



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

The Rights of Children with Special and Additional Support Needs in England and Scotland

Report

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EXECUTIVE SUMMARY

Introduction

1. This executive summary presents the key findings of a recently concluded research study by a team based at the Universities of Edinburgh and Manchester into the implementation of important new rights and duties concerned with decisions about the education of children with special educational needs and disabilities (England) or additional support needs (Scotland). The research was funded by an Economic and Social Research Council award (Ref. ES/POO2641/1).
2. The Children and Families Act 2014 part 3 (England) and the Education (Scotland) Act 2016 contain key provisions aimed not only at ensuring that the views of the child or young person with SEN/ASN inform decisions by those responsible for meeting their educational needs, and local policy, but also that older children enjoy autonomy as rights holders and participants in a range of processes including those concerned with planning their provision and seeking redress. The legislation holds out considerable promise of ensuring that the child's or young person's voice is central to decision-making in this field. Our over-arching research question was: Are we witnessing a new paradigm in education of children with SEN/ASN based on the principles of autonomous rights?

Research Overview

3. This research investigated the way in which the children's rights agenda is being implemented in practice in the field of SEN/ASN, taking into account the wider policy context of declining budgets, reduced local authority power, increasingly complex governance arrangements and policy divergence across England and Scotland.
4. The project's specific objectives were 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.
5. The research adopted a mixed method approach which included an analysis of policy, legislation and administrative data, a comprehensive, online survey of all local authorities in England and Scotland, semi-structured interviews with a wide range of professionals working in this field, and 36 detailed case studies (18 in each jurisdiction) of individual children/young people across six local authority (LA) areas (three English and three Scottish).

Key Findings

Analysis of Administrative Data

6. Analysis of administrative data suggests that there are important differences between England and Scotland with regard to the identification of children with SEN and ASN and the provision of statutory support plans.
7. Scotland has seen a large increase in the categories of children deemed to have additional support needs and identifies more than a quarter (and in some LAs more than a third) of the pupil population as having ASN. Children with English as an additional language are included under the umbrella of ASN, although the majority of these children do not have cognitive, physical or sensory difficulties. In England, one in seven pupils is identified as having SEN and although the proportion has increased very slightly in the past couple of years it has fallen every year before then since 2010.
8. In Scotland, a greater variety of plans are in use (CSP, IEP, Child Plan and other) compared with England (education, health and care plans (EHCPs) and SEN support).
9. Children are about six times more likely to have a statutory support plan in England (2.9% of the total pupil population) compared with Scotland (0.3% of the total pupil population).
10. In England the number of appeals registered by the First-Tier Tribunal (Health, Education and Social Care Chamber) increased from 3,712 (2015–2016) to 5,679 (2017–18). In Scotland the number of appeals registered by the ASN Tribunal increased from 62 (2015–16) to 92 (2017–18). Per head of population there were five times as many tribunal appeals in England than in Scotland.
11. Scotland appears to be phasing out statutory support plans, and children living in the most deprived areas are less likely to receive such plans than those in the more advantaged neighbourhoods. By way of contrast, in England, the proportion of pupils with a statutory support plan – in the form of an EHCP – is increasing. England's and Scotland's policies, or at least their effects as reflected in official statistics, appear diametrically opposed.

Legislative and Policy Frameworks

12. The law and policy governing special education in England and Scotland have evolved considerably since the 1980s and especially since the turn of the century.
13. Following the implementation of the Children and Families Act 2014 Part 3 and the Education (Scotland) Act 2016, respectively, the English and Scottish legislative frameworks now reflect a clear commitment to ensuring that children and especially young people have an autonomous voice in special needs decision-making. In both nations children and young people are given the right to information, advice and support, to have their voice heard in decisions on ASN/SEN assessments and support and to be involved in resolving disagreements. However, the more bureaucratic framework under the English legislation has led to young people's rights in England being more fully prescribed than in Scotland.
14. Young people aged 16 or over in both jurisdictions now have all same rights that parents of children hold. However, Scottish legislation appears to be more progressive than its English counterpart by giving children with ASN aged 12–15 who are deemed to have capacity

effectively the same rights as parents and young people. In England, rights conferred on children are more limited.

The Views of the Key Informants

15. In both jurisdictions, professional perspectives provided by key informants tended to be optimistic about the new emphasis on children's rights. They also highlighted a number of complex issues and competing interests that surround supporting cultures of co-production and greater engagement of children and young people in respect of new legal policy frameworks.
16. **In Scotland**, concerns were expressed by key informants that assessments of capacity and wellbeing may present obstacles to the exercise of children's rights. Concerns were also expressed that the new emphasis on children's rights might be associated with a downplaying of parents' rights.
17. Many respondents also remarked on the low level of awareness of the legislation in school and among parents of children with ASN. They also found the legislation unnecessarily complex and drew attention to widespread difficulties around understanding of the qualification criteria. LA informants questioned the relevance of CSPs in the light of the work involved and the decline in the number of children qualifying for one, as public sector cuts have led to a reduction in one-to-one services.
18. While far more children from poorer backgrounds are identified as having additional support needs and require extra resources to benefit from education, statutory support plans are disproportionately allocated to those in the most affluent areas. Some key informants pointed out that children identified with social and emotional behavioural difficulties, who tend to be predominantly from poorer backgrounds, are often accorded little respect in the classroom and are unlikely to have their wishes taken into account when alternative placements are being sought following exclusion.
19. **In England**, although LAs appear to be making efforts to engage with children and young people in the key assessment and planning processes, we identified only a small degree of change to date in participation and engagement and their impact on decisions. A number of informants indicated that the agency of children and young people continues to be rooted in the involvement of their parents and carers.
20. The intervention and support of school staff and especially SENCOs in both supporting assessment requests and reviewing EHCPs appears to be particularly helpful when ascertaining and presenting the views of children and young people. Parents also appear to be more likely to draw on support offered by education professionals who have existing relationships with their child than engage with independent advocates who may not understand their child's needs as well.
21. Key informants highlighted tensions when there is a conflict between a parent's and child or young person's wishes and it would appear that there continue to be risks that a parent's view may be accorded more weight than their child's.
22. Professionals commented that in cases of redress processes there appears to have been little progress in bringing the views, wishes and feelings of children and young people into consideration or of any markedly greater weight being accorded to them than previously. However, mediators and tribunal judges do seem to be committed to engaging with children

and young people's views, wishes and feelings when children and young people are supported to articulate them.

The Role of the Local Authority

23. In both Scotland and England, LAs responded positively to the potential of the respective sets of reforms to make a difference in the advancement of children and young people's rights. In both nations, services have been put in place to help children and young people realise their rights. However, many local authorities also acknowledged that there is still a long way to go before the relevant requirements of the new legislative framework, and the underlying policy objectives, are fully realised and engrained into routine practice. Progress towards the consistent implementation of respective reforms appears to be unevenly distributed and is particularly slow to take effect in Scotland.
24. Overall, the legislation in England places greater responsibility on local authorities to provide accessible information and support for children and young people with SEN and their parents than in Scotland. In England, information, advice and support is provided on a local basis to children and young people with SEN and disabilities (SEND) and their parents by SENDIAS. Support services in Scotland are delivered at national rather than local level, and although local authorities have a legal responsibility to inform parents, young people and children about these services most do not do so.
25. One area of advance in England has been engagement with children and young people through consultations about local provision and the local offer. Consultation with children and young people regarding local SEND provision is widely seen by LAs as beneficial in terms of improving policy and practice.
26. Whilst the majority of LAs considered that children and young people's participation in assessments and reviews of individual support plans was important, in both jurisdictions, respondents indicated that this does not always happen. Survey responses revealed sub-optimal levels of children's and young people's participation in EHCPs and CSPs.
27. Authorities reported that systematically involving children and young people in both consultations about local provision and in decisions about their own education and enabling their independent voice to be heard and properly considered required a considerable investment of time and resource. LAs in both jurisdictions conveyed a very clear message about not being sufficiently well resourced to implement reforms; especially in relation to managing increases in the volume, complexity and scope of ASN/SEND related workloads.
28. In Scotland, there also appears to be a need to reinforce the duties of local authorities to assess ASN and open CSPs in order to ensure that children and young people are able to access the additional resources required to meet their needs and the means of redress.

Case Study Analysis

29. Analysis of 36 in-depth case studies indicated that there is a wide range of intersecting factors and complex issues affecting the extent to which children and young people with ASN/SEND are able to access and realise their participation rights effectively regardless of the LA or jurisdiction in which they reside. A number of important factors appear to influence children and young people's ability to understand and realise their rights:

- their maturity, disposition and capacity;
 - their relationships and family dynamics;
 - their and their family's access to resources and knowledge of rights;
 - the attitudes of professionals and initiatives which help to build children and young people's capacity;
 - their prior experience, if any, of collective participation.
30. Children and young people tended to have a broad idea of the abstract concept of rights and some demonstrated understandings of their right to have their views and feelings respected.
 31. The case studies highlighted that children and young people with ASN/SEND are not always afforded an equality of opportunity in being informed about their rights or to participate in discussions and decision-making processes regarding education and support.
 32. Both north and south of the Border, there were difficulties ensuring participation rights of children with complex needs. Schools were often successful at listening to and acting on children's wishes when these were expressed verbally and in a manner deemed acceptable to the school, but they were much less adept in interpreting non-verbal messages, particularly when expressed in a manner which disrupted normal classroom activities.
 33. The vast majority of children and young people relied heavily upon their parent's or carer's access to sufficient information and support in order to realise their rights, and parents and carers very often advocated on behalf of their child. This underlined the importance of ensuring that children with ASN/SEND who are also looked after by the local authority are able to access a comparable level of support from care professionals and independent advocacy services.
 34. Families living in areas with a high level of deprivation or who have limited time and access to other resources are particularly likely to rely upon the expertise of professionals involved in their child's care to access information about SEND matters and their rights. Children and parents from socially disadvantaged backgrounds were also more likely to feel ignored and disrespected.
 35. In Scotland, parents experienced difficulties in ensuring that local authorities fulfilled their legal responsibilities, for example, in providing CSPs for children fulfilling the relevant criteria and ensuring that these documents were monitored and reviewed.
 36. In England, just over half of parents and carers were not aware of the local offer, and of those that accessed it, very few found this a particularly useful source of further information and support.
 37. In relation to practice in schools and classrooms, there appear to be more similarities than differences between England and Scotland. In both nations there is evidence of success in creating inclusive classroom environments where children's voices are routinely listened to on everyday schooling matters. Children, parents and teachers generally believed that children's voices were heard in school and there appeared to be broad support for children's rights in principle across both jurisdictions. However, some teachers expressed reservations about allowing children autonomous rights and some believed children's rights had 'gone too far'.
 38. In relation to dispute resolution, evidence from our case studies suggests that there is much work still to be done in order to fully include and support children and young people to participate at a meaningful level in the relevant processes.

Conclusions and Implications

- In both jurisdictions, there appears to be broad support for children’s rights of participation. However, our research suggests there is a gap between rhetoric and reality and there appears to be much work that needs to be done before policy aims and ambitions are translated into everyday practice and these are applied consistently across different educational settings and authorities in each jurisdiction.
- Whilst there appear to be some positive steps forward being made in terms of engaging children and young people in consultations about local SEND provision in England, this research has identified a number of important issues which impede the extent to which children and young people in both jurisdictions are able to access adequate support and information in order to participate at a meaningful level in decisions about their individual educational planning and support and in processes of dispute resolution.
- Local authorities in both England and Scotland are sympathetic to the broad aim of enhancing children’s rights. However, in a context of squeezed budgets, they have been slow to produce resources aimed at children and young people, ensure that advocacy services are available for all those who need them and provide training for school and local authority staff. This implies that in both jurisdictions, it is important to ensure that current levels of SEN/ASN spending are maintained or increased. Scottish LAs also need to ensure that all staff understand the importance of statutory support plans as a means of upholding the rights of children with ASN and their parents. They need to ensure that LA staff understand their legal duties and take action to counter the ongoing decline in the use of CSPs.
- Issues surrounding professionals’ access to resources sufficient to ensure a consistently person-centred approach to the planning and delivery of ASN/SEN processes alongside other competing institutional demands and increasing workloads limit the extent to which children and young people are supported to achieve greater autonomy in these contexts. Schools also have a particularly important role to play in the realisation of the rights of children with SEN/ASN. In England and Scotland, it is evident that not all practitioners have a good understanding of the new legislation, and further in-service training is needed.
- The levels of autonomy that children and young people are afforded by both parent/carers and professionals are also sometimes limited by a lack of clarity with regard to responsibility for ascertaining participatory capacity at a number of different levels of decision-making. There are also persistent difficulties in ensuring participatory rights of children with complex needs, particularly those from socially disadvantaged backgrounds and those with significant learning and communication difficulties, particularly if they have little or no speech.
- Parents and carers continue to act as children’s principal advocates and subscribe to the idea of children’s rights, but quite rightly recognise that they have a crucial role in ensuring that the decisions made are in the best interests of their child. It is important that parents and carers allow their children as much freedom as possible to engage in the decision-making process, including attending meetings and expressing their views through a variety of means.
- Parents and carers from socially advantaged backgrounds appeared to be more effective in mobilising external support and navigating a very complex system, although this is not always the case. Parents from less advantaged backgrounds, whose children were often disproportionately identified with social, emotional or behavioural difficulties, often felt adrift in the system and were unable to advocate effectively for their children. It is important

therefore, that professionals make extra efforts to engage with those they may regard as 'hard to reach'.

- We have identified something of a paradox, in that stronger children's rights legislation in Scotland has not obviously led to a greater degree of empowerment for children and young people. The contrast with England is at least in part due to the existence of a more tightly regulated planning system there leading to greater involvement of children and young people in formal processes.
- Scotland, has adopted a somewhat laissez faire approach to the use of statutory support plans. The over-complex and opaque system north of the border allows local authorities to pursue an idiosyncratic approach, whereby types of plan have proliferated with little effort to explain the increasingly diverse system to children and young people or their parents. As a result, statutory support plans have become almost obsolete, only accessible to the most determined and best-informed parents. In light of the declining use of statutory support plans, the Scottish Government needs to review the criteria for opening a coordinated support plan and ensure that local authorities are undertaking their legal duties. By way of contrast, England's growing use of EHCPs and an increased level of demand for local authority assessments means that children and young people are much more likely to be involved in formal planning processes, although this does not guarantee that they are always able to access and utilise their participation rights. Indeed, sub-optimal levels of participation were identified in a range of contexts.
- In both jurisdictions, children and young people are enthusiastic about the rights agenda, and need to be helped by the adults around them to be as active as possible in engaging in decisions on future plans for their education. In particular, their capabilities need to be maximised, but taking account of the need to adjust expectations as to autonomy in line with their capacity, which needs to be properly assessed, and ensure that the level of responsibility placed upon them is appropriate to their development, understanding and level of vulnerability.
- Given the risk that the autonomy rights of children and young people may intersect and overlap with those of their parent or carer, as well as possible disparities between the ways in which different professionals and institutions support children and young people's autonomy in decision making, the need to ensure that children and young people are made aware of their rights and are adequately supported to realise them independently becomes ever more pressing.

FINDINGS AND ANALYSIS

Introduction

1. Over recent years, new legislation¹ has boosted the autonomous rights of children and, especially, young people in England with special educational needs (SEN) and in Scotland children with additional support needs (ASN)². Governments in both jurisdictions wish to ensure that domestic legislation reflects the standards set out in international legal instruments and in particular, treaty obligations within the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities. Claims have been made in both nations that the new measures place the UK at the forefront internationally with regard to the practical realisation of children and young people's rights to be involved in major decisions on educational provision and in redress when disputes with education providers arise. This paper summarises findings from an ESRC funded study titled *Autonomy, Rights and Children with Special Needs: A New Paradigm?* (Ref. ES/POO2641/1) undertaken by researchers at the Universities of Edinburgh and Manchester from 2017–2019. Our over-arching research question was the following: Are we witnessing a new paradigm in the education of children and young people with SEN/ASN in terms of autonomy and rights? Our work aimed to identify and 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; and
 - the impact of a children's rights-based approach on the broader education and social policy landscape.
2. We begin with an outline of the methodology, followed by a cross-border comparison of legislation and policy on the rights of children and young people with SEN/ASN, exploring key similarities and differences between the two jurisdictions. Then, using case studies of children and young people, we examine the central issues which arise in the practical realisation of the rights in the two jurisdictions. We conclude with a discussion of the extent to which children's autonomous rights in the two nations have been enhanced in reality. We argue that the rhetoric of autonomous rights runs

¹ The relevant pieces of legislation are, in England: Children and Families Act 2014; and in Scotland, the Education (Scotland) Act 2016, which amended the Education (Additional Support for Learning) (Scotland) Act 2004

² The legislation in England refers to 'special educational needs' (SEN) whereas that in Scotland uses 'additional support needs' (ASN).

up against practical resistance on the ground, exacerbated by competing resource and policy objectives and in Scotland by rejection of formal education planning mechanisms.

3. Our research methodology involved a mixed methods approach. We conducted a detailed review of the literature. We surveyed all the local authorities in England (56 responded – 37% response rate) and Scotland (18 responded – 56% response rate) using an online survey. We carried out one-to-one interviews with 22 key informants in Scotland and 21 in England from a range of professional backgrounds with experience in the field of SEN/ASN, including school governors, teachers, local authority managers, tribunal judiciary, ombudsman, central government officers, lawyers and voluntary sector representatives. We identified six case study local authority areas, three in England and three in Scotland, which reflected different socio-economic and urban/rural profiles. We examined their SEN/ASN policies and organisation and interviewed key personnel. Within each of the six areas we identified case studies of six children or young people spanning the age range, areas of special need/disability, different genders and socio-economic background. We targeted in particular those whose primary area of need related to either Autistic Spectrum Disorder; Social, Emotional and Mental Health issues; Moderate Learning Difficulties; or Speech, Language and Communication Needs. In each of these 36 case studies we interviewed the child/young person and where possible observed them in their education setting. We interviewed two or more of the adults involved in supporting them, including parents, teachers/co-ordinators, social care support professionals. We focussed on how the child or young person participates in decisions and processes related to their education and life more generally and the support they need to enable them to participate effectively. There is more information on the methodology for the case studies below.

Policy Background

The Emergence of a Rights Policy Perspective

4. Education policy and legislation in both jurisdictions has traditionally focussed on parents' rather than children's rights. For example, since the early 1980s in both nations parents have had the right to express a preference as regards choice of school, and Parents' Charters of the early 1990s underlined parents' rights to information on school and individual pupil performance, as well as access to strengthened redress mechanisms. In relation to children with special and additional support needs, following the Warnock Report of 1978, the policy emphasis was on partnership with parents, and both policy and legislation were infused with a discourse of needs rather than rights ([Tisdall & Riddell, 2006](#)).
5. The Education Act 1993 enhanced the rights of parents of children with SEN and disabilities in England. The Act instituted a Code of Practice on SEN, extended the principle of parental preference to SEN school placement and introduced a new more independent dispute resolution mechanism in the form of the Special Educational Needs Tribunal. Subsequently, under the Special Educational Needs and Disability Act 2001, an obligation was placed on local authorities to arrange for (which also meant funding) independent mediation and the tribunal's jurisdiction was extended to

include hearing complaints relating to disability discrimination. In Scotland, similar changes were initiated a decade later than in England with the Education (Additional Support for Learning) (Scotland) Act 2004. Analysis of responses to the consultation on this legislation showed that local authorities in Scotland lobbied for the removal of statutory support plans and were strongly resistant to the institution of a tribunal. Parents and voluntary organisations, on the other hand, wished to retain statutory support plans and supported the idea of a tribunal and independent mediation ([Riddell & Weedon, 2010](#)). Earlier work on dispute resolution in England and Scotland showed that the growing emphasis on parents' rights was not extended to a discussion of the rights of children ([Riddell et al., 2010a](#); [Harris & Riddell, 2011](#)). This has changed recently, partly as a result of a desire to comply with the principles of the UN Convention on the Rights of the Child (CRC) and the UN Convention on the Rights of Persons with Disabilities (CRPD).

6. It is important when viewing the recent reforms which extend their rights in this field, described below, to appreciate that SEN/ASN is a field in which the relevance and importance of engagement with the voice of the child or young person has been recognised for some years. In England, for example, the SEN Code of Practice ([DfES, 2001](#)) – the one which preceded the present code – had a chapter on 'Pupil Participation' which referred to children and young people's 'unique knowledge of their own needs and circumstances' and emphasised that it was important for them to

—
where possible, participate in all the decision-making processes that occur in education including the setting of learning targets and contributing to IEPs, discussions about choice of schools,... the assessment of their needs and to the annual review and transition processes.³

7. It also referred to the importance of children and young people feeling 'confident that they will be listened to and that their views are valued'.⁴ While it might be difficult at times to ascertain their views, seeking and taking them into account was regarded as necessary.⁵ The Code, to which local authorities were required to have regard,⁶ stated that local authorities should seek to ascertain the views of children and young people when carrying out an assessment of their needs ([DfES, 2001, para 7:85](#)) – a formal process aimed at ascertaining if the needs and provision required to meet them should be included in a 'statement' of SEN (now replaced by the education, health and care plan (EHCP)). It also called for them to be 'actively involved' in the annual review of their needs, including attendance at all or part of the review meeting ([DfES 2001, para 9:19](#)). While there was no specific section in the statement for the views of the child or young person to be recorded, the advice that was obtained to inform the assessment process, which was to be appended to the statement, had to include 'Any other advice, such as the views of the child' ([DfES, 2001, para 8:30](#)). Hardly central to the statement, but at least potentially included. The Code was supplemented by a advisory SEN Toolkit ([DfES, 2001](#)), which included nearly 50

³ DfES ([2001](#)), para 3:2.

⁴ Ibid.

⁵ Ibid, para 3:3.

⁶ EA 1996 s.313.

paragraphs on children's individual and collective participation across policy and decision-making processes.

8. In Scotland, it was not really until the Additional Support for Learning (Scotland) Act (ASLA) 2004 that the principle of engagement with the child's voice became established. It was provided by the Education (Scotland) Act 1980 (ss 61 and 62, inserted by the Education (Scotland) Act 1981), that the local authority could not class a young person as having pronounced, specific or complex needs unless it had invited him or her to express his or her views to the authority on his/her SEN and the measures required to meet them; and in deciding whether to record (i.e make a 'record of needs' for) a person the local authority was under a duty to take into consideration any views express by the young person (or the parent if the young person lacked capacity). The 2004 Act for the first time placed local authorities under a duty to take account of both children's and young people's views, subject to capacity to express a view – when the authority determines if the child/young person has ASN or requires/still requires a co-ordinated support plan (CSP), and when preparing a plan or deciding on the additional support that is to be provided (ASLA, 2004, s 12). Under the 2004 Act, the CSP replaced the 'record of needs' (ASLA, 2004, s 2), providing for additional support where: (a) the child or young person had ASN likely to continue for more than a year, (b) the ASN arose from one or more 'complex factors' or from 'multiple factors', and (c) the needs required additional support to be provided by education authorities or certain other agencies (another local authority, a health board or other prescribed body) (ASLA, 2004, s 2).

Background to the 2014/2016 Reforms

England

9. Momentum for reform to the law on SEN in England came from the report of the Government-commissioned Lamb inquiry, *Special Educational Needs and Parental Confidence* (Lamb, 2009), which itself was informed by a separate research report for the then Dept for Children, Schools and Families by Penfold et al. (2009). Lamb called for a 'recasting' of the relationship between parents, schools, local authorities in this field to ensure a focus on improved outcomes for children. Parents, it found, often felt confused by or lacked confidence in the system for assessment and determination of needs and provision. Lamb considered that the system needed to operate in a more timely, responsive, strategic and co-ordinated way to ensure children's needs were met effectively. It recommended giving parents better information and more control over how their children's needs were being met. Resolution of issues of disagreement between parents and schools or local authorities should, it recommended, occur in a less adversarial way. Children and young people's participation in relation to the process surrounding statementing was 'rare' or 'tokenistic' (Lamb, 2009, para 4.70).
10. The Lamb report recommended that children and young people's involvement in decision-making should be strengthened but also that the child's voice should be heard and inform understanding of how to respond to their needs. It also recommended that a right of appeal should be conferred on children and young people. Lamb also referred to the *collective* voice of children and young people, which would offer 'an important user perspective on quality and equality' and provide

'feedback to inform the development of schools and services' ([Lamb, 2009, para 5.4](#)). The Labour Government produced an implementation plan in response to the Lamb report but it contained little on children and young people's independent rights apart from proposing an independent right for children and young people to appeal or to bring a disability discrimination complaint to the First-tier Tribunal ([DCSF, 2010](#)).

11. The Coalition Government's proposals for SEND reform were published in a Green Paper in 2011 ([DfE, 2011](#)). They said a great deal about enhancing parental engagement and control but like the Labour implementation plan limited proposals concerning children and young people's participation and rights to an extension of independent rights of appeal and complaint about disability discrimination. Such rights were to be piloted. When the Government's response to the Green Paper consultation was published ([DfE, 2012](#)), however, there were plans for the legal incorporation of children and young people's rights, with a number of proposals for engagement with their views at various stages in SEN processes. The Green Paper also contained proposals aimed at giving parents more control and for better co-ordination of education, health and care assessment and provision. The proposed arrangements, including those concerning children and young people's engagement, were tested out in a 'Pathfinders' programme spanning 20 areas of England and involving 31 local authorities. There were two 18 month stages, running consecutively between October 2011 and September 2014. The evidence from the programme was that engagement with children and young people themselves, rather than with their parent, was on the whole fairly limited ([Craston et al., 2013](#)). Other research confirmed that children and young people had a limited involvement in local preparations and in support planning ([Hill et al., 2014](#); [Craston et al., 2014](#)). In the final Pathfinders impact report ([Thom et al., 2015](#)), which was based on parent and carer perspectives, there was however an improved incidence of children and young people's engagement, but even so, only a minority of parents and carers reported that that their child's views had been taken into consideration. The factors affecting children and young people's participation were not, however, fully examined in the Pathfinders programme research.
12. Other research evidence on children and young people's participation emerged during the transition period to full implementation of the Children and Families Act 2014 between 2014 and 2017. This research has helped to inform our work. Adams et al. ([2017](#)) considered the views of parents and young people and found that, among cases where an EHCP had been created in 2015, there had been an attempt to listen to the child/young person and understand their views in 58% of cases; and in 51% of cases the child or young person had been included in meetings, although the rates were lower among those aged 10 or under or from a BME background. An advocate was offered in 41% of the cases. This evidence suggested an improving picture of engagement. Cullen et al. ([2017](#)) looked at disagreement resolution. Of the parents interviewed, 18 commented on young people's experiences of mediation and appeals, largely in negative terms. Some case study examples were highlighted, showing that insufficient help was given in response to the needs of young people and it affected their ability to attend and participate. A major barrier to direct participation by children and young people is anxiety about what amounts to unfamiliar adult-

orientated processes, also identified as a barrier to participation in Walsh's small study ([Walsh, 2017](#)).

Scotland

13. In a sense, the reforms relating to children and young people's rights made by the Education (Scotland) Act 2016, while far reaching in themselves, can be viewed as part of a progression in the recognition of their autonomy and rights. When Her Majesty's Inspectorate of Education in Scotland (HMIE) reviewed ASLA 2004 it identified a number of shortcomings, including in the areas of information for and engagement with parents and young people ([HMIE, 2007](#)). The report was instrumental in the reforms to the 2004 Act introduced by the Additional Support for Learning (Scotland) Act 2009. The changes made by the 2009 Act of particular relevance to young people's rights included enabling a young person to request at any time an assessment or examination (including an educational, psychological or medical assessment or examination) and requiring the request to be granted unless unreasonable. The Scottish Government was placed under a duty to ensure the availability to parents and young people of an advocacy service, on request and free of charge, for tribunal appeals. Outside these rights, one of the most significant of the 2009 reforms was the classification of looked-after children as having ASN and requiring the local authority to consider whether any such child requires a CSP.
14. The next development of particular relevance was the *Getting it Right for Every Child* ('GIRFEC') programme designed to improve children's wellbeing and prospects, launched in 2014. It aims, across education and other services, to advance the right of children and young people to be listened to and be assured that their wishes have been taken into account. It aims for consistency with the CRC, particularly the child's right to express his/her views and to have due regard paid to them, per Article 12 (see below). Section 1 of the Children and Young People (Scotland) Act 2014 requires the Scottish Government to keep under consideration and implement any steps to give better or further effect to the implementation of the CRC⁷ and in doing so to take account, as appropriate, of 'any relevant views of children of which they are aware'. It also imposes a duty to promote public awareness and understanding of children's rights.⁸
15. So far as individual children are concerned, a key element is provision for a 'child's plan' setting out the additional support – 'targeted intervention' (see s 34) – that the child needs and identifying a lead co-ordinator for the support. The intention is that a CSP would form part of a child's plan. There is to be a 'lead professional' drawn from one of the services supporting the child who will be expected to ensure the required support is provided. The arrangements under the Act include a 'named person' for the child and his/her family to listen to them and provide advice and support. He or she could be a designated member of school staff. However, there was a postponement following UK Supreme Court's ruling in *The Christian Institute and others v Lord Advocate* holding that the information-sharing elements which were

⁷ Children and Young People (Scotland) Act 2014, s.1.

⁸ Ibid, sus.(3).

central to the role of the named person were unlawful.⁹ The Children and Young People (Information Sharing) (Scotland) Bill aims to deal with the problems identified by the Supreme Court and to adjust the law in relation to information sharing regarding the child's plan. Non-statutory child plans have been in use for a number of years.

Children and Young People's Rights under the English and Scottish Legislative Frameworks

England

16. Part 3 of the Children and Families Act (CFA) 2014 has replaced the previous legislation, part 4 of the Education Act 1996, and sets out a new framework for SEN and disability (SEND), including the significant new rights for children and young people and the co-relative local authority responsibilities. The relevant provisions came into force in September 2014 but the DfE has allowed for a transition period of three years for implementing the reforms. A key element of the reforms is engagement and co-production, focused on parents and carers but also children and young people. In furtherance of the commitment to give families more control, provision is made for parents and young people to be given a 'personal budget' and more access to advice and information, including access to a published 'Local Offer' setting out the provision that the local authority expects to be available for meeting the requirements of those with SEND in the area. As noted above, education, health and care plans (EHCPs) have replaced statements of SEN with the aim of integrating arrangements for provision for meeting a range of inter-related areas of need.
17. Many of the central pillars of the previous system have been retained – so that, for example, there continues to be a presumption of mainstream placement, a right to express a preference for a school to be named in an EHCP and a right to participate in the assessment process. In relation to disputes, there continues to be a right to access disagreement resolution (a process to avoid or resolve disagreements between individuals and schools or local authorities in relation to SEND), to appeal and/or to opt for mediation (although now mediation has formally to be considered at the very least, before an appeal can be brought (see below), which is a requirement intended to reduce resort to the more adversarial process of appealing). However, the key point is that young people now hold such rights in place of their parents, while there is a greater opportunity than previously for children themselves to participate. The range of areas in which these participation rights, some of which are amplified in the SEND Regulations 2014 (SI 2014/1530) made under the Act, are shown in Tables 1 and 2 below.
18. On dispute resolution, specific provision is now made for children to be able attend mediation meetings (they may do so provided the parent and mediator agree) and requiring the mediator to take reasonable steps to ascertain their views about the issues under mediation (SEND Regs 2014, reg 38). Children's attendance and participation in appeal hearings is governed by the First-tier Tribunal's rules and

⁹ [2016] UKSC 51. This case arose out of concern about the role of the 'named person' and the provision for information sharing under Part 4 of the 2014 Act.

procedures which pre-date the CFA 2014. The rules give the child a right to attend the hearing, although he or she can be excluded if there is a risk of disruption or if their presence would prejudice proper presentation of evidence or inhibit oral submissions; the rules also enable the tribunal to permit the child to give evidence and address the forum.¹⁰ There is a power in the Act to pilot an independent appeal right for children and to introduce such a right on a permanent basis provided the right has first been piloted. However, under the Act the power to institute the pilot lapses after five years and it is therefore now in effect revoked. Consequently, it seems that a general right of appeal for children over SEND decisions cannot be conferred without fresh legislation.

19. Part 3 of the 2014 Act also sets out, in s 19, a number of key principles about children's, young people's and parents' involvement to which regard must be had by local authorities when exercising their SEND functions (see box below):

'In exercising their functions under [part 3] in the case of a child or young person, a local authority in England must have regard to the following matters in particular –

- (a) The views, wishes and feelings of the child and his or her parent, or the young person;
- (b) the importance of the child and his or her parent, or the young person, participating as fully as possible in decisions relating to the exercise of the function concerned;
- (c) the importance of the child and his or her parent, or the young person, being provided with the information and support necessary to enable participation in those decisions;
- (d) the need to support the child and his or her parent, or the young person, in order to facilitate the development of the child or young person and to help him or her achieve the best possible educational and other outcomes.'

20. Although s 19 seems on the face of it to impose a duty only on the local authority, the Upper Tribunal has confirmed that the First-tier Tribunal should also apply its principles and in particular should take proper account of the views and wishes of the child.¹¹ The same would also apply in the case of a young person, particularly as he or she is a party to any appeal proceedings. In *S v Worcestershire County Council (SEN)*¹² the Upper Tribunal seemed prepared to accept that not only was s 19 applicable before the First-tier Tribunal but the tribunal would also be bound by the 'overriding objective' under its rules, which includes dealing with a case 'justly and fairly' by 'ensuring, so far as practicable, that the parties are able to participate fully in the proceedings'.¹³
21. It was noted above that the Lamb report favoured collective engagement with children and young people. The CFA 2014 seeks to give effect to such an idea by placing local authorities under a duty to consult with the children and young people in its area in fulfilling its duty to keep its education, training and social care provision for children and young people with SEND under review and when preparing and

¹⁰ Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (SI 2008/2699) (L.16), rr 24(b) and 26.

¹¹ *M and M v West Sussex County Council (SEN)* [2018] UKUT 347 (AAC) [2019] ELR 43; *St Helens BC v TE and another* [2018] UKUT 278 (AAC) [2018] ELR 674.

¹² [2017] UKUT 92 (AAC) [2017] ELR 218.

¹³ Tribunal Procedure (Etc) Rules 2008, n 14 above, r 2.

reviewing their 'local offer' (CFA 2014 s 27 and the SEND Regs 2014 regs 54–55). Local authorities must also publish any comments from children and young people about the 'local offer' (s 30 and reg 56).

22. One issue of concern relates to the determination of capacity. Under the Act and regulations, the legal requirements governing participation are adjusted in cases where the young person, or parent in the case of a child, lacks capacity. Capacity is defined with reference to the Mental Capacity Act 2005, which refers in s 2(1) to 'incapacity to make a decision for oneself due to an impairment of, or a disturbance in the functioning of, the mind or brain'. The rights of the parent or young person who lacks capacity are exercisable through a representative (or, if the young person does not have one, the young person's parent or parent's representative).¹⁴ Two decisions of the Upper Tribunal in 2016¹⁵ clarified the meaning of these provisions on capacity as well as confirming that, in relation to an appeal coming before it, a young person should be assumed to have capacity unless it is shown not to be the case; and it is for the tribunal to determine whether the young person has or lacks capacity to bring an appeal or to make a decision about other matters that may arise in the course of proceedings. The way that capacity is defined in practice and the potential for a rather restrictive interpretation to be applied to it presents a risk of an incorrect exclusion from participation being made. It is an important issue (see [Doyle, 2019, 38–41](#)).

Scotland

23. The Education (Scotland) Act 2016 has made changes to ASLA 2014 which have extended children and young people's rights in a number of important ways. It has resulted in children aged 12 or over with ASN, provided they are judged to have 'sufficient maturity and understanding', holding the same rights as those held previously by parents and young people only, with the exception of requesting mediation and making a placement request (and appealing the placement decision) (see further [Scottish Government 2017b](#)). See

¹⁴ CFA 2014, s 80. SEND Regulations 2014 (SI 2014/1530), Part 6.

¹⁵ *Buckinghamshire County Council v SJ* [2016] ELR 350; [2016] UKUT 254 (AAC); *London Borough of Hillingdon v WW* [2016] ELR 431; [2016] UKUT 253 (AAC).

below. The rationale for not extending to children a right to make a placing request was that they might select a school outside the area or even abroad and that could be disruptive to family life. It was also considered that it would potentially conflict with the parent's duty to ensure their child's education ([Scottish Government, 2015, para.66](#) (referring to the Education (Scotland) Act 1980, s 30)). The age threshold of 12 is intended to align with Age of Legal Capacity (Scotland) Act 1991. If the child does not want to exercise their right independently, their parents will have a right to exercise it.

24. The child must, however, notify the education authority of their wish to exercise their right (ASLA, 2014, s 3A(2)). Such requests would need to be made in writing (ASLA, 2014, s 28), but email or other electronic communication, or audio or video recording, would be allowed ([Scottish Government, 2017b](#)). Before the child may exercise his or her right the education authority must assess and confirm the child's capacity to do so and must be satisfied that it would not 'adversely affect the wellbeing of the child' to exercise the particular right (ASLA, 2004, s 3A(3)). The official guidance ([Scottish Government, 2017b](#)) identifies the factors that the Government wants local authorities to consider in determining questions of 'maturity and understanding' and thus capacity, and whether wellbeing, for those aged 12–15. It reflects and outlines a broad policy ambition that:

Scotland is the best place to grow up and bring up children. This ambition requires a positive culture towards children. One where children are welcomed and nurtured. One where we all are alert to their needs and look out for them. Where children are listened to, where their views are heard and their rights protected. They should be respected as people in their own right, with rights to a life that allows them to fulfil their potential (Scottish Government 2017b, para 7).

25. A child aged 12 or over, with capacity, will also be able to make a reference to the tribunal, provided the tribunal is satisfied that the child's welfare would not be adversely affected. Disputes over questions of capacity and wellbeing have been brought within the tribunal's jurisdiction.
26. In recognition that children aged 12–15 would need support to be able to exercise their rights under the legislation as a whole, provision has been made for a support service to be available free of charge for them or for their parent if exercising rights on their behalf (ASLA 2004 s 31A). This is additional to the standard information and advice provided by Enquire, the Government-funded advice service for additional support for learning. The new service – My Rights, My Say – covers advice, attendance at meetings with the education authority, and conducting discussions with or making representations to the authority. There is also provision for advocacy for appeals. Children in Scotland, one of the partners in running My Rights, My Say, run the Children's Views service aimed at enabling children to be able to share their views in a formal process, such as an assessment of needs. Further details of support in Scotland are set out below.
27. The new independent rights extend to redress. The right to apply for 'independent adjudication' (ASLA 2004 s 16 and the Additional Support for Learning Dispute

Resolution (Scotland) Regulations 2005¹⁶) is affected by amendments made by the Education (Scotland) Act 2016. Children aged 12 or over have been given a right to apply for this process provided the education authority assesses the child to have capacity 'as respects views or decisions relating to the purpose of resolving disputes'. Young people have an independent right to invoke independent adjudication, a right held by their parent if the young person 'lacks capacity to express a view or make a decision for the purposes of resolving such disputes'. Independent adjudication is a process in which an independent adjudicator drawn from a central panel adjudicates (usually only on the papers) a dispute between a parent/child/young person and education authority, but not one falling within the tribunal's jurisdiction (see below). The adjudicator can make a recommendation to the authority as to the basis on which the matter should be resolved. Typically it handles disputes concerning an assessment of needs or the provision to be put in place to meet such needs. Children aged 12–15 have not, however, been given a right to opt for mediation. This is because it was considered necessary to avoid the child facing too much pressure and responsibility. But the child's view will have to be taken into account in the mediation.

28. The 2016 Act has also extended to children aged 12 or over an independent right to bring an appeal (or 'reference'¹⁷), a right which young people (under ASLA 2004 s 18, as amended) already held and which covers, inter alia, decisions on a requirement for a CSP or to continue to have one, a failure to prepare a plan where one is needed, completion of reviews of CSPs or to make the arrangements proposed in a CSP, and the information contained in a CSP. Amendments made by the 2016 Act also provide that a reference can be made to the tribunal over a decision of the education authority concerning the capacity of the child, aged 12 or over, to exercise a right under ASLA 2004 or as to the question of well-being. The rationale for extending a right of appeal to children aged 12 plus is based on the need to correct an anomaly whereby a child of this age could bring a complaint of disability discrimination under the Equality Act 2010 but could not pursue a reference to the tribunal ([Scottish Government, 2015, paras 46–48](#)). It also conforms with a recommendation of the UN Committee on the Rights of the Child ([Committee on the Rights of the Child \(2008\), para 67](#)).
29. The reform of the tribunals structure in Scotland under the Tribunals (Scotland) Act 2014 has led to the jurisdiction of the Additional Support Needs Tribunal being transferred into the First-tier Tribunal for Scotland Health and Education Chamber, from January 2018. Under the new The First-tier Tribunal for Scotland Health and Education Chamber (Procedure) Regulations 2017 (SSI 2017/366) the child or young person who is a party to the reference is entitled to attend the hearing unless 'in respect of the whole or any part of the proceedings the welfare, wellbeing, or interests of that child would be prejudiced by being present' (rule 38(7)(a)). He or she may be accompanied by a 'supporter'. It is also provided that 'a parent of a child or young person who is not a party' may attend (rule 38(7)(b)). The rules set out similar powers to those applicable to the First-tier Tribunal in England to exclude anyone

¹⁶ SI 2005/501 (as previously amended by SSI 2010/144), amended by the Additional Support for Learning Dispute Resolution (Scotland) Amendment Regulations 2017 (SSI 2017/356).

¹⁷ They are made under s 18 of ASLA 2004.

whose conduct might disrupt the proceedings or whose presence might make it difficult for any person to present evidence or make representations (rule 38(8)). The child (aged 12 or over) or young person, as the person making the reference, would have a right to make representations and give evidence. For this to happen in the case of children *under* 12, the tribunal must be satisfied that ‘the evidence of the child is necessary to enable a fair and just hearing of the reference’ and that the child’s welfare, wellbeing and interests would ‘not be prejudiced by doing so’ (rule 43(1)). If the under-12 child is permitted to give evidence, the tribunal or a legal member of it may, for the purposes of the hearing, appoint a person with appropriate skills or experience in facilitating the evidence of children (rule 43(2)). Such a person will have the role of *independent advocate*, paid by the tribunal. The independent advocates will be able to speak for the child at the hearing. Where it is the parent who is making the reference to the tribunal (which would be either because the child is aged under 12 or the child or young person lacks capacity), the tribunal will nevertheless have a duty to seek the views of the child (rule 44).

30. For disability discrimination cases going to the tribunal there is similar provision to the above under the new procedure rules in respect of children and young people’s participation in hearings (especially rules 84, 89 and 90); however, since the Equality Act 2010 enables a child (of any age), if having capacity to do so, to make the claim (Sch 17 para 8), the procedure rules also accord the child who is a claimant a specific right to give evidence (rule 89(1)).
31. The *Supporting Children’s Learning Code of Practice* ([Scottish Government, 2017c](#)), on which there was a six months consultation period, takes account of the extension of children and young people’s rights, including the determination of capacity and potential impact on well-being in the case of rights to be exercised by children aged 12 or over. The Scottish Government’s analysis of the responses to the consultation¹⁸ indicated a broadly positive view of how the code would deal with the new policy and rights framework ([Scottish Government, 2017a](#)). The new code, to which education authorities and appropriate agencies must have regard when exercising their functions (ASLA 2004 s 27(8)), deals in chapter 7 with children and young people and their parents’ involvement in their education and learning. The code not only refers to children’s right to be heard and listened to, and for their opinions to be ‘taken seriously’, but also calls for positive action to encourage children’s participation in decisions affecting them ([Scottish Government, 2017c, ch 7 para 2](#)). It also makes it clear that there is a presumption that children with ASN should be given an opportunity to discuss their needs and the support that is required. It addresses the question of parental consultation and covers the role of supporters. A strong emphasis is placed throughout on communication, its importance, and the steps needed to facilitate it.

¹⁸ https://consult.gov.scot/supporting-learners/code-of-practice/consultation/published_select_respondent

32. The rights of children and young people resulting from the Children and Families Act 2014 and the Education (Scotland) Act 2016 are summarised in Tables 1 and 2 below.

Table 1: Summary of rights accorded to children (C) and young people (YP) with special educational needs in England (post Children and Families Act 2014)

<p>Right to ask local authority to:</p> <ul style="list-style-type: none"> • Carry out an assessment or reassessment of their needs (YP) • Name a specific school in an EHCP (YP) • Prepare a personal budget if there is an EHCP (YP) 	<p>Right to get information and advice or for information to be shared:</p> <ul style="list-style-type: none"> • Access to advice and information on SEND, arranged by local authority (C and YP) • Information on right to give views to assessment (YP) • Entitlement to copy of finalised EHCP (YP) • Information on appeal and other redress rights (YP) • Non-disclosure of EHCP without subject's consent save in some circumstances (C and YP)
<p>Rights regarding having their views heard and considered:</p> <ul style="list-style-type: none"> • Their views, wishes and feelings and the importance of their participation to be had regard to by local authority (C and YP) • Tribunal to take account of views, wishes and feelings (C and YP) • Mediator to ascertain child's views (C) • To be consulted over local provision and the local offer (C and YP) • Input into decisions about assessment (YP) • Comments on content of draft EHCP (YP) • Inclusion of views in EHCP (C and YP) 	<p>Right to be involved in resolving disagreements and disputes:</p> <ul style="list-style-type: none"> • May select and participate in mediation (YP) • Attend mediation (YP) • Attend mediation, provided parent and mediator consent (C) • Right to appeal (YP) • Attendance at appeal hearing (C and YP) • Access to disagreement resolution services (YP)

Table 2: Summary of rights accorded to children (12–15) and young people with additional support needs in Scotland (post Education (Scotland) Act 2016)

<p>Right to ask local authority to:</p> <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 	<p>Right regarding information and advice:</p> <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
<p>Rights regarding having their views heard and considered:</p> <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) 	<p>Right to be involved in resolving disagreements and disputes:</p> <ul style="list-style-type: none"> • Ask for independent adjudication • Make a reference to the First tier Tribunal • Attend tribunal and have views heard and considered • Opt for mediation (YP only) • Be asked for their views during mediation

33. As these summaries show, there are important similarities between the two bodies of legislation in terms of the respective frameworks of rights. For example, in both nations children and young people are given the right to information, advice and support, to have their voice heard in decisions on assessment and support and to be involved in resolving disagreements. On the face of it, the Scottish legislation appears to be more progressive than its English counterpart, giving children with ASN aged 12–15 who are deemed to have capacity effectively the same rights as parents and young people. For example, children in this age group in Scotland have the right to request a particular type of assessment, to request a statutory support plan and to make a reference to the First-tier Tribunal. In England, equivalent rights are accorded to young people and the rights conferred on children are more limited. However, in Scotland the new rights are limited by caveats associated with assessments of capacity and wellbeing, although in England, there is also a threshold of capacity in that regulations provide for the rights of young people to be exercised on their behalf where they lack capacity as determined by the Mental Capacity Act 2005. In Scotland, each time a child with ASN wishes to exercise a right under the 2016 legislation, they must first inform the local authority, which then informs the parents of the child’s intention. The local authority assesses whether the child has capacity to exercise this right and whether using the right might have an adverse impact on the child’s wellbeing. The tests of capacity and wellbeing¹⁹ were described by the Scottish Commissioner for Children and Young People as paternalistic, restrictive and at variance with the fundamental principles of the UNCRC (Riddell, 2018). A key informant from the Equality and Human Rights Commission suggested:

The ... Government are saying that the Act is giving children the right to challenge decisions and actions under the additional support needs framework. But I don’t think they’re

¹⁹ Guidance for testing capacity and considering wellbeing is available at <http://www.gov.scot/Resource/0052/00529415.pdf>

actually giving children that right. What they're doing is saying, 'the education authority whose decision you're challenging will decide whether you've got capacity and whether it's good for you to exercise that right'. I think that's quite fundamental. (EHRC respondent)

Responsibility for Information, Advice and Support

34. In both nations, services have been put in place to help children and young people realise their rights. In England, information, advice and support is provided on a local basis to children and young people with SEN and disabilities (SEND) and their parents by SENDIAS²⁰. The Special Educational Needs Code of Practice 0–25 ([DfE/DoH, 2015](#)) recognises that free accurate and impartial information is necessary to support partnership working with children and young people with SEND and their parents, and requires local authorities and Clinical Commissioning Groups to jointly commission high quality services. All such services are expected to adhere to quality standards, which set out clearly the various tasks they are expected to undertake and the information which is needed to judge their effectiveness. Commissioners are required to publish an annual report documenting the effectiveness of these services. The local authority must ensure that children, young people and parents are provided with accessible information relating to:
- Local policy and practice
 - The local offer
 - Personalisation and Personal Budgets
 - Law on SEN and disability, health and social care through suitable independently trained staff
 - Advice for children, young people and parents on gathering, understanding and interpreting information and applying it to their own situation
 - Information on the local authority's provision for resolving disagreements, its complaints procedures and means of redress.
35. Local authorities are instructed to consider (but are not obliged) to provide an individual casework and representation service, which might involve a single intervention, such as a home visit, support at a meeting or assistance in writing a letter. It might also involve a series of interventions such as helping a parent access local support and provision or preparing for an appeal. It is emphasised that responding to an enquiry, such as a request for general information, does not in itself constitute case work. Providers of SENDIAS services are not only expected to provide advice and information, but also act as advocates for children, young people and their parents. Although services commissioned by local authorities under the auspices of SENDIAS are meant to operate at arms-length from the local authority which has commissioned them, criticisms of the Parent Partnership Service, which preceded SENDIAS, questioned the extent to which the service was truly independent and suggested that it might be a means of co-opting dissatisfied parents ([Todd, 2003](#)).
36. Compared with SENDIAS, which supports parents, young people and children, advice, information and advocacy support services in Scotland are more fragmented. In 2017,

²⁰ Quality standards specified by the DfE for SENDIAS services are available at <https://councilfordisabledchildren.org.uk/sites/default/files/uploads/resources/IASS%20Quality%20standards%20FINAL.pdf>

the Children’s Service, known as My Rights My Say, noted above, was funded by the Scottish Government to support children with ASN aged 12–15. Three different organisations are involved in service delivery: Reach, which is part of Enquire, the national advice and information service; Partners in Advocacy; and Cairn Legal. Somewhat confusingly, services for parents and young people aged 16–18 are available through different routes, with Enquire providing advice and information and Let’s Talk ASN, a collaboration between the Govan Law Centre and Barnardos, providing advocacy and legal support (but only for parents and young people who are seeking to resolve a dispute with the local authority using a formal dispute resolution mechanism). Parents and young people who are not in dispute with the local authority do not have access to advocacy services, since Enquire’s contract with the Scottish Government specifies that it must only provide advice and information, rather than undertake advocacy casework. All of these services are funded by the Scottish Government and operate at a national level, whereas local authorities have a duty to commission independent mediation services.

37. Section 26 of the Education (Additional Support for Learning (Scotland) Act 2004 Act requires local authorities to publish information on the following:
 - Policy in relation to provision for additional support needs;
 - Arrangements for identifying children and young people with additional support needs who require a CSP;
 - The role of parents, children and young people in these arrangements;
 - Arrangements for monitoring and reviewing the adequacy of additional support for children and young people;
 - Arrangements for independent mediation services including details of the service and how to access;
 - Officer(s) from whom parents of children with ASN and young people may contact for advice.

38. In 2009, amendments to the 2004 legislation increased local authority information duties. The Additional Support for Learning (Sources of Information) (Scotland) Order 2010 (SSI 2010/145) stipulated that local authorities must publish information on the National Advice and Information Service (Enquire), the Scottish Independent Advocacy Alliance and the national advocacy service for parents and young people (Let’s Talk ASN). The Additional Support for Learning (Sources of Information) (Scotland) Order 2016 (SSI 2016/299), which has replaced the 2010 Order, specifies Children in Scotland Ltd (Enquire), Scottish Independent Advocacy Alliance and Govan Law Centre Trust. Unlike England, Scottish local authorities are not obliged to publish information about and evaluate the local offer. Despite these new responsibilities, our review of the websites and policy documents published by the three local authorities in which we worked suggested that much of this information was not available in print or on-line, and none of the websites was providing information in child-friendly format.

39. Overall, compared with Scotland, the legislation in England places greater responsibility on local authorities to provide accessible information and support for children and young people with SEN and disabilities and their parents. Support services in Scotland are delivered at a national rather than local level, and although local authorities have a legal responsibility to inform parents, young people and

children about these services, most do not do so. There is a particular lack of support for parents and young people aged 16–18, who are only able to use the national advocacy service if they are using formal dispute resolution services or are contemplating doing so. In both England and Scotland, much support comes from voluntary organisations rather than government-funded services, but there is a strong element of chance in finding the right support at the right time, as discussed further below.

40. To summarise, the English and Scottish legislative frameworks reflect a clear commitment to ensuring that children and young people have an autonomous voice in special needs decision-making. However, our research revealed a somewhat mixed picture on how effectively the children and young people’s rights provisions of the new legislation in England and Scotland are being implemented on the ground. Surveys of local authorities in England and Scotland (Carmichael and Riddell, 2018; Davidge and Harris, 2018) showed that some local authorities had provided little training for their staff on the relevant legislative changes, and most Scottish LA websites failed to provide discrete areas for children and young people. Most English local offer websites do provide specific areas for children and young people, although the extent to which they are accessible and written in a child-friendly format is debatable.
41. Key informant interviews in both jurisdictions ([Riddell, 2018](#); [Harris & Davidge, 2018](#)) showed that many professionals felt more comfortable operating within discourses of needs, whereby professionals reserved the right to make key decisions on educational provision, rather than adopting a discourse of rights. There is also a lack of involvement by children and young people in dispute resolution processes. The case studies reported below indicate areas where progress has been made in the involvement of children and young people, and areas where further progress is needed.

The Human Rights Framework

42. The rights of children and young people with special needs are not derived exclusively from domestic legislation but are also enshrined in international law. While taking account of a wide range of international legal framework, not least that under the European Convention on Human Rights, we focused in particular on the UN Convention on the Rights of the Child (CRC) and the UN Convention on the Rights of Persons with Disabilities (CRPD).

Article 12 CRC

43. There was an expressed policy intention in England and Scotland underpinning the framework of rights for children and young people set out in the legislation and in the codes on SEN in England and ASN in Scotland to ensure consistency with the key principles in Art 12:
 1. 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.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.
44. In its periodic report to the Committee on the Rights of the Child in 2014 the UK confirmed that it ‘fully endorses and promotes the principle that children and young people should have opportunities to express their opinion in matters that affect their lives’ ([Committee on the Rights of the Child, 2015, para.53](#)).
45. Article 12 is of particular importance in relation to education. The General Comment on Article 12 explains: ‘Respect for right of the child to be heard within education is fundamental to the realization of the right to education’ ([Committee on the Rights of the Child, 2009, para.105](#)). As Lundy argues, when, in education, Art 12 is properly implemented, ‘other rights fall into place naturally’ ([Lundy, 2007, p. 940](#)). The reference to ‘age and maturity’ in Art.12.2 reflects the idea of children’s ‘evolving capacities’ that the CRC adopts ([Lansdown, 2005](#)). Yet where children with SEND are concerned, their capacity to form and communicate a viewpoint may not always be dependent on age and maturity alone. The General Comment on Article 12 advises that ‘maturity’ here refers, in the Article 12 context, to the ‘capacity of a child to express her or his views on issues in a reasonable and independent manner’ ([Committee on the Rights of the Child, 2009, para 30](#)). The General Comment also states that a child should be assumed to be capable of forming his or her own view but that the state would nevertheless have an obligation ‘to assess the capacity of the child to form an autonomous opinion to the greatest extent possible’ ([ibid](#)). It also addresses briefly the issue of children with disabilities, indicating States Parties’ obligation to ensure that such children are ‘equipped with, and enabled to use, any mode of communication necessary to facilitate the expression of their views’ ([ibid, para 21](#)).
46. The General Comment on Article 12 also emphasises the importance of providing feedback to children; so they should be told the outcome of the relevant decision making process and informed how their views were considered. This important issue is only partly addressed in the English and Scottish legislation. In the case of young people in England and children aged 12 or over with capacity in Scotland, there is a duty to inform them of the relevant decision and the reasons for it, which ought to address the particular views expressed. In the case of children, however, there is no specific provision for direct feedback. But note the duty on local authorities to publish any comments by children and young people with SEND about its ‘local offer’ and ‘the authority’s response to those comments’ (CFA, 2014, s 30).
47. The UN Committee on the Rights of the Child highlighted, in its 2008 monitoring report, the ‘little progress’ made by the UK ‘in enshrining article 12 in education law and policy’ and was particularly ‘concerned that insufficient action has been taken to ensure that the rights enshrined in article 12 are applied to children with disabilities’ ([Committee on the Rights of the Child, 2008, paras 32 and 67](#)). In its report in 2016 it reiterated the latter concern: ‘Many children with disabilities do not see that their views are given due weight in making personal decisions in their life, including choice of support and future’ ([Committee on the Rights of the Child, 2016, para 56](#)). The Committee has also been critical of a failure to ensure participation in a range of

processes for redress in this field ([Committee on the Rights of the Child, 2008, para 67](#)). The introduction of a right to make a tribunal reference for children aged 12 or over in Scotland was stated to be in response to the Committee's report's recommendation to the UK to 'Ensure that children who are able to express their views have the right to appeal against their exclusion as well as the right, in particular for those in alternative care, to appeal to special educational need tribunals' ([Committee on the Rights of the Child, 2008, para.67](#)).

48. Lundy ([2007](#)) has explained that in the education context there is a need for an effective application of the principles in Article 12 – that children's views are taken seriously and that hearing them is not a tokenistic process – at three separate junctures: (i) when decisions affecting individual children are made; (ii) when school level policies are developed; and (iii) in the making of government policy and legislation. We have seen how the new matrix of children and young people's rights in England under the CFA 2014 extends beyond participation in decisions about their own education but has a collective element too, related to local policy, through the requirement that children and young people with SEN are consulted by local authorities when they are reviewing the educational, training and social care provision in their area and when they prepare and review the 'local offer'. There is not the space here to develop the discussion into a wider analysis of engagement with children in national policy formulation, other than to note that this is a commitment of the Scottish Government and that the Children and Young People (Scotland) Act 2014 already requires it to take account of children's views when undertaking the state's duty to take steps to give better or further effect to the implementation of the CRC in its jurisdiction.
49. There has been considerable academic analysis by Lundy ([above](#)) and others of how the rights embodied in Article 12 can be fully realised – part of a broader discourse around ensuring the realisation of children and young people's effective participation as a facet of upholding their autonomic interests (see eg [Daly, 2018](#)). This has included the development of various models of participation (see [Parkes, 2012](#)), which have considerable value as tools for developing and evaluating policy and practice on children's participation. However, the precise policy influence in England and Scotland of the academic analysis is difficult to gauge because there is little explicit acknowledgement of this literature in official policy or explanatory material linked to the legislation.

Articles 7 and 24 UN CRPD

50. The Scottish and English policy frameworks on SEN/ASN both make reference to the UN CRPD. There is, however, no domestic legislative equivalent to the new statutory obligation in Wales, which in addition to the duty on local authorities and NHS bodies to have 'due regard' to the CRC also requires them to do likewise in relation to the CRPD (see the Additional Learning Needs and Education Tribunal (Wales) Act 2018, ss 7 and 8). Article 7.3 of the CRPD makes similar provision to Article 12 of the UN CRC but with a subtle difference. It states:

States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with

their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

51. It goes further than Article 12 CRC in its explicit requirement that children with disabilities should receive assistance which is appropriate to their disability and age to enable them to realise the right. This places a specific obligation on the state to provide resources for this purpose. The Article 7.3 obligation is in furtherance of the CRPD's general principles (in Art 3) of 'full and effective participation in society', 'respect for the evolving capacities of children with disabilities' and 'respect for the right of children with disabilities to preserve their identities'. Callus and Farugia ([2016, p. 11](#)) argue that even children with complex needs may be able to participate in decisions to some degree: they say that participation in decision-making may be regarded as a 'continuum' and that the CRPD means that it 'should be assumed that the disabled child has capacity'. Article 7 CRPD also provides for full enjoyment of human rights and fundamental freedoms by children with disabilities on an equal basis with other children and makes the best interests of disabled children a 'primary consideration' in all actions concerning them (Art 7.1 and 7.2).
52. Art 24 of the CRPD requires states to ensure 'an inclusive education system at all levels' which is directed to, inter alia, 'enabling persons with disabilities to participate in a free society' and that such children and young people should have access to primary and secondary education 'on an equal basis with others in the communities in which they live'. However, the UK entered a reservation to the effect that children with disabilities could be educated outside their local community if 'more appropriate education provision is available elsewhere'. General Comment No 4 on the right to inclusive education, in identifying the 'core features of inclusive education', refers to ensuring that students 'feel valued, respected, included and listened to' ([UN Committee on the Rights of Persons with Disabilities, 2016, para 12\(e\)](#)). It also places considerable emphasis on the importance of ensuring that children with disabilities receive all appropriate assistance and support with communication.
53. Thus, on the basis of Arts 7 and 24, one would expect learning and education decision-making processes to afford children and young people with disabilities appropriate opportunities to express their views and wishes and that these opportunities are equal to those of other children. Account must also be taken of the 'best interests' principle (also in Art 7), particularly since the General Comment says that consideration of it requires engagement with the child's views ([UN Committee on the Rights of Persons with Disabilities, 2016, para 47](#)). Importantly for the purposes of this study, the Comment also explains that the right of children with disabilities under Article 7.3 extends to participation 'in their own learning and individualized education plans, within the classroom pedagogy, through school councils, in the development of school policies and systems, and in the development of the wider educational policy' (*ibid*). It is also important to note that States Parties are required to ensure that the obligations in the Convention are acted upon and reflected in 'appropriate legal, administrative and other measures' ([CRPD](#), Art 4). There is an expectation that there will be:

Legislation to guarantee to all persons with disabilities, including children with disabilities, the right to be heard and to have their opinion be given due consideration within the education system, including through school councils, governing bodies, local and national

governments, and mechanisms through which to challenge and appeal decisions concerning education ([Committee on the Rights of Persons with Disabilities, 2016, para 63\(l\)](#)).

54. This expectation has only partly been met in England and Scotland although recent legislation has brought the position in these jurisdictions closer to the ideal. Even so, legislation is only part of the story where the participation of children and young people with disabilities in the opportunities to influence decision-making outcomes regarding education needs and provision are concerned. What is happening in practice is the true test.

Conceptual Framework

55. The central conceptual focus of our research concerns the nature and extent of children's autonomy rights in the field of ASN/SEND. Across many areas of social policy, there are disagreements about the extent to which children 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 have the status of being 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](#))

56. 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](#)).
57. 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).
58. 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 (see above)
59. Lansdown ([2005](#)) refers to the notion of 'evolving capacities' in this context. 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 objectively 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).

60. Tisdall (2018) notes that the CRC 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.
61. 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.
62. 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 'a sufficient understanding and intelligence to be capable of making up his own mind on the matter requiring decision', then parental consent may not be required for particular procedures.²¹ 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

²¹ *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] 1 AC 112 [2006] 2 WLR 1130 per Lord Scarman at 188–9.

objective matter: the child's views are pertinent but certainly not determinative ([Foster, 2009, p.123](#)).

63. 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.

The Case Study Methodology

64. Our research in schools and classrooms adopted a nested case study approach ([Chong & Graham, 2013](#)), 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. Our thematic data analysis contrasted 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.

Table 3: Scottish 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

Table 4: English LA social and education profiles

	Bigtown	Northshire	Greenshire	Great Britain
Social and Demographic Factors (NOMIS, 2017)				
Total Population	545,500	1,201,900	317,500	64,169,400
Type of LA	Urban	Urban/Rural/Coastal	Urban/Rural	N/A
IMD 2015 Quintile	1 st Quintile	3 rd Quintile	4 th Quintile	N/A
Workforce (NOMIS 2017/18)				
Economically active	72.9%	79.6%	81.0%	78.4%
In employment	69.1%	76.5%	77.7%	75.0%
1–3: Professional/manager	44.1%	40.2%	41.8%	45.9%
4–5: Admin/skilled trade	18.7%	22.0%	23.2%	20.4%
6–7: Sales/service	18.3%	21.0%	16.4%	16.7%
8–9: Manual	18.9%	16.8%	18.5%	17.0%
Education (NOMIS, 2017)				
NVQ4 and above	39.9%	33.2%	31.9%	38.6%
No qualifications	11.1%	6.7%	6.6%	7.7%
SEN (DFE, 2018)				England
School population with SEN	15.9%	12.9%	14.5%	14.6%
School population with EHCP	3.1 %	3.0%	3.5%	2.9%
School population on SEN Support	12.9%	9.8%	11.0%	11.7%
SEND appeals registered (rate/10,000 school pop.)	44(4.9)	60 (3.4)	2 (0.5)	4725 (5.5)

65. As noted above, within each of the case study local authorities (see Tables 3 and 4 above), we conducted six case studies of children and young people with SEN/ASN in different family/care and school contexts (36 in total; 18 in each jurisdiction). The case studies, based on semi-structured interviews and observations with children and young people and significant others, were used to explore factors affecting the exercise of rights of participation and redress. The interviews focused on children and young people’s accounts of their involvement in decisions on matters such as school choice, educational provision, funding including individual budgets (where appropriate), the resolution of disagreements including mediation and tribunals, curriculum and planning. We contrasted 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 the way in which children and young people’s rights shape, and are shaped by, educational systems.
66. We aimed to focus on children whose primary needs fall within the four most common overall official categories of SEN/ASN ([Riddell et al., 2016](#)): (1) social, emotional and behavioural difficulties (Scotland) and social, emotional and mental

health difficulties (England); (2) moderate learning difficulties; (3) speech, language and communication difficulties; and (4) autistic spectrum disorder. In the event, we found that many children had multiple difficulties, so that cases could not be neatly categorised in this way. In each authority, we aimed to include both primary and secondary aged children and those in the post-compulsory school age group. In the event, in England our sample included slightly more younger children and those in 18–24 age group compared with the Scottish sample, most of whom were in the 12–15 age range. In addition to these variables, children and young people were drawn from different deprivation quintiles²², although those from more affluent areas were slightly over-represented. Cases were drawn from different types of school (local authority maintained mainstream and special; academies (England only); other special schools).

67. In both jurisdictions, local authorities assisted us in making contact with schools, which then made the initial approach to prospective case study families. In England only, third sector organisations also assisted in publicising the research and making contact with families. In all cases, informed consent was obtained from all participants, and we made clear that respondents could withdraw from the research at any time without explanation.

²² We used the Scottish Index of Multiple Deprivation (SIMD) and the English Index of Multiple Deprivation (IMD)

Table 5: 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	0	1	2

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

Table 6: Case study participant profiles England

	Bigtown	Northshire	Greenshire	Number of cases
GENDER				
Male	3	5	3	11
Female	3	1	3	7
ETHNICITY				
White British	4	5	6	15
African Caribbean	1	0	0	1
Japanese British	0	1	0	1
Pakistani British	1	0	0	1
AGE				
Primary 5–11	3	2	4	9
Secondary 12–15	2	1	0	3
16–24	1	3	2	6
Primary SEN				
SEMH	1	2	1	4
MLD	0	2	0	2
ADHD	1	0	0	1
ASD	2	2	2	6
SLD	1	0	0	1
SLCN	0	0	1	1
SpLD	0	0	1	1
Sensory Needs	1	0	1	2
FSM	4	0	2	6
LAC	1	2	0	3
EHCP	5	5	4	14

Note: SEMH = social, emotional, mental health difficulties; MLD = moderate learning difficulties; ADHD = attention deficit hyperactivity disorder; ASD = autistic spectrum disorder; SLD = severe learning difficulties; SLCN = speech language and communication needs; SpLD = specific learning difficulties; FSM = free school meals LAC = looked after child; EHCP = education, health and care plan.

68. Within each of the case studies, we attempted to interview the child or young person (although in three cases in Scotland it was not possible to interview children with little or no speech), their parents/carers and up to two significant others, such as a teacher, educational psychologist or parent partnership officer. The interviews with children/young people were generally conducted at school, and parents/carers were interviewed at home, or in a setting of their choosing such as a café.
69. In order to understand the way in which the school environment supports the rights of children and young people with SEN/ASN, we undertook at least half a day's

classroom observation per child/young person, as well as interviews and other activities. As recommended by Fraser (2003) and Davis (2009), the methods we adopted were participatory, non-intimidating and responsive to the particular child or young person’s age, type of difficulty and learning environment.

Findings from Analysis of Administrative Data

70. As shown in Figure 1, the identification of ASN in Scotland has increased sharply across the years, with figures quadrupling within a decade, rising from 5.7% of the total pupil population in 2008 to 28.7% of the total pupil population in 2018. In contrast, the identification of pupils with SEN in England has steadily decreased across the years, with just under 15% of pupils in England identifying with SEN in 2018. As shown in Figure 2, the opposite trend occurs regarding use of statutory support plans in England and Scotland. Figure 2 indicates that the proportion of statutory support plans in England is substantially higher than in Scotland. The proportion of total Scottish school pupils with a CSP declined from 0.5% in 2010 to 0.3% in 2018. In contrast, the proportion of pupils in England with an EHCP has remained stable at 2.8%, increasing slightly to 2.9% in 2018.

Figure 1: Children with SEN/ASN as a percentage of the total pupil population in England and Scotland, 2007-2018

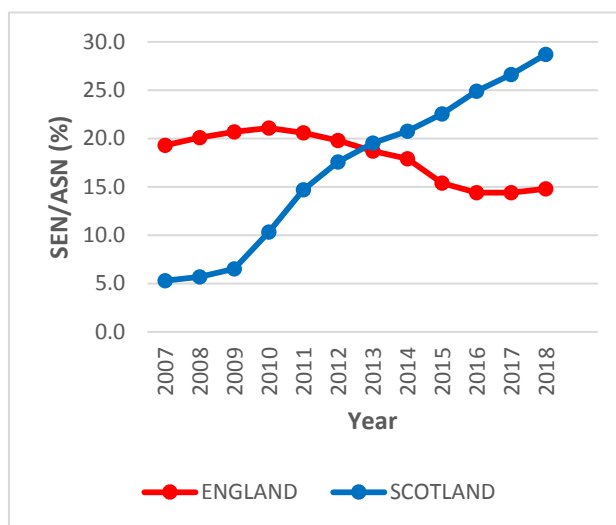
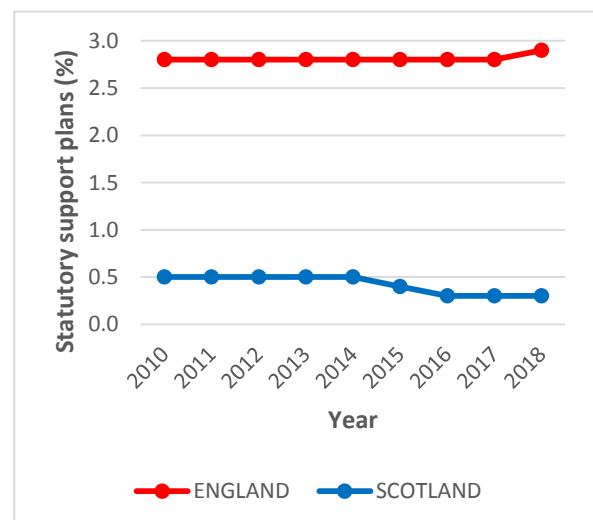


Figure 2: Percentage of total pupil population with a statutory support plan in England and Scotland, 2010-2018



Source: DfE 2018, Scottish Government 2019

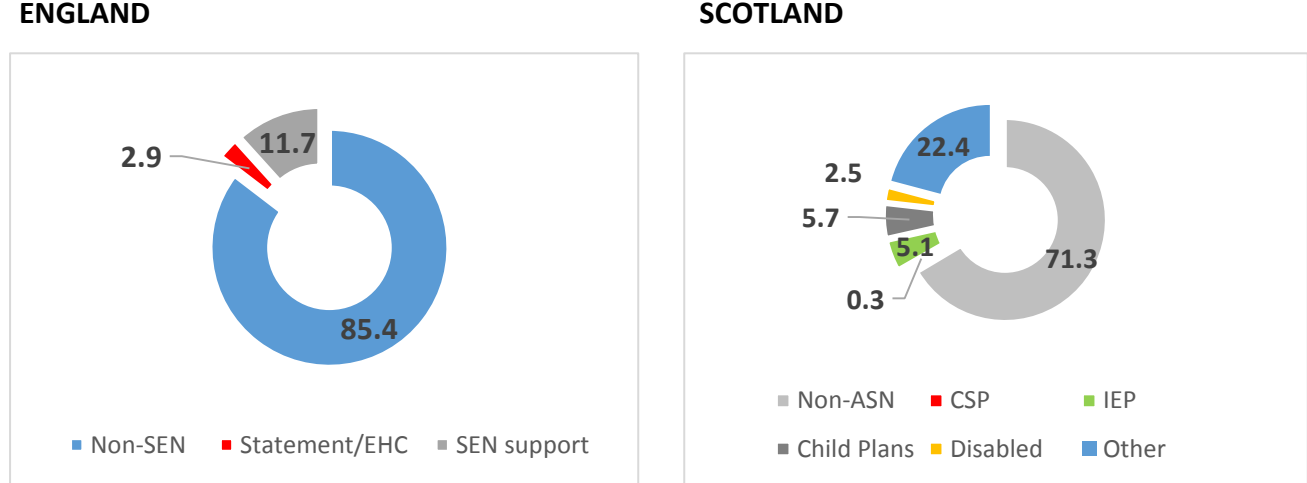
Note: Statutory plans = Education, Health and Care Plans (EHC plans) in England, Coordinated Support Plans (CSP) in Scotland

71. While statistics show that ASN identification in Scotland is currently almost double that in England, this difference is predominantly due to variations in the way SEN/ASN are classified and recorded between jurisdictions. In Scotland, there are now 24 categories of ASN, which includes English as an additional language (EAL), looked after pupils, young carers and more able pupils, with EAL alone accounting for 17% of the total pupils with ASN in Scotland. In contrast, England uses only 13 categories of SEN, capturing a smaller proportion of the pupil population. In effect, this means many

more children are identified with ASNs in Scotland requiring support with learning for various reasons, despite not having a learning difficulty or disability.

72. The difference in the rates of statutory support plans between Scotland and England can be accounted for to some extent by the different planning systems in use between these jurisdictions. As shown in Figure 3, there has been an expansion in the range of additional support plans in use in Scotland. While only 0.3% of total pupils in Scotland have a CSP, 5.1% have an Individualised Education Plan (IEP), while children with ‘Child Plans’ and ‘Other plans’ make up 5.7% and 22.4% of the school population, respectively. In contrast, there are only two support plans in use in England. 2.9% of the total pupils in England have an EHCP, that is statutory in nature, while 11.7% have a SEN support plan, which is not statutory. Given that, for children with the greatest needs, statutory support plans now represent an essential element in ensuring commensurate provision is made for them rights, this difference in the use of statutory plans between jurisdictions has substantial implications for the upholding of their rights.

Figure 3: Classification of all pupils by SEN/ASN designation in England and Scotland, 2018



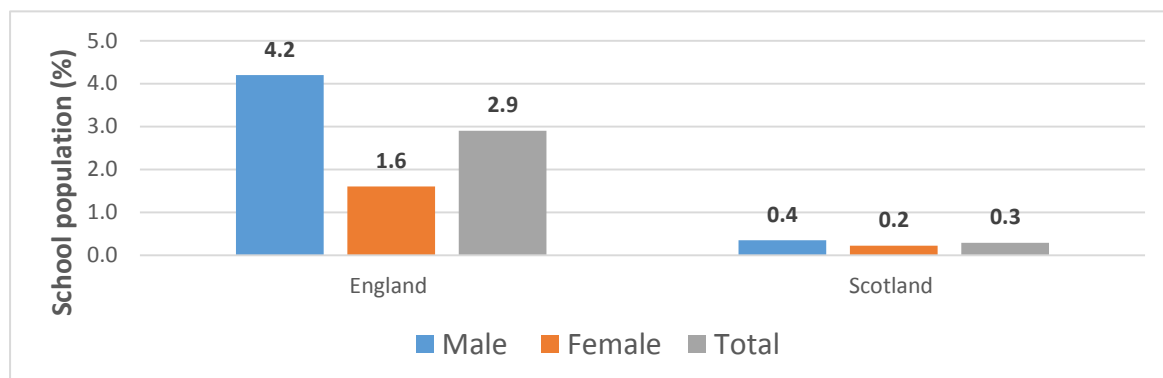
Source: DfE 2018, Scottish Government 2019

Note: In Scotland pupil numbers are not discrete; a child can have more than one ASN plan. SEN support and statement/EHC plan are discrete groups; SEN pupils receive either SEN support or a statutory plan.

73. Across jurisdictions, there are evident disproportionalities in SEN/ASN identification and provisions across gender, level of social deprivation and ethnicity. It is crucial to consider the implications of these inequalities on the implementation of rights for these groups of children.

74. As shown in Figure 4, there are substantially more males in receipt of statutory support plans than females. This gender disparity is larger in England than Scotland, presumably due to the very small number of pupils in Scotland receiving a CSP.

Figure 4: Percentage of total pupils with a statutory support plan by gender in England and Scotland, 2018



Source: DfE 2018, Scottish Government 2019

75. The magnitude of this gender difference varies between categories of need. In both jurisdictions, the largest gender discrepancy is shown in the Autism Spectrum Disorder category, with 4.1 times as many males than females in England, and 3.7 times as many males than females in Scotland. For low incidence normative categories such as hearing impairment and visual impairment, the difference is very small.
76. Disproportionalities in SEN/ASN identification and provisions are also evident by level of social deprivation. The Scottish Government uses the Scottish Index of Multiple Deprivation (SIMD) to measure deprivation. This is an area-based measure that is calculated using a set of indicators that examine factors such as education level, crime rates, housing and employment in an area. Each area is ranked and areas can be grouped into deciles from the most (SIMD 1) to the least disadvantaged (SIMD 10).

77. Figure 5 shows the total number of ASN pupils in Scotland split according to which SIMD decile they reside in. This figure indicates that there is a positive association between increasing levels of social deprivation and identification of ASN, where there are more pupils with ASN living in the most deprived areas than in the least deprived areas. This can partly be accounted for by the rise in identification of pupils within non-normative categories of ASN that are more strongly associated with social deprivation, for example the category ‘Social, Emotional and Behavioural Difficulties’. However, as shown in Figure 6, the opposite pattern occurs regarding use of statutory support plans, where a higher proportion of pupils living in the least deprived areas in Scotland (1.34%) have a statutory support plan compared to the proportion of pupils living in the most deprived areas (0.66%). This is likely to be due to parents in less deprived areas having greater economic, social and cultural capital to engage in more effective advocacy to secure support for their child.

Figure 5: Total ASN pupils by SIMD decile, 2018

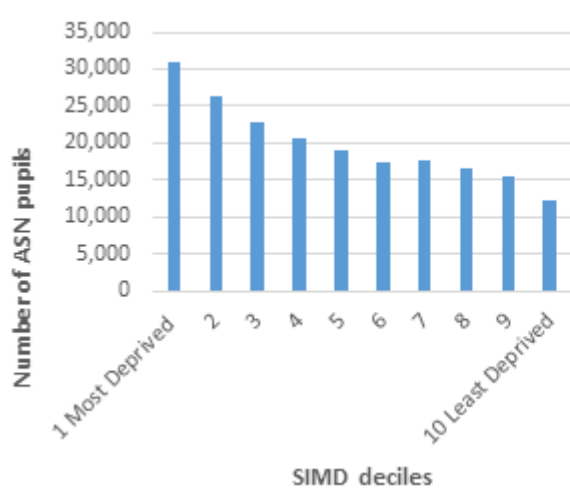
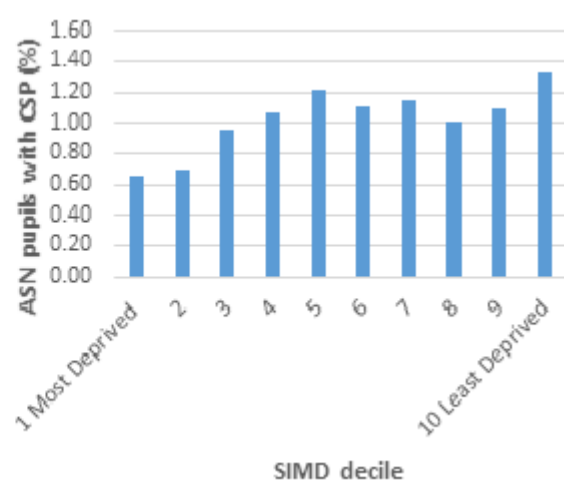


Figure 6: Percentage of ASN pupils with a CSP by SIMD decile, 2018

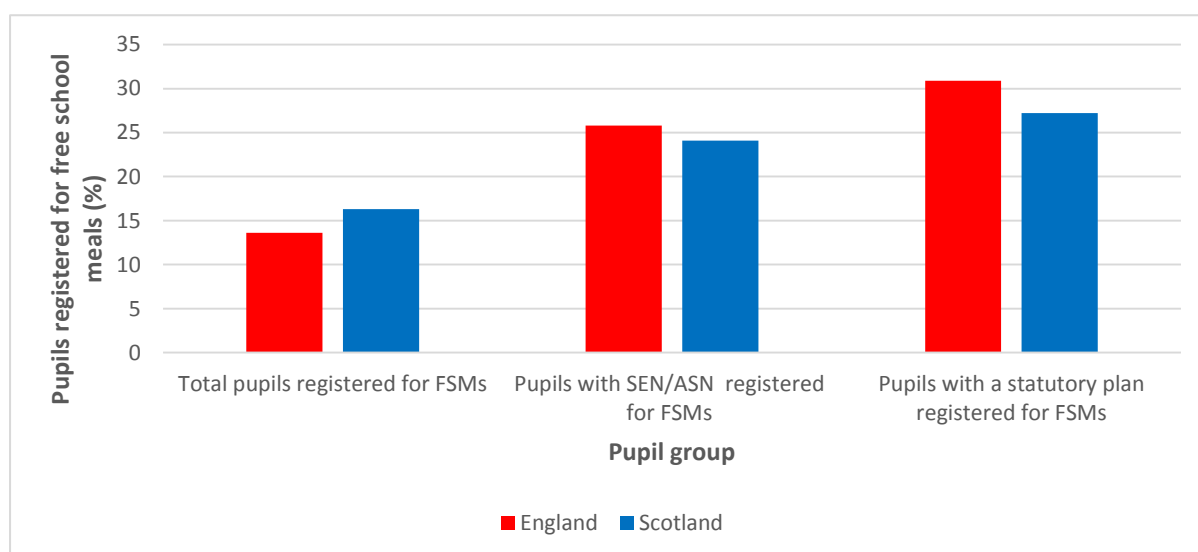


Source: Scottish Government, 2019

78. As SIMD data is area based, there is the risk of misclassification of individual pupils, where a pupil living in a deprived area may not actually be deprived and vice versa. One method to overcome this issue is to use free school meal (FSM) data. FSM eligibility is used as a measure of family material deprivation, where pupils living in families where the household income is below a certain threshold or where the parents/caregivers receive any of a range of specified benefits are entitled to FSMs.

79. As shown in Figure 7, a higher proportion of pupils with SEN/ASN in England and Scotland are in receipt of FSMs (25.8% of SEN pupils, 24.1% of ASN pupils) when compared to the proportion of the overall school population who receive FSMs (13.6% and 16.3% in England and Scotland, respectively). Similarly, a higher proportion of pupils with statutory support plans are in receipt of FSMs (26.3% in England and 27.2% in Scotland) than the proportion of pupils receiving FSMs in the total pupil population. This indicates higher levels of social deprivation among pupils with SEN/ASN and pupils on statutory support plans compared to overall levels of social deprivation in the total population. The magnitude of this difference is greater in England than in Scotland, suggesting the association between social deprivation and SEN identification and provisions is stronger in England.

Figure 7: Percentage of pupils eligible and claiming/registered for free school meals in England and Scotland by pupil group, 2018



Source: DfE, 2018, Scottish Government, 2019, special request

In Scotland, the statistics refer to the percentage of pupils in state primary and secondary schools between P4–S6 who are registered for FSM (P1–P3 pupils and pupils at local authority or granted aided special schools are not included).

80. Figures 8 and 9 provide further examination of this association between FSM eligibility and use of statutory support plans. The proportion of total pupils in receipt of FSMs with a statutory support plan is significantly higher (6.6% and 0.4% for England and Scotland, respectively) than the proportion of total pupils who are not in receipt of FSMs with a statutory support plan (2.3% and 0.2% for England and Scotland, respectively). Therefore, across both jurisdictions there are twice as many pupils in receipt of FSMs who have a statutory support plan, than there are pupils with a statutory support plan only. This indicates that there is an association between increasing levels of deprivation and use of statutory support plans across England and Scotland. This association is in contrast to the SIMD data reported in Figure 6 that shows higher rates of statutory support plans in the less deprived areas in Scotland, highlighting that differences in measurement can significantly influence interpretation of the data.

Figure 8: Percentage of total pupils eligible and claiming FSMs with EHCPs compared to total pupils not eligible for FSMs with EHCPs, in state-maintained primary, secondary and special schools in England, 2018

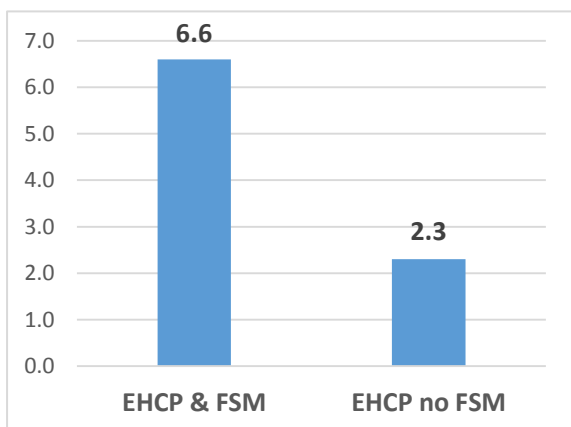
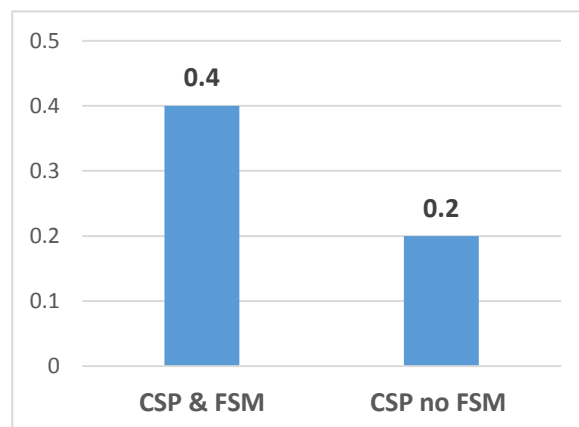


Figure 9: Percentage of total pupils registered for FSMs with CSPs compared to total pupils not registered for FSMs with CSPs, in state-maintained primary and secondary schools in Scotland, 2018

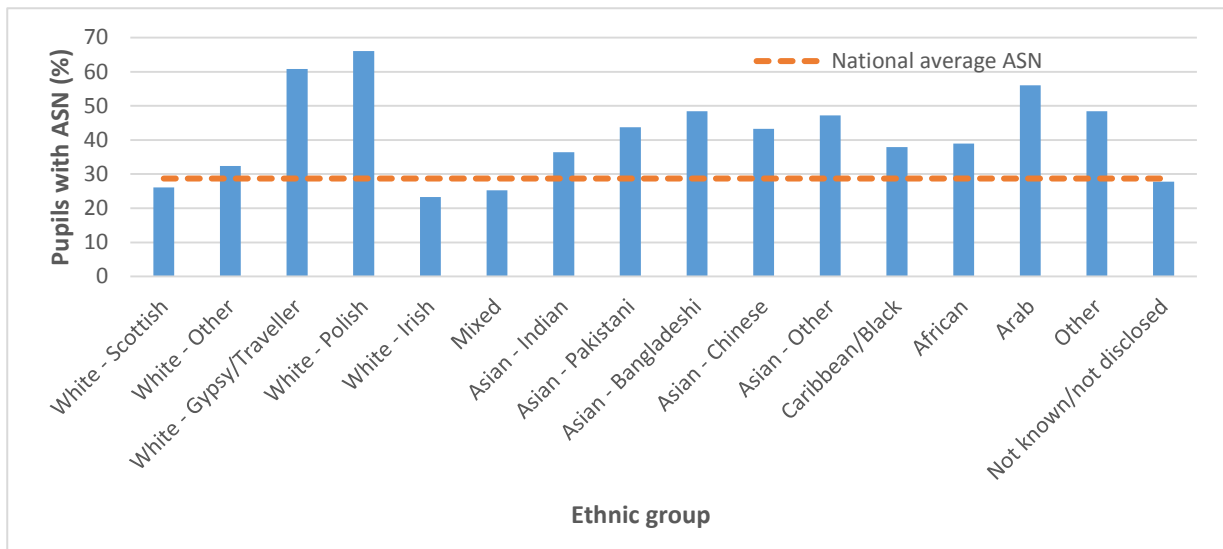


Source: DfE, 2018, Scottish Government, 2019, special request

In Scotland, the statistics refer to the percentage of pupils in state primary and secondary schools between P4–S6 who are registered for FSM (P1–P3 pupils and pupils at local authority or granted aided special schools are not included).

81. Disproportionalities in SEN/ASN identification and provisions are also evident across ethnic groups. As shown in Figure 10, the inclusion of EAL as a category of ASN means that a high proportion of Scottish pupils from minority ethnic backgrounds appear to have above average levels of ASN identifications (for example, 66% of Polish pupils are identified with ASN); however, only a minority of these groups have a learning difficulty or disability.

Figure 10: Percentage of pupils within each ethnic category identified with ASN in Scotland



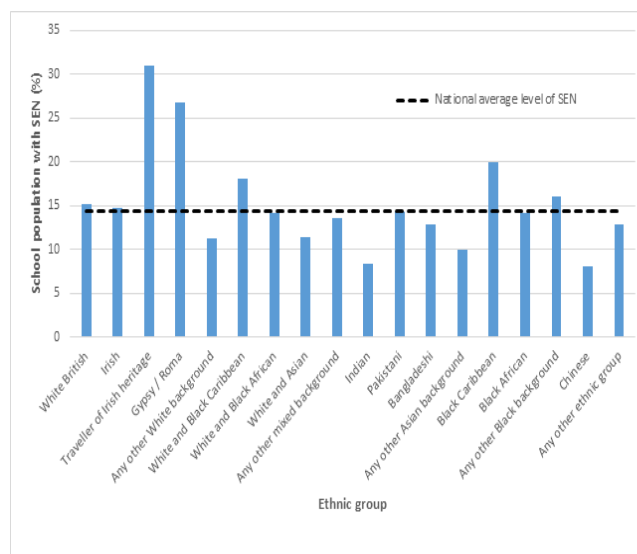
2018

Source: Scottish Government, 2019, special request

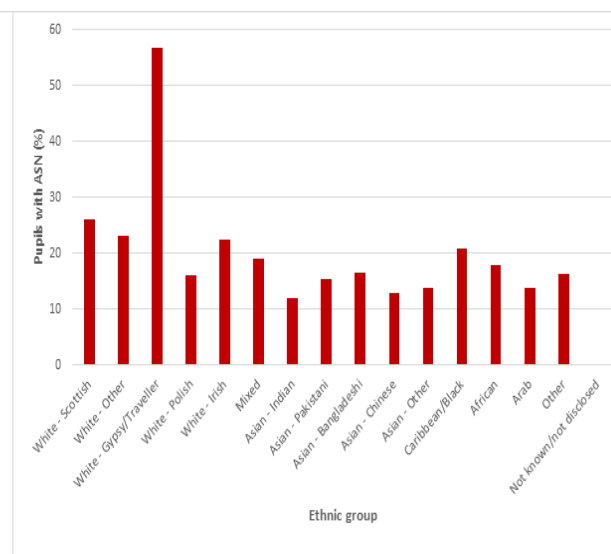
82. As shown in Figure 11, when EAL is excluded from the analysis, similar patterns of SEN/ASN identification are shown across jurisdictions. Of all minority ethnic groups, pupils from Traveller and Black/Caribbean backgrounds have the highest rates of SEN/ASN identification. Rates of SEN identification for White British/Scottish pupils are around the average and pupils of Chinese and Indian heritage have the lowest rates of SEN/ASN identification.

Figure 11: Percentage of pupils within each ethnic group identified with SEN/ASN in England and Scotland, 2018 (excluding EAL).

ENGLAND



SCOTLAND



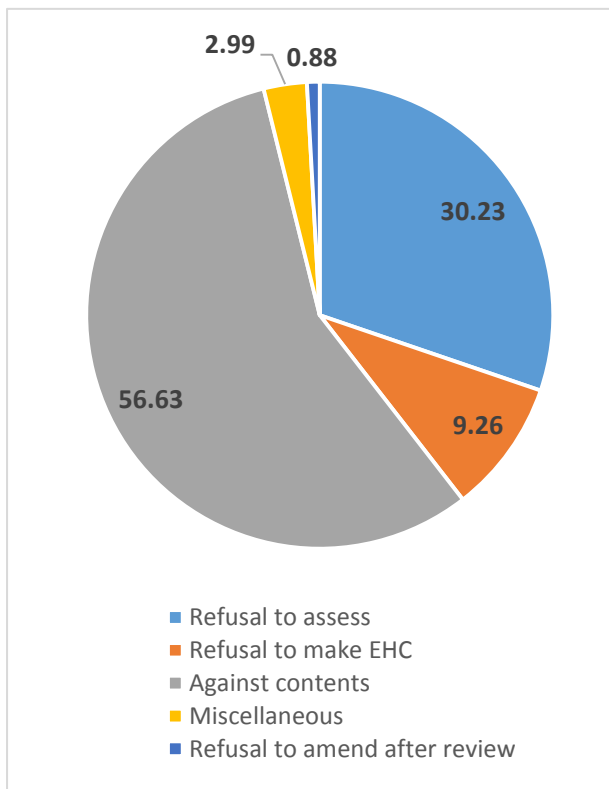
Source: DfE 2018, Scottish Government 2019, special request

83. In the area of appeals (or references in Scotland), the subject of a new right for children aged 12–15 with ASN under the Education (Scotland) Act 2016, we see a wide disparity between England and Scotland in the use made of this process. In England between 2017 and 2018, there were 5679 appeals registered in England by the First-Tier Tribunal (Health, Education and Social Care Chamber), compared to 92 appeal requests received by the Additional Support Needs Tribunal in Scotland (ASNTS). Therefore, by head of population, there was five times as many references made in England than Scotland. There is no breakdown by age/category of appellant in the published statistics, so it is unclear how many are brought by young people or, in Scotland, by children. However, information from the Tribunal Presidents in both jurisdictions suggest that the numbers are very small.

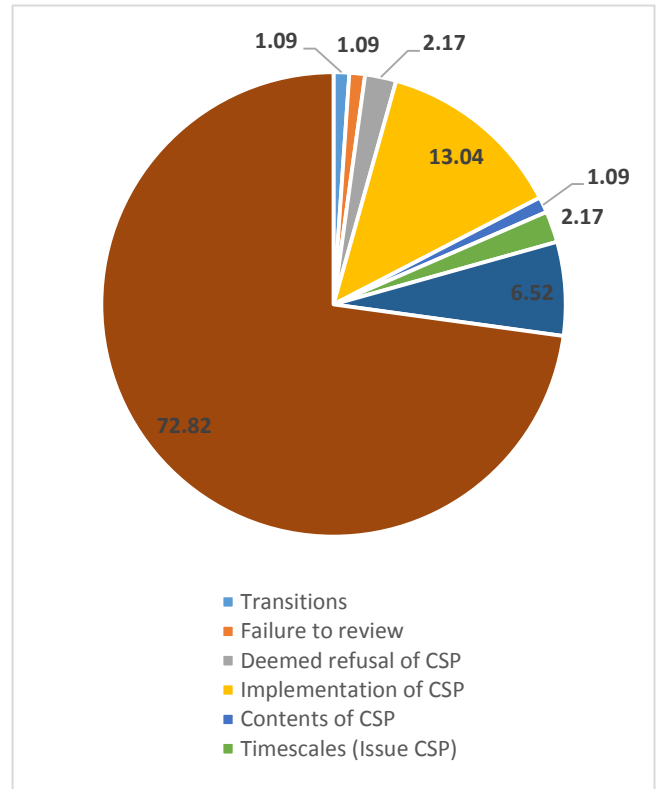
84. As shown in Figure 12, the reasons for appeal differed between jurisdictions. Over half (56.6%) of references made in England were raised in objection to the contents of a statement or EHC plan and almost a third of cases were related to a refusal to assess (30.2%). Whereas in Scotland, the majority of references were in relation to a placing request.

Figure 12: Registered appeals by type in England and Scotland, 2017–2018

ENGLAND



SCOTLAND

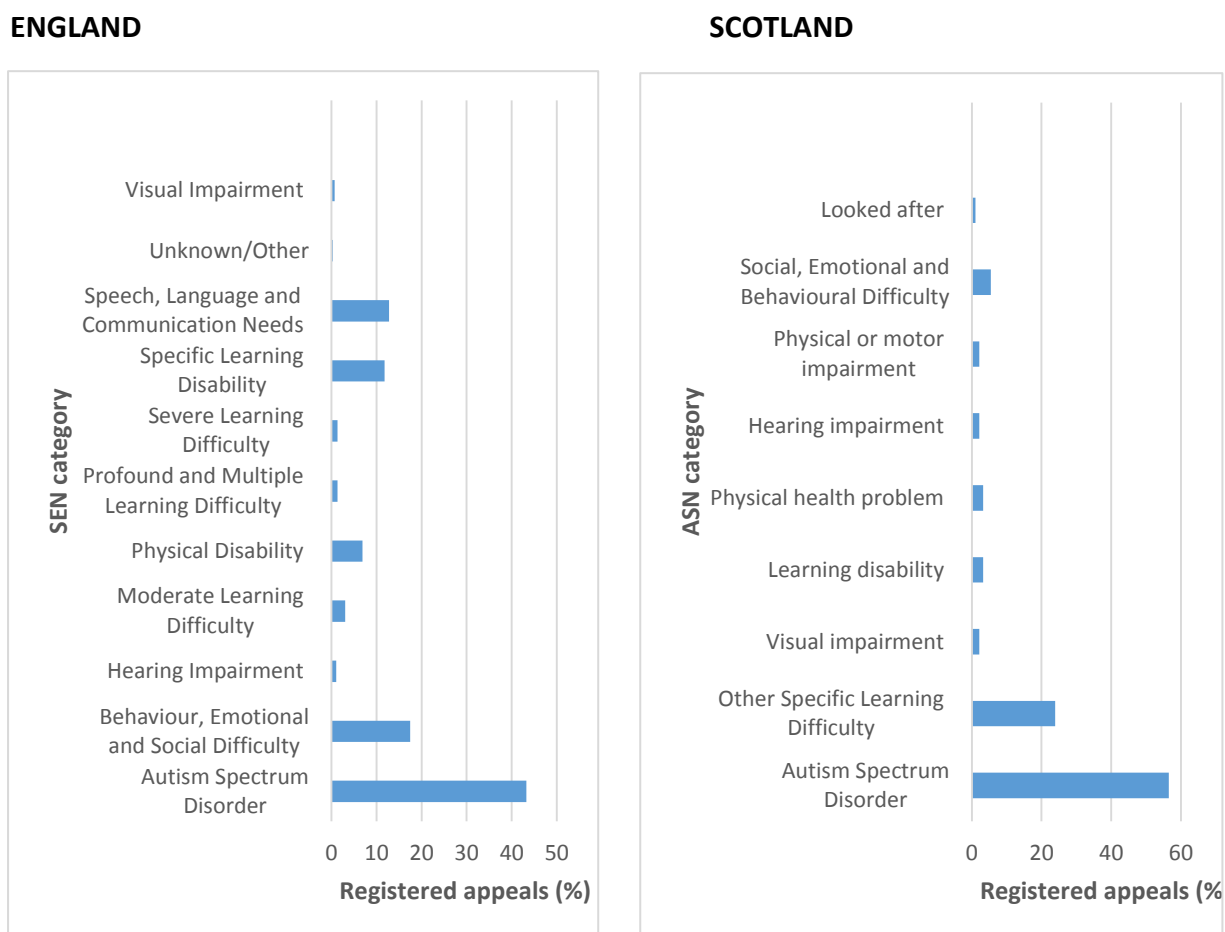


Source: MoJ, 2018; ASN Tribunal for Scotland, 13th Annual report, 2018

Note: English statistics show data collected across a 12-month period (1st September 2017 – 31st August 2018), while Scottish data shows appeals registered between 1st April 2017 and 11th January 2018

85. As shown in Figure 13, the majority of references were in relation to pupils with Autism Spectrum Disorder, with this trend illustrated across both jurisdictions.

Figure 13: Registered appeals by type of SEN/ASN in England and Scotland, 2017–2018



Source: MoJ, 2018; ASN Tribunal for Scotland, 13th Annual report, 2018

Note: English statistics show data collected across a 12-month period (1st September 2017 – 31st August 2018), while Scottish data shows appeals registered between 1st April 2017 and 11th January 2018

Findings from Local Authority Surveys

86. Two separate online questionnaires were sent to all local authorities (LAs) in England and Scotland in order to gather evidence on how respective legislative reforms have impacted upon LA practice supporting children and young people’s rights of participation in decisions concerning ASN/SEN provision. The surveys sought to identify how, and to what degree, LAs in each jurisdiction are facilitating the participation of children and young people in the relevant decisions and processes.
87. In Scotland, 18 LAs completed the questionnaire, giving a response rate of 56% and in England, 56 LAs completed all or part of the questionnaire, which resulted in an overall response rate of 37%. Analysis of the survey results for Scotland ([Carmichael & Riddell, 2018](#)) and England ([Davidge & Harris, 2018](#)) indicated that some positive changes have already taken place, in addition to underlining important issues which may impede the effectiveness of the new framework for children’s and young people’s

rights concerning SEND provision. A summary of key findings from the LA surveys in each jurisdiction follows below.

Training

88. LAs in both jurisdictions (Scotland, 81%, England, 90%) reported that all or some LA staff with SEND responsibility had received some form of training on children and young people's participation but there was little consistency in terms of the frequency, scope and type of training provided, regardless of jurisdiction. Some LAs in Scotland also noted that training tended to be around the inclusion of children and young people in meetings rather than in connection with statutory duties under the new reforms.

Provision of Advice and Information

89. In England, almost all LAs stated that they provide information about SEND matters via a range of passive and active channels and make an effort to maximise accessibility and use a variety of printed and digital media. Some LAs also engage the help of specialist teachers and interpreters when required. Advice and support are organised locally and are provided through the commissioning of a variety of bodies such as SENDIAS. Parent forums, local partnerships, charities and strategic groups also communicate SEND information on behalf of LAs.
90. Scottish provision of information and services appears to be more fragmented, less accessible and is organised and funded by the Scottish government. There is a complex arrangement with regard to how families and different aged children and young people access appropriate advocacy services. Although most LAs reported that they provided advice and information to children and young people about ASN via a range of methods such as forums, websites, leaflets, meetings and letters, most information was aimed at parents and carers rather than children and young people. Subsequent analysis of Scottish LA websites undertaken as part of later case study research (Ref WP8) revealed that LAs tend not to display information in child-friendly formats and there is little available information on ASN policies or other documents regarding the new legislation in print or digital formats. In addition, Scottish LA websites generally failed to mention the existence of the 2016 legislation and the new rights of children and young people.
91. In England, less than half of the responses indicated that the authority always arranges information, advice and support for young people in relation to EHC assessments and in Scotland, the majority of respondents said that they only did this if information, advice and support was needed or requested. Similarly, advice and information was provided on ASN provision, but this was typically aimed at parents rather than children and young people.
92. Across jurisdictions, variations in the capacity of different authorities to ensure that SEN related information and advice is both accessible and appropriate for children and young people were identified. In order for children and young people to understand what provision and support is available, further clarity and uniformity around the provision of information is required.

Reviewing and Consulting with Children and Young People about ASN/SEND Provision

93. Just over two-thirds of respondents in both jurisdictions reported that they regularly consult with children and young people about ASN/SEND provision and have used a variety of different mechanisms to do this. Most LAs used more than one mechanism and often children and young people were consulted via a combination of dedicated forums, surveys, youth councils and voluntary organisations. The majority of LAs felt that consultations were a positive development and that these processes had helped LAs to refine policy and practice, identify gaps in provision, and give children and young people opportunities to influence the agenda for change. In England, some LAs reported that specific consultations about the local offer have enabled the LA to improve the accessibility, layout, content and functionality of local offer information and pay closer attention to diverse communication needs.
94. Across jurisdictions, the LAs which did not consult regularly with children and young people regarding ASN/SEND provision identified difficulties in finding sufficient time or resources to fund consultations. Despite the fact that some LAs acknowledge that this issue needs to be addressed there is a risk that children and young people's right to participate in decisions about local provision will be side-lined, especially in times of significant reductions to LA resources.

Children and Young People's Participation in EHCPs and CSPs

95. Children and young people rarely make requests for ASN/EHCP assessments or communicate their views on the contents of statutory plans independently. In the majority of cases, children and young people's views and requests for assessments are often facilitated via a parent or another person. North and South of the Border, LAs also indicated that it is extremely rare for a young person to name their preferred school or alternative setting within statutory plans despite their rights to do so. In England this is also the case with personal budgets and young people very rarely make requests for these in their own right.
96. However, the vast majority of authorities said that they always set out the views of the child or young person in EHCPs and CSPs wherever possible. Where an authority does not do so it would generally be due to the child or young person's lack of capacity or an absence of parental agreement. Many LAs highlighted difficulties in consulting with younger children and those with more complex needs. Other barriers to including children and young people's views, which most authorities encountered, included an insufficient ability or willingness on the part of staff to engage with children and young people with more complex disabilities, a lack of parental co-operation, and the child or young person's low confidence, anti-social behaviour or apathy. Some respondents indicated that improving the availability and quality of independent professional support for promoting the voice of the child and young person as a key requirement for improving practice and provision in the future.
97. Whilst the majority of LAs considered that children and young people's participation in assessments and reviews of support plans was important, respondents indicated that this does not always happen. Survey responses revealed sub-optimal levels of

children's and young people's participation in EHCPs and CSPs, further investigation into why this is not happening consistently needs to be undertaken.

Resolution of Disagreements and Disputes

98. Both north and south of the Border, LAs said that they utilised a range of methods to make young people aware of dispute resolution, mediation and appeal processes and made arrangements to support young people with ASN/SEND with access to advocacy support in connection with these processes.
99. In England, far greater use is made of formal dispute resolution mechanisms compared with Scotland ([Gillooly & Riddell, 2019](#)) but across jurisdictions LAs reported that young people very rarely initiated a range of dispute resolution procedures independently.
100. In England a majority of LAs experienced difficulties in ensuring that the views of children are placed before the tribunal. Common problems included: parents refusing to provide consent for the authority to obtain the child's view, issues around ascertaining capacity or establishing whether the view that is presented to the tribunal is that of the child or the parent. Whereas in Scotland, two thirds of respondents reported that there were no problems placing the views of children and young people before the tribunal. However, a third of respondents said that difficulties might arise when the views of children and young people differed from those of their parents, since representing both viewpoints fairly and adequately could be difficult.

Parental Involvement

101. In Scotland, more than three quarters of respondents felt that while parental involvement in young people's decisions was important and should be taken into consideration, young people's views should take precedence. Authorities reported that they aim to resolve any differences in views between parents and their children using mediation, discussion and advocacy.
102. In England, LAs view parental involvement largely positively but there are also occasions when the parent's or carer's views overshadow those of the young person and thus interfere with young people's autonomy. Some authorities also reported that parents had expressed difficulties in accepting the increased emphasis on children's and young people's voice in respect of SEND decision making processes. Where a young person is not deemed to have capacity to make decisions, however, the views and extra contextual information that parents and carers can provide is seen as a broadly positive addition to decision making processes.

Planning for Future Education or Training

103. In England arrangements for supporting young people to make decisions about future education or training varied across LAs. A number of authorities commissioned independent support from specialist providers and some authorities also provided specific advice and support internally. In other authorities, young people are also able to access a range of services provided by schools and college careers services or are expected to consult information publicised within the local offer.

104. In Scotland, the majority of respondents said that their local authority provided support for young people making the transition to future education or training and often used external organisations to facilitate this.

Findings from English and Scottish Case Studies of Children and Young People

105. In the following sections, we illustrate areas where children's rights were clearly being promoted in schools and classrooms, and areas where major decisions were being made by the adults around the child or young person. We also draw out similarities and differences between England and Scotland, focusing on whether more progressive legislation in Scotland appears to be leading to an enhanced focus on children's rights in schools and classrooms.

Areas Where Children's Rights are Being Promoted

School Pedagogy and Ethos

106. In both jurisdictions, children, parents and teachers generally believed that schools were positive environments in which children's voices were heard and respected. This commitment extended beyond the group of children with SEN/ASN, for example, many schools were participating in the UNICEF Rights Respecting Schools programme²³. The idea of rights is abstract and difficult for children to articulate, but they still had a broad idea of rights as entitlements to nurture and care, as illustrated by Lewis, at school in a socially disadvantaged urban area in Scotland:

They should have the right tae play. Have the right tae eat. Have the right tae get sleep. Tae clean themselves (Lewis, 14 years, special unit attached to mainstream, SIMD1, identified with SEBD).

107. Children often spoke positively about their teachers' efforts to make them feel included and listened to, as illustrated by Alan's positive comments about the Department for Additional Support (DAS), a special unit attached to a mainstream school in a socially advantaged Scottish neighbourhood:

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 years, special unit attached to mainstream school, SIMD 5, identified with ASD).

108. Teachers described how they tried to maximise opportunities for choice in learning:

... 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

²³ Since 2006, 5,000 schools in the UK have participated in UNICEF's Rights Respecting Schools programme and are currently working towards embedding the principles of the UNCRC into daily school life as part of the accreditation process. <https://www.unicef.org.uk/rights-respecting-schools/the-rrsa/awarded-schools/>

to encourage her in other areas as well. So yeah I think, I think there's a really good balance ... (Class teacher of Holly, special unit attached to mainstream, SIMD 4, identified with ASD)

109. Claire (a young woman of 18 with social, emotional and mental health difficulties studying at an English FE college) referred to a long history of being excluded from primary and secondary schools and of the negative impact that this had on her well-being and self-esteem. However, she also drew attention to the increased freedom and autonomy that she experienced at college where she was more involved in decisions around her support needs and choice of subjects.

110. Despite the many positive efforts at observing children's rights, there were also occasions in which children and parents felt marginalised and disrespected, even when teachers believed they were creating an enabling classroom environment. Leslie's mother, for example, described on-going bullying and violence in the special unit attached to a Scottish mainstream school attended by her son:

Leslie was ... 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 (Mother of Leslie, 13 years, special unit attached to mainstream, SIMD 3, identified with ASD).

111. In England, too, pupils and their parents sometimes felt excluded from decision-making. For example, Lyron, identified with autism, attended a special unit (known as a 'resourced provision') attached to a mainstream primary school. For two afternoons a week, he was supported by a teaching assistant to join his peers in the mainstream classroom and was also involved in EHC planning meetings. Despite these efforts at involvement, Lyron was not allowed to join the other children at lunch and playtime, and felt isolated from his peers:

I'm not allowed out for lunchtime... something happened in year four and I've not been out for lunchtime ever since that incident...I'm just really annoyed. It's not fair, because I've been doing this for eight months (Lyron, 9 years old, England.).

Involvement in Formal Educational Planning

112. Scotland and England have adopted different approaches to formal educational planning, resulting in a more formal system south of the Border than north of it. In England, there has been an increase in the use of statutory support plans since the enactment of the 2014 legislation, with just under 3% of children receiving EHCPs ([Gillooloy & Riddell, 2019](#)). By way of contrast, there has been a gradual decline in the use of Co-ordinated Support Plans in Scotland since the passage of ASLA 2004, and now only 0.3% of the population has a statutory plan. As a result of the emphasis on formal planning in England, minuted meetings to review needs, monitor progress and plan future steps take place regularly and generally, to some degree, involve the child/young person, as well as parents. By way of contrast, in Scotland formal meetings are much less common and rarely involve the child. Among our case studies, only two Scottish young people had a CSP (and one of these might have lapsed), whereas 14 of the 18 English children and young people had EHCPs.

113. In Scotland, the majority of parents did not know what type of plan their child had, or indeed whether they had any plan at all. Parents told us about CSPs opened in primary school which were allowed to quietly lapse when a child entered secondary

school. Parents also said it was extremely difficult to find information about statutory support plans:

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 (Mother of Tom, 14 years, mainstream school, SIMD 3, identified with physical disabilities).

114. Scottish parents who insisted on a statutory support plan were generally happy for their child to be involved, while recognising the child's right to opt out of the process, as illustrated by David's experience:

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 (Mother of David, 13 years, special unit attached to mainstream, SIMD5, identified with physical and learning disabilities).

115. Scottish parents also felt that at times the child's involvement was somewhat artificial:

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. (Mother of Nick, 12 years, SIMD1, special unit attached to mainstream, identified with physical and learning disabilities)

116. To summarise, in Scotland children appeared to be more involved in everyday decisions on teaching and learning than in formal educational planning.
117. In England, by way of contrast, children and young people were more actively involved in formal aspects of support planning processes via their input to the 'All about me' section A of their EHC plan²⁴ and attendance at EHCP review meetings. Unlike their Scottish counterparts, most parents knew that their child had an EHC plan and the majority of children and young people were invited to participate in EHC planning. However, their degree of involvement depended on a number of factors such as the child's willingness to participate in meetings, adults' concerns about creating undue anxiety or stress for a child or young person who might find it difficult to hear others talking about their vulnerability or disability; parents raising objections; and concerns about a child or young person's capacity or maturity.
118. Where children or young people attended all or part of an EHCP review meeting, it appeared to be common practice for them to present their 'Section A – All about me'

²⁴ Section A of the EHC plan is a dedicated space for the child and his or her parent/carer or the young person to include their views, interests and aspirations in their own words and forms an integral part of the EHC planning process.

part of the form verbally or to give a short presentation. The child or young person used their preferred communication style to talk about what is important in their lives, their preferred forms of support and aspirations for the future. Pupils were supported with preparing their contributions by a teaching assistant, class teacher or their parent or carer. In some cases, involving children and young people with more complex needs or communication difficulties, views were articulated via a short film, assistive technology or with the support of an adult familiar with the child or young person's SEN and preferred medium of communication.

119. In England, the extent of a pupil's participation in decision-making was far from uniform or consistent across the country and was affected by the degree of support for person-centred planning. For example, Peter (aged 16, identified with ASD) attended a mainstream secondary school and was always invited to EHCP meetings, where he was able to express his views freely. By way of contrast, Chloe was described as 'talking non-stop', leading to reservations about attendance at her forthcoming EHCP review:

I don't know whether I'll take Chloe because, you know, like Chloe can talk. We could have a review that will last all afternoon if I took Chloe in, so I'll sit them down and talk to them about it and I think as they get older, then they do [participate] (Special school class teacher, regarding Chloe, 8 years old, IMD 5, identified with Autistic Spectrum Disorder).

Involvement in Collective Participation

120. In both jurisdictions, efforts were made to involve children and young people in collective forms of participation such as school councils. As is the case with pupil representative bodies in general, in this research more articulate and confident children were more likely to be involved than others. In addition, questions may be raised about the extent to which school councils and prefect systems are genuinely focussed on enhancing children's rights, or rather co-opting children into promoting the school's values and interests ([Whitty & Wisby, 2007](#)). Nonetheless, participants in pupil councils and prefect systems in Scotland were generally positive about their experiences. Alan, for example, was the first DAS pupil to be part of the mainstream prefect system, and described his sense of responsibility at being involved in the day to day running of the school:

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 ... 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, 17 years, special unit attached to mainstream school, SIMD 5, identified with ASD)

121. English case studies also provided illustrations of children and young people's experience of collective consultation mechanisms and the positive impact of 'having a say'. For example, eighteen year old Claire, who experienced social, emotional and mental health difficulties, appreciated having some say in decision making as a

student representative on her college council. She felt that the colleges had listened to students' views on food and had made changes.

122. However, some students were sceptical about the extent to which critical voices would be heard. For example, Laura, aged 17 and attending college, felt that the college was receptive to hearing positive views but was not open to criticisms:

R: We fill in a form once a year that says, 'Do you feel happy at college?' And most people say, 'Yes.' And I wrote them a short essay about why I said, 'No.' And I was never asked any questions on it afterwards.

I: Do any changes ever happen when you tell people how you feel?

R: I offered to be the Geography representative, because I wanted to go and pick my bone with the Head about why I was having to [try and organise additional SEN support] by myself. And it was met with a, 'Well we'll talk about this another time, Laura.' But I want people to know that this is the way I feel and this is not okay. (Laura, 17 years, FE college, IMD 3, identified with specific learning difficulties)

123. There were also some examples in both England and Scotland of explicit linkages being forged between the children's rights agenda and systems of collective participation, as illustrated below:

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 a' 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 a' those processes are quite good at allowing the boys, you know, a voice on decisions that are made within the school. (Head teacher, residential special school for children with autistic spectrum disorder)

124. In England, some local authorities commission charities such as Barnardo's to develop specific participatory groups to support children and young people with SEND (including those who are also looked after by the local authority) to learn about their rights and be consulted about local SEND provision. Jacob, a young man of 22, commented on how much he appreciated the opportunity to have his views heard:

I like to feel valued and appreciated because I have no family. I like to feel that I belong somewhere. I like to be given time to devote to my committee. I like to feel that I have a voice and can make a difference. (Jacob, 22 years, English FE college, IMD 1, identified with social, emotional and behavioural difficulties/autistic spectrum disorder)

Areas Where Less Progress has been Made on Children's Rights

125. In the section above, we identified areas where progress has been made in realising children's rights. In this section, we focus on areas where difficulties persist, where again there were many commonalities between the two jurisdictions.

Children with Complex Needs

126. As noted by 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 when these were expressed verbally and in a manner deemed acceptable to the school, but they were much less adept in interpreting non-verbal messages, particularly when expressed in a manner which disrupted normal classroom activities. These difficulties were evident in one of our Scottish case study sites, a special school for children with complex needs where most pupils had little or no speech. Even though some pupils had CSPs, it was rare for them to be involved in educational planning. On the section of the form for recording children's views, N/A was frequently written. A teacher explained the limitations she perceived in giving children 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 choose. (Scottish special school teacher – children with complex needs)

127. Conversations with staff members at one special school in England catering for children with complex needs revealed similar difficulties in accessing pupil voice

SL: This is where the PFA [Preparing for Adulthood²⁵] is a very difficult document to work with when you're trying to say to students, 'What help do you need in the future?'... They're like 'what's the future?'

PV: They can't understand the concept of tomorrow, let alone...

SL: Well their future is, I want to stay here 'cause this is the here and now, this is all they know. The thought of leaving something and not knowing, that's really difficult.

PV: That sets massive high anxiety levels for our students.

(Pupil Voice Co-ordinator & Sixth Form Leader, English special school.)

Children Living in Areas of Deprivation

128. Across the social spectrum, Scottish parents participating in the case studies had very little knowledge and awareness of their existing rights and the new rights accorded to children by the 2016 legislation, and this was particularly marked for those living in areas of social deprivation. English parents tended to be more aware of their rights, but for those in more deprived areas, knowledge was acquired, often by chance, from neighbours, friends, schools, or third sector groups.

129. Families from disadvantaged backgrounds often appeared to be passive and acquiescent, even when dissatisfied with educational provision on offer. In one of the Scottish case studies, for example, Colin's mother was very concerned about the school's failure to recognise her son's anxieties and the fact that he appeared to have been labelled as a 'work avoider' because of his need for frequent visits to the toilet. Her attempts to phone the school and local authority were generally unsuccessful and she felt that her concerns were ignored:

²⁵ Under reg 18 of the SEND Regulations 2014 (SI 2014/1530), where a child or young person is within 12 months of a transfer between phases of education, the local authority must review and where necessary amend the EHCP by a prescribed date, which is 31 March in the case of a transfer to post-16 education and 15 February in any other case. The SEN Code (DfE/DoH 2015 para 8.9) provides that the EHCP review at year 9 and every year thereafter must include 'a focus on preparing for adulthood'.

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'. (Mother of Colin, 13 years, special unit attached to mainstream, SIMD 1, identified with physical and learning difficulties)

130. Likewise, south of the border, Ben's mother felt ill-informed about the EHCP process and tended to rely on professionals as, 'they know what they are doing'. She felt unable to challenge her son's speech and language therapy provision due to lack of confidence and a resignation borne out of a feeling that school resources were already overstretched:

Maybe that's a little bit of ignorance on my own behalf by not looking into it further. I tend to let the school lead the way because I think they're the professionals and they know what they're doing. (Mother of Ben, 10 years, IMD 3, language and communication/moderate learning difficulties)

131. Children relied on their parents as their principal advocates and middle class parents were more adept than others at finding local authority policies and using external support services. For example, David's mother used her professional knowledge as a former teacher to find and read the local authority's ASN policy in order to secure a CSP for her son. She recognised that most parents would not be able to do this:

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. (Mother of David, 13 years, special unit attached to mainstream, SIMD5, identified with physical and learning disabilities)

132. In England, Peter's mother was also adept at drawing upon a range of resources, recognising that she had been proactive in ensuring that she could 'manipulate the system'. She was heavily involved in the life of a school, acting as chair of the PTA, but as a result was unable to work full-time:

I got off to a good start with the primary school ... I made myself heavily involved so that I could get access. So in that way I've sort of manipulated the system as well so I was sort of chair of the PTA for eight years and became a really key part of the school so then I had access to SENCOs just all the time, not in terms of, 'Oh can we have a meeting?' but I'd be at a Christmas Fair and the SENCO would be working with me and I'd be like 'Oh blah, blah, blah'. I did that on purpose so that I could sort of understand the school better and, you know, the teachers saw me differently because I was giving a lot back to the school so in a way I sort of manipulated the system as well. (Mother of Peter, 16 years, IMD 4, identified with Autistic Spectrum Disorder)

133. As indicated by the depute head teacher quoted below, teachers in Scotland were aware of the need to redress such power imbalance, but tended to blame 'pushy' middle class parents, instead of recognising the need to do much more to support others:

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. (Depute head teacher, Scottish special unit)

134. The disenfranchisement of children living in areas of social disadvantage in Scotland was particularly marked when these children had looked after status. For example, Chloe, a child in kinship care, had been moved from mainstream to the attached special unit because of behavioural difficulties. Staff found her behaviour very difficult to manage and during the day of classroom observation she attempted to steal a set of car keys and lock herself in the toilet. Chloe explained that she was embarrassed at being in the special unit and avoided contact with her former classmates in mainstream. She was also infuriated at being placed in a class with children who did not communicate verbally, recognising that she was far more intellectually able:

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 years, SIMD 1, special unit attached to mainstream, kinship care, identified with SEBD/ASD)

Involvement in School Choice and 'The Local Offer'

135. In general, parents believed that they were best able to determine what was in their child's best interests. While they were happy for their child to be given a say in day to day classroom matters, they believed that it was necessary for them to make important educational decisions on their child's behalf on matters such as school choice and post-school destinations. 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. Rather than seeking to override their parents' judgement, children accepted that parents might make decisions on their behalf.
136. For example, Laurie began school at his local primary, but became increasingly anxious, eventually spending all of his time alone at school and in his bedroom at home. His middle class parents believed that they needed to do something to break the cycle of isolation and eventually located a residential special school catering for children with autistic spectrum disorder. Their son was not involved in the choice of school, and initially resisted the move, but gradually accepted that this was a good place for him to be:

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 years, Scottish special residential school, SIMD 1, identified with ASD and anxiety)

137. In England, the CFA, 2014 (s 38) includes provision for young people (or, in the case of a child, the parent) to request a particular school or other institution to be named and included within an EHCP. Within the English case studies, many young people referred to receiving support from parents and carers in school/college choice. For example, after visiting a number of FE colleges with his parents, Kei chose a Catholic college on the grounds that it had the best level of support and drama was included in the curriculum. His father described it as a joint decision:

He did have a say and we did try to discuss and advise and that kind of thing, yes...we did try to come to the best decision as possible as a family and then also in discussions a bit with his teacher and stuff. (Father of Kei, 17 years, IMD 5, FE College, identified with moderate learning difficulties)

138. In both jurisdictions, choice of school for younger children was made or heavily shaped by parents.
139. We noted above the statutory duties placed upon English local authorities to produce, publicise and consult with young people and families regarding the area's 'local offer', including information about local SEND services, and to keep the local provision of education, training and social care for children and young people with SEND under review. Survey responses from 56 local authorities in England ([Davidge & Harris, 2018](#)) indicated that only two thirds always consulted with children and young people in preparing and continually reviewing the relevant SEND educational, training and social care provision. On the whole, the LAs engaging in some form of consultation with young people regarding the local offer found the feedback useful. Many authorities illustrated how consultations shaped subsequent provision and delivery. For example:

When engaging with young people on our Local Offer website we went to meet with young people in community groups. We set tasks for them to complete and observed how they navigated the system. We also asked about their expectations. This allowed us to make changes such as embedding You Tube videos as graphics, rather than as text hyperlinks. We observed how young people went past certain links because they were not in the obvious place. We observed how they glossed over text and the importance of getting graphics right. This is still a work in progress.

140. Just over half of parents and carers and most of the children and young people interviewed as part of the English case study research were, however, unaware of the local offer and had not been consulted about its development. Nevertheless, a few young people who were engaged in voluntary sector participatory groups for young people with SEND or were care experienced referred to being involved in consultations about the layout and content of the local offer. For example, James, a member of the LA SEND partnership board, had had some input into deciding on the group's logo and some contact with important decision makers. He spoke about being able to offer candid opinions at these meetings and was keen to ensure that there was always a young person representative at every meeting. He also explained that participating within LA consultation groups has enabled him to make suggestions about improving the LA's communications with other children and young people:

R: One is the media group, so we'll look over the LA's [local offer] website... We'll liaise that back to them, saying it's not child friendly, can you do this, change this, or make it easier.

I: Do they listen to your suggestions?

R: Most of the time, yes. (James, 16 years, IMD 4, identified with autistic spectrum disorder/specific learning difficulties)

Dispute Resolution

141. As noted above, in England, far greater use is made of formal dispute resolution mechanisms compared with Scotland ([Gillooly & Riddell, 2019](#)), a pattern which was

also evident in our case studies. In the Scottish case studies, only two parents had made placing requests and one had used mediation. By way of contrast, in England half of the case study families had been involved at some point in appeals or other challenges regarding a child or young person's exclusion, placement at a preferred setting or level of SEN support. Despite these differences, children and young people were rarely involved in the formal processes, although their views were relayed to the panel. In Scotland under the terms of the 2016 legislation, children are allowed to request adjudication or make a reference to the tribunal, but are not allowed to request mediation. Even though children have been able to make a reference to the tribunal since 2017, only one case has involved a child as the party.

142. In Scotland, school staff were generally unaware of the fact that children had independent rights of redress. By way of illustration, a Scottish head teacher reported his 'bewilderment' on hearing about the rights of children to be the principal party in a tribunal reference, indicating that he and his colleagues had received no prior warning or training from the local authority or the Scottish Government:

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. 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)

143. Doubts were also expressed about the capacity of children with ASN to engage in legal processes, and there were fears that the new rights might be abused:

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)

144. In England, as noted above, there are three dispute resolution mechanisms identified in the CFA 2014. The first arises from a duty on LAs to establish arrangements for independent persons to facilitate 'resolution of disagreements' between young people or parents of children and LAs or other relevant bodies (s 57). These services are, however, under-utilised. Secondly, there is provision for mediation of disputes involving these parties about most of the key issues concerning a child's SEND and provision, including health care provision (ss 53 and 54). Thirdly, there is a right of appeal to the First-tier Tribunal over a wide range of decisions by the LA concerning a child with SEND, including a refusal to carry out an assessment, a decision about making an EHCP and the determination of the contents of an EHCP (s 51). However, a precondition of bringing an appeal is receipt of information from a mediation adviser about mediation and the issuing of a certificate by the adviser confirming either that the intending appellant has participated in mediation or decided not to participate in it (s 55). The tribunal also holds a jurisdiction under the

Equality Act 2010 over complaints of disability discrimination brought by a young person or child's parent.

145. Within the English case studies, there were a number of occasions in which a child or young person explained that they had alerted a parent or carer to the fact that they were unhappy at their educational setting. This often led to a parent or carer either independently securing a placement at an alternative setting on their child's behalf or instigating an appeal. However, no young people had experience of engaging with mediation services or realising their right to appeal to First-tier Tribunal independently and in all cases involving appeals, parents and carers invoked this right.
146. We cited earlier the research by Cullen et al. (2017) for the Department for Education which indicated that young people's experiences of the processes of mediation and appeal in England 'were largely negative' and we also referred to the problem of anxiety as a barrier to participation identified in the study by Walsh (2017). The negative impact of engaging in dispute resolution processes upon a child or young person's mental health and well-being was also highlighted as a continuing concern by parents interviewed as part of the English case study research.
147. Moreover, in the majority of incidences that involved some form of dispute, the parent or carer referred to having tried to protect their child from undue anxiety and distress by limiting their involvement in any conflict. For example, Aiden's parents have been involved in a number of appeals and in his interview Aiden explained that he had only recently become aware that his mother had been:

... battling [for a year] to get me to come here because it's really hard to get kids in here and that. (Aiden, 13 years, special school, IMD 5, identified with autistic spectrum disorder)
148. Aiden was glad that he had not been involved and considered that his mother's efforts to challenge his right to be educated in an appropriate setting made him 'think that my mum will never give up'.
149. Another case, involving Lizzie (21 years, identified with moderate learning difficulties/autistic spectrum disorder), highlighted some tensions around the extent to which parents and carers support their child to participate in appeal processes, whilst at the same time wanting to limit their exposure to adversarial contexts. In 2016, Lizzie and her family were involved in a First-tier Tribunal which eventually resulted in her securing a place at her preferred college. Her parents had tried to support Lizzie to express her views and wishes and to enable her to participate as much as possible in the appeal process. Various sources of independent advocacy support had been helpful in that respect. Lizzie's mother explained that Lizzie had been indirectly involved in the decision to appeal. She described how Lizzie's participation in the process was also limited by a number of factors:

Lizzie was involved in the decision, but only in the sense that we asked her which college she'd prefer, we kept her informed of the process but she wouldn't have known how to appeal, so we sought information from friends, Barnardo's, Parent Partnership, National Autistic Society, Northern College, NATSPEC, solicitors and online parents etc. We had tons to learn in a short time, the process would have been too difficult for Lizzie and she hates conflict. She would have also found it difficult to fund, I think she would have been eligible for legal aid, but again I don't think she could have applied without support and the process would have taken a lot longer.

150. Lizzie's mother went on to explain that, as parents, she and her husband had tried to protect their daughter from unnecessary distress concerning the decision to appeal the LA's refusal to fund a place at the preferred college:

She didn't voice anything relating to seeing if we could help her get into [preferred] College initially, as we had asked her not to worry about how we were going to get her there, we assured her if her wish was to go, we would try and make it happen. We asked her if she was happy for us to appeal on her behalf, which she was, she didn't like having to be assessed or talked about.

151. The majority of parents considered that their child would have great difficulty in realising their rights of appeal independently because of their own experience of difficulties with understanding and obtaining appropriate information, engaging with LA officials and realising their appeal rights. Education professionals tended to offer a more optimistic view and demonstrated a commitment to support a young person's participation preferences. For example, one SENCO referred to instances where a pupil and parent may have a conflict of views about how they might be best supported:
152. As the students get older, often they don't want somebody with them all the time, and you can see that their progress isn't particularly good but they're being very vocal that they don't want somebody with them in the classroom. The parents are saying 'if you drop that support back they're not going to make the progress', and trying to navigate through that, really, is often very tricky. You have to listen to the students' voice. Another example was a student who chose not to wear a radio transmitter to help them with their hearing in the classroom. The parent was absolutely adamant that they needed it and I said, 'You know, it's her choice, if she doesn't want to wear it', and so we came to the decision that if her progress dropped off, she would then consider using it again.

Conclusions

SEN/ASN Reform and Children and Young People's Rights: Still a Work in Progress in England and Scotland

153. Our analysis of administrative data suggests that there are important differences between England and Scotland with regard to the identification of children with SEN or ASN and the provision of statutory support plans. Scotland has radically increased the categories of children deemed to have additional support needs and identifies more than a quarter (and in some LAs more than a third) of the pupil population as having ASN. Children with English as an additional language are controversially included under the umbrella of ASN, although the majority of these children do not have cognitive, physical or sensory difficulties. At the same time, Scotland is effectively phasing out statutory support plans, and children living in the most deprived areas are less likely to receive such plans than those in the more advantaged neighbourhoods. By way of contrast, England seems to be deliberately aiming to reduce the overall number of children identified as having SEN but is seeing an increase in the proportion of pupils with an EHCP. England's and Scotland's policies, or at least their effects as reflected in the official statistics, are thus diametrically opposed.

154. In both Scotland and England, LAs responded positively to the potential of the respective sets of reforms to make a difference in the advancement of children and young people's rights. However, many local authorities also acknowledged that there is still a long way to go before the new legal framework and policy are engrained into routine practice. Progress towards the consistent implementation of respective reforms appears to be unevenly distributed and is particularly slow to take effect in Scotland.
155. Authorities reported that systematically involving children and young people both in consultations about local provision and decisions about their own education, and enabling their independent voice to be heard and properly considered, required a considerable investment of time and resource. In light of the constraints under which LAs in both jurisdictions are operating, some respondents indicated that, despite best intentions, realising this objective can be impossible. Moreover, authorities conveyed a very clear message about not being sufficiently well resourced to implement reforms; especially in relation to managing increases in the volume, complexity and scope of ASN/SEN related workloads. In Scotland, there also appears to be a need to reinforce the duties of local authorities to assess ASN and open CSPs in order to ensure that children and young people are able to access the additional resources required to meet their needs and the means of redress.
156. In relation to practice in schools and classrooms, however, there appear to be more similarities than differences between England and Scotland. In both jurisdictions, similar issues arise in involving children with more significant difficulties, those from socially disadvantaged backgrounds and those who are looked after/care experienced. With regard to progress on respecting the principles enshrined in the legislation and codes of practice concerned with proper engagement with the child's viewpoint, in both nations there is evidence of success in creating, at school level, inclusive environments where children's voices are routinely listened to on everyday classroom matters. However, evidence from our case studies suggests that there is much work still to be done in order to fully include and support children and young people to participate at a meaningful level in processes of decision making involving local authorities and in dispute resolution, perhaps chiming with Tisdall's perceptions that practitioners are much more comfortable with the well-being rather than the rights agenda, since the latter involves ceding control to children and young people ([Tisdall, 2015a](#), [2015b](#)).
157. We have identified something of a paradox, in that stronger children's rights legislation in Scotland has not obviously led to a greater degree of empowerment for children and young people in schools and classrooms. This is at least in part due to the existence of a more tightly regulated planning system in England leading to greater involvement of children and young people in formal processes. Scotland, by way of contrast, has adopted a laissez faire approach to the use of statutory support plans. The over-complex and opaque system north of the border allows local authorities to pursue an idiosyncratic approach, whereby types of plan have proliferated with little effort to explain the increasingly diverse system to children and young people or their parents. As a result, statutory support plans have become almost obsolete, only accessible to the most determined and best informed parents.

158. By way of contrast, England’s growing use of EHCPs and an increased level of demand for local authority assessments means that, if further progress can be made in ensuring their participation – as envisaged by the CFA 2014 – and that it is adequately supported, children and young people are much more likely to be involved in formal planning to meet their needs. There are, of course, dangers that routine involvement may be of the more tokenistic kind which, as noted by Lundy (2018), has often been dismissed by children’s rights advocates as fairly worthless. Even so, Lundy concludes that ‘tokenism is sometimes a start’, and that not listening to children’s voices is always wrong – ‘a breach of their human rights’. Much of the literature discussed here has highlighted the problems and inadequacies in current attempts to facilitate children’s participation. Nonetheless, there is a need for adults to engage seriously with views expressed by children. Lundy also suggests that whenever attempts are made to seek children’s views, this should be followed up by feedback which is child-friendly, fast and explains how the views expressed will be translated into action. Efforts to capture children’s voices which at first appear to be tokenistic may subsequently result in incremental social change.

Implications of the Findings for Different Groups

Implications for National Governments

159. Important legislation has been passed in England and Scotland to support the rights of children and young people, but this research suggests that there is a gap between rhetoric and reality. There is a need for national governments to review how well the legislation is working and to take necessary actions to tighten legislation or implementation where necessary.
160. In light of the declining use of statutory support plans, the Scottish Government needs to review the criteria for opening a coordinated support plan and ensure that local authorities are undertaking their legal duties.

Implication for Local Authorities

161. Local authorities in both England and Scotland are sympathetic to the broad aim of enhancing children’s rights, but, in a context of squeezed budgets, they have been slow to produce resources aimed at children and young people, ensure that advocacy services are available for all those who need them, and provide training for school and local authority staff. This implies that in both jurisdictions, it is important to ensure that current levels of SEN/ASN spending is maintained or increased.
162. Scottish local authorities need to ensure that all staff understand the importance of statutory support plans as a means of upholding the rights of children with ASN and their parents. They need to ensure that LA staff understand their legal duties and take action to counter the ongoing decline in the use of CSPs.

Implications for Schools

163. Schools have a central role to play in the realisation of the rights of children with SEN/ASN. In England and Scotland, it is evident that not all practitioners have a good understanding of the new legislation, and further in-service training is needed.

164. Practitioners continue to have difficulties in ensuring that the rights of particular groups of children and young people are respected, particularly those from socially disadvantaged backgrounds and those with significant learning and communication difficulties, particularly if they have little or no speech.
165. A common finding across jurisdictions is that children from socially disadvantaged backgrounds and their parents/carers often feel marginalised and disrespected by school practitioners. It is important that school make extra efforts to engage with those they may regard as 'hard to reach' and ensure their inclusion.

Implications for Parents and Carers

166. Parents and carers also subscribe to the idea of children's rights, but quite rightly recognise that they have a crucial role in ensuring that the decisions made are in the best interests of their child. It is important that parents/carers allow their children as much freedom as possible to engage in the decision-making process, including attending meetings and expressing their through a variety of means.

Implications for Children and Young People

167. Children and young people are enthusiastic about the rights agenda, and need to be helped by the adults around them to be as active as possible in engaging in decisions on future plans for their education. In particular, their capabilities need to be maximised, but taking account of the need to adjust expectations as to autonomy in line with their capacity, which needs to be properly assessed, and ensure that the level of responsibility placed upon them is appropriate to their development, understanding and level of vulnerability.

REFERENCES

- Adams, L., Tindle, A., Basran, S., Dobie, S., Thomson, D., Robinson, D., & Shepherd, C. (2017). [*Experiences of education, health and care plans: a survey of parents and young people*](#). Research report. London: DfE.
- 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)
- Brighthouse, H. (2003). How should children be heard? *Arizona Law Review*, 45(3), 691–711.
- Callus, A-M., & Farugia, R. (2016). *The Disabled Child's Participation Rights*. Abingdon: Routledge.
- Carmichael, D., & Riddell, S. (2018). [*Scottish local authority survey results*](#) (Autonomy, Rights and Children with SEN/ASN: Working Paper 3). Edinburgh: CREID, University of Edinburgh.
- Chong, P. W., & Graham, L. J. (2013). 'The Russian doll' approach: Developing nested case studies to support international comparative research in education. *International Journal of Research and Method in Education*, 36(1), 23–32.
- Committee on the Rights of the Child. (2008). *Concluding observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). Geneva: United Nations.
- Committee on the Rights of the Child. (2009). *General comment No. 12 (2009) The right of the child to be heard* (CRC/C/GC/12). Geneva: UN.
- Committee on the Rights of the Child. (2015). *Fifth periodic reports of states parties due in 2014. United Kingdom* (CRC/C/GBR/5) Geneva: UN.
- Committee on the Rights of the Child. (2016). *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/5) Geneva: UN.
- Craston, M. et al. (2013). *Evaluation of the SEND pathfinder programme: process and implementation*. Research Report. London: DfE.
- Craston, M. et al. (2014). *Special educational needs and Disability Pathfinder Programme evaluation. Summary of interim impact findings*. Research report. December 2014. London: DfE.
- Cullen, M., Lindsay, G., Totsika, V., Bakopoulou, I., Gray, G., Cullen, S. M., Thomas, R., Caton, S., & Miller, A. (2017). [*Review of arrangement for disagreement resolution \(SEND\). Research report*](#). London: DfE/Ministry of Justice.
- Daly, A. (2018). *Children, autonomy and the courts: Beyond the right to be heard*. Leiden: Brill Nijhoff.
- Davidge, G., & Harris, N. (2018). *English local authority survey results* (Autonomy, Rights and Children with SEN/ASN: Working Paper 4). Edinburgh: CREID, University of Edinburgh.

- Davis, J. (2009). Involving children. In E. K. M. Tisdall, J. M. Davis, & M. Gallagher (Eds.), *Researching with Children and Young People: Research Design, Methods and Analysis*. London: Sage.
- Department for Children, Schools and Families (DCSF). (2010). *Improving parental confidence in the special educational needs system: An implementation plan*. London: DCSF.
- Department for Education (DfE). (2011). Support and aspiration: A new approach to special educational needs and disability (Green Paper) (Cm 8027). London: DfE.
- Department for Education and Skills (DfES). (2001). *SEN Toolkit*. London: DfES.
- DfE. (2012). Support and aspiration: A new approach to special educational needs and disability: Progress and next steps. London: DfE.
- DfE/ Department of Health (DoH). (2015). *The Special Educational Needs and Disability Code of Practice 0–25*. London: DfE.
- Doyle, M. (2019). *A place at the table: A report on young people's participation in resolving disputes about special educational needs and disabilities*. Colchester: University of Essex.
- 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)
- Fraser, S. (Ed.). (2003). *Doing Research with Children and Young People*. London: Sage.
- Gillooly, A., & Riddell, S. (2019). *An overview of statistics on SEN in England and ASN in Scotland (Autonomy, Rights and Children with SEN/ASN: Working Paper 1, updated)*. Edinburgh: CREID, University of Edinburgh.
- Harris, N., & Davidge, G. (2018). *Analysis of Key Informant Interviews: England (Autonomy, Rights and Children with SEN/ASN: Working Paper 6)*. Edinburgh: CREID, University of Edinburgh.
- Harris, N., & Riddell, S. (2011). *Resolving disputes about special educational needs: A comparative perspective*. Farnham: Ashgate.
- Her Majesty's Inspectorate of Education (HMIe). (2007). *Report on the Implementation of the Education (Additional Support for Learning) (Scotland) Act 2004*. Livingstone: HMIe.
- Hill, K., Craston, M., Daff, K., & Macmillan, T. (2014). [*The SEN and Disability Pathfinder Programme evaluation: Readiness for reform and effectiveness of Pathfinder Champions*](#). Research report. London: DfE.

- Hollingsworth, K. (2013). Theorising children's rights in youth justice: The significance of autonomy and foundational rights. *Modern Law Review*, 76(6), 1046–1069.
- Lamb, Sir B. (2009). *Lamb inquiry, special educational needs and parental confidence*. London: Department for Children, Schools and Families.
- Lansdown, G. (2005). *The evolving capacities of the child*. Florence: UNICEF.
- Lundy, L. (2007). 'Voice' is not enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child. *British Educational Research Journal*, 33(6), 927–942.
- Lundy, L. (2018). In defence of tokenism: Implementing children's right to participate in collective decision-making. *Childhood*, 25(3), 340–354. doi: 10.1177/0907568218777292
- 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. Retrieved from <https://www.jstor.org/stable/2380960>
- Parkes, A. (2012). *Children and International Human Rights Law: The right of the child to be heard*. London: Routledge.
- Penfold, C., Cleghorn, N., Tennant, R., Palmer, I., & Read, J. (2009). [Parental confidence in the Special Educational Needs assessment, statementing and tribunal System: Qualitative Study](#). Research Report (DCSF-RR117). London: DCSF.
- Riddell, S. (2018). Analysis of key informant interviews: Scotland. (Autonomy, Rights and Children with SEN/ASN: Working Paper 5). Edinburgh: CREID, University of Edinburgh.
- Riddell, S., & Weedon, E. (2010). The origins and impact of the Education (Additional Support for Learning) (Scotland) Act 2004. *Cambridge Journal of Education*, 40(2), 113–131.
- 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. (2010a). Dispute resolution in additional and special educational needs: Local authority perspectives. *Journal of Education Policy*, 25(1), 55–73.
- Riddell, S., Stead, J., Weedon, E. & Wright, K. (2010b). Additional support needs reforms and social justice in Scotland. *International Studies in Sociology of Education*, 20(3), 179–199.
- Riddell, S., Stead, J., Wright, K., & Weedon, E. (2011). Theorising equality in education: What can be learnt from the field of additional support needs? *Éducation et Société*, 27(1), 67–83.
- Scottish Autism. (2018). *Not included, not engaged, not involved: A report on the experiences of autistic children missing school*. Scottish Autism. Retrieved from <https://www.notengaged.com/download/SA-Out-Of-School-Report.pdf>

- Scottish Government. (2015). *Education (Scotland) Bill. Policy Memorandum*. Edinburgh: Scottish Government.
- Scottish Government. (2017a). *Consultation on the Supporting Children's Learning Code of Practice and associated regulations: Analysis of responses*. Edinburgh: Scottish Government. Retrieved from <http://www.gov.scot/Resource/0052/00527803.pdf>.
- Scottish Government. (2017b). *Education (Additional Support for Learning) (Scotland) Act 2004 (as amended). Extending Children's Rights – Guidance on the assessment of capacity and consideration of wellbeing*. Edinburgh: Scottish Government. Retrieved from <http://www.gov.scot/Publications/2017/12/7828>.
- Scottish Government. (2017c). Supporting children's learning: Statutory guidance on the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended). Code of Practice (Third Edition) 2017. Edinburgh: Scottish Government.
- Tisdall, E. K. M. (2015a). Children's wellbeing and children's rights in tension? *International Journal of Children's Rights*, 23, 769–789.
- Tisdall, E. K. M. (2015b). Children's rights and children's wellbeing: Equivalent policy concepts? *Journal of Social Policy*, 44(4), 807–823.
- 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)
- Tisdall, E. K. M., & Riddell, S. (2006). Policies on school inclusion: Competing strategies and discourses. *European Journal of Special Needs Education*, 21(4), 363–381.
- Todd, L. (2003). Disability and the restructuring of welfare: The problem of partnership with parents. *International Journal of Inclusive Education*, 7(3), 281–296.
- Thom, G., Lupton, K., Craston, M., Purdon, S., Bryson, C., Lambert, C., James, N., Knibbs, S., Oliver, D., Smith, L., & Vanson, T. (2015). *Special Educational Needs and Disability Pathfinder Programme evaluation*. Final Impact Research Report. London: DfE.
- UN Committee on the Rights of Persons with Disabilities (CRPD). (2016). *General Comment No.4 (2016) on the Right to Inclusive Education*. Geneva: United Nations.
- Walsh, B. (2017). 'A Powerful Thing': Exploring the participation of children and young people in special educational needs mediation. *Education Law Journal*, 18(1), 13–35.
- Whitty, G., & Wisby, E. (2007). Whose voice? An exploration of the current policy interest in pupil involvement in school decision-making. *International Studies in Sociology of Education*, 17(3), 303–319.