SPECIAL AND ADDITIONAL SUPPORT NEEDS IN ENGLAND AND SCOTLAND – CURRENT DILEMMAS AND SOLUTIONS

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Learning objectives

This chapter will help readers to:

• gain a greater understanding of current SEN/ASN (special educational needs/additional support needs) policy in England and Scotland and of recent policy changes;
• problematize SEN/ASN categories, since some may enable children to access additional resources while others have a stigmatizing effect; and
• understand the tensions between parental power and local authority accountability.

This chapter identifies a number of current issues stemming from policy and practice in the field of SEN (England) and ASN (Scotland). In particular, we focus on dilemmas in two particular spheres: 1) the use of categories and their implications for resourcing, inclusion and the curriculum; and 2) the balance of power between parents and professionals. The chapter is structured around the idea of dilemmas, involving a choice between a number of courses of action, none of which is entirely unproblematic (Norwich, 2008: 3). The first dilemma turns on tensions between a universalist approach, which involves treating everyone the same, and a recognition of difference approach, which may involve positive action for some groups with a view to rectifying existing inequalities. The upside of the universal approach is that it emphasizes common aspirations for all; however, the downside is that it may underplay the disadvantages faced by some children as a result of their impairment combined with their social, political and economic context. Additional resources to fund reasonable adjustments, as well as efforts to bring about attitudinal change, may be necessary in order to level the playing field. Similarly, an approach based on the recognition of difference has upsides and downsides, potentially justifying the allocation of additional resources, but also stigmatizing and justifying social marginalization. These tensions, referred to as dilemmas of difference (Minow, 1985; Phillips, 1999), are not peculiar to education but are common to many social policy arenas and equality strands.

Before looking more closely at particular areas where dilemmas of difference arise, we first describe changes within the SEN and ASN policy fields over the past three decades. The second broad dilemma which we highlight in this chapter concerns the
balance of power between parents and professionals. While there has been a move towards the empowerment of parents with a view to delivering personalized services in education and other social policy fields, there are clearly both upsides and downsides to this approach. On the one hand, individual parents may argue that they are in the best position to determine their child’s needs and appropriate provision, but on the other hand local authorities may argue that they should retain the ultimate power in decision-making since they can act as impartial arbiters in the allocation of scarce resources. These dilemmas are explored more fully below.

This chapter draws on findings from an ESRC-funded research project entitled Dispute Resolution and Avoidance in Special and Additional Support Needs (RES-062-23-0803). The research used a mixture of methods, including analysis of policy and official statistics; approximately 50 key informant interviews; a questionnaire survey of local authorities in England and Scotland; a survey of parents (Scotland only); a survey of Parent Partnership Services (England only); and case studies of 49 parents in dispute with the local authority in six authorities (three in England and three in Scotland).

SEN AND ASN POLICY IN ENGLAND AND SCOTLAND

For about a decade following the publication of the Warnock Report (DES, 1978) the English and Scottish systems moved along roughly parallel lines, both using the umbrella term ‘special educational needs’ to define those children having greater difficulty in learning than their peers. In both countries, local authority officers and education professionals retained major decision-making power with regard to resources and additional support, with a commitment to work ‘in partnership’ with parents. However, during the 1990s, there was increasing divergence as Conservative educational reforms were implemented more forcefully in England, promoting managerialism and consumerism. Following the Education Act 1993, all English state schools were obliged to have regard to the Code of Practice on the Identification and Assessment of Special Educational Needs (DfE, 1994) and publish information about their policies for children with SEN. This legislation also established the Special Educational Needs Tribunal (SENT) to resolve disputes between parents and the local authority.

Major reform of ASN policy and practice in Scotland took place a decade after the reforms of the English SEN system described above. The Education (Additional Support for Learning) (Scotland) Act 2004 (the ASL Act) broadened the definition of ASN to include children who had difficulty in learning as a result of social problems as well as disabilities, and put in place a raft of measures to increase parental rights and local authority accountability. Theoretically, this should have led to more children being identified as having ASN, but the predicted expansion did not take place. The legislation also abolished the record of needs and established a new document, the co-ordinated support plan (CSP), to record the needs of children with multiple, complex and enduring difficulties requiring significant multi-agency support. However, as we explain below, local authorities have been very reluctant to open CSPs, preferring to use their own non-statutory plans. Finally, the ASL Act put in place a number of new dispute resolution mechanisms, outlined in a new code of practice (Scottish Executive, 2005).
The operation of dispute resolution mechanisms in England and Scotland respectively are discussed below in the section on parents and accountability.

THE IDENTIFICATION AND CATEGORIZATION OF CHILDREN WITH SEN AND ASN: THE DILEMMA OF UNIVERSALISM VERSUS DIFFERENCE

Paradoxically, while the definition of ASN in Scotland is somewhat broader than that of SEN in England, only 5% of pupils in Scotland are identified as having such difficulties compared with 20% in England (see Figure 2.1).

In part, this is because the English statistics include children with a statement of needs as well as those on school action-plus programmes (i.e. receiving help from professionals outside schools) and school action programmes (receiving help from school-based practitioners such as teaching assistants, the class teacher and the learning support teacher). The official statistics gathered by Scottish government, by way of contrast, only include children with a record of needs (which is in the process of being phased out), a CSP or an Individualized Educational Programme (IEP). Many children in Scotland, including some of those with the most significant difficulties, receive a local support plan which does not have statutory status and is not counted in the official statistics.

![Figure 2.1](chart.png)

**Figure 2.1** Pupils with SEN (England) and ASN (Scotland) in publicly maintained schools as a percentage of all pupils by type of school (2007) (The total includes all pupils with SEN/ASN, including those in special schools)

*Source:* Based on statistics from the DFES and the Scottish Government
As we noted above, while efforts have been made to replace individual categories of difficulty with one overarching category, this has proved very difficult for a variety of reasons. First, parents of children with particular types of difficulty, such as autistic spectrum disorder, and voluntary organizations representing these groups, have campaigned for official recognition of specific categories. Government has also found it useful to request local authorities to audit the incidence of particular types of difficulty, partly as an accountability mechanism, but also to inform funding decisions. In England, the practice of gathering data by type of difficulty, which was abandoned following the Warnock Report, was reinstated in the 1990s. In Scotland, despite official support for the broad conceptualization of ASN, local authorities have always been required to provide information to the government on numbers of children with particular types of difficulty. Figures 2.2 and 2.3 provide information on the categories of difficulty used in England and Scotland.

About three quarters of pupils identified with SEN come from four of the twelve categories included in the classification. The largest of these four categories includes young people with moderate learning difficulties (MLD) and the second largest group consists of pupils with behavioural, social and emotional difficulties (BSED). Pupils with speech, language and communication needs (14%) and those with specific learning difficulties (12%) account for just over a quarter of SEN pupils (see Figure 2.2).

**Figure 2.2** Pupils with particular types of difficulty as a percentage of all pupils with SEN (England)

*Source: Based on statistics from the DES*
A larger number of categories of difficulty (18 in total) are used in Scotland (see Figure 2.3). The largest category (learning disability) accounts for about a fifth of all pupils with ASN, while the second largest category, BSED, accounts for just over 15%. Together, these two include just over one third of the ASN population. Young people with autistic spectrum disorder, other moderate learning difficulties and language or speech disorder account for nearly another third. Dyslexia, other specific learning difficulties and physical and motor impairments each account for 7–9% of the ASN population. The remaining categories (including more able pupils, pupils who use English as an additional language, looked-after pupils and pupils with interrupted learning) came into use following the ASL legislation but are being very little used.

However, as noted above, recognition of particular types of difficulty is not necessarily an unalloyed good. As shown by Figures 2.4 and 2.5, there is a strong association between the identification of SEN/ASN and social deprivation, particularly for some types of difficulty such as BSED and MLD. These labels are rarely sought by parents, and are often applied by schools to children they find difficult to include. Tomlinson (1985) made a useful distinction between normative difficulties, such as sensory or physical impairments, which can be measured against an agreed norm, and non-normative difficulties, such as BSED, whose identification is much more reliant on professional judgement. Non-normative categories, which are also by far the largest, are very strongly

Figure 2.3  Pupils with particular types of difficulty as a percentage of all pupils with ASN (Scotland) (pupils with more than one support needs will have all support needs recorded and these figures should therefore be treated with caution)

*Source: Based on statistics from the Scottish Government*
associated with social deprivation, whereas lower-incidence normative difficulties are only loosely associated with social deprivation. These patterns of identification raise questions about whether children benefit from being identified as having SEN/ASN or whether, as argued by Armstrong (2003), this identification is a form of stigmatization which is used to justify their poor school attainment and exclusion from the labour market. It is worth noting that, in both England and Scotland, statutory plans, which provide stronger guarantees of additional resources and greater rights to challenge local authority decisions, are disproportionately allocated to children in more socially advantaged areas, again suggesting that, for children in more deprived areas, the disbenefits of being identified as having certain categories of need may outweigh the benefits.

Overall, the use of categorical systems illustrates tensions between discourses of sameness and difference. There continues to be a commitment to the overarching categories of SEN and ASN, with their implicit emphasis on the commonality of all pupils with difficulties in learning, but at the same time there are moves towards the use of fine-grained categories, suggesting a focus on pupil differences. Some of these categories have gained currency as a result of pressure from parents and voluntary organizations (e.g. autistic spectrum disorder and dyslexia), while others have entered the lexicon as a result of professional pressures (e.g. mental health problems). While normative

Figure 2.4 Percentage of English school population within each Income Deprivation Affecting Children Index (IDACI) decile by type of difficulty (category 1 = least deprived, category 10 = most deprived)

Source: Keslair and McNally (2009)
difficulties are identified across the social spectrum, children identified as having non-normative difficulties are concentrated in socially deprived areas. This suggests a dilemma of categorization, where some labels may have negative educational consequences, while other labels may bring benefits in relation to releasing additional resources without social stigmatization.

The use of particular categorization systems has implications for placement of children with SEN/ASN and the type of curriculum provided. The dominance of generic terminology, with its implicit discourse of commonality rather than difference, means that in England and Scotland there has been a presumption of mainstream placement. Around 1% of the total school population in Scotland and England are placed in special schools and units. Similarly, the expectation has been for all children to access a common curriculum with appropriate modifications (Lewis and Norwich, 2005). In England the statutory requirement in relation to inclusion, in place since 2002, requires that provision is made in mainstream schools for all children without statements. However, the increasing use of fine-grained categories of details, and the growing influence of voluntary organizations representing particular categories of difficulty, such as autism, has led to growing pressure for more differentiated curricula and teaching methods, potentially increasing the emphasis on children’s differences rather than their sameness.
PARENTS AND ACCOUNTABILITY: THE DILEMMA OF PARTICIPATIVE DEMOCRACY VERSUS BUREAUCRATIC ACCOUNTABILITY

As noted earlier, a recurring dilemma in the field of SEN/ASN concerns the balance to be struck between local authorities and parents in determining the distribution of scarce resources, particularly in the field of SEN/ASN when particular types of provision may be extremely costly, with consequences for other service users. A theme of the modernizing government agenda, which has been developed by successive governments, has been an emphasis on personalized rather than standardized services, in which consumers have a far greater say over the nature of services provided. This has partly been achieved by the growth of a mixed economy of welfare, with the voluntary and private sectors increasingly being funded by government to deliver services which were previously provided by the state, a move deprecated by some social policy critics (e.g. Ball, 2007), but sometimes welcomed by service users, such as the recipients of direct payments (Pearson, 2006).

The growth of consumerism through the exercise of voice has been a further element in the personalization agenda. In the field of SEN/ASN, along with many other spheres of education, parental power has traditionally been limited, with local authority and professionals retaining control over resource allocation decisions (Harris, 2005). The establishment of a number of dispute resolution mechanisms, since 1994 in England and 2004 in Scotland, was intended to increase opportunities for parents to challenge local authority decisions. Our recent ESRC-funded research project on dispute resolution in SEN/ASN (RES-062-23-0803), referred to earlier, explored the use and perceptions of different ways of resolving disagreements (tribunal, mediation and, in Scotland only, adjudication) and questioned whether these had succeeded in altering the balance of power between parents and local authorities. Tribunals exist to hear appeals from parents of children with SEN/ASN in cases of disputes between parents and local authorities (Scotland only) schools. The outcomes of the tribunals are legally binding unlike the outcomes from mediation; in Scotland, the remit of the tribunal is limited to children with CSPs.

A questionnaire survey conducted with all local authorities in England and Scotland found that they tended to hold negative views of the tribunal. In England, almost half of them did not think that the tribunal made a positive contribution to dispute resolution. They did not object to the right of appeal per se, but they believed that it encouraged parental challenges to decisions or intensified disputes. They regarded the process as irksome and likely to go against them. Some thought that the tribunal was overly generous towards parents in the degree of procedural flexibility it allowed them, for example regarding time limits, and in helping some secure a high level of resources for their child, skewing resource allocation. In Scotland, there were concerns about the tribunal’s rather adversarial hearing and variable approach. Parents, on the other hand, whose views were explored through case studies, were generally positive about the tribunal, seeing the process as somewhat stressful but feeling that in general fair outcomes were achieved. Figures 2.6 and 2.7 illustrate the use of the SEN/ASN tribunal in England and Scotland.
Figure 2.6  Total number of tribunal appeals received and registered annually between 1997/8 and 2006/7 the Special Educational Needs and Disability Tribunal (SENDIST) (England)

*Source:* Based on statistics from SENDIST

Figure 2.7  Reference to the Additional Support Needs Tribunal for Scotland (ASNTS) by local authority, 2006–10

*Source:* Based on statistics from the ASNTS
Since its inception, the use of the English tribunal\(^1\) has exceeded expectations, although there have been fewer appeals from parents living in areas of social deprivation and those from minority ethnic backgrounds. In Scotland, the use of the Additional Support Needs Tribunals for Scotland (ASNTS) has been much lower (only 76 references were made in 2007/8, with fewer references in the subsequent years). This is partly because references must relate to a CSP, but only a tiny proportion of children with ASN are deemed to meet the qualification criteria for a statutory plan (see Riddell and Weedon, 2009, for further discussion of this point).

Mediation has been strongly supported by government in preference to court or tribunal on the grounds that it is a cheaper and less stressful means of resolving disputes between the citizen and the state. A duty was placed on English local authorities to provide access to independent mediation under the terms of Special Educational Needs and Disability Act 2001, and the ASL Act 2004 obliged Scottish local authorities to provide access to independent mediation and adjudication. In both England and Scotland, mediation has proved much less popular than hoped for by government (Riddell et al., 2010). Although there are no national figures on SEN or ASN mediation, our local authority survey suggested that in England there was an average of little more than one mediation per authority, compared with an average (based on national statistics) of approximately eight appeal hearings per authority. More than half of authorities (60%) reported no mediations that year. In Scotland, three quarters of all authorities reported fewer than five mediations each. The reasons for the low uptake included a failure by local authorities to promote or publicize mediation, a reluctance to participate on the part of schools or local authorities, and suspicion by parents that mediation was a way of ‘fobbing them off’ rather than delivering justice, a view which was sometimes reinforced by parents’ advisers and representatives. During the year 2006/7, there were only 12 cases of adjudication in Scotland, signalling parents’ lack of knowledge of and confidence in this route.

Overall, the low uptake of alternative dispute resolution mechanisms (mediation and adjudication), and the apparent preference, at least in England, to take cases to the tribunal suggests that parents have little faith in less formal dispute resolution routes, which rely on trust between parties. However, it should be noted that the Parent Partnership Service (PPS) played a significant role in informal mediation. It was when this informal mediation failed that parents tended to opt for the tribunal rather than trying formal mediation. As noted above, Harris (2005) has argued that there has been little progress with regard to increasing parental participation in education decision-making, with local authorities and schools retaining control in many critical areas, including the field of SEN/ASN. This was reflected in the Lamb Inquiry which reported that parents lacked confidence in the system of decision-making and felt disempowered (DCFS, 2009). Findings from the research reported here also suggest that the bureaucratic decision-making continues to hold sway. While this is contrary to the rhetoric of parental empowerment, it must be acknowledged that there is a genuine dilemma in managing the balance of power between parents and professionals, since local authorities can legitimately claim that if the pendulum swings too far in the direction of allowing parents to act as the ultimate arbiters in resource allocation decisions, then their role as independent arbiters in the fair allocation of resources becomes compromised.
CASE STUDIES

So far we have discussed two particular dilemmas in the field of SEN/ASN. In the following section, we present two case studies drawn from the research project described above to illustrate that way in which these dilemmas are manifested in everyday life. The names used are all fictitious.

**Case Study**

The McIntosh family lived in Sea City, an affluent Scottish city with a low use of CSPs and a high proportion of formal disputes. At the time of the research, Fraser McIntosh was 15 years of age and had a diagnosis of autistic spectrum disorder. His parents, both professionals, worked freelance in order to combine work and childcare. Fraser was placed in a special school but, during his teenage years, his difficulties became more apparent, with attendant stresses for his family and teachers. His mother became convinced that school staff did not have the specialist training to manage his behaviour effectively. She researched the options independently, and eventually decided that placement in a residential Steiner school would best meet her son’s needs, although she knew the council was unlikely to agree because of the cost. Mrs McIntosh made a formal placing request, with a view to taking the case to tribunal as a last resort. Following advice from an advocacy organization, Mrs McIntosh took on the role of lead professional and, prior to a review meeting, had private meetings with all 13 professionals involved with Fraser. Each confirmed in writing that Fraser's current school could not meet his needs, and that a residential special school placement was required. The placing request was granted, although the senior officer continued to maintain that the local authority was able to meet the child’s needs and that cost of the residential placement was unjustified and detrimental to other children’s education because of its resource implications. This view was reinforced by the educational psychologist, who spoke of the danger of middle-class parents claiming more than their fair share of resources for their children.

**Case Study**

Carole Redgrave, a single parent working as a care assistant, lived in Midshire, an English local authority spanning both urban and rural areas with a low use of statements. Her daughter, Lucy, was aged 10 at the time of the research and, from early on in her primary school career, had struggled with basic numeracy and literacy, leading to a diagnosis of ‘non-specific special educational needs’. Lucy was placed on a school action-plus programme which delivered very little extra support, and still failed to make progress. On the advice of an educational psychologist, Mrs Redgrave asked if she could be assessed for a statement of needs, since this would deliver dedicated support, but a request for a formal assessment was turned down twice, despite support from a range of professionals. Mrs

(Continued)
Redgrave felt fobbed off by both the school and the local authority, but persisted in arguing Lucy’s case because she was convinced that her daughter would thrive in mainstream with extra help. The local PPS was recommended by a friend, and they supported her through mediation, after which a statement of needs was issued guaranteeing ten hours of support from a teaching assistant. According to the PPS, the headteacher had wanted Lucy to be placed in a special school, since she thought this was the only place where additional support would be available, but according to the PPS worker, Lucy was ‘nowhere near the criteria for special’. The additional support in mainstream was successful, with marked improvements in Lucy’s behaviour, confidence and attainment.

**Summary**

To summarize, a number of dilemmas characterize the field of SEN/ASN, in particular, the dilemma of whether to emphasize difference or sameness, and the dilemma of whether to accord greater power to parents or professionals in determining the type of appropriate education for a child with SEN/ASN. These dilemmas are interconnected, since they both have implications for resource distribution and identity. We noted that the educational reforms of the 1990s in England tilted the balance of power in the direction of parents, making professionals far more accountable and opening up accessible appeal routes. In Scotland, the ASL Act was implemented more than a decade after SEN reforms in England, with the aim of widening the pool of children eligible for additional support and boosting parents’ power to hold professionals to account. In both England and Scotland, there has continued to be a commitment to an inclusive educational system, underpinned by the presumption that a child will be placed in mainstream unless there are compelling reasons for a special school placement. It is also worth noting that the judicial system, both internationally (the European Court of Human Rights) and domestically (the tribunals and courts in England and Scotland), has largely failed to uphold as a matter of human rights parental convictions as regards the type of placement their child should have (Harris, 2007). This has led to disputes focusing on resource issues rather than broader issues of principle.

The analysis of official statistics on the identification of children with SEN/ASN in England and Scotland underlined some of the ongoing tensions in the system. Low-incidence normative difficulties, such as physical and sensory impairments, are identified across the social spectrum, and the issuing of a statement of needs or a CSP releases additional resources, potentially helping the child to achieve their educational potential. By way of contrast, high-incidence non-normative difficulties, such as BSED, which carry with them the risk of stigmatization, are much more likely to be identified among children living in socially deprived areas. Children with SEN/ASN living in such areas are less likely to be allocated additional resources, which might outweigh the negative impact of a stigmatizing label.

The brief case studies presented above also highlight the central dilemmas and the way in which they are manifested differently in particular circumstances. Mrs McIntosh wanted her son to be identified as unequivocally different from other children, so that the significant cost of the residential special school could be justified. Mrs Redgrave, on the other
hand, was not seeking a specific label for her child’s difficulties, but an assessment which would release additional support to be delivered in mainstream rather than a special setting. Both parents were similar in wanting their voices to be heard and in being willing to use formal routes of redress if necessary, although Mrs McIntosh had greater social and cultural resources at her disposal. The response of the schools and local authorities was similar in both cases, as they expressed deep anxiety about the danger of preferential resource allocation to those who were most willing to fight their corner. Over the next five years, as governments in England and Scotland struggle to deal with the squeeze in public sector funding in the aftermath of the recession, it is likely that such dilemmas will intensify.

Discussion Points

- What are the upsides and downsides of the broad definition of ASN employed in Scotland compared with the much narrower definition of SEN used in England?
- The English green paper published in March 2011 argues that too many children with non-normative difficulties are being identified as having SEN in England. What are the pros and cons of including such children under the SEN umbrella?
- Mediation has been promoted in England and Scotland as a better way of resolving SEN disputes compared with the tribunal. What are the advantages of judicial and non-judicial forms of dispute resolution and how can mediation be promoted?
- What can be done to help parents of children with SEN/ASN in their efforts to ensure that their children get the support they need?

Further Reading


Harris, N. and Riddell, S. (2011) *Resolving Disputes about Educational Provision: A Comparative Perspective on Special Educational Needs*. Farnham: Ashgate. This book discusses the nature of grievances and disputes in the field of SEN and the pros and cons of various dispute resolution mechanisms. It also focuses on SEN systems and approaches to dispute resolution in England, Scotland, the Netherlands and the USA.

Note

1. In England, the jurisdiction held by the Special Educational Needs and Disability Tribunal (SENDIST) is now with the Health, Education and Social Care Chamber (HESC) of the First Tier Tribunal (FTT), which hears special educational needs and disability discrimination cases. In Scotland, the Additional Support Needs Tribunals for Scotland (ASNTS) deal with references relating to CSPs only, although the Equality Act 2009 extends its remit to disability discrimination cases.

References