



A Place at the Table:

A report on young people's participation in resolving disputes about special educational needs and disabilities

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Terms and abbreviations used in this report:

C/YP = children and young people

CCG = Clinical Commissioning Group

CFA = Children and Families Act 2014

CoP = SEND Code of Practice 2015

DfE = Department for Education

EHCP = Education, Health and Care Plan (replaced statements of SEN)

LA = local authority

MCA = Mental Capacity Act 2005

Mediation = mechanism for reaching agreement on disputes

Participation = being involved

SEND = special educational needs and disabilities

Tribunal = mechanism for challenging local authority decisions on SEND through appeals

Young people – aged 16-25

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EXECUTIVE SUMMARY

This report presents findings and recommendations from a knowledge-exchange project exploring young people's participation in dispute resolution involving special educational needs and disabilities (SEND). The project, *A Place at the Table*, focuses primarily on young people aged 16-25 in England and their involvement in SEND mediation. The expectation is that it will be of value to the issue of participation of children and young people of all ages and in other jurisdictions and in other forms of complaint and dispute resolution, including appeals to the SEND Tribunal and complaints to the Local Government and Social Care Ombudsman.

Three key themes have been explored in this project:

- **Individual participation in SEND dispute resolution**, including types of participation; barriers, including attitudinal barriers; and the roles of parents, local authorities, and schools and colleges.
- **Mental capacity** and how it is understood in the SEND dispute resolution context.
- **The role and provision of information and advice** to young people about their rights and their options for resolving disputes.

The impetus for the project was the conferring of new rights upon young people under the Children and Families Act 2014 in relation to challenging decisions made by local authorities about their SEND support.¹ The Act extends the right to appeal to the First-Tier Tribunal (SEND) to young people aged 16-25 and 'transfers the right from the parent to the young person'.² It also requires a parent or young person to consider mediation before lodging an appeal with the tribunal. This project aimed to explore to what extent young people aged 16-25 are involved in their SEND disputes and complaints and whether the mechanisms for resolving SEND disputes, and in particular mediation and the tribunal, could do more to facilitate that involvement.

Decisions made by local authorities on SEND provision reflect many aspects of concern in administrative justice. These include the **quality of initial decision-making, accountability of public bodies, human rights considerations in the delivery of public services, and mechanisms by which people can challenge and appeal such decisions**, all of which must be considered in the current context of severe budget pressures on schools and local government and concerns about efficiency. The project has aimed to contribute to our *understanding* of the way these aspects of administrative justice are experienced through the lenses of children's rights and access to justice and to our *knowledge* of best practice for including children's and young people's voices in the process.

Emerging findings

During the course of the project, key messages have arisen that go beyond mediation and tribunal practice needing to adapt for more inclusive participation. A key message is that 'participation' covers a range of types and levels of involvement, from expressing views to making decisions. In the SEND context, it is important not to see this range as a hierarchy, with some types of participation more valuable than others. Facilitating participation and taking account of children and young people's views have long been emphasised in the SEND Code of Practice. However, in

¹ Children and Families Act 2014, <http://www.legislation.gov.uk/ukpga/2014/6/introduction>

² Children and Families Act Explanatory note, s.51(260),
<http://www.legislation.gov.uk/ukpga/2014/6/notes/division/4/3/12/1>

the context of legal rights under the Children and Families Act, it is decision-making rights for young people that are new. Yet it is currently difficult to determine the extent to which young people are exercising their rights to request mediation and to register an appeal to the SEND Tribunal because the data are not collected. The conclusion reached in this project is that few young people are doing so.

It also appears that a small number of young people attend SEND mediation or SEND Tribunal hearings. Figures from one SEND mediation provider, which works with about one-third of all local authorities in England, suggest that children and young people attend mediation in only 8% of cases. The extent of children and young people's involvement is not possible to determine from the collected data, so this figure is likely to reflect a range of levels of participation, including attending only and not being involved in meaningful decision-making.

The emerging findings suggest that:

1. **Young people are not exercising their rights on SEND decision-making to the extent that might be expected.** This may be because they know about their rights and choose not to exercise them. Alternatively, it may be because of the lack of a rights 'infrastructure' to support them to exercise their rights. We do not know enough to determine the reasons, but without adequate information and advice, it is difficult to expect children and young people to be aware of and exercise their rights.
2. **The emphasis on participation is both a source of anxiety for young people and a means of empowerment,** much as learning to drive can be. If it is a source of anxiety for some young people, this does not necessarily mean they do not want to be in the driving seat (although some may not), but they need support and practice. Decision-making is a learned skill.
3. **Parents face a significant change in role as their children grow up and become rights holders,** and they may need support in how to move from being advocates for their children to supporting their children to take a lead as decision-makers. The concerns that parents express about decision-making rights of young people with SEND reflect the importance of the relationship and the need to address their anxieties as well as those of young people themselves. Yet little support is available specifically addressing this.
1. **The legal concept of mental capacity appears not to be well understood in the SEND context,** and assumptions about capacity of children and young people can generate conflict and hinder attempts at meaningful participation in decision-making. Approaching young people's participation from a capabilities perspective rather than one of mental capacity may allow for more scope for supported participation and decision-making. Such a perspective also recognises the importance of relationships and trust between young people, their parents, and LAs.
4. **Addressing both attitudinal and practical barriers may require a significant shift in culture and in political will** to provide the information and advice infrastructure necessary for the exercise of those rights to become a reality. Significant changes in the information and advice infrastructure (rights awareness, legal aid, SEND expertise, advocacy) are needed to make exercising this right a meaningful and realistic option for those children and young people who choose to do so. The responsibility for these changes rests primarily

with local authorities and the Department for Education as the statutory bodies, but they cannot happen without the involvement and commitment also of schools and colleges, health and social care professionals, parents, and mediators and tribunal members.

5. **Insufficient data are collected and published by mediation providers and the SEND Tribunal** to allow for a full picture of young people's participation. The rights for young people enshrined in the Children and Families Act are not being reflected in procedures and practice, and this contributes to a lack of administrative data on, for example, numbers of young people participating in mediation and tribunal hearings. Help will be needed from the Department for Education and local authorities.
6. **Mediators and mediation providers could be doing more to engage with young people directly and to adapt their processes** to be more flexible and inclusive. This includes initial awareness raising and providing information that is accessible to young people. The Professional Standards for SEND Mediators could be more detailed in the expectations of what training and experience are required of mediators in relation to working with young people with SEND.
7. **Consideration is needed as to how young people can be involved as co-producers of guidance on designing/redesigning dispute resolution processes** that facilitate their participation as decision-makers. This is a design challenge, however, to ensure that such co-production is not tokenistic and exploitative, and it is resource-intensive if it is to be genuinely inclusive. Established participation groups of young people with SEND have an important role, but they are not intended to be representative of young people generally, and there will be a range of views and preferences as well as a range of needs to take into account.

Recommendations

A number of ideas have been generated from engagement with stakeholders from a range of perspectives. The ideas have led to recommendations for improvements in practice and for further research, which are set out in more detail in the final Part of this report.

About the report

This is the Final Report of the *A Place at the Table* project, which was carried out between November 2017 and March 2019. This project has been funded by grants from the University of Essex ESRC Impact Acceleration Account (IAA) Fund and Garden Court Chambers Special Fund, with support in kind from KIDS, a national charity working with disabled children and their families. It has been carried out in association with the UK Administrative Justice Institute (UKAJI), a national network of researchers and research users based at the University of Essex School of Law.³ The report draws on interviews and discussions, documents produced during the project, including blog posts and a briefing paper, a summary of a roundtable discussion, and a set of flipcharts drawn during the roundtable. It includes contributions in the form of case studies from several project participants, including mediation providers and mediators, a parent/carers forum and an Independent Supporter.

³ The UK Administrative Justice Institute has a website with blog and resources available at www.ukaji.org.

Part One: BACKGROUND

Chapter 1 – About the project

Introduction

A Place at the Table focuses on knowledge exchange and engagement between researchers, practitioners and users in the area of special educational needs and disabilities (SEND) disputes in England. The project concerns resolution of disputes, including complaints about and appeals against local authority decisions in relation to Education, Health and Care (EHC) needs assessments and Plans (EHCPs), and the extent to which young people participate in a meaningful way in SEND dispute resolution.⁴

The original aim of this project was to work collaboratively with practitioners (including mediators, tribunal members, local government, and advice and advocacy organisations), young people and their representatives, and expert academics to develop a practitioners' toolkit for facilitating participation and decision-making by children and young people (C/YP) in SEND disputes.⁵ However, during the course of the project it became apparent that young people's awareness of and involvement in SEND dispute resolution is low, and therefore producing guidance might be premature until it is possible to address other issues that may present barriers to young people's participation. It also became apparent that there are challenges in attempting to reconcile a rights-based approach to participation with concerns about the well-being of C/YP and the role of adults in securing good outcomes for them.

Decisions made by local authorities on SEND provision reflect many aspects of concern in administrative justice. These include the quality of initial decision-making, accountability of public bodies, human rights considerations in the delivery of public services, and mechanisms by which people can challenge and appeal such decisions, all of which must be considered in the current context of severe budget pressures on schools and local government and concerns about efficiency. The expectation is that the project will contribute to our *understanding* of the way these aspects of administrative justice are experienced through the lenses of children's rights and participation in access to justice and to our *knowledge* of best practice for including children's and young people's voices in the process.

The reasons for focusing primarily on mediation include that there has been a steep increase in the number of mediations in England since the Children and Families Act 2014, from 75 in 2014 to 2,497 in 2017 (DfE 2018a, p.9). This increase has occurred without any parallel increase in scrutiny of the mediation process, aside from the recent development of SEND-specific mediator practice standards (Mott McDonald et al 2018a). Other reasons to focus on mediation include the confidentiality of the mediation process, which can make it difficult to access information, and the distinctiveness of the parties' role in mediation. A focus on 'participation' as equivalent to 'decision-making' poses particular challenges in SEND mediation, a process in which the parties are decision-makers in a way they are not in a tribunal appeal or ombud complaint.

⁴ Other areas of dispute not covered by this project include those related to decisions of schools and further education colleges – e.g. provision of support for SEND, disability discrimination and exclusions.

⁵ In this report, 'C/YP' is used when referring to both children and young people of any age, and 'young person' or 'young people' are used when referring only to young people aged 16-25.

Decision-making and participation rights

After compulsory school age (the end of the academic year in which a young person turns 16), the right to make requests and decisions on SEND applies to the young person directly, rather than her/his parents. The Children and Families Act 2014 extends the right to appeal a local authority decision to the First-Tier Tribunal (SEND) to young people aged 16-25 and 'transfers the right from the parent to the young person' (CFA Explanatory Notes s.51(260)). It also requires a parent or young person to consider mediation before lodging an appeal with the tribunal.

Section 19 of the Act sets out the duties of local authorities to 'have regard to':

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

The statutory 2015 SEND Code of Practice spells out the new rights more explicitly. The Code explains that the Act 'gives significant new rights directly to young people. ... When a young person reaches the end of compulsory school age, local authorities and other agencies should normally engage directly with the young person rather than their parent...' (para 1.8). The Code also states that 'the right to make requests and decisions under the Children and Families Act 2014 applies to them directly, rather than to their parents', noting that parents can continue to support young people in their decision-making provided the young person is happy for them to do so (para 8.15).

The Code lists at para 8.16 the specific decision-making rights now held by young people:

- the right to request an assessment for an Education, Health and Care Plan
- the right to make representations about the content of that Plan
- the right to request a particular institution is named in that Plan
- the right to request a Personal Budget
- the right to appeal to the SEND Tribunal

This framework of rights for children and young people in SEND, and the policy underpinning it, 'is in part to ensure consistency with the key principles in Article 12 of the UN Convention on the Rights of the Child (CRC), which sets out the rights of C/YP to be involved in decisions which affect them, to have their views taken seriously and to participate in proceedings. It also reflects the UN Convention of the Rights of Persons with Disabilities (CRPD), which sets out rights in relation to support for accessing justice and exercising legal rights in 'a context in which equality principles have a particular relevance' (Harris 2018, p.21).

Across the UK

This project focuses specifically on individual participation of young people aged 16-25 in SEND dispute resolution, and primarily on mediation, with lessons to be learned across the mechanisms that exist for complaint handling and accountability in local authority decision-making. It covers England only, but with learning from other UK jurisdictions, where handling of SEND-related disputes and complaints, and the level of young people's involvement, differs from England.

Decision-making on SEND issues is set out more clearly in terms of children's rights in other parts of the UK. In Wales, for example, the Rights of Children and Young Persons (Wales) Measure 2011 requires ministers to have due regard to rights under the CRC, a duty placed also on local authorities in relation to education under the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Sherlock and Nason 2019, p.3). The 2018 legislative framework does not specify the age at which decision-making rights transfer; both children and young people with additional learning needs (ALN) are able to make appeals to the tribunal, although parents or another adult, acting as a 'case friend', can support them to do so. (The name change, from SEND to ALN, is intended to 'help to avoid some of the stigma associated with the existing terms' and to mark a distinction between the old and new frameworks.⁶) The 2018 legislation and draft Code of Practice also state that C/YP must be provided with independent advocacy services.

In Scotland, a different approach is taken in the Education (Scotland) Act 2016; children aged 12 or over with Additional Support Needs (ASN) have the same rights as parents. There are exceptions, including the right to request mediation, and the issue of capacity is dealt with differently than in England. C/YP have to notify a local authority of their desire to exercise their rights and the local authority then 'must assess and confirm the child's capacity to do so and must be satisfied that it would not "adversely affect the wellbeing of the child" to exercise the right' (Harris 2018, p.16).

Methodology and project activity

A Place at the Table is a knowledge exchange project and has involved meeting with and interviewing a number of stakeholders (participants), preparing briefing materials, commissioning and publishing blog posts, holding a roundtable meeting to discuss arising issues and explore next steps, and publishing the roundtable report. The project was approved under the University of Essex ethical approval process.

It was originally proposed to work directly with young people, but this aspect of the project has been postponed and will be part of a later, separately funded stage. This is because of the need to develop resources and to design an approach that will involve young people in a more meaningful way than the constraints of this project allowed. Because of this, it was premature to develop guidance for practitioners without any input from young people themselves. It was decided that this would be a future project involving co-production.

More details of the methodology, stakeholder interviews and project activities is provided in Appendix 1, and the participants are listed in Appendix 2.

Emerging findings

The initial impetus for the project was the researcher's observation as a SEND mediator that the number of young people participating in mediation had not increased despite the new rights brought in under the Children and Families Act 2014 (CFA), and a question as to whether this was also true of tribunal hearings. The primary original aim was to explore how mediators and tribunal members might need to adapt their practice in order to facilitate young people's participation, and to explore the production of a toolkit or guidance for mediators and tribunal members. The

⁶ Additional Learning Needs and Education Tribunal (Wales) Act 2018, Explanatory Memorandum Incorporating the Regulatory Impact Assessment and Explanatory Notes, para 3.5.

knowledge exchange project has identified broader issues of concern highlighting the need for a better understanding of the issues before any guidance can be produced. As a result, key messages have arisen that go far beyond the initial concerns about mediation and tribunal practice needing to adapt for more inclusive participation.

Among the emerging findings, these key messages suggest that:

2. **Young people are not exercising their rights on SEND decision-making to the extent that might be expected.** This may be because they know about their rights and choose not to exercise them. Alternatively, it may be because of the lack of a rights 'infrastructure' to support them to exercise their rights. We do not know enough to determine the reasons, but without adequate information and advice, it is difficult to expect children and young people to be aware of and exercise their rights.
3. **The emphasis on participation is both a source of anxiety for young people and a means of empowerment,** much as learning to drive can be. If it is a source of anxiety for some young people, this does not necessarily mean they do not want to be in the driving seat (although some may not), but they need support and practice. Decision-making is a learned skill.
4. **Parents face a significant change in role as their children grow up and become rights holders,** and they may need support in how to move from being advocates for their children to supporting their children to take a lead as decision-makers. The concerns that parents express about decision-making rights of young people with SEND reflect the importance of the relationship and the need to address their anxieties as well as those of young people themselves. Yet little support is available specifically addressing this.
5. **The legal concept of mental capacity appears not to be well understood in the SEND context,** and assumptions about capacity of children and young people can generate conflict and hinder attempts at meaningful participation in decision-making. Approaching young people's participation from a capabilities perspective rather than solely a mental capacity one may allow for more scope for supported participation and decision-making. Such a perspective also recognises the importance of relationships and trust between young people, their parents, and LAs.
6. **Addressing both attitudinal and practical barriers may require a significant shift in culture and in political will** to provide the information and advice infrastructure necessary for the exercise of those rights to become a reality. Significant changes in the information and advice infrastructure (rights awareness, legal aid, SEND expertise, advocacy) are needed to make exercising this right a meaningful and realistic option for those C/YP who choose to do so. The responsibility for these changes rests primarily with local authorities and the Department for Education as the statutory bodies, but the changes cannot happen without the involvement and commitment also of schools and colleges, health and social care professionals, parents, and mediators and tribunal members.
7. **Insufficient data are collected and published by mediation providers and the SEND Tribunal** to allow for a full picture of young people's participation. The rights for young people enshrined in the CFA are not being reflected in procedures and practice, and this contributes to a lack of administrative data on, for example, numbers of young people

participating in mediation and tribunal hearings. Help will be needed from the Department for Education and local authorities.

8. **Mediators and mediation providers could be doing more to engage with young people directly** and to adapt their processes to be more flexible and inclusive. This includes initial awareness raising and providing information that is accessible to young people. The Professional Standards for SEND Mediators could be more detailed in the expectations of what training and experience are required of mediators in relation to working with young people with SEND.
9. **Consideration is needed as to how young people can be involved as co-producers of guidance** on designing/redesigning dispute resolution processes that facilitate their participation as decision-makers. This is a design challenge, however, to ensure that such co-production is not tokenistic and exploitative, and it is resource-intensive if it is to be genuinely inclusive. Established participation groups of young people with SEND have an important role, but they are not intended to be representative of young people generally, and there will be a range of views and preferences as well as a range of needs to take into account.

A key message is that 'participation' covers a range of types and levels of involvement, from expressing views to making decisions. In the SEND context, it is important not to see this range as a hierarchy, with some types of participation more valuable than others. Facilitating participation and taking account of children and young people's views have long been emphasised in the SEND Code of Practice. However, in the context of legal rights under the CFA, it is decision-making rights for young people that are new. Yet it is currently difficult to determine the extent to which young people are exercising their rights to request mediation and to register an appeal to the SEND Tribunal because the data are not collected. The conclusion reached in this project is that few young people are doing so. It also appears that a small number of young people attend SEND mediation or SEND Tribunal hearings. Figures from one SEND mediation provider, which works with about one-third of all local authorities in England, suggest that children and young people attend mediation in only 8% of cases. The extent of children and young people's involvement is not possible to determine from the collected data, so this figure is likely to reflect a range of levels of participation, including attending only and not being involved in meaningful decision-making.

One of the tasks for this project has been to try to identify the extent to which young people attend mediations, although only a limited snapshot can be provided, as this data is not published, or even routinely collected, by mediation providers. A question that has come to the surface since the start of the project is a more fundamental one, however (Mueller et al 2007) – do we need to test the hypothesis that C/YPs participation in SEND mediation is beneficial?

Chapter 2 – Disputes in the SEND Context

SEND background

The term 'SEND' refers to special educational needs and disabilities and the identification of and support for children and young people (C/YP) with these needs from birth to age 25. This is the age group covered by the statutory framework under the Children and Families Act 2014 (CFA) and the 2015 SEND Code of Practice (2015 CoP).⁷

A 'right to education' for C/YP with SEND was set out in the Education (Handicapped Children) Act 1970. The concept of 'special educational needs' was developed in the 1978 Warnock Report to replace medical labelling and initiated a new emphasis on the 'social model' of disability that is the basis for later and related legislation, including the Disability Discrimination Act 1995, the Special Educational Needs and Disability Act 2001 (SENDA), and the Equality Act 2010. This reframed the problem as one in which 'disability' arises from the barriers located within society and its operation and attitudes rather than within the impairment of the individual (the social model versus medical model of disability), and it paved the way for an increased emphasis on enforceable rights of disabled children and young people.⁸

It was only in 2002 that children and young people were allowed to attend SEND Tribunal hearings, and even then this was at the discretion of the tribunal. SENDA and the 2001 Code of Practice expected local authorities (LAs) to seek to ascertain the views of children and young people who, it states, *'will be able to contribute valuable information about themselves and the ways in which they might like their needs to be met'* (2001 Code of Practice 7.85). In contrast, the current Code, while acknowledging that many young people will want their parents to help, or even to make decisions on their behalf, states that local authorities should support young people *'to communicate their needs and aspirations and to make decisions.... A decision by a young person in respect of an EHC plan will typically involve discussion with their family and others, but the final decision rests with the young person'* (2015 CoP, 8.17).

The current framework was suggested in the 2011 Green Paper 'Support and Aspiration: A new approach to SEN and disability'. This was followed by a Progress and Next Steps document in 2012 that built on the feedback received from the Green Paper, and by the SEND provisions identifying new duties for LAs in relation to replacing Statements of SEN with Education, Health and Care Plans (EHCP); the Local Offer providing information on services and educational institutions; and joint commissioning with Clinical Commissioning Groups (CCGs). The new framework is set out in the Children and Families Act 2014. The revised Code of Practice was issued in 2014, with a further revised version in January 2015 (DfE 2015). Para 8.13 of the 2015 Code of Practice states:

'After compulsory school age (the end of the academic year in which they turn 16) the right to make requests and decisions under the Children and Families Act 2014 applies to them directly, rather than to their parents. Parents, or other family members, can continue to support young people in making decisions, or act on their behalf, provided that the young

⁷ For a comprehensive overview of legislative and policy developments, see Harris 2018; for a comprehensive overview of procedures for complaints and dispute resolution, including mediation, for disabled children and young people, see Broach et al 2016, chapter 11.

⁸ For a brief overview of the history of SEND reform in England, see Adams et al, pp.27-30.

person is happy for them to do so, and it is likely that parents will remain closely involved in the great majority of cases.'

The specific decision-making rights relate to EHCPs: whether to carry out a statutory EHC needs assessment, whether to issue or maintain an EHCP, the contents of the EHCP, and the school or college placement. An EHCP sets out the education, health and social care needs of a C/YP and the support that is to be provided. It is drawn up by the LA if, following an EHC needs assessment, the LA decides that an EHCP is necessary; a LA can decide not to issue an EHCP if it deems that school- or college-based support is sufficient to meet the needs.

The previous categories of School Action and School Action Plus (school-based support) were replaced by a single new category, SEN Support, used to describe support provided by schools and colleges from the resources devolved to them. SEN Support is the responsibility of schools and colleges, not of LAs; although schools and colleges have legal duties in relation to SEN Support under the Equality Act 2010, in practice these can be more difficult to enforce than LA duties under the CFA. In contrast to SEN Support, an EHCP is a binding and legally enforceable document and is subject to statutory timescales. Provision set out in an EHCP must be made by the LA, for education and social care provision, or, where it involves health, the CCG.

International conventions reinforce the rights of C/YP to participate in decision-making. The UN Convention on the Rights of the Child (CRC) sets out the rights of children and young people to be involved in decisions which affect them, to have their views taken seriously and to participate in proceedings; and the UN Convention of the Rights of Persons with Disabilities (CRPD) sets out rights in relation to support for accessing justice and exercising legal rights. England's approach has been relatively tentative in its focus on the rights of children and young people, especially as compared with elsewhere in the UK. Harris notes that 'Scotland has gone further than England in extending independent rights to children, by recognising children as independent rights holders' (Harris 2018, p.20). New legislation in Wales does not impose strict duties regarding compliance with the CRC but it does establish a statutory obligation that is potentially enforceable in the courts and, more importantly, it places C/YP rights at the centre of SEND policy-making (Harris 2018, p.24). Wales was the first UK nation to give children themselves a direct right of appeal to the tribunal, and its emphasis on rights rather than welfare has been 'a defining feature' (Sherlock and Nason 2019, p.3).

SEND disputes

The disputes and complaints landscape related to SEND is complex and multi-faceted, with a range of complaint mechanisms for different types of disputes operated by different public and private bodies (schools, local authorities, Secretary of State, the NHS, the First-Tier Tribunal (SEND), mediation, ombud, judicial review) (Doyle 2014). The landscape is set out in a two-page table in the SEND Code of Practice (2015 CoP, pp.246-47); it is also described in guidance produced by the Department for Education (DfE 2018d) and in a leaflet for young people published (Mott McDonald et al 2018b).

SEND disputes relate to decisions made by LAs (and to some extent CCGs where health provision is involved) regarding identification of needs (involving education, health and social care) and provision of support to meet those needs. There is general recognition that C/YP should have their voices heard in the determination of such disputes. The SEND Code of Practice states that LAs '*must ensure children, young people and parents are provided with information and advice on*

matters relating to SEN and disability', including 'information on the local authority's processes for resolving disagreements, its complaints procedures and means of redress' (2015 CoP, 2.17). The Code also explains that 'young people must have confidence that they are receiving confidential and impartial information, advice and support' and that they 'may be finding their voice for the first time, and may need support in exercising choice and control over the support they receive' (2015 CoP, 2.15). The CoP goes further in relation to young people aged 16-25, however, in making it explicit that rights to make decisions and requests under the CFA apply directly to them, not their parents (2015 CoP, 8.15).

In practice, despite this explicit change brought in under the CFA, most young people do not attend mediation or tribunal hearings, and the mechanisms by which they can be involved in the decision-making process are limited. Furthermore, despite repeated references to the rights of young people, the CoP does not refer specifically to how the right to be heard is to be facilitated and exercised. There is a clear need, recognised by practitioners and researchers (e.g. Skipp and Hopwood, 2016), to consider if guidance is required on facilitating young people's meaningful participation.

Complaint and appeal mechanisms

Unresolved disagreements relating to requests for EHC needs assessments and for EHC Plans; changes to EHC Plans, and placement (education setting named in the EHC Plan) can be lodged as appeals to the First-Tier Tribunal (SEND). The Ministry of Justice suggests that appeals to the tribunal have increased due to the reforms made under the CFA that expanded the criteria of SEND to cover C/YP from birth to 25-year-olds in education (excluding higher education) and to cover health and social care as well as education (Ministry of Justice 2017).

Complaints about SEN Support (support provided by schools and colleges to C/YP with SEND but without EHCPs) are not considered by the tribunal but can be considered through complaints procedures of schools and colleges, and ultimately by the Secretary of State. Other mechanisms for complaints include the Local Government and Social Care Ombudsman (LGSCO) for complaints about local authority social care and education; the Parliamentary and Health Service Ombudsman (PHSO) for complaints about health care; and judicial review for claims relating to a local authority's failure to make provision set out in an EHCP. The LGSCO has seen an increase in the number of complaints about SEND, and an increase in the percentage upheld, and has published a report on the LA failures identified in the first 100 complaints it considered about EHCPs (LGSCO 2017).

It is not known how many SEND disputes and complaints are made overall, as the data are not collated nationally (Cullen et al 2017, p.167). Sources of data on SEND complaints include the DfE, Ofsted, the LGSCO, LAs and schools themselves. The following statistics are of particular relevance:

- In 2017-18, the LGSCO recorded 3,260 complaints about education and children's services, of which 277 were about SEND.⁹ Of the 70 detailed investigations carried out that year, 80% were upheld, a figure that has increased to 85% in 2018-19. Among the case studies included in that report are examples of complaints involving mediation and the tribunal.
- The SEND Tribunal reports on number of appeals in relation to number of 'appealable decisions', drawn from data collected by the DfE in the annual SEND 2 return completed by

⁹ Figures taken from presentation by Sharon Chappell, LGSCO, at the SEN Law Conference, London, March 2019.

LAs.¹⁰ In 2017, there were 338,866 appealable decisions, leading to 4,988 appeals registered.

- The DfE reports on appeals and mediations. In 2017, there were 2,497 SEND mediations conducted. In 2016-17, there were 1,599 SEND Tribunal hearings held (DfE 2017).

The mediation and tribunal statistics are explored in Chapter 3 below.

Schools have been identified as a gap in administrative justice redress because of the lack of effective, independent mechanisms to consider unresolved complaints about school decision-making in England. Mechanisms to challenge school decisions in relation to SEND are limited to requests to the Secretary of State, disability discrimination appeals to the SEND Tribunal, and, in cases of exclusion, LA-administered appeal tribunals). Under the Apprenticeships, Skills, Children and Learning Act 2009, the then Local Government Ombudsman was given new powers to consider complaints against schools made by C/YP or their parents. The following year, however, the Coalition Government announced its intention to repeal this power and to restore power to the Secretary of State in relation to complaints about schools (McKenna and Day 2011), which was followed through under the Education Act 2011 (section 45). The Local Government and Social Care Ombudsman (LGSCO) has argued in evidence to the House of Commons Education Select Committee that schools should be brought back into the ombud's jurisdiction.¹¹ (The situation is not the same across the UK, and in 2017 schools in Northern Ireland were brought into the jurisdiction of the NI Public Services Ombudsman.)

The place of mediation

LAs must arrange for parents and young people to receive information about mediation so that they can choose to take part in mediation before a possible appeal to the tribunal (2015 CoP 11.14). Mediation is a way for parties to agree jointly any decision or change in decision. It usually involves a face-to-face meeting between parent/carer (and sometimes C/YP) and one or more representatives of the LA's SEND team, with other participants including, as relevant, representatives from school or college, LA social care, the CCG on health care issues, and other professionals such as educational psychologists, legal advisers and advocates.

The meeting is facilitated by an independent trained mediator who has no connection with the dispute or the parties. The aim is for the parties to discuss the issues in dispute and, if possible, to reach an agreement that resolves those issues (e.g. an LA agreeing to a request for an EHC needs assessment or to issue an EHCP). Unlike mediation in civil and commercial disputes, however, in the SEND context mediation does not prioritise a 'full and final settlement' but instead prioritises collaborative problem-solving in a way that allows for expression of the parties' different, and often conflicting, needs and interests. Even where mediation does not result in an agreement, it provides an opportunity to clarify the issues in dispute and the parties' positions, and it is proposed by mediation providers that this can help narrow the focus of the dispute if it proceeds to a tribunal hearing. The cost of mediation is borne by LAs, although the provider must be independent of LAs (2015 CoP 11.15). In England, SEND mediation is provided by a range of mediation providers, most of which are not-for-profit and cover a regional area.

¹⁰ For more information on how 'appealable decisions' are calculated, see statistical release at <https://assets.publishing.service.gov.uk/.../send-appeal-rate-table-q4-2017-18.ods>

¹¹ Written evidence submitted to Education Select Committee, June 2018.

Mediation has been part of the SEND framework in England since the 2001 Code of Practice articulated the importance of independent disagreement resolution for these disputes and the duty of local authorities to make resolution services available. The 'SEN Toolkit', guidance on specific aspects of the 2001 Code of Practice but no longer in use, described the anticipated benefits of mediation as:

- *'in exploring outcomes – the solutions reached tend to be more creative than through other processes*
- *to build trust and ownership – which in turn might elicit outcomes that are more likely to be followed through...*
- *to facilitate communication – because the parties have solved the problem together, they will have needed to communicate positively and build greater understanding...*
- *in using a tiered process – enabling the parties, at separate sessions, to work through their differences e.g. the school or local authority, and then the parties separately'* (DfES 2001, pp.7-8).

Details of mediation requirements and procedures are set out in the Special Educational Needs and Disability Regulations 2014.¹² It is now a requirement, in all but a few exceptions, for parents or young people to consider mediation before appealing to the tribunal. Parents and young people who wish to appeal to the tribunal are required to obtain a mediation certificate (other than in cases involving only educational placement). The certificate is obtained after receiving information on mediation from a mediation adviser (who might also be a mediation provider) or after mediating; the aim is to give parents and young people the opportunity to consider attempting to reach a mutually acceptable agreement through mediation before going to appeal.

The 2015 Code of Practice (2015 CoP 11.38) explains that for mediation to work well, the mediator should play a key role in clarifying the issues in dispute, agreeing with the parties who needs to attend (including the involvement of legal representatives), and ensuring that the representatives of the LA and, where relevant, the CCG have authority to make decisions at mediation. The SEND Regulations state that the mediator must have sufficient knowledge of the legislation relating to SEND, health and social care to be able to conduct the mediation (s.40).

Whether or not to use mediation is voluntary for parents and young people; those who decide not to mediate following a Mediation Information and Advice Session (MIAS) will be issued with a certificate right away, which will allow them to lodge an appeal (within the deadline, which is either two months from the date of the local authority decision or 30 days from the date of the certificate, whoever is later). Those who agree to attempt mediation will be given a certificate following the mediation, which allows them to lodge an appeal (should one be considered necessary) within 30 days of the date of the mediation. If a parent or young person wants to use mediation, the LA is required to attend and to send someone with decision-making authority. (This is the first use of compulsory mediation in the UK and presents a challenge to one of the fundamental principles of mediation – that it is voluntary for all parties.)

Although mediation does not result in a legal determination, it takes place in the shadow of the legal framework, taking account of statutory rights and obligations in relation to SEND, equalities and human rights. It is not an alternative to tribunal or the ombud in the conventional sense but is complementary to those processes and is, with them, part of the wider accountability network in SEND.

¹² The Special Educational Needs and Disability Regulations 2014, s. 32-42.

Concerns about the use of mediation in the SEND context have been raised by researchers (e.g. Harris et al 2008) in relation to enforcement of individual rights, protection of children's rights and an inherent power imbalance between families and LAs. To some extent, these concerns apply not only to mediation but also to the range of non-judicial dispute resolution mechanisms available for SEND: that it is difficult to know which route to pursue and that the processes serve as individualised and privatised justice without reference to the public interest (Doyle 2014). Although mediation does not result in judicial determinations in the way a tribunal does, it takes place in the shadow of the legal framework, taking account of statutory rights and obligations in relation to SEND, equalities and human rights. Despite the limited empirical evidence on its use in SEND, mediation has been given new prominence in the CFA.

Polycentricity of disputes

In SEND disputes, the problems arising in relation to SEND support are often polycentric; they involve the relationships between LA and school/college, between school/college and parent, between school/college and C/YP, and between parent and C/YP, often overlapping. For example, there can be underlying tensions between schools and LAs about funding, control and independence (an issue exacerbated by the growth of academy status and its detachment from LA oversight). The role of the LA in ensuring that provision is made at the school level is sometimes unclear, particularly with schools that are not maintained by the LA, such as faith schools, academies and independent schools, and at the SEN Support stage.

The researcher's experience with SEND mediation reflects that although the dispute triggering the mediation is a challenge to a decision by the local authority, there are other disputes at play, including between parents and schools. Teachers can feel under pressure to deliver particular outcomes without adequate support or resources. They often feel parents make demands about the type or level of support the C/YP needs that schools cannot meet. In such cases, schools and teachers may neglect to involve parents or C/YP in the planning of support. It is not uncommon for parents of pupils with SEND to be banned from school premises if they are considered troublesome, just as pupils with SEN are often excluded for what is considered bad behaviour (see, e.g., Children's Commissioner 2017a; LGO 2014). Parents might become overprotective of their children, and their requests for support can clash with their child's need to develop independence and social skills; this can arise in particular where parents are requesting transport to take a pupil to school or one-to-one learning support within the classroom.

Cost is a constant source of tension: parents might perceive that appropriate provision involves delivering a specialised programme or sending the child to a residential school; the LA might consider that providing these options is expensive and puts at risk the provision they can make for other children. In this respect, other parents and C/YP within a wider community may become stakeholders with interests in the outcome of a specific case in which they are not involved. The fact that resources for SEN provision are capped public funds means that what are seemingly 'private' issues involving one family are actually 'public' issues with wider ramifications (see, e.g., Harris et al 2008).

Research overview

Relevant research exists on C/YP participation in strategic decision-making and more broadly on the value and practicalities of different levels of participation (see, e.g., Council for Disabled Children 2017a-c), but as this section shows, there is less research focusing on C/YP involvement

as individual rights-holders and decision-makers in their own disputes and particularly in SEND disputes. As Harris notes, it is in this area of resolution of individual disputes that *'the principal barrier to children's participation – arising from a general paternalistic perception that parents are best placed to represent their children's interests and advance their cause – has been most at the fore'* (Harris 2018, p.4).

Harris found that under the 2001 legislation (SENDA), C/YP 'did not participate in mediations and there was little attempt, and no legislative requirement, to ensure that they did so' (Harris 2018, p.5). Soar et al (2005) explored the extent to which C/YP participated in SEND mediation and found limited direct participation but more evidence of indirect involvement (e.g. questionnaires eliciting the C/YP's views or including C/YP's views within professionals' reports). Consulting C/YP in advance of mediation appeared to be the norm, with the aim of informing the adults attending (Soar 2005). In their evaluation of two pilots of young people's rights to appeal to the SEN Tribunal in Wales, which was carried out in 2009 following the Education (Wales) Measure 2009, Holtom et al (2014) indicated strong support for the principle of extending the rights of children and young people to participate in decision-making, but limited evidence of C/YP exercising this right in practice.

The Local Government and Social Care Ombudsman (LGSCO) published a Focus Report (LGO 2015) on complaints about local authority children's services which highlighted that the voices of children and young people are often not heard in complaints about their own social care needs: *'This means that children's interests are sometimes not central to the complaint – they can be unaware of one being made ...'*. The LGSCO also published a Focus Report on its first 100 investigations of complaints involving EHCPs under the new SEND framework (LGSCO 2017), highlighting a number of failures by LAs in administering the new processes. The LGSCO also noted that it upheld 79% of SEND complaints it considered, an 'exceptionally high' proportion considering its average uphold rate of just over 50% for all investigations (LGSCO 2017, p.3). The Children's Commissioner, who has a specific duty to investigate the availability and effectiveness of complaints procedures from the point of view of C/YP, has published a number of relevant reports on C/YP complaints procedures and on disabled young people's difficulties in getting their views heard and taken seriously (Children's Commissioner 2014, 2015).

A current ESRC-funded project by Riddell and Harris ([Autonomy, Rights and Children with Special Needs: A New Paradigm?](#)) is investigating the implementation of children's rights in SEN/ASN in England and Scotland. The project's Working Paper 2 (Harris 2018) gives a comprehensive overview of the legislative and policy developments in relation to C/YP's 'autonomous voice' and participation in the SEN/ASN context. Other working papers include a literature review, surveys of local authorities in England and in Scotland, and analysis of interviews with 'key informants'. Earlier work by Harris and Riddell explored the relatively low take-up of mediation in SEND under the Education Act 196 and the 2001 Code of Practice (Harris et al 2008).

Participation has most often been promoted as a duty on adults (e.g. parents or local authority officers) to obtain the views of children and young people. Drummond (2016) refers to the 'tentative approach' of enforcing participation rights in SEND Tribunals, due largely to conceptualisations of childhood – she documents the concerns expressed, primarily by parents but also other stakeholders, including the judiciary, about age of the C/YP and their capacity to participate. Her findings suggest that the judiciary had concerns about their ability to engage with C/YP in the tribunal setting.

Walsh (2017) explored how mediators and local authorities are addressing pupils' views and/or enabling their participation in SEND mediation. He found a higher level of commitment among professionals to C/YP participation than evidenced in research before the CFA and the SEND reforms, as well as examples of good practice in both direct and indirect participation. He also identified evidence of superficial compliance and parental resistance to participation by C/YP; parental advocacy, however well-intentioned, may enable but also inhibit C/YP's meaningful participation in decision-making.

NHS England's [*Ask, Listen, Do*](#) project started from a realisation that feedback, concerns and complaints systems (as well as safeguarding and access to justice) are not working as well as they should across education, health and social care for children and adults with a learning disability, autism or both, and for their families. Their experiences reflect that it is difficult to navigate through many complex systems across services, with many barriers. There is also not a good enough understanding within organisations about how to listen to families or children, young people and adults, and the reasonable adjustments needed to do that. Young people and their families are often not included or do not feel that feedback and other systems work for them and do not take part in them. Sometimes families can be seen by organisations as difficult and challenging, which can get in the way of organisational listening and learning. The *Ask, Listen, Do* project is working with a number of bodies (including the Local Government and Social Care Ombudsman) to try to influence and change organisational behaviours and approaches. The project is also producing resources for families to help empower them in understanding and dealing with these complex systems, and training and other resources to support organisations.

Considering the involvement of young people in the development of their EHC Plan and in Annual Reviews (i.e. prior to any dispute arising) is a useful starting point for two reasons. First, the majority of young people with SEND do not experience disagreements or disputes about having their needs identified and met (Adams et al 2017 for figures from 2015). Second, involvement in planning and preparation may be a pre-condition for involvement in dispute resolution, should disputes or disagreements arise. In an evaluation of the Pathfinder programme (DfE 2015), commissioned by the Department for Education and carried out in 2011-2014 to assess the impact of the SEND reforms, families involved in the new process ('Pathfinder families') were found to be more likely to agree that their child had had a say in the EHC support planning process than those in the comparison groups (with Statements but no EHCP). Yet only 37% of these families agreed (compared with 29% in the comparison group) with particular concerns expressed by parents of age 17+ young people in relation to arrangements for transition, indicating there is room for improvement in the level of C/YP involvement.

Adams et al (2017) looked at several measures of involvement: making an effort to listen to the C/YP and to understand their opinions; including the C/YP in meetings; asking the C/YP if they want to take part in meetings; giving choices to the C/YP as to how to take part in meetings; and providing aids to help the C/YP to take part (aids included communication aids, visual aids, or the help of an advocate/supporter). Most young people and their parents agreed that young people are included in the EHC needs assessment and planning process; in around three-quarters of cases relating to plans for 16-25 year olds, parents and young people felt that efforts were made to listen to the young person, and a slightly higher proportion reported that the young person was included in meetings. Only one-quarter, however, felt that the young person had been given choices as to how to take part.

The difficulties in being involved in planning support can vary and can be exacerbated for some young people depending on their needs. An Independent Supporter contributed a case study to this project describing the experience of a young woman with whom she worked, a care leaver with anxiety and personality disorder, who was struggling to get adequate support in college and to have her voice heard (Pope 2018).

More evidence is needed on the extent of progress in implementing the C/YP rights in the CFA and Code, the role of local authorities and schools in facilitating C/YP engagement in EHCP planning, and the support for parents who face a significant shift in role, from being advocates for their children to potentially taking a back seat in supporting decision-making by young people.

Chapter 3 - What we know

This section is intended to set the scene by providing some statistics on SEND, mediations and tribunal appeals. These have been checked with the mediation providers and the SEND Tribunal but it is important to treat them with caution as the data on young people's participation is not routinely gathered and is a snapshot only. One challenge with this project is that, as one interviewee explained, 'the evidence is anecdote rich but data poor'.

SEN statistics

Table 1 shows the percentage of the pupil population who have been identified as having SEN,¹³ and the percentage of those receiving SEN Support or with statements or EHCPs.

Table 1. SEN statistics

Percentage of pupils with SEN (England) (DfE 2018e)	
Pupils with SEN	14.6% (n=1,276,215)
Pupils on SEN Support	11.7% (n=1,022,535)
Pupils with statements or EHC Plans	2.9% (n=253,680)

The number of EHCPs and statements increased just over 11% from January 2017 to January 2018, a rise driven by large increases in EHCPs for the 16-25 age group. The number of new EHCPs issued in the 2017 calendar year increased by almost 17% (42,162 issued in 2017), compared with 2016 (DfE 2018a).

Classification of type of SEN need is set out in detail by the Department of Education. There are currently 12 types of need used in SEN, as shown in Table 2.

Table 2. Types of SEN need

Types of SEN need, England (DfE 2018c)
Specific Learning Difficulty
Moderate Learning Difficulty
Severe Learning Difficulty
Profound & Multiple Learning Difficulty
Social, Emotional and Mental Health
Speech, Language and Communication Need
Hearing Impairment
Visual Impairment
Multi-Sensory Impairment
Physical Disability
Autistic Spectrum Disorder
Other

Carmichael and Riddell (2017) provide a comparative analysis of the statistics for SEN in England and Additional Support Needs (ASN) in Scotland, including identification rates, categories of SEN/ASN used, demographic characteristics of pupils with SEN/ASN, and appeal rates. In England, the Department for Education reports annually on these statistics.

¹³ SEN, as opposed to SEND, is the term used in some of the DfE statistical publications.

Looked-after young people

In 2017, 35,260 pupils were defined as 'looked-after' (0.4% of the school population). (Looked-after C/YP cease to be 'looked after' at age 18; their status then changes to young adult eligible for help and assistance from the local authority.) Looked-after pupils are far more likely to have SEND than other pupils (57% versus 14%) and more likely to have an EHCP (27% versus 2.8% of the general school population) (Carmichael and Riddell 2017). The most common type of SEND for looked-after C/YP in 2016/17 was Social, Emotional and Mental Health – more than 37% of looked-after children with a statement or EHCP had this type of need, compared with just over 16% of all C/YP with a statement or EHCP (DfE 2018b).

Looked-after C/YP, especially those in institutional settings, have been identified as a particular group most in need of both the legal right to challenge and the support to do so. Holtom et al (2014) noted that one of the objectives of the Education (Wales) Measure 2009, extending the right to appeal to C/YP, was to ensure looked-after children have an independent right to appeal; in the pilots they studied, however, no looked-after children exercised that right. Concern about looked-after children was also a consideration in the extension of appeal rights to C/YP aged 12 in Scotland, which was implemented in January 2018. As Harris has noted, *'The position of children in care, or 'looked after' children, has long raised justice concerns arising from the fact that the local authority is in law their parent but also responsible for ensuring their SEN are met and, in any appeal or reference case, is the respondent'* (Harris 2018, p.23).

As data are not collected by mediation providers and LAs on the number of looked-after C/YP in mediation, it is impossible to determine whether they are currently under-represented. The view expressed by most is that they probably are.

Mediation statistics

In the years following implementation of the CFA, mediation numbers and mediation's impact on tribunal appeals was explored by a DfE-commissioned review (Cullen et al 2017), which looked at the effectiveness of procedures for resolving disagreements with local authorities and education, health and care agencies including information, advice and support services; mediation; complaints; and the First-tier Tribunal (SEND). The review found that, of just over 3,000 parents/young people from 109 LAs, the majority (58%) chose not to go to mediation. A substantial minority (42%) decided to go to mediation. This minority represented a marked increase in demand for SEND mediation following implementation of the new legislation.

The review found that those who used mediation were less likely to go on to lodge an appeal to the tribunal; of the group who chose not to use mediation, 36% went on to appeal, compared to 22% of those who had been to mediation, a 14%-point reduction in the likelihood of registering an appeal. The outcome recorded in these cases was 'resolution achieved without appeal to the Tribunal'. The researchers noted a marked increase in impact from Year 1 to Year 2 of the new system, suggesting the impact on appeal numbers would be likely to increase: 'Among those who opted to take up mediation..., the majority managed to resolve their disagreement without registering an appeal to the Tribunal: 54% in Year 1, rising to 63% in Year 2' (Cullen et al 2017, p.103).

Annual statistics released by the DfE since then show a steep rise in mediation numbers (Table 3 below). This is actual mediation numbers drawn from annual returns submitted to the DfE by local authorities (ie not the numbers of Mediation Information and Advice Sessions).

Table 3. Number of mediations

Number of mediations, England (Dept for Education Statements of SEN and EHCPs statistical releases 2015-18 ¹⁴)	
Year	Mediations
2014	75
2015	1,400
2016	1,886
2017	2,497

During the calendar year 2017, there were 2,497 mediations, up from 1,886 in the previous year (DfE 2018a and 2017).¹⁵ Of these, 630 (25.2%) were followed by appeals to tribunal during 2017 (and others mediated in 2017 would have been followed by appeals in 2018) (DfE 2018). In 2017 there were more SEND mediations conducted than SEND Tribunal decisions (2,497 mediations in 2017 compared with 2,298 SEND Tribunal decisions in 2017-18) (Ministry of Justice 2018).

C/YP involvement in mediation

Mediation providers do not routinely collect data on C/YP participation in mediation, although some are starting to do so. The DfE does not require this from mediation providers or from LAs. KIDS SEND Mediation Services report that C/YP rarely contact the mediation services themselves. Statistics gathered for this project from KIDS (its London and Regional SEND mediation services) suggest that in 2017, C/YP attended mediation in about 8% of cases.

Table 4 below provides statistics on mediations carried out by KIDS Mediation Services in 2017, including the primary issue in dispute. We do not know whether more would attend, and actively participate in decision-making, if the way mediation operates were changed. Together Trust, another SEND mediation provider, has started to collect these data and estimates that the child or young person attends in 10-15% of cases (see Case Study – Data collection).

The extent of the C/YPs involvement is not possible to determine from the collected data, so this figure is likely to reflect a range of levels of participation, including attending only. (Note that the services also facilitate C/YP involvement other than attending, where the parent and/or C/YP share C/YP's views.) The figures are small and it is difficult to identify any pattern in the primary issue in disputes. In addition, the age ranges (as young as age 4 for the Regional Service) suggest that the figures include young children attending mediation, possibly for child care reasons as opposed to reasons related to participation.

One suggestion made by a LA representative during the project was that LAs could require data on young people's involvement to be collected as part of the contractual agreements between LAs and mediation providers.

¹⁴ Available for years 2014-2017 at <https://www.gov.uk/government/collections/statistics-special-educational-needs-sen#statements-of-special-educational-needs-sen-and-education-health-and-care-ehc-plans>

¹⁵ Figures for 2018 were not available at the time of writing and will be published in December 2019.

Table 4. KIDS Mediation statistics – calendar year 2017

		KIDS Regional	KIDS London
No. of referrals (approx.)		1,000	1,500
No. of mediations		428	207
No. where C/YP attended		35 (8%)	17 (8%)
Age range of C/YP attending		Age 4-30	Age 12-24
PRIMARY ISSUE	Refusal to assess	Total: 21	Total: 2
	Contents of EHCP	Total: 10	Total: 12
	Refusal to Issue EHCP	Total: 3	Total: 2
	Cease to maintain EHCP	Total: 1	Total: 0
	Disagreement resolution	Total: 0	Total: 1

CASE STUDY - Data collection

Together Trust is a charity providing SEND mediation, among other services. It estimates that the child or young person attends mediation in about 10-15% of cases, although this has not been collected until recently. As a result of engagement with one of the local authorities the service contracts with, the mediation service has started recording data on whether the child or young person attended mediation and whether the child or young person submitted information on their views, such as a 'This is me' booklet designed to allow the young person to present their views on their support needs. It is interesting that the driver for this aspect has been a local authority in collaboration with the Together Trust mediation service, and the enhanced data collection (which applies not just to this local authority but across all those local authorities the service works with) has resulted from joint regular scrutiny of the mediation data by the LA and the mediation service. It is early days, and analysis of the data will not be possible until it has been embedded for at least several months, but it is a sign of increased recognition of the importance of identifying the extent to which children and young people are participating in SEND mediation in practice.

There are a number of SEND mediation providers across England, among them Together Trust, KIDS SEND Mediation, and Global Mediation. The researcher has been unable to locate a published list of all providers in England. Some providers are contracted to be the sole providers of SEND mediation to a local authority; other local authorities work with more than one provider. All providers are now expected to have mediators accredited under the SEND Mediator Practice Standards, and a register of accredited SEND mediators is being developed by the Civil Mediation Council and the College of Mediators.¹⁶

KIDS operates two SEND mediation services, one in and around London and one in other English regions. Roughly one-third of all LAs in England refer parents and young people to KIDS Mediation Services. There are some practice differences between the two KIDS Mediation Services:

- The London service works actively with 33 LAs.
- The Regional service works actively with 27 and is listed among a number of providers for several LAs.

¹⁶ For more information on the register, see <https://civilmediation.org/latest-news/register-of-send-mediators/>

- Each service operates a different caseworking model – in the Regional service, mediators do the initial casework with parties, usually by phone, and also run the mediation. In London, the mediation caseworkers in the office do the initial casework with parties and then hand over to the mediator. The mediator as caseworker model used in the Regional Service allows mediators to begin to develop trust with the parties before the actual mediation meeting, which may help with encouraging parents to allow the mediator access to the C/YP.
- In addition, the Regional service often holds mediations in schools, which makes it easier for a C/YP to attend all or part of a mediation meeting. The London service primarily holds mediations in local authority offices; where parents object, an alternative, more neutral, venue is found.

The KIDS Regional SEN Mediation Service collects more detailed statistics than the London service on young people over 16, including identifying when a young person attended mediation and participated with the assistance of parents and when a young person fully represented him/herself at mediation. C/YP might attend only part of a mediation, but the Regional Service explains that where they attend the full meeting they will be listed as an attendee on the mediation agreement and will sign the agreement.

Also in the Regional Service, if the young person is 16 or older, regardless of whether it is the young person or parent who makes initial contact, the mediator engages with the young person and the Mediation Information and Assessment Session (MIAS) is carried out with the young person, sometimes using speakerphone to enable both young person and parent to participate. The opportunity for a young person to agree to attend mediation is not limited to the MIAS, however, but remains open during the course of the pre-mediation casework. If a parent is reluctant to allow direct contact between the mediator and the young person, the mediator will explore with the parent why it is important that the young person is involved in some way.

The figures suggest that although the emphasis may be slightly different between the two KIDS Mediation Services, the percentage of mediations where young person attend is the same. Yet there is a need to examine mediation practices and consider if changes are needed to foster greater participation by and inclusion of C/YP in the process. The need goes further than how mediation is delivered. It also involves the support for C/YP to enable them to participate meaningfully. In discussions with the researcher, mediation providers have referred to the difficulty in accessing advocates for young people; advocates are involved in only a handful of cases. There is also the need for mediators to be equipped to work with C/YP with SEND and for SEND mediation standards¹⁷ to require expertise or training in this.

First-Tier Tribunal (SEND) statistics

According to the Ministry of Justice's latest statistics for SEND Tribunal appeals (for the period 2017-18), there were 5,679 registered appeals in relation to SEN, an increase of 20% when compared to the prior year (Ministry of Justice 2018a). Of the appeals registered, 13% involved a young person aged 16 or older at the time the appeal was registered (Ministry of Justice 2018b). The majority of appeals were in relation to the content of EHCPs, and one-third were against an LA decision not to carry out an EHC needs assessment.

¹⁷ The mediation practice standards for SEN mediators are available here:
<http://www.civilmediation.org/downloads.php?f=138>

Table 5. SEND Tribunal appeals

SEND Tribunal appeals, England 2017-18			
Appeals registered	Appeals decided	Appeals decided in favour of appellant	Disability discrimination appeals
5,679	2,298	2,035	138

The tribunal disposed of a total of 5,000 appeals. The number of appeals decided by the tribunal was 2,298 (46%), with the remainder of those disposed of being withdrawn or conceded. The statistics suggest a high percentage of tribunal appeals withdrawn or conceded before hearing and a high rate of success at hearing by parents in certain types of appeals. Of the decided cases, 2,035 (89%) were in favour of the appellant. (Note, however, that the fact that an appeal is recorded as decided in favour of the appellant does not mean that all aspects of the appeal were in favour of the appellant, particularly where the contents of an EHCP were the subject of the appeal.)

Of the 1,717 'refusal to assess' appeals, 1,153 were conceded, meaning the LA agreed to the appellant's request to carry out a needs assessment before the appeal was decided.

In addition, the tribunal considers disability discrimination appeals, although this is a much smaller jurisdiction. In 2017-18, there were 138 of these appeals registered; four cases (3%) were related to temporary exclusion from school, and the remainder were uncategorised. Appellants are much less likely to succeed in their disability discrimination claim than in an SEN appeal: only 66 claims (61%) were decided at hearing, of which 53% were dismissed and 47% upheld. (The reasons why the appeal numbers for disability discrimination are so low, and the upheld rate so different from those of SEN appeals, are not known and require further research.)

Most LAs report that it is unusual for a C/YP to attend a tribunal hearing (Davidge and Harris 2018). The experience of the SEND Tribunal, however, is that this is not rare and that the tribunal expects C/YP views to be presented (although this can take a range of forms, including in person but also via letters or videos submitted by the C/YP). The SEND Tribunal does not collect data on C/YP attendance, however, so it is not known how many attend hearings and to what extent they participate. Improving the data collected and published in young people's involvement in tribunal appeals is one of the recommendations made later in this report.

The tribunal does not require signed authorisation from young people who want a parent to lodge the appeal on their behalf. The appeal form (SEND35), however, suggests that it should be signed by a parent (for a child under age 16), a young person, or a nominated 'alternative person'. The form states: *'It should always be presumed that a Young Person has the mental capacity to make an appeal to the Tribunal. An appeal made by a Young Person will often be with the support of an advocate. An advocate can be a parent, family member or other individual, including someone who is paid to do so. A Young Person can also appoint a representative to act on their behalf during the appeal process, including at the hearing.'* As with mediation, the practice of not requiring signed authorisation from a young person is a pragmatic approach.

Part Two: THEMES

This chapter considers three key themes: participation, capacity, and information and advice. These have arisen through engagement with participants in the project and have been explored through interviews, blog posts, a briefing paper and the roundtable meeting.

Chapter 4 – Participation

Much of the work on the voice of C/YP with SEND highlights the greater risk to C/YP of not being heard and having rights denied; and the importance of 'doing with' rather than 'doing for' or 'to', a key principle of the disability rights movement. 'Doing with' involves providing the necessary support to enable young people to speak for themselves. Harris notes that the UN Convention on the Rights of Persons with Disabilities (CRPD) goes further than the CRC; in article 73, the CRPD includes an *'explicit requirement that children with disabilities should receive assistance which is appropriate to their disability and age to enable them to realise the right. This places a specific obligation on the state to provide resources for this purpose'* (Harris 2018, p.24).

The 2015 SEND Code of Practice explains that young people *'may be finding their voice for the first time, and may need support in exercising choice and control over the support they receive'* (2015 CoP 2.15). This is particularly important in the context of mediation, which is a problem-solving process whose emphasis on collaborative decision-making prioritises self-expression and self-determination by the parties. Therefore, mediation involving C/YP with SEND is an area of participation that both demands creative approaches to participation and provides opportunities for such creativity.

Yet as Lundy (2007) and others have found through empirical research, despite the emphasis on rights, in practice C/YP rights to participate are dependent on the cooperation of adults, including parents but also teachers, local authorities and other professionals. This is due to a range of concerns (about capacity, or perceptions of capacity, but also about authority and resources) and to limited awareness of the legal obligations to facilitate participation by C/YP (Lundy 2007, p.930). Participation as a policy agenda sets up a tension between what are known as 'liberationists', championing children's rights, and 'paternalists', concerned with adults' responsibilities for children's well-being (Kellett 2009; MacAllister 2019), and, in mediation practice, between a 'citizenship' approach versus a 'welfare' one (Shropshire Mediation Service 2004).

Individual participation is distinct from group or 'strategic' participation, such as that used for consultation purposes or in 'young commissioners' who play a role in service commissioning. Arguments for individual participation include the need for young people to 'practise' decision-making and the need to help them build resilience (e.g. by learning from decision-making). Early involvement of young people in planning for their SEND support may result in better and more sustainable outcomes. There is, however, what one interviewee referred to as a 'tyranny of autonomy', where rights of one group, such as young people with SEND, take priority over rights of others, such as parent/carers, often women whose scope for work is limited by expectations that they will look after a C/YP out of education.¹⁸

¹⁸ Luke Clements, Cerebra Professor of Law at Leeds University. As a case example, see LGSCO report on a complaint involving transport for a young person, in which the ombud identified the young person's mother's needs as well as those of the young person; Royal Borough of Greenwich (16 018 123).

One researcher has suggested that we need to ask *why C/YP should participate*, referring to a 'participation policy regime', with levels of engagement being contingent on individual relationships and on '*assumptions about degrees of capability or deservability*' (McKay 2014).

Mediator approaches to participation

In encouraging participation of young people of all ages, SEND mediators generally take what has been called a child-focused approach. This approach, however, can take the form of participation intended either to provide information to the parents and local authority (a welfare approach) or to encourage the involvement of the young person (a citizenship approach). The distinction is important in the context of the policy shift towards C/YP decision-making in SEND. As set out in the 'voice of the child' guidance for SEND mediators:

*'A **welfare approach** implies that the reason for meeting with a child is to feed back information to the adults with a view to helping them make a better decision for that child. A **citizenship approach** assumes some potential for a child to be involved, to a greater or lesser degree, in the negotiating and decision-making process itself'* (Shropshire Mediation Services 2004).

CASE STUDY – Ways of participating in mediation

In one case mediated by Together Trust, involving an 11-year-old with autism, the mediator sent messages and information to the young person via his mother to explain mediation and encourage him to consider if he wanted to attend at least part of the meeting. He was sent the 'This is me' booklet, to which he added additional information (because, he said, the booklet hadn't asked all the questions he wanted to answer), which he completed and brought along to the mediation. He was expected to stay only for part of the mediation but ended up staying for it all (and even giving his booklet to the LA representative when she asked to see it). The mediation service manager reported that this was an unusual level of involvement of a young person in mediation as he was completely engaged with the meeting and he spoke directly to the LA and school about things that were not working and discussed what good support would look like.

The welfare approach has been the predominant one in SEND mediation (and also arguably in family mediation, although there is a new focus on a child-inclusive mediation model being developed for UK family mediators by the Family Mediation Council¹⁹). The welfare approach, however, does not sit well with the rhetoric on children's rights, which reflects the role of young people as citizens and rights holders.

The final report of the Voice of the Child Dispute Resolution Advisory Group (March 2015) argued that a shift is needed to a child-inclusive, rather than child-focused, approach by mediators. This report looked primarily at mediation of family disputes, but many of the findings and recommendations are applicable to the SEND context as well. The report states that the Advisory Group

found '*very few children and young people were being provided with the opportunity to have their voices heard during the mediation process. The evidence showed that hearing children's voices was a minority activity.*' The Group also recognised that '*embracing child inclusive practice raises questions about the mechanisms that are appropriate for including children and young people, ethical considerations about taking a children's rights perspective, and implications for meeting the cost of providing this opportunity*' – issues it addresses in the report's recommendations.

¹⁹ See, for example, changes in the standards framework for family mediators (May 2018), Family Mediation Council, <https://www.familiymediationcouncil.org.uk/wp-content/uploads/2018/05/Standards-Framework-changes-for-CIM-May-2018.pdf>

Mediation providers use a range of tools to facilitate the C/YP voice in dispute resolution, ranging from soliciting responses to questions in a 'C/YP views form' to inviting the C/YP to attend mediation. The Together Trust has developed a booklet called 'This is Me' for C/YP to complete in advance of mediation, if they choose to, and to share with other attendees at mediation (see case study above). Most, however, are C/YP views obtained by and filtered through the parent/carer. For the most part, SEND mediation providers adopt the welfare approach despite the rights imperative of the CFA.

If SEND mediators were instead to adopt a citizenship approach, one that recognises young people aged 16-25 as legal rights holders, it might be expected that the mediation provider would engage directly with the young person or get authorisation that the young person would like a parent/carer to representative to act for them. In the absence of independent advocacy being available to young people, however, this has the potential to create anxiety in young people and to undermine the relationship between young person and parent/carer, which participants in this project have highlighted as a key concern. In any case, it is not always feasible for the mediation provider either to engage directly with the person or to obtain signed authorisation, particularly if the young person has not contacted the mediation provider directly. Mediation providers therefore use a flexible and pragmatic approach, which may not be in strict compliance with the Code of Practice but is possibly the only feasible one. This appears to reflect the practice of the SEND Tribunal as well.

What does participation look like?

A number of ways of conceptualising participation by C/YP have been developed. Specifically in relation to SEND, Walsh (2017) cites Lundy's model which, drawing on elements of Article 12 of the UN Convention of the Rights of the Child (UNCRC), includes a duty to provide the C/YP: *'the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law'*. Lundy (2007) emphasises that voice is important but is not enough in itself, and identifies four elements of this: space (including asking C/YP how they want to participate in decision-making); voice (facilitating C/YP to express their views); audience (listening to those views); and influence (acting on those views and giving feedback). Simpson et al point out that although *'voice requires that children are able to express their views, space requires that children are given the opportunity to express those views; audience requires that the child's view must be listened to; and influence requires that the child's view must be acted upon, as appropriate'* (Simpson et al 2017, p.47).

Simpson et al note the gap that exists between 'an individual's right to have his or her voice heard and the mechanism to enable that voice to be given effect' (Simpson et al 2017, pp.46-47) and cite models of participation that seek to distinguish between tokenistic and meaningful engagements. In practice, *'the extent to which young people's voices are truly 'listened to' varies according to the extent to which young people with different needs, cultural and social contexts and backgrounds, may want to be included, or not, in decision-making or indeed the extent to which they are allowed to participate'* (McKay 2014).

Types of participation are often set out in the format of a ladder, illustrating different and increasing levels of involvement (Hart 1992). Although useful in some contexts as a tool for exploring types of participation, the 'ladder of participation' model has been criticised for being sequential (one 'step' should lead on to the next) and hierarchical (Kellett 2009). Particularly in

relation to C/YP with SEND, it is important not to see participation as a hierarchy of progressing steps, with some forms seen as more valuable than others, but instead to consider all forms of participation and supported decision-making as important. VIPER, a partnership group of young people and several organisations, carried out a literature review on participation that provides a useful overview (VIPER 2013). The VIPER research suggests that a more appropriate model is one that sets out forms of participation as equally valid (VIPER 2013, citing Kirby et al 2003); all these types of participation involve some aspect of decision-making. The Kirby model of participation is set out in the VIPER research as below.

Figure 1: Kirby et al's model of the level of participation

	Children and young people's views are taken into account by adults	
Children and young people make autonomous decisions		Children and young people are involved in decision-making (together with adults)
	Children and young people share power and responsibility for decision-making with adults	

(Kirby et al, 2003a, p22)

A focus on participation as equivalent to decision-making poses particular challenges in SEND. Questions about capacity and competence of C/YP with SEND are cited as obstacles to involving them in decision-making (sometimes inappropriately – see section on Chapter 5, Capacity), but as the research overview has shown, and as explored further below, more pervasive obstacles are cultural and attitudinal. It may be that, for this reason, mediation as a process of collective decision-making is more suitable for some SEND disputes. Unlike the tribunal or the ombud, mediation is a process in which the parties are decision-makers. An interesting and relatively unexplored suggestion is made by Walsh, who refers to Suanne Gibson's identification of open dialogue as a counter to a 'Culture of Silence' in SEND (Gibson 2006) and to her 'call for a culture in which no-one is seen as the ultimate decision-maker' (Walsh 2017, p.25). Walsh suggests the idea of moving beyond the notion of a single, ultimate decision-maker to collective decision-making *'is useful and apposite in SEN mediation, in which parties work collectively to arrive at the own solutions. It challenges the view of the parent or professional as able to determine the circumstances in which CYPs are granted access to genuine participation'* (Walsh 2017, p.25).

Barriers to participation

Many barriers to C/YP participation in SEND dispute resolution have been identified in research (e.g. Harris et al 2008; Drummond 2016a-d; Walsh 2017), including psychological damage to the C/YP, the length and formality of hearings, and the risk that the C/YP may come across as more capable than parents had presented and so less in need of support. Attitudinal barriers about ability to participate reflect often misguided assumptions about capacity. In terms of participation in SEND mediation, Walsh (2017) notes that parents had mixed views about their young person attending mediation, mostly linked to concern about the impact on them of being exposed to a daunting, formal setting and a sense of limited understanding or capacity on the part of the young person. He also found concerns that SEND mediations usually take place during working hours and therefore C/YP attendance would mean time out of school. The length of mediations (up to four

hours) was another perceived barrier in Walsh's study, with the concern expressed that C/YP participation would be hampered by such prolonged discussion. In terms of participation in SEND Tribunal hearings, Drummond (2016a-d) highlights that parents often experience tribunals as legalistic environments with an inherent imbalance of power; the fear of their child being cross-examined feeds into parental protective instincts. Potential conflicts between the views of the young person and their parents can be difficult to reconcile – but not impossible. Concerns about anxiety of the C/YP, and the need to shield them from negative or sensitive information about their needs, often see parents and others prioritise safety over participation.

Relationships appear to be key, as is the need to develop and maintain trust between a C/YP and the adults involved, including parents but also health and education professionals. McNeilly et al (2015) noted that self-confidence in C/YP can enhance participation, and such confidence is built

'It is unrealistic to expect the young person to pull up a chair if they have not been involved throughout their SEN journey.'
Roundtable participant

through trusting the professionals involved: *'when children and young people got to know professionals well, sometimes over years, they were more likely to take an active part in decision*

making or express their opinions' (p8). This links to the need for C/YP to be actively involved in decisions on their SEND support from the start, in planning and agreeing on support, in order to build confidence and trust in order to strengthen the young person's relationships with relevant professionals.

Other barriers are practical rather than attitudinal. The first hurdle is often an absence of awareness of one's rights and of the mechanisms for resolving disputes. The research has identified that information and support for C/YP is vital (e.g. Holtom et al 2014; Drummond 2016a-d). LAs have a duty to consider whether a young person requires any information, advice and support in order to enable them to take part effectively in an EHC needs assessment and, if so, to provide it (SEND Regulations 2014, Part 2, clause 10). Adams et al (2017) report that just over half of parents and C/YP in their study had been given information by their LA about complaints, mediation and appeals procedures. However, a smaller proportion had used that advice, and only a very small proportion (5%) actually used the complaints, mediation, or SEND Tribunal appeal procedures. Where the EHCP was for a young person aged 16-25, the researchers found lower awareness of processes for reviewing the EHCP content, and complaints and appeal procedures, than in cases where the EHCP was for someone under 16.

Research has found limited direct participation but more evidence of indirect involvement: questionnaires eliciting C/YP views or including C/YP views within professionals' reports, and consulting C/YP in advance of mediation with the aim of informing the adults attending (Soar 2005). Drummond refers to the 'tentative approach' of enforcing C/YP participation rights in SEND Tribunals, due largely to conceptualisations of childhood – she documents the concerns expressed, primarily by parents but also other stakeholders, including the judiciary, about the age of the C/YP (especially at the younger end) and their capacity to participate (Drummond 2016d). Her findings suggest that the judiciary had concerns about their ability to engage with C/YP in the tribunal setting.

Adams et al (2017) looked at several measures of involvement: making an effort to listen to the C/YP and to understand their opinions; including the C/YP in meetings; asking the C/YP if they want to take part in meetings; giving choices to the C/YP as to how to take part in meetings; and providing aids to help the C/YP to take part. (Aids included communication aids, visual aids, or the help of an advocate/supporter.) Concerns about the lack of communication resources to facilitate meaningful participation, and lack of expertise to use those resources, have been cited in this project as barriers.

Concerns about participation

The emphasis on participation, and particularly on 'voice', is not without critics. Lundy refers to the 'cosiness' of the rhetoric about 'pupil voice' and suggests that the *'widespread use of such terms is in danger of creating a type of "chicken soup" effect – where children's voice is held out as an unquestionable good to be endorsed by all, a common, if somewhat dangerous side effect of children's rights discourse'* (Lundy 2017, p.931). The problem, she suggests, is that facilitating 'voice' can become a casualty when this common goodwill evaporates in the face of resources constraints.

Others express concern that an emphasis on participation is potentially oppressive. Walsh (2017) notes concerns about what is termed a 'moral crusade' using crude tools such as basic questionnaires; concerns by others that the vague language of participation (e.g. 'have regard to') is not clarified in the Code of Practice; and concerns that an element of manipulation and coercion of C/YP is introduced by formal policy initiatives on participation. McKay (2014) suggests that we need to ask *why C/YP should participate*, and she refers to a 'participation policy regime', with levels of engagement being contingent on individual relationships and on *'assumptions about degrees of capability or deservability'* (McKay 2014). The policy emphasis on young people's participation could be seen as unhelpfully conceptualising C/YP as consumers, *'as an extension of the choice/consumerism paradigm (and the provider accountability linked to it) that has had such an influence on the extension of parental rights in this field over the past three or so decades'* (Harris 2018, p.27).

What McKay terms a 'participation policy regime' potentially leads to C/YP feeling criticised if they choose not to act as decision-makers in their own right, or choose not to participate in mediation or a tribunal appeal – if they are considered in effect to have waived their rights as decision-makers. Decisions about the extent to which a young person participates in SEND dispute resolution must take account of that young person's preference, which might be a preference for no involvement (Walsh 2017, p.21).

There is also a potential clash of rights, when young people's rights as decision-makers come into conflict with rights of others, such as those of parent/carers. This has been described as the 'tyranny of autonomy' – a young person with capacity has a right to make a 'bad' decision (one that others might consider to be unwise and not in the young person's best interests), but a 'bad' decision can have huge implications for the family and specifically those family members, often women, who are the carers. The focus is the rights of the young person, but carers' needs are also important.

Young people may feel their participation in their own decision-making on support is limited to completing Part A of a draft Education, Health and Care (EHC) Plan and that they want more say in earlier stages such as assessments, planning, outcomes and pathways. A case study contributed to this project describes how one young person was excluded from discussions and planning meetings, and it was only with the help of an Independent Supporter that she was able to take part in discussions and finally obtain an EHC Plan (Pope 2018). Young people may find they are being labelled or excluded and that there is a focus on negative needs and not capacities, and they may feel under threat of exclusion from school and college settings, often feeling as if adults are 'waiting to get rid of them'.

Participants in the roundtable meeting discussed whether the new right causes anxiety in young people and their parents. To some extent the anxiety is created because of the lack of support and information available. Outcomes of participation may not be as intended; a young person may be perceived as not requiring support if he or she is able to engage in planning and decision-making, as occurred in one case example given at the roundtable meeting.

There is anxiety too among professionals who feel ill-equipped to work with young people with SEND, and there is a need for adults to have training in active listening and to understand that not all C/YP express themselves verbally (Lundy 2007, p.936), a particularly important point in SEND decision-making.

Concerns were raised among participants about the use of the term 'vulnerable', which is commonly used but reflects the 'welfare' approach that is at odds with children's rights and a focus on 'citizenship'.

Case study: Young person's versus parent's views

In a complaint investigated by the Local Government and Social Care Ombudsman (LGSCO), a parent complained on behalf of her son, a young adult. One aspect of the complaint was that her son's views had been misinterpreted by the LA, leading the LA to conclude that her son did not want to remain in education. The LGSCO found that although the son's views may have been different to those of his mother, the evidence suggested that his views had not been misinterpreted. It is an example that confirms a young person's decision-making despite the decision not aligning with that of the parent.

The complaint was that the LA had failed to ensure the support in her son's EHCP was provided and had made a number of errors in managing his transition to college, resulting in him being out of education for a period of time. One aspect of the complaint was that the LA allegedly wrongly interpreted the views of the young person as a decision that he did not want to return to education, *'perhaps because they lacked experience of the communication and understanding difficulties of young people with autism.'* This aspect wasn't upheld; the LGSCO decision states that the evidence *'supports that Mr Y was clear he wanted to do an apprenticeship not return to formal education. While I acknowledge this may not have been Mrs X's preference I do not have any evidence to support that this was fault by the SEN officer.'* The decision found a number of faults by the LA, however, including *'...in the way it managed a disabled young person's transition to college and in failing to respond effectively to concerns the young person's special educational provision was not in place. There was further delay in intervening when the young person was excluded from college with the result by the time a review was held the young person had become disengaged from education. This caused injustice to the young person and his family.'*

Royal Borough of Greenwich (16 018 123).

<https://www.lgo.org.uk/decisions/education/special-educational-needs/16-018-123#point1>

Who plays a part in participation?

It is clear that for meaningful participation to be realised, a number of individuals and institutions have a part to play, including parents/carers, schools and colleges, and LAs, as well as mediation providers and the SEND Tribunal.

Parents' role in participation

Mediators perceive that parents sometimes have reservations about facilitating direct access to a young person; parents' role of gatekeeper, while understandable, means that in practice mediation providers often must gain permission from the parent to engage with the C/YP. There are many reasons why a parent would not facilitate this access: concerns about the C/YP level of anxiety or ability to understand, for instance. There is an underlying distrust, also, of the motives of a LA in insisting that the C/YP attends the mediation; parents may suspect the LA will seek to reduce support, or cease an EHCP, if a young person says they do not want it. Some young people may hold different views to their parents, and parents believe strongly that they know what is best for their children. Residential placement, one-to-one support, school transport, and post-16 education are among the areas in which tensions can arise between parental and C/YP views.

The views of some C/YP with SEND have been captured in a report exploring the role of schools in leading good practice in SEND provision (Webster and Blatchford 2017). Examples of comments by pupils expressing frustration with one-to-one support are:

'Sometimes I just like working on my own. So like, in lessons where I'm not in the bottom group and I have a helper there, it just lowers my confidence. Because I don't like feeling that I need help and that everyone else thinks I need help, when I don't. It's just sort of embarrassing.' (p.62)

'It annoys me though, because sometimes I think they [TAs] speak to me like I'm dumb. Because they're saying, 'Do you know what that is?' and it's easy work. But then they think I don't understand, when I probably understand more than most other people. They just sit next to me when other people don't get it.' (p.62)

Unwillingness to talk frankly about a young person's disability in front of that young person is a reason many parents give for resisting the involvement of their child in mediation. According to one mediation provider, this can be addressed by providing some wording that parents can use to explain what will be discussed at the mediation, such as 'Things may be said that are positive about you and some that are things you struggle with.'

There is a view that parents have not been adequately supported in making the change from advocate to supporter as their C/YP grows up. Sinson recommends exploring the use of a Circle of Support as a way to ease parent's transition from decision-maker to supporting their child to make decisions (Sinson 2016, p.174). The Circle of Support draws on a range of people in the young person's life, including but not limited to parents.

As Walsh notes, parental advocacy, however well-intentioned, may enable but also inhibit meaningful participation by C/YP in decision-making, and 'moving beyond reliance on parental advocacy may be essential to guarantee C/YP voice' (Walsh 2017, p.20). It is important to remember, however, that parents remain one of the key sources of information and advice for C/YP with SEND, especially for young people entering adulthood. Roundtable participants identified the risk that prioritising decision-making by young people can threaten their relationship

with their parents and put at risk this key resource. IPSEA (2017b) found in its focus group work with young people that most rely on parents to handle matters relating to their EHCPs, and few felt able to act successfully for themselves. The young people cited factors such as insufficient understanding, anxiety, lack of confidence and trust, feeling overwhelmed, and not wanting to admit to their disabilities (IPSEA 2017b, p.9).

Local authority's role in participation

Statutory duties on LAs to support participation by young people are reflected in the Code of Practice and its underpinning principle of a right to participation in decision-making, from needs assessment through to EHCP planning and challenging decisions. There is some evidence that LAs welcome the emphasis on C/YP participation and act on it. Walsh (2017), for example, found a higher level of commitment among LA professionals to C/YP participation than evidenced in research before the SEND reforms, as well as examples of good practice in both direct and indirect participation, with particular ideas about the use of technology to facilitate participation.

Davidge and Harris (2018), as part of the [Autonomy, Rights and Children with Special Needs](#) project, have explored how LAs facilitate the C/YP participation in SEND decision-making and what challenges they face in doing so. The researchers carried out an online survey of LAs in England on issues of training and workload of officers and the extent to which C/YPs are involved in the Local Offer, in EHC needs assessment, the drafting and reviewing of EHCPs, and disagreement resolution, mediation and tribunal processes. Generally, LAs felt the rights conferred by the CFA were positive and have the potential to bring changes in the ways that C/YP can influence LA decision-making. However, many respondents also consider that there is a long way to go before C/YP participation becomes engrained in routine practice and the relevant rights were properly realised. Problems experienced by LAs in implementing their statutory duties associated with children and young people's rights under the 2014 Act include:

- Funding and the capacity of advocacy support
- Lack of staff awareness of the Mental Capacity Act 2005 (in addition to associated cost implications for undertaking mental capacity assessments)
- Difficulties with parents and professionals accepting the increased emphasis on children's and young people's right to participate in SEND decisions.

Respondents indicated that it is rare for young people themselves to make requests for EHC needs assessments. Many LAs described young people's views as a 'pivotal' part of the assessment process and that engaging with young people helped to ensure the content and delivery of young people's SEND support remained meaningful and relevant. A range of intersecting issues was identified that affect the LA's ability to ensure that the young person's view is heard and acted upon, including:

- Separating the young person's viewpoint from that of the parent or carer
- A need for a broader cultural shift on the part of LA, parents and carers in order to adapt to statutory changes and ensure that the young person's voice takes precedence
- Supporting a young person with communication difficulties and/or low confidence to articulate their independent view
- Conflicts and ambiguities around the young person's 'best interests'
- Capacity of the LA to invest sufficient time and resource to support young person to articulate views, wishes and feelings independently

It is clear from Davidge and Harris' findings (2018) that LAs say that C/YP rarely seek dispute resolution or mediation or lodge tribunal appeals in their own right. Two-thirds of LAs stated that

there had not been any cases of disagreement resolution pursued by C/YP themselves over the past twelve months, and the majority of LAs had received no requests for mediation from young people in their own right (even if assisted by a parent or other person). Almost all LAs say they make arrangements to provide C/YP with access to advocacy support in connection with mediation and tribunal appeals; this finding, however, is not supported by difficulties reported by mediation providers in accessing advocates for C/YP.

The extent to which C/YP participate in mediation meetings varies. Some respondents to the Davidge and Harris study noted that when it does happen, parents tend to speak for the C/YP. LAs offered some examples of young people demonstrating an awareness of their autonomous right to speak independently of their parents (Davidge and Harris 2018, p.60):

'Post 16 young people have participated effectively to the extent that at least one asked her parent to leave the room whilst she carried on the conversation with the LA and mediation organisation.'

'At the few meetings we've had, the young person has been present and has been encouraged by the mediator to contribute verbally in the meeting. The mediator had spent time with the young person prior to the meeting to discuss how they wanted to contribute.'

In Davidge and Harris's research, the majority of authorities also stated that it was very rare for a child or young person to attend a tribunal hearing. Among the challenges LAs say they face in ensuring the C/YP's views are heard by the tribunal are parents not giving consent for the LA to obtain the C/YP's view and the issue of ascertaining capacity and establishing whether the view that is presented to the tribunal is that of the child or the parent.

One LA practice identified in this project is requiring a young person's signed consent before proceeding with an EHC needs assessment. It was also suggested that requiring a young person's signature on an EHCP would remind LAs of the need to involve the young person in planning their support.

One area that LAs are clearly attuned to is the potential for conflict between a C/YP views and those of the parents. Mediation and informal discussions with young people and families (with or without independent advocacy support) were noted in Davidge and Harris (2018) as the most common way in which conflicts between the parent's and young person's views are resolved by authorities. Respondents also reported that the use of mediation, independent advocates or support from voluntary organisations has helped ameliorate some of the difficulties they face when trying to ensure that the young person's independent voice is heard and acted upon.

There is a perception (arising in interviews and in the IPSEA project 2017) that LAs put up barriers to accessing education for young people aged 20+, and that LAs resist agreeing to needs assessments and EHCPs for those aged 19-25. An LA's prioritising of young people's views over parental views is seen by some parents and lawyers as a way to reduce the number of assessments and EHCP and to cease EHCPs of older young people.

This tension between an LA's prioritising of C/YP views over parental views has come to light in a small number of mediation cases. In one, the LA refused to attend a mediation if the young person was not attending; she had capacity, and the LA appeared to distrust that the parent was representing the young person's views (see KIDS case study). One lawyer interviewed for the

project explained that she has not yet had this happen in any of her cases but expects it to. In another case, the LA initially refused to attend if the young person was not attending but did eventually agree to attend mediation. The SEND Regulations state that the LA is required to attend mediation if the parent or young person wants to, but this presents a new challenge: to what extent can an LA refuse to attend mediation if the parent but not the young person is attending?

CASE STUDY – LA declining mediation because the young person was not attending

Fadia Khan is 18 years old and has ADHD, severe anxiety and suspected (undiagnosed) autism. Her mother, Leena, contacted the mediation service after the LA had said no to maintaining Fadia's EHCP and no to carrying out a re-assessment of her needs. They had told Fadia and Leena that this was because they understood Fadia did not want to continue with education and that EHCPs are only required when the young person is still in education.

Leena had said that Fadia didn't know what she wanted to do; at one time, before her anxiety got worse, she had talked about working in a shop, but lately she just wanted to stay at home and watch TV. Fadia had not left the house for several months, due to her anxiety. Leena explained that Fadia wanted more information about what her options were - whether this was help getting into college to study or support with getting a job or apprenticeship. Fadia had told the mediation service that she wanted her mum to deal with matters on her behalf. She had a few friends but found new people and crowds very difficult. She also said that she wouldn't be able to attend a mediation meeting given her severe anxiety. Her mother was looking forward to the mediation and felt that she would finally be able to get some answers from the LA for Fadia about what her options were and how she could best be supported as someone with complex difficulties.

The mediation service set up the mediation meeting and the session was due to be attended by Leena, by Bob and Nusrat, two case officers from the LA's SEN department, and by Mike, the Connexions adviser. Fadia had filled in one of the mediation service's young peoples' views forms and Leena had said that she would be bringing this form with her on the day.

A few days before the mediation, Nusrat from the local authority rang the mediation service, concerned that Fadia's views had not been heard. Fadia had completed a form about her views to be shared at the mediation, but Nusrat asked if she could hear Fadia's views before the mediation. Fadia felt daunted by the thought of sending an email with details about her life; she didn't know where to start and would have needed support even to consider doing this. Nusrat explained that they really needed to hear more from Fadia before the mediation, given her age, as she wouldn't be coming to the mediation. Leena felt irritated by this and thought that the local authority was not taking Fadia's severe anxiety into account and was applying a blanket policy of 'this person is 18 years old so we must hear from her directly and liaise with her all the time, not her mum, regardless of her special needs, mental health issues and difficulties communicating'.

As Fadia wasn't able to give her views to the LA or Connexions before the mediation meeting and was not able to attend, Nusrat and Bob decided that it would be better if mediation didn't take place. Leena and Fadia were frustrated by the LA withdrawing from the mediation. Fadia's anxiety was still severe but she had become too exhausted herself to continue fighting the LA. She thought she would leave it a while longer then try to go back to it, once she had got her strength back.

KIDS SEN Mediation Service, June 2018

Schools' and colleges' role in participation

Most young people will get information on their rights in relation to SEND from their parents or from their educational setting. The post-19 SEND framework is relatively new to colleges, so many college-based professionals are having to learn, and even schools may not be well informed about post-16 SEND support (IPSEA 2017). To what extent do schools and colleges proactively inform pupils of their rights and how to enforce them? One way they do this is through Annual Reviews of EHCPs, which should involve the C/YP. No data is gathered centrally on young people's involvement in their Annual Reviews, despite the Code of Practice specifying that Annual Reviews should be undertaken in partnership with C/YP (CoP 2015 9.166-9.168).

Among the findings of a project exploring the experiences of students with SEND in primary and secondary schools is that consideration is needed of the factors that influence school leaders' decision-making so that there is a shared sense of SEND as a priority (Webster and Blatchford 2017). The study found that understanding of the 2014 SEND reforms among teachers and parents varied, and more work may be needed to improve this understanding and raise awareness. Although the reforms had been well received by those who understood the intentions, *'the overhaul to the SEND system does not yet appear to have had a profound effect on secondary school leaders' thinking and approach to provision for pupils with SEND'* (Webster and Blatchford 2017, p.6). The findings also suggest evidence of mixed levels of understanding of SEND reforms and framework among school staff and parents, and 'little evidence relating to pupils' awareness of the new system or role of the EHCP; one [pupil] was quoted as saying of the EHCP: *"It's a bit of paper that says I need more help"* ' (Webster and Blatchford 2017, p.78).

A number of case examples were found of young people participating in the Annual Reviews, although the result was not always positive. For example: *'[Pupil] enjoyed attending her annual reviews, but said that they talk about how she is getting on in class, "but don't say anything about how I work. They don't really ask me"'* (Webster and Blatchford 2017, p.79).

One argument is that C/YP who are involved in planning and agreeing on their support are more likely to engage with complaints and dispute resolution should problems occur. It has been suggested that Year 9 is the most crucial time for C/YP in terms of transition to adulthood and decisions to be made about post-16 education, and that information and support could usefully be targeted at Year 9 pupils.

Although *A Place at the Table* focuses specifically on dispute resolution, considering the involvement of C/YP in the development of their EHCP and in Annual Reviews is a useful starting point for two reasons. First, the majority of young people with SEND do not experience disagreements or disputes about having their needs identified and met (Adams et al 2017). Second, involvement in planning and preparation may be a pre-condition for young people's involvement in making complaints or in any later stage of dispute or disagreement resolution. This is a role for both schools/colleges and LAs. Are C/YP being 'invited' to Annual Reviews or being asked to play a leading role? To what extent can it help with later C/YP participation in dispute resolution if LAs routinely attend Annual Reviews and get to know the C/YP? In one non-maintained special residential school, the C/YP writes to the LA at the time of the Annual Review to invite them to attend.²⁰

²⁰ Case example provided by NASS.

Chapter 5 - Capacity

'Capacity' is a complex and potentially emotionally fraught issue. The Mental Capacity Act 2005 (MCA) explains that mental capacity applies to individual, specific decisions and may vary according to the nature of the decision; someone might be deemed to have capacity to make a decision about one issue (e.g. what to eat for breakfast) and not another (e.g. whether to attend college). However, an underlying principle in the Act is the presumption of capacity; an individual is presumed to have capacity unless otherwise determined by an assessment.

One reason for the complexity is that under the SEND Code of Practice, 'young person' refers to someone aged 16-25, whereas under the MCA Code of Practice, a 'young person' is someone aged up to 18, with those aged 18 and older being referred to as 'adults'. Under the Children Act 1989, parents maintain parental responsibility for a young person up to the age of 18.

In relation to SEND, the underlying premise is that young people aged 16-25 should be empowered to make as many decisions about themselves as possible, even if they are deemed to lack capacity to make a particular decision (see 2015 SEND Code of Practice s.8.21). One of the fundamental principles of the MCA is that a person is not to be treated as unable to make a decision merely because she makes an unwise decision: 'This means that a person who has the necessary ability to make the decision has the right to make irrational or eccentric decisions that others may not judge to be in his [or her] best interests' (MCA Explanatory notes, s.1(20)).

The MCA sets out five principles that apply to decisions and actions taken under the Act:

1. A person must be assumed to have capacity unless it is established that he or she lacks capacity.
2. A person is not to be treated as unable to make a decision unless all practicable steps to help him or her to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because he or she makes an unwise decision.
4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his or her best interests.
5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

The Upper Tribunal has clarified that the role of a parent supporting a young person with a tribunal appeal is 'as an assistant and an advocate. The appeal is brought under section 51 by the young person. The person who helps is merely assisting them'.²¹ This is distinct from acting as an 'alternative person', who is in effect the appellant or respondent, acting in respect of the young person.

Assumptions about capacity can be misleading and disempowering, and it may be that the legal concept of mental capacity is not well understood in the SEND context. For one thing, decisions to be made are issue-specific; it is not about global decision-making capacity. Sinson (2016) points out, for example, that it is not an indicator of lack of capacity if a young person wishes to do something different from any post-16 provision their parents or teachers prefer. 'People who have

²¹ London Borough of Hillingdon v WW [2016] UKUT 253 (AAC) (25 May 2016), para 13.

capacity are free to make decisions for any reason and are not required to do what is 'best' for them' (Broach et al 2016, para 7.43).

In conversations in this project, some participants used the term 'best interests' as a way to explain why parents and carers might override a young person's decision-making on their SEND support needs or educational placement. Yet 'best interests' is the term used once someone has been identified as lacking mental capacity, as a way of determining what decision should be made on their behalf. It is not a means to justify placing a limit on decision-making rights for people with capacity. It was noted at the roundtable discussion that best interests only kick in once capacity has been assessed and someone has been identified as not having capacity; there is, as one

'Mental capacity is decision specific; it is not a status.'

participant suggested, a tendency to leapfrog straight to best interests before capacity for a specific decision

has been determined. The prevalent use of 'best interests' in this way suggests there is still very much a welfare rather than citizenship approach to C/YP as rights bearers. The debate at the roundtable suggested that even among those working in the field of SEND and mental capacity, there is disagreement and a lack of clarity about the concepts and terms. If such challenges are arising in legal processes, are they more or less likely to lead to confusion in 'non-legal' processes such as mediation?

Disagreements about capacity can be a factor in conflict between a C/YP's views and those of her/his parents, something LAs are attuned to – indeed they are sometimes seen as fostering such conflict when parents claim the C/YP does not have capacity. Davidge and Harris (2018) found that although a majority (70%) of LAs consider the involvement of parents to be particularly important and that parental views should always be considered, the views of the young person should remain paramount. A parent's or carer's view can overshadow those of the young person and hinder a young person's autonomy. The majority of LAs consider the young person's views to take precedence over those of parents and carers unless the young person is deemed not to have capacity. But where a young person is deemed not to have capacity, the views and extra contextual information that parents and carers can provide are seen as broadly positive additions to decision-making processes.

At the roundtable, a case example was shared involving two young women who challenged their LA at the SEND Tribunal and were assessed as not having capacity because they didn't have decision-making experience – revealing a vicious circle that echoes earlier comments about building resilience and giving opportunities to practice decision-making.

Participants asked if it would be possible to revise the SEND legislation to reinforce the principle of presumed capacity and to determine what weight should be given to views of the young person and her/his parents if they conflict with each other. It was also suggested that a statutory right to, and funding for, independent advocacy is needed for young people to separate their voices from their parents (as in the Court of Protection).

MCA assessments

If mental capacity arises as a question in mediation, and there are differing views of the young person's capacity, it may require an assessment to be carried out. One mediation provider explained that this then can cause delays that are difficult to manage within the very tight timeframe for mediation (which must be held, or arranged, within 30 days of the decision being made by the LA). Who should carry out the assessment is unclear. When is an assessment (under

the MCA) necessary, who should do it, and how does carrying out an assessment affect the strict timeframe for mediation to take place?

The test is a 'functional' test that looks at the decision-making process itself. The Act gives four reasons why an individual might be unable to make a decision, the first three of which cover the vast majority of situations: 1) a person must first be able to comprehend the information relevant to the decision, 2) a person must be able to retain this information for long enough to make the decision, and 3) a person must be able to use and weigh the information to arrive at a choice. An individual who cannot undertake one of these three aspects of decision-making process is considered to be unable to make the decision. The fourth reason, that a person is unable to communicate a decision, is 'intended to be a residual category and will only affect a small number of persons' (MCA Explanatory Notes, s.1(20)). In other words, it is not to be used when someone requires support or aids in order to communicate a decision.

The MCA Code of Practice states the assessment should be carried out by the person who needs the young person to make the decision – in most cases involving EHCPs this will be the LA. In practice, it is likely to be carried out by a professional working with the young person – a psychologist, speech and language therapist, occupational therapist, for example. Sinson (2016, p.75) suggests that school or college or the LA should carry out the assessment (while noting that they might not have the required expertise and therefore may need to delegate), whereas IPSEA suggests that would not be appropriate, at least in the cases of disagreement with parents about capacity of the C/YP.²² As Harris has noted (Harris 2018, p.9), in two decisions of the Upper Tribunal in 2016 it was confirmed that a young person should be assumed to have capacity unless shown otherwise, and that it is the SEND Tribunal that determines whether a young person lacks capacity to bring an appeal. In one case, involving Hillingdon LA, the Upper Tribunal stated that where there is a question of the young person's capacity, 'the most efficient way to resolve it may be as a preliminary issue that the tribunal will have to decide before it identifies the correct parties'.²³ However, the expertise to make that decisions rests with the tribunal panel, the UT stated: 'We need to identify what that expertise consists of and where it resides. In the case of capacity, it is more likely to reside in the members of the panel than in the judge, the registrar or (under the current delegation pilot project) the caseworker. It is the contribution of the members that qualifies the decisions to which they contribute for respect in relation to capacity issues.'²⁴

Where a young person is assessed as lacking capacity for a specific decision, parents (or another adult) can act as an 'alternative person' or seek a deputyship order from the Court of Protection, which allows them to make decisions on behalf of their young person. However, even where a young person lacks capacity, he or she should not be excluded from the decision-making process (MCA Explanatory notes, s.4(30)).

Parents' views of capacity

The roundtable explored views that had been shared from parents involved in a parent/carer forum and considered what is needed to help parents with the shift in role brought about by the CFA. Parents need time to prepare for this shift, and they need information and advice to support them in making the transition; their child's participation in decision-making is a complicated issue.

²² See, e.g., <https://www.ipsea.org.uk/what-you-need-to-know/mental-capacity>

²³ London Borough of Hillingdon v WW [2016] UKUT 253 (AAC) (25 May 2016), para 18.

²⁴ London Borough of Hillingdon v WW [2016] UKUT 253 (AAC) (25 May 2016), para 30.

Parents clearly see themselves as the advocate for their child and as the person to raise a complaint, where necessary, on their child's behalf. As one parent said, *'As parents we are unsure why the LA requires A's voice to be separated from ours, when it is clear that he does not have the mental capacity to contribute at this point in his life.'*

The spirit of the law, being person-centred, is seen by parents as a welcome approach, but they also are sceptical about how the child's or young person's views and wishes can be meaningfully incorporated. It is not, one parent argued, person-centred to obstruct a young person's access to parental advocacy. This is particularly true where the young person is non-verbal. It is also a worry to parents that the LA or school might be interpreting the voice of the pupil.

One parent described her concerns about how the views of her son, who is non-verbal, could be used meaningfully, explaining, *'He can sometimes make choices about things that motivate him, but not always. ...On a daily basis I absolutely expect his views – where he can give them – to be taken into account. But for assessments and documents that could really affect his future provision I feel strongly that his views need to be interpreted by us, his parents, and supported by other adults who know him well.'*

It is also important to consider, as one parent suggested, that 'voice' is not a one-off event but is acquired over time and through ongoing dialogue: *'We feel that A's voice regardless of whether it is written by him or by us, his parents, will have been created through the ongoing dialogue within the home, through long night-time conversations about worries, experiences and through observations of him dealing with the world around him in the light of the support he has needed in various situations.'*

For looked-after children the issue of capacity has enormous implications, as the LA is in effect the 'parent' and also the one to determine capacity, as well as the body being challenged.

Capabilities

Aside from the issue of capacity, whether or not it is 'appropriate' for a young person to participate in mediation (or tribunal hearing) is not a straightforward assessment. It is not simply a matter of age – whether someone is too young to be involved will depend on the individual and the issues in dispute. The nature of an individual's needs or extent of their disability is a factor, but also relevant is how their participation is enabled – e.g. putting in place the structures and support that allow a young person to participate meaningfully. This is a key tension between the social model of disability, which identifies the disabling impact of the environment and attitudinal barriers, and the medical model, which focuses on impairment of the individual. In some ways, this tension echoes that between the citizenship and welfare approaches to 'the voice of the child' in mediation (Shropshire Mediation 2004). Dickins and Williams (2017) give an example that illustrates how a medical model approach can inhibit C/YP meaningful participation and decision-making, citing the wording in an EHCP: 'Due to Aaron's difficulty with language it was not possible to gain his views' (Dickins and Williams 2017, p.15).

It is also important to distinguish between 'legal capacity' and 'capability' – someone might have legal *capability* and not formal legal *capacity* (because of age, for example), something demonstrated in the research by Watkins et al (2018) on the law in children's lives. Watkins et al point out that the growing interest in Public Legal Education (PLE) and legal capability has focused primarily on adults, yet even young children can have legal capability, especially if the approach is taken that law is relevant to children's everyday lives and can be understood by them in that way.

Watkins et al (2018) note that C/YP reliance on adults does not imply a lack of legal capability – part of having legal capability is knowing when and where to go for help. In a study of young people's legal capability, Parle (2009) identified 'knowing where to go for help' as one of the main competencies of legal capability; the others are knowing rights and remedies, spotting a legal issue, planning how to resolve the issue, communicating effectively and managing emotions. Legal capability is made up of knowledge, skills and attitudes, with the latter including issues like persistence, confidence, and attitudes toward people and even spaces in the context of whom to trust, and where it is safe to trust (Parle 2009).

The law and the rhetoric of legal rights 'emphasises the importance of rationality and the intellect': 'The concepts of mental capacity, informed consent and compliance with standards expected by a responsible body of opinion all privilege in legal discourse logical thought and sound judgment' (Herring 2017, p.163). Herring notes a number of problems with regarding emotions as in competition with reason, including that it ignores the 'reality of human life' – 'If the law is to respond to real people, it must respond in a way that recognises the importance of emotion' (p.163). In addition, such an approach ignores the centrality of emotions to care and caring, and this can make the law ineffective – 'If the law wants to impact on people's behaviour, it must speak to their hearts as well as their minds' (p.163). Finally, capacity requires valuing, itself an emotional act that is part of decision-making. Herring also makes the point that 'best interests' is individualised; it focuses on the best interests of the individual (e.g. the young person in SEND, 'P' in the Court of Protection) regardless of the interests of others in relationships with that individual. A 'relational-based welfare' approach, on the other hand, recognises that best interests are appropriately promoted in the context of healthy caring relationships; decisions that only consider the young person's interests would not in fact be promoting that young person's welfare (Herring 2017, p.167). This approach by Herring appears to expand the concept of capacity beyond 'logical thought and sound judgment' so that it merges into that of a concept of relational capability, which in the SEND context gives recognition to the role that parents and other adults play in resolving disputes and to the sometimes differing, and even conflicting, interests of parents and young people.

'Capability' is also relevant in an alternative sense – that of the capabilities approach devised by Amartya Sen and developed in the context of social justice by Martha Nussbaum (Nussbaum 2011). This approach provides a useful framework to consider how people are enabled to *be* and to *do* in the pursuit of individual well-being and life planning. Capabilities are substantive freedoms to choose; *'they are not just abilities residing inside a person but also the freedoms or opportunities created by a combination of personal abilities and the political, social and economic environment'* (Nussbaum 2011, p.20). Terzi (2005) argues that the capabilities approach is a way to overcome the antagonism between the social model and the medical model of disability. Thinking about C/YP, taking a capabilities approach might move us away from the confusion around what 'capacity' means and the constraining legal focus on mental capacity (a term disliked by young people themselves, according to the IPSEA 2017 research) and toward a model of capability, which has an in-built recognition that capability may involve some degree of reliance on others in decision-making. This also is in keeping with the CRPD, which requires supported rather than substituted decision-making.

The capabilities approach is also explored by MacAllister in the context of Additional Support Needs (ASN) in Scotland and philosophical views of children's rights. He notes that there is philosophical disagreement 'that a rights-based approach is the best way to ensure that children receive the care, support and education they need to flourish' (MacAllister 2019, p.8). Tests of

capacity and competence do not feature in a capabilities approach, which 'does not presume that young children are capable of autonomy, but nor is any lack of this considered a barrier to children having a say about important matters affecting them' (MacAllister 2019, pp.10-11). MacAllister questions whether the Scottish legislation, most recently the Education (Scotland) Act 2016, does give C/YP enhanced rights in practice (and not only on paper, which he says is what rights without capabilities amount to) and whether a rights-based approach is appropriate in this context. He draws on Nussbaum and also the 'ethic of care' explored by Herring, which holds out the potential for a revised concept of 'autonomy' that incorporates interdependency, relationships, and care of others. He explores four potential objections to a human rights approach generally and to the specific approach to rights taken in the ASN legislation. These are that human rights might be 'moral fictions' that encourage manipulative behaviour; that focusing on 'the fundamental obligations adults have towards children' might be a better place from which to build up policy than conferring fundamental rights on C/YP; that a care-based approach (one focusing on relational rights and an ethic of care) might be preferable to a rights-based approach; and that the Scottish approach, in which capacity and competence of C/YP are subject to tests (as opposed to a presumption of capacity), 'can leave children and young people prey to manipulation by those in power' (MacAllister 2019, pp.3-4).

Whether a capabilities approach might provide a more useful framework for understanding how young people with SEND can be supported in decision-making is an area deserving further consideration. Capability is knowing when and where to go for help, not knowing everything yourself. It includes supported decision-making – young people being supported to make the decisions they can make. Would a capabilities approach help us move away from the limitations, tensions and misunderstandings of the concept of mental capacity?

Chapter 6 – Advice, information and support

Sources of information and advice

The CFA puts a duty on each LA to *'arrange for children and young people for whom it is responsible, and the parents of children for whom it is responsible, to be provided with advice and information about matters relating to the special educational needs of the children or young people concerned'* (s32). LAs are expected to establish and fund Information, Advice and Support Services (IASS, formerly known as Parent Partnership services) for parents and C/YP in relation to SEND. The SEND Code of Practice states that LAs *'must ensure children, young people and parents are provided with information and advice on matters relating to SEN and disability'*, including *'information on the local authority's processes for resolving disagreements, its complaints procedures and means of redress'* (2015 CoP 2.17).

LAs' provision of information on SEND services, early years, schools and colleges, and preparing for adulthood is referred to as 'the Local Offer'; in practice, this is a website set up by each LA. As with IASS services, there appear to be some Local Offer websites that have information geared to young people, but not all.²⁵

In addition to the Local Offer, in relation to particular LA decisions on requests for needs assessments or for EHCPs, the SEND Regulations²⁶ detail what information LAs must provide to parents and to young people about challenging the decision:

'When sending a copy of the finalised EHC plan to the child's parent or the young person in accordance with section 39(8)(a) or 40(5)(a) of the Act, the local authority must notify them of—
(a) their right to appeal matters within the EHC plan in accordance with section 51(2)(c) of the Act;
(b) the time limits for doing so;
(c) the information concerning mediation, set out in regulation 32; and (d) the availability of—
(i) disagreement resolution services; and
(ii) advice and information about matters relating to the special educational needs of children and young people.'

Despite these duties on LAs, the provision of appropriate and accessible information and advice for C/YP on SEND complaints and dispute resolution is patchy, both in terms of quantity and quality. In addition, some LAs appear to be sending decision letters (which contain the statutory information on advice, appeal rights and mediation) to parents only, regardless of the age of the young person.

There is recognition that a one-size-fits-all approach to developing information for C/YP with SEND is not appropriate, but the challenge as to how to address the range of needs has not been met. Distilling such a complex area of law into a format that is accessible to any C/YP is not only difficult; there are also questions as to the whether it is appropriate to produce alternative versions – i.e. one for the 'professionals' and one for the 'service users'. The Department for Education commissioned new guidance to be produced in connection with the SEND Tribunal

²⁵ For example, Bradford and District, <https://localoffer.bradford.gov.uk/content.aspx?mid=317>, compared with Hammersmith & Fulham, <http://search3.openobjects.com/kb5/lbhf/fis/localoffer.page?localofferchannel=0>

²⁶ Special Educational Needs and Disability Regulations 2014, http://www.legislation.gov.uk/uksi/2014/1530/pdfs/uksi_20141530_en.pdf

National Trial providing a single route of redress for social care and health issues as well as the tribunal's existing jurisdiction of education. In steering group meetings discussing this guidance, a number of views were expressed as to whether separate guidance should be produced for parents/carers and C/YP, as a more accessible version of that being produced for SEND professionals. The decision was made, 'in light of transparency',²⁷ to produce a single document of guidance (DfE 2018d). In addition, in August 2018 a [leaflet](#) was produced by the DfE specifically for young people aged 16-25 on resolving SEND complaints (Mott McDonald et al 2018b).

The Council for Disabled Children lists on the I'm a Young Person section of its website some resources on SEND specifically for young people. These include IASS, which has a C/YP-friendly section on its website which is primarily a signposting service with no detailed information on resolving complaints and disputes. The CDC young people's section also lists Independent Support, which ended in July 2018, although some factsheets and other resources produced as part of the Independent Supporters programme remain available. Some IASS services have young person-specific projects, but most of these services are severely under-resourced, and there is also the question of how aware C/YP are of these services.

Specifically, the provision of advice and information for C/YP on exercising their new rights in relation to SEND disputes does not appear to be resourced sufficiently. (In Scotland, in contrast, the extension of rights to C/YP at age 12 (which came into force in January 2018) was accompanied by a funded service and helpline for C/YP, called Reach.) But it is not clear if young people would use these sources of information and advice even if they were better resourced. A review of IASS services in 2017 reveals little C/YP direct engagement with the services (IASSN 2017). The IPSEA research found that nearly three-quarters of young people said they would look to their parent/carers for information on education and training, highlighting the importance of both ensuring that parent/carers have the necessary information and, for many young people, supporting their relationship with their parents (IPSEA 2017).

In relation to mediation, some providers have produced C/YP-friendly literature; the Together Trust, for example, has an Easy Read version of its mediation information leaflet and an accessible form for young people aged 16+ to authorise a representative (e.g. a parent) to attend mediation and speak on their behalf. KIDS SEND Mediation has an [Easy Read leaflet](#) for young people aged 16-25, which is available on their website. Global Mediation also publishes a leaflet specifically for young people. There does not appear to be any consistent approach to what or how information is provided for young people by SEND mediation providers, however, and there is no requirement to do so.

The SEND Tribunal does not currently produce information targeted specifically at C/YP appellants. In comparison, a 'Guide to Mental Health Tribunals for Young People' has been produced by the First-Tier Tribunal-Mental Health with the Royal College of Psychiatry, and a video showing a young person's experience with the SEND Tribunal in Wales is available on YouTube.

Where does the responsibility lie to ensure there is a system in place to support C/YP to exercise and enforce their rights? Although legislation is clear that responsibility lies with LAs, is this realistic, given the reality of where young people seek help? Participants at the roundtable meeting had a range of views of where responsibility lies: with parents, central government, LAs, schools and colleges, and perhaps with all of us. Also, information that is too generic and not

²⁷ Notes of SEND National Trial Steering Group Meeting, 7 February 2018, Mott McDonald.

tailored to individual circumstances and need is less helpful. How to make sure that LAs discharge their duty, particularly in light of budget cuts to local government, is a key issue. It was noted that the system is based around individual rights, but the information infrastructure is so starved of resources that it is impossible to deliver on this.

Developing legal capability

In an earlier section, this report discussed the concept of legal (as opposed to mental) capability and referred to the work of Watkins (2018) on the extent to which even young children can understand aspects of how the law affects them. Legal capability includes knowing where to go for help and support, including where to go for information. It is an issue being addressed by organisations working directly with young people. Youth Access, for example, has developed an education programme for 16-24-year-olds who are not in education as a way to try to overcome the sense of powerlessness that has been identified as the primary obstacle for young people in resolving and identifying legal problems. The course equips the young people with an approach to tackle legal problems. Their Making Our Rights Reality project has produced a manifesto setting out how young people want their rights respected (MORR 2014).

Recognising the scarcity of accessible information on SEND rights for C/YP, IPSEA was funded by the Legal Education Foundation to produce resources for young people (aged 16+) to enable them to use the law to get the right support, as well as training and services to parents and young people. The researchers carried out surveys of parents and carers as well as young people to explore their views on information and advice resources on SEND law. The project produced a report and a list of existing resources, many of which are available on the Are You a Young Person? section of IPSEA website, including a leaflet explaining young people's rights on decision-making and dispute resolution.

Information from the IPSEA research (2017) found that young people requested information that does not include much writing, large text, pictorial images, and in separate sheets from those targeted at parents and schools. Short videos and podcasts were also mentioned as welcome resources by some young people. Reflecting the fact that C/YP with SEND have a range of different needs, some stated they prefer written information and others that they prefer face-to-face advice from someone they know. Designing a single information resource to meet all needs is not feasible. Ideally, young people would like individually tailored information, which is often not possible due to resource constraints. One of the conclusions of the IPSEA research is that young people are likely to need support rather than to act independently in asserting their rights in relation to SEND. They are unlikely to be able to absorb large amounts of information and prefer short, simple resources in clear language. This is a challenge given the complexity of the SEND legal framework.

The IPSEA research also demonstrates the importance of having young people involved in developing resources (e.g. some terms not understood, use of acronyms, replacing 'local authority' with 'council', explaining 'assessment', use of 'triggering language' such as 'special' and 'mental capacity').

Access to legal advice

Early access to legal advice can be critical for young people, but an initial obstacle is that many young people do not identify their problem as a 'legal' one; in recent Ministry of Justice research,

only 6% of all young people viewed the problem they faced as legal (Balmer and Pleasence 2018). If they do, they may not trust the services that can help them; relationships and trust are essential building blocks. It was suggested at the roundtable meeting that parents also do not always identify an issue with SEND as a legal problem in the way SEND professionals do – they 'slip on a loose drain', as one participant stated, suggesting that there are risks in proceeding with a complaint or dispute without knowing one's legal rights. Participants suggested that there are many systemic issues to be addressed, not only in terms of cuts to legal aid and other barriers to accessing advice, but also in the need for a cultural change to one that respects young people's rights. In practice, it appears that SEND decision-making and dispute resolution are more likely to be addressed as a welfare issue rather than a rights one, contrary to the assertion that young people's involvement should not be 'in the gift of adults but a legal imperative', i.e. the young person's legal rights (Lundy 2007, p.931).

Parle (2009) found that *'young people's lack of knowledge of their rights/entitlements, legal processes or where to go for help impeded their ability to recognise that they were dealing with an issue with legal elements'*, which in turn affected their ability to resolve, or even to plan how to resolve, the issue. Drummond (2016) identifies pre-hearing advice and support and access to legal representation as essentials to address inequality of legal arms and also to counter the concerns about C/YP capacity and capability as outlined above. (The assumption that young people are always less likely than their parents to be aware of and to access information and advice is in some contexts misplaced. Genn et al (2006) found in their study of tribunal users that in some communities, particularly Pakistani, South Asian and Somali communities, younger people were considered to be more aware than older people of sources of advice and were a resource for older people, who faced language and cultural barriers.)

A study carried out with C/YP by Just for Kids Law with the Children's Commissioner on the impact of legal aid changes found that legal advice was necessary for many C/YP to resolve a problem with their LA or school (on, for example, homelessness, assessments for services and permanent exclusions) (Just for Kids Law and OCC 2014). There was generally a low level of awareness of their issue being a legal matter and evidence of difficulty achieving a resolution of the problem without legal advice. Pursuing alternative remedies (e.g. complaints procedures or mediation) could be effective, in appropriate circumstances, but legal intervention was usually necessary to progress cases.

The current situation suggests a need for radical re-thinking of how legal advice is made available to C/YP. A study of legal aid and access to justice for children noted that the Justice Select Committee, the Joint Committee on Human Rights and the Office of the Children's Commissioner have all criticised the removal of legal aid from children's cases (Coram Children's Legal Centre 2018). Although SEND remains in scope for legal aid, access to it is restricted to a mandatory telephone gateway. An exemption was made for children, so that they are not required to use the mandatory gateway. However, Coram Children's Legal Centre (2018) notes that in reality this exemption is operationally difficult to achieve for a number of reasons, including that there are very few specialist education law providers and only two legal aid contracts for education law. An independent review of the mandatory telephone gateway for civil legal aid (Hickman and Oldfield 2015) found that the number of SEND matters (one of three areas covered by the gateway alongside debt and discrimination, and identified as a priority area) started via the gateway was 45% lower than had been anticipated. Problems included lack of awareness of the gateway and difficulties navigating the service. Young people who are still eligible for legal aid post-LASPO were less likely to use either the telephone or the internet (Balmer and Pleasence 2018).

Telephone advice is in any case not always suitable for young people with SEND; the latest evidence (Balmer and Pleasence 2018) suggests that mobile phone usage is leading to a shift in how young people are accessing information, but it would be wrong to conclude that young people do not nevertheless benefit from and value face-to-face advice. The Coram report (2018) emphasises the value of face-to-face advice in two case studies, one involving a tribunal appeal and the other to secure EHC needs assessment. What does seem clear is that there is no single way in which young people use different modes of advice, as evidenced by the IPSEA research (2017).

It is clear that access to legal aid is only part of the picture of access to information on rights; only a tiny proportion of young people with legal needs ever gets to a lawyer and an even smaller proportion get that advice under legal aid. This underlines the importance of accessible and good-quality information, of resources to develop legal capability of, and interlinked youth advice services. The Local Offer of each local authority would be a logical one-stop shop for signposting to appropriate face-to-face services, but this would rely on young people being aware of the Local Offer sites and being able and willing to access information online. In any case, information and signposting still depend on an infrastructure of advice services being available locally for tailored advice.

It is also possible that a focus on access to advice on legal rights poses a threat to the importance of relationships in these young peoples' lives. The law prioritises autonomy, the individual and individual interests: 'The traditional legal method of setting out the claims of rights of each party do not match how people understand their personal lives' (Herring 2017, p.165). It assumes that we can separate out individual interests and 'enforce' them. It also requires 'framing' a dispute as a legal one, which can be particularly problematic in the SEND context because these disputes are not one-off legal events (although they include those, such as individual decisions that trigger a right to appeal) but ongoing matters of what Herring refers to as 'a working-through of relationships'. A relational concept of rights would recognise the individual's legal rights and the one-off legal event to enforce them but also place that individual in 'a web of relationships of care, attachments and interdependency'. Where there is a clash of rights of different individuals (in the SEND context, this might be parent/carer and young person), there is a need to identify the values at play and seek a balancing of competing rights that supports rather than undermines relationships that are important for young people. This exploring of the underlying values reflects the approach in mediation to identifying needs and interests behind parties' positions, more fertile territory to identify 'common ground' than the 'peaks of positions' often taken by people in disputes.

Part Three: CONCLUSIONS AND NEXT STEPS

This Part briefly sets out the conclusions, ideas for guidance, and recommendations for next steps.

Chapter 7 - Conclusions

This project has highlighted a number of challenges in the transfer of rights from parents to young people under the CFA and the gap between the SEND policy emphasis on rights and participation, on the one hand, and actual practice on the other. It has focused on three key themes through which these challenges could be explored further:

- In relation to **Participation**, listening and communication are the primary tools. It is clear that the roles of parents, LAs, and schools and colleges are key, as is the need to build relationships between C/YP and the adults working with them. There is a need to better understand what type of participation is desired by each individual young person and how best to facilitate this. Responsibility for facilitating participation is a duty on LAs but in effect is shared among a number of individuals and institutions, including schools and colleges, professionals working with young people, and parents/carers as well as mediation providers and the tribunal. Barriers to participation include practical barriers (e.g. lack of resources to aid communication) and, more importantly, attitudinal barriers, many of which are based on assumptions about the ability of young people to make decisions and participate meaningfully. Participation can take many forms, and innovation is needed; not all means of facilitating communication require costly resources.
- In relation to **Capacity**, the legal concept of mental capacity appears not to be well understood in the SEND context, and assumptions about the capacity of C/YP can hinder attempts at meaningful participation in decision-making. There is a need to understand if young people are being adequately supported to participate in decision-making. Although determining mental capacity (i.e. through a formal assessment under the Mental Capacity Act 2005) may be necessary in some cases, assertions of lack of capacity are too often put forward as a reason for a young person not to be involved and should be challenged. Where there is disagreement about the mental capacity of a young person, this can lead to barriers to resolving disputes. A focus instead on legal capability, and a capabilities approach, might be more fruitful and inclusive.
- In relation to **Information and Advice**, this project has identified that accessible resources on SEND complaints and dispute resolution are limited. Without adequate information, it is difficult to expect C/YP to be aware of and exercise their rights under the CFA. If we are committed to a rights-based approach in SEND (the appropriateness of which is contested by some), then resources will need to be invested as a priority, with C/YP taking part in co-developing such resources and co-delivering training, in order to develop a robust rights infrastructure to match the policy intention. Schools and colleges are an important source of information for young people and could play a larger role developing young people's awareness of their rights in relation to SEND decision-making. In addition, access to independent specialist advice and advocacy is needed to support young people in exercising their rights.

Challenges

These are not simple challenges to meet. There is the issue of decision-making capacity and parents' concerns about their child's best interests. There is also the unique dynamic between young people and their parents, and between young people and those perceived to be in power, such as LA officers. Young people may feel coerced into agreement in mediation, or their silence might be taken as tacit acceptance. There is parents' need to shift from a decision-making to an advocacy role, and their need for support to do so. There is the danger that disagreement will occur between the young person and her parents: 'Mediators may find themselves in the position of eliciting input from a student when the parents do not want the student's perspective to be considered' (Mueller et al 2003), leading to 'mediations within mediations'. There are many attitudinal and structural problems to overcome. Finally, but crucially, resources will be needed to address some of the challenges: the lack of accessible information and advice for young people, the need for professional advocates and supporters, and the need for training.

A starting point is the need for better quality data. Both tribunals and mediation providers experience some level of involvement by C/YP. The Code of Practice makes it clear that the right to request mediation or lodge a tribunal appeal rests with the young person rather than his or her parents, although young people can ask for support from parents and others. In practice, young people appear to be not exercising those rights, although without better quality data it is impossible to determine this with certainty. We do not know how many appeals and mediations involving young people are led by them, as opposed to by a parent/carer. The project has illustrated the data gap in this area, which has been described as an area that is 'anecdote rich but data poor'. It was agreed that more data is needed on the statistics for both mediation and tribunal cases. One practical step would be for mediation providers and the tribunal to obtain authorisation or consent from young people who want their parents or another adult to act for them. Currently, both SEND mediation providers and the SEND Tribunal take a pragmatic approach to young people as legal rights holders and do not require authorisation or consent when accepting a mediation request or appeal made by a parent of a young person aged 16-25. It would be useful to have greater clarity on the expectations regarding consent and authorisation.

Much attention is given to the rights of young people to request mediation or lodge an appeal in relation to EHC needs assessments and EHCPs. But most C/YP with SEND do not have EHCPs, and those who receive SEN Support (as opposed to those with EHCPs) do not have access to an effective independent mechanism for complaints. This supports the argument that power should be restored to the Local Government and Social Care Ombudsman to consider complaints about schools.

Independent advocacy is considered essential if C/YP are to be supported to participate in dispute resolution on SEND issues. It is not always possible to access an independent advocate, however, and it is not clear if all C/YP would want to have an advocate but would prefer to have their parents advocate for them. Should provision of independent advocacy for young people aged 16-25 be a default assumption, with young people able to opt out if they choose to do so?

One question arising at the roundtable discussion was: Why are young people not involved from the start in their SEND support planning? This should be embedded into the SEND work done by schools and colleges and local authorities. Roundtable participants suggested that in the four years since the reforms were introduced, there has not been the cultural change needed. Where is listening happening within the organisations involved in SEND, and what role should the Equality Act and Human Rights Act take in underpinning the approaches taken by organisations? It was also

suggested that feedback mechanisms are too formal and not accessible – this area is particularly under-developed, hindering young people's ability to feed into decision-making even informally. Participants explored whether better use of technology, such as producing webinars by and for young people, can assist with the gap identified.

As noted above, participants in this project believe that young people should be involved as co-producers of guidance on how to design/redesign dispute resolution processes that facilitate their participation and decision-making. How do we do that? Participation groups are not intended to be representative of young people generally, and there will be a range of views and preferences as well as a range of needs to take into account. Funding will be needed to resource this work.

One of the conclusions from the project is that there is a disconnect between the policy ambitions of participation and decision-making by young people with SEND, on the one hand, and the support of and exercise of individual participation rights on the other. The welfare approach that is the predominant approach taken in SEND dispute resolution is in keeping with an emphasis on 'voice' and participation, but it is not in keeping with the decision-making rights that young people have under the 2014 SEND legislation in the way that a 'citizenship' approach would be. We do not know enough about what young people want in the way of participation and decision-making, but we know that 'young people with SEND' are not a homogenous group. Each young person will have his or her own views on whether and how to participate. The value to young people of having a right to make decisions on SEND matters should be tested by work directly with young people themselves and should reflect their individual preferences. The language of legal rights and mental capacity are in many ways not well suited to SEND disputes, and they insufficiently recognise the importance of relationships and trust. Yet if a rights-based approach is what we are aiming for, then the default position must surely be that young people should be supported to participate in and act as decision-makers in mediation and the tribunal to whatever extent they choose to, and not merely be allowed to exercise 'voice'. However, that ambition cannot be realised without the infrastructure of advocacy, advice and information, both to young people as decision-makers and to their parents/carers as supporters of young decision-makers.

Chapter 8 – Next steps

One original impetus for the project was the sense that the practices of SEND mediation providers and the SEND Tribunal need to be adapted to be more inclusive of young people aged 16-25 and to facilitate their meaningful participation in mediation and appeals. The aim was to gather views on what guidance might look like for mediation providers and for tribunal members. As the project developed, it became clear that guidance and adapted practices form only one part of the solution and that much more needs to be done in relation to information and support for young people and their parents but also for LAs and schools and colleges.

It may be that developing guidance is still an appropriate aim, and ideas on what and how to proceed with this are set out below, but other improvements are needed before any change in practice will have effect. These other improvements include increasing the data collected and published so a clear picture can be gained about the extent to which young people are exercising their rights. It would also be helpful to gather and share examples of good practice by LAs, schools and colleges in facilitating young people's participation and decision-making.

What follows are ideas arising from participants in the project, including the co-production of guidance for mediators and tribunal members but also including a number of recommendations for next steps that could be taken by the wider range of stakeholders involved in SEND.

Guidance

Whether participation means active involvement as a decision-maker or some other form of young person's engagement with dispute resolution, it is important to consider the ways in which that participation can best be facilitated. This involves making accessible information and advice available and providing communication aids and advocates/supporters. Facilitating meaningful participation goes beyond providing support for a young person with SEND, however. It is clear that more guidance and support is also needed for parents and for LAs and other professionals working with C/YP with SEND, as well as for mediators and tribunal members. In keeping with the ethos of the social model of disability, it is the operation of the dispute resolution mechanism (in this case, mediation and tribunal) and the behaviours of those who work within it that also requires adjustment and support. As Series (2015) notes, *'In addition to providing supports for a particular person under Article 12(3) CRPD, Article 13 CRPD is an important reminder that the legal system itself should make appropriate accommodations to facilitate effective access to justice for people with disabilities – including by promoting appropriate training for those working in the justice system'*.

What would guidance for SEND mediators and the SEND Tribunal include? Generally, the participation literature suggests the need to emphasise listening and facilitating communication by and with young people – which might involve speaking but must also involve other methods of communication in order to accommodate a range of communication needs. For mediation this is even more crucial, as mediation focuses on direct exchange between the parties rather than on written evidence; also, in mediation the parties are the decision-makers and therefore need to understand what they are agreeing to in any settlement.

Dickins and Williams (2017) emphasise the value of listening and of exploring various forms of communication, noting that *'Communication difficulties are most often cited as the reason why disabled children, especially younger ones, are not consulted'* (p.4). In a study by the Children's Commissioner, disabled C/YP emphasised that they often felt they weren't listened to, and that

adults need help to understand how to communicate with them (Children's Commissioner 2014). Although to some extent communication techniques can be learned, adults' fear of not having the appropriate skills or expertise to listen to disabled C/YP can be a barrier. More significantly, attitudinal barriers, such as assumptions about capacity, can be more difficult to shift.

Good-practice examples

An initial step is to gather examples of good practice in facilitating communication and participation by C/YP. A comprehensive map of good practice guidance is beyond the scope of this project, but some examples are given below:

- The Communication Trust has published a list of strategies to support involving C/YP with speech and language communication needs, including a '**communication passport**'. This can be one page, or a booklet, written in the young person's voice to capture key information about that young person's specific communication needs. Other strategies include visuals, such as 'About me' pictures, visual schedules and storyboards.
- How to listen to C/YP is a key element of the *Ask Listen Do* project of NHS England, which is about helping young people and health and care providers to have better conversations, including when things go wrong. The project is using a **co-production model to develop resources that organisations can use to help improve their listening** and resolution skills and that young people can use to help understand how to navigate service provision and complaint routes.
- The Making Participation Work programme, a partnership of the Council for Disabled Children and KIDS which is funded by the DfE, produces a number of **factsheets on facilitating participation by C/YP**. Factsheet #4 addresses barriers to participation, and Factsheet #5 considers how to include C/YP in formal meetings.
- One mediation provider has developed a **This is Me booklet** for the C/YP to complete in advance of mediation. The booklet can help a C/YP focus on what's important to them, and if the C/YP agrees, it can be shared with the LA and other professionals at the mediation, whether or not the C/YP attends.
- Walsh (2017) explores mediation process considerations, including the use of collaborative '**plans for participation**' and non-parental advocates.
- Detailed, **stage-by-stage consideration of practical issues in mediation** is usefully set out in Mueller et al (2007), which looks at SEND mediation in the US but has relevance for the context in England.

Any guidance should also consider how mediation and tribunal practices could be adapted, and what training might be needed on working directly with C/YP with SEND. SEND mediation providers could adopt greater flexibility in the process used by, for example, holding **shorter face-to-face mediation meetings**. Mediators could consider offering a series of pre-meetings, which can be important for developing trust, and breaking mediation sessions into several shorter sessions rather than one-off events. The choice of mediation venue can affect young people's participation. It may be that where a young person is in education, **mediations should be held in school or college** to facilitate the young person's involvement. Both SEND mediation providers and

the SEND Tribunal members could adopt **more flexible time limits**, use **less formal settings** for hearings and mediations and produce **accessible literature** for C/YP. Preparing C/YP for attending hearings and mediations can be helpful. When C/YP are attending mediation, for example, the mediator could arrange for them to have **photographs** in advance of all the professionals attending. There is also the need for mediators to be equipped to work with C/YP with SEND and for the **SEND Mediation Practice Standards to require expertise or training** in this, an approach being adopted for a child-inclusive focus in family mediation.

Young people as co-producers and co-researchers

The primary gap in knowledge identified by the existing research relates to C/YP views about their participation – for example, what type and level of participation is desired and considered necessary by individual C/YPs themselves, and what procedural adaptations would enable participation?

Relevant to this project are lessons learned on the challenges of including children and young people (C/YP) in research focusing on their views and their participation. Shaw et al (2011) have produced guidance on involving C/YP (not necessarily with SEND) in research, *‘based on the premise that CYP are social actors who have a right to be involved in research about issues of concern to them. It is important to note that we not only seek to involve CYP in research because they have a right to be involved but also to improve the quality of the research itself’* (p4). They also note, however, that additional time is needed in order to deal with ethical issues on access, consents and gatekeepers (e.g. parents and others), and specific methodological challenges arise in relation to making research involvement meaningful and accessible to C/YP. This will require not just the resources (time and funding) to meet the challenges but also support to overcome assumptions that researchers might hold in relation to the contribution that C/YP can make as co-producers of research and that might lead to the risk that C/YP are incorporated into research methodology in a tokenistic or even exploitative way.

In relation to developing practitioners' guidance, the conclusion at the roundtable was that young people should be involved as co-producers²⁸ and have input on the design/redesign dispute resolution processes that facilitate their participation as decision-makers.

Participants at the roundtable discussed the 'slippery concept' of co-production with young people and the need for resources to facilitate such co-production. What is needed is involvement by young people, to design how they want to be involved, both in dispute resolution and in research and production of guidance. It's important to consider who is not involved as well as who is, and to assess whether young people are being asked to represent themselves (and their interests, which are variable) or to represent the interests of a group.

²⁸ 'Co-production' is a term with 'historical roots in civil rights and social care in the USA' and is used in relation to the role of service users in service provision. 'In the UK, co-production in healthcare and social services has gone beyond models of service user consultation towards developing a model of service delivery intended to impact on service users and on wider social systems.' Realpe, A and Wallace, L (2010), 'What is co-production?', The Health Foundation, available at: https://personcentredcare.health.org.uk/sites/default/files/resources/what_is_co-production.pdf

Recommendations

Below are set out questions for further research as well as practical steps that can be taken to improve our understanding of the implementation of C/YP rights, and specifically those of young people in relation to SEND decision-making and dispute resolution.

Further research

The report has identified questions for further research on the implementation of C/YP rights in the CFA and Code, including:

- Is a rights-based approach the right one for young people in the SEND context?
- Does meaningful participation in decision-making by young people improve opportunities to achieve good-quality outcomes for those young people?
- How do LAs facilitate C/YP engagement in EHCP planning and decision-making, including examples of good practice?
- Do C/YP themselves consider that participation in decision-making has affected them, and if so how?
- Do parent/carers consider that C/YP participation has affected them, and what help is needed for parents to adapt to a shift in their role to supporting their child's decision-making?
- How is the MCA being applied in SEND? Would a capabilities approach provide a more inclusive framework for understanding how young people may be supported in decision-making?
- How to improve the data collected and published by the SEND Tribunal and mediation providers in order to determine the extent to which young people, including those who are looked-after, participate in dispute resolution on SEND matters?
- What changes in the information and advice infrastructure (rights awareness, legal aid, SEND expertise, advocacy) are needed to make exercising this right a meaningful and realistic option for those C/YP who choose to do so?

Actions for researchers and practitioners:

- Conduct, commission and coordinate further research on the research questions above.
- Consider how to engage C/YP as co-researchers.

Actions for the Department for Education:

- When the Code of Practice is reviewed, consider clarifying what is expected of mediation providers and the SEND Tribunal in terms of assuming a young person's involvement and otherwise gaining young people's consent/authorisation for parents to act for them in resolving disputes.
- Work with researchers to review the data collected and published and work with the Ministry of Justice to consider how to improve the statistics on C/YP participation in SEND dispute resolution including mediation and the SEND Tribunal.
- Commission a survey and analysis of Local Offers of all 152 LAs in England to shed light on good practice and areas where improvements are needed and to facilitate sharing of good practice among LAs.
- Develop a range of accessible information resources, include visual and online resources, on rights and dispute resolution in relation to SEND, and have C/YP involved in developing them.
- Commission a database of support specialists to help young people choose who will support them in decision-making.

- Ensure independent advocacy is available to all C/YP with SEND.
- Share best practice on mechanisms for C/YP to participate in decision-making.

Actions for local authorities:

- Communicate directly with young people aged 16-25 about EHC needs assessments and EHCPs (e.g., write decision letters and other correspondence to both parent and young person in an appropriate format).
- Involve young people in 'next steps' meetings following decisions on EHC needs assessments and EHCPs.
- Consider requiring young people to sign (or otherwise confirm acceptance of) their EHCPs.
- Identify the obstacles that LAs face in carrying out their duties in relation to young people's participation and information and advice.
- Consider requiring mediation providers to collect data on C/YP involvement in SEND mediation as part of contractual requirements.

Actions for schools and colleges:

- Focus information and advice resources on Year 9, and include face-to-face advice.
- Consider 'rights assemblies' and in-school surgeries with rights workers available to help pupils.
- Encourage C/YP to take charge of inviting professionals, including the LA, to their Annual Review meetings.
- Help to support parent/carers to adjust to a shift in their role from advocate on behalf of their child to supporter of their young person's decision-making.

Actions for mediators and mediation providers:

- Collect and publish data on the levels and type of participation in mediation by C/YP, and especially look-after C/YP and care leavers.
- Obtain the young person's signature on mediated agreements when they have attended mediation.
- Recruit and train young people as SEND mediators.
- Publish anonymised case studies illustrating types of C/YP participation in mediation.
- Develop information resources aimed at young people with SEND.
- Consider if the guidance and training for SEND mediators sufficiently covers working directly with C/YP.
- Consider if the Practice Standards for SEND Mediators are sufficiently robust in relation to working with C/YP.
- Allow more flexibility into the model, timings, and venues for mediation.

Actions for the SEND Tribunal:

- Send all appeal correspondence directly to the young person in appeals involving young people aged 16 or older.
- Consider if the guidance and training for tribunal members sufficiently covers working directly with C/YP.

Actions for the LGSCO and PHSO:

- Work proactively and directly with C/YP and their representatives to raise awareness of the ombud route for complaints on SEND.

Appendix 1: A Place at the Table methodology and project activity

Methodology

A Place at the Table is a knowledge exchange project and has involved meeting with and interviewing a number of stakeholders (participants), preparing briefing materials, commissioning and publishing blog posts, and holding a roundtable meeting to discuss arising issues and explore next steps. The project was approved under the University of Essex ethical approval process.

Stakeholder engagement has been very involved, including meetings (in person or by phone), beginning with partner organisations KIDS Mediation Service and Garden Court Chambers and with the Local Government and Social Care Ombudsman. Participants were identified initially through a contact with those organisations that have a central role in SEND in relation to complaints and disputes and subsequently through referrals and suggestions by participants. Between November 2017 and March 2019, meetings and discussions have been held with 33 key individuals or groups representing children's disability organisations, SEND legal advice providers, local authorities, SEND advocates and Independent Supporters, the Department for Education, NHS England, mediators, the tribunal and academics; they were conducted in person, by phone or by Skype (see Appendix 1). Email exchanges facilitated further information and engagements. Stakeholders have expressed enthusiasm for the project and have contributed further contacts and suggested participants, which has led to an increased number of stakeholders than originally envisioned.

Key external stakeholder engagement by type Nov 2017 – March 2019

Stakeholder group	Meetings/discussions held	Email exchanges (no meeting)
Partners	KIDS Mediation Service (partner) (x 2 London and Regional services)	
	Garden Court Chambers (partner)	
Local government	Local Government and Social Care Ombudsman	
	Local authority representative	
	Local authority senior SEND team	
Health	NHS England Disabilities team	
Education	Dept for Education SEND team	
	Mott McDonald (consultant to DfE)	
	National Association of Independent Schools and Non-Maintained Special Schools	
Advice	Independent Parental Special Education Advice (IPSEA)	
	SEND Information and Advice Support Services (SENDIASS)	
	SEND-specialist lawyer x 2	
	Youth Access	
	Independent supporter	
SEND Tribunal	Deputy Chamber President	
Mediation	SEND mediation provider	Mental health specialist mediator
	SEND-specialist mediator x 2	SEND-specialist mediator x 2
	Family mediator	
Researchers	Academic researcher x 2	Academic researcher x 2
Other		Children's Commissioner
		Council for Disabled Children
	Parent/carers forum	

The researcher obtained access to data collected by KIDS SEND Mediation Service (both London and Regional services) on the frequency of young people's participation in SEND mediation covering the calendar year 2017. Data proved to be a challenge in that mediation providers do not routinely collect data on this aspect of their service users. In order to access case files and mediation agreements, the researcher produced a data access confidentiality form, which allowed the mediation provider to give limited access to mediation agreements and to feedback forms from parties. The researcher contacted two other SEND mediation providers; she did not receive a response to the request for statistics on young people's involvement from one, and the other is only beginning to gather this information and so was not in a position to provide statistics. As far as the researcher has been able to ascertain, there is no other source of data on young people's participation in mediation or tribunal appeals, although this will be explored with the Department for Education (DfE), the tribunal and mediation providers.

The researcher presented the project at two mediator continuing professional development meetings held by KIDS (November 2017 and July 2018) and attended a Council for Disabled Children (CDC) webinar ('It's My Life') on decision-making for young people with SEND (December 2017), a workshop on Making Participation Work held by CDC and KIDS (September 2018), and a seminar held at the University of Edinburgh on current research on children's rights and SEND (June 2018). The researcher also presented the project and initial findings at a panel session mediation and inclusion at Garden Court Chambers as part of Mediation Awareness Week (October 2018). In February and March 2019, the researcher participated in two workshops on education developments in Wales, presenting a snapshot of the SEND dispute resolution landscape in England.

Opportunities for co-production and impact have arisen in relation to the steering group for the national trial to extend the powers of the SEND Tribunal. This is a two-year trial that started in April 2018 to allow the tribunal to make recommendations on health and social care aspects of SEND. Impetus for this trial arose from powers in the Children and Families Act 2014 to pilot this extension to health and social care and from subsequent research on the pilot commissioned by the DfE (Cullen et al 2017). The steering group has been set up by the DfE and is run by consultants Mott McDonald. As a UKAJI representative, the researcher is a member of the steering group. In connection with this, and also arising from the 2017 research and DfE initiatives on SEND information for young people and SEND mediator standards, the researcher also gave feedback on the draft leaflet for parents and young people on SEND complaints, disputes and appeals, published in September 2018, and responded to the consultation on SEND mediator standards, published in June 2018.

Project activity

Completed work

The key activities of the project are as follows:

- Conversations, meetings and interviews have been held with individuals from advice and support organisations, mediation providers, researchers, lawyers, local authorities, the Department for Education, NHS England, and the Local Government and Social Care Ombudsman.
- [A Place at the Table project website](#) has been set up as a resource on the project and related developments.

- A briefing paper was produced for the roundtable meeting and circulated to participants.
- A roundtable meeting was held in June 2018 involving stakeholders (see Appendix 2 for list of participants).
- A [summary of the roundtable meeting](#) was published along with presentation slides and flipcharts from the session.
- Six blog posts have been published on the project (most posted on the UKAJI blog and re-posted on the project website²⁹):
 - M Doyle (15 March 2018), 'PART 1 – [Young people's involvement in SEND dispute resolution](#)'
 - M Doyle (24 April 2018), 'PART 2 – [Young people's involvement in research, research gaps and what guidance is needed for mediators](#)'
 - M Doyle (7 August 2018), '[Summary - Young people's participation in SEND dispute resolution: A Place at the Table roundtable discussion](#)', with link to [full report](#)
 - B Walsh (24 September 2018), '[Not the same without us': A Place for Inclusive Research?](#)'
 - T Pope (17 October 2018), '[N's story....one young person's journey through the EHCP process](#)'
 - M Doyle (26 February 2019), ' [Anecdote rich but data poor': The exponential growth of mediation in a shadowy corner of administrative justice](#)'

Briefing paper

The briefing paper distributed to participants in advance highlighted a number of issues arising in the overview of research and the informal discussions. Among these are the areas about which we know very little: young people's views and those of parents, schools/colleges, and local authorities, as well as the wider context of complaints and disputes (tribunal and mediation but also school complaints and the work of the Local Government and Social Care Ombudsman (LGSCO) and Children's Commissioner in handling complaints).

The briefing paper focused on three broad themes: **participation, capacity and information and advice**. These themes have been carried through the remainder of the project. The briefing paper also set out discussion questions for roundtable participants. It was marked as a confidential document and circulated to all project participants and published on the members' only (password-protected) section of the project website.

The roundtable

The roundtable discussion was a half-day session held on 25 June 2018 and hosted by Garden Court Chambers in central London; it was attended by 30 individuals with a range of perspectives on young people and SEND dispute resolution (attendees are listed in Appendix 2). Aside from presentations by project partners, contributions to the discussion are not attributed to individuals in this report. The presentation slides and flipcharts recording the discussion were published on the project website. A summary of the roundtable discussion was published in August 2018 on the UKAJI website and the *A Place at the Table* project website.

²⁹ The project website is at <https://aplaceatthetablesend.wordpress.com>; UKAJI's website is at www.ukaji.org.

Postponed or reconsidered work

- It was decided not to carry out a survey of LAs for a number of reasons: the timing was difficult for LAs because of the deadline for transfer of statements to EHCPs (end March 2018) and the start of the new national trial on tribunal recommendations (1 April 2018). In addition, the survey would have been limited to the LAs contracting with KIDS' Mediation Services, about one-third of all LAs. It was decided to draw on the comprehensive national survey of all LAs' views on participation carried out by Davidge and Harris (2018) as part of the ESRC-funded project on autonomy and children's rights based at the University of Manchester and University of Edinburgh.
- Work directly with young people has been postponed and will need to be part of a later, separately funded stage because of the need to develop resources and to design an approach that will involve young people in a more meaningful way than the constraints of this project allowed.
- Because of this, it was premature to develop guidance for practitioners without any input from young people themselves. It was decided that this would be a future project involving co-production.

There are several reasons for postponing to a follow-up project the direct work with C/YP:

- Most C/YP, even those actively engaged in participation, will not have had experience of dispute resolution such as mediation, the tribunal, or an ombud complaint and so may not be familiar with the process in order to contribute to ideas about how they can be made more accessible, beyond the useful but mostly generic ideas about participation in meetings and decision-making generally. There is a risk that this could be tokenistic and not make the best use of C/YPs' time.
- This project has identified that the lack of accessible, C/YP-friendly information (printed and online literature and leaflets, videos) on complaints and disputes in SEND hampers researchers' ability to engage directly with C/YP, and the resources for the project do not allow for creation of, and consultation on, such information. (During this project, in August 2018, the DfE and Mott McDonald published a leaflet on SEND dispute resolution for young people aged 16-25.)
- There are also challenges in accessing existing C/YP participation groups. A number of such groups exist (e.g. FLARE, a group of young people with SEND, run with Council for Disabled Children and KIDS and funded by the DfE), but SEND dispute resolution is not necessarily one of the areas on which they focus; getting time to discuss this means offsetting other issues they are working on. There is also the risk that working with established participation groups will result in only those C/YP who are already engaged in rights issues being involved.

Appendix 2: A Place at the Table participants

Participants in interviews/informal discussions/email exchanges

Patrick Agius	Department for Education
Monica Aldulaimi	Department for Education (1)
Scott Boyd	Mott McDonald
Mary Busk	NHS England (2)
Sharon Chappell	Local Government and Social Care Ombudsman (3)
Luke Clements	University of Leeds
Paul Crawte	KIDS (4)
Helen Curtis	Garden Court Chambers
Jassy Denison	KIDS mediator
Susanna Diegel	Manager, KIDS Regional SEN Mediation Service
Rachel Dixon	Camden Special Parents Forum
Claire Dorer	National Association of Special Schools
Audrey Dorival	Manager, KIDS London SEN Mediation Service (4)
Serena Fasso	Irwin Mitchell
Alison Fiddy	IPSEA
Suzie Franklin	Together Trust
André Imich	Department for Education
Sarah Jackson	NHS England (2)
James Kenrick	Youth Access
Mick King	Local Government and Social Care Ombudsman (3)
Lorraine Lipman	KIDS mediator
Julie Reddish	Hertfordshire LA
Laxmi Patel	Boyes Turner
Helen Powell	Office of the Children's Commissioner
Wayne Martin	Autonomy Project, University of Essex
Traci Pope	KIDS Independent Supporter
Julie Reddish	Hertfordshire Local Authority
Ruth Richards	Wiltshire Local Authority (5)
Daisy Russell	SENDIASS/IASS
Emma Sass	Department for Education (1)
Ruth Smallacombe	Family mediator
Kathleen Tarrant	Department for Education (1)
Judge Meleri Tudur	SEND Tribunal

1 Joint discussion (in person), Department for Education SEND Team

2 Joint discussion (phone), NHS England Disabilities Team

3 Joint discussion (in person), Local Government and Social Care Ombudsman

4 Joint discussion (in person), KIDS

5 Joint discussion (in person), Senior SEND Team, Wiltshire LA

Participants in Roundtable meeting, 25 June 2018

Monica Aldulaimi	Young People's Participation, Department for Education
Caroline Barrett	Solicitor, Irwin Mitchell
Elena Bazilyuk	Parent
Mary Busk	Family Carer Advisor, NHS England
Joanne Byrne	SEND Mediator, KIDS
Sharon Chappell	Assistant Ombudsman, Local Government and Social Care Ombudsman
Florence Cole	Solicitor, Just for Kids Law/SEND Mediator, KIDS

Mairi-Ann Cullen	Senior Research Fellow, Centre for Educational Development, University of Warwick
Helen Curtis	Barrister and Mediator, Garden Court Chambers – PARTNER
Kirsty Dennis	Service Coordinator, KIDS Mediation Service - PARTNER
Audrey Dorival	Service Manager, KIDS Mediation Service - PARTNER
Margaret Doyle	Senior Research Fellow, University of Essex - UKAJI/SEND Mediator, KIDS
Serena Fasso	Solicitor, Simpson Millar
Alison Fiddy	Chief Executive, IPSEA
Neville Harris	Professor of Law, University of Manchester
Carey Haslam	SEND Mediator, KIDS/Conflict Consultant
James Kenrick	Chief Executive, Youth Access
Wayne Martin	Professor of Philosophy, University of Essex - Essex Autonomy Project
Nick O'Brien	Honorary Research Fellow, University of Liverpool
Jane Parsons	Research Support Assistant, University of Essex
Traci Pope	Independent Supporter, KIDS in Camden
Sheila Riddell	Professor, Director of the Centre for Research in Education Inclusion and Diversity, University of Edinburgh
Katherine Shaw	Regional Director, KIDS - PARTNER
Maurice Sunkin	Professor of Public Law, University of Essex – UKAJI - PARTNER
Kathleen Tarrant	SEND Disagreement Resolution, Department for Education
Judge Meleri Tudur	Deputy Chamber President, SEND Tribunal
Simone Vibert	Policy & Public Affairs Analyst, Children's Commissioner's Office
Ben Walsh	Researcher /SEND Mediator, Anglia Care Trust

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