



Queen's University Belfast

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The access to justice barriers for tribunal users: a comparative case study on Special Educational Needs Tribunals

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Overview

- Background to the research
- Participating groups
- Key findings
- General barriers to participation at SEN tribunals
- Issues surrounding child participation in the process
- General recommendations for improving accessibility and participation



Background to the Research

- **Special Educational Needs Tribunals**
- Examining obligations flowing from Article 12(2) of the UN Convention on the Rights of the Child and Article 7 of the UN Convention on the Rights of Persons with Disabilities
- Examining the participatory nature of these tribunals
- Comparative study of tribunals in Northern Ireland and Wales



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Focus of the research



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Background

Devolution and Social Policy

- 2 very different experiences of devolution
- Northern Ireland – coming out of conflict. Fragmented political environment. Entrenched constitutional debates which have taken precedence over social policy. Reluctance to advance child rights.
- Wales – Initially restricted by limitations on legislative autonomy. ‘Social policy parliament’ which at that time possessed powers in the field of children’s policy. Government rhetoric advances citizenship and we witness the incorporation of the UNCRC into domestic legislation.



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Participating Groups

- Families with experience of Special Educational Needs tribunals
- Local Authorities/Education and Library Boards
- Tribunal judiciary
- Tribunal administrative staff
- Government departments
- Focus group sessions with children considered to have Special Educational Needs



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Findings – General Barriers

- Socio-economic background and personal characteristics of parents

'Too often tribunals are the mechanism of the middle class and too many people from poorer backgrounds don't understand the system or they're intimidated by the system and they don't take part and I find that incredibly sad because there's a much greater need' (Tribunal Panel Member NI)

'....the number of appeals have dropped significantly in Wales recently and there's no clear explanation for why that should be but I'm concerned that it may be a combination of those parents who really need to be able to access the system not having the confidence to do so.....if they're unable to access the system then there is something wrong with the system.' (Tribunal Panel Member Wales)



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General Barriers

- Scepticism regarding alternative dispute resolution services
- Difficulties accessing support
- Legalistic, formal and intimidating process
 - 'Ah, horrendous....absolutely horrendous'* (NI Family)
 - 'I think it was absolutely horrendous. It was the worst thing to have to go through.'* (Welsh Family)
- Inequality of legal arms
- Approach of panel/legal representatives
- Detrimental impact on mental and physical health, marital relationships and finances.
- Dissatisfaction with the process even when they received a favourable outcome (Wales)



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Child Participation

- Child/Adult power relations
- Parents felt that they should provide the voice of the child in the process
 - *'We made [our child] aware of nothing and I think where that's concerned it all depends on the child. And I think you decide what's best for your child'* (NI Parent)
 - *'They wanted to speak to [my child] regarding their feelings and what they felt....I made hell over it. I had to write to the tribunal saying that I didn't agree to it because he doesn't understand'* (Welsh Parent)
- Disagreements between the child and their parents – legislative barriers (Wales)



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Child Participation



- Conceptualisation of childhood – linking age and capacity
- Protectionism from an adversarial process and sensitive personal details.
 - *'Even if I'd taken it to the court, to the High Court, I would never have had [my child] in court or speaking about it because in [my child's] head and in [my child's] world, he's the smartest child and there's nothing....he's perfect....part of it is protection for your child.'* (NI Family)
 - *'I don't think it would be a good idea to actually take them to the hearing unless it was totally changed. Should a child be exposed to somebody from the Education Department going, well this child isn't able or this child can't do that?...It did get quite nasty...'* (Welsh Family)



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Child Participation



- Procedural elements – too lengthy, formal and legalised process
- Court-like environment
- Cross examination by legal representatives

'What I want is what's best for the child and being best for the child is not being aggressively questioned by an over ambitious young barrister' (NI Panel Member)

'The last one we had was very short and would have been awful for [our child] because the barrister was so confrontational....Barristers are paid to be quite nasty, aggressive and.....I was going to say destructive, because that's how they work, isn't it? They take you apart in order to prove their point.' (Welsh parent)



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Differences between Wales and Northern Ireland

- Judicial attitudes to granting children the full right to appeal
- Political will to implement changes to advance child participation – yet both have initiated changes which will limit legal rights and access to the tribunal through restructuring of the 'statementing' system.
- Generally, both families in Northern Ireland and Wales experienced similar difficulties when engaging with SEN tribunals and relayed the same attitudinal position in terms of child participation in the process.



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General Recommendations

- Adapting processes to meet the needs of all tribunal users
- Expanding support through pre-hearing advice and support
- Improving tribunal based information
- Expanding time limits
- Improved awareness of the tribunal
- Expanding the inquisitorial, enabling function of the tribunal
- Addressing the inequality of legal arms
- Improving monitoring of decisions
- Changing the recording of statistics on outcomes



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Realising Child Participation

- Is legislation enough?
- Need to acknowledge children as rights holders – addressing the attitudinal concerns of adults
- Development of innovative methods and mediums of collecting the voice of the child – responsive to the child's needs
- Address concerns regarding the tribunal setting
- Building capacity and communication skills of judiciary/tribunal staff/legal representatives



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The way forward



Everybody says we have legislation that says children have to be listened to but it's not worth the paper it's written on. We've got the UN Convention on the Rights of the Child.....for goodness sake we might as well put that in the bin' (NI Parent)

This doesn't have to be the case.



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