

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

Working Paper 8

Scottish Case Studies Analysis

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1. Introduction

Over recent years, both England and Scotland have passed legislation specifically designed to boost the rights of children and young people with special and additional support needs. Although children's rights have been extended further in Scotland than in England, the broad aim in both jurisdictions is to incorporate the principles of the United Nation Convention on the Rights of the Child (CRC) into domestic legislation. Article 12 of the CRC has particular implications for education, since it reinforces the right of every child capable of forming a view to express that view on all matters of concern to him or her. This includes the child's right to have their voice heard and respected in everyday decision-making processes and to express a view in administrative and judicial processes. 'Due regard' must be paid to these views in the light of the child's age and maturity. Table 1 illustrates the main rights accorded to children aged 12-15 with capacity under the terms of the Education (Scotland) Act 2016.

Table 1: New rights accorded to children with additional support needs in Scotland:

Right to ask local authority to: <ul style="list-style-type: none"> Find out if they have ASN Request a specific assessment Find out if they need a Co-ordinated Support Plan (CSP) Ask for a CSP to be reviewed 	Right to get information or for information to be shared: <ul style="list-style-type: none"> About their ASN Receive a copy of the CSP Be told about decisions about their rights Be asked if they are happy for information to be shared when they leave school
Right to support to have their views heard: <ul style="list-style-type: none"> Be involved in decisions about their support Access to support and advocacy to have their views heard (My Rights My Say) 	Right to be involved in resolving disagreements: <ul style="list-style-type: none"> Ask for independent adjudication Make a reference to the ASN tribunal Be asked for their views during mediation

Not included: Mediation, placing requests

The specific objectives of the research are to analyse:

- The extent to which children (defined here as those 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.

This Working Paper examines whether children's rights are being realised in practice and the extent to which the legislation has led to material changes in schools and classrooms.

2. Conceptual framework

The central conceptual focus of our research concerns the nature and extent of children's autonomous rights in the field of ASN. Across many areas of social policy, there are disagreements about the extent to which children should hold full citizenship rights. For example, O'Neill ([1988](#)) has argued that although children should be seen as rights-bearers, their vulnerability and need of adult protection makes them inherently different from adults. Whereas adults are expected to make choices and accept the consequences, children are unable to understand the future implications of choices made at an early stage in their lives, and therefore adults must always mediate children's expressed wishes with a view to determining what is in their best interests. In addition, children lack the power to use formal mechanisms to enforce their rights. For these reasons, children should not be expected to operate as fully autonomous rights-holders. O'Neill acknowledges the apparent advantages of according children full citizenship rights:

We may begin with a reminder of the appeal and importance of thinking in terms of children's rights. Children easily become victims. If they had rights, redress would be possible. Rather than being powerless in the face of neglect, abuse, molestation and mere ignorance they (like other oppressed groups) would have legitimate and (in principle) enforceable claims against others. (O'Neill, 1988, p.445)

However, rather than expecting children to ensure that their rights are met, O'Neill argues that this responsibility should lie with institutions, set up to ensure that children's rights are enforced (O'Neill, 1988, p. 445).

This type of argument tends to be characterised as paternalistic by advocates of the children's liberation movement. For example, Farson ([1974](#)) argues that children should be regarded as fully autonomous rights holders with similar status to adults. Along similar lines, Holt suggests that:

The rights, privileges, duties, responsibilities of adult citizens be made available to any young person of whatever age who wants to make use of them' (Holt, [1974, p.15](#)).

Article 12 of the UNCRC promotes a gradualist approach, so that the rights enjoyed by children are gradually increased in relation to their age and maturity. Rather than arguing that all children should have exactly the same rights, the UNCRC notes that, as children mature, the rights accorded to them should gradually increase:

States parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child' (UNCRC, 1989).

However, as noted by Archard ([2015](#)), there is an asymmetry in the treatment of children and adults. All adults, other than those who are deemed incapable, are permitted to exercise autonomous choices irrespective of whether these are wise or not. By way of contrast, children are required to demonstrate capacity in order to have their views taken into account, and in some areas (for example, voting) are judged as a group to be ineligible. By virtue of their age, adults are always in a position to make judgements about whether children's views are in accordance with their 'best interests', even if the adult's beliefs and judgements may objectively be against a child's interests. With reference to legal decision-making in health in the UK and child protection in Norway, Archard and Skivenes ([2009](#)) agree that the child's views are not authoritative, but neither should they be treated as merely consultative, as argued by Brighouse ([2003](#)).

Tisdall ([2018](#)) notes that the UNCRC has encouraged many countries to strengthen children's rights, but difficulties in implementing participation rights have frequently arisen as a result of the requirement to take account of a child's competence and capacity. In the context of family law

proceedings, she unpicks the concepts of competence and capacity, arguing that these are generally seen as inherent to the child, rather than contextual and relational. Ultimately, she argues that children's participation rights are likely to be strengthened by alternatives, such as new ideas about how to recognise and support people's legal capacity within the UN Convention on the Rights of Persons with Disabilities. Despite the strength of these arguments, our fieldwork highlights the challenges in supporting disabled children with little or no speech to participate in decision-making.

Despite the emphasis on children acquiring rights at different ages according to their degree of understanding, many developed countries still use chronological age in a somewhat arbitrary manner to determine rights and responsibilities. In the UK, for example, young people normally have the right to vote at the age of 18, but in the Scottish referendum on independence in 2014, the voting age was reduced to 16. In the opposite direction, the age of criminal responsibility in Scotland was recently changed from 8 to 12.

In other areas, subjective assessments of competence and capacity are used to decide which children can exercise their rights of participation. For example, in medical law the concept of Gillick competence is used to decide whether a child under 16 years of age is able to consent to his or her own medical treatment, without the need for parental permission. Broadly, if a child is judged to have sufficient understanding and intelligence to fully comprehend the treatment which is proposed, then parental consent may not be required for particular procedures. At the same time, the court may over-rule a child's power to consent to or refuse medical treatment. Foster (2009), in his critique of the principle of autonomy in medical ethics and law, suggests that '... autonomy flounders when it comes to the question of the treatment of and withdrawal of treatment from children' (Foster, 2009, p. 121). In the use of the best interests test, Foster argues that the law is 'appropriately paternalistic'. He explains:

The child's view of where its best interests lie should of course be ascertained, and the older the child is, the greater the weight they will have, but best interests, say the courts, are an objective matter: the child's views are pertinent but certainly not determinative (Foster, 2009, p.123).

Debates around autonomy, competence and capacity have particular resonance in the field of medical ethics because of their implications for matters of life and death. These issues are also highly relevant to other field of social decision-making, including family law (Tisdall, 2018), youth justice (Hollingsworth, 2013) and education. Children as rights-bearers are not only constructed in law, but also as users of welfare services. Since education is the principal universal service experienced by children, what happens in this domain is of great significance to wider debates about children's autonomous rights.

3. Methods

The research adopted a nested case study approach, in which children were located within specific families, schools, local authorities and national jurisdictions. The aim was to understand the way in which policy on children's rights was understood at each level and in the context of a particular set of social circumstances. Methods included semi-structured interviews, classroom observations and activities with children and young people and significant adults (parent/carers, education and social care professionals). Interview schedules and other research activities focused on eliciting the views of children, young people and significant adults' involvement in decisions on matters such as school choice, educational provision, the resolution of disagreements (especially through mediation and tribunal), curriculum and planning. The analysis of data contained in this report contrasts the views of children and young people with those of adults, as well as examining adults' views of children and young people's capacity to exercise choice, the ways in which disagreements between adults and children/young people are resolved and how children and young people's rights shape, and are shaped by, educational environments. In the following sections, our sampling rationale and methods are explained.

3.1. Selection of local authority fieldwork sites

The research team worked with three Scottish local authorities with different social and geographical profiles, ASN policies and practices reflected in patterns of identification, placement, use of statutory support plans and references to the tribunal. Our analysis of administrative data ([Carmichael & Riddell, 2018a](#)) provided us with insight into key differences in local authority policy, practice and interpretation of the legislation. As part of the LA survey ([Carmichael & Riddell, 2018b](#)), we asked LAs to indicate whether they were willing to participate in the case study stage of the research. We followed up all those indicating an interest, and eventually three agreed. The Scottish LAs which agreed to participate were geographically close to each other, but displayed significant differences with regard to the variables we wished to explore, such as use of special schools, identification rates of ASN, use of CSPs, rates of tribunal references and deprivation levels.

To understand the policy context of each authority, we synthesised administrative data pertaining to the LA, analysed relevant policy documents, examined web-sites and conducted interviews with key staff such as principal educational psychologists, senior officers and head-teachers. We were interested in exploring their views on issues relating to the identification of ASN, the use of different types on plan, funding, policies on admissions and exclusions, dispute resolution procedures and the promotion of children and young people's rights. All interviewees were asked to comment on the effectiveness of the new legislation and what the authority was doing to ensure its successful implementation. Table 2 summarises socio-economic and demographic data for the three local authorities.

Table 2: LA social and education profiles

	Sea City	Eastshire	Coalshire	Scotland
Social and Demographic (NOMIS, 2017)				
Total Population	513,000	104,100	371,400	5,425,000
Type of LA	Urban	Accessible rural	Accessible rural	N/A
Deprivation (zones in most deprived 30%)	19.8%	15.9%	30.2%	N/A
Workforce (NOMIS 2017/18)				
Economically active	72.9%	81.3%	78.1%	77.3%
In employment	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%
Education (Scottish Government 2016)				
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%	

3.2. Selection and recruitment of case study participants

Within each authority, we conducted **six case studies** of children and young people with ASN in different family/care and school contexts (**18 in total**). The original plan was to carry out 24 case studies per jurisdiction, but arranging access and conducting the fieldwork took longer than expected. The recurrence of similar themes reassured us that the completion of 18 case studies was sufficient to fulfil our research objectives. [Appendix 1](#) provides case study profiles of children and young people, while Appendix 2 summarises local authority profiles.

The purpose of the case studies was to explore factors affecting the exercise of rights of participation and redress. Methods used included semi-structured interviews and school-based observations of children and young people and significant others. The interviews focused on children and young people's accounts of their involvement in decisions on matters such as school choice, educational provision, the resolution of disagreements including mediation and tribunals, curriculum and planning. The views of children and young people were contrasted with the perspectives of adults surrounding the child, including parents, carers and teachers. We were interested in exploring adults' views of children and young people's capacity to exercise choice, the ways in which disagreements between adults and children/young people are resolved and the way in which children and young people's rights shape, and are shaped by, educational systems.

We adopted a purposive sampling strategy, drawing on the findings of the analysis of administrative data and local authority survey ([Carmichael & Riddell, 2018a, 2018b](#)). Our aim was to focus on children whose primary needs fell within the four most common overall official categories of ASN ([Riddell & Weedon, 2016](#)): (1) social, emotional and behavioural difficulties; (2) moderate learning difficulties; (3) speech, language and communication difficulties; and (4) autistic

spectrum disorder. In each authority and for each category, we wished to work with children in primary and secondary school settings. In addition to these variables, we intended the case studies to reflect diversity in terms of deprivation quintiles as measured by the Scottish Index of Multiple Deprivation (SIMD), ethnicity, gender and age. We envisaged that cases would be drawn from different types of school (LA maintained mainstream primary and secondary, LA maintained special; independent and grant aided special).

In the event, the social characteristics of our sample did not entirely reflect the original purposive framework described above. Very few children were identified as having speech, language and communication difficulties, and it appeared that this category was subsumed within the label of autistic spectrum disorder. It should be noted that there was a degree of uncertainty about the categorisation of difficulties, since in many cases no clinical assessment had been undertaken, and the categories corresponded to teachers' subjective assessments of children's needs. In addition, many children were identified as having more than one difficulty such as SEBD and ASD, and it was not possible to determine which of these might be the primary difficulty.

Given the fact that children from areas of multiple deprivation are more likely to have ASN identified than those from more advantaged neighbourhoods, there was a slight over-representation of the latter group. Learning support teachers might have been unwilling to direct us towards children with challenging behaviour, many of whom come from very deprived backgrounds. In addition, school gatekeepers were likely to steer us towards families they thought would be most willing to participate and with whom they already had a good relationship. As illustrated by the case studies, those from more advantaged backgrounds often had more open lines of communication with school than others.

With regard to ethnicity, all of the cases were White British, a broad reflection of the ethnic profile of children with ASN in Scotland, once those with English as an additional language are excluded (Carmichael & Riddell, 2018a). Four of our pupil case studies were looked after/care experienced, and only two had a CSP, reflecting the declining use of statutory support plans highlighted in our analysis of official statistics.

The majority of our cases were aged 12-15 and in some type of secondary provision, mainly managed by the local authority. It was evident that the distinction between special and mainstream was becoming increasingly blurred. Most Scottish local authorities have moved away from the large free standing special school model, and most mainstream secondary schools now have special units attached to them. The children in these units may have their name on the mainstream roll and be counted as a mainstream pupil, but in practice many spend little time in mainstream classes with their peers.

We also found in Scotland that there was no neat division between special and mainstream settings. The majority of case study children were located in a special unit attached to mainstream. Some children spent most of their time in mainstream but used the special unit as sources of support throughout the school day. In other cases, there was little or no contact between the special unit and the mainstream school, even though the child might have his or her name on the mainstream roll. Different terminology was used to refer to the unit in different authorities, for example, they were sometimes referred to as Departments of Additional Support, Support Bases or Hubs.

Table 3: Case study participant profiles Scotland

	Sea City	Eastshire	Coalshire	Number of cases
GENDER				
Male	3	4	5	12
Female	3	2	1	6
ETHNICITY				
White British	6	6	6	18
AGE				
Primary 5-11	4	2	0	6
Secondary 12-15	1	4	5	10
16-24	1	0	1	2
ASN				
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
LAC	2	1	1	4
CSP	1		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.

Table 4: Family data

	Sea City	Eastshire	Coalshire	Number of cases
SIMD quintile				
Unknown	2 (LAC)	1 (LAC)	0	3
1	0	0	1	1
2	0	1	1	2
3	1	1	0	2
4	0	2	1	3
5	3	1	3	7
Family Composition				
Lone parent	0	3	0	3
Two parents	4	2	6	12
Kinship Care	0	1	0	1
Looked after	2	0	0	2
Parent/Carer Occupation				
1-3: Professional/managerial	2	3	3	8
4-5: Admin./skilled trade	0	1	0	1
6-7: Sales/service	0	0	0	0
8-9: Manual	1	1	2	4
Unemployed	1	0	0	1
Unknown	2	1	1	4

Table 5: 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 (funded through social work Self Directed Support)	1	0	0	1

Table 6: Number of cases by governance

	Sea City	Eastshire	Coalshire	Total no of cases
LA Mainstream	2	1	2	5
LA special unit within mainstream	0	5	3	8
LA Special	1	0	0	1
Grant aided special	2	0	0	2
Independent special	0	0	1	1
Post-16 unit (funded through social work Self Directed Support)	1	0	0	1

3.3. Case study research activities

Within each of the case studies, we interviewed the child or young person, their parents/carers and up to two significant others, such as a teacher, classroom assistant, speech and language therapist or social worker. The interviews with children/young people were generally conducted in school, and parents/carers were interviewed in the home, at school or in another setting chosen by the adult. All participants were given information about the project and consent was obtained.

In order to understand the way in which the school environment supports the rights of children and young people with ASN, we undertook at least half a day's classroom observation per child/young person (subject to permission), as well as interviews and other activities. The methods we used were participatory, non-intimidating and responsive to the particular child or young person's age, type of difficulty and learning environment. In addition to semi-structured interviews and less formal chats, children's pictures were used as a way into a conversation about their degree of participation in school life and educational decisions. In relation to children and young people with little or no speech, it was necessary to rely on observation and discussion with teachers and classroom assistants.

Once the fieldwork was complete, we developed a series of headings incorporating the emergent themes and each case was written up under these headings. Subsequently, a horizontal analysis was carried out, exploring themes across cases, while also presenting short vignettes which are intended to retain a sense of the integrity and specificity of each case. In the following section, we provide an overview of each local authority based on an analysis of administrative data, policy documents and interviews with key informants.

4. Findings

Initial thematic analysis of the case studies identified a range of significant factors influential to children and young people's autonomy in ASN decision-making in a range of contexts. The analysis presented in this report is structured according to the following key themes:

- Individual factors affecting children and young people's ability to participate
- Family relationships and dynamics
- Cultural awareness, resources and knowledge of rights
- External sources of support
- Enabling environments
- Children and young people's experiences of collective participation

4.1. Individual factors affecting children and young people's ability to participate

Summary

- Major challenges arose in supporting educational participation by children with complex difficulties irrespective of their age.
- Children with little or no speech, many of whom had a diagnosis of ASD, were least likely to be involved.
- Interpretation of preferences and feelings was always inflected by the adults around the child.
- Children who were capable of articulating their views verbally, irrespective of age, were much more likely to have these taken into account and acted on.
- Children with confident personalities were also much more able to play an active part in mundane and higher level decisions
- Effective parental advocacy was critical in ensuring children's voices were heard and acted upon.

4.1.1. Difficulties in making choices

Specific challenges arose for practitioners in accessing the views of children with complex needs. For example, Catherine is a seven year old girl with complex learning disabilities, sensory impairments and cerebral palsy. She also has respiratory problems and difficulty swallowing food. She is described by her mother as 'vocal but not verbal', and uses about three different sounds to communicate. The speech therapy team at her special school is working with her to extend her vocal range. At school she generally uses a wheelchair, but at home she can move around in a seating frame. She does not interact much with the other children, but shows some response to song signifiers.

Although highly critical of outside school support and wider social exclusion, Catherine's mother is very positive about the school and the intensive communication environment which it offers. Teaching and therapy are geared towards helping Catherine to communicate so that she can exercise as much agency as possible. Staff in the school also believe that children are being given choices 'in everything possible':

We're giving them choices in everything possible. Giving them the right to experience the world. So we take them out into the community, we bring the community in. They participate in the

things like recycling and beautification and stuff like that. They ... they have a right to me to reach their potential. And so we do everything that we can for them to reach their potential in every way physically, cognitively, emotionally, socially, everything. So I think the school does a really good job of ensuring that that the child is getting as much access and as much empowerment, as much choice, as much of life as they can. (Catherine's teacher)

Despite the desire to engage children as much as possible in everyday decisions, staff are aware of the challenges in moving beyond simple binary choices:

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, you know, they'll choose, that kinda thing. (Catherine's teacher)

Catherine's class teacher believes that in the school, children are involved in shaping their education by indicating their likes and dislikes non-verbally:

I think they're indirectly involved. Well directly and indirectly. So directly by making, the choices that they make throughout the day and the way that they demonstrate themselves and what we notice that they like and showing us what they like and things like that. And then indirectly by, when I'm writing the plans or developing the lesson, I have to draw on that so they actually influence everything that we do if, you know, if I'm being an observant and conscientious teacher. I have to pull all of those factors in. So yeah I think they do, they might not be aware that they're doing it but they do influence what we're doing and how we do it. (Catherine's teacher)

However, there are major challenges in facilitating meaningful participation:

Catherine is seven years old but functions on a six to nine month old level according to the documents that I've read. I know, maybe her primary condition is cerebral palsy but I think there are some other issues that go along with that. She doesn't talk. She makes, well she vocalises but the sounds don't appear to mean anything except for a few. She'll do [makes noise] to say hello. And other sounds just don't appear to mean anything. So she's not walking. Also she has very little muscular stature so she's very baby like. So she's not able to do much as far as six year old would go. She can use some communication devices like tapping a Big Mac but she doesn't appear to know what that means either. She just knows that, 'If I hit that there, a sound comes out of it'. Speech and language have worked with her on trying to get her to understand that when you touch that something will then happen. And if you want that to happen again you touch it again but she just appears to just hit it because it's there. And that's one of the motions that she has, the banging and things like that. So she doesn't know how to play. So we've worked really hard trying to get her to play. So she's just a little tiny baby in a kid's body and she's got quite a small body as well compared to the other children in the classroom who are the same age. (Catherine's teacher)

The head teacher believes that staff development work is needed in involving children with non-verbal communication in educational planning. In the section of the IEP and other plans on the child's views, she notes that staff generally write 'not applicable'. She believes that more work could be done in accessing children's views, but acknowledges the challenges in interpreting non-verbal forms of communication.

In the case of Holly, a vocal fourteen year old with ASD, school staff believe that her anxieties and phobias made it difficult for her to participate and make choices without the support provided by the special unit:

Holly is a very bright vivacious young girl. She has amazing potential. She's a sponge for knowledge but she has difficulties and challenges linked to autism and a lot of anxieties linked to that as well which impinge her learning and her social ability to interact with her peers to flourish in ways without support that other youngsters her age would find a lot less challenging. (Class teacher)

4.1.2. Degrees of confidence

The child's confidence and support, irrespective of age, was also an important factor, as illustrated by Sally, a six year old with physical difficulties educated in a mainstream primary school. Sally has a small wooden wheelchair which is used to push her round the school by other children, although they are told to ask her permission before she is moved so that she has a greater sense of agency. She also has a standing frame which she uses at break time to move quickly round the playground. Sally is well integrated into the class and has a close friend, whose party she recently attended. She has a classroom assistant with her in the morning, who helps her with standing up exercises and accompanies her to the toilet. However, this arrangement is being reviewed by the local authority, and Sally's views are being sought on how much physical help she needs. Sally requests to be interviewed with two friends because she does not want to be identified as different.

Sally happily joins in all classroom activities, sitting at a table with her three close friends. All activities are teacher led and structured, but the children make choices throughout the day. For example, during an art activity, children choose the fruit they want to use to make patterns on a gingerbread house. The best bit about school in her view is that 'We get to choose what we want to play with at playtime'. Her Dad explains that Sally is an active agent in negotiating classroom relationships and setting boundaries, particularly with other pupils:

They're really good people. The kids are quite helpful. Some a' them treat her, they don't know how to treat her, they treat her like she's maybe a wee bit younger than she is. And she picks up on that but I think that's just kids not knowing how tae deal with a situation. (Sally's Dad)

The classroom assistant agrees with the view that the other children are sometimes too keen to help, and this could have an infantilising effect:

She has her friends that she plays with. But also in the class, they're all wanting to help, they're all keen to help Sally. We have to kind of sometimes pull that in because they're all too keen to help. (Sally's classroom assistant)

Ruth, an S3 pupil (aged 14) with a diagnosis of ASD, provides another example of a young person whose confidence has grown during her time at secondary school. When Ruth started secondary, she often found it impossible to deal with the noise and tension of classroom life. As a result, she would run away, either hiding under the stairs or phoning her Mum to come and get her. She sometimes left the school entirely, causing huge consternation because of self-harming behaviour. Now, Ruth explains, with the help of the school and her Mum, she is learning new coping strategies. If she finds a lesson overwhelming, she has a classroom pass, which allows her to go to the Department for Additional Support for some time out:

Some people who go down there are down there because they misbehave and they swear a lot. But then there's like others like who can't like cope with classes. And then if I'm really upset they have like a tent in one of the DAS classrooms and then I can just sit in there. (Ruth)

Ruth participates in most mainstream classes and decides when she needs the support of a classroom assistant. She has a strong sense of her own abilities and achievements:

In the recent tests I've had, I've got National 5 in German and an A, an A in biology. In National 4 in Spanish which is as high as you can get, A in Spanish and B in history which was the highest mark in the class. And then English I'm really good, I'm gonna get National 5 in that. And it's just maths when I do tests, I kinda black out. But I can do the work, I'm like the head of the class. (Ruth)

In terms of her future, Ruth is ambitious and says she would like to go to university and have a well-paid job:

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)

Ruth's mother believes that the school has been 'absolutely brilliant', allowing her daughter to develop her talents in a flexible learning environment. Ruth's ability to cope in a busy secondary school environment is contingent on knowing that she can retreat to a calm place when she needs to, and both her mother and the Head of the DAS have been responsive to Ruth's expressed wishes.

4.2. Family relationships and dynamics

- In general, parents believed that they were best able to determine what was in their child's best interests.
- For this reason, parents believed that they had the main responsibility to make important educational decisions on behalf of their child in matters such as school choice and post-school transitions.
- However, parents sought the consent of the child or young person when they believed this was possible and when the success of an educational or post-school placement depended on the young person's acceptance and co-operation.
- They also believed that children should be involved as much as possible in routine decisions on classroom practices, curriculum and pedagogy.
- Looked after/care experienced children had difficulties in being involved in major educational decisions as a result of lacking parental support.
- Parents and carers supported children's agency by involving them in decisions at home or in care settings. They recognised the importance of constructing an environment to maximise participation in domestic and wider social life.
- Sometimes parents were appointed as legal guardians to safeguard their child's future interests.

4.2.1 Parental involvement in school choice

Parents often took decisions on their child's behalf when they believed that this was in the child's best interests, particularly in relation to school choice. However, as illustrated by the case of Laurie, children's consent was sought after the main decision had been made by adults in light of their assessment of the child's best interests. Laurie is described as a quiet 15 year old boy, who experiences high levels of anxiety, but has become increasingly confident while he has been at a residential special school. His family run their own financial services business. His mother describes him as a caring and considerate boy with high levels of anxiety. Laurie had a very unsettled school career during primary and early secondary school, with long periods of non-attendance.

Laurie's parents identified a residential special school as the best option before broaching the subject with their son, who was at first deeply opposed to the idea of living away from home. He was eventually persuaded to go for a visit, and gradually decided that he would 'give it a go'. Laurie's mother realised he was settling in when he left some of his belongings at the school, only bringing a few things home at the weekend. Despite his initial uncertainty, Laurie's mother says he has settled into the school really well and is much happier.

Laurie explains that he was initially very unhappy with the idea of living away from home:

Well I came here in November. 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)

Laurie's key worker agrees that it was initially a decision made by Laurie's parents on his behalf. However, the school insists on a trial period and would not persuade them to stay against their wishes:

Well Laurie told me that he particularly didn't want to come here and it was at his parents' insistence. And he wasn't very keen cause it was November when he came or something but he says he likes it now and he thinks it's going to be good for his education. ... Laurie knows that it's positive for him and he's doing well in respect of he's came over the hurdle of getting here. He's learning, he's listening to instruction, he's taking part. ... So it doesn't matter if they like it or not, they get to try it and if they like it they can take it further. If they don't, it doesn't matter, they can move on to something else. (Laurie's key worker)

Although Laurie recognises that the decision to change school was made by his parents, he feels that he was eventually included in the process:

Yeah so apparently my mum and dad, this was in October, so they told me, they told me about this school and when I finally agreed to it they told me that they've actually been looking at the school for three years. So yeah so ...they've been discussing about this for quite a while now. And it was only October, last October that I found out about it. And yeah they told me that I'm gonna be staying there and that was like a big worry for me. Like I didn't wanna stay at a different school, like a boarding school. I didn't wanna wake up in a different building miles away from home. But obviously as time went on I started to think about how well my education would be and how well ... like my future would probably be. So yeah I decided to give it a go ... (Laurie)

He also recognised that his previous school had not worked for him:

... at my old school I used to not go to school for a while. I used tae want to stay at home. I used to be really lazy and just stay in bed all week and I never wanted to go to school again. And I always ... I always wanted to ... like stay in the house. But my mum always told me to think, to try something. And, and ... yeah so as I said I really didn't wanna come here for a long time but then ... you know, they showed me what it's like. I had to take I think about three visits before I started coming here. And I think ... yeah I made the right decision. (Laurie)

Children did not necessarily resent the fact that parents investigated possible school placements without the young person's agreement. For example, at the start of secondary school Ruth's mother was so concerned about her daughter's well-being that she looked into the possibility of obtaining a place in a residential special school as a weekly boarder. At the time, Ruth was unaware that other school options were being considered, but was not particularly concerned that this option was initially considered without her involvement:

[My Mum and Dad] wanted to send me to, in first year cause I wasn't like...coping so well. They wanted to send me to a different school. I don't remember what it's called, it's pretty far away. It's like a boarding school and they wanted to send me there. And I'd probably get a time for music or something because it'd have like good programmes – but I've settled in here.

How did you feel about going to a boarding school?

Well I don't know, my mum didn't tell me until after I'd settled in [here]. But I wouldn't have minded because it was like an optional boarding school. So you could have been there for the week and then come back on the weekend. (Ruth)

4.2.2. Parental involvement in decisions on health and well-being

Parents were also often closely involved in decisions on safety and well-being. This was exemplified in the case of Jeannette, a young woman of 22 who lives with her parents while attending a post-16 transition unit. The family lives in a relatively affluent and recently constructed housing estate on the city outskirts. Jeannette's father is managing director of a business, while her mother is a home maker. Jeannette has a diagnosis of ASD and learning disabilities. She attended mainstream primary and then moved on to a special school for her secondary education. Subsequently she completed a three year residential life skills course at college before returning home to begin the four year lifelong learning programme. Jeannette's parents are her legal guardians and manage her benefits. They ensure that she has enough money to cover personal expenses, but feel that she does not have the financial acumen to manage her own financial affairs.

The parents' decision to become legal guardians arose as a result of a trip to the dentist when Jeannette was 15. Her mother was informed that she did not have the right to request a particular dental procedure on her daughter's behalf:

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'. I said, 'No you'll not'. I said, 'It'll be a white filling'. And she said, 'blah, blah, blah'. And then, she explained why she said a metal filling. It was the fact that it would be stronger and obviously Jeannette didnae need tae go through it again. And I said, 'No'. I said, 'If it was another child that didn't have a learning disability they would have a white filling in and they would refill it when you needed to fill it. 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)

At this point, Jeannette's parents decided that the only way to protect her best interests was to seek legal guardianship under the terms of the Adults with Incapacity (Scotland) Act 2000, which creates provisions for protecting the welfare of adults who are unable to make decisions for themselves as a result of a mental disorder or an inability to communicate. Decisions may be made in relation to matters such as arranging services, managing finances and property and medical treatment. At the post-16 unit, Jeannette's parents intervened if they felt she was being given too much freedom to cross roads by herself on the way to the shops, and they also supervised her relationship with her boyfriend.

4.2.3. Parental involvement in decisions on post-school transitions

Parents were often closely involved in decisions on post-school transitions. For example, Alan's parents encouraged their seventeen year old son to attend a careers interview on his own. However, they intervened when it was suggested that he enrol on a special, rather than a mainstream, college course:

And when we see these things, then we think, well, there must be support for Alan to access a college course without going into a special course. And initially we were thinking that he might go into hospitality because he'd done well with his cookery, and he's doing a hospitality course linked to [name of college] at the moment. He probably told you all about that, but he's very proud of it. So, we thought if we can get him into a mainstream college, he's more like, with support, and if he needs full-time support we can apply for the Disabled Students Allowance, and then he's more likely to move on to a successful outcome. (Alan's Mum)

In the same way, Jeannette's mother engaged in a circle of support exercise, while recognising that, as her daughter's legal guardian, she would always have the final say in determining her future:

She did what's called the big plan. And basically we met over the course a' weeks, quite a few weeks and it was Jeannette and her circle. So she could bring in whoever she wanted. She could bring her mum, her dad, her granny, her friends, her neighbour, the dust-man, anybody. And we went and we did a series a' exercises and they did a big diagram, this is me and ... with big arrows coming off it and different coloured pencils. 'What do you want?' 'Oh I want to get married?' 'Oh you want to get married, where about?' 'Oh on a beach', and she'd draw the beach and she'd have her and her boyfriend and then they had a wee dog and it was a pug and it was Roxanne or something. And then there was a driving licence and there was this and there was that and there was this. And all these things. And she wanted to learn to cook and, 'Oh what are you gonnae cook?' 'Oh spaghetti bolognaise and carbonara'. So it was quite specific in terms a' something silly that you'd like to do. 'Oh I want to sing with Little Mix or Beyonce' or whoever, ...right. So she had this big plan and everything. And she used that, which I thought was a waste a' time, however it got us talking. The benefit of it is it got Jeannette talking about her next step in life in a fun way rather than in a panicky way. (Jeannette's mother)

4.2.4. Families and carers supporting autonomy in the home/residential setting

It was clear that parents and carers had an important role to play in supporting autonomy at home and in residential settings. For example, recent physical adaptations to Sally's family home facilitated her physical autonomy. A ramp had been built up to the front door, along with hand rails and widened doors. The installation of a smooth wooden floor in the living room, kitchen and a downstairs bedroom to allow Sally to propel her wheelchair throughout the house without assistance. Supportive family relationships also contributed to Sally's growing independence:

Out a' school she goes tae Rainbows on a Thursday. And she enjoys that. She enjoys the social aspect of that. She was a bit quiet to start off wi'. As, as I said before, once she's part a' the group, she loves it. I'm not sure what else. She's quite active, she likes to do things herself. She's very independent. She likes tae draw and she does, she plays a lot with her wee dolls that she's got. And at the moment she's actually copying her brothers now and she's getting intae playing the x-box [laughs]. (Sally's Dad)

Autonomy was also encouraged for children in residential settings, recognising the specific challenges in these contexts. For example, Nathalie is a 10 year old girl who is a 52 week boarder in a residential special school. She has a supervision order and is looked after by her home local authority. She would like to have more contact with her family, but at the moment this is judged to be against her best interests. Because she has little contact with her family, the home makers in the residential cottage try to create a welcoming and homely environment. Nathalie helps in the kitchen with food preparation and she has a hamster which she is encouraged to look after. The children at the school take part in adventurous activities in the school grounds, such as roasting marshmallows over a wood fire. The school manager explains the freedoms and protections which co-exist:

I think the cottage staff are amazing though as well, about being children's advocates, cause they're the ones that live with them all the time, and support them, so they're really good at sharing their voices, sharing their views, listening to them, putting things in place for them, you know. And I do think we're very forward thinking, you know, we've had one wee boy this morning stressing because his mobile phone's been taken off him, but it's only so we can put a safe network on it, so he's struggling to understand why that is. But the easy option for us would be to say, 'No, you're not getting a mobile phone' We let them walk down to the shops if we feel they're able to, in

terms of risk assessment being put in place, and we feel they're gonna be safe, and all that type of stuff, whereas it would be easy for us to say 'No, you're not going'. Self-travel, we really encourage self-travel, going to different clubs, we really encourage that, so I would say that, you know, we are really good at listening to the voices of children. (School manager, Nathalie's school)

4.2.5. The position of looked after children who lack parental advocacy

Looked after/care experienced children appeared to be extremely disadvantaged by the lack of effective parental advocacy, with the local authority or kinship carers unable to fill this gap. This is illustrated by the case of Chloe, a girl of 15 who is looked after by her grandparents and is being educated in a special unit. Chloe appears to be an intelligent, chatty girl and has been identified as having both ASD and SEBD. Chloe is in kinship care provided by her grandparents, who live in an area of multiple deprivation in a former mining town. School staff observe that Chloe's moods can be volatile and that she can be loving and caring towards her peers or hostile and aggressive. Chloe feels that her difficulties are much less severe than those of some of her class mates who have little or no speech. She was previously in a mainstream setting and does not want to be seen in the special unit by her former classmates:

I don't like the fact that I'm in a class with...very autistic, 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)

Chloe's frustration with her current situation manifests itself in challenging behaviour. For example, during the observation period she locked herself in the toilet and refused to come out, shouting and swearing at staff members. She also attempted to steal a teacher's car keys. Because Chloe's behaviour disrupts the smooth running of the school, she has assumed a 'floating role', moving between classes depending on the particular issues of the day and closely shadowed by a support worker. Chloe feels she is being educated in the wrong setting and has a deep sense of unfairness that her voice is not being heard. Her grandparents do not appear to be closely involved in the school and are not able to advocate effectively on her behalf.

To summarise, most parents made major decisions on behalf of their children, including those relating to school choice and post-school provision. At the same time, they sought to involve the child or young person as much as possible, particularly when they were aware that the success of a school placement or a transition plan depended on the child's consent. Chloe's case illustrates the lack of attention to the child's wishes when parents are not able to act as effective advocates and the child's behaviour is seen as disruptive.

4.3. Socio-cultural factors and awareness of rights

- Across the social spectrum, parents had very little knowledge and awareness of new rights accorded to children by the 2016 legislation.
- The social, cultural and economic resources available to parents from different social backgrounds varied greatly.
- Middle class parents were generally more aware of their rights but some struggled to navigate the system.
- Parents living in socially deprived areas were often acquiescent, even when dissatisfied with educational provision, because they believed their concerns would be ignored.
- Informal networks were sometimes used effectively by parents in less advantaged areas.

4.3.1. Factors affecting parents' knowledge and awareness of legal rights

As noted earlier, Laurie, from a relatively socially advantaged family, attended mainstream primary and then went to a high school with a special unit attached. He was upset by the noise and unpredictability of the other pupils and increasingly withdrew from social contact, spending most of his time alone in a room at school and in his bedroom at home. Although the school recognised they were unable to cope, they were reluctant to admit that this was the case. In light of Laurie's distress, his parents decided to make a formal placing request and a tribunal reference if necessary. The learning support teacher agreed to support their case:

We did some research and we went and visited a couple a' schools. And we visited the school a good couple a' years ago and then, and then it all kinda went a bit quiet again. And then we sat down one day and said, 'Look this isn't working. We've got an opportunity now. He's got no social interaction, he's not meeting any milestones whatsoever in terms of academic achievement therefore we need to do something about it. We basically took it into our own hands and said, 'We need to do something about it'. And at that point we really really fought wi' the region for them to accept it. And we thought, to be fair, we thought there was gonna be more of a fight because we thought [the placing request] would be rejected and we'd have to go through the lot, the courts and so on and so forth but actually we didn't... I think we could evidence [what he needed], because things had been minuted and documented right from the second year of primary ... (Laurie's father)

We could evidence that actually we've done everything that we can possibly do. We had a really, really amazing support teacher at the high school who actually when Laurie got his diagnosis was Laurie's first key worker. So we'd known her for years. And she really fought our corner in terms of, you know, the school were saying, 'Oh well, he comes across OK, he's presenting well in school. He's having conversations with adults'. And she was saying, 'He's having conversation with me, I'm in my fifties. He's not having conversations with the fourteen year olds'. And that's what Laurie really needed. (Laurie's mother)

David's parents provide another example of a middle class family who have used dispute resolution mechanisms, but still struggle to have their rights realised in practice. David's mother, a former teacher, has been very active in advocating for her son throughout his life and is one of the few parents who has used dispute resolution mechanisms. She describes a difficult situation at primary school, where the school was effectively excluding David from school trips. Because of his physical difficulties, he was not allowed to go to the top of the bus with the rest of the children, and was left to sit with the classroom assistant downstairs. There was no buddy with him and he felt left out. When David's mother went to the school to ask for things to be done differently, she was met with five teachers sitting around a meeting table who, she felt, bullied her. The school did not expect her to take any action, but she requested independent mediation. She was satisfied with the outcome in terms of improving communication and building better relationships:

I felt ... in ... P5 or it might have been P4, there were several things in that he wasn't being properly included in trips. That was a big one. If the school went out on the bus, for example, David wasn't allowed to go upstairs with all the rest of the class. And ... he wasn't given a buddy to sit downstairs with, only his learning assistant. Or ... he was put in a taxi on his own with only the learning assistant. And it was such a bad period ... we ended up using mediation to rectify things because it really went pear shaped. Mediation was good yes. They were really good. I think at the time, in fact I had a horrible meeting where the deputy had told me one thing and the head teacher reneged on it. And I had five of them and I hadn't taken anybody to the meeting with me and they really ganged up on me and it just wasn't nice. And I, I don't think they thought I would complain about it. (David's mother)

A CSP was opened for David at primary school, but, despite repeated requests, it has not been reviewed at secondary and external support from services such as occupational therapy have been discontinued. David's mother recognises that she may need to make a formal complaint to elicit some action but is reluctant to do this because she does not want her son to be victimised:

I am being very understanding at the minute and I'm allowing the school to get used to David because obviously David is a singular entity to them. They've never had anything like David before. So I'm giving them time to get to know him, for [them to organise the IEP]. And certainly they'll have a copy of the one that came from primary school. And primary school, it took them about five years to get it right in primary school. So I'm just letting things...go at the moment. The CSP, I've been in touch with the Education Authority and I need to follow it up again because it should be reviewed in October. And because it hasn't been reviewed, well it was reviewed last October, because it hasn't been updated, I'm in this grey area ... My next step though is, because I've emailed him so many times about it and he's emailed me back to the point he admitted that he hadn't done it, my next step is a complaint. And that's the only place I've got to go now. And because the school's never been involved with one before, I don't imagine, they've been very vague about it too. (David's mother)

David's mother notes that at secondary school fewer specialist services from outside agencies have been provided:

Up until ... the end of primary school, he ... was receiving blocks of physiotherapy in school. That seems to have tailed off a little bit. And speech and language were involved and should still really be involved. And ASL services, there's a ... a teacher comes in and spends an hour a week with David ... Occupational Therapy tried to discharge him and I wouldn't let them but ... they're not involved on a day to day basis which I think is wrong. (David's mother)

David appears to be the only child in the school of 1,200 pupils with a CSP (and one of the few case study pupils with a CSP) and David's mother explains that, to inform her discussions with local authority officials, she read the local authority ASN policy document, although this is not something which parents normally do:

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)

Despite her efforts to understand her legal rights, David's mother is aware that the status of the CSP is uncertain. It had not been reviewed since primary school and the learning support teacher did not know whether it was going to be updated or discontinued.

Some teachers believed that 'pushy' middle class parents enjoy an unfair advantage in advocating for their children and therefore getting better support. For example, the deputy head teacher of the special unit attended by Holly explained that children's rights were more likely to be realised when backed up by a supportive parent:

I think it's quite pronounced here but I think even in the mainstream there's a definite link between the capacity of the parents to engage with their rights and their children's capacity to engage. They're often directly linked. We sent out leaflets to the parents to make sure the parents were aware of the changes, and we've definitely, you know, tried to empower them, and we've offered them the opportunity if there's things they don't understand that we will support, we'll advocate for them too if we have to. I'm not sure how many of the people who maybe most need to exercise their rights are doing it, cause I think there tends to be a direct link with the people who are most able to do that, the biggest capacity to do that, exercising their rights, pushy parents. (Deputy head teacher, special unit)

In her view, parents of children with ASN often did not engage with the school because they felt intimidated and overwhelmed. The special unit was taking steps to try and create an environment

in which parents could support each other through events such as drop-in coffee mornings where parents could exchange information.

David's and Holly's cases contrast with the experience of case study families living in more deprived parts of Scotland, where parents frequently had little knowledge of their rights and those of their children. For example, fourteen year old Lewis lives in an area of multiple deprivation and was identified as having behavioural difficulties at primary school. He was frequently excluded from primary school and since then has had a 'flexible education' package, which means that he currently attends part-time. The learning support teacher said that there was no requirement for him to do anything educational in his time at home. She hoped that his time in school could be extended eventually, but this might require a formal diagnosis of ADHD and medical treatment for the condition:

His [flexi education] plan was reviewed in October this year. And it's in consultation with the Educational Psychologist and with mum. And the aim is to increase his time at school. However, that's not on the cards at the present moment in time. It will be reviewed in January again and that's when it, hopefully we can increase it. (Lewis' learning support teacher)

The use of flexible educational arrangements has increased in Scotland over the past decade and Scottish Government policy states that flexible packages may be used as a way of reducing school exclusions ([Scottish Government, 2017](#))¹, as long as these are carefully monitored and schools ensure that children and young people are receiving the recommended 25 hours of full time education in primary schools and 27.5 hours in secondary. There are concerns that flexi-schooling may be used to mask the failure of schools to provide adequate education for certain groups of children, particularly those with complex learning disabilities and challenging behaviour, including those with a diagnosis of autistic spectrum disorder ([Scottish Autism, 2018](#)). Lewis' mother, unlike some other parents in our case studies, did not appear unduly concerned that the local authority was failing to provide full time education for her son. She was unaware of her son's rights and had not suggested that he might need a CSP.

Also living in an area of multiple deprivation, Colin is a thirteen year old boy whose mother feels dissatisfied with the level of support, but is unable to communicate effectively with the school and eventually gives up what she considers to be an unequal struggle. At primary school, Colin's mother believes her son was left to get on with things by himself:

I think they just kinda shoved him in a corner and just left him to get on wi' it. I mean obviously he did what he could do but just like they didn't have any time for him without putting someone doon in front a' him. [He was left to] get on wi' it, without even trying tae help him eh. So no, in that side it wasn't great. (Colin's mother)

Colin's mother tried to raise concerns about the lack of support, but felt that despite numerous meetings, no progress was made:

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'. ... So I mean dinnae get me wrong, see the support staff, they were absolutely fantastic. And I quite believe if they had half the chance they'd have gave him the support that he needed. But obviously he was only allocated to like so many hours a week. And it wasn't, it wasn't one to one. It was like shared support wi' another wee boy that was in Colin's class that Colin gets on

¹ Scottish Government (2017) Included, Engaged and Involved Part 2: A Positive Approach to Preventing and Managing School Exclusions Edinburgh: Scottish Government <https://www2.gov.scot/Resource/0052/00521260.pdf>

really well wi'. But obviously I think if they had half the chance they would have gave him the support but they could only allocate him so many hours a week eh. (Colin's mother)

In contrast to the acquiescence of Lewis' and Colin's parents, Laurie's family was unwilling to accept a situation where their son was failing to receive an adequate education and used their right to make a placing request to move their son to residential special school.

Despite the general association between social class and an ability to navigate the system, there were some examples of more socially advantaged parents failing to negotiate effectively with schools. For example, Jack is a 17 year old young man from a socially advantaged background who has had a disrupted educational experience, moving between mainstream, special and home schooling. Jack has a diagnosis of ASD and does not communicate verbally. Jack's mother is a former school teacher who is not currently working outside the home, having spent the previous few years home-educating her son. She believes that her son's education and support were satisfactory when he was at mainstream primary, but problems began when he moved to a special setting:

In the mainstream it was fine, the first two years. And we had review meetings, and the ed psych was there, and he made progress and targets were made, and ... and there were termly reviews, and then when he went to a special school for primary school children. I used to go still [to the meetings] because they were quite good on the paperwork, but the paperwork was meaningless. (Jack's mother)

After two years of education in a secondary special school, Jack's mother withdrew her son on the grounds that he was making little progress. Jack was taught at home for two and a half years before moving to a special unit, which he was attending on a part-time basis at the time of the research.

There appeared to be different assessments of Jack's ability and potential by his parents and teachers. According to his mother, the school under-estimates Jack's cognitive abilities because of his communication difficulties, while his teacher feels that his mother has unrealistic expectations, leading to confusion:

His learning profile is very jagged because his mum has taught him a lot at home. He's mostly been home schooled. She feels very, very let down by the education system. People have seen him and said he's high complex needs, therefore he goes in the complex non-verbal group and she feels extremely strongly that she's been let down and as an educator it's extremely difficult to meet his needs. He's seventeen and he doesn't always want to do what he knows he wants to do. And so he can be quite evasive and he wants to do things like go on YouTube and read comics when he really, you know, sort of also wants to be studying at a higher level. I still don't know how to really get his full potential. But every week my expectations of him have risen, [partly from] having close communication with Mum. (Jack's teacher)

Well ... he told me at the end of last term he wants to study History at university. And I said, 'Is that because of you wanting to study there or is that someone else?' 'It's someone else'. 'Is that...?' 'It's mum'. And so it's a very interesting and quite delicate situation because he, with the backing of Mum, wants something quite vague and unclear which is really linked to a hope that the previous verbal Jack will re-emerge. And suddenly he'll click and he'll be, you know, speech will return to normal. And so there's a dislocation between where he is and where Mum thinks he is. And there's a dislocation between how other people have perceived him and I feel he's in the middle. He certainly needs support in every sense, in every respect, unless it's something completely routine. (Jack's teacher)

By way of contrast, Jack's mother expresses dissatisfaction with the quality of education provided, the vagueness of the curriculum and the absence of assistive technology. She feels that her son is 'bored and lonely' and that his education has been 'at the whim' of individual teachers:

One of the things that I've said over the years is my daughter, who's in mainstream, follows a curriculum, whereas my son has been totally at the whim of the teacher. [A particular teacher] decided he didn't have the cognitive ability, she didn't teach him to read, she didn't believe in computers, they didn't have an interactive whiteboard in their classroom when every other child in Scotland would've had an interactive whiteboard. She didn't believe in technology, but to somebody who has the significant physical difficulties that Jack does, actually the iPad was a total revelation in that he could do things. And I think he was about nine maybe, I put things on for her sister who's three years younger, simple spelling things, and he could spell, he could do them, and he hadn't done any of that sort of stuff since, in the mainstream. And I went in to them and said, 'He can do this, you know, he needs to be learning to read'. (Jack's mother)

Jack's mother also believes there has been a lack of educational planning and target setting, and does not understand why the CSP which her son had at primary was discontinued at secondary:

So, probably when he was eight or nine, I could find paperwork about CSPs, they applied for a CSP, he got a CSP. No trouble because he's got OT involvement, speech and language involvement. Nobody else, I don't think. The ed psych should've been involved but they never could come to the meeting. So, he had a CSP for however many years. He got a CSP to leave primary, because there was nowhere suitable for him to go to school. (Jack's mother)

Jack currently has an IEP and a positive behaviour plan (PBP) but his mother believes that the process of setting targets at the school is ineffective and her concerns have been ignored:

We kept mentioning the lack of targets, the ed psych mentioned them, and she'd be more positive than I am, so, you know, the next time ... So, he was passed onto the new teacher, as far as I know, with no targets, but then the teacher told me that he had been given targets, so I then lost it a little bit, saying I have never seen targets, why has she given you targets when I've never seen them, because I probably would've disagreed with them ... And, so then the IEP was suddenly drawn up, but quite late on, and I did say many times, and the speech and language therapist ... will have heard me say very regularly, the IEP is supposed to be shown to the parents, discussed with the parents in the draft stage, which it certainly hasn't been. (Jack's mother)

A follow up phone call at the end of the research revealed that Jack did not return to school for the current academic year. His mother said the school had moved Jack out of a class with more able pupils because they felt he could not keep up with the work and occasionally made noises that disturbed the other pupils. She was also annoyed that the school had failed to provide any of the promised communication software. Jack is currently at home, with no future plans. For most of his secondary education, Jack has been home-educated because of his parents' deep concerns about the quality of school-based educational provision. Despite their professional knowledge and resources, Jack's parents have not been unable to secure the type of education which they think their son needs. In addition, they have not used the available dispute resolution routes to challenge local authority decisions, instead trying to resolve matters at local level and withdrawing their son from school when such efforts failed to produce the desired result.

4.3.2. Parents' use of external support

On the whole, compared with socially disadvantaged families, middle class parents were more adept at accessing external support on their children's behalf. For example, Jeannette, described above, was educated in a post-16 unit at the time of the research. Her parents describe the ongoing struggle for additional resources, and were conscious of being described as 'greedy and selfish' by social workers for taking more than their 'fair share' of the service's budget. When her daughters were at school, Jeannette's mother drew on advocacy support provided by a voluntary organisation supporting children and young people with learning disabilities. Jeannette's mother describes a dispute over restraint and seclusion used to punish Barbara (Jeannette's sister), in which the intervention by an advocacy worker from a local voluntary organisation was critical:

So things got so bad between me and the school because they were saying it was my daughter's fault and I was like, 'No, her behaviour is her communicating that her needs aren't getting met'. I said, 'She's not a bad child. She's doing this to communicate'. Then they put her in a room. I found out that they were putting her in a room, a cupboard and locking the door. And I heard a' that via somebody else. And when I asked them they didn't deny it and I said, 'I want tae see it'. So then they told me what had happened, they'd been putting her in this time out cupboard room, shutting the door. She was sitting wetting herself. She started, then she started smearing, the poo on the walls. And I was like, 'Well ...', and I just went ballistic, absolutely ballistic. And then I thought, 'Right I cannae do this. I cannot do this anymore'. Cause I knew we werenae getting anywhere. When I started I could not contain my anger at them. And I thought, 'I have tae get somebody else in' and I found an advocate from [name of voluntary organisation]. And she came tae the house. And for the first time in my life I felt I had a professional that actually listened tae me. And when, by the time she went away two hours later I was like that, 'Whoa!'. And then I had somebody with me and she went in. She said, 'Look I'll go in and observe'. And because she was a professional and had the professionals behind her, they let her in. And she was like, 'Well I don't blame Barbara for behaving the way she is'. And she said, 'It's awful, I've never seen such things in my life'. (Jeannette's mother)

Subsequently, Jeannette's mother went into the school to train staff on how to work with her daughter, and matters improved. Jeannette's parents recognise that their relative social advantage has helped them mobilise support:

Well I do feel that yes we've got some advantages. I mean that doesnae make us any better or worse than anybody else. I've been very, very fortunate in the fact that Jeannette's mother is able tae do some amazing research and stuff and she's got a network a' friends there that help her and she helps them and everything. I mean that, and at the same time, I'm no wanting tae speak out a' turn about any other families, but some other families have got a hundred other challenges tae deal wi' at the same time. I mean they might be on the benefit system. They might have physical disabilities in the family and stuff like that. And tae be honest you just think, you know, how difficult is it for them. I mean we've got, you know, a lot a' advantages that some other families dinnae have. And therefore they dinnae get anywhere near the clarity a' what's possible. Or they'll just take it as being, 'Oh well, that's what we got told. That's what we got told so that must be what it is'. (Jeannette's father)

In his view, if everyone got what they are entitled to, the system could not function:

... the sad fact is that because some families don't get what they should be getting in terms a' rights or in terms a' entitlements or that, that's how the system nearly balances itself. It cannae balance itself but the sad fact is that if everybody got what they should be getting the whole thing would just implode. (Jeannette's father)

As noted earlier, less socially advantaged families also used external advocacy when available. For example, Tom, a boy with physical disabilities who is a wheelchair user, was being educated in a mainstream school. Various disputes arose with the local authority in relation to the CSP and, more recently, school transport. One strategy was to build a close relationship with health and social work professionals, so that problems with provision of these services could be addressed directly:

I had raised concerns and so did my OT. We're really good friends, well not friends, we've got a really good working relationship with our OT to more the stage that we can now just pick up a phone and go, 'J, we need you', instead of going through ... yeah I just pick the phone up and say, 'J, need you, blah de blah de blah' and she'll help me as much as she can but she obviously has to do it in a professional manner. So she looked into it but she couldn't really find much information of what the next steps were to proceed - obviously the action hadn't been taken. Because Tom as well was meant to receive physio from two inputs and that was written into his CSP plan as well and that never, ever happened. So then we went to the headteacher at that point as well and we

was like, 'Look, it's in the CSP. Tom's not getting regular physio at school or at home. What now happens?' And she was like, 'Oh we'll call a meeting'. So a meeting was called but nothing was ever really done about it. (Tom's mother)

While Tom's parents were unaware of formal dispute resolution routes, they were proactive in bypassing formal channels and contacting the council directly, in this case relating to a disagreement over transport:

I had spoke tae a man at the council, I had phoned him directly which I wasn't meant to do [laughs] but I did. I was like, 'Do you know, I've had enough of the whole back and forward through different people'. I was like, 'Like just speak to me yourself, tell me what I need to do'. (Tom's mother)

Since the phone call to the council did not produce the desired outcome, the next step was to contact the MP, who had intervened successfully in an earlier dispute over a ramp:

So if that doesn't work I'll be going to see our MP which we've had to do a few times in the past to fight for things to be done. After that I don't know where my next steps would be. So basically Tom had been in a wheelchair, electric wheelchair since he was eighteen months old. And when he started nursery at the age of three, he would take his wheelchair from the house to nursery. And we needed a ramp from our front door cause there was two steps, two steps to the front door so we needed to get his wheelchair in and out and the council refused it because he wasn't at an age to be driving a wheelchair outdoors. And I was like, 'Well he needs a wheelchair'. So we went down the stage, 'Well can you provide two?' 'No, one'. So we were having to carry the wheelchair, electric wheelchair in and out the house which has not been good for us over the years. So we had to do that for a good maybe six to eight months. And I was like, 'Do you know something, I'm gonna go to the MP'. And we went to him. Within two weeks of a meeting with him we had a phone call saying the ramp was getting installed. (Tom's mother)

Craig, educated in a residential special school, provides a further example of the beneficial use of external support by a parent with little knowledge of the system. Craig coped well at nursery, largely because, in his mother's view, he had a plan that structured his day. He began to experience problems early on in mainstream primary school. He was not able to pay attention or sit still and his mother recalls him being physically restrained by school staff:

But then when he went to school and it was the school setting he didnae cope wi' that. So from a very young age they started using all that restraining on him from primary one ... Cause he wouldnae sit in his chair and he would just run around and no focus on anything. So they thought the best thing tae do wi' Craig was restrain him. So then he was put in the nurture room at another school and they were still restraining him. (Craig's mother)

Around the age of seven, Craig was frequently excluded from school and was identified as having ADHD. The head teacher wanted him to sign a good behaviour contract, which his mother believes he was too young to understand:

So that was maybe in primary two. But he wouldnae sign the contract because he didnae get on wi' the headteacher because he thought she was evil because she's telling these people tae do whatever on him. So then we would go tae the meetings and he would maybe take his shoes off. 'Oh just go home, you're not listening'. So simple things like him taking his shoes off which he does all the time, not so much now but he did. It was a routine, he had to take his shoes and socks off, she was thinking that's him not listening tae instructions. So he'd get put home for a few days and then after a while I said, 'Oh I cannae do this any more. He cannae go back tae that school'. So then he was out a' school for months wi' no education, no nothing. (Craig's mother)

Craig's mother was finally put in touch with a local ADHD support group, who attended meetings and generally helped her to navigate the system:

My old next door, my old over the back neighbour accessed the ADHD group for her young child. And it was her that put me in touch with L. and said, 'Oh you could get help from them'.

L. came with me because she knew, she had went through primary school with Craig and she knew more than me because me being a parent, you kinda work wi' the local authority cause you think, 'Well they know best'. Until you're in it and then you look back and you think, 'You shouldn't have let it go on for so long'. But the local authority will just palm you off... that's what L's good for. She knows what's what or where tae get the information cause parents wouldnae have a clue cause it's all obstacles tae try and find these people. (Craig's mother)

The voluntary organisation also helped her make a placing request to the residential special school. Looking back on her experience, Craig's mother believes that local authorities need to be much more pro-active in providing information in accessible formats:

Well you cannae just go in tae the local authority and get this information. You've got tae go pillar tae post before you hit the right person. Unless you've dealt with it before, it would maybe be easier. Cause there's nothing really out there, or there wasn't when Craig was wee. It's maybe changed now, I don't know, but that would probably be a good help. (Craig's mother)

To summarise, external support helped parents to understand the system and challenge local authority decisions on behalf of their children. Middle class parents were more effective at mobilising external support, but there were also examples of parents from less advantaged backgrounds accessing advocacy services, but contact often depended on chance connections, for example, advice from a neighbour in a similar situation.

4.4. Children's knowledge and awareness of legal rights

- Children and young people in our case studies did not know about their new rights and none were using the recently initiated My Rights My Say service.
- A few schools and local authorities were considering how best to inform children of their new rights, but most were sceptical that the legislation would be used and doubted children's capacity for autonomous decision-making.
- A mainstream secondary school had been challenged by a pupil seeking to use the new legislation and the head teacher said that, prior to this, the school was unaware of the legislative changes.
- A residential special school had been proactive in inviting speakers from the My Rights My Say service to tell pupils about access to advice and information, advocacy and legal support.
- Children relied on their parents to push for their voices to be heard and middle class parents were more adept than others at finding and using external support services, often provided by voluntary sector organisations.

In order to help children understand and use their new rights, the Scottish Government funded the *My Rights My Say* Service <https://reach.scot/myrightsmysay/>, encompassing advice and information, child advocacy and legal support with a view to helping children realise their rights. None of our case study children was using these services, but it appeared that awareness of the service was slowly growing and head teachers were slowly realising that their policies and practices might be exposed to legal scrutiny.

The way in which head teachers responded to the new legislation varied greatly and was critical in facilitating children's awareness. For example, the head teacher of a mainstream secondary school was shocked to find that a young person was using the new legislation to challenge the school's position on exclusion and support. He said that he was unaware of the new legislation prior to the

legal challenge, and felt that the local authority had failed to provide proper advice and information to head teachers, as well as appropriate levels of ASN support in school. In his view, there was confusion about the division of responsibility for ASN provision between local authorities and schools. In addition, he had doubts in principle about giving children autonomous rights, because they were unlikely to understand the future implications of choices and were prone to manipulation by parents.

We have an ongoing and live issue at the minute where we do have a young person who's fourteen who has exercised this right. I'm not so sure that it's not under the direction of the parent who's very critical of not just this school but critical of the city, of CAMHS, of Police Scotland, of ... the Educational Psychology Department. Of basically every professional who doesn't work the way that he would like them to work. So like, I suppose, any system, it's open to ... abuse. But I do think what's happening here is that we have a young person who doesn't have the capacity. She is a highly autistic young person. I'm not so sure she does have the capacity to...maybe exercise the degree of skill that's required to do this properly and fairly. And I think it's been managed by her parent. (Head teacher, mainstream secondary school)

By way of contrast, the head teacher of a residential special school welcomed the new rights and invited representatives from the *My Rights My Say* service and other voluntary organisations into school to talk to pupils about their entitlements. He regarded the legislation as helpful to the school in securing ongoing financial support from local authorities:

We also 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. We invite [name of voluntary organisation], for example, is one a' the agencies that obviously are an advocacy agency. And we also encourage very regular contact with children's rights officers from the local authorities the boys come from. So they're all included in any communications that happens with the school, any review meetings etc. (Head teacher, residential special school)

In general, children believed strongly that their voices should be heard in school. However, a few children questioned whether children should be given full autonomous rights. Lewis, for example, believed that children should gradually acquire rights and should not be expected to take responsibility for their well-being at too young an age:

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.

Oh that's really interesting. And do you think it's fair enough that grown-ups, let's say your mum or a teacher, makes decisions for you at this point in your life?

I think that's alright ... cause folk like ma age, they're silly cause they go out tae drink and booze and it's just, it shouldnae be happening. So I think if they had their own rules that would be like, ... we know for definite it would probably be that. So I dinnae think, I dinnae think children should make our rights. (Lewis)

To illustrate his point, Lewis explained that his Mum allows him to go out, but tells him he must be in at a certain time:

I think that's fair cause I could be oot on a like Friday and there are loads a' people go out, drunken and that. So I think when ma mum tells me tae come in at half nine, I should be in at that time. (Lewis)

4.5. An enabling environment? School pedagogy and ethos

- Children, parents and teachers generally believed that schools were positive environments in which children's voices were heard and respected.
- There were also cases in which children and parents felt marginalised and disrespected.
- At times, there was a mismatch between staff perceptions of a strong children's rights culture and parents' perception of exclusion and disrespect.
- Many teachers expressed reservations about allowing children autonomous rights.

Here, we focus on the school settings in which children find themselves, examining whether they provide an environment conducive to engagement and co-production with children and young people. We consider the ways in which the settings seek to facilitate and encourage participation by children and young people. We also examine professionals' attitudes and knowledge of the rights framework and their view of the legislation's impact on professional practice within their setting.

In principle, teachers believed that school environments were seeking to foster pupil engagement. Children and their parents commented on positive school environments, although negative experiences were also reported. Aged 17 at the time of the research, Alan has a diagnosis of ASD and learning difficulties and describes the Department of Additional Support as well organised and inclusive:

It's like [when I came] to the school, it's been quite an enjoyable experience. Very nice teachers who like generally 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. There's always events happening and it's just nice overall really, yeah. (Alan)

He explains the role of the DAS:

It's basically a way forward to give children who have disabilities who wouldn't usually manage in mainstream, like cause if I was in mainstream I would panic. I would like, I would be stressed out my head, and I just wouldn't actually be able ... to function, I wouldn't be able to do ... my best. And yeah, like I say, it's basically a place where I can go, get the extra help, get that little bit more explanation and... you could even get taken to your classes, someone could sit in your classes with you if you wanna go out in mainstream and try there. You can ... get someone with you to go to the classes and, like I say, give you a bit more help. And they're all decent. And it's, again, down to how well you get on with the PSAs. And I usually get on best with them. Well I have two people I especially get on with very well. (Alan)

However, Alan also believes that DAS kids are sometimes overlooked, with greater priority placed on the needs of those in the mainstream:

If you're in a school a' this size, it's gonnae happen at some point. Like it's inevitable, it's always gonnae happen. They're particularly bad with the DAS department kids cause they tend to forget about us [more than] the mainstream. They always take them as priority over us for some reason. And it always comes down to the point of the DAS teachers or PSAs, actually having to go and remind them. But that doesn't happen all the time. Sometimes they remember but it's ... it's a good chunk of the time and I don't always get told about meetings and stuff like that, or assemblies. (Alan)

When he was younger, Alan feels his ideas were not necessarily listened to, but as he has matured his ideas have been taken more seriously. He sees the support of the DAS staff as having made a major difference to his school career:

I feel that when you're younger ... they always know better. I feel that once you're younger your ideas are more passed by. It's only like if you're in a club or like the eco committee or something like that or the pupil council that ... that's the only way you would really be heard. They do listen to you and they do take stuff on board. They're really good for doing that. I tend to be listened to because I've had the DAS backing me. So I've never really had a problem of not getting listened to because I've had the PSAs there and I've had Miss T at the back of me and stuff like that to actually help me go and do it. But as you go up the school and you go up the years and once you mature a lot more and once they sorta start seeing that, and especially when you become a prefect or, or if you become a prefect, they start looking at you as humans, not as younger school pupils who they think are annoying. But they're not particularly bad for it but I know some people that have had some problems here and there with...not getting dealt with properly if that makes sense. (Alan)

Alan's mother also believed that children's voices were listened to and their wishes were respected:

I think even the whole language and ethos of the school, when they talk about young people, they don't talk about children, they talk [about young people], you know what I mean...I do think that you get that ethos and that vibe from them when you're up. They treat them respectfully, the prefects are very much [involved]. I mean, Alan's, I think, the first DAS prefect. But they're very much treated as young adults, and they are young adults, and they're listened to. And Alan is very articulate, we've always said to him, we've always tried to teach him to be reflective of incidents that have gone wrong and then to articulate what he wants or needs. And he will do that, he will say, 'I'm not very happy with this', and they're proactive about going and, like, speaking to someone about it, but it's then well received. Do you know what I mean, it could be, 'Oh no, you know your place', but it's well received, they will listen. And I know again, not all children are proactive in saying 'I'm not happy about this, I'm not standing for this'. His brother was badly bullied on the school bus. It was horrible, really horrible. And the school were, again, really good about it, and listening to him, and listening to me, and dealing with it. (Alan's mother)

Holly's mother was similarly positive about efforts made by the special unit to encourage pupil engagement in everyday classroom decisions and choices. Holly's teacher explained the school's approach:

... 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... (Holly's class teacher)

There were also examples of special units being experienced as disabling and segregating environments. For example Leslie is a thirteen year old boy who lives with his mother and two older brothers in a small town. He has multiple additional support needs (ASD, SEBD, learning disability, physical/motor impairment) and attends a special unit attached to a mainstream school. There has been a high staff turnover and the relationship between the special unit and the mainstream school appears strained, with a number of staff in the unit feeling that they are 'brushed under the carpet'.

Leslie's mother believes that her son has been bullied and that poor communication means that she has to relay his distress back to the school:

Leslie was telling me. Coming home very upset. He keeps a lot of things in at school. And it all comes out at home when he comes home. He would be very upset about things. Not eating, not

sleeping very well, having nightmares. So...it got to the stage where basically, I knew I was being ignored by what they were saying. (Leslie's mother)

Leslie's mother phoned the local authority and attempts were made to sort out the problem. However, she still feels that the unit's ethos is unsupportive:

Because to get away from this other child, Leslie was the one that was moved out of class, out of his familiar surroundings and away from his friends which I didn't agree with. Then when this child started picking on somebody else, they've realised this child does have issues, so this child is now taught on his own. So then they moved Leslie back. And now because the way that the high school is organised, they move them up the month before, the classes have been mixed to welcome in new children. Leslie is the only one that's been taken away from all his friends yet again and put with brand new children. (Leslie's mother)

Asked whether she knows about children's new legal rights, she replied: 'Nope, haven't got a clue'. In general, she felt 'in the dark' about what happens in the school and her only support has been from a local carers' group:

I'm not very aware of what goes on at the school. And I do feel kept in the dark a lot of the time. You're sorta told what they want you to know. But I always thought I could count on the local council sorta helping. But after obviously recent events, my personal situation is I feel I don't have their backing or their support or even sorta trying tae resolve the issues. So I feel that I would be on my own with trying tae do that. ... I have had help from [name of a voluntary organisation] before. There was a chap there who helped. And they were really good about helping find out things. But apart from that, and finding out things myself, you know, and working that way, I would have no idea. (Leslie's mother)

By way of contrast, Leslie's teacher feels the school is making good progress in promoting children's rights:

I think the unit is working very hard and, and succeeding in getting the rights of the pupils across and in place definitely. And it can be an almost an ongoing piece of work just because of the nature of our pupils that a lot of them are very adamant of their own rights but find it very difficult to see that other people might also have those rights. So it is an ongoing task. But as a school, yes definitely you know, at every turn I mean we've got pupils who are kind of helping to make up their own timetables. We've got pupils that have requested maybe alternative spaces to work in for whatever reason. And as much as we can accommodate that we do. (Leslie's class teacher)

Teachers often expressed ambivalence about the extent to which pupils with ASN have the capacity to make autonomous decisions and understand the consequences:

I think it's good that [pupils] are able to have their say. I think you'd have to look at every individual. So this young girl that I mentioned that I am worried about her perception of things, I think if somebody explicitly sat down with her and said, 'You're allowed this, you're allowed that', she would say, 'OK I want that, I would like that, I would like that, I would like that'. Because she thinks, 'Oh right, OK I've got a choice'. But she wouldn't understand the implications. But I'm not sitting thinking that children shouldn't have a voice or anything but at what point? I worry that it's becoming this 'We are all equals even if you are a child and you're an adult' and it worries me. (Learning support teacher, mainstream school)

I think rights are beneficial to children. However, how children interpret their rights isn't always the way, I think, that they're written down. We teach the young people, for instance, the basic rights within the school. The rights are, that you should be heard, but they need to recognise that they need to be responsible too. And that's hard because they say, 'It's my right' [laughs], you know. But you also need to be responsible. (Learning support teacher, special unit)

4.6. Engaging pupils in educational planning

- Statutory support plans are increasingly rare in Scottish schools. They are currently given to only 0.3% of the total school population and 0.2% of pupils in mainstream schools.
- There is also a decline in the use of IEPs, which are opened for 5% of children.
- The use of different types of plan varies greatly by local authority, and there are widely different practices in terms of children's involvement.
- The majority of parents do not know what type of plan their child has and children are not routinely involved in formal educational planning.
- Parents sometimes felt that children lacked capacity to be involved in planning meetings.
- Children appear to be more involved in everyday decisions on teaching and learning than in formal planning.

Children's involvement in more formal aspects of educational planning, for example, the construction and review of CSPs and IEPs, depended on adult commitment and the child's willingness to participate. David's mother, for example, was aware of her son's right to have his voice listened to, but said that he did not wish to attend meetings:

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 whether that's because he doesn't have the capacity to understand what the meetings are about and ... the relevance of him being there. 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 [laughs]. And quite adamantly, yes. But certainly his views were taken on board. Whether it was a tick box exercise I can't say [laughs]. (David's mother)

Leslie provides a further example of a child who is not involved in formal aspects of education planning. He has an IEP and a PBP (Personal Behaviour Plan), although his mother says she has never seen the IEP, was not involved in setting any of the targets in the current document and has not been contacted by the school about IEP review meetings. Asked about Leslie's involvement, she says:

I have no idea. I'm not too sure if Leslie would have the understanding. How much understanding he would have with that. You know, how he would go about explaining it or anything at all ... (Leslie's mother)

Leslie's teacher explained the level at which children were engaged:

We generally try and find out if they are happy with what, you know, what they have done, where they have got to. And we would then maybe give them a couple of ideas. (Lesley's class teacher)

There was a sense from some parents that children's involvement in planning meetings was 'scripted' and 'staged':

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)

The residential special schools appeared to have rigorous planning and review processes in place, which were part of the accountability process for looked after children. Nathalie, for example, had a resilience plan which was reviewed every six months and which included a written statement from her:

Nathalie doesn't have a CSP, ... we don't have IEPs here either, but we have our review of resilience document, so I could show you her resilience plan. Her resilience assessment. Which is reviewed on a six-monthly basis as well, and that has all her targets in it. So, she'll have six targets within that, plus three education targets. So, the six targets are linked to the resilience domain, so secure base, friendships, education, and then the three education targets are numeracy, literacy, and health and wellbeing. (Head teacher, residential special school)

The inconsistency and lack of transparency characterising the education planning process meant that often children and young people were not involved, and neither were parents. A frequent point made by parents was that local authorities provided little information about statutory support plans, leaving it up to individuals to find the information for themselves. For example, Tom's parents criticised the LA for failing to inform parents about CSPs and properly administer the system:

I personally do feel it is a big problem. I think there needs to be more information to parents about a CSP cause we had to kinda google what a CSP meant and what it was, cause the school never gave us any, really, in-depth information about a CSP. And then if there was any appeals, disagreements with the CSP we were never told any procedures how we would go about that if it got to the stage that things weren't happening which obviously happened with us. And then I just feel that the schools need to be more aware as well of what a CSP actually is. (Tom's mother)

4.7. Involvement of young people in dispute resolution

- Formal dispute resolution mechanisms are relatively rarely used in Scotland and none of the case study children had been involved in a reference to the tribunal, adjudication or mediation.
- In a residential special school, some looked after young people had been helped to use dispute resolution mechanisms to challenge local authority decisions on future support.
- School staff were generally unaware of the fact that children could mount legal challenges and there were doubts about the capacity of children with ASN to engage in legal processes.

Formal challenges to educational decision-making in Scotland via the tribunal are much lower in Scotland than in England (less than 100 references per year, generally involving placing requests) ([Riddell et al, 2010](#); [Gillooly & Riddell, 2019](#)). None of our case study children was involved in formal dispute resolution mechanisms. In one of the residential special schools where research took place, we were told that two pupils had been helped by child advocacy services to challenge local authority decisions to withdraw support at the age of 18, since legislative changes oblige local authorities to provide follow-on care for looked after young people over the age of 18 if in full time education.

As noted above, the head teacher of a mainstream secondary school was surprised when a child decided to make a complaint of disability discrimination to the tribunal. According to the head teacher, this case exposed the gaps and uncertainties with regard to school and LA responsibilities and the lack of grassroots knowledge of legislative changes:

I think [the changes] took me and I think most of my colleagues aback. I don't think any of us as head teachers ... knew that it was coming. Maybe one or two of them did but probably most of them like me are just running their schools. So when we heard this I think most of them, most of us are kinda slightly bewildered as to why this would be required. But 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)

Learning support teachers tended to support the broad principles of children's rights to be involved in important decisions, including dispute resolution, but had some reservations about allowing children complete autonomy:

I think there's, there's more of an emphasis [on children's rights] and ... it's a tricky one. For example we've got another girl, young girl who is in S2 and I am very concerned about her perception and her thoughts and how she perceives when things are said to her. So, for example, her mum tried to confiscate her phone due to her behaviour at home or because she was staying up all night but she was coming in and saying, 'Mum's hurting me, she's hurting me'. I wasn't happy with what she had chosen to do yesterday but she's gone away and said she's now scared of me. But this is a girl who is of an age where she has rights to say, make decisions about her education. I worry about her cognitive ability and ability to understand the consequences but she does not want to listen to my advice or to other staff. And I think that's a worry. That's a worry. (Learning support teacher)

Commenting specifically on the new legislation, a learning support teacher reflected:

I think to an extent it's very good because again, you know, it's child centred apparently. Pupils are, you know, having a voice apparently and theoretically, I don't know in practice how this will look. However, I think it will have a lot to do with the child's disability and the level of disability because when we're talking about pupils with complex needs, they struggle to take decisions about their everyday needs like when they want to eat, when they want to be toileted etc. Making decisions like that, it will be very challenging. So yeah to an extent I think it's very good. Again, you know, pupils do have a voice and they should know about that but I think it needs to be explained properly to the community, to teachers, to parents about how it works and how it should work because I think I can see cases of it being misused in a way.

...

I'll tell you an example because I have a pupil in mind. Carl for example ... he has autism and he's quite literal about many things and he will not take jokes the way we take them which is fair enough. 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. So in that way I kind of think because we do have a lot of pupils who ... they mislead you a lot, they will change the truth and they will manipulate many things and that's because of their attachment disorder, for example. It's many other issues anyway and problems that they might have. (Learning support teacher)

4.8. Children's and young people's experiences of collective participation

- There was a strong commitment in most schools to involving children in collective decision-making via pupil councils, prefect systems and group discussions in class on matters such as rules and curriculum.
- Some schools were particularly active in involving pupils in peer to peer support and advocacy.
- External agencies were sometimes used to support pupil involvement.
- Individual pupils valued the experience of being given responsible roles in school.

Pupils' collective participation was taken seriously in many schools. For example, a residential special school involved pupils in peer support activities and worked with a voluntary organisation providing advocacy services. Speakers from *My Rights My Say* (Enquire, Partners in Advocacy and Cairn Legal) were invited to speak to the children about their rights:

Every child has a key worker and a key teacher. So they support that process. 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 supporters so that if, for example, a young person is having a difficulty with something that's happened in the school, a member of staff, another young person [can be] their support mechanism. That doesn't rely on the staff in the school. The boys are involved in that process as well. So all of those processes are quite good at allowing the boys, you know, a voice on decisions that are made within the school. But we also engage ... external advocates. We also have ... a ... lawyer who comes, who comes in to discuss with the boys their rights and entitlements in school and beyond the school. We invite in one of the voluntary organisations that obviously is an advocacy agency. And we also encourage very regular contact with children's rights officers from the local authorities the boys come from. So they're all included in any communications that happens with the school, any review meetings etc. All of that gets spread out to all of those particular people. (residential special school head teacher)

In one of the secondary schools, Alan described his pride at being made a prefect, taking his role very seriously:

And it was actually a teacher what actually said, 'You know what, go for being a prefect'. And I was always one of 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 feels that he is making a positive contribution to the school ethos and its wider social goals:

You make sure that everybody's behaving and eating their lunch and not chucking food around. And it's basically the same ... In the assembly hall. We're always paired up in the assembly hall cause stuff can randomly break out, it's crazy. And we just watch for people and remind people to clean up after themselves and recycle. ... the school's a big place, like it's always a place for worrying about our environment and wanting to do the best for it. Even though you can come back to school at five or four o'clock and the lights would still be sitting on [laughs]. But yeah we do worry about the environment and we always try to be as eco-friendly as possible ... And like we're always spotted around the school ... and we'll be beside the library corridor, the cafeteria at the front. Like there's just various different duties that they just get put on and it's done on a weekly rota. And like there's a lot to do and like we get picked for ... the events after school. And ... so like on the 7th of November I've been picked and like ten other prefects have been picked to come back for the Advanced Higher parents evening. And so we'll come in, set up and we'll stand and help parents and all that. And we always seem to have a good reputation as we do so. Especially like once they see us sorta standing there always willing to help with our blazers and badges and stuff like that. (Alan)

Holly is also involved in the pupil council of her special unit, and has contributed ideas such as improving the playground space. Holly's mother notes that children are asked their opinions in group discussion about the topics they would like to learn about:

I mean, you know, they've had meetings in the class and Holly said what she's interested in, and they asked the pupils' opinions on [how the] curriculum can be developed a bit more ... You know, I get the diary back saying that we've had another meeting today, we were in groups discussing what

we want to do for the next term, and things like that. So, it looks like, yeah, that's happening ...
(Holly's mother)

Charlie, an 11 year old primary school child, is very aware of the UNICEF Rights Respecting Schools agenda. He is a member of the pupil council and was involved in drawing up the class charter of rules. His mother comments on her children's awareness of their rights, but feels that there is also a need to emphasise responsibilities:

I mean the school's quite a strong leader in children's rights, but I always tell my children that with rights comes responsibilities. (Charlie's mother)

5. Conclusions

The case studies reveal a strong commitment to the broad principle of promoting the educational rights of children and young people with additional support needs, alongside a recognition of the practical difficulties in enacting rights in schools and classrooms, which are ultimately spaces controlled by adults. As noted by other researchers such as McNeilly et al., (2015), major problems persist in accessing the views of those with the most significant difficulties, including those identified with ASD, SEBD and learning difficulties. Schools were often successful at listening to and acting on children's wishes in everyday classroom interactions. However, children were rarely involved in formal education planning processes, and parents also complained of minimal involvement.

In most cases, parents were the most important advocates of their children's rights and generally acted on their behalf in matters such as school choice, post-16 destinations and safety issues. Parents experienced difficulties in ensuring that local authorities fulfilled their legal duties, for example, in providing CSPs and ensuring that these documents were monitored and reviewed. Parents from socially advantaged backgrounds were generally, but not always, more effective in mobilising external support and navigating a very complex system. There were also examples of parents from deprived areas using informal support mechanisms, such as taking neighbours' advice and contacting elected representatives. These parents, whose children were disproportionately identified as having SEBD, often felt adrift in the system and were unable to effectively advocate for their children.

There was little knowledge and awareness among children and young people, parents and teachers of the new rights conferred by the 2016 legislation and there were no examples among our case studies of children using their rights to access advice and information, advocacy or legal support services. In a small number of schools, the legislation was being used to support the rights of children and young people, since it was recognised that there was a confluence of interests between the school and the child. In mainstream schools, head teachers were only slowly becoming aware of the legislation and the possibility of legal challenge by children came as a shock.

Referring back to the central focus of the research, there is no evidence as yet that there has been a paradigm shift in the field of additional support needs in response to children's autonomous rights. There is general agreement that the voices of children should be heard in classrooms. At the same time, local authorities have, to date, failed to provide advice and information to schools, parents and schools. Statutory planning processes have been weakened and there continues to be some resistance to the use of formal dispute resolution mechanisms. In addition, teachers and parents often express reservations about conferring autonomous rights on children with ASN who they see as lacking capacity to fully understand the consequences of decisions.

References

- Archard, D. (2015). Children, Adults, Autonomy and Well-being. In A. Bagatini & C. Macleod (Eds.), *The Nature of Children's Well-being: Theory and Practice* (pp. 3-14). Dordrecht: Springer.
- Archard, D., & Skivenes, M. (2009). Balancing a Child's Best Interests and a Child's Views. *International Journal of Children's Rights*, 17(1), 1-21. doi: [10.1163/157181808X358276](https://doi.org/10.1163/157181808X358276)
- Brighouse, H. (2003). How should children be heard? *Arizona Law Review*, 45(3), 691-711.
- Carmichael, D., & Riddell, S. (2018a). [An overview of statistics on SEN in England and ASN in Scotland](#) (Autonomy, Rights and Children with SEN/ASN: Working Paper 1). Edinburgh: CREID, University of Edinburgh.
- Carmichael, D., & Riddell, S. (2018b). [Scottish local authority survey results](#) (Autonomy, Rights and Children with SEN/ASN: Working Paper 3). Edinburgh: CREID, University of Edinburgh.
- Farson, R. (1974). *Birthrights*. London: Macmillan
- Foster, C. (2009). *Choosing Life, Choosing Death: The Tyranny of Autonomy in Medical Law and Ethics*. Oxford: Hart Publishing.
- Franklin, A., & Sloper, P. (2006). Participation of disabled children and young people in decision-making: A survey of current and recent activities in England. *British Journal of Social Work*, 36(5), 723-741. doi: [10.1093/bjsw/bch306](https://doi.org/10.1093/bjsw/bch306)
- Franklin, A., & Sloper, P. (2009). Supporting the participation of disabled children and young people in decision-making. *Children and Society*, 23, 3-15. doi: [10.1111/j.1099-0860.2007.00131.x](https://doi.org/10.1111/j.1099-0860.2007.00131.x)
- Gillooly, A., & Riddell, S. (2019). [An overview of statistics on SEN in England and ASN in Scotland \(update\)](#). (Autonomy, Rights and Children with SEN/ASN: Working Paper 1 (update)). Edinburgh: Centre for Research in education Inclusion and Diversity.
- Hollingsworth, K. (2013). Theorising children's rights in youth justice: The significance of autonomy and foundational rights. *Modern Law Review*, 76(6), 1046-1069.
- McNeilly, P., Macdonald, G., & Kelly, B. (2015). The participation of disabled children and young people: A social justice perspective. *Child Care in Practice*, 21(3), 266-286.
- O'Neill, O. (1988). Children's rights and children's lives. *Ethics*, 98(3), 445-463. <https://www.jstor.org/stable/2380960>
- Riddell, S., & Weedon, E. (2016). Additional support needs policy in Scotland: Challenging or reinforcing social inequality? *Discourse: Studies in the Cultural Politics of Education*, 37(4), 496-512. doi: [10.1080/01596306.2015.1073012](https://doi.org/10.1080/01596306.2015.1073012)
- Riddell, S., Harris, N., Smith, E., & Weedon, E. (2010). Dispute resolution in additional and special educational needs: Local authority perspectives. *Journal of Education Policy*, 25(1), 55-73.
- Scottish Autism. (2018). *Not included, not engaged, not involved: A report on the experiences of autistic children missing school*. Scottish Autism. www.notengaged.com. Retrieved from <https://www.notengaged.com/download/SA-Out-Of-School-Report.pdf>
- Scottish Government. (2017). *Supporting Children's learning: Statutory Guidance on the Education (Additional Support for Learning) Scotland Act 2004 (as amended)*. Edinburgh: Scottish Government.

Tisdall, E.K.M. (2018). Challenging competency and capacity? Due weight to children's views in family law proceedings. *International Journal of Children's Rights*, 26(1), 159-182. doi: [10.1163/15718182-02601003](https://doi.org/10.1163/15718182-02601003)

Appendix 1: Profiles of children and young people

Sea City

Jeannette is a young woman of twenty two who lives with her parents while attending a post-16 transition unit. The family lives in a relatively affluent and recently constructed housing estate (SIMD 3) on the city outskirts. Jeannette's father is managing director of a business, while her mother is a home maker. Jeannette has a diagnosis of ASD and learning disabilities. She attended mainstream primary and then moved on to a special school for her secondary education. Subsequently she completed a three year residential life skills course at college before returning home to begin the four year lifelong learning programme. Jeannette's parents are her legal guardians and manage her benefits. They ensure that she has enough money to cover personal expenses, but feel that she does not have the financial acumen to manage her own financial affairs.

David has just turned thirteen and is attending his local secondary school, which is in a largely middle class neighbourhood. The family live in a large house in an affluent middle class suburb (SIMD 5) and both parents have professional occupations. David was born with a congenital heart defect and cerebral palsy and was subsequently diagnosed with epilepsy and learning difficulties, causing memory loss. David's mother describes her son as 'a happy little boy when he is comfortable in his surroundings'. At primary school, David had a good set of friends and was keen to maintain this friendship group in secondary school. After looking at some special schools in the city, his mother felt that a mainstream placement was the best option for her son in terms of keeping him in an inclusive environment. David's mother has used formal dispute resolution procedures such as independent mediation. A CSP was opened for David at primary school, but it has not been reviewed since the start of secondary and provision of external services such as occupational therapy and speech and language therapy has diminished.

Catherine is a seven year old girl with profound and complex difficulties who is described as 'pre-verbal'. She lives with her mother, father and two siblings in an affluent urban area (SIMD 5). Catherine has an IEP but no CSP. She is educated in a special school which uses intensive communication methods. Catherine has very limited involvement in educational decision-making or in decisions on health and social support. Catherine's mother is positive about educational provision but is concerned about cuts to play scheme provision in the school holidays. She believes that the unpaid labour of carers is not fully recognised.

Charlie is an eleven year old boy who lives with his mother, father and three siblings in an affluent urban suburb (SIMD5). He is at a mainstream primary and has been identified as having dyslexia, although there is no formal diagnosis. He is intelligent, eloquent and capable of participating at school, but has low confidence. He feels passionate about human rights, and has contributed to a pupil charter.

Nathalie is a ten year old girl who is attending a residential special school as a 52 week boarder under the terms of a supervision order. She is regarded as a child at risk of harm and is looked after by the LA. She has freckles and shoulder length curly hair. Nathalie's resilience plan notes that she is a bright girl who needs a bit of encouragement with self-care tasks such as cleaning her teeth. She enjoys writing, maths, cooking and swimming. In the cottage where she lives, she gets on well with the care staff and has her own hamster. Nathalie comes from a very disadvantaged

background and her mother is staying in temporary accommodation with a family member. She works as a carer.

Martin is a ten year old boy who lives at a residential special school as a 52 week boarder. He appears quiet and well behaved and is generally compliant and helpful in class, obeying instructions and listening. He enjoys having his own bedroom in the residence. He has a very disadvantaged and disrupted background and his family is no longer able to care for him. Application for a permanence order by the LA is currently underway, which would make his looked after status permanent. This is being contested by his mother.

Eastshire

Jack is a seventeen year old young man with a diagnosis of autism who is currently being educated by his mother at home and was earlier placed in a special unit. He lives with his family in a semi-detached house located on a quiet residential cul-de-sac in an affluent market town (SIMD 5). Jack has a diagnosis of ASD and is able to make sounds but not intelligible words. He uses an electronic communication system and some sign language. People who know Jack understand his body language and non-verbal cues. His gross motor skills are good but he has trouble with fine motor control. Jack's mother feels that her son has not received an appropriate education. She believes that assistive communication technology could have been used to enhance understanding and learning. Jack was home-educated for several years.

Chloe, a girl of fifteen with a diagnosis of ASD and SEBD, is looked after by her grandparents who live in an area of multiple deprivation in a former mining town (SIMD 2). She is being educated in a special unit. School staff observe that Chloe's moods can be volatile and that she can be loving and caring towards her peers or hostile and aggressive. Chloe feels that her voice is not listened to at school and resents being educated with pre-verbal children.

Sally (SIMD 2) is a six year old girl who is educated at a mainstream primary school. She has physical disabilities and a diagnosis of cerebral palsy which means that she has difficulty standing and walking unaided, some problems with fine motor skills such as cursive handwriting and some speech difficulties. According to her father, 'she's quite an intelligent young lassie. She's ... quite a quiet wee lassie when you first meet her. but as soon as you get to know her, ... she's quite talkative'. She is a confident girl who has been supported by her family to engage in social activities such as Rainbows. Her class mates sometimes seek to be over-protective, but she is independent and capable of drawing boundaries.

Leslie (SIMD 3) is a thirteen year old boy who lives with his mother and two older brothers in a post-war terraced house in a small town. He has multiple additional support needs (ASD, learning disability, physical/motor impairment and SEBD), and his learning delay gives the impression of a younger child in the body of an older boy. He is being educated in a special unit attached to a mainstream school. Leslie is a very chatty boy who speaks with an American accent, despite having no particular links to the US. He has a good sense of humour and is questioning and inquisitive. Leslie likes recipes and has made his own cookbook, which he is proud of. He enjoys watching TV programmes and cartoons on YouTube.

Nick (SIMD 1) is a twelve year old boy who lives with his mother, a single parent, and two brothers in a socially deprived area. He has physical and learning difficulties and is educated in a special unit attached to a mainstream school. Nick had a CSP but this was recent closed because it was felt that outside agency support was no longer required. His mother disagrees with this assessment. She is unsure what type of plan he currently has. He participates in meetings, but his mother thinks this is scripted and staged. Nick's mother has issues with the school about 'over-walking'

and not taking care of toileting needs. She has not used formal dispute resolution and is trying to resolve her complaints with the LA, but has difficulty making contact and finding the right person to speak to.

Holly is a fourteen year old girl with a diagnosis of ASD, ADHD and learning disabilities. She is being educated in a special unit attached to a mainstream school. Both parents have professional occupations and the family lives in a relatively affluent suburb (SIMD 4). Holly is an active, vocal and engaged pupil who appears involved in her daily school life. She has a personal behaviour plan, but no IEP or CSP. Heather is a member of the Pupil Council. Heather's mother has been a powerful advocate for her daughter throughout her life and has managed to obtain considerable support from the system. She feels involved and engaged with her daughter's education.

Coalshire

Alan, aged seventeen at the time of the research, has a diagnosis of ASD and learning difficulties. The family lives in a modern house in an affluent suburb (SIMD 5). Alan's difficulties were evident from birth and, according to his mother, early educational experiences in England were not positive, since the focus was on moving him out of mainstream. Since the family arrived in Coalshire, he has been educated in mainstream schools and currently splits his time between the Department of Additional Support and mainstream classes. The goal for his final year at school is to spend increasing amounts of time in mainstream classes without additional support, deciding when he needs to return to the DAS. Already Alan takes a number of practical subjects in mainstream and has achieved National 5 passes in PE, woodwork and cookery. Alan's mother is a teacher and has been able to navigate the system effectively.

Lewis is a fourteen year old boy attending a Department for Additional Support linked to a secondary school in an area of multiple deprivation (SIMD 1). He is a member of a large blended family. Lewis was identified as having behavioural difficulties at primary school and he struggles to read and write as a result of lack of time in school and opportunity to learn. According to his mother, Lewis enjoys practical things such as swimming and he is a member of the local cadets group. Lewis was excluded from primary school and since then has been 'flexibly educated', spending at least half of his time at home, where he says he watches telly with his Mum. The DAS is keen to increase the number of hours Lewis spends in school, but insists that this cannot happen until he has a formal diagnosis of ADHD and, if necessary, appropriate treatment.

Colin is a thirteen year old boy who is fragile and very small for his age. He has physical and learning difficulties and lives in an area of multiple deprivation (SIMD 1) with his mother and step-father. He is quiet and subdued in class and appears to have limited verbal capacity. He has a desk and chair that are significantly smaller than the others in the classroom, and the chair has wheels, enabling Colin to move it around easily. At various points during the observation, he appears tired, sitting with his head in his hands and rubbing his eyes from time to time. Colin is described as a 'work avoider' by a teacher, but his mother is frustrated because she feels that his difficulties have not been properly identified. She has tried to make the school aware of her concerns, but finds it difficult to communicate with them.

Tom (aged 14, SIMD 3) is a boy with physical disabilities who uses a wheelchair. He is educated in a mainstream school. His father is a skilled tradesman who has his own business and the family has just moved to a new bungalow outside the school catchment. Various disputes have arisen with the local authority in relation to the CSP and, more recently, school transport. Tom's parents have used unofficial dispute resolution routes, including contacting elected representatives.

Ruth, an S3 pupil (aged fourteen) with a diagnosis of ASD, attended a mainstream primary school and is currently at a mainstream secondary school. Her parents have professional occupations and she lives in an affluent area (SIMD 4). When Ruth started secondary, she often found it impossible to deal with the noise and tension of classroom life. If she finds a lesson overwhelming, she has a classroom pass, which allows her to go to the Department for Additional Support for some time out. Ruth is an intelligent girl who wants to go to university. She feels passionate about gender equality.

Laurie (SIMD 5) is a fifteen year old boy, who has become increasingly confident while he has been at a residential special school. Laurie has an IEP and a care plan. His family run their own financial services business and live in an affluent area. He has a diagnosis of ASD and his mother describes him as a caring and considerate boy with high levels of anxiety. Laurie had a very unsettled school career during primary and early secondary school, with long periods of non-attendance. Laurie's parents identified a residential special school as the best option before broaching the subject with their son, who was at first deeply opposed to the idea of living away from home. He was eventually persuaded to go for a visit, and gradually decided that he would 'give it a go'. He is a talented singer and would like to obtain work as an actor when he leaves school.

Craig (SIMD 1) has physical and learning difficulties and a diagnosis of ASD. His mother, a single parent, is a cleaner and she lives in an area of deprivation. Craig has an IEP and a care plan. He experienced a troubled and interrupted primary education, with inappropriate use of seclusion and restraint and long periods of exclusion. He attended a number of schools that did not work out for him, until his mother managed to arrange a place at a special residential school with support from a local advocacy/ADHD group. Craig appears happy with how things are going. His mother was initially trusting of the LA and accepted their view on things but gradually lost confidence in the system. She now feels better able to navigate the system more effectively and question decisions. She still feels that information about rights and services is difficult to access.

Appendix 2: Local Authority profiles

Sea City

Demographic profile

Sea City is a large urban area with a population of about 500,000. The population is projected to grow by about 10% over the next decade. In-migration is split between those coming from within Scotland, the rest of the UK and from overseas. Sea City has a relatively high employment rate (76.6%, compared with a Scottish average of 73.9%) and a high proportion of its workforce in professional and managerial occupations (57.1% compared with a national average of 42.8%). Only 12% of the Sea City workforce is employed in manual occupations, compared with a national average of 17.7%. A high proportion of Sea City's workforce (63.9%) is educated to degree level, exceeding the proportion of university graduates in other UK cities. Just over 3% of Sea City's pupils leave school with no qualifications, which is lower than the national average of 8.7%.

At the other end of the spectrum, about 20% of children in Sea City are living in poverty (defined as less than 60% of median household income after housing costs), and one in six households has no adult in employment. 19.8% of Sea City's neighbourhoods are in the 30% most deprived neighbourhood zones, indicating that it has more areas of deprivation than Eastshire, but significantly fewer than Coalshire. Sea City is therefore a city of contrasts, and a central aim of the city's economic strategy is to foster inclusive and sustainable growth.

ASN statistics and policy

In Sea City, 26% of the population is recorded as having some type of ASN, slightly higher than the national average. The city has a slightly lower than average proportion of children with a CSP (0.26% compared with a national average of 0.3%). Sea City had 12 tribunal cases in 2017, the highest number of any Scottish local authority, equivalent to 2.47 per 10,000 population.

Sea City has produced two versions of its ASN policy document, the first aimed at professionals and the second, available on-line, aimed at parents and the general public. There was no version of the policy document aimed at children. The document broadly reflects information from the Code of Practice, although there was little mention of the 2016 amendments extending the rights of children aged 12-15 with capacity. There is a plan to produce child-focussed materials, but at the time of the research these were not available.

Eastshire

Demographic profile

Eastshire is a small local authority with a population of 104,100 (47.8% male, 52.2% female). Located close to Sea City, Eastshire was part of a larger region until 1996 and remains part of a larger health board. It is classified as an 'accessible-rural' authority by the Scottish Government, and is relatively affluent with below average levels of social deprivation. In 2012, 2.5% of Eastshire data zones were among the most deprived 15% data zones in the country. While low, this proportion has increased from zero per cent in 2004.

Eastshire has a higher employment rate than Scotland as a whole (78% versus a national average of 74%). It also has a higher than average proportion of workers in managerial and professional occupations and in services and sales. A lower proportion of workers are employed in manual and factory jobs than in Scotland overall. With regard to level of education, Eastshire exceeds the

Scottish average at all levels (NVQ1-4), and a lower than average proportion of the working age population has no qualifications.

ASN statistics and policy

Eastshire does not have any special schools, but has developed special units attached to mainstream. A small number of pupils are educated in special schools outside the local authority. The percentage of the school population identified as having ASN is 21.5%, just below the national average, while 0.26% of the population has a CSP, also just below the national average.

The authority's Additional Support for Learning policy is available on the main LA website and takes as its main points of reference the Children and Young People (Scotland) Act 2014. Additional Support for Learning legislation is mentioned in relation to placing requests and ways of resolving disagreements, but the fact that this is the main body of legislation governing education policy and practice is not explained. The children's rights provisions of the Education (Scotland) Act 2016 and the revised Code of Practice are not mentioned. At the time of the research, (Spring/Summer 2018), the local authority was in the process of reviewing and updating its documentation to reflect the 2016 legislation, and planned to produce a child friendly version in due course.

Coalshire

Demographic profile

The population of Coalshire is approximately 370,000, making it a medium sized 'accessible rural' authority. Its boundaries remained unchanged following regional reorganisation in 1996, and this has facilitated continuity in service planning and provision. The employment rate in Coalshire stands at 78.1%, just above the national average of 77.3%. The LA has wide contrasts in terms of its economic profile. A university town and the surrounding area is very prosperous, with the university and spin out companies contributing to high levels of skilled employment. By way of contrast, the ex-mining communities of mid-Coalshire have ageing populations, high levels of economic inactivity and social deprivation. Some coastal towns have also experienced long term decline and overall earnings are lower than the national average.

In terms of educational qualifications, Coalshire has slightly higher outcomes than the national average (e.g. 7.3% leave school with no qualifications compared with a national average of 8.3%). However, there are major school-level inequalities reflecting wider socio-economic disparity. Schools in socially advantaged areas have much higher outcomes than school in former mining communities of mid- Coalshire and the former senior secondary schools continue to reflect their earlier academic traditions, while those which were junior secondaries often lag behind.

ASN statistics and policy

Coalshire identifies 21% of children as having ASN, which is just below the national average of 25%. This reflects a four-fold increase in identification over the past decade. In 2008, only 5% of pupils were identified as having ASN, although this figure only included children with a CSP/Record of Needs and/or an IEP. As is the case across Scotland, growth in the proportion of the school population identified as having ASN reflects an increase in categories and plans counted, rather than better resourced provision for children.

There has been a change in the pattern of provision over the past decade with regard to type of school. In 2008, Coalshire had 17 special schools, whereas it currently has 5 special schools educating only 0.27% of the pupil population. However, most secondary schools have

Departments of Additional Support (DAS units). In large secondary schools, DAS units are physically separate from the rest of the school and some pupils spend virtually all their time there, while others participate in some mainstream classes. Irrespective of how long they spend in mainstream classes, DAS pupils are officially included on the mainstream school roll.

CSPs are opened for about 0.35% of the pupil population, which is around the national average. The proportion of children with a CSP has halved over the past ten years. Qualitative interviews made clear that CSPs were used 'as a last resort' within the LA, and that the vast majority of children with ASN have their needs identified and met through a 'universal personal planning process'. Additional Support Plans (previously known as Integrated Support Plans), rather than CSPs, are used for children who need additional support from other agencies. In 2017, Coalshire had one referral to the tribunal.

Policies about ASN in Coalshire are available on-line, but at the time of the research had not been updated to take into account the 2016 amendments to the ASfL legislation giving children additional rights. For example, there is no section for children and young people explaining, in child-friendly language, new rights to request a particular type of assessment, a CSP or make a reference to the tribunal.

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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