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Centre for Research in
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Autonomy, Rights and Children with Special Needs: A New Paradigm?

Working Paper 3

Scottish local authority survey results

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SUMMARY

The Education (Scotland) Act 2016 enhances the rights of children with additional support needs aged 12 – 15 who are deemed to have capacity, so that the rights of this group are broadly similar to those of parents and young people. This report presents the findings of a survey sent to every local authority in Scotland in November 2017. The survey sought information on how local authorities were facilitating the participation of children and young people with additional support needs and also preparing for children's extended rights. Eighteen local authorities out of thirty two completed the questionnaire, giving a response rate of 56%. The findings are summarised below.

The role of respondents

- Most respondents were the lead education officer with responsibility for ASL in their local authority. The majority of authorities did not have a separate officer with responsibility for promoting participation by children and young people with ASN.
- The majority of ASL staff had received some training regarding children/young person's participation in ASL matters.
- Most respondents felt the new legislation would lead to an increase in workload.

Reviewing ASL provision

- Just over two thirds of respondents reported that the LA consulted with children/young people regarding their ASN provision and typically did so via multiple mechanisms, such as forums, surveys and voluntary organisations.
- About a third of respondents reported that they did not consult regularly with children and young people about local provision. Reasons given for not consulting included the cost of consultation and lack of time. Some respondents acknowledged that it was a gap in provision that the LA intended to address.

Provision of advice and information

- Local authorities said that they provided advice and information about ASN via a range of methods, including forums, websites (including signposting the Enquire website), leaflets, meetings and letters. However, most of the information appeared to be aimed at parents rather than children and young people. There was no mention of dedicated advice and information aimed at children and young people.

Assessment of additional support needs

- As stated in the Code of Practice (Scottish Government, 2017, para 26, p. 25), local authorities are legally obliged to meet requests for assessment which are made by a parent, child aged 12-15 who is deemed to have capacity, or a young person, unless the request is unreasonable. They are also obliged to assess the additional support needs of all looked after children with a view to determining whether a Co-ordinated Support Plan is required. Six respondents did not know how many assessment requests were received by the local authority in the previous year. This information was not collated centrally and requests for assessment were dealt with by schools. The remaining five officers who responded to the question reported that requests for assessment varied

from less than ten to more than 100. The two local authorities reporting large numbers of assessment requests may have counted requests made to schools, as well as formal assessment requests made to the local authority.

- Four respondents reported that virtually all requests for ASN assessment made to local authorities came from parents, with very few requests from young people.
- Most respondents said that the authority sometimes or usually consulted with the child or young person when carrying out an assessment. One said the authority never consulted. The main reason for not consulting was the incapacity of the child or young person. Parental objection and potential for harming the child were also given as reasons for not consulting.
- Five respondents reported that most children and young people submitted their views when undergoing ASN assessment and three said the majority submitted evidence. Most respondents felt the process of obtaining views and evidence was worthwhile and important and should be encouraged.
- Only one respondent said that the local authority always arranged for information, advice and support to be provided to children and young people in connection with an ASN assessment. The majority of respondents said that they only did this if information, advice and support was needed or requested.
- All respondents always or usually took the views, wishes and feelings of children/young people into account when conducting an ASN assessment. If this did not happen, the main reason cited was the child or young person's incapacity.
- Similarly, all respondents always or usually took the views, wishes and feelings of children and young people into account when conducting a CSP assessment. As with ASN assessment, the primary reason for not taking the views of the child or young person into account was due to the child or young person's incapacity.

Contents of CSPs

- Only two respondents reported that they always consulted with the child or young person about the contents of the CSP. The majority of respondents said they consulted if the child or young person was deemed to have capacity.
- Most of those who responded to this question reported that young people 'hardly ever' or 'never' inform the authority of the school they would like named in their CSP.
- About half of respondents said that the child or young person's view was usually communicated via a parent or other person, rather than directly by the child or young person.
- Six respondents said that CSPs always set out the views of the child or the young person, and three said that these views were included if the child or young person was capable of expressing them. Respondents' comments indicated that obtaining children's views was important because otherwise the parents' views dominated.

Review of CSPs

- Four respondents said that the local authority always consulted with children/young people about reviewing their CSPs, and a further six said they did this if the child or

young person had capacity. One respondent said that the authority hardly ever consulted.

- Respondents reported that post-school planning involved multi-agency support and the young person's involvement in this process was actively sought by the majority of authorities.

Disagreement resolution

- Local authorities used a range of methods to make young people aware of dispute resolution possibilities, such as forums, online information, leaflets and meetings.
- Young people rarely initiated dispute resolution procedures (tribunal, adjudication, independent mediation). Nine respondents reported zero cases, one respondent said there had been 1-2 cases and another respondent said there had been 3-9 cases in the previous year.
- Only two respondents reported a small number of requests (1-2 cases) for independent mediation initiated by young people. However, eight respondents said their authority provided advocacy support for young people taking part in mediation.
- All respondents (10) said that there were no appeals against a local authority decision brought by young people in their own right in the past twelve months (even if assisted by a parent or other person).
- However, all respondents said that their authority offered advocacy support to young people making a reference to the tribunal.
- Two thirds of respondents reported that there were no problems placing the views of children and young people before the tribunal. A third of respondents said that difficulties might arise when the views of children and young people differed from those of their parents, since representing both viewpoints fairly and adequately could be difficult.

General

- The majority of respondents said that their local authority provided support for young people making the transition to future education or training, often using external organisations.
- Most respondents felt that parental involvement in young peoples' decisions was important and should be taken into consideration. However young people's views should take precedence. Authorities would aim to resolve differences in views between parents and their children using mediation, discussion and advocacy.
- Respondents felt the 2016 Act had the potential to make a real difference to the advancement of children's rights, but practical support must be given to allow children and young people the ability and confidence to realise their rights.

1. Introduction

The Education (Additional Support for Learning) (Scotland) Act 2004 has been amended by legislation passed in 2009 and 2016. The 2016 amendments are contained within the Education (Scotland) Act 2016 and their aim is to enhance children's rights, making them broadly equivalent to those of parents and young people aged 16-18. These extended rights for children between the ages of 12 and 15 were implemented on 12 January 2018. This report contains the findings of a questionnaire sent to all local authorities in Scotland. The questionnaire sought information on how local authorities were facilitating the participation of children and young people with additional support needs and also preparing for the extended rights for children. In addition, the questionnaire explored the challenges local authorities were facing in implementing the legislation.

2. Methods

The questionnaire was produced using an online survey platform. An early version of the questionnaire was piloted with one local authority contact. After revisions, an electronic link to the final version of the questionnaire was emailed to the named person with overall responsibility for ASN in each of the thirty two local authorities in Scotland. Two email reminders were sent out and the remaining non-responses were followed up by telephone calls. Eighteen local authorities completed the questionnaire, giving a response rate of 56%. Three authorities completed duplicate submissions and these responses were combined into single entries for each authority.

All of the questions in the survey were optional to answer. The results presented below contain all answers from the eighteen local authorities which completed the survey. The number of responses for each question is noted in the results.

3. Findings

The questionnaire was divided into eight sections, which focussed on:

- 1) The local authority and your role
- 2) Reviewing ASL provision
- 3) Provision of advice and information
- 4) Assessment of additional support needs
- 5) Contents of coordinated support plans
- 6) Review of coordinated support plans
- 7) Disagreement resolution; appeals and mediation
- 8) General

The results presented in this report are structured according to these section headings and are presented below.

3.1 *The local authority and your role*

The first question asked whether the respondent was the person with responsibility for ASL in their local authority and in most cases the questionnaire was completed by the lead officer.

Table 1: Is the questionnaire respondent the lead person with responsibility for ASL in their local authority?

	number	%
Yes	12	67
No	6	33
Number of responses		18

The job titles of the six respondents who were not the lead person responsible for ASL in their local authority are listed below:

- Education Support Officer for ASN
- Inclusive Education Manager
- Education Support Officer ASN
- Coordinator (Inclusion)
- Principal Educational Psychologist
- Manager of Support Team for Education

The next question asked whether there was an officer with a lead role in children's and young people's participation in ASL in the local authority. Seven local authorities reported having an officer with a lead role in children's and young people's ASL participation, and ten LAs did not have this role (**Table 2**).

Table 2: Is there an officer with a lead role in children/young person participation in ASL in your authority?

	number	%
Yes	7	41
No	10	59
Number of responses		17

The issue of training was addressed in the next question, which asked whether local authority staff with responsibility for decisions about ASL in relation to individual children and young people had received training with respect to children’s and young people’s participation. Three respondents reported no training had been given, eight reported “yes, some” and five reported ‘yes’ (**Table 3**).

Table 3: Have ASL staff received training regarding children’s/young person’s participation in ASL matters?

	number	%
Yes	5	31
Yes, some	8	50
No	3	19
Number of responses		16

In response to a question on the nature of training provided, it was reported that some training was given by external organisations (e.g. Enquire) and some was provided internally by the educational psychology or legal teams. A respondent noted:

Enquire provided training several years ago, also our Educational Psychologist has worked with us to develop our own ways of gathering views in collaboration with SALT (Speech and Language Therapy).

Training had also been given at school level, as noted in the following comments:

Training and discussion has taken place predominantly with pupil support coordinators in schools. During school improvement visits, feedback was given on the quality of plans for learners and specific action points in relation to pupil and parental voice in the setting and evaluation of targets.

And

In terms of schools, they have been given training within professional learning framework. Training was also undertaken personally, and our legal team advises on additional supports.

Other authorities noted that their training has focussed on inclusion of children and young people in meetings and ensuring their voices are being heard, although this was not specifically in connection with the new legislation:

Ongoing training – e.g. Person Centred Planning- including young people in their meetings etc. We have not yet trained around specific changes in the act.

We have prioritised solution focussed planning across our children’s services, including ASN. A core part of this approach is to ensure the voice of the child/ young person is heard and the plan responds accordingly. Though this is a work in progress.

Respondents who informed us that no training had been given were asked if any training was planned in the next 12 months. One answered 'yes', one answered 'don't know/uncertain' and one said 'no' (Error! Reference source not found.).

Table 4: Is any training for ASL staff planned in the next 12 months?

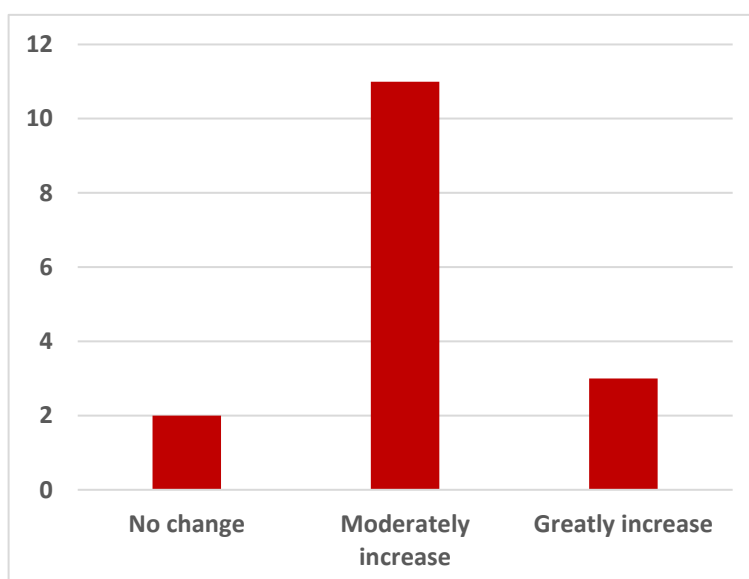
	number	%
Yes	1	33.3
Don't know	1	33.3
No	1	33.3
Number of responses		3

Respondents were then asked how the forthcoming implementation of the 2016 Act would impact on the workload of ASL staff. The majority of respondents felt their workload would increase upon the implementation of the 2016 Act. Most felt a moderate increase would occur, while three felt a great increase would happen. Two respondents thought the implementation of the 2016 Act would not lead to any increase in workload (Figure 1 and Table 5 Error! Reference source not found.).

Table 5: Impact of new legislation on local authority workload

	number	%
No change	2	12
Moderate increase	11	69
Great increase	3	19
Number of responses		16

Figure 1: Impact of new legislation on local authority workload



Respondents were offered the opportunity to comment on the impact of the 2016 Act on present or future workload. In general, respondents felt that while workload would increase, the potential impact of the Act would be beneficial in formalising work that local authorities already carry out.

For example:

We currently expect that staff ensure CYP participate in any planning around them and have quality assurance in place to monitor this. I feel the changes in the Act will help to ensure staff are more proactive in ensuring full participation and consultation

And:

The changes in engagement will be positive. We do engage children and young people, but I support the requirement on all to do this more effectively and more systematically.

A number of respondents felt the new legislation may take time to have an effect on day to day practice and they were not sure how much the new legislation would increase uptake of rights among children and young people. For example:

The implementation of the Act will require us to explain new processes to a wide range of staff. Ongoing we are not clear how significant the uptake of these new rights will be.

And

I feel it will take time to embed and we won't see too much change for some time.

Section summary

Most respondents were the lead person responsible for ASL in their local authority, but the majority of authorities did not have an officer with a lead role in children/young person participation in ASL.

- The majority of local authority ASL staff had received some training regarding children and young person's participation in ASL matters, but not necessarily in the context of the new legislation.
- Most respondents felt the new legislation would lead to an increase in workload, although they did not know the extent to which children and young people would seek to use their new rights.
- A view was expressed that the Act would formalise work which was already being undertaken in consulting children and young people, and the full impact of the legislation would not be felt for some time.

3.2 Reviewing ASL provision

The first question in this section asked whether the LA regularly consulted with children and young people with ASN when preparing and reviewing their educational, training and social care provision. Eleven respondents answered yes, five answered no (**Table 6**).

Table 6: Does the authority regularly consult with children/young people regarding their ASN provision?

	number	%
Yes	11	69
No	5	31
Number of responses	16	

The eleven local authorities who indicated that they regularly consulted with children and young people were then asked how that consultation took place. Local authorities could select multiple options. Eight authorities stated they used children and young people forums, seven authorities used surveys, five used voluntary organisations and three local authorities used local youth councils. Four local authorities selected 'other' and listed those options as 'will start own forum', 'individual reviews', 'own networks' and 'no' (**Table 7** and **Figure 2**).

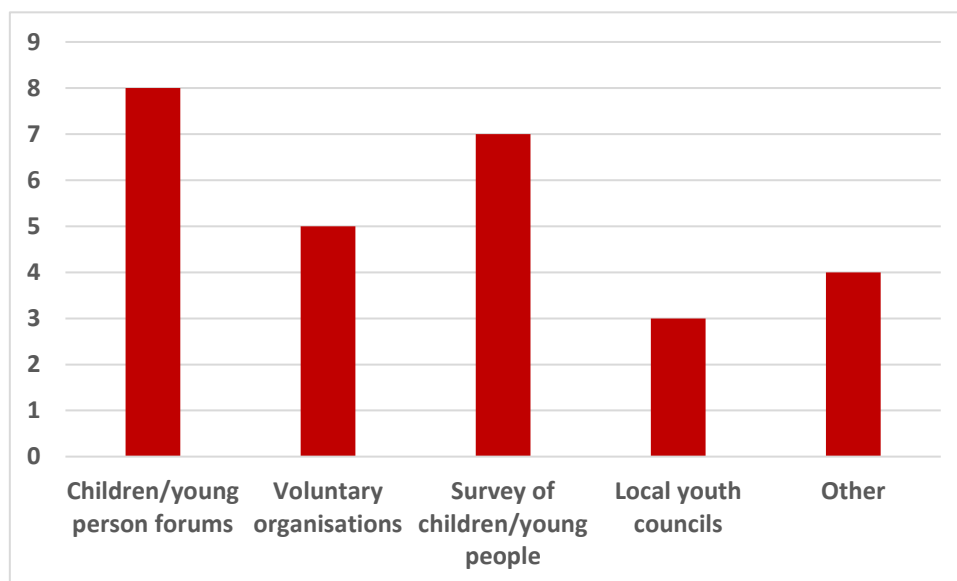
Table 7: How does the local authority consult with children/ young people?

	number	%
Children/young person forums	8	n/a
Voluntary organisations	5	
Surveys of children/young people	7	
Local youth councils	3	
Other	4	
Number of responses	11	

NB: Local authorities could choose multiple options.

The number of ways in which local authorities consulted with children and young people was equally distributed across the eleven authorities. Three LAs used a single method of consultation. Three LAs used two methods, two authorities used three and three LAs used four methods of consultation.

Figure 2: How does the consultation of children and young people take place?



NB: Local authorities could choose multiple options.

The local authorities who carried out consultation were also asked whether they felt the consultation was useful. Seven authorities answered this question and overall, they felt the consultation process was beneficial.

For example,

It is increasingly important that we continue to develop our processes of engaging with young people. We have inclusion ambassadors who attend events and we are seeking to further develop the role of young people moving ahead

And:

These consultations help inform appropriate targeted interventions.

Five local authorities reported that they did not carry out consultation with children and young people when planning provision. These authorities were asked why this consultation did not happen. One authority reported not having thought of doing it and two cited cost and time factors as reasons for not consulting. Three LAs cited other factors which were: (1) Use of external forum to consult, (2) No strategic reason but acknowledgement of a gap in provision and (3) Reported having plans to include this in ASN strategy in the near future. Four local authorities gave one reason why consultation had not taken place and one authority gave two reasons (**Table 8**).

Table 8: Why does consultation with children/young people not happen?

	number	%
Haven't thought of it	1	n/a
Cost or time factors	2	
Other	3	
Number of responses		5

NB: Local authorities could choose multiple options.

Section summary

- A majority of respondents said that children and young people were consulted about ASN provision and typically did so via multiple mechanisms, such as forums, surveys and voluntary organisations.
- The authorities which did not consult regularly either cited cost/time factors as reasons for not consulting, or acknowledged it was a gap in their provision that they intended to address.

3.3 Provision of advice and information

Respondents were asked what arrangements were made by the local authority to provide children and young people with information regarding ASL. Local authorities reported using a combination of different methods to provide information. Information was available on websites and in leaflets. Respondents referred to information which was directed specifically at parents (rather than children and young people) such as individual letters, meetings with a range of participants (e.g., teachers, ASN workers and social work staff) and events such as parent forums. Fifteen respondents answered this question. Most stated that their authorities used various forms of communication, but these were often aimed at parents rather than children

Council website – links to service provision, Integrated Children’s Plan, etc. School websites, Range of information leaflets and documentation. Individual case review meetings, Team Around the Child (TAC) meetings, One-to-one meetings: Head Teacher, Guidance/Pastoral Support Teacher, Social Work Disability Team, NHS staff, etc.

And:

We signpost Enquire on our website and also in school handbooks. We have a locally based vol. organisation called CHIP+ which provides information and support to parents/carers and young people. They partner with us in publishing local information about services. Their leaflets and publications are available in public spaces and are available on line. They also have stalls at many events run that relate to education, health and social care for children and young people.

There was no mention of materials aimed specifically at children and young people informing them of their new rights under the 2016 legislation.

Respondents were then asked how children and young people were made aware of the advice and information services on ASL provided by the local LA. Responses to this question broadly echoed the answers given to the previous question. Authorities used a variety of methods; such as information on websites, communication with schools and forums. It was highlighted that while information may be readily available, the onus is often on the child or young person (or their parents/carers) to find it:

As above, although they would need to know it is there to go and look for it. We do copy letters to children over the age of 12 where this is required e.g. exclusion letters etc. and we involve them in all meetings/planning processes that relate to them. But I would not be confident that we provide the information they require to be fully informed and aware of services that are available to them.

Section summary

- Local authorities provided advice and information to children and young people about ASN via a range of methods; specifically forums, websites, leaflets, meetings and letters.
- However, it appeared that most information was aimed at parents and carers rather than children and young people. No respondents referred to dedicated information and advice on the council website for children and young people.

3.4 Assessment of additional support needs

Local authorities were asked how many requests for ASN assessment were made to the authority in the previous twelve months, and whether their answer was an accurate number or an estimate. Two authorities gave an answer of less than ten requests, all of which were estimated numbers. One authority reported receiving 12 requests, one authority answered 200 and one answered 3,000. The remaining six authorities stated they either did not know or were unable to answer (Table 9).

Table 9: How many ASN assessment requests were made to the local authority in the past twelve months?

Q14	number	%
Unknown/unable to answer	6	55
Less than 10	2	18
less than 100	1	9
more than 100	2	18
Number of responses		11

There appeared to be some discrepancy in how local authorities viewed this question which influenced their answers. Some authorities reported on requests to the central ASN team, and were able to give an actual number. Other authorities appeared to interpret this question to include devolved or informal requests made across the authority as a whole (including requests made to schools) and either gave high numbers of requests (e.g. 3,000) or commented that they felt the question was unclear or, because of the devolved nature of assessment requests, were unable to give an answer to this question.

Local authorities were then asked what percentage of ASN assessment requests were made by parents in the previous twelve months, and asked whether their answer was an exact number or an estimate. Three authorities reported this figure was unknown, one reported that no requests were made by parents, two reported that 50% of requests were made by parents (both estimated figures), one LA reported 99% were made by parents (estimate) and three authorities reported 100% of requests were made by parents (two of which were estimates and two of which were exact numbers) (see Table 10).

Table 10: What percentage of ASN assessment requests were made to the local authority in the past twelve months were made by parents?

	number	%
Unknown/unable to answer	3	30
0%	1	10
50%	2	20
99-100%	4	40
Number of responses		10

Local authorities were then asked how many requests for assessment came directly from children or young people themselves. Nine respondents answered this question; two reported this figure was unknown, one reported a figure of 1% (an estimate) and six authorities said that no requests

for assessment from young people directly (four of which were exact figures, and two were estimates). Local authorities do not receive assessment requests directly from young people (Table 11).

Table 11: What percentage of ASN assessment requests were made to the local authority in the past twelve months were made by children/young people?

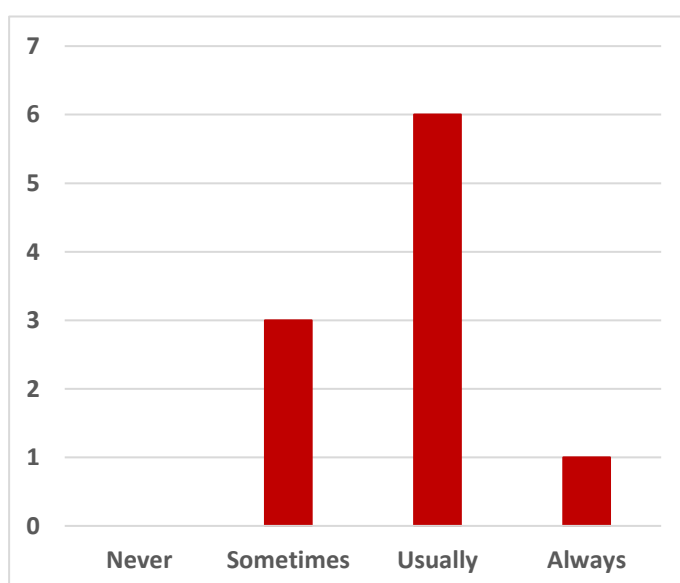
	number	%
Unknown/unable to answer	2	22
0%	6	67
1%	1	11
>1%	0	0
Number of responses	9	

The next question asked when local authorities receive a request for assessment, whether they consult with children and young people when deciding to carry out that assessment. Six respondents said they usually did, three respondents sometimes did and one respondent always did (Figure 3 and Table 12).

Table 12: Do you consult with children/young people when deciding to carry out an ASN assessment?

	number	%
Never	0	0
Sometimes	3	30
Usually	6	60
Always	1	10
Number of responses	10	

Figure 3: Do local authorities consult with young people when deciding to carry out an assessment

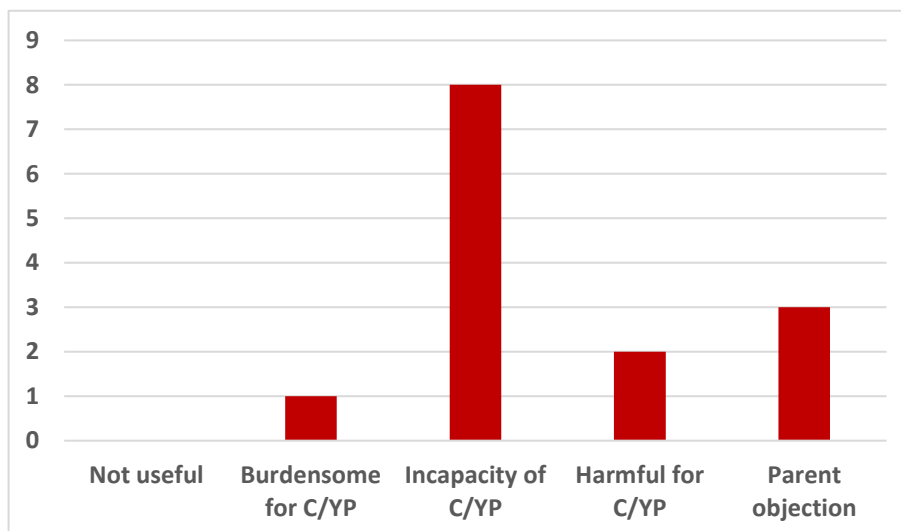


Local authorities who did not always consult with young people when deciding to assess for ASN were then asked under what circumstances consultation would not take place. The majority of respondents reported that incapacity was the most common barrier to consultation, followed by parental objection. Potential harm or burden for the child/young person were also reasons for a lack of consultation (Table 13 Table 1 and Figure 4).

Table 13: Why wouldn't consultation with child/young person take place?

	number	%
Not useful	0	n/a
Burdensome for C/YP	1	
Incapacity of C/YP	8	
Harmful to C/YP	2	
Parent objects	3	
Number of responses	9	

Figure 4: Why wouldn't consultation with child/young person take place?



NB: Respondents could choose multiple answers

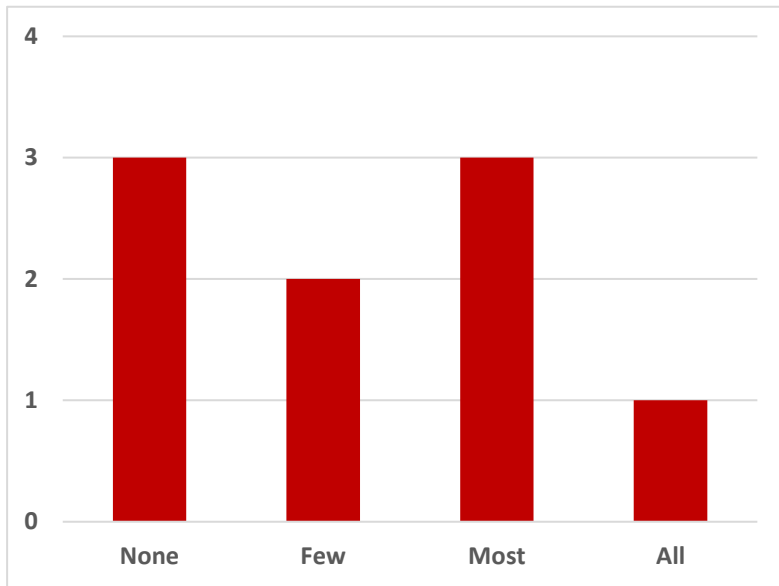
Local authorities were asked what proportion of children and young people undergoing ASN assessment submitted evidence and what proportion submitted their views. Nine respondents answered this question. Three reported that no children and young people submitted evidence when undergoing ASN assessment. Two reported that few did, three reported that most did while one LA reported that all children/young people submitted evidence (Figure 5 Error! Reference source not found. and Table 14).

Table 14: Proportion of children and young people submitting evidence when undergoing ASN assessment

	number	%
None	3	33
Few	2	22
Most	3	33
All	1	11

Number of responses	9

Figure 5: Proportion of children and young people submitting evidence when undergoing ASN assessment



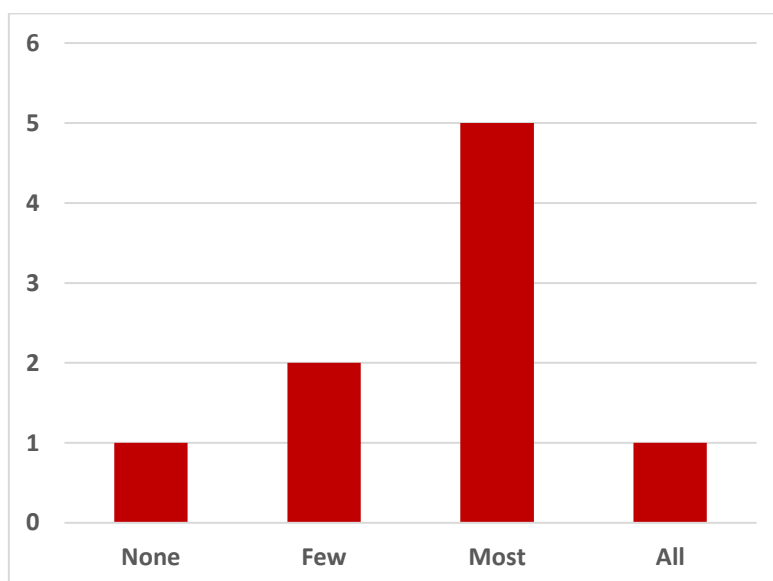
Five respondents reported that most children/young people submitted their views when undergoing ASN assessment. One authority reported none did, two reported that a few did and one reported all children/young people gave their views (Table 15 and Figure 6Error! Reference source not found.).

Based on these responses, children/young people appeared more likely to submit their views, rather than evidence, to the local authority when undergoing an ASN assessment. Seven authorities reported that most or all children/young people gave their *views*, whereas four authorities reported that most or all children children/young people provided *evidence*.

Table 15: Proportion of children and young people submitting views when undergoing ASN assessment

	number	%
None	1	11
Few	2	22
Most	5	55
All	1	11
Number of responses	9	

Figure 6: Proportion of children and young people submitting views when undergoing ASN assessment



The next question asked respondents to comment on the importance of children/ young person's views in informing ASN decisions made by the local authority. In general, respondents felt that the views of the child/young person were important, and taken into account when making decisions, for example:

Children and young people's views when submitted are key pieces of information in supporting joint decision making.

And:

I feel the child views should very much be taken into account if they have capacity and would encourage this to happen.

Respondents also commented on the possibility that parents and children/young people may hold views that are incompatible with each other, and highlighted the potential difficulties in ensuring both parties' views are suitably represented. For example:

We value the views of children and young people. The difficulty can be ensuring that the parental or adult view does not replace or negate the young person's view.

And:

The context and history of this subject is that it has been the views of the parents that has been paramount when involved in ASN assessment. Periodically it has come to light that a child or young person has views about such assessments contrary to the parents. In those circumstances the child's views hold more sway with the officers taking forward the assessment.

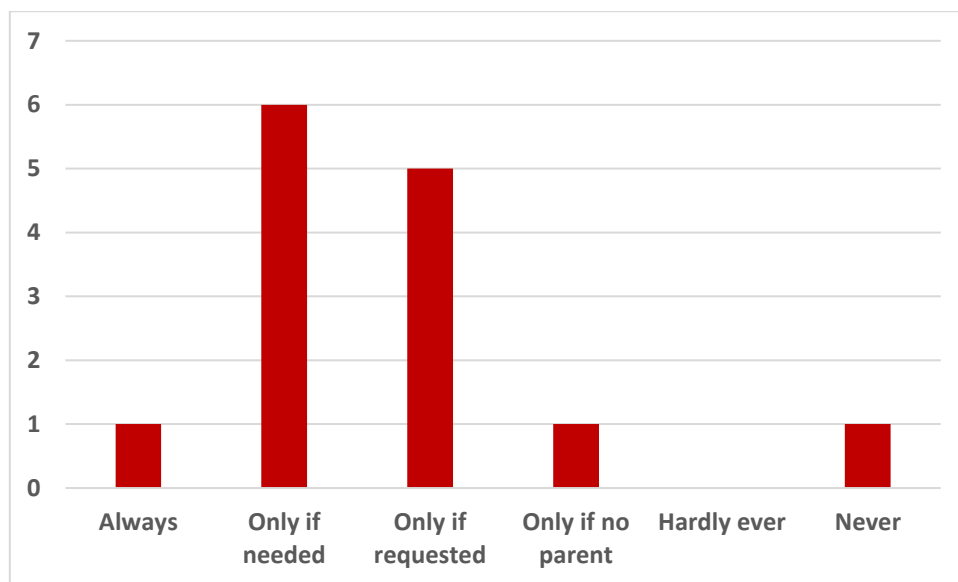
The following question asked whether local authorities arrange for information, advice and support to be provided to children/young people in connection with an ASN assessment. The majority of respondents reported that their local authorities supplies this information if needed or if requested (**Table 16** and **Figure 7**).

Table 16: Does the local authority arrange information, advice and support in relation to an ASN assessment?

	number	%
Always	1	n/a
Only if needed	6	
Only if requested	5	
Only if no parent	1	
Hardly ever	0	
Never	1	
Number of responses		10

NB: Respondents could choose multiple answers.

Figure 7: Does the local authority arrange information, advice and support in relation to an ASN assessment?



When asked whether they take children/young people’s views, wishes and feelings into account when conducting an ASN assessment, all respondents reported that they always or usually did (Table 17).

Table 17: Does the local authority take the views, wishes and feelings of children/young people into account when conducting an ASN assessment?

	number	%
Yes, always	4	60
Yes, usually	6	40
Sometimes	0	0
Never	0	0
Number of responses		10

NB: Respondents could choose multiple answers.

Child/young person incapacity was cited as a reason for not taking views into account in three cases, while parental objection or difference of opinion with parents was mentioned twice. One

respondent assumed that best practice could not be followed across all schools in their authority at all times, therefore concluding children’s/young people’s view could not always have been taken into account (Table 18).

Table 18: What circumstances would prevent the local authority from taking children/young person’s views and feelings into account when carrying out an ASN assessment?

	number	%
Wouldn’t be useful	0	n/a
Burdensome for C/YP	0	
Harmful for C/YP	0	
C/YP incapacity	3	
Parent objects	1	
Time/resource constraints	0	
Other	2	
Number of responses		5

NB: Respondents could choose multiple answers.

Respondents were asked whether they ascertain the views, wishes and feelings of children/young people when carrying out a CSP assessment. Local authorities did so whenever possible. Five authorities stated they always sought this information and six authorities did so if the child/young person was capable (Table 19).

Table 19: Does the local authority seek to ascertain the views of the child/young person when carrying out a CSP assessment?

	number	%
Always	5	45
Only if C/YP capable	6	55
Only if parent agrees	0	
Hardly ever	0	
Never	0	
Number of responses		11

Following on from the previous question, local authorities were asked how they ascertained the views of the child/young person. A common approach was via discussion with a trusted adult. For example, one respondent reported:

Have a template to seek views. Someone who knows child well meets with them & takes them through the process and gathers their views

And:

During the establishment of a CSP the views of a child /young person will be sought. This is usually by a 1:1 discussion with a trusted adult e.g. their Learning Support teacher and then brought to the meeting and either the young person or a supporter will share the views. Sometimes the parent will support the child to share their views at the meeting. Less often the child / young person will undertake sharing their view entirely on their own.

Respondents noted that the method of obtaining the child/young person’s views should be appropriate to their capacity, and suggested authorities are able to adapt their approach according to the individual concerned, for example:

Various ways, depending on the capacity and communication needs of the child

And:

Through a variety of ways which are appropriate to the individual.

Local authorities were asked whether they took the views, wishes and feelings of children/young people into account when carrying out a CSP assessment. There were eleven responses to this question. Five respondents stated the authority always did so and six said they usually would do so (Table 20).

Table 20: Does the local authority seek to ascertain the views, wishes and feelings of the child/young person when carrying out a CSP assessment?

	number	%
Always	5	45
Usually	6	55
Sometimes	0	0
Never	0	0
Number of responses		11

The six local authorities who did not *always* take children’s/young people’s views, wishes and feelings into account were asked what under what circumstances they did not do this. Five authorities cited child/young person’s incapacity as a reason, and one authority gave incapacity, parental objections and risk of harm to the child/young person as reasons to avoid taking their views, wishes and feelings into account (Table 21).

Table 21: Under what circumstances would the local authority not seek the views, wishes and feelings of a child/young person when conducting a CSP assessment?

	number	%
Wouldn’t be useful	0	n/a
Burdensome for C/YP	0	
Harmful for C/YP	1	
C/YP incapacity	5	
Parent objects	1	
Time/resource constraints	0	
Other	0	
Number of responses		6

NB: Respondents could choose multiple answers.

Section summary

- Local authorities gave different answers to the question about ASN assessments depending on their understanding of the question. The majority did not know or reported very low numbers of requests for assessment. One authority stated that 3000 requests for assessment were received in the past 12 months, probably referring to requests to schools. One authority said that requests for assessment were devolved to schools.
- The majority of requests for ASN assessment made to local authorities came from parents, with virtually zero requests coming directly from young people.
- The majority of local authorities consulted with children and young people with regard to carrying out an ASN assessment. When authorities did not do this, incapacity of the child/young person was the primary reason for not consulting, followed by parental objection and potential for harming the child.
- The majority of children/young people (two thirds of respondents reported 'most' or 'all') submitted their views to the local authority when undergoing ASN assessment, but fewer children/young people (44% of LAs reported 'most' or 'all') submitted evidence. The majority of respondents felt the process of obtaining views and evidence was worthwhile and important and should be encouraged.
- The majority of local authorities arranged for information, advice and support to be provided to children/young people in connection with an ASN assessment **only** when needed or requested.
- All respondents always or usually took the views, wishes and feelings of children/young people into account when conducting an ASN assessment. If this did not happen, the main reason cited was child/young person's incapacity.
- Similarly, all respondents always or usually took the views, wishes and feelings of children/young people into account when conducting a CSP assessment. As with ASN assessment, the primary reason for not taking the views of the child or young person into account was due to the child/young person's incapacity.

3.5 Contents of CSPs

Local authorities were asked whether children/young people were consulted about the content of their CSP. Capacity of the child/young person was the primary factor in deciding whether consultation takes place. Of the eleven respondents, two reported always consulting with children/young people and nine reported consulting only if the child/young person was considered capable (Table 22).

Table 22: Are children/young people consulted about the contents of their CSP?

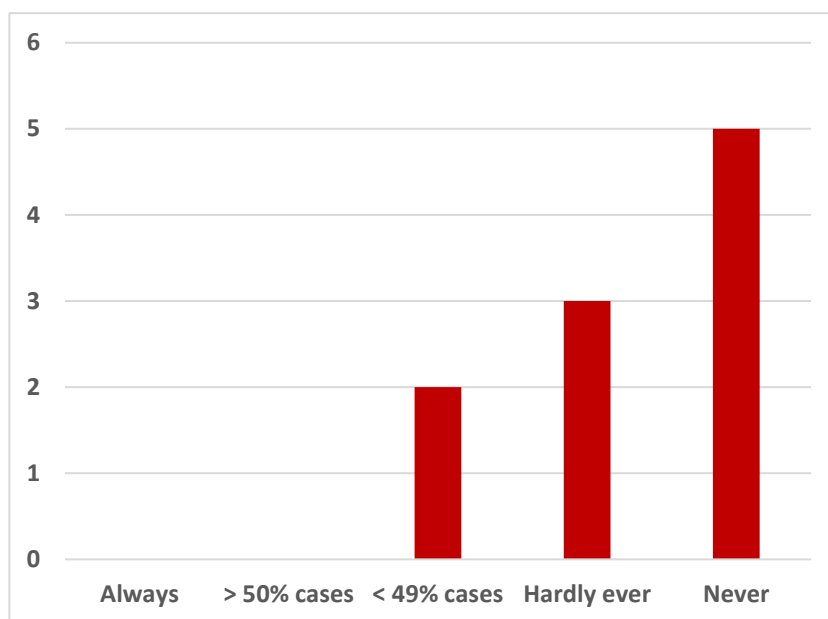
	number	%
Always	2	18
Only if deemed capable	9	82
Only if parent agrees	0	
Only if time/resources allow	0	
Hardly ever	0	
Never	0	
Number of responses		11

Young people rarely provided the local authority with the name of a school they would like named in their CSP. When asked, two respondents said this happened in less than half of cases, three authorities reported this hardly ever happened and five authorities stated this never happened (Figure 8 and Table 23).

Table 23: How often do young people inform the authority of the school they would like named in their CSP?

	number	%
Always	0	0
In at least 50% of cases	0	0
less than 49% of cases	2	20
Hardly ever	3	30
Never	5	50
Number of responses		10

Figure 8: How often do young people inform the authority of the school they would like named in their CSP?

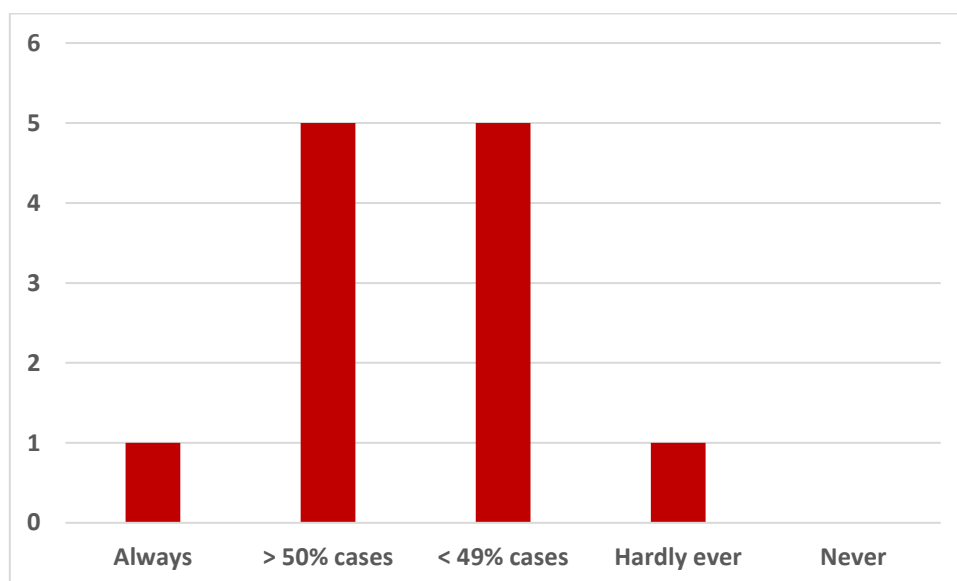


Local authorities were then asked how often a child or young person’s views were communicated via a parent, or person other than themselves. For a number of authorities, this happened frequently; four authorities reporting that this occurred in at least 50% of cases, and five authorities stating this happened in less than 49% of cases. One respondent said that another person always gave the views of the child/young person and one respondent said this hardly ever happened (Table 24 and Figure 9).

Table 24: How often is the child/young person’s view communicated via a parent or other person rather than directly by the child/young person himself or herself?

	number	%
Always	1	9
In at least 50% of cases	4	36
less than 49% of cases	5	45
Hardly ever	1	9
Never	0	0
Number of responses		11

Figure 9: How often is the child/young person’s view communicated via a parent or other person rather than directly by the child/young person himself or herself?



Decisions made by local authorities regarding CSPs are likely to involve discussion with children, young people and parents. Authorities were asked to comment below on any problems they encountered in ensuring that it is the child or young person’s independent voice that is heard and acted upon. Two main issues were raised. One issue was the capacity of the child to express their views. For example:

Sometimes it is difficult to get a young person’s views due to capacity but we are trying hard to develop resources to help this.

The second issue was how the views of the child and the parent might be interpreted and given precedence by the local authority. In situations where the capacity of the child causes difficulties in conveying their views, parents were often asked to provide a view on behalf of the child, as highlighted by the following respondents:

Those children with significant LD or language difficulties do find it hard to communicate their views fully and this can present challenges for staff less skilled at engaging with this type of pupil. In such cases, I am sure that some HTs will simply ask the parents what they think their child would want. This does give the balance of power over to the parent and so it is even more important that the Local Authority is cognisant of the effects of any decision on the child.

Parent views tend to be more to the forefront of this part of the planning process particularly with younger children and those with more severe and complex needs.

It is always a challenge to get the views of the child from the views of the parent. To ensure it is the child's needs that are being met.

Respondents reported situations in which parents may prevent the local authority obtaining the view of the child, for example:

Parents sometimes refuse us the opportunity to seek the views of the child on the basis that they do not have the capacity to answer.

When asked how routinely local authorities included the child or young person’s views in their CSPs, six local authorities reported always doing this. Three authorities would include views if the

child/young person was considered capable and two authorities reported that the views of the child/young person were not always ascertained or communicated (Error! Reference source not found.).

Table 25: How routinely do CSPs set out the view of the child/young person?

	number	%
Always included	6	55
Only if C/YP capable	3	27
Only if parent agrees	0	0
Views not always obtained	2	18
Hardly ever or never	0	0
Number of responses		11

When asked to indicate the kinds of barriers or difficulties that have prevented or hindered the inclusion of such views in CSPs, respondents mentioned parental views, communication difficulties or non-participation as factors.

Age and level of understanding of child. Language or learning difficulty. Often children do not seem to be aware of the assessment going on, however staff are asked to always make an inference of how content a child seems in a particular environment, or whether they are experiencing any situations that cause them distress. Although sometimes the view may therefore be by proxy, by saying that we should ALWAYS gather their views, there is no prior judgement as to whether the c/yp has the capacity to give one. If it was 'only when capable' as a rule, some staff would deem a child incapable and wouldn't even try to have the conversation.

Section summary

- Capacity of the child/young person is the key determinant of whether they are consulted about the contents of their CSP. Less than a fifth of LAs consult all the time, while four fifths do so if the child/young person is deemed capable.
- More than three quarters of respondents reported that young people 'hardly ever' or 'never' inform the authority of the school they would like named in their CSP.
- There was considerable variation in the extent to which the parent or other person conveyed the child's view. In almost half of LAs, this happened more than 50% of the time, while in slightly over half of LAs, this happened less than 50% of the time. Local authorities acknowledged that while capacity issues might hinder obtaining the views of children / young people (especially language and learning difficulties), nonetheless obtaining those views was important. Over half of respondents said that their authority always did this, and just over a quarter said that the authority obtained the views of the child or young person if they were capable of expressing a view.

3.6 Review of CSPs

When asked about consulting children/young people about reviewing their CSPs, four respondents reported always doing this, six reported doing this if the child/young person was deemed capable and one respondent reported hardly ever consulting children/young people about their CSP reviews (Table 26).

Table 26: How routinely are children/young people consulted about a review of their CSP?

	number	%
Always	4	36
Only if deemed capable	6	55
Only if parent agrees	0	0
Only if time/resources allow	0	0
Hardly ever	1	9
Never	0	0
Number of responses		11

Respondents were then asked what support the LA provided to assist young people in participating in post-school transition planning. Most respondents highlighted that transition planning involved significant multi-agency involvement, for example:

Significant inter-agency working between Social Work Disability Team, Education More Choices, More Chances (MCMC) Team, Skills Development Scotland (SDS) and/or college/university transition team. Transition planning now central to school and service future development.

The transition process often begins a couple of years prior to the actual transition, and ensuring engagement from all agencies could be problematic, as noted by this respondent:

Transition planning starts 2-3 years in advance of transition with staff from adult services attending meetings and planning for next stage and getting to know new staff, provisions etc included in an enhanced plan. We have had difficulties getting all agencies to engage in this, so success is variable

It was reported that children/young people were involved in the process, for example:

Post school planning will always involve the young person who will attend the meetings and participate in the preparation for these.

And:

Close contact with the young person over a long period with pupil support teacher and other professionals involved in the team around the child.

Section summary

- The majority of authorities consulted with children/young people about reviewing their CSPs, but more than half made clear this was contingent on capacity.
- Post-school planning involved multi-agency working and the young person's involvement in this process was actively sought by the majority of authorities. Engaging with other agencies was sometimes difficult.

3.7 Disagreement resolution

Local authorities were asked to explain how young people were made aware of the authority's arrangements for the avoidance or resolution of disagreements between young people and either schools or the authority.

Most respondents reported that a number of communication methods were used, such as forums, discussions with head teachers and educational psychologists, information on websites and in handbooks. A number of respondents reported that letters were frequently used, but it appeared that this type of communication was with the parent rather than the child or young person:

This is much more tricky. Because dialogue is largely with parents, apart from the fact that the young person would receive the same letter as their parents, we would not necessarily have a further conversation with them in this regard. If parents are not happy, they would get in touch, but I have not been aware of any situation where a young person has exercised this right.

And:

The Head teacher (or person leading) should inform the child of their rights. Educational Psychologist will share this with young people. Letters to parents include their rights.

When asked about disagreement resolution over the past twelve months, authorities reported that very few cases were instigated by young people themselves. Nine local authorities reported no cases occurring in the past twelve months, one authority reported an estimated 1-2 cases in which disagreement resolution had been pursued by a young person and one authority reported an estimated 3-9 cases in which this was the case (**Table 27**).

Table 27: How many disagreement resolution cases have been pursued by young people themselves in the past twelve months?

	number	%
No cases	9	82
1-2 cases	1	9
3-9 cases	1	9
10+ cases	0	0
Don't know	0	0
Number of responses	11	

Following on from the previous question, authorities were asked how many young people had requested independent mediation in their own right (even if assisted by a parent or other person). Young people in dispute with their local authority did not typically request mediation. Nine local authorities reported receiving no mediation requests in the previous twelve months, while two authorities reported receiving an estimated 1-2 cases (**Table 28**).

Table 28: How many requests for dispute mediation have been made by young people in the past twelve months?

	number	%
No cases	9	82
1-2 cases	2	18
3-9 cases	0	0

10+ cases	0	0
Don't know	0	0
Number of responses		11

When asked about advocacy arrangements, local authorities reported they typically provided, or provided access to, advocacy support for young people who took part in mediation related to ASN disputes. Eight authorities reported providing this service while two reported that they did not. The authorities who provided advocacy typically did so via an external advocacy service, such as Kindred. One authority stated they might also use a member of staff who had a good relationship with the young person as an advocate (Table 29).

Table 29: Does the LA make arrangements to ensure that young people with learning difficulties are provided with, or have access to, advocacy support when taking part in mediation?

	number	%
Yes	8	80
No	2	20
Number of responses		10

Local authorities were asked to consider disputes which go to mediation, including where mediation is requested by the parent, and comment on the extent to which children and young people effectively participated in mediation meetings. Respondents indicated that children/young people might be involved in the mediation process to some extent, but involvement in official mediation meetings was not common. This was due to a number of factors. Often, the dispute was between the parents and the authority, as noted by this respondent:

Recent experiences has been where parents have had a disagreement with the authority and not the child. As such, the child has not been involved.

Also, parents might wish to exclude their children from the mediation process, and it was possible that the children may not be invited to attend:

Children or young people are usually involved in the mediation process when the independent mediator visits the family but rarely involved when a mediation meeting takes place between parties. I am unsure whether this is more to do with parents not wishing children to be present or a lack of specific invites to young people.

When asked how many young people have in their own right (even if assisted by a parent or other person), brought an appeal against a decision of the LA concerning an ASL/disability decision in the past twelve months, no authorities reported receiving any such appeals (Table 30).

Table 30: How many appeals against local authority ASL/disability decisions have been brought by young people in the past twelve months?

	number	%
No cases	10	100
1-2 cases	0	0
3-9 cases	0	0

10+ cases	0	0
Don't know	0	0
Number of responses	10	

Local authorities were asked if they made arrangements to ensure that young people with learning difficulties were provided with, or had access to, advocacy support when taking part in an appeal. Seven authorities answered that they did make these arrangements, or would do so if requested. Typically, authorities would use specialist staff who knew the child in question, or refer the child to external advocacy services. For example:

We would ensure that a member of staff supported that child – either an EP or someone who knows the child. This would depend on the parental view.

When asked if the local authority ever experienced any difficulties in ensuring that the views of the child/young person (or the reasons why those views could not be obtained) were placed before the tribunal, the majority of respondents answered that they did not (**Table 31**).

Table 31: Does the local authority ever experience any difficulties in ensuring that the views of the child/young person are placed before the tribunal?

	number	%
Yes	3	33
No	6	67
Number of responses	9	

Most comments centred on how the views of parents and children/young people could be fairly represented. It was acknowledged that parents could influence their child's views and parents' and children's views might differ. For example:

Most often parents provide the voice of the child at Tribunal and it is very difficult to argue against this. Even when children have made comment and give their views on something, parents will not always accept this and will generally have counter views. In my experience, parental views will most often be heard above that of the local authority and to be fair, it is seldom in our area that parents want something which is not in the best interests of their child and so this situation is not frequently experienced.

Furthermore, local authorities and parents might have different perceptions of the child's view. If going to Tribunal we are driven by parental requests. In my experience parents always express their children's views. We may also express the views of the young people and indeed these two expressions may differ. Indeed if the young person were present then that would be a third and different view. All three expressions would be valid.

Authorities were asked about disputes which go to appeal and the extent to which children and young people participate effectively in hearings. The number of tribunal references in Scotland is low, and a number of respondents said that this question was not applicable to them. One respondent replied that children would not be involved if the appeal was raised by a parent. Another respondent highlighted the difficulty that can arise if the parent's views appeared to differ from the child's, for example:

We have relatively few appeals and young people have been involved in a number. This has always been important although at times difficult - where a young person is felt to have been presenting the views of the parent and not the views they have previously expressed to school staff.

Section summary

A range of methods existed to raise awareness of dispute resolution possibilities, such as forums, online information, leaflets and meetings. However, respondents did not refer to information designed specifically for children and young people.

Young people rarely sought dispute resolution or mediation themselves. More than four fifths of respondents reported zero cases of young people pursuing dispute resolution or requesting mediation themselves over the past twelve months.

Most authorities offered advocacy to children/young people involved in mediation, but acknowledged their involvement in the formal aspects of mediation (such as official meetings between parties in dispute) was limited.

No appeals against a local authority decision were brought by young people in their own right in the past twelve months (even if assisted by a parent or other person).

All authorities offer advocacy support to young people who were going through an appeal.

A majority of respondents said that the authority did not experience problems placing the views of children/young people before the tribunal. Respondents commented that when children/young people's view differ from the views of their parents, representing both viewpoints fairly and adequately could be difficult. They also noted that difficulties might arise when the local authority's and the parent's perceptions of the child's views differed. For example, sometimes the child expressed particular views to school staff and different views at the tribunal.

3.8 General

Respondents were asked about arrangements in relation to decisions about young people’s future education or training. They were asked specifically about whether young people were provided with support from an independent skilled supporter to ensure their views were acknowledged and valued.

Eight respondents reported having arrangements in place to assist with this, while two said that such arrangements were not made. The majority of respondents mentioned the use of external bodies to facilitate this, for example:

Yes, through Kindred or maybe also Skills Development Scotland or Activity Agreements

And:

Arrangements with SDS and our own authority's specialist providers.

One respondent noted that while they gathered views at school level, independent advocacy was missing from their provision:

We tend to gather the views of young people at school level and do not provide an independent advocacy service. This is a gap in provision. It would sometimes also be helpful if the tribunal system would provide a service where someone could represent the views of c/yp, where they are not capable of doing this themselves.

Local authorities were asked to consider whether, for young people aged 16 or 17, the involvement of parents in decisions affecting them was particularly important. Of the nine respondents, seven felt involvement of parents was important, and two did not know (**Table 32**).

Table 32: Do you consider that, for young people aged 16 or 17, the involvement of parents in decisions affecting them is particularly important?

	number	%
Yes	7	78
No	0	0
Don't know	2	22
Number of responses		9

When asked to elaborate further, respondents acknowledged that while parental views were important and should always be considered, the views of the young person should be given at least equal, and ideally more, precedence. For example:

Parents are anxious for their children as they transition post-school and know their needs well and so their views are important. However, by this age, the views of their children are more important and should provide the louder of the two voices. This is where the gap in service is, for those young people who lack capacity to state their views or make a clear decision about future planning. For those young people who are capable of expressing themselves in writing, or verbally, their voice is the one that is listened to and their decisions will carry the weight, although their parents views would still be asked for as they will still be supporting their child into adulthood.

And:

Some young people are more or less independent and the involvement of the parents is therefore still important. The parent has rights in relation to the service provided by education and LAs have to work with both the young person and their parent.

Respondents were then asked how any conflict between the parent and young person's view would be resolved when the LA had to make its decision. Most respondents referred in general terms to mediation, discussion and advocacy as means of solving parent/young person conflict with regard to decisions. Two respondents made it clear that the decision of the young person would take precedence over the views of their parents, for example:

Unless the individual child/young person's capacity was an issue, the preferences of the young person would take precedence.

And:

A YP's view would always be taken into account. It would be their decision. By this stage, parents would be informed that their young person has a legal right to make decisions as appropriate.

Finally, respondents were asked to consider the extent to which the Education (Scotland) Act 2016 had the potential to make a real difference in enabling children's views to influence decision-making by local authorities.

Respondents felt the 2016 Act had the potential to make a real difference, but to realise the potential, practical support must be given to allow children and young people the ability and confidence to realise their rights. For example:

It has the potential but that has been there since 1996 Children Scotland Act. A young person needs support to express opinions particularly if they differ from those of parents

And:

I agree that the possibility is here. We need to ensure however that we don't just play lip service to this and that we really do support and empower children and young people to exercise their rights. Sometimes we confer the rights on c/yp, but they are not confident about how to exercise these rights.

And:

Potentially a big difference. The Act 'formalises' the process and will encourage children to ask for their rights and schools to more regularly ensure views are sought more often.

One respondent made specific reference to capacity and the test for wellbeing, and how those issues might influence the practical implementation of the legislation of the Act:

Depends on how the profession take forward the clauses with regard to capacity and the test of wellbeing.

When asked what specific problems in relation to children/young person's rights the 2016 Act was intended to address, respondents made reference to the separation of parents and children's rights and the current lack of children/young people using those rights:

Skilling up practitioners to be able to gather and represent the views of children who traditionally this has been difficult for. Ensuring children with ASN know their rights and have the skills to

exercise their rights. Ensuring that parents have a view, but that we are clear when their children's views take centre stage and when they have the legal right to decision making rather than their parents. Staff in local authorities need to know all of this and to support changes in practice to ensure ch/yp are empowered and engaged and have their rights met.

And:

A lack of involvement / participation of children in the decision making about themselves. Ensuring rights are extended to allow children to benefit (from the rights within the ASL Act) in the same way as young people and their parents can.

Section summary

- The majority of respondents reported that their local authorities provided support for young people making the transition to future education or training. Many used external advocacy organisations to support young people.
- More than three quarters of respondents felt that while parental involvement in young people's decisions was important and should be taken into consideration, young people's views should take precedence. Authorities would aim to resolve differences in views between parents and their children using mediation, discussion and advocacy.
- Respondents felt the 2016 Act had the potential to make a real difference, but practical support must be given to allow children and young people the ability and confidence to realise their rights.

Conclusion

Local authority respondents were broadly sympathetic to the main aim of the 2016 amendments to the ASfL legislation in terms of enhancing children's rights of participation and redress. However, they raised a number of reservations about the practicality of the legislation and the extent to which it would achieve meaningful rather than tokenistic change. While two thirds of authorities consulted with children about local ASN provision via forums, voluntary organisations and surveys, about a third did not. Similarly, advice and information was provided on ASN provision, but this was typically aimed at parents rather than children and young people.

Local authorities are legally obliged to respond to requests for ASN assessment and to determine whether a CSP is required. It was evident that most respondents did not know how many requests had been received over the past year, although the number appeared to be very small, with almost all such requests coming from parents rather than children and young people. In some cases responsibility for assessment appeared to have been devolved to school level.

Attempts were generally made to involve children and young people in ASN and CSP assessments, but lack of capacity was often given as a reason for not doing this. As a result, children and young people's views were more likely to be recorded with few providing evidence.

Children and young people appeared to have very little involvement in the various forms of dispute resolution. Even though young people have had the same rights as parents to make references to the tribunal since its inception, they do not appear to have been able to use this right to date, despite the reported availability of advocacy services. Respondents also expressed concerns that parents' views appeared to take priority over those of the LA and the child in dispute resolution. They believed that greater weight should be attached to the child or young person's view if this could be articulated.

This suggests that if the 2016 legislation is to be implemented meaningfully, major changes are needed in terms of addressing the practicalities of children's and young people's involvement. An examination of local authority websites showed that ASN information generally failed to mention the existence of the 2016 legislation and the new rights of children and young people. There is a danger that children and young people's views will not be sought because of doubts about their ability to express a meaningful view. Efforts are being made by the ASN tribunal to ensure that its procedures are accessible to children and young people. However, unless there is an increase in knowledge and awareness of all parties (children and young people, parents, local authority staff, teachers) dispute resolution mechanisms will not be used. In addition, there is a need to reinforce the duties of local authorities to assess ASN and open CSPs, because otherwise children and young people are likely to lack the additional resources required to meet their needs and the means of redress. This is particularly important at a time of major reductions in local authority funding, which have led to a decrease in ASN support staff and services (Accounts Commission, 2018).