

**Institution: The University of Edinburgh**

**Unit of Assessment: 25 Education**

**Title of case study 4: Special and Additional Support Needs: Resolving Disputes, Enhancing Rights and Improving Communication**

### 1. Summary of the impact

Research at the University of Edinburgh (2008 to 2012) has i) raised awareness of different types of dispute resolution (tribunal, adjudication, mediation) in Scotland and England; ii) promoted non-judicial forms of dispute resolution; iii) encouraged professionals to improve their communication with parents; and iv) enabled international comparisons to be made with regard to the rights and responsibilities of parents and professionals in different special/additional support needs systems. The significance of the impact is that it has informed changes in legislation and regulation and improvements in parental support, with key beneficiaries being education policy-makers, practitioners and parents. Reach of the impact extended to policy makers across the UK and Europe, local authorities in England and Scotland, providers of dispute resolution services, individual parents and voluntary sector organisations

### 2. Underpinning research

The case study is underpinned by two ESRC-funded projects: *Dispute Resolution and Avoidance in Special and Additional Support Needs in England and Scotland* and the follow-on *Dispute Resolution in Additional Support Needs: Working Together to Improve Children's and Families' Experiences in Scotland*.

*Dispute Resolution and Avoidance in Special and Additional Support Needs in England and Scotland* (RES-062-23-0803, £314,000, January 2008 to August 2009) was directed by Prof. Sheila Riddell, School of Education, University of Edinburgh (appointed October 2003) and Prof. Neville Harris, School of Law, University of Manchester. Dr Joan Stead (Senior Research Fellow, appointed in 2000) and Dr Elisabet Weedon (Senior Research Fellow, appointed in 2004) were based at Edinburgh. Funded by ESRC, the project was evaluated as outstanding.

The research involved a review of academic and policy literature and statistics, a survey of English parent partnership workers, and case studies of families involved in disputes with local authorities and schools over special/additional support needs provision. (Note that the usual term in England is special educational needs (SEN), whereas in Scotland it is additional support needs (ASN)). Questionnaires were sent to officers with responsibility for special/additional support needs in all local authorities (32 in Scotland, 150 in England). Responses were received from 27 local authorities in Scotland (84% response rate) and 60 in England (40% response rate). The study found that:

- More than 90% of local authority (LA) staff in both England and Scotland **supported the principle of alternative dispute resolution**, arguing that disagreements should be resolved at the lowest possible level, usually by negotiation or informal mediation at school level.
- Local authority officers **regarded mediation as preferable to the tribunal** on the grounds that it was less costly and less stressful for all concerned. About 70% of English LA officers and 90% of Scottish LA officers in the survey said that they were satisfied with mediation as a dispute resolution mechanism. Levels of satisfaction with the tribunal were lower (just over 40% of LA officers in England and just under 40% in Scotland were satisfied with the tribunal).
- In Scotland, about 80% of parents who were surveyed reported difficulties in resolving disputes at school level, believing that their voices were not heard. When they sought a formal means of dispute resolution, they often **regarded the tribunal as preferable to mediation** because of its ability to provide a clear-cut judgement and recommendations.
- In both Scotland and England, only a minority of parents sought a more formal dispute resolution route (formal mediation, tribunal or, in Scotland only, adjudication), partly

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because local authorities did not inform them of their rights. In relation to the pupil population, the English tribunal dealt with ten times more cases than the Scottish tribunal, due to different qualification criteria and a greater awareness of parental rights in England.

- Qualitative case studies revealed that young people and parents, particularly those from socially disadvantaged backgrounds, lacked access to advocacy services charged with helping them to realise their rights.

Following the conclusion of the project, an ESRC follow-on funding grant was awarded to Riddell for a project on improving communication in additional support needs: *Dispute Resolution in Additional Support Needs: Working Together to Improve Children's and Families' Experiences in Scotland* (RES-189-25-0225, £97,000, February 2011 – July 2012), with Resolve Mediation and Common Ground Mediation as partners.

Three think tanks and a launch event at the Scottish Parliament were organised and a glossy guide to the services framework aimed at parents and practitioners was produced and disseminated to all Scottish local authorities, schools and voluntary organisations working with children with additional support needs and their families.

### 3. References to the research

Harris, N. & Riddell, S. (2011) *Resolving Disputes in Special Education: A Comparative Perspective*. Farnham: Ashgate. Supplied on request.

Riddell, S. & Weedon, E. (2010) Reforming special education in Scotland: Tensions between professionalism and rights. *Cambridge Journal of Education* 40: 2, 113-131. In REF 2 (Weedon).

Riddell, S. & Weedon, E (2009) Approaches to dispute resolution in additional support needs in Scotland. *European Journal of Special Needs Education* 24: 4, 355-369. In REF 2 (Weedon).

Riddell, S., Harris, N., Smith, E. & Weedon, E. (2010) Dispute resolution in additional and special educational needs: Local authority perspectives. *Journal of Education Policy* 25: 1, 55-73. In REF2 (Riddell).

Riddell, S., Stead, J., Weedon, E. & Wright, K. (2010) Additional support needs reforms and social justice in Scotland. *International Studies in Sociology of Education* 20: 3, 179-199. In REF 2 (Weedon).

The quality of the research is evidenced by outputs in respected peer-reviewed journals, exemplified by the above, and by ESRC as the source of funding indicated in section 2, including the award of funding to follow on from the earlier project. The original project was evaluated by ESRC as outstanding.

### 4. Details of the impact

The research and follow-on projects have had a major impact on special and additional support needs policy in Scotland, England and Europe in terms of **raising awareness of parents' and children's rights and methods of avoiding and resolving disputes**.

The projects' findings were communicated in: i) a series of six working papers and two briefings published on the website of the Centre for Research in Education Inclusion and Diversity; ii) academic papers and a book; iii) articles in publications aimed at practitioners such as *Mediation Now* and *Children in Scotland Newsletter*; iv) a dissemination conference, think tanks and a launch event at the Scottish Parliament which attracted media coverage (Times Educational Supplement, 3<sup>rd</sup> February 2012, 'Pupils need a greater say in disputes over schooling, say experts', URL 1); and v) a glossy publication aimed at parents and practitioners distributed in a variety of ways including the website of CREID and Enquire (the ASN Advice and Information Service for Scotland) (URL 2).

#### *Impact in Scotland*

Recommendations were incorporated into the Education (Additional Support for Learning) (Scotland) Act 2009, including new duties on local authorities to gather data on all children with

additional support needs plans and to improve access to information for parents and young people. Evidence submitted to the Scottish Government's consultation on the legislation by the National Deaf Children's Society cited the research [5.1]. Findings were also cited in HMIE's report to Scottish Ministers on the operation of the Additional Support for Learning Act. The Review of the Additional Support for Learning Act (HMIE, November 2010, page 10, URL 3) cited findings from research undertaken by CREID on behalf of the National Deaf Children's Society.

The CREID research report, entitled *The Impact of the Education (Additional Support for Learning) (Scotland) Act 2004 on Deaf Children* explored levels of satisfaction with support services amongst parents of children with hearing impairments. The statistical analysis of the relationship between ASN, looked after status and attainment level was cited in the Equality and Human Rights Commission's Triennial Review [5.2].

Findings were cited in the *Strategic Review of Learning Provision for Children and Young People with Complex Additional Support Needs*, known as the Doran Review, (Scottish Government, 2012) [5.3]. The paper by Riddell and Weedon (2010) was used to illustrate the tensions over access to information and services which frequently characterise the relationships between parents and authorities (Section 1, para 1.1, p.15).

Data gathered by Resolve Mediation, a major provider of mediation services in Scotland and a partner in the follow-on funding project, indicate that the projects **led to an increased take-up of mediation services** [5.4]. Their records of full mediations conducted by the organisation reveal an increase from 12 mediations per year in 2005/06 to 49 in 2011/12.

Following the launch of *Communication Matters*, the glossy publication aimed at parents and practitioners, a Parliamentary Question was lodged requesting information on actions taken by the Scottish Government to implement recommendations with regard to improving communication and resolving disputes effectively. The Parliamentary Question and Government response is Question 10 under the Education and Lifelong Learning Committee Question Time [5.5].

#### *Impact in England*

The ESRC project had an impact on the development of English policy with regard to **the resolution of SEN disputes**. For example, a standard letter issued to all parents who lodge a tribunal appeal with the First-tier Tribunal (Health, Education and Social Care Tribunal) in England now includes a statement advising them to consider mediation prior to launching an appeal. Professor Harris was advised that the recommendation to use mediation prior to appeal had led to an increase of the overall annual settlement rate by 7.3% in 2011 compared with the previous year.

The Green Paper *Support and Aspiration: A New Approach to Special Educational Needs and Disability* (DfE, 2011) referred to the research, noting that there will not always be agreement on the best form of special educational provision for children and so there will continue to be a need for the First-tier Tribunal. It also identified a need to develop further non-judicial routes such as mediation which, as demonstrated by the research, are under-used (DfE, 2011, para 2.61) [5.6].

The research contributed to the evidence used in the Administrative Justice and Tribunal Council's report *Putting it Right – A Strategic Approach to Resolving Administrative Disputes* (AJTC, 2012). The report noted that SEN has been identified as an area of administrative justice where mediation could play a role. Paragraphs 89-93 (p.26) summarise the findings and conclusions of the research concerning the potential for much greater use of mediation despite its low uptake to date [5.7].

#### *Impact in Europe*

NESSE (European Network of Experts in the Study of Social Aspects of Education) commissioned Riddell to undertake a major review of literature on special educational needs and disability. In 2012, the EU Directorate General (DG) of Education and Culture published the report, which drew extensively on the analysis of policy and statistics within the ESRC project. In the foreword, the Director-General of the European Commission's Directorate General for Education and Culture noted that 'The report is written specifically for policy and decision-makers, in jargon-free language that can be understood and acted upon'.

In an email communication [5.8], an official in DG Education and Culture reported on a meeting with DG Justice. He commented that 'There was substantial discussion on the report. The High Level Group members were greatly interested, had all read the report in detail and were all unreservedly enthusiastic about it. They find it to be very useful for their work, clear, authoritative, constructive and reader-friendly, at a level of abstraction rightly pitched to inform and guide policy makers. This discussion revealed that the report has had a profound impact on national policy makers in the field of disability. I communicated this information to my hierarchy. The Commission can take some pride in having commissioned this report and you for having produced it. It is a successful contribution to evidence-based policy making at national level'.

URL 1: [www.tes.co.uk/article.aspx?storycode=6172518](http://www.tes.co.uk/article.aspx?storycode=6172518)

URL 2: [www.docs.hss.ed.ac.uk/education/creid/reports/27\\_ESRC\\_Publication.pdf](http://www.docs.hss.ed.ac.uk/education/creid/reports/27_ESRC_Publication.pdf)

URL 3: [www.educationscotland.gov.uk/Images/raslaabl\\_tcm4-712941.pdf](http://www.educationscotland.gov.uk/Images/raslaabl_tcm4-712941.pdf)

All links live at 16.10.13.

### 5. Sources to corroborate the impact

Sources to corroborate the impact are indicated in square brackets in the text. Web pages have been archived at <https://www.wiki.ed.ac.uk/display/REF2014REF3B/UoA+25>

[5.1] Submission from the National Deaf Children's Society to the Scottish Government on the Education (Additional Support for Learning) (Scotland) Amendment Bill 2008 paragraph 1.2  
[www.scotland.gov.uk/Publications/2008/07/16110426/129](http://www.scotland.gov.uk/Publications/2008/07/16110426/129)

[5.2] Equality and Human Rights Commission report (2010) *How Fair is Britain? Equality, Human Rights and Good Relations in 2010: The First Triennial Review* London: EHRC. Reference to research on p. 314.

[www.equalityhumanrights.com/uploaded\\_files/triennial\\_review/how\\_fair\\_is\\_britain\\_-\\_complete\\_report.pdf](http://www.equalityhumanrights.com/uploaded_files/triennial_review/how_fair_is_britain_-_complete_report.pdf)

[5.3] *Strategic Review of Learning Provision for Children and Young People with Complex Additional Support Needs* (the Doran Review) (Scottish Government, 2012) citation of Riddell and Weedon (2010) to illustrate the tensions over access to information and services which frequently characterise the relationships between parents and authorities (Section 1, para 1.1, p.15).

[www.scotland.gov.uk/Publications/2012/11/7084](http://www.scotland.gov.uk/Publications/2012/11/7084)

[5.4] Email about the increase in mediation cases in Scotland as noted by mediator in Resolve Mediation, 2012.

[5.5] Email from an MSP on the Parliamentary Question following the launch of *Communication Matters*, the glossy publication aimed at parents and practitioners, 06.06.12. He requested information on actions taken by the Scottish Government to implement recommendations with regard to improving communication and resolving disputes effectively. The Parliamentary Question and Government response is Question 10 under the Education and Lifelong Learning Committee Question Time. [www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=705](http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=705)

[5.6] Department for Education Green Paper, *Support and Aspiration: A new approach to special educational needs and disability*, Cm 8027, para.2.61, citing research briefing paper in its discussion of policy on mediation.

<http://webarchive.nationalarchives.gov.uk/20130401151715/https://www.education.gov.uk/publications/eOrderingDownload/Green-Paper-SEN.pdf>

[5.7] Administrative Justice and Tribunals Council, Annual Report 2009-10. Full page of report (p.27) covers dissemination conference on research findings and expresses AJTC's interest in the research which promoted its participation in the conference.

[http://ajtc.justice.gov.uk/docs/ar2010\\_web.pdf](http://ajtc.justice.gov.uk/docs/ar2010_web.pdf)

[5.8] Email about the reception of the NESSE report by the EC DG Justice Committee, 26.10.2012, from an official in the European Commission DG Education and Culture.

[www.nesse.fr/nesses/activities/reports/activities/reports/disability-special-needs-1](http://www.nesse.fr/nesses/activities/reports/activities/reports/disability-special-needs-1)