



**Volume 1, Issue 3  
December 2015**

**Editorial Team:**

Paul Putman

Irene Stevens

**The Contributors:**

Mrs. Marie Harrison

Mr. Ian Nisbet

Dr. Irene Stevens

Ms. Laura Hutchison

Ms. Zachari Duncalf

**Inside this issue:**

- ♦ **President's Address** - **May Dunsmuir** shares an update on the work of the Tribunal this year and highlights future developments. *(Pages 2 – 3)*
- ♦ **Partners in Advocacy** - **Marie Harrison**, a children and young persons advocacy worker, talks about the role of advocacy and the importance of the views of the child. *(pages 7 – 8)*
- ♦ **The Voice of the Child** - **Iain Nisbet** gives a legal perspective on the child's right to education using case examples from legal challenges to Strathclyde Regional Council. *(Pages 9 - 12)*
- ♦ **Members' Training and Induction** - A contribution from **Irene Stevens** celebrating the recent members' training event and induction of new members in Glasgow. *(Pages 13 - 14)*
- ♦ **Equality and Human Rights** - **Laura Hutchison**, Senior Enforcement Officer at The Equality and Human Rights Commission, discusses the law in relation to discrimination and highlights an interesting case from England. *(Pages 15 - 16)*
- ♦ **Education for Children in Care** - **Zachari Duncalf**, a lecturer in Sociology at the University of Central Lancashire, writes about education for children in care based on her professional and personal experiences. *(Pages 17 - 18)*

## President's address

ASNTS President **May Dunsmuir** welcomes you to the latest edition of the newsletter.



Photograph by David Murray

@ StaticPhotography [Fm.Static@gmail.com](mailto:Fm.Static@gmail.com)

**D**ear members,  
As we approach the close of 2015 I want to extend my thanks to each of you for your continuing commitment to the work of the Tribunal and for your patience while the process of re-appointments was concluded and new systems bedded in, including the pilot of the Member Development Scheme. I want to reflect in this edition on the range of significant events for the Tribunal in 2015.

### Member re-appointments

The majority of our existing membership faced re-appointment by October. One of the challenges in completing the processes necessary to allow me to make recommendations to the Scottish Ministers was a suitable mechanism for member review. This is set out in the Member Development Scheme, which has been piloted throughout 2015. The majority of those who have completed their member review this year have commented positively on the process. **If anyone wishes to make any further observations on the Scheme, please send them to me before the end of January 2016.** After that time I intend to reflect on the Scheme's provisions with the Member Development Committee. I would like to extend my gratitude to the Committee for their efficiency and focus in ensuring the majority of our membership was able to complete their review process in 2015.

I would also like to congratulate all of those who were re-appointed in 2015. I am delighted the Tribunal will continue to benefit from the range of expertise which our membership reflects.

### Member training and development

2015 has been a very busy training year and I would like to thank the Member Training Committee for its hard work in developing and delivering a challenging programme. Training has included our all-member conference in March, evening training for our conveners and members and a two day induction course for our new conveners and members.

In addition to this, our first Judicial Handbook has been completed, which includes our first Case Digest, authored by one of our conveners and Training Committee Chair, Derek Auchie. This has been issued to our new conveners and members and will be provided to our remaining membership by the time of our all member conference on 16 March 2016.

### **New member and convener appointments**

After a high level of interest in our summer recruitment round, the Scottish Ministers have appointed 6 new conveners and 5 new members, each of whom bring a rich range of expertise and experience to the Tribunal.

I was delighted with the response from within our existing membership to the request for mentors and our first informal peer-mentoring scheme is now in place. I am confident this will prove to be a very supportive tool.

### **Tribunal reform**

I continue to be involved in the passage of Tribunal reform in a range of ways, from regular meetings with judicial heads of the devolved and reserved tribunals and the President of Scottish tribunals, to meetings with Scottish Government policy staff and staff of the Scottish Courts and Tribunals Service. It remains the plan that the Tribunal will transfer into the Scottish Tribunals in October 2017. I will continue to keep you informed of progress during 2016.

### **Tribunal staff**

Finally, there have been a number of changes within the staffing structure in 2015, with two significant departures. I am pleased we now have our first Member Liaison Officer, Lynsey Brown, who is also my PA. Hugh Delaney continues to bring his rich range of experience as Senior Case Officer. A new case officer is being recruited but in the meantime Paul Putman and Alan Kerr are continuing to provide casework support. I am very grateful to the staff of the Tribunal for their commitment and hard work in ensuring the delivery of a first class service.

I hope you all enjoy a peaceful and healthy festive period.

***I hope you enjoy reading this Newsletter. Please continue to feel free to contact me or any of the Committee chairs if you wish to share any information or ideas that will enhance the work of the Tribunal.***

With my best wishes

May Dunsmuir

President

## A Short Natter To Staff

Each issue we speak to a member of the Scottish Courts and Tribunals Service (SCTS) staff about the work they do for the Tribunal. For this issue, **Lynsey Brown**, introduces herself as the new PA to the President and Member Liaison Officer (MLO).

**L**ynsey joined the Mental Health Tribunal in 2009 as a hearings clerk before moving to ASNTS in June 2012 as a Case Officer.

She then spent a brief period working for the Ministry of Defence before returning to the Mental Health Tribunal as a Case Worker in 2014. Lynsey recently returned to us on promotion as PA to the President and Member Liaison Officer.

In her spare time she is an Independent Stylist for Stella & Dot, a jewellery and accessories company, and enjoys hopping around the globe.



## A Swift Nod To Success

This issue we would also like to take the opportunity to introduce one of our new members, **Hope Craig**, who was successful in a recent ASNTS recruitment exercise which provided the jurisdiction with 5 new members and 6 new conveners.



**H**ope is currently a trainee solicitor at Anderson Strathern. She graduated from the University of Strathclyde with a First class LL.B (Hons) in 2013. Hope won the Delict and Unjustified Enrichment Prize, the Greens prize for best 3<sup>rd</sup> Year Student and the Head of Law School Prize. She then went on to complete her Diploma in Professional Legal Practice in 2014.

Her desire to become a member of the ASNTS stems from both personal and professional experiences of children and young people with a broad range of additional support needs. She is delighted and excited to be given the opportunity to be part of the ASNTS.

---

# **T**ribunal communication - new information.

A look at what has been happening in the Tribunal's Administration.

As part of the recent merger between the Scottish Tribunals Service and the Scottish Courts Service our jurisdiction have undergone an IT and telephony migration. The new contact details for the ASNTS team are provided below:

## **Hugh Delaney - Senior Case Officer**

**Phone: 0141 3025861**

**E-mail: [HDelaney@scotcourttribunals.gov.uk](mailto:HDelaney@scotcourttribunals.gov.uk)**

## **Lynsey Brown - PA to the President and MLO**

**Phone: 0141 3025863**

**E-mail: [Lbrown2@scotcourttribunals.gov.uk](mailto:Lbrown2@scotcourttribunals.gov.uk)**

## **Alan Kerr - Temporary Case Worker**

**Phone: 0141 3025842**

**E-mail: [akerr5@scotcourttribunals.gov.uk](mailto:akerr5@scotcourttribunals.gov.uk)**

## **Paul Putman - Newsletter Editor**

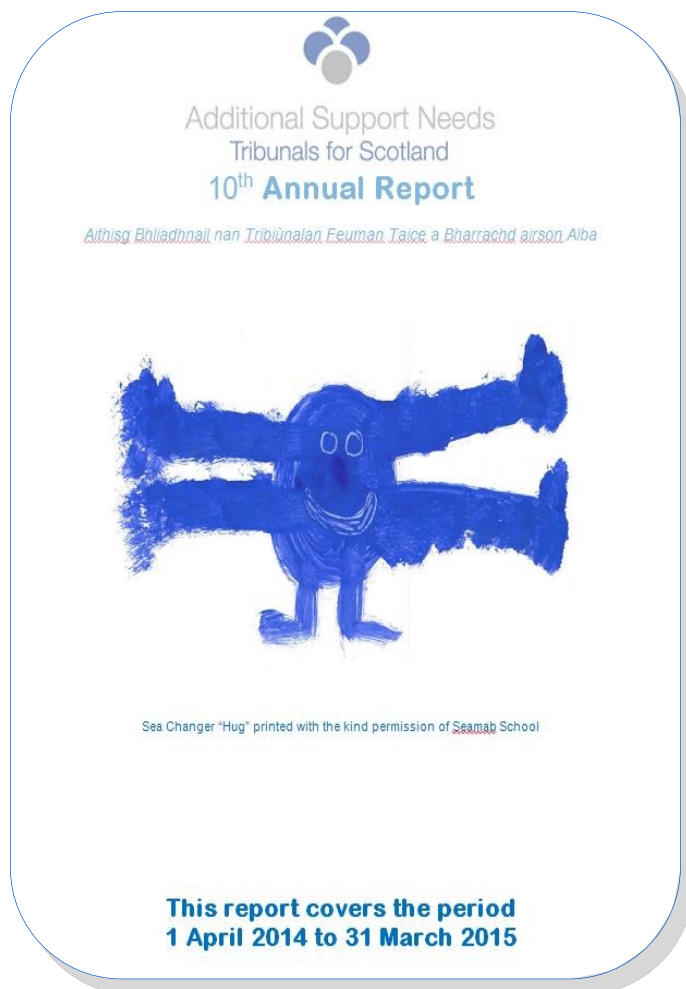
**Phone: 0141 3025841**

**E-mail: [PPutman@scotcourttribunals.gov.uk](mailto:PPutman@scotcourttribunals.gov.uk)**



# Annual Report

The 10th Annual Report for ASNTS has recently been completed and is available to view on the website.



You can access a copy of the annual report by using your smartphone to scan the QR at the bottom of this page or by typing the following address into your web browser:

<https://www.asntscotland.gov.uk/content/publications>



## **“It’s not enough to ask, you have to actually listen!”**

Article by **Marie Harrison**, Children and Young Person’s Advocacy Worker

**A**s adults we can find it stressful when people disagree. There is nothing more tense than being stuck in the middle of an argument. It happens in our private life, at work, meetings and in situations such as tribunals or hearings.



---

I remember the first time I attended an ASN tribunal with a young person - my palms were sweaty and I had a million questions in my head: "Did I answer all my partner's questions?" "Could I have done more?" "Is he ok?" and so forth.

And then it hit me.

If I as an adult, trained, Advocacy Worker was feeling stressed about the situation, what on earth was my advocacy partner going through?

Children with additional support needs (ASN) go through the same emotions as other children when they are put on the spot: Stress, anxiety, anger, confusion, just to name a few. For a child with ASN to be told that his or her future in education will be decided at a big meeting can be unnerving. And when adults disagree, it becomes even more important to hear from the child.

**“Providing children with rights is not about undermining parents' role in their family. It is about enabling children to have a direct influence on the support they receive if they wish to and benefits those whose parents are unable to act on their behalf.**

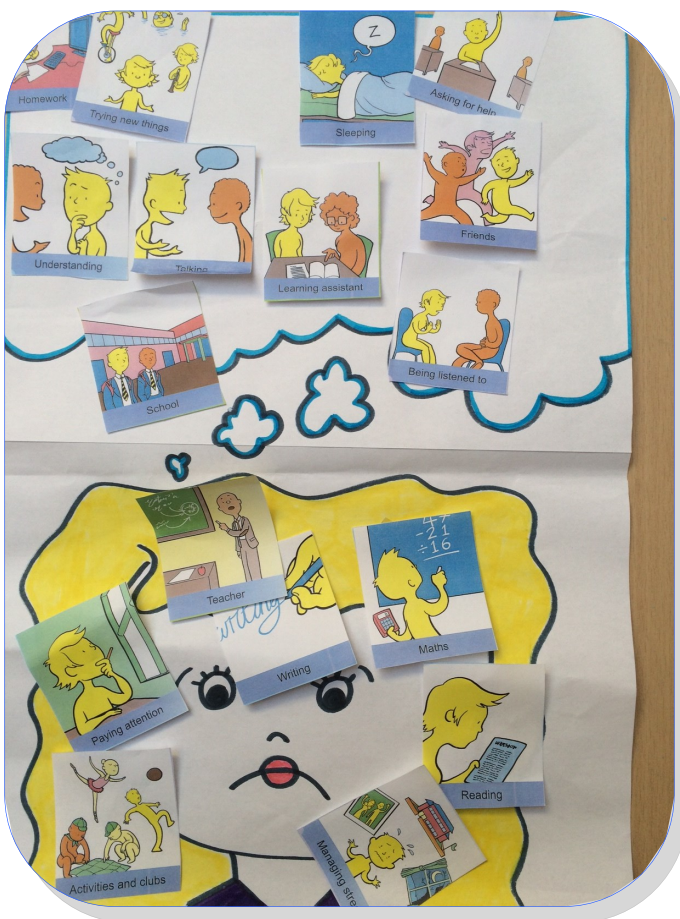
Under the United Nations Convention of the Rights of the Child (Article 12), children have a right to express their views and have their opinions taken in to account in decisions that affect them. Independent Advocacy provides an opportunity to hear the views of children with ASN in a child-friendly, unbiased and age appropriate way.

Before hearings or tribunals, we meet with the young person 1:1, without parents, teachers or other people in the room. We take our time and answer questions. We talk about the tribunal and explain what is going to happen. As advocacy workers we do not have opinions ourselves - we are solely there as a "loud speakers" for the child, to pass on their views or to support them to do so themselves. Passing on the views of a child or young person can happen in one of two ways – either by the submission of a statement or by attending an interview. Statements can contain questions from the panel and drawings or letters from the child. At interviews the advocacy worker does not speak unless the child asks a direct question.

Tribunals can be stressful - especially if you are at the centre of one. It is imperative that the children and young people involved in ASNTS feel able to express their own views and more than anything feel that they are being listened to. A young advocacy partner once said to me: "Adults always think they know better. Maybe they do. But they don't know how I feel unless they ask me. And sometimes even if they ask then they still don't listen!!"

At Partners in Advocacy we are dedicated and committed to support children and young people through the tribunal process - we look forward to hearing from you!

***A young non-verbal girl made this statement – I presented her with a variety of cards such as “family”, “school”, “Friends” etc. and she was asked to place them on her happy face or sad face. As a result she was able to pass on her views. After we finished she asked for stickers to decorate the happy face. The results are shown below.....***



Partners in Advocacy  
Room 420  
The Pentagon Centre  
Washington Street Glasgow G3 8AZ

Scottish Charity No SC027857  
Registered Company No 185467  
0141 847 0660  
e-mail: [glasgow@partnersinadvocacy.org.uk](mailto:glasgow@partnersinadvocacy.org.uk)

## The Voice of the Child

A legal perspective from **Iain Nisbet**. A shorter version of this article first appeared in Children in Scotland magazine, Issue 168, published in October 2015.



**T**he general principle that children should be educated in accordance with the wishes of their parents is long established<sup>1</sup>. This principle is not absolute. Two legal challenges to the education department of Strathclyde Regional Council in the 1980s<sup>2</sup> demonstrate that the wishes of parents must be considered alongside other relevant factors – including “the avoidance of unreasonable public expenditure”.

---

It is nonetheless, an important legal duty and one which is confirmed by the European Convention on Human Rights – at least in relation to a parent’s “religious and philosophical convictions”<sup>3</sup>.

More recently, the importance of the views of the child has been recognised. Article 12 of the UN Convention on the Rights of the Child affords “the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”

Scots law requires that each “education authority shall have due regard, so far as is reasonably practicable, to the views (if there is a wish to express them) of the child or young person in decisions that significantly affect that child or young person, taking account of the child or young person’s age and maturity.”<sup>4</sup>

These principles of participation apply, even where the child or young person has additional support needs. Section 12 of the Education (Additional Support for Learning) (Scotland) Act 2004 sets out a number of specific instances where the views of the child, young person and/or parent must be both sought and taken account of.

**“The child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.**

The Code of Practice “Supporting Children's Learning” underlines the importance of these duties:<sup>5</sup>

“All children and young people should have the opportunity to make their views known about decisions which affect them. They should have the opportunity to express their opinions and have these opinions taken seriously. They should be encouraged to contribute to decision-making processes, the setting of educational objectives, the preparation of learning plans, reviews and transition planning. They need to know that what they have to say will be respected, listened to and, where appropriate, acted on.”

This goes well beyond setting up a pupil council or an eco-committee, and requires an active and on-going practice of pupil engagement.

Participation is specifically mandated in the preparation of a Co-ordinated Support Plan (CSP). The authority is required to record the views of the child and the parent within a CSP. In the case of a young person, their views should be recorded. Where the young person lacks capacity, the views of their parent should also be recorded.



**They should have the opportunity to express their opinions and have these opinions taken seriously. They should be encouraged to contribute to decision making processes...**

While this section of the CSP is not subject to appeal, there is a little in the way of commentary. The first President of the Tribunals in her annual report of 2007/2008 undertook a review of 24 CSPs which were the subject of references that year. She noted:

“In a third of those reviewed this part [parent's views and child's views] was not completed or was very cursory. Where this is not completed then it would be helpful for the plan to state why this could not be completed. Other examples of bad practice were where in the parental comment box was typed, ‘Parent did not volunteer comment on the draft.’ In another where the views of the child were supposed to be recorded ‘none received to date’ was entered.”

Similar concerns were expressed by one Tribunal, who were “..concerned that the child's views were not recorded in the CSP..” and “..also concerned that the appellant's views were recorded in very short compass..”<sup>6</sup>

The Presidential review also noted examples of good practice: “For instance, where the child was not able to express their views, photos of the child at school were included; or in another the views of both the parent and child were expressed in first person terms indicating a real engagement with both to ensure that their views were properly and authentically recorded. A further example was where comments from a letter from the parent were copied into the report rather than just summarised.”

It is unusual for disputes to require a Tribunal hearing, but where they do, the practice of the Tribunals is commendable. Practice Direction 05/2010 requires Tribunals to consider whether steps are required to seek the views of the child in an appropriate manner, and to take steps to facilitate that process. It is not uncommon for the Tribunal to arrange for an independent children's advocacy practitioner to meet with the child and report back. Special arrangements can be made to allow a child with additional support needs to speak directly with Tribunal members.

Taking account of the views of the child will not always be straightforward. Indeed, the Code of Practice notes that “[t]he education authority may have to make specific arrangements .... for example, the use of alternative or augmentative communication systems ..”<sup>7</sup> Further, the Code urges the recording of both what the young person actually expressed (whether through gesture, vocalisation or other means), what interpretation was made of that expression, and by whom.<sup>8</sup>

The best way of ensuring that a child's views can be recorded accurately and fairly is to make sure they are familiar and comfortable with giving their views, and used to having those views taken seriously. “Schools and early years settings should create a climate where seeking children's views and encouraging participation in decision-making are everyday activities.”<sup>9</sup>

**“Providing children with rights is not about undermining parents' role in their family. It is about enabling children to have a direct influence on the support they receive if they wish to and benefits those whose parents are unable to act on their behalf.**

Similar considerations apply to parents. The guidance found in the Code of Practice at Chapter 7 is a great place to start, especially the good practice points at paragraph 40: “Professionals must take responsibility for encouraging good relationships with families based on trust, openness and effective communication.”<sup>10</sup>

Section 17 of the Education (Scotland) Bill (currently working its way through the Scottish Parliament) strengthens the rights of children to express a view and to participate in the decision-making process in relation to their additional support needs. It also aims to ensure compliance with the UN Convention of the Rights of the Child by extending rights of appeal, dispute resolution and other formal requests to children with legal capacity.

The Committee's stage one report notes several concerns about the proposals for the use of a “best interests” test – and with good reason. If a child has rights, then it not for others to decide if it is in their best interests to use them. That is part of what it means to have rights – deciding whether and how best to exercise them.

*Continued over...*

Despite these (and other) concerns, the Bill represents another step towards the full participation of children with additional support needs in their own education and, as such, deserves support.

---

### Reference Guide:

1. S28, Education (Scotland) Act 1980
2. Cf. Keeney v. Strathclyde Regional Council 1986 SLT 490 & Harvey v. Strathclyde Region Council 1989 SLT 612 (HL)
3. Article 2 of Protocol 1, European Convention on Human Rights
4. Section 2(2), Standards in Scotland's Schools etc. Act 2000
5. Chapter 7, para 2
6. ASNT decision d/12/200
7. Chapter 7, para 10
8. Chapter 7, para 13
9. Code of Practice, Chapter 7, para 8
10. Chapter 7, para 26





Since the last newsletter, the training committee has been busy devising training events. Following feedback from the members, the training committee devised and facilitated two evening training sessions. A two day induction event for our new members was also held.

---

The first evening training was for our Tribunal members and took place on 16 September 2015 at Europa House. During the evening, we had an interesting and thought provoking talk on data handling issues which was delivered by Russell Hunter. Russell is a solicitor working for the Mental Health Tribunal and is also one of our newly appointed conveners. I think it would be fair to say that Russell's talk had us running back home to lock up our PCs and paper documents! We then had a talk from Sara Matheson on the implications for the Tribunal of the Children and Young Persons (Scotland) Act 2014. Sara brought her own lovely personality and style to the discussion and really brought it to life. Following this we had group sessions focussed on conduct issues and case dilemmas. Feedback from the members had suggested that these were interesting and relevant parts of our day conference in March 2015 and that people wanted a bit more time to discuss and think these through.

**“Participants enjoyed these opportunities and the evaluation of the evening event for Tribunal members was positive.**

Participants enjoyed these opportunities and the evaluation of the evening event for Tribunal members was positive.

The second evening training was for our conveners and took place on 7 October 2015 at Europa House. During the evening, Russell Hunter and Sara Matheson reprised their talks on data handling and the Children and Young Person's (Scotland) Act 2014. The conveners then worked on case dilemmas and also on how to conduct conference calls. Once again, feedback showed that participants enjoyed these activities and found them helpful. In both of the evening events, members and conveners were asked to develop a list of tips for good practice.

The Tribunal members worked on good practice during the conduct of a hearing and the conveners worked on aspects to keep in mind for a productive conference call. These were passed to the President who will think about how to incorporate them in future guidance. If members or conveners were unable to attend, we would urge you to contact Hugh or one of the training committee members to ask for copies of the PowerPoint presentations used.

Our two day induction event was held at the Novotel in Glasgow on 3 and 4 November 2015. Our President welcomed our new members and conveners before they started work on sessions which included case preparation, conduct, making decisions and obtaining the views of the child. There were a range of interesting presentations. Ian Nisbet of the Govan Law Centre and Anne-Marie Davies, Quality Improvement Manager (ASN) for Education and Children's Services in Aberdeenshire gave the group a 'double act' on how it feels to be an appellant and a respondent. Marie Harrison, Children and Young People's ASN Advocacy worker from *Partners in Advocacy*, talked to the group about different ways to obtain the child's views. Declan Welsh attended and talked about his activist work and also sang his song about the UNCRC. A part of each day was given over to conveners only and members only, and they had an opportunity to discuss issues which were specific to each group. Evaluation from the event was positive and new members and conveners commented that it had helped orientate them to their new roles with the Tribunal.

The induction training could not have happened without the help and assistance of a range of people. So we would like to thank Peter Hissett, one of our conveners, who kindly helped to lead the streamed session for conveners.

“” **Evaluation from the event was positive and new members commented that it had helped orientate them to their new roles with the Tribunal.**

We would also like to thank Lio Moscardini, one of our members, for helping with the hearing scenarios on the first day. Our speakers were interesting and informative, so thanks go to Anne Marie, Ian, Declan and Marie. We would also like to thank Sara and Russell for their input at the evening training, and for making these topics as entertaining as possible!

As always, the events could not have progressed without the secretariat. So thanks must go to Paul, Hugh, Alan, Lynsey and Hazel for being on hand and for making things run smoothly. Our thanks also go to May for introducing the events, providing leadership and ideas and for keeping training as a priority. Finally, we could not have developed the ideas for these events without our members and conveners. As I have indicated previously, we need your ideas to be able to develop something interesting and relevant. The evaluation forms which have been submitted will provide the basis for further training. And if you have any ideas in the meantime, please get in touch with any of the training committee to let us know your thoughts.



Additional Support Needs  
Tribunals for Scotland

## Equality and Human Rights Commission Scotland

**Laura Hutchison** discusses discrimination arising from disability and the objective justification test with guidance from an appeal in England.

In this article, Laura Hutchison, Senior Enforcement Officer at the Equality and Human Rights Commission, discusses the law in relation to discrimination arising from disability and highlights guidance from an interesting English case, *SN v Nottinghamshire County Council*.

---

The Equality Act 2010, which sets out the law in relation to disability discrimination claims in schools, introduced a new form of discrimination, "discrimination arising from disability". This occurs when a disabled person is treated unfavourably because of something connected with his or her disability and this treatment cannot be justified as a proportionate means of achieving a legitimate aim. There have been very few reported cases on discrimination arising from disability, so a recent Upper Tribunal decision in England *SN v Nottinghamshire County Council and Another* [2014] UKUT 0002 (AAC) is of particular interest. Link: <http://www.ossccsc.gov.uk/Aspx/view.aspx?id=4077>

Although decisions of the Upper Tribunal are not binding on the Additional Needs Tribunal for Scotland, they can be taken into account and can be helpful where there have been no Scottish cases.



Creating a fairer Britain

In *SN*, the Upper Tribunal examines the adequacy of the reasons given by the First-tier Tribunal (FtT) (Special Educational Needs and Disability) in explaining how it reached its decision that there was no unlawful discrimination against a pupil arising from her disability. The decision provides helpful guidance on how tribunals should approach the question of whether the unfavourable treatment can be justified.

This appeal concerned a girl, J, who has moderate learning difficulties, challenging behaviour and impairments characteristic of autistic spectrum disorder. At the time of the incident J was 10 years old. While at school, J assaulted one of her specialist support mentors. This was the fourth time she had assaulted one of her mentors. Discussions between the school and her parents took place and resulted in her being allowed to continue her education under the auspices of the school but in a different and more individualised way from previously. The new arrangements meant J was no longer at the school full-time, she did not continue with all of her courses and she was not able to interact with her peers to the same extent as before.

For a claim under s.15 of the EA 2010 to succeed, the unfavourable treatment must be as a result of something arising in consequence of the person's disability, not because of the disability itself.

For example, Ben has asthma and is off school with breathing problems. While Ben is off, the school organises a trip and doesn't include him in the arrangements. When Ben returns to school he is not allowed to go on the trip. The unfavourable treatment was Ben not being allowed to go on the school trip. He was treated this way because he was off school - something arising in consequence of his disability. Unless the school could justify the unfavourable treatment, this would constitute unlawful discrimination arising from disability. By contrast, if Ben was not allowed to go on the trip because he has asthma, he would be discriminated against because of his disability. This would constitute unlawful direct discrimination contrary to s.13 of the EA 2010, unless it could be shown that a pupil in materially similar circumstances who doesn't have asthma would have been treated the same way.

In this case, there was no dispute that J is disabled, that the school knew this and that her behaviour, striking her mentor, arose as a consequence of her autism. However, the FtT found that the school was justified in discriminating against J because it had two legitimate aims: the health and safety of pupils and staff; and minimising disturbance to students working for exams. It accepted that "those were legitimate aims and also they were proportionate" and as such the school had shown that the treatment was justified as a proportionate means of achieving a legitimate aim.

J's parents appealed to the Upper Tribunal, challenging the way the FtT dealt with the application of section 15 to the facts of the case and in particular, argued that the tribunal failed to give sufficient reasons in respect of proportionality. In considering this part of the appeal, the Upper Tribunal explained that the FtT had to identify one or more legitimate aims.

**“Unless the school could justify the unfavourable treatment, this would constitute unlawful discrimination arising from disability.”**

It must then ask itself whether the discriminatory effects of the treatment were significantly outweighed by the importance and benefits of the legitimate aims. It must also consider whether there was any reasonable alternative arrangements open to the school which meant that the legitimate aims could be achieved by other, less discriminatory, means. This, therefore, required an examination of two matters: the legitimate aim and the proportionate means. However, from the language of the decision it was clear the FtT had identified the legitimate aims and then held that those aims were proportionate. The explanation by the FtT was, in Judge Ward's view, "at best muddled."

In paragraph 22 of the judgment, Judge Ward explains that the assessment of proportionality is an evaluative one which is critical to ensure that the unfavourable treatment experienced by a disabled person goes no further than it needs to. Therefore, there must be some sort of explanation of the reason why the FtT considered the means (the arrangements made by the school) to be proportionate. He went on to find that the lack of any information about the assessment of proportionality was sufficient to obscure the basis on which the FtT reached its decision on what is a key issue.

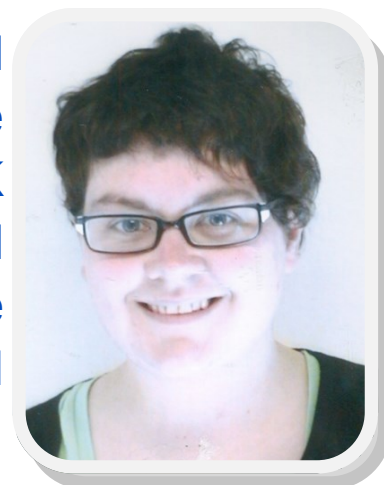
The approach adopted by the Upper Tribunal in *SN* is consistent with the Commission's Technical Guidance for Schools in Scotland<sup>1</sup>. In Chapter 5, page 59, of our guidance we emphasise that for the justification test to be relied upon successfully, even if the aim is legitimate, the means of achieving it must be proportionate. This requires a separate and additional assessment of whether the unfavourable treatment is appropriate and necessary in the circumstances.

<sup>1</sup><http://www.equalityhumanrights.com/publication/technical-guidance-schools-scotland>

## The Importance of Education for Children in Care

**Zachari Duncalf**, a lecturer in Sociology at the University of Central Lancashire, writes about education for children in care based on her professional and personal experiences.

Over the last 10 years I have worked with young people in care and care leavers of all ages from across the UK on a variety of different research reports and projects. Time and again I see the same issues facing them regardless of their age and background.



---

In a report I wrote alongside the Care Leavers' Association in 2010 entitled *Listen Up: 310 adult care leavers speak out\**, 70 year old care leavers were telling us the same things about their time in and leaving care that 17 year olds were. Most prevalently within this report, education consistently comes up as an immediate and long term issue for young people in care and care leavers.

As a researcher, volunteer and trainer the most prolific area of provision in terms of training and awareness around the issues facing young people in care and care leavers is that of education. The Governments across the UK understand that the crux of life long outcomes can be grounded in their success in education. Yet young people in care and care leavers still do very poorly in educational standards.

But WHY?

My own experience of growing up in care was in some ways quite typical in terms of lack of stability, support and important relationships which many young people in care continue to experience. I was taken into care when I was 11 years old and for a period of 8 years I moved across 19 different placements and local authorities. I was taken out of school for 3 years but returned when I was 14 to complete my GCSE years whilst still moving into different placements. Whilst completing my College A Levels I was homeless. Such disruptions present huge challenges and show why support for learning legislation is necessary for young people who are looked after. Nevertheless, I achieved 11 GCSEs and 3 A Levels and have gone on to complete further qualifications to become a University Lecturer. Firstly, I want to stress I am not wonder woman! In meeting the hundreds of care leavers that I have worked with on various projects, I am not alone in this experience. The report previously mentioned showed that 33% of respondents had a Degree, Masters or PhD which shows that the potential is there for young people to succeed in education with the right support.

\*Duncalf, Zachari (2010) Listen up! Adult care leavers speak out : the views of 310 care leavers aged 17-78. Accessed at <http://strathprints.strath.ac.uk/27410/>

Young people in care and care leavers have often been through horrendous situations and circumstances. They deal daily with their experiences and circumstances and I am constantly amazed by their tenacity, precociousness, vim and vigour. There is sometimes though a reluctance of these young people to engage in formal education and it is down to the sector to inspire and support a change in this for each young person. I believe we also need to value and promote many kinds of approach to education, traditional as well as extra-curricular and non-traditional forms. Flexibility and belief in the young person are so important.

“There is sometimes though a reluctance of these young people to engage in formal education and it is down to the sector to inspire and support a change in this for each young person.

It is a privilege to work in this area and have the personal experience that I have. I would urge more organisations to draw on any individuals within their workforce that have personal experience of working with young people in care, alongside their professional qualifications. I would also urge organisations to take account of the views of older care leavers – after all if we were all judged on how our own 16 – 18 year olds were doing we'd probably say “not very well!” Talking to older care leavers (aged 25+) invites this important experience into the discussion. They have lived *through it* and are not *living in it* which gives a unique perspective and understanding on what can be achieved in our adult-to-child agendas on education.

---

*Zachari Duncalf is a care leaver who spent eight years as a young person in residential care. Now, as an academic and experienced researcher she has undertaken numerous service evaluations and pieces of research into the experiences of young people in care and care leavers. Recently these projects have focused on education, leaving care, longer term outcomes and transitions. Zachari is soon due to complete her PhD at the University of Glasgow on the life-long effects of growing up in care.*

# **Tribunal News**

## **Congratulations to our new members**

We would like to offer our congratulations and a warm welcome to all of the new members and conveners who were successful in the recent ASNTS recruitment. The names and roles of our new appointments are listed below:

### **Conveners:**

Julius Komorowski  
Lesley Dowdalls  
Michael Hanlon  
Dierdre Hanlon  
Muriel Robison  
Russell Hunter

### **Members:**

Christine Pacitti  
Hope Craig  
Maureen Howie  
Polly Cowan  
Pradeep Pasupuleti

## **All members training event 2016**

Another item to add to your diary, the all member conference for 2016 has also been confirmed. The event will be held at **Hallmark Hotel, 27 Washington Street, Glasgow, G3 8AZ** on **Wednesday 16 March 2016**. Members are invited to attend a pre-event meal and networking opportunity on **Tuesday 15 March 2016** with more details to follow.



Venue details are shown below:

### **Nearest train stations:**

Anderston (0.5 miles)  
Glasgow Central (1.4 miles)  
Glasgow Queen Street (1.5 miles)

### **Nearest motorways:**

M8 junction 19 (0.5 miles)  
M8 junction 18 (0.6 miles)  
M8 junction 20 (0.8 miles)

A full programme for the event will be distributed to all members in due course. If you have any questions please contact **Ms. Lynsey Brown, PA to the President and MLO** on **0141 3025863** or e-mail at **Lbrown2@scotcourtsribunals.gov.uk**

Europa Building  
450 Argyll Street  
Glasgow



Additional Support Needs  
Tribunals for Scotland

Phone: 0141 302 5860

Fax: 0141 302 5901

Email:

ASNTSAdmin@  
scotcourtribunals.  
gov.uk

**Tribunal Decision  
Database QR Code**



**Past editions of  
the newsletter**



## **Our next edition will be issued in June 2016**

### Contributions:

If there are any contributions you wish to make to future editions, please contact the editorial team using the e-mail address opposite.

***Contributions for the June 2016 edition must be lodged no later than 27 May 2016. All contributions should be set out in Arial font, size 12 and justified as this improves accessibility.***

### ***Disclaimer:***

*The Additional Support Needs Tribunals (ASNTS) seeks to ensure that the information published in the Newsletter is up to date and accurate, however, the information on the Newsletter does not constitute legal or professional advice and the ASNTS cannot accept any liability for actions arising from its use.*

*The views of individual authors are theirs alone and are not intended to reflect the views of the ASNTS.*