, with boys outnumbering girls in all categories.

Table 1 about here

To summarise, local authorities appear to have resisted aspects of the legislation which parents supported but they opposed, particularly the duty to open CSPs for children who meet the criteria. Variation in local practice is much greater than it was before, indicating resistance to standardise practice via the Code. Finally, even though local authorities supported the wider definition of additional support needs, little progress appears to have been made in terms of identifying a wider and more diverse group of children. In the following sections, we examine the perspectives of local authority staff and parents.

Local authority staff perspectives

As noted in the methods section, the views of local authority staff were obtained from a questionnaire investigating their views of the strengths and weaknesses of the ASL Act and the dispute resolution mechanisms within it. The majority of staff believed that the wider definition of additional support needs and the focus on coordination of services were strengths. They also tended to support the strict qualification criteria for a CSP. There was a 50:50 split with regard to the provision of additional routes of redress, with equal numbers seeing this as either a strength or a weakness. Weaknesses identified by a majority were the failure to define what counted as significant input from other services as a criterion for opening a CSP, and variation in local authority use of CSPs. Comments generally focussed on the Act's weaknesses and highlighted:

- Lack of clarity about the financial and administrative responsibilities of the local authority where the pupil lived (the 'home' authority) and the authority where the pupil was being educated (the 'host' authority)

- Lack of clarity about the responsibilities of other agencies
- The Act was too 'parent friendly' and had been 'hi-jacked' by a small group of parents.
- 'Independent bodies' were policing the Act.
- There was little mention of parents' responsibilities and the Act tended to encourage a confrontational attitude
- Variability in understanding of, and too much emphasis on, CSPs to the detriment of IEPs.
- An increase in unwelcome bureaucracy.

With regard to the 'parent friendly' view of the legislation, one respondent commented:

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 LAs prior to any disagreement going to a formal process. (Local authority respondent)

With regard to the various types of dispute resolution, respondents took a generally positive view of mediation, with twenty three regarding it as either highly satisfactory or satisfactory, compared with nine who regarded adjudication or the ASNTS as highly satisfactory or satisfactory. However, respondents made it clear that they believed disputes were rare and encouraged any problems to be resolved through informal negotiation at school level. Most had little or no experience of mediation, adjudication or tribunal (see table 2).

Table 2 about here

Although the ASNTS was used more frequently than mediation or tribunal, far fewer references were made than expected, perhaps as a result of the very small number of CSPs and lack of information issued to parents of children with ASN who did not qualify for a CSP (HMIe, 2007).

The comment below represents a local authority officer's trenchantly-worded assessment of the new legislation:

Abysmally delivered legislation and guidelines, based on a good idea. When Scotland (or England & Wales) can produce a sustainable definition of the term, "needs", then the ASL legislation may work. Until then, a ridiculous over-reliance on 'significance' will leave this legislation in the 'surely it must be replaced soon' category.

Parents' perspectives

A similarly critical view of the legislation was presented by parents in our

sample, although from an entirely different angle. Since one of the key aims of the legislation was to improve educational provision for children with additional support needs, parents were asked about what type of additional support their children were receiving, and how satisfied they were with it. The vast majority said that their child was receiving some form of additional support. Most commonly, additional support was provided by classroom assistants (reported by 56 per cent) by the classroom teacher (reported by 52 per cent), or by the learning support teacher (39 per cent). Additional help from non-school based professionals was less common (for example, 36 per cent reported extra help from a speech and language or other therapist and 15 per cent from a social worker).

As shown in Table 3, of those who were receiving additional support, around half of all respondents appeared to be dissatisfied. For example, 52 per cent said they were not satisfied with help from the learning support teacher, and 45 per cent were not satisfied with extra help from the class teacher or the classroom assistant. The highest levels of satisfaction were with the least common forms of extra help (61 per cent of respondents were very satisfied or satisfied with extra help from speech and language therapists and 75 per cent with extra help from a voluntary organisation).

Table 3 about here

Comments indicated the spread of opinion:

The learning support base teacher is very good and has helped Kathryn enormously. The classroom assistant is also very good, but she has a huge amount of children to support. I think more classroom assistants should be available to support children with ASN. (Parent of child with dyslexic type difficulties)

There has been no support whatsoever, even though he is starting P7 and was diagnosed in P2. The school has been unhelpful, even issuing a letter of exclusion. We have had to fight for basic rights. DCFP have been very supportive, however. (Parent of child with ADHD)

Amongst our sample, a high proportion of parents (80 per cent) reported some form of disagreement with the local authority over educational provision, most frequently in relation to additional educational support (76 per cent) or assessment of difficulties by education staff (60 per cent). Most difficulties (60 per cent) were resolved through informal negotiation with the school, but the majority of parents who used this route were dissatisfied (see Table 4).

Table 4 about here

About fifty per cent of parents had resolved their disagreement through contact with Enquire, the national advice and information service, and the majority (85 per cent) were satisfied. Only a small minority of the sample said their disagreement had been resolved through formal mediation (14 per cent), adjudication (8 per cent) or the ASNTS (14 per cent). As shown in Table 4,

there were quite high levels of dissatisfaction with these formal routes of dispute resolution. Interestingly, mediation was the least popular (59 per cent not satisfied), followed by the ASNTS (48 per cent not satisfied). Forty per cent were not satisfied with adjudication. Again comments illustrated the reasons underlying parents' dissatisfaction, which were partly to do with process and partly to do with outcomes:

Negotiation at school level was very disappointing. Parental concerns were not taken seriously. (Parent of child with very complex additional support needs)

Part of the settlement (imposed by Council) was that we attend mediation which I feel would be beneficial. However, this has yet not taken place. (Parent of child with multiple impairments)

We had a case at dispute resolution and the adjudicator's recommendations in Jan 2008 were agreed upon by the education authority. Since then they have refused to action a number of recommendations. He was to be immediately multi-agency assessed to identify needs. Health refused, totally dismissing the adjudicator's report. "Who was this person teaching them what to do?", said manager in Health. ... Since the dispute resolution case I am being personally attacked by school/authority. (Parent of child with multiple impairments)

We have just received the Tribunal ruling. It was in our favour and quite critical of the local Education and Health Authorities. Nevertheless, the Tribunal process was a stressful nightmare. It extended over 5 months (4 days sitting) and parents should not have to experience that. The Tribunal panel was fair in its conduct, but the actual process served to demonstrate that a quasi-judicial process like this is not family friendly and inquisitorial, but adversarial and trial-like. How ministers and policy officials in SEED [Scottish Executive Education Department] could think otherwise is beyond belief. (Parent of child with multiple impairments)

It is not possible to say whether parents were either more or less satisfied with the new legislation compared with previous arrangements, since comparable data gathered before the legislative changes are not available.

Summary and Conclusion

As we noted in the introduction, new policy and legislation are almost always a reflection of the competing pressure exerted by a range of actors. Once legislation has been enacted, its translation into practice is also governed by the further interactions of social actors, in which some are more powerful than others. Over previous decades, professionalism and bureaucracy have dominated Scottish SEN policy, and throughout the consultation process, local authority staff lobbied hard to achieve an even stronger influence in the

ASN reforms, promoting a model of 'entitlement' which would allow them to devise systems of resource allocation based on bureaucratic notions of fairness, with restricted routes of appeal for dissatisfied parents. In line with the wider emphasis on universalism in Scottish education (Devine, 1999), they sought to blur the boundary between pupils with RoNs and others by promoting the wider category of additional support needs, which was intended to include a much wider group of children. In early consultations on the reform programme, they generally opposed specific legislation for children with SEN, arguing that there was no need for separate documents and processes for a small group of children. They campaigned against the creation of CSPs and a regulatory Code of Practice on the grounds that these were too restrictive of local authority autonomy. A tribunal system was also opposed on the grounds that it would give too much power to parents and encourage challenges to local authority decisions.

Parents, on the other hand, were much less involved in early consultations on SEN reforms, in large measure because, although voluntary organisations were asked for their views, parents were unaware that any change was afoot. Nonetheless, the draft Bill included a number of measures designed to enhance the rights of disabled children and their parents, including the establishment of additional routes of redress. It was only when the draft ASL Bill was published that parents became aware that significant legal rights were about to vanish, and they mobilised against the abolition of the RoN through a web-based campaign. Whilst their campaign for reform, rather than radical change, of the existing system was unsuccessful, their (somewhat belated) action led to a number of concessions, including the establishment of an adjudication process for parents whose children failed to qualify for a CSP and the decision to publish a regulatory Code of Practice.

The legislation thus reflected an attempt to balance parental and local authority preferences and interests. In its implementation, it is clear that local and health authorities have subverted elements which were designed to safeguard the rights of disabled children and their parents. For example, the criteria for a CSP have been interpreted extremely stringently, leading to far fewer CSPs being opened than had been anticipated, thus restricting the number of parents eligible to appeal to the ASNTS. In addition, the degree of local variability in use of CSPs is much greater than had been the case in relation to RoNs. Other new routes of redress have been little used, partly because information about them has only been routinely given to parents of children with CSPs. Although local authorities were enthusiastic about the new additional support needs terminology, they seem to have been slow in using the new categories, with few children identified as having ASN as a result of interrupted schooling, being looked after by the local authority or being more able. Survey findings indicate local authority officers' tendency to regard the legislation as too 'parent friendly' and restrictive of local authority freedom. For their part, about half of parents in our sample did not believe their children were well supported in school, were likely to disagree with the local authority and the school in relation to assessment and educational support, and were generally unhappy with the application of dispute resolution mechanisms, in particular informal negotiation at school level.

On the basis of this evidence, it would be possible to concur with Fulcher's (1989) contention that in the field of SEN, discourses may change but practices often remain the same. However, that would be an over-simplification. It is evident that, even though parents of children with ASN still have limited power to challenge local authority decisions, the experience of campaigning to retain the RoN has had an empowering effect, encouraging parents to act as 'citizen-consumers' (Clarke et al., 2007), campaigning not just on behalf of their own child, but on children with ASN more widely. This, in turn, has had an impact on government action, for example, whilst an information and advice service had been funded since 1999, there had been no funding for independent advocacy services for parents. In 2008, following pressure from parents and opposition from local authorities, the Scottish Government awarded a grant to ISEA and the Govan Law Centre to deliver such services, and there are future plans to extend such services in the future.

It is also evident that the struggle between interest groups continues, as illustrated by the responses to the consultation on amending legislation (Scottish Government, 2008). The Bill proposed a number of limited changes to the ASL Act, including clarifying the financial and planning responsibilities of 'home' and 'host' authorities and giving the ASNTS power to review its own decisions. However, local authorities, having ceded little in the way of parental rights (Harris, 2005), continued to press for a much wider overhaul of the legislation, including abolition of CSPs:

The production of the CSP is procedurally complex and formal. By its nature, it is driven by official letters and procedure-driven meetings. The need to have documents written in a standard defensible style has already resulted in a CSP style of writing which, like the language of its predecessor the Record of Needs, acts as a barrier to plain communication. It is very difficult to detect any additional benefit impact on interagency working either from the CSP process or the documents themselves. (Local authority officer response to consultation on the Education (Additional Support for Learning) (Scotland) Bill 2008).

On the other hand, a parents' advocacy organisation documented the ways in which local authorities were subverting the legislation, including restrictive interpretation of qualification criteria for a CSP, failing to respond to requests for adjudication and failing to implement the recommendations of adjudication and the ASNTS. All parties appeared to agree on the need for radical, but entirely different, changes, pleas which have been ignored to date by the Scottish Government.

Clearly, this is a policy arena within which struggles between different actors promoting competing models of procedural justice will continue to be played out. The aim of Government must be to steer these debates in such a way as to promote creative, rather than destructive, tension. In addition, there is a compelling need for future research which explores the implications of these

tensions for substantive justice, particularly with regard to children's educational experiences and outcomes.

Glossary

ADES Association of Directors of Educational Services

ASL Act Education (Additional Support for Learning) (Scotland) Act 2004

ASN Additional Support Needs

ASNTS Additional Support Needs Tribunals for Scotland

ASP Additional Support Plan

ASPEP Association of Principal Educational Psychologists

CSP Co-ordinated Support Plan

DRC Disability Rights Commission

FNA Future Needs Assessment

HMIE Her Majesty's Inspectorate of Education

IEP Individualised Educational Programme

ISEA Independent Special Education Advice

RON Record of Needs

RONA Record of Needs Alert

SEN Special Educational Needs

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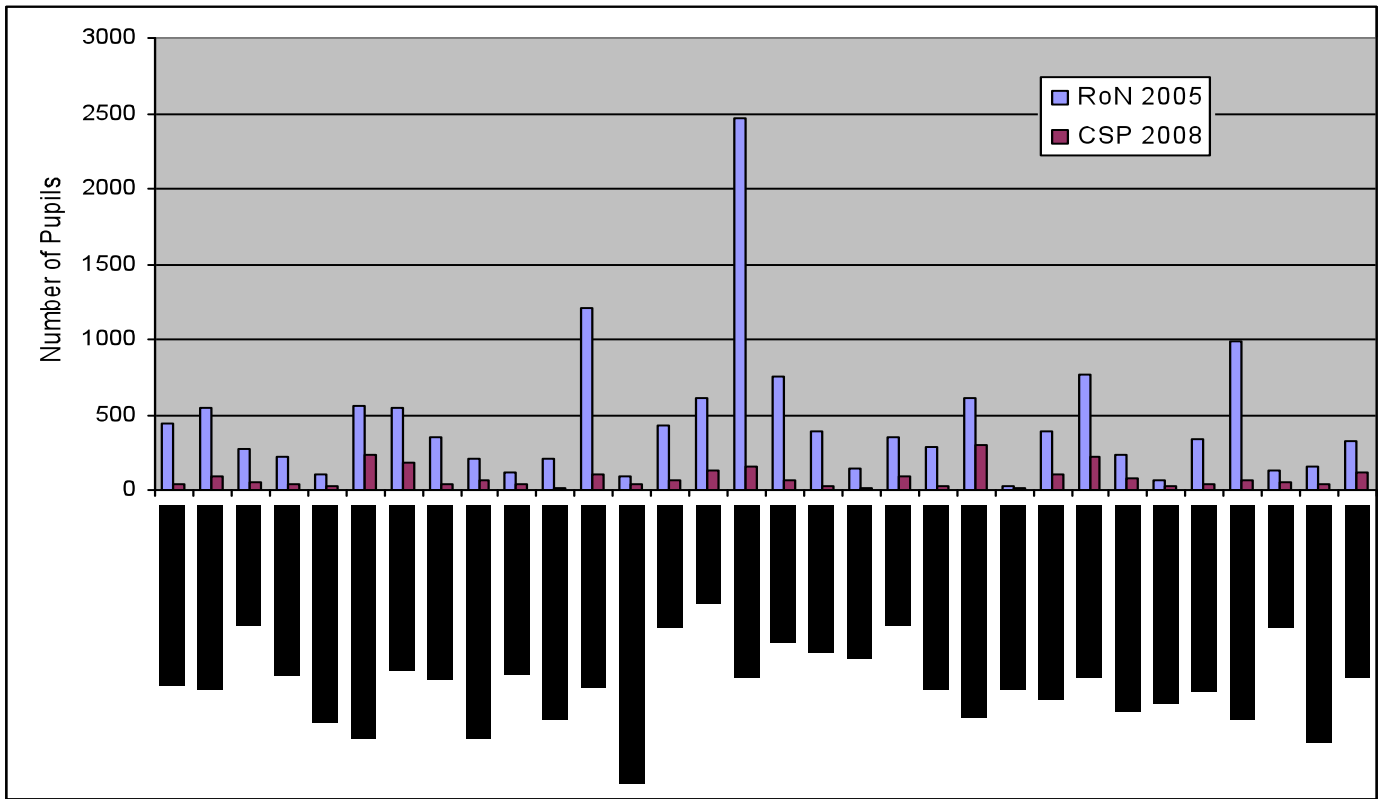
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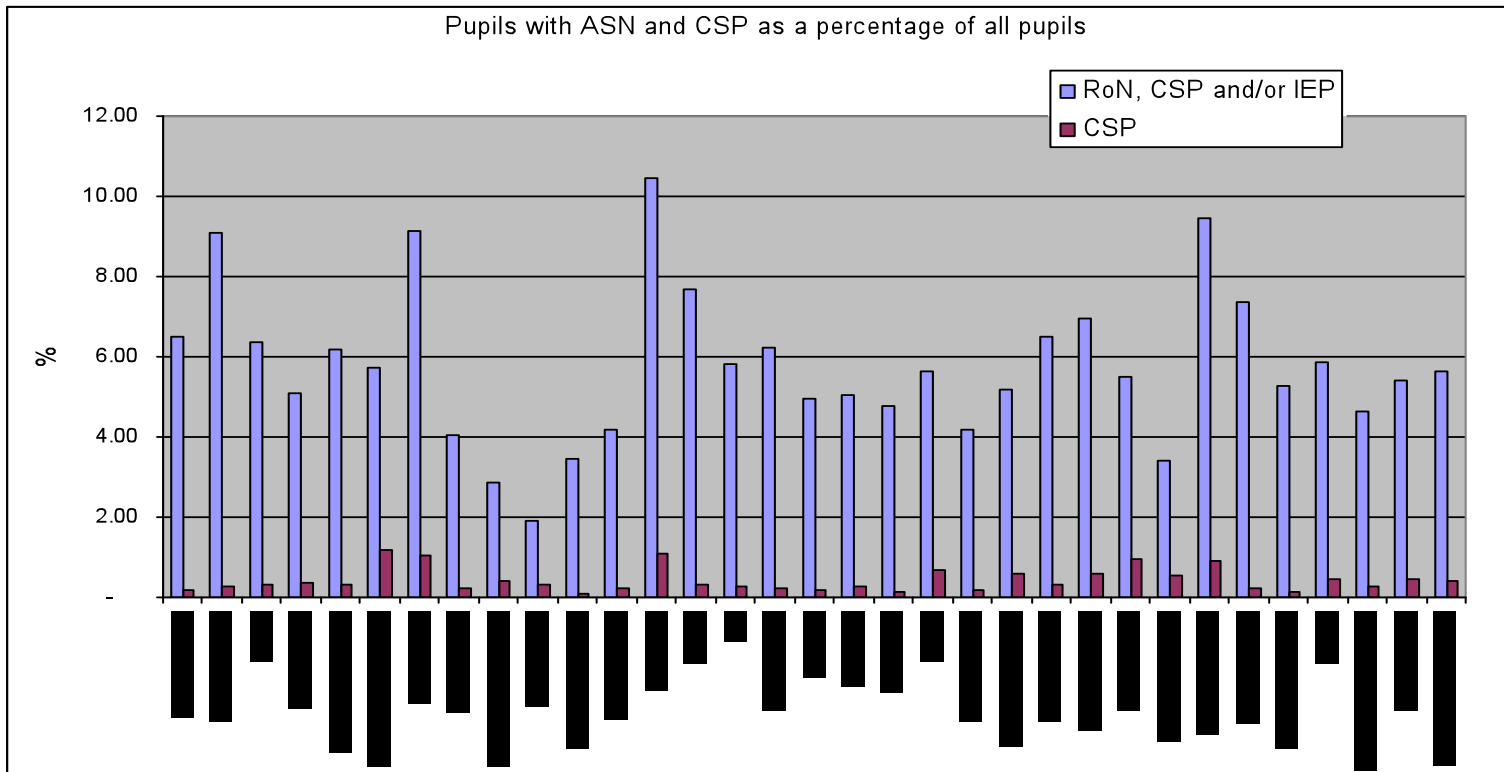
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Figure 1: Number of Pupils with Records of Needs, 2005, and Co-ordinated Support Plans, 2008, by local authority (Source: Scottish Government, 2009)



Source: Scottish Government, 2009

Figure 2: Pupils with Additional Support Needs and Co-ordinated Support Plans, 2008 as percentage of all pupils by local authority



Source: Scottish Government, 2009

Table 1: Reason for support for pupils with Additional Support Needs, by gender, 2008. Occurrences: pupils with more than one reason for support will appear in each row

				Rate per 1000 pupils		
	Female	Male	Total	Female	Male	Total
Pupils for whom reason for support is reported	11,388	26,463	37,851	34.0	76.4	55.5
Learning disability	3,092	5,883	8,975	9.2	17.0	13.2
Dyslexia	1,104	3,084	4,188	3.3	8.9	6.1
Other specific learning difficulty (e.g. numeric)	969	1,950	2,919	2.9	5.6	4.3
Other moderate learning difficulty	1,970	3,684	5,654	5.9	10.6	8.3
Visual impairment	535	741	1,276	1.6	2.1	1.9
Hearing impairment	408	558	966	1.2	1.6	1.4
Deafblind	23	30	53	0.1	0.1	0.1
Physical or motor impairment	1,210	1,814	3,024	3.6	5.2	4.4
Language or speech disorder	1,354	3,084	4,438	4.0	8.9	6.5
Autistic spectrum disorder	642	4,279	4,921	1.9	12.4	7.2
Social, emotional and behavioural difficulty	1,665	6,531	8,196	5.0	18.9	12.0
Physical health problem	739	1,084	1,823	2.2	3.1	2.7
Mental health problem	84	134	218	0.3	0.4	0.3
Interrupted learning	211	325	536	0.6	0.9	0.8
English as an additional language	592	781	1,373	1.8	2.3	2.0
Looked after	455	630	1,085	1.4	1.8	1.6
More able pupil	144	145	289	0.4	0.4	0.4
Other	722	1,480	2,202	2.2	4.3	3.2

Source: Scottish Government, 2009

Table 2: Number of requests for different types of dispute resolution reported by local authorities, 2006-07

	Number of local authorities reporting mediation requests	Number of local authorities reporting adjudication requests	Number of local authorities reporting ASNTS references
None	5	9	6
Less than 5	15	17	14
Between 6 & 10	6	0	4
More than 10	1	0	2

Table 3: Parents' level of satisfaction with support provided

Type of support child is receiving	Very satisfied	Satisfied with support	Not satisfied	Missing Nos/%
Extra help from class teacher	30 (24%)	38 (31%)	56 (45%)	58 (32%)
Help from learning support teacher in class	21 (25%)	19 (23%)	44 (52%)	98 (54%)
Help from learning support teacher in support base	24 (28%)	22 (26%)	40 (47%)	96 (53%)
Help from classroom assistant in class	27 (27%)	29 (29%)	45 (45%)	81 (45%)
Help from classroom assistant in support base	16 (33%)	9 (19%)	23 (48%)	134 (74%)
Help from visiting teacher	4 (14%)	10 (35%)	15 (52%)	153 (84%)
Help from speech & language therapist	23 (32%)	20 (28%)	28 (39%)	111 (61%)
Help from school nurse	6 (24%)	6 (24%)	13 (52%)	157 (86%)
Help from social worker	5 (14%)	11 (31%)	19 (54%)	147 (81%)
Help from voluntary organisation	17 (59%)	5 (17%)	7 (24%)	153 (84%)
Help from other professional	21 (55%)	5 (13%)	12 (32%)	144 (79%)
Help from other therapist (e.g. occupational therapist, physiotherapist)	19 (33%)	12 (21%)	26 (46%)	125 ((69%)

Table 4: Parents' level of satisfaction with the way the disagreement was handled

	Very satisfied	Satisfied	Not satisfied	Missing
At school level	10 (8%)	27 (22%)	84 (69%)	18 (13%)
By information and advice provided by Enquire	41 (51%)	27 (34%)	12 (15%)	59 (42%)
By formal mediation provided by local authority	1 (3%)	15 (39%)	23 (59%)	100 (72%)
By independent adjudicator appointed by the Scottish Government	6 (40%)	3 (20%)	6 (40%)	124 (89%)
At Additional Support Needs Tribunal	5 (24%)	6 (29%)	10 (48%)	118 85%