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

Briefing

Scottish Case Study Findings

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Introduction

Over recent years, both Scotland has passed legislation specifically designed to boost the rights of children and young people with additional support needs with the broad aim of to incorporating the principles of the United Nation Convention on the Rights of the Child (CRC) into domestic education 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. The figure below illustrates the main rights accorded to children aged 12-15 with capacity under the terms of the Education (Scotland) Act 2016.

New rights accorded to children with additional support needs in Scotland

Right to ask local authority to:

- 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:

- 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:

- 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:

- Ask for independent adjudication
- Make a reference to the ASN tribunal
- Be asked for their views during mediation

Not included: Mediation, placing requests

This briefing reports on key findings drawn from 18 in-depth case studies that sought to explore whether a new era of children and young people's participation rights is materialising in practice in this field in Scotland.[1] It forms part of our broader study of the impact of key legislative and policy reforms affecting children and young people's autonomy contained within the Education (Scotland) Act 2016 and the *Supporting Children's Learning: Code of Practice* (2017).

The case studies were drawn from three local authority (LA) areas which reflected differences in terms of social deprivation and urban and rural populations. Within each LA, six case study participants were recruited with the aim of reflecting as wide a range as possible of children and young people with different types of ASN situated in a variety of

[1] The case studies were conducted as part of the wider ESRC project on Autonomy, Rights and Children with Special Needs: A New Paradigm? (ES/ P002641/1).

family/care and primary school, secondary school and pst-16 contexts. We aimed to include participants reflecting differing levels of deprivation, as well as a range of ages and a representative gender balance. Eighteen children and young people took part in the case studies, aged between 6 and 22 years.

The briefing summarises the views and experiences of children and young people, parents and carers and professionals in relation to children's autonomy in ASN decision-making in a range of contexts.

Individual factors affecting children and young people's ability to participate and make choices

- 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.
- For those with little or no speech, preferences and feelings were always interpreted by the adults around them.
- Children who were capable of articulating their views verbally, irrespective of age, were much more likely to have these taking into account and acted on.
- Children with confident personalities were also more able to play an active part in mundane and higher level decisions, including making decisions on their post-school destinations.
- Effective parental advocacy was critical in ensuring children's voices were heard and acted upon.
- Children believed their voices should be heard, but did not want to have too much responsibility until they felt they were ready.

> You know, we're always looking at ways to give pupil voice, but a lot of it's on a level of [simple] choosing. So, you know, 'Do you want that for snack or do you want that for snack?' And then they can choose. **Catherine's teacher**

> So like just imagine that I'm fourteen. I will, I think I'd be old enough to make a start, a wee bit making my own, no bad decisions. When I'm over sixteen I can make ma decisions cause I'll be a young adult. But, like ma wee cousin J., he's no auld enough tae make his own rights right now. So like just wait until he's older and then he can make his rights. **Lewis, 14yrs**

> I know I want to go to university and I want lots of money but I don't know what for. Like everyone said I should work with younger children 'cause I'm good with them but I don't think I should like being a teacher or anything like that. I just have no patience. **Ruth, 14 yrs**

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.
- Children accepted that parents might make decisions on their behalf when they believed this was in their best interests.
- Looked after/care experienced children had difficulty in having their voices heard due to lack of 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.

I don't like the fact that I'm in a class with… two very autistic young people. And it gets a bit annoying. And I think I should be in a different class with the higher functioning people. **Chloe, 14 yrs, kinship care**

They wanted tae put a … metal filling in but it was at the front. And I said, 'No she'll get a white filling'. And they said, 'No we'll put a metal one in because it's stronger'. ….And I said, 'No'. …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**

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, 14 yrs**

Socio-cultural factors and awareness of rights

- Across the social spectrum, parents had very little knowledge and awareness of their existing rights and the 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.
- Children were dependent 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.

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, socially advantaged background**

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 [to the meeting] because she knew more than me. Because me being a parent, you kinda work wi' the local authority cause you think, 'Well they know best'. But the local authority will just palm you off … **Craig's mother, socially disadvantaged background**

… 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, socially advantaged background**

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

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. 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. **Depute head teacher, special unit**

Children's knowledge and awareness of legal rights

- Children and young people in our case studies often had quite general views about the nature of rights and did not know about the new legal provisions.
- None of our case study pupils was using the My Rights May Say service.
- A few schools and local authorities were considering how best to inform children of their new rights, but there was also ambivalence about the principle of children's autonomous rights.
- 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 their new rights and encourage the use of advice and information, advocacy and legal support services.
- A few children questioned the principle of autonomous rights, believing that adults needed to support children until they felt ready to make their own decisions.

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

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. 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**

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

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.

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.
Alan, 17 yrs

…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

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

Engaging pupils in educational planning

- Statutory support plans are increasingly rare in Scottish schools. CSPs 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 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.
- Children appear to be more involved in everyday decisions on teaching and learning than in formal educational planning.

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**

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. **David's mother**

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**

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.
- 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.
- A few schools felt that the children's rights to challenge local authority decisions should be encouraged as a way of improving provision.

> 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. **Learning support teacher**

> I think [the changes] took me and I think most a' my colleagues aback. I don't think any of us as head teachers … knew that it was coming. So when we heard this I think 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**

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.

> There's a very kind of extensive process of meetings within the school to allow the young people a voice. 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 all a' those processes are quite good at allowing the boys, you know, a voice on decisions that are made within the school. **Residential school head teacher**

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

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 operationalising rights in schools and classrooms. 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, deciding on post-16 destinations and safety issues. Parents experienced difficulties in ensuring that local authorities fulfilled their legal responsibilities, for example, in providing CSPs for children fulfilling the criteria 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 less advantaged backgrounds using informal support mechanisms, such as taking neighbours' advice and contacting elected representatives. Parents from less advantaged backgrounds, whose children were disproportionately identified with SEBD, often felt adrift in the system and were unable to effectively advocate for their children.

There was little knowledge of new rights under 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 promoted as a means of supporting the rights of pupils, particularly looked after children. Head teachers in mainstream schools were only slowly becoming aware of the legislation, sometimes when school provision and practice was the subject of legal challenge.

Teachers and parents often expressed reservations about conferring rights on children with ASN, worrying that they might lack capacity to fully understand the consequences of autonomous decisions. There is no evidence as yet that children's autonomous rights are acting as a new paradigm reshaping the Scottish ASN system.

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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