

Impact of the Disability Discrimination Act Part 4 on Scottish Schools

Volume 1 of 1

Joanna M. Ferrie
B.Sc. (Hons) Psychology

Thesis submitted in full for the award of Doctor of
Philosophy

University of Glasgow

Department of Sociology, Anthropology, and Applied Social
Sciences

April, 2008

Abstract

This thesis aims to highlight the dilemmas within education provision for disabled pupils. This is the product of competing frameworks, coming from different historical and philosophical contexts. The Warnock Report (1978) only managed a partial transition within education for disabled pupils from segregation to inclusion. This midway stage of integration continued the bureaucratic and professional dominance over access to additional support and continued to segregate the most affected pupils despite using humanitarian and equality rhetoric to defend its position. Throughout the 1980s and 1990s this tension led to wide variation in policy interpretation throughout the UK, yet the SEN policy framework went largely unchallenged until the Disability Discrimination Act (DDA, 1995) launched the Special Educational Needs and Disability Act, also known as Part 4 in 2001 (DDA, 2001). The DDA attempted to impose a rights-based model of equality on education. The survey data and qualitative in-depth interviews generated by this thesis show that the existing tension fuelled a resistance that has challenged a thorough engagement with the DDA. Further the surveys sent to schools and local authorities suggest that insufficient time was afforded the DDA Part 4 to impact on Scottish schools before new legislation was introduced and ratified in Scottish law (Additional Support for Learning Act, 2004). In-depth interviews exploring the system of complaint under the DDA Part 4 revealed a further tension between impairment effects and social expectations of discipline in schools related specifically to a diagnosis of Attention Deficit Hyperactivity Disorder, or allied conditions. In following the ethos of the social model, this thesis concludes that the DDA Part 4 failed to account for the differentiation of experience within the disabled community, and so offered little support for those most challenged by the pedagogical structures in schools. Based on the findings of this thesis, the DDA Part 4 has had little impact on Scottish schools, due in part to the tension within the competing SEN framework and timing of other policies. In addition inherent flaws within the terms of the DDA Part 4, including the omission of auxiliary aids and services from the remit of discrimination, contributed to its failure to impact on Scottish schools.

Table of Contents

	Page
List of Accompanying Material: Appendices	7
List of Tables	8
List of Figures	10
Acknowledgement	11
Author's Declaration	12
Glossary and Abbreviations	13
1 Chapter 1 – Introduction	16
1.1 Introduction	16
1.2 Defining Inclusion	17
1.3 The SEN Framework	21
1.4 Ending Discrimination: Human Rights Agenda and the Social Model	23
1.5 The Terms of the DDA (1995) and Part 4 (2001)	25
1.5.1 The Disability Rights Commission	27
1.5.2 Making a Challenge Using the DDA Part 4	28
1.6 Aims of this Research	29
1.7 Structure of this Thesis	31
2 Chapter 2 – Barriers to Participation: the Social Model and Capabilities Approach	35
2.1 Introduction	35
2.2 The Medical Model and the Expert Professional	36
2.3 The Barriers Approach: the Social Model	38

	Page
2.3.1 A Critique of the Social Model	43
2.3.2 Emancipation and the Child	47
2.4 Equality and Capabilities	48
2.5 SEN and Disruptive Behaviour	56
2.6 Conclusion	60
3 Chapter 3 – From Segregation to Inclusion: Policy, Practice and Special Education	62
3.1 Introduction	62
3.2 The Domination of Professionals in SEN and Other Administrative Frameworks	64
3.3 The SEN Framework	69
3.4 The Special Educational Needs Framework and Inclusive Schooling: A Contradiction in Terms?	74
3.5 SEN: A Label of Difference	78
3.6 Continuing Tensions: The Rise of the Disruptive Pupil	80
3.7 England and Wales versus Scotland: Different Approaches to SEN	85
3.8 Conclusion	90
4 Chapter 4 - The Recognition of Rights and the Disability Discrimination Act	93
4.1 Introduction	93
4.2 International Perspectives: Human and Civil Rights	95
4.3 Scottish Devolution and the Rise of the Human Rights Agenda	100
4.4 The Disability Discrimination Act (1995): New Rights	103
4.4.1 The Terms of the Disability Discrimination Act Part 4: Education	106
4.5 Can the DDA Deliver New Rights?	112

	Page
4.6 Additional Support for Learning: A New Kind of Fairness?	113
4.7 Conclusion	115
5 Chapter 5 - Methodology	118
5.1 Introduction	118
5.2 Challenges and Opportunities of the Emancipatory Approach	119
5.3 Research Aims	127
5.3.1 Mixing Methods	128
5.3.2 Setting Scotland as a Research Parameter	131
5.4 Method: The Quantitative Survey	132
5.4.1 Questionnaire Design	134
5.4.2 Administering the Surveys	136
5.4.3 Administering the Parent Survey	138
5.4.4 Administering the School Survey	140
5.4.5 Administering the Survey to Local Authorities	141
5.5 Method: In-depth Interviews	142
5.5.1 Recruitment of Participants	143
5.5.2 Analysis of Interviews	147
5.5.3 Reflections on the Interviews	149
5.6 Ethics	150
5.7 Presentation of Data	152
5.8 Conclusion	154
6 Chapter 6 – Analysis of Surveys	156
6.1 Introduction	156
6.2 Awareness of Key Legislation	157
6.3 Transference of Knowledge	167

	Page
6.4	Responses Made to the DDA Part 4 170
6.5	Comparison of Schools: State and Independent Provision 175
6.6	Challenging Discrimination 181
6.7	Has the DDA Part 4 Promoted Social Justice in Scottish Schools? 183
6.8	Interpretation of the DDA in Scottish Schools: Tension between Anti-Discrimination Approach and SEN Framework 190
6.9	Conclusion 192
7	Chapter 7 – In-depth Interviews: A Biographical Account 197
7.1	Introduction 197
7.2	The In-depth Interviews of Young People whose Parents’ Reported Discrimination 201
7.2.1	Robert’s Story 201
7.2.1.1	Discrimination Reported to the DRC 203
7.2.2	Drew’s Story 207
7.2.2.1	Discrimination Reported to the DRC 208
7.2.3	Alasdair’s Story 210
7.2.3.1	Discrimination Reported to the DRC 211
7.2.3.2	Head Teacher’s Account 214
7.3	Record of Needs and Support Provision in School 215
7.4	Conclusion 222
8	Chapter 8 – Analysis of In-depth Interviews 225
8.1	Introduction 225
8.2	The Terms of the DDA Part 4 and its Definition of Discrimination 228
8.3	Satisfaction with Support from the DRC 233
8.4	Inclusion 239
8.4.1	Inclusion Requires Training 246

	Page
8.5	Exclusion 249
8.5.1	Disruptive Behaviour and Blame 251
8.6	The Pressure of Making a Claim: Education, Empowerment and Stress 253
8.6.1	Sources of Support 257
8.6.2	Challenging Teachers: The Emotional Cost 259
8.6.3	Stress 263
8.7	Conclusion 265
9	Chapter 9 - Conclusion 268
9.1	Introduction 268
9.2	The DDA Part 4 did not Impact on Scottish Schools Because: The Rights-Based DDA Part 4 could not Challenge the Dominance of the Needs-Based SEN Framework 271
9.3	The DDA Part 4 did not Impact on Scottish Schools Because: State Schools do not have a Responsibility to Comply 277
9.4	The DDA Part 4 did not Impact on Scottish Schools Because: Part 4 did not Cover Auxiliary Aids and Services 279
9.5	The DDA Part 4 did not Impact on Scottish Schools Because: The Definition of Discrimination was too Narrow 280
9.6	The DDA Part 4 did not Impact on Scottish Schools Because: The Appeals Process was Complex and Intimidating 286
9.7	The DDA Part 4 did not Impact on Scottish Schools Because: Rights did not Emerge 289
9.8	What Went Wrong? A Conclusion 292
9.9	Discussion and Future Directions 295

List of Accompanying Material: Appendices

	Page
10 Appendix 1 – Questionnaires 2002 and 2004	299
Survey to Schools 2002	300
Survey to Schools 2004	309
Survey to Parents/ Carers 2002	320
Survey to Parents/ Carers 2004	328
Survey to Local Authorities 2002	338
Survey to Local Authorities 2004	347
11 Appendix 2 – Interview Agendas and Information Pamphlets	357
Interview Schedule for Parents Involved in a Claim of Discrimination	358
Interview Schedule for Child or Young Person Involved in a Claim of Discrimination	361
Information Sheet for Parents	363
Information Sheet for Education Professionals	365
Information Sheet for Younger Participants	367
Table A2.1: Tabulation of participants who responded to the recruitment phase of this thesis.	369
References	371

List of Tables

	Page
Chapter 3 – From Segregation to Inclusion: Policy, Practice and Special Education.	
Table 3.1	Six normative models of administrative justice. 65
 Chapter 6: Analysis of Surveys	
Table 6.1	Level of awareness of the changes Part 4 had made to the DDA: comparison of the 2002 and 2004 surveys – percentage responses from parents (2004 only) schools and local authorities (LAs). 160
Table 6.2	Understanding and level of awareness of DSPERA, 2002: A comparison of the 2002 and 2004 surveys – featuring data from parents or carers, schools and local authorities (LAs). 162
Table 6.3	Survey to schools: If your school has made changes as a result of the DDA Part 4, has your school definite written plans to meet each of the following objectives - comparison of 2002 and 2004 surveys. 171
Table 6.4	Does your child's school have a written policy on SEN or disability? A comparison of the 2002 and 2004 surveys 174
Table 6.5	Type of school (independent or state) to respond to 2002 and 2004 surveys – by school's level of understanding of the changes Part 4 has made to the DDA. 176
Table 6.6	If your school has made changes as a result of the DDA Part 4, has your school definite written plans to meet each of the following provisions?: comparison of independent and state schools. 178

List of Figures

		Page
Chapter 6: Analysis of Surveys		
Figure 6.1	Awareness of the Disability Discrimination Act: A comparison of parents, schools and local authorities (percentages) – data from the 2002 and 2004 surveys.	159
Figure 6.2	Understanding and awareness of DSPERA: Featuring data from parents or carers, schools and local authorities (LAs) (percentages) (data from 2002 and 2004 surveys collapsed).	163
Figure 6.3	Levels of Understanding the ASL Bill: A comparison of parents, schools and local authorities (percentages) (2004 survey data only)	164
Figure 6.4	Awareness of Part 4, DSPERA and the ASL Bill: 2004 School Survey Data Only.	165
Figure 6.5	Awareness of DSPERA: A comparison of parents, schools and local authorities (percentages) featuring data from the 2002 and 2004 surveys.	167
Figure 6.6	Needs of disabled children taken into account in practice by school area and by state versus independent school.	177
Figure 6.7	Percentage of parents and carers who would consider using channels to challenge discrimination experienced by their child – 2004 survey only.	181
Figure 6.8	Are you fully compliant with the Disability Discrimination Act Part 4? Comparison of schools and local authorities (LAs).	185
Figure 6.9	Percentage of parents or carers who would like more information about legal rights, legislation, making a complaint and advocacy support.	187

Acknowledgement

I would like to thank my supervisors Professor Nick Watson and Professor Sheila Riddell for their encouragement and support. Nick in particular helped shape this thesis and helped me produce work beyond my expectations. My colleagues at the Strathclyde Centre for Disability Studies kept me on track through equal measures of enthusiasm and cake: your support is recognised and appreciated. Also the DRC-Scotland who supported this research and me personally.

My family have gone beyond the call of duty. Mum, thank you for all your proof reading. Sarah, Rose and Mick, thank you for the time you gave me. Dad, (some of) the arguments over dinner actually did help. Bryan, thank you for the cooking, the cleaning, the washing ... for everything you've done. And Sandy, thank you for keeping me grounded and happy.

Author's Declaration

The Impact of the DDA Part 4 on Scottish Schools.

I declare that the above mentioned thesis embodies the results of my own special work, that it has been composed by myself and that it does not include work forming part of a thesis presented successfully for a degree in this or another University.

Glossary of Key Terms

Child	A young boy or girl. Used to denote that a person is the progeny of an adult. Used in this thesis according to the terms of the Children (Scotland) Act 1995
Civil Rights	Challenge made by citizens against the State generally promoting equality
Disability	A social, attitudinal or environmental barrier imposed by a non-disabled society causing the oppression of people with impairments. Thus disability is defined according to the Social Model
Disaffected	Used to denote the challenging behaviour that places a strain on effective teaching methods
Disruptive	Used to denote the challenging behaviour that places a strain on effective teaching methods though disruption is distinguished from disaffection in that the behaviour is related to an impairment
Human Rights	Basic rights of individuals to liberty, justice and equality
Impairment	A condition of the mind and body
Inclusion	Used to denote full and equal access to opportunities
Independent School	Used to denote schools outside the authority of state education
Integration	Education provided either in a segregated unit (in terms of curricula and professional staff) sharing the same grounds as a mainstream school or a split-placement between special and mainstream provision
Mainstream	Education normally available to all children living in a local area. Mainstream education is structured around assessment of ability with key assessments taking place in secondary school (Standard Grades and Highers)
Mainstream with special unit	A mainstream school that shares its grounds with a unit providing specialist provision
Professional	An adult whose qualifications have been considered to lead to an expertise in a given area and who uses this to inform decisions
Pupil	Child or young person in full time education. Used in recognition that pupils are subject to the rules and authority of professionals

Special Educational Needs	Established by the Education (Scotland) Act, 1980 as amended to refer to children and young people with additional support needs
Special Educational Needs Framework	A series of Act of Parliament that established and amended the provision for children and young people with a special education need
Special School	A school that offers specialist support for children for who a mainstream placement is considered to be inappropriate
Young Person	Used in this thesis according to the terms of the Children (Scotland) Act 1995 to refer to a child above the age of 12, or who is younger but able to contribute to complex decisions, again with reference to the 1995 Act

Abbreviations Used

ASL	Additional Support for Learning: Used to denote the Education (Additional Support for Learning) (Scotland) Act 2004
ASN	Additional Support Needs: Term used by the ASL Act in recognition that some children and young people require additional support to access education
ADHD	Attention Deficit Hyperactivity Disorder
ASD	Autistic Spectrum Disorders
CSP	Co-ordinated Support Plan: Introduced by the ASL Act to record provision for children and young people who require continuing review
DDA	Disability Discrimination Act: Ratified in 1995 in recognition that disabled people living in the UK face institutional discrimination
DDA part 4	The Special Educational Needs and Disability Act 2001 or SENDA is Part 4 of the Disability Discrimination Act. It is referred to in this these as the DDA Part 4 to clearly distinguish it from the Special Educational Needs Framework
DRC	Disability Rights Commission: set up to regulate and promote the DDA
DRC – Scotland	Disability Rights Commission in Scotland: One of four branches of the DRC and based in Edinburgh with a remit for promoting and regulating the DDA in Scotland
DSPERA	Education (Disability Strategies and Pupil's Educational Records) (Scotland) Act 2002
Record	Record of Needs: A legal document outlining SEN and provision required
Sch.	Schedule: Used to refer to schedules within Acts of Parliament
SEBD	Social Emotional and Behavioural Difficulties
SEN	Special Educational Needs
UN	United Nations
UPIAS	Union of the Physical Impaired Against Segregation: Part of the disability model and supporters of the social model

1 Chapter 1 – Introduction

1.1 *Introduction*

Disabled young people are challenged by social, attitudinal, cultural and environmental barriers to an inclusive mainstream education. The Conservative Government (eventually) recognised that institutional discrimination disadvantaged disabled people sufficiently to warrant the Disability Discrimination Act (DDA) 1995. The Special Educational Needs and Disability Act 2001 is the third amendment to the DDA, and will be referred throughout this thesis as the DDA Part 4. Essentially, Part 4 extended the protection of the DDA into education. This thesis explores the impact of the DDA Part 4 on Scottish schools. The implementation of the DDA Part 4 challenged the orthodoxy of the Special Educational Needs (SEN) framework. Whereas the SEN framework focused on supporting the additional needs of disabled pupils, the DDA Part 4 adopted a rights-based approach. These opposing approaches had significant implications for disabled pupils.

The first section of this Chapter will introduce the concepts of segregation, integration and inclusion. These concepts have dominated the education of disabled pupils. A clarification of the terms is required to fully engage in what the disability movement were challenging when they opposed special schools and also highlights the impact of the exclusion from a mainstream placement on future life chances. Within this discussion the terms ‘mainstream’ and ‘special’ as they relate to schools will be presented. This certainly informs later Chapters and so the discussion here is fairly brief, but necessary to outline some of the parameters of this research.

The Chapter will move on to focus on the SEN framework and the key legislation that informed it. The term SEN will be defined. This discussion will aim to highlight the political assumptions permitted by the SEN framework and how this has contributed to the oppression of disabled people. This argument of oppression is largely derived from disabilities studies, and is informed by the social model’s analysis of disabling social structures. This necessarily will involve an historical overview, however this will be briefly outlined here as a deeper evaluation is provided in Chapter 3.

The rights based approach of the DDA will be explored in the next section. Again this will be a brief overview, sufficient to outline how the DDA has developed to challenge existing provision for disabled pupils. The DDA was influenced by the human rights agenda which via the United Nations (UN) had campaigned for anti-discrimination legislation in all member states. The Act was also a response to the civil rights movement and the political activism of the disability movement, which continues to campaign for the rights of disabled people. The DDA Part 4 included various caveats that restricted the definition of discrimination to facilitate its interface with the SEN framework. The discussion of the tension between the needs-based SEN framework and rights-based DDA will frame how I have understood the task of assessing the impact of the DDA Part 4 on Scottish schools. The outline of these approaches will be brief but sufficient to provide a useful context for Chapters 2, 3 and 4.

The Chapter will progress to examine in more detail, the terms of the DDA (1995) and Part 4 (2001). In particular the parameters imposed on the term disability and discrimination by Part 4 will be discussed. The role of the Disability Rights Commission (DRC) in implementing the DDA will then be considered. All these debates and discussions presented here have informed the research aims and these will be presented before the final section, which will introduce the forthcoming Chapters.

1.2 Defining Inclusion

This section will examine the relationship between segregated, integrated and inclusive education. This discussion necessarily relates to the SEN framework and education policy, but references to these are limited here and will be expanded on in later Chapters. In addition the terms segregated, integrated and inclusive will be crudely mapped onto education provision to discuss the differences between a mainstream, mainstream with special unit and special school placement.

Segregated education has been described as a legacy of the philanthropic and religious domination over education generally (Ainscow, 1999). The state intervened with the Education Act (1944; 1945 in Scotland) to standardise mainstream provision and impose

assessment criteria on pupils and the education of disabled children was legislated for alongside general provision. However, many disabled pupils were placed in special schools that retained their links to charitable and religious groups and so became segregated by default (Evans, 2007). Schools run by charities traditionally operated around an impairment type (for example the RNIB continues to work closely with schools for children with visual impairments and Capability Scotland continue to influence the education of children with cerebral palsy). The 1944 Act (1945 in Scotland), referred to disabled pupils as 'handicapped' which as Shakespeare (2006) argues is derived from the term 'cap in hand'. The 1944 Act established eleven categories of handicap used to distinguish between impairment types (and these were, using the language of the 1944 Act: blind, partially sighted, deaf, partially deaf, delicate, diabetic, educationally subnormal, epileptic, maladjusted, physically handicapped and pupils suffering from a speech defect). The Act also imposed a segregationist policy as many children were placed in special schools,

All blind, deaf, physically handicapped, epileptic and speech-impaired children were to be educated in special schools. In the case of the blind and epileptic, these were to be boarding schools.

Heward and Lloyd-Smith, 1990: 28

Indeed until 1971 children labelled as 'educationally sub-normal' could be excluded from education altogether and placed in the care of health boards (Evans, 2007; Riddell 2007).

As will be discussed, there was growing pressure to end the segregation of disabled people into institutions of any kind, and this included special schools. Although the Warnock Report (1978; a major influence in the development of the SEN framework) and the consequent legislation (Education (Scotland) Act, 1980 and as amended) argued for inclusion, it continued to allow caveats that permitted segregation if the child concerned was considered to find such a placement beneficial.

Integration was seen by some as a compromise. Children could be educated at their local school but receive specialist support. Integration has been defined as constituting a shared location; social contact between all pupils and shared curricular elements (Pijl and Meijer, 1994). Typically integrated placements either involve a full-time placement in a Unit that

shares the same location as a mainstream school, or a shared placement between a mainstream school and a Unit (either located on the same grounds or elsewhere). Even where integration officially exists a pupil's primary experience may be of segregation particularly if they do not have the opportunity to mix with their peer group and so the integration model has not always delivered what it proposes in theory. Though Slee talks about inclusion in the next quote, the context of the passage makes it clear that he is referring to integration as I have described it here.

Placing kids with appropriate support in schools and classrooms that retain all the cultural hallmarks of exclusion ought not to be described as inclusive education. Just as segregation is unacceptable to communities that describe themselves as democratic, assimilation is reprehensible and speaks not to an educated citizenryit is about location and it is about the resources to enable all children to learn.

Slee, 2007: 165

Terzi (2005) argued that though there is evidence that the integration model has influenced practice it is difficult to link it explicitly with policy that prefers to use the term inclusion. For example, Hegarty, Meijer and Pijl (1996) concluded that integration did not always bring changes to the curriculum. In other words in moving from segregated to integrated education, the only thing that changed for pupils was a shift in location. Munn et al (2000) concluded that children placed in special units were rarely included back into mainstream as the division between the child and their peer group increased. Though the child may officially be on the mainstream register, their school days could be spent isolated and 'removed from the wider school community', (Riddell, 2007: 35).

Acknowledging the inconsistencies around a definition, Ainscow (2007) identified four key elements that he believed constituted inclusion. His work is based on many years actively engaged with teachers to help them evolve their pedagogical practices and thus his definitions of inclusion go beyond theoretical framing to an understanding of practical utility. Firstly, Ainscow described inclusion as a 'process', and a 'never ending search to find better ways of responding to diversity' (Ainscow, 2007: 155). Key to this definition is the idea that celebrating diversity involves a learning process, inviting creative and original solutions to what have traditionally been defined as problems and divisions. Secondly, inclusion cannot

occur without the removal of barriers. Again this aspect of inclusion requires an openness to learn about what barriers exist, and so within this there is a need to evaluate and measure barriers to participation. Thirdly, inclusion cannot occur unless all pupils are present, participate and achieve. Within this definition, Ainscow described 'present' as being located in the same place according to the same rules (including punctuality). 'Participation' relates to the quality of experience and this can only be determined in consultation with the learners themselves. 'Achievement' should go beyond exam results to include all opportunities to learn across the curriculum, (Ainscow, 2007: 156). Finally Ainscow argued that inclusion must highlight learners who are at risk of exclusion, marginalisation or underachievement. Usefully, this quadrilateral definition locates inclusion as a moral responsibility of education providers, rather than engaging in any discussion of deficit or impairment.

Slee (2007) has also argued that inclusion should not be considered as relocation from special school to mainstream. This solution assumes that 'regular' education is the best model. As the thesis will discuss, introduction of markets into schools has made them hostile environments for those unable to compete academically. Rather, Slee encouraged inclusion to be considered as an opportunity to relocate all education provision in new times (2007).

Inclusion in education is derived from the view that exclusion is immoral. Hence inclusion in education can be seen as a basic human right, necessary for a fair and just society (Thomas and Vaughn, 2004). In turn this frames segregation into special school placements as discriminatory. This issue has moved firmly onto the political agenda and Ofsted (the Office for Standards in Education, 2003) now rates schools on their inclusion of SEN pupils, (Rouse and McLaughlin, 2007). Despite the arguments for inclusion, this Chapter will continue to explore why it has not happened in practice, as Roger Slee wrote,

"Notwithstanding this stipulation of inclusive education as a prerequisite for democratic schooling it saddens me to report that much of what is offered as inclusive education is less than democratic, less than inclusive".

Slee, 2007: 160

As has been implied by this account, inclusion is widely considered to exist in mainstream placements. Placements in a specialist unit attached to a mainstream school or a shared

placement between a unit and a mainstream school is considered integrationist and a special school placement is considered segregationist. This is a crude and sometimes misleading understanding. The degree to which any placement could be inclusive will be explored throughout this project.

1.3 The SEN Framework

The SEN framework refers to legislation influenced by the Warnock Report (1978). The Report argued for the end of bureaucratic labelling that had dominated the education of disabled children. The Report criticised the eleven handicap labels imposed on disabled children as unable to adequately describe children who had more than one impairment. In addition, the labels did not indicate the severity of the impairment, nor did it indicate what additional support needs each child had.

The Warnock Committee published their review of education (1978) and argued that the labelling of children should be abandoned. The Warnock Report suggested that the term Special Educational Needs (SEN) be used to describe all children affected by social, environmental or cultural disadvantages. The report estimated that this would relate to approximately 20% of the school population. This 20% would not always describe the same children as the Warnock Committee recognised that children migrated in and out of positions of disadvantage. The Report proposed that the most disadvantaged should receive an individual assessment known in England and Wales as a Statement of Needs and in Scotland as a Record of Needs (Record).

The Education (Scotland) Act 1980 was the first Act to implement the messages from the Warnock Report and was amended to modify provision throughout the 1980s and 1990s. Thus the 1980 Act became the foundations of the SEN framework. The Act was amended in 1981 to formally introduce Records into Scottish education. The Record was initiated in response to a child who had additional support needs. The assessment could involve a number of 'expert' contributions from medical practitioners to assess the impairment and from

education psychologists to make inferences about how the impairment might disadvantage them in school and what additional support might be required. Thus, though the Records provided additional support and a route to inclusion for pupils, the Recording process located the deficit with the child rather than with the school or teachers. In line with estimates published in the Warnock Report, around 2% of the school population have consistently been Recorded since the 1981 Act was implemented. The Record was a legal document outlining the provision agreed by professional experts to be required in order for the child to access education. Although parents could appeal against the decision to open a Record they could not challenge the diagnosis or provision outlined in the Record. Thus the terms of the Record could not be disputed and so expert professionals were effectively immune from a legal challenge.

The SEN framework was heavily criticised from its inception. Kirp (1982) criticised the Warnock Committee for not including a disabled person or disability-led groups, thus the Report was written for disabled people, not by disabled people. Florian (2007) argued that though the term SEN aimed to end stigma, it was still a label used to distinguish between normal pupils and those who required additional support. Florian and Pullin (2000) argued that establishing additional need in comparison to 'normative' progress placed ambiguity at the heart of SEN causing it to be defined differently by different people in different environments (Dessent, 1987). These criticisms and others will be discussed in more detail in Chapter 3. Such variation did indeed exist and the number of Records opened varied between schools and between local authorities (Thomson et al, 1989).

The 1981 Acts that created the Statementing system in England and Wales and the Recording system in Scotland were very much alike. They were distinguished by their implementation in different education systems but also by a number of minor discrepancies. For example parents in Scotland were able to request a placement at a school of their choice: this was not provided in England and Wales. Several policy documents and amendments to the 1980 Education Act further impacted on how Scotland interpreted their 1980 Act differently to England and Wales. In particular the Education Reform Act 1988 in England and Wales introduced market frameworks into education reflecting the strong influences of the Conservative Government. This encouraged parents to act like consumers both in terms of

choosing schools and pushing provision forward via their presence on school boards. The 1988 Act also forced schools into competition for resources which served to frame pupils who did not contribute positively to league tables or who drained school resources as undesirable. Therefore although the Warnock Committee had hoped to drive inclusion forward, the market frameworks of the 1980s countered their efforts and in fact more pupils were educated in special schools at the end of the 1980s than at the beginning (Swann, 1988; 1991).

In summary, the SEN framework had hoped to challenge segregationist policies that had dominated the education of disabled pupils prior to the Warnock Report (1978). The individualist approach encouraged by the Report had the potential to make a relevant difference for pupils who completed the assessment for a Record. However parents were unable to contest the terms of the Record thus reinforcing the power of expert professionals.

1.4 *Ending Discrimination: Human Rights, Civil Rights and the Social Model*

The human rights agenda developed alongside the SEN framework but enjoyed an international field of influence. Notably taken forward by the United Nations, the human rights agenda represents a unified declaration of minimum freedoms and rights that should be enjoyed by all people. The human rights agenda has argued for the end of discrimination. Thus anti-discrimination legislation is derived, at least partially from a human rights agenda. Specifically the UN has campaigned for all children to be educated in their local mainstream school, though until Article 24 of the *Convention on the Rights of Persons with Disabilities* (UN, 2007) they acknowledged that resources and funding issues might prohibit this in practice.

Civil rights influenced the campaign to recognise the inequalities faced by disabled people mainly through the disability movement. Barnes was a founding member of the Union of the Physically Impaired Against Segregation (UPIAS, 1976) and an early and prolific contributor to disability studies. He was fully involved in the development of the social model of disability, and has used this to inform his criticism of the DDA. The social model has been contested but a number of features are generally recognised by most people. Firstly the social

model distinguishes between impairment and disability. Impairment refers to the biological basis that in medical terms would constitute a diagnosis. Disability refers to the barriers faced by impaired people, caused by social structures that are built and maintained for the non-impaired majority. Social barriers could be environmental, social or cultural. Secondly the barriers that disable people are socially constructed. Therefore they could be removed and so their maintenance is a political oppression of disabled people. Thirdly, emancipation from this oppression must come through civil and political participation in all areas of life so that social structures are informed by disabled people. Only through this process can disabled people end their isolation, exclusion and segregation from opportunities (Oliver, 1990; 1996).

The DDA might be considered the State's response to pressure from civil and human rights movements. The original Act contained many caveats, not least was the omission of education. This triggered a great deal of criticism, particularly from the disability movement and the field of disability studies. For example, Barnes (2007) argued that the earlier amendment that created part 2 of the DDA, pertaining to employment, was of little use unless the institutional discrimination in education was challenged. Providing protection from discrimination in employment (DDA, 1995, Part 2) appeared worthless if disabled people could not get past the educational barriers and achieve the qualifications that made them competitive in the employment sector.

To examine to what extent the principles of the human rights agenda and the social model informed the DDA (1995) and Part 4 (2001), the focus will now turn to the terms of this legislation.

1.5 Terms of the DDA (1995) and Part 4 (2001)

This section will outline this legislation and tentatively assess its success in championing the rights of disabled people. The DDA (1995) will be introduced and then focus will turn to how Part 4 relates to education. Specifically the process of making a claim will be outlined. Information relating to the DRC will then be presented and this is critical for three reasons. Firstly the DRC was created to bridge the gap between the legislation and disabled people and so it has heavily influenced how the DDA has impacted on social structures

including education. Secondly the DRC had a branch in Scotland that had a specific remit for focusing on bridging the gap between Westminster and devolved provision, again including education. Thirdly the DRC – Scotland part-funded my studentship and their involvement in this research will be briefly discussed. As with the earlier sections of this Chapter, the discussions generated here are abbreviated versions of what appears later in the thesis. They are presented in order to contextualise the research questions and aims. To avoid repetition later on in the thesis, the exploration of the terms of the DDA is concise and succinct.

The DDA (1995), defines disability as,

...a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.

(DDA, 1995, Part 1, 1 (1)).

Long term relates to an actual or expected period of time not less than 12 months duration, or for the rest of the life of the person affected (DDA 1995, sch 1 paragraph 2 (1)). The Act further defined the day-to-day activities as including: mobility; manual dexterity; physical co-ordination; continence; ability to lift, carry or otherwise move everyday objects; speech, hearing or eyesight; memory or ability to concentrate, learn or understand; and perception of the risk of physical danger, (DDA 1995, Sch 1 (1)). To establish eligibility, a claimant required a medical diagnosis to prove they were disabled. Thus disabled people continued to be dependent on expert professionals to access a law designed to emancipate them. Therefore the DDA seems to be supporting the medical model, defining disability in an individualist framework and by the impairment experienced, rather than acknowledging the social, physical or environmental structures that exacerbate the impairment and create the disability (Barton, 1996; Gooding, 1994; Woodhams and Corby, 2003).

The decision to assess disability in this way mirrors the gender and race anti-discrimination legislation. Under such law, eligibility is defined using a biological criterion rather than social. To apply this criterion to disability is problematic within the context of the social model, because it is not the biological impairment that causes disability. Impairments

are not always stable or visible and their disabling effects depend hugely on the environment. Therefore establishing a claimant as disabled should require an account of environmental effects over and above any impairment effects. In addition, the focus on a medical diagnosis of impairment immediately contextualised a person as inferior, and the barrier to involvement being related to them. For example if a school is accused of holding a discriminatory attitude, does it matter what the biological impairment of the pupil is? Critically, establishing disability is categorising a person as different, and this undermines any attempt at establishing equal rights and in this way the DDA does not fully deliver social justice.

...the individualising effect of the expression of the DDA's definition quintessentially damages the 'sameness' ideology that is so crucial to the expression of liberal equality. Difference cannot be treated 'as if' it does not exist when proving that it *does* exist is fundamental to the process.

Woodhams and Corby, 2003: 167, (emphasis author's own).

The DDA (1995) was amended for the third time in 2001 to produce Part 4 and to place a duty on education providers to end the discrimination of disabled pupils. Unlike SEN legislation which applies to local authority provision only, the DDA Part 4 related to state and independent schools and colleges. Independent school boards or owners are ultimately responsibly for the school's compliance with the DDA Part 4 whereas the compliance of state schools lies with their local authority.

Part 4 of the DDA made it unlawful to discriminate against a child for a reason related to their disability in admissions (including placement requests), in education and associated services (including school trips; the curriculum; teaching and learning; school sports and the serving of school meals) and exclusions (DRC, 2004). Discrimination is considered to occur in two ways. Firstly, less favourable treatment involves unjustifiable discrimination for a reason relating to a child's disability. Justification for discrimination could be argued if the reason was both material to the circumstances of the particular case and substantial (not trivial or minor). Secondly, discrimination could occur if a school had failed to take reasonable steps to ensure a child was not at a substantial disadvantage compared to other children at the school (DRC, 2004).

The DDA Part 4 had two strands: schools and post-16. The schools strand did not place a requirement on education providers to supply auxiliary aids and services, thus pupils or parents were unable to use Part 4 to challenge the support provision outlined in their Records. Critically then, any additional provision (or not) supplied by the school to aid inclusion and access could not be challenged by the DDA. The post-16 strand *did* cover discrimination associated with the provision of auxiliary aids and services.

The DDA Part 4 imposes duties on education providers not to discriminate or treat pupils less favourably and to make reasonable adjustments to support all students with a disability. The legislation has promoted inclusion and the formal removal of barriers which may have existed in schools. Therefore, despite the medical test of eligibility, the aims of the DDA are consistent with the social model. The duty to take reasonable steps was extended to disabled children who might become pupils, thus there was a need to be anticipatory (DRC, 2004). Parents or pupils were required to bring a case within six months of the act of discrimination taking place.

1.5.1 The Disability Rights Commission

The DRC was created by the Disability Rights Commission Act (1999) and opened in April 2000 to regulate and promote the DDA (1995). Although its main office was in London it had branches in Manchester, Stratford upon Avon, Edinburgh and Cardiff. The Edinburgh branch worked closely with the English offices but also concerned themselves with national (that is Scottish) legislation where it departed from UK-wide policy. Where the DDA had been too restrictive to represent a case, the DRC had used British Human Rights legislation to extend their abilities to represent cases of discrimination, (Bindman, 2007). Thus the DRC may have operated as an interpreter of the DDA, emphasising its commitment to the social model and human rights agenda.

Three caseworkers worked for the Scottish branch of the DRC and each specialised in a different area of the DDA (education, employment and goods and services) although there was some crossover in their remits. For the first year that the DRC – Scotland operated, the casework team were managed from Manchester. The creation of a legal team in the Scottish

Branch after a year enabled the casework team to establish some autonomy from the rest of the DRC.

This research was supported by a CASE studentship funded by the ESRC. The CASE element required that the research relate to a professional issue and offer a pragmatic discourse. The thesis was also part-funded by the DRC - Scotland. To fulfil my commitment to them, I was based in their offices for one day a week for most of the funding period. The benefits of this arrangement were significant. I was able to share with them early findings from my analysis and contribute to related projects to gain a wider insight into how the DDA was impacting in Scotland. In addition, the DRC – Scotland funded my paper presentation at the Nordic Network on Disability Research 2005 conference in Oslo, Norway (Edson, 2005).

1.5.2 Making a Challenge Using the DDA Part 4

As stated, the DRC - Scotland had a full time caseworker in post throughout my field work in charge of Part 4 education cases. Parents in Scotland querying an incident that they believed to be discrimination could contact the DRC helpline based in Stratford upon Avon. If the case was considered valid their details were passed onto the Scottish branch of the DRC for further investigation. The DRC was created to bridge the gap between policy and experience. Therefore the support they gave to parents aimed to ensure that the complexities of the Act did not act as a barrier.

Once caseworkers had established that the child considered in a case under Part 4 was probably disabled and had probably been discriminated against (this could only be decided by a Court), they negotiated with the parent to agree how to proceed. Though cases could ultimately be heard at the Sheriff Court in Scotland, parents reluctant to pursue the case to this degree were encouraged to explore other, less intimidating strategies to resolve their challenge against the child's school. Even parents that were adamant that they wanted their case heard in Court were required to use other avenues in the first instance. This started with letters to the school to collect evidence about the incident at the centre of the claim and to request a reasonable response if this was relevant. This was followed by a request for meetings.

If the case was still unresolved after this process had been administered, parents were invited to use the DRC's conciliation service. This was a form of mediation that aimed to allow parents and their child's school to negotiate a positive way forward but had no power to impose a decision or settlement on either party. Both the education provider and the pupil or parent had to agree to conciliation. If parents were unhappy with the outcome of the conciliation, they were afforded an additional two months (on top of the standard six months) to bring a case to court, thus they were not disadvantaged (in terms of timetables) by using this route of redress. Conciliation was designed to resolve cases and avoid a Court case in recognition that this could be stressful and intimidating. In fact, the formality of the Sheriff Court was thought to have contributed to the low number of cases made in Scotland (Wolfe, 2007). The Court could not agree any financial compensation but could, if a case was upheld, offer a declaration of rights or an order requiring positive action.

In England and Wales, a pupil or parent making a case under the DDA Part 4 may appeal to SENDIST (Special Educational Needs and Disability Tribunal) or SENTW (Special Educational Needs and Disability Tribunal for Wales). These replaced the Special Educational Needs Tribunal (SENT) and in effect took an established tribunal, existing out-with the court system, and extended the remit to include disability discrimination cases. The tribunals had the dual advantage of being less intimidating than the Court, and of having cases heard by people who were practiced and experienced in hearing DDA cases.

The Education (Additional Support for Learning) (Scotland) Act 2004 represents the next wave in provision for pupils in Scotland who may be disadvantaged. The Act created the Additional Support for Learning Tribunal that has been hearing cases since 2005. The tribunal does not currently hear disability cases, but it has the potential to (just as SENT evolved into SENDIST).

1.6 Aims of this Research

It is clear to me that much hangs on education. As Terzi (2005) argued in her support of the capabilities approach, learning to read not only vastly increases the likelihood of employment, but increases the likelihood that a person can access knowledge and be stimulated by

literature. The SEN framework segregated many disabled children into special schools or units attached to mainstream schools. The opportunity to learn, and access the freedoms associated with this was compromised for many disabled children. The DDA Part 4 seemed to introduce a measure of redress that could be used to support the rights of disabled children to access the education that would provide inclusion now and inclusion in the future. The central aim of this research is to determine if the DDA Part 4 had delivered inclusion and rights in practice and to critically assess if it has had an impact on Scottish schools. Thus the central research aims are:

1. To investigate the impact of Part 4 of the DDA on schools in Scotland.
2. To look at the impact on the application of Part 4 and the Education (Disability Strategies and Pupils Educational Records (Scotland) Act 2002, which obliged local authorities to plan for accessibility for disabled students, as well as the proposed additional support needs framework which was due to replace the special educational needs (SEN) framework in Scotland.
3. To illuminate different responses to the DDA within different local authorities, school sectors (independent and state) and families of disabled children.
4. To consider the nature of social justice promoted by the DDA and the extent to which anti-discrimination legislation is an effective means of enhancing the life chances of disabled pupils.
5. To analyse the extent to which the legislation is working well and any changes which may be needed to make it more effective in combating discrimination and promoting equality for disabled pupils and prospective pupils.

Aims 2-5 support the first, and so feed into an understanding of the extent and nature of the impact of Part 4 of the DDA on Scottish schools. Specifically point 2 requires an understanding of how the SEN framework developed in a devolved Scotland and how it has informed the ASL Act (2004). Point 3 will build on the literature that has shown a variation in interpretation of the SEN framework (Thomson et al, 1989) and will determine if different stakeholders have interpreted the DDA differently. Points 3 and 4 look specifically at whether the DDA Part 4 has been able to maintain its human rights ethos, and whether anti-discrimination legislation can improve the life chances of disabled pupils, and finally if Part 4

is found weak in practice, then the analysis of data will attempt to generate suggestions for its modification.

1.7 Structure of the Thesis

Chapter Two provides a wider and deeper discussion of theoretical models which have framed how disability is understood. The social model and the capabilities approach are the main models focused upon. The social model, as discussed earlier, developed as a political message to challenge the oppression of disabled people (Oliver 1990; 1996). The social model has been rehearsed and challenged (see Thomas, 1999; Shakespeare, 2006 and Shakespeare and Watson, 2001) and these developments will be charted. The capabilities approach was developed by Sen (1980; 1985) to offer an alternative framing of disadvantage that went beyond measures of utility or poverty. The principles were built upon, notably by Nussbaum (2006). In distinguishing between the capabilities approach and Rawlsian contracts (Rawls, 1971), Nussbaum (2006) emphasised that well-being and the end of disadvantage required participation in civil and political life. Disability was framed as a disadvantage by the capabilities approach, but it was recognised that other elements of experience could also be framed as a disadvantage. This allows capabilities to transcend the division between impairment and disability inherent in the social model, as both can contribute to disadvantage. This Chapter aims to use the social model and capabilities approach to assess *how* disabling barriers have been allowed to emerge in our social structures.

Chapter Three traces the development of education provision for disabled pupils. Necessarily, the SEN framework is the primary focus of this Chapter. Writers reflecting a barriers approach, a rights perspective and feminist analysis have criticised the assumptions made by the framework and their arguments will be presented. The work of Kirp (1982) and Riddell (2006) have particularly informed the assessment of the SEN framework. Riddell (2006) substantiated Kirp's (1982) models of administrative justice, and analysed to what extent Scottish SEN provision is influenced by competing frameworks such as professionalism, consumerism and bureaucracy. The SEN framework has been associated particularly with professional frameworks as exemplified earlier by the 'expert professional' able to decide which pupils get provision and the protection and validation of a legal

document: the Record. If parents were able to challenge the provision supplied by their child's school, then parents might be considered to be acting as consumers, with a power that can be used to enhance provision and services.

Chapter Four looks more closely at the rights agenda (civil and human rights) and how it emerged to influence anti-discrimination policy and in particular the DDA. The DDA will be examined in more detail and the definitions of discrimination and disability used by Part 4 will be assessed in terms of delivering the social justice message promoted by the rights agenda. Examples from employment law have further indicated how the DDA has been interpreted. In the absence of case law pertaining to the school strand of education, employment cases provide the best resource.

The methods employed by this research project are outlined in Chapter Five. To reflect the participatory principles of the social model and the capabilities approach, I was committed to involving people who had made a claim under the DDA. The opportunities and challenges presented by the emancipatory approach (Stone and Priestley 1996) are considered. The research aims are re-stated and the methods introduced. I have used a mixed methods design, using quantitative surveys and qualitative in-depth interviews to explore different elements of the research aims. Three surveys were developed and sent to local authorities, schools and parents or carers of a child with a disability or a SEN or a Record in 2004. The surveys permitted a comparison with data collected in 2002 by Cogan, Riddell and Tisdall (2003; also sent to local authorities, schools and parents or carers). The qualitative short answers generated by the surveys and the in-depth interviews were analysed using grounded theory. The Chapter considers each method in detail.

Chapters Six, Seven and Eight comprise the findings Chapters of the thesis. Chapter Six looks in detail at the levels of awareness of the DDA Part 4 and presents the analysis of the surveys. The surveys were sent to parents or carers, schools and local authorities twice. They were sent in 2002 to measure awareness of the DDA and how it was impacting on schools (Cogan et al, 2003) and again in 2004 to measure awareness of, and responses to Part 4 two years after its implementation. The data collected from the surveys permitted a number of comparisons. Survey data generated in 2002 could be compared with data generated in

2004 to determine if the DDA Part 4 was continuing to impact on Scottish schools, and what barriers to compliance with the terms of Part 4 existed. Secondly the three stakeholders represented by the surveys were compared: thus parents' responses were compared with schools' responses and with local authorities' responses.

Chapter Seven presents a biographical account of the three in-depth interviews. These accounts provide an overview of the challenges each young person represented by the interviews has faced in accessing education. In particular these accounts serve to present the case of discrimination that was presented to the DRC – Scotland. The biographical data is so rich and emotional that it was considered useful to present it separately to the analysis. The focus then turns to a theme that emerged from the interviews and the short answer responses from the surveys and revolves around problems with Records. As noted earlier, auxiliary aids and services are outside the remit of the DDA Part 4. However, these elements were a major cause of concern for parents and many felt that the failure by schools to deliver the provision outlined on the child's Record constituted discrimination. Thus this discussion highlights a central weakness of the DDA Part 4: it is unable to challenge the most prolific forms of discrimination in Scottish schools.

Chapter Eight presents an analysis of the qualitative data generated by the research to explore how the DDA Part 4 has been used in practice. As the parents who made a claim of discrimination experienced the claims process, their accounts are highlighted. However a great deal of data provided by the short answer responses on the surveys from parents or carers, schools and local authorities further informed the themes that emerged from the interviews and so are also presented here. The Chapter begins by outlining understanding of the terms of the DDA and whether it has been useful in challenging discrimination. Necessarily, a discussion of how the DRC have facilitated cases is presented and this particularly focuses on the experiences of conciliation. Inclusion is the next major theme to be explored. Though the DDA promoted inclusion there was little evidence that Scottish schools had become more inclusive as a result of Part 4: a lack of resources and training were generated as explanations. Many of the young people represented by the survey to parents and the interviews were excluded from school and excluded from opportunity. This central theme of exclusion is discussed and multiple examples of how this manifested are presented. Finally the focus turns

back to the experience of making a claim using the DDA Part 4 to examine the strain it imposed on claimants. The interviews with parents were infused with emotion, for example all reported feeling frustrated and angry with their child's school. This emotion caused stress which ultimately ended the parents' claim of discrimination.

Finally, Chapter Nine brings together the main conclusions that have been identified during the course of this thesis. The impact of the DDA Part 4 on Scottish schools will be assessed in light of this evidence. This discussion largely is located in the tensions caused by imposing a rights-based policy on a needs-based SEN framework. Weaknesses in the DDA itself will be highlighted as also contributing to its minimal impact on Scottish schools. The findings of this thesis will be used to inform a discussion of how the DDA Part 4 might be strengthened in order to protect the rights of disabled pupils to be free from discrimination in school. The Additional Support framework is then briefly considered to explore whether it has the scope to work with the DDA (to a better degree than the SEN framework) to enhance the life chances of disabled pupils. This final Chapter not only contributes to existing knowledge about how disabled young people are restricted from accessing the full opportunities presented by an inclusive education, but aims to provide a starting point for considering how life chances could be optimised by future provision.

2 Chapter 2 – Barriers to Participation: the Social Model and Capabilities Approach

2.1 Introduction

An issue central to this thesis is the extent to which the rights-based Disability Discrimination Act (DDA) was able to articulate with the needs-based special educational needs (SEN) framework. The DDA part 4 introduced a rights-based framework to a sector dominated by normative, essentialist and individual deficit models of special needs education. This Chapter will map two conceptual strands that have informed this transition; the social model and Nussbaum's capabilities approach.

This Chapter aims to provide a context for the debates discussed in the rest of the thesis. To understand the key theoretical debates introduced in Chapter 1, the social model will be explored in more detail. This begins with a brief account of how normative social structures have caused the disadvantages associated with disability. This was largely a function of the Capitalist influences which promoted a medical discourse that was in turn responsible for the rise of the professional expert. The domination of the professional is exemplified by the creation of policy for, not by, disabled people and this medical approach will be briefly explored in the first section of this Chapter. The social model was developed to oppose this medical framework, criticising it for being oppressive.

The next section of this Chapter will turn to the social model and the Chapter will draw on writings from some of the main protagonists involved in the disability movement (then writing as academic professionals) including contributions from Mike Oliver and Colin Barnes. The social model has been contested for rejecting the experience of impairment. These debates will be introduced and the social model's continuing dominance over disability research will be debated.

The Chapter will continue by examining models of equality, and in particular Nussbaum's (2006) capabilities approach to social justice. Largely influenced by Amartya Sen

(1985, 1992), the capabilities approach emerged from the field of economics as a new approach to framing disadvantage. The Chapter will move on to examine the work of Martha Nussbaum who has further developed the approach and used it to understand the disadvantages faced by disabled people. The main argument to be drawn from this framework is that unless disabled people and pupils within special needs education contribute to making the rules by which they are governed, then equality cannot be achieved. This principle is used to demonstrate (and echo the position outlined by the social model) that special needs education prevents equality by continuing to be governed by policy made for disabled people, not by disabled people. Where appropriate, the exploration of the capabilities approach will be informed by the social model to illustrate how they can usefully be considered together (Burchardt, 2004) and how this might have implications for policy (and anti-discrimination policy in particular).

The final section of this Chapter goes beyond the discourse of equality or emancipation and looks at the balancing of rights between the disabled pupil and their classmates. This pulls sharply into focus once the issue of disruptive behaviour, increasingly associated with SEN, is considered as inclusive education for the individual may result in an uncomfortable learning environment for the majority. Despite international support for inclusive practices, this last section aims to highlight the barriers to inclusion as seen by educational practitioners. Disruptive behaviour must be considered by this thesis in order to demonstrate that inclusion is not just about a shift in attitudes but needs a closer focus on how Teachers should be supported in practice. In addition, this final section lays the groundwork for the qualitative data Chapter (Chapter 7) which echoes these issues.

2.2 The Medical Model and the Expert Professional

As stated in the introduction, the social model was a political response to the oppression of disabled people. The social model framed the medical domination of provision for disabled people as a major cause of the disadvantages that they faced: these disadvantages have been collectively understood as the ‘medical model’. This section will explore the medical model and how it was used to describe the paternalism of professionals, who made decisions for, or

in the supposed best interests of disabled people. The root of this model, and why the disability movement challenged it, follows.

The medical model focused on impairment as being the cause of disability. The World Health Organization's (1980) definition of disability offered a three-tier model. The model promoted the interaction between impairment and the environment by using the term disability, but also added the term handicap to relate to the social barriers which limited opportunities. However by relating the term disability to impairment, the WHO definition located the deficit with the individual. For this reason the medical model has also become known as the individual model.

Oliver (1990) further highlighted how the medical or individual models of disability derived from a medical discourse. For example the provision of services for disabled people has been framed by medicalised language: disabled people suffer, need help, a cure or treatment and should be pitied. Oliver called this the personal tragedy model (1990) and associated it with assumptions of dependency placed by society on disabled people. Consequently, the medical model had influence beyond health care and its assumptions were also embedded in wider social structures including education.

Individual cure or, more likely, adjustment to a less-than-normal adult life, became the objective of the special system. A youngster entering the system of special education was unlikely to return to ordinary school. Only after leaving school, if at all, might he disappear into the general population.

Kirp, 1982: 145

For example until 1971, the care of those termed 'educationally sub-normal (severe)' was provided by health authorities, and so these children lay completely outside of education (Evans, 2007). Even in contemporary times, before resources could be allocated to support any disabled person, the nature of their impairment is assessed. This may involve a medical examination followed by assessments from education and perhaps social work professionals. Professionals assessed how the impairment would limit and restrict 'normal' function, and so the person is defined by their impairment with an emphasis on deficit.

Many sociologists and academics had bought into some of the assumptions of the medical model. For example, Bury (1997) recognised a strong link between chronic illness and disability, and argued that although the two are different, it is meaningful to consider the two together, especially with respect to older populations, ‘Though not all forms of disability are caused by chronic illness, most are’, (Bury, 1997: 120). The medical model, therefore, was allied with the concept of rehabilitation and the pursuit of normality with the assumption that this was in the interest of the person. Of course normality, certainly in this context, was a social construction dependent on time and location and its definition would be dependent on populist influences (Barnes, 1996a). Critically the medical model used the expertise of professionals (mostly non-disabled) to socially construct disability.

2.3 The Barriers Approach: the Social Model

This section of the Chapter will introduce the emergence of the social model through disability activism in the 1970s and 1980s. The political significance of the social model was essentially a response to the dominance of the medical model. This section will discuss how the disability movement challenged the medical model and how this informed the social model’s definition of disability.

The UPIAS (Union of the Physically Impaired Against Segregation), was formed in the 1970s and was perhaps the first group to claim to represent all disabled people (formally groups organised around a particular impairment, for example the RNIB can trace its routes to 1868, and use the charity model to challenge inequality) (Abberley, 1987). The disability movement that operated in the 1970s was inspired by other civil rights movements that campaigned for gender and race equality and had successfully fought for legal rights in the US and UK (for example the Race Relations Act 1976 and Sex Discrimination Act 1975). The UPIAS sought to challenge the inequality that they faced as disabled people.

The social model emerged from this commitment to emancipate disabled people, to end the oppression faced by disabled people and achieve equality (Oliver 1990). The social model was not an example of isolated and fully formed ideas, but has been better described as an awakening, influenced by evolving political, social and moral arguments (Thomas, 1999).

As the main players who created the social model graduated into academic positions the social model informed a new discipline: disability studies.

Although aspects of the social model have been contested over the last thirty years (Oliver, 1996) there are four central tenets of the social model which are common to all versions and so share a consensus of approval (Burchardt, 2004). Firstly the social model distinguishes between impairment and disability. Secondly, the social world creates economic, physical and social barriers for disabled people. Thirdly the personal tragedy model should be rejected in order to achieve emancipation from oppression. Finally collective action is required to change society. Though these concepts were introduced in Chapter One, I will explore these in more detail here.

The WHO (1980) provided a three tier model of impairment, disability and handicap. In contrast the social model presented a distinction between impairment and disability. The term impairment, as used by the social model largely coincided with the definition promoted by the WHO. Thus impairment was a condition of the body or mind and so could include a range of conditions that if framed in a medical discourse would be diagnosed and treated. For example, impairments might include a visual impairment, a mental health problem or a learning difficulty. The social model presented disability as a category distinct from impairment. Related to this, the second element refers to disability as the product of social, economic and physical barriers that had been constructed to prioritise the needs of non-impaired people. For example, Gleeson (1997) argued that disability was located spatially (physical barriers) temporally (social attitudes and historical political structures) and economically (productivity), thus, barriers could be attitudinal and physical, (Thomas, 2002). As Finkelstein argued,

Disability is the outcome of an oppressive relationship between people with impairments and the rest of society.

Finkelstein, 1980: 47

Thirdly, by emphasising that social structures cause disability, the personal tragedy model of disability becomes unsustainable. Discrimination and oppression are socially constructed and serve to disadvantage disabled people. Because they are socially constructed they should be

dismantled as a matter of social justice in order to achieve equality (Oliver and Barnes, 1998). Therefore access to education, to employment and other social structures should be considered a right. Finally, though it is established that society needs to change, disabled people need to collectively oppose the systems that discriminate and oppress. This would involve recognising that the experts on the disadvantages of disability are people who experience impairment and not the traditional 'expert professionals' thus challenging the power held by doctors, teachers, social workers and researchers (Albrecht, 1992).

As the social model distinguished between impairment and disability, so Oliver (1996) argued that disability should be separated from illness. He recognized that in some situations or experiences this separation would not be useful, but argued that while the two were unified in people's consciousness, social barriers would never be removed as disability would remain a medical issue. This position was counter-argued by Bury (1996) who argued that without impairment, society had no basis of response to additional need that might be generated from impairment and so it was futile to state that the body had nothing to do with disability. Social modelists have stood their ground arguing that the illness was measured against normative experience with an emphasis on ending the illness by rehabilitation or cure.

Such pursuit of normality in the lives of disabled people was oppressive in two ways: firstly it was less attainable for some, and secondly it posited that disabled people should aspire to be average, and for most of us, this would lie under our expectations. Thomas (1999) further reasoned that the idea of normality was limited in the extent to which it could represent the aspirations of people with learning difficulties or mental health problems. By celebrating difference, the social model fought against the homogeneity promoted by the normality approach and argued that it was neither realistic nor desirable (Morris, 1991).

According to Oliver (1990) the medical model was an interpretation of the wider impact of capitalist structures on disabled people. Capitalist structures correspond to the process of industrialisation that triggered urbanization, changing work patterns and the increasing 'interference' of the state (to regulate employment and living arrangements). The demands of factory work in particular were considered to negate the integration of disabled people into productive roles.

The operation of the labour market in the nineteenth century effectively depressed handicapped people of all kinds to the bottom of the market.

Morris, 1969: 9

If employment was not accessible, then another source of subsistence needed to be developed and disabled people were increasingly segregated into institutions such as the workhouse and asylum. Consequently, disabled people were excluded from participating in society and from freedom. Oliver has argued that the consequences of capitalist structures continue to exclude disabled and impinge on their right to full participation (1990).

Throughout most of the 20th Century the UK supported the segregation of many disabled people from their communities into institutions (often run by medical professionals): asylums; residential homes, supported accommodation and special schools for example. As the futures of many people were protected (decided by others and funded by the state), their rights as citizens were restricted. For example academic attainment and fulfilling employment were not achievable for many disabled people. Philanthropic and humanitarian ideologies were used paternalistically to defend disabled people from the realities of life and effectively reduced civil participation by removing accountability, taxes and responsibility. Without these truisms of life, we have no challenges, rewards and arguably, no fulfilment. Perhaps the reasoning behind segregation from citizenship was humanitarian, but the consequences were unkind. Many disabled people were not given a choice about how they were going to live their life, (Brighouse, 2001).

[Freedom is] a recurring theme in the demands of the disability movement: for independence (the opportunity to choose your own living arrangements), for civil rights (the opportunity to take full part in society), and for autonomy (the opportunity to formulate and pursue a plan of life). Liberation from disability is about having choices, not about living life in conformity to some pre-defined notion of normality.

Burchardt, 2004: 742

The legacy of rules made by non-disabled people for disabled people has led to assumptions that disabled people should be excluded from opportunities. The social policies and structures that have been informed by these assumptions institutionally discriminate against disabled people. Institutional discrimination had led to segregation from citizenship (both the fulfilment and responsibilities associated with this) for disabled people.

Institutional discrimination ... is embedded in the excessive paternalism of contemporary welfare systems and is apparent when they are systematically ignoring or meeting inadequately the needs of disabled people.

Barnes, 1992a: 7

Institutional discrimination had increasingly infiltrated social policy throughout the 20th Century until the disability movement formed a cohesive and credible counter-argument. Without this collective voice, the State's oppression remained unchallenged and hidden from view (Barnes, 1992a). Oliver (1990; 1996) conceptualised this discrimination as social and economic barriers causing disability and associated it with the prejudice faced by other segregated communities (for example minority ethnic groups). Institutional discrimination had fed into our culture's psyche further establishing a culture of dependency. For example Shearer, (1981) argued that legislation like the National Assistance Act, (1948) and the Chronically Sick and Disabled Person's Act (1970) encouraged,

... the notion that people who happen to have disabilities are people who are helpless, unable to choose for themselves the aids to opportunity they need.

Shearer, 1981: 82

This was also evident in the acceptance of charities acting as an appropriate source of expertise or funds (for example providing housing; respite facilities; help-lines or managing special schools) rather than expecting the state to make adequate provision as it did for those it recognises as citizens.

Oliver, (1996) argued that disabled people would only be accepted as citizens if they were productive and could therefore meet their civil responsibilities (like paying tax). Oliver was writing at a period of evident institutional discrimination against disabled people. For example, Glendinning and Hirst, (1989) reported that disabled young people could be refused a place on a Youth Training course on the basis that their employment prospects would be minimal. Exclusion from employment directly impacted on opportunities to be self-sufficient. Due to a lack of qualifications, employment and social opportunities, disabled people have been more likely to be dependent on services (Barnes, 1990; Hirst, 1987). If responsibilities could not be met, then the issue of 'fault' or being 'non-deserving' came into play. This situation then allowed disabled people to be judged by non-disabled experts as to whether they

had the right to be a citizen and take part in rule making (or contracts to relate this to Nussbaum, 2006).

The most powerful attack against institutional discrimination (as formed by capitalist structures and the medical model) was that the social model was created by and for disabled people (Campbell and Oliver, 1996). Therefore disabled people were setting themselves in direct opposition with professionals as a new source of expertise. The social model was an essential step in re-defining disability to achieve the emancipation of disabled people.

However, in employing the materialist and anti-capitalist framework, Oliver (1996) was able to describe the problem without offering the solution, for many disabled people were unable to contribute within the materialist discourse. By applying his argument, it followed that impaired people who were economically productive were not disabled. Indeed if the social model was successful in removing all social barriers, disability should not exist. Though some people seemed to live in this reality (impaired but not disabled), the majority did not. The Chapter will go on to explore how the social model has been challenged.

2.3.1 A Critique of the Social Model

In providing an outline of criticisms against the social model, this section will begin by outlining criticisms levelled at the UPIAS. This is not because the UPIAS and the social model are the same, but rather reflects that the strong political drive of the UPIAS was translated into the model. The social model has been criticised for hiding personal experience and hiding the disadvantaging effects of impairments. This is due, at least in part, to the fact that the members of the UPIAS (including those that developed the social model) represented a relatively homogenised group of disabled people. For example, they tended to be male and to have a physical impairment which coloured their understanding of disability (Barnes, 1996b). The section will then turn to challenges made against the social model.

The UPIAS (1976), as champions of the disability movement, had a strong political ideology.

[Disability is] the disadvantage or restriction of activity caused by a contemporary social organisation which takes no or little account of people who have... impairments and thus excludes them from the mainstream.

UPIAS 1976, cited in Oliver 1996: 22

The UPIAS were committed to the political mobilisation of disabled people to oppose the systematic segregation of disabled people from society and end the exclusion of disabled people from decision making positions of power. Oliver, (1990; 1996) argued that oppression was so entire that even disabled people in power bought into the construction of dependency and failed to identify as oppressed, thus contributing to the subjugation of disabled people. This position allowed the UPIAS to retain a strong political focus. However this excluded some people from participation in Union meetings: non-disabled people were exiled from the early debates and dissenting disabled people were accused of not understanding the ideology or being deluded and so doubly oppressed.

This approach triggered criticism particularly from disabled women. For example Davis (in Campbell and Oliver, 1996: 67-68) argued that the organization of UPIAS was dominated by masculine political debate, although she clarified that this method did reap rewards. Mason (also in Campbell and Oliver, 1996: 52) went further saying that the exclusion of people was vigorous and forceful, to the point that the UPIAS no longer attracted members because potential members became fearful of a public rejection at the hands of the original members, (Thomas, 1996). Such treatment motivated the setting up of alternative groups. For example the Liberation Network of Disabled People in 1979 was a women-only organisation of which Mason was a founding member. Yet UPIAS and the social model continued to dominate anti-disabilism campaigning despite presenting a homogenized account of living with oppression.

In particular Oliver's (1990) account of the materialist oppression of disabled people had informed the distinction between impairment and disability that formed the basis of the early social model. In locating disability only in a social sphere, Oliver's social model could not acknowledge the interplay of other elements of an individual that could further disadvantage them. Thus, the social model was criticised for denying the multiple and personal experiences of oppression which occur when a person belongs to two or more

minority groups. For example, much has been written promoting the experience of disabled women (Crow 1996; Thomas, 1999), disabled black people (Stuart, 1993; Begum et al, 1994; Priestley 1995) and disabled children (Kennedy, 1996; Morris, 1997; Robinson and Stalker, 1998). In order to make the message of the social model politically powerful and perhaps because the main proponents of the disability movement had similar impairments, and so could present a unified model based on their collective experiences, Oliver (1990) ignored the subjective and multi-faceted concepts of experiencing impairment. The concept of disability promoted by Oliver revolutionised thinking on disability and liberated many disabled people into forming a new identity far removed from the medical model's personal tragedy theory. However this message continued to alienate some disabled people from emancipation because their subjective experience was invalidated.

Carol Thomas in her critiques of the social model has focused on the non-physical barriers that can oppress and cause disability. For example, she argued that discriminatory attitudes can restrict personal growth; skill development; psychological and emotional health. Thomas termed this, the psycho-emotional dimensions of disablism, (Thomas, 1999) or the social-relational theory, defined as,

Disability is a form of social oppression involving the social imposition of restrictions of activity on people with impairments and the socially engendered undermining of their psycho-emotional well-being.

Thomas, 1996: 60

Some impairments will have a psychosomatic dimension with a psycho-emotional consequence, for example pain. Within this example, both the social and the medical model could offer emancipation of a kind. Pain therefore may have a biological basis and be allied closer to the medical model than the social model (need for prescribed pain relief). By ignoring impairments as a (part) cause of disability, the social model over-socialised their position, and blamed society for a disability which was not social (Bury, 2000, Thomas, 2002). The psycho-emotional dimension was triggered by social constructs, for example difficulty finding employment because of discriminatory attitudes, and therefore related heavily to the social model of disability. 'Disability is about both 'barriers' to 'doing' and barriers to 'being'' (Thomas, 1999: 60). Here a link can be made to the capabilities approach

to equality (Nussbaum, 2006), discussed later on in this Chapter. There has been some exploration of the psycho-emotional dimension of disability within disability studies (for example Finkelstein and French, 1993; Shakespeare and Watson, 1997). The argument does not follow that disabled people are passively manipulated into a depressive state akin to Personal Tragedy Theory; rather it was acknowledged that psycho-emotional oppression is another barrier to overcome and was actively challenged by disabled people. Thus Thomas' critique of the social model was in the form of a barriers model, but did not hold that *social* barriers were the only cause of disability. The social model may be limited because it removed agency from its members (Terzi, 2005). By directing all responsibility to society, it argued that society must find the solution. The social model therefore, underestimated and ignored as a resource the ingenuity, strength and adaptability of its members.

The social model has also been criticised for being modernist, as it presented impairment and disability as being disconnected. By separating the two concepts, the social model risked reinforcing the medical model, which also denied the interaction between impairment and the self, (Hughes and Paterson, 1997). This dualism also served to ignore the impact of impairment, and consequently relegated it to a medical discourse. The social model could also be considered modernist in its over-emphasis of a single category, in this case, the disabling effect of social barriers. Thomas (1999) reasoned that the limitations of the social model were not based in their materialist foundations, but in the way these foundations were represented, and so the social model was unable to take the personal into account. Thomas (1999) and others, challenged the social model to develop its own strategy in response to these criticisms, and incorporate the personal account of impairment into its approach (Shakespeare, 2006).

Despite attempts to critique the social model (for example, Shakespeare and Watson 2001) and re-structure it (for example, Thomas, 1999; Shakespeare, 2006) it continued to dominate the discipline. This created a tension in British disability studies as academic theorising continued to look toward a political model to maintain its credibility both academically and in terms of policy. As will be seen later in this Chapter and in Chapter 3, once the social model was applied to education, the flaws in the approach become evident.

That is, the focus on social structures as the only barriers to learning restricted policy and practice from achieving the equality desired by the social model.

To follow this argument, the social model had limited use once it was applied. The duality and uncompromising nature of impairment or disability made it difficult to apply to practice. Yet despite the DDA (1995) and four subsequent amendments, discrimination is still faced by disabled people. Perhaps as testament to this, the new Equality Act (2006) included disability as a 'strand'. It seemed clear that discrimination still existed to oppress disabled people. Evidently, the work of the social model was not yet finished. Disability (that is, socially created barriers) still existed and therefore the political movement needed to persist to promote inclusion and to highlight the social injustices that continued.

In summary, the social model was successfully used to raise awareness of the oppression faced by disabled people. However the uncompromising duality of the social model limited its use in practice. The social model denied impairment as a cause of disadvantage and this was inconsistent with the experience of many disabled people. In hiding this personal experience from the model, disabled people were challenged to isolate disability from other elements of their identity that were also associated with disadvantage. The next section will expand on the argument presented here that disability can be exacerbated if an individual also belongs to another minority group: a brief account of how being a child and having an impairment can lead to oppression follows.

2.3.2 Emancipation and the Child

Both the experience of being a child and being disabled can be termed as sources of oppression. More than disabled people, disabled children are trapped into a discourse of welfare (Cockburn, 1998; Hogan, 2002). This is largely a function of the requirement to attend school between the ages of 5 and 16. Therefore children have little opportunity to resist the authority of professionals. In fact children spend most of their waking time being organized by social structures that they have no control over. They are certainly framed as dependent on adults to make decisions, though initiatives like student councils are increasingly used to involve pupils.

Perhaps one of the biggest barriers is when it is assumed that impairment means that it is not possible for the young person to make choices.

Morris, 2001: 19

School is where children learn that their value to society depends on their ability to produce according to capitalist principles; a status quo made worse by league tables and a national curriculum (Hargreaves, 1990; Davis and Hogan, 2004: this argument will be extended in Chapter 3). The overwhelming influence of school can predominate in a child's life, and the aspirations within school could, because they are endorsed by adults and society, overwhelm their non-educational aspirations, needs and wants (Prout, 2000).

The Children's Rights perspective challenged the notion that children required adult intervention, in the form of formal education, in order to eventually mature into responsible and productive adults (Hogan, 2002). The UN Convention on the Rights of the Child (1989) and the Children (Scotland) Act 1995 are recent examples of how the promotion of the rights of children could challenge the capitalist paradigm, and ensure that children have a powerful voice to inform policy, rather than just be the subject of it (Davis and Hogan, 2004).

According to the Children's Rights movement, parents are no longer the protector of their children, but the protector of their children's rights, with the role of encouraging their children to think and act independently of others (Moss and Petrie, 2002). This movement reflected the emancipation of disabled people (Barnes, 1992a), (despite the fact that adults were still involved as 'protectors' in the Children's Rights movement) and was therefore especially relevant to disabled children.

2.4 Equality and Capabilities

This next section will turn from a sociological to a philosophical perspective to explore ideas of citizenship and the service user's right to participation. In particular, Sen (1982, 1992) and Nussbaum (2006) used the capabilities approach to examine how users formally segregated from participation (for example due to living in poverty or due to discrimination) needed to join the 'rule-makers' in order to achieve inclusion and equality. The capabilities approach goes beyond utilitarian conceptualising of disadvantage which tends to use income as a

measure of equality. Sen (1980) argued that while an economic basis is relevant, it needs to be contextualised by social and physical barriers to equality in order to have a meaningful and relevant impact for individuals.

Extra costs like additional heating, or paying for personal assistance, mean that for the same level of income, a disabled person will achieve a lower standard of living than a non-disabled person.

Burchardt, 2004: 739

The capabilities approach has been applied to disability and in particular the work of Nussbaum (2006), Terzi (2005) and Burchardt (2004) will be considered.

So far in this Chapter, we have discussed how the medical model was challenged by the social model as disabled people collectively argued against oppression. From this review, it was concluded that disabled people and children have traditionally and historically had limited opportunities to contribute to society generally and to education policy specifically. This section of the Chapter will introduce philosophical ideas of social justice, in an attempt to connect, theoretically, how participation must come before inclusion can be achieved. Institutional discrimination and capitalist oppression were considered (Oliver, 1996) to prevent the involvement of disabled people in society and thus restricted the citizenship of disabled people. Although the social model introduced this argument, it did not fully articulate with egalitarian notions of citizenship. By exploring such philosophical arguments, inequality has been framed (notably by Martha Nussbaum, 2000, 2006) in terms of social justice and capabilities. In turn the capabilities approach has been explored in relation to special educational needs (Terzi, 2005). The next section of this Chapter will introduce the capabilities approach and describe how it formulated freedom and justice. The focus will then turn to how the capabilities approach may be used to overcome the practical limitations of the social model as discussed earlier in this Chapter.

The ideas of social justice which most influenced Nussbaum's interpretation of the capabilities approach (2006) originated with philosophers such as Hume and Kant, and emerged from the work done by Rawls (1971) on social contracts. Because of these influences, the idea of justice that Nussbaum employs is therefore located in a time and place,

namely early Western capitalism. Thus it offers similar origins to Oliver's (1990) materialist capitalist perspective, though the former deals with the included and the latter the excluded.

The basis of social justice concerned those who made rules and law, known as social contractors. In order for social justice (including equality and freedom from discrimination) to exist, social contractors should be citizens who lived with and obeyed the rules, and not just representatives of those citizens. Social justice prevailed as rule makers made rules that advanced their interests. Thus because rule makers were made up of citizens, everyone's interests were advanced. Contracts were required, because without them 'entitlements are insecure and equality non-existent' (Nussbaum, 2006: 39). Thus equality was not assumed to be inherently within us but was an agreement reached: a counter-balance supporting mutual dependency and advantage to avoid exploitation. Rawls, (1980, 1996) excluded people who were ill, disabled or impaired arguing that they cooperated with and contributed to other contractors, presumably on the materialist notion that low productivity equalled low status. He argued that as contracts worked by mutual advantage, people would only cooperate with those who they considered would help them gain. People who make (or who are recognised as having the potential to make) unusual or expensive demands without contributing to the social product, Rawls argued, would ultimately reduce the groups gain. This is an unpleasant feature of contract theories. By invalidly assuming the non-contribution of disabled people, contract theories effectively disallowed their contributions.

The distinction Rawls, (1980, 1996) drew between 'normal' and 'impaired' people mapped on to those who he considered to be cooperative or non-cooperative. As Nussbaum counter-argued, this was a social construction imposed upon disabled people. She argued that Rawls or social contractarians could not know whether an impaired person was able or unable to cooperate. Nor did this model recognise that if restrictive social barriers were removed, most impaired people could cooperate, indeed had fought for the right to cooperate and contribute to social contracts. Thus Rawls and his model effectively lay the 'blame' of non-cooperation unjustly on disabled people.

Their relative lack of productivity under current conditions is not 'natural' it is the product of discriminatory social arrangements.

Nussbaum, 2006: 113

Epstein, (1992) countered Rawls' assumption that non-cooperative people should be excluded from social contracts, arguing that we all had the potential to be ill or impaired, either temporarily or permanently. Were this to happen, our moral worth would not change. Thus, excluding people who are impaired, ill or disabled is immoral, and potentially excludes everyone.

Further, if a group of people had been segregated from those making rules (or contracts), the rules that were made would not represent their interests, (Nussbaum, 2006: 17-18). This idea of social contracts (Rawls, 1971) harked back to ideas set out by Hume and Kant, at a time when most disabled men were segregated from the majority and did not contribute to making rules. The social-contract tradition represented those that possessed equality. Nussbaum (2006) argued that any theory of justice based on this system would be unable to treat disabled people as citizens as they were essentially, an afterthought, represented at best, but not participants.

To be considered equal citizens (subjectively and objectively) disabled people must be both part of making social contracts, subject to their rules and to the rules which are inclusive of their experience. Through this process, disabled people could find the emancipation they had collectively sought through the social model. Disabled people have been excluded from policy making. Fry (1987) reported that in the 1987 general election, many disabled people did not appear on the electoral register; blind and deaf people were unable to find party publications in accessible formats and so were unable to make an informed decision; inaccessible public transport and inaccessible polling stations prevented many others from voting (Ward, 1987). To relate this argument to education; until special education or additional support for learning legislation is informed by disabled people, it will not meet the needs of disabled pupils. The Warnock Report (1978; discussed in detail in Chapter 3), was a major influence on special needs education in the UK but was written by a committee that did not include a disabled person or a disability-led organisation.

Nussbaum (2004) used the alienation of disabled people from contract making as the source of stigma and shame that surrounded the experience of living as an impaired person. Here the shame is a judgement placed on those unable to contribute in a materialist and productive way, thus echoing Oliver's stance (1990, 1996). She argued that it was the way that society was structured that makes shame inevitable, and therefore, only society can rectify the situation.

... modern liberal societies can make an adequate response to the phenomena of shame only if they shift away from a very common intuitive idea of the normal citizen that has been bequeathed to us by the social-contract tradition so influential in the history of European thought: the image of the citizen as productive worker, able to pay for the benefits he receives by contributions he makes.

Nussbaum, 2004: 176-7

Contractarian models were a form of procedural justice. This held that provided equality and justice were built into the process of law (or contract) making, then the outcomes, (laws) would be equal and just. To work, this process assumed that all law makers were equal. In contrast Nussbaum's capabilities approach (2000, 2006) was outcome-based. A just and equal outcome was first determined, and then the process of achieving this was developed. This latter method had the advantage that it was not open to the manipulation of self-interested law makers particularly where the law makers did not represent everyone.

The capabilities approach (Nussbaum, 2006) celebrated diversity (and so was inclusive to people with a disability) and was so allied with the social model. As difference and heterogeneities could be managed within this theory, the capabilities approach offered an alternative to the currently homogenized policy framework of special education (Terzi, 2005). Thus, the approach allowed for multiple identities and factors to contribute to experience, and in this way it perhaps also offered an alternative to the social model's dichotomy of impairment or disability.

The capabilities approach was originally developed to explore poverty and the related and associated inequality (Sen, 1992). The approach both articulated with a liberal egalitarian philosophy and approached the idea of equality from a distributive perspective. Inclusion was considered a moral issue and thus offered an interesting challenge to policy makers. When

applied to education, inclusion was considered mandatory in order for democracy to be achieved (Nussbaum, 2006, and also Armstrong et al 2000; Clough and Corbett, 2000). For it was considered, that if democracy and equality could not be accomplished within an educational environment, then the principles of social justice could not be instilled in the adults that pupils become. As Marcia Rioux said 'Equity in education is a commitment of the public education system to social justice' (Rioux, 2007: 107).

Whereas the social model was framed in a materialist discourse, the capabilities approach used 'freedom to choose' as its measure of inequality. Thus, those who were oppressed and discriminated against had less freedom and opportunities to make fulfilling life choices. Rather than looking for equal resources, the capabilities approach argued that the capacity each person had to pursue well-being should be equalized. Within this, well-being was considered to be derived from potential for functioning and capabilities. Functions referred to the activities and notions that 'constitute a person's being', (Sen, 1992: 40) for example nutrition, health and happiness. In addition to having the capacity to function, an individual must have capabilities: 'the freedom to lead one type of life or another', (Sen, 1992: 40). It was the idea of freedom to choose that was central to the capabilities approach.

Capabilities were measured according to three criteria: personal characteristics (including age and gender but also more abstract concepts such as intelligence); external circumstances (such as inherited wealth, location of upbringing) and inter-individual variation (describing the differences between people in terms of what their ambitions are, and how successful they are in achieving their aspirations), (Terzi, 2005; Sen, 1985, 1992). When applied to education or any aspect of social living, the capabilities approach arguably went beyond the social model and the current education policy framework in that it could recognise both impairment and social barriers.

If transport were accessible, personal assistance was provided free at the point of use, and household items were designed to be inclusive, the extra costs of living with an impairment would be considerably lower than they presently are. In other words, some additional costs are unavoidable costs of impairment, while others are costs of disability.

Burchardt, 2004: 740

Thus, it could be used to meet Norwich's (1993) call for an accommodation of both the 'individual personal' and the 'social organization' (Norwich, 1993: 20) and the interaction between the two. It also worked from an emancipatory position as the individual's aspirations influenced the capabilities measure, thus a person had the right to decide for themselves what is important, and what is required to make them equal.

Education is a key theme in social justice. In terms of the capabilities approach it is fundamental both to being and doing. A formal education is not just the key to employment and qualifications but to a rich cultural life. For example if pupils leave school unable to read, they will be limited in their career opportunities, and in the fulfilment of reading as a pastime (Terzi, 2005). In this way, education can be seen as a capability that will inform and develop future capabilities and freedoms.

Since participation requires basic educational skills, denying the opportunity to schooling to any group, for example, female children, is immediately contrary to the basic conditions to participatory freedom.

Sen, 2000: 32

In turn, any restriction to learning (either impairment related or social barriers) could restrict future opportunities. Therefore education should not be seen as a resource limited issue (again, explored in Chapter 3), but one of social justice, where an individual's life-long fulfilment depends on a successful experience of education. In addition, the compulsory nature of compulsory education ensures that all children learn the social values extolled by the system that educates them, (Rioux, 2007). If equality needs to be learned, then it needs to be learned in school. Therefore education can be termed,

... both an end in itself, that is, a process through which personal development and respect are obtained and a means to an end, that is, an integral part of the achievement of social citizenship.

Basser, 2005: 534

In addition, any society will advance only if the individuals within it advance, thus making individual learning a prerequisite for social development (Sen, 2000).

In criticism of the capabilities approach, impairment was framed as a disadvantage, and this perhaps failed to reflect the positive (or even neutral) life experiences of disabled people. The assumption of disadvantage generated the idea that disabled people required compensation (for example, time, remuneration and legal rights) in order to achieve equality and freedom. In one way then, the capabilities approach faced the same problem as the social model and SEN policy, in that disadvantage needed to be measured in order to adequately compensate. However Terzi (2005) argued that as disadvantage is just an aspect of what influences capability, this will not cause the stigma or division that currently dominates special education (Minow, 1990). Terzi claimed that the capabilities approach, when applied to disability, floats over the materialist divisions between impairment and normality; over special education policy's normal and SEN categories; and over the medical model's resources or no-resource dichotomies. Further the impact of impairment and social barriers become relational and so are able to co-exist and contribute evenly.

If disability is seen as one aspect of a person's experience, balanced with factors such as age, gender, health, economic status, aspirations and so on, then disability becomes an aspect of each person's identity rather than a dominating label. Therefore it cannot be owned by 'expert' professionals. Indeed no decision should be imposed upon any individual if the capabilities approach is to be seriously engaged with. Any assessed disadvantage becomes an issue of social justice rather than a case for a specific minority issue relating to legislation such as the Disability Discrimination Act (DDA, 1995). This has the advantage of giving justice to people without them having to define themselves by any anti-normative category. It also challenged the configuration of the DDA where an individual must fight for their own rights. Rather the onus should move to the social structure (for example, school, education department, local authority, government) to deliver social justice to all its members. Thus, they are automatically free then to feel like citizens as 'disadvantage' as a concept is recognised to occur (potentially at least) to all people.

Though managing to avoid an isolating and segregating label, the capabilities approach may fail to adequately indicate how redistribution should work. Redistribution cannot be infinite in demand or in amount (Veatch, 1986). When Sen originally conceptualised capabilities, he examined poverty. Within this field a cut-off point can be determined.

Nussbaum (2000) has argued for agreed minimum criteria to be constitutionally ratified in order to guarantee human dignity, and so address who is eligible for recognition or redistribution without using the segregating terminology of specific disadvantage, or the arbitrary and inconsistent cut-off currently used in special needs education.

The capabilities approach may indeed offer an alternative to the social model without having to relinquish the idea that social barriers disable. So far in this Chapter, normative structures and special needs education has been critiqued as contributing to the segregation of disabled people. The full participation of disabled people in education, rule making and social cultures is envisaged as mandatory to allow equality. Before we leave this discourse of justice though, the final section will examine the debate around what happens when ideas of justice conflict. This is illustrated by considering the rights schools have to exclude disruptive pupils, in the interests of the majority of students.

2.5 SEN and Disruptive Behaviour

So far in this Chapter, disability has been framed as a social construct, the result of social barriers rather than impairment. The disabled person has been characterised as an oppressed and medicalised being with little political agency or rights to citizenship. Within this construct, social justice appears to be necessary and fair. To highlight the issues in providing equality in practice, this Chapter will now turn to consider how schools have traditionally responded to disabled pupils who engage in disruptive behaviour.

Schools employ teachers to adopt the role of professional expert. The expertise of teachers extends beyond the subject matter of each lesson to a wider role as the teacher has responsibility for discipline and performance (both theirs and their pupils). The introduction of market regulation into schools (for example the right to request a placement and league tables) imposed an ultra-competitive framework on schools throughout the 1990s (generated by the Education Reform Act (1988) implemented in England and Wales and influencing Scottish policy in the 1990s). Such programmes have been criticised for encouraging segregation of 'difficult' pupils,

Schools may ... be encouraged to expel students whom they find difficult to teach.

OECD, 1999: 34

Education policy that promotes market frameworks has been criticised for encouraging the segregation of disabled pupils into special schools. As schools had to compete for pupils, disruptive or low-attaining pupils were considered a threat to the school's public image (Armstrong and Galloway, 1994). As many of these children have a diagnosed condition which contributes to their special needs status, some impairment groups have become synonymous with disruption in the SEN literature (for example pupils with Attention Deficit Hyperactivity Disorder (ADHD), Social, Emotional and Behavioural Disorders (SEBD) and Autistic Spectrum Disorders (ASD)). Swann (1992) measured an increase in the number of students with behavioural problems removed from mainstream into special schools, a form of exclusion then that doesn't appear on the school records. On the face of it, market frameworks result in unequal and unfair treatment of disabled pupils.

This poses a problem for the social model and the social justice/capabilities approach. Some children are considered to be outside the mainstream framework, because their behaviour is not framed by their impairment, but by the unsettling impact it has on the rest of the school. This argument is supported by the huge increase in the number of pupils diagnosed with conditions relating to behavioural problems (for example, ADHD, ASD and SEBD). So who is the social justice framework defending by insisting on inclusion? The rights of the pupil with a behavioural condition must be weighed against the rights of the other pupils sharing the same environment. Promoting equality and inclusion for disabled pupils is not the issue per se, the issue here is of the inclusion of pupils who can be violent or aggressive (whether or not this behaviour is related to an underlying impairment or condition).

The expansion of the SEN category to include young people with disruptive behaviour has been afforded a materialist explanation by some. For example, Riddell, (2007) referred to an earlier study (Bowles and Gintis, 1976) to support the argument that education policy had evolved to compensate for the consequences of a capitalist Britain. Specifically, pre 1990s, children from socially disadvantaged communities were not given the same educational opportunities as children from affluent communities, rather as they were expected to enter into

blue-collar employment, academic performance was considered relatively unimportant. Thus any child from a deprived background with a learning difficulty or who struggled to read would be less likely to receive educational support. Arguably this is still the case as people diagnosed with dyslexia are much more likely to come from middle or high income homes. The collapse of the youth labour market throughout the 1980s was supposedly tempered by greater pressure for young people to stay on at school, and thus barriers to learning became more evident (as the young person stayed at school for longer) and more disabling (as the academic work got more difficult) (Tomlinson, 1985; Riddell, 2007).

Education is the linchpin to the argument because it is the school system which is responsible for knowing and judging intellectual ability and thus justifying the social and economic place of individuals. The school system is structured then to act as a sorting system for the long-term social and economic order rather than to equalize opportunities.

Rioux, 2007: 113

It seems that the correlation between deprivation and SEN has been accepted without question by policy makers and practitioners. The link is an accepted fact rather than a situation to be challenged. Kumar (1993) and Mortimore and Whitty (1997) have provided evidence to support their claim that low educational attainment is linked to poverty. However, low educational attainment seems to have become tantamount to SEN. The conceptual link between social deprivation and impairment has informed strategies used by local authorities in England and Wales to determine what proportion of their budget should be allocated to supporting pupils with SEN (Evans, 2007).

This is an example of policy excluding pupils caught in a triangle of disadvantage: low socio-economic background; disruptive behaviour and SEN status. Armstrong and Galloway (1994) described how the policy of competition, informed by the market regulation framework, forced schools to focus on those pupils most able to optimise a school's reputation and their league tables. The Education (Scotland) Act (1981) (discussed in detail in Chapter 3) permitted focus on impairment as a valid reason for removal from the mainstream class,

... reforms have encouraged teachers to re-define their responsibilities towards their pupils as the notion of professional competence has moved away from being defined in

terms of managing and retaining disruptive pupils in mainstream classes and towards successfully negotiating their removal by formal assessment procedures.

Armstrong and Galloway, 1994: 176

Armstrong and Galloway continued by arguing that this process then located the breakdown of a mainstream placement as due to the deficit of the child, rather than a weakness of policy or pedagogical practice. The SEN label, rather than protecting resources, may actually have contributed to the segregation of the child. Their disruptive behaviour could be pathologised in a way that allowed schools to disregard their duty of education as being outside their expertise. The assessment process for gaining a record of needs may be less about determining appropriate resources and more a way of legitimising a failure to cope with certain pupils. This was demonstrated by the fact that exclusion often occurred at the same time as an assessment was initiated, further reducing any chance a child might have of returning to a placement in mainstream education (Armstrong and Galloway, 1994). Writing from a rights perspective, Rioux commented,

The challenges that children present because of their differences, should not provide an excuse for inaction and exclusion.

Rioux, 2007: 115

This point was further expanded on by Ainscow, who has worked closely with educational practitioners to implement social justice theory into pedagogical practice.

It is very easy for educational difficulties to be pathologised as difficulties inherent within students. This is true not only of students with disabilities and those defined as 'having special educational needs', but also of those whose socioeconomic status, race, language and gender render them problematic to particular teachers in particular schools.

Ainscow, 2007: 150

This section has explored arguments that some children get caught in a triangle of disadvantage that inflates issues until segregation and exclusion is sanctioned. The capabilities approach and the social model could frame this as oppression or disadvantage and argue that the market frameworks have imposed capitalist structures on education that reduce the opportunities for disabled people to participate in mainstream education. A deeper analysis of pedagogical practices might frame the disruptive behaviour as being triggered by inflexible

and unsupportive teaching styles. However it is more difficult to see how the capabilities approach or the social model could resolve this situation. To promote the rights of the disruptive student is to deny the rights of other students and staff to be in a work environment free of violence (disruption in its most extreme form). This debate will be returned to in Chapter 9.

2.6 Conclusion

The DDA Part 4 was launched into an established social system which had oppressed and disadvantaged disabled people. Materialist explanations for this generated the medical model, and this in turn highlighted the role of 'expert professionals' in acting for, and not with, disabled people. This Chapter has considered the challenges made to this social order from the social model and the capabilities approach.

The social model challenged institutional discrimination in all sectors of life. The disability movement emerged in the mid-1970s inspired by the US Civil Rights movement and anti-discrimination lobbyists representing gender and race equality causes. Strongly politicised, the movements were committed to ending the dominance of the medical model in their lives, and ending the consequent segregation from opportunities and citizenship. The social model was their manifesto for change. The demands written into the model were not open to negotiation. Despite the strength of their message, campaigns and critique of the dominant order, it was almost twenty years between the UPIAS (1976) promoted the social model (Oliver 1990) and the first rights-based legislation: the DDA (1995).

The social model succeeded in initiating the challenge to discriminatory practices in the UK. Through their academic writing, the disability movement successfully brought into focus the oppression faced by disabled people. Thus an articulate political movement became a sharp and vicious critic. They succeeded first in becoming part of the established order, and then in confronting it. Perhaps the inflexibility of the social model can explain why it took so long to influence policy. The inflexibility was challenged from inside the movement (Thomas, 1996, 1999; Crow, 1996, Shakespeare and Watson, 1997, Shakespeare, 2006) for presenting a

limited argument. By focusing on only social barriers the social model gave the SEN framework no means to articulate with it, thus closing any negotiations for change.

The capabilities approach argued for greater participation of those who live by ‘rules’ in making the rules. Nussbaum (2006) argued that as disabled people had traditionally and historically been unable to contribute to the rules that governed equality, they could not hope to be equal. Thus to achieve inclusion and equality, disabled people must be actively involved in making new laws and policies that represent their interests, in order to achieve equity, a similar case was made by the social model.

Though the capabilities approach and the social model frame disadvantage and criticise education structures that segregate pupils out of mainstream placements they do not sufficiently acknowledge the tensions within education of including pupils who are disruptive in class. The fight for equality and inclusion for disruptive pupils is tested by the impact their behaviour has on other pupils. Thus in order to protect the rights of pupils and teachers generally, some pupils may be excluded and this tension (and how the social model and capabilities approach might inform a resolution) will continue to inform this thesis.

In the next Chapter, the issue of inclusion will be considered, in light of education and SEN policy over the last 30 years. The normative model of administrative justice (Kirp, 1982; Riddell, 2006) will be used to examine the SEN framework and assess where barriers to equality and inclusion exist for disabled pupils.

3 Chapter 3 – From Segregation to Inclusion: Policy, Practice and Special Education

3.1 *Introduction*

Rawls (1971, 1980, 1996) argued that people unable to fully cooperate (by this he meant ill, disabled or impaired people) should not be included into contractarian models, or be involved in law making. Rather their needs should be considered after social contracts have been drawn. In many ways this seems to reflect the way special educational needs (SEN) provision has been developed: as an afterthought to mainstream education. In order to study education provision for disabled pupils, it is necessary first, to have an understanding of policy and practice, and secondly to understand the theoretical frameworks that have informed it (Riddell, 2006). This project occurred at a time when two frameworks were competing for dominance within ‘special’ education: needs-based special educational need (SEN) framework and the rights-based anti-discrimination legislation. The SEN framework was inspired by the Warnock Report (DES, 1978) and led to the system of recording the most affected pupils. The rights-based framework was influenced by the human rights agenda and the social model (which in turn emerged from the civil rights movement) and aimed to emancipate all disabled people to political freedom and autonomy. In addition, shortly after the fieldwork was completed, came the Education (Additional Support for Learning) (Scotland) Act, 2004 (ASL Act). The ASL Act was still in the form of a Bill during the dissemination of the surveys and the qualitative fieldwork, yet its influence had been detected and so is considered in this Chapter. The purpose of this Chapter is to trace the policy development relating to the education of disabled pupils and to critically assess to what extent policy has moved from segregation to inclusion. While this Chapter charts the evolution of the SEN framework, the next Chapter will debate the growing influence of human rights in UK anti-discrimination policy and specifically the advent of the Disability Discrimination Act.

The first section of the Chapter presents a review of critical writing in the field of education and will explore approaches to ‘special’ education in the first section of this

Chapter. In particular Riddell's six normative models of administrative justice (2006) will be looked at in depth. Influenced by Kirp, (1982), Sheila Riddell aimed to critically assess the motivations behind education policy by looking at the dominant framework in which the policy was formed. In this Chapter, Riddell's perspective will be used to review the policies that make up the SEN framework and will aim to determine why a social justice or a rights-based framework did not articulate with special education earlier than 2001 (SENDA, 2001).

The Chapter will progress with an account of the Warnock Report (DES, 1978) and how it hoped to end the bureaucracy that permeated education and promote inclusion. This section will continue by examining the theoretical basis behind the development of the SEN category, and how it has been interpreted in practice, particularly by the Education (Scotland) Act 1980 (as amended). I aim to highlight the tensions between policy and practice that have been allowed to develop and which have led to inequality and an infringement of the rights of disabled and SEN pupils.

The next section will focus on the nature of inclusion and how the 1980 Act allowed segregation to exist in practice despite the strong proposals for inclusion inherent in the Warnock Report. Support for segregation, still notably evident in parent-led groups will be considered. This discussion will highlight how the assumption that inclusion is better, (generated by equality), has been challenged.

This discussion will be followed by an exploration of the consequences of labelling students as having SEN. This label was intended to reduce stigma. However this has not happened in practice. Minow (1985, 1992) termed it the dilemma of difference, describing the need to create a category so that resources and additional support can be provided which automatically, it seems, creates a degree of inferiority for those eligible to join the group.

The issue of discipline and impairment is a crucial section of this Chapter, and the themes introduced here resonate in the data Chapters (particularly Chapters 7 and 8). The increase in pupils diagnosed with conditions that are associated with disruptive and anti-social behaviour has given mainstream schools a new challenge in inclusion. The current SEN framework, it is argued, in focusing the failure to learn on the deficit within the individual

child, prevents a fair review of how school environments and pedagogical practice form barriers to learning for these pupils.

Finally, the comparative work between Scotland and England and Wales is used in this Chapter to highlight trends and so is a mechanism for critical thinking rather than being an exhaustive and comprehensive description of policy. Scottish education has developed alongside English policy and this has resulted in differing approaches to SEN. I will consider how this has impacted on practice. In particular the market and consumerist frameworks (Riddell, 2006) have been shown to have a greater impact on English and Welsh schools, than schools in Scotland. In turn, the rights-led legislation, such as the Disability Discrimination Act (DDA, 1995) encompasses the entire UK. The exploration of different influences on SEN in this Chapter will allow in Chapter 4, a full debate of how the DDA articulates with the different educational frameworks north and south of the border. The UK was the only developed country to introduce SEN reform (in the guise of the Education (Scotland) Act 1980 (as amended)) without allocating additional resources, (Wedell, 1988) and the consequences are explored in this section of the Chapter.

3.2 The Domination of Professionals in SEN and Other Administrative Frameworks

In this section, contributions by Kirp (1982) and Riddell (2006) are considered. This will aid a critique of the policy that forms the SEN framework. The work of Sheila Riddell is particularly relevant as her critique of education policy spanned the arrival of the rights movement into UK legislature (the Disability Discrimination Act, 1995) and the new additional support approach (Education (Additional Support for Learning) (Scotland) Act, 2004). This section provides an outline of Riddell's sociological interpretation of policy and will be used to critically consider the terms of SEN policy throughout this Chapter.

David Kirp (1982) offered a comparative essay on the debate on special education reform, outlining how a rights based-influence on American special education had increased justice for pupils in the US compared to the professionalism dominating in the UK. In his essay, Kirp reviewed the huge changes in special education policy that had been developed in

the UK in the 1970s. Kirp concluded that policy influenced by professional, political, legal, bureaucratic and market regulation frameworks managed the education of disabled pupils. Riddell (2006) added managerialism to frame how UK policy had developed. In order to clarify the character of each framework, Riddell described how each one was associated with a mode of decision-making, legitimating goal, mode of accountability and remedy for user (see Table 3.1).

Table 3.1: Six normative models of administrative justice. From Riddell, 2006: 12

Model	Mode of Decision-Making	Legitimating Goal	Mode of Accountability	Characteristic Remedy for User
Bureaucracy	Applying rules	Accuracy	Hierarchical	Administrative review
Professionalism	Applying knowledge	Public service	Interpersonal	Second opinion complaint to a professional body
Legality	Weighing-up arguments	Fairness	Independent	Appeal to a court or tribunal (public law)
Managerialism	Managerial autonomy	Efficiency gains	Performance measures	Management sanctions Complaint to ombudsman
Consumerism	Active participation	Consumer satisfaction	Consumer charters	‘Voice’ and/or compensation through charter
Markets	Price mechanism	Private sector – profit Public sector – efficiency	Commercial viability	‘Exit’ and/or court action (private law)

Kirp (1982) argued that despite the opportunity to introduce influences that could have improved social justice and equality for disabled pupils, UK policy continued to be dominated by professional frameworks for a number of reasons. Firstly research that informed policy and the writers of policy were not disabled. For example, the Committee that created the Warnock Report (DES, 1978) was composed of educational professionals and ‘friendly’ academics chosen to maintain the status quo, (Kirp, 1982). No groups representing disabled people and no disabled people were appointed to the Committee. Additionally, although the Report (and

other Government documents during the decade) did encourage the inclusion of disabled pupils into the mainstream, no additional funding was made available to fulfil this proposal.

DES circulars in the early 1970s made explicit reference to resource constraints as justifying the failure of local authorities to implement concededly beneficial reforms. Section 10 of the 1976 Education Act, which called for integrating handicapped children into ordinary schools, was not implemented partly because the resources were unavailable ...

Kirp, 1982: 168

Thus the potential for a revolutionary approach to special education was limited.

Although the other routes to equality for disabled pupils had some influence during the early years of the SEN framework (early 1980s) they did not have the impact of the professional framework. For example, special education was seen as a minority issue, and would therefore have little impact on voting patterns; hence a political framework had minimal impact on special education policy. Similarly, the legal framework was hindered from influencing special education policy in the UK in three ways. Firstly, the lack of a constitution in Britain provided no legal basis from which to launch a rights-based argument. In the US the constitution was successfully used to challenge spending decisions by education departments.

Court decisions rejected the arguments of school districts that certain needs of handicapped children were unaffordable. The constitution, said the courts, does not carry a price tag – the implication being that these needs were not demands to redistribute resources which might be compared with other demands, but were absolute entitlements.

Kirp, 1982: 169

Secondly, in the UK, appeals against decisions made by a local authority education department could at best change the circumstances for the individual child, but would have no impact on other children facing the same barriers. Hence the effort and cost of a litigious or administrative appeal in the UK was prohibitive given the potentially small reward. Appeals in the 1970s and 1980s were rare and generally unsuccessful (Kirp, 1982). Finally, the potential of a legal influence on special education was dampened by the fact that no legal expert sat on the Warnock Committee. Evidently special education was considered remote from legal

matters, though this is problematic as citizenship, as will be discussed in the next section, requires a legal basis for rights and freedoms.

Omitted from Kirp's analysis was the influence of the civil rights movement, mostly because it had not had much impact on the education of disabled children. Although he concluded that the professional framework dominated, all frameworks were essentially made up of professionals or adults making decisions for disabled pupils. The views of children and disabled people were not reflected in any of the frameworks influencing special education. The dominance of bureaucratic and professional frameworks in SEN policy was at the expense of the consumerist voice of parents and children. Though some parents were more powerful and vocal than others, in terms of assessment (Record of Needs) professionals always had more power than parents (Armstrong and Galloway, 1992; Swann, 1987; Tomlinson, 1981) and children (Armstrong et al 1993). In contrast, professionals were able to negotiate with each other as power was perceived to be shared (Armstrong and Galloway, 1994). Indeed the Record came to be seen by some practitioners as a bureaucratic tool to reach a decision already made,

...the decision to refer a child for assessment is usually made in anticipation of a particular outcome: either the removal of a child from the school or the acquisition of additional resources. In consequence, an assessment under the 1981 Act is seen by teachers merely as a bureaucratic mechanism for effecting that outcome.

Armstrong and Galloway, 1994: 187

Though Kirp (1982) considered the influence of bureaucratic, legal and market regulation frameworks on special education to be limited, Riddell (2006, and Brown, 1994), writing with a focus on the 1980s and 1990s, were clear that they too dominated policy in Scotland. Each framework not only defined the problem attended to, but indicated the mode of accountability and suggested the resolution. Thus the framework chosen, governed the ease by which service users could engage with the policy and fight their case (Riddell, 2006). For example, a sector or system dominated by a bureaucratic framework relied on hierarchies and followed rules to ensure accountability and consistency. Service users were represented by categories, rather than individual needs, and used administrative reviews to challenge any decisions. In contrast, the professional framework was founded on the knowledge of experts, claimed to focus on the individual rather than the requirements of practitioners and users could

appeal to professional bodies if there was a decision they wanted to contest. The professional framework may have worked well if the professionals were indeed experts and if they were independent of the budget controllers. In the case of SEN, the same psychologists undertaking Record assessments were employed by local authorities and pressurised to reduce expenditure. This dual role effectively undermined any efforts to fully support pupils with SEN (Riddell, 2006). The legal framework aimed to deliver fairness and justice through independence from the system that supported the service user. The court or tribunal system aimed to resolve conflict (see Riddell, 2006: 13 for a more detailed review).

The Conservative Government of the 1980s and 1990s influenced the rise of three further frameworks: managerialism, consumerism and market regulation. Kirp (1982) also stated that these three frameworks had increasing influence on American education. As Riddell argued (2006) managerialism aimed to optimise efficiency by applying performance measures (Clarke and Newman, 1997; Newman, 2001). Market regulation aimed to increase value for money and quality by setting service providers in competition with each other. Finally consumerism sought to increase service users' influence on service development. Such influence contributed to citizenship in that the rule-makers become undistinguishable from the rule-users. It worked alongside market regulation to ensure that competition did not over-emphasise efficiency and profit to the cost of service quality (Riddell, 2006).

The (theoretical) outcome of consumerist and marketised principles was greater efficiency, effectiveness and value for money, since, in a social re-enactment of Darwinist principles, services which were poorly adapted to market conditions would wither and die ...

Riddell, 2006: 60

Though the consumerist framework permitted the participation of parents, children continued to be hidden from impacting on policy. With the market and consumer frameworks, the most effective form of redress for service users was to quit the provider and move elsewhere (Riddell, et al, 2002). However, articulate service users from mid to high socio-economic backgrounds were more likely to afford such a negotiation.

The Conservative doctrine of freedom of choice becomes, in education, the freedom of parents who can afford to choose among schools, but never the freedom of all parents and students to choose any learning they wish.

Paquette, 1997: 74

Although these three frameworks were extensively applied by Conservative Governments in the 1980s and 1990s, they have remained popular and have continued to influence the Labour/Liberal coalition that was existent at Holyrood throughout the time the fieldwork for this thesis was conducted.

Although Riddell (2006) and Kirp (1982) comprehensively distinguished between the six administrative frameworks, in practice, they were likely to co-exist within a policy (though to differing extents). What is clear from these models is that service users had limited opportunity to influence policy. As consumerism was the only framework that automatically made the user 'visible', a policy must incorporate this framework in order for users to participate. However as consumerism rarely existed without markets, not all users were equally heard. The six models of administrative justice will be used throughout this Chapter and thesis to critically assess SEN policy. In particular the aim is to explore how well the SEN framework acknowledges the rights of disabled children to be treated equally and fairly. The next section will chart the origins and developments of the SEN framework in the UK.

3.3 The SEN Framework

The Warnock Committee formed in 1973 to review educational provision in the UK for children and young people with disabilities of body or mind. The report the Committee produced in 1978 introduced a new concept of SEN. The term SEN as outlined by the Warnock Report (DES, 1978) was intended to refer to environmental, social and cultural disadvantages that could impact on educational attainment rather than rely on the distinct medical categories of the 1944 Education Act (1945 Act in Scotland). But despite making such inclusive noises the Warnock Committee also stated that special schools would still have a place in the UK's educational system, thus essentially contradicting their political message of inclusion for all. The Warnock Report informed the Education (Scotland) Act 1980 (as amended). This formed the basis of the SEN framework. The impact of this Act and consequent amendments will be discussed in this section.

As discussed the Warnock Report had argued for inclusion for all pupils and aimed to de-institutionalize the experience of disabled pupils (Heward and Lloyd-Smith, 1990). Therefore the Report (1978) challenged the segregationist model of education imposed by the Education Act 1944 (1945 in Scotland). Under this earlier system, children attending special schools were not only isolated from their peers but also from academic attainment and so future economic competitiveness (Brighouse, 2000). In practice the 1944 Act was interpreted along bureaucratic lines: special schools were set up using eleven medical categories to determine eligibility (Evans, 2007). This was partly due to the emphasis of the 1944 Act that focused on assessing the aptitude of the average or normative child. If an education policy is focused on the normative child, children who lie outside this descriptor will always fail to be valued by educational policy. In this way education policy was used to manage (rather than educate) disabled pupils in terms of choices, resources and opportunities (Riddell et al 1994). Kirp (1982) described SEN as an afterthought.

British special education is ... almost exclusively the province of specialists, an institutionally marginal service isolated from ordinary schools and managed by a specialist group ... Special education was an afterthought in the history of publicly provided schooling in Britain.

Kirp, 1982: 142

Though the Warnock Report argued for inclusion, the 1980 Act (as amended), stated that segregation into a special school was justified if a mainstream placement was considered incompatible with the efficient education of other children at the school; that the child could not access the support they required in the placement, and finally, that the placement was not an efficient use of resources. Sanctioned segregation was glossed over as the Act launched a new definition of SEN that removed deficit overtly from the 'label'. Within the Act, special education was defined as,

...education by special methods appropriate to the requirements of pupils whose physical, intellectual, emotional or social development cannot, in the opinion of the education authority, be adequately promoted by ordinary methods of education, and shall be given in special schools or by other appropriate means.

Chpt. 44, Part I, (1) (5) (c) Education (Scotland Act) 1980

Although a medical condition did not specifically feature, the emphasis was nevertheless, put on the child's impairment as restricting their access to a traditional curriculum.

The Warnock Report encouraged a shift from bureaucracy to professionalism in order to provide a relevant and individual assessment of each child's needs. The greater knowledge generated by the Records assessment process was thought to have three advantages for SEN pupils. Firstly it would promote the attitude that SEN pupils were deserving of attention and resources. Secondly, it would recognise the value of taking an individual approach, and so each pupil should feel personally respected. And finally, the in-depth Records would place the emphasis for change on schools encouraging them to modify learning environments and so become inclusive. Unfortunately the same groups of professionals that diagnosed using the eleven categories that pre-dated the Warnock Report, were employed to produce the Record assessments. Therefore medical doctors and psychologists were able to increase their role as 'expert' without having necessarily any greater insight into education or learning. Thus in practice, the shift in attitude predicted by the Warnock Report was unlikely to materialise.

The 1980 Act (as amended) did implement the Warnock Report's proposal of Recording children aged between 2-18 years with pronounced, complex or specific SENs. Once identified, the local authority had a duty to open a Record for each child of school age that required regular provision reviews. The Record aimed to ensure that children with profound or complex SEN could access appropriate educational provision. The Record was only opened if a medical doctor approved this and after completing a medical assessment of a child's needs. Thus the decision to open a Record and to provide a contract (as the Record had a legal status) of additional support provision was made by a professional. Social workers, psychologists and teachers could also assess the child and contribute to the Record.

Parents could appeal against the decision to Record or continue Recording; the summary of the child's impairment; the statement of SEN arising from those impairments and the nominated school. Such an appeal had to be lodged within 28 days of receiving the Record (Chpt. 58, (4) (1) (63) (1-5)). The Sheriff could overrule the decision of the appeal committee in the Scottish Court system, if successfully petitioned by either the authority or the parent. The Sheriff had the choice of forwarding the case to the Secretary of State for consideration,

before delivering their decision. A child or parent was unable to appeal against the measures proposed by the authority to meet the assessed SEN in many cases because provision was not quantified (Riddell, 2006: 31). Therefore although a child may be recorded, there was no guarantee that the educational provision met the approval of the parent or child.

Once written, the pupil or their parent had little opportunity to appeal against the content. The appeal procedure available to parents was intimidating, would make little difference to the actual provision provided for their child and not surprisingly, was little used. Therefore professionalism continued to dominate the education of disabled children. Although the parent could contribute their opinion about whether the child had a SEN, the education authority had the final decision about whether the label would be attached, (Chpt. 44, Part II, (62) (1) Education (Scotland) Act 1980). Therefore although partnership working with parents was encouraged, there was no doubt that the balance of power remained with professionals.

As discussed, the 1980 Act (as amended) argued for greater partnership working between local authorities and parents. This affirmed the rights of the parent to make decisions on behalf of their child. It also encouraged some degree of consumerist behaviour from parents as they were permitted to request placements and assessments. In this way, the Warnock Report and 1980 Act (as amended) created a tension that they did not intend between schools as experts and parents as consumers, and a tension was also created between articulate parents who could use placement requests to advance their child's opportunities and parents unprepared to exploit the system. In practice, the professionalism that dominated the Recording process (1980 Act, as amended) did not easily articulate with consumerist themes of choice and accountability (limited though it was). Perhaps in recognition of this tension, the 1980 Act (as amended), while increasing the role of the parent also placed new responsibilities on parents. For example if a parent did not ensure their child attended a Record assessment they could be fined.

In abolishing the 'handicapped pupil' label and its eleven medical categories, the Warnock Report (DES, 1978, 43, paragraph 3.25) intended to both eliminate stigma and move away from the bureaucratic pastime of ticking boxes to assess need. However, the 1980 Act (as amended) had to define the resource costs of educating disabled children who required

additional support to access education. To determine what additional provision was required, local authorities were required to determine how many children in their area met the definition of SEN and required continuing review. Thus the bureaucratic framework continued to shape the provision of education for disabled pupils.

Perhaps the failure of the 1980 Act (as amended) to legally protect the rights of pupils and parents is a reflection of the lack of legal representation on the Warnock Committee. The Committee did not include any legal representatives and also failed to include a sociologist, despite the fact that assumptions were made about social values and dimensions, (Lewis and Vulliamy, 1980). Kirp (1982) commented that of the twenty-six Committee members, only one was the parent of a disabled child. In addition, the Committee did not embody any of the diversity it claimed to represent, for example there were no non-white or disabled committee members. In this way the Committee itself imposed professionalism on the process of producing their report. They used their expertise as professionals to inform their conclusions rather than the lived experience of disabled pupils. As the capabilities approach to social justice (Nussbaum 2006) (discussed in Chapter 2) would say, citizenship and emancipation cannot be delivered by professionals but by full participation of disabled people. The continued dominance of professionals on the Warnock Committee was reflected in the move to a professional model in the application of the recording process.

In summary, dominant models of professionalism and bureaucracy continued to define education provision for disabled children. Despite attempts by the Warnock Committee to promote inclusion, the 1980 Act (as amended) was able to continue placing disabled pupils in segregated special schools. The Warnock Committee proposed the use of Records to provide individual and relevant support (and so to facilitate inclusion) but these were under professional control and parents were given little opportunity to contribute to them or challenge aspects that they did not agree with. Therefore the SEN framework continued the exclusion of parents and disabled children from actively participating in decisions that concerned them. The recording system in Scotland was not sufficiently informed by legal or consumerist frameworks to allow a user-friendly appeal system to emerge.

3.4 The Special Educational Needs Framework and Inclusive Schooling: A Contradiction in Terms?

As noted in the last section, the Warnock Report (1978) promoted the concept of inclusion. The Records it proposed were aimed to offer disabled children the additional support they needed to attend a mainstream placement. However this message was lost within the terms of the 1980 Act (as amended). The Act continued to permit segregated education and so there was little incentive for schools and educational professionals to alter the education system. This section will explore in more detail why the inclusive principles of the Warnock Report did not materialise in practice.

The Warnock Report (DES, 1978) reasonably argued that SEN pupils belonged on the same continuum of academic ability as all children, rather than belonging to a distinct group (Riddell, 1994). This is evident by the argument within the Warnock Report that an estimated 20% of pupils would fit the SEN category at some point during their education: thus indicating the transitory and inclusive nature of the term SEN. On the face of it, this understanding of SEN promotes inclusion as there are apparently no grounds for segregation. However, the Warnock Report went on to advise that some children would require a Record. These pupils would represent a predicted 2% at one end of the continuum. To support their placement in mainstream education, additional support could be made available if approved by the Recording process. Although the Report and the 1980 Act (as amended) stated that support within mainstream was preferable to a segregated special school placement for these pupils, (Dyson and Millward, 2000) the division between Recorded and non-Recorded pupils was sufficient to maintain the status quo of segregation for some. In practice, this tension between inclusion and segregation often led to integration, characterised by special units located on the same campus as mainstream schools and sharing some resources (teachers, rooms and equipment for example) (Ainscow, 1999).

Hegarty (2001) claimed that education policy relating to pupils with a SEN has moved from segregation to integration to inclusion over the past 40 years. Despite this general transition, the SEN framework, as discussed, endorsed the provision of education within segregated special schools for those children least able to engage in academic progression and

assessment (Lunt, 2002). In fact Swann's (1985, 1988) analysis of school statistics revealed no sign that any move towards integration or inclusion had occurred. Indeed in 1991 there was an indication that the number of primary children segregated into special education was increasing (Swann, 1991), particularly in the case of children with behavioural difficulties (Swann, 1992). A more recent review of Government figures has shown that between 2002-2004, a third of English Local Education Authorities increased the number of disabled pupils educated in segregated provision (Rustemier and Vaughan, 2005).

The use of special schools and units not only divided pupils but educational professionals. As a consequence the special education teacher becomes an expert in their 'field' rather than an expert teacher. Such isolation and polarization within education then allowed for competition between different kinds of schools for resources each arguing priority, rather than a cohesive solidarity between all teachers (Lewis and Vulliamy, 1980). This further reduced the potential for inclusion. This dualism in education (between normative/mainstream and special education) has been described as a 'false consciousness' where a different pedagogical approach is assumed (Florian, 2007). Rather a number of academics have indicated that 'special' teaching strategies work well with all pupils (for example, Cook and Schirmer, 2003; Vaughn and Linan-Thompson, 2003; Lewis and Norwich, 2005). Though the 'intensity' of delivery may differ, the approach is the same. If this is indeed correct, then arguments for segregation become redundant. It also means that mainstream teachers are automatically special education experts.

The ambiguities in the Act allowed it to be interpreted in polarized ways, and Tomlinson (1982) argued that this was the result of tensions that existed within the terms of the 1980 Act (as amended). In particular, she criticised the Warnock Report for claiming to have a humanitarian approach that did not translate into practice, "The rhetoric of special needs may be humanitarian, the practice is control and vested interests" (Tomlinson, 1982: 75). The 1980 Act (as amended) protected professionals' career structures (medics and psychologists) at the cost of providing educational inclusion for disabled pupils (Tomlinson, 1982). Oliver (1985) related this argument to the dominance of charitable organisations, not necessarily proficient in academic or pedagogical matters, but involved, nevertheless in special schools. The issue here was that separating special schools from the same

infrastructure as mainstream schools is another form of exclusion, particularly as charitable involvement encouraged the perception of dependency (Rickell, 2003; Burrows, 2003). Oliver's point is made by considering the comparatively tiny number of mainstream schools run by charities. Len Barton encapsulates the argument, but also indicates that academic writing in the field of education and sociology has been culpable for hiding the issues that existed and oppressed,

What sociologists have argued is the view that concern for the handicapped has developed as a result of progress, enlightenment and humanitarian interests, is totally unacceptable. The experience of this particular disadvantaged group has generally been one of exploitation, exclusion, dehumanisation and regulation.

Barton, 1986: 276

Though a powerful argument, some have argued that it fails to recognise that some children will progress outside of academic assessment models, whether they are included or not. For example Croll and Moses (1985) claimed that Barton's argument was too conceptually political, and identified discrimination where it did not exist, thus undermining the humanitarian intentions of the 1980 Act (as amended) in providing schools outside of the assessment model for those children who would benefit from it. Oliver (1985) and other supporters of the social model argued that only a strongly critical approach would be sufficient to affect change and therefore their arguments were valid. It seems that the arguments are describing different scenarios, the disability movement were clearly trying to remove barriers to learning, and Croll and Moses (1985) could be seen to argue that assessment-led mainstream school could be a barrier to fulfilment for some children.

A further tension becomes apparent when inclusion is applied in practice. If education was only about fulfilment, then inclusion could be achieved. However as Brighouse (2000) argued, schools also endeavour to promote economic competitiveness and to strengthen pupil's post-school employment opportunities. This together with the related marketisation of schools introduced during Thatcher's years in Office (i.e. league tables) does not allow for diversity to be promoted or celebrated unless it can be done within this framework of attainment.

One barrier to inclusion that goes against the humanitarian assumptions made by the social modelists and egalitarians (as discussed in Chapter 2) is that some people want segregated education. Special schools are popular among many parents, and the deaf community has actively campaigned for the right to educate pupils in an environment where British Sign Language is the dominant language, and deaf culture is promoted (Ainscow, 2007).

Supporters of special education, including some parents, have fought to keep special schools open because they are believed to offer ideal provision for their children. Their view may be correct; for example a segregated placement in a special school is funded at around four times the level of an integrated placement (Dessent, 1987). Parents aware of this fact cannot be blamed for assuming that the segregated placement must be superior.

From this brief overview of SEN provision it is clear that although inclusion may have influenced policy, there is significant variation in how this was realised, (Lindsay, 2003). Norwich has argued that the current practice of variation can be interpreted in similarly varied ways,

... the issue of whether we talk about special or inclusive education. Do we assume that there is something additional or different about special education compared to mainstream or general education? Or do we assume that the mainstream education is to be extended or enhanced to accommodate or include the diversity of learners? Is reference to anything additional or different a form of discrimination? Or does talk about inclusive education just perpetuate the apartness of special provision which critics have identified in reference to special educational needs?

Norwich, 2002: 482-483.

This relates directly to the tensions within the SEN framework as discussed in the introduction. That is, any additional need must be identified with sufficient detail to develop a suitable learning plan. However this process cannot be achieved without describing difference or without attributing labels. Negative connotations are derived from labels and so stigma occurs (Corbett, 1996). This argument is balanced by the continuing popularity of special schools among many parents who consider the provision to be well suited to their child's needs. Segregation may not be consistent with equality, but equality might not be the right

yardstick to measure the appropriateness of an education placement. This Chapter will continue to explore how this tension appears within policy and manifests in practice. In the journey from segregation to inclusion, policies should work to eliminate stigmatisation of the group it aims to support.

3.5 SEN: A Label of Difference

A major barrier to inclusion was the set-up within education of a category of special educational needs. As Florian (2007) has argued, whatever the label, a distinction is made between normal pupils and those who require provision that is additional to or different from the majority. Once labelled into a category of difference (Minow, 1990), the stigma of inferiority follows as pupils are considered to be weaker learners. The process of developing policies in education relevant to only a minority could, in itself, be seen as an act of segregation, isolating that group from normative experience.

Problems also existed around the definition of the term SEN. Florian and Pullin (2000) suggested that defining the term in relation to normative progress placed ambiguity at the heart of SEN. This is because normative progress is inconsistent and individual differences of pupils will emerge due to alternative teaching styles in different schools. Therefore a child who has SEN in one school may not be considered to have SEN in another. Dessent (1987) placed criticism on the Warnock Report for claiming to use a continuum approach as in practice it is at odds with the dichotomous division of either having or not having SEN. This dichotomy is imposed by the need to allocate resources. In practice then, bureaucracy and the need to categorise overrides any attempts at inclusion. Dessent (1987) argued that the division between having SEN or not, is arbitrary and is variable in different areas of the UK. Thus the SEN label is not given fairly and cannot be seen as a tool of social justice, and therefore cannot achieve the equality it aims to. Imposing the dichotomy (by attributing the SEN label to a child) leads to segregation either from normative experience for some or from resources for others. In their research, Thomson et al (1989) were unable to reliably determine a threshold and nature of special educational need which could guarantee recording. The researchers also made the point that if they could not determine what would consistently trigger a Record, how could strategic planners of educational services reliably support additional need in their region

satisfactorily? Variation in the number of Records between different local authorities revealed that Recording policies operated differently in different areas, partly due to the bureaucratic operation of the Recording process (Goacher et al, 1988; Thomson et al 1989).

Overall, it appeared that the type of provision experienced by children with special needs was influenced by a mixture of geography, politics and luck.

Riddell and Brown, 1994: 11

Scottish figures have shown that the variation between local authorities in the number of pupils who have been Recorded is fourfold and the variation in the percentage of pupils in special school placements in thirteen fold, (Scottish Executive, 2003). This is the case even when island communities and regions that don't have special schools are removed from the equation. If they were included, variation would be even greater, (Riddell, 2007).

Tomlinson (1985) also criticised the new SEN label arguing that it was too broad. In including non-impaired but socially disadvantaged pupils into the definition (a step that has been re-taken with the Education (Additional Support for Learning) (Scotland) Act 2004), Tomlinson argued that funds were being diverted from disabled children. Berliner's (1993) interview with Warnock in the Guardian Newspaper revealed her admission that additional resources are only allocated once a Record exists. Therefore the remaining 18% of school children who are on the continuum of need sufficiently to be recognised by the Warnock Report (DES, 1978), but who do not have a Record, in fact have less spending on their needs as it is either spent on optimising the attainment of the majority, or diverted into supporting those with the legal tools of redress, that is, a Record (Berliner, 1993). This theme is returned to in the data Chapters where experienced difficulties seemed to be placement specific. Once a Record exists, SEN becomes a legal term and so it is more than just a semantic debate here. A pupil could have legal protection and resources in one placement but not in another.

The move to a homogenized label of SEN allowed ambiguity to pour into the educational system as different local authorities defined it differently.

The report's ambiguous treatment of so many issues permitted enthusiasts to embrace it for wholly inconsistent reasons. The author of Section 10 of the 1976 Education Act,

which proposes integration of handicapped children lauded the effort as a 'magnificent and important'¹ endorsement of integration, even as the general secretary of the National Union of Teachers observed that 'we are glad that the Warnock Report does not advocate speedy integration'².

Kirp, 1982: 163 quoting in turn from ¹Times Educational Supplement, June 23, 1978 and ²Times Educational Supplement, May 26, 1978

Elliott (1990) criticised the decision to remove the eleven categories, arguing that each diagnosis indicated a pattern of support and resources that could be tailored to each child. Without the guidance inherent in this model, resourcing SEN became unfair, unpredictable and difficult to control as the SEN label failed to describe the nature of the deficit. This view was echoed by Critchley (1981), though coming from a medical position, he did argue that at the very least an impairment should be aetiologically differentiated, for example, a neurological deficit would require a different support provision to a socially acquired deficit.

The Warnock Report aimed to aid inclusion and end the stigma associated with the 'handicap' approach by developing a new term of SEN. Rather than using medical conditions to guide decisions about which pupils should get additional support, the Warnock Report preferred to group all children together. Thus children who could be described as SEN were at one end of a continuum and not a distinct category. This approach might have been conceptually strong, but it failed to attend to the fact that pupils who were considered to have SEN would probably need additional resources. The allocation of resources imposed a bureaucratic category on the SEN label after all. The definition of SEN is sufficient to stigmatise and exclude but insufficiently precise to allocate resources reliably or consistently.

3.6 Continuing Tensions: The Rise of the Disruptive Pupil

In this next section I will consider the rise in pupil numbers, diagnosed with conditions such as SEBD (social, emotional and behavioural difficulties) and ADHD, (attention deficit hyperactivity disorder). Pupils with these conditions reflect a sub-group of disabled pupils. Resistance to the inclusion of these pupils is not due to the claim that pedagogical practice is unable to meet their needs. Rather, the argument is presented that these pupils are unable to meet the disciplinary requirements of mainstream education. This highlights the tension between defining SEN as a deficit of the child or as a failure of pedagogical structures. Clearly

these map on to the social model's impairment/disability dichotomy, and the consequent problems this has posed for SEN are considered.

The tensions that continue to exist in 'special' education originated in the strategies inspired by the Warnock Report (1978). This tension relates to the dilemma of identifying children in order to assess their need and determine the resource implications but at the same time labelling them knowing that stigma follows. As Norwich, (1993) argued, although the 1980 Act (as amended) moved away from categories, they could not evade labels. Supporters of the social model (for example; Armstrong, Barnes, Barton, Corbett, Oliver, Slee and Tomlinson have all written on this issue) have argued that disability is caused by the social barriers of institutional discrimination and oppression. According to this argument, labelling is seen as conceptual segregation, a devaluing in the otherness of abnormality. However, unless 'difference' is determined then support provision for disabled pupils or pupils with SEN will be inadequate (Lunt, 2002; Norwich 1993; 1996). Delineation of categories into one encompassing label of SEN makes assessments (Record) necessary. Without them the individual experience of impairment is homogenized and providers get lost in the consequent ambiguity. For example categories such as SEBD or global and profound needs are used to describe different impairment sets by different authorities. In order to alleviate this tension an understanding of the theoretical reasoning behind certain definitions should ensure that the appropriate terminology is used. Further an understanding of the political movements behind policies is required to understand how resource decisions are made, for progress must provide equality in practice, not just in theory.

A tension has also been seen to exist in the SEN framework which simultaneously focused on the deficit of the child (categorisation of impairment) and the deficit of the school environment (the Record is used to provide additional support to remove barriers to learning). This individual/social dualism caused tension and conflict within any school-based approach to additional support. Some have argued that within this tension, the individual deficit model has prevailed in significance, particularly concerning pupils diagnosed with social, emotional and behavioural problems. Newell (1980) and Lewis and Vulliamy (1980) quoted in Kirp (1982: 162-3),

... while schools retain structures and practices which are entirely undemocratic, and which only allow as alternatives apathetic or active conformity or disruption and rejection, it is the schools we must label as disruptive and not the students.

Newell, 1980: 8

Problems endemic to schools become easily translated to become problems of particular children and practice suggests that categorization is followed by isolation, rather than eradication of the causes of the problem.

Lewis and Vulliamy, 1980: 7

Perhaps the most controversial area of concern in the inclusion debate, are those pupils who strive to maintain a placement because their impairment causes them to struggle to meet the disciplinary demands of mainstream. Pupils diagnosed with SEBD, ADHD, global development delay and so on, are recognised as having problems focusing their attention for periods of time, for being easily distracted, and for being poorly organised. Within mainstream school such behaviour is framed as a discipline issue. It is not difficult to see how these conditions have developed a discourse of exclusion.

Such teacher labelling can all too easily lead to self-fulfilling prophecies, so that pupils come to exhibit those properties which have been assigned to them. Not only that, but other teachers can *think* pupils exhibit these properties even when they don't.

Lewis and Vulliamy, 1980: 7

Thus, such pupils are seen as a threat to the behaviour management of the entire school. Inclusion ultimately undermines school discipline. Tomlinson (2001) reported that teachers and unions are increasingly concerned about the rise in disruptive and violent incidents. It may be fear talking, yet on one level, schools may be showing inclusion within the exclusion of disruptive pupils. Excluding pupils who challenge discipline is a form of inclusion as it is extending the same responsibilities to all pupils. To allow some pupils not to follow some rules would be in itself a form of segregation. Slee (1995) has called ADHD the 'label of forgiveness' to describe the way unacceptable behaviour is re-framed as acceptable because it relates to a condition. This may allow practitioners to focus on the school environment and curricula rather than the deficit of the child. But if school environments remain restrictive, how are teachers supposed to deal with the disruptive behaviour?

A study by Hjerne and Salijo (2004, in Riddell, 2007) examined the experience of pupils with a diagnosis of ADHD in Sweden's schools. They concluded that environmental factors, such as curriculum or approach of the teacher, were not considered as barriers to learning, rather the deficit was the focus. In addition, parents tended to acquiescently or passively accept the teacher's version of problems. As routes to challenging discrimination require the involvement of the parent, it is worrying that parents might not feel able to argue the point. Chapter 8 will return to this issue, as the interviews generated by this project highlight this tension.

An extreme response at either end of this spectrum (i.e. ignoring pedagogical barriers or ignoring impairment barriers to learning) may be recognised as potentially discriminatory. Yet the middle position may still not be adequate as it can place blame on both the school and the child. As the 'blame' is shared, the responsibility for learning is diluted between the two, sufficiently in some cases to prevent action, as camps are formed.

... a 'with us or against us' type of debate has polarized the field in ways that have made it difficult to move practice forward.

Florian, 2007: 11

Unless resources are available to remove barriers (that is provide additional support) then the blame could undermine learning and curriculum delivery. This argument has been used by McKay (2002) to criticise the social model's almost exclusive focus on societal barriers to learning,

... many cohorts of experienced teachers ... have been taught that impaired hearing is not a barrier to learning, because real barriers have to be constructed socially.

McKay, 2002: 160

While arguing that some barriers to learning are not societal, McKay could be challenged by the example of a deaf pupil. If the teacher used sign language to communicate with the pupil then social barriers or impairment barriers would not interfere with learning. The assumption that all pupils communicate best using English is a social construction and a potential barrier turning impairment (in the case of the example) into a disability. This interpretation of events

demonstrates the linearity of the social model, where if the teacher adopts the optimum teaching pedagogy for this pupil, they fail to communicate with the rest of the class.

The social model, in focusing on social barriers, neglects to acknowledge that impairment barriers exist. Thus after the last social barrier has been removed, and education is inclusive, a child whose impairment causes pain and sleepless nights, will be at a disadvantage. Promoting diversity in the classroom may be advantageous and progressive as a social principle but it is insufficient alone. It is not only negative attitudes that prevent mainstream teachers from engaging appropriately with SEN or disabled pupils. Training and technology are also required to make a difference. The social model is a bright ethos, but it loses its strength as soon as it is applied.

Yet the alternative may be worse. The number of children diagnosed with a behavioural difficulty and segregated to a special school from a mainstream placement increased throughout the 1980s (Swann, 1992). The continued segregation of some children and in particular those with behavioural difficulties locates the problem with the child. This exclusion reinforces the notion that teachers in mainstream schools are unable to challenge the barriers to learning related to the impairment. In practice, segregation blames the child.

Such polarised ways of thinking arguably deny the complexity of the experience of disability. Terzi (2005) argued that the causal links of disability coming from both impairment and society should be considered together. Hence, while local authorities are searching for funding formulas to manage resource allocation, they are directing attention away from consultations with disabled pupils, and responses that are more about a change in attitude than expenditure. Dyson (1993) argued that schools need to embrace the diversity in the classroom (of which SEN is just an element) and develop inclusive and flexible pedagogical practice. This approach is simplistic according to Norwich (1993), who argues that it could be considered a form of oppression. That is, placing responsibility for learning wholly on the school ignores the agency of the pupil.

In considering the right to equality for all disabled pupils, a dilemma emerges in the case of pupils who are disruptive. In protecting a child's right to an inclusive education,

consideration must be given to the rights of other pupils and professionals. Schools have not coped well with this dilemma and disruptive pupils have increasingly been placed in segregated placements. The next part of this Chapter will re-examine these themes with a critical comparison of the development of the SEN framework in Scotland and England.

3.7 England and Wales versus Scotland: Different approaches to SEN

The focus will now turn to the contrast between educational systems in Scotland and the rest of the UK. The theme of consumerism will be re-addressed as it will be shown that the English system went further to encourage it. Resource allocation will also be considered as a major barrier to equality.

Having distinct educational systems in England and Wales, and Scotland meant that the 1980 Act (as amended) was written twice, one for each region of the UK. The way Scotland interpreted this legislation differed, not only because education delivery and assessment was structured differently but because of a stronger ethos of equality compared to England. For example, the conclusions of the Scottish Education Department Inspectorate Report (DES, 1978) was influential north of the border. It suggested that school curricula were designed in such a way that they could be a contributory factor to educational difficulties. Further, the report emphasised that teaching methods should be modified to aid inclusion of all pupils before children were assessed according to any individualised deficit model. The report was radical and argued that inclusion could be achieved using the same curriculum for all pupils but varying the speed of progress. Inclusion at this level would avoid losing contact with peers, lack of stimulation and a lack of motivation to work hard at school. However the report argued that responsibility for this strategy should be placed on the classroom teacher, thus indicating that no resources would be made available to help adapt pedagogical styles or local authority-wide support put in place. Thus the report was criticised by educational practitioners who struggled to accommodate their new responsibilities (Allan, Brown and Munn, 1991). Although similar noises were made in England and Wales (Dessent, 1987) no formal document was published.

The 1980 Act (as amended) gave all parents the right to request a placement at a school of their choice going further than the associated policy in England and Wales. This might have been expected to increase consumerist-type behaviour in Scotland though this did not occur. Rather, the influence of the 1988 Education Reform Act (operating in England and Wales only) encouraged parents to approach education as a product rather than a service, and to behave as consumers. It imposed market-like strategies, inspired in part by Margaret Thatcher's privatisation drive and impacted on school choice, competition between schools for resources and local management structures (Evans, 2001). Thus the partnership with parents ideology encouraged by the Warnock Report (DES, 1978) had greater impact in England and Wales where a Board of Governors, which had to include parents, ran each school.

The 1988 Education Reform Act has been criticised (see Barton, 1993) for imposing league tables thus reducing pupils to attainment figures. In turn, this sent a message to pupils unable to contribute to the spreadsheets, that they did not count, further isolating and ostracising these children and young people. The Conservative policy agenda introduced competition and market forces into education to an unprecedented degree with the 1988 Act. Schools were afforded greater autonomy at the expense of the power and control once held by local education authorities (LEA). The reduction in bureaucratic working was intended to increase the quality of educational provision, as in theory, schools would compete for the limited resources, raising standard in all schools. LEA in England and Wales developed funding formulas to produce budgets based on each school's objective need (for example the number of pupils weighted by age). A SEN factor could also be computed into this equation. Here, the labelling of pupils had direct consequences for expenditure and so need became less an issue of meeting additional support needs and more about budget management. As a consequence of this management framework, LEA in England and Wales that included SEN within their formula generated a higher number of statements compared to other authorities (Lunt and Evans, 1994).

... it provides a perverse incentive whereby children are of more monetary value to a school while their special educational needs continue to be a problem, and the more severe the needs, the more money will be available to support them.

Evans, 2007: 52

In addition responsibility for each child's attainment was shifted to parents as they were encouraged to act as consumers searching out the best placement for their child rather than accepting local provision (Brown, 1990).

A centralised and standardised curriculum and assessment strategy further placed an expectation on all pupils to participate academically. Thus, those children unable to compete academically were devalued by the system and in some cases removed from school statistics, as they would otherwise reduce the school's performance data and possibly result in lower funding or lower placement requests.

Pupils with special educational needs are unlikely to be the pupils that schools are competing to attract, since their performance in tests may detract from the school's overall position in the league tables, their 'behaviour' may discourage other parents from choosing the school, and meeting their needs may be costly on the school budget.

Lunt and Evans, 1994: 43

In consequence, the market economy as applied to education, could have encouraged schools to exclude pupils who did not contribute to the school's performance targets.

This is arguably the most troubling aspect of our own research. It has revealed how a competitive context that values narrowly conceived criteria for determining success creates barriers to the development of a more inclusive education system.

Ainscow, 2007: 154

Rather than seeing all schools improve together, the Conservative's marketisation of education resulted in some schools being left with reduced budgets and educating children whose parents were unable or unmotivated to behave in consumerist ways. Therefore regardless of a pupil having a SEN or disability, inequality existed in British education (Riddell, Brown and Duffield, 1994). Thus the egalitarian notions of social justice that were embedded (albeit almost hidden) in the Warnock Report (DES, 1978) were almost totally eroded by the Tories' competitive individualism (Riddell and Brown, 1994).

In turn, this emphasis on academic attainment focused on only one aspect of what we might expect education to deliver. Social and personal development were pushed out of the syllabus as they took second place to attainment. The 1988 Education Reform Act involved

little consultation with teachers and their response was hostile, particularly given that elements of the curriculum that had previously not presented barriers to disabled pupils (i.e. those around personal growth and fulfilment) were minimised (Copeland, 1991; Heward and Lloyd-Smith, 1990; Swann, 1992; Wedell, 1988).

Also according to this legislation, school-funding mechanisms changed. Eighty percent of funds per school went straight to the school. The remaining twenty percent was diverted to the local authority and spent on administrative costs and additional services costs (including provision to support pupils with a statement). Therefore additional support costs for each pupil were not controlled by their school, but by their local authority (Evans, 2001), and consequently were at greater risk of being cutback. This increased layer of management amplified the bureaucracy for statemented pupils only and created a barrier to responsive and appropriate support. A child, who had an individual education plan that required additional support, would have their needs met by the school's budget. However a child with a statement of needs would have their additional support needs met by the local authority, and so schools and parents recognised the enhanced provision and rights accessible via the Statementing process. It is this mechanism that has contributed to the greater consumerist behaviour exhibited by parents in England and Wales. Indeed, structuring budgets in this way created no incentive for schools to minimise the impact of impairment, for this would ultimately reduce resources for the whole school, (Lunt and Evans, 1994). A similar financial mechanism was set up in Scotland following the publication of *Devolved School Management - Guidelines for Progress* (SOED, 1992b) reflecting the terms of the 1988 Education Reform Act, but as parents were still not formally involved in School Governing Boards, the consumerist impact was limited.

The provision that committed to integration within the Education Act 1980 (as amended, governing England and Wales) was not written into the Scottish 1980 Act (as amended). In addition, Scottish schools had no duty to interact formally with parents (Riddell and Brown, 1994), so at the same time as the Scottish Office Education Department argued against the deficit model as applied to SEN pupils, the 1980 Act (as amended) sanctioned segregation on the grounds of deficit. Therefore educational provision for SEN pupils in

Scotland, in the early 1980s, was not as egalitarian as the Scottish policy makers would have liked.

Circular 4/96 (SOEID, 1996) was published twelve years after the 1980 Act (as amended) became fully enforceable, and was relevant only to Scotland. The circular supported a more flexible approach to the recording process than in England and Wales, though the English/Welsh Code of Practice (DfE, 1994) did have quasi-legal status (Riddell, 2006). The Circular aimed to clarify the assessment process and re-inform parents and young persons about their rights and access to provision under the recording system. No new rights or provision came with the Circular, rather it was to be used as a guide to the 1980 Act (as amended). Part of the reason it took twelve years to produce was because initially the guide was not considered necessary. Journal articles and pressure from the voluntary sector collectively encouraged the Scottish Office Education Department (SOED) to consult and produce such a guide as the ambiguities of the 1980 Act (as amended) became evident.

The 1990s brought change in Scotland that demonstrated a return to ideas of social justice. The 5-14 curriculum was published as guidelines rather than law and was introduced over a long time frame, encouraging consultation between the SOED and teachers (SOED 1992a para 20.3). The guidelines required all pupils to complete 'level' A of a standardised test before being subjected to national testing. This aimed to encourage participation for all who could. However even 'level A' required a degree of teaching and it is not clear whether special schools were committed to teaching to this level, given that a child's success would require them to teach the national syllabus.

In summary, the rise of managerial, consumerist and market frameworks in England was a response to the 'individualist' approach of the Conservative Government. Here education was framed as the pathway to future competitiveness in global markets as pressure was put on attainment levels and league tables. In this way, education conformed to Oliver's materialist argument as a source of oppression for disabled people (Oliver, 1990, 1996). These frameworks were written into English and Welsh law via the Education Reform Act 1988. Although the same frameworks' influences have been detected in Scotland, it has been to a lesser extent due to the absence of a law, and to the longer time frame afforded to the change.

3.8 Conclusion

It has not just been the inflexibility of the social model that has prevented a rights-based policy to impact on education before the DDA. The necessary framework of consumerism did not influence education policy in the UK until the late 1980s and 1990s when the Conservative Government aimed to match reform in the US (Kirp, 1982). Even though this framework has influenced policy (particularly in England), it has been tempered by the drive towards efficiency and profit originating from the market regulation framework. Therefore the route to challenge SEN policy seemed unavailable to service users. Although some parents may have had the opportunity to influence decisions, this was not the case for all parents, and so consumerism had a limited impact. Indeed improving quality of provision for the children of articulate parents meant that there were less resources to share among parents who were unable to take advantage of consumerist influence.

Riddell's model of administrative justice (2006) was usefully applied to SEN provision. Dominant frameworks of professionalism and bureaucracy established in the post-war periods continued to segregate parents and pupils from actively participating in decisions that concerned them. Professionals were given greater control in deciding which children required additional support. Variation between local authorities in Scotland and England demonstrate that professionals were not working on an agreed set of definitions or assessment criteria. Thus some children were left without additional provision through accident of their location. In addition, the absence of legal or consumerist (parents) representation on the Warnock Committee perhaps contributed to the dampening of these voices in the terms of the 1980 Act (as amended). As a consequence, the recording system did not allow a user-friendly appeal system to emerge. Thus parents were left with few avenues to appeal against the content of their child's Record, leaving the expert professional unchallenged.

Inclusion has been defined as a process to participation, removing barriers where they exist and highlighting learners at risk of failure. To be inclusive, policy must be capable of learning, and creative problem solving (Ainscow, 2007). As all pupils are offered equal opportunities, they also must take an equal share of responsibilities. Therefore inclusion is necessary to satisfy the disability movement's call for emancipation and the capabilities

approach's call for human dignity and equality. A major barrier to inclusion has been shown to be the continued endorsement of special schools, and therefore, the segregation of some pupils. Indeed it has been argued that the move towards integration has not been endorsed by policy, and also does little to end the experience of segregation for pupils and their teachers. This division in location allows an artificial division of attitude to emerge as mainstream teachers consider that they don't have the expertise to teach SEN pupils. This in itself is a barrier to the creative problem solving that teachers will need to engage with in order to deliver inclusive education. While children with SEN or disability are located in different classrooms, inclusion will not happen as education providers will be under no pressure to examine how their pedagogical practices contribute as barriers to learning. The continuance of special schools was endorsed by the 1980 Act (as amended). While such blatant segregation is permissible, there is little incentive for schools to pursue inclusion. As Ainscow (2007) demonstrated, inclusion takes effort.

Through the 1980s and 1990s, bureaucratic and professional frameworks continued to dominate the education of disabled pupils (Riddell, 2006). Although consumerism was encouraged, it was not sufficient to meaningfully create partnership working as parents and professionals continued to have unequal status. The transition from medical deficit labels to the SEN label was intended to reduce stigma yet the dilemma of difference (Minow, 1990) continued. Ultimately, the recording process divided pupils and the allocation of resources to one group categorised them sufficiently as different. Further, while a division exists in attitude or location (i.e. mainstream is different to special), the stigma around SEN will continue. Perhaps the greatest issue with this is the fact that the SEN label is insufficiently precise to describe additional needs or to allocate resources reliably or consistently. Thus the stigma is experienced without the allied benefit of better learning opportunities.

A comparison of Scottish approaches to SEN with England and Wales demonstrated that the rise of managerial, consumerist and market frameworks in England and Wales were a response to the 'individualist' approach of the Conservative Government. Education became firmly entrenched in a normative framework, where the development and future economic capacity of the typically able was paramount. Parents as consumers bought into the ethos and schools with successful examination performance were sought-after placements. The

introduction of markets placed schools in competition with each other for resources and to attract those pupils most able to positively contribute to their performance targets. Thus pupils who were expected to attain high results were afforded greater status than those unable to compete academically. In this way, schools became a materialist environment to use Oliver's (1990) language, and consequently institutionally oppressed and discriminated against disabled and SEN pupils. The Education Reform Act 1988 operating only in England and Wales contributed greatly to the move towards market frameworks. Although markets also influenced Scottish policy, it was not to the same extent, and parents were not as inclined to act as consumers, hence the effects have been muted.

The next Chapter will examine the rise of the human rights agenda in the UK. Emerging policy will be discussed, including the Disability Discrimination Act (1995) and the amended Part 4 (DDA, 2001) which applies to education. Again a Scottish/English comparison will be used to discuss how the DDA has articulated differently with SEN frameworks in England and Wales, and Scotland.

4 Chapter 4 - The Recognition of Rights and the Disability Discrimination Act

4.1 Introduction

This Chapter looks more closely at the rights that were presented by the Disability Discrimination Act (DDA, 1995) and Part 4 (DDA, 2001). The influence of human and civil rights will be considered as important in applying pressure to UK Governments to extend anti-discrimination policy from race and gender, to disabled people. In creating the DDA, the Government agreed that disabled people were a minority group that faced oppression and discrimination.

So far, this thesis has explored whether disabled or SEN pupils have been excluded from education opportunities in Scotland and the rest of the UK. The first section of this Chapter aims to focus more deeply on the theme of equality and looks to an international rights perspective (informed by human and civil rights). Education is a gateway to almost all of these rights and freedoms yet it has rarely been the focus of a human rights perspective (Rioux, 2007). Just as SEN policy argued for inclusion but permitted segregation, so the human rights agenda, as framed by United Nations (UN) conventions also agreed that the cost of inclusion might be prohibitive though has campaigned for Member States to promote inclusive practice. The UN has actively campaigned for education to incorporate human rights ideology in its practices and to move to inclusive models. The civil rights movement has also influenced rights-policy in the UK. Education policy in the US has been shaped significantly by civil rights and this will be explored together with a brief account of how it informed UK policy.

As noted, the SEN education legislation developed differently in England and Wales and Scotland. As anti-discrimination was a reserved matter, the DDA came from Westminster, and covered the whole of the UK. However in articulating with the SEN framework, there is evidence that the DDA was interpreted differently in Scotland. In addition, the impact of a devolved Scotland will also be considered as a possible trigger for alternative thinking in education compared to England and Wales.

The terms of the DDA (1995) will then be introduced framed by a brief history of how it emerged. While gender and race were protected in British law since the 1970s, disability was not formally considered a source of oppression until the general DDA was ratified in 1995. The DDA was born from pressure from within the UK too, and represented the (then Conservative) government's response to lobbying from the disability movement over a 20-year period. The disability movement and its social model argued for equal recognition and entitlement to academic opportunities for disabled pupils. The social model was used to highlight the institutional discrimination that disabled certain pupils within the British educational system. Pressure from the disability movement (and others as stated) eventually led to the DDA, though Barnes (2007) charted the first attempt in 1981, and thirteen subsequent attempts against a Conservative government before success in 2005. The section will continue with an examination of the definition of disability and discrimination used by the DDA. Although influenced by the social model, the definition of disability is located in the individual rather than the social and expert professionals continue to be involved in determining who is eligible for protection under the Act.

The DDA Part 4 (DDA, 2001) applies to education with distinct approaches to school and post-16 education provision. The DDA Part 4 promoted inclusion and emphasised that all children should be educated within mainstream schools unless this was in direct opposition to the parent's expressed wish, or if the child's needs were incompatible with efficient education (Lindsay, 2003). Though this rights-led policy then firmly supported and assumed inclusion, the caveat for exclusion reflected the SEN framework. The DDA Part 4 was seen by some as a tool to help remove barriers that existed for disabled pupils. However it came six years after the original DDA (1995) and only after continued campaigning.

The Chapter will continue by considering how the DDA Part 4 has worked in practice, and whether it has delivered sufficient rights to contribute to the emancipation of disabled people as intended. Particular attention will be paid to how it has interfaced with the SEN framework. Also barriers to using the DDA Part 4 which have come to light over the last six years will be explored. This Chapter aims to support the data Chapters and provide a full background to how the DDA (1995, and as amended, 2001) was formed, and how it has been used.

4.2 International Perspectives: Human and Civil Rights

This section will highlight documents and policy development out-with the UK, to chart how the rights perspective has increased its presence on the political agenda. Pressure from the human rights agenda will be considered first as organisations such as UNESCO (1994) and the UN (1982) have helped drive UK policy towards inclusive education. The impact of civil rights will then be considered as an influence on the DDA and in particular the US civil rights movement and the impact that has had on education is considered.

Human rights describe a range of rights all necessary for a human being to live with dignity, freedom and opportunity. Included under the canopy of human rights are the right to political, civil and social participation, education and work, family life, an adequate standard of living, and the right to economic security. Further, human rights law protects the right to feel free from discrimination, from violence and torture, and free to contribute to culture.

The World Programme of Action (WPA), based in the United Nations, focused on education and declared that education of disabled children should take place in the ‘ordinary school system’ (UN, 1982: 3). Though the declaration echoed the message of the social model that social attitudes were a major barrier to participation, the WPA did introduce a caveat reminiscent of the Scottish 1980 Act (as amended, see Chapter 3), that such inclusion was not always possible. This was re-framed in Article 23 of the *Convention on the Rights of the Child* (UN, 1989), which said that the right to inclusion was ‘subject to available resources and appropriate to the child’s condition’ (UN, 1989). The UN *Standard Rules on the Equalization of Opportunities for Persons with Disabilities* (1993) called for all human rights laws to protect persons with disabilities from discrimination and protect their rights to equality, thus anti-discrimination legislation had its roots in a human rights discourse. Rule 6 of the Standard applied to education and did not use resources to limit inclusivity, but neither did they focus on how pedagogy should change to ensure quality of learning for all pupils (Peters, 2007). In addition, although the Standard showed commitment to a barriers approach to frame disability, it referred to ‘integration’ throughout Rule 6, suggesting that the UN had not fully committed to inclusive schooling. It did however state that all children should be taught in mainstream schools and that provision should be made available to allow access, that all

children should be educated in local schools and in schools that had flexible curriculum. Special schools were only sanctioned if they were used to prepare children for mainstream placement. The *Convention on the Rights of Persons with Disabilities* (2007) focused on the right to dignity and freedom and made special provision for children and women. Article 24 on education stated that 'Parties shall ensure an inclusive education system at all levels' for children 'in the communities in which they live' and embrace 'human diversity'. In contrast to previous Standards and Conventions the 2007 Convention allows no caveats except one,

In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

UN, 2007, Article 7 (2)

This is the only caveat that may allow Party States to continue to segregate children and young people into special schools. Like the Salamanca Statement then (discussion to follow), the UN had clearly endorsed inclusive education, but given little guidance on how the transition should be achieved. Although Britain had supported the UN directives, a policy response was a long time coming, (Bynoe, 1991).

The UN's crawl towards inclusion was taken up by UNESCO (1994), and endorsed by 92 Governments and 25 international organisations (Peters, 2007). In 1994, UNESCO published the Salamanca Statement, which declared that inclusive education was the best approach to optimise human dignity, enjoyment of human rights, equalization of opportunity, as an effective means of combating discriminatory attitude and claimed it was the most cost effective solution (supported by Dessent, 1987; Metts, 2000). The Statement encouraged all Member States to revise education policies, to ensure that disabled children had the right to attend the school that they would attend if they were not disabled.

UNESCO's Salamanca Statement advised that a definition of SEN should be extended to support socially, culturally and economically disadvantaged children, including children from ethnic and linguistic minority backgrounds. This duty was finally met within Scottish policy thanks to the ASL Act 2004 and helped raise awareness about barriers to learning beyond the medical categories that still informed UK practice (the ASL Act will be discussed in more detail at the end of this Chapter). However the Salamanca Statement did not indicate

any parameters of eligibility (for example, how severe did a problem need to be before additional provision was provided?). In a resource-limited arena, such breadth of inclusion was likely to interfere with policy development as funds restricted progress. Thus there were problems in applying such an ethos pragmatically and the Salamanca Statement did not offer any resolution to the dilemma it created for policy makers. The absence of a severity scale also allowed governments to fully comply with the definition whilst vastly limiting the number of pupils actually eligible. Additionally, homogenising pupils by grouping them under the single concept of SEN did not reflect the differing aetiology of need nor the kind of additional support required. Therefore while inclusion seemed to be associated with ideas of liberal egalitarianism and maximising opportunity for all, it did not translate well into practice. As the Chapter progresses, I hope to argue that inclusion struggles in practice, because the SEN framework continues to dominate provision and prevents inclusion from being embraced as an opportunity, focussing rather on the problems associated with the concept (Ainscow, 1999).

... pedagogy needs to be improved in ways that will lead them [schools] to respond positively to pupil diversity – seeing individual differences not as problems to be fixed, but as opportunities for enriched learning.

Ainscow, 2007: 148

Despite arguing strongly for equality, there has been opposition to the Salamanca Statement's definition of the term. For example, supporters of special schools have argued that human dignity and enjoyment for some children are best achieved in the non-competitive and supportive environment of segregated provision. In addition, although equality of opportunity, as it refers to economic competitiveness, very rarely exists within special schools, it could do. The segregation itself is not necessarily a barrier to attainment.

The Salamanca Statement had huge influence. Such pressure led the World Health Organisation to re-think its definition of Disability which was modified to heavily reflect the social model and distinguished between two dimensions: functioning and disability (WHO, 2001). Unlike the WHO (1980) definition derided by the disability movement, the new definition placed the cause of disability with the environment, and thus added fuel to the argument that pedagogical practices should change to include all pupils.

In contrast to the human rights movement, the civil rights movement campaigned to redress power imbalances between the citizen and the state. Historically, the civil rights movement originated from a growing unease at State control and is heavily associated with campaigns launched in the 1960s and 1970s that challenged the institutional discrimination that treated minority groups less equally under the law.

Education reform in the US has significantly come via the civil rights movement and specifically from civil cases brought by individuals belonging to a minority group against the US Government. Such reforms and the process of effecting change have greatly influenced British education (Kirp, 1982) and so it is useful to consider how the US has approached equality and inclusion. As the US has a constitution that protects basic rights and freedoms, any legislation that combats discrimination in schools impacts on all pupils. Therefore the principles of a case that involves discrimination on the grounds of race will inform and protect the rights of disabled pupils to be free of discrimination. A number of civil cases challenged the segregation of pupils. For example, the principle of ‘separate but equal’ was quashed in the *Brown v Board of Education* (1954) in a landmark trial ending segregated education on the grounds of race (Rioux, 2007). This ruling undermined any argument that children could be both segregated and treated equally (MacMillan and Hendrick, 1993). Rioux argued that the ‘separate but equal’ philosophy was a myth, yet is found in modern education practice and provision in countries that claim to have a good human rights record, and this would include the UK. This myth was so entrenched in education policy that separation was argued as a positive solution for a child. Such education policy focused on the child’s alleged incapacity to benefit from education systems that were developed to educate ‘normal’ children instead of criticising the education systems that prohibited inclusion and therefore equality. In this way, defining a child as ‘different’ or having SEN was not a process of inclusion: a way of determining what additional resources would facilitate their learning. It was about justifying disadvantage (Rioux, 2007, Minow, 1985).

In a later hearing, the US Court ruled that SEN and disabled children faced the same type of stigma from segregated education provision as had been experienced by minority racial groups. This was the foundation for the legal right for all children to be educated inclusively (*Mills v Board of Education*, 1972). Following this ruling, the Education of All

Handicapped Children Act (Public Law 94-142, 1975) formally directed all children to have access to education, regardless of severity or type of disability. In 1990, the Act was re-named as the Individuals with Disabilities Education Act (IDEA, 1990) and increased accessibility to the mainstream curriculum for all students. By doing this, inclusion went beyond the integrationist idea of sharing the same space. Inclusion in the US grew more common and by 1994, a report from the National Centre on Educational Restructuring and Inclusion (NCERI) detected inclusion programmes in every US state, for children of all ages and degrees of additional support need (in Lipsky and Gartner, 1997).

However special schools continue to exist demonstrating the right of parents to make segregationist choices for their children. In contrast to the UK's professional discretion model of identifying SEN, US policy was informed by the legal and bureaucratic frameworks exemplified by the duty placed on each State to identify children with a special educational need (Kirp, 1982). This legal duty had resulted in 8% of American school children meeting the definition of SEN compared to just 2% in the UK. Writing in 1997, Palinscar estimated that about 11.5% of school aged children were enrolled into special needs programmes in US schools. At this level, it is apparent that special education is no longer a distinct branch, but a significant part of general education (Palinscar, 1997).

The US has certainly taken great steps towards inclusion, using civil rights to challenge against segregated placements. However, rights are not the only influence within the US education system, and not surprisingly perhaps, consumerism and market regulation frameworks were clearly evident. As discussed in the UK context in Chapter 3, policies and legislation informed by market principles had put huge pressure on schools to assess all pupils. Such assessments were then used as ammunition for schools to compete over resources (thus inclusion may have happened, but was selective of which disabled pupils were cooperative, to borrow the language of Rawls (1980, 1996)). There was evidence from the US that schools had been reluctant to accept SEN pupils who could 'depress' the school's performance scores or to omit such students from formal assessments for the same reason (OECD, 1999: 34). Though Rouse and McLaughlin (2007) were reviewing the British education system, their observation that reforms which aimed to include all pupils conflicted with standards-based reforms, leading to tension and confusion for schools, is appropriate too for the US system.

The American civil rights movement influenced UK policy because it fuelled the disability movement's political claim for emancipation. Mike Oliver (1990) reported that the manner in which the civil rights movement acquired their rights was influential. Thus when campaigning, lobbying and legal routes proved ineffectual, the British disability movement 'employed other techniques of social protest including organised boycotts, sit-ins and street demonstrations' (Barnes, 1992a: 18). Thus pressure put on UK policy makers from disability-led organisations within the UK has its routes in the US.

In summary, the human rights agenda had grown strongly throughout the 1980s and 1990s increasing the pressure on the UK to respond with policy. Though the UN and UNESCO were strongly committed to inclusion, they gave little pragmatic consideration to how the barriers to inclusion could be challenged. This may then, have limited their impact on policy in the UK. The US largely reflected the UK's move towards inclusion, and also had been seen to be under the same political pressures, particularly consumerism and market regulation (Kirp, 1982). Consumerism may have had a greater hold in the US due to the juridification of many services as parents had used legal systems to fight for rights. In addition the civil rights movement paved the way for education to be seen as a right for all children.

4.3 Scottish Devolution and the Rise of the Rights Agenda

This section of the Chapter aims to map the rise of the rights agenda in the UK and argue that, perhaps thanks to the Scotland Act, 1998, this has a stronger foothold in Scotland than in the rest of the UK. The Children (Scotland) Act (1995) will be considered for the extra rights given to children at this time and recognition that children should be considered as agents of participation in all decisions affecting them. The section then considers policy that has added to the SEN framework, but has arguably placed a greater emphasis on the rights of the pupil due to the influence of the rights perspective.

A human rights perspective calls for equality, fairness and freedom and is consistent with the concept of inclusive education for all pupils.

It is to be a part of society not to be apart from society. To understand disability in a human rights context means to recognize the inequalities that are inherent to our institutional structure.

Wills, 2000

Rioux, (2001, 2003) argued that the professional frameworks that have dominated SEN provision (Riddell, 2006) have undermined the agency of pupils in making their own decisions. In addition, interventions made by professionals based on the concept of SEN or disability being an individualised pathology or deficit, ultimately compromised the person's rights to be seen as a pupil and citizen first. As argued, and a point highlighted by Rioux (2007), to isolate children from education alongside their peers, is to exclude them from an ordinary childhood and the potential for an ordinary adulthood (Barnes, Mercer and Shakespeare, 1999; Barton, 1995; Oliver, 1996).

The Human Rights Act (1998) covered the whole of the UK and so was reserved to Westminster. It was enacted at the same time as Scotland gained its own parliament, and perhaps to reflect this timeliness, the Scotland Act (1998) made more than a nod to equality and rights. Article 14 of the Human Rights Act (1998) prohibited discrimination on any ground, though it did not explicitly refer to disability, it did refer to social origin and birth or other status. In Part 2 of the act, Article 2 promoted the right to education though placed no duty on provision to be inclusive. In line with the Human Rights Act (1998), the Scotland Act (1998), underpinned the principles and works of the Scottish Government with a rights-based agenda, and also prohibited discrimination on the grounds of social origin, and explicitly prohibited discrimination on the grounds of disability. This definition was within the context of promoting equal opportunities, and so the language was progressive and inclusive.

Scottish policy and welfare had developed differently to the rest of the UK even before devolution. For example Ozga (2000) identified a 'culture of resistance' in Scotland opposing the individualist and right-wing Thatcherism, and the Anglo-centric preoccupations of UK-wide policy. Further, policy was interpreted differently in Scotland throughout the 1980s and early 1990s reinforced by the desire to distinguish itself from a UK Conservative Government that had little legitimacy in Scotland (McAra, 1999; Mooney and Poole, 2004). This argument is given to explain the greater tendency for Scottish people to support left-wing politics, in

comparison with the rest of the UK. With regard to education, a more collective ideology in Scotland had led to greater emphasis on comprehensive schooling and thus less social divisions (Croxford et al, 2000). Yet despite this, inequality still existed in Scotland and this was true for education as well as other welfare issues (Mooney and Poole, 2004).

The rights agenda informed other policy development in Scotland. For example, Part 2 of the Children (Scotland) Act (1995) established the right of the child to be presumed to have the maturity and competence to contribute to hearings (Sheriff Court, Children's Panel and so on) once they reach the age of 12 years, though they may have been invited to contribute earlier than this if they showed the aptitude and inclination. The Children (Scotland) Act (1995) supported multi-disciplinary working, and allowed social work departments to formally highlight the welfare of a child to the education department, and request an assessment with a view to a Record being implemented. In so doing, the Act was a precursor to the ASL Act 2004. Greater emphasis in involving children was also inherent in the Standards in Scotland's Schools etc Act 2000, which promoted mainstreaming and a requirement to involve and engage with children in decisions affecting them. According to this legislation, the decision to place a child in a special school should only be taken in exceptional circumstances, (Paragraph 15 (3)) for example, when mainstream education was not suited to the aptitude or ability of the child; where mainstream could not offer efficient education or where mainstream would result in unreasonable expenditure. This 2000 Act was part of the SEN framework. Coming after devolution, it could have taken the opportunity to push inclusion forward and end segregation on any grounds. Although the Act re-made the case for full inclusion of all pupils, in practice it went little further than the 1980 Act (as amended) as the special school or segregated education options were maintained.

The Education (Disability Strategies and Pupil's Educational Records) (Scotland) Act 2002 (known as DSPERA) is also part of the SEN framework, but did introduce a new way of thinking about inclusion. Of particular significance is the absence of the SEN term from the Act (MacKay and McLarty, 2003). The 2002 Act placed a duty on education providers to ensure that school education was accessible to all pupils (with an emphasis on disabled students). Education authorities were expected to audit their provision and where accessibility wasn't available, to develop and then implement their strategy to achieve accessibility. Within

this legislation, accessibility referred both to the school curriculum, and also to the physical environment of schools. Thus education providers were encouraged to think spatially and creatively about access to education and educational opportunities. Early indications suggested that schools were able to audit their physical access but found audits of the curriculum more problematic. Independent schools seemed to have made a minimal gesture to the 2002 Act, perhaps doing only what was necessary to avoid legal action (Scottish Executive, 2003; Riddell, 2006). The definition of disability used in this Act is in alignment with the Disability Discrimination Act 1995. This act could have worked as a bridge between the DDA Part 4 and the SEN framework as in theory it could have met the social model's demands for removing all social barriers to end disability.

In summary, the rights agenda in Scotland may have found more support than in the rest of the UK being written into the tool of devolution (Scotland Act, 1998). However the SEN legislation that appeared immediately after devolution did not increase the rights of disabled and SEN pupils to be educated in an inclusive environment. The next section of the Chapter examines how the DDA (1995 and as amended) was developed to promote equality by challenging discrimination.

4.4 The Disability Discrimination Act (1995): New Rights

After a brief account of the civil rights pressure that had to be placed on UK policy makers in order to achieve the emergence of the DDA, this section of the Chapter will consider the basic terms of the DDA. In particular, the definition of disability will be focused on.

As stated, the disability movement lobbied the Conservative Government fourteen times between 1981 and 1995 before the DDA was finally passed (Barnes, 2007). The first reading of the Civil Rights (Disabled Persons) Bill was unsuccessful and was prevented from progressing by a handful of Conservative MPs (Woodhams and Corby, 2003). Several factors may explain the Conservative Government's eventual capitulation. Firstly the Act was passed during the last years of Conservative rule and may have been intended as a gesture, to sway those voters looking for social justice to appear on the political agenda in an attempt to win the 1997 general election. The Conservative Government may have responded to the substantial

outcry when the 1990 Bill was not passed (Pitt, 1997). Further, the growth of disability studies had led to key publications, using Government statistics irrefutably showing that disabled people faced discrimination (Barnes, 1991; Barnes, 2007). As the disability movement grew, demonstrations became larger and more frequent, heavily influenced by the US civil rights movement (Barnes, 2007). Although the DDA was eventually ratified, key exclusions (education and transport) and get-out clauses and caveats limited the usefulness of the legislation for disabled people.

The DDA (1995) was a landmark piece of legislation as all disabled people were offered the protection of a single Act (though in practice it was separated into different parts and protection was conditional). The Act was of critical importance because it accepted that disabled people living in the UK were an oppressed minority and faced institutional discrimination that should be considered unlawful. Thus disability (rather than impairment) became seen in law as a cause of discrimination.

... major disability rights laws in Canada, Britain (the Disability Discrimination Act of 1995) and the US (Americans with Disabilities Act of 1990) mandated an end to discrimination in all aspects of life and required the elimination of all types of barriers to participation in society. As a result the end of the twentieth century saw the establishment of a new era based on civil rights, [and] social participation...

(Peters, 2007: 123)

The Act was written in such a way that protection was provided; however the DDA (1995, and Part 4, 2001) relied on case law to determine how exactly its message of inclusion and freedom from discrimination should be formed in practice (Howard and Cox, 2000). In contrast, the latest addition to the DDA, the Disability Equality Duty (2005) has placed a duty on public bodies to end discrimination without the need for disabled people to actively highlight where this has occurred. The DDA (predating the Duty 2005) depended on disabled people feeling sufficiently empowered to first recognise that they had been discriminated against, and then to bring a legal challenge, often against colleagues, people within their community or those in a position of power (for example, educators).

As outlined in Chapter 1, the DDA defines disability as ‘a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out

normal day-to-day activities' (DDA, 1995, Part 1, 1 (1)). The Disability Rights Taskforce (DRT), set up by the new Labour Government in 1997 reported in the document *'From Exclusion to Inclusion'* that the definition of disability given by the DDA was complex and difficult to use. This was substantiated by Meager et al, (1999) who estimated that in the first eighteen months of the DDA's Part 2, 18 percent of cases heard at an Employment Tribunal failed on the definition of disability. As a consequence, it became routine for employers to challenge eligibility in each case (Gooding, 2000). Such confusion over the definition of disability has led some to argue that the term is a useless addition to the legislation (Cunningham and James, 2001; Noon and Ogbonna, 2001). Further the cost and stress of providing the required evidence of eligibility was seen by many as a barrier to making a case at all (Meager et al, 1999). This argument was strengthened when it was understood that the use of the word disability in this context reinforced the medical model. The DRT document also criticised the DDA for its narrow definition as it allowed only disabled people protection. It therefore omitted those perceived to be disabled and those who faced discrimination because they were with, or were associated with a disabled person (Woodhams and Corby, 2003).

Unlike the Race Relations Act (1976) or the Equal Pay Act (1970), disabled people had to prove that they belonged to the category of 'disability' in order to be protected by the legislation. Thus in race and gender cases, it was assumed that the claimant was eligible for normal treatment. Enforcing a category of eligibility assumes that disabled people deviate from what is normal. That is, it is the status of the claimant that is the primary focus rather than their case of discrimination. As Woodhams and Corby (2003: 174) argued, '...the initial burden of proof is on the individual to establish that they are 'disabled enough' by an impairment to 'count''. Therefore although the DDA existed to end inequality and difference, in practice the Act depended on it and so increased the difference. Eligibility was determined at a preliminary hearing. A definition of disability under alternative statutory definitions was not necessarily a guarantee of eligible status (for example someone registered under the Disabled Persons (Employment) Act 1994 would not automatically be protected (Doyle, 2003)). Recent amendments have specified that some medical conditions infer automatic eligibility such as HIV+, facial disfigurement and multiple sclerosis. Thus the medical model can be seen to have an influence, as diagnosis, medical evidence and medical expertise, formed the basis of any case brought under the Act. However the social model's influence is

also apparent as daily activities are considered, showing that barriers can be impairment based and socially based. The inclusion of conditions such as facial disfigurement are also evidence that the social model has influenced the DDA as it recognised that the social response to impairment disables, even if the impairment itself does not restrict activity.

The DDA required disabled people to establish their own idea of discrimination and use this to inform case law. In recognition of the institutional discrimination faced by disabled people, it was anticipated that support networks may need to be established to guide people, generally excluded from participating in civil and legal matters, in making a case. The Disability Rights Commission (DRC) was set up to meet this perceived need.

The DRC was absorbed by the Equality and Human Rights Commission (EHRC) in 2007. The Equality Act of 2006 created the single commission to continue the work of the DRC, the Equal Opportunities Commission and the Commission for Racial Equality, and to represent three new equality strands: sexual orientation, religion or belief and age. Part of the reasoning behind the single commission, was that it could represent cases where individuals have experienced multiple oppression, and so may address the modernist weakness of the DDA. Though still with an office and a remit for Scotland, former DRC workers are not well-represented among the EHRC staff and it is concerning that disability issues may become invisible as there is no longer a body with the expertise or the drive to commit time to ending discrimination on the grounds of disability.

In this section, I have reviewed the inauguration of the DDA (1995) and the DRC. Though the DDA's definition of disability is sensitive to the social model, in practice, disabled people rely on the endorsement of medical professionals before they are officially considered eligible.

4.4.1 The Terms of the Disability Discrimination Act Part 4: Education

As stated Part 4 of the DDA was ratified in 2001 and implemented from 2002. Part 4 had two strands: schools and post-16 cases. It is the schools strand that is relevant to this research. The

DDA Part 4 makes it unlawful to discriminate against a child for reasons related to their disability. A more detailed account of this provision appears in Chapter 1. Predominantly this section will explore what rights are actually afforded by the DDA Part 4. The section will continue by exploring how the legal routes of redress in Scotland may compromise the capacity parents and children have to bring a case under Part 4.

As the DDA Part 4 relied on case law to strengthen its message and define its parameters, it was dependent on cases being made to challenge education provision. In turn, this process relied on parents being adequately aware of the legislation, and adequately empowered to use it. Thus parents and children had to behave as consumers in order to assert their rights under the DDA. Cogan et al (2003) published a baseline report of awareness of the DDA after the first year of its operation, which has hugely informed the methodology of this thesis. Cogan et al reported that parents had little knowledge or understanding of the legislation. This finding is perhaps reflected in the low number of DDA Part 4 claims taken to SENDIST or SENTW (around 80 case brought per year from 2001 to 2004 rising to only 128 cases last year, Wolfe, 2007). This finding was echoed by Lewis et al, (2006) who concluded that information about rights and entitlements needed to be disseminated more widely in order to be seen by parents. They recommended dissemination information in shops, supermarkets, doctors' surgeries, and pubs. Lewis et al also concluded that information should be accessible in terms of language and format. The Cogan et al (2003) study showed that, in comparison to parents, schools were more aware of the DDA Part 4 (though not all schools had a good understanding). Local authorities on the other hand reported a high awareness and high level of understanding, possibly a function of the audits they had completed in order to be sure they complied with the law (Riddell, 2007). The DRC had strongly committed to the dissemination of the DDA in accessible formats. To this end the DRC held special events in 2002-3 to launch the new Part 4 duties. The events were attended by 274 parents, teachers and education authorities. A follow up survey showed that 74% of those who responded found the events helpful (DRC, 2005). Similar events were rolled out during 2004-5 targeting parents only. A survey of attendees showed that feelings of empowerment and understanding of the DDA Part 4 were substantially increased.

The duty to make reasonable adjustments for disabled pupils was anticipatory, and in this way it should have prevented pupils ever being in a position of substantial disadvantage. This then placed a duty on schools to consider educational provision for disabled pupils, even if they did not have a disabled pupil enrolled at the time the DDA Part 4 became active in 2002. To comply with this duty, schools were expected to audit all policies, practices and procedures to ensure that discrimination could not occur, and in this way formally consider the needs of all pupils in all aspects of school management and decision-making. Further this process should have been continuous, so that schools regularly updated or re-considered their policies in light of their duty under the DDA Part 4. This duty also encouraged inter-agency working as the need to be anticipatory related to the need to be informed early of prospective pupils and their additional support needs.

There are two exemptions under the reasonable adjustments duty. Schools are not required to: provide auxiliary aids or services or remove or alter physical features. The first provision may be protected if the pupil has a Record of needs, though as discussed earlier in Chapter 3, even if these provisions are agreed, they do not become guaranteed. Further the Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002 does require education providers to assess school accessibility and where problems exist, develop a plan or strategy to overcome them. Including the issue of accessibility within the DDA, when it was already protected under the SEN framework was considered to be a bureaucratic crossover that would serve only to confuse education-users. Therefore, although there is potential difficulty over these exemptions, there may be some protection available from the SEN legislative framework. Education providers could justify not making reasonable adjustments on the basis of financial cost. In this way, the DDA supports market frameworks over social justice, allowing decisions to be made on an economic basis rather than a moral one (Woodhams and Corby, 2003).

Disabled people who faced discrimination and felt able to challenge their school under Part 4 in Scotland could result in the case being heard at the Sherriff Court. In contrast, and to briefly re-state earlier arguments, cases in England and Wales are presented at tribunals that hear SEN cases (usually relating to Statements) and disability cases. English cases are heard at the Special Educational Need and Disability Tribunals (SENDIST) and Wales now has its own

version (SENWT). The tribunal model was considered to be less intimidating and more accessible than going through the traditional court system, and had been considered to contribute to the increase in cases in England and Wales of an educational nature, compared to Scotland (DRC, 2007). However, to develop case law in England and Wales, the claim had to be heard in a County Court or the High Court, and so some cases in England and Wales were directed towards the more intimidating legal courts. To support parents and children through what could be an intimidating legal system, Lewis et al, (2006) recommended the use of disability-linked advocacy and support groups in a review of the experience of disability in Great Britain. The study, funded by the DRC, focused on children and young people with education as a critical topic. Such networks would support children or young people from the moment they experienced discrimination until a claim had been settled. It appeared that even though the DRC existed, without such advocacy groups and networks, children and/or their parents did not feel comfortable or able to challenge discrimination. The DRC in Scotland encouraged the Scottish Executive to consider extending the remit of the new Additional Support for Learning Tribunal (to be discussed later in the Chapter) to cover disability cases. The Scottish Executive agreed to formally consider this recommendation fully during their 2007 review of the new tribunal.

Whether cases are heard at the Sheriff Court or in a Tribunal, no financial compensation is available for those winning a case, though a verdict might establish the rights of the claimant and place an order on schools to take positive action. Therefore the pupil or their parent could win recognition that their education provider had infringed their rights and freedoms. Interestingly Wolfe (2007), writing for the DRC, considered that the lack of a financial remedy against schools had not impacted on their response to their duty to comply with the Act. Rather, he suggested that the possibility that schools may be ordered to apologise to pupils was a far greater deterrent than a fine.

In practice, 'sorry' has proved to be the hardest word. Several cases have made repeated trips from the SENDIST to the High Court and back again because a school is unwilling, even through gritted teeth, to apologise for discriminating against a disabled child in circumstances where writing a cheque would probably have proved no problem for them.

Wolfe, 2007: 43

Although the DRC had supported numerous claims made using the DDA Part 4, few have made it to court. The DRC publication ‘DRC Legal Achievements: 2000-2007’ observed,

The DRC has backed such claims, some with stark facts, but the nature of the claims and the institutions means that cases tend to settle and little of new legal principle has been established.

Wolfe, 2007: 40

Although 129 (schools and post-16) cases have been handled by the Scotland Casework Department, no education cases have made it to the Sheriff Court in Scotland and only 69 legal cases were supported by the DRC in England or Wales between 2002 and June 2007 (DRC, 2007). Of these, only 45 had a recorded verdict and in the pre-16 education sector, 10 won their case and in the post-16 education sector only one person won their case. This is an incredibly low figure when it is considered that 8,221 cases were opened (relating to Part 4) between April 2004 and June 2007 (records not available prior to 2004) by the DRC of potential cases of disability discrimination (DRC, 2007). Therefore only 0.1% of all claims made to the DRC contributed to case law. Cases were not usually opened until the DRC were satisfied that the claimant was eligible under the DDA. Interestingly the most recent cases brought to the attention of the DRC in England and Wales focused on issues around how the DDA Part 4 interfaced with the SEN framework. Specifically claims have revolved around confusion over who should fund resources: the school (responsible under the DDA) or the Local Education Authority (responsible for the provision for statemented pupils according to SEN legislation). Another issue that has prompted multiple claims is the right of schools to exclude pupils for disruptive behaviour, where the pupil has both a recognised disability and a SEN. In the former case exclusion may become discriminatory if the behaviour that is the focus of the exclusion can be considered part of the impairment. As these cases settled before the tribunals were able to offer a verdict, the conclusions cannot be explored here.

Though Scottish education case law does not exist, some employment cases establish precedents which future education cases may have to learn from. The case of *Rose v Bouchet*, 1999, exemplifies this point. Mr Rose was prevented from acquiring a private lease on a flat, because the property owner felt that access would be an issue. Mr Rose’s visual impairment created, in the opinion of the landlord, a health and safety issue as the property was accessed

through a small flight of stairs. The Court found for the landlord and this was upheld on appeal. Thus a disabled person's abilities could be determined by a lay-person with no communications with the disabled person, and no established safety issue. This case demonstrates that as long as justification for discrimination is presented as reasonable, it does not need to be valid.

The term 'reasonable adjustment' was contested in the employment case *Archibald v Fife Council* (2004). Briefly, Ms Archibald was severely and unexpectedly impaired by a minor operation and was unable to continue her manual position with Fife Council. According to the Council's advice she re-trained for a clerical post but was unable to secure a new post because she failed to get past the interview stage. Ms Archibald argued that a reasonable adjustment should be to transfer to another vacant position for which she was qualified. Though Fife Council disagreed, the House of Lords accepted Ms Archibald's appeal, establishing that employers had a 'duty' to make a reasonable adjustment, and recruitment procedures could not interfere with this (Renton, 2006). On the face of it, DDA Part 2 had been interpreted as allowing positive discrimination to take part. Interestingly, in reaching their decision, the High Court employed the DRC's Code of Practice as well as the DDA Part 2 itself (Renton, 2006). This is important for schools, because it establishes a precedent for giving children additional support, or different rules within education, providing the pupil can establish that this is a requirement related to their disability. Employment case law has demonstrated that the law asks first if reasonable adjustments have been made, if not, then the employer has acted in a discriminatory way (Hughes, 2004). Busby, (2005) argued that the High Court's decision was radical in that it incorporated the ethos of the social model in saying that Fife Council's recruitment procedures disabled Ms Archibald in their inflexibility. Within this argument, the decision for Ms Archibald did not in fact promote positive discrimination, rather it endorsed the removal of barriers so that she could be treated equally (Renton, 2006).

The third employment case places an important emphasis on how the DDA Part 4 might be interpreted in case law relates to *Goodwin v The Patent Office*, (1999 – IRLR 4). Mr Goodwin had paranoid schizophrenia, which did not usually interfere with his work due to stabilising medication. The Employment Tribunal held that Mr Goodwin had a disability

whether he did or did not take his medication, and therefore his employers could not use his failure to take his medication as justification for making him redundant (Howard and Cox, 2000).

In conclusion, the DDA Part 4 aimed to end the discrimination faced by disabled pupils. The legislation required pupils or their parents to make their case (assuming that they were sufficiently empowered to do so) to a Court or a tribunal. The terms of Part 4 placed a duty on schools to be anticipatory. In theory this was supposed to eliminate substantial disadvantage as schools had to consider what disabling barriers could exist for disabled pupils, and remove them. Despite the DRC existing to support pupils and parents making a case under the DDA Part 4, a low number of cases have been made in the UK generally, with a disproportionately low number of cases made in Scotland reaching the legal framework (that is the Sheriff Court).

4.5 Can the DDA Deliver New Rights?

The DDA Part 4 aimed to redress the discrimination faced by disabled pupils at school. The Act gave parents and pupils new rights to challenge discrimination and promote equality. As has been noted in the US system, a segregated placement is considered unequal treatment. In contrast, many parents, as discussed in Chapter 3, campaign for special schools to stay open, suggesting that equality is not the most important aspect of education for these families. This section examines whether the new rights afforded by the DDA are strong enough to aid inclusion, promote equality and end discrimination. As little research has focused on this to date, this section is brief but will inform the data Chapters and discussion in Chapter 9.

Also as noted, the Warnock Report (1978) promoted inclusion but this was not interpreted into practice following the Education (Scotland) Act 1980 as amended. This was due to the multiple tensions within 'special' education, as market forces conflicted with inclusion. The introduction of a rights-based approach into education, aimed to change this. Certainly if new legislation cannot go beyond rhetoric (Armstrong et al, 2000), then the SEN framework is given no indication of how it should respond. Any response from schools takes time, effort, resources and commitment, and so new legislation must be careful to direct

schools in how to make the transition to the new inclusive rights perspective efficiently. As way of an example, to achieve inclusion, new legislation would have to give teachers a pragmatic solution as to how they could successfully teach pupils demonstrating disruptive behaviour in their classrooms, without reducing their focus on all pupils in class.

DRC publications did attempt to bridge the gap between legal protection of disabled people and pragmatic support for teachers and learners. The document ‘Code of Practice for Schools’ was published by the DRC in 2002 alongside sister publications for parents, and for post -16 education. Elements of the legislation were explained. Critically, examples were included in the Code to illustrate how the Act should be understood and interpreted by teachers. Education providers were thus able to judge what reasonable adjustments were, and the extent of their duty to support disabled students. The examples were selected to push the boundaries for schools and to encourage them to engage with the duty in a new and creative way. The examples also included scenarios where schools could safely take no action. Despite the careful consideration given to this document, schools remained uncertain of the parameters of their duty under the DDA Part 4 (Cogan et al, 2003).

While the SEN framework exists, rights may struggle to be implemented, as they will be unable to articulate with strategies that require categories that endorse separateness. The fact that parents or pupils need to legally challenge their school ultimately means that they have to challenge the professional framework that has dominated SEN. This required determined, knowledgeable and empowered people to bring a case. The DRC worked hard to guide schools and local authorities as to how their duties under the DDA could be met in practice. They also worked hard to disseminate information to parents and promote their role in facilitating genuine cases of discrimination. The impact the DDA Part 4 actually had on Scottish schools will be assessed in Chapters 6, 7 and 8.

4.6 Additional Support for Learning: A New Kind of Fairness?

Essentially this research is examining the articulation of the rights-based DDA with the existing needs-based SEN framework. The thesis is caught in an historical predicament (as all

social research is) because the SEN framework is being challenged from another direction. Before progressing to a summary of this Chapter then, it is important to return to the SEN framework and consider the most recent policy, the Education (Additional Support for Learning) (Scotland) Act (2004).

The 2004 Act separated itself from the SEN framework in many ways, rejecting the term special educational needs, and moving to the concept of additional support needs (ASN). In so doing, the Act aimed to include more children under its canopy. For example, the ASN label is applied to any child who requires additional support to benefit from school education (section 1) ASL Act, 2004), whatever the cause, and could for example include a child who is bullied at school. The label can also be applied to a parent of a child, thus recognising that the child may need additional support even though the trigger for that need does not lie with them. Thus the label moves away from medical or professional categorisation of need (DRC, 2005). The emphasis is placed on providing appropriate educational support, rather than defining a child using a deficit model. The 2004 Act was designed to supplement SEN legislation, and so was intended to sit alongside the DDA Part 4. Disabled pupils not covered by the new legislation would still have the protection of the DDA.

Records were to be replaced with the strengthened and streamlined Co-ordinated Support Plan (CSP). Less children should qualify for a CSP, as children must experience multiple disadvantage, or access multiple support provisions in order to be eligible (Scottish Executive, 2005). Therefore a child understood to be disabled under the DDA may not qualify for a CSP even if they have previously been assessed as having a SEN. Similar to the Record, a child considered eligible for a CSP must be assessed and examined to establish if multiple or complex additional needs exist. Those children who may have had ASN but were not eligible for the CSP, were likely to get an individual education plan (IEP) setting out short and long term educational goals. However IEPs have no legal basis, do not aid access to additional resources, are unlikely to involve inter-agency working and have no route to a legal appeal (Riddell, 2006; Kane et al, 2003). Therefore, although the ASL Act promoted inter-agency working and the additional support provision for a wider group of children, in practice less inter-agency working will be done, and less children will be directly supported.

Although the ASL Act (2004) set up an Additional Support Needs Tribunal in an attempt to improve accessibility of legal frameworks for parents and children, only cases relating to CSPs are heard. Cases relating to discrimination continue to be ineligible. Riddell, Ferrie and Maguire (2006) reported that the tribunal had enjoyed limited business in its first six months, and so barriers are still evidently preventing parents and children from appeals.

4.7 Conclusion

The DDA Part 4 appeared six years after the original DDA (1995). It extended the right to be free of discrimination into schools and with the post-16 strand into further and higher institutions. The new rights for parents and pupils appeared after growing pressure from the human rights agenda (UN and UNESCO notably) and a civil rights agenda (progression in the US and from the disability movement in the UK). Both the civil and human rights movements campaigned for inclusive education and framed segregation as unequal and therefore discriminatory treatment.

In terms of UK education policy, equality had not been established for all pupils. It seems that the SEN framework, the domination of the 'expert professional' and growing influence of marked frameworks colluded to restrict equality for disabled pupils.

Within the English context, therefore, there are two main strands within the reforms. On one hand, there are those aspects of legislation designed to protect vulnerable children, to encourage their inclusion, to reduce their social exclusion and to improve the quality of the services they receive. On the other hand, there are the standards-based reforms which stress academic excellence and high-stakes accountability for individuals, schools and local authorities. Often these reforms are in conflict and lead to a series of tensions and confusion in schools.

Rouse and McLaughlin, 2007: 88

The rights of minority groups recognised as facing oppression and discrimination have increasingly influenced British policy. For example, in 1998 the UK ratified its own Human Rights Act. The same year Scotland became devolved and the 1998 Scotland Act incorporated inclusion, equality and human rights into the functions of the Scottish Government. Yet, to fully achieve this manifesto for social justice, rights needed to be provided in law: a commitment to the concept of equality and justice was not sufficient to end discrimination.

Therefore, even after devolution SEN legislation allowed the segregation of some children on financial, pedagogical or inefficiency grounds (Standards in Scotland's Schools etc. Act 2000).

The DDA (1995) arrived after decades of campaigning, lobbying and rejected Bills. The Act established that institutional discrimination oppressed disabled people. It also incorporated aspects of the social model, recognising that environmental barriers could restrict opportunity and functioning. When it did arrive it provided partial protection, required disabled people to be sufficiently empowered to engage with the appeals process, and made normative comparisons setting up 'disability' as an inherent flaw in an individual. The DDA required claimants to establish their eligibility as a disabled person at the beginning of any case. Eligibility involved assessments from 'expert professionals' and in this way endorsed the medical model perspective of professional discretion that had dominated SEN. Almost one fifth of employment cases ended when eligibility was not established, and employers have come to challenge disability status as a standard response to any claim (Meager et al, 1999; Gooding, 2000). Thus the definition of disability used by the DDA distinguished between impairment effects, decreeing that some people were sufficiently impaired to be covered by the legislation, and others don't count. Before a case of discrimination is disputed, this distinction as disabled or not disabled occurs. Thus someone could be discriminated against on the grounds of their disability, only to discover that they are not disabled at all. The point here, is that the alleged discrimination is not challenged by the courts as the primary contention.

The DDA was amended in 2001 to produce Part 4 (also known as SENDA, 2001) relating to education. Part 4 did not directly challenge the SEN framework as issues around 'auxiliary aids and services' were not covered by Part 4. Therefore as well as tension between the demands of the market frameworks versus a social justice perspective; there is also a tension between the SEN framework (and the DSPERA in particular) and the terms of the DDA Part 4. To access an accessible environment, parents and children are effectively asked to have knowledge of two different legislative frameworks and policies, and be able to navigate through each sufficiently well to make a case. This tension has created a number of claims that have been managed by the DRC's caseworkers, (DRC, 2007). The timing of the

Education (Additional Support for Learning) (Scotland) Act (2004) may have further muddied the waters, bringing a transformation of the SEN framework.

The Disability Rights Commission was launched by the Disability Rights Commission Act in 1999 to promote the DDA and amendments. In so doing, the Commission have also supported disabled claimants in the attempt to impact on case law. Though dissemination programmes in Scotland have targeted a diverse group of people, and been valued by survey respondents, awareness of the legislation still seems to be low (Cogan et al, 2003). Further the new Equality and Human Rights Commission has incorporated the DRC and may reduce energies spent on disability issues, as it now competes with other equality strands.

5 Chapter 5 – Methodology

5.1 Introduction

The purpose of this Chapter is to connect the theory and policy outlined in the previous Chapters to the research aims set out in Chapter 1. I will outline the methods that I have chosen to investigate how the DDA Part 4 has impacted on Scottish schools.

The Chapter will begin by introducing the emancipatory approach to research. This approach is introduced within a wider discussion of feminism and power relations. Such debates influenced supporters of the social model to develop the emancipatory approach to research. I have been particularly informed and influenced by the emancipatory approach and its main assumptions. The principles of emancipatory research have been difficult to apply in practice and the challenges that it creates for researchers forms the first section of this Chapter. This approach demands that all social research address power imbalances between the researcher and the respondent, and to conduct research relevant and in the control of those participating. The debate presented will explain that this research acknowledged the value of the emancipatory approach, but due to the problems in meeting this approach in practice, was in fact participatory.

The Chapter will then turn to the research aims. These have been introduced in Chapter 1, but will be briefly restated here. In particular, I will argue that a mixed-methods approach is the best strategy to inform the research aims. Additionally, the research aims informed the decision to locate the data collection in Scotland, and this will be considered in more detail.

The Chapter progresses to outline the two methods frameworks, divided for the purpose of clarity into quantitative and qualitative data collection. The quantitative component of the methodology is considered first. Three surveys were developed and disseminated to local authorities, to schools and to parents or carers in 2004, building upon work carried out in 2002 (see Cogan, Riddell and Tisdall, 2003). Analysing the two data sets enabled comparisons of the awareness of the Act at the time of implementation, with awareness two

years later. Each survey contained several short answer questions producing qualitative information that was analysed alongside the data generated by the in-depth interviews. The design of the survey instruments is explored and then focus will turn to participant recruitment.

An overview of the qualitative methods frameworks is then presented. Grounded theory was used to permit an exploration of anticipated (as derived from an early analysis of the survey data) and emerging themes. Three in-depth interviews were conducted. These involved multiple interviews with the person who made a claim of discrimination (always the Mother) and with the young person at the centre of the claim. The educational professionals also involved in the claims were invited to participate and one agreed. A caseworker from the DRC – Scotland in charge of education cases also contributed. The recruitment of participants for the in-depth interviews was facilitated by the DRC – Scotland, and this process will be discussed in some detail. The Chapter then moves onto a consideration of how data was collected and analysed, before I reflect on my position as a researcher and how this was used to inform the analysis.

Before I turn to some concluding remarks, ethical considerations are outlined in the final section of the Chapter. This is followed by a brief account about how the analysis is presented in the data Chapters (Chapters 6, 7 and 8).

5.2 Challenges and Opportunities of the Emancipatory Approach

Though this section outlines the emancipatory approach and the challenges it creates for social research, the emergence of the approach will be considered first. This discussion begins with an overview of ‘traditional’ approaches to studying the social world and how these were challenged to incorporate experience, values and so equip research with the capacity to challenge oppressive social structures.

Positivist approaches can be traced back to Comte who proposed that the social world could be investigated using methods derived from scientific paradigms, essentially defined by

hypothesis-testing to produce quantitative data (Hughes, 1993). As will be discussed in more detail in the next section, the positivist approach implied that knowledge creation should be politically neutral and objective (Humphries, 1997). Early sociologists gave primacy to quantitative methods, and qualitative approaches were relegated (if used at all) to pilot case studies (Silverman, 1993). In line with feminist research development, dissatisfaction with positivism grew as it failed to acknowledge experience and failed to produce knowledge that could contribute to ending oppression and alleviate disadvantage (Johnston, 1991). In 1967, Becker argued that positivist methods served only to highlight the positions imposed upon people and groups by society. Value-free research did not and could not permit social structures to be challenged, and so oppression continued (Becker, 1967). Becker's (1967) observance of oppressive power relations in positivist data production may be resolved by adopting emancipatory values, but also by employing a plurality of methods. Therefore the quantitative strengths of hypothesis testing (ability to define, count and analyse variables) could be balanced by hypothesis generating qualitative approaches and their emphasis on describing a meaningful social world (Silverman, 1993). Thus qualitative research permits an exploration of the respondent as a social agent. Truman (1994) viewed qualitative paradigms (such as feminism, emancipatory, participatory, action, critical theory research) to adopt a partial view of the world, but one that was allied to the oppressed and disadvantaged.

The participatory approach was influenced by these radical approaches and sought to end traditional approaches to studying inequality and disadvantage which framed participants as passive and whose contributions required interpretation from the expert researcher (Stone and Priestley, 1996; Walmsley, 2001). Fundamentally, participatory research argued that power imbalances in favour of the researcher in the researcher/researched relationship reflected wider social structures, and if this was not addressed then the research would contribute to the further oppression of the researched group.

Feminism developed to explore the existential properties of womanhood, that is, how is it to be a woman, and to what extent the right to behave as free agents is infringed by paternalistic social structures. In many ways feminist analysis can aid an understanding of how researchers in the field of disability studies might aim to both increase academic

understanding and political emancipation. For example, Lather writing from a feminist perspective argues,

The overt ideological goal of feminist research in the human sciences is to correct both the *invisibility* and *distortion* of female experience in ways relevant to ending women's unequal social position.

(Lather, 1991, p.71)

This quote from Lather could be applied to the disability movement, and is consistent with the participatory approach.

The development of an emancipatory research paradigm will be introduced here, and was largely a function of the relationship between the activist principles of the disability movement and the academic discipline of disability studies. For example a special edition of *Disability, Handicap and Society* in 1992 collected papers that explored research relations, including papers from Oliver, Barnes, Zarb and Abberley, critiquing traditional sociological approaches to researching disability as parasitic (Hunt, 1981).

Disabled people have come to see research as a violation of their experience, as irrelevant to their needs and as failing to improve their material circumstances and quality of life.

Oliver, 1992: 105

The emancipatory approach demanded that participants go beyond participation, and achieve a greater level of ownership of the research produced in order to break the cycle of oppression. This would lead to research that could be used as 'part of the process of changing society to ensure full participation and citizenship' (French and Swain, 1997: 28). Also it demanded that disabled people should control the research in terms of what questions were asked and who received funding (Zarb, 1992). Traditional research (that pre-dated the participatory or emancipatory approaches) was accused of improving the careers of those engaged in the research rather than removing barriers for disabled people and, in this way, was inconsistent with the social model (Barnes, 1992b; Stone and Priestley, 1996). The introduction of the emancipatory approach signified the interlocking of the political message of the social model in disability studies in the UK.

Disability studies thus became framed by the principle that research that does not focus on the removal of societal barriers contributes to the marginalisation of disabled people. In addition, it was argued that such research had informed policy. Therefore if research adopts a position of expertise as more valid than the experience of disabled people, then it is likely to produce segregationist and oppressive policy (Rioux and Bach, 1994; Abberley, 1992). Thus, to end the oppression of disabled people they should be involved in producing the policy that affects them (Nussbaum, 2006), and also be involved in research that focuses on such policy. This position reflects, I argue, the professional dominance of special education. Professional expertise has colonized this field, with medical, psychological, educational and academic professionals contributing to a far greater extent to policy and its implementation than disabled pupils or their parents. This may be most clearly demonstrated by the absence of disabled people on the Warnock Committee (see Chapter 3 for a full discussion). The professional dominance of education generally, and special education in particular (Riddell, 2006) has not been sufficiently challenged by emancipatory policy or emancipatory research.

I therefore had two strong reasons for adopting the principles of the emancipatory method. Firstly it allowed the research to be informed by the theoretical perspective of the social model, and thus to examine where barriers existed to restrict the life chances of disabled people. Secondly, through employing an emancipatory methodology the research aimed to ensure that disabled people (and their representatives) were involved in this evaluation of key policy. Creating emancipatory research requires investment in certain epistemological assumptions, and these have created challenges for researchers. These assumptions were framed by Stone and Priestley (1996) as six key principles relating to the theoretical basis, the intended outcome of the research and the practical implications in producing the research. They and many other researchers have written about the huge conflicts full engagement with emancipatory research presents. For example Barnes (1992) discussed the problems of securing funding; Oliver (1992) discussed the problems of conducting research with a 'hidden' emancipatory agenda; and Stone and Priestley (1996) asked which disabled people should be included, highlighting the heterogeneity of opinion within the disabled 'community'.

To demonstrate how emancipatory research has informed my approach to my methods, I will briefly outline Stone and Priestley's (1996) six assumptions. The first principle related to

choosing an epistemological framework of the research consistent with the social model and the removal of social barriers. Specifically, this principle encourages researchers to distinguish between their role as ‘expert’ and their role as ‘knower’. Where researchers act as both expert and knower, they effectively deny the knowledge and experience of disabled people. Emphasising that social barriers restrict disabled people minimises focus on a pathological or individualist tragedy conceptualisation of disability and thus represents a radical shift from traditional sociological approaches to disability research (Felske, 1994). For example, in discussing traditional approaches to social research Oliver argued,

It is hardly surprising that, by the end of the interview, the disabled person has come to believe that his or her problems are caused by their own health/disability problems rather than by the organisation of society.

Oliver, 1990: 8

Secondly, Stone and Priestley (1996) challenge the researcher to surrender objectivity. Thus the researcher must adopt the political principles of the social model, and infuse their research with a commitment to seek and remove social barriers. This principle runs counter to the objectivity celebrated by positivist research (Zarb, 1992; Hunt, 1981), but as I will argue that does not mean that all quantitative methods become inconsistent with emancipatory research. These first and second principles represent the epistemological basis for emancipatory research.

The third principle demands that the researcher examines the motivations for the research to ensure that its purpose goes beyond the pursuit of academic advancement. Both positivist and interpretive research have been criticised for failing to produce ‘immediate improvements in the material conditions of life for the disabled research subjects’ (Oliver, 1992: 109). Barnes (1996b) challenged the academic system for encouraging researchers to ‘write for other university based researchers’ (Barnes, 1996b: 108-109) thus motivated by professional advancement rather than contributing to the end of oppression. As Swain et al argued (1998),

Research is not justifiable simply on the traditional, modernist grounds of furthering knowledge on the basis that knowledge is intrinsically good. The challenge to

researchers is clear: the essentially political act of research can exploit vulnerable and powerless groups within society.

Swain, Heyman and Gillman, 1998: 21-22

Research was framed as political on the grounds that traditional research allowed disabled people's voices to remain hidden (and as argued, this contributed to policy that concealed the views of disabled people) (Barnes, 1996b). Any truly emancipatory research must therefore hear and be informed by disabled people (Booth, 1996; Shakespeare, 1996) and contribute to social change that is perceived as useful and relevant by disabled people. In this way,

... the political standpoint of the researcher is tied to political action in challenging oppression and facilitating the self-empowerment of disabled people.

Stone and Priestley, 1996: 703

Research then becomes a process of empowerment and emancipation, rather than just an academic exercise in observation. This element of the third principle feeds directly into the fourth, which concerns reversing the social relations of research production. This principle describes the process of transferring the power inherent in the researcher/researched relationship to disabled people. The treatment of disabled people as passive research 'subjects' was consistent with oppressive societal structures, and to end the latter, emancipatory research must attend to ending the former, and recognising the agency and knowledge of participants. Research should challenge oppression and barriers where they exist. Fundamentally, this principle demands that disabled people should be heard through the research, rather than the researcher assuming the right to speak on their behalf (Ramcharan and Grant, 1994). Full attention to this principle should result in disabled people having control of what research is done and how funding is distributed.

The fifth principle is firmly anchored in the social model and claims that all experience should be framed as political. Although the disability movement initially argued for the exclusion of experience (Oliver, 1990; Finkelstein, 1996), this has been contested (notably by Thomas, 1999; Morris, 1991, Shakespeare and Watson, 2001). The introduction of experience allows the heterogeneity of disabled people to inform research alongside the homogenized and collective political stand demanded by the social model (Morris, 1991). To remove the political from the personal was considered to encourage the disempowerment of disabled

people and reinforce the personal tragedy model (Abberley, 1992; Finkelstein, 1996). Finally, the sixth principle presented by Stone and Priestley (1996) explored the use of qualitative and quantitative data. A positivist approach to research lacks the political sensitivity required to develop emancipatory research. However this does not mean that quantitative data should be considered outdated or irrelevant. Nor does it endorse qualitative research as the 'best' approach, as this too can lack political sensitivity (Abberley, 1992). Both qualitative and quantitative data collection can be supported by the emancipatory theoretical paradigm as outlined here (Barnes, 1992b). Further the use of both methods of data collection could, in its plurality of approach, '... satisfy the need for both macro- and micro-level understanding of the oppression of disabled people' (Stone and Priestley, 1996: 705). Thus both quantitative and qualitative methods can 'be used in an oppressive or an emancipatory context' (Stone and Priestley, 1996: 706). Far more critical than the method of data collection is the emphasis on the personal and political experience of disability. This research uses quantitative and qualitative methods to approach the research aims fully.

This research has been guided by these six principles in an attempt to both reflect on the experience of living with the protection of the DDA Part 4, and to frame this experience in a political understanding of how barriers continue to restrict the life chances of disabled pupils. The emancipatory approach has limitations in practice. As discussed, the involvement of disabled people is required. However this was difficult to accomplish. Those involved in the survey to parents and in-depth interviews (to be discussed later in this Chapter) did contribute to a discussion of the barriers that they encountered in using the DDA Part 4 and so the central research questions were tested during the process of data collection (Touraine, 1981). In this way I argue that parents had a degree of control of the research and of the emerging themes. One parent involved in the in-depth interviews was disabled and reflected on her own experiences, the other two parents *represented* disabled pupils. Therefore this research conforms to the demands of participatory research rather than emancipatory research.

The DDA Part 4 placed a duty of knowledge and expertise on parents and carers, rather than on disabled young people. The disabled children and young people, to whom the DDA Part 4 was relevant, were ultimately missing from the data. Attempts were made to engage with the disabled young people who were central to the claims of discrimination discussed in

the in-depth interviews. However because the claims were in practice controlled by their parents, the parents became the focus of the in-depth interviews. The young people were involved in the sense that they participated in an interview, but their knowledge of the claims process was restricted, and so their views, in this instance, remained outside of the focus of the research. As has been discussed, the emancipatory approach is informative but has been untenable in practice. In this case, the legal structures and organisations of Part 4 operated without the need to involve disabled pupils.

The involvement of the Disability Rights Commission both supported and restricted the use of emancipatory aims. The DRC – Scotland met their targets to employ disabled people (at least 50% of their workforce had declared themselves as disabled). In this way, this thesis was part-funded and the research itself was informed by disabled people. Although the DRC existed outside of Government control, their funding and the legislation that created it ultimately came from Westminster. My experience working with the DRC - Scotland allowed me to intuitively understand that they were committed too, to the principles of emancipatory research. Their structural and bureaucratic tie with Westminster may not have compromised the DRC's commitment to the social model, or the integrity of this research, but this can not be known for sure.

For these reasons the emancipatory approach (even if it did not create great challenges for researchers) would not help me approach my research aims. However, I do argue that the research is participatory and as it identifies barriers to inclusion and ending discrimination, it could contribute to a confrontation of oppressive structures in education. Referring again to their paper,

... within the confines of the British welfare state, it is unlikely that an isolated doctoral research project will do much to change or alter the disablement policy agenda. However, if the transformative potential for research extends beyond individuals, then justification might still be found. Where our research is fully and sensitively disseminated, where it can be used to confront social structures of oppression, to contribute to an understanding of disablement within a global political economy then it may be considered worthwhile.

Stone and Priestley, 1996: 714

This in turn highlights issues around my role as a non-disabled researcher. The experience of being a disabled researcher is not necessarily consistent with an emancipatory epistemology and therefore does not in itself secure the empowerment through research of disabled people (Barnes, 1992b). My commitment to the political message of the social model pre-dates this research and is informed by experiences out-with academia, and this enables me to justify my position as a researcher able to engage in research within the field of disability studies. Further I would highlight Stone and Priestley's third principle of emancipatory research, which contests that disabled people should be framed as knowledgeable and experienced. My role as 'expert' reflected my ability to complete the research with regard to historic and social contexts and to have possession of the time, training, skill and resources required. I used this to facilitate participants' views to emerge and inform the conclusions drawn.

5.3 Research Aims

The aims of the research and the involvement of the DRC were introduced in Chapter 1. However to contextualise my choice of methods, I shall summarize this here. I will then turn to the decision to use mixed methods (combining quantitative and qualitative) and then outline my decision to locate the research in Scotland. The research aims were:

1. To investigate the impact of Part 4 of the DDA on schools in Scotland.
2. To look at the impact on the application of Part 4 and the Education (Disability Strategies and Pupils Educational Records (Scotland) Act 2002, which obliged local authorities to plan for accessibility for disabled students, as well as the proposed additional support needs framework which was due to replace the special educational needs (SEN) framework in Scotland.
3. To illuminate different responses to the DDA within different local authorities, school sectors (independent and state) and families of disabled children.
4. To consider the nature of social justice promoted by the DDA and the extent to which anti-discrimination legislation is an effective means of enhancing the life chances of disabled pupils.

5. To analyse the extent to which the legislation is working well and any changes which may be needed to make it more effective in combating discrimination and promoting equality for disabled pupils and prospective pupils.

Aims 2-5 support the first, and so feed into an understanding of the extent and nature of the impact of Part 4 of the DDA on Scottish schools.

The DRC - Scotland with the Strathclyde Centre for Disability Research secured Economic and Social Research Council CASE studentship funding to support this thesis. The CASE element required a professional engagement between the DRC - Scotland and myself. To meet this requirement I worked for one day a week, during the funding period of the studentship, with the DRC in Scotland. This allowed me to gain awareness of how the DRC - Scotland were prioritising their tasks and delivering their remit of promoting the DDA in Scotland. This was a thoroughly positive and rewarding experience.

The DRC – Scotland hoped to use the thesis to contribute to their understanding of how the DDA Part 4 had been implemented, and its value to schools, local authorities, parents and pupils: the knowledge acquired in the development of this thesis will now be passed onto the Equality and Human Rights Commission - Scotland. As Baldwin (2000) argued, this is a growing trend in social research, where stronger and tighter links between researchers and policy makers perhaps offer more potential for research to have a meaningful impact. Despite early involvement with the project, the DRC - Scotland allowed the research to continue and limited their input to a monitoring capacity, with a regular presence and supervisory meetings. Their support rather than their advice allowed academic independence to be maintained.

5.3.1 Mixing Methods

The research aims were informed by the Cogan et al study (2003). Aims 2 and 3 intended to build on the wealth of quantitative information collected in their 2002 survey, and to detect any differences in awareness and understanding of key legislation affecting disabled pupils by disseminating a modified survey in 2004. As well as awareness of the DDA Part 4, this enquired about awareness of DSPERA (2002) and the ASL Bill (2002: that became the

Education (Additional Support for Learning) (Scotland) Act in 2004). However the quantitative approach could not inform on the nature of social justice promoted by the DDA. Nor could it be used to analyse the extent to which Part 4 was working in practice, or how it had promoted equality for disabled pupils.

In order to address the third and fourth aim, a different methodological approach was required. This was largely dictated by key informants who could best explore how the DDA Part 4 had worked in practice: those that had made a claim. The DRC - Scotland had a small database (of twelve families) that had pursued a claim of discrimination. These twelve families had contributed to a 'case'. This meant that a caseworker at the DRC - Scotland agreed that the child or young person involved was disabled, and that the reported discrimination could be investigated with a view to finding a resolution. All cases were closed before the field work began. Therefore as far as the DRC - Scotland were aware, the cases had been resolved. No case resolution had involved presenting a claim to the Sheriff Court. The support of the DRC - Scotland in funding and monitoring this project facilitated access to this database. Therefore the decision to explore the family's experience (Hughes, 1976) of pursuing a claim using in-depth interviews to generate qualitative data seemed a logical one, allowing exploration of the third and fourth research aims.

Mixed method designs that have combined qualitative and quantitative methods are not new, though the literature has responded with caution. As discussed earlier, qualitative and quantitative methods are derived from contrary epistemological, ontological and methodological foundations (Barbour, 1998; Leininger, 1994). However, this does not exclude their use. Thus quantitative and qualitative approaches produce different data, but not incompatible data.

Combining the two methods in one study presents problems. Criticism has focused particularly on triangulation studies (Webb et al, 1966; Denzin, 1970), which use different methods to look at the same question. Thus one methodology is used to verify or cross-validate the findings of another methodology (Dowell et al 1995). This would be advantageous if the two studies (for effectively this is what they are) did indeed produce the same conclusions. It would allow a degree of validity and reliability to be demonstrated in the

methodological tools. Even when methodologies seem to agree, caution should be taken when interpreting the data. Morgan argued that different methodologies cannot produce an analysis that is easily comparable, rather the data should be considered to exist in parallel (Morgan 1993). The triangulation approach declined in popularity after a series of studies produced results that failed to converge (Morgan 1998).

Problems with multiple-method research stem then, from using both methods equally (Morse, 1991) to approach a single question. Rather more success has been found when using one method to complement another. For example a large quantitative survey that yielded un-hypothesised conclusions might be followed up with case studies to explore the new findings, termed 'salvage qualitative work' (Weinholtz et al 1995). Alternatively a survey might be used to expand on what has been learned from a case study, and so enhance the value of the data in terms of drawing generalisations (Morgan 1998). Both these examples use the methods consecutively. The second study is therefore informed by the first. Morgan (1998: 368) called this the 'Priority-Sequence Model'.

This research therefore corresponds with the priority-sequence model of multiple-method research. Choosing to use qualitative methods was not a salvage operation however. Although my quantitative and qualitative field work overlapped, the Cogan et al (2003) study informed both approaches. The decision to use both methods in this thesis was a pragmatic one, to use only one would produce an incomplete response to the first research aim (Barbour, 1998). Morgan stated in reference to health research '... the interest in multiple methods is the complexity of the many different factors that influence health' (Morgan, 1998: 362). This argument is true too for this thesis which incorporates sociology, education and disability studies. The use of the two methods allowed the different strengths of each to contribute to this research. The quantitative surveys introduce concepts of validity, objectivity, reliability and generalization. In turn, the qualitative in-depth interviews allow the research to be credible and dependable (Hamberg et al, 1994).

This thesis developed three surveys (one to local authorities, one to schools and one to parents or carers, see appendix 1) that aimed to measure awareness and understanding of Part 4 of the DDA. The surveys were modified versions of those used (disseminated and analysed

in 2002) by Cogan et al (2003) The DRC - Scotland funded the project *A survey examining levels of awareness of Part 4 of the Disability Discrimination Act 1995: Educational provision for children with special educational needs and/or disabilities in Scotland* (Cogan, et al 2003). Questions that were kept the same allowed for a comparison to be made between the attitudes of local authorities, parents and schools at the point when the DDA was first implemented, with attitudes two years into its lifetime. Additional questions were included which reflected the changing framework in Scotland to one of additional support needs, as specified in the second aim. The data collection occurred in 2002 and so coincided with the implementation of the DDA Part 4 in Scottish schools, and the 2004 surveys reflected positions two years after implementation.

As well as a comparison in attitudes between 2002 and 2004, the questionnaires also aimed to compare and contrast understanding and awareness of policies between local authorities, schools and parents. The earlier report (Cogan et al, 2003) concluded that local authorities reported the best understanding of the DDA and SEN legislation, with schools and parents or carers less confident of the legislation.

The interview schedules (see Appendix 2) were informed by Cogan et al's (2003) conclusions, and an early analysis of the 2004 survey data. In contrast to the micro-level analysis of experience permitted by the qualitative interviews, the quantitative surveys permitted a macro-level analysis that highlighted structural frameworks impacting on Scottish education, and allowed greater confidence in drawing conclusions that could be extrapolated to generally consider the impact the DDA Part 4 has had on Scottish schools.

5.3.2 Setting Scotland as a Research Parameter

The decision to conduct this research in Scotland, rather than adopt a UK-wide parameter, was derived from a number of factors. Firstly, the Disability Rights Commission (DRC) had a Scottish Branch based in Edinburgh which served to reflect the issues that impacted on Scottish disabled people, (though they did commit much time and energy to working with their English and Welsh branches to contribute to an understanding of UK issues). They were

particularly concerned in accessing information about Scotland's schools and their response to the DDA.

Secondly, Scottish devolution has reinforced the distinctiveness of Scottish culture and law, and this is clearly demonstrated in having a separate system for Education. As Education is devolved to Holyrood and had a longer history of being distinct from English and Welsh educational frameworks, there was a strong case for looking at the DDA's impact on just one educational system. Similarly the appeals procedure written into the DDA Part 4 is different in Scotland to the rest of the UK as parents will ultimately arrive at the Sheriff Court in Scotland, in direct contrast to England and Wales which host tribunals created for cases relating to special educational needs provision of disability discrimination (a full discussion of the difference in the legal process is offered in Chapter 4). The tribunals are considered to be friendlier and more accessible than the legally intimidating Sheriff Court, and may contribute to the higher proportion of English and Welsh claims made under the DDA Part 4 south of the border. In hindsight, including England and Wales would have greatly increased the 'sample' and this would have been beneficial in recruiting families for the in-depth interviews. However I continue to support my decision to focus the research to Scotland given that the different education system and system of appeal would have created complex problems for the analysis.

All local authorities in Scotland were invited to contribute demonstrating that the parameter offered in some ways a more manageable sample. Four local authorities were selected to disseminate the survey to schools. I was able to select a combination of rural and urban authorities representing geographically disparate communities. The literature review contains a strong national (as in UK) voice, and my analysis is mindful that this research can and should be relevant to interested parties throughout the UK.

5.4 Method: The Quantitative Survey

This thesis embraced a plurality of research methods in order to maximise understanding of how the DDA Part 4 impacted on Scottish schools. In developing a quantitative survey, full consideration was given to ensure it was valid, reliable and accessible to respondents. The

survey is a useful instrument in reaching a great deal of people, and therefore is able to produce information that service providers find powerful and useful, to quote Kvale:

...when it comes to convincing a modern audience, the hard quantified facts may appear more trustworthy than qualitative descriptions and interpretations.

(Kvale, 1996: 67)

Ultimately policy makers and policy users find the golden nugget of a statistic useful, and when presented alongside a qualitative journey (to use Kvale's (1996) miner and traveller analogy) different sides of the same story can be presented, resulting in a perspective that is more complete and able to bring to light the complexities of the social world.

To briefly summarise an earlier discussion the development of so called quantitative methods can be seen as the desire to preserve the 'authenticity' of science in social research. Thus, social research has aimed to measure the social world using the same principles used to measure the natural world. This approach called for research to be independent of value-judgements, for objectivity in research, an empirical methodology, scientific investigation and a restriction to questions that could be answered (Hammersley, 1995). The restrictions this has imposed on social research are well recognised, and many support the incorporation of values into the positivist paradigm. Therefore the social world *is* constructed and a product of historical context and research, therefore researchers cannot and should not adopt an independent position (Oliver, 1992).

The use of quantitative, empirical research allowed the involvement of a far larger group of people. The survey instrument allowed collection of precise data (compared to a semi-structured interview) to allow direct comparison within and between groups of people. Thus conclusions could be drawn about the awareness of a representative group, and so could be generalised to the wider population to which the sample related. However, the data produced is situated in a place and time. This indeed, was manipulated by the analysis as the 2002 survey was considered a valid picture of awareness as the DDA Part 4 was implemented, in comparison to the 2004 survey which measured awareness after Part 4 had been in place for over 2 years.

5.4.1 Questionnaire Design

The use of the survey was intended to explore how the meaning of the DDA Part 4 was understood by parents, schools and local authorities. The questionnaires used in the 2002 survey were developed by Cogan, Riddell and Tisdall, who consulted with a case study local authority, the DRC and the academic literature. All three surveys were split into six sections:

Section 1: Who filled in this survey?

Section 2: Awareness of policy and legislation

Section 3: Information and advice

Section 4: Future plans in schools

Section 5: Statistics, and

Section 6: Additional Information.

To optimise validity and reliability, many questions were the same in my 2004 survey and the 2002 Cogan et al surveys. In addition the same key questions were asked of local authorities, schools and parents. In this way comparisons between the surveys (both in terms of a 2002/2004 comparison and a comparison of respondents) could be considered reliable. Validity refers to the collective understanding of what questions mean to ask. That is the researcher and the respondents agree that each question means the same thing. Therefore interpretation of the data validly reflected the responses from respondents. Several questions in both surveys that asked about particular provision (for example existence of written policies) used the same wording for every policy type, so that respondents were able to interpret the questions in the same way, thus preserving validity.

Some questions on the Cogan et al (2003) surveys were removed from the 2004 survey, or were presented in a different format because respondents to the first surveys indicated low validity. This was indicated generally by respondents failing to answer the question at all. Where changes were made, additional care was taken in making a comparison between the two survey periods.

The main changes to all three questionnaires disseminated in 2004, were additional questions relating to awareness of the Additional Support for Learning Bill, which did not exist in 2002. Local authorities, schools and parents were also asked if their school(s) fully complied with the Disability Discrimination Act Part 4. This question was almost omitted as there was concern that some schools and local authorities would not enjoy admitting that they were not complying with their duties, and rather than lie, they would choose not to submit their responses. This may indeed account for the four local authorities who failed to respond to the 2004 survey. However, the 28 local authorities who did respond, did answer the question, and their answers are discussed in Section 6.7, see Figure 6.8. In addition, the 2004 survey schools and local authorities were asked about the kind of information that they recorded relating to pupils with special educational needs and/or disability.

To speed up the process of completing the questionnaire, most questions required a tick-box answer, though participants were invited to expand on their responses with short answers if they wished. Short answer responses were invited: whenever the question offered an 'other' category; to explore definitions of disability; to measure the most helpful source of information regarding the disability discrimination act and to finally, offer any additional comments. These were not always completed, but any short answer responses were analysed alongside the in-depth interviews using NVivo. Just under one fifth of parents (19.5%), 63.3% of schools and 71.7% of local authorities took the chance to expand on their views using the short answer facility. Some respondents did not restrict their responses to particular questions, using the chance to 'be heard' to write pages sometimes, of comment and so in some cases the qualitative data generated by the surveys is rich and emotional. In fact emotion was a theme that emerged through the analysis.

The bulk of the questions in each of the three surveys were written with the intention of using the Pearson's chi-square inferential statistic for ordinal data. Because respondents were asked to explore their understanding and awareness of policies, they were asked to indicate which statement of a range they most agreed with. This was loosely based on Likert's summated ratings method (1932), although unlike this method, I was not wanting to generate a single figure to represent the respondent's collective attitude, but a series of numbers each relating to the proportion of people who agreed with each statement, which could then be used

for comparison with other populations. Although care was taken to create a full scale of options within each range, there would inevitably be differences in the semantic value attributed to each statement by each participant thus potential was created to compromise validity. For this reason, a stronger parametric test (as opposed to the non-parametric chi-square) could not be considered. The low power of the statistic used was outweighed by the large sample sizes on the school and parent surveys in particular: thus the chi-square proved an effective statistic.

The raw data generated by Cogan et al (2003) was re-coded and re-examined. Therefore analysis of the 2002 surveys were re-done alongside analysis of the 2004 surveys to ensure that coding changes did not impact on the reliability of the analysis.

Parents and carers were asked to use their child as the focus when answering the questions, and schools were asked to think of their own school. Local authorities were asked to answer questions in relation to their own authority. Appendix 1 features the questionnaires from 2002 and 2004. Analysis was completed using version 13 of SPSS. This allowed all the data to be collected together and manipulated to produce a thorough analysis. Highlights from the analysis as they relate to the research aims appear in Chapter 6. This includes a comparison of independent and state schools, and mainstream and special schools.

5.4.2 Administering the Surveys

The survey research period ran from October 2002- March 2003 for the first phase and was designed to collect responses as the DDA Part 4 was launched. The second phase of the research period ran from May 2004 – October 2004, and this was timed to capture views of the DDA Part 4 at the point at which all schools had a duty to comply with the legislation.

One thousand questionnaires were sent to parents and carers in 2002 (200 from 4 local authorities, plus 200 using the Enquire database) and eight hundred in 2004 (200 from 4 local authorities, the Enquire database was not available to use). In 2002, 358 parents or carers responded (35.8% of available sample), and 233 parents or carers responded in 2004 (29.1% of available sample). Thus 591 questionnaires were available from the parents' survey for

analysis. All 32 local authorities responded to the 2002 survey (100%) and 28 local authorities responded in 2004 (87.5% of local authorities). In 2002 school questionnaires were sent to 319 schools (50 schools from 4 local authorities: Aberdeen n=50; Fife n=50; Glasgow n=50; Highland n=50 and all 119 independent schools) and to 319 in 2004 (same divisions as 2002). In 2002 153 schools responded (47.9% of available sample) and 129 schools responded in 2004 (40.4% of available sample).

Although the four local authorities who agreed to take part in 2002 were aware that a future survey would be administered to provide comparative data, they were not asked to commit to this research beyond disseminating the 2002 survey. When it came to contacting the local authorities in 2004, there was some resistance to further participation in the research. For example one of the local authorities had seen a change in senior personnel that had resulted in a change in ethos within the education department and they had become opposed to the labelling of children with special educational needs. In their opinion this survey contributed to the segregation of students with a disability or special educational need, because it was not focused on access for all pupils. Initially the local authority refused to take part in the 2004 survey, but finally agreed after the Head of Communications, from the DRC – Scotland argued the case for the research. He managed to successfully argue that since special educational needs policy in Scotland and the DDA Part 4 provided specialist provision for a minority of students, it was useful to know if this did in fact create a barrier to educational inclusion. After changing their mind and agreeing to participate in the second phase of the survey, this authority was in fact the most responsive both in terms of the number of completed questionnaires returned, and the speed of response.

Problems also occurred with a second local authority, who had actually agreed very quickly to participate in the second phase of the survey. However they found it difficult to provide the manpower to distribute the questionnaire to parents in the second phase. This authority could not determine which parents should be sent the questionnaire, or address the envelopes. The authority also refused my offer to do this work at their offices because of their commitment to maintaining confidentiality for their service users. After a month of negotiation, it was agreed that the parents' questionnaire could be sent to schools within the authority requesting that the school identify suitable participants and send out the

questionnaire. Twenty schools were chosen at random from within the authority, though the schools did represent the region in terms of the proportion of secondary schools, primary schools, mainstream and special schools targeted. Two schools returned the questionnaires without explanation, and one head teacher from a secondary school made contact to explain why they would not take part: the head teacher felt that the minority of students at his school with a disability or special educational need had been over-targeted with surveys, questionnaires and requests for interviews. He felt embarrassed to ask the parents to complete another piece of research, and felt that these families had reached a saturation point. This is an interesting position, and suggests that schools are increasingly involved in the collection of information with (as implied by the head teacher) none of the benefits of acquiring knowledge. Alternatively this could be interpreted as a professional acting as gatekeeper making the decision to participate *for* parents, rather than allowing them to make the decision. The refusal to support this research meant that another school needed to be contacted. The three schools were replaced with another three schools from the list so that as far as possible, I could be sure that 200 questionnaires were sent to parents in this authority.

5.4.3 Administering the Parent Survey

In deciding which parents should get sent a copy of the parents' questionnaire, local authorities were asked to randomly select 200 parents or carers (with the exception of one local authority as discussed: each school had only to select ten parents) of a child/ren with a special education need and/or disability and/or a Record of Need. Local authorities were also asked that the parents or carers selected should represent primary, secondary and special schools. The questionnaire, covering letter and pre-paid and addressed return envelopes were supplied ready packed into an envelope so the local authority had only to provide the address of the recipient. In the letter parents were informed of how their details had been collected to reassure them that we did not have access to their personal details, and that their local authority had not compromised confidentiality. This worked well, and the research team did not learn of the identity of any parent or carer who was sent a copy of the questionnaire unless they volunteered that information, thus fully complying with Data Protection guidelines.

The 2002 survey used the Enquire database to target a further 200 parents, and their responses are analysed as part of this comparison. However the 2004 survey did not repeat this data collection for two reasons. Firstly the initial research team had strong connections with Enquire which facilitated access to their database which did not exist in 2004, and secondly the size of the data set once the 2002 and 2004 responses are combined was great enough.

The two samples of parents or carers generated in 2002 and 2004 provide a snapshot of the level of awareness of the DDA and other special education policies. They show the awareness of their child's school provision for pupils with a special educational need or disability and the school's response to the DDA, if any.

Parents and carers were asked to return their questionnaire in the provided pre-paid envelope to myself at the Strathclyde Centre for Disability Research at the University of Glasgow within four weeks. The questionnaires were colour coded so that I could immediately determine from which local authority the questionnaire had been returned. As they arrived at the Centre, they were numbered. Even if a parent or carer had provided their name on the questionnaire, this information was not used to classify the questionnaire. The respondents were asked to return even partially completed questionnaires. Once returned, questionnaires were stored in a locked cupboard. In 2002 and 2004, the data was entered onto a computer that was password protected, and in 2004 only I was involved in data entry and analysis. My contact details featured on the letter and questionnaire, and parents and carers were encouraged to make contact if they had any questions about the survey.

Parents, schools and local authorities, were reassured that the information they provided would be treated confidentially and that their anonymity would be protected. Therefore all returned questionnaires were assigned an identifying code which referred to their source authority (for schools and parents only, or if for local authorities if they explicitly provided that information) and to the order of return. In addition parents were informed that their anonymity would be protected to ensure no negative consequences would occur, for example, we reassured them that their service provisions would not alter as a consequence of their participation. Due to the way the parent surveys were distributed, we were unable to send a reminder to parents and carers.

5.4.4 Administering the School Survey

The initial survey of Scottish schools used four local authorities, chosen for the demographic and geographical diversity: Aberdeen City; Fife; Glasgow City; and Highland. As the second phase of data collection was ready to take place in 2004, the same four local authorities were contacted in an attempt to provide a second data set that could be closely compared to the first. In 2002, each of the four local authorities was asked to select, and distribute 50 questionnaires to schools: 20 primary; 25 secondary and 5 special schools. Therefore in 2002, 200 questionnaires were sent to schools in four local authorities.

In 2004 a slightly different methodology was used. In the initial survey, schools who had responded were invited to identify themselves. To make the comparison more direct, the 2004 survey asked the local authorities for permission to select the schools so that those who had responded earlier could be included in the second phase. Sixty-eight percent of schools (n=135) identified themselves, and so were included in the second phase. Once these schools had been included on the mail out, then the remaining quantity of schools were randomly selected from those available within the authority, ensuring that the proportions of the final list remained the same of 20 primary; 25 secondary and 5 special schools. All four local authorities agreed to this change of methodology: firstly the contact details for schools are widely available, and secondly it reduced their administrative role. In addition, the school survey was sent to all independent schools (n=119) in Scotland. Therefore 319 questionnaires in total were sent to schools in 2002 and again in 2004.

To encourage a response, the schools were sent a cover letter explaining the research, a photocopy of a letter from their local authority providing us with their permission to contact schools, a pre-paid addressed envelope and the questionnaire. The survey packs were sent to the head teacher, but other senior staff were encouraged to complete the questionnaire if this was considered more appropriate. Again my contact details were provided on the letter and on the questionnaire, and respondents were encouraged to make contact if they had any queries.

As we knew which schools had been contacted, we could make some conclusions about which schools had not returned their questionnaire. After eight weeks a second

questionnaire was sent to all schools thought to have not returned the first questionnaire. As this process involved guesswork, it was problematic. To avoid the repetitive reminding of schools who had already submitted their response (albeit anonymously), a reminder was sent out only once.

5.4.5 Administering the Survey to Local Authorities

The survey to local authorities required a much simpler method of distribution. In 2002 and again in 2004, the names of the Directors of Education were collected for all 32 local authorities in Scotland.

The survey packs, consisting of the questionnaire, cover letter and pre-paid addressed envelope were sent directly to the 32 Directors of Education, though they were informed that the questionnaire could be completed by another senior staff member if considered appropriate. In addition to returning the questionnaire, respondents were asked to include copies of their authority's policy statements regarding special education. Nine authorities returned their policy statements along with the 2004 survey.

Response from the local authorities was initially poor with only 15 (47%) returning questionnaires within the first four weeks. After six weeks a reminder was sent (including a copy of the questionnaire) to the remaining local authorities. Again there was some confusion about who had returned the questionnaire as two local authorities had not identified themselves on the document, and so the reminder acknowledged that some authorities would receive the letter despite having already returned the questionnaire. This second phase generated a further ten responses (31% or 78% combined). A final reminder was sent to local authorities after a further eight weeks, but this time using email (with the questionnaire attached) as a strategy attempting to ensure that senior personnel did notice our request, and this generated three responses (28 responses in total or 87.5%). There was a four month gap between the first local authority responding and the last, and it was decided that no more reminders would be sent out, as a further increase in the gap would, given the huge transition in education policy during this period, possibly cause a difference in the response from local authorities.

5.5 Method: In-depth Interviews

Whereas the quantitative analysis might allow an examination of the general response to the DDA Part 4, it was unable to explore the process of using Part 4, and so a qualitative approach was developed to investigate this. The use of interviews or shared dialogue together with the analysis then of transcriptions used language both as producer of knowledge, and as a tool to organise and present knowledge. Wittgenstein (1969) argued that every-day language is a gateway to thought and knowledge. So it is our interpretation of life that is more relevant, than the facts of living, and this can only really be explored via language. In turn, different cultures construct different realities (Berger and Luckmann, 1966), and so to explore the views of parents of a disabled pupil, it was essential to engage with representatives from this group.

In order to capture the experience of those that had made a claim under the DDA Part 4, this thesis adopted a grounded theory approach (Glaser and Strauss, 1967) of data collection and analysis. This approach involves the systematic gathering and analysis of data. The process of analysis permits themes to emerge and so, theory evolves throughout the data collection and analysis. The purest form of grounded theory proposed that theory should be generated from the data rather than from the researcher's own theoretical position. This position of theoretical objectivity has been criticised and so grounded theory has been revised in the forty years since Glaser and Straus (1967) formally introduced it. It has become accepted to use the analysis to elaborate on or explore existing positions (see Bryman, 1988; Strauss, 1987), thus the theory still remains 'grounded' in the analysis (Strauss and Corbin 1994). The flexibility of this approach supported the aims of this thesis. Grounded theory allowed me to maintain my political position in line with the social model, and also use early analysis of the survey data (together with conclusions drawn by Cogan et al (2003)) to inform the in-depth interviews. Therefore the interview schedules contained reference to themes that were anticipated, for example, inclusion and conflict.

The interview schedule (see Appendix 2) may have been written in advance of the interview to reflect the research aims, but respondents were permitted to deviate and to talk about issues relevant to them even if they did not coincide with the schedule. This permitted themes not anticipated to emerge. By allowing early analysis of the surveys to inform the

interview schedule, an exploration of the research aims was permitted. The families who took part were able to reflect on early findings and how they informed the research aims. Through this reflection they were able to highlight the themes that resonated with their experience. Thus grounded theory worked well in practice to develop conceptual richness (Strauss and Corbin, 1994).

The ‘theory’ that was invested in the research questions became re-discovered (Strauss, 1987) during the course of the in-depth interviews. This enabled the quantitative and qualitative approaches to meet within the data collection itself, so any attempts to join the two together became more valid. Interviews were conducted with the parents involved in a claim of discrimination in an attempt to address any omissions or inconsistencies with the data before it was analysed (Addison, 1989). A single interview schedule was used, (see Appendix 2) and the second interview focused on collecting information not covered in the first. The use of semi-structured interviews allowed participants to respond to pre-determined themes and to guide the research agenda. Thus in their initial interview, I was able to gain evidence about the central themes that structured respondents’ lived experience. If pre-determined themes were not covered, they could be highlighted in subsequent interviews. Some themes consistent with a feminist framework emerged. For example, the fact only Mothers were available for, or were willing to be interviewed communicated something about the gender bias in providing pastoral educational support.

5.5.1 Recruitment of Participants

Given issues of data protection requirements, the DRC – Scotland agreed to act as a mediator in sending correspondence to parents. As stated earlier, every parent who had approached DRC - Scotland with a case, and where it was established that the child was eligible (that is they had a disability under the terms of the DDA), and where the case was now closed, was sent a letter through the DRC - Scotland. This method had limited success. It was hoped that parents would be reassured that the research was endorsed by the DRC. However the letter had to specify that involvement in the project would not have any impact on their case (indeed it could not as their cases had closed) and this may have alarmed parents that there potentially could be consequences for participating in the research. Having spoken to those who agreed to

be interviewed, it became clear that their challenge using the DDA Part 4 was an emotional experience (this theme emerges in the analysis presented in Chapter 8). Therefore parents may not have wished to revisit this stressful time of their lives. Asking parents to discuss issues on which they had ‘closure’ may have accounted for the low level of participation.

Only twelve parents were eligible to be contacted to participate in this research. Given that not all would agree, it was planned to adopt an in-depth interview approach as this would maximise potential interviews and increase awareness of the experience from a number of different (and sometimes conflicting) standpoints. It was planned that parents would be interviewed at least twice. This would allow them to build a relationship of trust with me in my role as researcher, would allow for interviews to focus on different elements (for example the first interview tended to be quite an emotional stream of experience, with the follow ups allowing clarification of key events and case progression). The children and young people were invited to participate. It was hoped that schools and local authorities would agree to contribute and reflect on their experiences, thus offering insight into the experience of fighting a case of alleged discrimination. The principle caseworker at the DRC – Scotland in charge of managing education cases also contributed. In fact recruitment had limited success. Only three families agreed to participate and only one teacher agreed to contribute to an interview. Parents and children or young people were interviewed on multiple occasions in order to ensure they had the opportunities to fully explore their experiences and so where the data collection was compromised in gathering a range of perspectives, it made up for it in depth. The recruitment process will now be considered in more detail.

Five parents responded to the invitation to participate, either in writing, by telephone or by e-mail. The full range of methods of response may demonstrate that parents found this element of the research process accessible. All parents were spoken to on the telephone, either on their initial contact with me, or after I had received communication from them by letter or e-mail.

I had no control in manufacturing a representative sample. However variation did exist in those that agreed to participate, (see Table A2.1: Appendix2 for an overview of participants). All the parents who contacted me were female, and were the mother of the child

who had allegedly experienced discrimination. Two of the mothers were married and co-habiting with the child's father, the other three parents were single parents. One of the women was single but lived within a community shared with other members of her family; one woman was single and lived in a community entirely isolated from her relatives and one woman lived with her husband in a village where the small community replaced her need for family support. Respondents lived across the central belt of Scotland, two lived in urban areas, one lived in a rural authority, one parent lived in a rural and deprived authority and one from a rural and affluent authority. Two parents had been educated to degree level and a third was 12 months into an undergraduate degree. One parent worked full time; another part time; one parent was in receipt of Carer's Allowance in relation to her son; one parent received Disability Living Allowance for her own needs and the fifth parent was in full-time education. The young people who were the focus of the in-depth interviews attended a mainstream primary, a mainstream secondary and a special school. Despite the small number of respondents then, there is clear representation of different socio-economic groups and family types. Given the small number of parents who have attempted to bring a case under the DDA Part 4 in Scotland, the sample was never going to be able to offer a normal distribution, yet there was diversity within those that responded.

The three women who eventually formed the basis of the in-depth interviews were very keen to be involved, and had no fear of the consequences of being involved in this research. For example, when I told them that we planned to speak to the child's school, there was no hesitation in supporting this idea, even though two of the three parents had children (other than the disabled child) who continued to attend these schools. The two other women who had made contact chose to withdraw before the first interview. One of the women who decided to withdraw was initially keen to participate until I told her about the plans to contact the school. Her attitude to the research changed immediately and she became reluctant to participate. The thought of contacting the school where her other children continued to learn was sufficient to cause withdrawal from the study, even though I offered her assurance that I would not contact the school at all if she preferred. In our conversations she reported that the issue was closed now (her disabled son had left school to attend a post-16 vocational training course) and that she did not want to trigger repercussions for her other children. Because our telephone conversations were informal, it was not ethical to ask her to explore further the idea

that she was in a way, coerced not to discuss her case, but the implication remained that she perceived there to be potential risks from participating. The fifth participant withdrew for her own health-related reasons. After three months and six months, I attempted to get back in touch to see if her involvement could be resurrected, but my offer was twice declined.

All three young people involved in the claim of discrimination were invited to be interviewed. The invitation was made to each young person in the presence of the parent and with the support of the 'Information Sheet for Young People' (see Appendix 2). In accordance with the permission granted by the Social Sciences Faculty of the University of Glasgow, the young people were interviewed only after they and their parent gave informed consent. The young people all chose not to be recorded. The interview schedule developed for the parents as the key informants was modified to ask only key questions likely to get answers in order to optimise the engagement of the young people (Alderson, 1995). In accordance with the social model's position on personal tragedy approaches, the young person was not asked to discuss the impairment that contributed to their disability to ensure that the interview in no way pathologized their experience. The parents remained in the room during the interview. This may have interfered with the process of eliciting information and the young people were vague in their responses to the questions (also available in Appendix 2). It is possible that the young people did not feel in control of the research process (Thomas and O'Kane, 1998). However responses suggested that they did not have the knowledge of the DDA Part 4 claims process to contribute fully. This notion was supported by the interviews with parents who reported that they had purposefully removed their child from the claim in order to protect them. This issue is explored in Chapter 8. I had recognised that the young people were social actors capable of understanding and explaining the social world (Thomas and O'Kane, 1998; Alderson 1995) and had tried to give each child the space to express themselves (Mauthner, 1997). The protectiveness of the parents was almost certainly a barrier to the young people's participation (Hood et al, 1996; Morrow and Richards, 1996). Despite attempts to engage with the young people, their participation was regrettably, minimal. As none of these young people had been actively involved in pursuing the claim itself (no young person interviewed had had direct contact with a DRC caseworker), they were interviewed only once.

Although all three families (parents and young people) gave me permission to contact the schools and educational professionals involved in the alleged discrimination and in the legal process of making a claim, recruiting professional participants proved as difficult as recruiting parents. Two out of the three possible schools declined without comment, though one did suggest that I could contact the local authority. The response from the local authority was formal, negative and critical, stating surprise that I thought it right to consider it appropriate to discuss a child they still were educating. I responded to inform them that I had permission of the child's parent but they were not persuaded to participate.

The lack of engagement was very disappointing but perhaps the third school was able to give an indication of why educational professionals were reluctant to get involved. The head teacher of the third school took over a month to make a decision, but agreed to be interviewed on the grounds her experience of the process of a claim under the DDA was difficult and emotionally draining. She felt that improvements could be made to the process and her agreement was largely based on this being an opportunity to meaningfully contribute to this, and also because the research was linked to the DRC, with which she has had a positive and productive relationship. This interview is discussed predominantly in Chapter 7. Interestingly this interview with the head teacher was as emotionally charged as that with the parents. This interview corroborated much of the information expressed by the parent involved in the claim against the school, but there were also aspects of each interview that conflicted. This isn't surprising given that the interviews focused on an issue of conflict. However, the interviews remain a legitimate account of how each participant perceived the claims process. Necessarily this has led to some inconsistencies in the analysis. As stated, as these reflect the conflict inherent in making a claim under the DDA Part 4, inconsistencies have not been removed from the analysis or its presentation in Chapters 7 and 8.

5.5.2 Analysis of Interviews

It was important to ensure that certain questions were included on all interview agendas to aid comparison across the in-depth interviews. The interview agendas were compiled in an order that reflected my thinking, and so this order was purposefully not imposed on the interviews. In this research, (and influenced by a grounded theory approach)

the interviewee largely led the initial interview and the interview agenda was used only when the interviewee naturally fell silent on one of the issues, or when the conversation reached a natural pause. Subsequent interviews, when the participant was more relaxed, were based more firmly on the research agenda. Subsequent interviews were therefore used to return to aspects of the interview agenda not previously covered in accordance with grounded theory. The interview schedule related directly to the research aims and also a theoretical understanding of the process of bringing a claim of discrimination under the DDA Part 4 (and appears in full in Appendix 2).

Each parent was interviewed at least twice, and their interviews were transcribed and analysed. Interviews lasted between 1 hour and 3 hours, and parents were given control of this. After each hour passed I asked each parent if they were happy to continue on, or if they wanted to take a break or end the interview. All of the young people were interviewed though one young man found it very difficult to engage with the agenda. The other two children did not want to be recorded, but did allow notes to be taken. These were written up immediately to produce further evidence for analysis.

The qualitative analysis package QSR NVivo (Richards and Richards, 1994; Richards, 2002) was used to manage the data produced by the interviews and the short answer responses to the surveys. The analysis involved the deconstruction of the transcripts into fragments which were then re-constructed under thematic headings (Lofland, 1971). This process used the qualitative data only, sourced from the in-depth interviews, and surveys to parents, schools and local authorities. Once the data had been re-grouped into thematic sets, attention reverted to the research questions to re-order the data in a way that provided a meaningful response to the central questions of the thesis. Using NVivo allowed for this process to occur without necessarily removing fragments of information entirely from their context. Additionally fragments could be allocated to more than one theme, allowing multiple interpretations of the material (Atkinson, 1992). Alternatively themes could be placed in a tree, or hierarchy, or coded as a sub-set (Tesch, 1990) which allowed grounded theory to infuse the analysis. That is, some themes may have emerged unexpectedly, but were able to be placed meaningfully within the overall analysis.

5.5.3 Reflections on the Interviews

Field notes were used to reflect on my experience of the interview, and were a useful reminder of how each interview had been, as I prepared for the next. Thus they were used to maintain, as far as possible, a consistent approach to each respondent. The main themes generated by each interview were noted, but most of the notes reflected a personal interpretation of the interviewee. For example each note started with the descriptors they had used to describe themselves, so the identity that they would recognise formed the basis. Next came notes about the location of the interview, apparent mood of the interviewee and so on. The notes were used to help me further contextualise the interview transcripts (Atkinson, 1992), particularly helpful when returning to them after a break from analysis. The field notes were therefore part of the process of de-construction and construction involved in the interpretation and analysis of the interviews overall. Critically they featured my own reflexive account of each interview, and in this way, the field notes created a bridge within the analysis between the interviewer and the interviewee (Van Maanen, 1988) which aided contextualisation of the data within the research questions (Tesch, 1990). By maintaining the context of each fragment as much as possible, the analysis hoped to avoid a positivist or objective interpretation of the data (Atkinson, 1992).

The field notes also allowed me to reflect on my effect on the interviews. I was between 3-7 months pregnant during the interviews with the parents (the professional interviews were conducted post maternity leave) and this encouraged them to engage with me outside of the researcher/ respondent relationship. Before the interview started, all three parents remarked on my pregnancy asking questions like: How many months are you? Is it your first child? This was quickly followed by streams of advice. One parent discussed the gender of the child and told me not to find out; another told me which nappy cream was the most effective and the third advised me to get a car. I did little to solicit these gems and tried to deflect the focus from myself and back onto the interview: this was difficult and pregnancy related questions are spattered throughout the transcripts. My pregnancy had the potential to minimize any imbalances in the relationship, as it permitted the women interviewed to act as experts towards the naïve and first time mother. I supposed that this may have made them more comfortable with me, and with the interview process. I don't claim here to have achieved

reciprocity (Oakley, 1981) as I never revealed as much about myself as the respondents revealed about themselves (Ribbens, 1989), but I (or rather my physical appearance) did reveal it first, and this may have encouraged them to reveal more in the long run.

I found these interviews emotional and draining. I think the participants would agree with this. On reflection I believe that my pregnancy may have aided an emotional response from the parents. However it cannot be the only explanation as my interview with the head teacher was also very emotional. The three parents and the head teacher all commented on the emotional and psychological strength they needed to complete the process of making (or fighting) a claim under Part 4 of the DDA. In fact the parents (see Chapter 7 and 8) discussed terminating their claim because they didn't feel that they had the strength to continue. Similarly the head teacher spoke about retiring early as a direct response to her experience of fighting a claim of discrimination.

5.6 Ethics

As discussed, the Data Protection Act (1998) prohibits the disclosure of personal information held by one party, to another without the full consent of the persons to whom the information relates. It was important that this research worked in accordance with this legislation. The DRC – Scotland contacted parents on my behalf. Interested parents were invited to contact me and my contact details were given on the letter. Parents were assured that their personal information had been kept confidential, that I did not know who would be receiving the letter, and that I could only learn of their identity if they responded to the letter, and therefore disclosure of their identity was their personal and complete decision. Parents could respond by contacting me directly or could post back a signed permission slip, with their contact details on it. However, this meant that a second mail out to encourage those that had not replied initially could not be approved by the DRC - Scotland. This further contributed to the low participation rate.

Respondents to the in-depth interviews were told of the purpose of the research using three formats: a written letter, a pamphlet and verbally at the beginning of the first and subsequent interviews. This included why I was doing the research so that respondents were

clear that part of my motivation included the hope of achieving a doctorate degree (see Zarb, (1992) for the importance of declaring intent). By supplying the information in this format, I could be sure that all participants were treated equitably and had full access to the relevant information. Each respondent understood that they could withdraw from the study or pause the interview for any reason. Participants were asked to sign a 'consent to participation' form and 'permission to be recorded' form. Participants verbally gave their consent at the beginning but did not sign the consent form until the end of the interview, at which time they were fully aware of what they were consenting to, and in this way informed consent was optimised. In addition at the end of each interview, the key informants (parents and young people) were encouraged to reflect on their participation when I asked 'Why did you agree to take part in this study?' and in this way agenda for participation was shared (Bamberg and Budwig, 1992; Swain et al, 1998).

Ethical approval was sought and granted from the Social Sciences Faculty of the University of Glasgow. In agreement with the terms of this approval, all contributions from participants were treated as confidential. Returned questionnaires were given an identification code of a letter (denoting the regional source) and a number denoting the order of return (thus the first returned questionnaire from Fife was coded F1, the second, F2 and so on). These codes were used as the identifier when entering the data into SPSS so that I had a strategy for identifying the source questionnaire should a query arise about the data once it was in the SPSS database. Questionnaires and interview transcripts were locked into a filing cabinet, which could be accessed by my key alone; in turn this was located in a lockable suite of offices which were accessible by a small team of research and academic staff. These files will be destroyed in accordance with the demands of the Ethics Committee at the end of the research period. My computer could only be accessed with my unique staff identifier and my password which was changed at regular intervals protecting the information generated by participants kept in electronic form. A Scottish Enhanced Disclosure Check was performed at the beginning of the research period, and was submitted to the ethics committee. In addition photographic identification from the University of Glasgow was taken with me to initial and all subsequent interview with each participant to further reassure participants of my authenticity.

In addition to the University's ethics committee, ethical considerations were informed by the Code of Ethics published by the British Psychological Society (Robson, 1993), and were also informed by various papers, notably Swain et al, (1998).

Participants were encouraged to choose the location of the interviews, and all chose their own homes (with the exception of the professionals who chose to be interviewed at their place of work), in addition all participants were free to choose the time and day that most suited them. In recognition of my own safety, I did, if offered a preference by the participant, choose an interview time during the day. All interviews were conducted on a week day during traditional work-hours. I always kept my mobile phone with me, and switched on (though in silent mode to avoid interruptions) and the contact details of the interviewee were given to a colleague, with the permission of each participant. My partner was aware that I was attending an interview and knew to contact my colleague if I didn't call-in after a couple of hours. Although these safety measures were set up for my protection, there was absolutely no cause for concern at any stage of the fieldwork.

5.7 *Presentation of Data*

The real identities of the respondents to the in-depth interviews have been kept confidential. Interestingly, this matter was raised with the parents who formed the basis of the in-depth interviews, and all of them suggested I use real names. As they could not predict the consequences of participating in this research, it was ethically sound to provide anonymity as far as possible. In this case the decision to change names was mine. This may have undermined the ownership each parent had of their 'story' as it becomes, through the stripping of identifying information, an anonymous account (Rowan, 1981; Swain et al, 1998). To try and avoid this, names are used to identify the parents and young people who were represented by the in-depth interviews. This was done to encourage the reader to engage with the person represented by the interviews, whereas using numbers to describe them may have reduced their identity. The names used are not the real names of the people who contributed their stories. In contrast, professionals who contributed to the interviews are identified by their professional title. This is not to deny that they are also real people, but to quickly communicate to the reader that they are involved because of their professional status. I have

removed capitals from titles such as local authority, head teacher and caseworker. The purpose of this is to present their responses alongside that of parents. The use of capitals together with their professional title might be interpreted as my imposition of a hierarchal structure on respondents which was not intended.

Respondents to the three surveys were offered the opportunity of including additional comments, and this qualitative data was analysed alongside the in-depth interviews. Where quotes appear in the thesis from a respondent to the survey, they are identified by the survey they responded to (parent, school or local authority), by the local authority in which they lived and by the order in which they responded. At times, their contributions are qualified by additional information, for example the impairment group used to label the child or young person, or whether the school is special or mainstream. This is done to clarify the meaning of the quote, and care has been taken to use information that does not compromise the confidentiality given to respondents. Not all local authorities identified themselves and so to preserve equity, no local authority is identified.

This thesis obeys recognised rules of academic presentation. Quotes longer than one line of text are separated from the body of the paragraph, indented and single spaced. Within quotes the contents of square brackets ([]) replaced specific people, schools or local authorities with a more generic label to conceal identity or were added to help contextualise or make sense of the quote. Also within quotes the notation '...' is used to either denote that the quote is opening mid-sentence, or when used mid-quote, to denote that the respondent has taken a significant pause. The notation '... ...' is used to denote that words have been removed to simplify or clarify the meaning conveyed by the respondent. Where this has been done, it has been done with care not to distort or change the meaning. Therefore the context is not altered by the omission of the words. Contested terms are highlighted throughout the thesis using single quotation marks. Usually these terms appear in the Definitions section that appeared before Chapter 1.

5.8 Conclusion

To summarise, this research was influenced by the principles of the emancipatory approach. Although the principles were absorbed into the process and my motivations were consistent with the political message of the social model, the emancipatory approach could not be applied because it demanded that disabled people be involved throughout the research process. I was prevented from involving disabled people due to the framework of the DDA Part 4 that permitted cases to be made by a parent or guardian rather than the child or young person who actually experienced the discrimination. This was exacerbated in turn, by the disabled young people being framed as dependents by the parents: thus no young person had been actively involved in the case of discrimination pursued on their behalf.

It could not be argued though, that this research exists totally outside the parameters of an emancipatory approach. The DRC – Scotland part funded this research, and early findings from the analysis of surveys have informed some DRC events and publications (for example, DRC 2005). The conclusions drawn by this thesis will be disseminated to the Equality and Human Rights Commission in Scotland and should inform their understanding of the DDA Part 4 and how it has impacted on Scottish schools. Therefore there is potential for the conclusions drawn here to influence pressure on revisions to the DDA.

The data Chapters begin with Chapter 6 which presents an analysis of the surveys. The 2002 surveys (generated by Cogan et al, 2003) are compared with the 2004 surveys (generated as new data for this research) to examine if a difference can be detected in awareness of the DDA Part 4 from the implementation of the Act, to two years into its life. The main themes generated by an analysis of the quantitative data are presented alongside some of the qualitative responses from the surveys. Chapter 7 introduces the in-depth interviews with a biographical account of those that participated, and their claim of discrimination under the DDA Part 4. Separating this from the analysis was essential as the narrative of the analysis was disrupted by the constant need to contextualise each theme and quote. Thus Chapter 7 provides the context for Chapter 8. Then Chapter 8 presents the analysis of the qualitative data generated by the research. Though it uses the in-depth interviews, it also includes data generated from interviews with a DRC caseworker, and uses the qualitative data generated by

the surveys. Thus the micro-level experience generated by the in-depth interviews is contextualised in the macro-level responses from the survey.

6 Chapter 6 – Analysis of Surveys

6.1 Introduction

This Chapter will focus on the data generated by the three survey instruments described in Chapter 5 (available in Appendix 1). The analysis of the quantitative data is supported by qualitative data (short answer responses) and presented to consider the research aims outlined in Chapter 5 of this thesis. The three survey instruments (questionnaire to parents or carers, to schools, and to local authorities) and the two dissemination periods (2002 and 2004) were analysed together and compared where appropriate. Comparisons were also made between special and mainstream schools, and independent and state schools. Such manipulation of the data was intended to measure changes in practice between the two survey periods, which possibly reflected the differing approaches to education provision for disabled and SEN pupils.

To briefly re-state the purpose of this research, different responses to the DDA Part 4 were explored by comparing awareness of this legislation from parents or carers, schools and local authorities. Associated legislation like the Education (Disability Strategies and Pupils Educational Records) (Scotland) Act, 2002 (DSPERA) and the Education (Additional Support for Learning) (Scotland) Bill (ASL) 2002 were also considered. The DDA was launched in 1995, and recognised that disabled people in the UK faced institutional discrimination. The DDA was intended to be a tool, used by disabled people to fight and end the discrimination they experienced. In 2001, the DDA was amended to produce Part 4. Part 4 related to education and had two strands: schools and post-16 education. This analysis deals with the schools strand, which omitted auxiliary aid and services. This omission hugely restricts the gamut of uses that could be framed as discrimination under the DDA Part 4 in Scottish schools. Auxiliary aids and services were covered by the post-16 strand, but such education providers (further and higher education) lay outside the parameters of this research. Although children could make a case under Part 4, it was generally expected that their parents would be the primary claimant, and for this reason parents or carers were surveyed rather than children. The survey was sent to parents of children with a disability (86.6% of respondents reported

that their child had a disability), a SEN (90.5% of respondents reported their child had SEN) or a Record of Needs (78.2% of respondents reported that their child had a Record) and thus parents or carers should have had some knowledge of the legislation explored here.

DSPERA (2002) came out of the SEN framework. Perhaps because it was ratified by a devolved Scottish Government, DSPERA was influenced not by market regulations, but by the drive to inclusion and in this way echoed the ideology of the human rights agenda. Under DSPERA, schools were expected to audit accessibility (both in terms of the environment and the curriculum), and publish a strategy for improving accessibility. The 2002 Act did not refer to SEN, but used the DDA definition of disability and thus was intended to work in tandem with the DDA to promote inclusion.

When the 2004 surveys were disseminated, parents or carers, schools and local authorities were asked about awareness of the Education (Additional Support for Learning) (Scotland) Bill (now ASL Act 2004). Therefore in this Chapter it is the Bill that is referred to, while the rest of the thesis refers to the Act. Planned responses to the Bill were examined to determine if, and in what ways, they differed from responses to the DDA Part 4. The ASL Bill was the subject of a series of consultations during the time of the 2004 survey, and so respondents were engaged with this new policy. It aimed to replace the SEN framework with a new additional support for learning definition of need. To be defined as having additional support needs, a child would be expected to access multi-agency support, and require additional support from education specifically. However many children covered under the old SEN framework or the DDA Part 4, would not be covered by the ASL Bill, and so this thesis allowed respondents to provide some early feedback.

The information flow from local authorities to schools and on to parents was examined to assess where the breakdown in communication occurred and possible reasons for this happening. The responses made by schools and local authorities specifically to the DDA Part 4 was assessed and will be reported in the next part of the Chapter. This allowed an examination of what elements of the DDA Part 4 had been complied with, and which areas were lacking Action. Changes to school and local authority policies made in response to the DDA Part 4 and DSPERA were considered to determine how the legislation had been

interpreted and what changes schools and local authorities had considered to be a priority. Similarly changes to local authority and school infrastructures were analysed to assess the extent to which the legislation had impacted on education providers. In addition responses from parents or carers were analysed to explore to what extent parents were familiar with their children's school's response to the legislation. Independent and state schools and mainstream and special schools were compared to assess whether a difference in attitude could be detected between the types of school. Any difference may allow conclusions to be drawn about each school's underlying philosophy of education for disabled and SEN pupils.

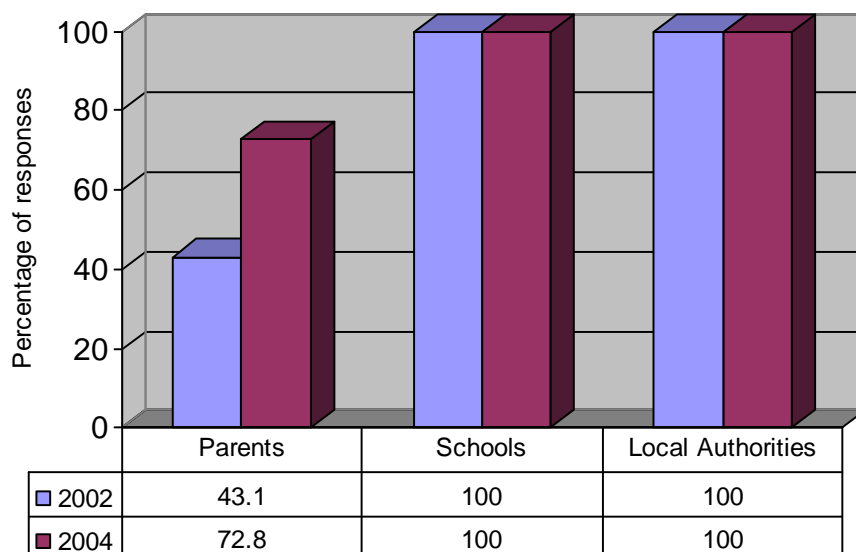
The next section of the Chapter considers knowledge and awareness of the procedures for making a claim of discrimination outlined by the DDA Part 4. This is based on the premise that to be an effective piece of legislation, the DDA Part 4 must be recognised by parents or carers as a tool for redress. This Chapter will then consider the form of social justice delivered by the DDA Part 4, thus connecting this Chapter to the literature review of Chapter 2 and policy reviews of Chapters 3 and 4. Evidence supporting an increased juridification of this sector was examined. However there was also substantial evidence that schools and local authorities made significant efforts to engage with the DDA but were confounded by a lack of case law and ambiguity around the terms of their duties. The Chapter progresses then to examine the ranges of information and support that were available to parents or carers, schools and local authorities. In particular the role of the Disability Rights Commission is considered.

6.2 Awareness of Key Legislation

In the first section of this Chapter, a baseline of awareness will be established. Awareness of the Disability Discrimination Act (DDA 1995) and DDA Part 4 (2001), DSPERA (2002) and the ASL Bill have been measured. A number of comparisons were permitted by this data, including results from local authorities, schools and parents or carers. Data collected from the survey done by Cogan et al (2003) has been re-analyzed and compared with the new data collected in 2004. In addition data from state and independent schools have been compared. Such comparisons allow an exploration of how deeply each group had understood the legislation. This section will begin by reporting awareness and understanding of the DDA and DDA Part 4.

All 32 local authorities responding to the 2002 survey, and all 28 responding to the 2004 survey had heard of the DDA, and about the changes Part 4 had made. In both the 2002 and the 2004 survey, 100% of school staff reported that they had heard of the DDA 1995. There was a small increase in 2004, in the number of school staff that said they knew about the changes Part 4 had made to the DDA: (92.8% in 2002 compared to 95.3% in 2004 – this difference was not significant: $X^2=0.411$, $df=1$, $p>0.5$). Therefore not all schools were explicitly aware that the DDA had been amended to include education. There was a significant increase in the number of parents or carers who had heard of the DDA 1995 between the 2002 and 2004 surveys ($X^2=45.956$, $df=2$, $p>0.001$). However awareness among parents or carers was low compared to schools and local authorities. Figure 6.1 shows the pattern of responses from parents or carers compared with the school and local authority surveys.

Figure 6.1: Awareness of the Disability Discrimination Act: A comparison of parents, schools and local authorities (percentages) – data from the 2002 and 2004 surveys.



There was a slight decrease in the number of local authorities who reported being familiar with the DDA's definition of disability in 2004 (96.4%; 2002 – 100%). The decrease in awareness is not statistically significant and may be due to staff turnover, with newer staff being less thoroughly engaged with this legislation. Both the 2002 and 2004 surveys asked schools and local authorities about their familiarity with the DDA definition: a non-significant

increase in awareness between the two school surveys was recorded, from 86.9% in 2002 to 89.9% in 2004. In response to the 2004 survey only, 48% of parents or carers were familiar with the DDA's definition of disability showing understanding of a key element of the Act for almost half of parents or carers. However, over half of parents were unsure whether their child would be covered by the DDA.

Although awareness about the DDA was good, specific knowledge of the changes made by Part 4 were not as well reported. For example, by 2004 most local authorities reported that they had a good understanding of the changes that Part 4 had made to the DDA (75%) with the remaining quarter able to say that they had a good understanding of some parts, see Table 6.1. This was a substantial improvement (though non-significant) on the response rate from the 2002 survey where just over half had a good understanding of Part 4 (53.3%); 30% had a good understanding of some parts, and the remaining 16.7% had some understanding of the changes made to the DDA. As the legal duty to comply with the duties set out by the DDA Part 4 falls to local authorities in Scotland, it is surprising that understanding was not consistently good for all elements of Part 4. It is possible that the legislation was well understood, but that local authorities remained unsure about how they were supposed to Act, in order to meet their duties.

Table 6.1: Level of awareness of the changes Part 4 had made to the DDA: comparison of the 2002 and 2004 surveys – percentage responses from parents (2004 only) schools and local authorities (LAs).

	Good understanding of the Act	Good understanding of some parts	Some understanding of the Act	Little or no understanding of the Act.
Parents 2004	9.5%	9.5%	38.2%	42.8%
Schools 2002	28.2%	20.1%	42.3%	9.4%
Schools 2004	33.6%	28%	37.6%	0.8%
LAs 2002	53.3%	30%	16.7%	0%
LAs 2004	75%	25%	0%	0%

Respondents to the school survey were more likely to report that they had either ‘good understanding and awareness of the Act’ or ‘good understanding and awareness of some parts of the Act’ in 2004 (61.6%) compared with 2002 (48.3%), the results are also shown in Table

6.1. In addition, school staff were less likely to report that they had either ‘some understanding or awareness of the Act’ or ‘little or no understanding and awareness of the Act’ in 2004 (38.4%) compared with 2002 (51.7%, a significant difference was found between the two surveys using Pearson’s Chi-square ($X^2=11.968$, $df=3$, $p<0.05$)). Although there was an increase in the understanding of Part 4, school staff were most likely to report that they had only some understanding and awareness of the Act in 2002 (42.3%) and 2004 (37.6%). This is evidence that the filtration of information from the policy makers and local authorities to school staff about the changes to the DDA was fairly effective around the time that Part 4 was introduced in 2001, as indicated by the reasonable awareness rate in 2002, and improved awareness rate in 2004.

However some schools reported very low awareness. Half of schools (51.7%) were not confident in their knowledge of the legislation in 2002, and although there was a significant improvement, 38.4% of head teachers and senior school staff reported not having a good understanding of the Act by 2004. Therefore, for a significant proportion of schools, engagement with the DDA Part 4 was low in 2002 and 2004. Information had not successfully filtrated from local authorities to schools in all cases. In this sense, the bureaucratic structure of the DDA Part 4 effectively created barriers to information flow as knowledge was restricted from filtering to schools and on to parents or carers. This also supported the professional framework as the knowledge required by parents to challenge provision was not made available to them.

In response to the 2004 survey, only 9.5% of parents or carers reported having a good understanding and awareness of Part 4, and only 9.5% reported having a good understanding and awareness of some parts. Thirty-eight percent of parents and carers had some understanding and awareness, but the largest proportion (42.8%) reported little or no understanding or awareness of the DDA Part 4, see Table 6.1. Therefore parents or carers reported a lower understanding of the terms of Part 4 than schools and local authorities.

Parents or carers reported less knowledge of the Education (Disability Strategies and Pupils Educational Records) Scotland Act (DSPERA), compared to the DDA (1995 and as amended, 2001). There was very little difference in awareness between the 2002 and 2004

survey as shown in Table 6.2. Only around one quarter of respondents to the parent survey had heard of this legislation that promoted accessibility for disabled pupils. Parents or carers who had heard of DSPERA were asked how well they understood the legislation and the data generated also revealed little change (chi-square was non-significant) between the two survey periods, the results feature in Table 6.2, and the data collapsed across the two survey periods is illustrated in Figure 6.2.

Table 6.2: Understanding and level of awareness of DSPERA, 2002: A comparison of the 2002 and 2004 surveys – featuring data from parents or carers, schools and local authorities (LAs).

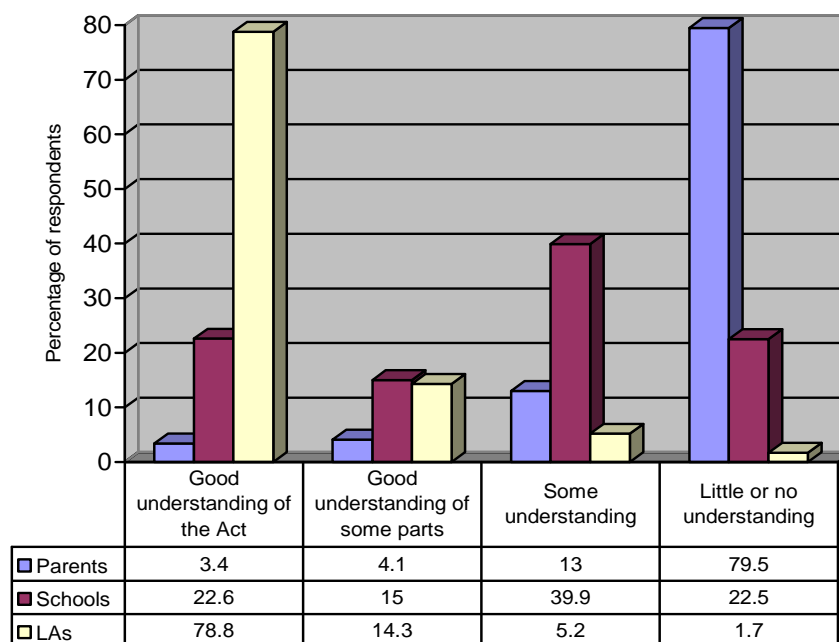
	Had heard of the Act	Good understanding of the Act	Good understanding of some parts	Some understanding	Little or no understanding
Parents 2002	25.7%	3.8%	5.4%	13.9%	76.9%
Parents 2004	26%	3.5%	3.1%	14.3%	79.1%
Schools 2002	69.9%	17.5%	13.9%	37.2%	31.4%
Schools 2004	70.3%	27.7%	16%	42.6%	13.8%
LAs 2002	93.3%	72.4%	13.8%	10.3%	3.4%
LAs 2004	96.4%	85.2%	14.8%	0%	0%

DSPERA came into existence in 2002 and so coincided with the first surveys. A comparison of the school data from the 2002 and 2004 surveys shows little difference in awareness (2002 – 69.9%; 2004 – 70.3%). A trend was detected when comparing data from independent and state schools however which narrowly missed significance (state – 66.8%; independent – 79.4%; $X^2=5.834$, $df=2$, $p=0.054$), so showing that independent schools tended to have greater awareness of DSPERA compared to state schools.

School staff responding to the 2004 survey were more likely to report a good understanding of DSPERA (27.7%) compared to respondents in the 2002 survey (17.5%; $X^2=10.304$, $df=3$, $p<0.05$), see Table 6.3. There was also an increase (non-significant) between

the 2002 and 2004 surveys in the depth of understanding expressed by local authorities, see Table 6.3. Of note, no local authority reported having a poor level of awareness of DSPERA in the 2004 survey, yet some schools and parents continued to have low awareness. All schools had to publish an audit of accessibility and a strategy of how barriers would be overcome. The figures here are troubling as under DSPERA, every school had a duty to provide their authority with an accessibility strategy. Around one fifth of independent schools and one third of state schools seemed either to be unaware of this duty, or did not realise that their strategies were a response to this particular piece of legislation. It seems that some schools poorly engaged with this exercise if they were still unsure of DSPERA.

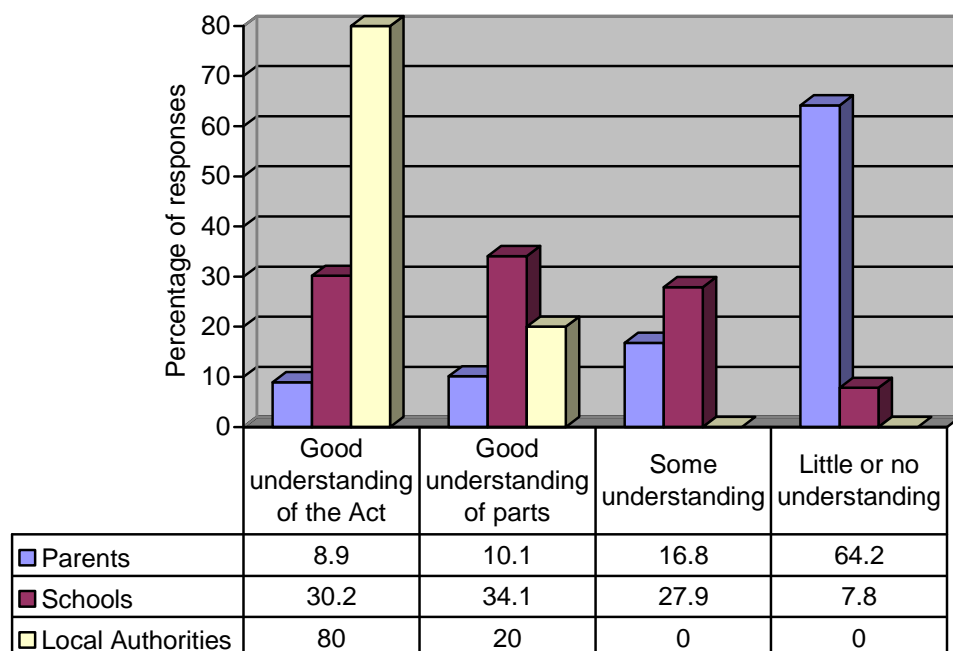
Figure 6.2: Understanding and awareness of DSPERA: Featuring data from parents or carers, schools and local authorities (LAs) (percentages) (data from 2002 and 2004 surveys collapsed).



When examining responses to the DDA (1995), Part 4 (2001) and DSPERA (2002), it is evident that information about key legislation was not flowing down from local authorities to schools, or from schools to parents. This is clearly demonstrated by Figures 6.1 and 6.2. The parents or carers who contributed to the 2002 and 2004 surveys had poor awareness of the key SEN or rights-based legislation that protected their children's rights, or promoted accessibility to their children's school. As DSPERA coincided with the first survey, so the

Education (Additional Support for Learning) (Scotland) Bill (ASL Bill) was a new development for schools at the time of the second survey, therefore data regarding awareness was collected in 2004 only. Just prior to the 2004 survey, an extensive series of consultations had involved local authorities, schools and parents or carers (as well as disability-led organisations, the Disability Rights Commission (DRC) and voluntary sector organisations), run by the Scottish Executive to review the terms of the Bill. Thus all three groups reached by the 2004 survey should have been aware of the imminent Act, and how it would change education provision.

Figure 6.3: Levels of Understanding the ASL Bill: A comparison of parents, schools and local authorities (percentages) (2004 survey data only)

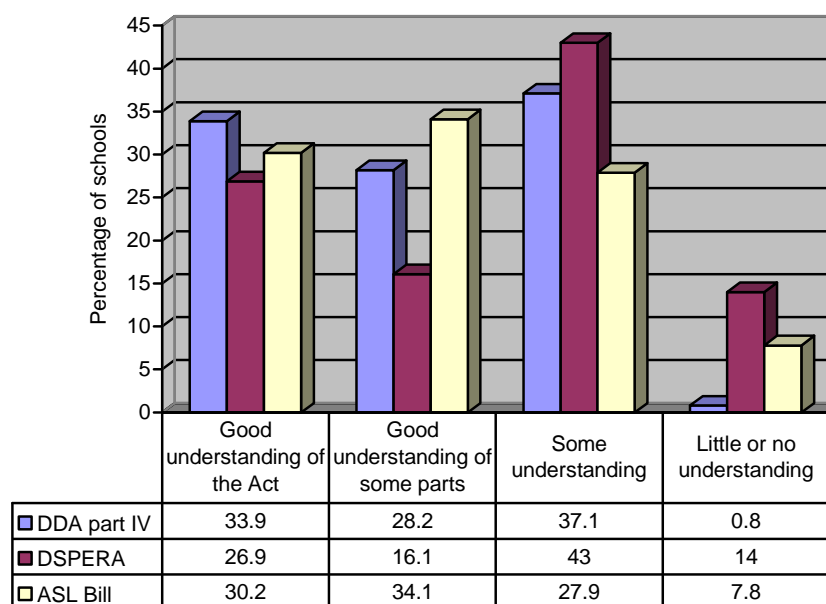


Around one third of parents or carers (34.5%) had heard of the Bill, but a greater proportion (54.4%) of respondents had not. Although only 34.5% had heard of the Bill, 15.4% reported that their child's school was planning changes in response to this new Bill. Given the low level of awareness of the Bill, it is not surprising that only 8.9% of parents or carers reported having good understanding and awareness of the Bill; 10.1% had good understanding and awareness of some parts (see Figure 6.3 for full results). In contrast, most local authorities reported that they had a good understanding of the ASL Bill (80%) and the remaining 20%

reported that they had a good understanding of some parts, also Figure 6.3. Schools showed more diversity in their responses, again showing that not all local authorities had successfully shared their expertise with their schools or with parents.

Compared to Part 4 of the DDA and DSPERA, there was good awareness of the ASL Bill reported by schools, see Figure 6.4. There was a greater tendency for schools to report better awareness of Part 4, but considering this had been in place for two years and the ASL Bill had not been ratified, this was perhaps expected. This awareness was not a passive response: over half of schools (51.6%) had begun planning changes to their policy and practice in response to the new ASL Bill. Further, 72.7% of these schools, would say that their response to the ASL Bill was distinct from their response to the DDA (a significant difference was found: $X^2=17.206$, $df=2$, $p<0.001$), showing a good understanding of the ASL Bill and how it differed from the DDA.

Figure 6.4: Awareness of Part 4, DSPERA and the ASL Bill: 2004 School Survey Data Only.



In addition to the response made by local authorities to the DDA Part 4, a commitment was shown to make changes in response to the ASL Bill by all authorities. However, 36% of authorities did not expect their response to the ASL Bill to be distinct to their response to the DDA Part 4. The ASL Bill deals with service provision with an emphasis on multi-agency

working. In contrast, the DDA is an instrument prohibiting discrimination on the grounds of disability. It is concerning that one third of local authorities believed that the same strategies could satisfy the demands of both pieces of legislation.

In summary, the data collected in the 2002 and 2004 surveys revealed that local authorities consistently had better knowledge, and better understanding of all the legislation covered. Though some local authorities did not always report the highest level of understanding, they always knew more than schools. In turn, schools always reported that they knew more than parents or carers. Therefore information was not cascading down from local authorities to schools, and onto parents. This limited the power parents had to behave as consumers and challenge decisions made by professionals. Some anomalies arose from an analysis of this data. For example, by 2004 only a third of the schools surveyed reported having a good understanding of the DDA Part 4 despite having been expected to respond to this legislation over a two-year period. In turn only three quarters of local authorities shared this good understanding of Part 4, despite having a duty to meet the terms of the 2001 Act. Although all schools had a duty to respond to DSPERA (2002) by publishing strategies to overcome barriers to accessibility, only 22.6% of schools had a good understanding of the legislation, and only 78.8% of local authorities shared this level of enlightenment. In requiring schools to complete an audit and strategy report, schools were encouraged to think creatively about accessibility. This process was intended to increase engagement with the issue of accessibility and so encourage schools to challenge barriers that contributed to the exclusion of some pupils. Yet low levels of understanding of DSPERA suggest that sadly, this exercise did not achieve its aims.

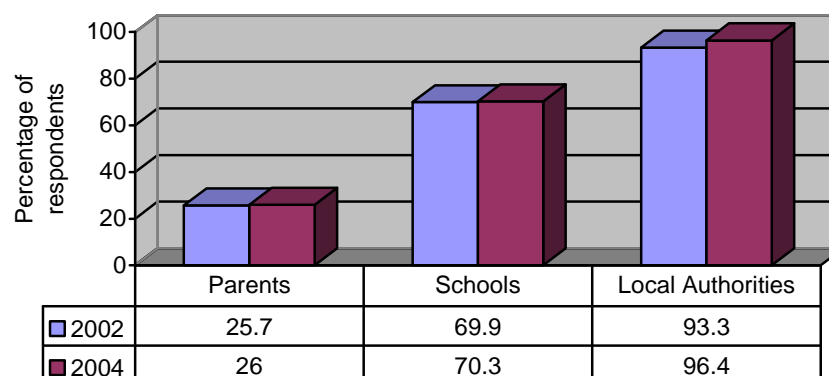
The ASL Bill, perhaps due to the consultation programme, was on the agenda for schools and local authorities. Parents or carers and schools reported better understanding in the 2004 survey, of the terms of the Bill, compared to understanding of DSPERA (2002). Over half of schools had planned their response to the Bill and almost three quarters of these, reported that their response would be distinct to their response to the DDA Part 4. This result was expected given that the ASL Bill was a modification of the SEN framework and aimed to improve access to education, in contrast to the DDA which was an anti-discrimination tool. The flipside of this is that one quarter of schools did not plan a distinct response to the Bill. In

addition, a third of local authorities did not think that their response to the Bill would be different to Part 4 of the DDA. This may demonstrate that local authorities have misunderstood the ethos behind each piece of legislation. An alternative explanation might be that some schools and local authorities had primarily adopted a legal framework in response to both policies in an attempt to reduce their liabilities and thus missed engaging with the differing ethos of each policy. This issue will be explored further later in the Chapter.

6.3 *Transference of Knowledge*

The focus of the Chapter will now shift to the flow of information, from local authorities to schools, and onto parents or carers, and aims to explore possible barriers to effective communication. Although awareness and understanding of the DDA Part 4 among schools was not high, not all schools had chosen to contact their local authority for more information (32.2% had not). Yet schools reported that their local authority was the most popular choice to source information about Part 4 (67.8% of schools had approached their local authority for information). Local authorities were also considered to be the most useful source of information as reported by schools. As can be seen from Table 6.1, authorities always had a better understanding of Part 4 than schools, which indicates that knowledge about the legislation had not successfully been passed down to schools. It can therefore be concluded, that despite 67.8% of schools seeking information from their local authority, only 33.6% felt as confident as their authority on their understanding of Part 4.

Figure 6.5: Awareness of DSPERA: A comparison of parents, schools and local authorities (percentages) – featuring data from the 2002 and 2004 surveys.



Problems in information flow are most likely to occur where the authority has gaps in their knowledge. Not all local authorities were aware of DSPERA (2002): 93.3% in 2002, rising to 96.4% in 2004. Local authorities did show higher awareness though than schools, which in turn showed higher awareness than parents, see Figure 6.5.

Parents or carers have shown poor knowledge and understanding of the legislation designed to improve educational opportunities for their children.

This questionnaire had identified my distinct lack of information and understanding of how this legislation will impact on my child.

Parent or carer 47, Highland

Though I am very well educated myself and very interested in my child's education, my ignorance in this area embarrasses me – I work in the field of community education.

Parent or carer 45, Fife

Some parents considered that the school should be responsible for informing them of changes to legislation, and what this means for their children. The DDA Part 4 requires education providers to disseminate information relating to the Act to parents or carers. However there seems to be some confusion between school and local authorities on who is responsible for this duty. Not all schools were prioritising the dissemination to parents of this information. For example in 2004 one third (37.2%) of schools had no written plans committing them to raise awareness among parents, and one fifth (19.4%) had no plans to raise awareness among children or pupils.

I have found that none of the information about the DDA has been made available to me and how it affects education. The school has never told me about what was available.

Parent or carer 43, Aberdeen

Perhaps schools expected their local authority, as the responsible body for compliance with the DDA Part 4 to organise programmes aimed at parents and pupils.

By 2004, all local authorities had written policies in place, or were in the process of completing policies that committed the authority to raise awareness among teaching staff of the needs of pupils with a disability. The number of authorities with completed policies rose significantly from 14.3% in 2002 to 78.6% in 2004, ($X^2=20.749$, $df=1$, $p<0.001$). This is evidence of an increased commitment to the dissemination of knowledge about the DDA Part 4 into schools. However, in 2004, 18.5% of local authorities did not have any plans to create written policies regarding raising awareness among parents, and only 63% actually had policies in place. Again in response to the 2004 survey, just under one quarter (21.4%) of authorities reported that they had no plans to develop written policies about raising awareness among children or pupils, and only half (50% of authorities) had completed such policies. The responsibility for dissemination of information to parents and pupils is clearly not seen as their responsibility by a substantial proportion of local authorities.

Of the schools that responded, 44.7% reported that their local authority was the most helpful source of information. Yet schools did report some frustration with accessing information relating to the DDA Part 4.

Need guidance from local authority and information about best practice.

School 18, Fife

We need an 'open door' approach in communications with the local authority. Bureaucracy can be a barrier.

School 8, Fife

The case is different for Independent schools as they carry the legal responsibility for meeting their duties under the DDA. Therefore difficulties in accessing information about the terms of key legislation may have more critical consequences. One school suggested that information should be automatically disseminated to schools in an accessible format,

Information e-mailed direct to schools to be accessible to ALL STAFF would increase awareness. This should be done by relevant authorities and associations.

School 22, Independent Sector

Such blanket communication would perhaps aid communication within schools, highlighted by some parents as a barrier to inclusive education. For example,

When the management staff were aware of the possibility of autism (prior to diagnosis) none of the teachers who taught my child were informed, so continued to punish her for her behaviour.

Parent or carer 42, Aberdeen

In summary, parents tended to rely on their child's school to disseminate knowledge about legislation. However not all schools and local authorities had policies to meet this expectation. Parent's misunderstanding about knowledge transference may encourage them to believe that no changes had been made to policy. It is clear that without good awareness of legislation like DSPERA and the DDA Part 4, parents of children with a SEN or disability will be without the informed knowledge required to pursue a claim.

6.4 Responses Made to the DDA Part 4

The DDA Part 4 introduced not only new legislation, but a new framework for schools. Previously the SEN framework had dominated education provision. It was anticipated then that schools and local authorities would have to make changes to internal policies to accommodate the differences between the definitions of SEN and disability. This next section reviews some of the changes made by schools and authorities, and also examines to what extent parents or carers were aware of these changes.

Schools prioritised updating their policy on bullying in response to the DDA Part 4. This would meet the terms of the Act that placed a duty on schools to prevent the harassment of disabled people. Less than half of schools (44.8%) had completed policies relating to the physical environment and only 54.1% had policies increasing access to the curriculum by 2004 despite having had a duty to do so under DSPERA (2002). One school blamed resources and the following quote indicates a level of frustration in their inability to address these issues,

This is a crucial issue for our society and for schools – we must be resourced properly if we are to do it justice. This relates particularly to time and training for staff as well as physical alterations to buildings etc. Please help schools properly rather than pay lip-service to the issues involved.

School 11, Aberdeen

Despite awareness-raising with parents being an issue that needed addressing in order to comply with the DDA Part 4, this was the area where there were most likely to be no plans to produce a written policy, see Table 6.3.

Table 6.3: Survey to schools: If your school has made changes as a result of the DDA Part 4, has your school definite written plans to meet each of the following objectives - comparison of 2002 and 2004 surveys.

Topic area of written policy	Survey	n	Do written plans now exist?		
			Yes %	In process %	No %
Increasing access to school's physical environment ⁺	2002	116	21.6	34.5	44
	2004	96	44.8	30.2	25
Increasing access to the school curriculum *	2002	115	37.4	30.4	32.2
	2004	98	57.1	28.6	14.3
Preventing children being bullied at school	2002	121	76.9	10.7	12.4
	2004	102	76.5	13.7	9.8
Raising awareness among parents *	2002	112	18.8	25.9	55.4
	2004	94	33	29.8	37.2
Raising awareness among children/pupils*	2002	112	31.3	33.9	34.8
	2004	93	46.2	34.4	19.4

* Significant difference found using chi-square at the $p < 0.05$ level ⁺ at the 0.001 level

The schools surveyed also demonstrated that they understood the distinction between SEN and disability. For example, significantly more schools had a member of the school's senior management team with specific responsibility for disability issues in 2004 (83.3%) than 2002 (72.2% $X^2=4.130$, $df=1$, $p < 0.05$), suggesting that schools acted quickly to engage with the DDA Part 4, and that this engagement was sustained.

Analysis of the data generated by authorities also revealed that they increasingly recognised the distinction between pupils with SEN and disability. For example, written policies relating to SEN and disability increased between 2002 and 2004 (SEN: 2002 – 93.8%; 2004 – 100% and Disability: 2002 – 68.8%; 2004 – 88.9%). Rather than challenging the dominant SEN framework, the focus on disability spurred authorities on to formalise their response to SEN. For some authorities, this revealed confusion over definitions, for example

14 local authorities reported that they used the DDA definition of disability, 2 reported that they used the definition in DSPERA (which is derived from the DDA, so showing some confusion) and 3 would use the additional support needs definition outlined in the ASL Bill. SEN too, shared a low consensus over the definition,

SEN needs defining. Does this mean SEN in terms of 1980 Education Act, or is it more inclusive (taking in the more able etc)?

Local authority 11

SEN is interpreted differently by local authorities, schools and individuals.

Local authority 19

The trend of greater attention to the needs of disabled pupils is further demonstrated by the increase in the number of local authorities who reported that their annual improvement objectives mentioned disability (2002 – 64.5%; 2004 – 88.9%). The DDA's emphasis on disability then did not interfere with local authorities' commitment to the SEN framework, but did trigger a focus on disability as a separate category.

The survey to local authorities also generated evidence that disability was increasingly considered a priority within their management infrastructure. For example, most authorities had a committee that dealt regularly with policy and provision for disabled pupils (2002 – 75%; 2004 – 82.1%), and had a member of the senior management team with specific responsibility for disability issues (2002 – 81.3%; 2004 – 96.4%). By 2004, 100% of local authorities had written policies that explicitly made reference to disabled pupils in the areas of curriculum delivery (46.7% existed in 2002) and arrangements for working with other agencies (56.7% in 2002). However the data does reveal an anomaly. Ten policies that were in the process of being written in 2002 had not appeared by 2004 (these include: admissions; exclusion procedures; school trips; exams and assessments; classroom organisation; and complaints). Without further qualitative investigation it is difficult to establish why this anomaly exists. To surmise, it may be that local authorities recognised the need to address the needs of disabled students in 2002, but failed to setup a formal recording system so that they could measure their response, so that by 2004 there was no evidence that their performance

had improved. Alternatively local authorities may have changed their minds about how they were going to best support disabled pupils, and so policies were not completed by the 2004 survey. There is some evidence, considered later in the Chapter, that the arrival of the ASL Bill may have distracted local authorities from finishing their response to the DDA Part 4.

As discussed, local authorities had a duty under Part 4 of the DDA to raise awareness of the legislation with parents. Despite this duty, only 60.7% of local authorities (2004; 3.1% in 2002) had written plans in place. Only 50% of authorities (2004; 3.1% in 2002) had written plans in place to raise awareness among children and pupils. Though this shows a failure in meeting the terms of the DDA Part 4, it does suggest that local authorities increasingly recognised the importance of communicating directly with children. As part of their response to the DDA Part 4, by 2004 local authorities prioritised plans to increase access to the physical environment in schools (89.2%); to prevent children being bullied at school (78.6%) and planned to raise awareness among teaching staff of the needs of disabled pupils (78.6%).

Despite schools and local authorities responding to the DDA Part 4 and completing plans and policies, parents and carers showed poor awareness of this progress. The admissions policy was read by the largest proportion of parents (31.5%) and one in four had read the policy on school trips (28.9%). Parents and carers were least likely to have read policies on staff development (11.2%) and estates and buildings (3.9%). Therefore a substantial proportion of responses made by schools and local authorities to Part 4 did not impact on parents or carers. There was no evidence to suggest that they had impacted on disabled pupils either.

In both the 2002 and 2004 survey there was a low incidence of parents or carers self-reporting awareness of their child's school policy on SEN or disability, but respondents in the 2004 survey did seem to have a better idea, (SEN - $X^2=12.395$, $df=2$, $p<0.05$; disability - $X^2=16.88$, $df=2$, $p<0.001$) showing an improvement in engagement with their school's policies, see Table 6.4. A number of factors may have caused this improvement: firstly schools could have increased the number of policies, or publicised the existence of policies as a response to the legislation; or parents could have become more aware of the school's response to SEN and disability as their awareness of the legislation has improved. If the latter

is the case then this may indicate that parents are behaving in a more consumerist way, becoming more interested in educational provision and allowing parents to perhaps evaluate their child's school, rather than just accept the service offered.

Table 6.4: Does your child's school have a written policy on SEN or disability? A comparison of the 2002 and 2004 surveys

	Does your child's school have a written policy on SEN?		Does your child's school have a written policy on disability?	
	2002 survey	2004 survey	2002 survey	2004 survey
Yes	43.3%	57.7%	30.4%	45.4%
No	6.5%	3.1%	10.1%	4%
Don't Know	50.1%	39.2%	59.4%	50.6%

Similarly, most parents were unaware that their child's school had made any specific responses to the DDA Part 4 (2002 - 72%; 2004 - 79%) again showing low awareness of how the Act was supposed to impact on education provision. Between 4% and 7% of parents or carers who responded were aware of policies that were within the process of change. This suggests that parents were not aware of the changes schools were planning to make, until the change had been achieved. This brings into question the degree of consultation that schools have engaged in with parents and carers, and suggests that they are not using parents as a source of expertise to help them respond to the legislation, thus preserving the divide between professional experts and passive parents or carers.

Schools and local authorities responded specifically to the DDA Part 4. This is evident by the number of policies relating to disability detected by the 2002 survey. Although the number of policies relating to disability issues increased over the next two years, schools and local authorities were more likely to prioritise policies relating to the terms of DSPERA (for example access to the curriculum and environment) than to the terms of the DDA Part 4 (for example awareness-raising with parents and children or pupils). However it seemed evident that schools had confused the two Acts, and considered access arrangements would meet the terms of the DDA Part 4. Not only was there confusion over which duties corresponded to which Act, but also confusion over the definitions of critical terms such as disability and SEN. Parents had fairly low awareness of the changes that had been made, and almost no awareness

of the changes still being made during the survey periods. This suggests that school and local authority policies relating to disabled pupils were being updated without consultation with parents or carers.

6.5 Comparison of Schools: State and Independent Provision

Comparisons of state and independent schools revealed further indications that responsibility for raising awareness among parents and pupils was treated differently. Indeed state and independent schools performed differently on a number of measures. In Scotland, under the DDA Part 4 the responsible body for state schools is the local authority. Alternatively each independent school must ensure that they meet their duties under Part 4 as their management committee is the legally responsible body. The Scottish Council for Independent Schools provides advice and support but does not share the legal responsibility for compliance with the DDA. It was supposed that state schools having the support of a local authority would perhaps have gone further in meeting their duties under the DDA Part 4, demonstrated by a greater understanding of key legislation. The independent school sector represents huge diversity, from schools that promote academic excellence to schools categorised as special schools supporting a particular impairment type (for example, autistic spectrum disorders). In comparison to state schools, the independent sector may be rich in either financial resources or expertise, and this could have increased their response to the DDA Part 4. Differences between the two school types appeared from the beginning of the analysis.

Both in 2002 ($X^2=3.956$, $df=1$, $p<0.05$) and in 2004 ($X^2=4.08$, $df=1$, $p<0.05$) independent schools reported significantly better understanding of the DDA Part 4 than state schools. Independent schools seemed to be more knowledgeable about the DDA Part 4 than staff representing state schools (as measured by percentage reporting to have 'good understanding and awareness of the Act', see Table 6.5). This suggests that a low response rate from independent schools (24%, state schools, 50%) is unlikely to be due to disengagement with the DDA and SEN legislation. In addition, independent schools were more likely to have heard of DSPERA (2002), and report that they had good understanding

and awareness of this legislation (independent – 35%; state – 17%; $X^2=10.74$, $df=3$, $p<0.05$) compared to state schools.

Table 6.5: Type of school (independent or state) to respond to 2002 and 2004 surveys – by school's level of understanding of the changes Part 4 has made to the DDA.

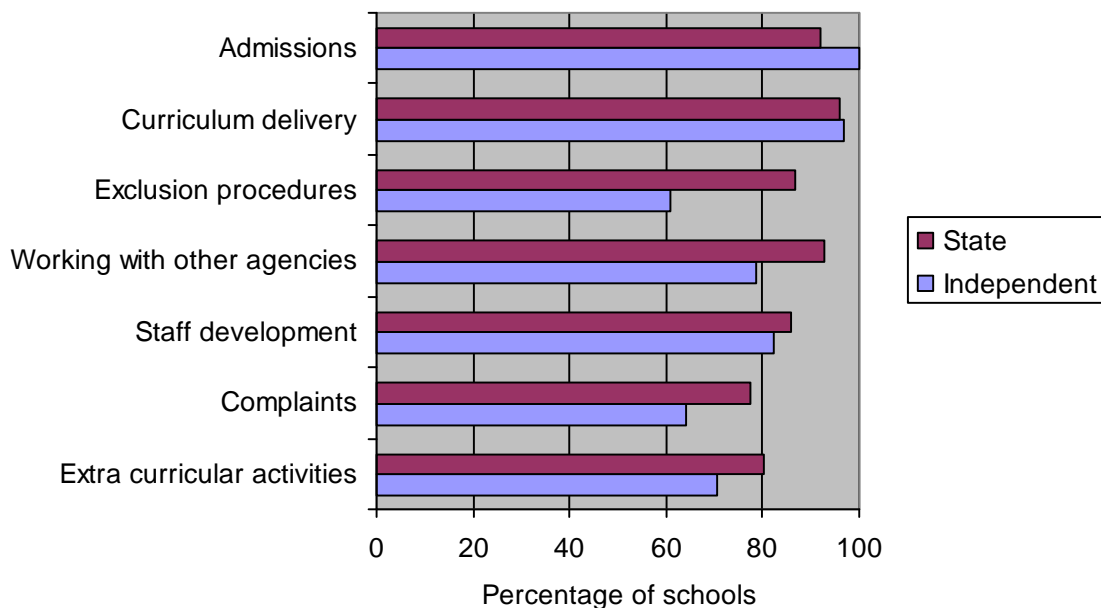
School type	Survey	School's level of understanding of the changes Part 4 has made to the DDA			
		Good understanding and awareness	Good understanding and awareness of some parts	Some understanding and awareness	Little or no understanding and awareness
Independent	2002	17 (45.44%)	7 (17.3%)	13 (32.3%)	2 (5%)
	2004	18 (61.7%)	5 (17.5%)	6 (20.8%)	0
State	2002	24 (21.4%)	23 (20.5%)	50 (44.5%)	12 (13.6%)
	2004	24 (25.8%)	30 (31.7%)	41 (41.6%)	1 (0.9%)

Independent schools were more likely than state schools to have formally responded to the DDA Part 4 by including disability awareness and concern for disabled pupils within key school policies. For example, independent schools were significantly more likely than state schools: to have a school development plan relating to disability (2002 survey: independent: 62.5%, state: 39.2%; $X^2=4.558$, $df=1$, $p<0.05$); and to have a written policy on disability (2004 survey: independent: 68%, state 19.8%; $X^2=21.199$, $df=1$, $p<0.001$). This is particularly interesting as independent schools were not required to have such plans. This is further evidence that independent schools had proactively engaged with the legislation, going beyond their minimum duties.

Independent schools were more likely to have written policies that took the needs of disabled pupils into account, in eight out of thirteen areas, including: admissions ($X^2=21.141$, $df=2$, $p<0.001$); delivery of the curriculum ($X^2=9.925$, $df=3$, $p<0.05$); staff development ($X^2=18.347$, $df=3$, $p<0.001$) and complaints ($X^2=17.125$, $df=3$, $p=0.001$) compared with state schools. Thus more evidence is generated that independent schools are going further to consider the needs of pupils with a disability, at least in terms of their written school policies. However state schools had a tendency to be more responsive in practice to the needs of disabled children than independent schools and the difference was significant for three areas:

exclusion ($X^2=9.699$, $df=3$, $p<0.05$); working with other agencies ($X^2=8.949$, $df=3$, $p<0.05$) and complaints ($X^2=14.607$, $df=3$, $p<0.05$) (data appears in Figure 6.6).

Figure 6.6: Needs of disabled children taken into account in practice by school area and by state versus independent school.



It should be noted that this data is based on self-responses, and the children and young people educated in the schools may not share this perspective. Thus the data should be interpreted with caution. It does appear that although independent schools have done more work making written responses to the DDA Part 4, state schools seemed to be doing more in practice to support the needs of pupils with a disability or SEN. This may indicate a greater investment in consumerist frameworks owing to their pupils paying for their education. Even independent schools whose main customers were local authorities (specialist schools providing support for children who had the same or similar impairments), may have responded to growing consumerist pressure from parents as they were more aware of their need to offer value for money, engage in positive communication and to keep school rolls full.

Perhaps the fact that parents are fee-paying (in most cases) has increased the need for independent schools to prioritise communication. Independent schools were generally more likely to have a written policy committing them to raising awareness and improving

communication with parents, pupils and staff compared with state schools, or to be in the process of writing relevant policies, see Table 6.6.

Table 6.6: If your school has made changes as a result of the DDA Part 4, has your school definite written plans to meet each of the following provisions?: comparison of independent and state schools.

Topic area of written policy	School	Do written plans now exist? %			Pearson's Chi-Square
		Yes	In process	No	
Improving communication with pupils of school information	Independent	37.3	40.7	22	$X^2 6.562$, df2, $p < 0.05$
	State	36.7	35.2	38.1	
Raising awareness among teaching staff of needs of pupils with a disability	Independent	41.9	50	8.1	$X^2 12.318$, df2, $p < 0.05$
	State	51.9	26.9	21.2	
Raising awareness among parents	Independent	33.3	33.3	33.3	$X^2 6.285$, df2, $p < 0.05$
	State	22.3	25	52.7	
Raising awareness among children/pupils	Independent	31	46.6	22.4	$X^2 5.867$ df2 $p = 0.053$ Non-significant
	State	41.1	28.8	30.1	
Increasing access to school's physical environment	Independent	36.5	49.2	14.3	$X^2 19.965$, df2, $p < 0.001$
	State	30.4	25	44.6	

The data from Table 6.6 provides further evidence that independent schools have made more changes to their written policies in response to the DDA Part 4 than state schools. Possible explanations for this might be threefold: firstly, state schools that face a legal challenge under the DDA will be able to deflect this to their local authority that has the responsibility to fight the challenge. This 'buffer of responsibility' may also have created a bureaucratic layer effectively preventing schools from making changes without their local authority's permission, thus reducing their autonomy and ability to make changes quickly. Alternatively, independent schools may have gone further to meet their duties under the DDA Part 4 because they each have legal responsibility for compliance. Secondly, as all schools in an authority must meet the terms of the DDA Part 4 in order for the local authority to be considered compliant, authorities may have organised a co-ordinated approach that could have

caused a delay in individual schools making changes as they have waited for clear directives. A third explanation may be that independent schools have had earlier access to greater resources to make the changes they have identified as relevant. All three factors could have contributed to the difference in responses between state and independent schools.

As well as comparing state and independent schools, special and mainstream schools were compared. The aim of this comparison was to explore whether the collective needs of the student body could be detected in responses to the DDA Part 4. There are problems with interpreting the data. Not all children in special schools have a Record of Needs, and some could fail to meet the definition of disability under the DDA (though this seems unlikely). It follows too, that some children in mainstream schools will have a Record of Needs, will meet the DDA definition of disability or will be defined as having special educational needs. Therefore the data is interpreted with care, and conclusions drawn are recognised as being patterns, rather than proof of a different attitude. In fact, very few differences were found between the two school categories. Parents or carers (responding in 2002 and 2004) with a child at a special school were more likely to report awareness of the school's written policies than parents of children at mainstream schools (the difference reached significance level using Pearson's chi-square for all policy areas). Many parents whose child attended a special school reported excellent provision.

The school my son attends could not include the children more. Everything revolves around finding the children's potential and enhancing them. This is the advantage of a 'special school' – especially an excellent one.

Parent or carer 36, Aberdeen

The same pattern appeared in the responses from the school surveys. Special schools were more likely to report they had written policies over thirteen areas, with the exclusion of estates and buildings which followed the trend but did not reach significance. This suggests that special schools were actively and formally supporting the needs of their pupils, rather than parents simply assuming that this was the case. It also may suggest better communication between special schools and their pupils' parents.

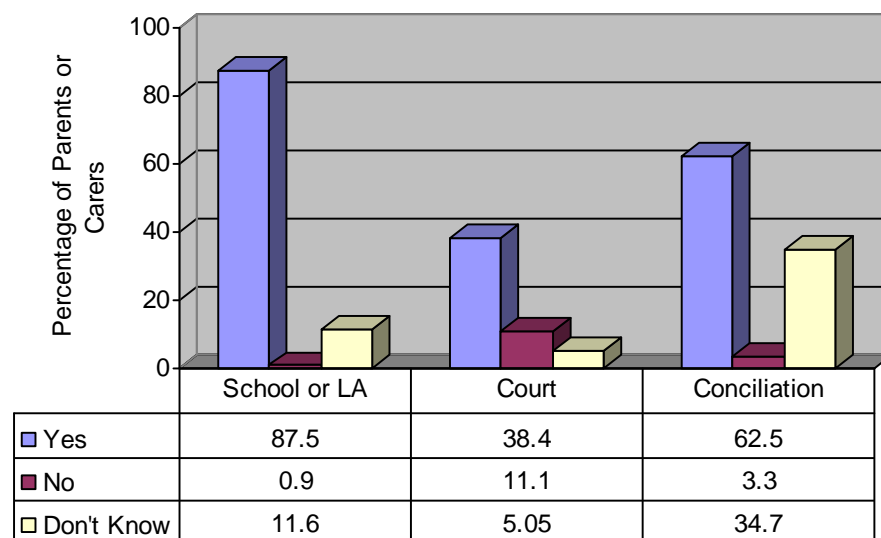
Comparing the 2002 and 2004 surveys revealed an increase in the percentage of parents or carers whose child attended a special school, rising from 36.6% in 2002 to 42.8% in 2004 (difference is non-significant using Pearson's chi-square). As parents and carers were responding on behalf of a child with SEN, a disability or a Record, the high proportion attending a special school placement is not surprising. The DDA Part 4 incorporated a message of inclusion, though it did include caveats which permitted segregation under some circumstances (see Chapter 4). This message of inclusion did not have the intended impact on Scottish schools. Interestingly, a lower proportion of children were enrolled in a mainstream placement by 2004 (29.3%; 2002 – 35.1%). In addition, the proportion of children attending a special unit sharing the same location as a mainstream school remained fairly static (2002 – 28.2%; 2004 – 27.9%) suggesting that there had been no shift in thinking towards integration or inclusion. The continued support of special schools (as indicated by attendance figures) is well documented in the literature (for example, Swann 1998; 1991; 1992). This earlier literature pre-dated the rights-based DDA, and Part 4 in particular. Segregation and integration indicated a medical model approach to education, where pressure is placed on the child to be 'normal' in order to 'earn' inclusion. This finding then, contributes to the conclusion that the DDA Part 4 has not impacted on Scottish schools, at least in terms of encouraging inclusive practice, as demonstrated by the location of school placements.

To briefly summarise, independent schools had made a more formal response than state schools to the DDA Part 4, and were more likely to have written policies that took the needs of disabled children into account. However, the diversity within the independent schools sector prohibits drawing generalising conclusions. Special schools seemed to have responded by developing more written policies than mainstream schools. The parent or carer survey corroborated this finding, suggesting that parents whose child attended a special school enjoyed better communication with the school than parents whose child had a mainstream placement. Inclusion does not seem to have increased between 2002 and 2004 suggesting that the segregationist influence of the medical model on Scottish schools has not been challenged by the DDA Part 4.

6.6 Challenging Discrimination

Communication between schools and parents is of fundamental importance. Parents cannot use the DDA Part 4 unless they are fully aware of their child's rights under the Act, and also to what extent their school is meeting the duties. Under Part 4, it is unlawful for schools to discriminate against a child because of their disability. Parents and carers were asked if they were aware of the options available to them should they be concerned that their child was experiencing discrimination. Routes available to parents were school or local authority complaint procedures; taking a case to court; and conciliation service offered by the DRC. There was much more awareness among parents or carers about the school or local authority's complaint procedures than going to court or using conciliation in 2002 and 2004. Parents or carers became increasingly aware between the 2002 and 2004 surveys of the school or local authority complaints procedure (2002 – 34.6%; 2004 – 52.4% $X^2=17.6$, $df=2$, $p<0.001$), and taking a case to court (2002 – 25.4%; 2004 – 33.5% $X^2=6.566$, $df=2$, $p<0.05$).

Figure 6.7: Percentage of parents and carers who would consider using channels to challenge discrimination experienced by their child – 2004 survey only.



Despite fairly low awareness, most parents (87.5%) would consider approaching their child's school or local authority to challenge a case of discrimination, see Figure 6.7. The next stage in the process, should the complaints procedure not produce a satisfactory outcome,

would be to approach the DRC's conciliation service and this would be considered as an option by just under two thirds of parents or carers (62.5%). Only 38.4% of respondents would consider taking the case to court, and this may well explain why no successful cases have been made in education in Scotland to date: parents and carers are not keen to pursue a case to this degree.

Schools had fairly good awareness of their local authority's complaints procedures. Most schools, 92.8%, were aware that a parent concerned about discrimination against a child could use the school or local authority complaints procedure. There was less awareness from schools about parents having the option to take a case of discrimination to court (81.2%). Only around half of schools (51.3%) knew that a parent could take a case of discrimination to the conciliation service offered by the DRC. Clearly then schools are a lot more aware of the strategies that they, or their local authority have put in place to help resolve a claim of discrimination than the conciliation service offered by the DRC. This may not be surprising as progress toward the DRC's conciliation must be instigated by a parent or child, and so the school can only make use of the service after a claim has been initiated. However, it is surprising that one fifth of schools did not know that a case of discrimination could go as far as a legal court. Perhaps these schools have not taken the DDA Part 4 seriously and are unaware that they have a legal duty to comply with this legislation. Alternatively, as responsibility for meeting the duty lies with the authority, perhaps schools are unconcerned about the consequences of their behaviour.

Slightly more local authorities were aware that a parent concerned about their child facing discrimination could take a case to court (2002 – 90.6%; 2004 – 96.4%) rather than use their own, or the school's complaints procedures (2002 – 87.5%; 2004 – 96.4%). Quite surprisingly, one local authority responding to the 2002 survey was not aware of their authority's complaints procedure. Local authorities' awareness of the DRC's conciliation service was lower, at 75% in 2002, and lower again in 2004 at 71.4%. Low awareness of the conciliation service is a little odd as this is a stage prior to court for parents. Though it was a fairly new strategy to help minimise the stress of making a complaint, introduced by the DDA Part 4, it was in operation during both survey periods. If local authorities' response to the

DDA Part 4 was purely anti-litigious, they would be expected to have a thorough understanding of the claims process.

Parents and carers then, were more likely to contact the school if they felt their child was discriminated against, and were generally resistant to take a case as far as court. Schools and local authorities were not fully aware of the process of making a claim, and in particular reported surprisingly low awareness of the DRC's conciliation service.

6.7 Has the DDA Part 4 Promoted Social Justice in Scottish Schools?

As discussed, in order to bring a case of discrimination under the DDA Part 4, parents and carers must be familiar with the legislation, and with support networks available. Due to poor filtration of information, parents and carers reported fairly low familiarity with Part 4. Therefore, according to this data the DDA would not work well using a bottom-up process of the discriminated making a challenge resulting in case law. There is an alternative route for the DDA Part 4 to deliver social justice. If schools and local authorities are sufficiently fearful of a legal challenge, or if sufficiently motivated by the drive to be inclusive, they could work to improve their provision of education for disabled pupils, thus reducing the likelihood of discrimination. Though the results are the same, the motivation behind change is radically different, and will have consequences for the way schools behave.

The surveys do generate evidence to support the juridification theory. For example, 24% of schools said that they had sought legal advice in 2002 compared with 23.3% in 2004. But an additional 14.3% said that they planned to seek legal advice in 2004, and it triggers the thought that some schools may be responding not to the DDA Part 4 itself, but perhaps to specific legal concerns, either where the school recognises they are not fully compliant with the legislation, or where a parent has highlighted a possible issue. Therefore there is evidence here that schools are motivated not by offering equality, but by avoiding a legal challenge.

Further, a legal challenge seems inevitable given the low proportions of parents, schools and local authorities who were sure that they were complying with the DDA Part 4. Only 25%

of parents or carers responding to the 2004 survey were sure that their child's school was complying with the DDA. This question was not asked in the 2002 survey. Five parents expanded on this, by saying that the school was in bad repair; a further five thought that there was not enough specialist staff or knowledge within the school; three thought that mainstream teachers were not sufficiently trained, and two parents would prefer the learning support teachers to have direct contact with parents.

Despite being a special needs school, the physical environment is disgraceful and many aspects of this do not comply with the DDA. [Emphasis respondent's own]

Parent or carer 3, Glasgow

Other ideas generated include: information regarding the DDA should be sent to all parents; provision is on the decline and professionals keep fobbing parents off.

Only 32.3% of schools responding to the 2004 survey were sure that there were no outstanding issues that needed to be addressed before it fully complied with the DDA Part 4. Further, 14.2% of schools were not sure whether they complied with their duties under Part 4 of the DDA, and 53.5% thought that more work was needed in order to comply, see Figure 6.8. Schools who reported that they did not yet fully comply with the DDA were invited to report which areas of their provision needed to change for them to meet their duties. The most commonly reported area that prevented the school fully complying with the DDA was the physical environment of the schools, specifically access to school entrances and upper floors. There was also some concern that too much emphasis was placed on pupils rather than staff.

Usually the City Council provides physical aids in response to a need of a particular child – no disabled toilet for adults! Delay in having building adapted for pupils already in place – full audit pending.

School 6, Aberdeen

However, a lack of accessibility does not contravene the DDA Part 4 necessarily, provided that an audit of the environment has been made and reasonable steps taken to improve accessibility. In fact the DDA Part 4 indicated that no changes that incur financial outlay need be made, as this would be considered an unreasonable step. Rather schools should have attended to the physical accessibility of their school to meet the terms of DSPERA (2002).

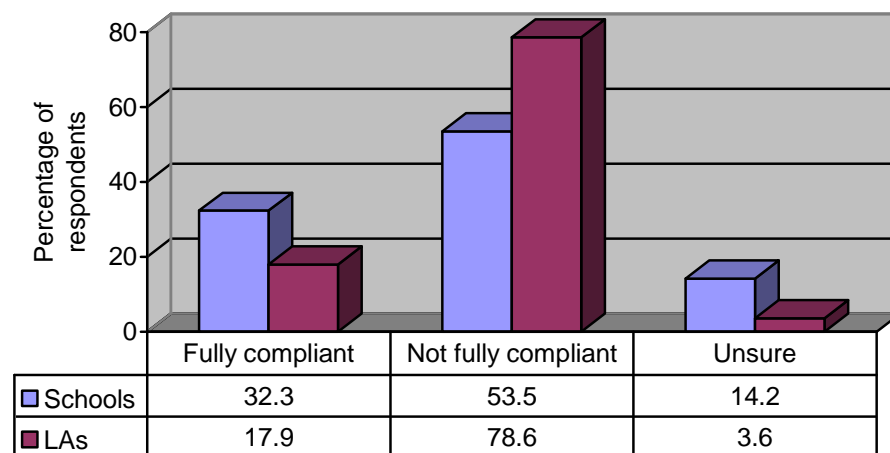
Other issues generated by schools, which they felt needed addressing in order to fully comply with the DDA included: staff development; more teaching resources; improved access to curriculum; and improved communication with their local authority.

Not convinced all staff have assimilated fully the information accessible to them. Nor am I satisfied we have sufficient resource support to meet all needs.

School 4, Glasgow

Again concern over changes to the curriculum is a duty under DSPERA (2002) and so some schools are incorrectly indicating that they are not complying with the DDA Part 4. In addition, auxiliary aids and services (such as teaching resources) are outside the remit of Part 4 and clearly schools are confused about this. This confusion must relate to the schools' confidence in their knowledge of the DDA.

Figure 6.8: Are you fully compliant with the Disability Discrimination Act Part 4? Comparison of schools and local authorities (LAs).



The majority of local authorities (82.2%) either were not sure, or believed that they were not complying fully with the DDA Part 4 in the 2004 survey, see Figure 6.8. When responding to this survey, local authorities had a duty to be fully compliant with the legislation. This then is a remarkable admission, and perhaps demonstrates the difficulties of engaging with the DDA, that is schools and authorities are not clear about what they need to do in order to comply and possibly need more guidance.

Done what we can, but case law may raise un-thought of issues.

Local authority 6

Uncertainty about compliance, particularly on the part of schools and authorities who have engaged fully with an audit of their practices, and have changed accordingly, could undermine their commitment to this legislation as they become disheartened about their perceived lack of progress.

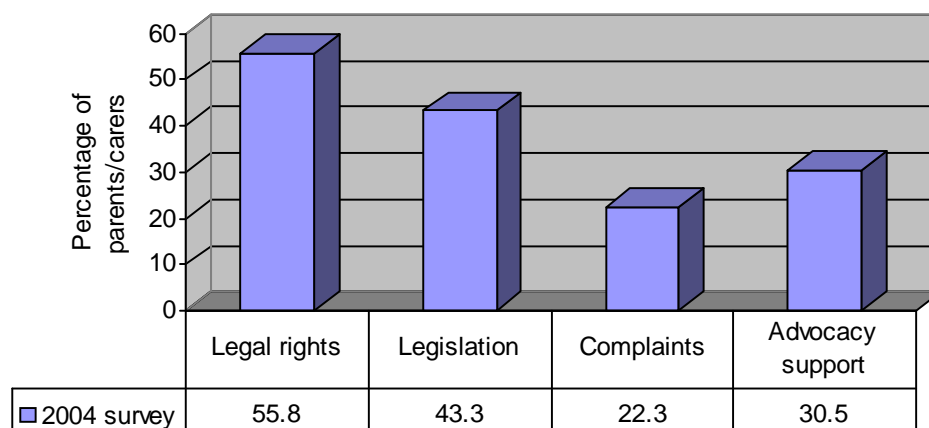
Local authorities were invited to indicate what areas needed attention in order for them to comply fully with the DDA. The most popular response was improving access to buildings (n=5) though four of these authorities said that the process had been started. Other areas that needed attention include: improving access to the curriculum; staff training; staff attitudes; appointing a mobility officer; ensuring transport to and from school and ensuring school trips are accessible. In addition to these points, five authorities agreed that 'inclusion is a long-term strategy' (Local Authority 4). One authority said that they expected to be responding to the DDA for many years as they learn more about good practice, and another authority felt that they probably did comply with the DDA Part 4 but would respond to case law to improve their services.

Given the uncertainty about compliance, it would perhaps be logical to assume that the DRC had been approached by parents or carers, local authorities and schools to minimise the ambiguity and inform their interpretation of the DDA Part 4. Parents showed generally low awareness of the DRC or its provision of information, (28.9% aware in 2004). Even fewer parents knew that the DRC had published a guide for parents on the rights of disabled children in education, (26.6% aware in 2004). Although parents were significantly more aware in 2004 of the DRC, its functions and publications, awareness remained low.

As can be seen from Figure 6.9, most parents or carers (55.8%) wanted more information on their legal rights suggesting that parents or carers had cause to consider using this information and that they were engaged with the idea of a legal challenge. This is further evidence supporting the theory that juridification is imposing itself on educational provision. Understanding the legislation was another popular area (43.3% of parents wanted more

information), and yet this raised a question of why more parents and carers had not used the DRC as a source of this information. Over one fifth (22.3%) of respondents wanted information about making a complaint, suggesting perhaps that their child might have experienced discrimination and this is further supported by just under one third of respondents who were interested in finding out about advocacy support.

Figure 6.9: Percentage of parents or carers who would like more information about legal rights, legislation, making a complaint and advocacy support.



It is perhaps disappointing that zero percent of 2004 parents or carers had attended a DRC event, particularly as the commission has continued to develop its outreach programme travelling across Scotland to make their events accessible. It is also disappointing that the number of respondents using the DRC helpline for information about the DDA stayed the same at 2.1% of respondents in 2002 and 2004. It seems that parents are relying on schools to filter information down to them.

Around two thirds of schools (71.5%) knew that the Disability Rights Commission provided information on the education provisions of the DDA and published a Code for schools on the rights of disabled children in education (66.5%). The Code for schools was developed to encourage schools to think creatively about implementing the terms of the Part 4 and offered realistic examples to help translate the terms into practice. The third of schools unfamiliar with the Code may have struggled with the pragmatics of implementing the legislation. However short answer responses also indicated barriers to using the guide,

This [Code of Practice for Schools] will be of limited value unless schools are given enough time for a member of staff to be able to review and disseminate information effectively throughout the school community.

School 12, Aberdeen

Even with the Code, some schools were prevented from responding because they did not have the resources to allow staff adequate time to engage with the legislation.

Local authorities were more aware of the publications and functions of the DRC. Ninety-five percent of authorities knew that the DRC had published information on the educational provisions of the DDA. An increase (non-significant) in the number of authorities aware of the guide for local authorities on the rights of disabled children in education, published by the DRC was detected between the two survey periods (2002 – 78.1%; 2004 – 96.4%).

Local authorities were asked to consider where they had sourced information relating to the DDA Part 4, and whether the information was useful to them. The most popular source of information in the 2002 and 2004 survey, was from a DRC event (2002 – 71.9%; 2004 – 75%). Disseminating information to local authorities using events was an effective strategy by the Disability Rights Commission because at least three quarters of authorities managed to attend. Local authorities considered that events run by the DRC were the most useful, followed by information from the Scottish Executive, and then the DRC helpline.

The DRC successfully targeted local authorities but this did not trigger the information cascade to schools and parents or carers that they had anticipated. In fact parents were struggling to find information from any source. Parents or carers therefore remained limited in their capacity to behave as consumers. Twenty percent of parents or carers approached their child's school for information about the DDA in 2002, compared to 33.9% in 2004 (significant difference: $X^2=12.752$, $df=1$, $p<0.001$). A significant increase in use, was also found for using the media (2002 - 13%; 2004 – 23.2%; $X^2=9.358$, $df=1$, $p<0.05$) and the internet (2002 – 8.1%; 2004 – 14.2%; $X^2=4.63$, $df=1$, $p<0.05$). The most helpful source of information as reported by parents or carers in 2002 and in 2004 was their children's school (2002 – 4.8%; 2004 – 10.4%); followed by voluntary organisations (2002 – 3.9%; 2004 – 7.1%); the internet (2002 –

1.2%; 2004 – 5.4%); from other parents (2002 – 1.8%; 2004 – 2.9%); from professionals (2002 – 2.4%; 2004 – 2.1%) and from the Scottish Executive (2002 – 2.4%; 2004 – 0%). Low numbers of parents or carers selected a ‘most useful’ source of information, presumably because most considered the information unsatisfactory.

Although DRC events had only been accessed by 10.8%, and their helpline by 3.3% of schools, these sources of information and guidance were considered helpful. The DRC events were the fourth most helpful source of information generated by 6.7% of schools, and the helpline was the sixth most helpful source of information generated by 3.9% of schools. Sources of information popular with local authorities include other professionals (2002 – 25%; 2004 – 57.1%; significant difference found $X^2=4.759$, $df=1$, $p<0.05$); media coverage (2002 – 25%; 2004 – 29%) and searching on the internet (2002 – 22%; 2004 – 21 %). Most local authorities (89%) had approached the Scottish Executive for information relating to the DDA.

The least popular sources of information for local authorities were from parents (2002 – 6.3%; 2004 – 7.1%) schools (2002 – 3.1%; 2004 – 0%) and from another helpline (not DRC) (2002 – 0%; 2004 – 0%). This revealed the lack of upward flow of information as parents and schools were generally not recognised as having expertise in this area, again reflecting a divide between professional expertise and parents or carers. There was a small rise in the proportion of local authorities who contacted the DRC helpline for information about the DDA (2002 – 12.5%; 2004 – 17.9%).

In summary, local authorities and schools did respond to the DDA and tried to find out more information about their duty. Local authorities were most likely to consult with official bodies such as the Scottish Executive, other local authorities and the DRC. Schools seemed to rely principally on their local authority for information, and parents or carers seemed to rely on schools. The types of information sought by respondents indicated a growing concern with the legal aspects of the DDA. Local authorities, schools and parents or carers reported increasing awareness of the claims procedures. In addition, more local authorities and schools had sought legal advice in 2004 compared with 2002. Concern over the claims procedure may reflect low compliance with the DDA Part 4. Astonishingly 67.7% of schools and 82.2% of

local authorities were either unsure, or thought they did not comply with the DDA Part 4, two years after the legislation was implemented.

6.8 Interpretation of the DDA in Scottish Schools: Tension between Anti-Discrimination Approach and SEN Framework

As discussed in Chapter 3, the SEN framework aimed to move on from the segregated education (and the stigmatisation associated with it) that had dominated the education of disabled children and young people up to the 1980s. Eleven medical categories were replaced with the term special educational need thanks to the Education (Scotland) Act 1980 (as amended). The term SEN was used to move on from labels, but also as a label itself, to allow the categorisation of certain pupils who required assessment and support. Therefore the 1980 Act (as amended) tried to abandon labels but could not. The DDA faced the same tensions. In order to offer protection, it needed to create a parameter of eligibility, and to do this required the use of labels. Categories recognised by medical practitioners were used to formalise the parameters of eligibility. Thus pupils who needed additional support had to be diagnosed with a recognised condition. The surveys generate evidence that suggested that this had influenced the rise in conditions that related to a social or emotional impairment.

At present no non-ambulant or epileptic children have transferred successfully to high school. We have 4 autistic children, 1 Tourettes, several ADHD, Dyspraxic and too many to count with social and emotional problems.

School 13, Fife

The surveys of local authorities revealed an increase (not significant) in the use of the categories social emotional behavioural difficulties (2002 – 68.8%; 2004 – 89.3%); learning difficulties (2002 – 78.1%; 2004 – 92.9%); mental health conditions (2002 – 71.9%; 2004 – 92.9%) and unseen disabilities (e.g. diabetes, epilepsy or heart condition), (2002 – 62.5%; 2004 – 89.3%), between the two surveys. What is interesting is the rise in use of categories that relate to hidden or unseen disabilities showing perhaps greater sensitivity to social and emotional conditions. Riddell's (2006) model of administrative justice can be used to explore how the DDA has been interpreted. Local authorities have responded to the DDA Part 4 in the same manner as they have responded to earlier SEN legislation by using categories

demonstrating bureaucracy, and further have used the expert as gatekeeper model of professionalism.

From this angle it is difficult to see how the DDA Part 4 is offering a different approach to social justice than the previous SEN framework. However this isn't the whole picture. The surveys from schools and local authorities generated many examples of them working very hard to familiarise themselves with the legislation and make appropriate responses.

As the DDA Part 4 was launched, schools initiated a number of strategies to educate themselves about their new duties. For example, in response to the 2002 survey, 91.5% of schools attended relevant seminars; 94.8% gathered relevant information and 92.9% of schools gave advice to staff. Surprisingly by 2004, the schools seemed to have done less (62.9% had attended seminars and 27.6% planned to do so; 65.1% had gathered information and 34.9% planned to do so; and 53.9% had advised staff and 40.9% planned to do so). It is unclear what prevented the schools from completing their planned responses to the DDA Part 4. Because the 2002 and 2004 surveys did in fact contact the same schools in many cases, it can be assumed that the responses from 2004 under-report the responses made to the DDA Part 4. The training and information gathering may not have been repeated since 2002, and so the school responses in 2004 simply did not recall that the exercise had taken place. It may have been a case of finding the time to organise the event: to initiate the process of change; perhaps there were funding issues which prevented an early response; or perhaps this hesitancy expressed in 2004 is a function of the lack of case law which would explicitly guide schools to make the most appropriate and meaningful changes. In addition other issues such as the forthcoming ASL Act (2004) may have dominated the school's agenda since the 2002 survey which may have reduced the priority status of complying with the DDA Part 4.

The huge impact of both bills [DDA Part 4 and ASL Bill] have not been taken into account by local authorities – we are required to know about terms and comply – no guidance and no extra support! [Punctuation respondent's own]

School 3, Fife

Similarly, between 6-18% of schools surveyed in 2002 reported that they were in the process of producing written policies that explicitly referred to pupils with a disability. Yet responses from the 2004 survey revealed that there were actually fewer policies that had been written compared to 2002 (for example Admissions: 2002 – 49.3%; 2004 – 46.3%; delivery of the curriculum: 2002 – 60.8%; 2004 – 54.5%). Given that some of the schools that responded did not respond to both surveys, such anomalies can be expected to exist. However this trend exists for 10 of the 14 school areas and so perhaps conclusions can be drawn, for example, the policies ‘in process’ as recorded from the 2002 survey could still be ‘in process’ in 2004. Alternatively the work ‘in process’ may have discontinued, either because the school no longer felt the written policies were required, or they were waiting for guidance to confirm what work was necessary. It is also interesting to note that up to 7% of schools did not know whether pupils with a disability were explicitly referred to in some school policies. This mostly occurred where a senior member of staff completed the questionnaire, or professional level was withheld, rather than when the head teacher completed the questionnaire.

Results from the local authority survey showed the same pattern of lower reported Action in response to the 2004 survey than the 2002 survey: this is the case for nine of the eleven Action points (for example 81.3% of authorities had changed practices in 2002 compared to 67.9% in 2004; 93.8% had reviewed policies and procedures in 2002 compared to 85.7% in 2004). As there was little variation between the authorities that responded to each survey, it can be concluded that responding to the DDA Part 4 had become a lesser priority by 2004. The two exceptions were appointing more support staff (2002 – 28.1%; 2004 – 42.9%) and interestingly, seeking legal advice (2002 – 71.9%; 2004 – 85.7%). This further supports the idea that the response to the DDA Part 4 is made increasingly on legal terms. Bureaucratic and professional frameworks continued to dominate education provision for disabled pupils, demonstrated by the rise in the use of impairment labels, particularly those relating to SEBD.

6.9 Conclusion

The three surveys painted very different pictures about awareness and engagement with anti-discrimination legislation. There was plenty of evidence to suggest that parents were unable to access the level of information that they would have liked. Schools too did not appear

confident in their understanding of the legislation. This confusion was reflected in responses from local authorities, but here another theme emerged as work towards the ASL Bill seemed to have usurped the incomplete work aimed at complying with the DDA Part 4. The two survey periods allowed a comparison of views from when Part 4 was first implemented, to when it had been in place for two years. Despite the gap being relatively small, differences were detected demonstrating that the DDA has taken time to infuse into the consciousnesses (and policies) of schools and local authorities. I shall summarise the main findings presented in this Chapter. Overall though, the DDA Part 4 seems to have a minimal impact on Scottish schools. The data presented here informs four main arguments about why this is the case. The first argument is that education legislation dominated Scottish schools to the extent that the rights agenda of the DDA could not take hold. Secondly as the duty for compliance does not fall on Scottish state schools (independent school Boards are responsible) they have deflected any responsibility for implementing the DDA onto local authorities. The third argument is that the DDA Part 4 presented parents or carers and pupils with few rights in practice. The omission of auxiliary aids and services in particular led to confusion over what is covered. Finally, Part 4 did not offer an easy route for parents or pupils to challenge schools as most were reluctant to end up in the Sheriff Court. The lack of any significant legal challenge allowed schools and local authorities to suspend their response to Part 4.

As discussed the first explanation for the minimal impact of Part 4 is that education continued to be driven by education legislation. The rights agenda implicit in the DDA was informed by the social model and more recently, has been shown to be consistent with the capabilities approach. This rights agenda has apparently not impacted on Scottish schools. For example, the DDA Part 4 promoted inclusion, yet this message did not seem to have impacted on the proportion of young people in special placements (which actually increased between 2002 and 2004). Thus pressure continued to be placed on children to normalise, rather than schools to remove barriers and build social structures that were accessible to all children and young people. This is mainly due to the dominance of education legislation which did not permit professional expertise to be challenged by parents' and pupils' rights. Thus the professional framework continued to dominate over consumerist frameworks. Although parents became *more* aware of the DDA between 2002 and 2004, schools and local authorities were always more aware, thus the professionals possessed more knowledge and expertise than

the consumer (75% of local authorities, compared to only 33.6% of schools and 9.5% of parents or carers reported having a good understanding and awareness of the changes Part 4 had made to the DDA). It was also clear that resources were unavailable to support schools and local authorities from making the transition from the SEN needs-based approach to the DDA's rights-based approach. The lack of resources allowed the opportunity presented by the DDA to be swept away by the ASL Bill.

Secondly, the DDA had a limited impact on Scottish schools because in Scotland the responsible body is the local authority not the school. Local authorities' response to the DDA was largely restricted to mentioning Part 4 in policy documents and improving awareness of their legal position. Specific duties under the Act such as communicating with pupils and parents and being anticipatory were less evident. Schools demonstrated a mixed response to the DDA. Independent schools tended to take more notice of the consumerist power of parents and so were more likely to have made changes to policy and improve communication than state schools. This may not indicate engagement with the inclusive message of Part 4 but obedience to the market framework of keeping the customer happy. Alternatively, as independent school Boards were responsible for the implementation of the DDA Part 4, this may account for their better performance on some measures compared to state schools. Many schools (state and independent) did not make plans to improve communication with parents or pupils, or make changes specifically in response to Part 4. Being once removed from the duty of compliance may account for the inactivity of some state schools.

A third reason that the DDA Part 4 had a limited impact is the weakness of Part 4 itself. Whereas the DDA (1995) made a clear argument to end discrimination, Part 4 included several caveats that made it less meaningful to Scottish pupils. The exemption of auxiliary aids and services for example removed the main issues that were likely to cause disagreement between pupils and their education providers. Therefore any rights afforded to pupils under Part 4 were weak. The exclusion of auxiliary aids and services obviously caused confusion over what the DDA Part 4 did cover. Most local authorities and schools mistakenly identified access to buildings and the curriculum to be covered under Part 4 (whereas these are covered by DSPERA 2002). For example all surveys in 2004 reported low levels of compliance with the Act (only 25% of parents or carers (referring to their child's school), 32.3% of schools and

17.9% of local authorities reported definitely being fully compliant with the DDA Part 4). This confusion allowed schools and local authorities to remain inactive while they waited for clarification of the terms of the DDA Part 4. However the anticipated case law did not arrive and so Part 4 continued to have minimal impact on Scottish schools.

It is evident that barriers existed interfering with local authorities and schools meeting their duties under the DDA Part 4. The decrease in written policies between the 2002 and 2004 surveys revealed by schools, suggests that attention was diverted from the DDA before planned responses were completed. The anticipated ASL Act (2004) seems a likely cause; for example all local authorities surveyed in 2004 had started planning their response to the ASL Act. The ASL Act was the third major piece of legislation to impact on SEN pupils in three years, and may have overloaded education providers. Although all local authorities had started responding in anticipation of the ASL Act, only two thirds expected this would differ from their response to the DDA Part 4. It may be concluded then that either responses to the DDA Part 4 had been re-interpreted as responses to the ASL Act, or that authorities misunderstood the terms of each piece of legislation, wrongly assuming that the same strategies would satisfy both duties. Either way, the impact of the DDA Part 4 on Scottish schools was not fully completed before attention was diverted to the ASL Act.

The fourth reason is related to the third. The DDA Part 4 did not provide pupils with an easy route to challenge schools. The Sherriff Court was not a popular destination for parents, and ultimately would have dissuaded many parents from pursuing a claim beyond school or local authority complaints procedures. For example, only 38.4% of parents or carers would consider taking a case of discrimination as far as the Sherriff Court. Low awareness and engagement with the DRC in Scotland resulted in low awareness of the support and mediation that they could offer to help resolve disputes between pupils and their school. Only 1.2% of parents and carers from the combined 2002 and 2004 surveys attended a DRC event, and 2.1% (from both surveys) used the DRC helpline for information.

In conclusion, the DDA Part 4 had a minimal impact on Scottish schools. The development of categories of need indicated that the DDA had been interpreted using a bureaucratic model, and the continued use of the expert to determine eligibility signified the

continued dominance of professionalism. Thus evidence suggests that the DDA Part 4 has been interpreted in the same way as SEN legislation. Further the DDA Part 4 did not succeed in promoting inclusion and thus did not challenge the accepted practice of segregating some children into special education. The rights-based message of social justice inherent within the DDA seemed to have been lost as schools and local authorities become increasingly motivated to avoid litigation. Parents and carers too seemed to have become more engaged with the legal aspects of the DDA Part 4 though there was little evidence to suggest that it had inspired them to Act in a more consumerist way.

7 Chapter 7 – In-depth Interviews: A Biographical Account

7.1 Introduction

The previous Chapter looked at the quantitative data generated by the surveys of parents, schools and local authorities. In response to the primary research questions, the Chapter concluded that the DDA Part 4 has had minimal impact on Scottish schools. For example, the rights-based DDA Part 4 was unable to challenge the dominant SEN framework, state schools were able to hide behind the ‘buffer of responsibility’ as local authorities were ultimately responsible for compliance, Part 4 did not in fact provide parents with many rights due mainly to the omission of auxiliary aids and services, and finally, the DDA did not offer parents a comfortable route to challenge schools. According to the quantitative analysis, if the DDA Part 4 had brought social justice, it was as a bi-product of the anti-litigious approach adopted by schools and local authorities rather than the parental consumerist-type pressure anticipated by the Act.

As discussed in Chapter 5, the survey instruments were developed to answer the second and third research question. The in-depth interviews aimed to produce data that could be analysed using grounded theory, to approach the final two research questions. This Chapter aims to outline how the in-depth interviews have been used to inform this analysis. Each in-depth interview will be introduced in turn, offering a biographical account of the experience of discrimination described by the parents and young people who contributed to the interviews.

In-depth interviews were completed with three families who had approached the DRC - Scotland because they believed their child experienced discrimination. The in-depth interviews usefully revealed how the DDA Part 4 had been used by parents. The families who contributed to each in-depth interview were recruited with the help of the DRC and met particular criteria: firstly, families had been referred to the DRC – Scotland office after contacting the DRC helpline and assigned a caseworker. Secondly, each child who was the focus of the claim of discrimination would have been assessed as having a disability.

Therefore in each case presented here, the school should not have disputed the child's eligibility to make a claim under the DDA. Thirdly, the casework team at the DRC – Scotland would have assessed the claim as being one of discrimination due to the disabling condition of the child. Finally, the case of discrimination would have been resolved at the time of interview.

Parents who had made a case on their child's behalf and who met the recruitment criteria were contacted by the DRC - Scotland and invited to participate. As discussed in Chapter 5, there was a strong theoretical argument to contact the children and young people who were the focus of discrimination. This practice would recognise their individual experience and allow them some control over the narrative presented. However this research had strong grounds for contacting the parents as the primary informants. The DDA Part 4 required that all cases made concerning a child under the age of 12 be made by the parent in line with the Children (Scotland) Act (1995). A child over the age of 12 could bring a case if the court considered them competent. Even if the young person was aged between 12 and 16 years and competent, their parent was legally entitled to bring a case on their behalf without the young person being involved. If the case was brought by a parent, the child or young person needed only to contribute to conciliation or the court trial if they chose to. Indeed at the time of recruitment, all cases reported to the DRC under Part 4 were brought by a parent. All children who were the focus of the in-depth interviews were invited to participate once the parents had completed their first interview. Though none of the children or young people wanted to be Recorded, they did agree to contribute and their responses inform this Chapter and Chapter 8.

Twelve parents were contacted on my behalf by the DRC, therefore I did not learn of the identity of those invited to participate unless and until they made contact to find out more information about the project. Five parents made contact and three agreed to participate. One parent withdrew after her health problems interfered with scheduling the first interview. The other parent withdrew after learning that her child's school would be contacted during the research.

A narrative providing the background of each child's experience of disability, their engagement with education providers and the claim of discrimination reported to the

Disability Rights Commission (DRC) features in this Chapter. The tone of each 'story' is quite different though all are emotionally charged. Parents were encouraged to explore the issues pertinent to themselves within the flexible parameters of the interview agenda and so insight into their experience of events could be gained. For example, in-depth interview 1: Robert's story offered a lot of detail about the actual pattern of discrimination because his parent was able to focus on a particular period of time in her son's education where problems existed. In contrast, in-depth interview 2: Drew's story is comparatively brief, which demonstrated perhaps the logical and focused thinking of the Mother who had a diagnosis of Asperger's syndrome. Finally in-depth interview 3: Alasdair's story generated an account of his experiences from birth as his parent found it difficult to separate the discrimination he experienced at school from the discrimination she believed he received from medical practitioners. Chapter 5 provided a detailed account of the interview process and participant recruitment. However key elements will be repeated here. All interviews with parents and children have informed this Chapter.

All three schools involved in the discrimination claim made to the DRC - Scotland were invited to participate. Two declined demonstrating the sensitivity of the debates initiated by this research for schools. The one school that agreed is introduced in this Chapter and this account reflects too the high emotional engagement this head teacher had with the claims process. In addition an interview conducted with a caseworker with the DRC - Scotland in post during the field work period and in charge of education cases, contributes to the discussion here.

After a biographical introduction to each in-depth interview, this Chapter will focus on the way the family unit responded to the discrimination they believed they experienced. The Chapter looks closely at the actual claim of discrimination reported by the parent to the DRC, and the process of making the claim. In all three in-depth interviews parents struggled to identify a single event of discrimination but preferred to contextualise the case they made under the DDA Part 4 (which did need them to identify a single incident) by re-telling a string of contentious behaviour by their child's school.

The Chapter continues by examining the child or young person's experience of school, looking specifically at issues around transition; the usefulness of a Record of Needs (Record) and support provided within the school. The terms of the Record and in particular, the provision of aids and auxiliaries were outside the remit of the DDA Part 4. Yet parents who responded to the survey, the in-depth interviews and those who contacted the DRC for advice (according to the DRC caseworker) raised issues relating to aids and auxiliary support more than any other issue. The Record was considered by some as a gateway to adequate provision and by others as ineffective paperwork; both positions will be presented in this section of the Chapter. The fact that this falls outside the jurisdiction of the DDA was considered a failing of Part 4. Therefore problems with Records are considered here as they are pertinent to the parent's perception of discrimination. I chose not to place this discussion in the analysis Chapter (Chapter 8) because it demonstrates a misconception about the DDA. This part of the Chapter is informed by the in-depth interviews and the short answers from the survey to parents. The Chapter concludes with a discussion about the main themes generated by the in-depth interviews and introduces Chapter 8 and its analysis of each in-depth interview.

The stories related here could not always be corroborated. Alasdair's story is in part challenged by the head teacher's account of events. Cate had kept an archive of letters and documents relating to her son's exclusions from the school and local authority C that she shared with me. These helped corroborate some of the issues generated by the in-depth interviews with Cate and Robert. The DRC caseworker too, was able to give some insight. What is presented here reflects the extent of emotion and feeling associated with making a claim, and for this reason has a richness that goes beyond the quantitative data. Even if the two other schools had contributed, there would still be a huge amount of information left uncorroborated. For example medical practitioners, charitable organisations, social services and parent networks are implicated to varying degrees by the in-depth interviews. Thus it is acknowledged that a personal account of events is presented here. As a result, the themes explored and conclusions drawn should be interpreted with caution. Although the research questions are acknowledged here, the analysis itself appears in Chapter 8.

7.2 The In-depth Interviews of Young People whose Parents' Reported Discrimination

A biographical account of Robert, Drew and Alasdair's story will follow. Each story will also outline the cases made on their behalf to the DRC – Scotland. To complete Alasdair's story, an overview of the account provided by the head teacher at his school is included, the other two schools declined to participate.

7.2.1 Robert's Story

In 2001, aged, 8, Robert was living in Fife with his family, and although doing well at primary school, a split placement was arranged in a behavioural support centre for one day a week, where Robert underwent psychological assessment resulting in a diagnosis of ADHD. In addition he spent Fridays with a mental health support nurse with another pupil from his primary school. This worked very well and continued for 18 months. Two years later aged 10, Robert and his family moved to a post-industrial small town east of Glasgow. His new primary school did not offer behavioural support, and were not familiar with ADHD. Cate reported that Robert's new head teacher had different ideas to her, and those established in local authority A about how to manage his condition. One of the issues of dispute was Robert's use of the drug Ritalin which had been used to help control his behaviour.

One of the incidents at the primary school was they took him on holiday for a week, and the head mistress met me when they came back off holiday, and she said to me that she had decided to take Robert off his Ritalin because he didn't need it, and he had been absolutely fine off it. Well on holiday it's different, he had plenty to do and he had masses of physical exercise. Then within the week they were screaming at me to come and get him because he had started getting put out in the hall.

Cate, parent of Robert aged 12

This decision by an educational professional, to suspend a child's medical treatment, without his parent's knowledge or permission, was out-with their power and authority. As the school from local authority C did not participate, the claim remains uncorroborated. Cate reported that she had tried to comply with the school's ethos and keep him off his Ritalin, but Robert's behaviour became more disruptive.

The secondary school were concerned that Robert would not easily make the transition from his primary school, and offered to take Robert for one morning a week, during his final term at primary so that he could adjust. This solution worked fairly well and is a good example of the school using their initiative, good practice and a reasonable adjustment to meet Robert's additional needs. In retrospect Cate was concerned that this measure allowed teachers at the secondary to identify Robert as needing 'special' management, and this may have undermined any opportunity he had to fit into the school.

As the secondary placement began, Cate reported that the school had agreed to administer Robert's lunchtime dose of Ritalin. The school did not deliver on this agreement. Robert's behaviour in class was appropriate in the morning sessions, but he was asked to leave all three afternoon classes because his behaviour was not manageable.

So that was him, his first visit to the school and he had stuck out like a sore thumb. The school's attitude to that was, well it was his responsibility [to take the Ritalin]. I mean he's 10 or 11 at this point, so it's not his responsibility; it's the schools responsibility.

Cate, parent of Robert aged 12

Teachers do not have a legal duty to take over the administration of medication during school hours, and in fact many teachers have resisted the responsibility. Robert failed to cope with multiple classrooms and homework and started to receive a string of temporary exclusions for minor and vague infringements, such as incomplete homework, 'failing to take advice' (this was an actual reason taken from a letter to Cate from her son's school) and unreasonable behaviour. Cate was concerned that the movement between classrooms every hour would be very disruptive for Robert, but the school refused to try and reduce the movement within the timetable. Cate very clearly argued that the school were responsible for the incidents to a greater degree than her son, because they did not put in place the support that he needed, and that had worked well in a previous school.

See with Robert, he's not got a major disability ... his problems ... they could be worked out in the classroom, they could make provisions if they so wanted, but they don't. Because it's too much hassle for them.

Cate, parent of Robert aged 12

As discussed, the secondary school initially forgot to give Robert his Ritalin. Then Robert ran out of the Ritalin which had been prescribed by a paediatrician on the east coast of Scotland. Cate had assumed that she would be able to get a repeat prescription from her new general practitioner, but was refused, and was unable to secure an appointment with a paediatric consultant for some weeks. For the second time then, Robert's medication was abruptly terminated and his behaviour became less manageable.

I thought there's no medication, I can't get my hands on it, the teachers will understand, and I'll just have to send him to school without it. So they kept suspending him and suspending him and I mean, it wasn't for big major issues, he wasn't being violent or aggressive or ... it was minor every day things, silly daft things, like not having his homework or they kind of daft things.

Cate, parent of Robert aged 12

As shown in Chapter 4, it has been established using part II of the DDA that behaviour relating to a disability that could be controlled by medication, but that hasn't been (due to failure to take the medication) is covered under the DDA, and so schools may expect their duty of reasonable measures and anti-discrimination to extend to the situation described by Cate.

7.2.1.1 Discrimination Reported to the DRC

A series of incidents was reported to the DRC apparently contributing to discrimination and representing a long period of conflict with the school. Cate argued that punishments appeared excessive for the 'crime' particularly where the misdemeanour could be related to the child's disability. With discussion with a DRC – Scotland caseworker, Cate was supported in identifying a particular incident that could be challenged using the DDA Part 4. An account of this incident, follows.

As Robert moved into the second term of his first year at secondary school, he was given an internal suspension, where he had to attend an isolation unit for three days. The isolation unit was a classroom where pupils were seated in booths and given their lessons by text book; they were supervised but not taught. The pupils who attended the isolation unit with Robert were generally older, and some were there because they were being punished for

violent and aggressive behaviour. Robert's mother was not informed that Robert was internally suspended, until after the sanction had been imposed. She remembered that Robert came home from the first day of this internal suspension agitated and upset. Cate was opposed to the absence of a teacher and formal lessons, but was outraged by the way the pupils were treated outside of the lesson hours.

They weren't allowed to talk, at break time they weren't allowed to go outside, at lunch time ... once they had written out so many punishment exercises, they were allowed to go and get their lunch, after they had their lunch, they had to come back down and sit down and write out more lines until the end of the lunch-break. Once lunch was over they had go back up the stair to the isolation unit again and carry on working until home-time, so they weren't getting a break.

Cate, parent of Robert aged 12

Cate argued that her son was being punished unfairly because he had a reputation as a trouble maker due to the difficulties he had without his Ritalin. She felt that his disorganization should have been understood as a symptom of his ADHD and treated leniently, with perhaps more assistance provided to help him organize his time. Cate also considered that the punishment was particularly harsh for a child with ADHD, as his focus of attention was limited, and to leave him with just text books would severely limit his engagement with the lessons. Cate argued that the lack of a Record made her position weak. She felt that a Record had not been necessary at Robert's former primary school in Fife as he had an Individualised Education Plan, a responsive teacher and the greater flexibility of a primary curriculum. However the move to a different school outside Glasgow and the transition into secondary education triggered sufficient difficulties to warrant the protections, as she saw it, of a Record. At the very least Cate believed that a Record would challenge the new local authority's questioning of her son's diagnosis and the prescription of Ritalin. Despite the lack of a Record, Cate continued to argue that the humiliation of being segregated from his friends at lunchtime and during breaks was an excessive punishment, given his infractions were minor.

Cate was determined to avoid the scenario that occurred at the primary school where she took Robert out of school, and so approached the head master for an appointment to try and attend to the matter. She made the case that the punishment seemed excessive, and that Robert was struggling with the isolation unit because it exacerbated his ADHD. The head

teacher refused to reduce the punishment, so Cate offered to take Robert home, and adhere to a temporary exclusion. Interestingly the head teacher also refused this option. An internal suspension would not contribute to performance tables, but as the school and the local authority declined to participate in this research, it is difficult to surmise why the head teacher refused Cate's compromise. The head teacher told Cate that unless Robert attended the further two days in the isolation unit then he could not return to class. Cate was told that the only alternative to Robert completing his punishment was finding another school. Cate took Robert home and contacted the Education Department, and was forwarded to an educational psychologist who informed her that an alternative school could not be considered while there was an outstanding punishment. Therefore, Robert would have to finish his two days in the isolation unit before he could return to school or move to a new school.

Cate's negotiations with the school had totalled 12 weeks during which time Robert had been effectively suspended, and had not been attending school. At this point Cate contacted the DRC for advice on how she should proceed, and was told that the first step was to get written confirmation from the Education Department regarding Robert's educational status. The Head of Education of local authority C wrote confirming that Robert was an excluded pupil, and must finish his punishment before being eligible to move school. Cate wrote back to the Department using quotes from the Children (Scotland) Act (1995), specifying that Robert was entitled to greater consideration because he had a disability. Cate researched the legislation herself to strengthen her argument as she felt without this she would not be listened to. The Education Department queried Robert's status as a disabled pupil, and so in response Cate formally requested that the assessment for a Record be initiated.

Cate received a great deal of support from the DRC about how to approach the school and Education Department, for example, how to write letters, and what content was appropriate. Her DRC caseworker advised Cate that they could make a case using the appeals procedure because Robert had excluded pupil status and helped her set up a meeting with the appropriate personnel from the Education Department, and Robert's school. This meeting was prior to the DRC's conciliation stage. The meeting was not successful, and the school remained firm in their stance that Robert remained excluded until he completed his two days in the isolation unit.

Cate then informed the school and Education Department that she was formally beginning the appeal procedure with the support of the DRC to fight Robert's exclusion. The DRC organised a conciliation meeting between Cate, the school and the local authority. The day before it was due to take place, the Education Department insisted that the appeal was invalid because Robert had not officially been excluded. Cate opposed this claim stating that for some time she had had it in writing from their office that Robert had indeed been excluded, but the Department argued that this was a misunderstanding, and reiterated that the exclusion appeal could not go ahead, they added that they had taken legal advice on the matter and would not move on this issue. Over the next 24 hours Cate copied her letter and sent it to local authority C and the school. The school's head teacher contacted her to say that the appeal could not continue until they had the go-ahead from their lawyers, and even if this claim was genuine, it was an interesting delay tactic. Cate reported feeling outraged that during this period, Robert had not attended school, and now there was another stage that the Education Department wanted to incorporate which would further disrupt Robert's access to education.

The evening of the cancelled conciliation meeting, Cate was telephoned by the head teacher, who apologised and invited her into a meeting the next day. When she arrived, she noted that the same people that had been expected to appear at the conciliation meeting were present. The head teacher apologised for the confusion and delay in reaching a resolution, and agreed that Robert should return to normal classes without completing the two days in the isolation unit. Further additional support would be provided for Robert in class. Cate concluded from this that the school and Education Department were seriously worried about the consequences of the case going beyond the conciliation organised by the DRC.

But because he hadn't been at school for like, 12 weeks, they would want him to go to the support base, which was the changed name of the isolation unit, he wouldn't have any punishments, he could go out at break times and lunch times and that but it was just to get the teachers to bring him up to speed with his maths for a week. So I agreed to that, but I saw also it was a face saving technique for the head master at the school.

Cate, parent of Robert aged 12

Although there was a period of settled attendance at school, early on in his second year, Robert began getting more temporary exclusions. Cate recalled that Robert was accused of involvement in incidents without sufficient proof. Before the situation escalated, Cate asked

for Robert to be transferred to another secondary school in the area, and her request was granted, though she was not given a choice of school due to over-subscription in all but one school. Robert enjoyed his new placement, and had worked with teachers to organise a timetable with minimal movement between classrooms. He reported that he had not experienced any discrimination in his new school. His attendance and behaviour had been well within the accepted range at the end of his first year. The case against his former secondary school was ended by Cate after the local authority's conciliation meeting. Though she feels the challenge of discrimination was not met by the school, she is satisfied that her son is in an environment that supports his learning. Although the matter is closed, Cate has never received a letter formally closing her appeal to the school.

7.2.2 Drew's Story

Drew and his family lived in rural local authority D, south of the central belt. In 1997 his pre-school teacher suspected that Drew had a learning difficulty and informed the prospective primary school. However neither the nursery, nor the school told the family of their suspicions, until Drew started to have problems concentrating mid-way through primary school. Once they had been informed that problems existed, the condition was quickly recognised as an autistic spectrum disorder because the Mother, Kathryn, also had the condition. Prior to a diagnosis, Drew had done well at primary school, his early years were very productive, and Drew won several awards. During his P4 year, Drew's teacher went on maternity leave, and the disruption of a new supply teacher was thought to have triggered challenging behaviour.

He was under the table, things were getting thrown, the teacher was getting hit.

Kathryn, parent of Drew aged 13

Drew was referred to psychological services in 2002, when he was aged 8 and in P4. He was quickly diagnosed, and the school were initially responsive to his needs. The assessment for a Record began in 2003 and was completed a year later when Drew was aged 10. However Drew began having difficulty responding appropriately to situations which upset him, becoming aggressive, and then absconding from school on several occasions. Kathryn attributed this behaviour to his disability, and asked the school to make special provision to

help avoid this behaviour (she wanted him to be able to carry his mobile phone so that he could contact her when distressed, and she could calm him down), but the school refused on the grounds that it had a blanket policy on mobile phones. In addition, there was conflict over a new behaviour policy for using the school bus, which stated that disruptive behaviour would lead to a ban.

7.2.2.1 Discrimination Reported to the DRC

Through her early discussions with the DRC - Scotland, Kathryn was able to isolate several incidences of discrimination from what she described as a pattern of unfair behaviour by the school. In trying to generate a Record of Needs for her son, Kathryn felt that his condition was not adequately described and so support solutions were not sufficiently focused. In addition, this process had taken place at a time when Drew was absconding from the school premises, because he had been upset in some way and didn't know how else to manage the situation but to leave (on an earlier occasion he had kicked a door to communicate his frustrations and this had led to a temporary exclusion). The school responded not by working with the family as Kathryn had hoped, but by reporting her to the Children's Reporter as being responsible for Drew's non-attendance at school. Kathryn believes that Drew would not have left the school if he had been able to talk with her at the point at which he got upset and so provided a mobile phone for Drew to use, only in this situation. Kathryn used the DRC - Scotland to help her ask Drew's school to allow him to use his mobile phone on school premises (only in emergencies to reduce the chance of absconding) and to be exempt from the strict transport policy.

The phone was needed to encourage his independence, to help make him feel safe, so if he's got the phone with him, then he can use it.

Kathryn, parent of Drew aged 13

The school objected to this as they had in place a ban of mobile phone use on the premises.

We all do it as adults, I phone my husband if I feel down. So why can't children, if they feel down? I mean I'm talking keeping it to playtimes. Every school should have a pay phone or they should be allowed to use their mobiles. So the school said he could keep the phone in the school office, but if he's about to explode, he can't go quietly to the school office, even if he thought of it he would probably grab the wrong one.

Kathryn, parent of Drew aged 13

You see I really thought that [taking a mobile phone into school] was a reasonable adjustment but the school resisted it and I thought, for goodness sake! It's just a small adjustment to your policy!

Caseworker with the DRC

The other main cause of complaint to the DRC was related to transport. Initially Kathryn contacted the school to request if the school bus could change its route to include a bus stop more convenient for Drew. The school said that this was not possible. Kathryn then contacted the bus company that supplied the service, and asked them to change the route, and was successful. The route change was very minor, though she claims it makes a substantial difference to Drew's safety. How the school responded to this is unclear as they declined to be involved in this research. Kathryn reported that the school then initiated a new behaviour policy for the school bus, with strict penalties for misbehaviour which started with formal warnings and would ultimately lead to exclusion from the bus service. Soon after the policy was introduced, Drew was reported by the driver for disruptive behaviour, though Kathryn argues that his behaviour was related to his disabling condition. Kathryn was sent a formal letter from the school, stating that future misbehaviour would result in Drew being excluded from using the school bus. But Kathryn feels that under the Children (Scotland) Act (1995), the Education Department must provide suitable transport to get her son to and from school because he had a recognised disability, and if the school bus is inappropriate (because his behaviour, which is related to his disabling condition is too disruptive), then a taxi service must be provided instead. Kathryn argued that as transport to school was included on his Record, the school had a duty to provide appropriate transport, and if Drew's behaviour was sufficiently disruptive to trigger a ban, then the school would have to make alternative provision.

Kathryn approached the DRC to request support for both claims of discrimination: that the school did not take reasonable measures (i.e. allow the use of a mobile phone) and discriminated on grounds relating to Drew's disability (that is, expecting him to adhere to a strict discipline policy). The case reached conciliation but again, Kathryn was bitterly disappointed with how it was managed. As she was in the third trimester of her fourth pregnancy and as Drew was about to move up to secondary school, she chose not to pursue the case further.

7.2.3 Alasdair's Story

In 1986 aged 3 months Alasdair started having seizures triggered by a virus (cytomegalovirus) caught by his Mother in the first trimester of pregnancy. The seizures worsened in severity and were as frequent as 250 grand mals seizures a day which caused brain damage. Anna maintained throughout the interviews that Consultants at Yorkhill Hospital misdiagnosed and withheld treatment. Anna was also critical of the doctors at Yorkhill and argued that they had not experimented with any medication to control the seizures. After a massive epileptic seizure aged 6 months, Alasdair lost control of the left side of his brain, becoming hemiplegic. To avoid damage to the right hemisphere, Alasdair needed an operation to surgically separate the two hemispheres of his brain, but was on the waiting list for 2 years and 4 months before Anna sought help from medical experts in her native United States.

Anna and Alasdair flew to Pennsylvania to meet American doctors in 1989. The consultant at Yorkhill apparently refused to send any Records or scans to the medical team in Philadelphia. New scans were done, but resulted in a change of diagnosis, and so the surgery was cancelled. Anna expressed disappointment at being on a waiting list at Yorkhill for an operation her son had apparently never needed. Anna and Alasdair stayed in the US for a further 9 months, separated from the rest of their family, while doctors determined a new diagnosis and treatment plan. Alasdair had a further 4 operations over the next 4 years until the seizures were finally controlled. During this period, Alasdair was able to take his first steps and also started to talk. The operations were done in the US, but between surgeries Alasdair returned to Scotland with his Mother. However when he returned to Scotland, Alasdair did not receive any of the physiotherapy, occupational therapy or speech therapy that he had accessed in the US. Anna did her best to bridge that gap, but as a result, Alasdair developed an American accent, and struggled to understand the Scottish accent. In 1992, aged 7 Anna claimed that a paediatrician based in Edinburgh used a drug on Alasdair that should not have been used with patients with a severe learning difficulty; it resulted, almost immediately with symptoms consistent with an autistic spectrum disorder – though this has not been formally diagnosed. From this period, Alasdair has been violent when upset. Despite the huge developmental achievements, Alasdair's visual ability did not improve; he has tunnel vision and has severe myopia. He became alarmed if approached from his right side.

In September 1995, Alasdair moved to a special school 15 miles from his home, which taught children with physical impairments. Anna described a pattern of discrimination against her son for the entire duration of this placement. For example, although Alasdair's visual impairment was well documented on his Record which had been in existence for almost 8 years, it was only through a chance meeting that Anna learned that her son should be registered blind. Anna had no idea why the medical staff that originally diagnosed his visual impairment or the school did not inform her of this.

In September 2002, Anna was informed that Alasdair could not make a case under the DDA Part 4 because his learning difficulty was deemed too severe to achieve the level of competence required by the Court. As he was over 16, Anna needed to establish legal guardianship in order to make the case of discrimination on his behalf. At this time, Alasdair left the family home and moved into his own flat. Between September 2002 and August 2003 Anna fought for legal guardianship of Alasdair so that she could bring a case of discrimination on his behalf under the DDA Part 4. Because she could not use the DDA during this period (because she didn't have guardianship), Anna brought a private case to the Sheriff Court. Legal guardianship of Alasdair was awarded to his Mother **and** a solicitor appointed by Glasgow City Council Education Department, for the duration of the private Sheriff Court case. In July 2003 Anna and Alasdair lost their private case but Anna did become the sole legal guardian of her son. This allowed her to pursue a case using the DDA.

7.2.3.1 Discrimination Reported to the DRC

Anna's complaints against the school were many and varied and clearly covered a significant period prior to the legislation becoming active. Anna complained that the school spent time teaching her son Makaton, despite the fact that he was registered blind, and had excellent hearing, so not only did he not need Makaton, but he could not have used it anyway. A similar complaint was levelled at the school's Physiotherapy Department who allegedly had involved Alasdair in weightlifting sessions despite this being harmful to him because of his condition. When a physiotherapist from outside the school challenged this, according to Anna, the Head Teacher apparently refused to exempt Alasdair from the sessions.

The spasticity clinic couldn't understand why the boy was so tight, and they put him on the maximum dose of muscle relaxant. Three months later I got his report card saying he was doing weightlifting and I thought what? And the teacher said, 'well I did complain and they said it was fine, didn't they tell you?'

Anna, parent of Alasdair aged 19

Anna also complained that Alasdair was not being referred to various sources of support and training run through his school, and offered to other students. For example, because of his visual impairment, Anna argued that Alasdair should have been given mobility training to help him navigate his environment. Anna argued that she only found out that this training was available at the school after Alasdair had been registered blind (though he was already eligible for this because of his Record) and learned through a visit from the RNIB. Anna then contacted the school to find out how Alasdair could access the training, but could not find out. She then approached the parent network, discovered who the mobility officer was and contacted them directly. The mobility officer reported that the school had told her that Alasdair was not to get mobility training at home or at school and that his family should not be contacted. Anna viewed this as a clear case of discrimination, but had struggled to understand why the school would withhold training that would increase Alasdair's safety and confidence in his environment. The withholding of training has been interpreted by Anna as victimisation.

Anna also made claims that the school had actively tried to trigger a violent outburst from Alasdair by humiliating him in front of his peers.

And they would do everything, they would yell in his ear! They would grab him! You know they sent him home everyday with food on his face; they would not clean his face. They actually delighted in him looking a fool.

Anna, parent of Alasdair aged 19

Specifically, Anna reported that Alasdair had to sit on a chair designed to suit a child of primary school age, while his fellow pupils all had normal sized chairs; she recounted an episode of the Depute Head allegedly making fun of his drooling while eating which is a symptom of his hemiplegia. Anna also was particularly upset by an episode which occurred during a outing to a shopping centre in Glasgow and this specifically became the complaint pursued via the DRC. Alasdair became violent after he had tripped over a display in a store. Anna argued that school staff should have recognized that the display was a hazard, and that

Alasdair should never have been asked to navigate his way around it. Therefore she held the school staff responsible for Alasdair's shock at his fall, and his aggressive response. Initially the school responded by banning Alasdair from future trips to the shopping centre and the matter was seemingly dealt with. However the punishment was revised, and Alasdair was banned from representing the school in the upcoming swimming meet, where he had won gold medals every year he had competed. Anna claims that the punishment should not have been revised, as this confused her son, in addition the second punishment was perceived as a personal attack designed to hurt Alasdair in a way that was inappropriate.

Anna had been in almost daily contact with the school during the latter years of her son's placement to highlight incidents where she felt her son had been discriminated against. Additionally she had made complaints to the local authority and made a private case in the Sheriff Court. As the DDA Part 4 allowed for cases to be made in retrospect, Anna was able to approach the DRC - Scotland with a claim of discrimination. The school responded to all the letters sent to them by the DRC but argued that they had not discriminated against any pupil. The DRC caseworker organised conciliation, and put Anna in touch with a disability advisor to help her prepare an agenda for the conciliation. Alasdair was not involved with this process, nor did he attend the conciliation meeting. Anna was optimistic about the meeting, she hoped that her version of events would be heard and expected to leave the meeting with a verdict about whether discrimination had occurred. Anna was incorrect to expect a verdict, rather conciliation is designed to foster communication and to arrive at a consensus about future provision.

Some cases went straight to conciliation because the legal processes would not have helped people get what they wanted. Because if people want an apology, then a court, you know ... that is not the place to get that. The Sheriff is ... their business is not about getting apologies. Perhaps people wanted that from conciliation, wanted more confrontation and formality.

Caseworker from the DRC

It may not be surprising then that Anna was disappointed: she felt that the conciliator gave little credence to her arguments and the agenda was not discussed in full. The conciliation meeting coincided with Alasdair moving to a college placement which had started successfully

so Anna chose not to pursue the discrimination claim any further, however she was evidently still emotionally involved with her experience.

7.2.3.2 Head Teacher's Account

The interview with the head teacher directly challenged the information generated by the in-depth interviews with Anna and Alasdair. Some issues were agreed with, for example the head teacher agreed that Anna was in touch with the school on a daily basis making further claims of discrimination and also that Anna was an empowered person who had the confidence to pursue a claim using any legal route available.

The head teacher was adamant that Alasdair had not been discriminated against,

What I was particularly concerned about in that background was that the week after the meeting with the DDA, we were actually taking the boy away on a residential trip, so at no time was it ... your son won't get included ... the boy was fully included in every activity in this school.

Head teacher of school in local authority B

The head teacher reported feeling confident that reasonable measures had been taken on multiple occasions to maintain Alasdair's placement with the school. She was able to offer multiple examples of this, and also argued that as all children and young people at the school had a disability, school policies were already written in favourable and supportive terms. The head teacher challenged Anna's claims that Alasdair was discriminated against,

Everything was based on the fact that we didn't understand Alasdair's disability. We actually had someone from the Adolescent Psychiatric Team for pupils with learning disabilities; we had someone from there doing a whole staff training session on Alasdair's needs. We had management plans on his needs, but the whole thing [parents position] was based on, if Alasdair hit somebody, it was because he was disabled.

Head teacher of school in local authority B

It seems evident that the school did try to accommodate Alasdair's needs and made additional provision in order to satisfy the DDA duty to be reasonable. Yet the school had a bottom line of discipline which prevented the head teacher from being fully flexible.

Things would range from a 'reminder of strategies' to a detention, to missing another trip because ... and then to exclusion. But we have a standard menu, like any school, these weren't just applicable to Alasdair; they were applicable to every child in the school.

Head teacher of school in local authority B

In addition to pressure from the rule book to treat Alasdair according to a prescribed structure of discipline, teachers and other pupils put pressure on the head teacher to take a tougher stance.

The exclusion is not just about punishment ... to use that word ... for a boy, it's about ... I have a greater responsibility to the well-being of the school community, and the school needed a rest. Pupils were coming to me telling me that they were afraid ... [teaching staff] were saying why aren't you getting that boy out of the school?

Head teacher of school in local authority B

Contact with the school indicates the variation in accounts. Despite apparent proof that Alasdair was fairly accommodated in the school, his Mother remained convinced that he was treated less favourably than other pupils for a reason relating to his disability.

7.3 Record of Needs and Support Provision in School

This next section of the Chapter examines the experience each child had of school generally. In particular the value of a Record or an Individualised Education Plan (IEP) is considered. Some ill-feeling toward the co-ordinated support plans (CSP) initiated by the Education (Additional Support for Learning) (Scotland) Act (2004) was detected, and is also reported here. Some parents thought that a Record was necessary to access inclusive education and others were frustrated with the provision made available despite having a Record.

Meeting children's assessed needs – especially support and curriculum access is not done. There are too few staff and the area education office is VERY reluctant to open Record of Needs. Poor staff development regarding SEN. There are transport problems to and from school. Poor and very late future planning. No specialised dyslexia support. No notes provided for dyslexics. Little computer support for dyslexics. Little awareness of DDA in teachers and school board. Area Education Department refuses to open Records of Needs because they know they don't have the resources (staff and equipment) to meet the needs. I've been a teacher for 20 years and still children with significant needs aren't getting the help they need and often aren't even diagnosed

properly till after school. Most by that time have switched off school or into drugs and heading for prison.

Parent or carer 6, Highland

The most frequent misconception about the DDA reported to the DRC caseworkers was related to auxiliary aids and services. Most parents who consulted the DRC wanted help in this area but were told that help was not available under the DDA Part 4.

I think because auxiliary aids and services weren't covered under the schools cases, we were unable to support parents in a critical area. Because the provision of classroom assistants ... I mean, so much hinges on that.

Caseworker with the DRC

Therefore the DDA did not help parents challenge the most commonly reported source of discrimination. This indicates tension and confusion between the remit of the DDA Part 4 and legislation associated with the SEN framework.

It took Drew three attempts to get a Record even though he had been diagnosed by a medical practitioner as having Asperger's Syndrome. Drew attended a mainstream school, and had a learning support assistant in class as a result of the provision outlined in his Record, but there was no set rule as to when the help would be provided highlighting a bureaucratic barrier to accessing agreed provision. Generally it focused on subjects that required a practical response from Drew, for example, home economics:

He doesn't have his own assistant, but we are going to be looking at that, because they keep changing his assistants, and it doesn't give him any routine, and he's not very organized going into classes. The classes are, I think, 45 minutes long, and if he takes 15 minutes to get organized at the beginning and at the end, then he only does 15 minutes work.

Kathryn, parent of Drew aged 13

Clearly then continuity over assistants and the classes they attended were essential for Drew to achieve any continuity of learning. Continuity (of classrooms, of teachers and of learning support assistants) minimised the disruptive effects of Drew's condition. During the normal term-time, there was little demand from other pupils for learning support, and Drew managed to access adequate support, but during exam time, much more demand was placed on the

learning support team, and Drew often lost out. His Record had led to funding for a Dictaphone, which Drew took to school with him, but Kathryn felt that he needed to be actively encouraged to use it at each lesson. Further, the Dictaphone was not an adequate substitute for a learning advisor, as his main problem was not concentration, but organization. Despite Drew's Record outlining provision that should have provided the continuity of support he needed to learn, in practice, provision was disjointed and inconsistent.

One of the main concerns highlighted by Kathryn's claim to the DRC - Scotland, was Drew's tendency to abscond when he felt that he could not cope with a situation at school that upset him. His absconding had led to temporary exclusions from the school, which upset his Mother as she perceived the absconding to be related to his disabling condition. She therefore requested that his IEP address the issue, and that the school develop a policy of how to respond to Drew absconding, so that he was not unfairly treated. However the IEP was not re-written. Though she asked, Kathryn had no evidence that a policy was developed to deal with Drew's absconding. She therefore concluded that the IEP was not useful and did not contain enough information. Though Kathryn saw no written evidence that a policy was developed to deal with Drew's absconding, she believed that strategies were put in place, for example, Drew reported being unable to leave the classroom even if he needed a toilet break:

At the primary school they would keep him in, even if he was needing the toilet, and he ended up running out of the class because he was in physical pain, and he couldn't control it.

Kathryn, parent of Drew aged 13.

The caseworker with the DRC generated another example of schools resisting changes to their policies in order to accommodate additional needs relating to a pupil's disability.

It's like the school that insisted on all children wearing nylon trousers. And this child had severe eczema and wanted to wear the cotton version but they wouldn't allow that.

Caseworker with the DRC

In fact this case was settled quickly after the DRC wrote to the school outlining their duty to be reasonable. These examples illustrated the reluctance of some schools to think more creatively about how policies could be re-structured in recognition that some children were

particularly affected, or disabled by existing structures. This could be interpreted as an over-investment in the professionally created structures, and resistance to consumerist challenges to these structures.

Drew's Record stated that he should get access to transport to and from school. Kathryn used her own section of the Record to put in writing that under the Education (Scotland) Act (1980, as amended) Drew must be provided with transport should the school bus become unsuitable. Kathryn envisaged a gap arising between the Record's provision of suitable transport and the school service supplied which was subject to stringent discipline rules and she intended to pursue this if he was expelled from using the school bus because of inappropriate behaviour. This is an example of a provision agreed in principle that through translation into practice had resulted in unsuitable support. Even after going through the Record assessment procedure and agreeing additional provision, some parents felt that the support provided at school generally had not improved.

No one has ever contacted us to see if everything has been put in place for Drew. There was a big list of equipment and he doesn't have it all.

Kathryn, parent of Drew aged 13

In this case, it seemed that the Record had been administered to some extent but not as fully as expected. In another case, Anna claimed that her son's Record had been ignored. Anna considered her son's Record to accurately describe his condition and abilities as it precisely reported his visual impairment and the severity of his learning difficulty. Yet Anna believed that the school did not recognise the impairments as listed.

And these women ... and the worse ever ... the most insulting ... they refused to believe he was blind, even though he was registered blind and he ended up his last year of school, they assured me that there was no learning difficulty at all. And they said it was because he used big words, I pointed out that he uses words that he hears from his family, we come from a very academic background – he hears long words.

Anna, parent of Alasdair aged 19

Parents have never been able to appeal against the outline of diagnosis entered into the Record, thus were never able to challenge the expert professional on this issue. Anna argued

that problems arose with teachers at his special school because they did not get access to the Record:

I came to the conclusion that they could not have read any of the reports written about Alasdair and it turned out that he had a one-to-one teacher for 9 years who was wonderful and she told me that at the primary school she had read his Record of needs and when she got to the secondary school they kept them locked up so not one teacher had read the Record of needs.

Anna, parent of Alasdair aged 19

The head teacher corroborated the fact that Record was kept securely and thus indicated her legal responsibility to protect the confidential information contained within the Record. She was adamant, however, that all relevant information from the Record was available to all staff via Alasdair's personal profile. The profile had been reviewed every six months since being opened eight years ago and all staff in contact with Alasdair were encouraged to contribute. Thus the head teacher reported that the pertinent information Recorded on the Record was fully available, yet Alasdair's Mother continued to insist that the Record itself should be available. This parent's response to the issue may also reveal a misunderstanding of the function of a Record, which is a legal document that should feature just enough information to support a case for additional educational support or equipment. Anna's position may be interpreted as inflexible, and the head teacher reported feeling frustrated at similar demands made by Anna which were not fully informed or reasonable.

The assessment for a Record was only initiated for Robert after his secondary school refused to acknowledge his status as a disabled student, despite a medical diagnosis of ADHD. This issue had generated a claim to the DRC involving another young person.

One case, a local authority did not accept a diagnosis made by another local authority and there were delays in finding an appropriate placement while their own medical paediatrician assessed the child. They would only accept the word of *their* professional. [Emphasis implied by the expression of the respondent]

Caseworker with the DRC

This suggests either that expert professionals (employed by other authorities) are considered fallible by local authorities or that this can be used as a delay tactic to withhold services and

provision for as long as possible. In Robert's previous school in local authority A, the support provided was adequate to attend to his additional needs.

He had a diagnosis but the reason I hadn't gone for a Record of Needs, was because when we were in [local authority A], the way they dealt with Robert was totally different, it was like all the agencies came together and they decided what the best thing would be, and how he should progress, so it was informal but it was a plan.

Cate, parent of Robert aged 12

In Cate's opinion the move to local authority C triggered the need to access a Record.

The only reason I did apply [for a Record] was the way the people were treating him; the way they viewed ADHD and the way they kind of ... made their own assumptions. I felt that he needed that to protect him.

Cate, parent of Robert aged 12

The idea of a Record being used as a gateway to services was echoed in the parents' survey. Three parents or carers described their struggle with their local authority to provide learning support, even after it had been specified on the child's Record.

We were advised by the head teacher that if the Record of Needs assessment recommended one-to-one support, then they couldn't provide it. We had to lobby the Scottish Executive.

Parent or carer 29, Glasgow

This issue was echoed by several parents or carers responding to the survey. Although provision was agreed on the Record, schools did not have the resources to supply the provision. This was a pertinent point at the time of the survey, as it had been announced that Records would be phased out and replaced with the Co-ordinated Support Plan (CSP). The ASL Bill indicated the move to use of CSPs would reduce the number of children or young people eligible. Thus those with a Record receiving incomplete provision (in terms of what was agreed on the Record) may end up with no legally agreed provision.

When kids start losing their Record, I guess a lot of parents will get a rude awakening.

Parent or carer 20, Aberdeen

Provision agreed on the Record was funded by local authority budgets. If a child's provision was no longer protected by their Record and they were not eligible for a CSP, any additional support they needed would be paid for from school budgets, and this would severely impact on the provision available for children with a recognised SEN or disability. This framework was well in place before the DDA Part 4 was created in 2001. According to the data collected for this thesis, the DDA Part 4 had not impacted on the SEN framework by increasing access to the additional support required by pupils, even if this was stated on their Record. This is not surprising as Part 4 was not designed to overlap the provision available under the SEN/Records framework, yet it confirms that critical aspects of a pupil's access to education were outside the remit of the DDA altogether.

Records and CSPs can continue in place until the child is 18, or leaves full time education if earlier. Although her son was only 13, Kathryn was concerned that the local authority was making no provision for his transition from child services to adult services. This was partly based on her own experiences as an adult with Asperger's, and also on the patchy provision offered to Drew as a child. She was particularly concerned because she was aware that there were few autistic specific adult services, because such a small number of adults had been diagnosed. However, there was a huge comparative increase in the number of school children who had been diagnosed, and who required support and she predicted that they were going to flood adult services over the next five years.

There is a very poor link between child and adult services. No help moving from education into further education because the Education Department don't have jurisdiction of the colleges and universities.

Kathryn, parent of Drew aged 13

The third in-depth interview revealed further issues around transition. One parent considered that as her son moved from child to adult services, she would have to take it upon herself to research potential service provision for him. However she found local authority B unhelpful.

[Local authority B] are so proud of themselves. I wrote to leisure and I said I have a 19 year old disabled son and they replied straight away with information for pre-school! There are lots of things out there, but it stops when you get 16.

Anna, parent of Alasdair aged 19

Transition and the apparent lack of communication between children's and adult services was also a concern for parents who responded to the survey. Parents contributing to the survey and the in-depth interviews made bleak predictions about provision available once the protection provided by Records ended. This also demonstrated expectancy as reported by parents that their role as guardian would continue into their child's adulthood. This implied that young people would continue to be framed in a dependent role.

In summary, each child or young person represented by an in-depth interview considered accessibility to education to be supported by a Record. The value of the Record was two-fold. Firstly it framed the child as having a SEN or disability which protected them from being labelled as disaffected or constructed as 'little devils' (Valentine 1996; Hold 2003). Secondly the Record outlined the provision that should be made available to ensure that the school environment was inclusive. One parent contributing to the in-depth interviews sought a Record only when her child's placement broke down suggesting that inclusion can be achieved without this legal document. This was clearly seen as a valuable commodity by parents, although most were dissatisfied with the provision provided in practice as being only a proportion of that agreed on the Record. The shift to using CSPs as heralded by the ASL Act (2004) may further reduce provision for children and young people with a SEN or disability but who do not meet the multiple-services criteria of the Act. Although the terms of the Record and auxiliary aids were not covered by the DDA Part 4, it was a common misconception that they were. This demonstrated confusion between the protection afforded by the DDA and the SEN framework.

7.4 Conclusion

This Chapter has provided the families' perspective of the key episodes contributing to their claim of discrimination. What emerged is an emotional and involved sequence of events. Indeed it took multiple interviews to organise the events into chronological order.

All three in-depth interviews reported a string of experiences which they described as being discriminatory. This further supports the conclusions drawn from the analysis presented in Chapter 6. In particular, the weak terms of the DDA prevented parents from using it to

challenge cases of discrimination that emerged from poor provision in Scottish schools. The omission of auxiliary aids and services undermined parents' and pupils' rights.

Many parents (responding to the surveys and in-depth interviews) were dissatisfied that provision outlined on the Record was not supplied in practice. Many of these parents had tried to challenge the provision outlined in their child's Record using the DDA, but had been told that this was outside Part 4's jurisdiction. Clearly then, parents felt that the discrimination their child experienced and barriers to learning were left unchallenged because the powers of the DDA Part 4 were too limited. As the Additional Support for Learning Act (2004) had proposed further restrictions to the provision of additional services, some parents were not optimistic about the future educational opportunities available to their children.

This perhaps illustrates that parents viewed Records as offering legal protection. In other words, Records guaranteed a level of additional provision and a level of acceptance (of particular relevance in Robert's case). A tension existed between this interpretation of Records and that of schools (responding to the survey) and head teacher (interviews) who viewed Records as a basis of need and additional provision rather than a guarantee of it. The educational perspective provided by the survey and interviews indicated that Records in no way framed pupils as blameless. Therefore Records were not considered by schools to offer protection. The DDA Part 4 was unable to dissipate this tension because it lay outside its remit, yet evidently it remained to challenge relationships between schools and parents.

Further the fourth conclusion generated by Chapter 6 is also supported by the biographical accounts presented here. The DDA Part 4 had minimal impact on Scottish schools because the complaints procedures were prohibitive. In Chapter 6 the consequence of possibly ending up the Sherriff Court discouraged most parents, and in this Chapter it has been shown that all those involved in claim (parents and head teacher) found the process exhausting, stressful and emotionally draining. This issue will be explored further in Chapter 8.

Chapter 8 will build on the biographical information presented here. It will offer an analysis of the qualitative data produced during the in-depth interviews and by the surveys to

parents or carers, schools and local authorities. The next Chapter will also relate the analysis of the in-depth interviews to the intentions of the DDA Part 4 and explore to what extent the Act has been used as an effective tool against discrimination. The decision to stop pursuing the case of discrimination coincided in all three cases with the young person's transition (from primary to secondary; from secondary to an alternative secondary placement; and from secondary to college) and this will be explored further in Chapter 8. The nature of the conciliation service will also be re-examined to explore how this step, introduced by Part 4 of the DDA to avoid the stress of a Court appearance, could leave parents feeling let-down and dejected. It seems from the basic overview presented in this Chapter that conciliation is acting as a barrier to social justice rather than the intended facilitator.

8 Chapter 8 – Analysis of In-depth Interviews

8.1 Introduction

This Chapter is informed by the qualitative data generated by this research. This includes short answer responses to the surveys to schools, local authorities and parents or carers, and interviews with parents, young people, DRC caseworker and head teacher.

Whereas Chapter 7 provided a biographical account of the families involved in a claim of discrimination, this Chapter presents an analysis of all the qualitative data collected. This analysis considers whether the DDA Part 4 was an effective means of ending discrimination and enhancing the life chances of disabled pupils. The analysis also examines how the legislation has been used in practice, and will consider in what ways it could be modified to be a more effective anti-discrimination tool and facilitate greater promotion of equality for disabled pupils.

As outlined in the previous Chapters, the in-depth interviews were generated using the Disability Rights Commission (DRC) – Scotland's case records, and involved families who had reported a claim of discrimination under the DDA Part 4. These families were recruited with the help of the DRC and met the following criteria: had been referred to the DRC - Scotland office and assigned a caseworker; each child or young person who was the focus of the claim of discrimination had been assessed as having a disability to the satisfaction of the DRC (had cases gone to Court, the disability may have been disputed); the casework team at the DRC - Scotland would have assessed the claim as being one of discrimination due to the disabling condition of the child (again this may have been disputed by a Court); and the casework relating to the alleged discrimination would have been resolved at the time of interview. Thus twelve families were eligible, and three contributed to the in-depth interviews. A full account of the recruitment procedure can be found in Chapter 5.

In the first section of the Chapter, attention will focus on the DDA Part 4 itself to explore how it had been used in practice, and whether it had been an effective means of challenging discrimination. This begins with an analysis of how parents have defined

discrimination. The discussion then moves to the extent to which parents were satisfied with the contact they had with the Disability Rights Commission (DRC), and the outcome of their claim of discrimination. In particular the focus falls on the conciliation process. One parent used local authority C's conciliation process as the authority insisted on this before using the DRC's version, and the other two parents involved in the in-depth interviews and one school head teacher from local authority B reflected on their experience of the DRC's conciliation service. In all cases conciliation was a negative experience and contributed to the parents' withdrawal from pursuing the claim further. The experience of using conciliation will be critically assessed to explore where barriers to participation existed, and how the service could improve.

The second section of this Chapter examines the theme of inclusion. Inclusion was promoted by the DDA Part 4 and this section explores whether it has influenced Scottish schools to be more inclusive. There was substantial support for special schools within the parent survey. The choice to attend a particular school with an emphasis on attending mainstream versus a special school is considered, alongside barriers to finding inclusive education in a particular placement. Many parents who responded to the survey and those interviewed equated inclusive practice with well-trained teachers who were aware of impairment effects and how to facilitate learning. Not surprisingly then the lack of training on disability issues, the DDA and on facilitating learning for certain impairment groups was considered problematic by parents and a barrier to inclusion.

Exclusion from school was experienced by all three children or young people involved in the in-depth interviews, and self-exclusions, temporary exclusions and permanent exclusions are considered in the next part of the Chapter. Such exclusions undoubtedly would impact on the life chances of each child. Examples of self-exclusions appeared in the short-answer responses from the surveys, and several examples of schools requesting that children be absent (for a reason relating to their disability, and usually related to the lack of auxiliary staff) during particular school events were generated. These issues are central to this thesis as they revolve around the notion of blame. As discussed in the literature Chapters (2, 3 and 4), the diagnostic criteria of Social Emotional and Behavioural Difficulties (SEBD), Attention Deficit Hyperactivity Disorder (ADHD) and Autistic Spectrum Disorders (ASD) are disputed

and this is reflected in the variation of approach between different local authorities in Scotland (Thomson et al 1995). The line between such a diagnosis and the idea of a child or young person being disaffected is critical as a diagnosis should lead to protection under the DDA Part 4. The in-depth interviews were analysed to explore where this line might be located.

The experience of empowerment provided the final major theme that will be investigated in this Chapter. This emerged from the analysis of surveys as many parents or carers stated that they would not pursue a case of discrimination as far as the Sherriff Court. Their sense of empowerment (of survey and interview respondents) and how this related to capacity to make a case under Part 4 is examined to investigate if some parents had qualities that particularly equipped them to challenge the educational provision offered by their child's school. The support networks (family and professionals) exploited by parents to help them make a claim will be examined. Related to this theme, is the emotional cost of making a claim. The in-depth interviews tended to 'blame' one or two particular teachers and frame them as obstructive. Analysis of the data revealed that the anger directed at teachers is more likely to indicate frustration with the 'system'. Therefore teachers were caught between policy and the demands of parents. This tension caused stress and heightened emotion on both sides of the conflict.

A wealth of information was generated by the surveys and the in-depth interviews, and both inform this Chapter. As stated in Chapter 7, and argued in Chapter 5 the data that emerged represents the legitimate views of the participants. At times the interviews contradict those given by other people, but this allows an examination of the conflict inherent in the claims process. For this reason, caution must be taken when attempting to draw any generalisations from these in-depth interviews. Yet I maintain that the analysis is a valid interpretation of events and indicates the emotional cost of making a claim under the DDA Part 4. As well as responses to the parents', schools' and local authority's surveys, three families, a head teacher from local authority B and a caseworker from the DRC contributed to the debates presented here.

8.2 The Terms of the DDA Part 4 and its Definition of Discrimination

The first section of this Chapter will examine parents understanding of, and engagement with the DDA Part 4. I will begin by assessing how the interviewed parents defined discrimination and how this relates to the definition presented by Part 4. The section will continue with an exploration of how well the legislation helped parents challenge the discriminatory practice of schools. As this section focuses on the experience of making a claim under Part 4, it necessarily refers heavily to data generated by the in-depth interviews. Some parents or carers responding to the survey also commented on these issues and so this data is presented here too.

To establish that the parents involved in the in-depth interviews understood the terms of the DDA Part 4, they were asked to define discrimination during their preliminary interview. As discussed in Chapter 4, the DDA Part 4 places a duty on schools not to treat disabled pupils less favourably and to take reasonable steps to avoid putting disabled pupils at a substantial disadvantage (DRC, 2002a). Failure to meet either duty would constitute discrimination. The parents defined discrimination as unequal or unfair treatment relating to a child's disability.

If you discriminate against someone, then you treat them unfairly, you are not treating them typically. The way I look at it is, whether someone is able bodied or disabled, whether they are black, white, Chinese or Asian, it's the human race. It doesn't matter whether you can communicate. At the end of the day it doesn't matter what people are, no one has the right.

Kathryn, parent of Drew aged 13

Not only does this definition tie in with the DDA Part 4, but it also links into thinking about human rights, as it reinforces the notion of equal status, the right to freedoms and the right to be free of oppression. In fact one parent only became aware of the DRC and the DDA after consulting a website about human rights. Two parents related disability discrimination to race and gender discrimination, therefore framing their understanding of discrimination in recognition that some people can be disadvantaged or oppressed because of their membership of a minority group.

The DDA Part 4 used terms such as ‘fair’ and ‘reasonable’ and the DRC caseworker suggested that this encouraged parents to over-broaden the definition of discrimination.

Some people wouldn’t accept where our remit boundaries were or the limitations we had. Because we were the DRC they felt that we should be able to help with any aspect of their children’s rights ... they might have been treated unfairly, but we had to say, ‘this is not about fairness’ ... they wanted someone to say ‘this is wrong’ ... but we need the evidence and it has to relate to the law.

Caseworker with the DRC

Therefore, those involved in the in-depth interviews did seem to have a sound understanding of discrimination, but not perhaps specific knowledge about the restrictions imposed by the DDA’s definition. The DRC - Scotland independently agreed that their claim was substantial enough to pursue, but this did not necessarily signify that discrimination had occurred. Much of what parents told the DRC would not have resulted in a claim,

You might be able to pull out something from the whole massive story and say ‘this relates to our role at the DRC with the DDA. The other things, I’m sorry, but we can’t help you’.

Caseworker with the DRC

The decision by the DRC to support a claim of discrimination had no legal basis and was restricted to the parents’ account of events. Nevertheless, the parents believed and were supported in the belief that their child had been subjected to unfair treatment for a reason relating to their disability.

The DDA Part 4 gave children and parents different rights than they had previously enjoyed (if they were covered) under the SEN framework, because it introduced the concept that treating pupils who had a disability less favourably was discrimination. By arguing that disabled pupils should not be discriminated against, the DDA Part 4 adopted the human rights agenda to protect disabled pupils against exclusion from opportunities in education (see Chapter 4 for a full discussion of this point). If discrimination could be proven and a case was successfully made to the Sheriff Court (in Scotland), then case law would exist. In practice this should have reinforced the rights of disabled children to an equal and inclusive education in Scottish schools.

As well as an individual having to prove they were disabled before they were protected by the DDA, they also had to demonstrate that the discrimination they experienced was related to their disability, and was unfair. In Alasdair's case, the school were asked to respond in writing to the claim of discrimination. If the head teacher at this point had argued that Alasdair had not been treated unfairly, and that any pupil who had behaved in the same way would be punished in the same way, the school's disciplinary measures would have been lawful. However, the letter from the school did not make this argument, and this gave Anna the right to make a claim of discrimination under the DDA.

It was a very chancy thing, which shows you about the disability rights problem. It depended on how she answered the letter. Now if she answered the letter as 'all the children would have received that treatment' then it couldn't be ... that wouldn't be discrimination, right? So if she had said something different ... the act didn't change, the nasty thing was the same ... but the response ... what she would have legally written down, why she did it, made the difference. It turned it into something that you could use. Now that can't be right.

Anna, parent of Alasdair aged 19

Cate echoed this argument demonstrating detailed awareness of the DDA and its limitations. This point was also upheld in part 2 employment law (see Chapter 4, *Rose v. Bouchet*): if reasonable measures were attempted, then the Court was likely to uphold them as reasonable even if the disabled person felt that they were inadequate, or even if the reasonable measures were ill-informed.

This may be at the root of the uncertainty shown by the parents interviewed about which incident was singled out for their claim under the DDA Part 4. All three in-depth interviews generated multiple examples of alleged discrimination, but many incidents would not be supported by the DDA Part 4, because the school could too easily argue that their behaviour would be applied to all pupils. In addition there is continued debate about conditions like ADHD, ASD and SEBD and to what extent they trigger disruptive behaviour. It is not surprising that schools did not know when to discipline, and when to provide additional support, assuming that they had the budget to do the latter.

The DDA Part 4 is complex. One parent interviewed considered that most parents would find it difficult to understand the terms of the legislation. Indeed only 9.5% of parents

or carers (data from 2004 survey, see Table 6.1, Chapter 6) reported having a good understanding of the changes Part 4 had made to the DDA. The process of responding to the survey enlightened some parents and carers to the issue of discrimination in Scottish schools and the DDA Part 4. Indeed several schools and local authorities reflected on this issue too.

There is little awareness of the DDA. There is a need for all schools to be made aware of the Act.

School 13, Aberdeen

This [DDA Part 4] is a new area. There have been no known tests of Part 4 in Scotland. We will want to learn from these experiences as they unfold. The tension between the DDA and disability education is not fully understood – even by experienced lawyers.

Local authority 6

Even if the terms of the DDA are understood, the process of making a claim requires the confidence to argue points of law, as the next quote demonstrates:

For parents, and this will sound arrogant, the majority don't have the intellect to go online and look at legislation and interpret it, and what that is in relation to their child, and the incident that has taken place. Generally I can do that. My problem is not interpreting, my problem is not being able to quote, sometimes because of low confidence, I'm not sure whether I am correct or not.

Kathryn, parent of Drew aged 13

I knew they were wrong, but to fight people in education you need to have something to fight them with. So I got on the internet.

Cate, parent of Robert aged 12

The parents involved in the in-depth interviews made a challenge using the DDA Part 4 on their child's behalf. No child or young person represented by an in-depth interview was actively involved in the process of making a claim. As the child did not have to be involved in the case of discrimination, the parents interviewed seemed to isolate the fight from their families. For example, the interview with Robert was fairly brief as he could not recall which incident of discrimination formed the basis of his case, nor could he discuss any case of discrimination in particular, though he was clear that he had felt unfairly treated. His mother reported that she just 'gets on with it' and rarely discussed the case with him. The parents seemed to be motivated by the idea of achieving social justice using the DDA Part 4 for their child rather than with their child. This notion runs counter to that of the DRC who had

developed best practice to support children and young people, using the Children (Scotland) Act 1995 to guide the way.

From the age of 12 you are assumed to have the capacity to deal with your own case. Our practice contrasted with the DRC in Manchester and London ... the autonomy of the Scottish team allowed this and we got training in working with children in legal settings ... we tried to speak to children as soon as we possibly could. The parents weren't up for that. I suppose they weren't expecting that to be required, but we pushed for that ... I did speak to children because we had to be accessible. But you also had to speak to the parent. It was impossible to disassociate them from the process ... sometimes the parent doesn't see the point, they say 'oh the child won't be able to' so they then don't get the opportunity, but children were able to express themselves and could describe the incident well.

Caseworker with the DRC

This raises a couple of interesting issues. The caseworkers employed by the DRC - Scotland had for the first 12 months of practice been managed by the legal team in Manchester. Thus the quote from the caseworker was not offering an interpretation but reflecting on English practice. The Scottish DRC were influenced by the terms of the Children (Scotland) Act 1995 and their response represented compliance with their legal duties under this legislation. However similar duties had been imposed on English and Welsh public bodies due to the Children Act 1989 and so this cannot account for the difference between English and Scottish practice. The difference lies in the way the legislation was interpreted. The DRC – Scotland took advantage of having their own legal team (existing after the first year and shifting management of the casework team to Scottish control) to emphasise a participatory ethos. The DRC – Scotland casework team were informed by legislation and by research (for example Alderson 1993) that demonstrated that children and young people have the capacity to be involved in and contribute to resolving complex issues. In practice the DRC – Scotland encouraged children and young people to participate in their claims, recognising their agency to a greater extent than the DRC in England.

The DDA was set up in a way that its jurisdiction would be clarified by case law. The lack of case law under Part 4 (particularly in Scotland) may have led to the principles of inclusion being undermined by those interpreting the legislation. Kathryn felt that her local authority had not engaged with the DDA, and were prepared to meet only the minimum

requirements. For example, she believed that local authority D had done little to improve their understanding of the support needs of disabled pupils.

If you have someone in charge of special educational needs, then first and foremost it should be someone who understands the issues, what is discriminatory? Have they worked with the disabled? Unless you have that then you are not qualified to deal with quality development in special educational needs.

Kathryn, parent of Drew aged 13

The DDA Part 4 was not easily used by claimants. The ambiguities in the Act, including who is covered and what is reasonable may have prevented some parents from pursuing a claim. This was corroborated by a DRC caseworker. In addition, some parents were suspicious that their local authority had only met their minimum duties under the DDA rather than take the opportunity to create more inclusive provision in their region. The lack of case law had perhaps limited the implementation of the Act as local authorities had not had sufficient guidance about how the DDA Part 4 should have been interpreted.

8.3 *Satisfaction with Support from the DRC*

The focus will now turn to the DRC – Scotland and how well they facilitated the challenges made by parents. The DRC was set up in response to the Disability Rights Commission Act (1999) to regulate and promote the DDA. The DRC - Scotland had a full time caseworker in post throughout the field work in charge of Part 4 education cases. Parents' responses to the process of using the DRC to make their claim will be explored here. In particular this section of the Chapter will focus on conciliation, a form of mediation initiated by the DRC to resolve cases and avoid, if possible, a Court case. Conciliation was not well understood by those who used it. The head teacher and parents involved in conciliation found the process stressful and were unsatisfied by the results.

The parents interviewed were satisfied with the support they received from the DRC once they had made contact with a caseworker in Scotland. However before they could be referred to this stage, each parent had to discuss their situation with a phone operator in England. One parent in particular would have preferred direct contact with a caseworker so that their situation could be described just once.

I had spoken to a lot of people, and there are delays because you're getting someone else involved and then someone else, and the to-ing and fro-ing of paper – it's a wee bit daunting.

Kathryn, parent of Drew aged 13

Kathryn first heard about the DRC when she was doing a web search for information about the DDA. She wasn't clear, initially if she had a case of discrimination, but used her initial contact to tell her story, 'I think to be honest, I just blurted everything out' (Kathryn, parent of Drew 13). Once Kathryn had got in touch with the DRC, the process moved quickly, and she arrived at conciliation sooner than she had expected. However, the fast pace of the appeal system may work against parents. An overview of the appeal system is available in Chapter 4.

The whole process ... obviously there had to be letters going back and forth, but the whole process was fairly quick. Right through to the conciliation bit, but what I will say is, although an agreement was signed ... I felt that ... No one has ever come back and said ... if I'd been phoned to see if everything is okay, then I would have said, 'no it's not'.

Kathryn, parent of Drew aged 13

This disheartened response was the main reason why Kathryn did not consider pursuing the claim of discrimination beyond conciliation. Some short answer responses from the parent survey revealed that parents had accessed the school's or local authority's conciliation service before formally pursuing a complaint with the DRC, and this may contribute to the low number of cases referred to the DRC.

Nobody really cares and they don't take you seriously, things are never followed through to the end.

Parent or carer 24, Aberdeen

Thus the school and local authority conciliation stage may indeed resolve some issues raised by parents. The above quote though, implies that some parents found the appeal procedure futile and this disengaged them from other avenues of appeal.

However positive their relationship was with the caseworker employed by the DRC - Scotland, the experience of the DRC conciliation service was negative in all cases.

Interestingly, only 15% of parents responding to the 2004 survey knew that conciliation was an option if they felt they had a case of discrimination to contest, though this had risen from 11% in 2002.

It was a disaster, any of my contacts or anyone that would ever ask me about the disability rights thing, I would say 'do not do that, do not go down that route with [local authority B]'. I would tell them 'sure, use the legislation, but do not have anything to do with conciliation'.

Anna, parent of Alasdair aged 19

Anna took issue with conciliation because she felt that she was unsupported, and unable to challenge the school's account of events. The DRC - Scotland put Anna in touch with professional support to help her prepare for conciliation and to help structure the agenda. However Anna reported that the agenda was mostly ignored as the school and education department representatives had the right to refuse to discuss items on the agenda. In response the school's head teacher was critical that she was given the agenda with no chance to contribute to it prior to the meeting herself (for example she would have liked the chance to add items). Anna also alleged that the school representative lied during conciliation about the support they had offered Alasdair, and was backed up by the senior representative from local authority B. Anna then asked if Alasdair's learning support assistant, who was waiting in the corridor, could contribute to the conciliation, as she could substantiate Anna's version of events, but this was refused and Anna particularly blames the chair's lack of authority for allowing this to happen.

And the guy that was in charge was such a namby pamby, I wanted to pick him up by the scruff of the neck and shake him so he would wake up.

Anna, parent of Alasdair aged 19

The interview with the head teacher from local authority B also raised concern over the conciliation process. The head teacher contacted the DRC - Scotland after being informed of the claim made against her school and inviting her to join the conciliation. She was complimentary about the support and guidance she had received from the DRC caseworker she spoke to, and felt encouraged about conciliation.

So I spoke to someone at the DRC and said I was a wee bit alarmed about this ... and she said 'no, it was a mediation thing, and the idea is to find a solution' and I though right, okay, I did feel a bit better about it but I have to say the experience bore no resemblance to what [DRC caseworker] said it was going to be like.

Head teacher of school in local authority B

Specifically the head teacher reported that the mediator in charge of conciliation did not have control over the session, nor the authority to obtain control.

I found ... the gentleman in question, I don't know where he was trained ... but he certainly was not skilled in any shape or form in doing anything like that ... He lost control of the meeting several times, so much so that [director of special needs education, local authority B] said at one point 'If this doesn't stop, we're leaving' ... So at the very end the guy said, 'do you feel you've got anything out of this?' and the Mum and Dad both said 'No' and he was shocked, you could see it in his face. I felt like saying to him, I could have told you that, what she wanted was for someone to give me a row, okay?'

Head teacher of school in local authority B

Here the head teacher made a critical point. The conciliation was developed to reach a consensus about how the situation that existed could be addressed so that all could move forward positively. It did not address specifically the claim of discrimination, though that would be used as a starting point to discuss future provision. Thus no verdict was forthcoming and the mediator chairing the conciliation had no power or authority to judge either person's argument. The other in-depth interviews corroborated this point, agreeing that conciliation needed a chair that could support the claimant. Clearly the parents expected the mediator to have a more forceful role in the proceedings,

Technically that person [chair] is independent, but really that person is Drew's representative to make sure the thing is dealt with fairly, I think that is awkward because I didn't know if that person is representing me towards the [local authority D] or is chairing it as an independent, i.e. on both sides.

Kathryn, parent of Drew aged 13

That conciliation did not work for anyone who tried it is an important finding. For all parents it was a repeat of a meeting already held by the school or local authority. The only 'new face' round the table was the conciliation chair who either because of his skills, or because the parents and teacher had a false idea of the purpose of the meeting, was an unsuccessful mediator. However, the view of the DRC caseworker countered these accounts,

In the cases I worked with ... certainly the post-16 cases, conciliation seemed to be helpful. Because the further and higher education institutions ... they didn't want to discriminate, and if we [DRC] said 'look, something really needs to change' then they would jump. That's the impression I got from the conciliation reports that I saw.

Caseworker with the DRC.

Perhaps by relying on the reports from the DRC conciliation service, caseworkers at the DRC were unable to detect the problems that had arisen during the conciliation process. The idea that conciliation would help parents avoid a Court case seemed confused. Though a Court appearance was avoided, parents and teachers were left dissatisfied by their experience and the situation that had led to a claim of discrimination remained unresolved. Evidence from the surveys to parents demonstrated that parents or carers would rather use their school or local authority complaint procedures and conciliation over a Court case (38.4% of parents would consider Court, 62.5% would consider conciliation, and 87.5% would consider school or authority complaints procedure, see figure 6.7, Chapter 6).

Cate had planned to use the DRC's conciliation service but the school in local authority C had insisted on using the local authority's conciliation first. Cate believed that this decision came from their legal team,.

They withdrew from the conciliation set up with the DRC ... I got a phone call from the legal team at [local authority C] and he said 'we've very sorry to hear about the claim, can we meet to discuss this?'. So then the next thing the head was on the phone at 6 or 7 o'clock at night apologising ... So I went to the meeting and the director of education was there, now he is a very obnoxious man but he [director] apologises ... so they apologised but I think they were frightened in case I was going to take it any further. So they said they'd take him [Robert] back in and they said do you want a formal apology and I said 'no, I don't need to have my 3 pounds of flesh'. They had admitted that they were wrong.

Cate, parent of Robert aged 12

What has been demonstrated by this thesis is that conciliation organised by the DRC ended parents' claim of discrimination, not because the matter was resolved, or because their mind was changed about whether discrimination occurred, but because they were too exhausted and frustrated to continue. The decision to withdraw from the fight against discrimination occurred after conciliation because the parents interviewed felt that further

pursuit of their idea of social justice would be futile. In addition, the parents felt that the process was so stressful, they were not sure their health would withstand the further struggle.

I need to get on with my life and as far as I can see the DRC haven't helped much. If I'm relying on [local authority D] education department only, then I'm lost. I need to rely on myself ... I want to know why the system has got away with what it did. Why did I have to go through the DRC? You know? Why is Jack McConnell getting thousands and thousands and all these other ministers, and I don't see any change.

Kathryn, parent of Drew aged 13

I got to the point where I was pissed off, frustrated ... I'd had enough.

Cate, parent of Robert aged 12

And there is so much emotion. So many people had been fighting for years. They think 'oh finally! There is a DRC', but actually there was not very much that we could do. We could offer conciliation but that was not what people were wanting.

Caseworker with the DRC

The school from local authority B was not informed of the outcome of the conciliation or if the parent was planning to continue with their claim.

It was quite a gruelling thing for me ... I received no further word, no letter ... I have no idea what the outcome was ... I was left in limbo, thinking is this now going to Court? ... Did the DRC decide that they wouldn't support a Court case?

Head teacher of school in local authority B

Here it became apparent that the school, as much as the parent, was looking for validation, for a judgement to be made. The teacher reported feeling highly stressed by the experience of facing a claim and participating in conciliation. She would have welcomed knowing that the case file was closed, and believed the DRC should have been responsible for this. This theme of stress will be re-examined at the end of the Chapter.

To summarise, contact with the DRC - Scotland was positive and the parents and head teacher involved in the in-depth interviews felt supported and encouraged by the caseworker with whom they had contact. Conciliation was considered, prior to the event, as a positive step that might help avoid a Court case. However everyone involved expected that the conciliation would reach some kind of verdict and the absence of this defeated the parents from continuing their claim with the DRC. Therefore the redress measures set-up by the DDA Part 4 to

challenge disability discrimination in Scotland were weak. Conciliation was not successful in bringing together aggrieved parties or in mediating a resolution to the claim of discrimination.

8.4 Inclusion

This section will explore inclusion and in particular the tension between mainstream and segregated special schools. The DDA Part 4 supported inclusion, but allowed segregation under specific caveats, thus in practice the DDA Part 4 contradicted the ethos of the United Nations (Holt 2003, see Chapter 4). This section will assess to what extent the principle of inclusion has impacted on Scottish schools and impacted on parents' choice of school placement. The three in-depth interviews were able to explore the experience of education in a mainstream primary, a mainstream secondary and a special school (attended during secondary years). The school choices available to parents were restricted by their child's additional needs in all three cases, effectively undermining consumerist principles. Of all the issues generated by the short answer responses to the parent survey, that of inclusion over segregated special school placements attracted the most comment.

Many parents argued that the tailored and supportive education offered by their child's special school created an ideal environment.

My child attends a special needs school because that is where I chose for him to go. While my knowledge of various acts/school policies may be limited, I am more than delighted with the care and education he receives and that is what is important. His every need is catered for at school so I have no concerns. I would not want him placed within a mainstream school as I don't believe the same high quality education could be sustained for a special needs child.

Parent or carer 14, Fife

This quote reflects the position of many parents who responded to the survey, and was further supported by the increase in the number of children placed in a special school in 2004 compared with 2002 (as reported in Chapter 6). As the above quote suggests, many parents felt that mainstream education could not offer adequate provision.

Integration of children with disabilities into mainstream schools does not work, nor will it work until all involved have a full and comprehensive understanding of the

needs of the individual child. In order for this to happen, more money and staff are needed.

Parent or carer 55, Highland

Even though this parent supported special schools, they implied that they would prefer an adequately resourced mainstream placement.

There was a fear among some parents responding to the survey that their child would be bullied if they attended a mainstream school. One parent or carer reported that their local mainstream primary had been cruel to three disabled children to the point that they were removed and a special school placement found.

[mainstream] School is hostile to disabled children. Our child like 2 others, has now had to be removed because of cruelty.

Parent or carer 39, Highland

This finding is corroborated by earlier research examining the views of parents (Alderson and Goodey 1998), teachers (Holt 2003) and pupils (Shaw 1998) that disabled pupils are bullied by non-disabled pupils in mainstream schools. Some of the pupils that contributed to Shaw's research had moved from a special placement to mainstream school and had complained of bullying and name-calling at their new school. However, no child interviewed (disabled or non-disabled) advocated segregation, or would consider returning to a special school placement, suggesting that even if problems arose within a mainstream placement, the experience remained better than the special school experience.

An inclusive mainstream placement appeared to be the preferred option, though many were reluctant to consider that it existed in practice. The SEN framework endorsed integrationist programmes (involving pupils learning in special units sharing the grounds of a mainstream school, or units that educated pupils attending a mainstream placement for part of the school day), and these found considerable support among survey respondents.

[Son's] school provides a good environment which does not allow discrimination against the Disabled Students Education Unit in the primary school. They offer a high level of care and education for my son.

Parent or carer 25, Fife

My child's school is a mainstream primary school with a disabled students unit and works exceptionally well for the needs of my child.

Parent or carer 62, Fife

However the integrationist approach did have some drawbacks. One parent commented,

I did like the learning unit for him but disadvantage was that other subjects slipped and he had to catch up at home. Especially maths, he did P6 at home while completing P7 at school. He had no problem with maths so he could do this.

Parent or carer 8, Glasgow

The isolation of pupils into units or schools outside mainstream provision was problematic for many parents responding to the survey,

All pupils should go through the same front door of their school and belong to their age related year group. How their day then proceeds will depend on their needs – which should not be being met in isolated schools and units but in purpose-built departments of mainstream schools.

Parent or carer 53, Fife.

Schools responding to the survey reported that they had made changes in response to the DDA to promote inclusive practices,

The DDA has been important in bringing about changes.

School 33, Aberdeen

In this sense, the choice of placement was less about school type (mainstream or special school) and more about finding a school that had an open and inclusive ethos.

Two children with Down's Syndrome. One at mainstream – excellent school, one at special school – very supportive.

Parent or carer 30, Highland

Anna was always in agreement with the education department of local authority B's decision that her son should attend a special school, but felt that the school chosen for him was a poor choice. It primarily catered for children with a physical impairment and had not

traditionally provided placements for those who had a learning difficulty (though several pupils were in fact admitted under these criteria) and therefore did not provide a fully inclusive environment. The head teacher of the school agreed with this assertion.

The shame is that [school in local authority B] was not equipped to deal with pupils with learning difficulties. But when he was being admitted they got the call to say that he would be getting his own teacher. [Learning support assistant] had been with him for years and she would continue to be his one-to-one, and so the school said great. They didn't think twice about whether the school was right for Alasdair.

Anna, parent of Alasdair aged 19

It seemed local authority B considered the addition of a learning support teacher sufficient to make the placement accessible and inclusive for Alasdair. Anna claimed that in reality the placement was inappropriate and caused problems whereby the school could not make reasonable adjustments to appropriately manage Alasdair's behaviour. The placement also, arguably, failed him academically. Anna claimed that no significant changes were made to the curriculum to accommodate pupils with a learning difficulty.

So those kids were left to moulder. Their potential is not being met at all. With Alasdair, all it would have taken was training; he had a great deal of potential.

Anna, parent of Alasdair aged 19

Alasdair's head teacher believed that her school provided an inclusive environment. Some other special schools responding to the schools survey agreed that despite their isolated location, they could still embed inclusive principles in their structures, for example one school reported, 'although we are not a mainstream school we still strive for inclusion' (School 17, Fife).

Several parents or carers responding to the parents' survey assumed that their child's school *must* be fully compliant with the Part 4 because it was a special school. These parents assumed that policies were in place to meet the needs of disabled students.

I'm not sure how to answer some of the questions on school policies etc as my daughter attends a special school and one would assume that all legal requirements,

policies, changes to policy because of legislation, are already in place.

Parent or carer 21, Fife

The survey to schools offered a slightly different picture as only 39.1% of special schools responding to the school survey in 2004 reported that they fully complied with the DDA, though this compares to 29.9% of mainstream schools.

Specials schools could improve inclusion through outreach programmes and partnership working with local mainstream schools, but parents reported that caveats (like good behaviour) created barriers to inclusion in practice.

The policies are irrelevant because he attends a special school and all these topics are done on an 'exclusion basis' – inclusion only comes if he is good.

Parent or carer 53, Fife

In addition 'inclusion' often required parents to negotiate and co-ordinate professionals from different schools in order to gain permission to attend a mainstream class.

My son has a full time place at a stand alone special needs school. I have requested inclusion (part time for computers, music, swimming, cookery etc) at his local high school. This has to be negotiated at the start of each year, gets less rather than more and I'm told depends upon agreement of the teachers involved. The rest of his year have their new timetables agreed and in-action by May – he is still waiting in October and the director of education keeps fobbing me off.

Parent or carer 53, Fife

Such restrictions though are not confined to special schools. Several parents responding to the survey reported that their child's mainstream placement relied on them to compensate for areas where the school did not have the resources to deliver support.

Children with learning difficulties are discouraged from applying for entry. Our son is required to come home for lunch each day.

Parent or carer 29, Glasgow

I have been asked to take my own car (with son in it) when classes go on school trips!! Once when [our son's] helper was off sick, the head teacher asked me to take [son] home from school half an hour early as he couldn't provide cover. I suggested [son]

draw or read in the class instead of withdrawing him from class. They didn't want my son to do that.

Parent or carer 11, Glasgow

I am currently paying privately for my son to attend a dyslexia institute in Glasgow – would love to have this paid for by educational funds. Find it hard to believe that parents have to pay to help their child.

Parent or carer 4, Glasgow

Clearly many parents would be unable to meet such demands and their children could effectively then be segregated from their local mainstream school or from specific activities like school trips. In fact several schools and local authorities were aware that school trips needed to be re-examined in order to comply with the the DDA Part 4.

We need to do a complete review of access to the curriculum and sports / off-site visits.

School 23, Independent Sector

Outstanding issues include training of all staff – school trip training in particular.

Local authority 12

The principle of inclusion was also threatened by placements that were located outside a pupils' neighbourhood. Drew attended a mainstream school, but not the closest one to his home. Rather his mother submitted a placement request to a Catholic school that she felt provided a strong moral framework that implicitly enforced a routine and discipline on its pupils which made it a more supportive environment for Drew. Though the placement worked well, Drew's Mother was concerned that the transport provision could break down and this would have a disastrous impact on Drew's education and consequent life chances. The alternative would not have been the local secondary, but a special school, though this would have meant a placement out-with the region of local authority D.

Robert too, moved to a secondary outside his local community in order to find a placement that supported his learning needs. By attending a school in the next town, Drew and Robert may have found the academic support they required but were effectively segregated from the other young people in their community who were able to attend their local mainstream secondary.

[School in local authority C] is society to him. It's where he goes to meet his pals. He was there training for this future and making connections ... meeting girls and that ... they shoved him out of that and he was stressed, depressed and bored. They knew what they were doing to him and it wasn't right. They isolated him.

Cate, parent of Robert aged 12

Alasdair required a taxi to take him to and from his school 10 miles from his home. In all three in-depth interviews, then, the young people had compromised to find a placement that would help them learn and enhance their life chances. In order to find a school that suited their additional needs, they had to travel a fair distance. In fact Alasdair's placement was too far from his home and did not meet his needs.

To summarise briefly, Chapter 6 concluded that Part 4 had not impacted on inclusion, as more children were educated in a special school placement in 2004 than in 2002. There was much support for special and mainstream provision for the children and young people represented by the in-depth interviews and survey of parents. Those opposed to a mainstream placement felt that it would not offer the supportive environment or additional provision (for example speech therapy) provided by special schools. Some parents voiced particular concern about bullying in mainstream. Opposition to special education was based on an ideological perspective that segregation in education would lead to segregation from life and future opportunities. Though some special schools reported that they had an inclusive ethos, this was challenged by parents. It was evident that mainstream schools had more opportunities to present an inclusive environment, but several parents or carers reported having to supplement mainstream provision in order to achieve inclusive access to the full school day and school trips. A similar debate around special units attached to mainstream schools was generated. Several parents were fully satisfied with the placement at their local mainstream school and felt that the additional provision provided by the unit worked well. However attendance at the unit was at the cost of progression in academically valuable subjects. Barriers to inclusion existed then in all types of school. All three of the young people represented by the in-depth interviews travelled more than 10 miles to their school and transport was an issue in two cases, threatening to prevent access to education. Although the DDA Part 4 promoted inclusion and some schools reported that they had modified policy in response to this, multiple examples were generated of pupils facing barriers to being educated alongside their peers.

8.4.1 Inclusion Requires Training

Regardless of whether their child attended a special or mainstream placement, many parents (interviewed and responding to the survey) felt that a lack of training on disability-related issues presented a barrier to inclusion for pupils.

Anna felt that Alasdair's teachers misunderstood his needs and consequently exacerbated situations he found difficult. Anna believed that this because the teachers at the special school did not have specific training in special education or ASDs.

[teacher] was asked 'what are your qualifications?' she only had one, a diploma in physical education and she was making our lives miserable because she was a stupid woman who thought she was smart. I knew from his teacher that none of them had been trained in disability awareness, even though they supported children with a disability.

Anna, parent of Alasdair aged 19

The theme of training for teachers was also generated by the other in-depth interviews and the parent survey. Several parents questioned the qualifications held by the teachers teaching who taught disabled pupils in mainstream or special schools.

'Teaching standards' don't apply within a special school. Some teachers have no experience of teaching special needs pupils when they start at school!

Parent or carer 54, Fife

School is NOT accessible! No training for mainstream teachers. EVERYTHING depends on low paid learning assistants! [Emphasis respondent's own]

Parent or carer 29, Highland

Last year he may as well have played truant, as his class teacher had no training in how to teach a dyspraxic child. Therefore he attained nothing in that school year.

Parent or carer 29, Glasgow

Responses from schools and local authorities painted a more positive picture but clearly restricted resources had delayed a prompt and full engagement with the DDA.

Not convinced all staff have assimilated fully the information available to them. Nor am I satisfied we have sufficient resource support to meet all needs.

School 54, Glasgow

Not all buildings have been made fully accessible yet and plans are progressing as fast as budget and personnel can manage. Staff are trained but training does not equal implementation. Situation is continuously evaluated.

Local authority 11

As indicated in the above quotes, some staff had clearly resisted engagement with the DDA. The parent survey generated some issues with the approach taken by particular teachers.

My son was degraded in front of his entire class by an English teacher who made him sit at the back of the class. She was aware of his vision problems, she then chose to degrade him by pointing out his spelling mistakes even though she is aware he is dyslexic.

Parent or carer 59, Highland

Here a child was allegedly ridiculed for aspects of their behaviour and learning that were relating to the child's disability. Training and raising awareness of disability may not eradicate such behaviour as the parent reported that the teacher was aware of the child's additional support needs.

8.5 Exclusion

The three in-depth interviews all described periods of exclusion from school, particularly self exclusions and temporary exclusions. The parents who contributed to the interviews all felt that if the school had been more understanding and accommodating then exclusion would not have been necessary. This position is framed by their child's status as disabled and manifesting disruptive behaviour as a 'symptom' of their condition. Exclusion from school was a central trigger to approach the DRC with a claim of discrimination for two of the parents involved in the in-depth interviews.

It has been argued that local authorities, schools, parents and children or young people can collude to remove a child temporarily from a school placement, (Ball and Connolly 2000). Self-exclusion is similar to truancy in that the child is absent from school despite there being no sanctions enforcing the absence (such as an exclusion). However, self-exclusions are considered different to truancy in the education literature, as they are considered to be a response to a particular issue; often they have the support of a parent or carer; and usually are

not the subject of discipline by schools (whereas a truanting pupil may expect detention). Schools do not treat self-exclusion as truancy because they benefit from the pupil's absence.

[School in local authority C] had the largest truancy in [local authority C] because they don't want to deal with them kids. So many kids have gone there and ended up at different schools because they don't want the pupils that are going to be a bother or a nuisance to them.

Cate, parent of Robert aged 12

For example, schools may find teaching and discipline easier if some pupils considered disruptive are absent. This behaviour may actually be considered inclusive by some, for if the pupil was considered disaffected (and so to blame for their actions) then they may expect a permanent exclusion rather than the more reasonable self-exclusion. Local authorities may also agree not to contest self-exclusions as they do not impact on performance tables or they may have a 'no exclusions' policy. Children and parents may collude by self-excluding in order to remove themselves from what they perceive to be a difficult and hostile environment. Parents may also conspire with schools because they are concerned that formal (permanent or temporary) exclusions may impact negatively on the life chances of their child. In declaring that no school should condone exclusion or truancy as a way of dealing with disaffected or failing students, the Social Exclusion Unit (SEU 1998) implied that this had occurred in practice. All three children at the focus of these in-depth interviews faced temporary exclusions, but there is some evidence that self-exclusions also occurred.

It was notable that temporary exclusions were used to punish truancy, thus extending the child or young person's absence from school. During his periods of temporary exclusion for non-attendance, Kathryn reported that Drew became much more productive because he was in a settled and secure environment with one-on-one tuition, albeit non-professional guidance from his mother. Anna reported that temporary suspensions were seen as a positive experience by her son:

He would have to have time off school and of course if you do that to any kid, they don't want to go back.

Anna, parent to Alasdair aged 19

Before Robert was formally excluded, Cate reported that she encouraged self-exclusion because she didn't know how else to deal with the accusations made against him.

He was accused of setting off the fire alarm, and I said, well, did you see him? 'No.' I said did anybody see him? 'No.' Well, I said, how did you know it was Robert? She said it had to be Robert to reach it, this is the head mistress by the way, I phoned the educational psychologist and told him and his attitude was, well don't let him go up to the school causing problems, and I said, 'excuse me, he won't go near the school because of the problem'.

Cate, parent of Robert aged 12

Removing Robert in this way was a form of collusion with the school. The school in local authority C managed to remove a disruptive pupil, who they believed to be responsible for particular incidents, without having to formally exclude him. Cate's priorities were her son's happiness and his academic opportunities, and she felt these could not be achieved by continuing the placement with this school.

In Robert's first year at secondary school, he was frequently excluded (temporarily) for minor misdemeanours such as forgetting his homework. Cate collected all the paperwork relating to Robert's school and so was able to show me evidence that Robert was excluded for minor infringements of school policy. His mother believed that his ADHD and the absence of his Ritalin contributed to his inability to organize his time. For this reason, Cate had expected the school to make reasonable adjustments and discipline Robert differently to other pupils committing the same misdemeanours. The reasons given for temporary exclusions seemed to Cate to be vague and minor and she suspected that the school used this penalty too easily.

I told them that I was fed up with him being continually suspended, he was never at school. Their way of dealing with his problems was to put him out the school.

Cate, parent of Robert aged 12

Cate argued that Robert had been considered disaffected rather than disruptive and thus had approached his behaviour as a discipline issue.

I don't think schools discriminate against all disabled children but ADHD is perceived to be a problem. The media doesn't help because programmes show these kids and they don't have parents with strong boundaries and it allows people to think ADHD is my fault, my inability to control Robert. They show violent ADHD kids, not the shy

ones who want to work hard at school ... it's made out that Robert has ADHD because of his home and they don't look at the school.

Cate, parent of Robert aged 12

One school (School 6, Highland) argued that the terms of the DDA Part 4 could be understood in terms of supporting pupils with physical impairments (signified perhaps by the large proportion of schools who focused on changing the physical environment in their response to Part 4) but it became confusing and problematic when applied to pupils with social problems. Another school considered the DDA Part 4 to be incompatible with the support of pupils who had 'short-term needs' and SEBD and ADHD could fit this category (School 23, Aberdeen).

Robert was placed in an isolation unit as a disciplinary measure and it was this experience that formed the basis of the claim made to the DRC. In disciplining Robert in this way, he associated with young people who did not share his 'disability status'.

Boys that are violent and in trouble with the law ... I mean, I know they kids have got problems but they are different problems. [Local authority C] should be making special provision for children with neurological disorders rather than lumping them in with kids with social problems.

Cate, parent of Robert aged 12

Cate therefore argued that the school had not made a distinction between disruptive and disaffected behaviour, and challenged this as unreasonable. In exploring the school's behaviour, Cate believed their attitude to Robert was based on his class and background.

He [head teacher of school in local authority C] comes over in a very middle class way ... and I don't mean that nasty ... I mean he thinks he's better than everyone else ... years ago we had to deal with that snobbish attitude ... like kids must do what they are told ... they punish them that need support ... it is shocking. To my mind a lot of it is class. And area. They [school] are suspicious of these kids, they get a stigma like they're up to no good. That's not any way to treat people.

Cate, parent of Robert aged 12

Throughout this section, parents have framed their children as disruptive rather than disaffected. This highlighted particular issues for schools educating pupils with conditions such as ADHD and SEBD. The diagnostic criteria for such conditions are debated and open to dispute. In fact SEBD was considered outside of the DDA definition of disability by at least

one local authority. Clearly the parents who contributed to the in-depth interviews felt that their children had been disciplined inappropriately. In response, they challenged the school and demanded reasonable adjustments. Thus while the school was enforcing discipline policies, the parents campaigned for the schools to change their structures to make them more inclusive and accessible to children labelled with a disability or SEN. The next section explores in more depth how schools distinguish between a label of blame and a label of forgiveness (Slee 1995).

8.5.1 Disruptive Behaviour and Blame

Before this research started, it was hoped that the pursuit of in-depth interviews would generate at least one example of a child considered disruptive, as this seemed to raise tensions in schools between discipline and reasonableness. The DDA Part 4 protected the right of all disabled children not to be discriminated against because of their disabling condition, unless a response impacted negatively on the other children who attended the school. As a pupil's violent behaviour in class (even if their behaviour did relate to their disability), could be detrimental to the other pupils, a discriminatory response from the school would be lawful. In fact all the claims discussed in the in-depth interviews related to violent behaviour.

Given the violent outbursts, perhaps the schools were unable to avoid exclusion. Yet the parents argued that the DDA Part 4 should frame this as discrimination.

We have had one, sorry two outbursts at the school, one he slammed the door and it just missed the teacher's fingers. I went in the next morning and he apologized. Drew can be a little sod when he wants to be but that doesn't give people the right to treat him like shit. It gives people the ... they need to have patience, to realize that he has those difficulties, but they can be dealt with appropriately and if they are, then you have the number one pupil sitting there.

Kathryn, parent of Drew aged 13

Anna described how an accidental fall from a taxi escalated into a violent outburst as her son panicked. Once he had regained his composure, he was remorseful and apologised for his behaviour, but his Mother believed that the school's response was harsh and involved a personal attack on her son.

He saw that he had hit his beloved [learning support assistant] and held onto the taxi and kicked the taxi saying 'bad taxi'. And he was thrown out of school for a month. But it was because he had fallen out of a taxi.

Anna, parent of Alasdair aged 19

Though the school did not corroborate their response to the incident as described by Anna, they did add that the person involved in the incident needed hospital treatment. The severity of the incident led the school to exclude Alasdair in accordance with their policy on exclusions. In addition, the head teacher had to consider the rights of school staff to work in an environment free of violence. Here then, the intentions of Alasdair are defined by two distinct issues: his Mother used his fearful response to excuse his behaviour thus relating his response to his disability and ignoring the rights of staff; and the school uses the consequences to defend their disciplinary response thus positioning his behaviour as violent or disaffected. This tension existed in the other in-depth interviews,

But they [school in local authority C] were arguing the point that his behaviour without his Ritalin was bad and they were justified in putting him in the isolation base but I says 'wait a minute, this [ADHD] is a medical condition but if someone with diabetes didn't get their insulin and became violent, would you treat them the same way?' And they just looked at me. I says 'well I don't see any difference'. And I don't, they are both medical conditions that use medication to stabilise them. The psychologist ... I could have killed him ... he had written that Robert was fully in control ... basically he said he was acting up rather than having ADHD.

Cate, parent of Robert aged 12

Cate's point reflected *Goodwin v. The Patent Office*, the employment case which held with the claimant that behaviour usually controlled by medication was to be considered part of the disabling condition when medication had not been taken (see Chapter 4). In her argument, Cate relies heavily on a medical account of Robert's behaviour, framing it as a symptom of his ADHD. She is able therefore, to logically distinguish between what behaviour he is responsible for (good and appropriate behaviour) and that for which he is not responsible (disruptive behaviour). Within this account, the consequences of his disruptive behaviour are not considered. In this way, Cate has interpreted Robert's diagnosis as a 'label of forgiveness' (Slee, 1995). Clearly the parents interviewed expected the school to understand the condition

and how it impacted on their child, and behave in ways to minimise the challenges of the condition.

In summary, all three children or young people represented by the in-depth interviews had been excluded from school on at least one occasion because of disruptive behaviour. Though there was little evidence that the school framed this behaviour as disaffected, the young people were subjected to the same disciplinary procedures as other pupils in the school. As the disruptive behaviour was related to their disability, and as the school environment contributed to the incident (either by exacerbating disorganization or expecting pupils to cope with long journeys), the schools may have opted to be more reasonable. As only one school agreed to contribute it is difficult to generalize about schools' view of this tension. Evidence from the school in local authority B suggested that reasonableness can only excuse so much. According to this analysis, when a child was violent, or when other pupils were placed in a negative environment because of the behaviour of a disabled child, then the school felt justified in considering exclusion. In this situation then the DDA Part 4 was unable to resolve the difference in position between parents and schools.

8.6 The Pressure of Making a Claim: Education, Empowerment and Stress

This final section of this Chapter will examine the challenges of making a claim of discrimination under the DDA Part 4. Rather than focus on the terms of the DDA (as discussed earlier), this section will explore the emotional response to the claims process. As noted, most parents (61.6% responding in 2004) did not think they would pursue a case of discrimination as far as the Sherriff Court. The three parents interviewed were adamant that when they had initiated their claim, they would have presented the case in Court had they had the opportunity. These parents shared the belief that they were more confident, knowledgeable and empowered than most parents and this had helped them challenge their child's school. Thus the theme of empowerment emerged from the interviews and will be explored here. Evidence from the survey to parents also informs this theme. Despite being committed to pursuing the claim of discrimination as far as Court, none of the claims progressed beyond conciliation. A major barrier to progression was the emotional cost and stress of the claims

process and these themes will be explored separately. Finally the theme of support is explored, firstly from other family members and then from professionals allied to education but not involved in the specific incidents that generated the claim to the DRC. This indicated that the parents were in fact not as empowered as originally thought as fundamentally they felt that their position was unequal to the teacher's professional status and expertise.

The mothers interviewed in the in-depth interviews were informed about the relevant legislation and knew how to acquire knowledge. Though not always confident in their abilities, the three women were committed to using their skills to challenge the discrimination they perceived. For example Kathryn described herself as an expert because she is the mother of the person she was representing with her complaint to the DRC - Scotland. She was also an expert because she had the same condition and so was disabled in the same ways as her son. Nevertheless, in order to make her case, Kathryn had sought to educate herself regarding the legislation. She had also been on every Scottish local authority website to read their published policies to see how they had interpreted the legislation; she had attended educational conferences and had made contact with the Scottish Society of Autism and Govan Law Centre to clarify any remaining uncertainties.

I have spoken to lots of people who have legal knowledge about lots of different things to try and see if I'm right: to know if the law is on my side. I do love reading about legislation, and I always research something before I fire bullets. I'm on the internet and I'm in touch with a lot of parents ... the more of us that shout, the faster the legislation will change. We can't quietly stand in a line.

Kathryn, parent of Drew aged 13

A parent or carer responding to the survey was also clear that they were ready to challenge their child's school if necessary.

My child is placed appropriately in a special school and her needs are being met, but I am aware of my rights as a parent if any discrimination is directed at my child and how to deal with it in an appropriate manner.

Parent or carer 57, Highland

Clearly some parents had a better than average understanding of the DDA Part 4. In some cases this knowledge had allowed parents to perceive themselves as experts equal to their

child's teachers. In the following quote, the parent's awareness of her son's condition and the DDA effectively dissolved the traditional power imbalances between parent and education provider.

Not enough teachers know about dyslexia. I don't think schools know that they need to raise awareness among children [duty under DDA Part 4]. I do think the school should give out more information. Most of my knowledge has come from private study. I was prepared to complain and go to Court if son did not get access into secondary [school of choice] due to his dyslexia. I was told if school could not meet his needs they did not need to take him. At end of day there was no problem. He was admitted.

Parent or carer 8, Glasgow

For some of the parents interviewed, knowledge was acquired during and as a result of the claims process. Cate was studying for a social science degree at university; her interest in this area had been fuelled by her perceived need to be able to challenge education provision.

A lot of people don't challenge education. They don't know how to stand up for themselves. I'm not a snob or anything, but I do stand up. I write letters and that. I go up to the school. It is intimidating but I've asked for minutes and I've phoned and phoned and then I just said, 'I'm coming up this afternoon and I'm not leaving until I get the minutes'. I'm too strong for him [head teacher in local authority C] because he is not used to parents answering him back.

Cate, parent of Robert aged 12

Anna had studied at the post-graduate level and was knowledgeable and articulate. In fact those interviewed were consistent with parents (usually framed as middle class) typically able to behave as consumers to optimise provision for their children (for a wider discussion of this, see Chapter 3).

Prior to the DDA Part 4, Anna attempted to challenge the school's decision to temporarily exclude Alasdair by taking a private case to the Sheriff Court. Anna demonstrated enormous determination to use any legal strategy available. The head teacher of Alasdair's school reflected on Anna's resolve,

So for example, she wrote to the director of SEN in [local authority B] about me, she wrote to the director of education [local authority B] about me, she wrote to the head of [local authority B] about me ... so it was a very very difficult time. And I excluded the boy ... the boy was quite violent, and I excluded the boy a couple of

times and she challenged the exclusions ... both exclusions were upheld by [local authority B] but she then took it a step further and we ended up at Edinburgh and then at the Sheriff Court in June, and in the May I was called to a DDA conciliation about something completely different. So basically I felt that I was being targeted, I felt that it was a case of 'get her, whatever way we can'.

Head teacher of school in local authority B

It is possible that Anna felt her actions were necessary to be heard. Cate also drew on her experience challenging educational practice and concluded that there was an aura of futility about making a complaint.

Even though parents are standing up and fighting, nothing is changing for the kids.

Cate, parent of Robert aged 12

Drew's Mother believed that local authorities and schools relied on parents to be docile and reluctant to argue,

They thought that they could smooth talk me and I was going to sit and go 'oh right, yes, I'm just a paranoid Mother'. At the end of the day, I'm not going to go to [local authority D] and go 'blah blah blah', until I have researched it. They don't expect that, they expect us to still be children sitting in the classroom going 'Yes miss! Sorry miss! We'll do what we are told miss!'

Kathryn, parent of Drew aged 13

I'm quite pleasant to them, but I've got an attitude as well. I told him [head teacher of school in local authority C] quite straight, 'you should have done your job better'. He was quite annoyed with me by then. I'm too strong for them because he's [head of school in local authority C] not used to parents answering him back.

Cate, parent of Robert aged 12

Evidence of parents' commitment to challenging provision was not restricted to the in-depth interviews,

Teachers at school are helpful and well meaning but I do have to kick up a fuss to get anything done.

Parent of carer 15, Glasgow

Kathryn argued that it can be difficult for parents to tackle discrimination, or any issue with their local authority and this is exacerbated by the fact that most parents of a child with

an ASD, or other learning difficulty, will also have the condition. Kathryn has Asperger's Syndrome resulting in communication problems which are not recognised by the local authority.

I need support to make sure that my children get the support they need, but my disability isn't recognized by the education department. They bombard you with paperwork and forms and other types of things and they don't realize ... I'm intelligent right? I've got my Highers and everything else but it's finding the organizational skills to find the time ... because I don't have the time skills to sit down and complete these forms.

Kathryn, parent of Drew aged 13

Another parent argued that she needed an advocate at meetings to give her confidence and to provide confirmation of what had occurred. The parents' survey revealed that many respondents found challenging education professionals difficult and were not aware of how to access knowledge: this must have contributed to the lack of cases of discrimination made using the DDA Part 4 in Scotland.

It has been shown here that the women involved in the in-depth interviews were empowered. For one parent, this confidence existed prior to making their claim to the DRC – Scotland. For other parents it came through their experiences of challenging discrimination. They either had or were in the process of pursuing academic qualifications that reinforced their identity as knowledgeable and informed. Any sense of confidence was derived in part from the support of other professionals, and a sound knowledge of relevant policy. There was also a shared view that if they didn't campaign on their child's behalf, then their child would continue to be oppressed and excluded from the full experience of education and the opportunities that it could provide.

8.6.1 Sources of Support

As discussed earlier, the young people who were the focus of the claim of discrimination reported to the DRC were not involved in the process of fighting a case. In a similar way, siblings were rarely included in the claim, though two parents alleged that the school had involved them. One family who had originally made contact but then re-considered their

participation, decided against being involved because their second child was still at the school where the discrimination against their first child had occurred and they were reluctant to 'make waves'. One of the parents interviewed described how her younger daughter was apparently involved by the head teacher:

The head teacher even started pulling Mary in and started questioning her. I phoned my husband and he went ballistic, because they upset his daughter.

Kathryn, parent of Drew aged 13

At this point Kathryn's husband began to actively support the claim of discrimination whereas before he had been passive and uninvolved. Another in-depth interview generated a similar example: an older sibling attending the same school started to get detentions for the first time. His mother blamed the head teacher who she felt was now victimising the whole family, not just her younger son. All the parents interviewed were frustrated with the 'system' but this was typically targeted at individual teachers.

Anna, responded differently and admitted that she had used her younger son (aged 15) and her husband to aid communication with the school, and so used them as a source of support. She believed she had more status and authority, and was taken more seriously when accompanied by her son wearing his private school uniform, or when with her ex-husband (who she described as 'posh' with a Doctorate degree).

If I had to go to school then his brother would come with me just to listen to what they had to say so that I knew I hadn't dreamed it.

Anna, parent of Alasdair aged 19

Anna used her son and husband to give her more confidence and status, though it is unclear whether it did in fact have an impact on how teachers responded to her.

The parents interviewed all spoke about support they had received from a professional outside of the education environment. Kathryn regularly met with a mental health nurse who supported her to manage the organizational difficulties associated with Asperger's Syndrome. This nurse had encouraged Kathryn to make a claim and had helped her organise the paper work involved. Similarly, Anna believed the support of a social worker facilitated the formal

registration of Alasdair's visual impairment. The social worker was married to an optometrist, and so her personal and social networks helped Anna navigate the 'system' and bypass traditional gatekeepers (for example Alasdair's general practitioner should have co-ordinated referral to a hospital consultant).

And that's how this country works, it's bad luck and bad luck and then a fluke! The most amazing coincidence and suddenly you're getting support – wonderful!

Anna, parent to Alasdair aged 19

As well as accessing services, the support of someone who had professional status was considered essential in challenging decisions made by education practitioners, though support rarely translated into action.

I tried to get help from the social work because I felt they understood but they said 'no, we can't help you make a complaint to education'. But that doesn't help when you know what you are saying is right and you go in there with a child and there are two teachers. Their word is going to be taken over yours ... they can call you a liar, and they've done it! So you need someone in there with you ... if you've not got that then you're not going to get anywhere. You are never going to win. Because they'll just sit there and patronise you, make their decision and then carry on regardless.

Cate, parent of Robert aged 12

Though empowered, parents needed the support of someone who had professional status and expertise to substantiate their claim. The parents interviewed had clearly invested in the idea that professionals had more power and influence than them. In making a challenge, the support of another professional, even one outside of education, was considered essential to give credence to their position. Thus even three strong women, confident and articulate enough to make a case under Part 4 of the DDA, felt inferior to the teachers they challenged. No parent interviewed had found support in a professional willing to formally speak on their behalf. It may not have been intentional but this complicity among professionals effectively preserved their power.

8.6.2 Challenging Teachers: The Emotional Cost

This section collects together accounts made by parents against particular teachers (rather than the school or local authority). As has been stated, this is the perception of events presented by

parents and are not corroborated by other key informants as only one head teacher contributed to this research. What is evident is that parents felt that they and their children were subjected to a personal attack. Frustration was expressed by parents as they found it difficult to challenge the actual or perceived authority of professionals.

All of the parents interviewed felt that a significant barrier to receiving equality of opportunity within the school was a senior teacher who either challenged the support needs of the child, or challenged the parents' views about appropriate provision. One respondent to the parents' survey argued that in many cases, responding to the DDA was resisted by some head teachers.

Changes are under way at local authority level, but some schools will be tougher to change than others (loophole at head level).

Parent or carer 56, Highland

The in-depth interview with Cate revealed significant variation between schools in how they recognised and supported Robert's additional needs. For example, Robert had moved schools and regions in his final year of primary school. The new primary school in local authority C did not adequately understand his condition according to Cate and so no additional provision was provided.

Their attitude was ... they didn't try and help him .. his language can get better sometimes and worse but he doesn't have control over it. But he would get penalised when it was bad ... but it wasn't his fault!

Cate, parent of Robert aged 12

At the same time, she felt that Robert was beginning to be accused of incidents without proof that he was involved, and appeals to the educational psychologist did not reassure Cate, as he immediately supported the head teacher's right to apply discipline at their discretion. Cate was particularly alarmed at the psychologist's power to make decisions as he had not actually been involved in any of Robert's assessments. He had though assessed Cate's eldest son who had also been excluded from school while under the attention of the same psychologist, and Cate was adamant that this had coloured his view of the family.

I wasn't happy with the psychologist. Me and him clashed ... So I felt he knew me and had decided. His perception of me and the whole family was based on what had happened when things hadn't gone well and I knew nothing about raising kids. He didn't take how I had changed into account.

Cate, parent of Robert aged 12

This quote inferred that Cate felt blamed for Robert's ADHD and also blamed herself for her first son's difficulties (he was diagnosed with ADHD at the age of 16 after being excluded from school). Cate had supported her undiagnosed eldest son through what they perceived to be an unresponsive and unreasonable educational system. However, she had been unable to challenge the verdict of professionals. It is apparent then, that Cate was not always empowered and confident enough to challenge education professionals. Facing similar experiences with Robert generated a different response and there are several explanations for this. Firstly her proactive challenge against the school might reflect her frustration at this earlier experience. Secondly, the fact that Robert had been diagnosed earlier may have allowed Cate to invest authenticity into her challenges. And thirdly, the support of Robert's schools in local authority A had contributed to Cate's self-belief and capacity to protect Robert.

All the parents interviewed felt personally attacked by the head teacher, as they perceived the discrimination to be targeted wilfully at their children. For example, Kathryn reported that 'Drew's problem was the head teacher'. As well as perceiving the discrimination to be a personal attack, all parents believed that the child was targeted by the head teacher, and so they were not so much discriminated against because they had a disability, but because they were disliked.

They [school] still look at Drew being Drew. Sometimes, I can see it is the Asperger's but other people they say 'oh, it's just Drew'. He gets it all the time and really it's not fair.

Kathryn, parent of Drew aged 13

Alasdair ... the school said 'he's just a nasty horrible boy' and he's not! ... It was written down that he was violent and horrible and that no one wanted to be around him, but there was no explanation of how this related to his disability or what reasonable steps could be taken by staff to avoid the negative behaviour.

Anna, parent of Alasdair aged 19

What is evident from these quotes is that parents interpreted the disciplinary measures meted out by teachers as personal and vindictive attacks rather than objective policy implementation. Thus the school's response to their child's behaviour was framed as emotional and hostile by the parents and this in turn triggered a hostile and emotional response from parents. In turn, the head teacher felt that she had been subjected to a personal attack,

After the first exclusion [temporary exclusion of Alasdair], I got a letter, and this was a 20 page letter, complaining about me, and it wasn't just about me, could I point out that this particular individual [Anna] has taken out formal complaints against most of the therapists in the school as well, so it wasn't just me. That was helpful, because I didn't feel that it was just me.

Head teacher from school in local authority B

The head teacher reported questioning her approach time and again to ensure that she wasn't behaving as accused, for example the following quote reflected on the private Court case taken by Anna to the Sheriff Court,

The sad thing for me ... in a way, because we won the case ... and in a way, I felt vindicated ... well no that's not the right word because I was never vindictive towards her ... but I felt that ... my judgement was okay, someone had agreed that my judgement was on course.

Head teacher from school in local authority B

The head teacher reported agonising over every disciplinary decision she took relating to Alasdair, demonstrating that she did indeed take his impairments into account when reviewing his behaviour and deciding on an appropriate disciplinary action. Here too it is evident how far the partnership between Anna and the school had disintegrated as a consequence of Anna opposing and challenging every aspect of provision.

In summary, parents involved in the in-depth interviews focused on particular teachers as operating as barriers to inclusion. There is some evidence to suggest that parents frustrated with the 'system' may have blamed particular professionals rather than the structure they worked within. This personification of the system was usually represented by hostility towards the head teachers. Building positive relationships with a child's school revolves around building positive relationships with the teachers. So perhaps it is not surprising that teachers

continued to be the focus when frustration (over the incident that formed the basis of a claim of discrimination) flooded the relationship with the school. Clearly the parents were unable to disengage from their relationship with teachers and so their challenge against the school was emotionally charged and stressful.

8.6.3 Stress

Though empowered and equipped to make a claim of discrimination, the parents involved reported that the process was difficult. A high degree of stress was reported by those interviewed, which they believed led to stress-related medical conditions.

I put in for attendance allowance and they wouldn't pass it ... I need help to take my medication, so I'm in pain today because I don't know which ones to take. One makes me feel sick, and I've got an ulcer now, I blame [local authority D] for that, for the stress. We went through the DRC and everything at the same time as my pregnancy, and then the stress with Drew, it has been too much. It has had a big impact on my health.

Kathryn, parent of Drew aged 13

In addition to the stress of pursuing a case of discrimination, Kathryn had been threatened with a supervision order by the Social Work Department after she had been reported to the Children's Reporter for Drew's absences from school. As a result of this, Kathryn had considered the possibility that attempts could be made to remove her children from her care. So convinced was she, that she had prepared a plan of action, which included selling the house so that the equity could be used to pay legal fees. Kathryn's fears did not appear to be justified, yet they evidently contributed to her experience of stress. Another parent, brought up with the welfare system of the United States was surprised at the lack of support offered to her family during an incredibly vulnerable period of their lives:

But we've had a tough time, and getting over those things, you expect the powers that be to be sympathetic ... The greatest burden has been on me. I will die knowing that there was nothing that I could do. It was a choice between leave him there [at school in local authority B] and at least [learning support assistant] could protect him ... or have no education and do the best I could at home.

Anna, parent of Alasdair aged 19

In addition to the stress felt by the claimant, it was evident that the young people represented by the in-depth interviews had been affected by their experience.

He wouldn't have known he was being discriminated against, but he would have known that they were being unfair, and he was devastated. And he was aware that we were under stress.

Anna, parent of Alasdair aged 19

An assessment at a later placement at College revealed that Alasdair had very low self esteem, and he constantly sought reassurance that he was being 'good' and behaving appropriately. Similarly, Robert struggled to integrate with his friends and lessons after his period of exclusion. He had lost his motivation for attending school, and had begun to assume that he would be unsuccessful academically. His mother recalled,

But the time away from school had really knocked his confidence and that ... he was isolated from his friends.

Cate, parent of Robert aged 12

The experience of making a claim was also hugely stressful for those involved, and contributed to the families' decision not to pursue the claim into the Sheriff Court.

The in-depth interviews were reflecting on the process of making a claim. Several parents responding to the survey felt that supporting their disabled child generally, was stressful, even without the issue of discrimination. This was manifest in general confusion about key legislation and how schools had responded (see Chapter 6). Some parents reported feeling overwhelmed and overburdened with the recent policy changes,

Now feel very uninformed and ignorant to changes. There has been no other avenue for help and support. Could you please send me as much information as possible about disability rights?

Parent or carer 42, Fife

My answers do not necessarily reflect the information available rather my ability to take things in. Having become sole carer to my 2 special needs kids over the last 2 years, I am often overwhelmed by my duties and paperwork has become the last thing on the pile of responsibilities. It is often unread.

Parent or carer 59, Fife

In summary, although parents responding to the interviews and to the survey indicated that they were confident and empowered to challenge education provision, in practice this was undermined by high levels of stress, a lack of support from family members (though this situation was created by the women) and by feelings of inferiority. Making a case under Part 4 of the DDA meant challenging people that they had previously worked in partnership with. Therefore challenges damaged personal relationships with their children's teachers contributing to stress and emotional exhaustion.

8.7 Conclusion

This Chapter concludes that the DDA Part 4 had a minimal impact on Scottish schools and so reflects the conclusions drawn in Chapter 6. The reasons why Part 4 did not have a greater impact are fourfold according to the analysis presented here. Firstly, Scottish schools were not influenced by the rights agenda implicit in the DDA. This was due in part to confusion about how discrimination was framed by Part 4. Additionally, schools did not get more inclusive and the rights of young people to behave as agents continued to be sidelined (although the DRC – Scotland did challenge this). In turn, this contributed to the DDA's inability to challenge the needs-based approach of the SEN framework as professionalism continued to dominate. Secondly, the DDA may have helped schools respond to the needs of physically disabled pupils, but it did not help alleviate the problems of teaching pupils who could be violent. Part 4 did not help parents and schools resolve the tension between framing pupils as disruptive or disaffected. Thirdly, the DDA Part 4 did not make it easy for parents to challenge education provision. Making a claim was stressful and emotional to the extent that it prohibited parents from pursuing a case as far as the Sherriff Court, thus limiting the potential for case law to emerge. Finally the conciliation service was inadequate and served only to divert energy (from parents, schools and the DRC) from achieving a satisfactory resolution. Parents wanted the chance to formally challenge their child's school and ultimately, hear a verdict. These factors will now be considered in more detail.

Firstly, the DDA introduced a rights-based agenda and this had encouraged parents to interpret the concept of discrimination according to a broader human rights perspective. The notion of fairness adopted by parents did not accurately reflect the terms of the DDA's

definition of discrimination. Thus the nature of social justice promoted by the DDA in Scottish schools was narrower than that envisaged and desired. Indeed many claims of discrimination referred to the DRC were outside their remit.

The rights-based agenda is exemplified by the promotion of inclusion. However the interview and survey analysis revealed multiple barriers to inclusion. For example, none of the young people represented by the interviews were placed at their local school and the surveys generated examples of parents having to provide additional time or resources in order to maintain a mainstream placement. Therefore the new 'rights' brought by Part 4 did not emerge in practice and there was no evidence that placements had become more inclusive as a result of the DDA.

The DDA Part 4 did not successfully protect the rights of young people to participate in the claims process. Although parents had welcomed the chance to behave as consumers and challenge decisions made by education professionals, this opportunity was not extended to their children. In contrast, the DRC caseworker was committed to hear the young person's perspective and found them to be informed and active agents who welcomed the chance to contribute to the case. Therefore parents did not recognise their children's autonomy and assumed that they were dependent on them to challenge poor provision. This is not an uncommon approach for parents to take with regard to children of school age, but it has been argued (Shakespeare and Watson, 1998) that disability further reduces opportunities for children to act as agents. Part 4 did not challenge the non-participation of disabled young people.

Secondly, schools and local authorities found it difficult to frame all disabled pupils within the terms of the DDA Part 4. For example, responding reasonably to physically impaired pupils created significantly fewer problems than making reasonable adjustments for disruptive pupils. Parents responded emotionally to the claims process and 'blamed' particular teachers for the problems their child encountered at school. Much of this resistance to teachers seemed to pivot around the 'framing' of the young person's behaviour. Parents consistently challenged the normalising practices of schools that used discipline policies to manage behaviour demanding instead that schools act reasonably to accommodate their child and their

condition. Thus while schools seemed intent on framing children and young people as disaffected and responsible for their behaviour, parents framed their children as disruptive and blameless. Caveats within Part 4 allowed schools to discriminate where it was in the best interests of other pupils, and this was particularly relevant where the disabled pupil behaved violently.

Thirdly, and as reflected in the second argument, using the DDA Part 4 to challenge schools was stressful and emotional. The parents interviewed had worked hard to re-frame their identity as an informed expert of their child and of the DDA using academic qualifications as a catalyst for this awakening. The parents were empowered and motivated yet were under great strain throughout their appeal and all complained of fatigue, stress and ill-health. So stressful was the process that all three parents ended their appeal after the conciliation stage. This had been picked up by the DRC caseworker but no emotional support was provided for parents. Even after the cases had been formally closed, the interviews with parents still contained a great deal of emotional energy.

Finally, although the parents interviewed were positive about the support they received from the DRC, their experience of using conciliation was not positive. Thus Scottish redress measures were weak. It was apparent that parents were looking for a resolution to their appeal, and in particular a verdict in support of their claim of discrimination. Conciliation was not intended to deliver this, but to provide an impartial environment to facilitate productive dialogue. The futility of conciliation, as described by parents and education practitioners, led to parents ending their claim with the DRC. Thus the DDA Part 4 did not work well in practice and allowed schools to escape a direct and legal challenge of discrimination.

9 Chapter 9 – Conclusion

9.1 *Introduction*

In the final Chapter of this thesis, attention will return to the research questions that have framed this study. Therefore, in exploring whether the DDA Part 4 has impacted on Scottish schools, its impact on ending institutional discrimination and promoting equality for disabled pupils will be explored. As has been discussed in earlier Chapters, the DDA promoted the rights of disabled people not to be discriminated against. In this way, the DDA was based on an established recognition that disabled people faced institutional discrimination and oppression. Part 4 extended this right to schools. Specifically, disabled pupils had the right not to be treated less favourably or to be put at a substantial disadvantage for a reason related to their disability. The DDA was informed by the social model and schools were expected to review policies and practices to ensure that disabled pupils were not discriminated against. In addition those who experienced discrimination were able to make a claim with the support of the DRC.

Six main conclusions have been drawn from the findings Chapters (6, 7 and 8) and these will form the structure of this Chapter. Each conclusion will be presented and informed by the data generated, the literature, and the theoretical models that have supported this research.

The DDA Part 4 applied a rights-based philosophy on Education. Part 4 necessarily needed to engage with the SEN framework which dominated the education of disabled pupils. The first conclusion to be discussed therefore is that the rights-based DDA did not impact on Scottish schools because it could not challenge the imbalances resulting from the professional dominance of SEN provision. Parents were not sufficiently able to act as consumers and use their new rights to contest the decisions made by professionals. This argument will be supported by enhanced awareness and understanding of the DDA and Part 4 shown by local authorities and schools in comparison with parents or carers responding to the surveys.

The second conclusion is that the DDA Part 4 did not impact on Scottish schools because they were not generally responsible for meeting the duties to end discrimination. Independent schools were responsible and the data generated by the survey to schools demonstrated that they had gone further than state schools to respond to Part 4. Examples of how consumerism impacted on independent rather than state schools will feature in this section of the Chapter. As the responsibility to comply with the Act lay with local authorities, there was less scope to challenge pedagogical structures in state schools. Thus the most likely response to Part 4 of the DDA was to include disability into policies.

Thirdly, the DDA Part 4 was couched in weak terms. In particular the exclusion of auxiliary aids and services from the terms of Part 4 was a significant omission. This resulted in parents and children being unable to challenge the lack of provision that restricted their access to inclusion. The Warnock Report (DES, 1978) intended for Records to provide the individual support for children required to allow them to access inclusive education. The critical terms of the Record that outlined additional support could not be contested under Education legislation. Therefore omitting this additional support, in the form of auxiliary aids and services, effectively prevented any challenge by parents or children. This omission is not just a conceptual issue, many parents responding to the survey and the parents and DRC caseworker involved in the in-depth interviews felt that auxiliary aids and services should be covered by the DDA and this criticism from participants will be explored.

The fourth section will argue that the DDA failed to impact on Scottish schools because the definition of discrimination used by the DDA Part 4 did not cover the range of discrimination reported by parents. In particular the caveats of 'reasonableness' and not having to make changes that were costly allowed schools and local authorities to justify discriminatory practice. Parents interviewed mistakenly defined discrimination in broad terms and many of the issues they generated as discrimination lay outside the DDA's definition and the remit of the DRC.

The fifth section is related to the fourth conclusion, the DDA Part 4 failed to impact on Scottish schools because the appeals process was difficult to use. The conciliation service provided by the DRC was not well understood by the parents or teachers invited to participate

in it. Respondents to the questionnaire (local authorities, schools and parents or carers) had fairly low awareness that the service existed. The DRC was therefore not successful in bringing together aggrieved parties or resolving cases satisfactorily. The conciliation process was so disagreeable that the parents felt unable to continue with their claim. Presenting a case of discrimination at the Sheriff Court was not popular among the parents who responded to the survey. The tribunal system that operates in England and Wales may be a better route to legal redress and this section will conclude that the Additional Support for Learning Tribunal in Scotland should hear disability discrimination cases.

Finally, the DDA Part 4 did not impact on Scottish schools because it did not provide enough support or guidance to allow rights to be used in practice. This is demonstrated by the consistent use of segregated special schools demonstrating that the pattern of provision had not changed since the DDA Part 4 was implemented. Parents were unable to challenge professionals and children and young people were restricted from participating in their claims. Although the DRC worked to support parents and children, fewer than 3% of parents who responded to the survey had any contact with the Commission. This section will particularly focus on *why* children were ‘hidden’ from the claims process.

This penultimate section introduces three arguments that were supported by this research but which span the six conclusions drawn thus far. This section is used to make some general conclusions about why Part 4 did not impact on Scottish schools. This section focuses mainly on the timing of the Act, which sandwiched it between DSPERA (2002) and the Additional Support for Learning Act (2004) and any impact the DDA might have had got lost as schools focused on the transition from a SEN to a ASL framework. In addition, implementation of the ASL Act was heavily funded by the Scottish Executive and this effectively over-shadowed the DDA and diverted energy from schools and local authorities thus restricting their response to Part 4. In addition the capabilities approach will be used to demonstrate that a central flaw of Part 4 was that disabled pupils were not sufficiently recognised as participants, this then reflects the sixth argument, but here the focus lies on *how* they were hidden. Though the DRC – Scotland challenged this, Part 4 itself did not do enough within its terms to challenge paternalism and professionalism and as a consequence the rights of disabled pupils were hidden.

The discussion to this Chapter will use the arguments generated to consider how the DDA (1995) and Part 4 (2001) might be strengthened to improve the rights of disabled children to access equal opportunities to an inclusive education. It will also consider how this research might inform existing practices and future directions for research in this area.

9.2 The DDA Part 4 did not Impact on Scottish Schools Because: The Rights-Based DDA Part 4 could not Challenge the Dominance of the Needs-Based SEN Framework

In this section I will argue that the rights-based DDA Part 4 was unable to challenge the needs-based SEN because it relied on legal and consumer frameworks that were not robust enough to challenge the frameworks of professionalism, bureaucracy and markets. Thus, this section draws heavily on the analysis of education policy developed by Kirp (1982) and Riddell (2006). The section will begin with a discussion of the frameworks that have influenced the SEN framework. Literature that has informed this area will be presented alongside findings from this research that demonstrates that professionalism, bureaucracy and markets continue to dominate the education of SEN and disabled pupils. The DDA Part 4 increased the rights of disabled pupils to challenge discrimination. Such a challenge would require use of legal and consumer frameworks. The second part of this section will explore why these frameworks were not strong enough to impact on Scottish schools.

A major framework to influence SEN provision was professionalism. Professionals had dominated the education of SEN and disabled pupils before the 1980 Education Act (as amended), though the Act did cement their authority over pupils and their parents. This was demonstrated by the power professionals had to decide which pupils should get a Record and the associated entitlements. This was largely a function of Record assessments being completed by medical and psychological professionals. Thus professionals allied to education had the final say about which children would be Recorded and would therefore (in theory at least) have the legal protection of a Record of additional support provision. As has been discussed, parents were unable to challenge the critical elements of their child's Record because they tended to be written in vague terms (provision was un-quantified, Riddell, 2006) and so were restricted from challenging the expertise wielded by professionals. Huge

variations between local authorities revealed that the decision to Record pupils was arbitrary and open to interpretation (Thomson et al, 1989). This questions the expertise of professionals. In practice, the likelihood of having a Record was a function of luck and geographical location (Riddell and Brown, 1994).

The data presented in the analysis of the in-depth interviews revealed that parents continued to invest heavily in the value of a Record thus endorsing the expertise of the professionals that could provide them. In addition, by seeking out a Record, parents were investing in the educational structures that would only supply additional support if a professional agreed that this was required by the pupil.

Professionalism also emerged as a theme from the analysis of surveys as schools and local authorities were more likely to understand and be aware of key legislation (including the DDA 1995; Part 4 2001; DSPERA, 2001 and ASL Act 2004) than parents or carers. Thus parents possessed less knowledge of their rights under the DDA Part 4 than schools and local authorities and so in terms of using the Act they were already at a disadvantage.

In challenging schools, all three parents had to go beyond behaving as consumers. The only way to challenge professionals was on their terms, by becoming experts and by using the language of the professionals. Each worked hard to acquire academic qualifications, knowledge of policy and legislation and when this failed, they borrowed status (from family members and other professionals). In contrast, the parents or carers responding to the survey had less knowledge, were less articulate and less empowered. This finding coincides with conclusions drawn by Riddell et al (2006) that parents were reluctant to challenge schools. Therefore only a minority of parents were sufficiently equipped to challenge professionals and make a claim under the DDA Part 4, demonstrating that professional dominance is itself a barrier to rights.

Not only did parents have to learn the language of the professionals in order to challenge them directly, they also had to understand the bureaucratic frameworks which framed their activities. The bureaucratic framework was shown by Riddell (2006; Riddell et al, 2002) to dominate Scottish schools alongside professionalism. Bureaucratization had been

established by the Warnock Report (1978) as dominating the education of disabled pupils since the Second World War. The best example of this was the use of eleven legal categories of disability which were unable to reflect the severity of impairment effects, the effects of belonging to multiple categories or inform practice by suggesting the best approach to education. The Warnock Report thus devised a single category of special educational need (SEN) to avoid the stigma that had grown around some impairment groups. Alongside SEN, the Record was launched by the Education (Scotland) Act 1980 (as amended) to describe individual need and develop individual solutions to help the most severely affected pupils access education. This move from eleven categories to one should have ended the bureaucratization of special education. However, Riddell (2006) showed that this had not been the case throughout the 1980s and 1990s, and this thesis has demonstrated that this is not the case now. Schools and local authorities were more likely to use categories of impairment to define need in 2004 than in 2002. In particular there was a rise in the use of categories such as ADHD and SEBD.

The third framework that had dominated SEN was really focused on mainstream education. Rights for parents and disabled pupils were thwarted by the application of political procedures that had been culpable in the dominance of the markets framework in education generally (Riddell, 2006) at the cost of inclusive education for all. The markets framework was based on a capitalist ideology and had impacted on education throughout the Conservative years of the 1980s and into the new Labour leadership of the 1990s. This is perhaps exemplified by the Education Reform Act (1988) in England and Wales, but which permeated into Scottish policy via the *Devolved School Management Guidelines* (SOED, 1992b). The 1988 Act imposed league tables on schools creating competition for resources. The dominance of this ideology in the education system made disabled pupils less equal to their peers. This manifested in the notion that education is an investment. This position sanctions funding and educational opportunities for those most able to contribute to society as adults. That is the potentially high earners who could 're-pay' the investment through taxation. Rawls (1971) termed this the 'mutual advantage' principle, where only those who were considered to benefit society were included in the advantages of belonging to society. Those considered unable to become productive workers were given less status within society (Oliver, 1990, 1996). Even

Nussbaum in her support of the capabilities approach recognised the dominance of this capitalist model when she stated,

... there are indeed questions to be asked about how much the state should invest
in special education.

Nussbaum, 2006: 129

The context of a capitalist society thus influences the political procedures that form new policy, and in this way the influence of markets had permeated SEN and anti-discrimination legislation. This context must be challenged to alter the political procedures and allow the human rights based, anti-discrimination outcomes of the DDA and DDA Part 4 to be realised. Under the markets system pupils who were resource-intensive, critically disabled pupils, were less attractive (Lunt and Evans, 1994; Evans 2007).

In order to balance the effects of the market framework, consumerism was encouraged and this framework will now be assessed. In education generally, consumerism involved parents searching out the best placement for their children. Consumerist pressure could also encourage schools to become more inclusive but for such a change to occur parents had to share a consensus of opinion. The survey to parents clearly showed a divide between parents that insisted that a special school placement was the ideal form of provision and parents who argued that inclusion was essential. As the DDA Part 4 had not impacted on the proportion of parents who sought a special school placement, consumerism actually supported the markets framework from continuing to exclude 'low-value' students into special schools.

There was evidence generated by the survey to parents' to suggest that consumerism had become more influential between 2002 and 2004. Parents or carers responding to the 2004 survey demonstrated greater awareness of their children's new rights under the DDA Part 4. They also demonstrated a change in behaviour as more parents had tried to find information relating to their child's rights, with more parents approaching their child's school, using the media and the internet in 2004 compared to 2002. The parents who contributed to the in-depth interviews also had behaved as consumers seeking information from legal experts, the internet and impairment groups to support their demands for a different provision from their child's school. Parents who were acting in this consumerist way represented a minority of respondents

however. For example, parents were not more likely to have read or have awareness of their child's school policies that related to disability in 2004 compared to 2002 (responses to both surveys was low on this issue). This may demonstrate that they had little awareness of the provision made generally for their children and therefore would be unable to detect any structural or institutional discrimination. Had it existed, therefore, such discrimination would have gone unchallenged by the DDA Part 4.

For consumerism to challenge professionalism, parents and pupils needed to contribute to the service they were using: to help shape it. The analysis of the surveys revealed that few schools and local authorities had used parents as a source of expertise about the DDA Part 4. This suggested that their expertise was not recognised and therefore their contributions in this field were not valued. In Scotland, school boards do not need parent representatives and so the way boards are structured may account, to some extent, for the limited influence of consumerism detected by this thesis. In England and Wales school boards require parent participation and this may contribute to the greater influence of consumerism detected in England and Wales by Riddell et al (2002).

For parents to engage with consumerist frameworks sufficiently to support a claim under Part 4 also required engagement with the legal framework as parents had to have a clear understanding of the appeals procedure in order to challenge school provision. Indeed parents were more likely to have sought, or were interested in seeking legal advice in 2004 compared to responses to the 2002 survey. In addition, schools and local authorities sufficiently fearful of a legal challenge might commit more resources to ensuring that they did not discriminate against disabled pupils. The surveys to schools and local authorities revealed that they were motivated to make changes in response to the DDA Part 4. This was signified by the policy audit detected by the 2002 survey. However the 2004 survey revealed that fewer policies relating to disabled pupils existed after the two year interval. This suggested that local authority and school responses to the DDA Part 4 were not ongoing. Perhaps this argument is best illustrated by the finding that 82.2% of local authorities and 67.7% of schools were not fully compliant with the DDA Part 4 and thus had not met their legal duties two years after the Act became enforceable.

Resources, a lack of guidance and confusion over the terms of the DDA Part 4 were generated as barriers to compliance. Perhaps because schools and local authorities became aware that they had not met their duties, they were more likely to have sought legal advice in 2004 compared to 2002, thus signifying the greater influence of legal frameworks on Scottish schools. It might be argued that the legal framework would have had greater influence on schools and local authorities had case law emerged. Responses to the survey suggested that this would provide guidance that schools and local authorities would be able to use to more confidently meet their duties under the DDA Part 4. Therefore, although the legal framework had increasing influence as a result of Part 4, it was not used to support parents' rights, but to inform schools and local authorities of what they needed to do to comply.

In summary, the frameworks of professionalism, markets and bureaucracy had dominated special education in Scotland. Data generated by the surveys and the in-depth interviews demonstrated that these frameworks were not challenged by the DDA Part 4. The DDA Part 4 required disabled pupils or their parents to act as experts, and to continually place pressure on schools to change. Evidence from the in-depth interviews suggested that in order to challenge schools, parents had to be capable of using professional language and understanding the bureaucratic structures in which professionals located their expertise. Most parents, as indicated by responses to the surveys did not have the necessary expertise or knowledge of the DDA Part 4 to challenge provision. The frameworks of legal and consumerism frameworks could have aided the impact of Part 4 but these were unable to emerge with enough strength to challenge the SEN framework. This issue will resonate throughout this Chapter. The conclusions generated by this research reflect the findings of Riddell et al, (2006): the dominance of professionalism was echoed by key informants working in the field of education who reported that education legislation was influencing school policy and practice to a greater extent than the DDA (Riddell, 2005).

9.3 The DDA Part 4 did not Impact on Scottish Schools Because: State Schools do not have the Responsibility to Comply

In Scotland, the legal responsibility for compliance of state schools with the DDA Part 4 lay with the local authority. School boards or school owners were responsible for compliance of independent schools. This section will examine to what extent this deflection of responsibility contributed to the low impact of the Part 4 on Scottish schools.

Local authorities were most likely to respond to Part 4 by auditing policies to include mention of disability. This process did not generally involve the participation of parents or children. Therefore any changes informed by this audit did not necessarily impact on real barriers to inclusion or access which could have been highlighted by service users. Local authorities were also likely to have improved their awareness of legal routes to redress demonstrating that they were prepared to make only minimal changes in order to meet their Duty, or wait until a legal challenge (either against them or another local authority) guided their response. There was some evidence generated from the survey to local authorities that they were not satisfied with their response to Part 4 as noted by low compliance rates reported. Alongside this admission, local authorities argued that they had had little time or resources to respond to Part 4 and that their response was ongoing. However 18.5% of local authorities had no plans to raise awareness of the DDA with parents or carers (63% had plans in place) and 21.4% of authorities had no plans to raise awareness with children (50% had plans in place) and yet this was a requirement under Part 4. Schools were also weak on meeting this duty. There are three possible explanations to support this finding from the surveys. Firstly, schools and local authorities may be unaware of this duty. Alternatively they may be aware but had no intention to meet it. Finally schools and local authorities may have been unsure where responsibility was located (schools may have expected local authorities to meet this duty, and authorities may have expected schools to respond, or both may have anticipated that the DRC would meet this requirement). Whether intentionally or not, some schools and local authority structures produced barriers to parents behaving as consumers: restricting the flow of necessary knowledge about the DDA Part 4.

A comparison of state and independent schools showed different levels of response to Part 4 which, again, reflect market and consumerist frameworks. The differences may also reflect the displacement of responsibility from state schools to their local authorities. For example, independent schools were more likely to have made changes to written policies to take the needs of disabled pupils into account, than state schools. They were also more likely to have improved communication with parents and children than state schools. Independent schools exist in market frameworks (to a greater extent than schools generally) in that they compete for students and need to demonstrate that they have earned the fees that they charge. Though the independent sector in Scotland is comprised of schools that aim to provide academic excellence *and* schools that aim to offer specialist provision usually around an impairment group, both compete for revenue. Therefore the parents or local authorities with whom they deal are more likely to behave as consumers and place pressure on independent schools to deliver excellent provision. Yet the legal responsibility placed on independent schools for compliance with the DDA may also have triggered their engagement with this legislation.

Schools were less aware and had poorer understanding of the DDA Part 4 compared with local authorities. Local authorities responded enthusiastically to the opportunities presented by the DRC. For example, many authorities attended conferences, read the *Code of Practice for Schools* (DRC, 2002) and reported that DRC events were the most useful source of information (as reported by local authorities in 2002 and 2004). Fewer schools had attended events or read the Code than local authorities, and fewer schools reported participation in such activities in 2004 compared with 2002 so the early response to the legislation was not maintained. An alternative explanation is that schools felt that they did not need to repeat attendance, although this is undermined by the finding in 2004 that only one third (33.6%) had a good understanding and awareness of the DDA Part 4. Given the low compliance with the DDA generally (67.7% of schools did not think they complied) it seems clear that legal responsibility may need to be located with all schools in order to encourage engagement with Part 4.

To summarise, independent schools and local authorities showed greater engagement with the DDA Part 4 as measured by the responses made. Local authorities responded by

auditing polices and increasing their knowledge of the legal basis of Part 4. Therefore the responses made by authorities may have had little beneficial impact on individual children. Schools clearly had more scope to respond to Part 4 but perhaps needed the incentive of legal responsibility to optimise their engagement.

9.4 The DDA Part 4 did not Impact on Scottish Schools Because: Part 4 did not Cover Auxiliary Aids and Services

This section will argue that part of the reason that Part 4 did not impact, was that in reality it did not cover the range of discrimination that disabled children faced in Scottish schools. By confining its remit, Part 4 omitted the most important source of discrimination: auxiliary aids and services.

The omission was intended. The provision of auxiliary aids and services is a function of the SEN framework and are generally supplied after a Records assessment and in accordance with the recommendations of the professionals involved in writing the Record. As noted earlier, although the Record should outline the provision, in practice this has rarely been quantified (Riddell, 2006). An appeal against a Record could be made on the grounds that the statement of SEN arising from impairments would not meet the child's needs but parents could not directly challenge the provision agreed even if it was quantified. This issue had been tackled by case law in England, but no similar decision was reached in Scotland, making Scottish pupils more vulnerable and leaving the provision outlined on their Record open to greater interpretation (Riddell et al, 2006). An appeal against the terms of the Record could lead to a case heard at the Sheriff Court and this alone might have deterred parents. Also a short window (28 days after receiving the Record) was permitted for appeals to be made, almost certainly too brief a time for parents to determine if provision was sufficient. Therefore parents had minimal opportunities to show their dissatisfaction with auxiliary aids and services under education legislation.

Auxiliary aids and services were omitted from the remit of the DDA because parents had the right to appeal under the SEN framework though, as demonstrated, this was

inadequate. Many parents complained of discrimination relating to aids and services in the short-answer responses to the parents' survey. The DRC – Scotland caseworker interviewed, reported that the vast majority of complaints made to the DRC helpline involved a disagreement with the school over provision of aids and services outlined on the Record and the DRC were unable to support the parents because the issue was outside their remit. The parents who were involved in the in-depth interviews reported what they perceived to be a series of incidents that involved discrimination but on investigation were able to isolate only one incident that fell within the jurisdiction of the DDA and DRC.

The omission of auxiliary aids and services caused considerable confusion over what the DDA did cover. Many local authorities, schools and parents were mistaken in their belief that ensuring buildings were accessible and that the curriculum was inclusive, were required to comply with Part 4: in fact these were covered by DSPERA (2002). This confusion and the lack of resources prohibited schools and local authorities from completing their response to the DDA and ensuring compliance.

In summary the omission of auxiliary aids and service severely reduced the incidents of discrimination experienced by pupils that could form a claim under the DDA Part 4. In adopting a legal framework the DDA relied on parents and pupils to act as consumers and to be sufficiently informed about their civil rights to challenge discrimination. The emerging case law would then establish definitively what was covered by the DDA. It is evident that there was too much confusion over what could be covered by the DDA to really give enough parents the opportunity to make a challenge under Part 4. Consequently no case law has appeared and the confusion over what schools and local authorities need to know and need to do remains.

9.5 The DDA Part 4 did not Impact on Scottish Schools Because: The Definition of Discrimination was too Narrow

As well as having a narrow remit, the DDA Part 4 used a narrow definition of discrimination. Critically it also included caveats which permitted schools to engage in some discriminatory

behaviour. This further confused schools, local authorities, parents and carers, who were unsure of what constituted the basis of a claim. This section will explore this using the example of disruptive pupils as possibly lying outside the remit of the DDA Part 4.

The definition of discrimination caused confusion for parents. The three parents involved in the in-depth interviews were clearly knowledgeable and informed about the DDA and about their rights but still did not have a sound understanding of how discrimination was framed by Part 4. Parents generally, as signified by responses to the parents' survey, were far less sure of the terms of the DDA Part 4 or of their rights and routes to redress. The parents interviewed had a sound understanding of discrimination generally, but their definition was broader than the Part 4 definition. Parents related discrimination to the unfair treatment of a minority group. To not discriminate was to treat pupils equally. Further disability discrimination was related to the discrimination experienced by racial minority groups. Rather the DDA protected against less favourable treatment and failure to take reasonable steps to avoid substantial disadvantage. This may have coincided with the parents understanding of discrimination, but the Act also provided some caveats to this definition that significantly narrowed the term.

The term 'reasonable steps to avoid substantial disadvantage' is contentious on two counts. Firstly 'reasonable' is an arbitrary term and schools might be forgiven for not knowing how to interpret this. Secondly, 'substantial' suggests that schools were permitted to not take steps to avoid mild or even intermediate degrees of disadvantage.

The second aspect of discrimination 'less favourable' treatment was disliked by the parents interviewed. They argued that schools, in claiming that all pupils were treated the same, were able to get away with discriminatory behaviour. This argument may not be obviously clear as equal treatment should not equal discrimination. However in the case of the in-depth interviews, the equal treatment related to disciplinary policies which allegedly did not permit schools to acknowledge the impairment effects that contribute to disruptive behaviour. Thus, the parents interviewed argued that disciplining a child with organizational difficulties (which might contribute to turning up late for class, concentrating in class or incomplete homework for example) that arise from a medically diagnosed condition such as ADHD or

SEBD should be considered discriminatory. To pursue this argument as far as the parents who were interviewed did, young people who were violent in school for a reason relating to their disability should not face the same disciplinary penalties as young people who are not disabled. The parents invested heavily in an argument of blame when arguing their position: a disabled child should not be to blame for their impairment or any behaviour related to it. Although only one school contributed to the in-depth interviews I viewed documents relating to temporary exclusions sent by a second school to a parent interviewed. From these two accounts it is evident that some behaviour required a level of discipline regardless of the degree to which it was related to an underlying condition or impairment.

This leads to a wider argument about the definition of disability used by the DDA. The term disability needed to be defined to restrict eligibility otherwise the subsequent demand for resources (or additional support provision) would not be supported by the resource limited market. Thus the term disability could only be applied to people who were medically certified by an expert professional. Additionally disabled people needed to prove that their activities of daily living were impaired by their disability. The more inclusive definition (which allowed some medical conditions to count without this scrutiny on capabilities) was not adopted by the DDA until after the field work period ended (came in 2005). The definition of disability was contested as a matter of course in employment cases because many people were not recognised as being protected under the DDA (Gooding, 2000). In fact, the DDA has had more success in employment cases, but this is due in part to the ‘disability card’ being played in appeals against dismissal. This has led employers to automatically contest the ‘disability status’ of the claimant further relying on expert professionals and placing the claimant in a position of defence. There has been difficulty in demonstrating that individuals are covered by the legislation, or that the discrimination that has occurred falls within the remit of the DDA (Gooding, 2000; Meager et al 1999). Similarly, the disability-status of one of the young people represented by the in-depth interviews was implicitly challenged by a local authority.

Within the academic literature, the debate continues about whether conditions such as ADHD and SEBD should be considered a disability. The confusion lies in the definition of the conditions, though there is no consensus (Lloyd, 1997), most definitions do refer to socio-spatial exacerbations of the conditions (DfE, 1994b). Thus a child, if supported adequately in

school may not be impaired by these conditions (Cooper, 1993; Lloyd and Munn, 1997), calling into question the biological basis of the condition. This has not yet been contested in an education case. It is pertinent to this thesis because all children and young people represented by the in-depth interviews had a condition included in this category of disability and their point of issue under the DDA Part 4 was associated with disruptive and violent behaviour at school. Pupils described as disaffected are most at risk of exclusion as their behaviour has been framed as unsupportable by school structures. However children who have a disability are not automatically considered disaffected, but disruptive (DfE, 1994b; Cooper, 1996). The distinction not only puts them into a different category, it allows them to escape blame and use a label of forgiveness (Slee, 1995; Reid and Maag, 1997).

Critically, research has shown that teachers have invested heavily in the distinction between disruptive and disaffected behaviour (Maras et al 1997; Lloyd and Norris, 1999; Galloway et al, 1994) and respond reasonably to the former while maintaining a commitment to the exclusion of violent pupils, as Lloyd stated, 'Rights in school are not the same as licence' (Lloyd, 1997: 16). Yet where the difference lies, or where the line is drawn continues to be contested.

The Warnock Report (1978) highlighted that a definition of SEN should recognise that some children have transitory needs, and would thus include conditions such as ADHD which are most likely to manifest during the secondary education years. The SEN legislation informed by Warnock also acknowledges that conditions like ADHD may require additional support. However in allowing an imprecise provision to be written into a Record, the SEN framework placed little pressure on schools to alter pedagogical practice or modify the school environment despite the child having a condition that is exacerbated by these factors.

The Education (Additional Support for Learning) (Scotland) Act, (2004) would include a child with ADHD under the definition of additional support needs but would only provide a co-ordinated support plan if the child demonstrated additional educational needs and also required multi-agency support, and so in practice may exclude many children whose main difficulties exist only in the classroom. It is unclear whether a legal challenge would result in a diagnosis of ADHD being contested as not being covered by the DDA. The case could be

made that ADHD falls outside the disability category as it can be dependent on particular environments and so would not satisfy the definition of impacting on daily activities. Thus disability as defined by Part 4 of the DDA may exclude pupils with conditions like ADHD from the protection of the Act because their difficulties are pronounced in schools.

To consider the case of Robert, he did not have a Record because his Mother felt that his condition was supported by his school in local authority A. A move to local authority C was considered less supportive and Robert's behaviour became disruptive, though the school's use of temporary exclusions suggests that they interpreted the behaviour as disaffected. In order to challenge this perspective, Robert's Mother sought the protection of a Record, as she understood that this would confirm that her son had a SEN and was blameless for his behaviour. Therefore the onus would be on the school to change rather than her son. Having established via a Record that her son had a diagnosed condition and SEN, Cate assumed that he would be protected under the DDA, and that the school would behave differently to her son and 'forgive' his behaviour, yet found that he continued to be disciplined for reasons relating to his condition, for example disorganization.

Drew's parent also used the DDA Part 4 to challenge the inflexibility of school policies structured for the 'normal' child in 'normal' circumstances. The school resisted any change to their structures thus not making a reasonable response. It is perhaps important to consider the consequences for schools in not adapting their policy, if the disabled young person continued to be disruptive, then schools were able to exclude, either temporarily or permanently, thus perhaps removing a pupil who was considered unsupportable, a drain on resources, or who presented a risk in terms of league table performance and school reputation (OECD, 1999; Armstrong & Galloway, 1994).

It is evident that parents (those responding to the survey and participating in interviews) need more guidance in how to understand Part 4 and particularly with the definitions of disability and discrimination. The DRC was setup in acknowledgement that all stakeholders would benefit from a commission that could disseminate knowledge and indeed the DRC – Scotland were well used by local authorities and schools (as indicated by the surveys). Despite outreach events and a DRC helpline, few parents had contacted the DRC

despite wanting more information. For example, only 2.1% of parents responding to the parents' survey in 2002 and 2004 had contacted the DRC helpline despite the fact that 55.8% of parents wanted information about their legal rights and 43.3% wanted information about legislation. This discrepancy was at least in part a function of low awareness of the DRC: only 28.9% of parents or carers were aware of the DRC or its remit.

The parents or carers responding to the survey had low awareness of the DRC generally. Though schools were more aware of the DRC and had attended events, there was some criticism of the *Code of Practice for Schools* (DRC 2002b). The Code used practical examples to illustrate the remit of the DDA Part 4 and to further define discrimination. However a couple of schools (and as these comments were not a response to a specific research question, more may have agreed) argued that the examples given in the Code frequently highlighted issues around physical access and did not sufficiently approach the tensions of including disruptive pupils, or how schools should go about balancing the rights of disruptive pupils with other pupils in the class.

The *Code of Practice for Schools* (DRC, 2002) went a long way in fact to explain how the DDA Part 4 had defined discrimination. The Code always described it as a one-off less favourable treatment where a child's opportunity to participate was limited for a reason related to their disability, and in the circumstance where other non-disabled children were not limited. That none of our parents generated an example like this suggests either that the Code does not fully represent the forms of discrimination experienced by disabled children, or perhaps more likely, the unfavourable treatment allegedly experienced by our in-depth interviews were not recognised as discrimination under Part 4 of the DDA. The parents interviewed built up an awareness of less favourable treatment, without a single, and clear case of discrimination occurring. Indeed this was reported in all our in-depth interviews (see Chapter 7 and 8), each parent reported a long episode of discrimination, ending, in the view of the parents, only when the child changed or left school.

In summary, the definition of discrimination used by Part 4 was too narrow to span the actual discrimination experienced by Scottish pupils. In particular the caveats placed around the definition were perceived by parents to give schools sufficient flexibility to avoid any

meaningful response to the DDA. This issue was highlighted by the tension between young people framed as disruptive and disaffected. Schools responding to the survey would have liked more support from the DRC on how to interpret their duties in the support of pupils who were disruptive in school.

9.6 The DDA Part 4 did not Impact on Scottish Schools Because: The Appeals Process was Complex and Intimidating

The next argument that contributes to the conclusion that the DDA Part 4 has not impacted on Scottish schools is concerned with the appeals procedure available to those who want to challenge discrimination. The conciliation service offered by the DRC will be considered. Also the absence in Scotland of a tribunal that can hear disability discrimination cases is criticised as deterring parents from pursuing a case of discrimination. In addition, in this section I will explore the structure of the appeals process that enables a parent to make a case on their child's behalf which can effectively exclude the child from the process altogether.

As discussed in some detail in Chapters 1 and 4, a person making a claim of discrimination under Part 4 could be invited (if they satisfy the DRC that the child or young person involved is disabled and was discriminated against within the remits of the DDA) to participate in conciliation. This service is a form of mediation offered to claimants to help them avoid a Court appearance. The conciliation aimed to open dialogue between the parent or carer and the school in an independent environment in the hope that a positive way forward could be found. The actual incident of discrimination which formed the basis of the claim would contribute to this dialogue but the conciliation did not aim to reach a verdict about whether discrimination did, or did not, occur. Essentially, this then did not meet the needs of parents. Those who took part in an interview had found the process of challenging their school stressful and emotionally draining. Much of their challenge had pre-dated their involvement with the DRC as they had complained to the school, had in some cases taken part in local authority conciliation and one parent had taken their school to Court with a civil case. Thus at best, conciliation could only offer a repetition of what had gone before leading parents and the school involved in the in-depth interviews to conclude that it was a futile exercise.

Conciliation was not successful and contributed to parents closing their claim with the DRC. Had they pursued it, they could have presented their case at the Sheriff Court. Though the three parents interviewed were adamant that they were equal to the Sheriff Court, their withdrawal from the process suggests that this may not have been the case. Parents responding to the survey did not, generally, want to pursue a case of discrimination as far as the Sheriff Court. In fact only 38.4% of parents or carers would pursue a claim this far. If the prospect of having to appear in Court prohibits parents from pursuing a claim, then the DDA Part 4 cannot protect the rights of disabled pupils and discrimination will continue unchallenged. In addition to not providing the rights for these individual children, the lack of case law also sends a message to school and local authorities that their policies and practice are not discriminatory.

England and Wales have a different appeals procedure where a case is ultimately heard at a tribunal. Many more cases have been heard in England and Wales demonstrating that this process is less intimidating for parents. Since 2005 the Additional Support for Learning Tribunal (ASLT) has existed in Scotland to hear cases, mostly in relation to the terms of co-ordinated support plans. Just as the English Special Education Needs Tribunal was extended to hear disability discrimination cases, so the ASLT could be extended.

Even if the ASLT was extended, this might not be sufficient to challenge the professional framework. Riddell et al's (2006) early review of the tribunal found that it suggested greater partnership working with parents able to challenge expert 'opinion'. However the professionals contributing to Riddell's study (including educational psychologists, teachers, senior education officers and education development officers working in the Scottish Executive) continued to invest in professional frameworks, and remained suspicious of consumerist behaviour,

Educational psychologists were of the view that in general additional services were being delivered when these were required and it was important that parents were not encouraged to become too critical and adversarial, since this would spell the end of partnership.

Riddell et al, 2006: 25

The challenge for parents was considerable. As the DDA relied on individuals to make case law, pressure for organisations to change came from below. Consequently it required people who had experienced discrimination and who were vocal, empowered and strong enough to make a case. Only when cases had been won, could other disabled people expect a given level of protection. Therefore protection depended on case law, which in turn depended on those people who had experienced discrimination being sufficiently empowered and skilled to act with agency. This is particularly relevant to Part 4 cases in Scotland, as currently no single case has been won implying that disabled people or their guardians do not feel sufficiently empowered to use the legislation. It is clear that the legal framework has had an increasing influence on education, but the model was not useful for parents. Thus, in Scotland, the fact that a case could end up at Court may have deterred parents from initiating a claim with the DRC. As a result the DDA Part 4 may not have been considered as an option by over 60% of parents or carers. There was some indication from the surveys that parents felt challenging provision was futile. The data generated by the in-depth interviews revealed that some parents were reluctant to openly oppose decisions made by providers who they needed to work with in future. For example two of the three parents were keen to end their claim for fear that their challenge had or would impact on provision offered to siblings of the young person who was central to the claim.

To summarise, despite parents or carers welcoming the ethos of the DDA this may have imposed its own set of problems in practice. The promised end to discrimination misled parents who contributed to the in-depth interviews. Using the DDA Part 4 to make a claim was stressful and emotional and this challenged the outcome of the claim in all three cases as parents withdrew. Thus cases were resolved as pupils moved to a different school, not because the DDA had worked in supporting their challenge. In addition many cases of discrimination did not meet the restrictive terms of Part 4 or they lay outside its remit as they were related to the provision of auxiliary aids and services.

9.7 The DDA Part 4 did not Impact on Scottish Schools Because: Rights did not Emerge

The final argument proposed by this thesis is that the DDA Part 4 did not sufficiently protect the rights of parents and pupils despite this being a central feature of the Act. This section will focus on why the right to an inclusive education, as promoted by Part 4, did not actually change the pattern of provision in Scotland. This section will then consider that if rights were successfully promoted by Part 4 at all, it was the rights of the parent, rather than the rights of the young person that were paramount.

The DDA Part 4 promoted inclusion as a right of all pupils. Segregation into special schools was generated by the disability movement as being just one example of the way disabled people were excluded from society (see Chapter 2 for a full discussion; Oliver, 1990; Barnes, 1992). Certainly the social model in arguing for the end of oppression, insisted that all children should be educated together. The capabilities approach as framed by Nussbaum (2006) argued that in overcoming disadvantage disabled people had to be involved in and participate in wider social structures, particularly education. The SEN framework had been influenced by bureaucratic approaches that had continued to impose segregated education for some disabled pupils despite the promotion of inclusive practice since the Education Act 1944 (1945 in Scotland). Even the new label of SEN was insufficient to challenge the categorisation of children into either mainstream or special school placements.

The survey to parents revealed that fewer children represented by the 2004 survey were educated in mainstream than in 2002. The same numbers of children were taught in special units attached to a mainstream school, and more children were educated in a special school in 2004 and in 2002. Further, data generated from the parents' survey revealed that the number of children with an autistic spectrum disorder, including ADHD educated in a special school increased from 29.2% in 2002 to 41.2% in 2004, echoing Swann's (1992) finding that children who may be considered disruptive (though not all children with these conditions are disruptive) are excluded from mainstream education and increasingly moved into special placements. This indicates that schools represented by the surveys used here were generally no better in providing the kind of individual, non-normalised environment that would allow

greater inclusion. If schools had been more supportive and more reasonable, then more children and young people would have been educated in a mainstream placement.

In addition inclusion was not always delivered in mainstream schools. Several parents responding to the parents' survey described how they had to supplement the additional support provided by the school in order to fully provide access to the school day and activities. Paying for additional assessments, providing transport and lunch cover were all generated as examples. Clearly children whose parents were unable to deliver these additional commitments could effectively be segregated within mainstream placements.

There was also no evidence that the rights message of the DDA had been used to empower and facilitate the participation of disabled children and young people as they were not involved in their own claim. As the 'voice' of disabled pupils was missing from the claims process, any resolution was unlikely to truly reflect their needs. In exploring this argument further, I will turn to the principles of the social model and capabilities approach to outline why participation is critical and then explore some of the barriers that restricted the participation of disabled pupils that emerged during this research.

It could be argued that the ethos of the DDA is connected to the social model and capabilities approach as both assume that disabled people should be afforded equality of participation in achieving political, civil and human rights. The capabilities approach argued that this equality was achieved through participation in creating rules or laws that had a positive outcome for those it represented (Nussbaum 2006). The DDA aimed to achieve the outcome of ending institutional discrimination by supporting case law brought by the disabled people who had faced this discrimination. Part 4 allowed parents or guardians to make that challenge on their child's behalf. Thus in challenging educational structures disabled people or their parents/guardians were exercising their political right to contribute to the law that represented them. In this way disabled people were promoting their civil and consumerist identities as they were challenging society to transform to meet their individual needs.

Even though consumerism had had some limited influence on parents as detected in the in-depth interviews and the parent survey, and even if this could be related to the DDA Part 4,

no evidence was generated that suggested that children or young people were acting as consumers. Therefore although the terms of the DDA Part 4 encouraged pupils to participate, it was not interpreted in this way and participation rarely occurred in practice. The cases that formed the basis of the in-depth interviews did not involve the young people represented by the claim of discrimination even though the youngest was aged 12 during the claims process and thus considered to have the 'capacity' to participate under the Children (Scotland) Act (1995). The parents interviewed were opposed to their children being involved in the claim, nor was I encouraged to involve them directly in this study (though no parent explicitly opposed this). This issue was highlighted by the DRC caseworker: she reported resistance from parents in involving their children in the evidence gathering stage of the claims process. Yet young people did contribute they were found to be insightful respondents able to engage actively with the process and the complexities of the DDA Part 4, echoing the findings of Alderson, (1993).

By not involving their children in the claim, parents were creating a barrier to participation that challenged both the inclusive message of the capabilities approach and the rights agenda. Without the DRC – Scotland's intervention, disabled pupils would have been excluded from participation in the case law that would influence the terms of the legislation that impacted on them and their access to life's opportunities.

Thus the parents were culpable in imposing a procedural structure on the DDA Part 4 that prevented it achieving an outcome of equality, inclusion and rights. The treatment of children as passive dependents that should have decisions made for them reinforces the exclusion of disabled people generally (Oliver, 1996). In retrospect, I could have invited the parents involved in the in-depth interview to counter this challenge, but at the time of the field work I had not considered the possibility that these parents could have created such barriers. This is just one example of the hermeneutic gap described by Giddens (1993). Indeed it was through the analysis that other evidence emerged that supported the notion that the young people were viewed as dependents rather than agents. Thus parents had acted in the 'best interests' of their children without allowing them the agency or dignity of deciding what that was for themselves.

In summary, the DDA Part 4 does not require that children are placed at the centre of a claim and this allows their views and wishes to be sidelined. The protection of children may be necessary and it may be right to avoid their involvement in the legal process but in building the DDA Part 4 in this way, it failed to offer an emancipatory model for the children it represented. Perhaps then the DDA's outcome could not be achieved because the political procedures applied did not fundamentally recognise that all people are equal, with equal rights to freedom and human dignity. Though parents may have been able to engage with the new rights under Part 4, disabled pupils were severely restricted from any engagement despite the efforts of the DRC – Scotland. In not successfully realising the rights of disabled people in practice, the DDA, in effect, contributed to the oppression of disabled people.

9.8 What went wrong: A Conclusion

In addition to the conclusions drawn thus far, another three elements will be considered here. These are themes that span across the six conclusions presented. Firstly, evidence from the surveys demonstrates that although issues around disability increased between 2002 and 2004, local authorities and schools also demonstrated increased awareness of the SEN framework showing perhaps confusion over how Part 4 had intended to challenge the existing framework. Secondly, the timing of the DDA Part 4 over-burdened Scottish schools. The consultation of the Additional Support for Learning Act (2004) overlapped with the implementation of Part 4. Given the overwhelming dominance of the SEN framework in the education of disabled pupils, schools and local authorities evidently felt that the ASL Act needed to be a priority. Finally and perhaps due to the overlap of legislation impacting on disabled people, disabled people were hidden by the DDA Part 4. As I will demonstrate with reference to the capabilities approach, procedural justice cannot occur unless disabled people are involved in how laws are formed. This argument relates to the previous section, but the argument here is framed in a theoretical analysis: disabled pupils did not participate in using Part 4.

The surveys to local authorities and schools revealed that disability had greater prominence in education structures in 2004 compared to 2002. This was demonstrated by the rise in policies, committees and champions with a specified remit for disabled pupils. Yet during the same period Special Educational Needs (SEN) also became more embedded in

education structure. Further, some schools and local authorities had already started to use the term ‘additional support needs’ to describe disabled pupils showing that attention to the ASL Bill had eclipsed the DDA Part 4. This suggests that responses made by schools and local authorities ran alongside existing structures set up by SEN or general education legislation rather than contesting them. Thus if the DDA had hoped to challenge the status quo by promoting inclusion and equality, then it had not impacted sufficiently on Scottish schools to change structures and achieve this.

Secondly, the introduction of yet more legislation in the form of the Education (Additional Support for Learning) (Scotland) Act (2004) (ASL Act) further muddied the waters. The then Bill’s consultation with schools and associated organisations was picked up by the 2004 survey. The survey to schools and local authorities revealed that they had already started responding to the forthcoming Act, thus deflecting resources from the incomplete response to the DDA Part 4. There was evidence that the definition of additional support needs as introduced by the Bill had already replaced the DDA’s definition of disability in some schools and local authorities, essentially causing disabled pupils to be hidden within a wider definition. In addition 27.3% of schools and 36% of local authorities were not planning a distinct response to the ASL Act compared to work done for the DDA Part 4. This suggested that schools and local authorities had interpreted the intended ‘outcomes’ of the ASL Act and Part 4 to be the same. This supports the argument that the anti-discrimination outcome of the DDA Part 4 could not be achieved because schools and local authorities did not perceive it to be distinct from the SEN framework that permitted discrimination in the form of segregation from inclusive learning and academic success.

In turn, the implementation of the ASL Act was supported by £24 million of Scottish Executive funding (Riddell et al, 2006). This money had funded an Implementation Officer post in each local authority in Scotland and training for key staff. No funding was provided by the Executive (or Westminster) to implement the DDA Part 4. Though the DRC did exist, it was funded from Westminster and could not compete with the integrative work or the volume of resources supported by the Executive in implementing the ASL Act (2004).

The third argument relates to the procedural application of the DDA Part 4, which did not sufficiently engage with disabled pupils. The capabilities approach will be used to substantiate this argument and I will begin with a brief recap of what this approach argues. The capabilities approach is a framework which counters the utilitarian concept that disadvantage is analogous only to income. Rather the approach seeks to frame inequality as a matrix where barriers to being and doing are considered as contributing to disadvantage (Sen, 1980; 1985). Within this model, income or impairment become elements which fluctuate and co-exist, impacting on a person's capacity to achieve equality and well-being, and in so doing, contribute to the 'capability set' (Burchardt, 2004). Critically education is given central importance by the approach as it is fundamental to being and doing. That is through education we earn greater access to opportunities to participate, but also better appreciation of our opportunities. Thus full participation in education is required in order to achieve social justice, for only those educated are able to fully participate beyond education.

The outcome of ending discrimination required the participation of disabled people, if the legislation was to be meaningful and efficient. I argue that the outcome of ending discrimination, at least with regard to disabled pupils has not been achieved, and hope to demonstrate that this is in part due to the nature of the legislation, which was not built to deliver the outcomes it aimed for.

The capabilities approach is like the criminal trial. That is, it starts from the outcome: with an intuitive grasp of a particular content, as having a necessary connection to a life worth of human dignity.

Nussbaum, 2006: 82

In the above quote, Nussbaum used the analogy of a criminal trial to explain how the capabilities approach should work in practice. Thus in a criminal trial, the outcome of a just verdict is paramount and the procedure that leads to the verdict must be just for the outcome to be realised. Therefore for the DDA to tackle the discrimination of disabled people, it had to adopt a just procedure. I argue that at some point in the development of the DDA Part 4, attention deviated from this outcome. Nussbaum (2006) argued that political procedures (for example, a constitution, economic or legal structures) are used to create the rule or law and achieve the specified outcome.

In practice then, there may be tension within the DDA between people needing to behave autonomously but perhaps living lives that have accentuated their dependency on others or on technology. There has been a fair amount of literature examining the dependency culture that has sometimes dominated the lives of disabled people (Zola, 1982; Oliver, 1996) and disabled children in particular (Shakespeare and Watson, 1998). According to this theory, disabled people are less likely to be treated as free agents and so are less likely to behave as free agents, and thus their rights under the DDA are compromised.

That is not to say that disabled people do not live their lives as free agents, just that those most at risk of experiencing discrimination may be the most dependent. And this again must feed directly into this research, as another aspect of our focus sample's multiple identity is that of child, so in more than one way, the people who have been discriminated against are less likely to have experience of free agency. As stated, the DRC – Scotland did try to facilitate the contribution from disabled pupils but, as this research has shown, they continued to be hidden from participation.

In summary, the timing of the DDA did much to interfere with its impact in Scotland. Schools and local authorities prioritised their response to the ASL Act for two major reasons. Firstly the new concept of additional support needs was replacing the SEN category and so all structures set up for SEN and disabled pupils needed to be reconsidered. Secondly the implementation of the ASL Act was funded and so each local authority had the resources and personnel to focus on additional support at the cost of disability rights.

9.9 *Discussion and Future Directions*

For all the reasons outlined in this Chapter, the DDA Part 4 has had little direct impact on school education policy and practice in Scotland though it may have had some impact in terms of policy review. In this final section, I will review some of the conclusions drawn. I will use this to propose future directions the DDA and education policy might take to become a more effective tool in fighting discrimination.

The DDA needs to include auxiliary aids and services. To omit this is to permit discrimination to continue. This should be seen as a priority as responses from parents interviewed, parents surveyed and the DRC caseworker agree that the additional provision currently provided for pupils with a recognised additional need is inadequate, inconsistent and discriminatory. Though the current ASL Act (2004) now offers an easier route to redress (appeals against the Records involved the Sheriff Court) thanks to the Tribunal, this might not make much difference as the Tribunal hears cases relating to Co-ordinated Support Plans (CSPs). Hugely lower numbers of children are expected to have a CSP compared to a Record. For example, one local authority responding to Riddell et al's (2006) review of early responses to the ASL Act had reviewed 400 Records and provided only 27 CSPs (this constitutes 7% of pupils formally Recorded). Other authorities revealed a similar pattern of provision. As a consequence pupils need the protection of the DDA in the provision of auxiliary aids and services. Not least because many are dependent on provision in order to fully access the opportunities within education and opportunities in life that derive from a successful performance at school.

The DDA Part 4 had a much bigger impact on universities and colleges due to the post-16 strand including auxiliary aids and services within its remit. Another reason the DDA may have impacted more in the higher and further education sector is the heightened consumerism brought about by students being increasingly responsible for funding their place and thus being more likely to assess the value and return of their investment.

The second proposal is that the duty to comply with the DDA Part 4 should be applied to all Scottish schools. The survey to schools revealed that independent schools had done more to respond to Part 4 and this is due, at least in part, to having legal responsibility. All of the parents interviewed and many responding to the survey had complained to their child's school about what they considered to be unfair treatment of their child. If *all* schools in Scotland had responsibility, then these early challenges may have been considered more seriously and effectively responded to. By placing responsibility at the local authority level, parents had to go through a number of levels to complain. Thus challenges against the school involved multiple meetings, mediation and possibility conciliation. Such procedures would often involve senior officials and this may have increased the stress and intimidation felt by parents.

These processes were completed by parents involved in the in-depth interviews even before they approached the DRC. As a consequence the parents were emotionally exhausted by the time they arrived at the DRC's conciliation.

Connected to this proposal, Scottish state schools should do more to increase the participation of pupils and parents. This might involve greater numbers and greater power for parents willing to contribute on school boards. Through this system, parents would be able to communicate directly with the school and influence changes before existing structure become barriers. Greater participation of parents would also give them the skills and expertise to consider themselves equal to professionals and so able to challenge them should an issue need contesting.

In addition to increasing responsibilities for schools, there should be recognition that schools need more support. Without the personnel or resources to apply energy to the implementation of Part 4, schools have become dependent on agencies such as the DRC. The new Equality and Human Rights Commission could usefully direct attention to this area. In particular, schools need more help in understanding the rights of disabled pupils that can be disruptive during the school day. This would also benefit from a research focus. The DRC's ten year review argued that case law had not emerged in Part 4 because many cases settled before a formal hearing (DRC, 2007). In terms of the cases that the DRC knew about then (but which did not appear in Court or at SENDIST) many were related to discrimination against disruptive pupils with a diagnosis of ADHD or SEBD. This could present a rich source of data to inform a clearly contentious issue.

The third proposal is that the DDA stops using disability as a requirement for protection. As disabled people get no financial compensation if they win a case (this is true for Part 4, as employment cases often revolve around wrongful dismissal, it is possible to win compensation), there is arguably no value in restricting eligibility. My argument hangs on the difficulty in using consumerism to challenge professionalism. In order to make a case under Part 4, children or parents need to act as consumers by assessing the service provided and if dissatisfied, request better provision. Assuming that a parent or child is sufficiently knowledgeable, empowered and determined to make a case that meets the DDA's definition of

discrimination and they make it into a Court (and as discussed this is improbable) they then have to defend their eligibility to receive the protection of the Act. Before the Court hear of the discrimination or place focus on the school, they must judge whether the claimant has a valid status (is disabled). In addition, this verdict is made by (legal) professionals based on the judgements of (medical) professionals. As claimants rely on professionals to corroborate their status an imbalance exists and power is placed away from the disabled person. Thus, the imbalance that exists between disabled people and professionals in education is reinforced by an appeals process that is supposed to be protecting their rights (Gooding, 2000; Meager et al 1999).

As stated, the DDA should lose the disability criteria. Everyone has the right not to be discriminated against. By having to establish a disability, the DDA offers no protection for people assumed to have a disability or people who face discrimination because they associate with a disabled person (Gooding, 2000). There seems no basis for this segregation to continue.

I will finish with a final thought that has been shaped by this project. Given that social structures discriminate, I see that without change some people are necessarily excluded from mainstream education. It is not in the interests of all children to share the same space as their peers all of the time. Being together for six hours a day, to listen to the same lessons, be set the same attainment targets or to sit in the same exam halls is not equality. The social justice argument made by this thesis is that more pupils are excluded than is necessary. Therefore more children and young people are denied their rights to participation. This is discrimination and addressing it is a moral necessity. It has been allowed to continue because the DDA Part 4 has created a paradox in practice, as it has relied on pupils placed in multiple layers of dependency to become inexplicably empowered, knowledgeable and skilful enough to make a claim. While no claim is forthcoming, schools and local authorities can encourage themselves to invest in the idea that discrimination is not happening. This paradox should be challenged by recognising that those who face discrimination are unlikely to be sufficiently empowered to challenge discrimination. It must be corrected for social justice to exist in Scotland.