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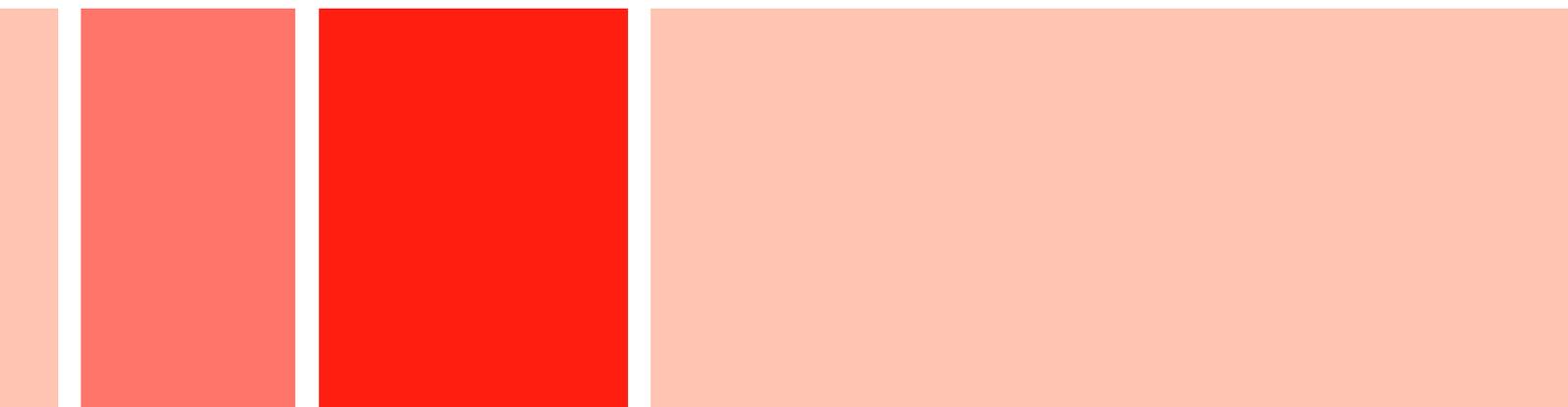
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# Evaluation of a Pilot of Young People's Rights to Appeal and Claim to the Special Educational Needs Tribunal for Wales

## Final report



# **Evaluation of a Pilot of Young People’s Rights to Appeal and Claim to the Special Educational Needs Tribunal for Wales**

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**The People and Work Unit**

Views expressed in this report are those of the researcher and not necessarily those of the Welsh Government

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## Glossary of acronyms

ALN	- Additional Learning Needs
ARP	- Action Research Project
CAMHS	- Children's and Adolescent Mental Health Services
DDA	- Disability Discrimination Act
DWP	- Department for Work and Pensions
EHRC	- Equality and Human Rights Commission
NAfW	- National Assembly for Wales
NYAS	- The National Youth Advocacy Service
PSE	- Personal and Social Education
SALT	- Speech and Language Therapy
SEN	- Special Educational Needs
SENCo	- Special Educational Needs Coordinator
SENTW	- Special Educational Needs Tribunal for Wales
SMT	- Senior Management Team
UNCRC	- United Nations Convention on the Rights of the Child
WAG	- Welsh Assembly Government

## **Executive Summary**

### **The Education (Wales) Measure 2009 and the pilot projects**

The Education (Wales) Measure 2009 (hereafter referred to as “the Measure”) extends the existing right of parents and carers to make an appeal or claim to the Special Educational Needs Tribunal for Wales (SENTW) to children and young people. The Measure also places new duties upon local authorities, in relation to the provision of information and advice about the new rights; dispute resolution; and the provision of independent advocacy services.

The introduction of the new rights for children and young people, and duties upon local authorities, is being piloted in two areas - Carmarthenshire and Wrexham - between 2012 and 2015. The purpose of the pilot projects is to inform the roll out of the Measure across Wales.

### **Evaluation of the pilot projects**

The evaluation of the pilots was required to assess:

- whether the pilot authorities implemented the provisions set out within the Measure
- whether the provisions within the Measure been implemented economically
- how efficiently the provisions within the Measure have been implemented by the pilot authorities
- how effectively the provisions within the Measure have been implemented by the pilot authorities

An action research methodology was adopted to answer these questions. This involved working with the pilot projects to:

- discuss the research questions and jointly identify how they could be answered (e.g. identifying what data was required and how this could be collected);
- ensure data was gathered in order to help answer the questions; and
- jointly analyse the data, in order to inform (and change) practice and identify where further research was required.

The action research with the pilot projects was complemented by:

- a literature review to identify initiatives in the UK and internationally which extend children's and young people's rights with the aim of increasing their participation in decisions which affect them;
- research with families in Carmarthenshire who were supported by an additional learning needs (ALN) family support worker, in order to help identify the impact of the pilot and the worker; and
- a survey of all local authorities in Wales not taking part in the pilot to assess their knowledge and understanding of the Measure's requirements and their preparedness to meet them.

### **Summary of findings from the literature review**

The literature review indicated strong support for the principle of extending the rights of children and young people to participate in decisions that affect them, but was only able to find evidence of limited practice. In most cases, children and young people's participation has been promoted through obligations or duties, placed upon adults, to consult children and young people, rather than through the extension of children's or young people's rights. This approach has meant that children's and young people's participation has been limited in practice. For this reason the literature review looked at what lessons can be drawn from other areas. These include, in particular, adults' experiences of appealing to tribunals and legal cases involving children's and young people's rights to consent to or refuse medical treatment.

## **Case studies: the projects in Carmarthenshire and Wrexham**

The implementation of the measure required each of the pilot projects to: communicate rights to appeal and to make a claim to the SENTW to children and young people; ensure they were supported to understand and exercise those rights; and to ensure that children and young people had access to services that could help them exercise their rights, such as advocacy services. There were some important differences in the way the pilot authorities fulfilled these requirements as outlined more fully in Table 1. In particular:

- Wrexham adopted a more “distributed” model, in which professionals, such as teachers and Special Educational Needs Coordinators (SENCOs) take on much of the responsibility for informing children and young people of their rights and supporting their decisions. Carmarthenshire adopted a more centralised model, creating a new role, that of ALN family support worker, which involved working with families to ensure they understood, and if they wished were supported to exercise, the rights to appeal or make a claim to the SENTW; and
- Carmarthenshire focused upon rights in the context of a family, on the basis that in almost all cases, decisions about whether to exercise rights would be taken by the family. In contrast, Wrexham focused on children’s and young people’s rights as separate to, albeit equal with, the rights of parents and carers.

**Table 1. summary of the requirements of the Measure and the approaches taken by Carmarthenshire and Wrexham**

<b>Measure requirements</b>	<b>Approach adopted in Carmarthenshire</b>	<b>Approach adopted in Wrexham</b>
Inform children of their appeal rights	<p><b>Communicate with children and young people by:</b></p> <ul style="list-style-type: none"> <li>- establishing a new role, that of ALN family support worker, who aims to work with all families going through the statutory assessment process, explaining their rights (i.e. the rights of both parents/carers and children);</li> <li>- giving SENCo's/ALNCo's responsibility for ensuring that children or young people who already have a statement of SEN understand their rights, either through 'Children's Rights' work with groups of pupils or on an individual basis (e.g. through an annual review meeting);</li> <li>- developing an understanding of children's rights through the PSE curriculum;</li> <li>- providing leaflets and posters which schools display (this is focused particularly upon raising awareness of rights to make a claim of disability discrimination); and</li> <li>- not providing children in "early childhood" with literature about their rights to appeal, as it is not appropriate to do so, and adapting communication to the needs of the child or young person. E.g. in some cases, the focus will be upon</li> </ul>	<p><b>Communicate with children and young people by:</b></p> <ul style="list-style-type: none"> <li>- mirroring the same processes as those for adults in terms of timing (e.g. writing to children and young people at the same time as the LA writes to parents or carers, to inform them of their rights);</li> <li>- providing additional support to children and young people (e.g. asking case friends<sup>1</sup>- to go through the letter and explain it to children and young people);</li> <li>- developing understanding of rights, through for example links to equalities week (this is focused particularly upon raising awareness of rights to make a claim of disability discrimination);</li> <li>- providing leaflets and posters which schools display (this is focused particularly upon raising awareness of rights to make a claim of disability discrimination); and</li> <li>- professionals and parents agreeing where a child cannot participate in the process (e.g. due to age and/or complexity of need) and it is therefore inappropriate to explain their rights to them.</li> </ul>

<sup>1</sup> Every young person going through the statutory assessment process has a case friend identified and assigned, who can help explain a child or young person's rights to them.

	<p>ensuring a child or young person understands that if there is something that is important for them and is not being provided, they can go to someone for help, even if their specific rights to appeal to the SENTW are not explained.</p>	
	<p><b>Ensure that professionals working with children are aware of and understand children’s rights to appeal/make a claim, and of the implications of this for their own practice, through:</b></p> <ul style="list-style-type: none"> <li>- training events for schools in children’s rights (delivered by Dynamix);</li> <li>- awareness raising with other groups of professionals (e.g. SENCos, the transition team, children’s disability team, and the youth service);</li> <li>- sending information packs to schools and other services; and</li> <li>- “signposting” professionals to the appeal or claims procedures (On SENTW’s website) if required.</li> </ul>	<p><b>Ensure that professionals working with children are aware of and understand children’s rights to appeal/make a claim, and of the implications of this for their own practice, through:</b></p> <ul style="list-style-type: none"> <li>- training events for learning settings (e.g. schools, PRUs, early years) and services (e.g. Child and Adolescent Mental Health Services (CAMHs) and Speech and Language Therapy (SALT));</li> <li>- awareness raising with other groups of professionals e.g. attending SENCo forums and SMT meetings)</li> <li>- sending information packs to schools;</li> <li>- embedding the Measure’s requirements in training for school staff involved in annual reviews and transition planning; and</li> <li>- “signposting” professionals to the appeal or claims procedures (On SENTW’s website) if required.</li> </ul>
<p>Make arrangements for and inform children about access right to Partnership and Disagreement Resolution</p>	<p><b>Reconfigure existing Partnership and Disagreement Resolution Services</b> (so they can cater for children and young people as well as parents or carers) by:</p> <ul style="list-style-type: none"> <li>- ensuring that existing services are family (rather than parent) focused; and</li> <li>- establishing a new role, that of ALN family support worker, who can support families and help resolve disputes without recourse to dispute resolution services.</li> </ul>	<p><b>Reconfigure existing Partnership and Disagreement Resolution Services</b> (so they can cater for children and young people as well as parents or carers) by:</p> <ul style="list-style-type: none"> <li>- engaging SNAP Cymru (who provided services for parents) to provide a service for children; and</li> <li>- maintaining a clear separation between services for children and services for parents.</li> </ul> <p>• <b>Inform children directly about their rights to services:</b></p>

Services	<ul style="list-style-type: none"> <li>• <b>Inform children directly about their rights to services:</b> <ul style="list-style-type: none"> <li>- As above – part of the process of explaining rights.</li> </ul> </li> <li>• <b>Ensure that professionals working with children are aware of and understand children’s rights to services:</b> <ul style="list-style-type: none"> <li>- As above – part of training and awareness raising with professionals.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- As above – part of the process of explaining rights.</li> <li>• <b>Ensure that professionals working with children are aware of and understand children’s rights to services:</b> <ul style="list-style-type: none"> <li>- As above – part of training and awareness raising with professionals.</li> </ul> </li> </ul>
Provide access to independent advocacy and support services <sup>2</sup>	<ul style="list-style-type: none"> <li>• <b>Inform children directly about their rights to services:</b> <ul style="list-style-type: none"> <li>- part of the process of explaining rights.</li> </ul> </li> <li>• <b>Ensure that professionals working with children are aware of and understand children’s rights to services:</b> <ul style="list-style-type: none"> <li>- part of training and awareness raising with professionals.</li> </ul> </li> <li>• <b>Ensure that existing advocacy services are adequate by:</b> <ul style="list-style-type: none"> <li>- reviewing existing advocacy services</li> </ul> </li> <li>• <b>Providing support to case friends</b>, if required; and</li> <li>• <b>Establishing a new role, that of ALN family support worker</b>, who can support families in making decisions about whether to exercise rights to claim or appeal.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Inform children directly about their rights to services:</b> <ul style="list-style-type: none"> <li>- part of the process of explaining rights.</li> </ul> </li> <li>• <b>Ensure that professionals working with children are aware of and understand children’s rights to services:</b> <ul style="list-style-type: none"> <li>- part of training and awareness raising with professionals.</li> </ul> </li> <li>• <b>Ensure that existing advocacy services are adequate by:</b> <ul style="list-style-type: none"> <li>- by working with “Second Voice” to extend their existing advocacy service</li> </ul> </li> <li>• <b>Providing support to case friends:</b> <ul style="list-style-type: none"> <li>- providing a briefing pack to case friends; and</li> <li>- ensuring that children and young people can talk to either a case friend or key worker about their rights to appeal or make a claim.</li> </ul> </li> </ul>

<sup>2</sup> The Measure only requires access to advocacy services. However, both pilots have developed additional support structures that complement these (i.e. the ALN family Support worker and case friends).

## **Implementation of the Measure by the pilot projects**

In each of the two pilot areas (Carmarthenshire and Wrexham), the process of implementing the provisions within the Measure was driven by relatively small teams within the inclusion departments of the local authority. In both areas, stakeholder participation, in order to inform the development of the pilots, was weighted toward children and young people and focused in particular upon communication of the rights.

## **The cost of the pilot projects**

The total budget for the four years of the pilot project in each local authority was £81,250. The main costs relate to:

- establishing or setting up the pilot project (start up costs), such as consultation with stakeholders, review of existing processes and the development of new processes and training for professionals; and
- running or operating the pilot project (operational costs), such as the cost of monitoring and managing the projects and in Carmarthenshire, the costs of the ALN family support worker.

Because only one claim and no appeals were made, the additional consequential costs of implementing the measure were relatively small.

The approach taken by both Carmarthenshire and Wrexham has been to:

- to use existing structures and processes where possible;
- to extend and develop existing services where needed; and
- to develop new services where required.

This approach has minimised the risk of duplication and inefficiency. The scope for cost savings is therefore largely limited to scaling back the extent of activity (rather than doing things more efficiently).

Given the work of the pilots, it is reasonable to believe that other local authorities, implementing the requirements of the Measure, will not be required to invest as much in the development of new systems and process as the pilots did.

Nevertheless, there will still be a need to review existing systems and processes and to both assess which elements of the approaches developed by the two pilots to adopt, and to assess if they need to be adapted.

### **The effectiveness of the pilot projects**

The study considered the effectiveness of the approaches taken by the pilots to ensure that children and young people understood their rights to make an appeal or claim to the SENTW; professionals understood the implications of the Measure; and that support structures were in place for children and young people.

Both local authorities used a number of approaches to ensure that children and young people were aware of and understood their rights to appeal and to make a claim to the SENTW. Both local authorities identified communicating rights to young children and/or children and young people with complex needs, as a significant challenge.

The approaches to communication each local authority adopted were informed by consultation with children and young people of varying ages and needs, in different types of learning setting. Both have used written material and have explained the rights verbally to children and young people to a greater or lesser degree. However, Wrexham has placed greater emphasis upon using written materials and Carmarthenshire has placed greater emphasis upon verbal communication. Both pilots report that their approach has been effective and that the flexibility to adapt the approaches to meet the needs of individual children and young people has been crucial.

It is likely that the strategies to raise children's and young people's awareness of their right to make a claim have been less effective than strategies to raise children's and young people's awareness of their right to appeal to the SENTW. This is because:

- the strategies to raise children's and young people's awareness of their rights to make a claim of disability discrimination to the SENTW were developed later than the strategies to raise awareness of the rights to appeal to the SENTW in relation to special educational needs; and
- it is relatively easy to identify and target children and young people who have a right of appeal to the SENTW, because they will be part of the statutory assessment and statementing processes and therefore known to schools and the local authority. In contrast, not all pupils with a disability will be known to schools or the local authority. Moreover, approaches which identified pupils as having a right to make a claim, could also serve to highlight their disability. As a consequence, it is more difficult to directly target children and young people who have a right to make a claim of disability discrimination, than it is to directly target children who have the right to make an appeal.

The evidence shows that the extent to which the training and awareness raising involved all professionals is mixed, but improving. Feedback collected after training events in both Carmarthenshire and Wrexham has been consistently positive and indicates that as a result of the training professionals say that they understand the rights and their implications. However, in both Carmarthenshire and Wrexham, follow up training has been required in order to ensure that some key professionals that missed the initial training were engaged.

Each of the pilot areas has established support structures that complement advocacy services: in Carmarthenshire this is provided by the ALN family support worker, and in Wrexham, by case friends. These are judged by the pilots to be effective. However each has potential problems: the family support worker model may be difficult to sustain if parents choose not to engage or disagrees with their child, and the case friend model raises the possibility of a conflict of interest between the child or young person and the setting who employs the case friend. No children or young people have taken up advocacy or dispute resolution services established as part of the pilots.

### **The impact upon children's and young people's well-being**

The implementation of the Measure requirements was judged by the pilots to have had a positive impact upon children's and young people's well-being. Most of the perceived impacts relate primarily to the emphasis each pilot has placed upon enhancing children's and young people's voice and participation in the statutory assessment process, rather than the right to appeal or make a claim itself. This judgment is consistent with evidence from other studies indicating that extending children's and young people's participation can have a positive impact upon their well-being.

To date only one case, a claim of disability discrimination, has been brought by a child, and both he/she and the family chose not to take part in the study. Therefore, the study cannot comment on questions about the experiences of children and young people who made a claim or appeal.

### **The potential reasons why children and young people choose not to make an appeal to claim to the SENTW**

There are a number of structural reasons why the total numbers of children and young people who could exercise their rights is relatively small:

- only a proportion of all children and young people who have a right of appeal would be able to understand and exercise their rights (for example very young children and/or those with profound learning difficulties may not be able to understand or exercise their rights);
- the rights of appeal are limited and are "weighted" toward the start of the process, and once a statement of SEN is issued, unless it is changed, there are fewer rights of appeal. This is important, because the majority of children enter the statutory assessment process at a young age, and are therefore often unable to fully understand, and therefore to exercise, their rights; and
- the number of children and young people going through the statutory assessment process is declining.

In addition, there are likely to be a number of reasons why those children or young people who could appeal would choose not to. These include:

- satisfaction with assessment and provision;
- the emotional “costs” or demands of making an appeal; and
- the continued option of parents or carers exercising their right of appeal.

The position with regards to claims of disability discrimination is more complex. Some of the reasons outlined above apply. However, rights to make a claim of disability discrimination are not subject to the same limitations that rights of appeal to the SENTW in regards to special educational needs are. It is also striking that the numbers of claims of disability discrimination (by parents and carers) are markedly lower than rates of appeal to the SENTW. This may mean that families do not perceive or recognise practices as discriminatory and/or do not fully understand their rights.

### **The impact of family support workers**

Carmarthenshire, which has historically had a relatively high number of appeals to the SENTW (from parents or carers), used the project to help develop a new role, that of ALN family support worker. The role involved supporting families, to ensure that both children and young people and their parents or carers understood their rights to make an appeal or claim to the SENTW and were supported in making decisions about whether to exercise those rights.

Since the introduction of the ALN family support workers, none of the families that they have worked with have made an appeal and the total number of appeals (by parents or carers) in Carmarthenshire has fallen sharply from 11 in 2009/10 to two in 2012/13.

In order to explore the impact of ALN family support workers, the study explored the causes of disagreement between a family and the school or local authority that could trigger an appeal to the SENTW and the ways in which an ALN family support worker could respond. This analysis indicates that ALN family support workers can

help address many of the key causes or triggers for disagreement, such as those linked to a misunderstanding or a lack of confidence that a child's needs will be met. Equally, there are problems, such as a breakdown or failure of provision, which cannot be resolved by just talking to and supporting parents and carers.

### **Local authorities' awareness and preparedness of the implications of the Education (Wales) Measure**

A survey of local authorities was conducted to assess their awareness of, and preparedness for, the implications of the Education (Wales) Measure. Sixteen local authorities responded. Their responses indicated that they were aware of the Measure and the extension of children's and young people's rights of appeal to the SENTW. However, less than half had made contact with learning settings; and only one third had reviewed their existing systems and processes to make parents and carers aware of the new rights, or planned how to support children and young people.

### **Conclusions**

The systems and processes for informing children and young people of their rights are well established and are generally regarded as working well in both local authorities. As a consequence:

- children and young people are reported by the professionals working with them to be aware of and understand their rights to appeal;
- professionals are reported by the pilot local authorities to be aware of and understand the rights and the implications for their practice (this judgment is based primarily upon evaluation of training and awareness raising work); and
- there are support structures in place to help children and young people make decisions about whether to exercise their rights to make a claim or appeal, and to support them if they choose to exercise them.

Nevertheless, because only one claim and no appeals have been made, the systems and processes established as part of the pilots, for enabling children and young people to exercise their rights to appeal or make a claim to the SENTW, have not been fully tested. This also means that the impact of the implementation of the Measure upon children's and young people's well-being is uncertain. Although it was not empirically measured (in this study), there is evidence from other studies, that increasing pupil participation and voice can have a positive impact upon children's and young people's well-being.

Moreover, there are a number of unresolved issues. For example, it is not clear how disagreement between parents or carers and a child or young person, about the communication of, and exercise of, their rights would be resolved; it is not clear if children and young people fully understand their rights to make claims of disability discrimination; and both pilots have struggled to get feedback from stakeholders about the impact and effectiveness of the pilot measures.

## **1. Introduction**

### **Children and young people's right of appeal: The Education (Wales) Measure 2009**

1.1. The Education (Wales) Measure 2009 (hereafter referred to as the Measure) extends the existing right of parents and carers to make a Special Education Needs (SEN) appeal or disability discrimination claim to the Special Educational Needs Tribunal for Wales, to children and young people. The Measure also places new duties upon local authorities in relation to, the provision of information, awareness raising and advice about the new rights; dispute resolution; and the provision of independent advocacy services to provide advice, representation and/or assistance to a child considering, or intending to make, a SEN appeal or disability discrimination claim. The Measure is discussed further in section two of this report.

#### **The children and young people's right of appeal pilot projects**

- 1.2. The introduction of the new rights for children and young people, and duties upon local authorities, is being piloted in two areas: Carmarthenshire and Wrexham. The pilot projects are discussed further in chapters two and four of this report. . In July 2015, the pilot regulations cease to have effect, and the rights and duties will automatically apply to the whole of Wales.
- 1.3. The People and Work Unit (PWU)<sup>3</sup> was commissioned by the Welsh Government to undertake a pilot study to inform and evaluate the implementation of the pilot projects. The research approach and methodology is discussed further in section three of this report.

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<sup>3</sup>[http:// www.peopleandworkunit.org.uk/](http://www.peopleandworkunit.org.uk/)

## 2. The Context for the Pilot

### The legislative context: Rights to make an appeal or claim to the Special Education Needs Tribunal Wales

2.1. The Education Act 1996 confers to parents or legal guardians the right to appeal about a local authority's decision:

- not to carry out a statutory assessment of child or young person's special educational needs, or to reassess their special educational needs;
- not to make a statement of special educational needs, following a statutory assessment, or to cancel a statement of special educational needs;
- not to change a statement of special educational needs following a reassessment of a child's needs; and
- about certain aspects of the content of a statement of special educational needs, such as the description of a child's special educational needs or the provision to be made for them.

2.2. The Equality Act, 2010, protects people who have or have had a disability against three different types of discrimination:

- direct disability discrimination<sup>4</sup>;
- indirect discrimination<sup>5</sup> ; and
- discrimination arising from disability<sup>6</sup>.

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<sup>4</sup> This occurs when a pupil receives worse (less favourable) treatment than another pupil because of a disability. Direct disability discrimination can also occur where a pupil is treated less favourably because of their association with a disabled pupil or where it is mistakenly thought that they have a disability" (SENTW, n.d).

<sup>5</sup> Under the Equality Act 2010, this occurs when a rule, policy or practice applies to all pupils/a particular pupil group, but has the effect of putting pupils with a particular disability at a disadvantage compared with non disabled pupils and the rule, policy or practice cannot be justified."

<sup>6</sup> This occurs when a disabled pupil is treated unfavourably because of a reason related to their disability and the unfair treatment cannot be justified and it cannot be shown that the school or Local Authority did not know about the pupil's disability and could not reasonably have been expected to know this."

- 2.3. In addition, people who have, or who in certain cases have had, a disability are protected against two additional forms of conduct: “disability related harassment”<sup>7</sup> and “disability related victimisation”<sup>8</sup>(ibid).
- 2.4. Appeals against local authority decisions in relation to special educational needs, or claims of disability discrimination against schools, in Wales are made to the Special Educational Needs Tribunal for Wales (SENTW). As outlined below, under the Education (Wales) Measure 2009, these rights to appeal and make a claim to the Special Education Needs Tribunal Wales (SENTW) are being extended to children and young people.

### **The Special Education Needs Tribunal Wales**

- 2.5. The Special Education Needs Tribunal Wales (SENTW) is an independent government funded body that hears appeals relating to local authorities’ decisions about children or young people’s special educational needs (SEN) and claims of disability discrimination in schools.<sup>9</sup>
- 2.6. When a case (related to either SEN assessment and provision or disability discrimination) is put forward to the SENTW, there can be a number of outcomes:
- it may be heard and upheld, which means the tribunal agrees with motion brought before it (i.e. if an appeal or claim is upheld the tribunal will overturn the original decision, if a ruling is upheld the appeal or claim is dismissed);

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<sup>7</sup>“ This occurs where a pupil receives unwanted behaviour related to a disability which has the purpose or effect of violating a person’s dignity or which is hostile, degrading, humiliating or offensive to the pupil.” (ibid.).

<sup>8</sup>“ This occurs when a pupil is treated less favourably because they are taking/have taken or might be taking action in good faith under the Equality Act or because they are supporting such a person” (ibid.).

<sup>9</sup> The exceptions to this are claims about maintained school admission decisions (which are heard by an admission panel) and permanent exclusions from maintained schools (which are heard by exclusion appeals panels). (ibid).

- it may be heard and dismissed, which means the tribunal rejects the motion brought before it (if an appeal is dismissed, the original decision stays);
- it may be conceded or not opposed, where the defendant (e.g. a local authority, in relation to an appeal in relation to special educational needs or a school in relation to a claim of disability discrimination) does not oppose the appeal or claim, and thereby agrees to renegotiate before appeal or claim is brought to tribunal; or
- it may be withdrawn, where the launcher of the appeal or claim withdraws the appeal or claim, before it is brought to tribunal.

*The number of appeals and claims to the SENTW*

2.7. Appeals relating to special educational needs make up the bulk of the Tribunal's workload. In 2012-13, 73 appeals were received, with a further 29 appeals carried over from 2011/12, compared to six claims for disability discrimination (p.3., SENTW, 2013). In 2011-12, 29% of appeals related to a local authority's refusal to undertake a statutory assessment and 56% related to the contents of a statement. The remainder related to a local authority's refusal to issue a statement (14%) or a refusal to reassess special educational needs (1%) (ibid). As table 2 illustrates, the number of appeals varies considerably by local authority.

**Table 2. Numbers of appeals to the SENTW by local authority area, 2011-12 and 2012-13**

	<b>2011- 2012</b> Number of appeals	<b>2012-13</b> Number of appeals
Blaenau Gwent	1	1
Bridgend	2	3
Caerphilly	2	1
Cardiff	12	8
Carmarthenshire	7	2
Ceredigion	1	1
Conwy	7	3
Denbighshire	2	2
Flintshire	0	2
Gwynedd	3	0
Merthyr Tydfil	2	0
Monmouthshire	6	2
Neath Port Talbot	1	7
Newport	8	20
Pembrokeshire	0	1
Powys	8	1
Rhondda Cynon Taf	7	3
Swansea	9	13
Torfaen	2	0
Vale of Glamorgan	5	2
Wrexham	0	0
Ynys Mon	1	1
<b>Totals</b>	<b>86</b>	<b>73</b>

**Source: SENTW, 2013**

2.8. To put it in context, the total number of appeals (73 in 2012/13) is small compared to the total number of pupils with a special educational need: 103,038 of whom, 13,564 had a statement of special educational needs (in January 2013) (Statistics for Wales, 2013).

2.9. In total, there were six claims of disability discrimination against Welsh schools, registered with the SENTW, in 2012-13 (SENTW, 2013). To put this in context, this is very small compared to the total number of pupils with a

disability. Although, there are no exact figures on the numbers of pupils with a disability in Wales, assuming that 6% of children are disabled (DWP, 2013), using the latest figures for pupils in school in Wales we can estimate that this would equate to roughly 28,000 pupils with a disability in schools in Wales.

## **The Education (Wales) Measure 2009**

2.10. The 2003-04 Annual report of the Children's Commissioner for Wales welcomed the extension of the right of appeal against exclusion to secondary school pupils. It commented that "We would like to see pupils' rights extended to other areas of education such as admissions appeals and the right of appeal to the Special Educational Needs Tribunal for Wales " (p35, Children's Commissioner for Wales, 2004).

2.11. This proposal was taken up by the Welsh Assembly Government and, in April 2009, the proposed Measure to extend children and young people's right of appeal to the SENTW was introduced. As the Explanatory Memorandum put it, the "fundamental objective of this Measure is to give a parity of appeal rights for parents and their children" (p.8, NAFW, 2009).

2.12. In oral evidence to the National Assembly for Wales Legislation Committee (NAFW, n.d.), Jane Hutt, then Minister for Children, Education, Lifelong Learning and Skills, outlined "three mains reasons" why the legislation was needed:

First, it gives practical expression to the United Nations Convention on the Rights of the Child, in particular article 12. Secondly, the legislation will enable us to ensure that the needs of children are considered by the tribunal. Current arrangements rely on the presumption that statutory agencies will be competent in their practice and administration and that parents will act to promote the best interests of their children. There may be hazards for some children if one or both of those essential ingredients are missing. Thirdly, there may be parents who, even with support, simply do not feel willing or confident or competent enough to pursue an appeal or claim. (NAFW, n.d.).

2.13. In further comments to the Committee, she also stressed that the Measure gave children who are looked after by a local authority an independent right to appeal and the “pilot and evaluation phase” was described as:

... key to providing ... the information about how these rights can be communicated to children and young people and how they can be supported (ibid.).

2.14. In order to support the development of the Measure and the pilot, a pilot design and implementation group was formed. The group brought together members of the Welsh Assembly Government, the SENTW, local authorities, the voluntary sector<sup>10</sup> and the Children’s Commissioner for Wales. The group considered a number of issues including whether there should be an age or competency bar, which the group rejected, and the potential for conflict and disagreement between parents or carers and children.

2.15. As part of the development process, a participatory training and consultation body, Dynamix, were commissioned to consult young people. The consultation highlighted a number of issues including the importance of ‘case friends’ who could support children and young people who might wish to exercise their rights.

2.16. It was originally intended that the regulations enabling the new right and duties to be piloted in the two local authorities would come into force by September 2010. However, this was subsequently delayed and the regulations were introduced in March 2012.

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<sup>10</sup> Such as Children in Wales, NYAS Cymru, SNAP Cymru and Tros Gynnal.

## The Pilot Projects

2.17. The pilot phase aimed to provide the opportunity to evaluate the practical application of the extended rights, including the configuration and resourcing of services necessary to implement the provisions introduced under The Education (Wales) Measure 2009.

2.18. The intention was for the pilot phase to cover two areas – one with a historically high number of appeals – and one with a much lower level (which would reflect the general situation in Wales). Cardiff, a local authority with a historically high level of appeals, agreed in principle, but subsequently withdrew from the pilot. Wrexham, an area with a historically small number of appeals<sup>11</sup>, and then Carmarthenshire, an area with a historically low, but rising, number of appeals<sup>12</sup> were subsequently selected as the pilot areas.

2.19. The pilot authorities were given a “wide discretion” about how to go about meeting the new duties<sup>13</sup>. However as outlined in the terms and conditions of the grant for the pilot projects, the local authorities were required to:

- Ensure that the project will provide value for money
- Clearly identify (through progress reports)
  - how they have met the new duties/functions placed upon them by the Measure;
  - the rationale for choosing the methods they chose and the evidence base for such a decision;
  - difficulties they have encountered;
  - good practice that has been identified;
  - costs associated with implementation and operation of the new rights;

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<sup>11</sup> Typically one or two appeals a year (SENTW, 2011, 2008).

<sup>12</sup> The number of appeals increased from between five or six a year for the period 2003/04-2006/07 to 19 in 2007/08 before falling back to 12 in 2009/10 and 2010/11 (SENTW, 2011, 2008).

<sup>13</sup> Taken from the Pilot Project Grant Terms and Conditions

- that they are keeping under review the progress of the methods that they have put in place;
  - that Welsh language aspects are taken into consideration.
- 
- Ensure a suitable sustainability strategy is established beyond the period of pilot and that good practice identified by the authority itself and by the ARP [action research project] is embedded within ongoing activities; [and]
  - Ensure effective and timely communication with both the contact within the WAG [sic] and the ARP on the progress and development of the Pilot.”

### 3. Aims and objectives of the study

3.1. In order to investigate and examine the work undertaken by the pilot projects the Welsh Government tendered for a 'pilot study' in September 2012. The purpose of the pilot study was to:

- Inform the development of practices and processes put in place by the pilot authorities to implement the provisions within the Education (Wales) Measure 2009
- Establish good practice models that can be used to inform the implementation by the pilot authorities
- Provide an end of pilot evaluation to inform the later roll out across Wales
- Amend the good practice models in light of the experiences of the pilot authorities to inform the later roll out across Wales.

3.2. The overarching questions that the evaluation element was tasked to consider were:

- Have the pilot authorities implemented the provisions set out within the measure?
- Have the provisions within the measure been implemented **economically**?
- How **efficiently** have the provisions within the measures been implemented by the pilot authorities?
- How **effectively** have the provisions within the measures been implemented by the pilot authorities?

3.3. A full list of the specific research questions is included in appendix and they are referenced in chapter seven. The contract was awarded to The People and Work Unit (PWU) who proposed a programme of action-research. The methodology is discussed in Chapter 4.

## **4. Approach and methods**

### **Introduction**

4.1. The action-research project and evaluation study was structured into three phases:

- inception and scoping
- a formative programme of research and action research and
- summative evaluation and reporting

### **Inception and scoping**

4.2. The scoping work included an inception meeting, qualitative semi-structured interviews with key stakeholders from the Welsh Government, the SENTW, SNAP Cymru and the pilot local authorities. The interviews ensured that the researchers understood the context and the aims of objectives of the projects and the evaluation. These interviews were complemented by a desk based literature review, described below.

#### *The Literature Review*

4.3. The aim of the literature review was to identify initiatives in the UK and internationally which extend young people's rights with the aim of increasing their participation in decisions which affect them. Initiatives which were identified were reviewed in order to, where possible:

- document the processes and practices adopted;
- assess the effectiveness of the initiatives in enabling vulnerable young people to participate in decisions which affect them;
- identify the ethical, legal and moral implications of an extension of children and young people's rights of appeal;

- identify good practice in extending children and young people’s rights of appeal; and
- consider the impact of initiatives to extend young people’s participation upon young people, including any impact upon their well-being.

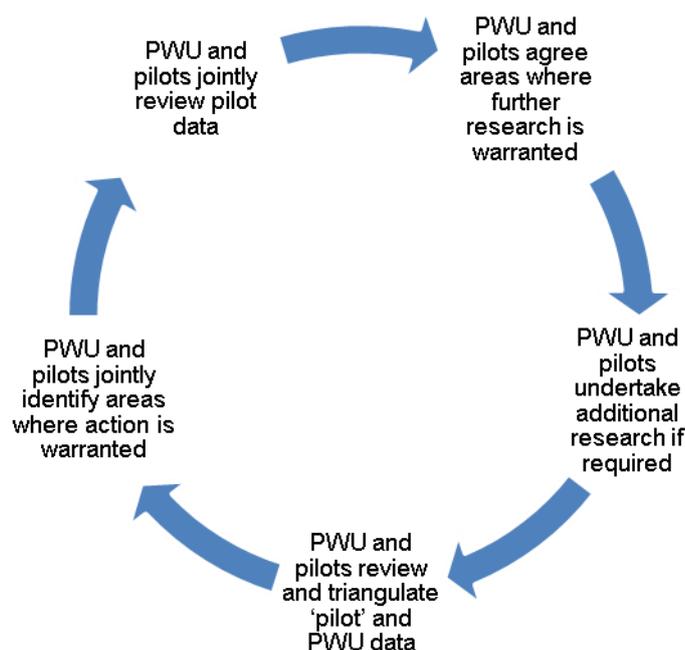
4.4. A separate report on the literature review was submitted to the Welsh Government and its findings are summarised in chapter five. Further details on the literature review are included in the appendix.

## Action research

### *The action research cycle*

4.5. The action research was designed to operate through a series of cycles, involving a joint planning meeting with pilots, research/data collections by both the Pilots and the People and Work Unit (PWU), and joint review meeting to consider the data collected and to plan the next phase of data collection. This is illustrated by figure 1.

**Figure 1. The action research cycle**



- 4.6. The cycles of action research did not follow a rigid timeline. Three cycles of action research were conducted in Wrexham, with meetings in February and November 2012, April and September 2013. Four cycles of action research were conducted in Carmarthenshire, with meetings in January and December 2012, January, April, July, and October 2013.
- 4.7. These dedicated action research review meetings were complemented by pilot meetings (convened by the SENTW) and attended by representatives of the Welsh Government, the SENTW, the two pilot local authorities, the Children's Commissioner for Wales, SNAP Cymru and the PWU.

#### *The action research approach*

- 4.8. The pilot review meetings focused on the issues of implementation, cost, efficiency and effectiveness. The initial meetings considered all of the research questions, (see Appendix 1 for details), in order to explore how and when they could be addressed and answered. The follow up meetings were more focused on specific questions. For example, much of the focus of subsequent meetings was upon evaluating the steps taken to raise awareness and build understanding of the rights amongst key groups of stakeholders: children and young people, their parents and carers and professionals (e.g. teachers, social workers etc). This process involved first exploring what each pilot had done (in this case to raise awareness) and then discussing what evidence there was of how effective this had been. For example, feedback from participants at training and awareness raising events and from those professionals who had been involved in communicating rights to children and young people were considered.
- 4.9. The PWU took on the role of "critical friend" in the review meetings. This involved, for example, facilitating and leading discussions and enquiry; testing and challenging the evidence; and providing advice on ways to address gaps in the evidence. Therefore, the action research meetings provided a valuable opportunity to review the research questions with the pilot officers and to

contribute to the development of research tools, such as questionnaires, which the pilots have used.

- 4.10. It was also anticipated that the action review meetings would provide a way of identifying further research which the PWU could undertake between meetings. However, this rarely occurred in practice. It was discussed with the pilot projects in each cycle, but it was only appropriate during the final stages, when additional research with families supported by the Additional Learning Needs (ALN) family support worker (FSW) in Carmarthenshire was agreed (this is discussed below).
- 4.11. In addition, although research tools, such as questionnaires for gathering data from the stakeholders involved in the process, were developed by the pilots in both Carmarthenshire and Wrexham, both pilots struggled to get feedback from stakeholders within the timescale for the action research study. Moreover, because only one claim and no appeals were made to the SENTW by children/young people during the course of the pilot study, it was challenging, if not impossible, to assess the effectiveness of all aspects of the pilots.

#### *Research with families who the ALN family Support Worker had supported*

- 4.12. Five families who the ALN family support worker (in Carmarthenshire) had supported and who were willing to have their contact details shared with PWU were identified. All five were contacted and the PWU were able to speak to four of them. Two of these opted to take part through a telephone interview and two asked for self-completion questionnaires. One questionnaire was returned.

#### *Survey of non pilot local authorities*

- 4.13. Because only one claim and no appeals were made by children and young people to the SENTW, discussions with Welsh Government staff were held and an amendment to the original work plan was agreed which would lead to

a further piece of research being conducted. This focused upon exploring the awareness of and preparedness for, the forthcoming Measure within non pilot Local Authorities. This was undertaken via an online questionnaire sent to local authorities in October 2013. The results of this survey are presented in chapter nine.

## **5. The effectiveness of initiatives in enabling vulnerable children and young people to participate in decisions which affect them: Summary of findings from the literature review**

5.1. In this section we outline the key themes from the literature review and then consider the conclusions from the limited literature available. In particular, it outlines the literature outlining the principle or case for extending rights to children and young people, but there is limited evidence of actual practice in this area.

### **The evidence base: the principle of extending rights to children and young people and the extent of practice**

5.2. This review found that much of the literature in the field is focused upon the principle of extending rights to children and young people rather than upon evaluating its practice. The extension of rights is seen as an important principle in its own right (reflected most notably in adoption of the United Nations Convention on the Rights of the Child (UNCRC)), and as a way to achieve other desirable ends, such as the empowerment of children and young people and the improvement of service delivery (described as “enlightenment” by Cashmore, 2010).

5.3. The review also found that there is very little evaluation of practice, because there is so little practice to evaluate; that is to say, the actual number of initiatives that extend children’s and young people’s rights to participate in decisions that affect them is small, allied to the fact that little or no evaluation has been undertaken of these initiatives. This means that children’s and young people’s right to appeal to the SENTW is, in many ways, groundbreaking, but that consequently the scope to use evidence from existing practice to inform development is limited.

### **The distinction between children’s and young people’s rights to participate and duties or obligations upon adults to involve children and young people in decisions that affect them**

- 5.4. The literature indicates that although there are very few initiatives that extend rights to children and young people to participate in decisions that affect them, initiatives imposing duties upon adults to consult or listen to children and young people appear to be much more common. For example, the Children's Act (1989) imposed an obligation on Local Authorities in the UK to try to ensure that a child's or young person's viewpoint is heard in a tribunal proceeding. However, this obligation to ensure the submission of the child's or young person's viewpoint is not always met and bodies such as the Equality and Human Rights Commission (EHRC) (2010) have argued that a right to be heard is needed. The distinction between *obligations* imposed upon adults (e.g. the obligation to consult children and young people) and *rights* conferred upon children and young people (e.g. to challenge decisions made by adults by appealing to a tribunal) is therefore crucial.
- 5.5. The inherent weakness in an obligation to consult, rather than a right to participate, is that when adults disagree with a child or young person's view, they can simply dismiss the views of the child or young person. In contrast, although a right to participate does not mean that young people necessarily have power over the decision (as this may legitimately be made by another body, such as a tribunal), it ensures that their views are properly considered as part of the decision making process.

### **Potential problems inherent in initiatives that extend children's and young people's rights to participate in decisions that affect them**

- 5.6. Although there are few initiatives that extend children's and young people's rights to participate in decisions that affect them, there is a substantial body of case law focused upon children's and young people's legal rights in relation to, and often in opposition to, adults'<sup>14</sup> wishes and rights. In particular this relates to children's and young people's right to consent to or refuse medical treatment

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<sup>14</sup> Including, but not limited to their parents or carers.

in their own right. This has led some commentators to advance two principal objections to extending rights to children and young people:

- that children and young people are not capable – or competent – to make decisions; and
- the potential conflict between a child’s or young person’s rights and perceived interest and those of their parents or carers.

5.7. However these objections (see e.g. Koocher and Keith-Spiegel, 1990), are contested by other commentators (see e.g. Lewis et al. 2007, Kenworthy and Whittaker 2010). Questions of capacity or competence to exercise rights may be a distraction from the central issue, because questions about the possession of rights are often considered separately from questions about competence to exercise those rights. The review highlights approaches to establishing a person’s competence, such as the Gillick and Fraser tests, but also the challenges inherent in this. The review also suggests that potential conflict between the rights and interests of a child and those of their parent or carers cannot be easily resolved. Therefore, it could be suggested that neither objection can be considered an insurmountable barrier or obstacle to extending young people’s participation. Nevertheless, they suggest there are likely to be practical problems when initiatives are taken to extend rights to children and young people to participate in decisions that affect them.

### **The need to support children’s and young people’s participation**

5.8. Questions of capacity and competence are also linked to the support that children and young people typically need in order to able to exercise their rights (EHRC, 2010). They are also linked to the changes that may need to be made to the way tribunals and other decision making bodies operate to ensure that they are more “child friendly”.

## **Evidence from adults' experiences when exercising rights to appeal to tribunals**

5.9. Given the very limited practice in extending rights to children and young people to participate in decisions that affect them, the evidence from the experience of adults exercising rights in tribunals is important (see e.g. Runswick-Cole 2007, Dockrell et al. 2002, Riddell et al. 2009). This highlights a range of potentially negative and positive impacts. These include:

- the potential emotional stress that children and young people exercising rights may experience;
- the difficulties they may experience in exercising their rights (e.g. in preparing a case and travelling to a tribunal); and
- the potential for the process to empower them.

## **Conclusions**

5.10. The literature (albeit limited) in this field indicates strong support for the principle of extending children's and young people's right to participate in decisions that affect them, but only limited evidence of this in practice. In most cases, children's and young people's participation has been promoted through obligations or duties to consult children and young people placed upon adults, rather than through the extension of rights to them directly. This approach has meant that children's and young people's participation has often been limited in practice.

5.11. Because there are so few examples of initiatives that extend children's and young people's right to participate in decisions that affect them, it is important to consider what lessons can be drawn from other areas. These include in particular, adults' experiences of appealing to tribunals and legal cases involving children's and young people's rights to consent to, or refuse, medical treatment.

## **6. Case studies: the projects in Carmarthenshire and Wrexham**

### **Introduction**

- 6.1. As outlined in chapter five, the extension of children's and young people's rights to appeal and make a claim to the SENTW is novel. As a consequence, there is very little experience, precedent or 'best practice' evidence for local authorities to draw upon when planning for the reconfiguration and resourcing of services necessary to implement the provisions introduced under the Measure. Therefore, as outlined in chapter two, the two pilot local authorities, have a vital role to play as pathfinders, outlining both the final destination (what is needed to meet the requirements placed upon local authorities by the Measure) and potential routes to that destination for others to consider for their own implementation of the Measure.
- 6.2. In this section, for each of the two pilot areas, we briefly describe the context, in terms of the numbers of children and young people going through the statutory assessment process and then outline the ethos of the pilot and the specific steps taken to:
- raise awareness of children's and young people's rights to appeal and make a claim to the SENTW, amongst children and young people themselves and the professionals working with them; and
  - to support children and young people in making decisions about their right of appeal and/or make a claim to the SENTW.

### **Context for the pilots**

- 6.3. Carmarthenshire has a large school population (27,889) compared to Wrexham (19,156) (figures for 2011/12). It is therefore reasonable to expect that the number of pupils going through the statutory assessment process would be higher in Carmarthenshire than in Wrexham. However, as Table 3 illustrates, Carmarthenshire has had a disproportionately larger numbers of

pupils going through a statutory assessment process than Wrexham<sup>15</sup>. As Tables 4 and 5 illustrate, this is reflected in a higher rate of statementing in Carmarthenshire.

**Table 3. Number of assessments, by local authority**

	Assessments resulting in new statements		Assessments completed, statements not issued		Assessments on going at 31 <sup>st</sup> Dec.		Total assessments on-going or completed	
	2011	2012	2011	2012	2011	2012	2011	2012
Wrx	39	44	0	0	7	5	46	49
Carm	132	107	5	2	65	67	202	176

Source: *Pupils with Statements of Special Educational Needs: January 2013*,<sup>16</sup>

**Table 4. Number of Pupils with a statement of special educational needs, Carmarthenshire and Wrexham**

	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
Wrx	834	840	834	758	706	650	615
Carm	1,133	1,135	1,140	1,047	1,046	1,061	1,056

Source: *Pupils with Statements of Special Educational Needs: January 2013*,

**Table 5. Pupils with statements, by age group and local authority (at January 2013)**

	Rate Per 1000, Pupils	Under 5	5-10	11-15	16 And Over	Total
Wrx	32	18	152	364	81	615
Carm	38	22	307	497	230	1,056
Wales	29	698	4,287	6,768	1,811	13,564

Source: *Pupils with Statements of Special Educational Needs: January 2013*,

<sup>15</sup> The ration of pupil population size is 1:1.5. in contrast, the ratio of assessments resulting in new statements in 2012 was 1:2.4

<sup>16</sup> <http://wales.gov.uk/docs/statistics/2013/130619-pupils-statements-special-educational-needs-january-2013-en.pdf>

## **The Carmarthenshire Pilot**

### *The Ethos*

- 6.3. The pilot project was firmly grounded in children's and young people's rights. For example, members of the pilot project team highlighted the findings of the Children's Commissioner, that Article 12 of the UNCRC (respect for the views of the child) was not being met. Moreover, children's rights were not seen in the abstract. Members of the pilot project team stressed that while the appeal process exists in law, for a child to appeal they need to understand that they have rights (ideally by understanding this includes rights in a broader sense than just their rights to appeal to the SENTW), and that children and young people will also need support. They described their aspiration as being to ensure that children and young people know and understand that they can speak to people if they have got problems, and specifically, if there is something that they need - rather than something they want – they should be able to go to someone to help them get it. The pilot project's work was therefore rooted in a broad conception of children's and young people's rights and voice. Their vision was that children's and young people's rights should be embedded in the curriculum and across the age range.
- 6.4. The focus upon children's and young people's participation and voice in decision making was also a key theme of the Additional Learning Needs (ALN) pilots, which both Carmarthenshire County Council, and key members of the children and young people's right of appeal pilot project team, were already involved in. These two pilot projects (the ALN and children's and young people's rights of appeal projects) were therefore seen as complementary.

### **The ALN Pilots**

In 2009, four pilot projects were set up as part of a programme of action research designed to inform and enable reform of the statutory framework for

children and young people with special educational needs. Pilot B, to develop and pilot an inter-disciplinary model for the identification, assessment, planning and review of provision for children and young people with severe and/or complex needs was undertaken by Carmarthenshire and Torfaen local authorities.

Further information about the pilot projects is available at <http://wales.gov.uk/statistics-and-research/programme-action-research-additional-learning-needs-pilot/?lang=en>

- 6.5. The (children's right of appeal) pilot project team in Carmarthenshire also decided, at an early stage, that the focus would be upon the family, rather than the individual child. The rationale for this was that they felt that, in almost all cases, the decision to appeal or make a claim would be made by the family, rather than just the child (or young person). For example, many statutory assessments are carried out an early age, so children are only going to exercise their rights with the support of the family. The focus upon families also enabled the project to improve communication between the local authority and parents and carers and improving their awareness and understanding of their rights was considered desirable. This reflected concerns about the relatively high number of appeals by parents and carers to the SENTW (outlined in chapter two).

#### *Raising awareness amongst children and young people*

- 6.6. The strategy to raise awareness had two strands. One was broad, and addressed all school age children and young people and one was narrow, targeted specifically at children and young people involved in the statutory assessment process.
- 6.7. The broad approach, for all children and young people, involved distributing leaflets and posters in schools, and involved children's and young people's rights being discussed as part of the Personal Social Education (PSE)

curriculum. There were seen to be ethical and practical difficulties in identifying and targeting individual children and young people with disabilities. Therefore, the strategy to raise awareness of rights to make a claim of disability discrimination only used this broad (rather than targeted) approach.

- 6.8. The targeted approach involved ALN family support workers<sup>17</sup> contacting families at the start of the statutory assessment process, in order to explain their role (as family support workers), the family's rights, and to leave information about their rights and sources of support. The aim was to work with any family whose child was going through the statutory assessment process and therefore had a right to appeal.
- 6.9. Where a child or young person is looked after, the ALN Family Support Workers also liaised with the Social Worker. Unless there is a joint responsibility order with the parent, the Social Worker receives the statutory paper work if they are under the care of the local authority. They have also visited some foster carers in order to explain the statutory assessment process (i.e. time scales and appointments that need to be attended, as they are the ones who will probably be attending the appointments with the child).
- 6.10. For those children and young people who already have statements of SEN and are "in the system", Carmarthenshire have focused on the person centred annual review as the means to involve the child, and give them a "voice" in the process. SENCo's/ALNCo's are expected to discuss a child's or young person's rights with them as part of this process, or through more general 'Children's Rights' work.
- 6.11. In response to feedback from education professionals and parents, Carmarthenshire decided not to provide literature about the 'Childs Right to Appeal' to children in "early childhood"<sup>18</sup> as they did not feel that it was

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<sup>17</sup> There were initially two Family support workers. This was later reduced to one post.

<sup>18</sup> The UN committee on the rights of the child, considered the implementation of child rights in early childhood in 2005 and concluded that "As holders of rights, even the youngest children are entitled to express their views, which should be "given due weight in accordance with the age and maturity of the child" (art. 12.1) (p. 7 UN., 2005) and "recommends that States parties include

appropriate to discuss this with children under the age of 8. However, they have still focused upon ensuring that children (and young people) have a voice in the process and that they understand that if there is something that is important for them that is not being provided, they are aware that they can go to someone for help.

### *Raising awareness amongst professionals*

6.12. In order to raise awareness and understanding of children's and young people's rights to appeal amongst professionals, the pilot team delivered presentations and briefings to individual services, such as social services, Careers Wales, LA services such as the youth service, transition team and the disabled children teams. Other projects and voluntary sector organisations, such as Real Opportunities and Mencap were also targeted. The pilot team also engaged with groups such as the SENCo forums; and commissioned the social enterprise, Dynamix<sup>19</sup>, to deliver training on children's and young people's rights to schools. In total, 191 people attend training or awareness raising sessions.

### *Support*

6.13. The family support worker role was seen as an integral part of the project. They played a central role in communicating rights to families and also ensured that families had access to support when making decisions about whether to make an appeal or claim.

6.14. The family support workers have worked with over 100 families to date. Some of these families were only seen once, while with others there was an ongoing relationship. The relationship could involve frequent contact at times (e.g. during the statutory assessment process) and be much more episodic at others (e.g. with contact only made before an annual review). In addition to

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human rights education within early childhood education" (p. 15, *ibid.*).

<sup>19</sup> <http://www.dynamix.ltd.uk/index.php?lang=en>

going out to visit families, in order to explain the family's rights and the statutory assessment process, family support workers have also attended meetings, such as statement review meetings.

### *Advocacy services*

- 6.15. There were a number of existing advocacy services for children in Carmarthenshire. These included Action for Children (who support looked after children) and SNAP Cymru (who support families where a child has additional learning needs and professionals working with such families). These advocacy services were complemented by the youth service.

### *Dispute resolution*

- 6.16. SNAP Cymru, which provides Carmarthenshire's Dispute Resolution Service for parents and carers, were commissioned to extend this service to children and young people. However, as is outlined in chapter eight, family support workers have also taken on a key role in relation to dispute resolution.

## **Wrexham's approach to implementing the Measure**

### *Ethos*

- 6.17. As in Carmarthenshire, the approach to implementing the Measure's requirements in Wrexham, was grounded in a broader understanding of children's and young people's participation. This emphasised the importance of children and young people's participation in all stages of the statutory assessment process (and not just in relation to rights to appeal). As a consequence, the Wrexham team placed considerable emphasis upon "Form D", the pupil's contribution to the annual review process. However, unlike Carmarthenshire, Wrexham was not part of the ALN pilots. Although it was planning to roll out person centred planning, this was less advanced than Carmarthenshire (which had begun the process earlier as part of the ALN pilots).

- 6.18. More fundamentally, Wrexham focused upon children's and young people's rights as separate, albeit equal to, and mirroring, the rights of parents and carers (rather than viewing them as part of a family's rights). Therefore, the focus of awareness raising was upon children and young people, rather than families. The approach involved developing processes for informing children and young people of their rights that ran in parallel to, and mirrored, existing processes to make parents and carers aware of their rights to appeal.
- 6.19. The final key difference of the approach taken in Wrexham, was the adoption of a more distributed model, in which much of the communication of rights and support for children and young people was delivered by existing school staff. Therefore, rather than a dedicated person (the ALN family support worker), teachers and support staff helped to explain the rights and support children and young people in making decisions about whether to appeal or make a claim.

*Raising awareness amongst children and young people*

- 6.20. The strategy to raise awareness had two strands. The first was a targeted approach, focused upon ensuring that children and young people involved in the statutory assessment process were aware of their rights. In contrast to Carmarthenshire, less emphasis was placed upon the broad approach to raising awareness of rights to appeal amongst all children and young people; nevertheless, information was published on the "Young Wrexham" website<sup>20</sup>. The second strand was a broad approach to raising awareness amongst all school age children and young people of their right to make a claim of disability discrimination.
- 6.21. The targeted approach to raising awareness and understanding of rights to appeal involved developing a "pupil voice" process to run alongside and

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<sup>20</sup> <http://www.youngwrexham.co.uk/en/info/education-employment-training/special-education-needs/voices-and-choices/>

integrate with the existing statutory assessment process. This meant that initially, Wrexham focused upon new requests for statutory assessments (about 40 children and young people). The existing process includes paperwork for parents and carers, outlining their rights to appeal, and equivalent child and young person friendly letters and leaflets were developed. These mirrored the paperwork and processes for informing adults of their rights. Therefore, as soon as a request for statutory assessment is made, the paperwork is sent out to parents or carers and also to the child or young person. Additional support is built in and case friends<sup>21</sup> are asked to go through the letter and explain it to children and young people and remind them that advocacy services are available throughout the process.

- 6.22. In addition, Wrexham worked to ensure that school staff and other professionals involved in the process were aware of children's rights to appeal (and to make a claim) and could explain those rights to children if required.
- 6.23. The process for informing the, roughly, 600 children and young people who were already "in the system" (i.e. those who already had a statement) of their rights to appeal, was also targeted, but differed in the approach adopted. A letter to all children and young people with a statement of SEN was considered, but the team were not comfortable with that. Instead, they adopted a strategy in which children's and young people's rights to appeal were raised at annual review and transition planning meetings by the SENCo or teachers coordinating these reviews. In addition, as all children and young people with an existing statement have a "key worker" (rather than "case friend"<sup>22</sup>), who can go through Form D (the pupil contribution) with them, this provides another opportunity to explain their rights.

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<sup>21</sup> The appointment of a case friend is made before a request for statutory assessment, so that the child or young person is supported from the beginning of the process. The case friend is involved for the whole process and is involved in explaining everything to the pupil including rights of appeal. This role differs to that of a "case Friend" who acts in support a child who is bringing a claim to appeal to the SENTW and who can submit a claim on behalf of the child and can support the child through the process.

<sup>22</sup> In these cases there are no case friends, as the statements were set up before the pilot.

- 6.24. Over time, as in Carmarthenshire, each new cohort of pupils will flow into the system (as they go through the statutory assessment process), and have their rights explained to them at the outset.
- 6.25. A process was established for identifying those children or young people who, because of their age and/or complexity of need, could not participate in the process. A multi-agency group, including for example an educational psychologist and the SENCO, decides whether a child or young person can contribute or not. This is usually decided through a meeting with the parents or carers before statutory assessment and a pro-forma was developed to confirm where it is deemed not appropriate to involve the child or young person in the process.
- 6.26. The broad approach to raising awareness and understanding of the rights to make a claim of disability discrimination, involved the development and distribution of a poster<sup>23</sup> to schools. This was underpinned by indirect work to ensure that school staff, and in particular SENCOs, and other professionals, were aware of children's and young people's rights to make a claim. Links were also made to the local authority's work more generally on equalities, such as Wrexham's own "Equalities Week", which aimed to raise awareness and understanding of equalities issues in Wrexham.

### *Communicating the right to professionals*

- 6.27. In order to ensure that school staff and professional services were aware of children's and young people's rights, all of Wrexham's schools (n=75) and selected services, such as educational psychology and educational social workers, were invited to attend Pupil Voice training. This involved presentations by the project team and the distribution of information about children's and young people's rights to appeal and make a claim. This was complemented by follow up work with specific groups of professionals such as

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<sup>23</sup> Wrexham worked with pupils in the Pupil Referral Units (PRUs) to design posters. A competition to design posters to raise awareness of rights was organised. This process was also seen as one way into raising awareness and understanding of disability discrimination rights in PRUs.

speech and language therapists, educational social workers, Child and Adolescent Mental Health Services (CAMHS), paediatricians, Team around the Family (TAC), Second Voice (advocacy service), behaviour support, English as an Additional Language (EAL) Services, sensory services, and Parent Partnership Services. In total, 50 schools attended the training and a representative from the majority of teams/services invited attended the training.

- 6.28. A 'cascade' training model was adopted to ensure that professionals were aware of and understood children's and young people's rights of appeal. This involved working with key people, such as primary and secondary school head teachers and SENCOs and relying upon them to ensure that other people in their schools were made aware of the rights. In addition, information about the extension of rights was put on the schools' intranet, on Wrexham's "Friday bulletin" (for LA staff); and a reminder letter and information was also sent to all schools.
- 6.29. As outlined above, Wrexham initially focused upon "new entrants" and the initial training focused on ensuring that school staff and other professionals understood the process for ensuring that children and young people entering the system for the first time (rather than those who already had a statement of SEN) understood their rights. Once this was complete the pilot began to focus on raising awareness of the rights of appeal to children and young people who were already in the system (because they had a statement of SEN). In order to ensure that school staff and other professionals understood these children's and young people's rights and could explain them during review meetings, a good practice guide was developed<sup>24</sup> and circulated to schools via Wrexham's SENCo forum, and further training was delivered.

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<sup>24</sup> This is a good practice guide for schools in relation to the annual review process. It highlights to schools the importance of pupils contributing to the annual review process and ensuring their views are sought (completion of Form D). In addition the guide identifies that the annual review process should be used as a forum to raise an awareness of the pupils' rights to appeal.

## *Support*

- 6.30. In order to help children and young people make decisions, all children and young people involved in the statutory assessment process, are assigned to what Wrexham have described as a *case friend*. The child or young person picks the case friend with support from school staff.<sup>25</sup> The majority of case friends are school workers, someone who the child already has a relationship with. Wrexham send an information pack to the case friend to explain the role and help support them. All correspondence from Wrexham County Borough Council goes via the schools and also to the case friend in order to ensure he or she can support the child or young person, ensure they understand their rights and the process and, if it reaches appeal, they are better able to support the child.
- 6.31. In addition to the support provided by case friends, Wrexham commissioned Second Voice to provide advocacy support for children and young people exercising their rights in relation to statutory assessment and statements. Second Voice's service is explained to children and young people as part of the process for explaining their rights to appeal and leaflets explaining the service are included in the Pupil Voice letters sent to children and young people<sup>26</sup>. This complements the Service Level Agreement that Wrexham has with the Citizen's Advice Bureau to provide a Parent Partnership Service.

## *Dispute resolution*

- 6.32. The existing dispute resolution service for parents and carers, the North Wales SEN Disagreement Resolution Service provided by SNAP (Cymru), was extended to cover children and young people. However, historically,

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<sup>25</sup>When the local authority receives a request for Statutory Assessment the pupil chooses their case friend with support from school staff. Where parents initiate the request for Statutory Assessment, contact is made with the school regarding the case friend and in some cases parents have helped the child or young person choose a case friend.

<sup>26</sup> Training for Second Voice covered both children's and young people's right of appeal to the SENTW and the SEN Code of practice for Wales.

parents and carers have not used the service offered by SNAP Cymru, indicating that the take up of the service by children and young people is likely to be low. Moreover, although required by the Measure to ensure that dispute resolution services are available to children and young people (which Wrexham have responded to), Wrexham see SNAP Cymru's service as primarily the support for parents, and see advocates and case friends as the key sources of support for children and young people. This reflects the distinction the pilot has drawn between information and support for each.

- 6.33. As outlined above, a key aspect of the family support worker's role in Carmarthenshire is to improve communication with families, by explaining the process and decisions, in an effort to reduce conflict and disagreement. In Wrexham where, for example, a moderation panel has made a decision not to issue a statement of SEN, the panel provides feedback on their decision via a letter and a pupil support officer will meet with the family to explain the decision.

## **7. Key findings from the pilot projects**

### **Implementation of the measure**

7.1. As outlined in chapter three, the study was required to consider series of questions about implementation:

- Who was involved – children and young people, parents, advocacy/ interest groups - in the process of designing and implementing the provisions within the measure?
- What was the outcome of this involvement?
- What factors – e.g. resources, commitment, expertise, existing practices and systems - if any, have created barriers to, or facilitated, implementation of the provisions?
- In what, if any, ways did context – e.g. resources, commitment, expertise, existing practices and systems – impact on implementation?

### **Context**

7.2. As outlined in the previous chapter, in some ways, the approaches taken by Carmarthenshire and Wrexham to implement the Measure differed. These differences were influenced by the different contexts in each local authority and differences in the ethos and interests of those involved in implementing the Measure. For example, Carmarthenshire was keen to improve communication with parents in order to reduce its relatively high rate of appeals from parents to the SENTW, which led them to develop the new role of ALN family support worker. Carmarthenshire had also rolled out training in person centred planning as part of the ALN pilots, which supported a strong focus upon children and young people's participation, and key staff members were keen to emphasise children's rights in a broader context than just the rights to appeal or make a claim to the SENTW. In contrast, Wrexham was more confident that communication with families was effective (reflected in

their historically low levels of appeals to the SENTW) and their focus was much more upon children's rather than the family's rights.

### **Design and stakeholder participation**

7.3. In each of the two LA's, the implementation of the provisions within the Measure was driven by relatively small teams within the inclusion departments of each LA. Given their position and roles within the LA they understood the existing statutory assessment process and parents and carers' rights of appeal. However, each team identified the challenge of communicating rights to appeal and make a claim to children and young people who might be young and/or have complex needs, as significant. As a consequence, as we outline below, stakeholder participation in both areas was weighted toward children and young people<sup>27</sup> and focused, in particular, upon communication of the rights, rather than other aspects of the implementation of the Measure's requirements.

#### *Developing process and approaches for communicating rights to children and young people: Wrexham*

7.4. In order to develop processes for children and young people, Wrexham CBC commissioned the National Youth Advocacy Service (NYAS) to consult "pupils of primary and secondary ages, professionals, including Head teachers and parents, to seek their views on the Measure and what is needed in education and advocacy service to ensure the Measure is effective" (Harrison, 2011). In total there were consultations with:

- 18 children and 27 young people with a statement of SEN, of which, six were looked after children;
- 14 parents of children with a SEN;
- 13 head teachers; and

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<sup>27</sup> Although the National Youth Advocacy Service (NYAS) consultation involved other groups of stakeholders, the focus was primarily upon how to communicate the right.

- 11 specialists, such as educational social workers or educational psychologists.

7.5. This work identified:

- Support amongst many participants for the principle of increasing children and young people’s involvement in decision making processes and for the extension of rights to appeal;
- the need to amend the current procedures and paperwork used by Wrexham CBC in order to make them more “accessible” to children and young people;
- the need for a range of methods to inform children and young people of their rights; and
- the need for a specialist model of advocacy to support children and young people with SEN (ibid.).

7.6. The consultation informed the approach taken by Wrexham and was followed up by consultations with young people via the “Big Yak” Youth forum.

*Developing processes and approaches for communicating rights to children and young people: Carmarthenshire*

7.7. In Carmarthenshire, the model was developed “in house” and the main focus of consultation was on how children and young people would want to access information about their rights. They explored how the information would be transmitted rather than the content of the message. This meant that although the focus was upon communicating the right to appeal, the approaches to communicating those rights were transferable to the communication of rights to make a claim to the SENTW.

7.8. The consultation covered four groups of children and young people, representing different age groups, based in different settings:

- primary (mainstream), aged 7-11
- secondary (Mainstream), aged 12-14
- special school, aged 15-17
- FE College, aged 16-19

7.9. All children involved in the consultation had an Individual Development Plan (IDP), statement or were on School Action/School Action Plus.

7.10. Young people were reported (by the pilot) to have really valued the experience and their views informed the design of materials. For example, the consultations revealed that it was more effective if the leaflets and paperwork materials produced were not colourful, not “all singing and dancing” (as the team had anticipated children and young people would want) but simple and visual.

## **Costs**

7.11. As outlined in chapter three, the study was required to consider a series of questions about the costs of the pilots:

- What costs are associated with implementing specific aspects of the measure?
- What has been the overall cost of implementation within the pilot authorities?
- In what ways, if any, could the costs associated with implementing the provisions be reduced?
- What will be the estimated costs to roll out the pilots across Wales?

### *The costs of implementing the pilot*

7.12. The total budget for the four years of the pilot project in each local authority was £81,250 (2010-2014). At time of writing (November 2013), Wrexham had claimed £68,762, and Carmarthenshire has claimed £52,786, for the period April 2010-September 2013. The difference can be attributed to the fact that because Carmarthenshire started the project later than Wrexham, it did not claim any “pre-commencement costs” for the period September 2011-March 2012.

7.13. The costs relate to establishing or setting up the pilot project (start up costs) and then running or operating it (operational costs). Because only one claim and no appeals were made, the additional consequential costs of implementing the measure were relatively small<sup>28</sup>. The key costs incurred during the pilot projects related to development (including consultation) and staff time. As outlined in chapter six, the pilots adopted different approaches, so that the costs of each differed. For example,

- Wrexham commissioned NYAS to undertake a research study to consult children, young people and professionals (Harrison 2011), whilst Carmarthenshire’s consultation were conducted by members of the pilot team;
- Wrexham relied upon existing members of the Inclusion team to develop and implement the pilot, whilst Carmarthenshire initially created two new “ALN family support worker” posts, to help implement the measure requirements, although this was subsequently cut back to one post; and
- both local authorities relied upon existing staff members to monitor and administer the projects.

7.14. Carmarthenshire advertised the ALN family Support worker post at Soulbury 7 (£39,079, the lowest level for an advisory teacher) because they anticipated

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<sup>28</sup> It is difficult to get exact figures for the cost of contesting a case at the SENTW, but estimates from one of the pilots suggest it is in the order of £10,000. Moreover, these cost would be borne whether the case was brought by a child or young person or their parent or carers.

that the post holders would work for the local authority in terms of providing training and advice to schools. It was also thought that the post might be offered as a secondment aimed at SENCOs. However, with the exception of providing joint input to INSET/ SENCO fora, the training and advice aspect of the role has not been developed. There were concerns this role might compromise the family support worker role. It would mean that as well as providing independent advice and support to families, who might be in conflict with the school and/or local authority, the worker would also be advising schools about provision and thinking about local authority policies and funding.

7.15. The training and advice aspect of the role with schools, was not developed, therefore, the role could be redefined. This may be something that other local authorities looking to develop a similar role wish to consider. This could reduce the cost of the post because support worker roles are generally paid at a lower level than advisory teaching staff. For example, the Unit Costs of Social Care 2012, for example, provides a salary of £22,918 per year, on-costs of £6,312 per year, and direct and indirect overheads of £13,144, to give a total annual cost of £42,374 for a “family support worker”<sup>29</sup> (p. 196, Curtis, 2012).

7.16. In addition to staff costs, the other key costs included:

- training for pilot staff in Carmarthenshire<sup>30</sup> (the family support workers attended a course on ‘Communicating and Consultation with Disabled Children and Young People’) (approximately £1,000);
- training for other stakeholders; and
- the production of leaflets and materials (approximately £650 for a six month period in Wrexham in 2013).

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<sup>29</sup> This role, for a person who provides “emotional and practical help and advice to families who are experiencing long- or short term difficulties”, differs somewhat from that of the family support worker role in Carmarthenshire, but provides a rough indication of the costs of this type of role (p. 196, Curtis, 2012)

<sup>30</sup> In Wrexham, the project team were drawn from the Inclusion department (so were familiar with SEN policy and practice).

7.17. The training of stakeholders was delivered “in house” by members of the pilot team, and made use of existing local authority or school premises, the additional costs were small. The cost of producing materials was also reported to be modest in both areas.

7.18. There was no take up of commissioned services, such as advocacy and dispute resolution, and these services are paid on a case by case basis, there were no costs for these to the local authorities.

### *The scope for cost savings*

7.19. The approach taken by both Carmarthenshire and Wrexham has been to:

- to use existing structures and processes where possible. For example, some training has been delivered via existing forums and structures, such as SENCo forums;
- to extend and develop existing services where needed. For example dispute resolution services for parents and carers have been extended to cover children and young people and in Wrexham existing processes for informing parents and carers of their rights to appeal, have been mirrored by a parallel process to inform children and young people of their rights to appeal; and
- to develop new services where required, the family support worker, for example in Carmarthenshire.

7.20. This approach has minimised the risk of duplication and inefficiency. The ALN family support worker role is a new one, that does not duplicate any existing role<sup>31</sup>. Nevertheless, it is important to bear in mind that the remit for this role is broader than just communicating rights to appeal or make a claim: the role

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<sup>31</sup> However, five years ago, there were more Pupil Progress Officers (PPOs) in Carmarthenshire, who took a similar role to that of the family support worker, working with families. However, the number of PPOs has been cut back from six to two and a consequence, they cannot fulfil that role any longer

also includes providing information and support about the statutory assessment process. The scope for cost savings is therefore largely limited to scaling back the extent of activity (rather than doing things more efficiently).

- 7.21. The two local authorities have taken different approaches, and therefore have differing costs. In particular, the additional cost of the distributed model of information and support (adopted in Wrexham) is lower than employing dedicated family support workers simply because it does not involve employing more staff. Nevertheless, the distributed model still imposes an “opportunity cost”, as the time that existing staff members devote to implementing the measure’s requirements means that they cannot do other things.
- 7.22. In addition, both local authorities face one potential inefficiency: the need in the future to adapt systems developed for the existing statutory assessment process to any changes, when the statutory framework for SEN is revised. It is not possible to assess the impact of this until the statutory framework for SEN is reformed.

#### *The anticipated costs of roll out*

- 7.23. As outlined above, much of the cost of implementing the Measure’s requirements was developmental (although the ALN family support worker creates significant recurring operational costs). In both areas, new systems and processes were required and as all stakeholders were consulted about how best to communicate their rights. The systems and processes are now established, and if they can be used as an “off the shelf” solution that other local authorities can use, they will not have to incur these developmental costs.
- 7.24. Given the work of the pilots, it is reasonable to believe that other local authorities implementing the requirements of the Measure, will not be required to invest as much in the development of systems and processes as the pilots

did. Every local authority is already obliged by law to notify parent and carers of their rights of appeal, and will have systems in place to do this. However, the ways in which they communicate these rights, over and above the letters they are required to by law to send, may differ. Therefore, there will still be a need to review existing systems and processes and to assess which elements of the approaches developed by the two pilots to adopt and to determine if they need to be adapted for their own circumstances.

- 7.25. The costs associated with reviewing existing systems, assessing the approaches developed by the pilots and then deciding what changes are required, are not likely to be large. For example, estimates suggest that the cost of establishing transition key working protocols, systems and processes, which have some similarities to the type of changes needed to implement the Measure's requirements, are in the region of £10,000-£15,000 for each local authority (Welsh Government, 2013). This indicates a total (national) cost of £200,000- £300,000, for the 20 local authorities who did not take part in the pilot.
- 7.26. The other key set up cost is training. In each pilot area a small number of training events (between two and three) were held for school staff and other professionals. Because these were not held during school hours, there were no costs associated with supply cover. Training was delivered by pilot staff. If local authority or school premises can be used, training can be held outside of school hours (so there are no costs associated with supply cover) the cost of training is minimal.
- 7.27. In terms of size, Wrexham is a mid-size local authority, with 1,133 qualified teachers, whilst Carmarthenshire is one of the larger local authorities, with 1,807 qualified teachers and the challenges of rurality. The challenge of training teachers and other professionals in a large metropolitan local authority like Cardiff, with 3,270 qualified teachers will be different.<sup>32</sup> There will

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<sup>32</sup> Source: Stats Wales, 'Number of qualified teachers by local authority, sector and gender', all figures for 2011/12 (<https://statswales.wales.gov.uk/Catalogue/Education-and-Skills/Schools-and->

be more teachers and professionals to train, but it may be easier to bring people together for training.

- 7.28. Once the systems and processes are established, there will be some on-going costs linked to the ongoing training, the monitoring and evaluation of implementation of the Measure's requirements and linked to any take up of commissioned services. In addition, as noted, the creation of a post, such as ALN family support worker, means there are significant recurring operational costs with an estimate of approximately £42,374 per "support worker" role (see 7.16 above). The number of support workers in a local authority, and the role they took on, would depend on the circumstances in that particular local authority.

### **Effectiveness**

- 7.29. As outlined in chapter three, the study was required to consider a series of questions about the effectiveness of the pilots:

- To what extent has the implementation of the provisions within the measure contributed to the well-being of children and young people with special educational needs?
- Are the commissioned services (independent advocacy, Partnership and Dispute Resolution Services) meeting the standards agreed with the pilot authorities in accordance with the SEN Code of Practice? <sup>33</sup>
- Is performance against standards being monitored effectively?
- Is implementation of the provisions within the measure meeting the Welsh Assembly Government participation standards? Is performance against standards being monitored effectively?

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[Teachers/Schools-Census/Local-Authorities/Teachers-and-Support-Staff/NumberOfQualifiedTeachers-by-LocalAuthority-Sector-Gender](http://wales.gov.uk/topics/educationandskills/publications/guidance/specialedneeds/cop/?lang=en)  
<sup>33</sup> <http://wales.gov.uk/topics/educationandskills/publications/guidance/specialedneeds/cop/?lang=en>

- Have the provisions been implemented in a way that has enabled/ supported children and young people to make appeals and claims to the tribunal?
- To what extent are children and young people made aware of, and have an understanding of, their right to appeal/ make claims?
- Is communication about the right to appeal/ make claims done in ways appropriate to age, need and ability?
- To what extent have children and young people been effectively supported through the appeal and claims process?
- Is guidance, developed for parents, case friends or practitioners working with/ supporting young people, useful?
- What do children and young people think of the appeal/ claim process?
- What are the experiences of children and young people who exercised their rights?
- Why did young people choose not to exercise their right to appeal/ make claims?
- What aspects of the pilots have worked well, what barriers have been faced, and what could be improved?
- Have there been any unintended or unexpected effects from the pilot projects?
- Have the pilots led to wider practical changes/ improvements for children and young people with special educational needs?

7.30. In response, in this section the report focuses upon six areas, into which these questions can be grouped:

- the communication of children and young people's rights;
- the effectiveness of training for professionals;
- the effectiveness of support for children and young people;
- the monitoring and effectiveness of commissioned services;
- the impact upon children and young people's well-being; and
- why children and young people choose not to exercise their right to appeal/ make claims?

- 7.31. To date only one case, a claim of disability discrimination, has been brought by a child or young person, and both the child or young person and his/her family chose not to take part in the study. Therefore, the study cannot comment on questions about the experiences of children and young people who made a claim or appeal.
- 7.32. As outlined in section three, although surveys were developed in both Carmarthenshire and Wrexham, and distributed by the pilots, the very low response rates, means that judgments about effectiveness are based primarily upon the judgments of those involved in implementing the pilots. While this is recognised as a key weakness in addressing the questions for the evaluation it was considered by both Welsh Government staff and the PWU that this was the best (and possibly only) option available for the evaluation.

#### *Communication of rights to children and young people*

- 7.33. As outlined in Chapter Six, both local authorities used a number of approaches to ensure that children and young people were aware of and understood their rights to appeal and to make a claim to the SENTW. Both identified communicating rights to young children and/or children and young people with complex needs, as a significant challenge. For example, the concepts of “tribunal”, “rights” and the process of statutory assessment and statements can be difficult to explain. This also complicates evaluation, as children or young people may be able to “parrot” the answers (e.g. saying that “I have the right to go to tribunal”), without understanding the underlying concepts.<sup>34</sup>

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<sup>34</sup> In relation to the question of whether and how much children and young people understood their rights to make an appeal or claim to the SENTW, it was noted that this is not a simple yes/no question, but includes a number of distinct questions: for example, does the child/or young person understand they have a right to make an appeal/claim? Do they understand what this means (e.g. what a right means to them)? Do they understand how and when they can exercise their rights?

7.34. Both local authorities decided to focus on ensuring that children and young people understand they have a right of appeal or to make a claim and who to go to for help and support, rather than also trying to explain the detail of how and when to make an appeal or claim to the SENTW. It was also noted (by the pilots) that information about the process, about how and when an appeal or claim could be made, was developed and publicised by the SENTW<sup>35</sup>. Therefore, they did not need to develop this themselves and could signpost people to it.

7.35. As noted the approaches to communication adopted by each local authority were informed by consultation. Both used written material and have explained the rights verbally to children and young people, although Wrexham has placed greater emphasis upon written materials and Carmarthenshire has placed greater emphasis upon verbal communication.<sup>36</sup> Both pilots report that their approach has been effective and that the flexibility to adapt the approaches to meet individual needs has been crucial<sup>37</sup>. For example, in Wrexham, teachers and support staff who know the children and young people have helped explain their rights. In Carmarthenshire, the ALN family support workers were trained in approaches to communicating with people with disabilities by Triangle<sup>38</sup>, a specialist training provider. The workers have also consulted parents and professionals (who know the child and their preferred means of communication), in order to identify the most appropriate approaches to take.<sup>39</sup>

7.36. Both local authorities identified that some children and young people would not be able to fully understand their rights and nor would they be able to

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<sup>35</sup> <http://sentw.gov.uk/youngpeople/?lang=en>

<sup>36</sup> Wrexham's approach, based upon letters, was that which was originally envisaged and outlined by Jane Hutt in her oral evidence to the NAFW Legislative Committee: "Local education authorities will be required—and that is the important point—to write to the parent and the child separately. There may be a situation in which the child is unable to understand the information, and that is where we must ensure that we engage with the advocacy opportunities."

<sup>37</sup> For example, if the information is delivered face to face, the person delivering it can modify their language; if they see that child has a visual impairment, they can simply read it aloud to them. In contrast, if it's just communicated by a letter, you can't do that.

<sup>38</sup> <http://www.triangle.org.uk/training>

<sup>39</sup> This has involved choosing the most appropriate means of communication and where necessary, adapting materials to ensure they are accessible

exercise their rights independently. The local authorities developed a different approach to this challenge. In Wrexham, a formal process was developed to identify on a case by case basis, those children or young people who, it was thought, due either to their age and/or complexity of needs, would not be able to take part in the pupil voice process. As a consequence, the processes for informing them of their rights were not implemented and this small group has therefore not had their rights explained to them. In contrast, in Carmarthenshire, as outlined in chapter six, there is not a formal process, but they have not sought to explain rights to appeal to children under the age of 8. However, because the focus is upon the family, rather than individual child or young person, it has been possible to explain rights to families, even if children or young people were unable to understand their rights. In addition, Carmarthenshire have adopted a position that even when a child or young person may not be able to understand their rights to appeal or make a claim, they may still be able to understand that if there is something they are unhappy with, they can ask someone for help. Therefore, they have not had to develop a formal process for deciding whether to explain rights or not to children and young people.

- 7.37. Overall, both the Carmarthenshire and Wrexham teams are confident that that children and young people understand their rights. The Carmarthenshire team is also confident that they understand their rights in a holistic way<sup>40</sup> (in contrast, as outlined in Chapter Six, the Wrexham team adopted a narrower focus upon rights, so this would not be expected).
- 7.38. As outlined in Chapter Six, the approaches to taken to informing children and young people of their rights to appeal, were targeted at children and young people with special educational needs and who were either going through a statutory assessment or had a statement of special educational needs. This helped ensure that all children and young people with a right to appeal were

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<sup>40</sup> Family support workers based this judgement upon children's and young people's responses to questions about whether they felt if they had a problem, they could talk to someone about it. As they explained, for them, the key question is if there is something a child doesn't agree with, they know who to go to.

reached. Nevertheless, in a small number of cases in Carmarthenshire, family support workers were either not put in touch with families<sup>41</sup> or families chose not to accept their offer of help (and the model requires a family's co-operation)<sup>42</sup>. In these cases, children and young people will only know about their rights if they have been told by someone else (e.g. a teacher) or if they have seen publicity.<sup>43</sup>

7.39. In contrast, in both Carmarthenshire and Wrexham, broad approaches were taken to communicating children's and young people's right to make a claim of disability discrimination to the SENTW. These targeted all school age children and young people though it is difficult to assess how effective they have been. Only one case has been brought, which on the face of it might indicate limited effectiveness. However, as outlined in section two, the total number of disability discrimination claims to the SENTW has historically been low, and as we outline later in this section, there are good reasons to infer that the numbers of claims (or appeals) by children and young people to the SENTW will always be low. Raising awareness of disability discrimination may also help reduce levels of discrimination, by making schools more aware and more mindful of the issue.

7.40. Notwithstanding the lack of empirical data, it is likely, that the strategies to raise children and young people's awareness of their right to make a claim, have been less effective than strategies to raise awareness of their right to appeal to the SENTW. This is because

- the strategies to raise awareness of their rights to make a claim were developed later than the strategies to raise children's and young

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<sup>41</sup> It was reported that due to a breakdown of communication with the administrative team they didn't realise that the family support workers were trying to work with every family involved in the statutory assessment process rather just families once a decision to/not to assess was taken.

<sup>42</sup> In one case, the family did not want their child to take part, because of the parents' fears that the local authority would seek to support him/her to exercise his/her rights without making a properly informed decision about whether to or not. In this case the child wasn't involved because as external bodies going into schools, family support workers require parental permission.

<sup>43</sup> If family support workers have not worked with a family, they may not have received information about their children's rights. The statutory assessment pack includes information about Snap Cymru and the relevant LA officers – but not children's right of appeal.

people's rights to appeal to the SENTW (and have therefore had less time to have an impact and to be monitored and refined by the pilots);

and

it is more difficult to directly target children and young people who have a right to make a claim of disability discrimination, than it is to identify and target children and young people who have a right of appeal to the SENTW.

- 7.41. It is more difficult to “target” awareness raising at individual disabled children or young people. A targeted approach risks, for example, highlighting their disability to themselves and others and there are practical problems of identifying all those children and young people with a disability. The pilots also felt that the audience for awareness raising work was not only children and young people with disability, but also, for example their friends. For example, many children and young people with a disability have a circle of friends and it is thought that they might “champion” and/or support the child or young person with a disability, who might then make a claim.
- 7.42. In addition, it was noted by one of the pilots that there is a potential conflict of interest as schools may be reluctant to promote claims that will be made against them. More positively this pilot is hoping that the poster will make schools actively consider and therefore reduce discrimination on the grounds of disability. ALN family support workers in Carmarthenshire also reported that, although there had been only one claim, they have had other queries about possible cases of disability discrimination, with families asking, “can they do this?” They explained in response, that they can check with pupil progress officers and, if necessary, feedback concerns to the school. This indicates that they may be increasing awareness and understanding for rights, even if those rights are not exercised.

## *Training and awareness raising for professionals*

7.43. The effectiveness of strategies to ensure that professionals are aware of and understand children's and young people's rights to make an appeal or claim, and the implications of the pilots for their own practice<sup>44</sup>, depend upon two factors:

- reach or coverage (i.e. were all relevant professionals engaged?); and
- impact (i.e. did those professionals who were engaged, in training and awareness raising, understand children's rights and change their practice accordingly?).

7.44. The evidence seems to indicate that the reach of training and awareness raising is variable, but improving. The reach of the training in Wrexham was generally greater than that in Carmarthenshire, where the training took place later. In Carmarthen for example, the participation of schools<sup>45</sup>, and some services such as health, was initially disappointing. Nevertheless, even in Wrexham, overall participation was lower than hoped and some groups, such as heads of PRUs were notably absent from the initial training. As a consequence, in both areas, follow up training has been required to extend reach and schools and non-school professionals have been sent information to try and ensure that they are aware of the rights and their implications.

7.45. As outlined in chapter six, in both Carmarthenshire and Wrexham, a "cascade" model was adopted. This meant that only a fraction of all professionals who needed to be aware of, and understand the new rights, were directly involved or engaged in training and awareness raising.<sup>46</sup> Much therefore depended on the extent to which those who attended training passed on the message to their colleagues. Equally, there is a strong case for

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<sup>44</sup> For example, some professionals are required to explain to children and young people what their rights are and to help support them in making decisions about the exercise of those rights.

<sup>45</sup> For example, every primary school in Carmarthenshire was invited to training in February, but only 15 took part out of 108 primary schools.

<sup>46</sup> For example, in Carmarthenshire, In total, 122 school staff attended training by the summer of 2013, out of total of 1,807 qualified teachers and 2,201 support staff in the county.

arguing that awareness is more important amongst some groups of professionals, most notably SENCOs, than other groups and these particular groups should be targeted above others. The proportion of these specific groups of professionals who were involved in the training was higher than that of the wider school workforce.<sup>47</sup>

7.46. The evidence of the impact of training is consistently positive, albeit limited in some important respects. For example:

- Feedback collected after training events in both Carmarthenshire and Wrexham has been consistently positive and indicates that professionals understand the rights and their implications;
- there is evidence that pupil participation in the statutory assessment process has improved in Wrexham, although there is still room for improvement (discussed further below); and
- there is evidence of appropriate referrals being made to the ALN family support workers in Carmarthenshire (indicating that other professionals understand their role, which is discussed below)

7.47. The impact of training upon pupil participation is mixed, although it is important to recognise that training was only one factor driving changes in this area. The Carmarthenshire team is confident that children and young people now have a voice in the statutory assessment process, although there are still weaknesses. For example, the extent of children's and young people's participation may be limited and, occasionally, somewhat tokenistic. This is broadly consistent with evidence from research into the ALN pilots (Welsh Government, 2014). In Wrexham the evidence to date from the pilot (based upon completion rates of "Form D", which includes a pupil's views<sup>48</sup>) indicates

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<sup>47</sup> For example in Carmarthenshire, over three quarters of the school staff who attend training, attend either the SENCO forum or a SEN professional learning community event.

<sup>48</sup> Although completion of Form D, which includes the pupil's views, has improved, it is not always completed. Wrexham have identified the need to look at the form and have developed a checklist of things to discuss with the child/young person and a good practice guide. This outlines where a child should be included, finding the way in which they can contribute and the role of the key worker or case friend.

that children's and young people's participation in the statutory assessment process, whilst improved, remains inconsistent.

- 7.48. In Carmarthenshire, proxy indicators of the impact of the training upon professionals' practice are generally, but not uniformly, positive or at least encouraging. For example, family support workers are receiving more requests for help from other professionals and they have had referrals from SENCOs and social services and perhaps more importantly the referrals are appropriate. In contrast, although they have targeted social services, all referrals have been for families rather than looked after children. Beyond this however, there is little empirical evidence of the impact of training upon practice. For example there is little empirical data on how effectively professionals, who are not part of the pilot, are communicating rights to children and young people. This is important as in both areas, the communication about the right to appeal for children and young people who already have a statement, is made by school staff, such as SENCOs (rather than members of the pilot team).
- 7.49. The need to reinforce and refresh the training has also been identified (and likened to "painting the Forth bridge" by one of the pilots). It was suggested that training should be a strand in LA development plans in order to maintain it particularly as the very small numbers of appeals and claims by children or young people may mean that it "falls off the radar".

#### *Support for children and young people*

- 7.50. As outlined in chapter six, Carmarthenshire and Wrexham have taken two different approaches to supporting children and young people. Whilst both offer advocacy services (discussed below), as required by the Measure, both have also developed complementary support structures: ALN family support workers in Carmarthenshire and case friends in Wrexham. Whilst each approach is regarded by the pilots as effective, each has potential problems. In particular the family support worker model may be difficult to sustain if there is a conflict between a child or young person and his/her parents and carers,

or parents or carers are unwilling to engage with the ALN family support worker. The case friend model in Wrexham raises the possibility of a conflict of interest between the interests of a child or young person and the setting which employs a case friend.<sup>49</sup>

### *Commissioned services*

- 7.51. As outlined in chapter six, in both Carmarthenshire and Wrexham, SNAP Cymru were commissioned to provide dispute resolution services. No children and young people are reported to have taken up this service and the effectiveness of the services is monitored primarily through SNAP Cymru's annual reports to each local authority.
- 7.52. The position with regards advocacy services is more complex. Second Voice in Wrexham is a council (rather than a commissioned) service. They work to their own code of practice, and whilst they are overseen by another council department, have not been actively monitored by the pilot. In Carmarthenshire SNAP Cymru are commissioned to provide an advocacy service in relation to children and young people with special educational needs.<sup>50</sup>
- 7.53. As with the dispute resolution service, no children and young people are reported to have taken up the advocacy service in either Carmarthenshire or Wrexham. It was reported, for example, that in Carmarthenshire, although family support workers are not classed as advocates, they act like advocates in that they speak on behalf of families, help them prepare for meetings etc. Wrexham's model, involving the identification of "case friends" may also have lessened demand for advocacy services.

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<sup>49</sup> One possible solution would be to identify a different case friend should a child or young person wish to lodge an appeal.

<sup>50</sup> In addition, Action for Children are commissioned to provide an advocacy service for all looked after children and this could include, for example, supporting a looked after child who made a claim or appeal to the SENTW.

*The impact upon children and young people's well-being*

- 7.54. As outlined in chapter four, the evidence from the experiences of adults indicates that going through the process of making an appeal is likely to have both positive and negative impacts. The experience itself may be stressful, but ultimately empowering.
- 7.55. A number of positive impacts on the well-being of children and young people were identified as a result of the steps taken by the pilots to implement the Measure requirements. It should be noted however, that these impacts are only based on the observations of those delivering the pilots, rather than, for example, research with children and young people themselves. The impacts included:
- more effective identification and planning to meet children's and young people's needs (in principle, meeting needs more effectively should enhance well-being);
  - the empowerment of children and young people; and
  - a positive impact on children and young people's relationships with adults and other children.
- 7.56. These impacts relate primarily to the emphasis each pilot has placed upon enhancing children and young people's voice and participation in the statutory assessment process, rather than the right to appeal or make a claim itself. Nevertheless, the impact, in relation to increased empowerment, is also linked by Carmarthenshire in particular, to the emphasis upon children's rights.
- 7.57. The findings on the positive impact of enhanced pupil participation and voice is broadly consistent with the evidence from evaluation and research into the

ALN pilots<sup>51</sup> (Welsh Government, 2012 and 2014) and transition key working in Wales (Welsh Government, 2012).<sup>52</sup>

7.58. The findings are also consistent with the findings of *Research into the benefits of children's and young people's participation in Wales: the benefits of participation* (Kendall, 2008) which identified that (in relation to benefits for children and young people):

“The most commonly identified benefits related to ‘softer’ outcomes, that is improvements in children and young people’s self-confidence and self-esteem” [identified in over half (18) of the sources selected for review].” (p9, Kendall, 2008) and

“Other softer outcomes noted focused on improvements in children and young people’s relationships with others, typically with staff working with them.” (p 17, *ibid*).

7.59. Nevertheless, the study cautions that the quality of the evidence varies and that although:

“The participation of children and young people in decisions which affect them is seen as inherently beneficial, but there is a need for robust research evidence to actually demonstrate that link.” (p 42, *ibid*).

### *The reasons why children and young people choose not to exercise their right to appeal/ make claims*

7.60. As outlined above the system and process for informing children and young people of their rights and supporting them are established in both Carmarthenshire and Wrexham. However, to date, only one claim and no appeals to the SENTW have been made by children and young people. There

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<sup>51</sup> As outlined in section six the pilots sought to enhance children and young people’s voice and participation in the process, and Carmarthenshire was also part of the ALN Pilots.

<sup>52</sup> It is worth noting that these studies also indicate children and young people’s participation may also have a positive impact upon parents’ and carers’ experiences and well-being, which in turn has a positive impact upon their children.

was considerable uncertainty at the start of the process about how many appeals or claims might be made, but the small number was nevertheless a surprise to many of those involved.

7.61. The number of appeals and claims could be regarded as a proxy measure of the effectiveness of implementation of the Measure's requirements. However, in our judgment, it would be a poor measure of effectiveness. There are a number of key reasons why it is likely that there have been so few claims or appeals. In relation to appeals, there are a number of structural reasons why the total numbers of children and young people who could exercise their rights is relatively small.

- Only a proportion of all children and young people who have a right of appeal would be able to understand and exercise their rights given their age and or the complexity/severity of their needs.<sup>53</sup>
- The rights of appeal are limited and are "weighted" toward the start of the process, that is to say, many of the rights relate to the assessment and issue of a statement of a SEN, and once a statement of SEN is issued, unless it is changed, there are fewer rights of appeal.<sup>54</sup> This is important, because the majority of children enter the statutory assessment process at a young age, and are often unable to either fully understand or fully exercise their rights. Because many statements are not regularly updated or changed, by the time a child is old enough to understand and exercise their rights, they have no rights of appeal.
- The number of children and young people going through the statutory assessment process is declining. This reflects improvements in provision,

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<sup>53</sup> The UNCRC itself outlines that rights should be communicated "in a manner consistent with the evolving capacities of the child" (article 5). And that "Parents, who are intuitively aware of their child's level of development, will do this naturally."

<sup>54</sup> An appeal could be made on the basis that a child disagreed with the description of special educational need (part 2) or the type of provision made for them (part 3), but these are like the other rights to appeal, time limited, and appeals must be made within 2 months of the local authority's decision.

which means that more needs are being met without the need for statutory assessment and/or a statement of SEN. It also reflects the policy of many local authorities to reduce the number of children and young people who are put forward for statutory assessment and/or issued with a statement of SEN. Although this could potentially increase the number of appeals for either a refusal to assess or a refusal to issue a statement, it means that the other grounds of appeal (outlined in chapter one), such as an objection to the content of a statement of SEN, a change in a statement of SEN or cancel a statement of SEN, do not apply.

7.62. In addition, there are likely to be a number of reasons why those children or young people who could appeal would choose not to:

- satisfaction with assessment and provision. The increased involvement of children and young people in statutory assessment process may be important here, in increasing their understanding and satisfaction. ALN family support workers may also be important and we discuss their impact further in the following chapter;
- the emotional “costs” or demands of making an appeal, which may be offset, but are unlikely to be completely eliminated by support; and
- the continued option of parents or carers exercising their right of appeal. This may be particularly important and may ultimately be the critical factor though this study cannot confirm or refute this, as with the notable exception of looked after children, the pilots saw relatively few scenarios in which a child rather than their parents or carers would choose to exercise their rights.

7.63. It is also important to note, as outlined in chapter two, that the proportion of parents and carers who exercise rights of appeal to the SENTW (84 in 2011/12) is very small compared to the total number of children and young people with a SEN (over 100,000)<sup>55</sup>. Given the reasons outlined above, it is

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<sup>55</sup> the total number of pupils with a special educational need was 103,038 in 2011/12, of which 13,098 have a statement of special educational needs (StatsWales, n.d. a).

reasonable to expect that the proportion of children exercising their rights would be lower still.

- 7.64. The position with regards to claims of disability discrimination is more complex. Some of the reasons outlined above, most notably issues around the age and capacity of children and young people to understand and exercise their rights, the emotional costs of making a claim and the option of parents or carers exercising the right, all apply. However, rights to make a claim of disability discrimination are not subject to the same limitations that rights of appeal are. Some members of the pilot teams were therefore surprised that there had not been more claims and some expected that there might be more claims in the future.
- 7.65. It is striking that the numbers of claims of disability discrimination (by parents and carers) is markedly lower than rates of appeal to the SENTW. For example, compared to the 84 appeals there were only 5 claims of disability discrimination to the SENTW in 2011/12. It is not clear why rates of disability discrimination are so much lower. In part, it may reflect the smaller number of children and young people with a disability (estimated to be 28,000 pupils)<sup>56</sup>. This is around a quarter of the total number of pupils with a special educational need, although more than double the number with a statement of SEN<sup>57</sup>. However, it may also mean that rates of disability discrimination are low; that children or young people and/or their families do not perceive or recognise practices as discriminatory; and/or do not fully understand their rights. The final points highlight the importance of the pilots' work to raise awareness and understanding of rights to make a claim.
- 7.66. In relation to awareness, although local authorities are required to inform parents or carers of their rights of appeal, as part of the statutory assessment process, there is not an equivalent duty in relation to disability discrimination.

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<sup>56</sup> This is based upon the assumption that 6% of school age children or young people have a disability (DWP, 2013).

<sup>57</sup> A child does not require a statement of SEN to have a right of appeal – for example an appeal can be made against refusal to assess or to issue a statement.

Evidence from UK surveys indicates that 72% of adults (in the UK) are aware of the Disability Discrimination Act <sup>58</sup>, suggesting that more than one in four adults do not understand their rights. Because this figure is for all adults, it is possible that the proportion of disabled adults who are aware of their rights differs. Anecdotal evidence gathered as part of the process of preparing the interim perspective on the UK Concluding Observations 2008 (Croke, 2012) also indicates that in relation to the United Nations Convention on the Rights of the Child (UNCRC) (which includes provision for non-discrimination):

“...for disabled children and young people their awareness of rights is limited, and informing young disabled people of their rights and ensuring their full understanding is a complex and lengthy task. Disabled young people may have heard of [the] UNCRC but it’s unclear if they know how the convention applies to their everyday lives. This may also be true for professionals; they are aware of the UNCRC but wouldn’t use it to challenge a situation or decision” (p47, Hill, 2013)

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<sup>58</sup> Percentage of individuals aware of the Disability Discrimination Act without being prompted of its aims and coverage, ONS opinions survey cited in ODI, n.d.

## **8. The impact of ALN family support workers**

### **Introduction**

8.1. As outlined in chapter seven, Carmarthenshire has had relatively large numbers of children and young people going through the statutory assessment process and this context influenced the model Carmarthenshire developed and in particular the establishment of the role of ALN family support worker, to improve communication and relationships between families and the local authority. The creation of this role constitutes the greatest operational cost associated with the pilot projects and in this chapter we consider the impact of this role.

### **The importance of communication**

8.2. As members of the pilot explained, the letters the local authority is required by law to send to families explaining their rights of appeal are very formal and impersonal. The statutory assessment process itself, can often be very bureaucratic, lengthy and difficult to understand (NAFW, 2006); documents like a statement of SEN can be daunting and difficult to read and parents may get little or no feedback on why a decision to, for example, not undertake a statutory assessment or issue a statement of SEN has been made.

8.3. In this context, having someone, like a family support worker to “talk it through” with a family, to help them understand the process and the decisions that had been made could be very important. Opening up lines of communication can also help ensure that problems and concerns do not “fester” and that people understand that they can discuss them, and that an appeal should be the last resort (an example was given of someone who lodged an appeal without contacting the LA to discuss their concerns). As members of the pilot explained, with face to face communication there was the opportunity to explain what had happened and what options a family had, there and then. This was felt to have saved a lot of time that would otherwise be spent responding to queries more formally. This was considered important,

because it was felt that in many cases, the thing that people were appealing against could often have been easily resolved through discussion.

- 8.4. Although employed by the local authority, the ALN family support workers have positioned themselves as independent, acting to support the family and ensure that they understand and can exercise their rights. They were described as being independent by the two parents interviewed, and both parents emphasised how much support the worker provided. For example, one parent described the statutory assessment process as “daunting” and explained how important it was to have someone, like the worker, who they could turn to if they had a problem or question. This was felt to be particularly important as they did not feel they could go to anyone else for help. The other parent explained how the worker had helped give them the “the strength to go to the school” to discuss their concerns. Both parents also emphasised how helpful it was to have someone explain the statutory assessment process to them, so they knew what to expect, particularly given the length of time the process had taken and the problems they had experienced in the past.
- 8.5. The skills of the people fulfilling the role of family support worker were seen as particularly important. The ALN family support workers were selected for their skills of being able to work with and engage parents and talk to professionals. Families were reported by the pilot to be more “more comfortable” talking to family support workers than they were to the school or local authority. This was supported by interviews with parents. For example, one parent described the worker as “someone who understood them” in marked contrast to the way they felt the school was “not listening” to them. The local authority in particular, was described by the pilot teams as being perceived by families as distant and faceless, just a signature on a letter.

#### *The impact upon the number of appeals to the SENTW*

- 8.6. There was an initial concern amongst the pilot team that raising families’ awareness of their rights would mean that more families chose to exercise their rights to appeal or make a claim to the SENTW. However, this concern

has proved unfounded so far, and the number for appeals in Carmarthenshire has fallen sharply from 11 in 2011/12 to 2 in 2012/2013.

- 8.7. Correlation (in this case between the introduction of the ALN family support workers and the decline in the number of appeals) is not the same as causation. For example, other factors, such as the ALN pilots, may also have contributed to the decline in the number of appeals. In order to explore the contribution made by the ALN family support workers, a theory based approach to impact attribution was adopted. This focused upon mapping the causes or triggers for disagreement and appeals to the SENTW, from both the perspectives of both the local authority and the parents or carers, and then exploring how a family support worker could respond to address those issues. This draws upon evidence gathered from both this study and research into the ALN pilots (Welsh Government, forthcoming) and is presented in table 6.

**Table 6. Causes or triggers for disagreement and appeals to the SENTW : Illustrations from a local authority, school and parents perspective**

Cause	Illustrations from a Local Authority or school perspective	Illustrations from a parents' perspective	Family support worker's response
Frustration and/or misunderstanding with the process	<p>Identification of needs can take a long time.</p> <p>There can be significant delays in diagnosing a child's problems and bringing in interventions to address them.</p> <p>Some conditions, like autism, can be very difficult to diagnose. Paediatricians can have long waiting lists, appointments can be missed.</p>	<p>Parents see their child struggling, missing milestones, perhaps unhappy and can feel there is no time to wait for 'due process' e.g. for a child to be diagnosed before action is taken.</p> <p>Parents can get exasperated by the time it takes to do a statutory assessment. They don't understand why it takes so long and don't know what's happening.</p> <p>Parents have to chase things up to make sure they happen.</p>	<p>Take time, be impartial and non-judgmental, sit down with the family, break the problem/disagreement/issue down to ensure they understand it. Explain the process, the timescales, the staged approach etc. Make it clear what they/their child are entitled to - and what they are not entitled to (e.g. send out the Ofqual statement on when extra time for exams should be given<sup>59</sup>). Ensure the family knows what to expect from the outset. Keep in touch with the family, ensure they know what's happening. If necessary informally mediate between the family and school/LA. Identify other problems (e.g. where families are missing appointments, slowing the process).</p>
	<p>Parents don't understand the staged approach – parents want immediate action and progress.</p> <p>They also don't understand how needs can be met through mainstream provision.</p>	<p>It's not clear what help the child is getting and parents just see their child struggling and/or unhappy. Parents feel that they have to act to protect/support their child and statutory assessment is often seen as the only way they can act to help their child.</p>	

<sup>59</sup> <http://ofqual.gov.uk/news/extra-time-timed-exams/>

	<p>Parents chase a diagnosis – pushing what their child cannot do.</p> <p>Perception that once there's a diagnosis, e.g. of ASD, they are entitled to a statement.</p>	<p>Experience is that services and support only kick-in once there is a diagnosis. For example as one parent put it “when we had the diagnosis suddenly all the doors opened”.</p>	<p>Early intervention (by a family support worker) in these cases, is felt to help prevent problems escalating or “festering”.</p>
	<p>Some parents misunderstand what a statement will mean. For example, they assume that with a statement their child will be entitled to one to one support or to extra time for exams.</p>	<p>Without a statement there is no one to make sure the child will get support needed.</p>	
<p>Misunderstanding, or difference of opinion with the school/LA on what their child needs/is the most effective way of meeting their child needs</p>	<p>Some parents belief that their child will only make progress if they get one to one support; that their child needs the support of a specific person that they've heard of; or that their child needs one to one support.</p>	<p>Fear that their child will be overlooked or 'lost in the system'. Awareness that their child is just one of many the teacher is dealing with.</p> <p>Suspicion that some schools/LAs /other services are trying to save money by not providing what is needed.</p>	<p>Take time, be impartial, sit down with the family, discuss the issues, ensure they understand it. Liaise with the different parties (e.g. family, school and other services). Find out what's happening. Find out what's available. In some cases, take parents to visit learning settings. Be realistic, honest and clear with the family about what is available. Help the family make an informed choice.</p>
	<p>Some parents are not taking responsibility for their child's development or support needs.</p>	<p>Some services are not meeting their responsibility for the child's development and trying to blame the parents unfairly</p>	
<p>Seeking an advantage for their child</p>	<p>In some cases, parents have unrealistic expectations.</p> <p>In some cases the family “know the system”, or will go looking for signs and symptoms on the internet.</p>	<p>Parents want the best for their child and if they see their child unhappy and or not making progress, they feel compelled to act. For example as one parent put it “They keep telling me that there are lots of kids</p>	<p>Explore alternatives for their child, be realistic, honest and clear about why their child does not meet criteria. Explain what has happened e.g. the case has gone to panel, and they have decided s/he doesn't</p>

	<p>Some parents are trying to give their child an unfair advantage – and an unfair proportion of resources.</p> <p>The children of “pushy” parents get too much compared to others whose parents do not fight, and get too little as a consequence.</p>	<p>with problems, I know that. But my job is to look after my child”.</p> <p>Parents want their child’s rights to effective support secured.</p>	<p>meet the criteria. Explain what their options are e.g. if you have new evidence you can talk to the schools. Explore what the parents can do themselves to help their child.</p>
Seeking an advantage for themselves	Where the claim is linked to disability related benefits.	There is considerable fear about the loss of benefits that parents feel entitled to.	
Lack of confidence, fear that a child’s needs will not be met.	<p>There are often fears about the transition from primary to secondary school, and the transition from school to college. At transition meetings, parents often say they need increased protection – even though secondary schools often have more capacity to meet needs. As a consequence, requests often start coming in around year 6.</p> <p>In part the loss of confidence is a consequence of schools failing to do enough to reassure parents, missing Y5 review meetings etc.</p>	<p>Parents have got to know and trust the support their child is getting. In primary school, they know the teachers etc – secondary school is unknown.</p> <p>A statement offers legal protection – a backup, which may not be needed, but which provides reassurance.</p>	<p>Liaise with the different parties (e.g. family, school and other services). Find out what’s happening. Find out what’s available Try to assuage worries, put people at ease.</p> <p>Show/talk about the support they will receive. Signpost to other agencies e.g. Careers Wales for the transition to FE, explain what Careers Wales will do (e.g. learning and skills plans) colleges will do (e.g. their own assessment).</p>
	In some cases there is a belief that schools are not meeting their child’s needs and the only way to resolve it to get a statement.	Services may have resisted providing support for a long time before needs are recognised – so the trust that, for example,	

		things will be done, has been lost	
	In some cases, parents believe a statement is not being implemented	Statements and support plans are not always fully implemented	
	In some cases, there may be a clash of personalities, and a breakdown of relationships.	Professionals can be rude, or dismissive; parents left feeling uncomfortable 'having' to become <i>'one of those parents'</i> who are seen as pushy	
Failures/ break down of provision	There are problems, examples of cases where the right provision is not being made. There are particular problems in relation to access to some specialist types of provision (e.g. SALT). The provision set out in a statement does not happen, or is withdrawn.	My child is not getting the support (s)he needs. Family life becoming dominated by chasing services.	Liaise with the different parties (e.g. family, school and other services). Find out what's happening. Find out what's available. Talk to the school about how needs could be met. Be realistic, honest and clear with the family about what is available. These problems can be difficult to resolve though, particularly where the local authority has limited/no control (e.g. it depends upon the Local Health Board).
	In some cases schools are not identifying problems early enough and not talking to the LA, so by the time the LA tries to intervene, it's close to breakdown/crisis.	My child is not making the progress (s)he should be and nothing is being done.	
Discrimination (DDA claims)	Poor physical access, schools naming pupils. In some cases parents may be unwilling/reluctant to complain to the school/governing body or be unclear who the "responsible body" is.		Liaise with both the school and family. If appropriate, advocate on behalf of the family. Work with the school to find out why they're not meeting the need. Consider bringing in a third party to help resolve the problem (e.g. an educational psychologist or pupil progress officer).

The causes or triggers may be linked to and or aggravated by parental needs. Examples are given in table 7.

**Table 7. Examples of parental needs**

Parental needs	Notes, examples	Reponses of a FSW
Autism or a mental health condition and/or a disability	Increases the risk of misunderstanding and/or conflict (e.g. parents who couldn't understand why it was acceptable to invite someone to a meeting by any way other than letter). In some cases it can make it more difficult to have a "rational" conversation	Take time, be impartial and non-judgmental, breaking the problem/disagreement/issue down to ensure they understand it. Provide support at meetings and make sure parents are making informed choices (i.e. Ensure that they are fully aware of all the information and possible outcomes).

- 8.8. None of the families who the family support workers' have worked with have taken their case to tribunal. This table indicates that ALN family support workers can help address some of the key causes or triggers for disagreement which can lead to appeals to the SENTW. ALN family support workers were able to identify a number of cases where, for example, giving parents and carers the chance to talk things through and/or to explain the process, they have helped stopped problems escalating.
- 8.9. Equally the analysis also indicates that the family support worker is not a "silver bullet" that can resolve every problem or disagreement. Where, for example, the problem relates to a breakdown or failure to meet needs, just talking to parents and carers, will not of itself, resolve the underlying problem.

## **9. Survey of local authorities to assess their awareness of the implications of the Education (Wales) Measure and the extension of children's and young people's right of appeal**

### **Introduction**

9.1. As outlined in chapter four, a survey of all local authorities in Wales not taking part in the pilot was developed. The survey used an online self-completion questionnaire which was designed to assess their knowledge and understanding of the Measure's requirements and their preparedness to meet them. A link to the online questionnaire was sent to local authorities by the Welsh Government and the responses were collected and analysed by the PWU.

### **Profile of respondents**

9.2. Sixteen respondents took part in the survey. They included local authority heads of service, inclusion managers and inclusion officers. In order to protect the anonymity of respondents, they were not asked to identify the local authority they represented.

9.3. Because one or two respondents did not respond to all of the questions in the survey, the total number of responses falls to 15 for some of the questions and to 14 for one of the questions.

### **Awareness and understanding the implications of the Education (Wales) Measure and the extension of children's and young people's right of appeal**

9.4. Overall, respondents were aware of the Measure and the extension of children and young people's rights of appeal to the SENTW, but two respondents were less clear about the right to make a claim of disability discrimination to the SENTW:

- all respondents (n=16) understood that under the Education Wales Measure (2009), children and young people with SEN will have a right of appeal to the SENTW against certain decisions made by Local Authorities; and
- 14 out of 16 understood that under the Education Wales Measure (2009), children and young people will have a right to make a claim of disability discrimination in Welsh schools. The others (2 out of 16) were unsure.

9.5. However, as table 8 illustrates, when asked about the implications of the Measure in more detail, the responses were even more mixed with around a fifth to just under half of all respondents either unsure or disagreeing (indicating that they did not fully understand all the implications of the Measure).

**Table 8 Local authorities' understanding of children and young people's right to appeal and claim (total number of responses=15).**

	Strongly Agree	Agree	Neither agree / disagree	Disagree	Strongly disagree	Don't know
I understand when children and young people can appeal to the SENTW in relation to decisions about statutory assessment and / or provision to meet their special educational needs	6	6	2	1	0	0
I understand how children and young people can appeal to the SENTW in relation to decisions about statutory assessment and / or provision to meet their special	4	7	3	1	0	0
I understand when children and young people can make a claim of disability discrimination to the SENTW	3	5	6	0	0	1
I understand how children and young people can make a claim of disability discrimination to the SENTW	3	4	6	1	0	1

*Source: survey of local authorities*

9.6. Similarly, as table 9 illustrates, when asked about their understanding of local authorities' duties under the Measure, the responses were mixed. At least two thirds of respondents agreed or strongly agreed with the statements. The remainder of respondents were either unsure or disagreed (indicating that they did not fully understand the implications).

**Table 9 Local authorities' understanding of their duties to children and young people**

(total number of responses=15).

	Strongly Agree	Agree	Neither agree / disagree	Disagree	Strongly disagree	Don't know
I understand the local authority's duty to inform children and young people of their rights to appeal and make claims to the SENTW	7	3	3	2	0	0
I understand the local authority's duty to make arrangements for children and young people to have access to partnership and disagreement resolution services	6	4	4	1	0	0
I understand the local authority's duty to inform children and young people about partnership and disagreement resolution services	5	5	3	2	0	0
I understand the local authority's duty to provide access to independent advocacy services that can listen to, and give voice to, children's views and concerns	5	8	2	0	0	0

*Source: survey of local authorities*

### **Local authorities' preparedness for the extension of children's and young people's rights of appeal**

9.7. Local authorities preparedness was very mixed and over 90% of respondents wanted more information about the Measure.

9.8. Less than half of the local authorities that responded had made contact with learning settings to ensure they were aware of the implications of the forthcoming Measure, and even where contact had been made, in many cases, only some (rather than all) learning settings had been contacted.

Similarly, with the notable exception of ALNCOs/SENCOs and Educational Psychologists, less than half of the local authorities who responded had made contact with key groups of professionals about the Measure.

Moreover, even where contact had been made, in many cases, only some of the professionals in each group had been contacted.

- 9.9. The picture with regards to support and advocacy services was similar, with around two thirds of respondents reporting that no contact had been made to raise awareness of the Measure. Interestingly, and in contrast, almost half the respondents reported that they had contacted SNAP Cymru.
- 9.10. The picture with regards to the extent to which local authorities had reviewed their existing systems and processes to make parents and carers aware of their rights, or planned how to support children and young people, was similar: only one third of respondents reported that they had.

### **Local authorities' expectations of the impact of the extension of children's and young people's rights of appeal**

- 9.11. Respondents' expectations of the impact of the measure were mixed. 60% of respondents did not expect many cases, although 40% were unsure of how many cases to expect. Nevertheless, half of the respondents (7 out of 14) have concerns about the extension of rights of appeal, or to make a claim, to the SENTW. Around a third (4 out of 14) did not have any concerns and around one fifth (3 out of 14) were unsure. A number of comments were made in response to this question. They covered both the desire on the part of local authorities for more information and concerns about the implications for children and young people. The comments included: "There is a lack of clarity about how this will work practically"; The child's ability/competency to make such a decision and the fact that parents could encourage the child to make the appeal" and "The concern isn't directly related to the child having rights of Appeal, but more around ensuring that there is appropriate back-up, advice and support for the child."

9.12. Just under half of respondents (7 out of 15) did not have any concerns about the duties placed upon local authorities to inform and support children and young people so that they can appeal, or make a claim to, the SENTW. However a sizable minority, 6 out of 15 did and the remaining two respondents didn't know.

### **Discussion**

9.13. The survey results indicate that levels of awareness of the rights and the duties the Measure imposes upon local authorities is generally higher than their levels of preparedness. Levels of awareness and understanding are slightly weaker in relation to rights to make a claim of disability discrimination. Most preparatory work has been narrowly focused upon schools and upon two key groups of professionals: SENCOs and educational psychologists. More work is needed, as the pilots illustrate the importance of engaging more broadly with other settings and services.

## 10. Conclusions

### Implementation and impact

10.1. The “fundamental objective” of the 2009 Measure namely “to give a parity of appeal rights for parents and their children” (NAfW, 2009) can be seen to have been largely achieved in relation to right of appeal to the SENTW. The literature review undertaken for this study demonstrates that there is no insurmountable obstacle to extending rights to children and young people, although it is accepted that there is little established practice to draw upon. The systems and processes in relation to rights of appeal to the SENTW are established and appear to be working well in both pilot local authorities although a lack of cases means that the systems have not been tested in practice. As a consequence:

- children and young people who have been involved in the process<sup>60</sup>, are reported to be aware of, and understand, their rights;
- professionals are reported to be aware of, and understand, the rights and the implications for their practice; and
- the support structures are in place to help children and young people make decisions about whether to exercise their rights, to support them if they choose to exercise them by making a claim or appeal.

10.2. The position with regards to claims of disability discrimination is less clear. The processes to enable children and young people to make claims, and to support decisions about exercising the right, are established. However, it has been harder to identify and engage children and young people who may have the right to make a claim directly, and levels of awareness and understanding of the right are therefore uncertain.

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<sup>60</sup> Some children and young people were not involved in the process due to their young age and/or the complexity of their needs.

- 10.3. Evidence from other studies indicates that enhancing children’s and young people’s participation enhances their well-being. Therefore it can be inferred that given the focus by the pilots upon pupil participation and voice this is likely to have had a positive impact upon children’s and young people’s well-being.
- 10.4. An appeal or claim to the SENTW should be a last resort and is a signal that the system has probably failed in some way.<sup>61</sup> Therefore, the fact that there have been no appeals and one claim is a measure of success – that the education and support system as a whole is working. Equally, as outlined in chapter eight, rights of appeal are limited and there are barriers such as the potential emotional stress and financial costs<sup>62</sup> of making an appeal or claim that may mean the rights to appeal or make a claim are not exercised even when the system has failed. It is also important to remember that due to age and/or the nature of their needs, not all children and young people have been included in the process. This reflects the judgment of those working with the child or young person, that as they would not understand their rights, it would not be appropriate to try to explain their rights to them at that point.
- 10.5. There are a number of important “structural” reasons why the number of children and young people who could both understand and exercise their rights to appeal are likely to be small. This, combined with other reasons why children and young people who could exercise their rights, chose not to, helps explain why, to date, there has only been one claim and no appeals to the SENTW by children or young people.
- 10.6. The extension of rights to children and young people effectively provides a ‘backstop’, for those cases where a parent or carer is unable or unwilling to exercise rights to appeal or make a claim on their child’s behalf<sup>63</sup>. However,

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<sup>61</sup> This is the key message of the Administrative Justice and Tribunal’s report, report “Right first time” (ATJC, 2011)

<sup>62</sup> Although the SENTW does not charge applicants, people, may for example, seek (and pay) for legal advice and representation.

<sup>63</sup> For example as outlined in chapter two, as Jane Hutt, put it in oral evidence to the National Assembly for Wales Legislation Committee (NAfW, n.d.), then Minister for Children, Education,

the pilots have confirmed that for the extension of rights to appeal or to make a claim, to act as a backstop, children and young people need to both understand their rights and feel able to exercise them. Information and support for children and young people is therefore vital.

## **Unresolved issues**

### *Objections by parents or carers*

10.7. It is not clear how disagreement between parents or carers and a child or young person, about the communication of and exercise of their rights, would be resolved. This issue was raised by the NAFW Legislative Committee (NAFW, n.d.), but has not (yet) been resolved by the pilots. Acting upon the advice of the SENTW, Wrexham have chosen to notify parents and carers that their children's rights will be explained to them, but have not asked for parental consent before contacting a child or young person by letter. In contrast, Carmarthenshire's model, which is based upon face to face contact with families going through the statutory assessment process, is dependent upon family consent and engagement; and not all families have consented. Moreover, even if contact can be made by letter, parents may still object to workers, who are not school staff, talking to their child and neither pilot has resolved what would happen if a parent or carer actively tried to block a child or young person who wished to exercise their rights to appeal. It may be possible to persuade parents and carers to do so, but it is not clear if and how they could be forced to do so (which means that the child's rights would be negated). It is important to stress, though, that this issue has not arisen yet.

### *Potential conflicts of interest*

10.8. Both the Carmarthenshire and Wrexham pilot models provide access to independent advocacy services. However, in practice there has been no take

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Lifelong Learning and Skills: "...there may be parents who, even with support, simply do not feel willing or confident or competent enough to pursue an appeal or claim".

up of these services. Instead, children and young people have relied upon local authority support services (i.e. ALN family support workers and case friends) and their family to explain their rights and help them decide whether to exercise their rights. Although both ALN family support workers and case friends are intended to offer independent advice and support, there may be a real or perceived conflict of interest. This appears particularly pronounced in relation to case friends (in Wrexham), who may be teachers and support staff in a school against which a child or young person is making a claim. Equally, all the feedback received to date indicates that these support services are valued and are perceived as being independent.

*Ensuring that children and young people are aware of their rights to make a claim of disability discrimination*

10.9. The main focus of the pilots has been upon establishing processes in relation to rights to appeal and it has been harder for pilots to address the rights to make a claim to the SENTW. As outlined above, the processes and paperwork developed by SENTW to enable children and young people to exercise their rights, are in place<sup>64</sup>. The two local authorities have established support structures for children and young people wishing to either exercise their right to appeal or make a claim. However, both have struggled to identify and directly target with children and young people who may have the right to make a claim. They have therefore relied upon broader, untargeted approaches to raise awareness, and the extent to which children and young people are aware of and understand their rights to make a claim is unclear.

*Looked after children*

10.10. As outlined in Jane Hutt's oral evidence to the NAFW's Legislative Committee (NAFW, n.d), in response to a recommendation by the Equality and Human Rights Commission, the Measure is intended to "ensure that looked-after children have the independent right to appeal". It was also felt that looked

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<sup>64</sup> See e.g. <http://wales.gov.uk/docs/dcells/publications/120316discyp1en.pdf>

after children could be one group of young people who would be likely to exercise their rights. This right has been established and both pilots have worked with social services and, where relevant, the ALN family support workers in Carmarthenshire have worked with foster carers, to ensure they understand the rights<sup>65</sup>. However, to date, no looked after children have exercised this right and the evidence from the pilot projects indicates that there has been little interest from looked after children in exercising their rights. This may be because of the reasons outlined in chapter eight outlining the range of reasons why so few children and young person are either able to exercise their rights or likely to do so.

### *The resilience of systems*

10.11. Although, as outlined above, the systems have been established, they have not yet been fully tested. Moreover, both pilots have struggled to get feedback from stakeholders about the impact and effectiveness of the pilot measures.

### **Implications for future practice**

10.12. Now that the structures and process are in place, it will be important for the pilots to continue to monitor and evaluate their effectiveness. Ensuring that feedback is gathered from stakeholders about children's and young people's awareness and understanding of their rights to appeal and to make a claim, and used to inform practice, is particularly important.

10.13. As outlined above, there are a number of issues that the pilot projects have been unable to resolve. The question of how to deal with objections from parents or carers to either the communication or exercise of rights by children and young people may not be one that the pilots themselves can resolve. It may therefore require consideration by a working group, including both the pilots and the SENTW, and convened by the Welsh Government.

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<sup>65</sup> Because parallel process for engaging children and young people, that mirror those for adults, have been developed in Wrexham, they have not worked directly with foster carers.

10.14. The survey of local authorities' awareness and preparedness, highlights the importance of disseminating information in order to strengthen awareness and understanding of the Measure, its requirements and likely implications. This should include, in particular, details on the approaches developed by Carmarthenshire and Wrexham. This, in turn, should help improve local authorities' preparedness for July 2015, when the pilot regulations cease to have effect, and the rights and duties will automatically apply to the whole of Wales.

## Bibliography

(All web references correct 30<sup>th</sup> November 2013)

Curtis, L. (2012). *The Units Costs of Health and Social Care 2012*, accessed at <http://www.pssru.ac.uk/project-pages/unit-costs/2012/>

Children's Commissioner for Wales (2004) *Annual Report 2003-04*, accessed at <http://www.childcom.org.uk/uploads/publications/16.pdf>

Croke, R (ed). *Rights here, right now. Are children's rights a reality in Wales?* accessed at <http://www.childrenswales.org.uk/UserFiles/resources/FInal%20Rights%20here,%20right%20now%20Report%20E.pdf>

Department for Work and Pensions, (2013). *Family Resources Survey 2011/12*, accessed at <https://www.gov.uk/government/publications/family-resources-survey-201112>

Dockrell, Peacey and Lunt (2002) 'Literature Review: Meeting the Needs of Children with Special Educational Needs', London: Institute of Education  
Accessed 23/03/12 at <http://eprints.ioe.ac.uk/749/1/Dockrell2002Literature.pdf>

Equality and Human Rights Commission (2010) *Consultation on Giving Children and Young People a Right of Appeal*, accessed 09/02/12 at; <http://www.equalityhumanrights.com/legal-and-policy/consultation-responses/response-to-consultation-on-giving-children-and-young-people-a-right-to-appeal/>

Hill, L, (2013) *Children with disabilities*, in Croke, R (ed). *Rights here, right now. Are children's rights a reality in Wales?* accessed at: <http://www.childrenswales.org.uk/UserFiles/resources/FInal%20Rights%20here,%20right%20now%20Report%20E.pdf>



Riddell, S., Harris N., Smith, E., Weedon, E., (2009), Dispute resolution service in additional and special educational needs: local authority perspectives, in *Journal of Education Policy*, 25:1, pp55-71, London: Routledge

*Runswick-Cole (2007) 'The Tribunal was the most stressful thing, more stressful than my son's diagnosis or behaviour': Parents' experiences of the Special Educational Needs and Disability Tribunal, Disability & Society, 22:3, p315-328*

SENTW (2013). *Annual Report 2011-2012*, accessed at:

<http://wales.gov.uk/docs/sentw/publications/130312sentw-annual-report-2012-en.pdf>

SENTW (n.d.). "Deciding to make a claim", webpage, accessed 27<sup>th</sup> November 2012,

<http://sentw.gov.uk/faqs/claimsfaq/decideclaim/;jsessionid=280158353726A39031567FE44265A36C?lang=en#named3>

Statistics for Wales (2013). *Pupils with Statements of Special Educational Needs: January 2013*, accessed online at <http://wales.gov.uk/docs/statistics/2013/130619-pupils-statements-special-educational-needs-january-2013-en.pdf>

Welsh Government (2012). *Programme of Action Research to Inform the Evaluation of the Additional Learning Needs Pilots: Robust Trialling Phase*, accessed at <http://dera.ioe.ac.uk/18411/1/130823-programme-action-research-inform-evaluation-additional-learning-needs-pilots-robust-trialling-phase-en.pdf>

Welsh Government (2013) '*Transition Key Working: A Cost Benefit Analysis of 5 Pilot Projects in Wales*', available online at <http://wales.gov.uk/statistics-and-research/costs-benefits-transition-key-working/?lang=en>

Welsh Government (2014), *Research on the IDP Expanded Testing Phase. Report for the Welsh Government*, available online at <http://wales.gov.uk/statistics-and-research/programme-action-research-additional-learning-needs-pilot/?lang=en>

## Appendix 1. List of research questions

**Table 10. Research questions related to implementation and notes on the approach taken to answer them**

Research questions	Notes on the approach taken
<ul style="list-style-type: none"> <li>• What was the involvement of children and young people, parents and carers and advocacy/interest groups in the process of designing and implementing the provisions within the Measure?</li> </ul>	<ul style="list-style-type: none"> <li>• The involvement of children and young people in particular, was a key focus of early meetings.</li> <li>• The involvement of different groups of stakeholders in designing and implementing the provisions within the Measure has been discussed in all meetings, as part of discussions about how the Measure is being implemented in each area.</li> <li>• Impact evaluation has focused upon the perceived contribution of different groups of stakeholders. For example, how young people have influenced the design of materials for raising awareness.</li> </ul>
<ul style="list-style-type: none"> <li>• What impact did the involvement of each of the above groups have?</li> </ul>	
<ul style="list-style-type: none"> <li>▪ What factors – for example resources, commitment, expertise, existing practices and systems - if any, have created barriers to, or facilitated, implementation of the provisions?</li> </ul>	<ul style="list-style-type: none"> <li>• A discussion of progress, including the impact of context, barriers and enablers, is a standing agenda item in action research meetings.</li> </ul>
<ul style="list-style-type: none"> <li>▪ In what ways, if any, did context – for example resources, commitment, expertise, existing practices and systems – impact on implementation?</li> </ul>	

**Table 11. Research questions related to cost and notes on the approach taken to answer them**

Research questions	Notes
<ul style="list-style-type: none"> <li>• What costs are associated with implementing specific aspects of the Measure?</li> </ul>	<ul style="list-style-type: none"> <li>• This was discussed in the initial meetings. It was agreed to calculate final costs, consider ways in which costs could be reduced etc during the final summative meetings.</li> </ul>
<ul style="list-style-type: none"> <li>• What has been the overall cost of implementation within the pilot authorities?</li> </ul>	
<ul style="list-style-type: none"> <li>• In what ways, if any, could the costs associated with implementing the provisions be reduced?</li> </ul>	

<ul style="list-style-type: none"> <li>• What will be the estimated costs to roll out the pilots across Wales?</li> </ul>	<ul style="list-style-type: none"> <li>• This will depend upon the model(s) proposed by each pilot and will require further work to consider the extent to which cost estimates from Wrexham and Carmarthenshire are likely to apply to other areas.</li> </ul>
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**Table 12. Research questions related to efficiency and notes on the approach taken to answer them**

Research questions	Notes
<ul style="list-style-type: none"> <li>• To what extent have the provisions within the Measure been embedded into existing procedures and practices within the pilot authorities/ Special Educational Needs Tribunals Wales?</li> </ul>	<ul style="list-style-type: none"> <li>• A discussion of progress, including the relationships between pilot practices and procedures and existing practices and procedures is a standing agenda item in action research meetings.</li> </ul>
<ul style="list-style-type: none"> <li>• Have the provisions been implemented in a way which is co-ordinated and which avoids duplication with existing practices?</li> </ul>	
<ul style="list-style-type: none"> <li>• In what ways, if any, could the provisions have been implemented more efficiently?</li> </ul>	<ul style="list-style-type: none"> <li>• Final summative meetings will explore this issue in more depth.</li> </ul>

**Table 13. Research questions related to effectiveness and notes on the approach taken to answer them**

Research questions	Proposed approach
<ul style="list-style-type: none"> <li>• To what extent has the implementation of the provisions within the Measure contributed to the well-being of children and young people with special educational needs?</li> </ul>	<ul style="list-style-type: none"> <li>• A discussion of impact, including the impact upon children and young people's well-being is a standing agenda item in action research meetings. Because only one case has come forward, and the family chose not to participate, this has focused upon the impact of raising awareness of children and young people's rights.</li> </ul>
<ul style="list-style-type: none"> <li>• Are the commissioned services (independent advocacy, partnership and dispute resolution services) meeting the standards agreed with the pilot</li> </ul>	<ul style="list-style-type: none"> <li>• This has been discussed at action research meetings. There appears to be some confusion over this as pilots were not aware that they were required to do this.</li> </ul>

authorities in accordance with the SEN Code of Practice? <sup>66</sup>	
<ul style="list-style-type: none"> <li>Is performance against standards being monitored effectively?</li> </ul>	
<ul style="list-style-type: none"> <li>Is implementation of the provisions within the Measure meeting the Welsh Government participation standards?<sup>67</sup></li> </ul>	
<ul style="list-style-type: none"> <li>Is performance against standards being monitored effectively?</li> </ul>	
<ul style="list-style-type: none"> <li>Have the provisions been implemented in a way that has enabled/ supported children and young people to make appeals and claims to the tribunal?</li> </ul>	<ul style="list-style-type: none"> <li>A discussion of progress, including the steps taken to (a) raise awareness and understanding of rights amongst key groups of stakeholders (children and young people, their parents and carers and professionals) and to develop support (e.g. training and information for case friends) is a standing agenda item in action research meetings.</li> <li>The PWU worked with both pilots on approaches to evaluating the impact of this (e.g. through surveys)</li> </ul>
<ul style="list-style-type: none"> <li>To what extent are children and young people made aware of, and have an understanding of, their right to appeal/ make claims?</li> </ul>	
<ul style="list-style-type: none"> <li>Is communication about the right to appeal/ make claims done in ways appropriate to age, need and ability?</li> </ul>	
<ul style="list-style-type: none"> <li>Is guidance developed for parents, case friends or practitioners working with/ supporting young people, useful?</li> </ul>	
<ul style="list-style-type: none"> <li>What do children and young people think of the appeal/ claim process?</li> </ul>	<ul style="list-style-type: none"> <li>Only one has come forward, and the family chose not to participate. Both the SENTW and the pilot local authority involved have been unable to discuss the case in any detail. The focus has, therefore, primarily been upon</li> </ul>
<ul style="list-style-type: none"> <li>To what extent have children and young people been effectively supported through the appeal and claims process?</li> </ul>	

<sup>66</sup> <http://wales.gov.uk/topics/educationandskills/publications/guidance/specialedneedscoop/?lang=en>

<sup>67</sup> [http://www.participationworkerswales.org.uk/userfiles/Project\\_plans\\_9including\\_files/file/Participation\\_Standards\\_W&E\\_2007.pdf](http://www.participationworkerswales.org.uk/userfiles/Project_plans_9including_files/file/Participation_Standards_W&E_2007.pdf)

<ul style="list-style-type: none"> <li>• What are the experiences of children and young people who exercised their rights? <ul style="list-style-type: none"> <li>- Was the advocacy service perceived to be professional and independent?</li> <li>- Did the service help children and young people to consider the full range of options in front of them, including appeal?</li> <li>- Where an appeal was pursued, did the child/young person receive sufficient support with preparing and presenting at the hearing?</li> </ul> </li> </ul>	<p>awareness and understanding of the right, as opposed to what children and young people think of the right.</p>
<ul style="list-style-type: none"> <li>• Why did young people choose not to exercise their right to appeal/ make claims?</li> </ul>	<ul style="list-style-type: none"> <li>• The reasons why children and young people choose not to exercise their rights have been explored (e.g. the shift toward earlier identification, so that statements are issued earlier, the reduction in the number of statements)</li> </ul>
<ul style="list-style-type: none"> <li>• What aspects of the pilots have worked well, what barriers have been faced, and what could be improved?</li> </ul>	<ul style="list-style-type: none"> <li>• A discussion of progress and impact is a standing agenda item in action research meetings and in the final summative meetings.</li> </ul>
<ul style="list-style-type: none"> <li>• Have there been any unintended or unexpected effects from the pilot projects?</li> </ul>	
<ul style="list-style-type: none"> <li>• Have the pilots led to wider practical changes/ improvements for children and young people with special educational needs?</li> </ul>	

**Table 14. Research questions related to implementation and notes on the approach taken to answer them**

Research questions	Notes on the approach taken
<ul style="list-style-type: none"> <li>• What was the involvement of children and young people, parents and carers and advocacy/interest groups in the process of designing and implementing the provisions within the Measure?</li> </ul>	<ul style="list-style-type: none"> <li>• The involvement of children and young people in particular, was a key focus of early meetings.</li> <li>• The involvement of different groups of stakeholders in designing and implementing the provisions within the Measure has been discussed in all meetings, as part of discussions about how the Measure is being implemented in each area.</li> <li>• Impact evaluation has focused upon the perceived contribution of different groups of stakeholders. For example, how young people have influenced the design of materials for raising awareness.</li> </ul>
<ul style="list-style-type: none"> <li>• What impact did the involvement of each of the above groups have?</li> </ul>	
<ul style="list-style-type: none"> <li>▪ What factors – for example resources, commitment, expertise, existing practices and systems - if any, have created barriers to, or facilitated, implementation of the provisions?</li> </ul>	<ul style="list-style-type: none"> <li>• A discussion of progress, including the impact of context, barriers and enablers, is a standing agenda item in action research meetings.</li> </ul>
<ul style="list-style-type: none"> <li>▪ In what ways, if any, did context – for example resources, commitment, expertise, existing practices and systems – impact on implementation?</li> </ul>	

## Appendix 2. The literature review

As outlined in section four, the aim of the literature review was to identify initiatives in the UK and internationally which extend young people's rights with the aim of increasing their participation in decisions which affect them.

The review systematically searched eight databases (CERUK - Current Educational Research in the United Kingdom; the Glasgow Centre for the Child and Society; the Digital Education Resource Archive; the Institute of Education E-Prints Research Repository; JSTOR; PsycARTICLES; PsycEXTRA and PsycINFO), using three sets of search terms, as listed in the boxed text. All items (such as an article) identified through the search were scrutinised and those meeting the inclusion and quality criteria listed below were included in the review.

### Search terms

- Set one: "children" AND/OR "child" AND/OR "young people" AND/OR "Young Person"
- Set two: "special educational need\*" AND/OR "disability" AND/OR "vulnerable" AND/OR "health" AND/OR "social care" AND/OR "education"; and
- Set three: "rights" AND/OR "participation" AND/OR "decision\*" AND/OR "tribunal" AND/OR "dispute" AND/OR "appeal" AND/OR "administrative justice".

Full details on the searches are included in appendix 3. Following the first sift, based upon a review of first title and abstracts and then a review of the full text, only one article that met all of the inclusion criteria was identified. A further 34 articles which provided contextual background on children and young people's rights and appeal processes were identified. Although they did not fully meet the inclusion criteria because, for example, they did not describe or evaluate an initiative that focused upon the extension of rights to vulnerable young people (in any field) or the extension of rights to young people (whether vulnerable or not) in the fields of education, health or social care, they were still judged to be useful and both suitable and relevant for this review.

## Inclusions and Exclusion criteria

### Included:

- Journals and articles in English.
- Literature published between 1978-2012
- Literature that describes and/or evaluates an initiative whose prime purpose is to establish or extend young people's rights, including the practices associated with such an initiative. In addition, this participation must be "meaningful" and must either enable vulnerable children or young people to participate in any decisions which affect them, or enable children or young people (whether vulnerable or not) to participate in decisions in relation to their health, education or social care.
- initiatives in an OECD country<sup>68</sup>

### Excluded:

- Descriptions or evaluations of initiatives that do not enable young people to participate meaningfully in decisions which affect them. For the purposes of this study, meaningful participation is defined as requiring as a minimum 'meaningful consultation', that is to say, that young people's opinions and views are sought and are taken into account when the decision affecting them is made (Sherry, 1969).
- Descriptions or evaluations of initiatives which do not impose a right to participate, but which, for example, only impose an obligation upon professionals to consult young people;
- initiatives which do not include children or young people (i.e. those aged 0-25); and
- initiatives that do not meet an adequate standard of methodological quality. The prime measure of this was whether the conclusions were adequately supported

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68 Australia; Austria; Belgium; Canada; Chile; Czech Republic; Denmark; Estonia; Finland; France; Germany ; Greece; Hungary; Iceland; Ireland; Israel; Italy; Japan; Korea; Luxembourg; Mexico; Netherlands; New Zealand; Norway; Poland; Portugal; Slovak Republic; Slovenia; Spain; Sweden; Switzerland; Turkey; United Kingdom; and the United States

by the data (i.e those articles which are not scored at least 2 in relation to reasoning and credibility).

**Table 15. Criteria for judging methodological quality**

<b>Dimension</b>	<b>Criteria</b>	<b>Scoring</b>
Research design	Clear explanation and rationale for the approach and methodology	<ol style="list-style-type: none"> <li>1. Unclear – we don't know what was done exactly or why it was done.</li> <li>2. Clear explanation, but inappropriate method for the research question.</li> <li>3. Reasonable method, but not very well-written, nor clearly explained.</li> <li>4. Clear explanation and appropriate method.</li> <li>5. Clear explanation of method; method completely appropriate to research question; thorough discussion of methodological issues and shortcomings.</li> </ol>
Evidence base	Primary research: Evidence base is sufficient to answer study questions	<p>Sampling/selection</p> <ol style="list-style-type: none"> <li>1. Sample is too small and affects the depth of the analysis/power to generalise.</li> <li>2. Sample is a reasonable size, but is clearly biased.</li> <li>3. Reasonable sized sample, but could still be biased.</li> <li>4. Sample is large enough to enable saturation and/or stratified to minimise the risk of bias.</li> </ol>
	Secondary research: Evidence base is sufficient to answer study questions	<ol style="list-style-type: none"> <li>1. Secondary data sources too limited and/or biased, limiting the depth of the analysis/power to generalise.</li> <li>2. Secondary data sources are clearly biased (e.g. limited to particular sources, to a particular group).</li> <li>3. Reasonable range of data sources used, but</li> </ol>

		<p>could still be biased.</p> <p>4. Broad range of sources used, little risk of bias.</p>
Reasoning and credibility	Conclusions are supported by data	<p>1. Conclusions not justified - making claims well beyond data presented, evidence not trustworthy.</p> <p>2. Limited reliability – questions about quality of evidence for example, sample size, analysis not clear or elements missing.</p> <p>3. Conclusions well argued and appropriate to methods/sample – good quality evidence.</p>

*Adapted from Townsley, et al, 2013*

## Appendix 3. Results from searches

Table 16. Results from searches

Search terms	Databases searched and numbers of studies identified for each combination of search terms					
	Ceruk	Glasgow Centre for the Child & Society	Digital Education Resource Archive	IoE Research Repository	JSTOR	PsycArticles, PsycEXTRA, PsycINFO
“Child” AND/OR “young Person” AND/OR “young people” AND....						
“Special Educational Need*”	48	2	30	17	9	5
“Vulnerable”	24	2	27	8	56	539
“Health”	50	4	32	13	119	1646
“Social Care”	21	3	35	15	5	20
“Right”	2	2	10	17	109	827
“Participation	42	3	32	17	111	931
“Appeal”	0	1	19	9	65	153
“Tribunal”	0	1	10	2	6	29
“Administrative Justice”	0	0	16	8	9	5
“Dispute”	0	1	12	9	20	60