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Autonomy, Rights and Children with Special Needs:  
A New Paradigm?

# Working Paper 8

## Scottish case studies

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# Research aimed to investigate



- The extent to which children (defined here as those of aged under 16) and young people (those aged 16-24 inclusive) with SEN/ASN are able to realise their participation rights effectively;
- The degree to which the autonomy rights of such children and young people intersect with those of parents/carers and are driven by, or influence, the decision-making of schools and local authorities;
- The way in which capacity for autonomous decision-making is understood and acted upon in different social contexts;
- The factors which promote or inhibit the realisation of autonomy rights by children and young people with SEN/ASN, including those who are looked after by the local authority;
- The impact of a children's rights-based approach on the broader education and social policy landscape.



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# Case study context: Three LAs, Six child case studies per LA (18 in total)



## LA social and education profiles

	Sea City	Eastshire	Coalshire	Scotland
<b>Social and Demographic (NOMIS, 2017)</b>				
<b>Total Population</b>	513,000	104,100	371,400	5,425,000
<b>Type of LA</b>	Urban	Accessible rural	Accessible rural	N/A
<b>Deprivation (zones in most deprived 30%)</b>	19.8%	15.9%	30.2%	N/A
<b>Workforce (NOMIS 2017/18)</b>				
<b>Economically active</b>	72.9%	81.3%	78.1%	77.3%
<b>In employment</b>	76.6%	78.6%	75.8%	73.9%
1-3: Professional/manager	57.1%	43%	42.1%	42.8%
4-5: Admin/skilled trade	16.3%	21.9%	17.6%	21.2%
6-7: Sales/service	14.6%	20.9%	21%	18.4%
8-9: Manual	12.1%	14.2%	19.4%	17.7%
<b>Education (Scottish Government 2016)</b>				
NVQ4 and above	57.8%	46.1%	45%	43.9%
No qualifications	3.2%	6.3%	7.3%	8.7%
School population with ASN	26.2%	21.5%	21.1%	24.9%
School population with CSP	0.26%	0.26%	0.35%	0.3%
Tribunal cases 2017 (rate/10,000 school pop.)	12	4	1	2.47
School population in special settings	1.27%	Unknown	0.27%	0.7%



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Case study participant profiles Scotland

	Sea City	Eastshire	Coalshire	Number of cases
<b>GENDER</b>				
Male	3	4	5	12
Female	3	2	1	6
<b>ETHNICITY</b>				
White British	6	6	6	18
<b>AGE</b>				
Primary 5-11	4	2	0	6
Secondary 12-15	1	4	5	10
16-24	1	0	1	2
<b>ASN</b>				
ASD	0	1	2	3
ASD, LD	1	0	0	1
ASD, SEBD	0	1	0	1
ASD, PD	0	1	0	1
ASD, ADHD, LD	0	1	0	1
ASD, CSL	0	0	1	1
PD	0	1	0	1
PD, LD	2	1	2	5
Dyslexia	1	0	0	1
SEBD, LAC	2	0	0	2
MLD, ADHD	0	0	1	1
<b>LAC</b>	2	1	1	4
<b>CSP</b>	1	0	1	2

Note: ASD = autistic spectrum disorder; LD = learning difficulties; PD = physical difficulties; SEBD = social, emotional and behavioural issues; CSL = Communication, speech and language difficulties; LAC = looked after child; MLD = moderate learning difficulties.



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## Number of cases by educational setting

	Sea City	Eastshire	Coalshire	Number of cases
LA mainstream primary	1	1	0	2
LA special unit within mainstream primary	1	0	0	1
Grant aided special primary	2	0	0	2
LA mainstream secondary	1	0	3	4
LA special unit within mainstream secondary	0	5	2	7
Independent special school	0	0	1	1
Post-16 unit	1	0	0	1



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# Research activities



LA officer interviews	9
CYP interviews	15
Parent interviews	15
Head teacher/Teacher interviews	33
Classroom assistants	15
Others (Social workers, Speech and Language therapists, Director of voluntary organisation)	5
Observations	1-2 days per child
Analysis of documents	e.g. CSP, IEP, Personal Behaviour Plan, Resilience Plan



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# Individual factors affecting children's ability to participate in educational decision-making



- Major challenges associated with participation by children with complex difficulties irrespective of their age.
- Children with little or no speech least likely to be involved – views mediated by adults.
- Children articulating views verbally, irrespective of age, more likely to be involved in decision-making.
- Those with confident personalities also more likely to participate in everyday and longer-term decisions, including making decisions on their post-school destinations.
- Effective parental advocacy was critical in ensuring children's voices were heard and acted upon.
- Children believed their voices should be heard, but did not want to have too much responsibility at an early age.



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# Individual factors affecting children's ability to participate in educational decision-making



- *You know, we're always looking at ways to give pupil voice, but a lot of it's on a level of [simple] choosing. So, you know, 'Do you want that for snack or do you want that for snack?' And then they can choose. (Special school teacher – children with complex needs)*
- *So like just imagine that I'm fourteen. I will, I think I'd be old enough to make a start, a wee bit making my own, no bad decisions. When I'm over sixteen I can make ma decisions cause I'll be a young adult. But, like ma wee cousin J., he's no auld enough tae make his own rights right now. So like just wait until he's older and then he can make his rights. (Lewis, 14yrs, living in neighbourhood with high social deprivation)*
- *I know I want to go to university and I want lots of money but I don't know what for. Like everyone said I should work with younger children 'cause I'm good with them but I don't think I should like being a teacher or anything like that. I just have no patience. (Ruth, 14 yrs, middle class background)*





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# Family relationships and the dynamics of participation and choice



- Parents believed that they were best able to determine what was in their child's best interests, particularly relating to school choice and post-school transitions.
- The consent of the child or young person was sought when possible to ensure their acceptance and co-operation.
- Children accepted that parents might make decisions on their behalf.
- Children with very significant difficulties, those whose behaviour was regarded as challenging and looked after/care experienced children were often excluded from decision-making.
- Legal guardianship sometimes used to safeguard the child/young person's best interests.



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# Family relationships and the dynamics of participation and choice



*I'd had a pretty tough time in my old school. I wasn't getting the right education. I didn't get the education that I needed. And ... they just gave me a lot a' free time so my parents asked me if I'd like it here. And obviously at first I wasn't really keen but then as time went on ... I got more used to it. (Laurie, 14 yrs, ASD diagnosis, initially excluded from school choice)*

*I don't like the fact that I'm in a class with... two very autistic young people. And it gets a bit annoying. And I think I should be in a different class with the higher functioning people. (Chloe, 14 yrs, kinship care, SEBD/ASD diagnosis, believes her wishes are ignored)*

*They wanted tae put a ... metal filling in but it was at the front. And I said, 'No she'll get a white filling'. And they said, 'No we'll put a metal one in because it's stronger'. ... And I said, 'No'. ... So just because she's got learning difficulties, she deserves a nice smile as well so she's having a white one'. And then she said, 'Well actually you don't have the right to decide that so I'll ask Jeannette'. ... So I didn't know about guardianship until that happened. So that was why we got guardianship. (Jeannette's mother - reasons for legal guardianship)*



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# Socio-cultural factors and awareness of rights



- In general, parents had little knowledge and awareness of existing and new rights.
- Middle class parents better able to navigate the system and mobilise professional support.
- Families from disadvantaged backgrounds were often acquiescent, even when dissatisfied with provision. Sometimes helped by voluntary organisations
- Counter examples of middle class parents feeling deeply dissatisfied with educational provision.
- Parents generally acted as children's principal advocates.



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# Socio-cultural factors and awareness of rights



*I did get a copy of [LA policy] and ... it's not what every second parent does. So it's not something you can go and chat necessarily to people about. I don't know anybody else who's done that, and I know several special needs parents. David's the only one with a CSP. (David's mother, less deprived background)*

*It was like fighting a losing battle. I was sick a' phoning them up and arguing wi' them and having meetings. And it just got me absolutely naewhere so I kinda just gave up. I thought, 'I'm wasting my time'. (Colin's mother, more deprived background)*



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# Children's knowledge and awareness of legal rights



- CYP had only general views about their rights and did not know about the new legal provisions.
- None of our case study pupils was using the My Rights May Say service.
- A few schools and local authorities were considering how best to inform children of their new rights – but low levels of awareness and little/no training.



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# Children's knowledge and awareness of legal rights



*They should have the right tae play. Have the right tae eat. Have the right tae get sleep. Tae clean theirselves. (Lewis, 14 yrs)*

*We engage...external advocates. We also have ... a ... lawyer who comes in to discuss with the boys their rights and entitlements in school and beyond the school. ... And we also encourage very regular contact with children's rights officers from the local authorities the boys come from. (Head teacher, residential special school seeking to raise pupil awareness of new rights)*



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# An enabling environment? School pedagogy and ethos



- Children, parents and teachers generally believed that children's voices were heard in school.
- At times, there was a mismatch between staff perceptions that a strong children's rights agenda was being promoted and parents' perception of lack of communication and awareness.
- Many teachers expressed reservations about allowing children autonomous rights.



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# An enabling environment? School pedagogy and ethos



*Very nice teachers who like genuinely care about you. They care about your wellbeing and they always ask about how you are, how your holiday's been. Just actually show an interest. I'm in the DAS Department and I can say for any other people who have disabilities and who want to come here, it's very well organised up at the DAS. Yeah and like I say it's very nice and it's a very inclusive school. (Alan, 17 yrs, DAS, diagnosis of ASD)*

*...we also try and include Holly in decision making and give her choices throughout the day. And the pupils have an input into the topics they want to learn so it's balancing their choice along with the curriculum expectations of what our balance for a broad general should be. So she has her own work tray and we try and filter in little things that are a personal interest to encourage her in other areas as well. So yeah I think, I think there's a really good balance. (Special unit teacher)*





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# Engaging pupils in educational planning



- Statutory support plans rarely used in Scottish schools - given to only 0.3% of the total school population and 0.2% of pupils in mainstream.
- Also decline in the use of IEPs (Opened for 5% of pupil population).
- Wide local authority variation in educational planning.
- Most parents do not know what type of plan their child has and children are not routinely involved in formal educational planning.
- Children more involved in everyday decisions on teaching and learning than in formal educational planning.



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# Engaging pupils in educational planning



*I guess that, this comes down to the child's capacity actually. Certainly at primary, whenever we had child planning meetings, David would complete the My Views sheet with the help of the Support for Learning teacher but he is not keen to be involved in meetings. And I personally don't think he would have gained much from being involved in something he didn't want to be involved in. And whenever we have a meeting in school I always give him the option to come. And he's quite adamant he doesn't want to come which is him executing his right, I suppose. (David's mother)*

*Nick always attends his meetings. He comes in and tells you what he's been doing and tells you what he would like to be doing. But that's taught. So it's hard to actually know what Nick really does want...It's not really spontaneous. There are little elements of spontaneous sort of reactions from Nick about it and stuff but it's very much what he's being taught. (Nick's mother)*



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# Involvement of young people in dispute resolution



- None of the case study children had been involved in a reference to the tribunal, adjudication or mediation.
- School staff were generally unaware of the fact that children could mount legal challenges.
- Concerns that right to access the tribunal might be abused.



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# Involvement of young people in dispute resolution



*I think [the changes] took me and I think most a' my colleagues aback. I don't think any of us as head teachers ... knew that it was coming. It may well be that some youngsters live in environments where they don't have parents and it's carers who don't maybe care the way they should or they're in an institution. Or simply their parents are, you know, not capable or able to do it for them. I suspect there's a whole raft of areas out there where this might seem to be a good idea, it might be applicable. But I think for the mainstream environment ... we're not so sure. (Head teacher, mainstream secondary)*

*Carl for example ... he has autism and he's quite literal about many things ... So many times in the past he has accused staff of mistreating him in his old school and so on which might be fair to an extent, I don't know, I cannot tell. However, I can see if it's not true and if Carl would be able to take that to court, I think it would be a very big case and an unjust case in a way, if it's not true to be honest. (Learning support teacher)*



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# Children's and young people's experiences of collective participation



- Most schools involve children in collective decision-making via pupil councils, prefect systems and group discussions in class on matters such as rules and curriculum.
- Some schools involve pupils in peer to peer support and advocacy.
- External agencies sometimes used to support pupil involvement.
- Individual pupils valued the experience of being given responsible roles in school.



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- Some schools involve pupils in peer to peer support and advocacy.
- External agencies sometimes used to support pupil involvement.
- Individual pupils valued the experience of being given responsible roles in school – did not see involvement as tokenistic.



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# Children's and young people's experiences of collective participation



*And it was actually a teacher what actually said, 'You know what, go for being a prefect'. And I was always one a' the people like, 'A prefect, I don't know'. And it was due to a teacher, she's a really good teacher ... she says I would make a really good prefect and so I took her advice. I went, like I put myself forward for being a prefect and I just did it since then. (Alan, 17 yrs)*

*There's a very kind of extensive process of meetings within the school to allow the young people a voice. So all the boys are attached to a house within the school. So there are house meetings which are then fed into the pupil council via the representatives from the pupil council who obviously are elected from the house. We have a peer support system where boys in the school are actually trained as peer. So all a' those processes are quite good at allowing the boys a voice on decisions that are made within the school. (Residential school head teacher)*



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# Conclusions



- Teachers support the idea of pupil voice.
- Children with less significant difficulties much more involved than those with complex needs or SEBD.
- Parents act as children's principal advocates – middle class parents have more social, cultural and economic resources at their disposal.
- Little knowledge of new rights legislation across the system – LAs have done little to raise awareness.
- Doubts about viability of children's autonomous rights and fears of abuse.