

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

Briefing

Scottish local authority survey results

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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.

Conclusion

Local authority respondents were broadly sympathetic to the main aims 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 radical 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).

Further information

All working papers and briefings of this project **Autonomy, Rights and Children with Special Needs: A New Paradigm?** (Ref. ES/P002641/1) are available at <https://www.ed.ac.uk/education/rke/centres-groups/creid/projects/autonomy-rights-sen-asn-children> and on the website of the Centre for Research in Education Inclusion and Diversity (CREID) at the University of Edinburgh (www.creid.ed.ac.uk).

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