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of Justice

# Review of arrangements for disagreement resolution (SEND)

## Research report

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<sup>1</sup> These are not the same as Independent Supporters, the national initiative to provide support to parents and young people navigating their way through the EHC needs assessment and plan development process.

# Executive Summary

## 1 Introduction

The Children and Families Act 2014 and the related *Special educational needs and disability code of practice: 0-25 years* (SEND code of practice) (DfE, 2015) place a greater emphasis than before on the avoidance of disagreements through a person-centred approach to decision-making and open communication between professionals and parents and young people (SEND code of practice, paragraph 11.1). Where disagreements and complaints arise, the legislation and the code make clear that parents and young people should be given information and, where they choose, support to enable participation in disagreement resolution and complaints processes. Local authorities (LAs) must therefore provide an information, advice and support service, an independent local disagreement resolution service and mediation service(s). The mediation service includes mediation advice (i.e. providing information about what mediation is and can offer) and full mediation<sup>2</sup>. Local authorities must inform parents and young people about these services, as well as of complaints procedures, and procedures for appealing to the English First-tier Tribunal SEND<sup>3</sup>. The reforms aim to reduce the incidence of disagreements and to achieve earlier resolution of those that do arise.

This review of arrangements for resolution of SEND disagreements took place **during the transition** from processes under the 1996 Act to those under the 2014 Act. The 2014 Act extended the age range, covering 0 to 25 years. The review was not of the reformed system but **only of the arrangements for resolving SEND disagreements**. This means the focus of the review was on that small minority of the SEND population where disagreements had arisen.

Other research (Adams, L. and others, 2017) has shown that SEND processes are working for the **majority**. The present report focuses attention on the important **minority** where disagreements have occurred.

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<sup>2</sup> Local authorities may commission one or more mediation providers.

<sup>3</sup> Each UK nation has its own equivalent Tribunal.

## Routes to resolving SEND disagreements

### Informal discussions and meetings with school staff and/or LA SEND staff

These informal discussions and meetings would normally be expected as the first step in seeking to resolve any issues or disagreements relating to SEND.

### SEND Information, advice and support service (IASS or SENDIASS<sup>4</sup>)

Every LA must provide or commission an impartial, confidential and accessible information, advice and support service for children, young people and parents in relation to SEND. The scope of the service is set out in the *SEND code of practice*, 2.17-19 (DfE, 2015). It includes offering informal support to resolve disagreements and help in managing mediation, appeals to the First-tier Tribunal SEND and complaints relating to SEND.

### Complaints procedures

All public services must have a complaints procedure. Those relating to educational settings in general and to SEND issues in particular across education, health and social care are summarised in the *SEND code of practice*, 11.67 – 11.111 (DfE & DH, 2015).

### Disagreement resolution service

Every LA must commission an independent disagreement resolution service (DRS) available to parents and young people. It covers all children and young people with SEN (not only those being assessed for or having an EHC plan). It may be used in relation to four types of disagreements that cannot be appealed to the First-tier Tribunal SEND. These four specific types of disagreement are set out in the *SEND code of practice*, 11.8 (DfE, 2015 see also Figure 15).

### Mediation service

Every LA must commission an independent mediation service that is available to parents and young people. Before making an appeal to the First-tier Tribunal SEND, unless the application is about placement only, parents or young people must contact the mediation service to discuss whether mediation might be a suitable way of resolving the disagreement (this is known as 'mediation advice'). The subsequent decision whether or not to take-up mediation is voluntary for parents or young people. If mediation is chosen, the local authority must ensure the meeting takes place within 30 days of being informed. Further information is provided in the *SEND code of practice*, 11.13 – 11.38 (DfE, 2015).

### First-tier Tribunal SEND

Specific decisions relating to EHC needs assessments, specific aspects of the content of EHC plans, or the decision to cease an EHC plan can be appealed by parents or young people through the First-tier Tribunal SEND (*SEND code of practice* 11.45, DfE, 2015 – for further information about appeals, see sections 11.39 – 11.52).

Source: authors, based on *SEND code of practice: 0 to 25 years* (DfE, 2015<sup>5</sup>)

The research was commissioned to provide independent information to support Ministerial commitments to conduct (i) a **review** of these disagreement resolution

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<sup>4</sup> Abbreviations used by these services vary – some use IAS (Information, advice and support) some IASS (Information, advice and support service). Some include SEND at the beginning (SENDIAS/S), some do not.

<sup>5</sup> [DfE & DH] Department for Education and Department of Health, 2015. *Special educational needs and disability code of practice: 0 to 25 years*. Department for Education: London.

arrangements and (ii) a **pilot**<sup>6</sup> to test the expansion of the powers of the First-tier Tribunal SEND to make non-binding recommendations on health and social care aspects of EHC plans.

The Tribunal's powers are currently limited to making decisions about the educational aspects of EHC needs assessment and plans. Within the pilot areas, for appeals about the educational aspects of an EHC plan, these powers were extended to enable the Tribunal to make non-binding recommendations about the health and/or social care aspects also. The pilot involved 17 English LAs that volunteered to take part (13 LAs took part from 1 June 2015 and four more from 1 February 2016.). The pilot was framed by Regulations<sup>7</sup>.

## 2 Aims and objectives

The overall **aim** of the research was:

- To assess how well new and existing routes for redress were working for children, young people and their families.

This overall aim was broken down into two more specific research aims:

- To gather evidence, including on any cost savings, to inform a review of arrangements for disagreement resolution required by the Children and Families Act 2014
- To understand the effect of the pilot to extend the powers of the First-tier Tribunal SEND to make non-binding recommendations about health and social care aspects of EHC plans, including cost implications.

The study had **six objectives**. These were:

1. To examine whether the process of education, health and care (EHC) needs assessment and plan development introduced under the Children and Families Act 2014 was successful in resolving and preventing disagreements at an early stage (research questions associated with this objective included perspectives on the experience of appealing to the First tier Tribunal SEND).
2. To examine whether disagreement resolution services (DRS) and information, advice and support services (IASS) were helping to resolve issues at an early stage and so contributing to a reduction in appeals to the Tribunal.

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<sup>6</sup> A 'pilot' in this context means a time-limited try-out of a new arrangement or practice.

<sup>7</sup> The Special Educational Needs and Disability (First-tier Tribunal Recommendation Power) (Pilot) Regulations 2015 and amendment dated 5 January 2016 The Special Educational Needs and Disability (First-tier Tribunal Recommendation Power) (Pilot) (Revocation and Transitional Provision) Regulations 2016.

3. To examine how successful mediation was in resolving issues without need for recourse to the Tribunal.
4. To examine whether health and social care complaints arrangements were working for children and young people with SEND and their parents, taking into account other reviews, such as the Francis inquiry (February 2013) and the Clwyd Review (October 2013). (The research also included education complaints arrangements.)
5. To understand the effect of the pilot to extend the powers of the First-tier Tribunal SEND ('the Recommendations pilot'), including cost implications.
6. To assess the cost savings of early (pre-Tribunal) disagreement resolution.

### **3 Methodology**

The research project involved integrating quantitative research, qualitative research, and economic cost-benefit research into a coherent whole. Here we provide a summary of the information collected.

#### **3.1 Quantitative information**

We sent three online surveys to all 152 higher tier and unitary English LAs, each covering two terms of the academic years, 1 September 2014 to 31 August 2016.

- 109 LAs (72%) responded to at least one of these surveys.

These data were used to analyse patterns based on individual cases going through the system.

- 42 LAs (28%) responded to all three surveys

These data were used to analyse patterns of disagreement resolution over time, from Year 1 (2014-15) to Year 2 (2015-16).

Two online surveys to LA lead officers responsible for EHC needs assessment processes, each covering one academic year, Year 1 (2014-15) and Year 2 (2015-16) respectively.

- 60 LA officers responded to the first of these; 62 LA officers responded to second

These data were used to gain an insight into views about key aspects of the SEND system, brought in under the Children and Families Act 2014, which are relevant to disagreement resolution.

## 3.2 Qualitative information

Qualitative information was collected through:

- Focus groups (average length of two hours) with 13 of the LAs involved in the Recommendations pilot (53 individuals)
- In-depth interviews (average length of two hours) with 79 parents with experience of disagreement resolution, including 9 with experience of the Recommendations pilot
- Contributions from four young people with experience of disagreement resolution (one through videos, one by written letter, two by interview)
- Interviews (average length of one hour) with:
  - 19 mediators from 11 mediation services
  - 15 supporters of parents from 14 organisations, mainly from the voluntary and community sector, but also including private sector
  - 8 complaints procedures representatives
  - 3 Tribunal panel representatives with experience of Recommendations pilot hearings

All these qualitative interviews and focus groups were analysed to understand the key themes underpinning SEND disagreements and disagreement resolution. They were also used to inform the forthcoming associated *Good Practice Guide*<sup>8</sup>.

## 3.3 Cost benefit information

Information on costs and costs avoided (cost savings) related to disagreement resolution services, mediation services and appeals to the First-tier Tribunal SEND were provided by the LAs that responded to the online surveys.

Information about the costs of the First-tier Tribunal SEND was provided by the Ministry of Justice.

Information about costs incurred by parents/young people appealing to the Tribunal were collected during the interviews with parents/young people.

The cost benefit analysis was conducted by London Economics.

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<sup>8</sup> Cullen, M. A., 2017. *Preventing and resolving SEND disagreements: a good practice guide for LAs*. London: DfE.

## 4 Findings

In presenting our findings, we emphasise that this review of arrangements for resolution of SEND disagreements took place **during the transition** from processes under the 1996 Act to those under the 2014 Act. The 2014 Act extended the age range, covering 0 to 25 years. The review was not of the reformed system but **only of the arrangements for resolving SEND disagreements**. This means the focus of the review was on that **minority** of the SEND population where disagreements had arisen. Despite our efforts to seek out parents/young people that had experienced early resolution of the disagreements, the parents interviewed were skewed towards the small minority of SEND disagreement cases that result in appeals to the First-tier Tribunal SEND. In our sample of 79 parents, 55 had experience of at least one appeal versus 11 with experience of early resolution (the remaining 13 had used complaints processes only).

### 4.1 Headlines

Based on analysis of all the information collected, our 'headline' findings with respect to the research objectives are:

- Local authority (LA) practices regarding SEND disagreement resolution **varied** widely, as shown by analysis of LA variation across the 42 LAs that responded to all three of our surveys.
- Person-centred **EHC needs assessment and plan development** were successful in fostering agreement and supporting the early resolution of any disagreements that did arise.
- Wide variation in the person-centeredness of **EHC needs assessment and plan development** was reported across the qualitative data gathered, from perceptions of excellent to less good practice.
- The **time taken** to resolve disagreements mattered: parents interviewed reported that when disagreements took many months to resolve, there were negative effects on their son or daughter. Such effects reported included: increased stress and anxiety, decline in mental health, reduced educational achievement and attendance due to remaining without appropriate support, and increase in use of home education as a stop-gap measure.
- **Early disagreement resolution** was best for parents and for children and young people children and young people affected. It had the added and important benefit of being the most **cost-effective** approach to SEND disagreements.
- **Mediation** reduced the likelihood of disagreements escalating to an appeal to the First-tier Tribunal SEND.
- **Mediation** proved to be a **cost-effective route** for disagreement resolution, compared to the costs of an appeal to the First-tier Tribunal SEND as incurred by the LA, Tribunal and parents/young people.

- **Information, advice and support services** varied in the quality and quantity of information, advice and support offered to parents, children and young people.
- **Disagreement resolution services** were generally not understood or used, despite being designed to have a unique role as an independent service where issues that cannot be appealed to the First-tier Tribunal SEND could be addressed.
- Regarding appeals to the **First-tier Tribunal SEND**, the great majority of key appealable EHC plan decisions made by the 109 LAs were **not appealed** by parents or young people.
- Parents interviewed had three main concerns about **SEND complaints processes**:
  - when the complaint was ignored or not taken seriously
  - when the response to the complaint took too long to emerge
  - when the response did not help to put right the issue/s complained about
- The **Recommendations pilot** resolved issues presented and led to some improvements in joint working around SEND across education, health and social care. The small number of recommendations made to health or social care did not produce sufficient evidence to assess health and social care responsiveness to recommendations, nor of the wider implications for the health and social care sectors.
- Almost everyone we asked about the concept of the pilot thought it seemed like a sensible idea, given the development of EHC plans.

## 4.2 Summary of main findings

Given the nature and size of our samples, the following findings may not be representative nationally. However, they highlight both positive and negative views on arrangements for disagreement resolution as experienced by these participants.

### 4.2.1 Person-centred EHC processes

Where **EHC needs assessment and plan development** was carried out in the person-centred spirit of the Children and Families Act 2014, and in accordance with the principles and requirements of that Act, there was qualitative evidence that this was successful in fostering agreement and supporting the early resolution of any disagreements that did arise.

The challenge is to ensure that these effective, person-centred practices are embedded in every LA's and educational setting's implementation of the Act – wide variation in practice from excellent to less good was reported.

There was evidence that, where EHC needs assessment and plan development practice was experienced as not person-centred, that is, as not respecting and

engaging the children, parents and young people, this contributed to adversarial disagreements about SEND.

Qualitative data indicated that early disagreement resolution was not always a priority.

### **What parents wanted to experience during EHC plan processes**

From analysis of the parent interviews, we identified five aspects of what it was these parents wanted to experience during the EHC plan process:

- To see their child's needs being recognised and met so that their child/young person had as good a chance as possible of a fulfilling life
- To be in good communication with professionals/workers dealing with their child/young person's case
- To be listened to and have their views taken on board – or at least be respectfully included in discussion around 'next best' options if views could not be taken on board for sound reasons
- To interact with staff who knew SEND law and understood SEND good practice and who put SEND law and the principles at the heart of the Children and Family Act 2014 into practice in their work
- To interact with staff who showed some understanding and empathy of the lived reality of caring for a child/young person with complex SEND

### **Relationships between key LA decisions and appeals (109 LAs)**

A large majority of the key EHC plan decisions made by the 109 LAs in our survey sample suggested the system largely delivers what parents and young people want, that is:

- **69%** of requests for EHC needs assessments were agreed
- **95%** of assessments led to an EHC plan being written
- **94%** of EHC plans were accepted without appeal

In our online survey sample, of **40,952 decisions** made across **109 LAs** regarding requests for EHC needs assessments:

- 7% of refused requests for assessment resulted in an appeal (n=873)
- 12% of assessments that resulted in a refusal to issue an EHC plan were appealed (n=168)
- 6% of EHC plans (any aspect of the content) were appealed (n=1528)

### **Relationships over time: comparing Year 1 to Year 2 (42 LAs)**

In the 42 LAs that provided survey data for Years 1 and 2 (2014-15 and 2015-16):

- The number of EHC needs assessments requested **rose** from 9,969 in Year 1 to 13,557 in Year 2.

- Of assessments completed, over **nine out of ten** resulted in agreement to issue an EHC plan: **92%** of assessments in Year 1 and **96%** in Year 2 led to an EHC plan being issued.
- As a proportion of decisions made by local authorities, refusal to issue a plan was the most likely decision to result in an appeal to the First-tier Tribunal SEND: in these 42 LAs, **6%** of such decisions were appealed in Year 1, rising to **15%** in Year 2.
- The majority of appeals were conceded or withdrawn before being heard by the Tribunal.

**Appeals** to the First-tier Tribunal SEND are not the only, or even the best, measure of the proportion of LA EHC plan decisions that result in disagreement. Such a measure would also need to take into account parents and young people using **all of the other disagreement resolution routes too**. The total number of disagreements cannot be counted precisely, as some parents reported disputes that are **unvoiced** by parents/young people who, for a range of reasons, do not feel able to challenge the school or LA.

### **Themes from the interviews/focus groups**

During the 13 LA focus groups, we were given many examples of ways in which local areas had made their EHC needs assessment and plan development processes **more person-centred** than previous ways of working.

Among our sample of 79 parents interviewed, there were 11 cases that illustrated how effective arrangements to resolve SEND disagreements can be. These included **meetings with SEND officers** that resolved the issues; **effective use of IAS services** providing parents with the information, advice and support needed to work together with the school and LA SEND team to resolve the issues, and **effective use of mediation** to resolve issues. The majority of our parent interviews focused on disagreements that took longer to resolve and most of those interviewed had experience of at least one appeal to the First-tier Tribunal SEND.

The parent interviews indicated that disagreements around SEND started from perceptions of disrespect (e.g. views ignored), injustice, even instances described as “cruelty” to the child concerned. Sometimes such experiences happened close to the time of the decision, process or incident that became the focus of open disagreement, sometimes they happened months or years before. Such experiences created distrust, which made disagreement more likely. They also led to parents feeling a huge sense of responsibility to achieve recognition of and provision for their child’s needs and strengths.

Knowledge and understanding of how the process for requesting an EHC needs assessment works was reported as not having always been clear for parents, nor for all the education, health and social care professionals involved, leading to inconsistent practice and disagreements.

The varying quality of EHC plans was reported by some interviewees of different types, including some parents, some LA representatives, some parent support organisation representatives and Tribunal panel representatives. Some parents had very positive experiences of the assessment process and were then disappointed by the inaccurate draft EHC plan they received. They described draft plans that did not reflect the parent's and child/young person's views, and that did not capture accurately the needs of the child/young person. This led to disagreements.

Some LAs in our focus groups had put processes in place to make sure that decisions to refuse to assess and/or not to issue a plan were first conveyed to parents through a conversation. This allowed the LA SEND officer to explain the evidence-based reasons for the decision, to express openness to receiving additional evidence and to provide assurances that personalised, appropriate SEN support would be put in place for the child or young person. These LA representatives reported that they believed that this explained the reduced number of appeals against such decisions in their respective LAs.

Parents/young people expected that their LA SEND teams would have the knowledge, skills, qualities and workload capacity to put the Children and Families Act 2014 into practice in the spirit in which it was intended. From our LA focus groups, we know that some LAs were working hard to ensure these expectations could be met. However, among the sample of 79 parents with experience of disagreement resolution who took part in the Review, this expectation was rarely met. Although a minority reported friendly, knowledgeable SEN staff – in these cases the issue of the disagreement focused on lack of appropriate provision – others reported instances of less good practice by SEND team staff (case workers, officers and managers). The national picture may differ given these findings are based on a small, qualitative sample.

Information provided through the interviews and focus groups indicated that there were gaps in provision for SEN placements. Some local areas were beginning to make better use of available data to plan and provide for the needs of their SEND population. Among the parents we interviewed, there were cases where there was a lack of what parents regarded as appropriate provision for their respective child's or young person's identified needs. In these cases, this led to disagreements with the LA, including appeals to the First-tier Tribunal SEND. Again, only a sample of areas was researched and the national picture may differ.

#### **4.2.2 Information, advice and support services (IASS)**

Our data from a variety of sources indicated that parents experienced different levels and quality of information, advice and support depending on where they lived.

Almost all the parents interviewed appreciated the existence of IAS services. There was awareness that training and resourcing varied and that this impacted on the parent experience of each service.

Some IAS services were experienced as very helpful, knowledgeable and able to offer individual support; others were experienced less positively.

A recurring theme among the parents interviewed was a degree of distrust of IAS services because they are not independent of the LA.

In both Year 1 (2014-2015) and Year 2 (2015-16), the majority (34 (57%) and 42 (68%) respectively) of responding LA lead officers for EHC needs assessment were satisfied with the cost in relation to the quality of the IAS service provided.

### **4.2.3 Disagreement resolution services (DRS)**

#### **Scale of use of DRS**

The 109 LAs that responded to any of our surveys reported a total of **625 cases** that went to a DRS.

Over half of the 42 LAs that responded to all three surveys reported **no use of DRS services** during 2014-15 or 2015-16.

In both Year 1 (2014-2015) and Year 2 (2015-16), more were satisfied with the cost in relation to the quality of the disagreement resolution service provided than were not satisfied.

#### **Reasons for using DRS**

Of the four types of disagreement<sup>9</sup> that can be taken to a disagreement resolution service, the most frequently used was to seek to resolve disagreements about the special educational provision being made in an educational setting for children and young people with SEND, whether or not they had EHC plans (73% of cases in Year 1 and 57% in Year 2). The least frequently reported reason for using DRS was for disagreements about the health or social care provision made for children and young people with SEND during EHC plan processes or whilst waiting for a Tribunal appeal to be decided.

#### **Themes from the interviews/focus groups**

- Almost all of the 11 mediation organisations represented by the 19 mediators interviewed provided DRS as well as a mediation service.

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<sup>9</sup> In summary, these are: 1. How education, health and care duties are carried out for children and young people with SEN. 2. About the special educational provision made for a child or young person. 3. About health or social care provision for children and young people with SEN and about special educational needs provision. 4. Between LAs and health commissioning bodies about EHC needs assessment or re-assessment or EHC plans (*SEND code of practice, 0-25* (DfE, 2015, 11.8, p249, (see also Figure 15).

- These mediators reported regional and LA differences in the extent to which LAs used DRS, a perception corroborated by our survey data.
- Those with experience of DRS cases described the process as the same as for mediation meetings.
- Overall, there was a perception that the distinction between ‘mediation’ and ‘disagreement resolution’ was unhelpful and confusing for parents.
- Parents interviewed had rarely heard of the DRS and none had used it.
- Representatives of focus group LAs mainly felt they did not need a DRS because “we are already doing that”. They reported that the service was not being used. Essentially, these LA staff already held meetings that were focused on resolving disagreements and saw little need for this additional service. These findings were corroborated by open responses to our 2014-15 (N=60) and 2015-16 (N=62) surveys of LA lead officers for EHC needs assessment.

#### 4.2.4 Mediation

##### Relationship between mediation and appeals

Mediation was associated with **a significant 14 percentage point reduction** in the likelihood of disagreements escalating to an appeal to the First-tier Tribunal SEND

- In the 109 LAs that responded to any of the three surveys, 3,003 parents/young people had contacted mediation for mediation information and made a decision whether or not to take up mediation
- Of these 3,003: 42% took up mediation and 58% did not
- Of those who took up mediation, **22%** went on to appeal
- Of those who did not take up mediation, **36%** went on to appeal

In our data, there was an increase over time (Year 1 to Year 2) in the positive association between take-up of mediation and reduced appeals to the Tribunal.

##### Meditators

- All 19 mediators we interviewed were positive about the mediation training they had received, but not all had received training in, or were knowledgeable about, SEND legislation or the *SEND code of practice: 0 to 25 years* (DfE, 2015).
- Concerns were expressed about the lack of nationally recognised accreditation and/or national standards for becoming a SEND mediator.
- The requirement to include information about mediation in LA decision letters was viewed as having successfully made it clear to parents that they had to contact a mediation service before lodging an appeal with the First-tier Tribunal SEND.
- Different mediation organisations and individual mediators handled the mediation process slightly differently but overall the process in practice was similar – a structured process with detailed prior preparation. The biggest difference appeared to be the extent to which children and young people were involved in the mediation.

- Only two of the 19 mediators had experience of the ‘health only’ pathway to mediation.
- Successful mediation was not always defined as ‘resolved without recourse to the Tribunal’; improved relationships between the parties to the disagreement were also viewed as a positive outcome.

### Experiences of mediation

- The status of the mediation agreement seemed to be unclear to some parents and professionals. There did not appear to be accountability about honouring the agreement. Some focus group LAs, however, stated that any agreement made at mediation requiring LA action would be honoured without question.

### Parents’ views (79 interviews)

- Parents’ responses during interviews as to their satisfaction with mediation as a way of resolving disagreements with the LA varied across the scale of 1 (not at all satisfied) to 5 (very satisfied). Parents were able to distinguish their views of process and of outcome.
- Where parents thought that the LA SEND team representative would be willing to shift position on any of the issues under disagreement, they took up mediation hoping for resolution without the need to appeal.
- If the deadline for registering an appeal was close, or if meetings with the LA SEND team representative/s had already failed to resolve the disagreement, mediation tended to be refused by parents.

### LA views (13 focus groups involving 53 representatives)

- LA focus groups reported very mixed experiences of mediation meetings – some positive, some negative, some neutral. This reflected differences of approach and perceived quality among mediation services and among mediators providing the service.

#### 4.2.5 Complaints processes

The SEND complaints system comprises **separate routes**, dependent on factors such as type of education establishment attended and the type of complaint.

Currently, there are no requirements to collect **data** on SEND complaints as a specific category. This means there is very limited data from which to judge the scale of SEND complaints.

From all the qualitative data we gathered about SEND complaints (40 parents, 13 LA focus groups (53 individuals), eight complaints process representatives, 14 representatives from parent support organisations), we concluded that the **complaints arrangements** most often used by parents/young people in relation to SEND disagreements were **education** (school and/or LA) complaints processes. Social care

complaints processes were reportedly used less often, and health complaints arrangements reported as least often used in relation to a SEND disagreement. However, only a sample of areas was researched and the national picture may differ.

Good practice included joint responses to SEND complaints that related to health and or social care, as well as to education aspects of the process.

- Where complaints processes were treated as an administrative burden, they failed to resolve disagreements. In such cases, parents sought other avenues of redress, sometimes using multiple complaints routes in parallel.
- Conversely, when complaints were taken seriously and responded to in a person-centred, respectful way, they could be quickly resolved and could be used to improve practice.
- Parents interviewed had three main complaints about complaints processes: when the complaint was ignored or not taken seriously, when the response to the complaint took too long to emerge and when the response did not help to put right the issue complained about.

#### 4.2.6 Appeals to the First-tier Tribunal SEND

- The great majority of key appealable EHC plan decisions made by the 109 LAs that responded to at least one of our surveys were **not appealed** by parents/young people (see data under EHC plan processes).
- Our sample of 55 parents with experience of appealing to the First-tier Tribunal SEND valued the existence of the Tribunal.
- The process of appealing about one's child was described as very stressful and emotionally draining. Financial costs (unless eligible for legal aid) were only part of the 'true cost' which also included the 'opportunity costs' of time spent on the case and the cost to the emotional, mental and physical well-being of the parent/s, the child/young person and any siblings.
- In our sample, direct financial costs varied widely from no direct costs to financial outlay of tens of thousands of pounds. (In the economic analysis conducted (see Chapter 8) the direct and indirect costs incurred by parents across our sample were estimated to be, on average, approximately **£6,300** in total.)
- Appealing to the Tribunal affects only a small minority of those involved in the EHC processes. In our sample, which was skewed to this minority, there were parents and young people who had experienced more than one appeal.
- Our sample included those who had appealed three key EHC plan decisions and had each upheld: refusal to assess, refusal to issue an EHC plan and content of the plan.
- It also included a number of parents who had two or three children with SEND, each of whom had been the focus of at least one upheld appeal to the First-tier Tribunal SEND.

- In 18 cases, the parents interviewed spoke about young people able to appeal in their own right as a result of the Children and Families Act 2014. These young people's experiences of mediation and appeals varied but outcome of the appeals were largely as desired.
- LA representatives, parent support representatives and Tribunal panel representatives provided multiple perspectives on the positive purposes of the appeals route to resolving a SEND disagreement, emphasising, for example, its democratic function around accountability of LAs.

#### 4.2.7 Recommendations pilot

- The Recommendations pilot resolved the health and social care issues presented and led to some improvements in joint working around SEND across education, health and social care. The 30 pilot appeals lodged resulted in nine Tribunal hearings under the pilot Regulations. These **did not produce sufficient evidence** to enable assessment of health and social care responsiveness to recommendations, nor of the wider implications for the health and social care sectors.
- The 30 appeals came from a total of 10 LAs: 15 of them were from one LA. Seven of the pilot LAs had no pilot appeals. Nineteen pilot appeals were from parents and 11 from young people.
- Almost everyone we asked (79 parents, 53 local authority representatives, 19 mediators, 15 representatives of parent support organisations) **supported the principle** that the First-tier Tribunal should have powers relating to the health and social care aspects of an EHC plan, as well as the education aspects. This was seen as making sense, given the development of EHC plans.
- **Benefits** of the Recommendations pilot noted by participating pilot LAs (composite list) included that it stimulated more joined-up working across education, health and social care, increased knowledge of each sector's relevant legal frameworks and practices, and acted as a 'lever' to promote reaching a resolution prior to the Tribunal hearing.
- Telephone case management of the pilot appeal cases by the presiding judge was successful in ensuring that missing reports, for example from health or social care partners, were obtained by the LA. In several cases, this provided sufficient information for the decision being appealed against to be changed and the appeal conceded.
- During the pilot, 11 Tribunal decisions were made in relation to requests for recommendations involving health (15 requests, 5 decisions) and social care (24 requests, 6 decisions).
- Interim follow-up data, regarding recommendations made, showed that, by end of February 2017, one recommendation to a clinical commissioning group had been refused because the recommendation had been based on evidence from a private report and, in two instances, decisions as to whether or not to implement

were the focus of further discussions at local level. The remaining recommendations had been implemented in full.

- One concern raised about the pilot (in three pilot LA focus groups) was regarding the possible implications for social care of the extended Tribunal powers – for example, Looked After Children status in relation to decisions about residential placements<sup>10</sup>.
- In terms of cost, pilot appeals were reported by LAs as demanding **more time** than education-only appeals. However, this was largely due to what can be thought of as ‘start-up’ costs. Tribunal representatives also reported that pilot cases took longer in terms of preparation and length of hearing, and required an additional panel member, compared to education-only hearings.
- In terms of **process**, the Recommendations pilot panels consisted of three people: a judge, an SEN expert and an SEN and social care **or** SEN and health expert.

#### 4.2.8 Economic analysis of cost benefit of disagreement resolution

These findings are based on a combination of desk-based research and responses to the three surveys of Local Authorities. These data relate to the period covering **1st September 2014 to 31st August 2016** (i.e. the first two years of the reformed SEND system).

- **In terms of impact, the use of mediation reduced the incidence of Tribunal appeals.** The analysis of the responses from Local Authorities suggests that when mediation was taken up, there was a **14 percentage point lower likelihood** of registering a Tribunal appeal (i.e. 22% compared to 36% when mediation services were *not* taken up).
- The estimated costs saved from avoiding Tribunal appeals were very significant:
  - Following successful mediation, Local Authorities estimated that the cost reductions achieved if a Tribunal appeal was avoided were approximately 62% in relation to preparation time. There was also a 41% reduction in costs associated with the financial expenses related to appeal preparation, and a 60% reduction in relation to the financial expenses associated with attendance at hearing.
  - From the perspective of the Local Authority, the costs avoided from successful mediation (i.e. where a Tribunal appeal and subsequent hearing are avoided) were estimated to be approximately **£4,100** for a representative case.

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<sup>10</sup> The First-tier Tribunal SEND could always make decisions about residential placements on education grounds. The Recommendations pilot enabled such decisions to be taken on education, health and social care grounds.

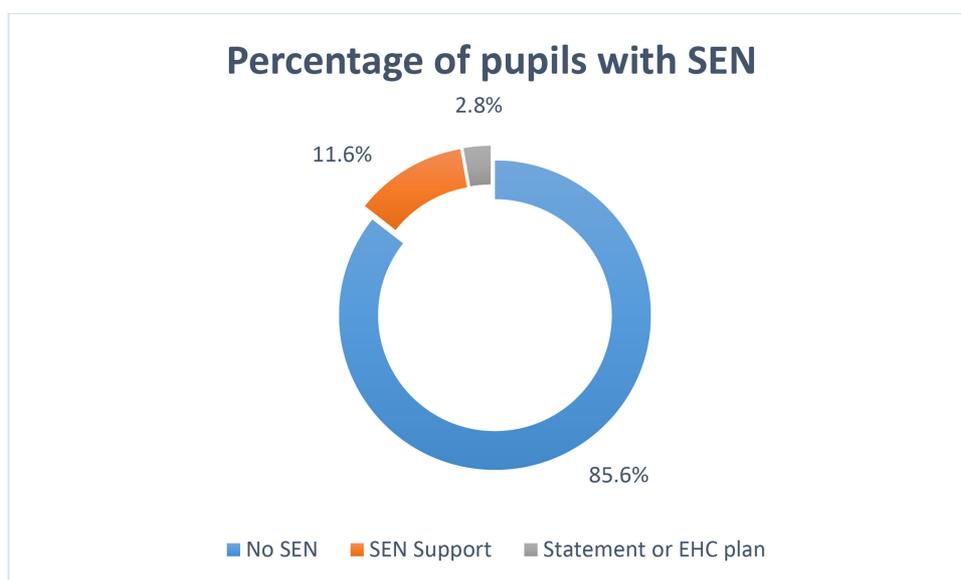
- The analysis estimated the Tribunal costs associated with Tribunal hearings to be approximately **£2,380**.
- The direct and indirect costs incurred by parents were estimated to be approximately **£6,300** in total.
- This suggests that the cost savings associated with the avoidance of a Tribunal appeal are in the region of **£12,800** per case.
  
- Given the fact that the **introduction of a requirement to consider mediation prior to appeal was associated with a reduced incidence of Tribunal appeals among those who took up appeals**, the costs *avoided* (benefits) from the lower incidence of Tribunal appeals and hearings were greater than the costs associated with the Local Authority purchase of mediation services.
  
- Based on the number of cases along each pathway (mediation or no mediation), the average costs avoided associated with the mediation route were estimated to be approximately **£499 per case**. As a result of the nature of the cautious methodological approach adopted, this is likely to be an *underestimate* of the actual costs avoided associated with the mediation route.

# 1 Introduction

## 1.1 Overall objective

The objective of this research was clear. It was to assess how well new and existing routes for redress are working **for children, young people and their families** when there is a disagreement about identifying and/or meeting special educational needs and disabilities (SEND). This means the research relates to a small, but important, minority of the population of children and young people: the roughly **15%** with special educational needs either at SEN support level (11.6%) or with a statement of special educational needs or an Education, Health and Care (EHC) plan (2.8%)<sup>11</sup> (Figure 1).

Figure 1: Percentages of pupils with SEN



Source: Data from Statistical First Release (SRF 29/2016), DfE and National Statistics, 2016

It is important to be clear from the outset that the large majority of children and young people have their SEND identified and met without any disagreements arising that require redress. For example, a separate survey of parents and young people (Adams, L. and others, 2017) published by DfE shows that, of those with completed EHC plans in 2015, 83% of new plans were provided following the first request, 66% were satisfied with the EHC plan process overall, 62% were confident that their plan would achieve agreed outcomes, and only 5% had to use complaints procedures and/or appeal to the First-tier Tribunal SEND to gain their plan.

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<sup>11</sup> Department for Education and National Statistics (2016). *Special educational needs in England: January 2016*. SRF 29/2016, 21 July 2016.

Where disagreements arise, most are speedily resolved through early discussions between and among parents/young people and the school, local authority (LA) and health professionals. Nevertheless, there is a small minority of disagreements around SEND that escalate to formal complaints processes and/or appeal to the First-tier Tribunal SEND. This research was commissioned by the Department for Education to provide independent information to support Ministerial commitments to conduct:

- (i) a **review** of these disagreement resolution arrangements
- (ii) a **pilot**<sup>12</sup> to test the expansion of the powers of the First-tier Tribunal SEND to make non-binding recommendations on health and social care aspects of EHC plans (the Recommendations pilot).

The Tribunal's powers are currently limited to the educational aspects of EHC plans but within the pilot areas, for appeals about the educational aspects of a plan, these powers were extended to the health and/or social care aspects also. The pilot involved 17 English LAs that volunteered to take part (13 LAs took part from 1 June 2015 and four more from 1 February 2016). The pilot was framed by Regulations<sup>13</sup>. The context for the pilot taking place was that, during the consultations prior to the Children and Families Act 2014, there was some pressure from House of Lords peers, sector organisations, parents and others, for issues with the health or social care sections of the EHC plan to be addressed during an appeal to the Tribunal.

## 1.2 Context

The Children and Families Act 2014 was a landmark reform of the system of support for children and young people with special educational needs and disabilities (SEND). The Act and the related *SEND code of practice: 0 to 25 years* (DfE, 2015) place a greater emphasis than before on the **avoidance of disagreements** through **a person-centred approach to decision-making** and **open communication between professionals and parents and young people** (Code of Practice, paragraph 11.1). Where disagreements and complaints arise, the legislation and the Code make clear that parents and young people should be given information and, when they choose to access it, support to enable participation in disagreement resolution and complaints processes. Local authorities must therefore provide an information, advice and support service, and independent local disagreement resolution service and mediation service/s. They must inform parents and young people about these services, as well as of complaints procedures and procedures around appealing to the First-tier Tribunal

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<sup>12</sup> A 'pilot' in this context means a time-limited try-out of a new arrangement or practice.

<sup>13</sup> The Special Educational Needs and Disability (First-tier Tribunal Recommendation Power) (Pilot) Regulations 2015 and amendment dated 5 January 2016.

SEND. The reforms aim to reduce the incidence of disagreements and to improve the resolution of those that do arise.

The Children and Families Act 2014 and the new *SEND code of practice: 0 to 25 years* (DfE, 2015), seek to reduce the need for appeals to the Tribunal by making the whole system much **more person-centred**. This change begins in the **quality of everyday teaching and learning** in early years settings, schools, and further education. High quality teaching for all pupils will prevent inappropriate over-identification of SEND where the underlying problem was, in fact, poor quality of teaching and/or an inappropriate learning environment. It will also help to ensure parents feel confident in the education provision for their child. Next, the new reforms aim to reduce disagreements escalating to appeal level by the **responsiveness of staff in early years settings, schools and further education** to concerns raised by parents and/or by children or young people. The change continues in the approach to identifying SEND, which encourages staff to **include the views of parents, children and young people** and to **involve them in decision-making about desired outcomes, and the type of support that will facilitate reaching these**. The **delivery of SEND support in a graduated way** should also help to resolve any disagreements early on.

**Figure 2: Routes to resolving SEND disagreements**

#### **Informal discussions and meetings with school staff and/or LA SEND staff**

These informal discussions and meetings would normally be expected as the first step in seeking to resolve any issues or disagreements relating to SEND. Most disagreements are speedily resolved at this stage.

#### **SEND Information, advice and support service (IASS or SENDIASS<sup>14</sup>)**

Every LA must provide or commission an impartial, confidential and accessible information, advice and support service for children, young people and parents in relation to SEND. The scope of the service is set out in the *SEND code of practice*, 2.17-19 (DfE, 2015). It includes offering support to resolve disagreements and help in managing mediation, appeals to the First-tier Tribunal SEND and complaints relating to SEND.

#### **Complaints procedures**

All public services must have a complaints procedure. Those relating to educational settings in general and to SEND issues in particular are summarised in the *SEND code of practice*, 11.67 – 11.111 (DfE, 2015).

#### **Disagreement resolution service**

Every LA must commission an independent disagreement resolution service available to parents and young people. It covers all children and young people with SEN (not only those being assessed for or having an EHC plan). It may be used in relation to four types of disagreement that cannot be appealed to the First-tier Tribunal SEND. These four specific types

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<sup>14</sup> Abbreviations used by these services vary – some use IAS (Information, advice and support) some IASS (Information, advice and support service). Some include SEND at the beginning (SENDIAS/S), some do not.

of disagreement are set out in the Code of Practice, 11.8 (DfE & DH, 2015 (see also Figure 15).

### **Mediation service**

Every LA must commission an independent mediation service available to parents and young people. Before making an appeal to the First-tier Tribunal SEND (unless the appeal is about placement only), parents or young people must contact the mediation service to discuss whether mediation might be a suitable way of resolving the disagreement ('mediation advice'). The subsequent decision whether or not to take-up mediation is voluntary for parents or young people. If mediation is chosen, the local authority must ensure the meeting takes place within 30 days of being informed. Further information is provided in the *SEND code of practice: 0 to 25 years*, 11.13 – 11.38 (DfE, 2015).

### **First-tier Tribunal SEND**

Specific decisions relating to assessment of SEND and to EHC plans, and specific aspects of the content of EHC plans, can be appealed by parents or young people to the First-tier Tribunal SEND (*SEND code of practice: 0 to 25 years*, 11.45, DfE, 2015 – for further information about appeals, see sections 11.39 – 11.52).

Source: authors, based on *SEND code of practice: 0 to 25 years*, DfE, 2015

When an **EHC needs assessment** is required, the **person-centred approach** is designed to reduce the likelihood of disagreements and to foster the early resolution of those that do arise. The person-centred approach puts the child or young person at the heart of the process. It involves children and young people, and their parents, in expressing their views and in decision-making processes. It provides support to enable this where necessary and, crucially, makes it clear how these views have been taken into consideration when decisions are made. This approach continues during the drawing up of the EHC plan and its regular review. The keyworking approach recommended to be used by LAs (Code 2.21) should support the person-centred feel of the process.

The new system has also enhanced the amount of independent, free of charge, **information, advice and support** about the SEND system available to parents, children and young people. This is included in the Local Offer. It covers a broadening of what used to be Parent Partnership services into SEND Information, Advice and Support Services (SENDIAS or IAS services) that are open to children and young people too. This service (Code 2.17- 2.19) should include providing parents, children and young people with information, advice and support about the local processes for resolving disagreements, mediation, and means to redress (complaints and appeal to the Tribunal). In addition, families may access a trained 'independent supporter' who can help them find their way through the EHC needs assessment and plan development process<sup>15</sup>.

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<sup>15</sup> Independent Support (IS) is a government initiative, launched in 2014. It is managed through the Council for Disabled Children on behalf of the Department for Education.

Use of **Disagreement resolution services (DRS)** is voluntary and undertaken with the agreement of all parties. The disagreement resolution service must be commissioned by, but independent of, the LA. It covers all children and young people with SEN, not only those being assessed for, or having, an EHC plan (Code 11.7). **Its purpose is to prevent further escalation of disagreements** and its focus is on **four types** of disagreement (Code 11.8)<sup>16</sup>:

- How education, health and care duties are carried out for children and young people with SEN, whether they have EHC plans or not
- About the special educational provision made for a child or young person, whether they have EHC plans or not
- About health or social care provision for children and young people with SEN and about special educational needs provision
- Between LAs and health commissioning bodies about EHC needs assessment or re-assessment or EHC plans (*SEND code of practice: 0 to 25 years*, (DfE, 2015, 11.8, p249, (see also Figure 15))

Disagreement types 1 and 2 cover all children and young people with SEN, including but not limited to those with EHC plans. Disagreement type 3 is limited to those children and young people who are being assessed or reassessed for an EHC plan, or when an EHC plan is being reviewed. The fourth type of disagreement, occurring during EHC needs assessments, reassessments and/or during drawing up of an EHC plan or reviews of the plan, does not involve parents or young people: it is between LAs and health commissioning bodies.

Under the Children and Families Act 2014, **'mediation'** refers to a specific process related to parents and young people who are considering an appeal to the First-tier Tribunal SEND regarding (a) the EHC needs assessment, (b) the special educational aspect of the EHC plan or (c) who want mediation on the health and/or social care elements of the EHC plan (Code 11.5). It is linked to *decisions* taken about EHC needs assessments and plans. Mediation is voluntary but, before an appeal can be registered with the Tribunal (unless the appeal is only about placement), the parent/s must have contacted the mediation service and received information about mediation (also referred to as 'mediation advice'). They must receive a certificate to prove that this has taken place. Once an appeal has been registered with the Tribunal, the parent or young person may still choose to mediate with the LA. In the Children and Families Act 2014, mediation at that stage is termed 'Disagreement Resolution'.

Parents and young people can also seek mediation regarding the health and/or social care elements of an EHC plan (Code 11.31) but cannot appeal to the Tribunal (Code 11.36). (In the 'extended powers' pilot areas, education appeals may also include requests for non-binding recommendations relating to health and/or social care.)

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<sup>16</sup> See Chapter 3, Figure 15 for further details about these four types of disagreement

There is an extensive, and rather complex, system of people and bodies that can consider formal **complaints** about decisions and provision for children and young people with education, health and care needs (see Table in Code 11.2). The basic principle of the system is that the complaints procedures of local providers of education, health, and social care (e.g. schools, colleges, Clinical Commissioning Groups (CCG), NHS Hospital Trust, or LA) should be used before raising complaints elsewhere. Regarding complaints about the **health** services received under an EHC plan, the local Healthwatch must provide patients with advice on how to complain or resolve an issue. Support can also be provided by a local NHS Complaints Advocacy Service. Complaints about treatment by **social care** services, including during an EHC needs assessment and drawing up of the plan, follow the Local Authority complaints procedure via either the Director of Children’s Services or the Designated Complaints Officer (Code 11.105). Figure 3 summarises the new system for resolving disagreements, showing at which stages of educational support each route may be used.

**Figure 3: Layers of disagreement resolution possibilities (from Sept 2014)**

Resolution routes	Stages of educational support			
	Differentiated teaching	SEN support	EHC needs assessment and reassessment	EHC plan development and review
<b>Information, Advice and Support Service (IASS)</b> (impartial service for parents, young people and children)	✓	✓	✓	✓
<b>Complaints procedures</b> (used for disagreements about processes)	✓	✓	✓	✓
<b>Disagreement Resolution Service</b> (used for 4 specified types of disagreement)		✓	✓	✓
<b>Mediation Advice/ Information</b> (compulsory if appealing to Tribunal, other than about placement) <b>Mediation</b> (voluntary – used for disagreements about decisions)			✓	✓
<b>Appeals to First-tier Tribunal SEND</b> (used for disagreements about specified decisions)			✓	✓

Source: CEDAR, University of Warwick, from information in Code of Practice (DfE & DH, 2015)

## 1.3 The present study

The present study reviewed the early implementation of the reformed disagreement resolution system. It also captured learning from the pilot of the extension of First-tier Tribunal SEND powers to enable issues across education, health and/or social care to be dealt with holistically in one forum.

### 1.3.1 Research aims and purpose

The overall **aim** of the research was:

- To assess how well new and existing routes for redress are working for children, young people and their families.

This overall aim was broken down into **two more specific research aims**:

- To gather evidence, including on any cost savings, to inform a review of arrangements for disagreement resolution required by the Children and Families Act 2014
- To understand the effect of the pilot to extend the powers of the First-tier Tribunal SEND to make non-binding recommendations about health and social care aspects of EHC plans, including cost implications

The **purpose** of the research was:

- To provide a comprehensive evidence base on the quality of implementation of the relevant reforms, on cost savings (from evidence collected for the review) and on cost implications of the Tribunal pilot

The research was commissioned on the understanding that the evidence gathered would inform government *decisions* on any changes that may be needed to the system of resolving disagreements in order to improve performance, and on the future role of the Tribunal. It would also provide insights into *good practice* to share with local authorities<sup>17</sup>.

### 1.3.2 Research objectives

The study had six objectives, each with associated research questions (set out in Appendix 1). The objectives were:

1. To examine whether the process of EHC needs assessment and plan development introduced under the Children and Families Act 2014 was successful in resolving and

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<sup>17</sup> Cullen, M.A., (2017) *Preventing and resolving SEND disagreement: Good practice guide for local authorities*. London: Department for Education.

preventing disagreements at an early stage (research questions associated with this objective included perspectives on the experience of appealing to the First tier Tribunal SEND).

2. To examine whether disagreement resolution services (DRS) and information, advice and support services (IASS) were helping to resolve issues at an early stage and so contributing to a reduction in appeals to the Tribunal.
3. To examine how successful mediation was in resolving issues without need for recourse to the Tribunal.
4. To examine whether health and social care complaints arrangements were working for children and young people with SEND and their parents, taking into account other reviews, such as the Francis inquiry (February 2013) and the Clwyd Review (October 2013). (The research also included education complaints arrangements.)
5. To understand the effect of the pilot to extend the powers of the First-tier Tribunal SEND ('the Recommendations pilot'<sup>18</sup>), including cost implications.
6. To assess the cost savings of early (pre-Tribunal) disagreement resolution.

### **1.3.3 Research methods**

The research project as a whole involved quantitative research, qualitative research, and economic cost benefit research being effectively integrated into a coherent whole. **Appendix 2** gives details of the whole study. Here we give outline information about the data on which the report is based.

#### **1.3.3.1 The online surveys**

Data from three online surveys sent to all 152 higher tier and unitary LAs are drawn on in this report. Table 1 shows the response rate and the sampling errors based on a total possible 152 LAs for each individual survey.

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<sup>18</sup> The 'extension of powers' pilot involves 17 LAs that volunteered in response to an invitation: 13 took part from 1 June 2015 and four from 1 February 2016.

**Table 1 LA response rate for each survey**

<b>Survey</b>	<b>Number of LAs responding (N=152)</b>	<b>Response rate (%)</b>	<b>Sample error at 95% Confidence interval</b>
Survey 1 (summer 2015)	80	53	8%
Survey 2 (spring 2016)	75	49	8%
Survey 3 (autumn 2016)	67	44	9%

Source: CEDAR, University of Warwick

Eighty LAs participated in the first online survey out of a total of 152 (i.e. 53%). Table 1 also presents the sampling error. This percentage represents the difference between the quantities estimated from participant LAs and quantities expected to be present among the total population of 152 LAs. Seventy-five LAs took part in the second survey (50%), and 67 in the third survey (44% of 152 LAs).

Table 2 sets out the numbers and sampling errors (also based on a total possible 152 LAs)<sup>19</sup> responding to one or more of these surveys.

**Table 2 LAs responding to one or more of the surveys**

<b>Number of LAs that responded to:</b>	<b>N</b>	<b>Sampling error at 95% Confidence Interval</b>
Survey 1 only	20	20%
Survey 2 only	13	26%
Survey 3 only	7	36%
Survey 1 and 2 only	11	29%
Survey 1 and 3 only	7	36%
Survey 2 and 3 only	9	32%
All 3 surveys	42	13%
<b>At least one survey (i.e. Total N of LAs that participated)</b>	<b>109</b>	<b>5%</b>

<sup>19</sup> See Appendix A3.3.1.

At least one survey was completed by 109 LAs, with 42 LAs responding to all three surveys.

These two groups of LAs (i.e. the 109 LAs who responded at least once and the 42 who responded all three times) are used in the rest of the report to describe the findings. Any estimates derived from analysing data from the 42 LAs are within 13 percentage points of the true estimates among all 152 LAs. Any estimates derived from data from the 109 LAs are within 5 percentage points of the true estimates in all 152 LAs.

Table 3 indicates the geographical distribution of the LAs that completed the survey.

**Table 3 Percentage of LAs covered by each sample, by region**

	N=42 (completed all surveys)	N=109 (completed at least one survey)
North East	58%	100%
North West	39%	78%
Yorkshire and the Humber	20%	73%
East Midlands	44%	67%
West Midlands	21%	64%
East of England	9%	100%
Inner London	21%	64%
Outer London	16%	42%
South East	26%	74%
South West	25%	63%

Figure 4 summarises the content and time periods covered by each survey.

**Figure 4: Content and time periods covered by the three online surveys to English LAs**

	Survey 1	Survey 2	Survey 3
Section A	1 Sept 2014 to 30 March 2015	1 April 2015 to 31 December 2015	1 January 2016 to 31 August 2016
	Basic numerical information: assessments of SEND under 1996 Act new EHC needs assessments under 2014 Act cases for formal mediation (initial contact and take-up of mediation) cases for disagreement resolution service new appeals under 1996 Act (by reason, status, outcome, type of need) new appeals under 2014 Act (by reason, status, outcome, type of need)		
Section B		1 Sept 2014 to 31 August 2015.	1 Sept 2015 to 31 August 2016
	Costs – general information: Start dates for disagreement resolution and mediation services Arrangement for paying for these services Reasons, if any, for cost variation in these services Reasons, if any, for variation in time spent on preparing for and attending a SEND Tribunal Views as to change, if any, in costs to the LA of preparing for and attending a SEND Tribunal	Costs related to SEND appeals: Preparation time, attendance time and direct financial costs for a medium time-consuming appeal Percentage increase in costs for a high time- consuming case Percentage decrease in costs for a low time consuming case Proportion of appeals that would be viewed as high, medium or low time consuming in nature Proportion of high, medium and low time-consuming appeals that went to an appeal hearing Views as to change, if any, in costs to the LA of preparing for and attending a SEND Tribunal Open comments invited.	
Section C	Open comments invited.		1 Sept 2015 to 31 August 2016
			To 17 pilot LAs only:  Costs related to SEND complaints (using same style of questions as for costs related to appeals)

In this report, we use our survey data in two ways:

- To convey findings that illuminate **patterns of disagreement resolution over time** in the 42 LAs that responded to all three surveys.
- To illustrate key messages about the **patterns of disagreement resolution at child/young person and family level** by summing the individual cases reported by all 109 LAs across all three surveys.

This second way of thinking about and presenting the data provides, we believe, a new and insightful way of examining disagreement resolution around SEND.

After Surveys 2 and 3, we also sent out separately a short online survey specifically to the **LA Lead Officers for EHC assessment and planning processes**. This sought views on a 5-point scale in relation to key elements of the reformed system for SEND: the Local Offer, IASS, DRS and mediation (**Appendix 9** provides details).

### 1.3.3.2 The interviews and focus groups

Table 4 shows the number of interviews conducted with each type of interviewee.

**Table 4 Qualitative interviews and focus groups: types and number**

<b>Interviewee types</b>	<b>Number</b>
Non-pilot parents/young people with experience of disagreement resolution	69
Parents/young people with experience of appeal under Recommendations pilot Regulations	10
LA representatives involved in SEND disagreement resolution (13 focus groups)	53
SEND mediators	19
Representatives of organisations supporting parents at mediation and/or Tribunal	15
Complaints procedures representatives	8
Tribunal panel representatives with experience of pilot appeal/s	3

Source: CEDAR, University of Warwick

In addition to the interviews and focus groups, the report is also informed by two other sources of qualitative data: desk research on LAs' Local Offer and calls to a random sample of IASS (Table 5).

**Table 5 Review study: other data collected**

<b>Review study: other work</b>
Desk research: Checked the Local Offer in 152 LAs for revisions made in light of parent/young people feedback, especially those relevant to person-centred, positive relations with parents and young people and to disagreement resolution.
Mystery shopping calls made to a random sample of 30 information, advice and support services (IASS) across England

Source: CEDAR, University of Warwick

All interviews were semi-structured allowing us to explore questions we knew were relevant to the research whilst also allowing interviewees to raise new themes about which we had not asked a question. For example, new themes included the relevance to disagreement resolution of the history of interactions parents had previously had with their child's school/s. This highlighted the issue of the variable quality of SEN support offered in schools.

Most of the interviews were conducted over the phone. Interviews with professionals typically lasted between one and two hours. Some interviews with parents were conducted face to face, at the parent's request. Interviews with parents were in-depth, typically lasting two hours or longer. A minority were exceptionally long (3-6 hours, broken across two interview times). A sample of interviews with each type of interviewee was transcribed. For the remainder, we used extensive notes taken during the interview, supplemented by checking back to the recording as necessary.

The focus groups typically lasted two hours. All but one were recorded with permission. Structured notes were taken during each. The number of people involved varied from LA to LA. The maximum group size was 10 people.

To understand and summarise the qualitative data, we used a thematic analysis approach. This was based on:

- a) Systematic collation of interviewees' responses under the themes structured in to our interviews
- b) Systematic analysis of each theme to pull out the range and balance of views (thus creating sub-themes)
- c) Systematic collation of additional themes generated by interviewees, again pulling out the range and balance of views (thus creating sub-themes).

## 1.4 The report structure

This report is based on **quantitative data** up to **end of August 2016** (submitted by 11 November 2016) and **qualitative interviews and focus groups** up to **26 January 2017**.

In Chapter 2, we present our findings related to our research objective examining whether the process of EHC needs assessment and plan development is successful in preventing disagreements from arising, and resolving at an early stage those that do. Chapter 3 examines whether information, advice and support services (IASS) and disagreement resolution services (DRS) are helping to resolve issues at an early stage. Chapter 4 considers how successful mediation is in resolving issues without recourse to the Tribunal. We explore the extent and nature of appeals to the Tribunal in Chapter 5, including the experience of parents and young people who have appealed. In Chapter 6, we examine whether complaints arrangements, including education, health and social care arrangements, are working for children and young people with SEND and

their parents. The pilot extension of the powers of the First-tier Tribunal SEND (The Recommendations pilot) is the focus of Chapter 7. Finally, in Chapter 8, we present our assessment of the cost savings of early (pre-Tribunal) disagreement resolution and the cost implications of the Recommendations pilot. Each chapter concludes with a summary of what we believe has been learned through the research.

There are eleven Appendices which provide more information and detail for those interested in the research methods and analysis.

## 2 Getting it right from the start? The EHC needs assessment and plan development processes

### Key Findings

Where **EHC needs assessment and plan development** were carried out in the person-centred spirit of the Children and Families Act 2014, and in accordance with the principles and requirements of that Act, there was evidence that this was successful in fostering agreement and supporting the early resolution of any disagreements that did arise.

The challenge is to ensure that these effective, person-centred practices are embedded in every LA and educational setting's implementation of the Act – wide variation in practice from excellent to less good was reported.

- Parents gave examples of practice that did not respect and engage the children, parents and young people in EHC needs assessment and plan development and described how this contributed to adversarial disagreements about SEND.
- In the experiences of our parent sample, early disagreement resolution was not always a priority for the LA.

### What parents wanted to experience during the EHC process

- To see their child's needs being recognised and met so that their child/young person had as good a chance as possible of a fulfilling life
- To be in good communication with professionals/workers dealing with their child/young person's case
- To be listened to and have their views taken on board – or at least be respectfully included in discussion around 'next best' options if views could not be taken on board for sound reasons
- To interact with staff who knew SEND law and understood SEND good practice and who put SEND law and the principles at the heart of the Children and Families Act 2014 into practice in their work
- To interact with staff who showed some understanding and empathy of the lived reality of caring for a child/young person with complex SEND

### Relationships between key LA decisions and appeals (109 LAs)

A large majority of the key EHC plan decisions made by the 109 LAs in our survey sample suggested the system largely delivers what parents and young people want: that is;

- **69%** of requests for EHC needs assessments were agreed
- **95%** of assessments led to an EHC plan being written

- **94%** of EHC plans were accepted without appeal

In our online survey sample, of **40,952 decisions** made across **109 LAs** regarding **requests for EHC needs assessments**:

- 7% of refused requests for assessment resulted in an appeal (n=873)
- 12% of assessments that resulted in a refusal to issue an EHC plan were appealed (n=168)
- 6% of EHC plans – any aspect of the content – were appealed (n=1528)

## **Relationships over time: comparing Year 1 to Year 2 (42 LAs)**

In the 42 LAs that provided survey data for Years 1 and 2 (2014-15 and 2015-16):

- The number of EHC needs assessments requested **rose** from 9,969 in Year 1 to 13,557 in Year 2, reflecting the gradual replacement of the old system with the new.
- Of assessments completed, over **nine out of ten** resulted in agreement to issue an EHC plan: **92%** of EHC assessments in Year 1 and **96%** in Year 2 led to an EHC plan being issued.
- As a proportion of decisions made by local authorities, refusal to issue a plan was the most likely decision to result in an appeal to the First-tier Tribunal SEND: in these 42 LAs, **6%** of such decisions were appealed in Year 1, rising to **15%** in Year 2.
- The majority of appeals were conceded or withdrawn before being heard by the Tribunal.

**Appeals** to the First-tier Tribunal SEND are not the only, or even the best, measure of the proportion of LA EHC plan decisions that result in disagreement. Such a measure would also need to take into account parents and young people using **all of the other disagreement resolution routes too**. The total number of disagreements cannot be counted precisely as some parents reported disputes that are **unvoiced** by parents/young people who, for a range of reasons, do not feel able to challenge the school or LA.

## **2.1 Introduction**

The **research objective** which this chapter addresses is:

- To examine whether the **process** of EHC needs assessment and plan development is **successful in resolving and preventing disagreements** at an early stage.

The context for this objective is the expectation that the process of EHC needs assessment and plan development will be conducted by LAs in an efficient and timely manner, and will involve “high quality engagement” throughout of the child or young

person and his or her parents (*SEND code of practice: 0 to 25 years*, Paragraph 9.7, DfE, 2015).

This chapter is based on analysis of two main types of information that allowed us to examine how successful or not the EHC plan processes have been in preventing disagreement and resolving early those that arise. We draw on:

- **Numerical data** from three surveys of local authorities across England covering 1 September 2014 to 31 August 2016, that is, the first two years of practice under the Children and Families Act 2014
- **Qualitative data** from interviews with 79 parents and 4 young people from 34 LAs, supplemented by interviews and focus group discussions with 97 others (details in Chapter 1)

The chapter first reports findings from the numerical data. This provides an overall picture of the scale of activity related to EHC needs assessment and plan development. Then we report themes from our interviews and focus groups that illuminate the extent to which the process of EHC needs assessment and plan development is successful in resolving and preventing disagreements at an early stage.

## 2.2 Scale of activity related to EHC needs assessment and plan development

To examine the scale of activity related to EHC needs assessments and plan development, we draw on data from three surveys, each covering two terms of the study:

- Terms 1 and 2 (September 2014 to March 2015)
- Terms 3 and 4 (April to end of December 2015)
- Terms 5 and 6 (January to August 2016).

Terms 1-3 equate to **Year 1** and Terms 4-6 to **Year 2** of the implementation of the Children and Families Act 2014 SEND reforms. Eighty LAs responded to Survey 1, 75 LAs to Survey 2 and 67 LAs to Survey 3 (Table 2 in Chapter 1). The results are presented to illustrate findings that help us understand how disagreement resolution was working during this time of transition from processes under the Education Act 1996 to those under the 2014 Act.

For those who are interested, more detailed information is presented in Appendix 3 where our analytic approach is described alongside fuller information on the data and statistical analysis.

## 2.2.1 Processing requests for EHC needs assessments

When examining disagreements relating to SEND, requests for EHC needs assessments are important because, for each individual child's case, it is only from that point onwards that decisions are made which can be appealed to the First-tier Tribunal SEND. We asked LAs to indicate the **number of EHC needs assessment requests** processed during September 2014 to August 2016, under the 2014 Act and of re-assessments under the 1996 Act (transitional arrangements)<sup>20</sup>.

- To examine the **relationship between key decisions** (e.g. a refusal to assess) **and outcomes** (e.g. the number of appeals related to this), we draw on relevant data reported to us from all **109 LAs** that responded to any of the three surveys.
- To examine **change or stability over time** (Year 1 versus Year 2), we draw on data from the **42 LAs** that responded to all three surveys.

### 2.2.1.1 Relationships between key LA decisions and appeals (109 LAs)

We first turn our attention to the decisions made on **individual requests for an EHC needs assessment**. To do this, we used the information we received from all 109 LAs who responded to one or more of our surveys. This allowed us to look at the **relationship between LA decisions** whether or not to conduct an assessment, and whether or not to issue a plan, **and the subsequent numbers of appeals to the First-tier Tribunal SEND**.

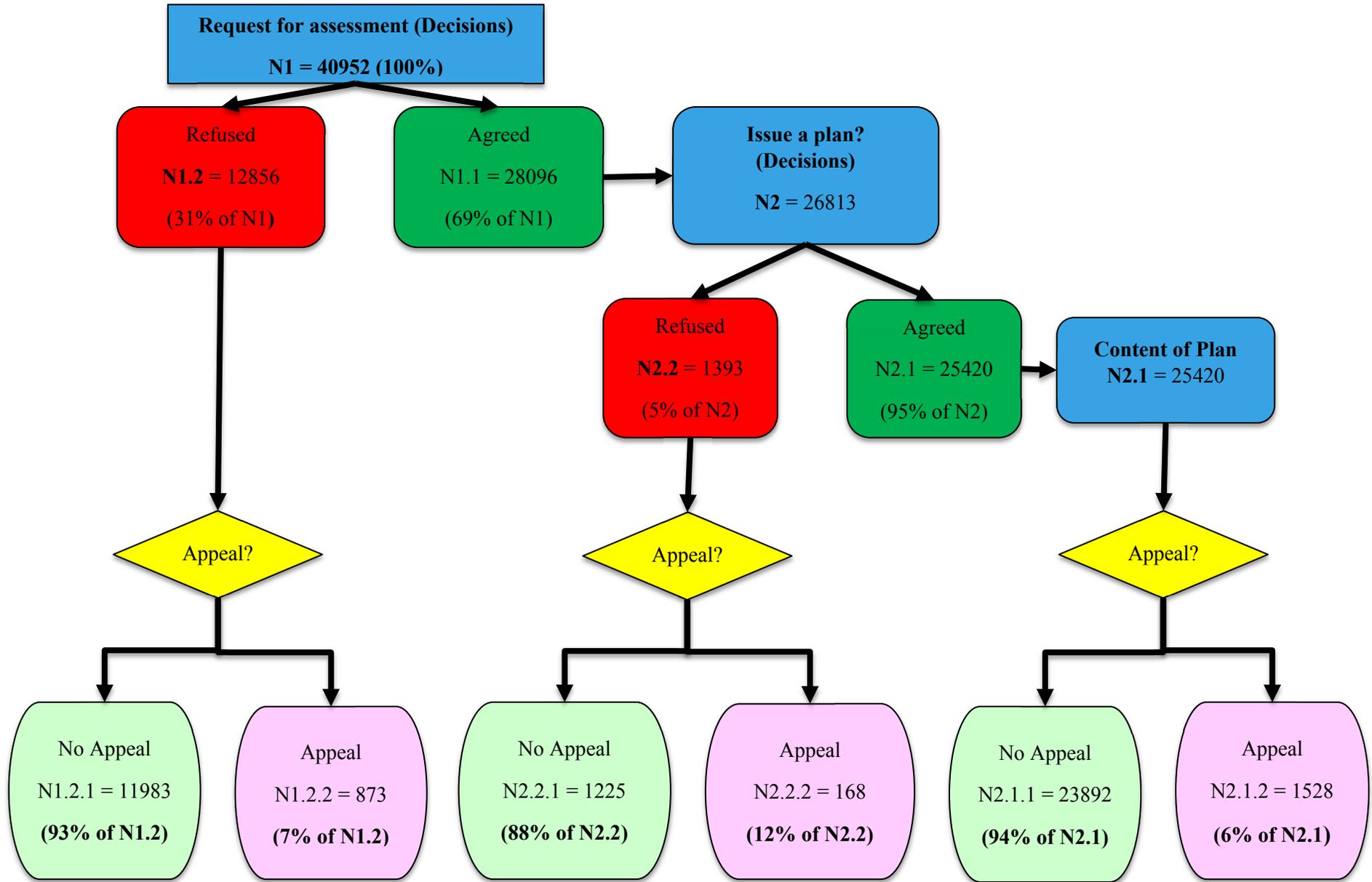
Every single one of these requests for an EHC needs assessment relates to a child or young person. It is very important to remember this when looking at statistics about SEND.

Figure 5 is a flow chart illustrating this relationship. It uses the information ('data') we received in relation to decisions taken. This means that it excludes the data relating to requests for assessment that had not been decided and to assessments that were not completed.

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<sup>20</sup> All data relating to assessment and statementing processes under the 1996 Act are presented in Appendix 4.

Figure 5: Flow chart showing First-tier Tribunal SEND appeals, 1.9.2014 – 31.8.2016 in relation to key LA decisions made in 109 LAs (Decided cases only)



Base: 109 LAs

Figure 5 (the flow chart above) shows that, in our online survey sample, **40,952 decisions** were reported to us across **109 LAs** regarding requests for EHC needs assessments during the research period, 1 September 2014 to 31 August 2016. These were the first two years of practice under the Children and Families Act 2014. Of these 40,952 decisions:

- **7%** of **refused requests** resulted in an appeal (n = 873)
- **12%** of assessments that resulted in a **refusal to issue an EHC plan** were appealed (n = 168)
- **6%** of **EHC plans** resulted in an aspect of the content being appealed (n = 1,528).

It is also important to consider the parents who are refused an EHC needs assessment, or refused an EHC plan following an assessment, or who do not agree with the content of the EHC plan, yet **who do not appeal**. We cannot assume that all of these are satisfied. As we show later (Chapter 5), a high proportion of cases to the Tribunal are conceded or withdrawn and, where the case is heard by the Tribunal, the majority are decided in the favour of the appellant. This suggests that there **may** be a similar proportion of 'refusal to assess' and 'refusal to issue a plan' and 'content of plan' decisions that are **not appealed** that **may** have been overturned if they had been appealed.

Information on the scale of appeals to the First-tier Tribunal SEND has not been presented in this way before, to our knowledge. In our view, it is more illuminating in terms of **raising questions that help us to better understand patterns of disagreements around SEND**. By examining rates of appeal in relation to the relevant decisions being made at LA level, and also taking note of the numbers involved, relationships between decisions made and both overall scale and rates of appeal can be explored in terms of LA processes and other relevant local factors. For example, using the numbers of EHC **appeals** nationally (Table 6 below), we can see that more appeals under the Children and Families Act 2014 relate to '**refusal to assess**' than to a 'refusal to issue a plan'. Our flow chart, by contrast, shows that, of all refused EHC needs assessment **requests** (n = 12,856, those that went to appeal amounted to 7% (n = 873). In terms of type of LA decision, in our sample of 109 LAs, the largest **proportion** of appeals (12%; n = 168) related to **decisions to refuse to write an EHC plan** following an assessment. Thus, showing both absolute numbers and percentages of different stages of the decision-making process provides a richer picture to assist monitoring and review of how the system is working.

**Table 6 Number of appeals by reason for appeal (national data)**

<b>Reason for appeal</b>	<b>Year 1 (2014-15)</b>	<b>Year 2 (2015-16)</b>
Refusal to assess	603	1185
Refusal to issue an EHC plan	97	321
Against any aspect of content of EHC plan	453	1672

Source: Statistical Bulletin, 8 Dec 2016, Ministry of Justice, SEND Table 2 <sup>21</sup>

Table 6 also shows that in Year 2, appeals against any part of the content of the EHC plan rose markedly from 453 in Year 1 to 1,672 in Year 2. It is likely that, at least in part, this was because of the expansion to cover the age range 0-25, the very large numbers of statements of SEN that have been transferred over to EHC plans (not always in an ideal manner, according to parents in our study), and better information and support for parents and young people about their rights of appeal. In order to examine any such changes over time in our sample of LAs, we used information given to us by the 42 LAs that completed all three of our surveys.

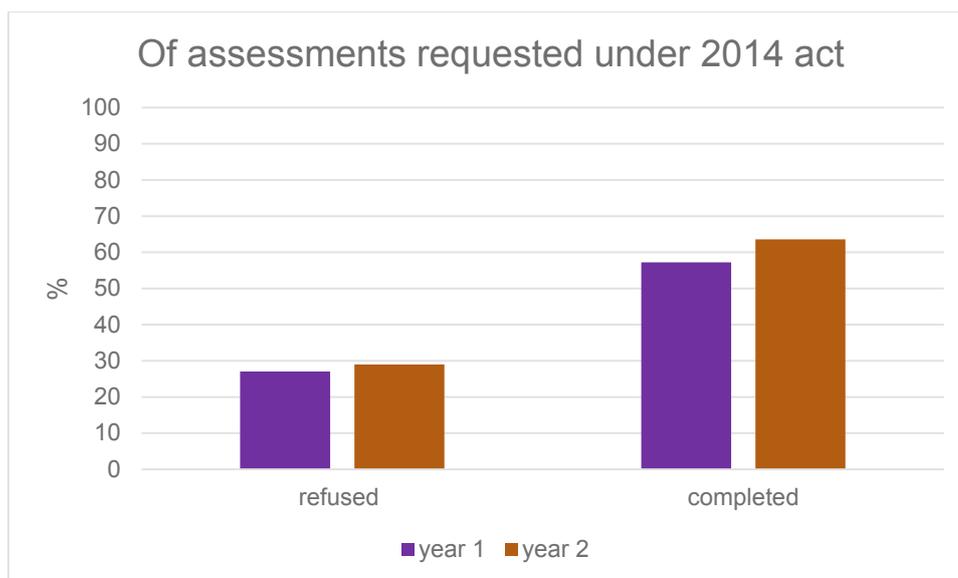
### **2.2.1.2 Relationships over time: comparing Year 1 and Year 2 (42 LAs)**

Across the 42 LAs for which we have data for Years 1 and 2 under the 2014 Act, a total of **23,526 EHC needs assessments** were requested: 9,969 in Year 1 and 13,557 in Year 2. In these 42 LAs, the **median** number of EHC needs assessments completed **per LA rose** from **198** in Year 1 to **264** in Year 2. This rise was likely to have been, at least in part, for the same range of reasons as noted above in relation to the national data presented in Table 6. Figure 6 shows the percentage of assessments requested that were refused or completed (i.e. agreed and completed).

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<sup>21</sup> In Table 6, we have used only data relating to appeals under the 2014 Act.

**Figure 6: Outcomes of assessments requested under the 2014 Act in Year 1 and Year 2**



Base: 42 LAs (responded to all 3 surveys)

Figure 6 shows that, in the 42 LAs under consideration, the majority of requests resulted in decisions, although for a substantial minority, not reported in the graph, no decision was reported. Of the decisions, a significant majority of assessments were reported as having been completed: **57%** at Year 1 and **64%** at Year 2. However, over a quarter of assessment requests were **refused** (Year 1: **27%**, Year 2: **29%**). There was no significant difference between the proportion of requests for assessments being refused and the proportion of assessments completed between the two years<sup>22,23</sup>.

In these 42 LAs, the **median** number of EHC needs assessments **refused per LA** rose from **48** in Year 1 to **63** in Year 2. Every decision to refuse to conduct an EHC needs assessment was potentially a source of disagreement between parents and the LA. Each could potentially be appealed.

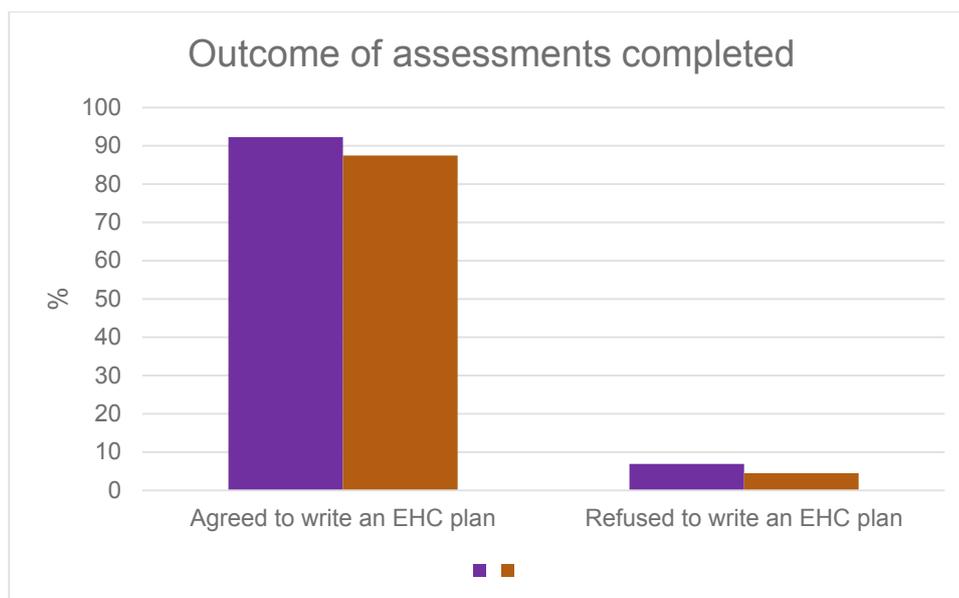
For the same 42 LAs, Figure 7 compares the percentage of EHC needs assessments that resulted in writing a plan or not in Year 1 and Year 2 of the new processes.

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<sup>22</sup>  $p = .257$ , non-significant, See Analysis 1a, Appendix 3

<sup>23</sup> There is a proportion of the assessments requested that the LAs did not report on (**16% in Year 1 and 7% in Year 2**), presumably because they were in process; therefore the bars in Figure 6 do not add up to 100%.

**Figure 7: Outcome of completed assessments under the 2014 Act in Years 1 and 2**



Base: 42 LAs (responded to all 3 surveys)

Figure 7 shows that, among these 42 LAs, about 9 out of 10 EHC needs assessments resulted in an agreement to write an EHC plan: **Year 1: 92%** (95% CIs: 91% to 93%) and **Year 2: 87%** (95% CIs: 87% to 88%). In other words, almost all EHC needs assessments led to an EHC plan in these LAs. However, for a minority of parents, the assessment of need process resulted in a **refusal** to issue an EHC plan: **Year 1: 7%** and **Year 2: 5%**. These decisions to refuse to issue an EHC plan could be appealed to the First-tier Tribunal SEND. Each one was potentially a source of disagreement between the parent/s and the LA<sup>24</sup>.

To understand whether there had been any change over the period in reasons for appeal, we looked at annual volumes of appeal as a proportion of decisions made (e.g. number of appeals for plan refusal as a proportion of all plan refusal decisions). (These two annual flow charts are in **Appendix 5**.) This clarified that **refusal to issue an EHC plan was the decision most likely to result in an appeal**. In Year 1, in these 42 LAs, 6% of refusals to issue a plan decisions were appealed, **rising to 15% in Year 2**. This compared to 5% of refusal to assess decisions in Year 1 rising to 8% in Year 2 and to appeals against any part of the content of the plan rising from 2% in Year 1 to 7% in Year 2.

Comparing the two years, there was comparatively little difference in the **percentages of decisions that were refusals**. In Year 1 in these 42 LAs, 32% of requests for EHC

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<sup>24</sup> For the remaining 0.8% of cases in Year 1 and 8% of cases in Year 2, the outcome of the completed assessments was not recorded, but it is likely that the outcome of these cases was pending.

needs assessment (for which a decision had been made) were refused versus 31% in Year 2. Refusals to issue a plan following an assessment, in these 42 LAs, ran at 6% in Year 1 and 8% in Year 2.

Concluding this section of the chapter, we can say that our analysis of the survey data leads to **two clear messages**:

(i) A **large majority** of the key EHC plan decisions made by the 109 LAs in our survey sample suggested the system largely delivers what parents and young people want: that is:

- 69% of requests for EHC needs assessments were agreed
- 95% of assessments led to an EHC plan being written
- 94% of EHC plans were accepted without appeal

(ii) Of the **minority** of EHC plan decisions that went against what parents and young people wanted, more were appealed in Year 2 than in Year 1.

However, appeals are not the only, or even the best, measure of the proportion of LA EHC plan decisions that result in a **disagreement**. Such a measure would also need to take into account parents and young people using all of the other disagreement resolution routes too. The total number of disagreements cannot be counted precisely, as some parents reported disagreements that are **unvoiced** by parents/young people who, for a range of reasons, do not feel able to challenge the school or LA.

In the remainder of this chapter, we draw on qualitative information to examine the extent to which the process of EHC needs assessment and plan development was successful in preventing disagreements and in resolving those that did arise at an early stage.

## **2.3 Extent to which EHC plan processes promote agreement and early resolution of disagreements: key themes**

We examined **how** the needs assessment and plan development processes were carried out in order to understand which aspects either **supported or deterred** early resolution of any disagreements arising.

Before presenting the key themes from the qualitative information we collected, we emphasise three points:

- The review was focused on how well **disagreement resolution processes** were working for children and families. It was not reviewing the overall implementation of the Children and Families Act 2014.
- However, this review took place **during the time of transition** from the way things operated under the 1996 Act to the new ways of working under the

Children and Families Act 2014. Additional pressures, uncertainties and teething problems were therefore to be expected. These affected disagreement resolution processes as well as other aspects of the system.

- The majority experience was one of **mutual agreement** – as reported above, our surveys showed that **a majority of LA decisions were in agreement with what parents/young people wanted**. In addition, a separate survey of parents and young people (Adams, L. and others, 2017) published by DfE shows that, of those with completed EHC plans in 2015, 83% of new plans were provided following the first request, 66% were satisfied with the EHC plan process overall, 62% were confident that their plan would achieve agreed outcomes, and only 5% had to use complaints procedures and/or appeal to the First-tier Tribunal SEND to gain their plan.

The **minority experience**, where disagreements arose, was the focus of our interviews. When things go wrong, it is important to reflect on lessons to be learned.

All the parents and young people who took part did so in the hope that the Ministerial Review would lead to **positive changes**, such that other families need not experience what they experienced. For example, typical comments included:

"I hope [the review] does help make things better." (Parent 20)

"I've agreed to take part [in the review] to make a difference to someone else's life. [...] I hope that people hear [the distress], then reflect on it and make some changes for the next people that go through what we went through" (Parent 5)

The themes reported below are drawn from a limited number of families' experiences and LA contexts and may not be generalisable to every similar family or LA context. However, these themes resonate with other work, such as the Scott Report (2016). The value of what we report lies in the range and depth it lends to our growing understanding of why and how disagreements around SEND arise, and how they can best be resolved to benefit the child or young person involved.

The themes are expressed in positive terms to reflect the hopes of parents and young people interviewed and the aspirations of professionals we spoke to. These themes are also expanded on in the forthcoming associated *Good Practice Guide* (Cullen, 2017).

### **2.3.1 Treat each other with respect and kindness**

Human beings develop in relation to others (see, for example, Bronfenbrenner, 1979). The most important interactions we have are face to face or voice to voice. When these interactions are positive, they build our self-esteem and confidence and our ability to develop further. When these inter-personal interactions are negative, they have a strong destructive power. The foundation of disagreement resolution lies in each of us treating the others in our personal and working lives with respect and kindness. We have used

‘kindness’ rather than ‘empathy’ here deliberately. Empathy requires understanding of the other’s situation and we do not always have that information. Kindness allows for the fact that the person we are interacting with, be that a child, young person, parent, SEN case worker or someone else, will have their own personal struggles. No-one has an easy life all the time or even most of the time. Parents of a child or young person with SEND have many additional challenges to deal with compared to other parents. Those children and young people with SEND face issues every day that other children and young people do not. Everyone working in LA SEND teams is working under pressure, as are all education, social care and health professionals.

We begin with this very basic theme for good reason. The disagreements around SEND that were discussed in interviews with us started with **a public employee behaving less well than was expected** by the child or young person and/or parent/s concerned. The public employee could be a teacher, a headteacher, a SENCO, a GP, a consultant, an EHC plan officer, a SEND manager, an educational psychologist – it could be anyone. Sometimes this behaviour happened well before the LA decision that later became the focus of the open disagreement. Sometimes the person whose behaviour fell below the parent, child or young person’s expectations was not involved in the later open disagreement. But that person’s behaviour made the child, young person or parent feel like **a victim** of disrespect (e.g. views being ignored or dismissed), injustice (e.g. being deprived of support entitlement), even of “cruelty” (a word used by several parents to describe how their child had been treated in school). That behaviour, if not quickly acknowledged and mended, created a more generalised sense of distrust in public employees. Distrust then made disagreements more likely. We learned this by listening to parents telling us about what happened before the disagreement. Figure 8 provides three examples out of many such instances reported by parents.

**Figure 8: Behaving less well than expected**

Behaviour	Context and impact
Refusing to listen	Parent 57 described attending a meeting to discuss the way forward after a refusal to assess decision. The LA SEND manager brought with her the child’s case file. Parent 57 reported that the manager opened the file and closed it, put her hand on top of it and said, “This file is closed and that’s it.” Parent 57 lodged an appeal straight away, having understood this to mean that her daughter was not being viewed as a person but as a pile of paper.
Being discourteous	Parent 77 called his case worker to ask for the rationale behind a refusal to issue a plan for a non-verbal child with autism, sensory processing disorder and severe learning difficulties, given that all the professional reports seemed to indicate that the child needed one. He said that the case

Behaviour	Context and impact
	worker responded with, “I don’t <i>care</i> what [medical doctor] had to say. He’s not an educational expert like I am.” The parent refused to speak to this person after that phone call, only communicating with the area manager. After several further negative experiences of LA staff behaviour, they gave up trying to resolve the disagreement and lodged an appeal.
Being unkind to a child with SEN	Several parents described incidents of staff behaviour at school that were unkind at best, cruel at worst. In each case, the child was punished for behaviours that were a direct result of their SEN. These incidents were very distressing for the children and the parents and created a deep mistrust.

Source: Interviews with parents

We heard from local authority employees that some parents behaved disrespectfully to them. As we’ve seen, this can be triggered by the power of the back story of the parent’s previous experiences with another person. Occasionally such parent behaviour was experienced as harassment. Individual SEND case workers, officers or managers described feeling **persecuted** by a parent during working hours. This, too, had a destructive power that fuels disagreements. Figure 9 provides some examples of individual parents behaving less than respectfully and kindly to school and LA staff.

**Figure 9: Some parents treat LA staff disrespectfully and unkindly**

Behaviour	Context and impact
Bombard with emails	<ul style="list-style-type: none"> <li>• One parent described her concern about how her child was being treated at school. She explained that one of her responses was to write e-mails to the school every single day for months on end, asking for information or stating what she wanted to happen.</li> <li>• One LA SEND manager told us that some parents were aggressive, rude and threatening to her. One parent had sent her 650 emails within a six-week period, often one per hour, starting at 7am. Some of these e-mails were also copied to the local MP and/or to the Department for Education. To protect herself, the SEND manager lodged a complaint against the parent.</li> </ul>
Make multiple Freedom of	<ul style="list-style-type: none"> <li>• More than one parent told us about making multiple Freedom of Information requests – e.g.</li> </ul>

Behaviour	Context and impact
Information Requests	after a refusal to assess, one parent said, “I bombarded the local authority with [multiple] FOI requests, just so they’d know they were dealing with someone who wasn’t going to go away lightly.”
Shouting	<ul style="list-style-type: none"> <li>Some parents described ‘losing their rag’ with LA SEND staff and described shouting at the person on the phone, behaviour they later felt ashamed about.</li> </ul>

Source: Interviews with parents and LA focus groups

Once relationships between a parent and an education, health or social care employee had gone wrong, parents described feeling a huge sense of responsibility to fight for justice for their child. They felt they had to **rescue** their child’s situation, to prevent immediate and long-term damage to their child’s quality of life. They described this in terms of ‘fighting’ and ‘battling’ for their child (see Figure 10)

**Figure 10: Parents feeling responsible for rescuing their child's situation**

“It's quite exhausting actually. You think, 'Here's the next battle. It's all about battling it out. It doesn't feel collaborative or supportive of the child.” (Parent 2)

“My [child] has a rare condition so we had to battle for support.” (Parent 87)

“Before we had the big battle with the local authority over the EHCP, I had a big battle with the CCG over funding for some specialist treatments that he needed, so I've been down that route as well.” (Parent 5)

“We had a huge battle to get the health in the education section. That's when the SENDIASS was brilliant.” (Parent 34)

“Once you are in somewhere [i.e. educational placement], why do we have to fight every year to keep [our daughter] there? Our county has no specialist colleges. It concerns me that every year we will have to go through the same thing - the battle starts again.” (Parent P9)

Source: Interviews with parents, 2016-17

The three negative interaction positions described above – of victim, persecutor and rescuer – were first recognised as hallmarks of negative inter-personal interaction by

the psychiatrist, Stephen Karpman (1968). He called it **the Drama Triangle**. ‘Drama’ because when we engage in interaction from any of these three starting points, we ‘play a part’ rather than act as respectful, kind human beings, responsible for our own actions. All of us ‘act out’ on this Drama Triangle whenever we believe we are a victim, or that we must ‘get back at’ someone else or that we must ‘rescue’ someone else. The relevance of this to disagreement resolution around SEND is that it helps to understand the **depth of emotion generated by some SEND disagreements**. It also provides us with a tool to notice when we, or someone else we are interacting with, is ‘acting out’ one of these parts. Once we’ve noticed this, we can practice resisting the strong, unconscious psychological urge immediately to join the drama, acting out an opposing role. Instead, we can consciously choose to behave as a rationale, respectful human being, responsible for one’s own actions. This includes how one responds to the other person in a disagreement. For example, several LA SEND team representatives described to us how they consciously chose to adopt **non-adversarial behaviours** towards parents during mediation meetings and appeal hearings. These behaviours included deliberately sitting beside, rather than opposite, the parent during mediation meetings and taking time to sit with parents before an appeal hearing to explain in a friendly manner what to expect during the hearing (for further details, see the forthcoming associated *Good Practice Guide*, Cullen, 2017).

### **2.3.2 Engage in discussions and decisions alongside each other**

The *SEND code of practice: 0 to 25 years* (DfE, 2015) emphasises that **engagement** of the child and parent/young person in the EHC needs assessment and plan development process is expected to be more than tokenistic. It gives guidance that parents or the young person must be “fully included in the EHC needs assessment process from the start” and “fully aware of their opportunities to offer views and information” and that they must be “consulted about the content of the plan” (Paragraph 1.4). Similarly, it draws attention to the “right” of the child “to receive and impart information, to express an opinion and to have that opinion taken into account in any matters affecting them from the early years” (Paragraph 1.6). This ‘person-centred’ way of working is designed to put children/young people and parents at the heart of the process and, in doing so, to help create mutual agreement and early resolution of any disagreements that may arise.

There are key points in the process where adopting a genuinely person-centred way of working with parents/young people was reported as effective in preventing disagreements and resolving quickly those that arise. These are the points at which key decisions are made and key processes happen:

- Request for assessment
- Drafting the EHC plan
- Refusal to conduct an assessment or refusal to issue a plan

Based on the views of all those we spoke to, it was clear that the degree to which parents, young people and children experience a person-centred process was **very**

**variable.** Variation was by LA but also, within LAs, by individual case officer and/or plan writer. Figure 11 sets out a summary of what parents wanted to experience, in place of the uncertainty and happenstance they described.

**Figure 11: What parents wanted to experience during EHC plan processes**

- To see their child's needs being recognised and met so that their child/young person had as good a chance as possible of a fulfilling life
- To be in good communication with professionals/workers dealing with their child/young person's case
- To be listened to and have their views taken on board - or at least be respectfully included in discussion around 'next best' options if views could not be taken on board for sound reasons
- To interact with staff who knew SEND law and understood SEND good practice and who put SEND law, and the principles at the heart of the Children and Family Act 2014, into practice in their work
- To interact with staff who showed some understanding and empathy of the lived reality of caring for a child/young person with complex SEN

Source: Interviews with parents

Figure 11 summarises what would be expected, based on the legislation and the *SEND code of practice: 0 to 25 years* (DfE, 2015). Based on what we have learned from the interviews and focus group discussions conducted for the review, if **this bedrock** were in place in every LA's SEND team, then the number and intensity of disagreements could be expected to fall markedly.

### **2.3.2.1 Requests for EHC needs assessment**

From our survey data (see Section 2.2 above) we learned that about a third of requests for an EHC needs assessment were refused. We also heard from mediator interviews (see Chapter 4) that refusals to conduct an EHC needs assessment were often the subject of mediation. These mediators suggested that refusals of assessment requests could be reduced if LAs communicated clearly with their local schools as to the type and quality of information and evidence that was required to meet the threshold for an EHC needs assessment. From the local authority focus groups, we heard from LA staff who had invested time in doing so. They reported that this was successful in reducing later disagreements over refusal to assess decisions. (Details in the forthcoming *Good Practice Guide*, Cullen, 2017.)

However, the parents in our sample, who had experienced refusal to assess decisions, were mainly those who had submitted a **parental request**. LA staff noted during the

focus groups that parental request for EHC needs assessments are usually unexpected requests. LA SEND team representatives reported viewing these as more challenging to respond to because they usually indicated that the school and parents did not agree on the child's needs. The resulting information collected, on which the local SEND panel would make its decision to agree or refuse an assessment, tended therefore to be rather thin. For example, the school may not have involved external professionals in supporting the child. Among our parent interviewees, most of those who submitted a parental request were turned down on the basis of insufficient evidence. This was described by parents as a very stressful and distressing experience. They wanted to ensure their child received the support required to make progress in education; they believed the school was not providing this; requests to have their child assessed by an educational psychologist or to have the school submit an EHC needs assessment request having been refused, their only route was to request an EHC needs assessment themselves. And then their request was refused for lack of evidence – the very evidence the school refused to gather. Multiple parents in our sample reported this experience.

The parents' interviews showed that parental attitudes to issues arising during request for assessment (and during needs assessment and drafting of the plan) were affected by previous experiences of how their child's needs had been met (or not) in school/s (i.e. SEN Support). The longer they felt their child's needs had been ignored by schools, or inadequately met, the stronger they felt about the need to get an assessment and a plan.

Through the LA focus groups, we learned that some LA SEN staff routinely met with parents to talk through a request for an EHC needs assessment. This proactive approach allowed these LAs to explain to the parents the 'Assess, Plan, Do, Review' cycle of evidence-gathering expected of schools at SEN Support and to visit the school with the parents to talk through what support was in place and what support should be in place. More frequently (and increasingly so since the Children and Families Act 2014, according to what we heard during the focus groups), in some LAs, SEN staff met with parents/young people to talk through the reasons for a 'refusal' decision and to agree a way forward.

Figure 12 is a case study of how one proactive SEN manager turned around a situation heading for a disagreement over a refusal to assess, by intervening using person-centred behaviours. Specifically, this SEN manager recognised that the school had not played its part at SEN Support level. She saw through the inadequate paperwork submitted to panel and the unsupported child it represented. She went to meet the parents in their home. She worked with the school to support them to put in place differentiated teaching and learning suited to this child's needs. She explained the whole process to the parents face to face. The result was that the parents felt listened to and supported, the school learned how to put in place the graduated response as set out in the *SEND code of practice: 0 to 25 years* (DfE, 2015) and the child's education

and quality of life was transformed. In the process, a SEND disagreement was prevented.

**Figure 12 Resolving issues at SEN Support**

Child's strengths (parent point of view)	Child's needs
Very, very bright and lively. Makes his own YouTube videos. Brilliant singer. Very knowledgeable about bee keeping.	Specific learning difficulties (not diagnosed for years); low working memory; slow processing speed; dyspraxia (painful to write).
<p><b>Backstory:</b></p> <p>This boy's mother described first having asked for help when he was in <b>Nursery</b>. She described having felt intimidated during a meeting with staff at his Infant School. She recounted years of trying to get help for him, complicated by his being at a school outside of LA boundary. In <b>Year 5</b>, the boy was threatened with exclusion if his parents didn't remove him from the school. The child was so distressed by this that he stopped speaking for a week: "It was heart-breaking", his mother said. At his new school, he flourished with a teacher who understood his needs and recognised his strengths. When that teacher left after one term, and a new head teacher and SENCO were appointed, all SEN support was removed from him on the grounds that he needed to become more independent before the move to secondary school. Without support in <b>Year 6</b>, he struggled and became more and more distraught about going to school. In school, he was punished regularly for being behind with his work and for his poor handwriting. This was the context in which his parents submitted a request for an EHC needs assessment.</p> <p><b>Resolution:</b></p> <p>When the parents' request for assessment was refused by the LA, his parents contacted the local IAS service. Separately, the SEN manager, who had been on the panel, e-mailed the parents requesting a meeting. The IAS worker agreed to support the parents at that meeting. The SEN manager had noted during the panel meeting that the child's needs suggested the school ought to have been providing support. She explained to the parents her plan to go in to the school to speak to the head teacher and the SENCO about putting in place teaching differentiated to this child's needs and recording progress on a three times six-weekly Assess, Plan, Do, Review cycle. She persuaded the parents that this 18-week wait would be worthwhile because she also arranged for the school to request assessments from all the relevant professionals so that, when the request for an EHC needs assessment was re-submitted, there would be enough evidence to agree to it and to write the plan. This all took place. At time of interview, the boy was thriving in a local special school.</p>	

Source: Interviews with parents, 2016

The type of person-centred approach to decision-making described in Figure 12 had not, in the view of a number of the parents' interviewed, reached (many) LA SEND panels, charged with making decisions on requests for assessment and whether or not to issue a plan. A recurring theme from parents interviewed was that decisions were

made at panel, sometimes without anyone there that knew or had worked with their son/daughter. It seemed generally the case that the parents did not get to see what paperwork on their child had been presented to panel. Especially in cases where the panel decision went against the collective view of all present at an Annual Review, or at another type of multi-professional meeting, parents queried whether their son/daughter's paperwork was read and/or understood. Focus group discussions indicated that some LAs include parents on their panels whilst others do not. While it is understandable for reasons of equity and fairness that SEND panels make their decisions based on paper work alone, from the experiences described to us by some parents, it would seem that there is more scope for the type of approach described in Figure 12. That is, for the panel chair or the SEN manager to follow up on refusal decisions based on insufficient evidence, especially where these are parental requests, to find out why the paperwork provided insufficient evidence.

### **2.3.3 Create an environment where SEND staff can do quality work**

Our learning from the interviews and focus groups is that handling potential disagreement 'flashpoints', such as refusal to assess, or refusal to issue a plan or disagreement over the content of a plan, requires LA SEN team members to have excellent interpersonal skills, person-centred values, attitudes and behaviours, and the skills and knowledge to carry out their role legally and in the spirit of underpinning the principles of the Children and Family Act 2014.

To minimise disagreements and maximise early resolution of those that do arise, it is at this early stage that it would seem most appropriate to concentrate any resources that can be put into the system e.g. improved standards of recruitment of staff, initial and regular training, staffing capacity matched to demand. Many parents interviewed for this research raised their concerns about the quality of SEND team staff, especially at case officer level. Issues raised included examples of case officers being unaware of the correct processes to follow for EHC needs assessment; being unable to provide information on personal budgets; repeatedly not answering e-mails or phone calls; communicating in a manner perceived by the parent as rude or dismissive; communicating as if they knew the child better than the parents, despite never having met the child, and coming across to the parent as abrupt and uncaring. Our sample of parents was drawn from the minority of parents who have experienced SEND disagreements: their views about SEND team staff may not reflect the views of the majority of parents interacting with SEND teams.

Among the parents interviewed, there were those who had gone through the process of EHC needs assessment and drafting of the EHC plan. The majority of these parents reported receiving poor quality draft EHC plans. Issues were about these being poorly written, incorporating cut and paste from reports that made a nonsense of the meaning of what was in the reports, lack of specificity, failure to incorporate the parents' views

(even when that part of the process had been done in a very person-centred way). For example, Parent 37 reported a very positive experience of EHC needs assessment:

"My experience was of very child-centred planning, with the right support in place. A lot was based on observation of [my son] i.e. it was child-centred, gaining the reports and engaging with the appropriate agencies effectively and in liaison with them." (Parent 37)

She was therefore very disappointed to find that, "The plan was very poorly written [...] not measurable, reasonable or achievable. It left things open to interpretation and therefore there was poor provision in Section F. It went through nine drafts to get to the Final." During the delay of producing these nine versions, her son was excluded from his school. Again, we emphasise that the group of parents interviewed were those who had experienced SEND disagreements. Their experiences of the EHC plan development process cannot be assumed to match the experiences of the majority of relevant parents.

Once parents and an LA SEN team were in disagreement, it seemed very difficult for issues to be resolved; instead, more and more seemed to go wrong. For example, paperwork being lost, or sent to the wrong school, or draft EHC plans being sent to the parents with the wrong child's details on the front and the wrong child's name throughout (this was reported multiple times in our small sample of parents). These issues exacerbated the original disagreement. Other examples were of meetings called to address the disagreement that, instead, made things worse through the tenor of the conversation. For example, one parent reported being told to her face by an SEN manager, "Why would I waste money trying to educate your daughter?" The interviews with parents included many examples of incidents in this vein. This suggests that there is a need to spread good practice around 'self-correct' processes (for example, stopping, reflecting, re-considering, meeting with the parent and young person or child). Analysis of interview data from parents in our sample showed that disagreements that were not resolved quickly, but were instead exacerbated, often linked back to SEND teams that were described by the parents as under pressure and/or to case officer-level staff reported as having had little or no training in SEND law and good practice, or in good practice in working with parents. It was also clear from our parent interviews that these parents were also under pressure, being the parents of one or more children with SEND.

It was clear from their interviews that the parents expected that SEND teams would have the knowledge, skills, qualities and workload capacity to put the legislation into practice in the spirit in which it was intended. They expressed disappointment when, in their experience, this was not the case. A few parents interviewed (e.g. Parents 20 and 78) argued that LA EHC needs assessment and planning officers should have mandatory training in the relevant legislation and the *SEND Code of Practice: 0 to 25 years* (DfE, 2015) before they were allowed to work with parents or write EHC plans.

From the LA focus groups, we heard about good practice in this regard, with locally developed training being given and systems of monitoring timelines and case management supervision put in place. (Further details in the forthcoming associated *Good Practice Guide*, Cullen, 2017.)

### **2.3.4 Sufficient, appropriate, good quality SEN support**

Where parents/young people were refused an EHC needs assessment or an EHC plan, it helped to prevent disagreement if support was offered afterwards, ensuring that appropriate provision was made outside a plan (for example, through high needs funding) and that families understood the available options.

In our parent interviews, there were only a few examples of support being offered at these stages that was deemed adequate by parents. This drove parents on to appeal. However, LA focus group discussions provided accounts of good practice at this stage that had resulted in disagreements being resolved. For example, the way these decisions were communicated to parents could make a difference – in some LAs these decisions were always given orally face to face or in a phone call, meaning reasons for the decision could be explained and discussed, as well as by letter.

More than one focus group LA reported being aware of a huge variation in what was offered at SEN Support level in local schools. Where there was also a breakdown in communication between the school and the parent/s, this could lead to misunderstandings and a loss of trust at SEN Support level. Cuts to local budgets were reported, in several focus groups, to have led to a loss of personnel to address such issues. For example, one LA had lost a lot of school improvement and SEND Support staff and so was no longer able to offer outreach work to schools to improve consistency at SEN Support.

Evidence from several LA representative focus groups showed that ‘high needs funding’ or other funding available to support short term needs, for example around phase transition or a difficult event in a child’s life, was perceived as helpful at SEN Support level.

It was clear from the focus groups that some LAs worked hard to ensure that their schools and other educational settings were aware of what was expected from them at SEN Support level. Good practice in this regard included LAs clearly communicating expectations around SEN Support (in some cases, these were written up in a local document). At school level, it was reported that having a parent leaflet about the school’s graduated response was helpful in enabling parents to understand how the school delivered SEN Support. Where the SENCO or head teacher was also willing to take time to talk this through with parents in relation to the specific support their child received, that was viewed as an effective way of preventing disagreements, based on misunderstandings of SEN Support, from escalating or resulting in a premature request for an EHC needs assessment.

### 2.3.5 Be mindful about timeliness

Regarding **timeliness**, the local authority must notify the parent or young person of its decision within a maximum of six weeks from a request for an EHC needs assessment. Where an assessment is undertaken, the decision as to whether or not an EHC plan is needed must be notified to parents or the young person within 16 weeks from the initial request for a needs assessment. The emphasis on timeliness is driven by an awareness that each case is about a child or young person experiencing difficulties in his or her early years setting, school or college.

During the interviews, some parents described the negative impact on their respective children/young people of delays in decision-making or in resolving disagreements. For example, one result of such delays was that several of the parents in our sample, albeit unwillingly, took the decision to remove their child from school in order to prevent further distress to their child. This situation was experienced very negatively by families; again, there were multiple examples of this in our data. Some parents in our sample reported losing their jobs because of this. Those parents also spoke of the negative impact on their own and their child's mental health. The stress and added pressure of having a child with SEND out of school was reported, in some cases in our sample, to have led to the breakdown of the parents' relationship.

In one LA, we heard of 113 children on the elective home education list, only three of which were because of parental philosophical or cultural beliefs about education. The others were doing home education as a way of dealing with school-based issues and delays in agreeing with the LA on an alternative, suitable educational placement.

## 2.4 What has been learned about EHC needs assessment and plan development in relation to preventing and resolving disagreement

The information gathered for this review indicates that, **when** EHC needs assessments and plan development processes are carried out in the person-centred way expected by legislation and the *SEND code of practice: 0 to 25 years* (DfE, 2015), this **was effective** in promoting agreement and in helping to resolve disagreements quickly. The challenge to arrangements for disagreement resolution was when that person-centred approach was **not** implemented fully. Individuals' experiences of the processes were affected by **wide variation** in how EHC needs assessment and plan development processes were implemented in different LAs. **Person-centred decision-making** was particularly important in terms of preventing disagreements and finding early resolution to those that did arise. Where the principles of the legislation and the *SEND code of practice: 0 to 25 years* had not been adopted in everyday practice, parents in our sample continued to experience the SEND system as adversarial, often describing their experiences as a 'fight' and a 'battle'. The challenge is to find and use ways of supporting the embedding of person-centred approaches and high quality plan-writing in every LA.

We found that a relatively small **proportion (7%)** of the key LA decisions around EHC needs assessment and plan development that can be appealed to the Tribunal are, in fact, appealed. The **volume** of these decisions (for example, refusal to assess in our surveys: n= 12,856) means that the number of individual parents/young people who receive a 'refusal' decision with which they are likely to disagree runs into thousands of cases. By using local data to review the proportion and numbers of cases that receive these 'refusal' decisions, LA SEND managers and lead officers could perhaps work to reduce the incidence of these within the system. Our evidence suggests that this would require schools and other educational settings to be aware of their responsibilities, under the Children and Families Act, to provide SEN support and to use the resources provided to them to deliver the provision specified in every EHC plan. It will also require LA SEND staff to be trained and supported to conduct assessments efficiently and to write EHC plans effectively, whilst working in a person-centred way. Finally, it will require local, regional and possibly even national conversations to be had about strategic planning to ensure an appropriate range of SEND provision to meet the identified educational, health and social care needs of children and young people.

These statistics offer an opportunity to reflect on the different stages of the EHC needs assessment and plan development process, when considering the current functioning of the system and possible actions for improvements.

We also found that there are not any national standards for the quality or training of SEND team staff. Mandatory training for these staff was suggested by some parents. As the delivery team for a statutory function of LAs, parents we interviewed expected that SEND teams would have the knowledge, skills, qualities and workload capacity to put the legislation into practice in the spirit in which it was intended.

### 3 Information, Advice and Support Services and Disagreement Resolution Services

#### Key Findings

##### Information, advice and support services

Our data from a variety of sources indicated that parents experienced different levels and quality of information, advice and support depending on where they lived.

- Almost all the parents interviewed appreciated the existence of IAS services. There was awareness that training and resourcing varied and that this impacted on the parent experience of each service.
- Some IAS services were experienced as very helpful, knowledgeable and able to offer individual support. Others were experienced less positively.
- A recurring theme among the parents interviewed was a degree of distrust of IAS services because they are not independent of the LA.
- In both Year 1 (2014-2015) and Year 2 (2015-16), the majority (34 (57%) and 42 (68%), respectively) of responding LA lead officers for EHC needs assessment were satisfied with the cost in relation to the quality of the IAS service provided.

##### Disagreement resolution services

- Disagreement resolution services were used less than mediation services.
  - Across the 109 LAs that responded to any of our surveys, disagreement resolution services were used a total of **625** times.
  - Over half of the 42 LAs that responded to all three surveys reported **no use of DRS services** during 2014-15 or 2015-16.
- In both Year 1 (2014-2015) and Year 2 (2015-16), a minority (17 (29%) and 27 (44%) respectively) of responding LA lead officers for SEND assessment were satisfied with the cost in relation to the quality of the disagreement resolution service provided. This was mainly because others were neutral, reporting no or little use of the service.
- These services were poorly understood. Among the 79 parents interviewed, each of whom had experience of SEND disagreements, almost all were unaware of such a service and none had used it.
- Some LAs would prefer not to have to provide such a service, given their own focus on early disagreement resolution meetings. Others could see the potential benefits of being able to draw on an independent mediator in the context of relevant disagreements.

## 3.1 Introduction

In this chapter, we first examine **perceptions** of the Information, Advice and Support Services (IASS) introduced by the Children and Families Act 2014 as a statutory service that must be provided by LAs. In particular, we examine perceptions of how well IAS services, “make known to parents and young people” disagreement resolution and mediation procedures, complaints procedures and details of how to appeal to the First-tier Tribunal SEND.

We then address the **research objective**:

- To examine whether disagreement resolution services are **helping to resolve issues at an early stage** and so contributing to a reduction in appeals to the Tribunal<sup>25</sup>.

Under the 2014 Act, ‘disagreement resolution service’ (DRS) has a specific meaning (*SEND Code of Practice: 0 to 25 years* (DfE, 2015) paragraphs 11.5 and 11.8). It focuses on resolving or preventing the escalation of four specific types of disagreement that are not appealable to the First-tier Tribunal SEND. Unlike mediation meetings requested by parents/young people, LAs may choose whether or not to accept a request to attend a DRS meeting.

This chapter first reports on our findings related to the role of Information, Advice and Support Services regarding disagreement resolution and then on findings about disagreement resolution services.

## 3.2 Information, Advice and Support Services (IASS)

Information, Advice and Support Services (IASS or SENDIASS) were introduced under the Children and Families Act 2014. Chapter 2 of the *SEND code of practice: 0 to 25 years* (DfE, 2015) sets out the principles and parameters of the service. In terms of disagreement resolution, the Code states that IASSs should provide, “**information** on the local authority’s processes for resolving disagreements, its complaints procedures and means of redress” (Paragraph 2.17). It also states that it should provide “**help when things go wrong**”, stating that this should include:

- “Supporting children, young people and parents in arranging or attending early disagreement resolution meetings

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<sup>25</sup> Disagreement resolution services aim to resolve issues that cannot be appealed. Doing so may, however, prevent it becoming an issue that can be appealed.

- Supporting children, young people and parents in managing mediation, appeals to the First-tier Tribunal (Special Educational Needs and Disability), exclusions and complaints on matters related to SEN and disability
- Making children, young people and parents aware of the local authority’s services for resolving disagreements and for mediation, and on the routes of appeal and complaint on matters related to SEN and disability” (Paragraph 2.19).

The IASS Network has also published national **quality standards** for IASS, including standards for the provision of information and advice, supporting individuals and for professional development and training. During 2016, the IASS national outcomes data pilot published user feedback from 12 IASS (June 2016) and from 17 IASS (October 2016). These provided data from 383 and 559 service users respectively (20 services and 940 users in total). The feedback was **overwhelmingly positive** with over 90% of users reporting their local service to be ‘helpful’ (94%), ‘very neutral, fair and unbiased’ (96%), effective in making a difference (90%) and that they would recommend it to others (95%).

In order to examine the extent to which IAS services were helping to resolve issues at an early stage by providing appropriate information, advice and support, we draw on data from<sup>26</sup>:

- Scripted calls to 30 randomly selected IAS services
- Two surveys (Year 1 and Year 2) of LA Lead Officers responsible for EHC needs assessment processes
- Views expressed about IAS services in all the interviews and focus groups we conducted

### 3.2.1 Scripted calls to randomly selected IASS

To examine how helpful IASS were in providing information, advice and support about disagreement resolution over the phone<sup>27</sup>, in June 2016, we randomly selected 30 local authority IAS Services (approximately one-in-five) from across England. We did this using a random number generator.

Contact numbers and opening hours were sourced from the Information Advice and Support Network website, individual IASS websites, or IASS voicemails. A researcher phoned all 30 IAS Services posing as the friend of a woman whose son had special educational needs. Two scripts were used: one focused on how to make a complaint and one on how to make an appeal to the First-tier Tribunal SEND. In half (15) the calls,

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<sup>26</sup> Brief details of these methods are in the Introduction. Further details can be found in the appendices.

<sup>27</sup> IASS also provide information, advice and support by e-mail and through calling back in response to a message left on voicemail.

the researcher used Script 1, and in the other half, Script 2 (set out in the text boxes below).

The scripts differed by issue being addressed, not structure. In terms of IASS intervention levels (IASSN, 2016), we deemed this to be a Level 1 (low) intervention request. The researcher took notes during the conversation which were then systematically recorded, using a structured template. The template recorded availability of the service (opening hours), ease of getting to talk to someone, friendliness of the voice on the phone (voicemail or person), the information given and any support offered.

### 3.2.1.1 Availability of the service (opening hours)

Opening hours of IAS Services were gathered from the Information Advice and Support Network website. Almost all (25 of the 30) had opening hours available on this website. A further two had opening hours stated on their individual websites but the remaining three did not.

#### Script 1:

Hello, I'm calling on behalf of my friend who has a son who's got special educational needs and is not happy about the support in school that he is receiving. She's thinking of making a complaint. I was wondering where she can find out how to do that, and what support there is to help her do that?

(I don't want to go into details)

[Close] Thanks for your help I'll pass this information on, and leave it up to her what she wants to do.

#### Script 2:

Hello, I'm calling on behalf of my friend who has a son who's got special educational needs. He's got a plan but my friend's not happy about the special educational provision specified in the plan. She's thinking of making an appeal. I was wondering where can she find out about how to do that? And what type of support is there for her if she'd like to do that?

(I don't want to go into details)

Thanks for your help I'll pass this information on, and leave it up to her what she wants to do.

Thirteen of these 30 IAS services were open from 9am to 5pm Monday to Friday (or for the same amount of hours). This will be called 'office hours'. A further 11 IAS services were open for fewer hours or days than office hours (eight being open for fewer hours, three being open for both fewer hours and fewer days). Conversely, three of the 30 were open for more hours. None were open on a Saturday or Sunday.

### 3.2.1.2 Ease of getting to talk to someone

Our researcher's persona was that of a working person who wanted to speak to someone, rather than leave a message and be called back at a perhaps inconvenient time. The 'friend's' persona was that of a mother who was too anxious and stressed to make the phone call herself. **One-third (10) of our initial calls were answered** and two-thirds (20) went to voicemail. Up to three further attempts were made to speak to a person at each of the 20 services where calls had gone to voicemail. These were made on different days and at different times of day to the initial call. This approach was successful in reaching a person to talk to in a further 11 of the 30 services, leaving nine where our calls failed to get beyond voicemail. Many IAS services operate a call back system. (We emphasise that it was our decision not to leave a message and be called back<sup>28</sup>.)

### 3.2.1.3 Friendliness of the voice on the phone (voicemail or person)

The researcher recorded a subjective sense of how friendly or not the voice on the phone was, whether this was the voicemail message or a person. Overall, that subjective judgement was that **half (15) were experienced as friendly**, eight as neutral and seven were experienced as unfriendly or off-putting. Examples of interaction experienced as friendly included the person from IASS 24 immediately responding, "Definitely we can help" in a reassuring and confident manner. Another example was the person from IASS 26 who explained that, although the local SEN team did not have to get involved with issues at school that they would do so. This was experienced as conveying that there were people who were able and willing to help.

Examples of interactions experienced as unfriendly or off-putting included a voicemail that had an unfriendly tone, or off-putting information being given in the recording. For example, the voicemail recording for IASS 11<sup>29</sup> stated that the service was "incredibly busy" and asked callers not to leave more than one message. The voicemail recording for IASS 21 stated they were operating on a "restricted service" so it would take longer to reply. These responses were experienced as unfriendly and off-putting – but we also understood that they were indications that these local IAS services were not resourced to a level where the level of service that might be expected could be delivered. Other sources of information, such as LA focus groups and interviews with parent support organisations representatives, indicated that some IAS services were very small and that others were being cut. Some of the parents interviewed also understood this context. For example, one said, "To be fair to them, they are hugely under-resourced." (Parent 3).

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<sup>28</sup> If the researcher had left a message, the call back would have revealed that the message had been from a researcher at the University of Warwick.

<sup>29</sup> The numbers used to identify IASS are otherwise meaningless.

Person-to-person responses experienced as unfriendly included being interrupted and told, “Well, Mum needs to phone me”, rather than being given the information requested (IASS 19). Another example was where the information requested was refused on the grounds that it could only be given to the caller’s friend. The member of staff said that the caller’s friend shouldn’t be afraid to call because, “We’re quite friendly” and “We won’t bite”. However, the member of staff had not asked why the friend wasn’t able to phone (only one person asked that, out of the 21 conversations with these random IAS services). The *SEND Code of Practice: 0 to 25 years* (DfE, 2015) only refers to IASS in relation to parents, children and young people. In our view, it was a reasonable expectation that these services would provide information to a parent’s friend or supporter, especially when, as in our scenario, all that was requested was information about how to make a complaint to a school or how to appeal to the Tribunal. In fact, eight of the 21 services refused to provide the requested information because the caller was not the person who directly needed it. Information provided by the IASS Network indicated that the context for this refusal to deal with anyone other than the parent was likely to be a concern about protecting the confidentiality of clients. In the context of giving out information that is in the public domain, such a concern was misguided (albeit well-intentioned). It suggests the need for this distinction to be clarified for some IASS staff.

#### **3.2.1.4 The information given and any support offered**

The information about IAS services in the *SEND code of practice: 0 to 25 years* (DfE, 2015) was used to create a set of ‘reasonable expectations’ of what a caller could expect to be told in response to our scripts requesting information on how to make a complaint to a school or how make an appeal to the First-tier Tribunal SEND. This set of expectations was discussed and agreed as reasonable with an IASS service that, based on our data from parents, had a good reputation as providing an excellent service. These expectations are summarised in Figure 13 (regarding complaints) and in Figure 14 (regarding an appeal).

In response to our request for information on how to make a complaint, seven of the nine services provided at least one piece of information and/or support. For example, four explained that the school’s complaints process would be on the school’s website; five advised that arranging an informal meeting with the school would be a useful first step towards resolving the situation and two offered support in setting this up and/or attending alongside the parent, and five stated that their IAS service could support the parent through the complaints process. None gave information about the local disagreement resolution service (Code, 11.5 – 11.12) which is specifically intended to be used, voluntarily, to support early resolution of issues between parents and schools (as well as three other types of disagreement). It can be used before, during or after a formal complaint. None of the nine IAS services made the caller aware of the information about complaints in the Local Offer. No help was offered in finding the school’s complaints procedure.

Figure 13: Our 'reasonable expectations' of information and support about a possible complaint

Information and support for making a complaint
<b>School complaints procedure</b> <ul style="list-style-type: none"><li>• Every school must have a formal complaints procedure</li><li>• Help finding the school's complaints procedure</li></ul>
<b>Informal meeting with the school</b> <ul style="list-style-type: none"><li>• This would be the first thing to do</li><li>• Support with attending or arranging this meeting</li></ul>
<b>Disagreement Resolution Service</b> <ul style="list-style-type: none"><li>• Who they are and what they do</li><li>• Can help with arranging and attending the disagreement resolution service meeting</li></ul>
<b>Local offer and its web page about complaints</b>
<b>Support through the whole process of making the formal complaint</b>

Source: CEDAR, University of Warwick, based on *SEND code of practice: 0 to 25 years* (DfE, 2015, 2.17-19)

Figure 14 sets out our 'reasonable expectations' of the information and support one might expect when calling up an IAS service to ask for information on how to make an appeal to the First-tier Tribunal SEND. In response to Script 2, seven of the 11 services provided at least one piece of expected information and/or offer of support. For example, five explained that arranging a meeting with a representative from the local SEN team would be a useful first step in resolving the issues and three explained about the role of the local mediation service.

**Figure 14 Our 'reasonable expectations' of information and support for making an appeal**

Information and support for making an appeal
<p><b>Local Resolution</b></p> <ul style="list-style-type: none"><li>• A meeting with the SEN team representative often a useful first step</li><li>• Offer support for local resolution</li></ul>
<p><b>Signposting information</b></p> <ul style="list-style-type: none"><li>• Letter that came with the plan</li><li>• Local offer appeal web page</li><li>• Guide for how to appeal</li><li>• Parent support organisations</li></ul>
<p><b>Mediation service</b></p> <ul style="list-style-type: none"><li>• Contact details, don't have to have mediation, will get the necessary certificate from contacting them</li><li>• Can support with mediation</li></ul>

Source: CEDAR, University of Warwick, based on *SEND code of practice: 0 to 25 years* (DfE, 2015, 2.17-19)

A phone conversation with the IASS may be the first port of call for people experiencing an issue or disagreement relating to SEND. We concluded that the scripted call experience indicated the need for **improvements in the consistency** with which such calls are responded to. Something as simple as a prompt sheet of basic information about disagreement resolution routes could ensure that anyone answering the phone would be able to provide helpful and accurate information.

### **3.2.2 EHC needs assessment lead officers' views of IASS**

Our main LA surveys did not ask about use of IASS. Instead, views about cost in relation to the quality of IAS service provided were sought in the separate surveys sent to LA Lead Officers for EHC needs assessment processes (Appendix 9). In respect of 2014-15 (Year 1), **over half the 60 respondents** (34, 57%) **'agreed'** (26) or **'strongly agreed'** (8) that they were **satisfied with the cost in relation to the quality of IAS service provided**. Just under a third (19, 32%) was 'neutral' on this. A minority of respondents 'disagreed' (5) or 'strongly disagreed' (2). In Year 2, **over two-thirds** (42, 68%) of the 62 respondents **'agreed'** (26) or **'strongly agreed'** (8) that they were **satisfied with the cost in relation to the quality of IAS service provided**. About a quarter (15, 24%) were 'neutral' and five (8%) 'disagreed'. None 'strongly disagreed'.

Comparing only the 32 LA representatives that responded in both years, there were no significant differences in views from Year 1 to Year 2.

### 3.2.3 Views of IASS expressed in the LA focus groups and by our sample parents

Amongst our interview sample of 79 parents, almost all were **aware** of their local IASS.

Some were **confused** by the availability of separate Independent Support (IS) for the purpose of navigating the EHC needs assessment and plan development process. For example, in response to a question about the local IASS, Parent P2 named the local IS service and reported that the person had been "very nice and helpful" during the process of getting the EHC plan drafted but once that was done, "she couldn't help then". Other parents were aware of the difference in remit between these two services but reported that, in their view, other parents found the distinction confusing. LA representatives in some of the focus groups also reported that having these two separate services was confusing for parents.

We asked parents who had used their local IASS to give it a score from 1 ('not at all satisfied' to 5 ('very satisfied') based on how satisfied they had been with the information, advice and support offered. Experiences and scores varied from service to service. One issue that underpinned these variations was the perceived **quality of the information and support received**. For example, Parent 37 contacted her local IASS for information and support around her son's exclusion from school. She was 'very satisfied' with the information and support received:

"[Our IASS] were easily accessible by leaving a message on the phone. I was allocated a case worker. She was very knowledgeable about the law and *SEND code of practice* and the Equality Act 2010. She was very informative. They guide you through it. It's an invaluable service." (Parent 37, 'very satisfied' with local IASS)

Conversely, Parent 25 was 'not very satisfied' with the support she received from her local IASS. She sought support for a meeting with the school SENCO about the lack of additional support for her son and his consequent reduced progress. She felt distrustful of the IASS person who accompanied her to that meeting, in part because she knew the service was paid for by the LA:

"I had no trust. It doesn't help that [the IASS] is funded by the education authority. It's one named person who deals with that school who goes [to meetings there] with all the parents. I might be completely wrong but I felt it was staged [...] too well rehearsed. [...] It was just lip service, like the SENCO had been giving me for the last three years." (Parent 25, 'not very satisfied' with local IASS)

In the LA focus groups, and by some parents, the varied quality of information and advice was explicitly linked to the **varied level of training** received by individual IASS workers. One LA's service, for example, was described as a "skilled team", all of whom

had done the BTEC online course in special educational needs and so had the requisite statutory knowledge to provide “good, accurate” information and advice. Equally, the personal qualities and social communication skills of the workers were viewed as important.

The issue of **trust** in the impartiality of the service **versus distrust** because the IASS was not an independent service was a second theme underpinning varied views of local IASS. Some parents expressed this as a “conflict of interest”. This theme also came up in LA focus groups around IASS where it was expressed as the difference between a parent advocate (that is, arguing on behalf of the parent) and a parent supporter (that is, enabling the parent to make choices and to be empowered). LA representatives also talked about having an ‘arm’s length’ relationship with their IASS, respecting their need to be impartial, but also of requiring to be kept informed of what type of issues were arising.

A third theme underpinning parents’ differing views of their local IASS was **the ease or otherwise of accessing the service**. For example, Parent 89 found the service “useful” when she contacted them after a second refusal to assess her daughter’s needs. She reported that she had had to leave a message but that someone rang back quite quickly. This contrasts with the experience of others who found it hard to make contact. For example, Parent 58 reported leaving voicemail messages and was told someone would call her back but no-one ever did. Other parents interviewed linked such experiences to awareness of the low level of staff resource allocated to their local service.

The fourth theme related to the fact that some IAS services were commissioned **to support parents all the way through their disagreement**, even if this meant an appeal to the First-tier Tribunal SEND, while others were not. The IASS Network commissioned and distributed general legal advice on this issue (Broach, 2016), because the remit as set out in the *SEND code of practice: 0 to 25 years*, (DfE, 2015) includes support during an appeal yet some contracts exclude this. Where such support was excluded, it could leave parents feeling “isolated”, the word used by Parent 35 who had received IASS support up to that stage, then was left unsupported during the appeal but supported again afterwards. This issue was also raised in LA focus group discussions where it was reported as “uncomfortable” when the situation arose where an IASS worker supported a parent through a Tribunal appeal.

Finally, the parents we spoke to valued it when the IASS staff were **friendly** but this was not sufficient if it was not accompanied by an ability to provide **accurate information, useful advice and practical support**. When both these elements were in place, the parents in our sample were ‘very satisfied’ with their IASS. For example, Parent 13 was supported by her local IASS in her search for a suitable school for her son who had specific learning difficulties but was very bright and creative. She described herself as ‘very satisfied’ with her local IASS worker, explaining:

"We couldn't have done without her. [...] She can't advise you to do anything but she's there to help you say what the law is. [...] She came to visit me and I found that very good. I felt like she was my solicitor because she knew all the school law and everything." (Parent 13, 'very satisfied' with local IASS)

### 3.3 Disagreement resolution services (DRS)

We now focus on disagreement resolution services, as constituted under the Children and Families Act 2014. In order to examine the extent to which disagreement resolution services were helping to resolve issues that are not appealable to the First-tier Tribunal SEND, we draw on data from<sup>30</sup>:

- Three surveys of LAs over 2014-15 (Year 1) and 2015-16 (Year 2)
- Two surveys of LA Lead Officers responsible for SEND assessment processes (Year 1 and Year 2)
- Views about DRS from all the interviews and focus groups we conducted.

#### 3.3.1 The remit of disagreement resolution services under the Children and Families Act 2014

Under the Children and Families Act 2014, every LA must commission from an independent provider a disagreement resolution service. The **purpose** of these services is, "to help resolve four types of disagreement or to prevent them from escalating further" (SEND *code of practice: 0 to 25 years*, paragraph 11.8, DfE, 2015). The four types of disagreement are highlighted in Figure 15.

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<sup>30</sup> Brief details of these methods are in the Introduction. Further details can be found in the appendices.

**Figure 15 The four types of disagreement eligible to be taken to disagreement resolution services**

The disagreeing parties	Type of disagreement	Relevant SEN stage
<p><b>1.</b> Parents or young people and:</p> <ul style="list-style-type: none"> <li>Local authorities</li> <li>Governing bodies of maintained schools or nursery schools; further education institutions;</li> <li>the proprietors of academies (including free schools)</li> </ul>	<p>About <b>how</b> these authorities, bodies or proprietors are carrying out their <b>education, health and care duties</b> for children and young people with SEN</p>	<p>All children and young people with SEN, <b>whether or not they have EHC plans</b></p>
<p><b>2.</b> Parents and young people and:</p> <ul style="list-style-type: none"> <li>early years providers</li> <li>schools</li> <li>post-16 institutions</li> </ul>	<p>About the special educational <b>provision</b> made for a child or young person</p>	<p>All children and young people with SEN, <b>whether or not they have EHC plans</b></p>
<p><b>3.</b> Parents and young people and:</p> <ul style="list-style-type: none"> <li>CCGs</li> <li>Local authorities</li> </ul>	<p>About <b>health or social care provision</b> for children and young people with SEN and About <b>special educational needs provision</b></p>	<p>Children and young people with SEN <b>during</b> EHC needs assessment, <b>while</b> EHC plans are being drawn up, reviewed <b>or</b> when children or young people are being reassessed <b>and</b> (for SEN provision) <b>while waiting</b> for Tribunal appeals</p>
<p><b>4.</b> Local authorities and:</p> <ul style="list-style-type: none"> <li>Health commissioning bodies</li> </ul>	<p>About EHC needs assessments or re-assessments or EHC plans</p>	<p>Children and young people with SEN <b>during</b> EHC needs assessments <b>or</b> re-assessments, <b>or</b> the drawing up of EHC plans <b>or</b> reviews of these plans</p>

Source: *SEND code of practice: 0 to 25 years* (DfE, 2015, 11.8, p249)

The '**duties**' referred to under disagreement Type 1 in Figure 15 above include, **duties on local authorities**:

- To keep their education and care provision under review
- To assess needs
- To draw up EHC plans

and the **duties on governing bodies and proprietors**:

- To use their best endeavours to meet children and young people's SEN

A crucial point is that disagreement resolution services have a **wide remit** (Figure 15): essentially, any SEN disagreement is eligible, except those that can be appealed to the First-tier Tribunal SEND. Further, engaging with disagreement resolution services is **voluntary** and will only happen **if** all parties agree to such a meeting. In addition, disagreement types 1 and 2 (Figure 15) are available for all cases concerning special educational needs, not just those with an EHC plan or awaiting an EHC needs assessment.

### 3.3.2 The scale of use of disagreement resolution services

#### 3.3.2.1 Overall numbers of cases using disagreement resolution services

In our three surveys, LAs were asked to indicate the **number of cases** that were registered with a DRS in their area (see Table 3 in Appendix 3). From the 109 LAs that responded to any of our three surveys, a total of **625 disagreements** were reported as having been taken to a disagreement resolution service. This is a lower take-up compared to mediation services (see Chapter 4). Given that the service enables access to independent mediation to help solve a range of disagreements (that cannot be appealed to the First-tier Tribunal), it would seem there is potential for greater use, for example for disagreements arising at SEN support level and during EHC needs assessment and plan development processes. For example, several parents in our interview sample expressed the belief that they could not access mediation until they had a final EHC plan, and stated that they had been unaware of the opportunity to access mediation at earlier stages through the disagreement resolution service. They said that, if they had been aware of this, they would have requested it. However, use of the service is voluntary and has to be agreed by all parties, including the LA (and the LA is responsible for paying for the service).

Across the 42 LAs that responded to all three of our online surveys, **over half** reported that **no use had been made of DRS**: 25 LAs in Year 1 (60%) and 22 LAs in Year 2 (52%)<sup>31</sup>. This means that, of this same group of 42 LAs, in Year 1, 17 used their DRS, reporting a total of 145 DRS meetings. In Year 2, this rose slightly to 20 of the 42 LAs

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<sup>31</sup> One LA (2%) responded Not Known/Not Applicable when asked for the total number of cases.

having used their DRS, reporting a total of 99 cases. Overall, the number of DRS cases more than doubled between Year 1 and Year 2, from 46 to 99,

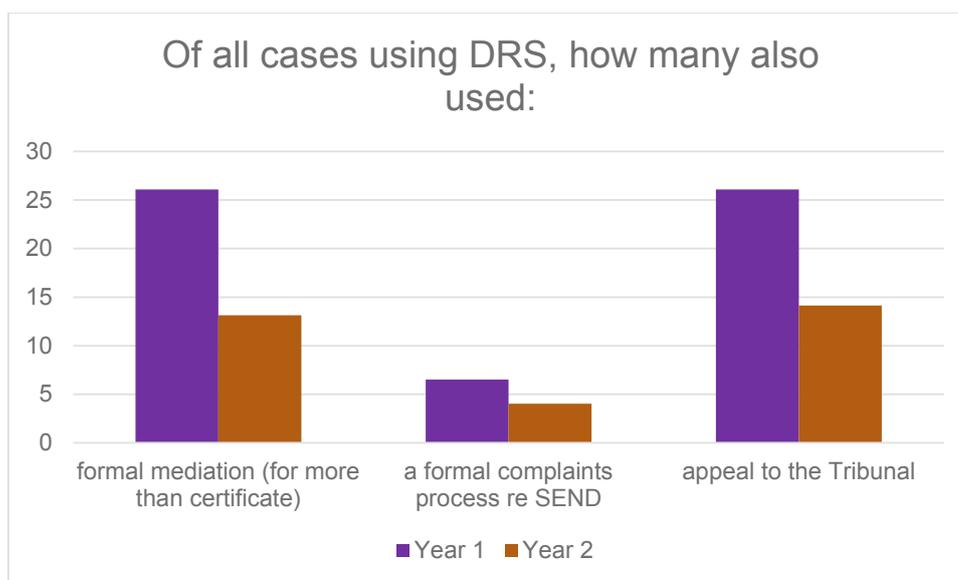
The scale of use of disagreement resolution services, as reported by these 42 LAs, was corroborated and, to an extent, explained during interviews and focus groups, as presented later in this chapter.

### 3.3.2.2 Parallel use of different disagreement resolution routes

The surveys also asked LAs to provide information about the number of cases where DRS were used in parallel with other routes to resolving disagreements.

Figure 16 shows that, in the 42 LAs, **17%** of DRS cases also involved a parallel use of **mediation** – Year 1: **26%** and Year 2: **13%**. The level of parallel use of DRS and **appeal** to the First-tier Tribunal SEND was similar – Year 1: **26%** and Year 2: **14%**. Parallel use of formal complaints processes accounted for 5% of all cases: 7% Year 1 and 4% in Year 2<sup>32</sup>.

**Figure 16: DRS used in parallel with other routes for disagreement resolution in Year 1 and Year 2**



Base: 42 LAs (responded to all 3 surveys)

This finding suggests that **some disagreements are complex**, involving both **decisions** that can be appealed to the Tribunal (hence the parallel use of DRS with mediation and/or appeal) and **processes** that cannot be appealed but can be dealt with

<sup>32</sup> For the remaining **60%** (**41%** in Year 1 and **69%** in Year 2) of cases using DRS, no parallel route was recorded.

through DRS and/or complaints processes (hence the parallel use of DRS and complaints).

### 3.3.3 Reasons for using disagreement resolution services

#### 3.3.3.1 All DRS cases reported in any of our three surveys

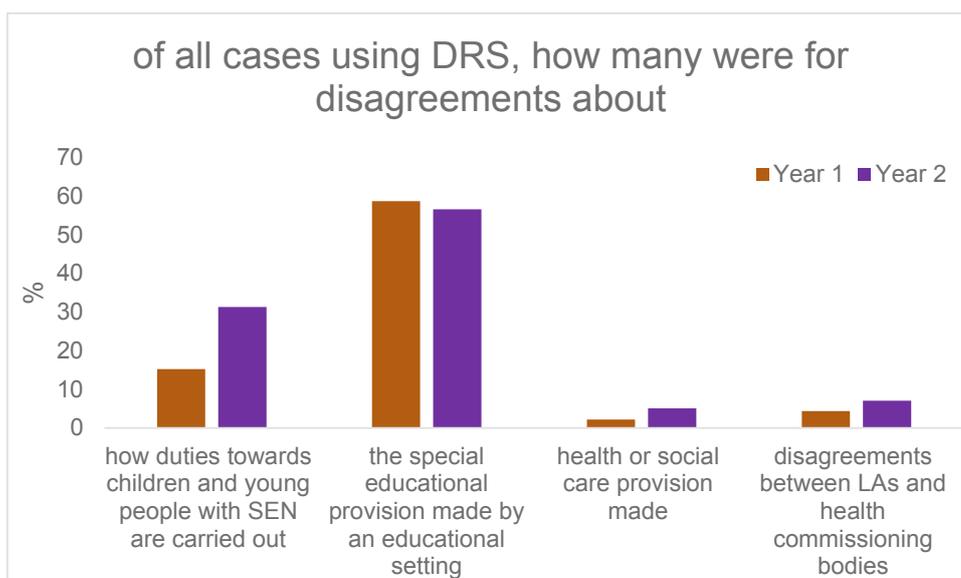
Looking at the 625 disagreement resolution cases reported in any of our three surveys, the reasons for doing so were recorded for 501 cases (80%). The most frequent reason (279, 45%) was for disagreements about how **education, health and care duties were being carried out** for children and young people with SEN, regardless of whether or not they had an EHC plan.

#### 3.3.3.2 Cases from LAs that responded to all three surveys

In the group of 42 LAs that responded to all three surveys, those that had used their DRS also recorded the reason for doing so in most cases (80% in Year 1, and 100% in Year 2).

The most frequent reason was **concerns about the special educational provision being made in an educational setting** (58% of cases in Year 1 and 57% in Year 2 – see Figure 17). The second highest concern was regarding **how education, health and care duties toward children or young people with SEN were carried out**, accounting for 15% of cases in Year 1 and of 31% in Year 2. Much less common reasons related to disagreements between the LAs and commissioning bodies (Year 1: 4% and Year 2: 7%), and concerns about the health or social care provisions (Year 1: 2% and Year 2: 5%).

**Figure 17: Reasons for using disagreement resolution services, Year 1 and Year 2**



Base: 42 LAs (responded to all 3 surveys)

### 3.3.4 Arrangements for procuring DRS

In our first survey to all 152 LAs (2014-15), we asked about the procurement arrangements for disagreement resolution services (see Figure 4 in Chapter 1). What we learned was that, among the 80 LAs that took part in that survey:

- 42% procured DRS on a simple spot purchase basis
- A further 16% used spot purchase plus an annual retainer/fixed fee
- 33% bought DRS on an annual block purchase basis, for a predefined number of cases<sup>33</sup>

For those LAs that purchased disagreement resolution services in blocks (33%), the procurement arrangements had different degrees of flexibility. More than half of the LAs did not receive a refund if the number of cases turned out to be lower than the number purchased from the provider. The remaining 40% had the option to re-sell the unused cases within local secondary markets consisting of neighbouring LAs or to carry them forward. If the number of required cases was higher than forecast, LAs could purchase more services (per case or per hour) from their current provider, through alternative providers, or purchase unused services from other LAs.

We also found that there was not a 'standard' price for DRS. Some respondents to Survey 1 made the point that there was not necessarily a direct relationship between price charged and the quality of the service.

For those who would like to know more, further details about the procurement of DRS and the drivers of costs are provided in Appendix 6, sections A6.3.2 to A6.3.3.

### 3.3.5 Views about disagreement resolution services

We sought views about disagreement resolution services through two annual surveys to LA lead officers responsible for EHC needs assessment processes, as well as in all the interviews and focus groups conducted. We report our findings by type of participant because each had a different 'take' on these services.

#### 3.3.5.1 LA EHC needs assessment lead officers' views of DRS

We sent LA lead officers for EHC needs assessment processes a short survey that included questions about DRS. The first survey related to 2014-15 (Year 1) and the second to 2015-16 (Year 2). These were sent out after the main LA surveys 2 and 3. They asked these officers for their **individual views** on a set of statements and gave space for open comments to explain the 'tick box' answers. Descriptive data are given in Appendix 9. Here we report the findings relevant to disagreement resolution services.

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<sup>33</sup> Procurement arrangements for DRS in the remaining LAs was either missing or unclear.

**Table 7 Views of disagreement resolution services (LA lead officers for EHC needs assessment)**

Question	Response scale	Year 1 N=58 Count (Percentage)	Year 2 N=62 Count (Percentage)
(i) I am satisfied with the cost in relation to the quality of service provided by our: Independent disagreement resolution service	Strongly disagree	4 (7%)	3 (5%)
	Disagree	10 (17%)	7 (11%)
	Neutral	27 (45%)	25 (40%)
	Agree	16 (27%)	24 (39%)
	Strongly agree	1 (2%)	3 (5%)
(ii) I am satisfied there is a focus on working towards early disagreement resolution by our: Independent disagreement resolution service	Strongly disagree	2 (3%)	
	Disagree	5 (8%)	4 (7%)
	Neutral	23 (38%)	23 (37%)
	Agree	25 (42%)	30 (48%)
	Strongly agree	3 (5%)	5 (8%)

Base: LA SEND assessment lead officers (survey data)

Table 7 shows that in both years, more of these lead officers ‘agreed’ or ‘strongly agreed’ that their disagreement resolution service provided value for money in terms of quality relative to cost. In both years the **largest group** of these lead officers (45% and 40% respectively) were ‘**neutral**’ regarding cost in relation to quality – open responses indicated that this related to little or no use having been made of the service. Analysis of the responses from those LA representatives who replied in both years showed there was no significant difference in views from Year 1 to Year 2. Open responses showed that meetings aimed at resolving disagreements between LA SEND officers and parents/young people were viewed by some as an effective, cheaper option than using the independent DRS.

### **3.3.5.2 Others’ views about disagreement resolution services (DRS)**

The finding from our survey data, that, overall, fewer cases were reported of disagreement resolution services being used than of mediation services, was also reflected in the information we gained from interviews and focus groups. Of the 79 **parents** interviewed very few (three) were aware that a specific disagreement resolution service existed. None had used it, although two had asked about it: one reported that, “[the LA] didn’t point me that way” (Parent 37) and the other that the case worker with

whom she was in a meeting implied that such a meeting equated to the statutory disagreement resolution service.

In the 13 focus groups with 53 **LA representatives**, again little or no experience of using the DRS was reported. In most of these discussions, the disagreement resolution services were referred to using words such as, “unnecessary” or “irrelevant”. Instead, these representatives emphasised the everyday efforts made by SEND teams and others to resolve disagreements informally, that is, without needing to involve an independent mediator for DRS or mediation. However, in two of these groups, DRS was reported as being **used effectively**. In one of these LAs, the DRS had been jointly commissioned with health colleagues to enable any SEND complaints with a health element to be responded to jointly. By November 2016, though, there had been no such cases. In the second of these LAs, the DRS had been used twice to help improve the working relationships between the SEND team and specific parents. In both cases, the result was that having had the opportunity to discuss the issues in more detail in the structured process of the disagreement resolution service, the issues were resolved and improved communication had been maintained.

Almost all of the organisations represented by the 19 **mediators** we interviewed also delivered disagreement resolution services. They reported **regional and LA variations** (‘regional’ because of the various large framework contracts) in the extent to which LAs used the new disagreement resolution services. Only two reported that the LAs commissioning that particular service were using it. Several others reported a sense that some LAs were avoiding using it because it was not compulsory. For example, one said,

“LAs are reluctant to use the service because of their time [i.e. capacity] and because it is not compulsory so the reaction is, ‘We don’t have time ...’. On the rare occasions when you get [a request for] the disagreement resolution ones, the LAs are reluctant to do it.” (M2)

Another reported that the mediation organisation had sent out information on the disagreement resolution service to all settings for parents and children/young people, as the view was that it was not being widely used.

In one area where the mediator reported a strong relationship between the LA and health, that mediator had had one disagreement resolution case. It involved health and the LA using the process to come to an agreement about joint funding of provision for a particular child.

All the mediators that had experience of disagreement resolution cases reported that the process was the same as for mediation.

Overall, it was clear that disagreement resolution services had not yet bedded in to the system to the extent that mediation services had done. Two issues were raised in relation to disagreement resolution:

- A perception that the distinction between ‘disagreement resolution’ and ‘mediation’ was “unhelpful” and “confusing” for parents
- Although the *SEND code of practice: 0 to 25 years* (DfE, 2015) is clear that the LA should pay for DRS, there were reports of uncertainty about who paid for the service when the focus of disagreement was the school. The issue was that the provider contract was with the LA not with the school.

This issue was believed by some to explain why the service was not used more often to resolve disagreements for children and young people at ‘SEN Support’ level in schools

Two focus group LAs used ‘spare’ **mediation** capacity to help resolve issues between schools and parents. In one LA, this offer had been taken up by schools, in another it had not been.

## 3.4 What has been learned about IASS and DRS

### 3.4.1 IASS

Our data indicated that experiences of IASS varied from LA to LA. Some services were viewed as very helpful, knowledgeable and supportive, others less so. These variations in views were associated with variation in ease of accessibility, variation in the quality of information and support offered, differing levels of training and of personal skills and qualities of workers, and the degree to which the service was viewed as impartial and as supporting parents, rather than advocating for parents. IAS services that were well perceived were valued by parents who used them and by focus group LAs who worked with them. There was acknowledgement that LA resourcing for IAS services varied and that this also explained variation in experiences of the level and quality of service offered.

### 3.4.2 DRS

We learned from the research that the use of disagreement resolution services had been relatively limited. The 79 parents interviewed had rarely heard of it and none had used it. There was limited awareness of the opportunity to access mediation through the DRS for issues that cannot be appealed to the First-tier Tribunal SEND. It may be that if this understanding of DRS were more widely known, more parents and young people would request this.

Focus group LAs mainly felt they did not need a DRS because “we are already doing that”. They reported that the service was not being much used. Essentially, where LA staff already held meetings that were focused on resolving disagreements they saw little

need for this additional service. On the other hand, we learned that disagreement resolution services had been used in some areas, most commonly around disagreements about SEND provision or about how duties around SEND were carried out but also, for example, to bring LA and CCG staff together to agree joint funding of provision or to work together in response to SEND complaints that involved both education and health.

## 4 Mediation: what does it contribute to early resolution? (Part 1)

### Key findings (quantitative data)

- There was a very high correlation ( $r=.98$ ) between making contact with a mediation service and taking up mediation
- Use of mediation increased significantly over the two years
- Education issues were the most common reason for mediation (over 70% of cases) followed by combined education, health and social care issues (about 20%)
- Rates of mediation varied greatly between LAs, from one or fewer per 10,000 of school population in 38% of LAs to between eight and nine in one LA
- The majority of cases of mediation were associated with resolution of the disagreement without an appeal to the Tribunal – this was a rising trend, from 54% to 63%
- Those who took up mediation were significantly less likely to appeal to the Tribunal

### 4.1 Introduction

The **research objective** addressed in this chapter is:

- To examine how successful mediation is in resolving issues without need for recourse to the Tribunal

The context for this objective is that, under the Children and Families Act 2014, it became **compulsory for all LAs** to send a SEND representative to attend a **mediation meeting** if this were requested by a parent or young person. Mediation meetings focus on seeking to resolve a disagreement about an EHC plan decision that is appealable to the First-tier Tribunal SEND. The 2014 Act also made it **compulsory** for all parents or young people to seek **mediation information from a mediation adviser** before registering an appeal with the First-tier Tribunal SEND. The **one exception** to this is where the appeal is solely about the name or type of the placement or that no placement is named (Paragraph 11.24). Chapter 11 of the SEND *code of practice: 0 to 25 years* (Paragraphs 11.13 to 11.38) provides guidance on these requirements. It also explains that mediation can also be used by parents seeking to resolve disagreements about the health and/or social care elements of an EHC plan (Paragraphs 11.31 to 11.37). In this case, parents do not need to seek mediation information from a mediation adviser beforehand.

This chapter is presented in two parts. Part 1 is based on analysis of information derived from our three online surveys of LAs. Part 2 is based on information from the interviews and focus groups we conducted.

First of all, we present numerical information about the **patterns of use of mediation** and examine how many parents or young people **do not then go on to appeal** to the First-tier Tribunal SEND. To examine **variation between LAs**, we again draw on data from the **42 LAs** that responded to all three surveys.

Then we present the **main themes** from our interviews and focus groups which have helped us **to understand why** mediation is sometimes successful in resolving disagreements without recourse to the Tribunal and why, sometimes, it is not.

## 4.2 Patterns of activity related to mediation

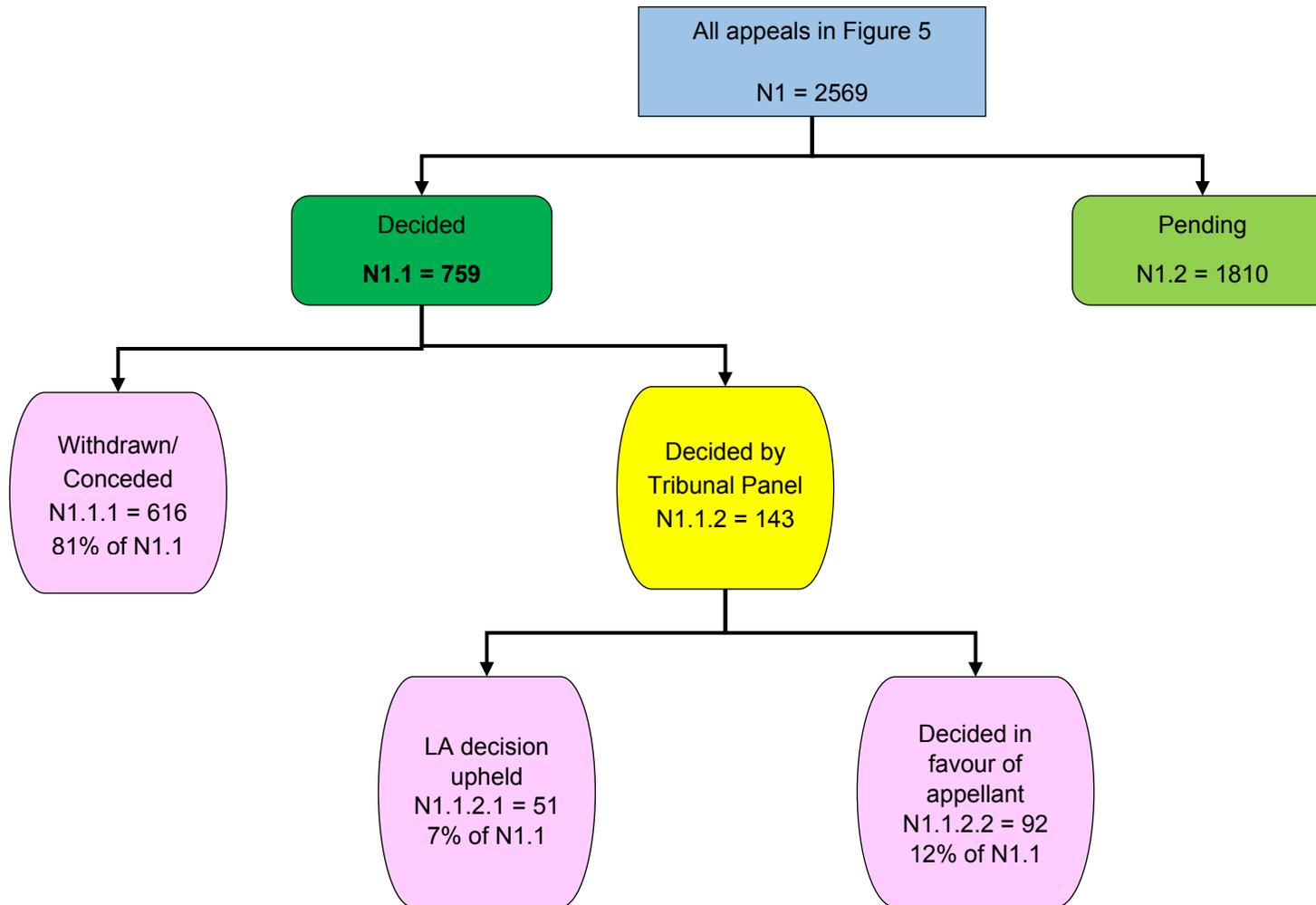
Under the Children and Families Act 2014, initial contact with the local mediation service is **mandatory** in advance of parents/young people registering an appeal with the First-tier Tribunal SEND (unless the appeal is about placement/type only). Take-up of mediation is **voluntary for parents and young people**. If such a meeting is requested by a parent or young person, then the LA **must** send a suitable representative to that meeting.

- To show **relationships between key LA decisions, mediation and appeals** we draw on data from all 109 LAs that responded to any of our three surveys
- To show any changes **over time** (Year 1 versus Year 2) in the use of mediation, we draw only on data from the 42 LAs that responded to all three surveys
- To show **variation among LAs** in the use of mediation, we again draw only on the 42 LAs that responded to all three surveys

### 4.2.1 Relationships between key LA decisions, mediation and appeals

In Chapter 2, we presented a flow chart (Figure 5) of key LA decisions in relation to appeals. We now develop this to show how the offer of mediation information and of mediation affects the number of disagreements that go to appeal. In Figure 18 we show the outcome of the total number of appeals (N = 2,569) made against any of three key types of LA decisions (refusal to assess, refusal to issue a plan, content of the plan) as reported by 109 LAs in any of our three surveys.

**Figure 18: Appeal outcomes**



**Base: 109 LAs (responded to any of the 3 surveys)**

Figure 18 shows that, among the 109 LAs that responded to our surveys, the great majority (81%) of appeals registered against LA decisions were **resolved** (withdrawn/conceded) **before they reached the Tribunal hearing**.

The interviews we carried out provided some insights as to the factors that made it more or less likely that a decision related to an EHC needs assessment or plan would be appealed (see Section 5.3.1). One of these factors was whether or not the parent/young person took up the option of attending a mediation meeting provided by an independent mediation service. Figure 19 illustrates the decision tree when mediation information and mediation are added in to the disagreement resolution possibilities prior to an appeal being registered. Our survey was not constructed in such a way as to allow us to follow through with the numbers taking up each of the routes in Figure 19. Nevertheless, we think it provides a helpful visual aid to understanding the potential of mediation to reduce appeals to the First-tier Tribunal SEND

Figure 19 (below) illustrates that, with the exception of disagreements that are only about placement, the **requirement to seek information about mediation** forces parents/young people to **make a choice** as to whether or not to take up the option of a mediation meeting prior to lodging an appeal. These meetings can offer an opportunity to resolve a disagreement without the need for an appeal to the First-tier Tribunal SEND.

Figure 20 shows that in the 109 LAs that responded to any of our three surveys, **3,521 people** made contact with their local mediation service for mediation information. Of those who **took up** mediation, **22%** went on to appeal, compared to **36%** of those who **declined mediation**.

Figure 19: Decision tree with mediation information and mediation added in after key LA decisions and before appeals to the Tribunal

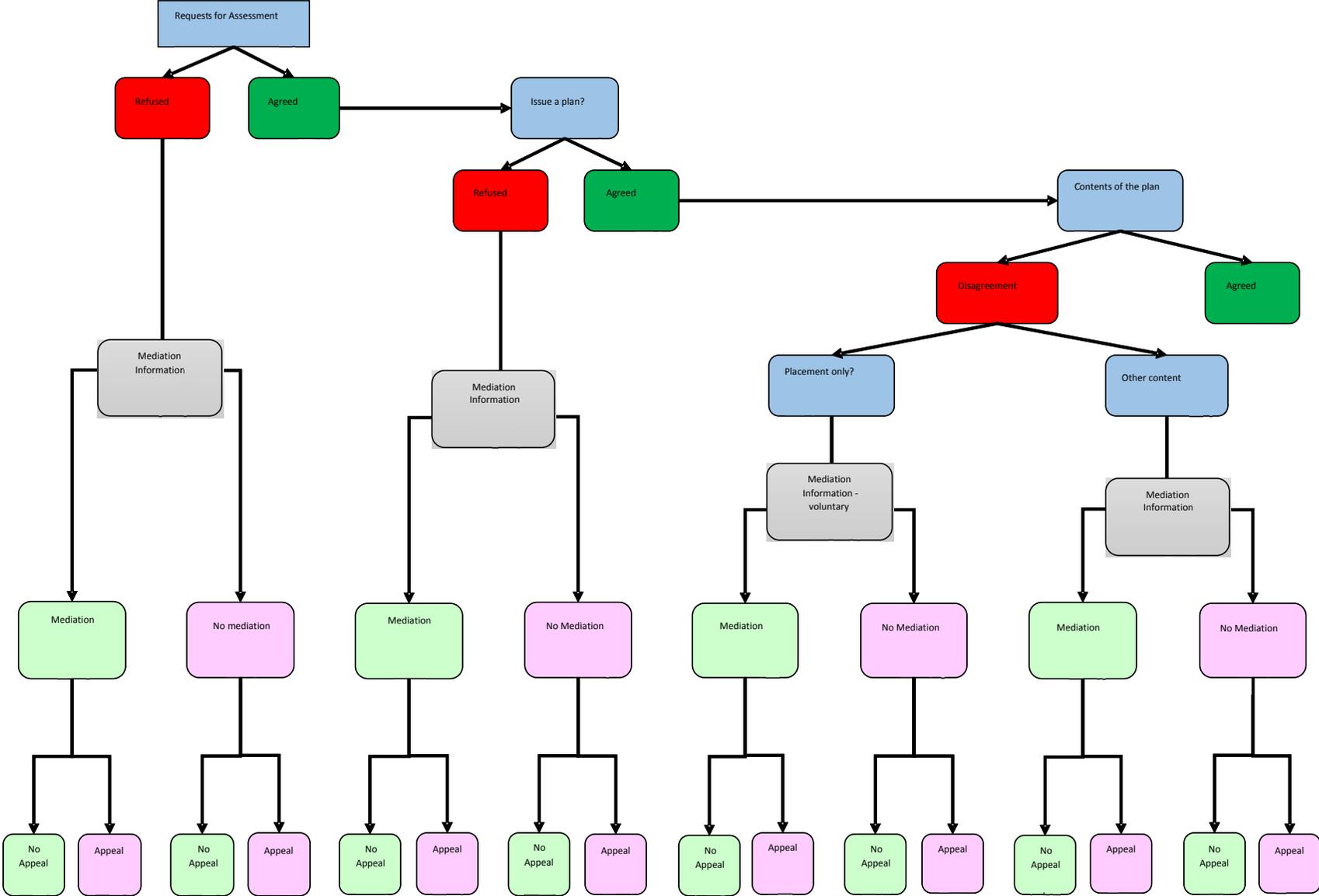
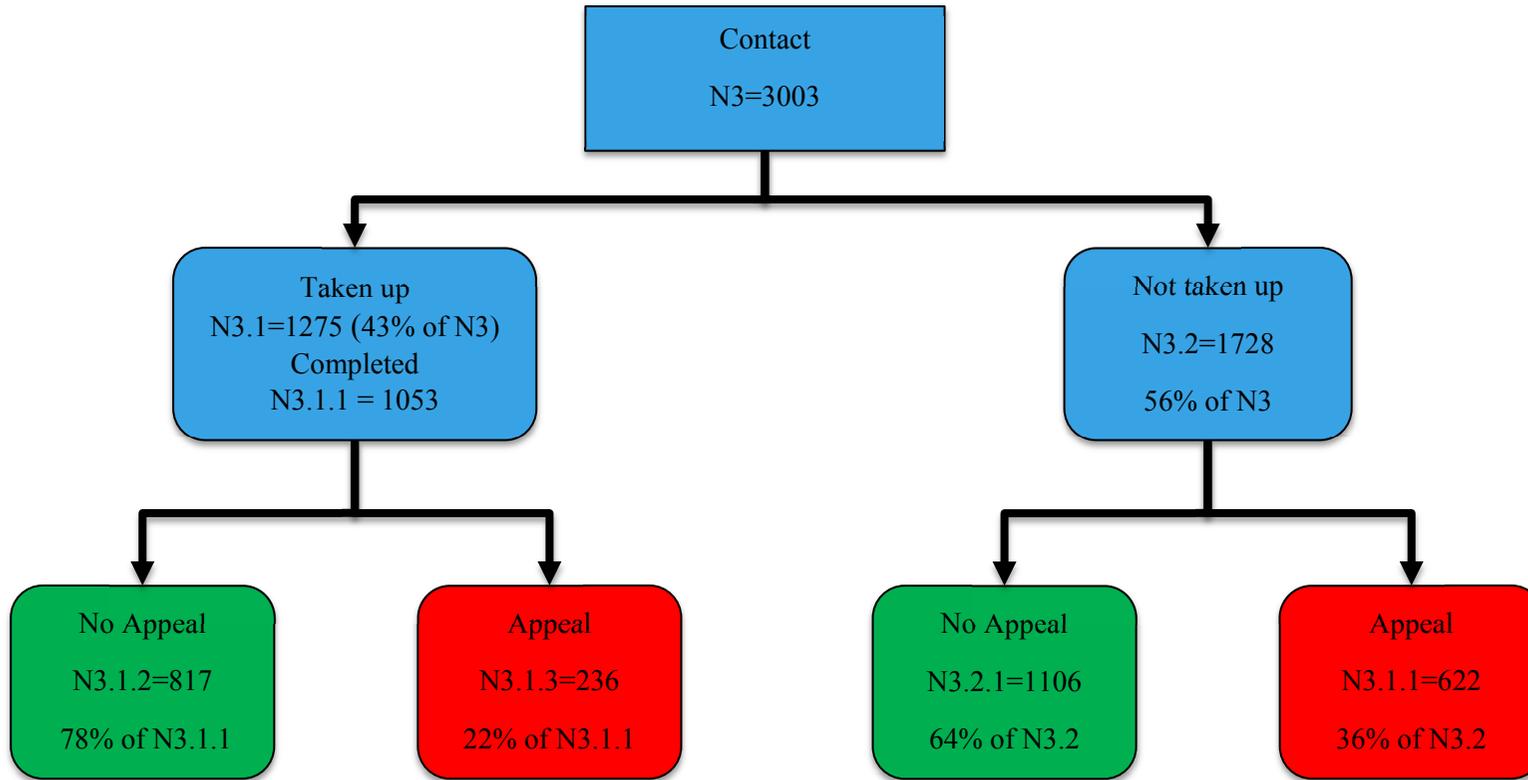


Figure 20: Effect of mediation on reducing appeals to the Tribunal

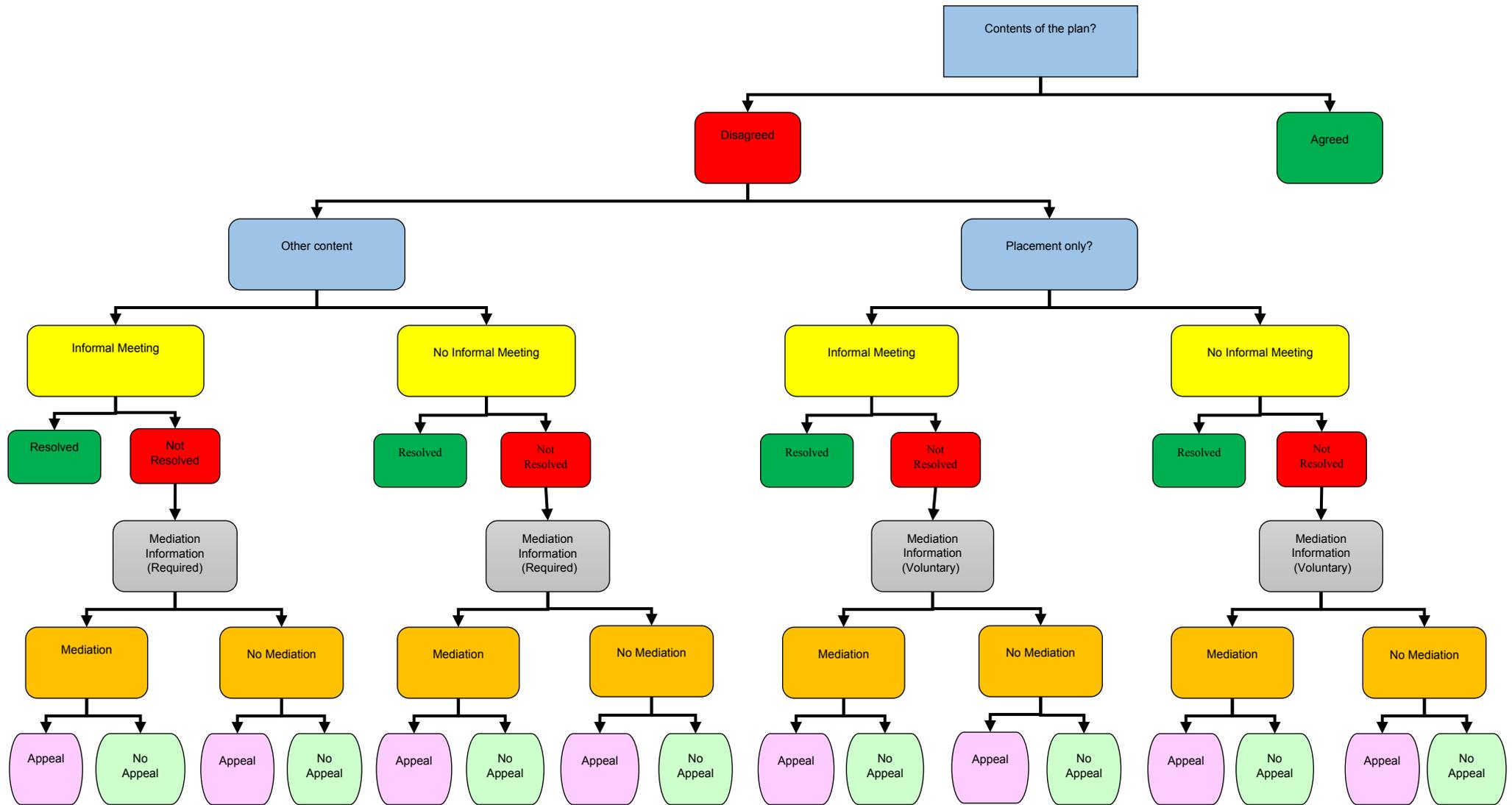


Base: 109 LAs, 2014-16

In practice, in addition to the requirement to offer formal mediation, many LAs routinely offer parents the opportunity/ies to meet with a decision-maker from the LA's SEN assessment team, and relevant others, in order to seek an early resolution of the issue through constructive face-to-face discussion, sometimes referred to as a 'Ways Forward' meeting. Figure 21 shows the disagreement resolution decision tree when this option is added in. To simplify the diagram, we focus only on one source of potential disagreements: the content of an EHC plan.

Figure 21 shows that, when an LA offers an early opportunity to meet to discuss the issue/s, disagreements may be resolved **without recourse to either mediation or an appeal.**

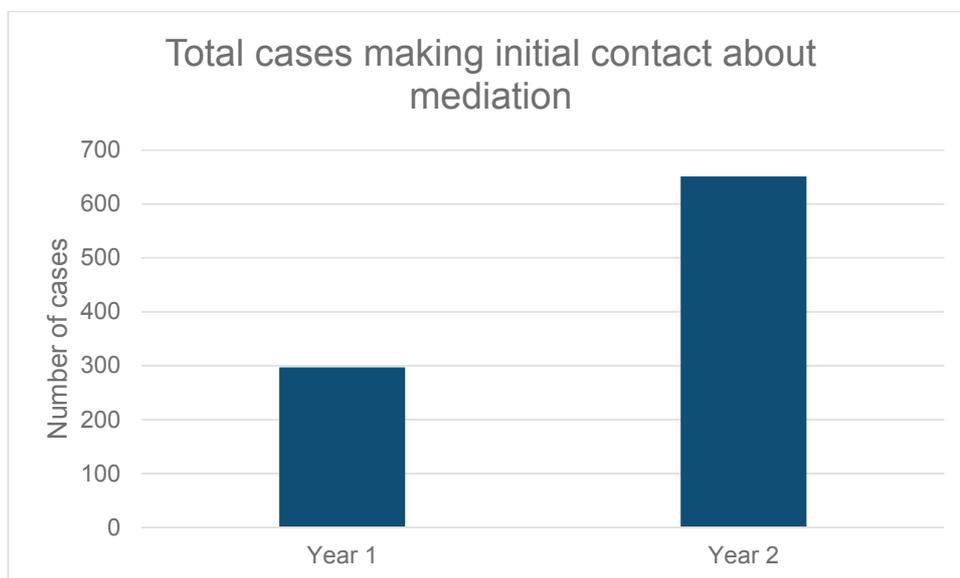
Figure 21: Disagreement resolution decision tree when discussion meetings with LA are added in prior to mediation ('Content of plan' example)



#### 4.2.1.1 Changes over time (Year 1 to Year 2) in use of mediation

Figure 22 shows the number of parents/young people making initial contact for mediation advice in Year 1 and Year 2 among the 42 LAs (see Table 2, Appendix 3 for detailed results).

**Figure 22: Number of cases making contact about mediation, in Year 1 and 2**



Base: 42 LAs (responded to all 3 surveys)

The number of new cases making initial contact with mediation services **more than doubled between the two years**. Second, the number of LAs where **no-one contacted** mediation services for mediation information (i.e. zero new initial contacts) was stable between the two years (**10%**).<sup>34</sup>

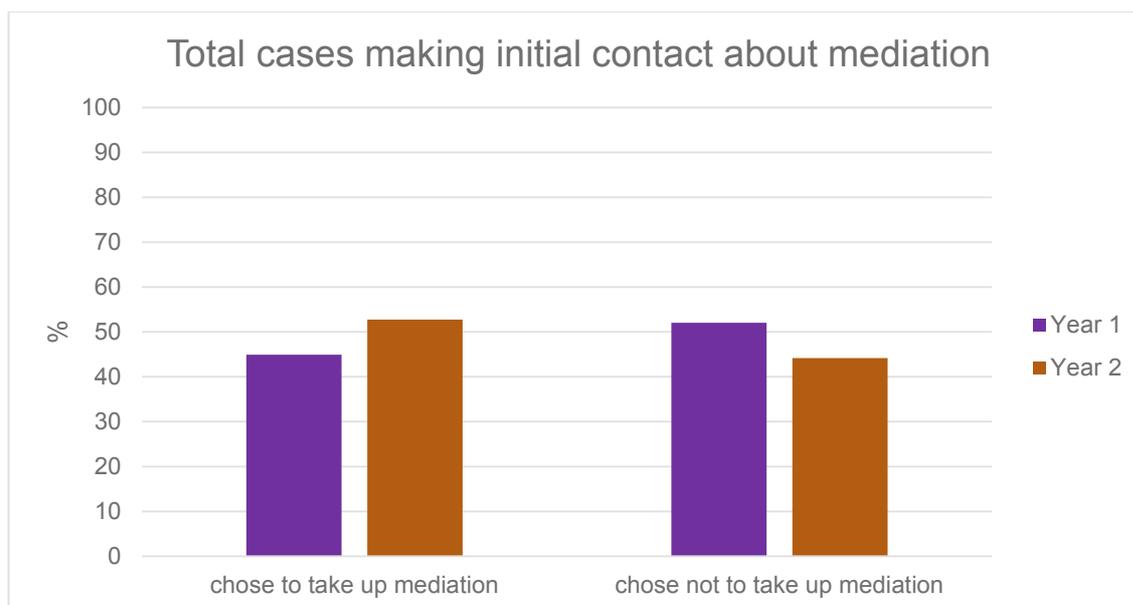
#### 4.2.1.2 Pattern of choices made regarding take-up of mediation meetings

Once parents/young people had made contact with a mediation service and had been given information about mediation, they each had to make a choice as to whether or not to take up the offer of mediation. Figure 23 shows, for the 42 LAs that responded to all three surveys, the percentage of parents/young people that opted to take-up mediation compared to those who did not.

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<sup>34</sup> The number of LAs in each year that were not able to answer the question of 'number of new cases making contact' was very low: no LAs in Year 1 and a single LA in Year 2.

**Figure 23: Take-up of mediation following initial contact, in Year 1 and Year 2**



Base: 42 LAs (responded to all 3 surveys)

Among those making an initial contact with mediation services, in Year 1, **45%** of parents/young people (95% CIs: 41%, 49%) **opted to take up mediation**. In Year 2, this was higher at **53%** (95% CIs: 50%, 56%). Conversely, in Year 1 **52%** (95% CIs: 48% to 56%) and in Year 2 **44%** (95% CIs: 41%, 47%) opted **not** to take up mediation, a significant increase in take up compared with non-take up<sup>35</sup>. For the remaining 2% in Year 1 and 4% in Year 2, the route following contact about mediation was not reported.

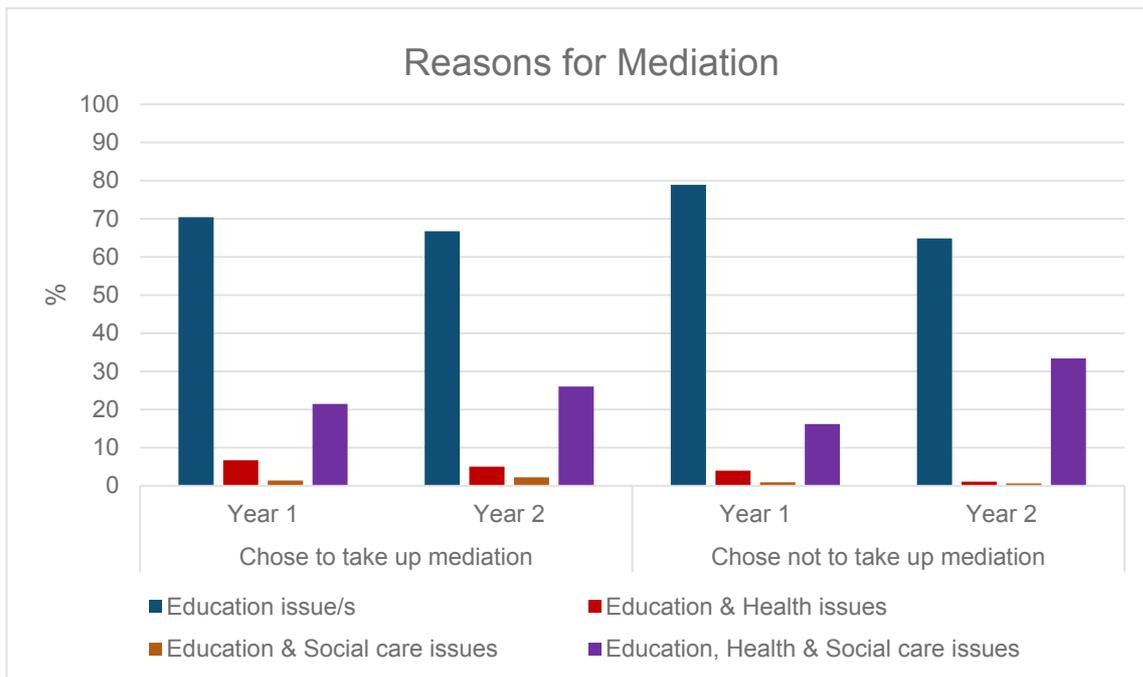
In Part 2, section 4.3 we draw on the qualitative data we collected to understand more about the reasons why parents and young people chose to take up mediation or not.

Our surveys asked for reasons why people contacted mediation services. Figure 24 shows the reasons for people making initial contact with mediation services in Years 1 and 2. This did not seem to differ greatly between those who took up mediation and those who did not.

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<sup>35</sup> p<.001; see analysis 2a, Appendix 3 for details

**Figure 24: Reasons for mediation for those who chose to take up mediation and those who chose not to take up mediation in Year 1 and Year 2**



Source: 42 LAs responding to all three online surveys, 2014-5 and 2015-16

**Education** was **by far the main reason** for new cases of parents contacting mediation services, both for those who took up mediation (**70% and 67%** of cases in Year 1 and 2 respectively), and those who did not take up mediation (**79% and 65%** in Year 1 and 2 respectively). This finding provides a context relevant to our later consideration of the Recommendations pilot in Chapter 7. (The Recommendations pilot was relevant for disagreements involving Education **and** Health **and/or** Social Care elements of an EHC plan. It ran in 17 LAs during 2015-16.)

**Combined Education, Health and Social Care issues** were the next largest reason, accounting for **21% and 26%** of cases (Year 1 and Year 2) for those who took up mediation, and **16% and 33%** (Year 1 and Year 2) for those who did not take up mediation.

For those who took up mediation, Education and Health, and Education and Social Care reasons accounted for **7% and 1% respectively** of cases in Year 1, and **5% and 2% respectively** of cases in Year 2. For those who did not take up mediation, Education and Health, and Education and Social Care reasons accounted for **4% and 1% respectively** of cases in Year 1 and **1% and 0.6% respectively** in Year 2.

#### 4.2.1.3 Variation among LAs in use of mediation

We examined **variation among the 42 LAs** in the number of cases making contact about mediation, and cases taking up or not taking up mediation. These 42 LAs vary greatly in total school population size, and to compare between them without adjusting for their size would not accurately depict their use of mediation. Therefore, in order to

make the data from these LAs comparable, we adjusted the average yearly number of mediation cases by the average yearly population per 10,000 of the school population<sup>36,37</sup>. We did the same for the cases **taking up** and **not taking up mediation**. The distribution of the rate per 10,000 of cases across the 42 LAs indicated that 10 LAs (23%) **of the 42 LAs in our longitudinal sample** had a **low rate** of cases **making contact** about mediation (i.e. a rate of less than 1 case per 10,000 of school population). In contrast only **two LAs** had a rate as **high** as between 10 and 11 cases per 10,000 school population of cases **making contact** about mediation, with the other LAs having rates in between.

A similar pattern was found for the distribution of the rate of cases **taking up mediation**: 16 (38%) reported between 0 and 1 case per 10,000 of school population **taking up mediation**, **whereas** the highest rate was found in one LA which reported between 8 and 9 cases per 10,000 of school population). Most **LAs reported low rates of parents not taking up mediation**: of the 42 LAs, **18 LAs (43%)** reported between 0 and 1 cases per 10,000 of school population **not taking up mediation**, while 3 LAs reported between 4 and 7 cases **not taking up mediation**.

Across all 42 LAs, the association between rates of cases making contact about mediation, and rate of cases taking up mediation was **highly significant, a correlation of  $r = .98$** , showing that LAs with a higher rate of cases making contact about mediation, also had a higher rate of cases taking up mediation. However, considering only the 10 LAs with the highest rates of mediation, there was a very different pattern: relatively little variation between these 10 LAs in rate of cases **making contact** about mediation across the 10 LAs, but considerable variation across these LAs in the rates of cases **taking up** mediation (see Figure 25).

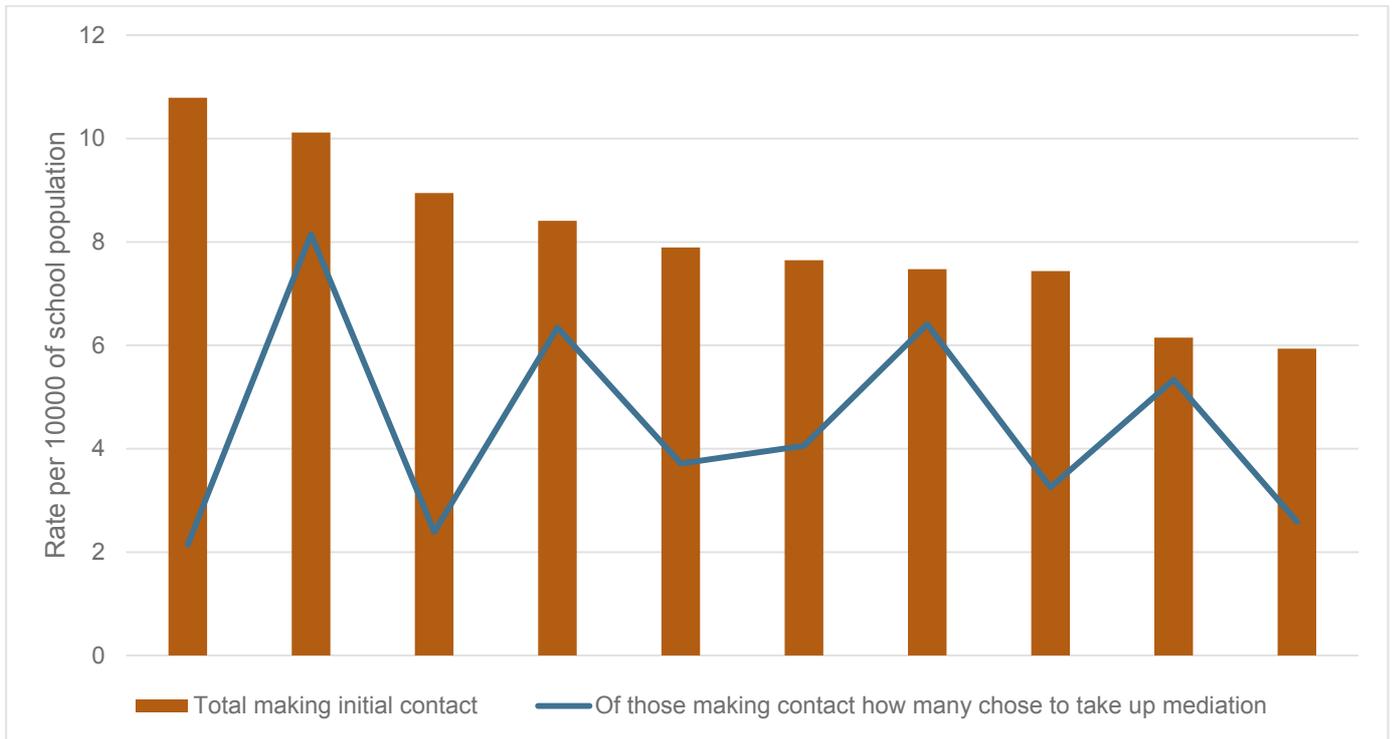
This difference between the pattern for the 42 and that for the 10 LAs with the highest rates is at least partly due to the limited range for variability for those LAs with very small numbers of cases. Nevertheless, the variation in these 10 LAs suggests differences in their mediation systems which are worthy of examination – in Part 2 of this chapter we provide more information from our qualitative study of mediation, which throws light on this finding.

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<sup>36</sup> Due to the differences in the time periods for the school census 2014, 2015, 2016 (i.e. January 2014 – January 2015 etc.) and our survey period (September 2014 – August 2015 and September 2015 – August 2016), in order to accurately calculate the rate of cases, we averaged across the years sampled to give an average yearly rate

<sup>37</sup> This is the same rate we use throughout the report, for consistency. It is also used in the national statistics.

**Figure 25: Rate of mediation contact compared with rate of take up of mediation per 10,000 of school population for the 10 LAs with the largest rate of mediation cases per 10,000 of school population**



<sup>38</sup>Base: 42 LAs (responded to all 3 surveys)

#### 4.2.1.4 Use of mediation in relation to subsequent appeals

Three possible outcomes following receipt of mediation advice were captured by the survey:

- (a) mediation was ongoing
- (b) resolution was achieved without appeal to the Tribunal
- (c) appeal registered with Tribunal

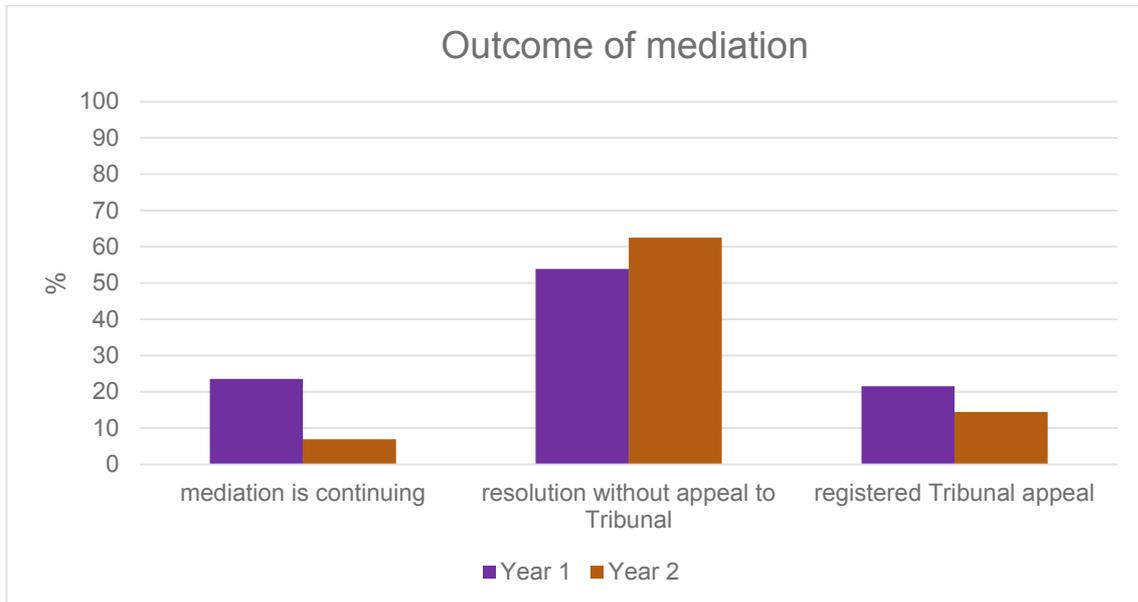
Outcome (c) was captured for cases where parents took up mediation and cases where parents did not take up mediation. The other two outcomes (a) and (b) were captured just for cases where parents took up mediation.

Among those who opted to take up mediation, in the 42 LAs, the **majority** managed to **resolve their disagreement without registering an appeal to the Tribunal: 54%** in Year 1, rising to **63%** in Year 2 (see Figure 26). Figure 26 also shows that **a relatively low proportion of cases that took up mediation over Years 1 and 2 registered a Tribunal appeal: 22%** in Year 1 declining to 14% in Year 2. For 24% in Year 1 and 7%

<sup>38</sup> One LA was excluded, as it had a disproportionately large rate of cases making contact, because it had a very small school population

in Year 2, mediation was continuing (i.e. had been requested but had not taken place at time of the survey)<sup>39</sup>.

**Figure 26: Outcome of mediation in Year 1 and Year 2**



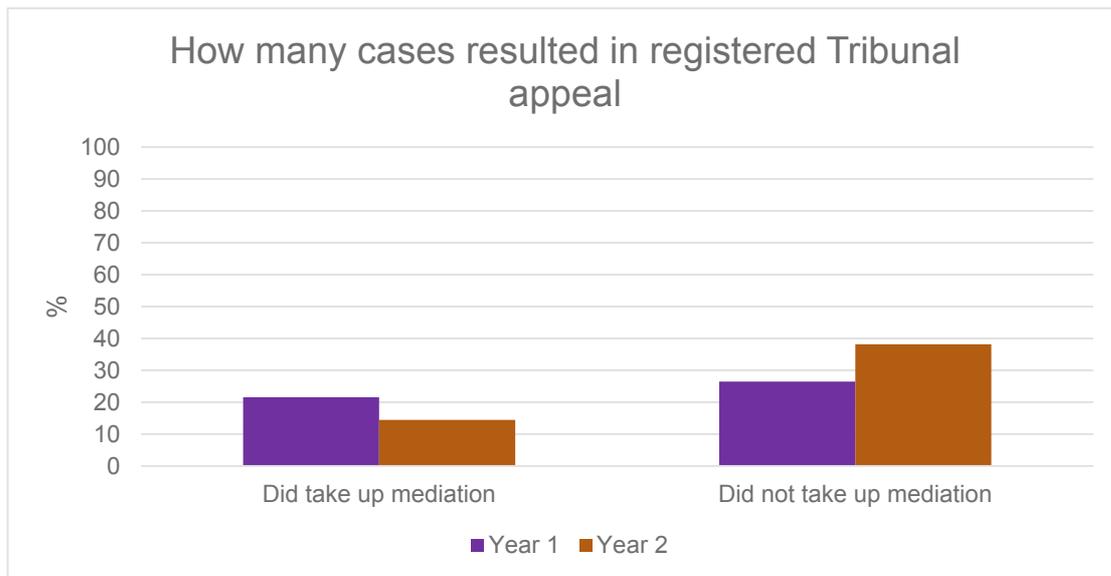
Source: 42 LAs responding to all three online surveys, 2014-5 and 2015-16

Figure 26 summarises the outcome of mediation<sup>40</sup>. In Figure 27, we compare this with the outcomes of parents/young people who chose **not** to take up mediation following their mediation information contact with the service. (Unlike Figure 26, Figure 27 **excludes** cases where mediation was continuing.) Figure 27 shows the percentage of cases that resulted in a registered Tribunal appeal when mediation was **not** taken up, compared to those where mediation **was** chosen by parents/young people.

<sup>39</sup> For the remaining 0.3% Year 1 and 16% in Year 2, the outcome of mediation was not reported.

<sup>40</sup> For those cases for which decisions were reported – there are more missing data from Year 2 than Year 1, which is almost complete

**Figure 27: Percentage of cases that resulted in Tribunal appeal, for those who did and did not take up mediation**



Source: 42 LAs responding to all three online surveys, 2014-5 and 2015-16

Figure 27 shows that, in Year 1, **22%**<sup>41</sup> of those who **had** taken up mediation subsequently registered an appeal with the Tribunal. The equivalent proportion among those who had **not** taken up mediation was **26%**<sup>42</sup>. In Year 2, **14%**<sup>43</sup> of those who **took up** mediation went to appeal, compared to **38%**<sup>44</sup> who did **not** take up mediation. In both Year 1 and Year 2 significantly more cases registered an appeal, among those who did not take up mediation, compared to those who did<sup>45</sup>.

These findings further suggest the effective role of formal mediation services in **decreasing** the number of appeals registered with the Tribunal and that the effectiveness of mediation at preventing appeals is increasing over time.

<sup>41</sup> Year 1, appeal after mediation taken up - 95% CIs: 17%, 26%

<sup>42</sup> Year 1, appeal after mediation refused - 95% CIs: 22%, 31%

<sup>43</sup> Year 2, appeal after mediation taken up - 95% CIs: 12%, 17%

<sup>44</sup> Year 2, appeal after mediation refused - 95% CIs: 34%, 42%

<sup>45</sup>  $p=.031$  See Analysis 2b, Appendix 3

## 4 Mediation: what does it contribute to early resolution? (Part 2)

### Key Findings (qualitative data)

#### Meditators

- All 19 mediators we interviewed were positive about the mediation training they had received, but not all had received training in, or were knowledgeable about, SEND legislation or the *SEND code of practice: 0 to 25 years* (DfE, 2015).
- Concerns were expressed about the lack of nationally recognised accreditation and/or of national standards for becoming a SEND mediator.
- The requirement to include information about mediation in LA decision letters was viewed as having successfully made it clear to parents that they had to contact a mediation service before lodging an appeal with the First-tier Tribunal SEND.

#### Experiences of mediation

- Parents' responses during interviews as to their satisfaction with mediation as a way of resolving disagreements with the LA varied across the scale of 1 (not at all satisfied) to 5 (very satisfied). Parents were able to distinguish their views of process and of outcome.
- Where parents thought that the LA SEND team representative would be willing to shift position on any of the issues under disagreement, they took up mediation because they hoped for resolution without having to appeal.
- If the deadline for registering an appeal was close, or if meetings with the LA SEND team representative/s had already failed to resolve the disagreement, mediation tended to be refused by parents.
- LA focus groups reported very mixed experiences of mediation meetings – some positive, some negative, some neutral. This reflected differences of approach and perceived quality among mediation services and among mediators providing the service.

## 4.3 Themes from qualitative data

In this second part of Chapter 4, we first present information about mediation from the point of view of the service providers: mediators. We then present views about mediation from the point of view of the service users: parents and young people and LA representatives.

### 4.3.1 Views of mediation providers

#### 4.3.1.1 Mediation training

The mediators were asked for their views of the training they had received. All were positive about the mediation training they had received. The length of the courses varied – for example, a five-day course, a 10-day course. Several of the mediators had also done further training either as part of the continuing professional development offered through their organisation or independently. Two had also done a master's degree in Conflict Resolution.

#### Lack of national standards for mediation

Five of the nineteen mediators talked about the lack of regulatory processes across mediation and/or, more specifically, the lack of nationally recognised accreditation and/or of national standards for a SEND mediator. This was viewed as problematic – for example, “We have a problem with not having agreed standards for SEND mediation” (M3); “There is no one overarching body for mediation qualifications.” (M6); “The regulatory issue is across the whole mediation field, not only SEN” (M8); “There are some training providers which we would not accept mediators from because they sort of train somebody for 2 days and say ‘here’s a mediator’.” (M15)

Mediation (apart from family mediation and commercial mediation) was described as **unregulated**. Different bodies were described as overseeing family and commercial parts of the mediation profession but SEND mediation was described as not having a home to oversee good practice and the development of standards. Two mediators (from one organisation) mentioned the existence of a national standards working group, originally set up by the College of Mediators but noted that, without any funding to support it, the work was moving very slowly: “I think it probably needs a turbo-boost of funding to really get it off the ground.” (M3). The working group also had a sub-group tasked with identifying standards for SEND mediation practice and also training standards around conversion from generic mediation to SEND mediation.

Mediation was also described as having **no nationally recognised accreditation**. Instead, a number of competing training providers existed. One very experienced mediator described there being: “a spectrum [of mediation training providers], quite a few of whom I think it’s no underestimation to say are a bunch of charlatans”.

## Conversion to SEND mediation

More than one mediator noted that the mediation training received had to be adapted to the SEND context:

'It had to be adapted really because there isn't, not that I'm aware of anyway, a specific SEN children's related mediation course, which I think is a great shame because there needs to be and there's a market for it.' (Mediator 4)

"There is no national picture of SEN mediation training. It's more that trained mediators move into the SEND area and they get top-up training about the *SEND Code of Practice* and legislation." (Mediator 7)

Some of those who were already accredited mediators spoke about further training they had received to relate their mediation skills to the world of SEND mediation. This had happened first in relation to mediation under the 2001 Code of Practice and again in relation to mediation under the 2014 Act. For example, one mediator interviewed had developed and delivered this "conversion training" for her organisation whilst another had received a session where people from the local authorities spoke about how the new SEND Code was being implemented.

The SEND Regulations 2014 (Section 40) state that, "Mediators must have sufficient knowledge of the legislation relating to special educational needs, health and social care to be able to conduct the mediation." These mediators' views varied on a spectrum about how important it was to have a thorough knowledge of the SEND domain. One end of the spectrum was the argument that awareness was enough, detailed knowledge of the field was not necessary. The other end of the spectrum was the view that, "It really does help to have that knowledge of how [the Tribunal and the ins and outs of the processes] all works and the understanding of it." (M2) The majority view was that some knowledge of SEND legislation and processes was essential but that it was not necessary to be an expert in SEND to be a SEND mediator. A minority view was that it was necessary to have expert knowledge within SEND to support the relationship with the parents or carers: "...if the parents feel when you speak with them that you don't understand the legislation, that you do not understand what ASD is or you don't have that sort of language, then you can't build trust." (M15)

### 4.3.1.2 The role of the SEND mediator

All nineteen of the mediators described SEND mediation in terms very closely based on the definition in the 2015 Code of Practice (paragraph 11.22). They emphasised that it was voluntary, impartial, provided by an independent, trained third party, non-legalistic, and that all decisions remained those of the parties in the mediation. One described it as being, "about giving parties a voice in a dispute. It's about creating a safe space for the parties in which they can have an open and honest conversation around issues that they have." (M12)

The mediator role was described as facilitative only, there to structure and manage the process and to record agreed action points. This facilitation was seen as ensuring the process was fair and equal, keeping people focused, shifting people's perspectives and enabling ownership of the process.

Several mediators made the point that the new reforms had caused confusion by using the umbrella term 'disagreement resolution' for a specific set of disagreement resolution arrangements. For example, one reported, "a great deal of confusion about, 'What *is* mediation advice?', 'What *is* disagreement resolution?'" (M8)

#### **4.3.1.3 Accessibility of mediation**

Overall, the sense among these 19 mediators was that take-up of mediation had increased under the Children and Families Act 2014, by making it compulsory for LAs to inform parents and young people that they must seek mediation advice before appealing to the Tribunal, and for LAs to participate in mediation when requested to by parents or young people. It was noted that under the new legislation mediators were clearly independent of the local authority. This, and the widening of the remit to include health and social care had also resulted in an increase in mediation uptake.

On the other hand, one mediator reported that not all LAs "take note" of the compulsory element: "Some LAs (I have two serial offenders I'm thinking of) just *won't* do it and we've had to issue a Part 3 certificate and then the parent just has to appeal." (M8) This mediator wondered whether compulsion was always appropriate: "I'm not sure that [attending a mediation] is a good use of time if the LA representative has their mind shut. [...] but, from the LA's perspective, they might say, 'we've already had lots of discussion with them and there is *nothing* further we can do.'"

#### **4.3.1.4 Mediation information**

The mediation information process (also called 'mediation advice') is clearly set out in the 2015 Code of Practice (paragraphs 11.14 – 11.25). All parents or young people who wish to appeal to the First-tier Tribunal SEND must first contact (one of) the LA's mediation provider/s for mediation information (unless the appeal is about placement only). If a decision is made not to take up mediation the parent or young person must be issued with a certificate stating that they have received mediation information before an appeal can be made to the Tribunal. Mediation information does not have to be provided by a mediator. The expectation was that the information would normally be given over the telephone but, if necessary, would be provided face to face or in writing or by other means preferred by the parent or young person.

Mediation organisations issue three different types of certificate:

1. Part 1 certificate – where parents have received mediation information and decided not to go on to have mediation

2. Part 2 certificate – where a mediation meeting has taken place
3. Part 3 certificate – where a local authority has been unable to arrange a mediation meeting within 30 days of the parental request.

One issue raised about these certificates was that it was not always the LA's fault that a mediation meeting could not be arranged within 30 days – sometimes it was the parent or the school that meant this deadline was missed.

Thirteen of the nineteen mediators had experience of offering mediation advice. Two mediators who each worked for two organisations (i.e. four organisations in total) each provided mediation advice for one but not the other. This is in line with the facts that some organisations are contracted to provide either mediation information or mediation but not both and also that some organisations use accredited mediators for mediation but not to provide mediation advice. There was variation as to whether the mediators offered mediation advice, with some saying their administrative staff completed the process.

The accounts given of what happened when a parent or young person contacted a service for mediation information were all similar and very closely modelled on the *SEND Code of Practice, 0-25* guidance. However, in practice, after first providing information about mediation and answering all the parent's questions, it seemed usual for the mediation adviser to ask enough questions of the parent to establish the basic information needed to offer the appropriate resolution pathway options. For example, the conversation was used to establish the nature of the disagreement to decide whether the case would potentially fall under disagreement resolution service or mediation service; whether education issues only were involved or also health and/or social care issues, what the date on the decision letter was and therefore the implications for the timeline for appeal to Tribunal. Several organisations routinely followed up with an email repeating core elements of the information, attaching the organisation's leaflet and including a link to the organisation's website which typically include a 'frequently asked questions' section.

One mediator suggested that perhaps the mediation information requirement could be made less onerous for parents for example by the Tribunal sending out information about mediation when an appeal was lodged or by information being made easily available on a national website with perhaps a video to watch illustrating the process. This suggestion was made in a spirit of seeking to reduce anxiety for parents at a time when they have just received a decision that is viewed as "bad news". A different mediator gave an example of the impact that mediation advice can have:

"One parent was adamant she just wanted a mediation advice certificate. I said, 'I have to have a conversation with you first. I'm sorry, I know you don't want to do this but this is what I have to do'. At the end of it she said, 'Actually it sounds really good that. I think I'll give it a go.' And she actually tried it and 45 minutes

after the mediation had [ended], everything had been overturned and they'd got everything that they wanted. She really, really praised the service and the fact that she'd tried the process." (Mediator 12)

#### 4.3.1.5 Mediation meetings

##### Varied responses by LAs to parental requests for mediation

Once parents or young people had received mediation information and had indicated a desire to take up mediation, the mediation organisation contacted the LA to inform them of this. The responses to this were reported to vary. One mediator, who was also the manager of a mediation service, reported that responses were, "not black and white – there are many shades of grey" (M8) – see Figure 28.

Figure 28: LA responses to requests for mediation

Spectrum of LA responses	Consequence
1. No response despite repeated chasing	<ul style="list-style-type: none"> <li>Mediation adviser issues a Part 3 Certificate to the parent/young person (i.e. one that states that the mediation did not take place because the LA did not meet within the timescale)</li> </ul>
2. LA indicates no previous knowledge of the disagreement and requests opportunity to meet informally with the parent/young person first	<ul style="list-style-type: none"> <li>Mediation adviser contacts the parent or young person to ask how they wish to respond to the LA's invitation</li> <li>Usually the parent or young person agrees and the result is an informal resolution and the mediation does not take place.</li> </ul>
3. Immediate agreement	<ul style="list-style-type: none"> <li>Mediation meeting is arranged</li> </ul>
4. LA asks for more details about the issue and provides the context of how this is being handled internally such that mediation is not seen as helpful at that point	<ul style="list-style-type: none"> <li>Mediation adviser contacts the parent or young person to ask how they wish to respond to the LA's information</li> <li>Usually the parent or young person agrees to wait the outcome of the internal process; sometimes they request a mediation meeting date is booked in just in case the outcome is not as desired.</li> </ul>
5. LA rejects the request and refuses to take part in a mediation	<ul style="list-style-type: none"> <li>Reported as happening where the terms of a framework agreement mean the mediation organisation is not able to accept a parental request for mediation but has to pass it on to the LA (one mediator only)</li> </ul>

Source: mediation interviews, 2016

More than one mediator mentioned the relative frequency of LA response 2 in Figure 28, i.e. that the mediation meeting does not happen because the issue is resolved informally. This was reported as “often” happening. This then raised an issue for the mediators because (a) they did not receive payment for the mediation (one organisation was seeking to reach an agreement with its commissioners on an agreed solution to this) and (b) the effectiveness of the mediation service could be underestimated (to avoid this, one organisation recorded such instances as, ‘case resolved due to service intervention’).

There are two pathways for mediation depending on whether the issue can be appealed to the Tribunal or whether it is about the health and/or social care elements of the EHC plan (2015 Code of Practice, paragraph 11.17). If the disagreement is only about the health element of the plan (or lack of it), the mediation must be organised by the responsible health commissioning body/ies. If it is about education *and* health or social care elements *or* about social care only, the LA remains responsible for arranging the mediation.

It was clear from the interviews that different mediation organisations and individual mediators handled the mediation process slightly differently but overall the process in practice was similar: a structured process with detailed prior preparation. The biggest difference appeared to be the extent to which children and young people were involved in the mediation<sup>46</sup>. One organisation involved the child or young person routinely in mediation meetings. This contrasted with others’ experiences of rarely or never having children or young people involved.

### **Mediations arranged through the responsible LA**

Where the disagreement involves, or may involve, health or social care elements of the plan, as well as the education element, the main difference to the mediation process is the range of professionals invited to attend.

Not all of the mediators interviewed had experience of a mediation that included health and social care matters. One felt that CAMHS were the most frequent health representative that was requested but they were not always able to attend. Another said that social care and health had, in their experience, been surprised at being contacted. One interviewee also said that they had had responses such as, ‘We don’t need to be there’. Non-attendance by either a health or social care representative meant that certain items on the action plan may have to be dealt with after the mediation. Questioning strategy was also brought up by one mediator:

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<sup>46</sup> Forthcoming research article by Ben Walsh (2017) reports findings of a study focused on the participation of children and young people in SEN mediation. He reports that practices in this regard are “highly variable”, (*Education Law Journal*, 18 (1)).

“...what I’m saying is you have to ask the right questions, so if a child has mobility problems you’ve got to say, ‘How does that look? How does that affect them? What are the barriers? What are the health implications?’...It’s being more curious about things.” (Mediator 13)

### Mediations arranged through health service contract

Among the mediators interviewed, only one represented an organisation that held a contract to provide mediation that was purely about the health elements of a plan. This mediator reported that, at date of interview, no cases had come to mediation through the health route.

### Ingredients of successful versus unsuccessful mediation

There was broad agreement across the mediators as to the features that made successful mediation more likely (Figure 29). Unsuccessful mediation was characterised by the lack of these elements.

Figure 29: Features of successful mediation (Mediators’ point of view)

- Preparation beforehand – by all parties, guided by the mediator
  - To know what to expect
  - To know the role of the mediator
  - To know the role of the child/young person’s advocate
  - To know their own respective role, responsibility and remit as part of the mediation
  - To know what information to bring with them
  - To ensure all the relevant people are invited
- Willingness to attend and to engage in the process with openness, honesty and a willingness by ‘disagreeing parties’ to listen and review position/decision
- Professionals attending to have the authority to make decisions on the day
- Parents being independently well supported
- Young people and children being independently well supported
- Skills of the mediator in making everyone feel comfortable, respected and listened to
- A clear agreement or action plan produced at the end

Source: mediator interviews, 2016

**Complexity** of the young person’s needs was *not* seen as affecting the success or not of the mediation. Complexity was reported as affecting the length of the mediation meeting and the number of people invited to attend but not, of itself, as affecting the outcome.

**‘Success’** was not defined by these mediators as simply meaning ‘resolved without recourse to the Tribunal’ (two mediators did describe it as such but it wasn’t their only

criterion). Successful mediation was defined as a productive process that clarified the issues and narrowed, if not resolved, the areas of disagreement. In any case, the mediators and mediation organisations did not know whether or not parents went on to appeal to the Tribunal after the mediation. One suggested that this information could be shared with them, if LAs agreed to keep track of the two processes. (Our surveys asked for these two sets of data to be brought together. It is useful to know that this had not happened before.)

We now turn to the views of the two main parties that use SEND mediation services: parents/ young people and LA representatives.

### **4.3.2 Views of mediation service users**

#### **4.3.2.1 Awareness of mediation as an option**

The qualitative information we gathered from parents, LA focus groups and representatives of those who supported parents at mediation, confirmed that parents were made aware about mediation in LA decision letters. Sometimes, there was an accompanying leaflet from the relevant mediation organisation. A small minority of parents interviewed reported that the decision letter they received did not provide the contact details of the mediation service.

#### **4.3.2.2 Making the decision to accept mediation or not**

Under the Children and Families Act 2014, parents and young people who were considering an appeal (unless it was only about placement) had to contact a mediation service for information about mediation. In our sample, this stage seemed to work well. A small minority reported difficulties in getting a response from the mediation service/s contacted (lots of phone-calls and emails before getting a response). Otherwise, almost all the parents reported no issues with how mediation was described to them by the mediation services. For example, positive comments included:

"The mediation service person was very good in explaining the process. The mediator is assisting the process but not representing me as such. He's there as a mediator to assist ourselves and the local authority in discussing issues."  
(Parent P2)

"Everything was clear and was OK." (Parent 86)

Only one parent found the mediation information "misleading", having taken from it an understanding that she had to go to mediation. More frequent were comments indicating that the parent had already decided, prior to mediation information, not to take up mediation but to go straight to appeal: for example, "I wasn't open to hearing it", said by several parents. As part of its contract with a group of LAs, one large mediation service had agreed to encourage parents/young people to first try speaking to the LA SEND team to seek a resolution without the expense of mediation. This encouragement

was included in its mediation information. Several parents in our sample mentioned this. However, in our sample, most had already worked hard with their LA SEND team representatives to seek a resolution.

From our data, the decision to take up mediation or not, seemed to be based on the degree to which the parent thought that the LA might be willing to shift position on any of the issues under disagreement. If they thought they might, and if working relationships remained intact, parents took up mediation in the hope of avoiding an appeal. It was viewed as a better way forward, if resolution could be achieved at mediation. Otherwise, mediation was refused – for example, this happened when there was a sense of not being listened to, or of trust having broken down between the parent and the LA SEND team:

"We decided not to, because the LA wasn't listening to us." (Parent 20).

"I didn't do mediation because of the run around I'd had up till then. There was no trust. There was no trust with the local education authority. I felt I couldn't get anywhere with them." (Parent 25)

Further, if the deadline for registering an appeal was close, mediation tended to be refused and, if trusted third party advice was not to go for mediation, this was followed. (In the context of these cases, such advice was either a realistic assessment of the unlikelihood of mediation making a difference or a way of reducing the time to wait until a Tribunal hearing date.)

#### **4.3.2.3 The focus of mediation**

In our sample, mediation was used to seek to resolve disagreements about refusals to assess, refusals to issue a plan and also about the content of the plan and placement. There were only a few examples of mediation about issues related to the health and social care aspects of the plan, as well as the education aspects. In other words, the focus of mediation mirrored the pattern of appeals to the Tribunal and complaints to health and social care. This makes intuitive sense as it is a resolution route that seeks to avoid further escalation or to reduce the number of points of disagreement that are escalated.

In the small number of cases in our data relating to social care or health issues, there were a few reported difficulties around the relevant representatives not attending. For example, Parent P9 reported that mediation did not happen because the social care representative did not respond to any emails or phone calls. Similarly, Parent 31 reported no-one from health came to their mediation – in her view, this was "so they can't be held accountable" for the lack of provision.

#### 4.3.2.4 Experience of mediation meetings and agreements

Among our sample, the experience of mediation meetings appeared to vary by mediator and/or mediation service and, of course, by the approach and attitudes of the parents/young people and of the LA and, where relevant, health representatives who were involved. An indicator of this variation is the fact that, when we asked parents during the interviews for their level of satisfaction with mediation as a way of resolving their disagreement, their responses varied across the nominal scale of 1 (not at all satisfied) to 5 (very satisfied). Parents were able to distinguish their views of process and of outcome.

LA representatives with experience of mediation meetings reported very mixed views of these – some positive, some negative, some neutral. This reflected the variety of mediation services and mediators providing the services to different local authorities, and sometimes within one authority. It also reflected variation in views as to the value of mediation meetings, based on (a) the expense of mediation (“It’s a very expensive conversation”) and (b) experience of the quality of mediation meetings. Regarding the cost of mediation, for example, some LA representatives argued that mediation was often not necessary because LA SEND staff had already had meetings with parents to try to resolve the issue. One suggestion was that mediation meetings should remain as an option, but that LAs should be allowed to have a discussion with parents and the mediator first, to determine whether a mediation meeting would be useful or not, i.e. that there should be a way of LAs being allowed to refuse to attend a mediation meeting if it were not going to be productive. When mediation meetings were held about issues that were unlikely to be resolved through mediation, some LA representatives felt it became a stressful and time-consuming situation for both parties, without much positive outcome to show for it. The unresolved problems tended to be ones where mediation was not the right tool to use – for example, a parent wanting a more expensive school than an LA felt could be justified or afforded. Other LA representatives were more positive about mediation meetings, acknowledging the added value of having a meeting with parents/young people facilitated by an independent, trained mediator and the opportunity to better understand the point of view of the parents/young person. Overall, LA representatives in our study did not seem convinced of mediation’s effectiveness in preventing escalation to appeal (a view our survey data contradicts).

From parents’ point of view too, the experience of mediation meetings varied. For example, Parent P8 had attended a mediation meeting under the mistaken belief that this was compulsory. She and her husband were disappointed that the mediator’s facilitative role did not improve the experience for them: “No one tried to make [the LA’s intransigence] easier or better for us. I’d taken along the Code of Practice about specifying and quantifying but [it made no difference]”. They did not find the process helpful and ended up feeling that they had to compromise against their better judgement: “We felt we *had* to compromise. The LA would not justify its refusal to specify a number of hours”. This case later became an appeal. The possibility that a mediation meeting could be used to talk parents out of pursuing a valid case any further

was raised by the Tribunal panel representatives interviewed. The concern was that, unless supported by someone who knew SEND law, parents could be persuaded to accept a resolution that was not as beneficial for their child as they would have achieved had they gone to Tribunal.

It was not necessary for parents to be supported at mediation. In our sample of parents, there were those who went to mediation supported by a third party but most went without such support. For example, Parent 5 described being supported at mediation by an EHC plan appeals worker from a charitable organisation: "That's what enabled us to cope with the mediation process". She noted that: "There must be lots of other families that don't have [support in mediation] and I think that would have been fairly horrific. [...] It all felt quite confrontational. [...] It felt like a court room". Other parents went to mediation supported by a friend or a teacher from the school or by their own adult disability support worker or by an IASS worker. Those, such as Parent 5, who were supported in mediation by someone who knew SEND law and could challenge the LA representatives on this, were very few in our sample.

By contrast, other parents had very positive experiences of mediation meetings that resolved their disagreement without needing to go to the Tribunal. Parent 2 was one of these: "I had a very positive experience of it, better than I expected it to be. [...] It was very lengthy, four hours, [but] I'm glad I took the step of agreeing to go to mediation".

Another theme about the experience of mediation was the extent to which the views of the child or young person were included. We know (see above) that mediation services varied in the extent to which they sought to include the views of the child. Parents' views varied about whether or not they wanted their child's views to be sought or their young person to be present. Here we give three examples that illustrate the spectrum of views:

**Example 1:** Parent 3, for example, thought it was **"important"** that her son [who was over 18] was present at the meeting:

"It was important for us that he did go because he is quite compelling when he gives his own evidence. [...] We all met up [for the mediation meeting] in the big social area of college and my son felt uncomfortable there because he thought everyone was looking at him. I had to ask if we could move on to the meeting room. [...] I really don't want to be critical or show any disrespect to the mediator but [...] [she was] possibly a little bit talking to [my son] without being aware of his mental ability, talking down to him a little bit. She was lovely but I think he felt a little bit patronised." (Parent 3)

**Example 2:** Parent 32 was **"in two minds"** about her 11-year old son's involvement in the meeting:

"I found that the way [the mediator] came out and interviewed my son was a bit ... I don't think it was pointless but I didn't like it that my son got involved in it.

But, in another way, I'm a bit undecided about that because him going into that meeting, only a couple of the professionals knew him personally because a lot of professionals don't really meet your child. And for them to meet him – and my son is so touching and lovely – and you could tell that they really liked him because he just said some lovely things. And then when they heard about the suffering and they could see what a nice kid he was I think it did make them feel something so, in that sense, it was good but I don't know how appropriate I feel that is but I can see the point of it. But I didn't know why they made him answer questions and draw pictures and all that kind of stuff." (Parent 32)

**Example 3:** Parent 18 is an example of those parents who were **glad for their child not to be involved**: "[My daughter] was oblivious to the whole thing and that was a good thing. I didn't want her worrying about it".

Those parents interviewed who had taken up mediation and found it did **not** resolve the disagreements, looked back upon it as a time-wasting additional barrier. They were more upset about their disagreement with the LA after a failed mediation than they had been before. A failed mediation was not always apparently so at the time of the meeting – the failure happened afterwards in that the actions agreed were not put into practice. In such cases, the 'Chatham House' rules of the process were raised as problematic by several parents. In such cases, the parents' only route was to go on to appeal. One mediator and some parents argued that there should be a feedback loop to the mediator to let that person know that the agreement had not been kept. Others suggested that a mediation agreement that had not been kept should be allowed to be included as evidence in any subsequent Tribunal appeal. Overall, the status of the mediation agreement seemed to be unclear to some parents and professionals, despite this being set out clearly in the SEND Regulations 2014. There did not appear to be accountability about LAs, schools or colleges honouring the agreement. Some focus group LAs, however, stated that any agreement made at mediation requiring LA action would be honoured without question.

#### **4.3.1.5 Resolution or escalation**

As reported earlier, our quantitative data showed that, among those who took up mediation, there was a 14 percentage point reduction in the likelihood of going on to appeal compared to those cases where mediation was declined.

From our qualitative information, it seems as if mediation was successful when a key aspect of the disagreement related to misinformation, misunderstanding or missing information which could easily be cleared up, enabling the LA representative to reconsider the evidence and change the decision. This happened, for example, in one case where it emerged during mediation that the papers that had gone in from the school to support the request for assessment had not been done very well: "The school did not do its job" (Parent 86). The LA representative agreed to visit the school to obtain the appropriate information and agreed to put in high needs funding for a short period of

time whilst the request was resubmitted. The parent reported that the request had subsequently been accepted and a draft plan written.

In more complex cases, as evidenced in our small sample of parents, mediation tended to be less successful at resolving the issues. Some interviewees (of different types, for example, including parent support representatives) suggested that this may have been because mediators, unlike the Tribunal, do not use 'the legal test', are required to be impartial and (at least some) understand their role to exclude pointing out illegal or questionable practice. School placement decisions were viewed as unlikely to be resolved at mediation, something recognised by the legislation: mediation advice is not a requirement in such cases.

#### **4.3.2.6 What does successful mediation mean to service users?**

As reported in section 4.3.1.5, there was broad agreement across the 19 mediators as to the features that increased the likelihood of successful mediation. These included preparation of all parties beforehand by the mediator, an open engagement in the process by both parties and independent support for parents and for children/young people. Success was not always defined as 'resolved without recourse to the Tribunal'. From the LA focus group views, it was clear that, to LA staff, 'successful' equalled resolved without recourse to Tribunal. However, LA representatives in these groups understood that some issues were unresolvable without recourse to Tribunal and also recognised the value of building relationships through a mediation meeting. Parents also viewed 'successful' mediation as reaching agreement such that there would be no need to go ahead to appeal to the First-tier Tribunal SEND. When agreements were reached and recorded by the mediator, the 'success' hinged on the subsequent honouring of these. Mediation that did not lead to agreement, or that led to an agreement that was not kept, was viewed as unsuccessful by parents in our sample.

## **4.4 What has been learned about mediation**

From the data gathered for the review, we learned that the requirement to include information about mediation in LA decision letters was viewed as having successfully made it clear to parents that they had to contact a mediation service before lodging an appeal to the First-tier Tribunal SEND. We also found that there was a very high correlation ( $r=.98$ ) between making contact and taking up mediation and that the use of mediation increased significantly over the two years among the LAs in our sample.

Education issues were the most common reason for mediation (over 70% of cases) followed by combined education, health and social care issues (about 20%). Rates of mediation per 10,000 of the LA school population varied greatly between LAs, from one or fewer in 38% of LAs to between eight and nine in one LA.

The majority of cases of mediation were associated with resolution of the disagreement without an appeal to the Tribunal – this was a rising trend, from 54% to 63%.

We have been able to demonstrate that those who took up mediation were significantly less likely to appeal to the Tribunal than those who did not take up mediation. Our qualitative information suggests that one reason for this is that mediation enables the less complex disagreements to be resolved – for example, those that were based on misunderstandings or missing information. Another reason may be that mediation was taken up by those who still had enough of a relationship with their SEND team to believe that mediation could be worthwhile.

All the mediators we interviewed were positive about the mediation training they had received, but not all had received training in, or were knowledgeable about, SEND legislation or the *SEND code of practice: 0 to 25 years* (DfE, 2015). Concerns were expressed about the lack of nationally recognised accreditation and/or of national standards for becoming a SEND mediator.

Parents' responses during interviews as to their satisfaction with mediation as a way of resolving disagreements with the LA varied across the scale of 1 (not at all satisfied) to 5 (very satisfied). Parents were able to distinguish their views of process and of outcome.

Where parents thought that the LA SEND team representative would be willing to shift position on any of the issues under disagreement, they took up mediation because they did not want to appeal.

If the deadline for registering an appeal was close, or if meetings with the LA SEND team representative/s had already failed to resolve the disagreement, mediation tended to be refused by parents.

LA representatives and parents reported very mixed experiences of mediation meetings – some positive, some negative, some neutral. This reflected differences of approach and perceived quality among mediation services and among mediators providing the service. It also reflected the complexity or otherwise of the issues under discussion and the differing values and attitudes brought into the room by participants.

## 5 Appeals to the First-tier Tribunal SEND (Part 1)

### Key Findings (Quantitative)

Only a small proportion (6%) of requests for assessment made to the 109 LAs in our surveys resulted in an appeal on any subsequent key decision. The proportions, and the absolute numbers concerned, varied between the three main types of appealable decision.

- Of **40,952 decisions** made across **109 LAs** regarding requests for EHC needs assessments:
  - **7% of refused requests** resulted in an appeal (n=873)
  - **12%** of assessments that resulted in a **refusal to issue an EHC plan** were appealed (n=168)
  - **6% of EHC plans** resulted in any aspect of the content being appealed (n=1,525)
- The number of appeals rose between Year 1 and Year 2 but this reflects, at least in part, the changes in the system, in particular the extension to the 0-25 year age range
- Most appeals are conceded by the LA or withdrawn
- Of those appeals that are decided by the Tribunal, the majority are decided in favour of the appellant (58% Year 1, rising to 67% Year 2)
- Overall, in Year 2 (when the reforms were more bedded in) the large majority of appeals (94%) were conceded or withdrawn, or decided in favour of the appellant by the Tribunal
- Rates of appeal varied greatly between LAs with respect not only to the school population, but also to the number of assessments requested and the number of appealable decisions made by the LA (refusal to assess, refusal to write an EHC plan and the content of an EHC plan when one had been written)

### 5.1 Introduction

#### 5.1.1 The national picture on appeals to the Tribunal

The First-tier Tribunal SEND is part of the First-tier Tribunal (Health, Education and Social Care Chambers). It is overseen by Her Majesty's Courts and Tribunal Service (HMCTS), an executive agency sponsored by the Ministry of Justice. It hears appeals against decisions made by LAs in England in relation to children and young people's EHC needs assessments and EHC plans (*SEND Code of Practice: 0 to 25 years*, DfE & DH, 2015, p259, 11.42). (Appeals about statements of SEN also continue to be heard, under the 1996 Education Act, until all statements have been transitioned to the new

EHC plan system, under the Children and Families Act 2014.) Figure 30 lists which LA decisions and parts of the EHC plan can be appealed to the Tribunal.

**Figure 30: What parents and young people can appeal about**

Parents and young people **can** appeal to the Tribunal about:

- A decision by a local authority not to carry out an EHC needs assessment or re-assessment ('refusal to assess/re-assess')
- A decision by a local authority that it is not necessary to issue an EHC plan following an assessment ('refusal to issue an EHC plan')
- The description of a child or young person's SEN in an EHC plan (i.e. Section B), the special educational provision specified (i.e. Section F), the school or other institution or type of school or other institution (such as a mainstream school/college) specified in the plan or that no school or other institution is specified (i.e. Section I)
- An amendment to these elements of the EHC plan

Parents and young people **cannot** appeal to the Tribunal about:

- The description of the views, interests and aspirations of the child and their parents, or of the young person (Section A)
- The child or young person's health needs which relate to their SEN (Section C)
- The child or young person's social care needs which relate to their SEN (Section D)
- The outcomes sought for the child or young person (Section E)
- Any health provision reasonably required by the learning difficulties or disabilities which result in the child or young person's having SEN (Section G)
- Any social care provision which must be made for a child or young person under 18 resulting from section 2 of the Chronically Sick and Disabled Persons Act 1970 (Section H1)
- Any other social care provision reasonably required by the learning difficulties or disabilities which result in the child or young person having SEN (Section H2)
- Personal Budget (including arrangements for direct payments) (Section J)

Source: *SEND code of practice, 0-25* (DfE, 2015, p259, 11.45)

Annual data<sup>47</sup> about appeals to the First-tier Tribunal SEND are published by the Ministry of Justice. Certain changes to the system brought in by the Children and Families Act 2014 have affected how appeal statistics since September 2014 can be

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<sup>47</sup> These are included in the annual Statistical Bulletin entitled, *Tribunals and Gender Recognitions Certificate Quarterly (July to September [year])*, published in December of each year.

fairly compared to those prior to that date. These changes have **increased** the number of those eligible to appeal as a result of extending EHC plans to the 0-25 age range (statements covered school age and early years children only), the new right of appeal for young people, and the fact that the transition process from statements and LDAs to EHC plans increased the numbers with opportunity to appeal. During the period of transition (up to March 2018), it will remain difficult to understand fully the meaning of any changes in the pattern of appeals.

To set the scene for this chapter, Figure 31 summarises national trends relating to appeals to the First-tier Tribunal SEND (MoJ, 2016).

**Figure 31: Summary of trends in national data on appeals**

### **Registered appeals**

- During 1994-2004, a steep rise from 1,161 to 3,532
- Since 2008-09, a gradual increase to a peak in 2013-14 of 4,063
- Since September 2014, when the new legislation came into force, there was first a reduction in number of appeals to 3,146 (2014-15) and then a rise of 18% (relative to that year) to 3,712 in 2015-16

### **Type of appeal registered**

- The most common types of appeal have been against the content of a statement (and now of an EHC plan) and against a refusal to assess
- In 2015-16, of all registered appeals:
  - Appeals against the content of statements or EHC plans accounted for about a half
  - Refusal to carry out an EHC needs assessment accounted for about a third

### **Registered appeals by type of SEN**

- The number of appeals relating to a child or young person with Autistic Spectrum Disorder (ASD) has been rising steadily over time since 1998-99 when these accounted for 13% of appeals.
- In 2015-16, of all registered appeals, those relating to a child or young person with ASD accounted for 38%. (ASD is the most common primary type of need for pupils with a statement of EHC pan – children and young people with ASD represent 9% of the total number of those with SEN and 26% of those with a statement or plan.)<sup>48</sup>

### **Registered appeals by local authority (per 10,000 of school children)**

- A rate per 10,000 school children is used to take into account the very different sizes of different local authorities.

<sup>48</sup> [Special Educational Needs in England: January 2016 \(DfE, July 2016\)](#)

- Since these data have been published, they have shown marked variation in rate of appeal by LA
- In 2015-16, of all appeals registered:
  - The highest rate was 13 appeals per 10,000 of school children
  - The overall rate for England was 4.3 appeals per 10,000 of school children
  - Seven LAs had a zero rate of appeals

### Registered appeals by outcome

- In 2015-16, of all appeals with recorded outcomes (3,154):
  - 72% were withdraw by the appellant or conceded by the LA
  - 28% were decided by a Tribunal. Of these 28%, 88% were decided in favour of the appellant<sup>49</sup> (i.e. the parent/s or young person who made the appeal)
- This overall pattern, i.e. that a large majority of appeals registered are withdrawn or conceded prior to an appeal hearing, and that, of those decided by a Tribunal, a large majority are decided in favour of the appellant, has remained the same over time.

Source: Ministry of Justice, 2016, pp42-45, and associated Excel tables

## 5.1.2 This chapter

This chapter is presented in two parts. In Part 1, we present findings from our three surveys sent to all English LAs and covering the first two years of the new SEND system: Year 1 (2014-15) and Year 2 (2015-16). In total, 109 LAs responded to at least one of these surveys and 42 LAs responded to all three. As in previous chapters:

- To show **relationships between key LA decisions and appeals**, we draw on data from all 109 LAs that completed any of our three surveys
- To show **change over time** (Year 1 to Year 2), we draw only on the information from the 42 LAs that completed all three of our surveys
- To show **variation among LAs**, we again draw on these 42 LAs that completed all three surveys

We used statistical analysis to test out how closely associated the nationally registered number of appeals for each of the 42 LAs who responded to all three surveys was to the number of appeals these LAs reported in our surveys<sup>50</sup>. This showed a strong association between these two sources, suggesting that the data we report from these LAs is very similar to the data these LAs report nationally. We also compared national statistics on reasons for appeal and compared these statistics to those obtained from our total sample of 109 LAs. We found that the proportion of appeals due to each

<sup>49</sup> 'Decided in favour of the appellant' does not necessarily mean that every point at issue was decided in favour.

<sup>50</sup> Totals under both the 1996 Act and the 2014 Act.

reason was similar between the national statistics and the current survey findings. For further details, see Appendix 3.3.

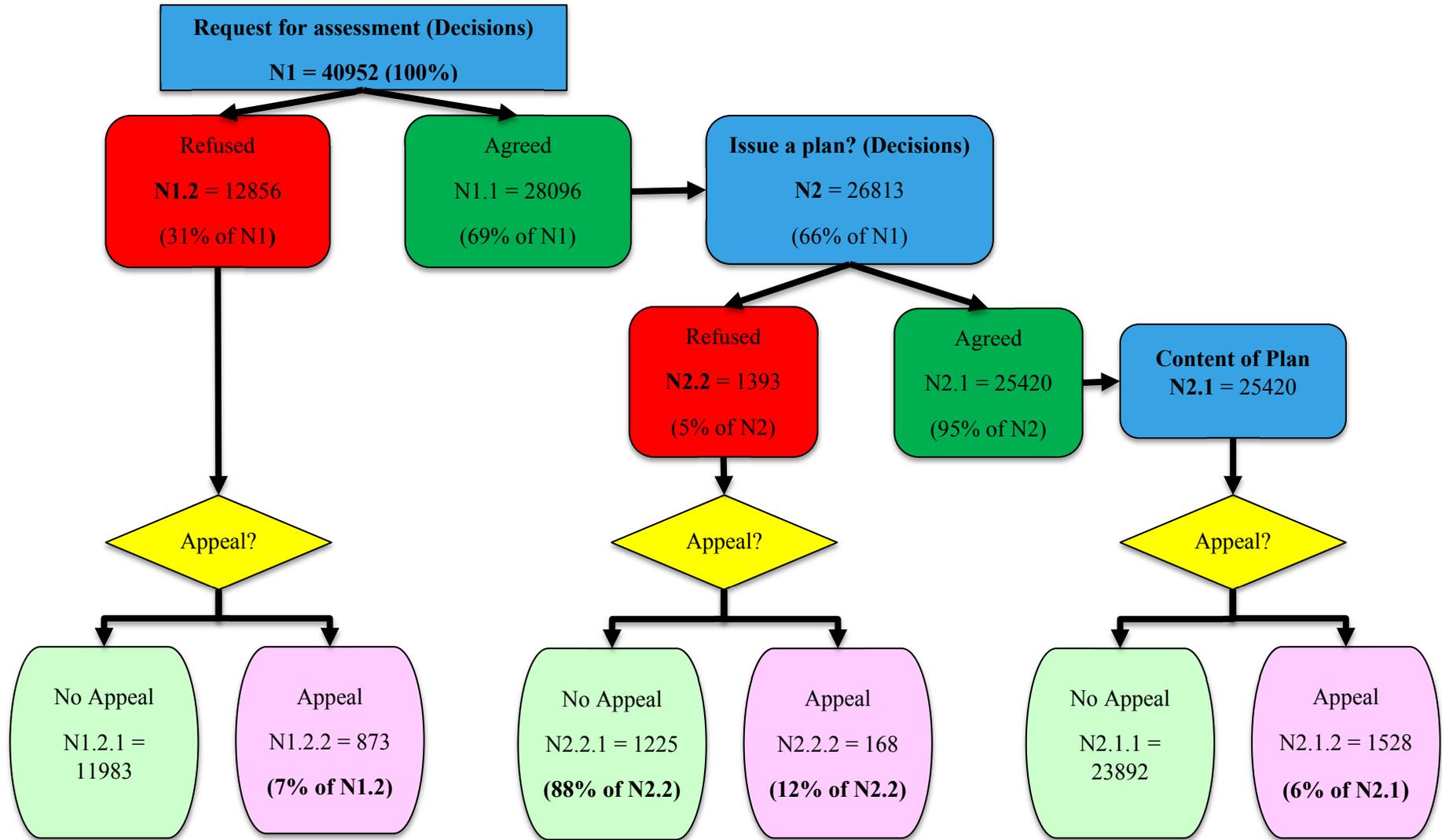
In Part 2 of the chapter, we draw on the interviews with parents/young people to report why they decided to appeal, how they experienced the process, and their views on the outcome of their appeal. In addition, we use relevant data from the focus group discussions with LA representatives, and from interviews with Tribunal panel representatives and parent support organisation representatives, to provide their perspectives on appeals to the First-tier Tribunal.

## **5.2 Patterns of appeal to the First-tier Tribunal SEND**

### **5.2.1 The relationship between key LA decisions and appeals**

Nationally, overall numbers of appeals to the First-tier Tribunal SEND have risen (MoJ, 2016). The information we gained through the LA surveys demonstrated that appealing to the Tribunal is very much a minority activity in relation to the total activity regarding SEN for which we have data. For ease of reference and to make this point clearly in this chapter, we **repeat**, as Figure 32, the flow chart presented in Chapter 2 as Figure 5.

Figure 32: Flow chart showing First-tier Tribunal SEND appeals in relation to key LA decisions made (September 2014 to August 2016)



Source: 109 LAs

Figure 32 (the flow chart above) shows that, in our online survey sample:

Of **40,952 decisions** made across **109 LAs** regarding requests for EHC needs assessments:

- **7%** of **refused requests** resulted in an appeal (n=873)
- **12%** of assessments that resulted in a **refusal to issue an EHC plan** were appealed (n=168)
- **6%** of **EHC plans** resulted in any aspect of the content being appealed (n=1,528).

While it is positive that, in relation to the number of decisions made, relatively small numbers of decisions are appealed, it cannot be taken for granted that this means that all the other 'refused' decisions, and all the other EHC plans, were accepted without any disagreements arising. As we have seen, **many such disagreements are resolved earlier on**, through discussion meetings organised by LA SEND staff and through mediation. In this chapter, we show that **a large proportion of appeals registered are resolved prior to the set date for the appeal panel hearing** (this has been shown in national data for many years).

## 5.2.2 Changes over time (Year 1 to Year 2) in use of appeals

In our three online surveys, LAs were asked to indicate the number of new appeals registered under the 2014 Act for each of the years considered. LAs also provided the reason for appeal, the current status of the appeal (pending, conceded or withdrawn, decided by Tribunal panel, and not known). Finally, they indicated how many of the appeals decided by the Tribunal panel were decided without a hearing, and also how many were decided in favour of the appellant.

### 5.2.2.1 Appeals under the 2014 Act

In the 42 LAs that provided responses to all three surveys, the **overall number** of appeals registered under the 2014 Act **increased** from Year 1 (268) to Year 2 (767) (see Appendix 3, **Table 29**)<sup>51</sup>.

Table 8 shows that 21% of participating LAs indicated they had zero [0] appeals registered at Year 1, while at Year 2 this reduced to 12% of the LAs. **Overall there was an increase in appeals registered under the 2014 Act over time**, as indicated by the decrease in zero-appeal registrations and an associated **increase** in 'high' volume (more than 10) appeal numbers.

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<sup>51</sup> All of these LAs were able to report numbers of appeals.

**Table 8 Percentage of LAs registering no, low to mid and high volumes of 2014 Act appeals (Year 1 & Year 2)**

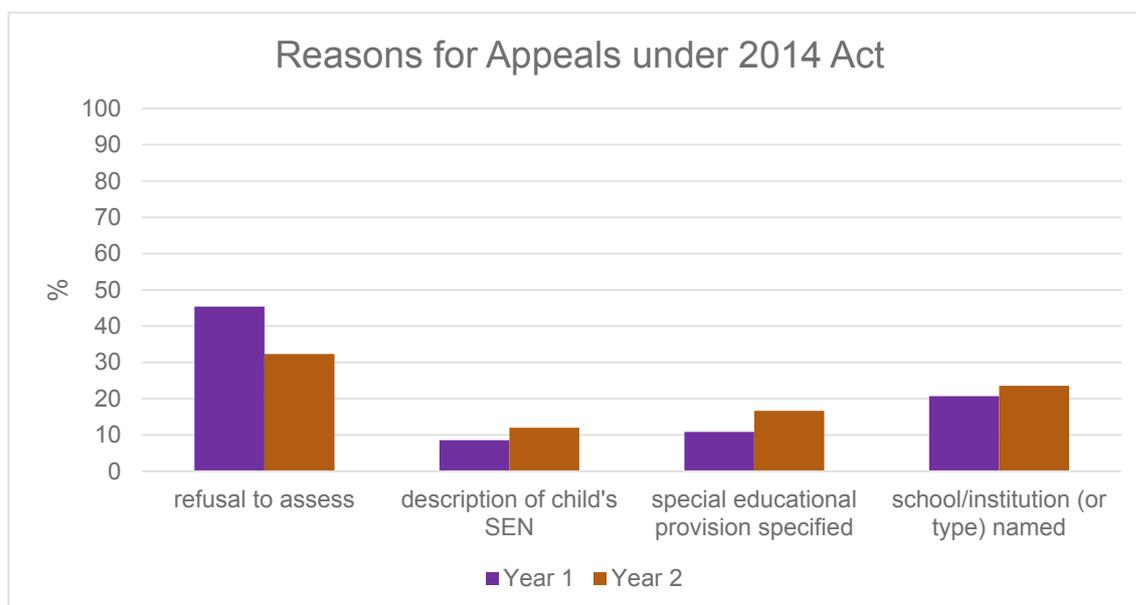
EHC appeals registered	Year 1	Year 2
	%	%
None (0)	21	12
Between 1-10	60	38
11 or over	19	50

Base: 42 LAs (responded to all 3 surveys)

In Year 2, LAs were also asked to indicate how many of the appeals registered under the 2014 Act involved cases either **transitioning or transitioned from an existing statement of SEN**. A total of **115** (15%) 2014 Act appeals involved such cases. A **substantial proportion of LAs** (11, 26%) had **no** 2014 Act appeals that involved such cases. The maximum number of transitioning cases involved in an appeal in any one LA was 17.

Figure 33 shows that four reasons were the most frequent for appeals under the 2014 Act: 'refusal to assess', 'special education provision specified', 'school/institution named' and 'description of child's SEN'. These reasons accounted for 85% of all appeals across both years.

**Figure 33: Reasons for appeals under 2014 Act, in Year 1 and Year 2 (reasons appearing less than 10% were excluded from the graph)**



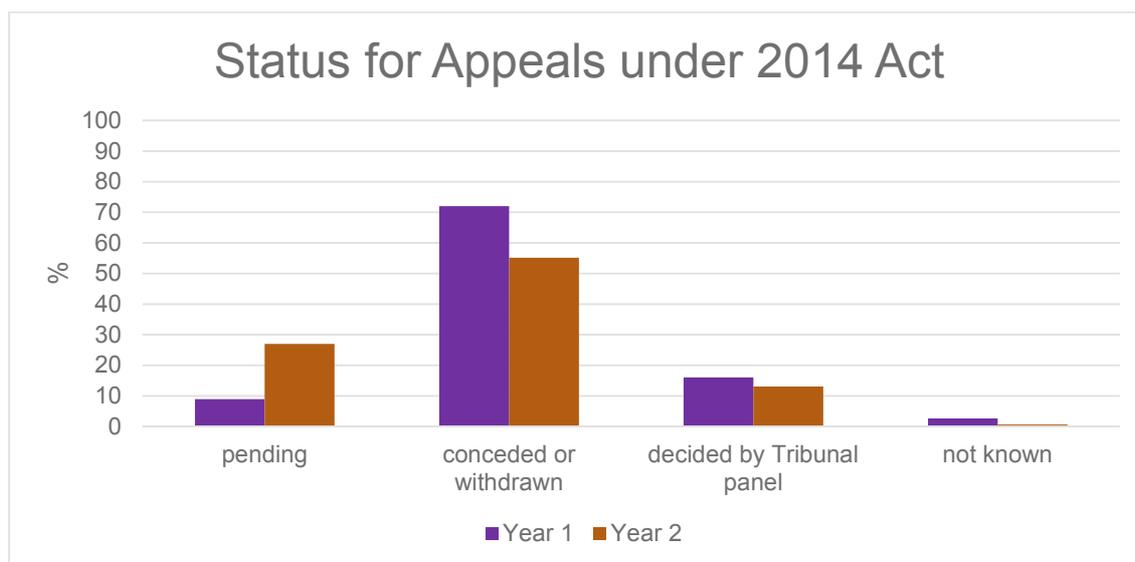
Base: 42 LAs (responded to all 3 surveys)

**'Refusal to assess'** accounted for nearly **half** of the appeals under the 2014 Act: **45%** in Year 1 (138) declining to **32%** (299) of appeals in Year 2. This was a significant

**decrease** over time. There was also a **significant decrease** in the proportion of appeals registered due to ‘refusal to issue an EHC plan’. By contrast, there were **increases** in the proportions of appeals for description of the child’s SEN and with respect to the SEN provision specified. However, there was **no difference** from Year 1 to Year 2 in the proportion of appeals for the school/institution (or type) named<sup>52</sup>.

With regard to the status of the appeals registered under the 2014 Act, we note (Table 4, part b, Appendix 3) the small number of registered appeals whose outcome was not known (7 and 5, in Year 1 and Year 2 respectively), and the 231 appeals whose outcome was still pending (24 and 207, in Year 1 and 2 respectively). Excluding those from the total number of appeals registered, Figure 34 shows that **the large majority of appeals were resolved before reaching the stage of a Tribunal hearing**. In Year 1, **16%** (95% CIs: 12%, 20%) were decided by a Tribunal and **72%** (95% CIs: 67%, 77%) were conceded or withdrawn. At Year 2, **13%** (95% CIs: 11%, 15%) of appeals were decided by a Tribunal, while **55%** (95% CIs: 51.6%, 58.7%) were conceded or withdrawn<sup>53</sup>. There was no change in this pattern between Year 1 and Year 2.<sup>54</sup>

**Figure 34: Status of appeals under 2014 Act in Years 1 and 2**



Base: 42 LAs (responded to all 3 surveys)

**Figure 35** Figure 35 shows that **over half of all appeals decided by the Tribunal were decided in favour of the appellant** (at least in part): 58% (25) in Year 1 and 67% (67)

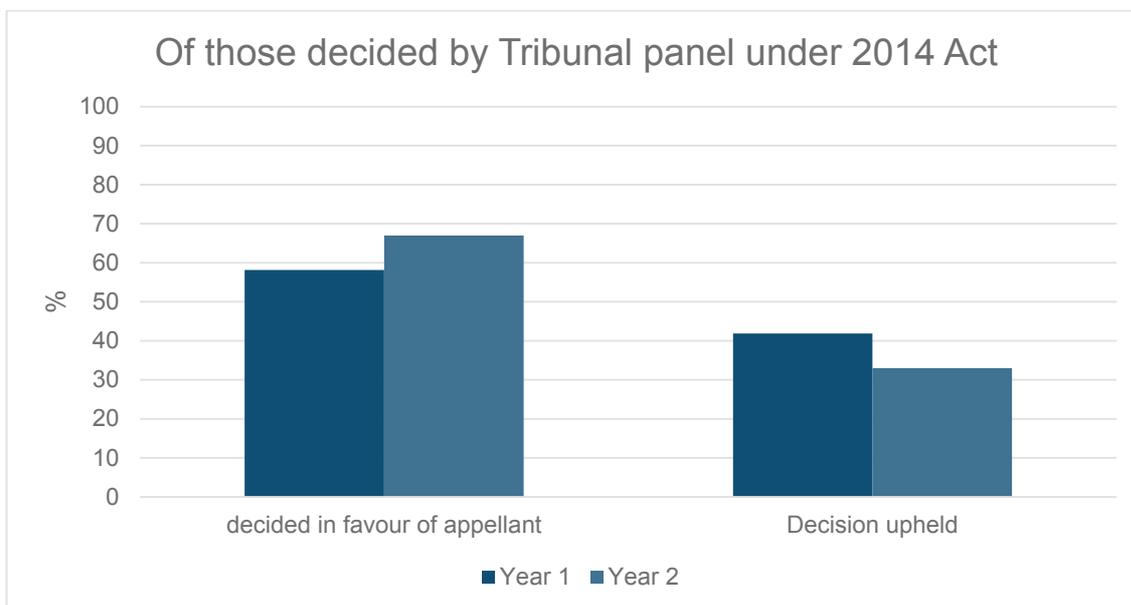
<sup>52</sup> See Analysis 4a in Appendix 3.

<sup>53</sup> For the remaining 0.4% of cases in Year 1 and 4.7% of cases in Year 2, a status was not recorded by the LAs.

<sup>54</sup> p = .769, nonsignificant. See Analysis 4b, Appendix 3

in Year 2, while the **LA decision was upheld** for the remaining 42% (18) in Year 1 and 33% (33) in Year 2.

**Figure 35: Outcome of appeals decided by Tribunal under 2014 Act in Year 1 and Year 2**



Source: 42 LAs responding to all three online surveys, 2014-5 and 2015-16

The overall picture requires combining the above findings. Taking Year 2 as an example, as this was after the procedures under the 2014 Act had become more bedded in, the following pattern is observable. Of the 523 decisions made in response to appeals in Year 2, 423 were withdrawn or conceded and just 100 were decided by a Tribunal panel, and of these 67 were decided in favour of the appellant<sup>55</sup>. Hence, 490 (94%) of the 523 appeals were either withdrawn or conceded or decided in favour of the appellant.

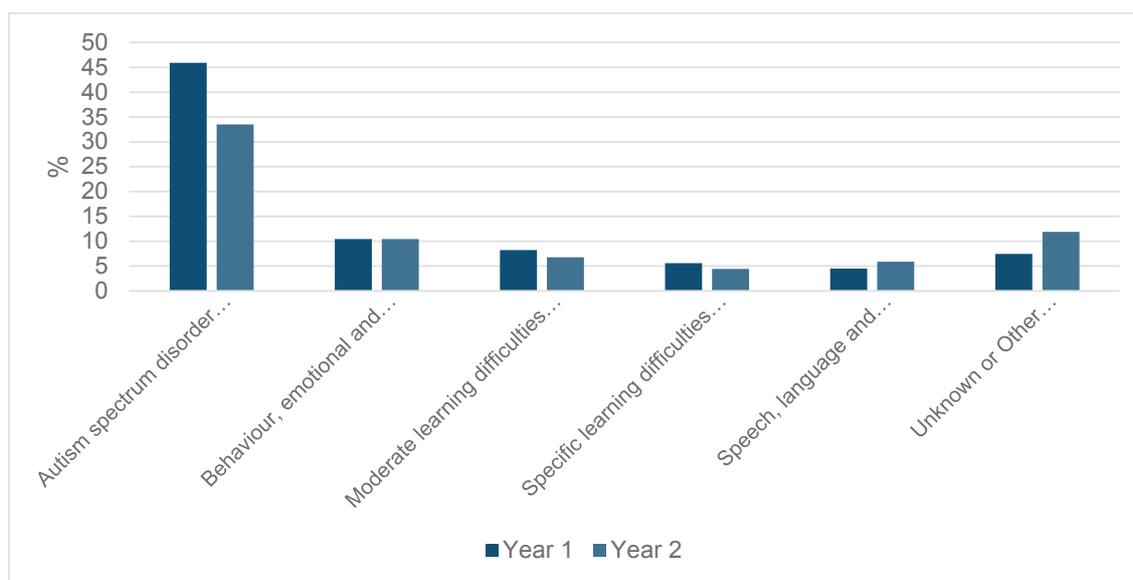
Our questionnaire did not distinguish appeals withdrawn by the appellant from appeals conceded by the LA, which prevents a more accurate conclusion on the relative benefit of parents appealing. However, the number of appeals withdrawn, conceded or decided in favour of the appellant represents a strong reason for LAs to be proactive about addressing issues that have led to appeals in their LA and to work constructively with parents and young people to reduce the causes of any perceived need to appeal. This means addressing the concerns identified in previous and current appeals, and making the reasonable provision necessary to meet the SEN identified through assessment processes. This will require consideration of the appropriateness of the Local Offer, of the provision made to meet SEN, and of the system of administering not only appeals but also the assessment and decision-making system.

<sup>55</sup> Appendix 3 Table 25

### 5.2.2.2 Nature of SEN ('primary need') cited in registered appeals

The nature of the SEN (also referred to as 'primary need') was recorded for each appeal registered. Figure 36 shows, **autism spectrum disorder (ASD) was the most frequent primary need, with the proportion decreasing over time**<sup>56</sup>: 46% (Year 1) and 34% (Year 2)<sup>57</sup>. Behavioural, Emotional and Social Difficulties (BESD), Moderate Learning Difficulties (MLD), Specific Learning Difficulties (SpLD) and Speech, Language and Communication Needs (SLCN) were also frequent, but only BESD exceeded 10% of cited primary needs.

**Figure 36: Nature of SEN in appeals under the 2014 Act in Year 1 and Year 2 (SEN appearing less than 5% were excluded from the graph)**



Base: 42 LAs (responded to all 3 online surveys)

### 5.2.3 Variation in rates of appeal among LAs per 10,000 of school population

In order to examine variation in rates of appeal among the 42 LAs that responded to our three surveys, we used the number of Tribunal appeals registered during the two years. In order to adjust for the variation in size of each LA (Appendix 3, Table 29), these appeal numbers were averaged and **adjusted** by the size of the average school population in the LA<sup>58</sup> across the same time period. Table 9 presents data from the 10

<sup>56</sup>  $p < .001$ , see Analysis 4d, Appendix 3.

<sup>57</sup> The prevalence of children with ASD nationally remained stable in the DfE national statistics of 2015 and 2016 at 9.0% and 8.8% respectively: [Special educational needs in England: January 2016, SFR, 29/2016 \(DfE, 2016\)](#).

<sup>58</sup> The total school population (as captured annually through the School Census) has traditionally been used to adjust the number of appeals for the size of the corresponding population. The new Act has extended the age range of the population considered (children from 0 years up to 25 years old are

participating LAs with the **highest average rate of appeals** per 10,000 of the school population and the 10 participating LAs with the **lowest rate of appeals** per 10,000 of the school population, across both years.

As can be seen, there is **wide variation** in the average yearly school population sizes of these 20 LAs, as well as in the yearly average number of appeals registered within each LA.

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considered). The total school population does not provide the total number of children in an LA who do not attend school, which would be the case for most children under 4 years old or many children over the age of 18 years old. CEDAR and the DfE are aware of the limitations of this approach– see Section 5.2.3.1.

**Table 9 LAs in the sample with the highest and lowest rates of appeals per 10,000 of the school population, across Year 1 and 2**

	<b>LA Number<sup>59</sup></b>	<b>Average Yearly Population</b>	<b>Average Yearly Appeals</b>	<b>Average Rate of appeals per 10,000 of population</b>
10 LAs with the highest rate of appeals	18	67,659.33	49.50	7.32
	11	44,796.67	25.00	5.58
	20	43,022.67	22.50	5.23
	7	71,607.00	31.50	4.40
	9	29,660.33	11.50	3.88
	31	21,533.00	7.50	3.48
	35	46,328.00	15.50	3.35
	39	188,303.00	63.00	3.35
	21	107,715.67	33.00	3.06
	38	41,550.33	12.00	2.89
10 LAs with the lowest rate of appeals	4	19,145.67	1.00	0.52
	23	83,361.00	4.00	0.48
	40	19,930.00	0.50	0.25
	42	45,879.00	1.00	0.22
	25	23,904.67	0.50	0.21
	25	42,754.67	0.50	0.12
	34	43,208.33	0.50	0.12
	3	28,239.67	0.00	0.00
	14	15,096.33	0.00	0.00
	17	276.00	0.00	0.00

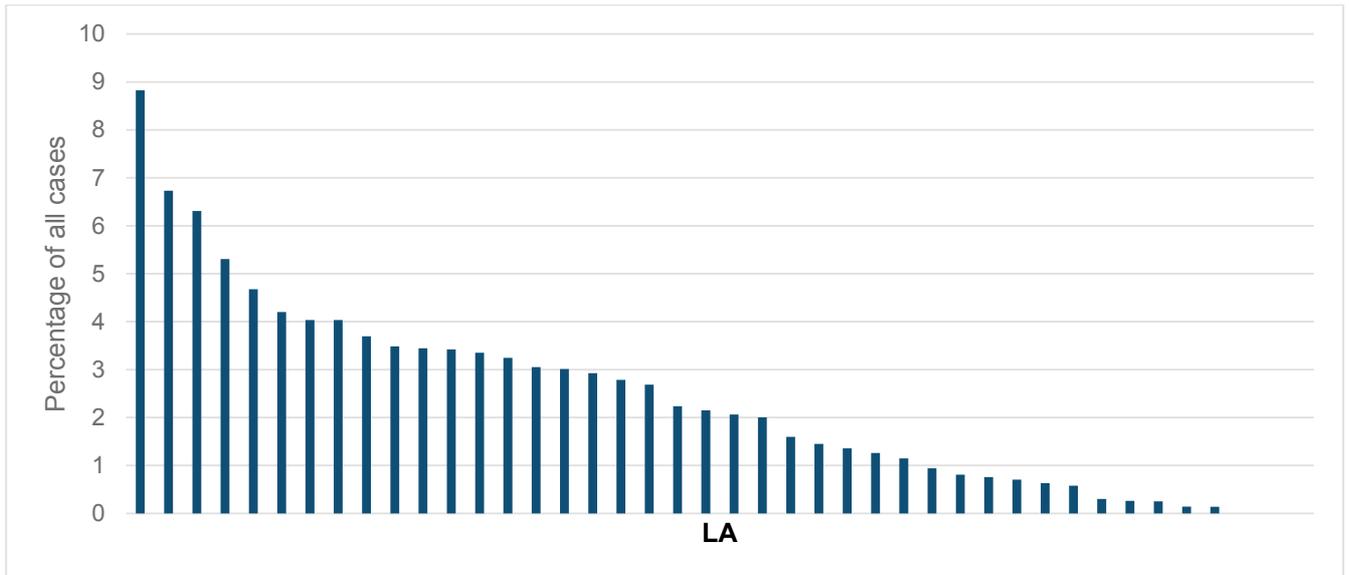
Source: 42 LAs responding to all three online surveys, 2014-5 and 2015-16

<sup>59</sup> LA names have been replaced with a random number, which is consistent across all Tables using 'LA code' in this chapter.

We also looked at the **distribution of rate of appeals** across the 42 LAs, which showed that 15 LAs (**36%**) had a rate of appeals up to 1 case per 10,000 of the school population, while only 1 LA had a rate of appeals of between 7 and 8 cases per 10,000 of the school population (see Section 1.4 in Appendix 3).

We then looked at the **variation** of the rate of appeals per 10,000 of the school population. Figure 37 shows that the LA with the largest rate of appeals accounted for nearly **9%** of all the appeals cases across the 42 LAs.

**Figure 37: Rate of appeals per 10000 of school population**

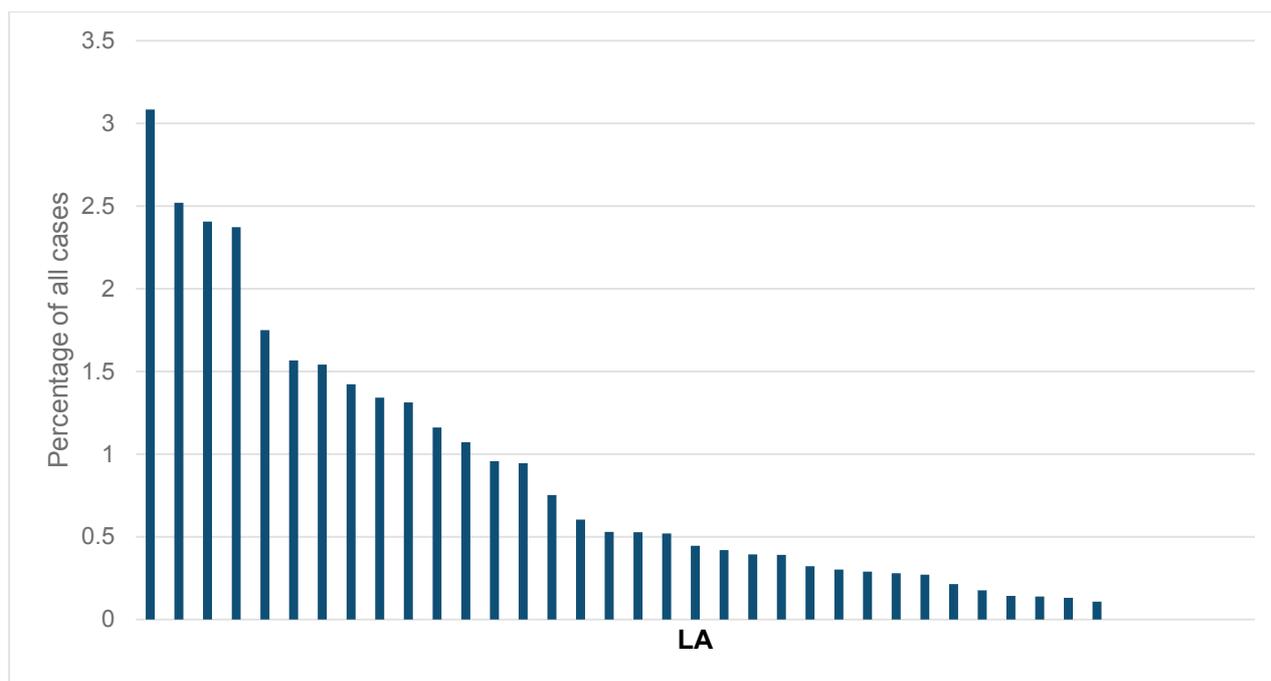


Data presented for each LA as a percentage of the total rate of cases across the 42 LAs. Bars ordered by highest percentage of rate of appeals across the 42 LAs.

Base: 42 LAs (completed all 3 surveys)

Finally, we then looked at the **variation in rates of appeals associated with ASD cases** (see Figure 38). Given that ASD is the largest special educational need category for appeals, we were interested in how these cases varied across the LAs.

**Figure 38: Rate of appeals associated with ASD cases per 10,000 of school population**



Data are presented for each LA as a percentage of the total rate of cases across the 42 LAs. Bars ordered by highest percentage of rate of appeals across the 42 LAs.

Base: 42 LAs (completed all 3 surveys)

Figure 38 shows that the LA with the highest rate of appeals associated with ASD cases recorded just over **3%** of all the appeals due to ASD across all 42 LAs, whereas half of the 42 LAs accounted for less than 1%. This demonstrates the variation between LAs in likelihood of an appeal with respect to ASD.

### **5.2.3.1 Rates of appeal per total number of EHC needs assessments requested**

We also explored the use of two new approaches to calculating appeal rates. As an alternative to using the total school population to adjust the rate of Tribunal appeals (see footnote 58), we first considered the **total number of EHC needs assessments requested** as an alternative base rate that represents all later SEN-related activity in an LA that is potentially appealable<sup>60</sup> (Table 10). We therefore estimated the proportion of appeals registered under the 2014 Act, adjusted for the total number of EHC needs assessments requested under this Act. We conducted these analyses using data **across Year 1 and 2** among the 42 LAs who participated in all three surveys. Table 10 presents the LAs with the highest proportion of 2014 appeals adjusted in this way, from our sample of 42 LAs.

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<sup>60</sup> In other words, for each individual child or young person, a request for assessment had to have been made in order for that child's case to generate any later decisions appealable to the Tribunal.

This approach illustrates an alternative method for adjusting the rate of appeals registered under the 2014 Act, as the total school population does not represent the whole population for which this Act is potentially relevant (i.e. 0 to 25 years). This approach is only viable when data on total number of EHC needs assessments requested are available for a given period. A strength of this approach is that the measure, ‘appeals per assessments requested’, keeps the focus on the disagreement resolution context. A caveat of this approach is that the reliability of the data about total number of EHC needs assessments requested rests with data quality practices within LAs. In this instance, for example, we excluded three LAs which reported either zero or ‘not known’ for EHC needs assessments requested over this two year period.

**Table 10 The 10 LAs with the highest proportion of appeals relative to total number of requests for EHC needs assessment across the two years (2014-15 and 2015-16)**

LA Code	Total EHC Needs Assessments Requested	Total Appeals	Proportion of appeals to assessments requested
8	121	63	0.52
11	393	50	0.13
18	1087	99	0.09
20	496	45	0.09
26	777	67	0.09
28	254	17	0.07
13	78	5	0.06
24	335	21	0.06
9	370	23	0.06
41	668	41	0.06
15	497	29	0.06

Base: 42 LAs (respond to all 3 surveys)

Our second additional approach, as presented in Table 11<sup>61</sup>, shows the proportion of appeals made against “appealable decisions”. “Appealable decisions” were the three key decisions that could be appealed following an assessment request: “refusal to

<sup>61</sup> The number of appeals per LA may vary across tables as LAs were asked to report number of appeals and also the reasons for appeals, the latter summing to more than the former in some cases

assess”, “refusal to write a plan” and “content of a plan”. We calculated the total number of appealable decisions for each LA, as a proportion of appeals due to these reasons. There was a significant correlation between rate of appeal per 10,000 of the school population and rate of appealable decisions<sup>62</sup>.

**Table 11 LAs with the highest proportion of appeals due to “appealable decisions”, across two years (2014-15 and 2015-16)**

LA Code	Total appealable decision	Total appeals due to “appealable decisions”	Rate of appeals due appealable decisions
8	107	86	0.80
39	1293	219	0.17
11	329	55	0.17
18	1197	111	0.12
26	777	71	0.09
28	203	17	0.08
21	918	66	0.07
24	300	20	0.07
20	634	42	0.07
41	630	41	0.07

Base: 42 LAs (responded to all 3 online surveys)

Of note are the LAs who appear in the top 10 highest rates of appeals per 10,000 school population, as well as in the top 10 highest proportion of appeals to assessments, and highest proportion of appeals due to appealable decisions. LAs coded as 8, 11 and 20 appear in all three of the tables (Tables 9, 10, and 11). Significant correlations showed that LAs with a higher rate of appeal per 10,000 also had a higher proportion of appeals to assessments<sup>63</sup> and proportion of appeals due to appealable decisions<sup>64</sup>.

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<sup>62</sup>  $r=.431$ . See Analysis 4e, Appendix 3

<sup>63</sup>  $r=.490$ ,  $p<.001$  See Analysis 4f, Appendix 3

<sup>64</sup>  $r=.431$ ,  $p=.431$ . See Analysis 4f, Appendix 3

Taken overall, we have demonstrated three ways in which the prevalence of appeals might be calculated, using two new metrics in addition to the current one. Each has a reasonable rationale and different benefits. The method based on 'appealable decisions' has the disadvantage that, at the time of our survey design, we did not know how the First-tier Tribunal SEND was going to report the appeals under the 2014 Act. Thus, we ended up with the situation where LAs could give more than one reason for an appeal under the content of an EHC plan. This distorts the 'rate' of appeal reported using this method in the present study but, if used again in future, information from LAs could be requested to match the categories used by the First-tier Tribunal SEND. This approach, and the approach based on rate per assessment request, may both be worthy of further exploration.

## 5 Appeals to the First-tier Tribunal SEND (Part 2)

### Key Findings (Qualitative)

- Our sample of 55 parents with experience of appealing to the First-tier Tribunal SEND valued the existence of that Tribunal.
- However, the process of appealing about one's child was described as very stressful and emotionally draining. Financial costs (unless eligible for legal aid) were only part of the 'true cost' which also included the 'opportunity costs' of time spent on the case and the cost to the emotional, mental and physical well-being of the parent/s, the child/young person and any siblings.
- In our sample, direct financial costs varied widely from no direct costs to financial outlay of tens of thousands of pounds. In the economic analysis conducted (see Chapter 8) the direct and indirect costs incurred by parents across our sample were conservatively estimated to be approximately **£6,300** in total.
- While appealing to the Tribunal affects only a small minority of those involved in the EHC plan processes, some children and families are disproportionately affected.
  - Our sample included those who had appealed three key EHC plan decisions and had had each upheld: refusal to assess, refusal to issue an EHC plan and content of the plan.
  - Our sample also included a number of parents who had two or three children with SEND, where each child had been the focus of at least one upheld appeal to the First-tier Tribunal SEND. These families reported being badly affected by the cumulative stress of multiple appeals, on top of the daily stresses of being a family with one or more children with special needs.

### 5.3 Themes from qualitative data

The **research questions** addressed in this section of the chapter are:

- Where parents/young people have taken a disagreement to the Tribunal, why did they decide to appeal?
- What has been their experience of that process and the outcomes?

The qualitative data we draw on is, firstly, from **55 parents** with experience of at least one appeal to the First-tier Tribunal SEND since September 2014, plus the views of **four young people** who appealed in their own name, supported by their parents. The right of young people to appeal in their own name was one of the changes made to the system under the Children and Families Act 2014. To provide other perspectives, we draw, secondly, on qualitative data from 53 LA representatives, three Tribunal panel representatives and 15 parent support organisation representatives.

### 5.3.1 Reasons why parents decided to appeal to the Tribunal

Parents in the sample appealed to the Tribunal on the grounds as set out in Figure 30 at the beginning of this chapter. The reasons why they did so were, of course, that they disagreed with the LA decision about their child's case. But, as was shown in section 5.2.1, many more parents receive a decision that is not what they wanted and do not go on to appeal to the Tribunal.

The reasons for appealing, given by the parents in our sample, were:

- They disagreed with an appealable matter
- Despite attempts to do so, this was not resolved otherwise (e.g. no resolution at meetings with LA or at mediation, or mediation refused)
- They believed their child's needs had not been fully identified and/or that their child was in an inappropriate educational environment
- Often these parents stressed that it was their **child's strengths** (i.e. indicators of potential) or the **severity of their child's needs** (for example, severely disabled children or children with rare medical conditions) that drove them on to appeal for the support they wanted for their child

Some of the parents who appealed to the Tribunal said they felt a duty to do so, hoping that it would not only improve the situation for their child but also encourage the LA to provide support desired by other parents, with children in similar situations. LA representatives, Tribunal panel representatives and parent support organisation representatives interviewed were asked their views about what purposes appeal to the Tribunal served, over and above other routes to redress. These are summarised in Figure 39.

**Figure 39 Perspectives on purposes of the appeal route within disagreement resolution options**

- A parental right: "An LA has to have a view of how it uses the resources to benefit the majority and accommodate individual needs. There are a small number of cases where that creates a tension. That's where parents have the right to challenge us." (FG8)
- An equality issue: "It has a democratic function around accountability of LAs." (FG2)
- It offers independent adjudication: "new eyes" (TR2)
- Access to experience, knowledge and expertise
- It encourages resolution of the disagreement: "There are a huge number of appeals that do not come to hearing. It's simply the process in motion that focuses people's minds and they can resolve it themselves." (TR1)
- It draws a line under a disagreement: "Children need closure. We can all get behind the decision and make it work for the child." (FG2)

- To consider the needs of the child
- To clarify the interpretation of the legislation, to build up a body of case law (Upper Tribunal)
- To have the power to direct LAs to apply the law, rather than local policy: “It leads to a national picture of consistency in applying the legislation.” (FG2)

Source: interview data

In three focus groups, it was reported that reasons for appeals tended to be around disagreements over suitable placements, with parents wanting independent provision when the LA view was that local provision could meet need. All three Tribunal representatives noted that placement issues remained a driver of appeals, with two noting this particularly in relation to post-16: “This is about provision not being made or planned for” (TR3). The lack of suitable provision for children and young people with autism was also raised by two Tribunal panel representatives as a reason for parents/young people affected by this to appeal. For example, one said:

“There has been a marked increase in [appeals about] young people with mental and social difficulties and often it’s because they have been in unsuitable provision. For example, those with autism or ADHD who can cope in primary where they are known to all and where allowances are made, in mainstream secondary schools, with no precise provision for their needs, they struggle. [...] Less aware schools react to behaviour, not need”. (Tribunal Representative 1)

### **5.3.2 Views and experiences of the appeal process**

To present the views and experiences of the appeals process described by those interviewed, we divide this into three stages: prior to a hearing, during a hearing and after the appeal has been concluded (conceded or withdrawn, agreed, or LA decision upheld).

#### **5.3.2.1 Views and experiences of the process prior to a hearing**

The period from registering an appeal to the point when the appeal was heard or conceded/withdrawn (i.e. the preparation phase) was the period described as most difficult by the parents and young people in our sample. The case study in Figure 40 gives one young person’s views about how that stage affected him and his family.

**Figure 40: Preparing the appeal: the whole family affected**

Young person's strengths(parent point of view)	Young person's diagnosed conditions affecting education
Enthusiastic, very hard-working, very protective of sibling (who had more complex SEND)	High functioning autism, Attention Deficit Hyperactivity Disorder, Anxiety, Literacy difficulties
<b>Young person's views about the process prior to a hearing</b>	
<p>“[The Tribunal process] is quite a difficult situation to be put in. [...] I care quite a lot for my brother and my family, as well as having to fight for my own needs to get what I need to become successful [i.e. the appeal].</p>	
<p>What a lot of people don't understand is, it's not just in school hours that this will affect, it's very much a case of 24/7. It applies an awful lot of stress on individuals which have to do the jobs [i.e. prepare the appeal case], especially my mum. The stress and the upset and everything that's caused, because there are these bridges being burnt down, because people either can't find the funding, or something's gone wrong in the paperwork or something, and they're just being picky about it and not doing it. All of that makes it extremely hard to want to help them help me and my family. Even cooperating is hard, when they're just putting up barriers all the time. And to see it happening to my family, I get quite grumpy and quite angry when it happens. The thing that I really struggled with was staying calm when talking to members of County [at my annual review meeting] because I didn't have time for them, because they were causing stress that my family didn't need.”</p>	

Source: separate interviews with young person and parent

The themes in Figure 40 were frequently reported by other parents interviewed:

- Negative impact on the whole family
- Children/young people affected by the stress placed on their parent/s
- Breakdown in relationships with LA staff ('bridges being burnt')
- Strong negative emotions
- The stress and hard work involved in dealing with the extensive paperwork ('the jobs')

Another young person interviewed (jointly with parent) stated that the period before the hearing was hard because of the **uncertainty** it created about her next steps in life:

“I wanted the information [i.e. the decision] to come quickly. We couldn't plan anything.” (P10, young person)

Other themes raised by parents with experience of this stage were:

- The long wait until a hearing (six months was the length of time most frequently reported).
- The difficult process of putting together a legally watertight case – 22 of the parents/young people engaged legal support (solicitor or barrister) to do this, with seven of these accessing this through Legal Aid or a charitable organisation.
- The cost of obtaining private assessment reports from freelancing professionals – these reports were not required by the Tribunal but were perceived as necessary when the *parent's view* was that one or more assessment reports obtained by the LA was out of date or lacking in detail or (reportedly) constrained by local policies that put pressure on local professionals as to what they could and could not write in their reports.<sup>65</sup>
- Dismay at what was described as “LA tricks”, such as missing out parent-supplied evidence from the evidence bundle sent to the Tribunal.
- The anger and frustration felt when the LA conceded very close to the hearing date – this was reported as leaving parents feeling that all the work and stress could have been avoided, if only the LA representatives had listened to their case in the first place:

"It's a terrible way to behave. I don't see any validation to it. There was no communication – a lack of negotiation and lack of conversation – it was all on paper. The working document was batted back and forth. It was a nightmare. We felt that the LA had dug their heels in for no reason. No-one [at the LA] gave the impression of giving two hoots. We were seen as 'difficult parents' [...] In the end, my husband had had enough and he just phoned up the LA's solicitor and said, "You are not seriously going to appeal on this" and the next day, she rang back and said, 'We concede'."(Parent P8)

This preparation stage before the hearing was also discussed in the LA focus groups and by parent support representatives. In six of the LA focus groups, LA SEND staff spoke about the importance of **the LA's approach to relationships with parents and young people during this time**. In these groups, there was an emphasis on “maintaining communication”, a “non-adversarial” approach and of being “reasonable to families”, as illustrated by the following quotations:

“What we always do is we maintain the communication routes throughout the management of the appeal so that parents don't feel that they can't change their views along the way. We don't want to have unnecessary confrontation.” (Focus group 12)

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<sup>65</sup> The view that such local policies were in place was mentioned frequently. We report it here but acknowledge that the LAs concerned may have contested the accuracy of this perception.

“It’s about doing the right thing as well. I won’t defend an appeal if I think it’s got more than a 50/60% chance of success. A lot of local authorities don’t do that. [...] It’s about being reasonable to families, knowing the stress they’re under.” [...] In this local authority, we don’t have the viewpoint where we’re against families in appeals. My viewpoint is, if we get to appeal, we’ve lost anyway because our system has failed on getting there, which I know is not that popular a view with some local authority reps.” (Focus group 10)

“We have to work with parents for a very long time. It’s not an ‘us and them’ situation. The relationship will be for several years (most of us in the team have been here for 20-30 years). We do our job as best we can, knowing the relationship will last after the appeal is over.” (Focus group 1)

“My approach is anti-adversarial. [...] We do not involve legal services. The SEND team do all the work. [...] EP and education training is around a consultative model and talking things through. [...] We talk to everyone involved and seek a resolution before [the hearing].” (Focus group 5)

Parent support representatives, especially those working in only one LA, had varying perspective on LA approaches to the pre-hearing date stage of an appeal. For example, one gave due credit to his LA for “adhering to the deadlines” and apologising if there was any delay. “They do follow the rules” (PSR 10). Parent support representative 14, working in another LA, had a different perspective, explaining that the LA had lost experienced staff and that, “new staff have been trained in LA procedure and policy, not in the law. The LA make it up as they go along.”

### **Support during the process of preparing the case**

Regardless of whether or not they had engaged legal support, twenty of the parents used parent support organisations (see Appendix 10) to help them through the appeal process, including attending mediation and/or the appeal hearing. Parent support representative 1 summarised her role in this regard as follows:

“I prepare appeals and explain the process of putting cases together. It’s taking parents through it step by step. It’s quite a scary process for a parent. Because we’ve been through appeals, we can reassure them that it’s not scary at all. Appeals can be favourable and supportive from what I have seen. All the form filling, the witnesses, each process can be explained.” (PS1)

In our sample of 55 parents with experience of appeal to the First-tier Tribunal SEND legal support was drawn on when they felt unable or unwilling to deal with the paperwork and administration themselves. In our sample, those parents and young people who were eligible for Legal Aid valued that help in preparing their case, including the opportunity to obtain additional assessment reports if needed.

## Professional reports (LA, NHS and privately commissioned)

A Tribunal panel representative stated that the Tribunal intended to issue guidance to professionals on the evidence they submit to the Tribunal. It would be based around 10 questions. “If LAs are smart, they will use that for EHC reports too.” (TR3) Such a move was welcomed by one LA representative who argued that this would be helpful and would remove the issue of the Tribunal panel trying to compare a 50-60 page independent report with a 2-page LA report. Some LA representatives said they did not value privately commissioned reports by non-LA or NHS professionals in appeal cases. However, others recognised that local/national shortages of NHS therapists (occupational therapists, physiotherapists, speech and language therapists) as well as LA educational psychologists meant that sometimes private therapists/psychologists were turned to for assessment reports.

## Tribunal administration and telephone case management

The Tribunal administration was well-regarded. One parent’s views are used to express this:

“The procedures are very efficient. HMCTS [Her Majesty’s Court and Tribunal Service] respond very quickly. They deal with things by e-mail. Case review and case management processes are very clear and both sides abide by them,”  
(Parent 84)

Telephone case management was also viewed as helpful: “To have a specialist, qualified judge directing the management of the appeal, that’s been helpful.” (Focus group 8)

From experiences reported in three focus groups and by one parent support representative of a national organisation, we heard that the welcomed reductions in the timescales for appeal hearings<sup>66</sup> had put the administrative system “under pressure”, which had led to reported delays in responses to requests for changes and in requests for telephone case management.

### 5.3.2.2 Views and experiences of the panel hearing

#### Parents’ and young people’s views

Interviews with parents who had experienced a Tribunal panel hearing indicated that almost all **valued the existence of the Tribunal route of redress** because it allowed for **independent examination of the evidence** and for **decisions based on the law** (rather than an LA’s local policy).

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<sup>66</sup> From 1 August 2016, First-tier Tribunal SEND appeals have been scheduled on a 12 week timetable, rather than the previous 20 weeks.

**Issues raised** by parents about the Tribunal appeal system in cases that went to a hearing, were that:

- The concept of ‘going to court’ was unfamiliar and stressful. Perception varied as to how daunting the actual experience was. This variation depended on how parents perceived the style and approach of the judiciary and any legal representatives present. It was particularly scary for the young people who attended their hearing even though some judges went out of their way to put the young person at their ease.
- Parents (except those eligible for legal aid) who chose to use legal representation paid legal costs and costs charged by their representative. These parents in our sample viewed it as unfair that their taxes were also contributing to the costs incurred by their LA contesting the appeal. (Appellants do not have to be represented and there are organisations, such as some IAS services and some parent support organisations, which will represent parents free of charge.)
- The situation could create a sense that ‘LA-paid staff’ were against parents. It was experienced as distressing when, for example, educational psychologists and school staff appeared as witnesses against them.
- Some parents reported being disappointed that the Tribunal panel would not take into account the past history of the child’s experiences and did not offer redress for past issues. This was felt particularly strongly where parents perceived their child’s needs had not been met over a long period of time.

### **Themes from other interviews/focus groups**

**Learning from the Tribunal’s experience:** One Tribunal panel representative noted that the Tribunal looked at individual cases, not at wider issues: “We can see the same LA over and over again but we can’t say, ‘Stop it!’. It’s a numbers game for some LAs. For example, around refusal to assess. [i.e. only a minority of such cases were appealed]” (TR3) A small number of other interviewees made the point that the Tribunal could do more to report, or act on, the patterns emerging for the cases heard e.g. repeat cases on the same issue/s from the same LA or evidence of local, regional or national gaps in provision. This was viewed as a missed opportunity for ‘the system’ to learn from experience. In fact, the Tribunal works with the Department for Education and writes letters to LAs to draw attention to any issues. (By contrast, LGO (see Chapter 6), publishes themed reports on issues raised by complaints cases that are deemed to be of wider significance. The LGO also sends a bespoke version of its annual report to any LAs about which it has concerns, based on repeated issues coming to the attention of the organisation.)

**Representation:** From our qualitative data it was clear that LAs differed in their approach to contesting an appeal. For example, based on the focus group discussions, the range of LA approaches included:

- routinely using an external legal firm to deal with all Tribunal appeal cases

- always using an in-house legal team
- handling appeal cases within the SEND team and choosing not to engage legal representative unless the parent did first
- handling appeal cases within the SEND team and having a policy never to engage legal representation to support their case, regardless of whether or not the parent used legal support

Both parents and some LA staff interviewed regarded the issue of legal representation as “quite unfair”. As one said: “You can have a lay LA representative versus a barrister or a lay parent versus an LA barrister.” (FG7).

“If I’m at appeal and the parent is unrepresented, I’ll go and sit in a room with them and talk about the case beforehand to explain that it is not personal. [I] am here to represent the local authority. I try and help them with the working document, bring extra papers for them. You get a lot of local authorities and they won’t do that with families. There has to be a working relationship after the Tribunal. I’ll hold my own against representatives because that’s their job and we’re paid to do that but it’s not the parents who should suffer in the process.” (Focus group 10)

Amongst our sample of parents, **legal costs incurred** by those who paid for legal support, ranged from **£280 to £55,000**. (See Chapter 8 for further information and economic analysis of direct and indirect cost to parents of making an appeal.) The *SEND Code of Practice: 0 to 25 years* (DfE, 2015) states that, “It is the Tribunal’s aim to ensure that a parent or young person should not need to engage legal representation when appealing a decision.” ( p259, 11.43). This was mentioned by several parents interviewed, who said that, when LAs used legal representation, this statement “rang hollow” (P12). The parent support representative perspective was that their advice and support meant that parents could avoid paying for a solicitor. In our sample of parents, there were quite a number who represented themselves.

**LA witnesses:** One Tribunal representative stated that, “often LAs bring the wrong witnesses. For example, they bring a headteacher, not a teacher or TA who knows the child on a daily basis.” This representative clarified that guidance for LA witnesses is provided by a Tribunal judge at regional user group meetings. In several LA focus groups, the difficulties of persuading relevant staff to attend an appeal were mentioned: “The struggle is to get services or schools on board to be witnesses”. To address this, one SEND manager [who had a legal background] had done Tribunal training with SENCOs and educational psychologists (EPs) (the latter in more than one local LA). The training focused on the appeal process, scenarios of what one might say in different circumstances, case law, and comparing independent EP reports with LA EP reports.

**The hearing:** LA representatives and parent support representatives described varied experiences of appeal hearings, with reports that the style and approach of judges

varied enormously (also clear from different parent reports of their experience). Those with most experience tended to be most positive. One parent support representative who had supported at over 50 appeals stated:

“I have 100% confidence in the Tribunal because of its independence of the LA and that its decisions are based on law and the evidence presented, as opposed to local LA policies which may or may not be compliant with the law.” (Parent support representative 20).

### 5.3.2.3 Experiences after the appeal had been settled

In our sample, parents reported varied experiences after the appeal had been settled. Some reported an **improved situation** for their child, others reported a **continued effort** to ensure the LA provided the support agreed during the appeal process. Four, of the five in our sample that lost their appeal, reported that the situation for their child **remained difficult** after the appeal, as did a small number of those who had won their appeal but who concluded that it had been, as one put it, “too little, too late” (P48).

The largest group reported that, after their appeal had been withdrawn/conceded or upheld, their son or daughter’s educational situation was **improved** as a result. The phrase “peace of mind” recurred in a number of these interviews, as parents were finally able to see their child thrive educationally with the additional support and/or new environment agreed via the appeal process. Figure 41 is a case study describing an improved situation following a successful appeal.

**Figure 41: After a successful appeal: improved situation (Sixth Form young person)**

Young person’s strengths (parent point of view)	Young person’s diagnosed conditions affecting education
Amazing sense of humour, can be very helpful, very good with technology, skilled at computer games and building complex Lego models	Autism, Dyspraxia, Attention Deficit Hyperactivity Disorder, Speech and language difficulties
<p><b>Situation for the young person’s education after appeal upheld</b>            Following the appeal, the young person moved to a specialist independent Sixth Form College that could meet his educational, health and care needs. His mother reported that he was very happy and settled there and was making academic progress because of the support he received there.</p>	

Source: Parent interview

A second group of parents won their appeal but then had to continue to work with the LA to ensure that the support specified in the EHC plan as a result of the appeal process was put into place. Figure 42 provides an illustration of this.

**Figure 42: After a successful appeal: support pending (child of primary school age)**

Child's strengths (parent point of view)	Child's diagnosed conditions affecting education
Very polite and well-mannered, very technically minded and willing to help others understand it too, musical, can be patient, can be gentle, strong-minded and focused	Learning difficulties, epilepsy, visual impairment, dyscalculia, dyslexia
<p><b>Situation for the child's education after appeal upheld</b></p> <p>This child's mother (P62) reported that, following the successful appeal, it was, "still full on, trying to get the provision in place. We are having meeting after meeting at school. It's very stressful." The provision was one-to-one support throughout the school day, a specialist teacher to provide support for the dyscalculia and dyslexia, an iPad to enable the child to type instead of writing by hand, and speech and language therapy.</p>	

Source: Parent interview

Among those few in our sample (5) that had lost their appeal one reported that the Tribunal's decision had resulted in their child's educational situation having improved, even if not by as much as they had hoped, had the Tribunal upheld their appeal (Figure 43).

**Figure 43: After losing an appeal: improved situation (child of secondary school age)**

Child's strengths (parent point of view)	Child's diagnosed conditions affecting education
Very talented singer; very good at sports; very kind; loves the family; brilliant with young children; happy temperament	Attention Deficit Hyperactivity Disorder; Opposition Defiant Disorder; General Anxiety Disorder; Obsessive Compulsive Disorder
<p><b>Situation for the child's education after losing the appeal</b></p> <p>The child started at the special school named in the EHC plan. This was not the school the parents had wanted for their child. The parent reported that sometimes the child struggled at school and came home saying, "I hate that school". The parent said that the school was more accepting of her child than had been the case at her previous mainstream school. "It's not what I wanted for [my child] but it's better than where she was before."</p>	

Source: Parent interview

In the four other cases, the situation after the appeal had been lost remained difficult for the child or young person. The case study in Figure 44 is of a child who was permanently excluded within two terms of starting at the school named in the statement and upheld at Tribunal.

**Figure 44: After losing an appeal: Situation worsened (Primary school-aged child)**

Child's strengths (parent point of view)	Child's diagnosed conditions affecting education
Really good memory for things interested in, comedic and funny, quite confident in interactions with others	Autism Spectrum Disorder, with very high anxiety, that can cause challenging behaviour when stressed
<p><b>Situation for the child's education after losing the appeal</b></p> <p>Following the appeal, the parents registered the child at the school the LA had named in the statement<sup>67</sup>. The mother met with the head teacher and deputy head teacher before term started. At that meeting, she reported, they told her that the school could not meet her son's needs: that the school representative that had attended the Tribunal hearing had not been aware of the statement. Nevertheless, the child attended the school but within one term, the boy had received a fixed-term exclusion, then another shortly afterwards, and before the second term was over, a permanent exclusion. Once permanently excluded, he received only two hours tuition per week. During this time, while the LA, "kept suggesting inappropriate schools", the child's mental health deteriorated, requiring treatment through CAMHS and a referral for a clinical psychologist assessment. The mother's mental health also deteriorated, requiring support from Adult Mental Health Services. At time of interview, the child's situation had not been resolved.</p>	

Source: Parent interview

In Figure 45, the case study is one where the parents deregistered the young person from school, rather than have the young person attend a school the parents believed could not meet his needs. This response to losing an appeal was not unique in our sample. In one of these other cases (P70), the LA took the parents to court for non-compliance with the Tribunal order. When it was proven in court that there was no case to be heard, because the order was to the LA, not to the parents, the LA then tried to prosecute the parents for the young person's non-attendance at school. The LA had, unbeknown to the parents, registered the young person at the school named in the EHC plan. This, too, was dismissed as an LA does not have the power to do that. The mother reported that, after the case had been dismissed, the LA's Education Welfare Officer, wrote her a letter stating that he would never apologise.

In Figure 45, the LA concerned also threatened legal proceedings but withdrew these following a complaints process. Eventually, in this case, the LA and parents found a placement that both agreed suited the young person's needs.

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<sup>67</sup> This child was awaiting transition to an EHC plan. The appeal was heard in 2015.

**Figure 45: After losing an appeal: De-registered and home schooled (young person of secondary school age)**

Young person’s strengths (parent point of view)	Young person’s diagnosed conditions affecting education
Very amusing, he likes people, very observant and thoughtful, good focus and knowledge about what he is interested in, affectionate.	Asperger’s Syndrome
<p><b>Situation for the child’s education after losing the appeal</b></p> <p>Having had their decision upheld, the LA expected the young person to attend the school named in his EHC plan. The parents were to transport him there. The parent reported that, “The LA tried to bully us to send him, using the threat of legal action. They told us the Tribunal order was legally binding on us. [In fact, the Order is binding on the LA.] The parents refused to register their child at that placement but spent “the most horrendous 9 months ever” waiting for the threat of legal action to be dropped by the LA. (This happened following a complaint to the Head of Statutory Services.) It took a full school year following the appeal before a placement was found that both LA and parents agreed met the young person’s needs. At time of interview, the young person was reported to be doing very well there, having settled in following a series of transition days.</p>	

Source: Parent interview

Parents who had experienced more than one appeal are the topic of the next section.

#### 5.3.2.4 Experiences of more than one appeal

The sample of parents that took part in the review included a small number with experience of multiple appeals to the Tribunal. In some cases, more than one child in the same family had been the subject of more than one appeal to the Tribunal. These families reported very negative effects of these repeated experiences, both on themselves and on their children. These cases also condense many of the themes raised by other parents who have experienced an appeal. For this reason, three illustrative case studies are given to reinforce these themes (Figure 46, Figure 47, and Figure 48).

**Figure 46: Case study: five appeals relating to two children**

One couple (P59) had gone through five appeals in total, related to their two children, of which two were won at a Tribunal hearing and the other three were conceded. The mother reported that the cumulative effect on her had caused her depression. This required medication and a prolonged period off work. This in turn had put her job at risk. One of her children had mental health problems, which had worsened during the appeal processes. Her view was that the LA SEN manager and SEN panel, that had made each of the decisions appealed against, were the cause: “I don’t think they understand the stress they cause.” Despite this, when she complained to the Director of Children’s Services, she reported that the response included, “You have brought this on yourself.”

Source: Parent interview

**Figure 47: Case study: three appeals relating to three children**

One woman (P79) who had three children, each adopted<sup>68</sup>, and each with very different special educational needs. In part because of the period of transition from the SEND system under the 1996 Act to that under the 2014 Act, she found herself in the position of having to appeal on behalf of each child during the same time period (i.e. all three appeals overlapped in their chronology). She described how her appeals were each motivated by a strong desire to see her children’s needs being met, yet she felt unsupported by their LA: “Does the LA see me as a crazy woman with three children? I would never have planned in a million years to have three appeals going through at the same time.” She, too, blamed the local SEN manager and decision-makers:

“I genuinely believe the reforms [i.e. under the Children and Families Act] were intended to make things better for families but it’s not happening here. This LA needs to be held to account for this. It’s just not right. [...] Ultimately, to them, finances come first, it doesn’t matter who the child is. The case officers are under-trained and don’t have a good grasp of special needs in general, which is really worrying. [...] They dismiss all the concerns parents have, and so nothing gets taken seriously. [...] This is meant to be a child-centred process. At the moment, [in this LA] the child is considered last. It’s not fair and it’s got to change.” (Parent 79) ”

This mother described the cumulative effect of three appeals, on top of bringing up three children with complex special education needs, as “horrendous”:

“It’s been a massive impact on my emotional and physical health. It’s been horrendous. It’s the cumulative effect of all three. It’s been one of the worst times in my life. I was bordering on depression around [time of one hearing]. Running up to that, I felt all I was

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<sup>68</sup> In our sample, this description is not unique and so does not identify the woman.

doing was writing letters and that affected my children.” (Parent 79)

Source: Parent interview

Figure 48<sup>69</sup> provides a summary of the chronology of one such case. It shows that the process, from request for assessment to placement in a suitable school to meet the child’s needs, took from November 2013 to April 2016, i.e. **two years and six months**. Or, from the point of view of the child, it took from when the child was in Year 2 to part-way through Year 5. During all of this time, although supported to the best of the school’s ability, the child’s special educational needs were not being met in full and were described as having worsened over this period: “You watch your child’s mental health decline. He was being violent to us and at school. He started refusing to go to Breakfast Club.” (P69) The whole experience left this parent feeling “emotionally, I feel completely drained because of it. I can’t work.” This parent also reported having, “no faith” in the LA as a result of these experiences, fearing that the LA could decide to remove the child from his new school at any subsequent annual review.

**Figure 48: Chronology of disagreement: child of primary school age with Autism and other conditions**

Child’s strengths (parent point of view)	Child’s diagnosed conditions affecting education
Very bright, Crazy sense of humour, Excellent memory, Keen to learn, Just lovely	Autism Spectrum, ADHD, Sensory Processing Disorder, Obsessive Compulsive Disorder, Generalised Anxiety Disorder, Dyspraxia, Sleeping difficulties
<p><b>First appeal - against a refusal to assess</b>            (Parent had no legal help, LA used an external firm of solicitors)</p> <ul style="list-style-type: none"> <li>• November 2013 primary school requests statutory assessment of <b>Year 2</b> child’s SEN, with parental agreement</li> <li>• LA refuses request on grounds that child’s academic progression was at an acceptable level and his needs were being met by the school</li> <li>• Parent appealed decision with backing of school</li> <li>• LA opposed appeal.</li> <li>• Tribunal date set for September 2014 (i.e. when child would be in Year 3)</li> <li>• LA concedes appeal in July 2014 (i.e. prior to Tribunal hearing)</li> <li>• Statutory assessment carried out</li> </ul> <p><b>Second appeal – against refusal to issue a statement</b>            (Legal help – Parent used <i>pro bono</i> solicitors, LA used an external firm of solicitors)</p> <ul style="list-style-type: none"> <li>• LA refused to issue SEN statement but issued a Note in Lieu – reason being child’s SEN were academically being met through school’s own budget and academic progression</li> </ul>	

<sup>69</sup> All identifying details in this chronology have been removed.

Child's strengths (parent point of view)	Child's diagnosed conditions affecting education
<p>within range expected, October 2014 (Child in <b>Year 3</b>)</p> <ul style="list-style-type: none"> <li>• School advised waiting 6 months and then submitting a new request for assessment.</li> <li>• Parent did not want further delay and so lodged appeal, December 2014</li> <li>• LA opposed appeal</li> <li>• Tribunal hearing set for May 2015</li> <li>• April 2015 – LA conceded appeal shortly before Tribunal hearing</li> <li>• Agreement to write an EHC plan</li> <li>• Final EHC plan issued August 2015 – but it failed to address parent's concerns of content or to name parent's choice of specialist placement</li> </ul> <p><b>Third appeal – against content of EHC plan and placement named</b></p> <p>(Legal help – Parent used <i>pro bono</i> solicitors for preparation and a parent organisation volunteer to support at Tribunal, LA used an external firm of solicitors)</p> <ul style="list-style-type: none"> <li>• September 2015 – mediation certificate obtained (Child in <b>Year 4</b>)</li> <li>• October 2015 application for appeal</li> <li>• Appeal date set for March 2016</li> <li>• LA conceded on placement in a local independent specialist school, March 2016 (two working days before hearing)</li> <li>• Appeal hearing still held, March 2016, to discuss and agree content of EHC plan</li> <li>• April 2016, child started at local independent specialist school</li> </ul> <p>At time of interview, parent awaiting outcome of Costs hearing to Upper Tribunal, made on grounds that LA's solicitor had delayed the appeal unreasonably. Child had settled well in <b>Year 5</b>. Parent concerned that LA would use transition to Y7 as an opportunity to move child from placement.</p>	

Source: Parent interview. Used with permission.

Appealing to the Tribunal affects only a small minority of those involved in the EHC plan processes. Those who appealed more than once, motivated by the belief (usually shown to be right) that their child's special educational needs were not being met, were disproportionately affected by the cumulative stresses and strains associated with the process.

### 5.3.3 Views and experiences of young people's right to appeal

#### 5.3.3.1 The context

The Children and Families Act 2014 gives, "significant new rights directly to young people once they reach the end of compulsory school age (the end of the academic year in which they turn 16)" (*SEND Code of Practice: 0 to 25 years*, DfE, 2015, Section 1.8). Chapter 8, Section 8.13 – 8. 16, of the Code provides further detail, including a list of these new rights:

- "The right to request an assessment for an EHC plan (which they can do at any time up to their 25<sup>th</sup> birthday)
- The right to make representations about the content of their EHC plan

- The right to request a particular institution is named in their plan
- The right to request a personal budget for elements of an EHC plan
- The right to appeal to the First-tier Tribunal (SEN and Disability) about decisions concerning their EHC plan”

(*SEND Code of Practice: 0 to 25 years*, DfE, 2015, Section 8.14).

No statistics have been published (at March 2017) on how many young people had taken up the right to appeal to the First-tier Tribunal SEND. However, we know that 10 of the 30 appeals under the Recommendations pilot (see Chapter 7) were signed by young people. Speaking about all SEND appeals, one of the three Tribunal panel representatives who took part in the research stated that, “a large number of young people appeals” had been lodged: “There is an appetite for young people to have education up to 25 years.” (Tribunal representative 2).

Two cases that went to the Upper Tribunal in 2016 (Hillingdon v VW and Buckinghamshire c SJ) were reported to have “clarified the issues” (Patel, 2016) around the new right of appeal for young people, specifically around mental capacity (both cases), the definition of ‘education’ and when a plan might be ‘necessary’ (the Buckinghamshire appeal).

### 5.3.3.2 The themes

Of our 79 parent interviewees, **18** spoke about young people with a right of appeal under the new legislation (16 at post-school stage and two in post-16 schools). In this section, in addition, we draw on data about young people’s right of appeal from the 13 local authority focus groups (53 individuals), three Tribunal panel representatives and 15 representatives of parent support organisations.

Reports of the *outcomes* of appeals by young people were largely favourable: for example, upholding the young person’s choice of placement.

The four main themes that emerged from analysis of all these views were issues in the transfer processes from a statement (those who were in school) or a Learning Difficulties Assessment (LDA) (those who were in college) to an EHC plan; issues around a lack of local suitable provision; the varied levels of preparedness of FE colleges to meet the needs of these young people, and about the new right of young people to appeal to the First-tier Tribunal SEND.

### **Transfer from a statement/ applying for an EHC plan after having an LDA**

In our sample of 18 cases, the process of obtaining an EHC plan for a young person was not straightforward. The issues raised by the individual experiences described by the parents were corroborated by the experiences of parent support representatives who had experience of many cases between them. In our interview data, these issues around transfer from a statement to an EHC plan for post-16 or post-19 further education included that not all staff had the knowledge and understanding of the new

rights under the legislation and of the implications of the extension of the age range, and that reassessments were not always conducted which often led to needs not being identified and appropriate provision and placements not then being put in place. In our sample, these situations were triggers for appeals to the Tribunal – an example is given in Figure 49.

**Figure 49 Transfer to EHC plan without “whole assessment of needs offered”**

Annie [a pseudonym] was aged 16 in January 2015 when the first meeting was held to transfer her statement to an EHCP. She had had a statement of SEN with a primary need of Cognition and Learning since the age of 10. At the transfer meeting “There was never a whole assessment of needs offered. We had annual review reports from OT and SALT but no up-to-date EP assessment.” That did not take place until **April 2016** – when Annie was assessed as having learning difficulties. Meanwhile, she had made the transition to a college, “in the main throng with all the others” which “went badly”. The college experience, without appropriate support, was very negative: “My child was drastically failing in college. She was excluded, physically assaulted and at risk of sexual exploitation because of her vulnerabilities.” The final plan was issued in August 2016. Mediation was tried, unsuccessfully, followed by an appeal lodged in October 2016. “[My daughter] was not involved in mediation. [She] is never addressed in the letters.” The appeal was over where occupational therapy belonged – in Section F (special educational provision) or Section G (health provision). Only when a new SEN 14-25 manager came in post did things begin to change: “She knows what she’s talking about. She’s been proactive and we are getting somewhere.”

Resolution: The LA conceded the Tribunal appeal in January 2017 but it was “too little too late” (update e-mail from mother) as by then the ‘at risk’ situation had escalated to a crisis.

Source: Parent 48 interview

### **Young person appeals relating to placement provision**

Two of the Tribunal panel representatives interviewed noted that disagreement over post-school placements was a trend in young people’s appeals under the Children and Families Act 2014. Other interviewees that supported parents and young people through appeals, and also some of the parents, spoke about LAs, and even regions, where there was no post-school provision suited to certain specific needs. This was viewed as triggering disagreements that resulted in appeals to the Tribunal.

Two interviewees (one for an LA, one a Tribunal panel representative) raised an issue about potentially suitable local training providers not being registered with the DfE which meant they could not be named in an EHC plan. One linked this to the Buckinghamshire Upper Tribunal case about what counted as ‘education’ post-school.

## Varied preparedness of FE colleges

Parent and parent support representatives described to us varied experiences of the presence, or lack of, support and understanding of SEND in general further education colleges, particularly in mainstream courses. Sometimes the same young person could experience both within one college, as, for example, Parent 17 described (Figure 50).

**Figure 50 Varied experience of support in a further education college**

Since Gina [a pseudonym] had turned 16, her mother had supported her through an appeal against a refusal to assess and an appeal against a refusal to issue a plan. During this time, Gina completed Foundation Support at FE college where staff had been “wonderful”. However, when Gina progressed on to a mainstream vocational course in her second year at college, “the system broke down”. At enrolment day, there was no record of Gina’s SEND, nor of the mediation agreement to which the college had been party. Gina (with an assessed learning age of 6) had been mistakenly enrolled on to GCSE courses. The mother’s view was, “It’s as if the whole of the last two years’ battle had not happened. [...] As the parent of a child with SEND, it’s normal experience to be let down. It’s normal. I expect it now - never anything easy.”

Source: Parent 17 interview

## Views and experiences of young people appealing to the Tribunal

Among the 18 young people discussed in our parent interview sample, there were examples of appeals made for refusal to assess, refusal to issue a plan and about the content of the plan, including placement. Reports of the *outcomes* of appeals by young people were largely favourable, for example upholding the young person’s choice of placement.

Parent reports of these young people’s experiences of the *process* of mediation and appeals were largely negative. For example:

- A young woman aged 16 (‘Gina’) attended mediation but the parent reported that no account was taken of her needs and that she walked out and went back to her college class. Similarly, in a later meeting with the LA seeking to resolve the situation, the young woman attended but was not given an opportunity to speak and so left again after two hours of being “bored” and listening to the EHC plan co-ordinator behave in a “very aggressive, full on manner” and with an “awful” attitude, according to Parent 17.
- A young man, aged 16, lodged an appeal with his mother acting as his helper. The parent reported that the mediator “insisted [our son] talk to him on the phone” because the LA wanted our son to do [the appeal] all himself. (Our son has social communication difficulties [as part of complex needs]). The young man and his

support worker attended the mediation meeting but he had to leave: “he was nearly sick due to anxiety but the LA officer insisted she wanted to see him”.

- The son of Parent 49 planned to attend his Tribunal appeal hearing. He mapped out a route from his home to the venue and undertook a practice journey with his helper. Unfortunately, shortly before the date of the hearing, the venue was changed. This reportedly caused the young man great anxiety which prevented him attending. (A Tribunal representative later clarified that, had the Tribunal administration known this, they would not have changed the venue.) His parents said they tried to share with the panel members a short video clip of their son (as he did not attend) but that, “they did not want to see it”.

On the other hand, Parent 3 described the benefit of her son attending mediation and presenting his evidence: “It was important for us that our son went because he is quite compelling when he gives his own evidence.”

### 5.3.3.3 Case studies of four young people’s views and experiences

Four young people took part in the research (three young men and one young woman). We refer to them by pseudonyms and give their ages at the time of their appeal: Andrew (aged 19), Freddie (aged 17), George (aged 16) and Laura (aged 22). Their views related to their appeal are reported in this section, three in their own words and one through the voice of his mother<sup>70</sup>. Each had appealed in their own name, supported by their mother. Figure 51 tells the story of Andrew’s two appeals to the First-tier Tribunal SEND.

**Figure 51 Andrew’s appeal: resolved prior to hearing**

Andrew (aged 19) made two appeals, both of which were resolved prior to a hearing. Andrew had had a LDA to support him in the local mainstream FE college and had coped during the first two years but struggled in the third year after a change of sites and staff. The LA refused to issue an EHC plan and so he submitted an appeal. Two weeks prior to the hearing, the LA had been debarred from further participation in the process and from attending the hearing for failing to submit the evidence bundle. When the Tribunal sent out the bundle, the parent reported that the LA section contained no evidence to support their decision not to issue a plan. Andrew’s Legal Aid solicitor then applied for a paper hearing<sup>71</sup>, in part to, “save Andrew from going through the stressful ordeal of attending the tribunal”. Three days before the hearing, the LA conceded and agreed to issue a plan.

<sup>70</sup> Andrew submitted his views about his complaint to the Director of Children’s Services rather than about his appeal.

<sup>71</sup> Although not relevant to Andrew’s appeal, it is worth noting that, from 1 August 2016, all appeals against a refusal to assess are dealt with without the need for a hearing.

“It has to be said, throughout that [preparation] time, [Andrew] was stressing himself to death about going to the Tribunal, thinking that it would be all his fault if we didn’t get the plan. It was really distressing to see that. They [the LA staff] put him through that. It was absolutely disgraceful. I still feel very angry about that, what they put him through. It’s totally outrageous. It’s not necessary. People need to think about what they do. It’s like it’s just a name to them on a bit of paper or a number on a sheet. There’s no acknowledgement that this is a real person you are dealing with.”

Andrew was then “incensed” when the draft plan was issued naming the placement he had visited and decided was not for him, as opposed to the one he had chosen. He submitted another appeal in June 2016 and got a hearing date in December. For Andrew, this meant another year out of education. This appeal was resolved through a meeting with LA senior officers, where it was agreed to fund his placement, at the specialist college he had chosen, for one year, from September 2016. Andrew was “delighted”. In an email update, in early 2017, his mother reported that Andrew had settled in well and was making good progress. As a result, the LA was considering funding a second year at the same college to enable him to achieve GCSE Maths: “They have to fill in gaps in his learning due to how much school he missed.”

Source: Interview with Andrew’s mother

Both Freddie and Laura’s respective appeals to Tribunal went to the hearing stage. Both prepared their views for the hearing. Freddie decided not to attend – instead, he prepared a PowerPoint of his views and wishes, and included links to two videos he’d made about the impact of his disabilities on his experience of life. Figure 52 provides some contextual information about Freddie and sets out the points he made in his PowerPoint slides.

**Figure 52 Freddie’s presentation to the Tribunal panel**

Young person’s strengths (parent point of view)	Young person’s needs affecting education
Does not see himself as disabled, uses his voice, makes films to communicate complex ideas, a national charity ambassador.	Quadriplegic cerebral palsy, cerebral visual impairment, audio-processing difficulties, severe speech, language and communication needs, complex epilepsy
<b>Young person’s views presented at Tribunal hearing via PowerPoint</b> <ul style="list-style-type: none"> <li>• I want to stay at [name of specialist college]</li> <li>• I want to learn to do things myself</li> </ul>	

Young person's strengths (parent point of view)	Young person's needs affecting education
<ul style="list-style-type: none"> <li>• I want to learn to do what you do but I need more help</li> <li>• I want to show you how some of my disabilities affect me [links to You Tube films<sup>72</sup> made by this young man about his disability]</li> <li>• Everything takes a long time to learn and I need a lot of help from a lot of people</li> <li>• Learning isn't just lessons in a classroom</li> <li>• Learning isn't 9 o'clock to 4 o'clock</li> <li>• Why do I have to do this?</li> <li>• Why do I have to ask to learn to be independent at court?</li> <li>• I like to choose when I stay</li> <li>• I sometimes have films to make at home and teach myself green screen</li> <li>• I am planning a campaign and documentary with Whizz kids so can't stay all week yet</li> <li>• I need to learn the skills to do simple tasks and living and not have to ask mum to do them</li> </ul>	

Source: Parent 78 interview and young person's PowerPoint slides (used with permission)

**Figure 53 Case study: Laura's experience of attending her Tribunal hearing**

Laura attended her Tribunal hearing accompanied by her father, whilst her mother acted on her behalf. Laura reported that, "The judge was really nice. She liked me." Laura's mother elaborated, explaining that the judge had made a point of coming over to talk to Laura, gave her a comic to look at, assured her she could leave the room at any time and granted her unique permission to call the judge 'Judge [First name]'. Laura made it clear during the joint interview with her mother that she had really appreciated this friendliness. However, the experience of the journey and the unfamiliar surroundings, plus the stress of knowing that her future plans were being decided upon meant that Laura "had a meltdown" (her mother's words) and had to leave the panel hearing. In the interview, though, it was clear that Laura was proud that she had attended in support of her strongly expressed desire to attend the independent specialist college she had chosen for herself.

Source: Joint interview with Laura and her mother

As in Andrew's case, George's appeal, against a refusal to issue a plan, was resolved prior to the hearing. In his interview, he described the difference this made for him in his Sixth Form College (Figure 54) and expressed his gratitude for that. He also said he

<sup>72</sup> These films had had over 8,000 views (at 7.3.2017).

wished it could have been achieved without “all the madness” of the appeal process (see Figure 40 in Section 5.3.2.1 for George’s views of the appeal process).

**Figure 54 "A very noticeable difference": after George’s appeal**

**Has the Tribunal decision made any difference to the support or understanding that you’ve encountered at school?**

“A lot more people have been aware since the Tribunal is over. The school has made a very noticeable difference in the effort they make and are trying to help. I really do appreciate it. I’m still quite sceptical about the whole situation because I just don’t know what way it’s going to go but, since the Tribunal, they have done very, very well. They’ve done credit, they’ve done well. They’re doing what the document says [the EHC plan] and any resistance is extremely small, hardly noticeable. It’s a big change and I’m grateful it is. I just wish it could have been done without all of the madness that came along with it.”

Source: Interview 24

## **5.4 What has been learned about appeals to the First-tier Tribunal SEND**

By looking at the proportion of appeals to the First-tier Tribunal SEND in relation to the number of relevant appealable decisions made at LA level, we have shown that only a small minority of such decisions are appealed. We have also shown that, when looked at in this proportional way, our data indicate that the decision most likely to be appealed is refusal to issue an EHC plan following an EHC needs assessment. The review has also highlighted that there is potential for greater use to be made of data about patterns of decision-making and appeals at LA level.

The First-tier Tribunal SEND was valued for its independence, its application of the law. It was viewed as having democratic accountability functions that enabled parents and young people to challenge LA decisions. However, both preparing for a hearing and attending a hearing were experienced as very stressful and draining by parents. Some LA representatives described approaches to working with parents and young people during appeals that minimised the sense of it being an adversarial process. The use of legal representatives by either side in the appeal was recognised as an issue. Some LAs had adopted voluntary practices of not using legal representatives and others of only doing so if parents did so first.

Parents and young people expressed frustration and anger when appeals were conceded after many weeks and months, believing that such appeals should never have been necessary in the first place or could have been resolved earlier. Our review has also highlighted that, among the minority of parents/young people who appealed to the Tribunal, there is a very small minority who have experienced multiple appeals,

sometimes for more than one child in the same family. This group of families was found to be greatly affected by the cumulative strain and costs associated with these processes, on top of the daily stresses of life as a family with one or more children/young people with special needs.

We learned that young people have taken up the new right to appeal in their own name. In the cases in our sample, the young people largely achieved what they had wanted from their appeals (for example, the placement of their choice). The research also highlighted issues around accessibility of the appeal process for young people, and around support in further education colleges.

## 6 Complaints processes about SEND cases: different routes for education, social care and health

### Key findings

The SEND complaints system comprises **separate routes** for use, dependent on factors such as, type of education establishment attended and the type of complaint.

The national scale of SEND complaints is currently unknown. Information on numbers and types of SEND complaint are not routinely collected or collated by LAs (SEND teams and social care) or by health providers/commissioners.

This means there is very limited data to judge the scale of SEND complaints:

- The Local Government Ombudsman (LGO, 2016) published a report showing that SEN complaints accounted for 10% of complaints and enquiries about Education and Children's Services during April 2015 – March 2016. (Complaints may be made to the LGO only once LA complaints processes have been exhausted.)
- At local level, some LA SEND and social care teams had begun the collection and review of SEND complaint data to inform service delivery and commissioning.

Parents interviewed had three main concerns about SEND complaints processes:

- when the complaint was ignored or not taken seriously
- when the response to the complaint took too long to emerge
- when the response did not help to put right the issue complained about

From all the qualitative data we gathered about SEND complaints (40 parents, 13 LA focus groups (53 individuals), eight complaints processes representatives, 14 representatives from parent support organisations), we concluded that:

- the **complaints arrangements** most often used by parents/young people in relation to SEND disagreements were **education** (school and/or LA) complaints processes
- social care complaints processes were reportedly less often used
- health complaints arrangements reported as least often used in relation to a SEND disagreement
- However, only a sample of areas were researched and the national picture may differ

Good practice included joint responses to SEND complaints that related to health and or social care, as well as to education aspects of the process.

Where complaints processes were treated as little more than an administrative burden, they failed to resolve disagreements. In such cases, parents sought other avenues of redress, sometimes using multiple complaints routes in parallel.

Conversely, when complaints were taken seriously and responded to in a person-centred, respectful way, they could be quickly resolved and could be used to improve practice.

## 6.1 Introduction

The **research objective** addressed in this chapter is:

- To examine **whether** health and social care complaint arrangements are **working for children and young people with SEND and their parents**, taking into account other reviews, such as the Francis inquiry (February 2013) and the Clwyd Review (October 2013)

### 6.1.1 The Francis Inquiry and the Clwyd Review

The Francis Inquiry (February 2013), the public inquiry into the Mid Staffordshire NHS Foundation Trust, provided an important context for examining the extent to which complaint arrangements are working for children and young people with SEND and their parents. That Inquiry found that complaints were a warning sign that “something requires correction”. It prompted the Clwyd Review (October 2013) of NHS hospitals’ complaints systems. Figure 55 highlights the quotation from the Francis Inquiry that was used in the Clwyd review to acknowledge that fact.

**Figure 55: The importance of paying attention to complaints**

#### **Francis Inquiry finding quoted in Clwyd Review**

“A health service that does not listen to complaints is unlikely to reflect its patients’ needs. One that does will be more likely to detect the early warning signs that something requires correction, to address such issues and to protect others from harmful treatment.”

“A complaints system that does not respond flexibly, promptly and effectively to the justifiable concerns of complainants not only allows unacceptable practice to persist, it aggravates the grievance and suffering of the patient and those associated with the complaint, and undermines the public’s trust in the service.”

(Public Inquiry into the Mid Staffordshire NHS Foundation Trust, Volume 1, Chapter 3 pp 245-287)

Source: Clwyd and Hart, 2013

The Francis Inquiry made recommendations about effective complaints handling that are relevant to any public service, if adapted to reflect that service context. Similarly, the Clwyd Review reported on the key points about making a complaint that “patients, relatives and friends and carers” (p20) wanted to see improved. Transposed to the

SEND context of parents, young people and children, the same issues apply. Figure 56 lists these Clwyd Review key findings but uses the words ‘parents and young people’ instead of the original ‘patients’. Later in the chapter (section 6.3), these themes will be shown to reflect the views of the parents with experience of complaining who took part in the present review.

**Figure 56: Key points from Clwyd Review transposed to SEN complaints context**

- **Information and accessibility** – parents and young people want clear and simple information about how to complain and the process should be easy to navigate.
- **Freedom from fear** – parents and young people do not want to feel that if they complain their situation will be worse in future.
- **Sensitivity** – parents and young people want their complaint dealt with sensitively.
- **Responsiveness** – parents and young people want a response that is properly tailored to the issue they are complaining about.
- **Prompt and clear process** – parents and young people want their complaint handled as quickly as possible.
- **Seamless service** – parents and young people do not want to have to complain to multiple organisations in order to get answers.
- **Support** – parents and young people want someone on their side to help them through the process of complaining.
- **Effectiveness** – parents and young people want their complaints to make a difference to help prevent others suffering in the future.

Source: Slightly adapted from Clwyd and Hart, 2013, p19

### 6.1.2 Evidence base

The chapter is based on qualitative data from two main types of interviewee:

- (i) **40 parents** who had made over 70 complaints
- (ii) those we will refer to as ‘**SEND complaints interviewees**’:
  - 15 people representing organisations that supported parents
  - discussion of complaints processes in 13 LA focus groups involving 53 individuals from a range of roles, including those responsible for managing complaints
  - 8 interviews with people who dealt with education, social care or health complaints

We sought interviews with a further 20 representatives dealing with complaints who did not take part. Some of those non-participating people were health and social care complaints representatives who responded to explain that, within the overall caseload dealt with, the number of cases relating to children as opposed to adults was small, and that the number of cases that related to children/young people with SEND was relatively low. One response indicated that there may also be an issue about awareness of such cases: “We get minimal feedback on this issue.”

We also draw on data from our analysis of feedback relating to complaints processes on the **Local Offer websites** of all **152 English LAs**.

In this chapter, we look first at the complexities of the SEND complaints system, then we report on the limited data that currently exists on the scale of SEND complaints. Finally, we present key themes about SEND complaints that arose in parent and SEND complaints interviews.

## 6.2 SEND complaints processes

The three public services of education, social care and health each have complaints processes in place. Our focus is on those complaints processes that are relevant to SEND. The *SEND code of practice: 0 to 25 years* (Chapter 11, paragraphs 11.67 – 11.111, DfE, 2015) provides information about **10 relevant complaints routes**:

- Early education providers' and schools' complaints procedures
- Complaints to the Secretary of State (under sections 496 and 497 of the Education Act 1996 and, regarding disability discrimination, under Section 87 of the Equality Act 2010)
- Complaints to Ofsted (about early years provision or a school as a whole, not individual children)
- Post-16 institution complaints
- Local authority complaints procedures
- Local Government Ombudsman (LGO) (investigates the process by which local authority decisions were made, not the decision itself)
- Parliamentary and Health Services Ombudsman (PHSO) (investigates complaints that individuals have been treated unfairly or received poor service from government departments and other public bodies in the UK, and the NHS in England)
- Judicial review
- NHS Complaints
- Complaints about social services provision (Children Act 1989: the Local Authority Complaints Procedure)

This raises the **first issue** about SEND complaints, which is that, far from the ‘seamless service’ mentioned in Figure 55 above, there is a **complaints system with multiple**

**routes for different complaints scenarios** which reflect the multi-faceted nature of providing SEND support and EHC plans. Different parts of the complaints system are **governed by different legislation** and **dependent on certain specifics of each case**: what type of school/setting the complaint is against, whether it is about education, social care or health, and whether the complaint is about provision, decisions, processes, EHC plan or disability discrimination. The matrix table in the Code of Practice (pp246-247), list **16** possible sources of redress about a complaint relating to **nine** different types of complaint categories.

The second issue is that each of the ten complaints routes listed above has its own staged procedures which take **varying amounts of time** to be worked through, if issues are not resolved at the first stage. For example, schools tend to have complaints processes that start by writing to the headteacher and then, if not resolved, to the Chair of Governors. If still not resolved, such complaints can be escalated to the Department for Education's School Complaints Unit. Local authorities tend to have procedures that begin by contacting either the head of the relevant department or a central complaints team who will log the complaint and refer it to the relevant manager. If not resolved, the next stage is usually to involve another more senior manager who is independent of the department or team complained about. A third stage may be to have a panel chaired by an external, independent person. In cases of social care complaints, local authorities are required by the Children Act 1989 (Section 26 (3)) to have a three stage complaints process with fixed timescales underpinned by a principle of independence (LGO, 2015). Sometimes this same process is used for other local authority complaints also. If still unresolved, these complaints can be taken to the LGO.

## **6.3 Scale of SEND complaints**

### **6.3.1 Lack of national or local area data**

It is not possible to report on the scale of SEND complaints because these data are not collated. Regarding national data, the only set published on SEND complaints relate to those that reached the **LGO** during one year (LGO, 2014). LGO cases are limited to those that have already exhausted all stages of an LA's complaints processes. From April 2015 to March 2016, the LGO (2016) received 3,438 complaints and enquires about education and children's services. Of these **355 (10%) were about SEN**. Of the SEN complaints, **70% were upheld**, compared to 51% across all complaints. This LGO report was unusual in identifying the SEN complaints and enquiries within the overall data on Education and Children's Services.

The **Schools Complaints Unit at the DfE** commissioned research examining complaints that, during August 2012 to July 2013, had exhausted school complaints processes without being resolved and had been escalated to that Unit (Bevington, 2014). During that period, 284 such complaints were reviewed, of which **20 (7%) related to SEN**. A separate customer satisfaction survey was also commissioned

covering the same time frame (Matthias & Wiseman, 2014): this found that the “key drivers of satisfaction” were ‘ease of being able to make contact’, confidence in the complaint being taken seriously’, and satisfaction with the time taken to reach an outcome’ (p8). The **0-25 SEND Unit** at the DfE may receive formal complaints when an LA (or a school) is not carrying out its statutory duties or is doing so unreasonably (powers under the 1996 Education Act). These data are not currently collated.

Our LA surveys did not include questions asking for numerical data on complaints because of the complexity of the number of possible routes and stages of complaints relating to SEND. Early on in the study, we asked 13 LAs for feedback on a draft set of questions related to complaints about SEND across education, social care and health complaint routes. From this we learned that these data were not readily available and that it would be too onerous to ask LAs to collect it for the surveys.

For the purposes of this review, we were therefore limited to relatively small-scale qualitative work to begin to understand how SEND complaints processes across education, social care and health were working for parents and young people.

### **6.3.2 Information on scale of complaints from SEND complaints interviewees**

Across the SEND complaints interviews (which included representatives from education, social care and health, as well as the LGO and Healthwatch England), the consensus was that **SEN complaints were “not that big an issue” (C5) in terms of scale**. Those that reached the LGO were viewed as usually being complex but the numbers were low. Across the LA focus groups, in only one of 13 LAs was it reported that “we get quite a few” (FG7). In the rest, a typical response was that there were “very few” (e.g. FG4). This picture was corroborated by the representatives of organisations supporting parents: of 14 such organisations, one reported no experience of supporting parents in connection with complaints, while the 13 other organisation representatives reported small numbers of parents seeking support to make complaints.

On the other hand, six SEND complaints interviewees noted the **disproportionate amount of time** that could be taken up by **one or two parents who used multiple avenues simultaneously** to seek redress of a complaint:

“Different routes often run alongside. A parent can be doing mediation and disagreement resolution and involving elected members and MP and meeting with local councillors. [...] It takes up a disproportionate amount of time.” (FG11).

In two LA focus groups and two other SEND complaints interviews, the topic of “difficult to cope with” parent behaviour around complaints arose. This was recognised to be a result of the “always highly charged” emotions (FG5) aroused by a sense that the parent’s child had been negatively affected by the issue complained about. Examples of such behaviour cited included a parent that emailed an SEN manager 650 times in one

week, and a parent who complained to so many people that the LA had to insist that only one point of contact be used.

Most of our small sample of SEND complaints interviewees reported that SEN complaints had **remained at about the same level** over time. Two reported increased numbers of SEN complaints, explaining this in terms of the “higher expectations” (FG3) of parents since the Children and Families Act 2014.

### 6.3.3 Number of complaints made by our parent sample

Turning now to our sample of 79 parents, just over half, from 19 different LAs, had made at least one formal complaint related to SEND processes or provision. In total, these **40 parents told us about over 70 separate complaints**. Just under a half had made **one complaint**, the other half had made **more than one complaint**. There were cases of two complaints, three complaints, and four and six complaints respectively (over a period of years).

The majority of these parents made complaint/s related to **education**: 27 parents made complaint/s against LA SEND processes/provision (29 separate complaints) and 11 against school processes/provision (15 separate complaints). A minority (6) had made complaints against both school and LA SEND processes/provision. Two also made separate complaints about the LA complaints processes not being implemented properly. Complaints to the **DfE** (i.e. to the Secretary of State for Education under 1996 Act) were made by four parents in the sample: two after school complaints procedures failed to resolve the issues and two after LA complaints procedures failed in resolving the case. Six parents, having made complaints against their LA’s SEND processes/provision, escalated these to the **LGO**. A few of the parents also involved their local MP, the Cabinet member or Councillor for Education and/or OfSTED, two had written to the Prime Minister and two had initiated Judicial Review proceedings. In our sample, those who involved multiple avenues of redress around the same complaint did so because they were seeking someone willing to be **accountable** for addressing the issues about which they were complaining. In two cases, the parent admitted that there was also an element of “getting their own back” on the LA: “They made my life a misery. I wanted to make them suffer a bit too.” In both these cases, the parents also reported later realising that a more constructive approach worked better.

Seven parents in our sample made a complaint against **social care** and six against a **health provider** (hospital trust or CCG). In each case, these complaints against a health provider were responded to at the first stage of the process. The six complaints made against social care varied in terms of how many stages of the complaint processes were used but only one went to Stage 3. (In another case, the parent involved the local MP and Councillor for Education, in addition to the social care process.) One parent had previously (i.e. before 1 September 2014) escalated a complaint about health processes to the **PHSO**.

Of the 40 parents in our sample who made complaints, **about a fifth** complained to **education and social care and/or health**. These parents had to navigate three separate complaints processes.

The numbers presented in this section are very small and derived from a small, self-selected sample of parents. They cannot be generalised beyond this particular sample. Instead, they provide a snapshot of over 70 complaints and the varying patterns of resolution or escalation. This snapshot is the best picture we have at the current time and may be of use in the future to guide further research and data collection and collation around SEND complaints.

## 6.4 Themes from qualitative data

### 6.4.1 Ease of making a complaint

“Whilst a uniform process of complaints handling should be applied, the making of a complaint should be easy to do.”

(Francis Inquiry, 2013, Executive Summary, 1.152, p72)

Most of the 40 parents interviewed who had experience of making a complaint reported that **finding out how to make a formal complaint was not difficult**, largely because of the availability of this information on the internet. In this group, most followed these procedures. A small minority bypassed them and simply “went to the top”, complaining to, for example, the Director of Children’s Services or the Chief Executive of an NHS Trust, without first having found out what the formal complaints procedure was.

Of the 40 parents, only a few reported seeking or needing **help to make their complaint/s**. Those who did turned to organisations, such as IPSEA or Support for SEND. Many such organisations offer support to help parents and young people make a complaint: 13 of the 14 parent support organisations that took part in the review reported doing so.

Data from our analysis of published feedback on LA’s Local Offer websites<sup>73</sup> allowed us to gain a wider perspective on how easy it was to find out how to make a complaint. In total, 25 LAs (16% of all 152 LAs) had received feedback relevant to disagreement resolution processes, of which **eight** (5% of 152 LAs) had received feedback asking that information on how to complain be made more accessible via the Local Offer website. In each case, the published response was that such information already existed, had been added, or would be added.

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<sup>73</sup> See Appendix 11 for further details.

Taking together our interview data and the data from the Local offer feedback analysis, we concluded that information about **how** to make a complaint was relatively easy to access.

However, in reviewing ease of making a complaint, we should also take into account any **barriers that prevent people from complaining**. In our total sample of 79 parents who were interviewed for the review, there were seven parents (9%) who had **decided not to complain**, despite describing issues during the interview that could have been the subject of formal complaints. The reasons they gave for not complaining are set out in Figure 57. Although these were only seven individuals, the range of reasons is similar to points made by participants in the Clwyd Review (see also Figure 56 above) and the Healthwatch England report (2014), suggesting that these reasons may have a wider resonance with other parents too.

**Figure 57: Reasons given for not complaining**

Reasons	Quotes from 7 parents (some gave more than one reason)
No faith in the system	<p>“You could never prove it anyway. [The school staff] would always have another story of what your child did or whatever.”</p> <p>“[Complaining] wouldn’t have changed anything”</p> <p>“If a truly independent complaints system was in place, then we would have [used it].”</p> <p>“There would be no one there to take it seriously. They all believe it is not their job.”</p>
Too stressful	<p>“We’ve got enough on our plate without that.”</p> <p>“I feel too stressed to [make a complaint]”</p>
Reluctant to complain about an individual	<p>“I didn’t want to go through reporting anybody for wrongdoing or anything like that.”</p> <p>“I don’t like the idea of making a complaint about a specific person.”</p>
Reluctant to complain for fear it would affect any future appeal to the Tribunal	<p>“I think my child has been failed by the system but we would like to go off the radar. We may well have to fight again (i.e. appeal to the Tribunal) and so would rather not complain now.”</p>

Source: Parent interviews, 2016-17

## 6.4.2 Approaches to responding to complaints

Among our small sample of people responsible for responding to SEND complaints from an education, social care or health perspective, six reported that their local

approach was focused on a **child-centred/person-centred approach to finding a resolution from the start**. For example, one social care representative said,

“As an organisation, we try to be receptive to complaints. We take them very seriously. For the complainant, it’s a big issue.” (Complaints processes representative 7)

A seventh described the local approach as a “rights-based approach” with, again, a focus on reaching a resolution. All seven of these representatives described aiming to meet with the person who had complained, or at least to have a telephone conversation with them, as soon as possible. That conversation was designed to understand what the core issues were (which sometimes turned out not to be the issue mentioned in the written complaint), and to work out what type of resolution the person sought – for example, simply an apology, or action to put something right, or an assurance that changes would be made to prevent the same situation arising again.

One local authority in our small sample described a different approach to complaints handling. This was summed up by the statement: “We don’t talk to parents about complaints. We investigate and we provide a written response.” (FG7). The drawback to this approach would seem to be that it missed the opportunity to clarify the issues and the outcome desired by the complainant.

Across the SEND complaints interviews, there was consensus about the key features of a good quality written response to a complaint. These were a response that:

- acknowledged the seriousness of the complaint
- addressed the concern point by point
- stated the reason for the decision to uphold or not uphold the complaint
- if complaint upheld, stated what had been learned from it and what would change as a result of it
- offered an opportunity to respond if not happy with the decision, and an opportunity to meet to talk that over
- stated the next step necessary to escalate the appeal if that were felt necessary.

### 6.4.3 Experiencing the complaints systems

In the group of 40 parents interviewed with experience of complaints, the experience varied. The varied themes that emerged reflected this:

Some had an **immediately satisfactory experience that resolved the situation**. Of the 40 parents, two had very positive experiences of the complaints system. One complained to the Chair of Governors (three times) about three separate school issues, each of which were immediately taken seriously and resolved.

Some were **not aware that there was a complaints system** that could have been used. A small number in our sample of 40 reacted to the situation complained about

almost instinctively, without stopping to find out what the correct procedure would be in order to lodge a complaint and gain a response. These parents said they were never told about the complaints system, or supported to use it at any point in their subsequent attempts to gain redress. Instead, they experienced their situation as a lonely battle with seemingly every door being the wrong door to achieve resolution. For these parents, these experiences created a deep sense that there was a lack of accountability around SEND complaints.

Some encountered a **lack of awareness** of the complaints process within their local SEND teams. Some complaints were not dealt with as formal complaints by the person who received them and so the parent received no response, or a much delayed response (e.g. six months later). Some SEND complaints interviewees were aware of this problem and spoke of the need for SEND teams to be trained in recognising a complaint and in handling complaints effectively:

“[SEND teams] need some effective complaint handling training. [Our training] starts with how to identify a complaint. [...] A complaint is an expression of dissatisfaction and that’s what some officers struggle with.” (Complaints processes representative 4).

Such experiences contributed to views expressing no faith in the complaints system, for example:

“It took six months to be passed on [from the SEN officer to the complaints team] and then it was almost immediately batted back to us saying, ‘No, this is SEND so it must be an appeal.’ [...] The complaints procedure was non-existent and that is dangerous. That is when people go to the press. [...] I was really shocked [by the lack of action].” (Parent 88)

The young person’s complaint letter (Figure 58) is an example of a complaint that generated no response at LA level, until escalated to the LGO. When SEND complaints systems were experienced as unresponsive or dismissive of parents or young people’s complaints, this fostered a strong sense of there being no accountability within a system based on statutory duties. **“There is no accountability”** was a statement made by many of the parents who took part in the review but it was most frequent among those who had had negative experiences of the SEND complaints systems.

Like Parent 88 quoted above, several other parents and SEND complaints interviewees mentioned that not everyone was clear about what could be appealed to the First-tier Tribunal SEND and what should be treated as a complaint. School transport issues related to placements named in a statement or an EHC plan was one example given where parents were, reportedly, often not made aware that this could be appealed to the Tribunal.

Some had a **lengthy, and therefore stressful, experience** of going through set stages that each added time before the situation complained of was addressed. Most of the 40

parents who complained, and used a local authority complaints process, went through more than one stage of that process. The time delay involved in doing so was described using words such as “stressful” and “distressing”.

**Figure 58: Complaint letter from a young person – ignored until escalated to the LGO**

[This complaint related to the delay in informing this young man that, despite engaging in developing a draft plan with him and his mother, the LA had eventually decided not to issue a plan, thus putting his college placement in jeopardy. The complaint was upheld by the LGO and recommendations made to the LA.]

### **Formal Complaint**

Dear [Name of Director of Children’s Services]

I am writing a formal complaint because I am very cross with you and the council because you have all been letting me down by not giving me the funding for [Name] College and an educational health care plan. I would like to know why you haven’t given me a plan.

We went to one meeting and talked about an educational plan and then my parents went to four more meetings but it turns out that I can’t have a plan now and this makes no sense. Who said I couldn’t have a plan and why? Whoever said this has made my situation worse!

Since I haven’t been going to college after the summer ended I have been stuck at home just sitting upstairs in my room all day and this has been making me feel like a complete failure, and it’s all because of the council letting me down. The new code of practice says the council should listen to children and young adults but they have obviously been doing the opposite due to them not taking any notice of me and not providing an educational plan.

I really miss going to college and talking to people in class and I’m starting to worry about maths because I’m forgetting some methods.

Do you even care about young people or not? I don’t think you do because all you care about is saving money.

Yours sincerely

[Name of young person]

Source: Used with permission of the young person and parents

### **6.4.4 Issues complained about**

The interview data about complaints indicate that the main topics of SEND complaints were around delays in statutory timescales or in placing a child/young person in a school; placement decisions, especially decisions made about secondary school placements for those with a statement or EHC plan; school transport decisions in relation to placements of those with a statement or plan, and failures in communication to the parent.

## Education complaints: schools

In our sample of 40 parents who had made complaints, SEND complaints against schools fell into two categories: (i) incidents involving the child and (ii) failure to provide for SEND. Examples of both categories are given in Figure 59.

**Figure 59: Examples of complaints against schools**

(1) Incidents involving the child
<p>Bullying by a staff member of a child with severe and complex needs</p> <p>"Wanton unkindness - cruelty, real cruelty and bullying' by staff</p> <p>"My child was bullied to the point of being physically tortured and hit on a daily basis [and nothing was done about it]"</p> <p>Non-accidental injury of child by head teacher</p> <p>Head teacher's conduct and mismanagement of child's SEND</p> <p>Child left by himself in a room; child manhandled and bruised by untrained staff</p>
(2) Failure to provide for SEND
<p>Not providing support set out in statement of SEN</p> <p>Not providing support set out in EHC plan</p> <p>Refusal to buy in educational psychologist to do an assessment (on grounds that the school had used up its credits)</p> <p>Failure to provide for child's SEND</p> <p>Failing to provide an out of school tutor in a timely manner</p>

Source: Parent interviews, 2016-17

In our sample, in only four cases were school complaint matters resolved to the parents' satisfaction. In some cases, the failure to resolve complaints about incidents involving a child led to parents removing such children from the respective schools. Other interviewees also reported that schools tended to be less responsive to complaints than LAs. For example, one reported that "Schools tend not to be very good at responding to complaints, and that's drawing also on my experience as a governor as well" (C4), while others said school complaints processes were "less effective than LA processes" and were "confusing for parents" because the processes varied depending on the type of school attended by the child or young person.

## Education complaints: LA SEND team

Complaints against how the LA carried out its statutory SEND duties could be grouped in to four categories: delays in processes, failure to provide statutory provision, behaviour or competence of staff member and failure to follow statutory processes (Figure 60).

**Figure 60: Examples of complaints against LA SEND teams**

(i) Delays in processes
<ul style="list-style-type: none"> <li>Delays in EHC needs assessment process</li> <li>Delays in issuing final EHC plan</li> <li>Delays in setting up annual reviews</li> </ul>
(ii) Failure to provide statutory provision
<ul style="list-style-type: none"> <li>Speech and language therapy, as set out in statement or EHC plan</li> <li>Full-time education for a child with EHC plan</li> </ul>
(iii) Behaviour or competence of staff member/s
<ul style="list-style-type: none"> <li>Paperwork sent to wrong school, paperwork lost</li> <li>Not listening to and/or not communicating with parents</li> <li>Communicating in a manner perceived as rude or insensitive</li> </ul>
(iv) Failure to follow statutory process
<ul style="list-style-type: none"> <li>Not following a Tribunal Order</li> <li>Not amending a statement/EHC plan after annual review</li> <li>Not following EHC needs assessment process</li> </ul>

Source: Parent interviews, 2016-17

How complaints against LA SEND teams were resolved varied. For example, some were resolved at the first stage by such actions as apologising and explaining what changes had been made as a result of the complaint, or putting right the problem complained about. For example, in response to a complaint about delays in receiving a draft EHC plan, one parent reported that the SEN consultant came to the house and was hugely apologetic and wrote the draft within a day. Conversely, other Stage 1 complaints were ignored or responded to in a manner that left the parent feeling “battered away” or “fobbed off”. In our sample, this led to escalation to further stages. These further stages could either resolve the issues or could lead to further issues arising. For example, in one case we were told that the Stage 3 independent investigator upheld the parents’ complaint and included in the report the statement that it was, “noticeable and chilling how little empathy all staff had for the family”. The SEND manager was told to

apologise and pay damages to the family but neither happened and so the complaint went to the LGO. The LGO upheld it.

In one case reported to us, there seemed to be a deliberate policy of using complaints as a gateway to provision – a complaint about lack of speech and language therapy provision was met by an admission by the SEN Manager that, only when a formal complaint was received, was this scarce provision put in place.

### **Social Care complaints**

The small number of complaints made to social care by the parents in our sample related to **assessments** (young person should have been assessed as a child, not as an adult; social care refused to do a Child in Need assessment); **lack of respite care**; and **disagreements over social care plans for the child or young person** (e.g. a move to assisted living, a move to a different city, a change to daily transport arrangements).

In these few cases, resolution came not from responses to the social care complaints processes but through other interventions. These included, for example, by local MPs becoming involved or simply by, as Parent 29 put it, the arrival of a social worker “who knew how to do her job properly”.

### **Complaints handled by the LGO (Education and/or Social Care)**

Of those in our parent sample who took complaints to the LGO, **three** reported that **their LA had not implemented the LGO recommendations at time of interview**. In two of these cases, the parents reported being told that, in order for the LGO to deal with that, they would have to register a new complaint with the LGO. Both gave up at that point. In the third case, the LGO caseworker repeatedly reminded the LA of the recommendations made but, at time of interview, they had not been implemented. An LGO representative clarified (by email) the position as to how that organisation handled non-compliance with recommendations, explaining that, “more robust systems for following up all remedies” were being introduced, including asking LAs to provide evidence that all recommendations had been complied with. Should recommendations not be complied with, three possible responses could be made. As reported by our parent interviewees, the LGO representative explained that one option was to “chase the council until the recommendations have been implemented in full”; a second option was to register a new complaint specifically about the failure to comply, adding that these cases would “generally go the Ombudsman with a recommendation to issue a public report”. In addition, the LGO would also “usually look for a further remedy because of further unnecessary time and trouble and distress caused by the additional failings”. The LGO representative emphasised that, provided it was made aware of the situation, the organisation “would not simply allow LAs not to comply with recommendations made”. A compliance rate of 99% was reported in 2015-16 (LGO, 2016). This topic of compliance with recommendations has been included here not only for its relevance to this chapter on complaints processes but also because of its

potential relevance for understanding the likely effectiveness of recommendations made by the First-tier Tribunal in the Recommendations pilot (Chapter 7).

A second theme was the length of time the LGO process took. Two parents told us they did not go ahead with complaining to the LGO when they realised how long it would take to be resolved. On the other hand, it is understandable that cases that have remained unresolved to the point of being passed up to the LGO would take time to investigate and reach a conclusion.

Others reported a successful resolution to their appeal, with the LGO upholding their complaints and recommending financial and other remedies. For example, the resolution of the young person's complaint, highlighted in Figure 58, was that the Ombudsman upheld the complaint and recommended that the Council should:

"Pay (the young man) £1,000 for distress caused by severe delay in making a decision on whether he met the threshold for an EHC plan and frustration of an expectation and reasonably held belief, sustained by the Council for many months, that a decision had been made to arrange his education under an EHC plan. The sum is also an acknowledgement payment for detriment caused by delay in providing him with the opportunity to appeal to the SEND Tribunal against the Council's decision not to make an EHC plan.

Pay (the parent) £500 for distress caused by frustration of a reasonably held belief, sustained by the Council for many months, that a decision had been made to arrange her son's education under an EHC plan and wasted time and effort contributing to a draft EHC plan." (Email update from parent of young person)

## Health complaints

In our small sample, the issues complained about to health providers were: **lack of therapy provision** (lack of SLT for profoundly deaf child, insufficient provision of physiotherapy and absence of occupational therapy for over a year for a child who required this daily); **failure to provide necessary equipment** (in this case, a working electric wheelchair), and a complaint **against an individual medical professional**.

Responses to the complaints were mixed in these few cases. An example of a successfully resolved case was where the health provider apologised and agreed that the child needed more physiotherapy. These needs were written in to Section F of the EHC plan after legal advice. An example where staff turnover led to a resolution breaking down was a case where it was agreed that a newly appointed occupational therapist (OT) would include the child on her caseload. This did not happen because the manager who made that agreement left his role without having put it in writing, and so the lack of OT provision continued. We were told about one case where the letter responding to the complaint was written in such a way as to be very upsetting for the parent who received it.

## 6.4.5 Satisfaction with the complaints processes as a way of resolving SEND disagreements

We asked the 40 parents in our sample how satisfied they were with the complaints processes as a way of resolving disagreements around SEND. Most described themselves as being 'not at all satisfied', with small numbers being 'not satisfied' or 'neutral'. Reasons for giving such low levels of satisfaction included:

"It's illegal, what goes on." "It's crooked." (School complaints processes)

"The LA complaints system took years and I had a child at risk at home. [...] The process doesn't work. It's bureaucratic. It's not aimed at sorting out the situation quickly, or at all. The bureaucracy doesn't understand the issues. It's not fit for purpose." (Parent 29)

"The system is rubbish. I had to give up work as soon as my son was illegally excluded." (Parent 41)

"The LGO is toothless. [...] The LA Complaints team thought that, because it was about SEN, it had to be an appeal! [...] I've been to my MP. He is useless!" (Parent 49)

"They ignored the initial complaint, then sat on it, then did not do what the LGO had recommended." (Parent 50)

We also asked these parents whether, having experienced making a complaint, they felt it had been worthwhile to do so. Views varied with some being pleased that processes had been changed as a result of the learning from the complaint, whilst others felt that nothing had changed and nothing had been gained.

## 6.4.6 Costs of complaints

### Cost to parents, children and young people

In our sample of 40 parents, only two mentioned a **financial** cost related to making a complaint. One spent £2,000 on legal advice, whilst another spent £12,000 on a Judicial Review because the complaints process had failed to produce a response to the issues raised. The rest spoke about costs in terms of the **time spent** on the complaint and in terms of the **mental and emotional strain** it placed on the parent/s but also on the child or young person with SEND.

"Lots of time. It took over my life. When we were supposed to be supporting [our son] and teaching him, we spent two years fighting the system." [...] My partner has had a few breakdowns with this, emotionally – depression. It's been very, very difficult. [...] Also our son is aware of it all and he is very annoyed about it because he wants to go to school." (Parent 19; son out of school for two years)

“The emotional and mental costs have been significant. My daughter used to get very anxious and upset for me.” (Parent 90)

### **Cost to LAs and health providers/commissioners**

From our small sample of complaints representatives from education, health and social care, it was clear that costs of complaints about SEND were not routinely collated. One children’s services complaints manager reported that it would be possible within the data system they used to cost up SEND complaints specifically. Others said they would estimate such costs based on time. Stage one responses to complaints were described as costing relatively little time. One estimate of an average complexity case was three hours of a principal officer’s time and one hour of admin time, compared to a complaint to the LGO which the same person estimated at 16 hours of a team manager’s time. In another LA, the manager responsible for SEND complaints estimated that the most complex complaint they had had, which had involved health colleagues as well as education, had taken up 13.5 hours in total, involving two health managers (3 hours each), two SEN managers (3 hours each), admin time (one hour) and Director time (20 minutes).

The statutory Stage 2 process for a children’s social care complaint was estimated by one complaints manager as costing anything from £2,500 to £10,000, depending on how much the independent investigator charged and how complex it was.

Overall, the view was that costs of the SEND complaints system were not excessive. This links back to the earlier point about the relatively small scale of SEND complaints.

### **6.4.7 Learning from complaints**

“[Complaints] are a source of information that has hitherto been undervalued as a source of accountability and a basis for improvement.”

(Francis Inquiry, 2013, Executive Summary, 1.152, p72)

Parents in our sample valued it when they were told that changes had been made because of their complaint. Others, even if their own child’s situation had improved because of the complaint, expressed a preference that there would have been wider changes made as a result so that other children would not go through what their child had experienced.

“Yes, it was worthwhile doing it for my child – but it made no difference for other children in the same boat in that school. I know that there are other parents reporting that headteacher’s conduct is appalling towards other children and parents.” (Parent 37)

The benefits of learning from complaints was a theme across most of the SEND complaints interviews. For example, one LA SEN manager reported using complaints

data to review gaps in provision, such as CAMHS provision. Another reported that learning from a specific complaint had fed in to the local development of the autism pathway. A third reported that any trends in complaints were analysed and used to develop relevant training to address issues such as inter-personal skills, or communicating information, with a commitment to using the learning from any complaints to make improvements in the system.

#### **6.4.8 Suggestions as to how to improve the SEND complaints system**

Both parents and SEND complaints interviewees suggested improvements in the SEND complaints system. Many of the parents wanted their local school and local authority complaints system to be **more responsive and accountable**. They also wanted SEND complaints to be **more independent** – a recurring theme was that the first stages of complaints processes meant that the person being complained about had the responsibility to deal with the complaint. These parents wanted this to be changed.

A **composite list** of the suggested improvements made by our small sample of SEND complaints interviewees was:

- To pull together SEND complaints across education, health and social care into one system (citing the Tribunal Recommendations pilot as a precedent for this) but basing it around a person-centred, problem-solving approach, rather than modelling it on the Tribunal system
- To ensure that all SEND staff were trained to recognise and deal effectively with complaints, using an agreed process
- To use mediation (i.e. provided via disagreement resolution services) to help resolve issues that would otherwise go to formal complaint
- To build up the ability of education, social care and health staff to deal constructively with parents under pressure

One focus group participant was from a local parent representative group. This person argued that what parents deserved was a:

“Robust complaints process, with education, health and social care working together to provide parents with an open and honest response. We [i.e. parents] have to provide so much evidence why our child needs something, so we want a good level of evidence back as to why a decision has been made.” (FG5).

## 6.5 What has been learned about SEND complaints processes

There is a lack of numerical information about the number of SEND complaints because there are no requirements to gather these data. From the information we were able to gather, it would seem that it is likely that most SEND complaints are about education, regardless of whether or not the child or young person has an EHC plan. These are dealt with through the complaints processes for early years settings, schools and colleges or, if about LA SEND duties, processes, or staff, through LA SEND complaints processes. From the limited information available, SEND complaints that cover health and/or social care aspects of special educational needs duties, provision or processes, are a minority of all SEND complaints. SEND complaints about social care are dealt with through the LA social care complaints process, with an expectation that the LA's SEN lead would be informed and, if relevant, involved in the resolution. SEND complaints about health, if first lodged through the LA SEND team, would be dealt with through the relevant health service processes, again with an expectation of keeping the SEN manager informed and, if necessary involved. If first lodged through health complaints processes, we do not know to what extent the special education needs of the child or young person would trigger liaison with the school or LA.

The experiences of parents and young people using these complaints processes varied. The key determining point was how the complaint was responded to at the start. If acknowledged and taken seriously, the experiences reported to us suggest that these complaints can be resolved and used as a source of learning and as a driver of improvements. Judging from the experiences of the parents and young person who participated in this study, if, in that first stage in whichever process is used, the complaint is unacknowledged or the response is dismissive, then the stress and time involved in taking complaints further, through the various escalation stages, was experienced negatively by the parents and young people.

Participants in the review made suggestions as to how ease of access to the SEND complaints processes for education, health and social care could be improved. From parents and young people's point of view, the most effective improvement would be to ensure every complaint is responded to in a timely and respectful manner, and in accordance with the relevant process for handling complaints. Parents and young people in the study also wanted to know that their complaint would be used, not only to acknowledge and put right the issue complained about, but also to improve the situation for other children and young people who might be similarly affected but had not complained. They also wanted to know that, if complaints were ignored or dismissed, or complaints procedures were not followed, that there was accountability.

## 7 The Recommendations pilot: Extension of the powers of the First-tier Tribunal SEND

### Key Findings

- The Recommendations pilot resolved the health and social care issues presented and led to some improvements in joint working around SEND across education, health and social care. The 30 pilot appeals lodged resulted in nine Tribunal hearings under the pilot Regulations. These **did not produce sufficient evidence** to enable assessment of health and social care responsiveness to recommendations, nor of the wider implications for the health and social care sectors.
- The 30 appeals came from a total of 10 LAs: 15 of them were from one LA. Seven of the pilot LAs had no pilot appeals. Nineteen pilot appeals were from parents and 11 from young people.
- Almost everyone we asked (79 parents, 53 local authority representatives, 19 mediators, 15 representatives of parent support organisations) **supported the principle** that the First-tier Tribunal should have powers relating to the health and social care aspects of an EHC plan, as well as the education aspects. This was seen as making sense, given the scope of EHC plans.
- We interviewed nine parents out of the 30 parents/young people who appealed under the Recommendations pilot Regulations. All nine were very positive about the concept of the Recommendations pilot, believing that being able to talk about the health and/or social care needs of their son/daughter alongside the education needs made their case both stronger and easier to present. One young person took part in an interview along with her mother.
- The views of the Recommendations pilot expressed in the thirteen pilot LA focus groups (53 people) varied but, overall, there was agreement that there had been too few cases to judge the effectiveness of the pilot or the wider implications of any recommendations made.
- Benefits of the Recommendations pilot noted by participating pilot LAs (composite list) included that it stimulated more joined up working across education, health and social care, increased knowledge of each sector's relevant legal frameworks and practices, and acted as a 'lever' to promote reaching a resolution prior to the Tribunal hearing.
- Telephone case management of the pilot appeal cases by the presiding judge was successful in ensuring that missing reports, for example from health or social care partners, were obtained by the LA. In several cases, this provided sufficient information for the decision being appealed against to be changed and the appeal conceded.

- During the pilot, 11 Tribunal decisions were made in relation to requests for recommendations involving health (15 requests, 5 decisions) and social care (24 requests, 6 decisions).
- Interim follow-up data, regarding recommendations made, showed that, by end of February 2017, one recommendation to a clinical commissioning group had been refused because the recommendation had been based on evidence from a private report; and, in two instances, decisions as to whether or not to implement were the focus of further discussions at local level. The remaining recommendations had been implemented in full.
- Interviewees' views varied regarding the potential effectiveness of non-binding recommendations as opposed to orders. Where there was a history of good working relationships with health and social care, local authority representatives were confident that recommendations would be actioned. However, many other interviewees expressed scepticism that recommendations would be acted upon, believing an order would be necessary to achieve implementation.
- The main concern raised about the pilot (in three pilot LA focus groups) was regarding the possible implications for social care of the extended Tribunal powers – for example, Looked After Child status in relation to decisions about residential placements<sup>74</sup>.

## 7.1 Introduction

The **research objective** addressed in this chapter is:

- To **understand the effect** of a pilot of 17 LAs to extend the powers of the First-tier Tribunal SEND to make **non-binding recommendations** on disagreements about **health and social care** aspects of EHC plans.

Under the Children and Families Act 2014, the powers of the First-tier Tribunal in relation to EHC plans were limited to the educational aspects, specifically three sections:

Section B – the child/young person's SEN

Section F – the special educational provision required by the child/young person

Section I – placement

This meant that none of the other sections of the plan (i.e. Sections A, C, D, E, G, H1, H2, and J) could be considered by the Tribunal when reaching a judgement about an appeal. This included health provision (Section G) and social care provision (Sections

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<sup>74</sup> The Tribunal could always made decisions about residential placements on education grounds; the Recommendations pilot enabled such decisions to be taken on education and social care and/or health grounds.

H1 and H2). During the development of the Children and Families Act 2014, there was some pressure from House of Lords' peers, sector organisations and parents that issues with the health or social care sections of the EHC plan should be addressed during an appeal to the Tribunal. The argument was that doing so would enable the Tribunal to take a holistic view of the education, health and social care needs of the child/young person who was the focus of the appeal. It was agreed to try out ('pilot') what effect it would have if the First-tier Tribunal SEND were given the power to consider the health and social care sections of the plan and to make non-binding recommendations where appropriate.

The pilot was framed by Regulations<sup>75</sup> that meant that, within the pilot areas, for appeals about the educational aspects of an EHC plan, Tribunal powers were extended to the health and/or social care aspects also. The Recommendations pilot closed to new appeals on 31 August 2016. Hearings related to pilot appeals continued through into March 2017. The delivery of the pilot was facilitated by Mott MacDonald.

The pilot involved 17 English LAs that volunteered to take part (13 LAs took part from 1 June 2015 and four more from 1 February 2016). The 17 included LAs with a history of high, medium and low numbers of appeals per year to the First-tier Tribunal SEND.

## **7.2 The scale of the Recommendations pilot**

Because EHC plans were new under the Children and Families Act 2014, the potential scale of the Recommendations pilot was unknown in advance. During the pilot, 17 LAs took part. They had varying histories of levels of appeal to the Tribunal from hundreds per year to none in recent years.

From interim information provided by the Tribunal<sup>76</sup> (Table 12), we know that 30 appeals were lodged under the Recommendations Pilot Regulations. The 30 appeals came from a total of 10 local authorities and 15 of them were from one LA. There were seven pilot LAs that had no pilot appeals. Of the 30 pilot appeals, 11 appellants were young people using their new rights of appeal under the Children and Families Act 2014 and the other 19 were parents.

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<sup>75</sup> The Special Educational Needs and Disability (First-tier Tribunal Recommendation Power) (Pilot) Regulations 2015 and amendment dated 5 January 2016.

<sup>76</sup> Unpublished interim report, 17.2.17 and additional e-mail communications.

**Table 12 Pilot appeals lodged**

<b>Pilot appeals lodged</b>	<b>Number</b>	
Number lodged in total	30	
Number lodged by a young person	11	
Number of LAs where pilot appeal was lodged	10	
<b>Pilot appeal outcomes</b>	<b>Number</b>	
Went to a full hearing as a pilot appeal	9	
Conceded or withdrawn following agreement prior to a hearing	11	
No longer a pilot appeal	6	
Still ongoing (at 20.3.17)	4	
<b>Pilot requests for recommendations and decisions involving</b>	<b>Number of requests</b>	<b>Number of decisions</b>
Health	15	5
Social care	24	6

Source: Communication from Tribunal (interim data as at 20.3.17)

Of the 30 pilot appeals, in terms of **domains of the issues**:

- 12 involved education and social care aspects, of which four went to full hearing, and two remain in process.
- 5 involved education and health aspects, of which two went to full hearing and one remains in process.
- 13 involved education and health and social care aspects, of which four went to full hearing, and one remains in process.

Health issues were about the description of health needs, lack of specificity in terms of the health provision and/or nature of health provision. Social care issues were about lack of social care assessment, whether or not a residential placement on social care grounds was required and/or lack of specificity in terms of social care provision.

In terms of **process outcomes**:

- Ten of the 30 appeals lodged went to full hearings, at which point one did not proceed as a pilot appeal because the social care issues had been resolved
- 11 were withdrawn or conceded (a similar rate to non-pilot appeals)
- In five cases, the health and/or social care aspects were settled and so the appeal continued but not under the Pilot Regulations
- In one case, the appellant moved away from the pilot LA and so that appeal also continued but not under the pilot Regulations.
- As at 20 March 2017, four pilot appeal cases remain in process

The nine pilot appeals that went to full hearings were relevant in terms of whether or not **recommendations** were made. From interim information provided by the Tribunal (see Table 12), we know that the Tribunal made five decisions relating to requests for recommendations involving health and six decisions relating to requests for recommendations involving social care. In Section 7.3.4.1, we report on implementation of the recommendations.

### **7.2.1 Potential scale of demand for health and/or social care aspects to be considered during an appeal**

Even with the experience of the pilot, it remained difficult to assess the potential scale of demand for health and/or social care aspects to be considered at appeal. Under the Children and Families Act 2014, the health and/or social care aspects of EHC plan disagreements cannot be taken into account at Tribunal. This is the strongest argument for extending the powers of the First-tier Tribunal SEND to enable such disagreements to be considered in the round and resolved in one forum.

Separate DfE-commissioned research (Adams, L. and others, 2017) showed that, in 2015, 47% of plans covered health needs and 48% social care needs. However, as demonstrated in Chapter 2 and Chapter 4, the proportion of issued EHC plans that were appealed was relatively small. In our data, based on 25,420 EHC plans from 109 LAs, 6% were appealed (see Figure 7, Chapter 2). Of these, it is likely that only a relatively small proportion would have been cases that required health and/or social care aspects to be included in the plan.

Using the data we have from our 42 LAs that completed all three surveys (Table 2, Appendix 3), we know that disagreements involving education and health and/or social care aspects made up 30% of the 284 cases where parents/young people took up mediation in Year 1 and 50% of the 718 mediations in Year 2. But only a proportion of the total number of disagreements that went to mediation went on to appeal (22% in Year 1 and 14% in Year 2 (Figure 27 in Chapter 4). From our data, we cannot say how many appeals resulted from these mediation cases concerned EHC plans that included health and/or social care provision.

We can say that, in the cases where parents/young people refused mediation, disagreements involving education and health and/or social care aspects made up 21% of the 327 cases in Year 1 and 35% of the 626 mediations in Year 2. Again however, only a proportion went on to appeal (27% in Year 1 and 38% in Year 2) and we cannot tell how many of these related to EHC plans that included health and/or social care provision.

We conclude from our survey data that it is likely that **a relatively small but important sub-set of appeals** currently going to the Tribunal **also involve disagreements about education and health and/or social care** aspects of the plan.

## 7.3 Themes from qualitative data

### 7.3.1 The health and/or social care issues raised in pilot appeals

The health and/or social care issues raised in **pilot appeals**<sup>77</sup> are set out in Figure 61. Some of these issues were resolved prior to the appeal hearing. Telephone case management, where the judge spoke to the parties to the appeal on the phone to clarify the issues and to check that all necessary information had been submitted, played an important part in this. Where crucial health and or social care reports were missing, the judge was able to use powers under the Regulations to direct that these reports be forthcoming. In several cases, the receipt of the information in these reports was enough for the LA to change its decision and resolve the appeal.

**Figure 61 The health and social care issues raised in pilot appeals**

<p><b>Resolved during telephone case management</b></p> <ul style="list-style-type: none"><li>• Failure of LA SEND team to gather evidence from health, particularly from Child and Adolescent Mental Health Services (CAMHS), and/or from social care services</li></ul> <p><b>Resolved at or before Tribunal hearing</b></p> <ul style="list-style-type: none"><li>• Disagreement over whether or not a residential placement was required by a child/young person</li><li>• Disagreement over whether a child/young person required direct therapy (which would come under Health) versus therapy delivered through an enabling/consultative model (which would come under Education)</li><li>• Disagreement about the child/young person's need for provision of interventions from CAMHS and adult mental health</li></ul> <p><b>Resolved through Tribunal recommendations</b></p> <ul style="list-style-type: none"><li>• Failure of social care service to undertake social care assessments for Child in Need or for disabled child where needed; failure to do a care assessment for young people over 18</li></ul>
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Sources: 9 interviews and 9 focus groups (experience of pilot appeals)

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<sup>77</sup> What counted as a pilot appeal was a matter of judgement because whether or not the issues at stake were the responsibility of education, health or social care had to be decided by the judge and panel. This meant that two of these nine cases involving our pilot appeal interviewees were registered as pilot appeals but the judgement was that responsibility fell to education and so they were treated as normal appeals from that point. Similarly, one of the nine cases became a pilot appeal during the hearing at the suggestion of the judge, with agreement of all parties.

These same health and social care issues (Figure 61) were also reflected in disagreements described by parents who were not part of the pilot. In addition, these non-pilot parents raised other issues relating to health and social care that were part of their SEND disagreement. These are summarised in Figure 62 to illustrate the kinds of issues that may have arisen if the Recommendations pilot had operated beyond the 17 pilot areas.

**Figure 62 Additional health and social care issues raised by non-pilot parents interviewed**

#### **Health issues raised outside the pilot areas**

- Disagreement around definition of SEND (e.g. refusal to assess because profound deafness was viewed as a medical need and not SEND)
- Late or non-existent reports from relevant health professionals
- Poor quality professional reports (inaccurate, misunderstanding of the EHC needs assessment process, not based on direct knowledge of the child/young person, not specific about provision to address needs)
- Cases where professionals showed unwillingness to learn about rare conditions in order to understand the child/young person's EHC needs and the implications for EHC provision (examples included health, social care and education professionals)
- Lack of CAMHS provision to assess and support children/young people affected by severe anxiety and other mental health issues that are part of, or co-morbid with, other diagnoses, such as autism or learning difficulties
- Difficulty in getting health representatives (e.g. paediatrician) to attend mediation

#### **Social care aspects raised outside the pilot areas**

- Lack of knowledge about entitlements under Chronically Sick and Disabled Children's Act 1970 and other relevant social care legislation
- Lack of knowledge about the different assessments that may be done, including Carer Assessment
- Assessments done by unqualified social care staff (e.g. family care worker)
- Poor quality professional reports
- Social worker or family care worker not attending mediation
- Respite care not offered/not available/inadequate to need for respite
- Specialist childcare over school holidays not offered/available

Source: 46 parent interviews

### **7.3.2 Parents/young people's experience of a pilot appeal**

We interviewed nine parents who had experience of the recommendations pilot from three different LAs. Their views about the **concept** of the Recommendations pilot were all positive. One parent lost the appeal but was pleased that health issues had been included, viewing this as having been "helpful" because, in her view, health issues were causing the SEN issues so it was "definitely better" to have health included in the

appeal: “Every aspect of the child’s life should be taken into consideration. It all ties together, all are intertwined with the others.” (Parent P2). Another parent did not have to attend a pilot appeal hearing because the LA conceded the appeal beforehand. This parent was very strongly in favour of the Tribunal being able to look at all sections of the EHC plan. He argued that it made no sense to have these together in the plan and then separate them out again if there were disagreements. When thinking of progression to adulthood, this parent argued that health and social care needs contributed as much, or more than, education needs and so it made good sense to take an holistic view of the young person’s situation.

Among the group of nine parents that we spoke to, several had appealed against their respective LA refusing to name a residential placement. The Tribunal has always been able to name such a placement on education-only grounds. Tribunal panel representatives interviewed spoke of how difficult it was when cases came before them where it was clear that, viewed holistically, the child or young person required a residential placement but viewed purely on educational grounds, such a decision could not be justified. The Recommendations pilot provided an opportunity to remedy this. However, perhaps because the pilot had encouraged much closer working with social care colleagues than had previously been the norm in some of the pilot areas, it was Tribunal decisions to order residential placements on education-only grounds that led to discussions back at LA level about the role of social care assessments in such cases. The parents in our small sample were simply pleased to know the residential placement had been agreed, not minding whether it was funded jointly by education and social care or not.

Among our small sample of parents with experience of pilot appeals, the issues brought to appeal regarding health provision related to therapies – occupational therapy and speech and language therapy. In one of these cases, the Tribunal ruled that the provision was education provision and in another recommendations were made to health about provision of direct one-to-one speech and language therapy and occupational therapy for a time-limited period. In the latter case, the parent would have preferred a binding decision on health rather than recommendations.

The logic of the EHC plan and of the recommendations pilot prompted one pilot parent (and several non-pilot appeal parents) to make the point that it would be even better if the EHC plan was viewed and ‘owned’ as a document by all three public services – education, social care and health. For example, one said:

“[The Recommendations pilot] is a good idea in principle but [the EHC plan] is an education document and therefore the buck stops with education. It’s not co-written. It’s written by education. [To make the pilot work], you’d need health, social care and education working as a team.” (Parent P8)

In terms of the experience of a pilot appeal, the parents we interviewed had no other experience of appealing to compare it to so, for them, it was just their appeal. One said

she could not imagine how such an appeal could be heard purely on education-only grounds. To her, it seemed self-evident that the education, health and social care aspects would all be considered in turn. However, there was a real issue about **how well, or not, the opportunity of the Recommendations pilot was communicated to parents** in the relevant areas. A small group among the nine parents we spoke to had not been aware that their appeal was part of the Recommendations pilot (although at least one acknowledged that they may have been told but had not taken in the fact, amongst all the other paperwork and information associated with their appeal). Several of the pilot LAs did not appear to have adapted their decision letters to parents to make them aware of the pilot. Among our sample of non-pilot parents interviewed, there were several from pilot LA areas who said that, had they known about it, they would have lodged their appeal under the pilot. Interview evidence indicated that there was also a lack of awareness about the Recommendations pilot among some of those who supported parents to make their appeal.

All but one<sup>78</sup> of the pilot parents interviewed about the Recommendations pilot thought the recommendations **should be made binding**. For example, one said: "If it is the Judge's [considered opinion], then it should be an order." Another made the point that, during negotiations with the LA, therapy provision had been moved from the health provision section of the plan to the special educational provision section in order to make it legally binding. This person argued that this proved how important it was that provision in the health and social care sections of the plan should also be legally binding. A third said, "I was slightly disappointed about a recommendation rather than an order. [...] It would be much more preferable to be legally binding."

### 7.3.3 Young people's pilot appeals

Of the nine pilot appeal interviews, two were about young people. In both cases, the appeal was about a request for a residential specialist college versus an LA offer of a local package of provision. The extended powers of the Tribunal were perceived as helpful in resolving both.

**Case 1:** Parent P9 described her 18-year old daughter as having "severe autism", as requiring help with personal care and as being "very vulnerable in every area". During the EHC plan development process, a residential specialist college placement was supported by the young woman's school, by CAMHS and by the respite centre the young woman attended. The issue was that the LA (education and social care) did not agree to this. Parent P9 said: "I battled with the education representative as, apparently, life skills are not an education thing." The EHC plan was finalised with a day placement, plus transport. Parent P9 sought mediation but the meeting did not take place as social

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<sup>78</sup> The remaining interview was a 'narrative flow' style of interview. This question was not asked.

services did not respond to the invitation. Parent P9 submitted the appeal. According to Parent P9, in this case, social services would normally have waited for the outcome of the appeal before considering the case again but, because this appeal would have been heard under the pilot Regulations, agreement was reached prior to the Tribunal hearing. Education agreed to fund the education element and social care agreed to fund the residential aspect. (This agreement was also, reportedly, influenced by the intervention of the local MP.) This parent said that the appeal process “was worth it” because it enabled her daughter to “get what she deserved. [...] I just wanted my daughter to go to college. [...] [The LA opposing the appeal] felt like they were slamming doors in our faces.” (Parent P9). At time of interview, this parent was able to feedback that her daughter had settled well into the new setting and had coped with the changes involved.

**Case 2:** The second pilot case was one where the young woman appealed in her own right, having seen a TV programme about a particular residential specialist college and having decided on that basis to attend the open day. After that experience, this young woman knew that this was where she wanted to go to gain the skills she knew she needed in order to become employable in a hotel, which was her aim. Her mother acted as her helper for the appeal. The LA offer was of a non-vocational FE college course two days a week, plus three mornings a week working as an ‘intern’ at a local pub, helping to wash up and so on. There was a local residential home option but the young woman did not want to live there because she had friends who did so and knew that this experience would not give her the opportunities of a waking day curriculum. The young woman’s mother said that she felt the LA “is paying lip-service” to the extension of the age range to 25 years.

This young woman’s EHC plan had not been based on any reassessments of her needs (then aged 21, the assessments had been done when aged 4). Her mother reported: “I feel very let down by the school staff. I don’t think they were educated enough about [the transfer process] and about the importance of the EHC plan.” (Parent P10) Through the appeal process, updated LA assessments were done (including by an educational psychologist, speech and language therapist and occupational therapist) and, through Legal Aid granted to the young woman, independent assessments were also done. However, the need for these new assessments meant that this young woman was delayed by a year in moving on to the college of her choice. The Tribunal panel ordered the requested placement and encouraged the LA to fund this for the full three years, even although this would take the young woman beyond age 25. The appeal being heard under the pilot Regulations meant that the evidence of this young woman’s needs could be viewed holistically and recommendations made as to speech and language therapy and occupational therapy provision. This parent said she couldn’t imagine what the case would have been like if only the education parts of the EHC plan had been considered. Her experience of the pilot appeal hearing was: “It’s holistic. At the Tribunal, every area of the EHC plan was talked through step by step. It’s all relevant: one thing impacts on another.”

In both these cases, the respective independent specialist colleges had, reportedly, advised the parents that they would have to appeal in order to have a chance of their LAs funding the placement. As Parent P10 said:

“It’s disappointing that we had to go to Tribunal. It was a very stressful process and living with a young woman with complex needs every day is stressful enough. It’s disappointing that you have to fight for something that is, effectively, your right. But those choices are taken away, unless you fight for them.”

In one further case in our sample, Parent 49 would have appealed through the pilot but was wrongly told that it ended on 1 August 2016 instead of 31 August. Her son, aged 17, had complex SEND and his appeal had social care and health aspects to it. It focused on the argument that his needs had not been properly assessed and that therefore Section F (special educational provision) was inappropriate.

### 7.3.4 Other parents’ views about the Recommendations pilot

All but one of the 70 parents interviewed, who were not directly involved in the Recommendations pilot, thought **the concept** of it **made good sense**. This suggests that, among parents with experience of SEND disagreements, the principle that the First-tier Tribunal SEND should also be able to consider the health and social care aspects of an EHC plan has ‘face validity’. Illustrative comments included an expectation that extending the power of the Tribunal in this way would encourage **better joined-up working across education, health and social care professionals**:

"[The Recommendations pilot] sounds like a positive step for parents. Anything that brings more cohesion to the different professionals involved would be a good thing." (Parent 88)

"I think [the Recommendations pilot] is a good idea because these are all separate organisations [i.e. education, social care and health] and they don't talk to each other. They're not as transparent as they should be with each other and so information does get fragmented. There's no continuity at times because the support your child needs comes under three different umbrellas. If they all worked together, and it was multi-disciplinary working, like we'd all like, things would be better." (Parent 25)

Many expressed doubts over whether non-binding recommendations would be effective. The majority view among this group of parents was that binding orders would be preferable to non-binding recommendations. However, some of the parents interviewed were aware that there were different legal frameworks governing education, health and social care and so recognised that it might not be straightforward to have orders instead of non-binding recommendations. For example, one said:

"Anything that is non-binding is open to problems. [...] I want to see these [recommendations] being binding - but I recognise that there are issues around bringing education and health law together." (Parent 89)

### 7.3.5 LA (education and social care) and CCG<sup>79</sup> experiences of being part of the Recommendations pilot

We conducted 13 focus groups (53 individuals) with pilot LAs. Three focused on good practice around early resolution of disagreements but these also covered views about the Recommendations pilot.

All understood the logic of the extension of Tribunal powers to fit in with the shift to EHC plans. The **benefits** mentioned were that the pilot:

- **acted as a “lever”** to gain supportive involvement of health and social care colleagues in relevant cases
- prompted **a single multi-agency approach** to a case that previously would have been dealt with as three separate disagreements
- prompted **improved joint working practices** between education social care, and health, for example, over the quality and timeliness of reports for EHC needs assessments and over joint funding of post-16 provision with adult social care and/or adult health services.

None believed that the Recommendations pilot had produced sufficient evidence to justify rolling out these extended Tribunal powers across all LAs. In almost all of the 13 focus groups, support was expressed for **an extended pilot** that would allow for more learning to take place about what recommendations would involve and how they would be received in practice. Three LA focus groups, each with experience of relevant pilot cases, were concerned about the local implications for social care of Tribunal decisions about residential placements. These decisions had raised awareness among the respective social care managers of the Tribunal’s existing powers to order such placements. Discussion in these focus groups included the implications for social care in relation to Looked After Status of the children under Section 20 of the Children’s Act 1989. The concern also related to the cost implications for these LAs of the decisions made in favour of residential placements. This, however, was not an issue specific to the recommendations pilot.

In four focus groups, doubts were expressed as to whether the Tribunal pilot panels had sufficient knowledge and understanding of social care and health law to understand the implications of its decisions and recommendations in these domains. These concerns

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<sup>79</sup> No data directly from CCG representatives; none were able to take part in the focus groups and we did not managed to secure any interviews– probably because so few cases involved health recommendations.

and doubts suggest that, should the pilot be extended, there would be a need for Tribunal representatives to communicate clearly the extent of the knowledge and experience of the Tribunal panels in relation to the law as it concerns education, health and social care issues in relation to children and young people with SEND. In Section 7.3.5, we report the perspectives of the Tribunal panel representatives on this issue.

Pilot appeals were reported as taking more time than education only appeals. However, this was due to what can be thought of as ‘**start-up**’ costs i.e. the need to search out the appropriate contacts for each appeal case in health and social care; having to learn about the specific duties of health and social care under the Children and Families Act 2014 but also under their respective, separate legal frameworks and local systems and practices, and having to schedule meetings to discuss the case and agree an approach. Where the local context made maintaining good working relationships with the relevant colleagues in health and social care difficult (e.g. because of rapid turnover of social care staff and/or because of CCG colleagues who were unresponsive due to pressure of other work), the time involved was greater. An example of such a situation is given in Figure 63.

**Figure 63 An example of a pilot appeal that succeeded in engaging adult social care**

“We had one scenario which almost was a [pilot appeal hearing] case. It involved a 20-year-old who was attending an independent day school. The parent had requested a place at a residential special school which was refused. It transpired that this was an ageing parent who was concerned about who would care for her daughter once she was gone [i.e. had died]. The parent didn’t get a response from social care. The social worker had left the case and it wasn’t picked up. The parent was disgruntled with social care and very anxious. The parent saw the appeal as the only opportunity to ensure security for her daughter. We managed to engage adult social care through the Tribunal (telephone case management) process. Adult social care clarified the assessment of needs and put forward an option for the young person which was assisted living. That is, to remain at day school, which was in combination with a local college, but to move into local supported living accommodation and travel to college. [We] had resisted initially for economics more than anything else – it was seen as over-provision.

There has been a massive staff turnover in social care. In 18 months, they have had three changes of senior manager. It makes it difficult – productive function exists through contacts and relationships that you build – and then you have to invest time to start again.” (LA focus group participant)

Conversely, where good working relationships were described among education, health and social care staff in relation to EHC plan processes (five groups), these focus group participants explained that disagreements that could be eligible for the

Recommendations pilot would not be expected to reach the stage of an appeal. Colleagues across **the three domains would work together to resolve the situation**, aware that such cases involved families already under immense stress. An example of such a case was described as follows:

“We had one pilot appeal case lodged and it was resolved out of panel. The parents wanted an out-of-county placement. Adult social care did an assessment and said they would fund the residential part so we paid the education part.” (LA focus group participant)

These LAs had joined the pilot hoping **to share good practice** with others and to be at the forefront of any new developments that would further support partnership working across education, health and social care for the benefit of children, young people and families.

**Figure 64: Examples of existing joined-up working across education, health and social care**

- Joint decision-making panel for EHC needs assessment and plans – including a CCG representative and a senior social care manager
- Some cases where provision was jointly funded with health
- Regular working meetings with CCG representative
- SEND team provided training to health colleagues (e.g. therapists and paediatricians) on writing outcomes for the EHC needs assessment reports
- Education and social care under one manager
- Creation of a (fixed term) post as SEND lead within social care to support social workers in understanding their duties under the Children and Families Act 2014
- Positive working relationships established across education, health and social care, enabling joint working on the types of cases that would be eligible under the pilot Regulations

Source: composite list drawn from 13 pilot LA focus groups

In one focus group, it was pointed out that the Recommendations pilot Regulations did not require the Tribunal to be informed whether or not recommendations had been followed or not. (The Regulations required that the health commissioning body would inform the LA in writing, of what, if anything, was being done in light of the recommendation/s and give reasons why any decision had been made not to follow the recommendation/s or any part of it/them. Similarly, the health commissioning body and social care (as applicable) were required to write to the parent or young person stating what, if anything, was being done in light of the recommendation/s and give reasons why any decision had been made not to follow the recommendation/s or any part of it/them.) In this focus group, the view was that, during the pilot, if recommendations were made, there should be a requirement that the Tribunal should be told whether or not the intention was to comply and, later, to confirm that the recommendations had been actioned or to explain why they had not been. The suggestion was that, during the pilot period, it would aid the Tribunal panels' judgements about the practical implications

of particular types of recommendations made, if feedback was provided about the extent to which any recommendations were implemented, with reasons being given for why any were not implemented.

### 7.3.5.1 Follow-up information about health and social care responses to recommendations

In late January and February 2017, we recontacted the ten LAs where we knew there had been at least one pilot appeal lodged. We wanted to know if any recommendations had been made and, if so, to what extent they had been implemented or not. We learned that recommendations had been made in **six cases** known to these LAs (three cases in one LA and one each in three other LAs)<sup>80</sup>.

Figure 65 summarises the nature of the recommendations made, as indicated by the LA representatives, and provides an update on implementation, as at early March 2017. Cases 1 and 2 in Figure 65 were discussed in the relevant LA focus group. The reaction reported was one of disappointment as the LA (education and social care) had hoped for an outcome whereby the Tribunal had ordered a day school on education grounds plus a recommendation to social care for foster care, or had ordered a 38-week residential school placement on education grounds, plus a social care placement for the remaining weeks. The Tribunal decision to order a 52-week placement on education grounds (based on an existing power, not an extended power because of the Recommendations pilot) triggered a lot of reflection at local level, as reported during the focus group.

Case 4 in Figure 65 was also discussed during the relevant focus group. The order to place the child in a 38-week residential placement on education grounds, plus recommendations to health and social care, had come as a surprise to the local professionals involved (education, health and social care). At the time of the focus group, discussions among the three services (education, health and social care) had begun as to how to respond to the recommendations. The case raised awareness in the relevant social care team of the Tribunal's power to order residential provision on education grounds. This was an existing power and not a new power related to the pilot. The order made in Case 4 (Figure 65) was described by a social care representative as going against what was reported as a strong social care ethos of maintaining children and young people in their family home. The case had revealed a lack of providers able to deliver the package of local support that had previously been identified and funded by social care.

At the time of follow-up contact, **learning** reported from the pilot appeal cases included the importance of collaborative work and joint commissioning across the three partner

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<sup>80</sup> From anonymised data provided by the Tribunal, we know that these six cases represented the interim number where recommendations had been made (with two cases not completed at 17.2.17).

agencies; the quality and specificity expected by the Tribunal in terms of health and social care needs related to SEN and the associated provision, and an increased awareness of the legal frameworks relevant to EHC plans, such as the Children and Families Act 1989 and the Chronically Sick and Disabled Person's Act, 1970.

**Figure 65 Nature of recommendations and update on implementation**

Nature of recommendations in each case	Update on implementation (at 6.3.2017)
1. Recommendation to local authority that Section H1 (social care provision) of EHC plan be amended to specify the need for 1:1 care support at all times when not in an educational setting.	<b>Implemented.</b> (The context was that the Tribunal had ordered a 52-week placement on education grounds.)
2. Recommendation to local authority that Section H1 (social care provision) of EHC plan be amended to specify the need for 1:1 care support at all times when not in an educational setting.	<b>Implemented.</b> (The context was that the Tribunal had ordered a 52-week placement on education grounds.)
3. Recommendation to social care to refer the child/young person to Early Help Team for social care needs within a month.	<b>Implemented.</b> Led to an assessment of needs and work being undertaken with the young person and the parent and outcomes being achieved that improved the situation at home and at school. Case was closed after three months with agreement of parent.
4. Recommendations to local authority to change in the EHC plan the description of health needs related to SEN (Section C) and social care needs related to SEN (Sections D) and the respective provision (Sections G and H) to bring these in line with evidence submitted to the Tribunal	Health <b>refused</b> to do this on the grounds that the relevant evidence submitted to Tribunal was a privately commissioned and not an NHS report.  Decision by social care was <b>pending</b> ; internal discussions about the implications of the case for local practice were taking place.
5. Recommendation to local authority to amend EHC plan to specify health provision (Section G)	<b>Implemented.</b> Led to developments in local joint working practices, including the setting up of a new Joint Health Commissioning sub-group, and of new working relationships with Adult health services.
6. Recommendation to local authority to amend EHC plan to specify in more detail health needs related to SEN (Section C) and health provision (Section G).	<b>Implemented.</b> Tribunal judgement also highlighted gaps in collaborative working across education, social care and health. Local discussions as to how to improve collaborative working were underway.

Source: Follow-up e-mails and telephone calls with 10 pilot LAs known to have had pilot appeal/s

### 7.3.6 Tribunal perspectives on the Recommendations pilot

Because there were a limited number of Recommendations pilot hearings, and all but one of these were heard by the same judge, we were only able to interview a very small number of Tribunal panel representatives (3).

These three representatives welcomed the opportunity provided by the extension of the Tribunal powers to take **a more holistic view** of the needs of, and therefore the provision required by, children and young people with educational and health and/or social care issues.

“You can look at the child holistically. The pilot makes the difference [...] It makes the EHC plan an EHC plan.” (Tribunal representative 3)

In terms of the **challenges** this brought, the main ones mentioned were:

- The pilot appeals took longer and therefore required more resource. There was more evidence to read, the complexities required most to be conducted as two-day hearings with a three-person panel instead of as one-day hearings with a two-person panel.
- New panel members had to be recruited with expertise in health and social care and trained in SEND law and practice.
- All panel members had to be trained in the remit of the pilot and the types of health and social care issues that might arise.
- Awareness that the legal frameworks for the three domains differed, such that only education has to provide for individual needs – health and social care have to provide for all needs within their budget.
- A growing awareness, with experience of pilot appeal cases, that the same words can have very different meanings within the different domains of education, health and social care. For example, it became apparent that the word “severe”, as used by health and social care professionals, did not mean the same as when used by educational professionals. This was highlighted as a training issue relevant to all those involved in EHC plan processes across the three sectors – that is, to foster mutual understanding of the differing gradations of need used.
- The multiple formats of EHC plans were viewed as unhelpful for a legal document, particularly so in the pilot appeals.

In terms of **process**, the Recommendations pilot panels consisted of a judge, an SEN expert and a social care **or** health expert. In the pilot, that third person’s specialism was “not matched to the issues” i.e. a case involving social care issues **may** not have been heard by a panel including a social care specialist. Similarly, a case involving health issues **may** not have been heard by a panel including a health expert. Questions were raised (by parents and by some LA focus groups) about the level of experience and expertise of the pilot panel health and social care lay members. The credibility of the Tribunal panel members to make recommendations on health or social care is likely to

be critical as to whether or not any notice is taken of such recommendations. Tribunal panel members acknowledged that social care issues were less familiar to the panel members than health issues. “We’re used to health reports”, but not so much to Care Orders and children/young people Accommodated under Section 20. The working approach described was to deal with the education aspects first and make decisions on that basis and then look at health/social care.

Nine members with health and/or social care experience were added to the SEND panel. Some of these already had SEND experience but others needed training in SEND law. **Training for panel members** was developed and delivered by senior judges, including two from the mental health jurisdiction where the power to make recommendations already existed. The half-day training was incorporated into a regular training day. In all, about 130 panel members were trained for the Recommendations pilot. The focus was on how to approach the drafting of recommendations and included small group work based around case scenarios.

Pilot cases were reported as requiring longer to prepare, and longer to hear. On the other hand, **telephone case management** was used in all the pilot cases, leading to a number of issues being settled before a hearing.

One **benefit** of the pilot, reported by the Tribunal representatives, was that the power to direct health and social care to provide the reports needed to make an informed decision had been effective. LAs did not have that power. Experience of the pilot appeal cases suggested that often that power was all that was needed to resolve the issues because these reports provided the evidence needed to make a decision (Figure 66).

**Figure 66: The power to order reports during telephone case management**

“During telephone case management, the judge asked for various information. We didn’t have a social care report [...]. The judge asking for that was really helpful in helping our practice in terms of who to seek advice from in social care. [...] We then used the overview assessment from Adult Services and that helped us look at funding and the amount of support [the subject of the appeal] might receive. We should have asked for that [before] That information had not been requested just because it was early days in the 2014 [Act] arrangements. **We’d do that automatically now and we’ve now got transition social workers in place so they give us all that sort of information now.**”

Source: One pilot LA focus group interview

The power to make recommendations, even if these had not been requested by the parents/young person appealing, was also **welcomed** by these Tribunal representatives. This power was mainly relevant in cases where the parents/young person were not aware of the pilot.

One Tribunal panel representative noted the particular benefits of the extended powers of the Tribunal in relation to post-school young people:

“[The Recommendations pilot] is a lot more important when you are dealing with a young person, so the extension of the age range up to 25. [...] When you’ve got a young person in their 20s, this business of preparing them properly for independent adult living is important. That is the major difference [compared to non-pilot appeals]. [...] (Interviewer: How do the pilot powers enable you to do that better?) For young people with very complex difficulties, realistically, academic learning is often not on the cards. Their learning is going to be based on everyday life skills and that is not really the realm of schools. That involves much more therapeutic input from health and also care implications.” (Tribunal representative 1)

All three Tribunal representatives were in favour of the Tribunal retaining the extended powers beyond the pilot. Reasons for this shared view were that these powers made sense because the Children and Families Act 2014 had extended the age to 25 years old. Those who still needed an EHC plan in their 20s would almost invariably need some health and social care input. The extended powers were also viewed as having reduced bureaucracy for families (one route to resolution instead of three) and as having delivered a better deal for parents/young people and for LAs. Two were in favour of going beyond recommendations to orders, but one believed such a development would be “premature” until “the Tribunal panels are fully reflective of all three services” (Tribunal representative 1).

### 7.3.7 Perspectives of others

As part of the Review, we also interviewed 19 mediators representing 11 mediation organisations and 15 representatives from 14 organisations that provided support to parents/young people at mediation and/or at appeal. We asked these people for their views, and any experience, of the Recommendations pilot.

All these people were **in favour of the principle** of the Tribunal having the power to consider the EHC plan regarding health and social care aspects as well as education.

Among these interviewees, there was **limited experience of the pilot**. Three of the nineteen mediators interviewed had experience of mediations that involved health and/or social care matters but did not know if these cases had gone on to appeal or not. Three of the 15 supporter representatives had had experience of supporting parents through a pilot appeal (5 such appeals in total). Four of these five pilot appeals were reported as having been resolved before the hearing, the fifth reported as decided by the Tribunal in favour of the parents. A further case was referred to as having been eligible for the pilot but not put forward as such because, at the time, the supporter was not aware of the pilot. A **lack of communication** about the pilot was raised by a small number of these supporters – for example, one said: “In our experience [i.e. of that

organisation], LAs were not telling their parents that they were in the pilot. [...] We think there were only about 30 cases nationally and we think that was in part due to lack of information.” (Supporter, Organisation 10). The main **benefits** of the pilot reported by those three supporters with experience of it included that social care issues were being resolved at Tribunal rather than the parent having to go to the Family Courts and that the Tribunal pilot acted as a lever to engage health and social care in the relevant appeal issues and resolution. The non-binding nature of recommendations was viewed as less helpful to parents – for example, “Because you couldn’t enforce a recommendation, it is hard for parents to understand whether it would be helpful for them.” (Supporter, Organisation 8)

### 7.3.8 Cost implications of the Recommendations pilot

There were an insufficient number of cases involved in the Recommendations pilot to enable us to conduct an economic analysis of the cost implications. This section is therefore based on **qualitative evidence** from LA focus groups and from Tribunal panel representatives. It is therefore illustrative only.

In considering the cost implications of the Recommendations pilot, our working hypothesis was that an appeal under the Recommendations pilot might avoid a complaint being made under social care and/or health complaints arrangements. Thus, the costs savings from complaints avoided would offset some or all of any additional costs incurred by a more complex appeal process (that is, involving education and social care and/or health issues). In practice, qualitative data gathered from pilot LAs revealed that there were several instances where a pilot appeal had run alongside related complaint/s made to social care and/or health.

As noted in Section 7.3.4, LA representatives reported that pilot appeal cases involved more work (time) than education only appeals. This ‘opportunity cost’ (time) was mainly related to the need to develop the relevant contacts across health and social care and a shared understanding of the issues and implications of the case. That is, these were largely ‘start-up costs’. In some of the cases that went to a pilot hearing, there were greater costs (time, travel, accommodation) associated with the longer length of that hearing. (Pilot appeals were listed, by the Tribunal service, for two-day hearings rather than one day. In practice<sup>81</sup>, pilot appeal hearings ranged from one day to three days). For the Tribunal panel members, too, there were similar additional costs in relation to preparation time and the costs associated with the longer length of some of the hearings.

We were not able to assess any cost implications of the recommendations made under the pilot Regulations.

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<sup>81</sup> The Tribunal unpublished interim report on the pilot appeals, dated 17.2.17.

## 7.4 What has been learned about the Recommendations pilot

The nine pilot appeals that went to a Tribunal hearing provided a limited testing out of the extended powers to make recommendations about the health and social care sections of an EHC plan. However, there was evidence that the extended powers *per se*, and some of the recommendations made, acted as a spur to increase joint working across education, health and social care where this was required. The interaction of education, social care and health personnel with the Tribunal process also led to increased awareness of relevant law in relation to children and young people with education and social care and/or health needs.

There was almost unanimous agreement with the concept of the Recommendations pilot. It was seen as fitting and logical to be able to bring issues relating to all three domains to the Tribunal, given the existence of Education, Health and Care plans.

Views varied about the reality of the pilot in practice. The LA focus groups thought that it should not be rolled out until a bigger pilot (more cases, more recommendations) had afforded the opportunity to learn what the pitfalls and creative opportunities might be. Among some LA representatives and most of the parent and other interviewees, the majority view was that the certainty afforded by binding orders would be preferable for parents/young people than non-binding recommendations. There was some awareness that, were binding orders affecting health and social care to be introduced, the differing legal frameworks across the education, health and social care sectors would require to be addressed at least in so far as these related to the areas covered by EHC plans. Of the five cases where there were recommendations made, one recommendation to health had been refused, on the grounds that the evidence for it had been privately commissioned. Other recommendations had been implemented or the decision to do so or not had not been made at time of writing.

## 8 Economic analysis of mediation versus no mediation prior to appeals to the First-tier Tribunal SEND<sup>82</sup>

### Key findings

The analysis presented here is based on a combination of desk-based research and the findings from the three surveys of LAs. These data relate to the period covering **1st September 2014 to 31st August 2016** (i.e. the first two years of the reformed SEND system).

- In terms of impact, the introduction of a requirement<sup>83</sup> to contact mediation services prior to appeal to the First-tier Tribunal SEND reduced the incidence of these appeals amongst those who took up mediation. The analysis of the responses from Local Authorities suggests that when mediation was taken up, there was a 13.6 percentage point lower likelihood of registering a Tribunal appeal (i.e. 22.4% compared 36.0% when mediation services were *not* taken up).
- The estimated costs saved from avoiding Tribunal appeals were very significant:
  - Following successful mediation, Local Authorities estimated that the cost reductions achieved if a Tribunal appeal was avoided were approximately 62% in relation to preparation time. There was also a 41% reduction in costs associated with the financial expenses related to appeal preparation, and a 60% reduction in relation to the financial expenses associated with attendance at hearing.
  - From the perspective of the Local Authority, the costs avoided from successful mediation (i.e. where a Tribunal appeal and subsequent hearing are avoided) were estimated to be approximately **£4,100** for a representative case.
  - The analysis estimated the Tribunal costs associated with Tribunal hearings to be approximately **£2,380**.
  - The direct and indirect costs incurred by parents were estimated to be approximately **£6,300** in total.
  - This suggests that the cost savings associated with the avoidance of a Tribunal appeal are in the region of **£12,800** per case.
- Given the fact that the introduction of the requirement to contact a mediation service reduced the incidence of Tribunal appeals amongst those who took up mediation, the costs *avoided* (benefits) from the lower incidence of Tribunal

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<sup>82</sup> A longer version of this chapter forms **Appendix 9**. This will be of interest to those who wish more technical details about the methods and analysis used.

<sup>83</sup> With the exception of appeals relating to placement only.

appeals and hearings were greater than the costs associated with the Local Authority purchase of mediation services.

- Based on the number of cases along each pathway, the average costs avoided associated with the mediation route were estimated to be approximately £499 per case.

## 8.1 Introduction

To understand the financial impact of mediation of disagreement resolution services, the fundamental aim was to assess the cost avoided through mediation by Local Authorities, HM Courts and Tribunal Services, and most importantly, the parents involved in the process. There are two 'alternative' mediation pathways (or routes) – the first where mediation and disagreement resolution services are taken up and the second where they are not. Once a particular route is adopted (i.e. formal mediation is taken up or otherwise), each potential outcome is the same (i.e. registration for a Tribunal appeal, Tribunal hearing and resolution without Tribunal hearing). These alternative mediation and disagreement resolution pathways are presented in Figure 67

LAs' cost information was collected through three surveys, and combined with qualitative interviews with parents. This was supported by desk-based research and modelling, which allowed us to assess both the outcomes along the alternative mediation, but also the costs associated with each outcome under the different pathways. The combination of analyses relating to outcomes and costs allows for an assessment of the costs avoided.

It is important to note that the data collected, although offering a reasonable assessment of the costs incurred by the various key stakeholders involved, are derived from a subset of all those potentially involved in SEN appeals and mediation activities. We have no real way of assessing the extent to which the samples upon which the analysis is based are representative of every LA or every parent. As such, the cost information (in particular, the information from parents) should be considered indicative. Despite this, the analysis does provide a reasonable indication of the relative costs associated with the two routes of disagreement resolution. The analysis is driven by the differences in the outcomes (the reduced incidence of appeals under the mediation route) and it is this outcome that should be most concentrated upon.

### 8.1.1 Surveys of local authorities

The first survey of LAs was used as an exploratory tool to understand which factors most affect the costs of disagreement resolution and mediation services, as well as Tribunal preparation and attendance. In summary:

- The procurement costs of mediation and disagreement resolution services for LAs **were straightforwardly evaluated in terms of monetary costs, and were relatively fixed.**

- The determinants of the time costs associated with preparation and attendance at First-tier Tribunal SEND appeals for LAs **were evaluated in terms of time (opportunity) costs in connection to preparation for Tribunal appeals and attendance at Tribunal hearings**. Local Authorities stated that the costs incurred were driven by the **complexity** of the case under consideration. Complexity was subjective and the definition differed by LA. Given this, we designed Surveys 2 and 3 to gather information on Tribunal preparation and attendance by 'complexity'.

## 8.2 Economic analysis and findings

### 8.2.1 What are the alternative routes (and costs) associated with the alternative disagreement resolution pathways?

Once an initial contact is made with the formal mediation service offered by the Local Authority, a family will first choose whether or not to pursue formal mediation.

#### If the formal mediation route is followed:

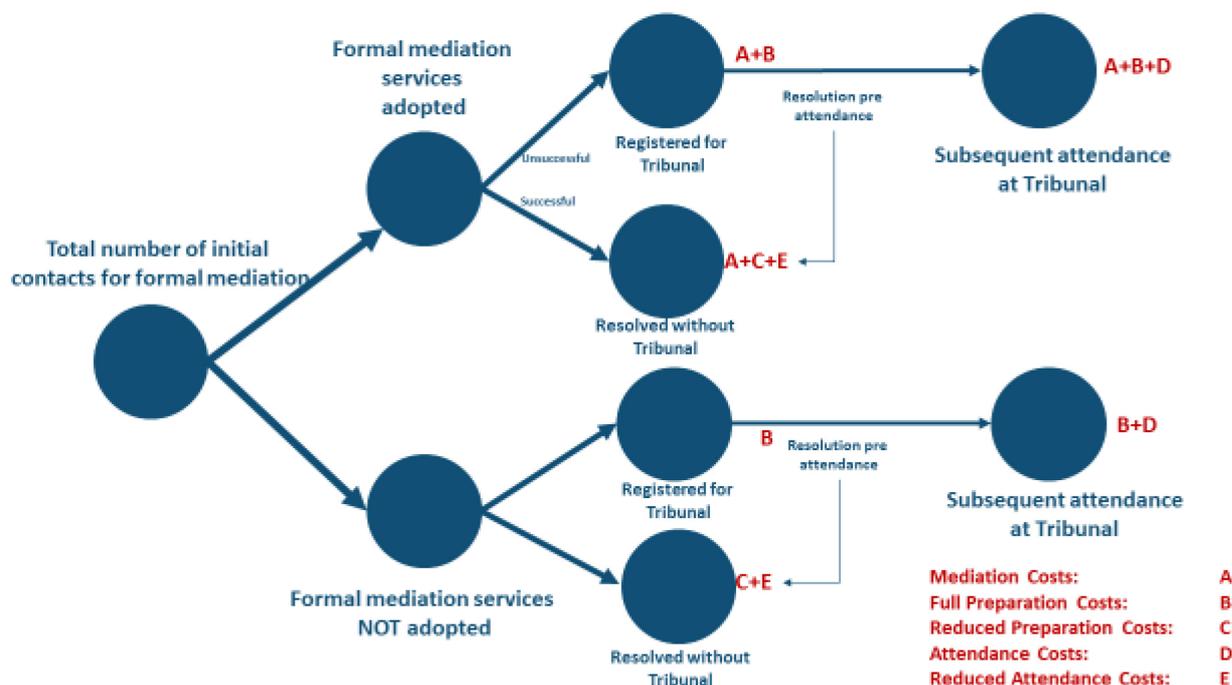
- Should formal mediation leave disagreements unresolved, the family are likely to opt for a Tribunal appeal. In this case, the LA will incur mediation costs (identified as 'A' in Figure 67 below) and the full costs related to the preparation for a Tribunal appeal (cost component 'B'). Subsequently, depending on whether there is a Tribunal hearing or not<sup>84</sup>, there will be *additional* costs related to attending the Tribunal (costs 'D').
- Under formal mediation that resolves the case without recourse to the Tribunal, the LA will incur the mediation cost 'A', reduced preparation costs (cost component 'C'), and reduced attendance costs (cost E).

While mediation services would be expected to reduce the preparation and attendance costs compared to full Tribunal appeal, successful mediation would only be expected to result in a partial reduction in the costs incurred. The analysis of Surveys 2 and 3 indicated that, on average, the costs avoided by LAs associated with preparation time following a successful mediation are 62% of the full costs of preparation for a Tribunal appeal. There was also a 41% reduction in costs associated with the financial expenses related to appeal preparation, and a 60% reduction in relation to the financial expenses associated with attendance at hearing.

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<sup>84</sup> The data are scaled by the proportion of cases actually terminating with and without a face-to-face hearing.

Figure 67: Formal mediation pathways and associated cost component



Source: London Economics

### If the family chooses not to use formal mediation:

- If a Tribunal appeal is registered, the LA will have to prepare for the case and attend the hearing (costs 'B') and, as before, if the hearing takes place, incurs the additional costs associated with attendance ('D').
- If no appeal is registered<sup>85</sup>, and the case is resolved without the full recourse to the Tribunal hearing, the LA incurs only the reduced preparation costs ('C') and reduced attendance costs (cost E).

## 8.2.2 What has been the incidence of alternative disagreement resolution pathways?

The LA surveys indicate that of the 3,003 initial contacts made with the formal mediation services (Table 13) between September 2014 and August 2016, 1,275 chose to take up formal mediation, while 1,728 chose not to pursue it.

Of those cases that had completed mediation, approximately 22.4% resulted in a Tribunal appeal<sup>86</sup>. In contrast, of those families that did not engage with the formal mediation process offered, approximately 36.0% (622 of 1,728) decided to register an appeal. This suggests that engagement with formal mediation was associated with a

<sup>85</sup> Where mediation was not taken up, the data collected were whether or not an appeal was registered.

<sup>86</sup> i.e. 236 out of 1,053 (1,275 choosing to take up mediation minus 222 continuing in mediation)

13.6 percentage point lower likelihood of registering a Tribunal appeal. This difference was statistically significant, and is both a key finding of the analysis, but also a determinant of the differential costs between the two dispute resolution pathways.

**Table 13 Overview of cases by route**

	Total making initial contact	Chose to take-up mediation	Chose not to take-up mediation
<b>Total number</b>	<b>3,003</b>	<b>1,275 (42.5%)</b>	<b>1,728 (57.5%)</b>
<i>Of which:</i>			
<b>Mediation is continuing</b>	<b>222</b>	222	-
<b>Resolution without appeal to Tribunal</b>	<b>1,923</b>	817	1,106 <sup>87</sup>
<b>Registered Tribunal appeal</b>	<b>858</b>	236	622

Source: London Economics - Survey 1 to Survey 3 analysis

### 8.2.3 Local Authority Cost information

Following the analysis of Survey 1, it was concluded that case ‘complexity’<sup>88</sup> (however defined by LAs) was the key determinant of the costs associated with Tribunal appeals – but that this varied by LA. As such, we asked respondents in the 2<sup>nd</sup> and 3<sup>rd</sup> Surveys of LAs to provide indicative costs associated with a Tribunal appeal that was of *medium complexity*, and then asked respondents for scaling factors to determine the costs associated with a low and high complexity case.

To achieve this in practice, for *each stage* (i.e. *preparation and attendance*) outlined in Table 14 we asked LAs to provide an estimate of the total time devoted by each professional grade involved (e.g. educational psychologist, SEN officer, etc.) and to list the monetary expenses incurred by Local Authorities in a medium complexity case. The average of these responses was then used in the cost estimation.

<sup>87</sup> This number is based on data for ‘no appeal registered’.

<sup>88</sup> Survey 1 asked LAs whether the costs of the services varied depending on a number of aspects, such as the nature of the primary special education need or the type of disagreement. The options provided were:

- the primary SEN of the child/young person
- the complexity of need (e.g. education only versus education, health and social care)
- the type of disagreement, and
- the number of the topics that are under disagreement

The majority of respondents considered none of the options presented as a driver of costs in the procurement of Mediation services (85% of respondents) or Disagreement resolution services (82%). However, more fundamentally, LAs suggested that their own costs associated with preparation ahead of disagreement resolution and mediation services were increasing with the ‘complexity’ of the case under consideration, which does not directly relate to the procurement of disagreement and mediation services. In other words, procurement costs were independent of opportunity (time) costs.

The survey also asked respondents to provide an assessment of the reductions in these costs under the scenario in which the Tribunal appeal is avoided, as well as to estimate both the distribution of cases that might be considered of low, medium or high complexity, and the proportion of (low, medium or high complexity) cases culminating in a hearing following a Tribunal appeal.

**Table 14 Costs per typical hypothetical medium complexity case, by route**

<b>Costs per hypothetical 'medium' complexity case</b>	<b>Full case including mediation, appeal, and hearing (A+B+D)</b>	<b>Successful mediation (no appeal) (A+C+E)</b>	<b>Full case with no mediation, appeal, and hearing (B+D)</b>	<b>Successful informal mediation (no appeal) (C+E)</b>
<b>Preparation, of which:</b>	<b>£5,183</b>	<b>£2,574</b>	<b>£4,331</b>	<b>£1,721</b>
Mediation services	£853	£853	£0	£0
Labour (time/opportunity costs)	£4,123	£1,600	£4,123	£1,600
Additional financial costs	£208	£122	£208	£122
<b>Attendance, of which:</b>	<b>£1,725</b>	<b>£180</b>	<b>£1,725</b>	<b>£180</b>
Labour (time/opportunity costs)	£1,287	£0	£1,287	£0
Additional financial costs	£438	£180	£438	£180
<b>Total (preparation + attendance)</b>	<b>£6,908</b>	<b>£2,754</b>	<b>£6,056</b>	<b>£1,901</b>

Note: Numbers are averages of the numbers in Survey 2 and 3.

Source: London Economics – Survey 2 and Survey 3 analysis

In more detail, Table 14 shows that a medium complexity case that is fully resolved following formal mediation, Tribunal appeal and subsequent hearing has an estimated monetary cost (to the LA) of £6,908 (A+B+D). The analysis indicates that if mediation is successful in preventing the Tribunal appeal in the first instance, the monetary cost for a medium complexity case includes the cost of mediation (£853), the reduced costs associated with preparation (£1,600), the reduced financial costs relating to legal costs, overheads etc. (£122), and reduced attendance expenses (£180). Combining all these elements, the total costs associated with successful formal mediation stands at £2,754 (A+C+E), which represents a £4,155 reduction on the Tribunal appeal and hearing outcome.

Under the no formal mediation route, if the Tribunal appeal is pursued and a hearing is attended, the cost estimated for this type of case resolution is £6,056 (B+D). If resolution is reached informally, i.e. without formal mediation, or a Tribunal

appeal/hearing, the cost for a medium complexity case was estimated to be £1,901 (C+E).

### 8.2.4 Estimating costs for different levels of complexity of cases

LAs were asked to estimate costs for a medium complexity Tribunal appeal, inclusive of mediation and the LAs own attempts to resolve the disagreement informally. Respondents were then asked to attribute the additional cost burden associated with a highly complex case (59%) and the reduced cost burden associated with a low complexity case in comparison (31%).

LAs also provided an estimate of the proportion of cases that culminate in a Tribunal appeal and hearing by case complexity. 44% of cases could be classified as medium complexity (with 38% resulting in an appeal), while the low and high complexity shares were estimated to be 30% and 26% respectively<sup>89</sup>. Of these, 12% and 49% resulted in an appeal (respectively).

**Table 15 Overview of cases by complexity, cost impact and incidence of Tribunal hearing**

	Low	Medium	High
<b>Distribution of cases</b>	30%	44%	26%
<b>Change in costs</b>	-31%	Baseline cost	+59%
<b>Terminating in a hearing</b>	12%	38%	49%

Note: Numbers are averages of the numbers in Survey 2 and 3.

Source: London Economics

### 8.2.5 Scaling costs to reflect different complexity cases

Using this information on the costs associated with a medium complexity case, the various cost components were then scaled upwards by 59% for typical high complexity cases and downwards by 31% for typical low complexity cases under each alternative pathway (Table 16).

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<sup>89</sup> The numbers in Survey 2 were 48% for a medium, 26% for a low and 26% for a high complexity case. In Survey 3 the numbers were 41% for a medium, 34% for a low and 25% for a high complexity case.

**Table 16 Cost estimates for cases by scenario and complexity level**

	<b>Low complexity case</b>	<b>Medium complexity case</b>	<b>High complexity case</b>
<b>Mediation and full appeal (incl. hearing)</b>	£4,752	£6,908	£10,988
<b>Mediation and appeal (no hearing)</b>	£3,565	£5,183	£8,244
<b>Mediation and no appeal (successful mediation)</b>	£1,894	£2,754	£4,380
<b>No mediation and full appeal (incl. hearing)</b>	£4,166	£6,056	£9,632
<b>No mediation and appeal (no hearing)</b>	£2,979	£4,331	£6,888
<b>No mediation and no appeal (successful informal resolution)</b>	£1,308	£1,901	£3,024

Source: London Economics - Survey 2 and Survey 3 analysis

### **8.3 Assessing the costs of Tribunals**

We undertook desk-based research and analysis to arrive at a range of estimates of the cost of operating a SEND Tribunal. As with the analysis of LAs, we asked HM Courts and Tribunal Service to provide an indication of the composition of the Tribunal panel (in terms of the number and role); an indication of the time associated with both preparation in advance of the Tribunal; and the attendance time associated with the Tribunal.

Combining different labour costs associated with preparation and attendance (judicial members, expert members and Tribunal clerks), we estimated the labour costs associated with Tribunal preparation and attendance to be £1,817. In addition to these attendance and preparation costs, we also assessed the administrative costs incurred by HMCTS (derived from the 2014-15 HMCTS Annual report and Accounts). These were estimated to be £214 per Tribunal. Combining these estimates, the ‘bottom-up’ analysis suggests the average cost of conducting a Tribunal to be in the region of £2,031<sup>90</sup>.

In addition to these bottom-up analyses, a recent Memorandum of Understanding between HMCTS and the Department for Education essentially allows the HMCTS to

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<sup>90</sup> Note that considering the HMCTS Annual Report and accounts in 2013/14 and 2014/15, the estimate of the total costs of HMCTS Tribunal activity divided by an estimate of the total number of cases heard in the respective year was estimated to be between approximately £1650 and £1850.

'bill' the Department for appeals received as a consequence of new appeal rights being introduced by the Children and Families Act 2014. Where the case is heard by a two person panel (i.e. a Tribunal judge and a non-legal member), the cost is £2,380 per appeal.

Given the comparability of the alternative approaches, we used a cost of £2,380 as the cost of Tribunal operation and administration.

## 8.4 Assessing the costs to parents

### 8.4.1 Direct costs

In total, the evaluation collected parental 'cost' information relating to 48<sup>91</sup> cases involving a Tribunal appeal and, in many cases, subsequent hearing. For 45<sup>92</sup> of these, the final outcome involved a Tribunal appeal. Although a relatively small sample (with some of the costs identified in a very qualitative sense), the direct costs were identified where respondents provided an indication of the costs incurred as a result of the following reasons:

- Costs of education while child out of school/waiting for agreement
- Costs to parent of private reports (for instance, from therapists or educational psychologists)
- Cost to parents of third-party support (for instance, through SEN advocates, legal representation etc.), and
- Other costs to parents (e.g. postage, paper and printing)

In relation to the first category (the cost to parents of education while child out of school/waiting for agreement), the average was estimated to be approximately £7,000 *per family affected*. The average costs associated with the acquisition of private assessment reports was estimated to be approximately £2,100 *per family affected*. In respect of the costs associated with third party support, the analysis indicated that the average cost incurred per family affected was approximately £6,800, while in respect of other direct administration costs, the average cost incurred *per family affected* was approximately £900.

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<sup>91</sup> We received data from 53 parents, including three cases where we received data from two parents (in the same family). As such, there was information gathered from a total of 50 discrete cases. However, for two cases no cost data was provided. Because of this they had to be excluded from the analysis.

<sup>92</sup> Of the 48 individual cases on which we had data, 45 cases had undergone or were in the process of going through an appeal. A further two cases indicated that they had already incurred some costs even though an appeal had not, or not yet, been lodged. However, because of the small sample size associated with these cases we did not estimate the costs incurred if no appeal was lodged. For a further one case we did not receive data on whether an appeal had been lodged or not. One further parent had gone through the appeals process with three different children. We treated this as three separate cases.

Across those respondents where the eventual outcome was a Tribunal appeal, the average direct costs (across both pathways of dispute resolution) incurred by parents was £4,843<sup>93</sup>. Note that this aggregate estimate is across all families, whereas the previous estimates are across just those families incurring those particular costs.

### 8.4.2 Opportunity Costs

In addition to the direct costs incurred by parents, we also tried to understand the indirect or opportunity costs associated with a Tribunal appeal and hearings. Again, it is inherently difficult to identify (and measure) the time costs associated with Tribunal appeals, in part because respondents found it sometimes difficult to assess these costs. For instance, a number of respondents indicate that the preparation time was 'all the hours I had' or 'every evening and weekend for a year'. However, respondents were pressed on exactly the amount of time involved in preparation associated with a Tribunal appeal and hearing, with the responses ranging between 4 and 52 weeks (the average being 22.9 weeks)<sup>94</sup>.

The average of the total number of hours spent in relation to the Appeal for the period in question was 13.8 hours per week<sup>95</sup>. To generate a monetary value associated with the opportunity cost, (a fraction of) the relevant hourly wage associated with the specific *occupation* of the parent from the Labour Force Survey<sup>96</sup> was estimated. Combining this information on the hours incurred and the associated time-cost, we estimated the total opportunity cost per respondent to be £1,456.

Combining the average direct cost (£4,843) with the average opportunity cost (£1,456) provides an estimate of the total costs associated with a Tribunal appeal of £6,300 per family when mediation is used and not used.

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<sup>93</sup> Note that one family indicated they had incurred legal fees of £55,000, more than two and a half times as much as the next highest overall direct cost incurred by a family and more than eleven times higher than the average direct cost incurred by other families. Another family further indicated they had incurred costs relating to education while their child was out of school of £130,000 (including lost earnings). In order to provide a cautious estimate of the costs incurred, these outlier responses were excluded from the analysis of the relevant direct costs.

<sup>94</sup> Note however, there were two responses that indicated that the time involved was significantly greater than this (80 and 104 weeks respectively). In order to provide a cautious estimate of the opportunity costs incurred, these outlier responses were excluded from the analysis.

<sup>95</sup> Note that, as with the number of weeks involved in a tribunal appeal, there were two responses who indicated a significantly higher number of weekly hours spent in relation to the appeal (75 and 150 hours per week respectively). In order to provide a cautious estimate of the opportunity costs incurred, these outlier responses were excluded from the analysis.

<sup>96</sup> Note that the standard wage rate is not generally taken to represent the opportunity cost of leisure. In practice, most studies estimate time cost as a proportion of the individual's wage in some way. Cesario and Knetsch (1976) first suggested approximating the opportunity cost (value) of time as some proportion of the wage rate. In relation with this approach, a key question is which proportion of the wage rate should be used as a proxy for the opportunity cost of time. 33% has probably been the most often chosen fraction. For instance, Hellerstein (1993); Englin and Cameron (1996); Coupal *et al* (2001); Bin *et al* (2005); and Hagerty and Moeltner (2005) use 33%. Parsons *et al.* (2003) observe that the literature has more or less accepted 25% as the lower bound and the full wage as the upper bound, although neither value enjoys full support (Hynes *et al.*, 2004).

## 8.5 Costs for different complexity cases including Tribunal operating costs and costs to parents

Using the estimated costs incurred by LAs (by complexity), and the additional costs incurred by parents and HMCTS, we weighted the aggregate costs by the distribution of cases (according to their complexity). The result (presented in Table 17) is that a representative full appeal and hearing is associated with a cost of £16,935, while successful mediation (with no appeal) has an estimated cost of £2,917.

**Table 17 Total cost estimates for cases by scenario and complexity level – including Local Authority, family and Tribunal operating costs**

	Weighted Average by Distribution of Cases
<b>Mediation and full appeal (incl. hearing)</b>	£16,935
<b>Mediation and appeal (no hearing)</b>	£11,449
<b>Mediation and no appeal (successful mediation)</b>	£2,917
<b>No mediation and full appeal (incl. hearing)</b>	£15,916
<b>No mediation and appeal (no hearing)</b>	£10,602
<b>No mediation and no appeal (successful informal resolution)</b>	£2,014

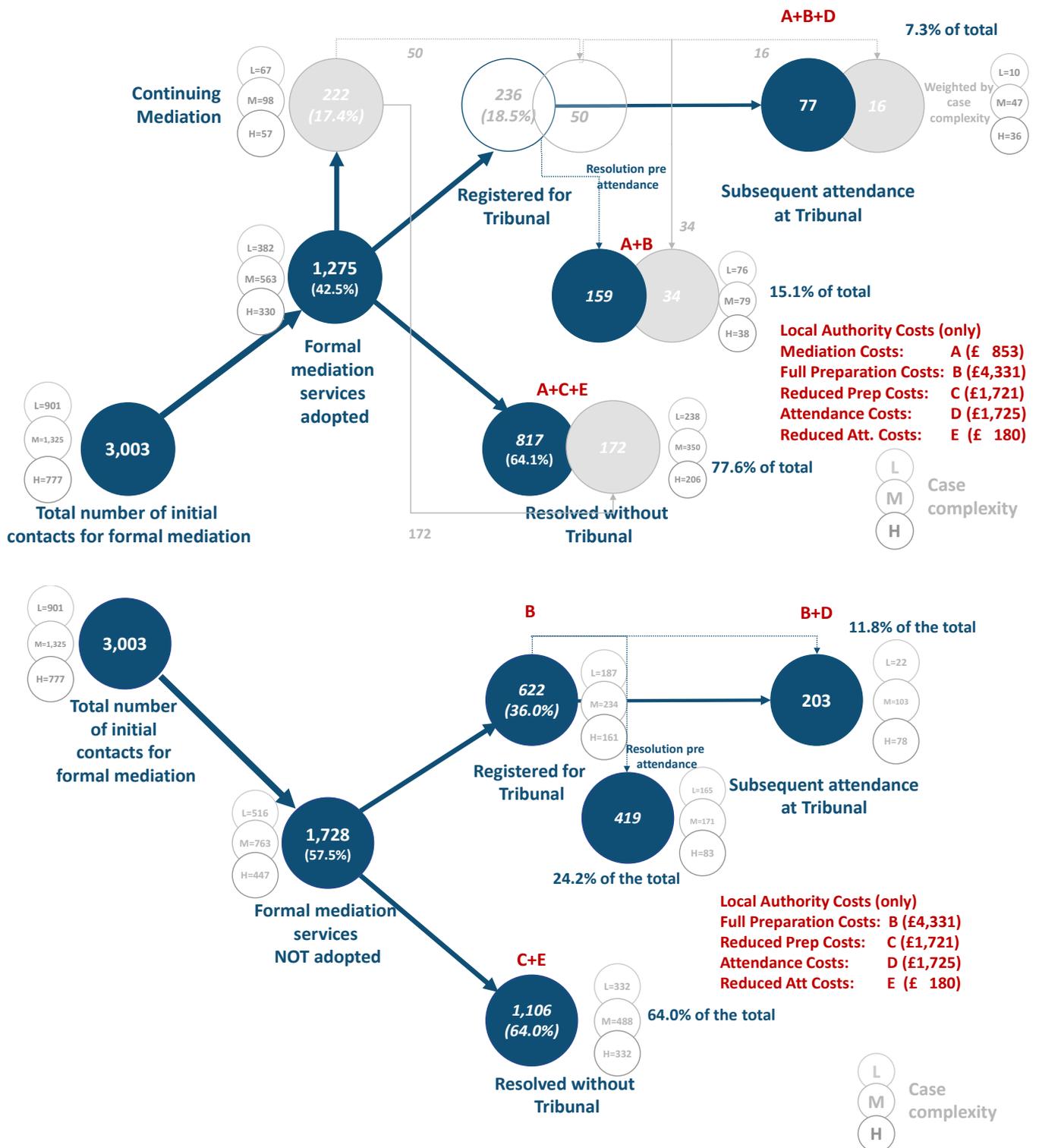
Source: London Economics - Survey 2 and Survey 3 analysis

### 8.5.1 Distribution of cases

#### 8.5.1.1 Distribution of cases along the two routes

Figure 68 provides information on the number of cases following each route, including a breakdown by complexity level.

**Figure 68: Allocation of cases by route and complexity level - mediation scenario (top panel) and no-mediation route (bottom panel)**



Note: Numbers of low, medium and high complexity cases may not perfectly add up due to rounding.

Source: London Economics - Survey1 - Survey 3 analysis

Combining the various elements of data, the analysis suggests that, overall, under the formal mediation pathway:

- 7.3% of cases that were under mediation end up with a Tribunal appeal and hearing (compared to 11.8% along the no-mediation route)
- 15.1% of cases on the formal mediation pathway were resolved by a Tribunal without hearing. This compared to 24.2% along the no-mediation route
- 77.6% of cases with mediation were resolved without a Tribunal appeal. This compared to 64.0% along the no-mediation route.

### 8.5.2 Overall costs: formal mediation versus no formal mediation

Combining information on the incidence and distribution of low, medium and highly complex cases across the alternative disagreement resolution pathways, it is possible to generate an overall estimate of the cost of a case following the formal mediation pathway compared to a case without recourse to formal mediation (Table 18). On average, the analysis shows that the cost of a case along the mediation pathway stands at £5,231 while the average cost of a case without formal mediation stands at £5,730 – a difference of £499 per case.

**Table 18 Average cost by resolution route - weighted by case complexity (including Tribunal costs and costs to parents)**

	<b>Mediation</b>	<b>No mediation</b>
Weighted average cost full appeal (including hearing)	£16,935	£15,916
Weighted average cost appeal (no hearing)	£11,449	£10,602
Weighted average cost no appeal (early disagreement resolution)	£2,917	£2,014
Overall average cost	£5,231	£5,730

Source: London Economics - Survey1 to Survey 3 analysis

Combining the differential costs with the relative incidence of cases along the two dispute resolution pathways results in a cost saving of £499 per case. In aggregate, across all cases in the sample, this represents a £636,462 saving associated with mediation.

## 8.6 What has been learned about costs and benefits of mediation

This section provides our assessment of the costs and benefits associated with the mediation policy in respect of the Research Objectives of the evaluation.

- Addressing Research Objectives 1 and 3, the analysis of the LA data suggests that engagement with formal mediation was associated with a statistically significant 13.6 percentage point lower likelihood of registering a Tribunal appeal. This reduction in the incidence of Tribunal appeals and subsequent hearings is the fundamental measure of impact and is a key determinant of the differential costs across the two 'routes' of disagreement resolution.
- Addressing Research Objective 6, the analysis identified cost savings associated with early (pre-Tribunal) disagreement resolution. In particular, the reduced incidence of Tribunal appeals and hearings associated with the mediation pathway resulted in a lower aggregate cost compared to the non-mediation pathway (£5,231 compared to £5,730). Although there are some uncertainties associated with the costs data collected (and in particular the direct and indirect costs incurred by parents), the analysis suggests that the aggregate cost savings associated with the 1,275 cases that engaged in the mediation pathway was in excess of £600,000.
- Although these cost savings appear relatively small, it is important to re-iterate that:
  - Because of the cautious methodological approach adopted, the estimate of cost savings is likely to be an underestimate of the true cost savings
  - The approach towards mediation and dispute resolution is relatively 'new', and as such might see a greater impact over time as it embeds. In particular, whereas the difference in the incidence of Tribunal appeals across mediation was approximately 4 percentage points by the end of the 2<sup>nd</sup> survey (covering 4 school terms), the deterrence effect had increased to almost 14 percentage points by the end of the 3<sup>rd</sup> survey (covering 6 school terms).

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# Appendix 1: Research objectives and research questions

**Objective 1:** To examine how successful **mediation** is in resolving issues without need for recourse to the Tribunal.

Associated research questions:

## *Quantitative*

- For issues that can currently be appealed to the Tribunal:
  - how many parents/young people have used the mediation service?
  - how many *parents/young people* have decided *not* to use the service?
  - how many have used the mediation service and then gone on to appeal to the Tribunal?
  - how many have used the mediation service and *not* gone on to appeal to the Tribunal, the case having been satisfactorily resolved?
- For issues, including issues not currently covered by appeals to the Tribunal (i.e. health and social care elements of an EHC plan):
  - what is the level of take-up of mediation and what are the outcomes?

## *Qualitative*

- Is information on mediation made available to parents? If so, when and how is this done? If not, why not?
- How well informed are parents/young people about the possibility of using mediation?
  - How accessible is the information about the process to different sub-groups of parents/young people e.g. by age, ethnicity, type of need?
  - What account is taken of differing levels of facility in reading and writing in English?
- Why have some parents/young people chosen to use the mediation service and others not to do so?
- What aspects of EHC needs assessments and/or plans have been taken to the mediation services (including those not currently covered by appeals to the Tribunal, i.e. health and social care)?
  - How does this compare with the aspects of assessment of needs and Statements of SEN taken to mediation services? If there are differences, why is this? If not, why not?
  - Why are these aspects taken to mediation?

- What is the experience of the parties to the mediation (i.e. parents, young people, LAs, CCGs) in using the service in terms of the process and the outcomes?
  - How far does the process lead to complaints being considered in a holistic way?
- Where education disagreements have been taken to mediation, how far have these been resolved successfully?
- Why have some used mediation and still gone on to appeal to Tribunal?
- Where health and/or social care disagreements have been taken to mediation, how far have these been resolved successfully?
  - If not successfully resolved, have parents/young people gone on to use other avenues for redress? If so, how did this work out? If not, why not?
- What characterises successful mediation versus an unsuccessful mediation?

**Objective 2:** To examine whether the **process of EHC needs assessment and plan development** is successful in resolving and preventing disagreements at an early stage.

Associated research questions:

#### *Quantitative*

- How many requests for assessment end up in the mediation/Tribunal system compared with the statutory assessment/statement process?
- What are the most common areas of disagreement during the process (education, health, care needs/provision)?

#### *Qualitative*

- What is the experience of parents and young people in navigating EHC needs assessment and development of EHC plans?
  - Is the EHC plan system less 'adversarial' than the statutory assessment/statement process?
  - To what extent did parents find the process one which involved genuine discussion and partnership to agree EHC plans? How 'person-centred' was the process?
- Are some cases resolved more successfully at this stage than others, i.e. which are more likely to move on to mediation or other complaints processes? If so, why is this?
- Where parents/young people are refused an EHC needs assessment or an EHC plan, what support is offered afterwards, to ensure that appropriate provision is made outside a plan and that families understand the available options?

- What do parents/young people think of this support and of the available options?
- Where parents/young people have used information, advice and support services, how did this help them to understand and engage with the EHC needs assessment process and the drawing up of a plan?
- Where parents/young people have taken a disagreement to the Tribunal, why did they decide to appeal?
  - What has been their experience of that process and the outcomes?

**Objective 3:** To examine whether **disagreement resolution services (and information, advice and support services)** are helping to resolve issues at an early stage and so contributing to a reduction in appeals to the Tribunal.

Associated research questions:

#### *Quantitative*

- How often are disagreement resolution services being used to resolve disagreements between parents/young people and CCGs/local authorities about health or social care provision during EHC needs assessments, while EHC plans are being drawn up or reviewed, or when children or young people are being reassessed?
- How often do parents/young people use mediation or other complaints processes in parallel to disagreement resolution or afterwards?

#### *Qualitative*

- To what extent were parents aware of the opportunity to use the disagreement resolution service before they entered the system?
  - What did they think of the information, if any, available to them about the process?
- What is the experience of the parties to the disagreement in using the disagreement resolution service?
- Are disagreement resolution services being used to resolve disagreements between parents/young people and CCGs/local authorities about health or social care provision during EHC needs assessments, while EHC plans are being drawn up or reviewed, or when children or young people are being reassessed?
  - If so, how well does this work? If not, why is this?
- Are these services being used for disagreements between parents/young people and local authorities, early years' providers, schools or FE colleges about SEN provision for children and young people who do not have EHC plans?

- If so, how well does this work? If not, why is this?
- How successful are disagreement resolution services?

**Objective 4:** To examine whether **health and social care complaint arrangements** are working for children and young people with SEND and their parents, taking into account other reviews, such as the Francis inquiry (February 2013) and the Clwyd Review (October 2013).

Associated research questions:

*Quantitative*

- How many health and social care complaints are made?
  - How many are health versus social care?
  - How many are complaints about both health and social care?

*Qualitative*

- How are current avenues for redress working in relation to children/young people with EHC plans, particularly if there is a disagreement that covers education as well as health and social care?
  - What is the experience of parents/young people who have used these avenues for redress?
- How are they working for children/young people who do not have EHC plans?
- Are there opportunities to improve ease of access to complaints processes for education, health and social care complaints outside the Tribunal?

**Objective 5:** To understand the effect of a **pilot** of up to 20 LAs to extend the powers of the Tribunal to make **non-binding recommendations** on disagreements about **health and social care** aspects of EHC plans.

Associated research questions:

*Quantitative*

- How many appeals are made to the Tribunal that include health and/or social care aspects? How many are health versus social care? How many are appeals about both health and social care?

*Qualitative*

- What are the main issues raised in appeals which also include requests for recommendations about health and social care?
  - Why is this?

- What are the experiences of parents from requests for recommendations on health and social care aspects of EHC plans in addition to making an appeal about educational aspects?
- What are the challenges for local authorities and CCGs where the Tribunal makes recommendations about social care and health?
- What are the challenges for the Tribunal of hearing appeals and requests for recommendations on health and social care at the same time, or do they find it more holistic?
- What are the outcomes of requests for recommendations on health and social care?
  - Are recommendations implemented? If so, how? If not, why not?
  - If recommendations are not implemented, what steps do parents/young people take?
  - Do they turn to other existing avenues to resolve disagreements? If so, which do they use and how well does this work for them? If not, why not?
- How useful was the Tribunal in making recommendations that parents/young people found helpful?
- What are the main issues on which the Tribunal chooses to make recommendations regarding health or social care which the parents/young people have not raised?

**Objective 6:** To assess the **cost savings** of early (pre-Tribunal) disagreement resolution and the **cost implications** of the pilot of extended powers for the First-tier Tribunal SEND.

Associated research questions:

- What are the additional costs associated with the provision of enhanced disagreement resolution and mediation services from 1 September 2014?
- What are the cost savings that arise from the avoidance of a Tribunal hearing, or a shorter Tribunal hearing, because of earlier disagreement resolution?
- What are the cost implications of the pilot of extended powers for the Tribunal?

## Appendix 2: The overall research design

The overall research design combined three research methodologies: quantitative, qualitative and economic cost-benefit.

### A2.1 The quantitative component

We developed, in collaboration with representatives from the first 13 pilot LAs, an online survey that asked questions designed to find out:

- the number of decisions made that could cause disagreements (assessments and re-assessments requested, agreed or refused and of statements or EHC plans agreed or refused to be written)
- the scale of use of the various stages of pre-Tribunal disagreement resolution (disagreement resolution service, mediation service)
- the number, type and outcome of appeals to the First-tier Tribunal SEND.

These data were requested retrospectively by term.

- Survey 1 covered 1 September to 31 December 2014 (Term 1) and 1 January to 31 March 2015 (Term 2).
- Survey 2 covered 1 April to 31 August 2015 (Term 3) and 1 September to 31 December 2015 (Term 4).
- Survey 3 covered 1 January to 31 March 2016 (Term 5) 1 April to 31 August 2016 (Term 6).

In all, we collected two years of data.

We allocated substantial resources to maximising responses. We adopted a collaborative approach seeking LA input on the content and wording, tested out Survey 1 with a small number of LAs, and made initial contact with the Directors of Children's Services to alert them to the plan for the surveys and to ask for the contact details of the most appropriate person to receive the surveys. We alerted each nominated contact person in advance of the survey being sent out. We created a survey website with a video introducing the research team and the administrator from where a hard copy of the survey could be downloaded. We provided dedicated administrative support to handle queries or problems and queries were responded to as a priority. We provided a detailed summary of the findings to participating LAs as well as headline findings to non-participating LAs. Surveys 2 and 3 were accompanied by a letter from Ann Gross, Director – Special Needs, Children in Care and Adoption, at the Department for Education, emphasising the value of survey responses as evidence informing the Ministerial review of the disagreement resolution arrangements.

The analysis plan included examination of frequency of use per LA of the various routes for disagreement resolution in relation to school population, to mirror First-tier Tribunal

SEND statistics from the Ministry of Justice. Desk research enabled us to conduct secondary analysis of published data such as existing Tribunal statistics by LA, Index of Multiple Deprivation LA ranking, LA-level data on free school meals, exclusion from school and others. This allowed us to explore external factors affecting the variation in levels of appeal by LA.

We also related rates of appeal to the Tribunal to the total number of relevant decisions made per LA. These data were triangulated with qualitative exploration of internal factors affecting decision-making in a sample of LAs.

## A2.2 The economic cost-benefit component

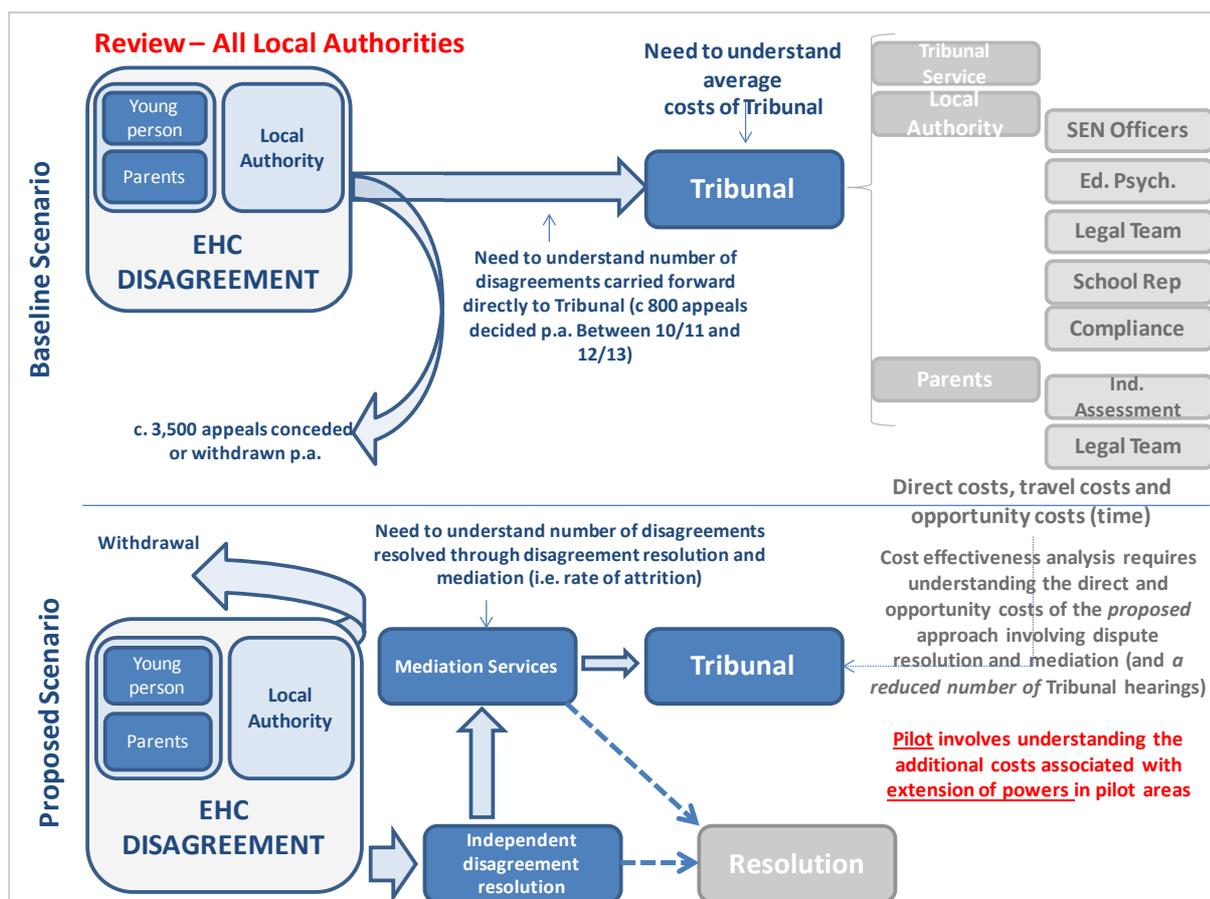
Following HM Treasury Green Book guidance, we undertook a cost-benefit or cost-effectiveness analysis comparing the present value of the **additional costs** associated with the provision of mediation services (the proposed scenario) with the benefits (or **costs savings**) that result from the avoidance of full scale appeals to the Tribunal service (*the baseline or counterfactual scenario*).

This involved a detailed assessment of the monetary value associated with the costs of disagreement resolution services (and residual Tribunal costs) compared to the monetary value associated with the **avoided costs** of full-scale Tribunal activity.

Figure 69 shows the framework for this work – we collected data on the costs of (baseline) provision (at an aggregate and disaggregated level), in terms of the fixed and operating **costs of the Tribunal**. These costs were measured at a number of levels, but we concentrated on the **opportunity** (or time) **costs** incurred by different actors.

As a variation of the main Review of the disagreement resolution and mediation process (the proposed approach), to better understand the additional **Pilot** in the 17 volunteer Local Authorities, it was also necessary to understand the additional activities associated with the increased powers to make non-binding decisions on health and social care issues (triggered through education appeals), including Tribunal staff familiarisation and training costs.

Figure 69: Framework for the assessment of cost savings and cost implications



Data on costs incurred by the local authorities in relation to the baseline scenario were being collected through the surveys of LAs. This was the main focus of the work. In qualitative interviews with parents, we asked about time spent preparing an appeal and attending a hearing, as well as about any financial costs incurred such as in relation to independent reports or legal support. Because the Tribunal operates in both the baseline and the proposed scenarios, our focus will be on understanding the marginal additional costs associated with the Tribunal pilot and any savings associated.

Combining the various sources of information, we generated an average cost associated with the SEN disagreement under the different scenarios. This was used together with the number of cases going through each scenario (collected via the LA surveys). Comparison of these aggregate costs provided an indication of the extent to which mediation activities have generated cost savings compared to historical arrangements. We also incorporated the additional relevant costs for pilot LAs, assess where these costs arise and to what extent the costs may be mitigated through savings elsewhere (for instance in time).

## A2.3 The qualitative component

There were two qualitative studies: one focused on understanding experiences and capturing learning from the pilot extension of powers for the First-tier Tribunal SEND and the other focused on examining in depth the experiences of those involved in providing and using disagreement resolution processes, both informal and formal.

Table 19 summarises the interviewees for each qualitative study by type and desired numbers. The two studies overlapped in the sense that anyone in either study who had experience relevant to the other study was asked about that at the same time. For example, parents appealing to the Tribunal were asked their views of each of the earlier stages of the process where attempts may have, or could have, been made to resolve the disagreement/s.

**Table 19 Interviewees for each study - Type and numbers**

<b>REVIEW Study</b>	<b>Desired number of interviews/groups</b>
Mediators	<b>20</b>
Non-appellant parents/ young people	<b>50</b>
Complaints procedures representatives	<b>20</b>
LA focus group – those involved in early resolution	<b>3 groups</b>
<b>Total</b>	<b>90 + 3 groups</b>
<b>Tribunal PILOT Study</b>	<b>Desired number of interviews</b>
Appellant parents/young people	<b>20</b>
Independent supporters	<b>15-20</b>
Tribunal panel representatives	<b>20</b>
Clinical Commissioning Group (CCG) representatives	<b>20</b>
Pilot LA focus groups – those involved in Tribunal cases	<b>10 groups</b>
<b>Total</b>	<b>75-80 + 10 groups</b>

In addition to the interviews listed in Table 19, the review study included desk research examining LAs' Local Offers in terms of any revisions made in light of feedback from parents and/or young people.

The interview data was analysed thematically, starting from themes structured in to our semi-structured schedules and adding those raised by interviewees. Within each theme, the range and relative weight of opinion was identified.

## A2.4 Overview of the impact of the changes to the SEND system

To conclude our section on the methodology, we present Figure 70. This sets out the **success criteria** for the review of the disagreement resolution arrangements (based on the wording specified on page 11 of the ITT). It also summarises which of our methods provided evidence to show to what extent these criteria may have been met.

**Figure 70: Success criteria related to the disagreement resolution arrangements**

Success domain	Success metric	Proposed data source/s
Number of Tribunals	Reduction against baseline (registered appeals prior to 1.9.2014)	Ministry of Justice data on appeals LA surveys Role of mediation in this – qualitative interviews
Length of hearing	Reduction against baseline, measured in half days	LA surveys Role of mediation in this – qualitative interviews
Number of disagreements	Reduced against baseline (previous SEN system)	LA surveys
Early resolution of disagreements	Earlier than baseline (previous SEN system) And/or Early <i>per se</i> – e.g. prior to complaint or appeal	LA surveys qualitative interviews
Use of IASS and/or DRS	i) Number of disagreements resolved and not taken to Tribunal ii) Number of partial agreements and narrowed issues taken to Tribunal. (Compared to number of full disagreements taken to Tribunal)	LA surveys
Use of health complaints services	Viewed positively by parents and young people	Qualitative interviews
Use of social care complaints services	Viewed positively by parents and young people	Qualitative interviews
Use of extended Tribunal powers	Positive effects for parents and young people	Qualitative interviews

Source: Based on criteria set out in ITT, p11

## **A2.5 Ethical approval**

The research proposal received full ethical approval from the University of Warwick's Humanities and Social Sciences Research Ethics Committee ((Ref: 111/14-15). As professionals, we also adhere to the British Educational Research Association's Ethical Guidelines for Education Research and also the Code of Ethics of the British Psychological Society. As a DfE-sponsored research project, approval for the study was also deemed to be granted from the Association of Directors of Children's Services.

## Appendix 3

### Introduction: Description of the data

Data were available from three surveys, each covering two terms of the study. Terms 1 and 2 (September 2014 to March 2015), Terms 3 and 4 (April to end of December 2015) and Terms 5 and 6 (January to August 2016). Respondents to these three surveys comprised 80 LAs to Survey 1, 75 LAs to Survey 2 and 67 LAs to Survey 3. The results presented in this Appendix, apply to the **42 LAs** that responded to all three surveys.

The information presented in **Section 1** details our analytic approach towards the data from the 2014 Act, and the statistical significance of comparisons and relationships between the two years covered by the three surveys. These analyses reflect the bedding in of the 2014 Act. For example, at the start of Year 1 LAs were continuing to make decisions on assessments started under the 1996 Act – this practice reduced over the period of the study. Also, the age range covered by the Act increased to 0 to 25 years

In **Section 2** we present statistical comparison of data from the 2014 Act between the pilot and non-pilot LAs. Of the 42 LAs that completed all three surveys, 11 LAs (26%) were part of the pilot and 31 (74%) were not.

In **Section 3** we present data of the assessment and appeals under the 1996 Act for the 42 LAs, over the two years of the surveys.

### A3.1 Approach to statistical analysis of data from 2014 Act processes

#### A3.1.1 Sampling error

This quantity enables us to understand the extent to which the precision of the sample survey estimates is limited by the number of LAs who actually participated in the survey (compared to the total population of 152 LAs). This is essentially the difference between our sample and the total population. We estimated this for N=109 LAs who participated at least once, and N=42 LAs that participated at all three time points, because these are the samples on which we are basing our analyses and conclusions – see Table 20.

We carried out three surveys in order to examine changes over time. LAs varied in how many surveys they responded to. Overall, 109 LAs took part in the study, with 42 LAs providing data for all three surveys. As there are 152 LAs in all, our results are estimates of the results that would have been achieved from all 152. We, therefore, provide information of the sample error at the 95% confidence interval – see Tables 19 and 20.

Table 20 reports the sampling error for each survey at the 95% confidence interval and Table 21 reports the sampling error for the number of LAs responding to either one, two, or three surveys, and the sampling errors for the 109 LAs as a whole, and the 42 LAs as a whole. The sampling error for the 109 LAs is 5%, and for the 42 LAs it is 13%.

**Table 20 LA response rate for each survey**

<b>Survey</b>	<b>Number of LAs responding (N=152)</b>	<b>Response rate (%)</b>	<b>Sample error at 95% Confidence interval</b>
Survey 1 (summer 2015)	80	53%	8%
Survey 2 (spring 2016)	75	49%	8%
Survey 3 (autumn 2016)	67	44%	9%

**Table 21 LAs responding to one or more of the surveys**

<b>Surveys responded to:</b>	<b>Number of LAs</b>	<b>Sampling error at 95% Confidence Interval</b>
Survey 1 only	20	20%
Survey 2 only	13	26%
Survey 3 only	7	36%
Survey 1 and 2 only	11	29%
Survey 1 and 3 only	7	36%
Survey 2 and 3 only	9	32%
All 3 surveys	42	13%
<b>At least one survey (i.e. Total N of LAs that participated)</b>	<b>109</b>	<b>5</b>

### A3.1.2 Analysis of the data from the 42 LAs that responded to all three surveys

Forty-two LAs provided data across all three surveys. Data from these LAs were used to compare information between the two years considered (September 2014 to August 2015 and September 2015 to August 2016). Where data were frequencies, chi-square associations explored statistical differences.

Table 22 describes the **overall number** of assessments over each year, along with **the mean, median, range, percentage of LAs reporting zero assessments**, and **percentage of LAs reporting Not Known/Not Applicable answers**.

**Table 22 Assessments processed under 2014 Act**

	Year 1 (September 2014 – August 2015)							Year 2 (September 2015 – August 2016)						
	Total	Mean	Median	Max	Min	% of zeros	% NK/NA	Total	Mean	Median	Max	Min	% of zeros	% NK/NA
<b>Total assessments requested</b>	9969	243.1	198.0	0	832	4.8	2.4	13557	322.8	246.0	1	1531	0.0	0.0
<b>assessments refused</b>	2694	67.4	48.0	0	234	0.8	68.3	3931	93.6	62.5	0	297	0.8	0.0
<b>assessments completed (total)</b>	5707	142.7	118.5	1	531	0.0	68.3	8618	205.2	163.5	1	1139	0.0	0.0
<b>Of assessments completed under 2014 Act: for how many was the decision</b>														
<b>(a) agreed to write a Plan</b>	5266	131.7	123.5	1	453	0.0	68.3	7539	179.5	157.0	1	595	0.0	0.0
<b>(b) refused to write a Plan</b>	393	9.8	4.0	0	144	7.1	68.3	388	9.2	4.0	0	67	7.9	0.0

### A3.1.3 Assessments under the 2014 Act

**Analysis 1a.** The number of assessments refused and the number of assessments completed both increased between Year 1 and Year 2, reflecting the transition to the 2014 Act. There was no significant difference between the proportions of completion and refusals,  $\chi^2 (1, 20950) = 1.28, p = .257$ .

### A3.1.4 Mediation

Table 23 presents the **overall number** of cases making contact about mediation over each year, along with **the mean, median, range, percentage of LAs reporting zero assessments, and percentage of LAs reporting Not Known/Not Applicable answers**. The data are derived from the responses of the 42 LAs for which we have data from all three surveys.

**Analysis 2a.** In Year 1, 297 cases **took up mediation**, compared to 344 who did not take up mediation. In Year 2, 651 cases took up mediation, compared to 545 who did not take up mediation. There was a significant increase in the number of people taking up mediation compared with those not taking up mediation between Year 1 and Year 2  $\chi^2 (1, N=1837) = 10.96, p < .001$ .

**Analysis 2b.** We then looked at the number of cases where an appeal was registered, following mediation compared to those who did not take up mediation. In Year 1 160 cases where mediation had been used resulted in resolution without appeal to the Tribunal, compared to 64 where there was an appeal to the Tribunal. In Year 2 the numbers of cases increased to 407 and 94 respectively,  $\chi^2 (1, N = 725) = 8.74, p = 0.31$ .

**Table 23 Formal Mediation Service**

	Year 1							Year 2						
	total	mean	median	min	max	% of zeros	% NK/NA	total	mean	median	min	max	% of zeros	% NK/NA
<b>Total making initial contact</b>	661	15.7	9.0	0	91	9.5	0.0	1234	30.1	18	0	246	9.5	2.4
<b>Of those making contact how many :</b>														
<b>chose to take up mediation</b>	297	7.8	3.0	0	52	4.8	9.5	651	16.7	10	0	86	2.4	7.1
<b>chose not to take up mediation</b>	344	9.6	5.5	0	64	14.3	14.3	545	14.7	8	0	173	11.9	11.9
<b>Of those taking up mediation How many cases were about:</b>														
<b>Education issue/s</b>	200	5.7	3.0	0	52	4.8	16.7	479	12.9	7	0	86	7.1	11.9
<b>Education &amp; Health issues</b>	19	0.8	0.0	0	18	52.4	42.9	36	1.2	0	0	30	64.3	26.2
<b>Education &amp; Social care issues</b>	4	0.2	0.0	0	1	47.6	42.9	16	0.5	0	0	6	59.5	21.4
<b>Education, Health &amp; Social care issues</b>	61	2.4	0.0	0	20	42.9	40.5	187	5.8	0	0	60	52.4	23.8
<b>How many cases resulted in:</b>														
<b>mediation is continuing</b>	70	2.7	0.0	0	22	38.1	38.1	45	1.4	0	0	11	42.9	21.4
<b>resolution without appeal to Tribunal</b>	160	5.0	2.0	0	45	2.4	23.8	407	11.0	4	0	78	9.5	11.9
<b>registered Tribunal appeal</b>	64	2.1	1.0	0	10	23.8	26.2	94	2.6	2	0	9	21.4	14.3
<b>Of those not taking up mediation How many cases were about:</b>														

	Year 1							Year 2						
	total	mean	median	min	max	% of zeros	% NK/NA	total	mean	median	min	max	% of zeros	% NK/NA
<b>Education issue/s</b>	258	8.9	5.0	0	64	7.1	31.0	406	12.7	7	0	173	7.1	23.8
<b>Education &amp; Health issues</b>	13	0.6	0.0	0	7	40.5	50.0	7	0.3	0	0	4	50.0	40.5
<b>Education &amp; Social care issues</b>	3	0.1	0.0	0	2	45.2	50.0	4	0.2	0	0	1	50.0	40.5
<b>Education, Health &amp; Social care issues</b>	53	2.4	0.0	0	32	40.5	47.6	209	8.0	0	0	119	38.1	38.1
<b>How many cases resulted in:</b>														
<b>registered Tribunal appeal</b>	91	3.8	2.0	0	22	16.7	42.9	208	6.7	4	0	56	7.1	26.2

### A3.1.5 Disagreement Resolution Service (DRS)

Table 24 describes the **overall number** of cases using DRS over each year, along with **the mean, median, range, percentage of LAs reporting zero assessments**, and **percentage of LAs reporting Not Known/Not Applicable answers**.

**Table 24 Disagreement Resolution Service**

	Year 1							Year 2						
	total	mean	median	min	max	% of zeros	%NK/NA	total	mean	median	min	max	% of zeros	% NK/NA
<b>Total cases using DRS</b>	46	1.1	0.0	0	7	59.5	2.4	99	2.4	0.0	0	37	52.4	2.4
<b>Of all cases using DRS (a) how many were for disagreements about:</b>														
how duties towards children and young people with SEN are carried out by LA or education setting	7	0.6	0.0	0	4	19.0	71.4	31	2.6	0.0	0	13	16.7	71.4
the special educational provision made by an educational setting for a child or young person, with or without an EHC plan	27	1.9	1.0	0	7	4.8	66.7	56	2.9	1.0	0	20	11.9	54.8
health or social care provision made by the LA or CCG in relation to EHC needs assessments and plans	1	0.1	0.0	0	1	26.2	71.4	5	0.4	0.0	0	3	21.4	71.4
disagreements between LAs and health commissioning bodies about EHC needs assessments and plans	2	0.2	0.0	0	1	21.4	73.8	7	0.6	0.0	0	2	16.7	71.4
<b>Of all cases using DRS (b) how many also used:</b>														
formal mediation (for more than certificate)	12	0.8	0.0	0	3	21.4	61.9	13	0.8	0.0	0	6	26.2	61.9
a formal complaints process re SEND	3	0.3	0.0	0	3	26.2	71.4	4	0.3	0.0	0	1	21.4	69.0
appeal to the Tribunal	12	1.0	0.0	0	8	19.0	71.4	14	1.0	0.0	0	8	26.2	66.7

### A3.1.6 Appeals under 2014 Act

Table 25 describes the **overall number** of cases where DRS was used over each year, along with **the mean, median, range, percentage of LAs reporting zero assessments** and **percentage of LAs reporting Not Known/Not Applicable answers**.

**Table 25 Appeals under the 2014 Act**

	Year 1							Year 2						
	total	mean	median	min	max	% of zeros	% NK/NA	total	mean	median	min	max	% of zeros	% NK/NA
<b>TOTAL NUMBER</b>	268	6.4	3.5	0.0	41.0	21.4	0.0	767	18.3	10.5	0.0	100.0	11.9	0.0
<b>a) Reasons for Appeal</b>														
<b>refusal to assess</b>	138	4.6	2.0	0.0	26.0	4.8	28.6	299	9.1	5.0	0.0	34.0	4.8	21.4
<b>refusal to re-assess</b>	2	0.1	0.0	0.0	1.0	52.4	42.9	4	0.1	0.0	0.0	2.0	61.9	31.0
<b>refusal to issue an EHC plan</b>	25	0.9	0.0	0.0	4.0	33.3	35.7	58	1.8	1.0	0.0	11.0	35.7	23.8
<b>description of child's SEN</b>	26	1.0	0.0	0.0	7.0	33.3	35.7	111	3.7	1.0	0.0	46.0	33.3	28.6
<b>special educational provision specified</b>	33	1.1	0.5	0.0	9.0	35.7	28.6	154	4.8	2.0	0.0	48.0	16.7	23.8
<b>school/institution (or type) named</b>	63	2.1	1.0	0.0	11.0	23.8	28.6	218	6.2	3.0	0.0	43.0	7.1	16.7
<b>school/institution (or type) is not named</b>	9	0.3	0.0	0.0	3.0	50.0	38.1	48	1.6	0.0	0.0	26.0	52.4	28.6
<b>against amendment/s made</b>	5	0.2	0.0	0.0	5.0	54.8	42.9	20	0.7	0.0	0.0	9.0	54.8	31.0
<b>refusal to amend plan after re-assessment</b>	1	0.0	0.0	0.0	1.0	57.1	40.5	6	0.2	0.0	0.0	2.0	57.1	33.3
<b>refusal to amend plan after review</b>	1	0.0	0.0	0.0	1.0	54.8	42.9	5	0.2	0.0	0.0	3.0	59.5	33.3

	Year 1							Year 2						
	total	mean	median	min	max	% of zeros	% NK/NA	total	mean	median	min	max	% of zeros	% NK/NA
<b>decision to cease to maintain EHC plan</b>	1	0.0	0.0	0.0	1.0	54.8	42.9	2	0.1	0.0	0.0	2.0	64.3	33.3
<b>b) Status of Appeals</b>														
<b>pending</b>	24	0.9	0.0	0.0	3.0	35.7	33.3	207	6.3	3.0	0.0	37.0	11.9	21.4
<b>conceded or withdrawn</b>	193	6.0	4.5	0.0	35.0	2.4	23.8	423	11.8	9.5	0.0	53.0	4.8	14.3
<b>decided by Tribunal panel</b>	43	1.5	1.0	0.0	7.0	26.2	31.0	100	2.9	2.0	0.0	14.0	14.3	19.0
<b>not known</b>	7	0.3	0.0	0.0	3.0	47.6	40.5	5	0.2	0.0	0.0	2.0	59.5	31.0
<b>c) Outcome of Appeal</b>														
<b>decided without a hearing</b>	16	0.6	0.0	0.0	8.0	47.6	40.5	22	0.6	0.0	0.0	9.0	59.5	19.0
<b>decided in favour of appellant</b>	25	0.9	1.0	0.0	3.0	23.8	35.7	67	1.9	1.0	0.0	14.0	35.7	16.7
<b>d) Nature of SEN</b>														
<b>Autism spectrum disorder (ASD)</b>	123	4.1	1.5	0.0	19.0	9.5	28.6	257	7.1	3.0	0.0	37.0	7.1	14.3
<b>Social, emotional and mental health difficulties (SEMHD)</b>	28	1.0	1.0	0.0	5.0	23.8	35.7	80	2.5	1.5	0.0	13.0	16.7	23.8
<b>Hearing impairment (HI)</b>	3	0.1	0.0	0.0	1.0	45.2	47.6	6	0.2	0.0	0.0	2.0	50.0	38.1
<b>Moderate learning difficulties (MLD)</b>	22	0.9	0.0	0.0	5.0	35.7	40.5	52	1.7	1.0	0.0	13.0	26.2	28.6
<b>Multi-sensory impairment (MSI)</b>	0	0.0	0.0	0.0	0.0	52.4	47.6	3	0.1	0.0	0.0	1.0	52.4	40.5
<b>Physical difficulties (PD)</b>	12	0.5	0.0	0.0	2.0	40.5	38.1	23	0.9	0.5	0.0	3.0	31.0	38.1

	Year 1							Year 2						
	total	mean	median	min	max	% of zeros	% NK/NA	total	mean	median	min	max	% of zeros	% NK/NA
<b>Profound and multiple learning difficulties (PMLD)</b>	7	0.3	0.0	0.0	2.0	45.2	42.9	7	0.3	0.0	0.0	1.0	45.2	38.1
<b>Severe learning difficulties (SLD)</b>	9	0.4	0.0	0.0	1.0	33.3	45.2	33	1.2	1.0	0.0	4.0	26.2	35.7
<b>Specific learning difficulties (SpLD)</b>	15	0.6	0.0	0.0	3.0	35.7	42.9	34.0	1.1	1.0	0.0	12.0	28.6	28.6
<b>Speech, language and communication needs (SLCN)</b>	12	0.5	0.0	0.0	3.0	35.7	45.2	45.0	1.6	1.0	0.0	11.0	23.8	31.0
<b>Visual impairment (VI)</b>	0	0.0	0.0	0.0	0.0	52.4	47.6	2.0	0.1	0.0	0.0	1.0	54.8	40.5
<b>Unknown or Other difficulty/disability</b>	20	0.9	0.0	0.0	8.0	35.7	47.6	91.0	3.5	1.0	0.0	27.0	28.6	38.1

**Analysis 4a.** We compared the numbers of appeals for each of the main categories of appeal with the total number of appeals for other reasons in Year 1 and Year 2. There was a significant decrease in the proportion registered for “refusal to assess” between Year 1 and Year 2:  $\chi^2(1, N=1034) = 12.63, P < .001$ ; in the proportion of appeals for description of the child’s SEN:  $\chi^2(1, N=1034) = 3.96, p = .047$ ; and the SEN provision specified:  $\chi^2(1, N=1034) = 8.14, p = .004$ . However, there was no difference from Year 1 to Year 2 in the proportion of appeals for refusal to issue an EHC plan:  $\chi^2(N=1034) = 0.08, p = .362$ ; or in the proportion of appeals on the basis of the school/institution (or type) named  $\chi^2(1, N=1034) = 2.46, p = .117$

**Analysis 4b.** We compared the number of appeals that were conceded or withdrawn to the number of appeals that were decided by Tribunal panel, in Year 1 and Year 2. In both Year 1 and Year 2, significantly more appeals were conceded/withdrawn compared to decided by Tribunal panel. The interaction between year and outcome was not significant,  $\chi^2(1, N=759) = 0.09, p = .769$ , suggesting the outcome of the appeals was consistent across the two years.

**Analysis 4c.** We also looked at the number of appeals that were associated with a child with an ASD compared with the total numbers of appeals in each year. This revealed a significantly smaller proportion of appeals were associated with ASD as the nature of the SEN in Year 2 than Year 1,  $\chi^2(1, N=1035) = 13.12, p < .001$ .

**Analysis 4d.** We correlated the number of appeals reported in the current survey of 42 LAs to the number of appeals registered across the same time period for each of these 42 LAs in the national statistics. The correlation between these two data sources was very high  $r = .830, p < .001$ , indicating a very high association between appeals recorded in the current survey and nationally recorded appeals.

**Analysis 4e.** We also compared the rate of appeals per 10,000 of the school population in the national statistics to the proportion of appeals due to the sum of the main “appealable decisions” in the current survey, i.e. refusal to assess, refusal to issue an EHC plan, and the content of the EHC plan when one was produced (including description of the child’s SEN, the special educational provision specified and the school/institution (or type) specified) for each LA..

The association between the rate of appeals per 10,000 of the school population, and the proportion of appeals due to “appealable decisions” was significant,  $r = .431, p = .006$ , but the association between average population and the proportion of appeals due to appealable decisions was not significant,  $r = .216, p = .186$ .

## **A3.2 Statistical comparison of 2014 Act data between the pilot and non-pilot areas**

### **A3.2.1 Statistical Approach**

Among the 42 LAs that completed all three surveys, 11 were part of the pilot and 21 were not. As these LAs differ vastly in population size, and the pilot and non-pilot groups were uneven, it would be inappropriate to analyse this data using the methods used to analyse the full data set.

Therefore we calculated the data as a proportion of the size of the total school population of the LAs in the pilot and non-pilot areas. For example, for the number of assessments requested, we adjusted the average number of assessments requested across the two years, by the average yearly school population for the pilot and non-pilot LAs, so that the number assessments requested were now presented as a proportion of the whole school population for the group.

Because we were comparing proportions of the overall population between the pilot and non-pilot LAs, we used z-tests. Z-tests were carried out for the 2014 Act only, for proportion of school population requesting assessments, proportion of school population making contact about mediation, proportion of school population using DRS, and proportion of school population making appeals.

### **A3.2.2 Assessments under the 2014 Act**

Table 26 describes the **mean rate of assessment, per 10000 of school population for the pilot and non-pilot LAs**, along with **the mean, median, standard deviation, and range**. The data presented in Table 26 show each measure as a proportion of the average yearly population per 10,000 of the school population, for the LAs in the pilot and non-pilot areas respectively.

**Table 26 Assessments processed under 2014 Act**

	Non-pilot					Pilot				
	Mean Rate	Median	SD	Min	Max	Mean rate	Median	SD	Min	Max
<b>Total requested</b>	55.7	53.3	24.2	16.9	137.7	53.4	54.1	18.0	16.9	80.8
<b>Assessments refused</b>	15.1	13.5	7.8	0.0	35.1	14.6	11.3	7.3	6.4	32.4
<b>Assessments completed (total)</b>	36.3	34.6	16.1	7.3	85.4	31.3	30.7	13.8	10.5	60.8
<b>Of assessments completed under 2014 Act: for how many was the decision</b>										
<b>Agreed to write a Plan</b>	34.3	31.2	17.1	7.2	82.6	30.4	28.7	14.1	7.8	60.3
<b>Refused to write a Plan</b>	1.6	1.0	2.0	0.0	6.6	1.1	0.9	0.9	0.0	3.0

**Analysis 5a.** Comparison between the rate of assessments requested in the pilot and non-pilot LAs was significant  $z=4.69$ ,  $p<.001$ , showing that there was a higher proportion of assessments requested in the non-pilot LAs.

### A3.2.3. Mediation

Table 27 presents the **mean rate of cases making contact about mediation, per 10,000 of school population for the pilot and non-pilot LAs**, along with **the mean, standard deviation (SD), median and range**.

**Table 27 Formal Mediation Service**

	Non-pilot					Pilot				
	Mean rate	Median	SD	Min	Max	Mean rate	Median	SD	Min	Max
<b>Total making initial contact</b>	6.0	4.2	8.3	0.0	41.6	4.4	2.2	4.3	0.2	14.6
<b>Of those making contact how many :</b>										
<b>chose to take up mediation</b>	3.1	1.9	3.6	0.1	17.1	2.3	0.7	3.3	0.2	11.0
<b>chose not to take up mediation</b>	2.9	1.0	5.6	0.0	29.3	2.2	2.0	1.9	0.0	6.1
<b>Of those taking up mediation How many cases were about:</b>										
<b>Education issue/s</b>	2.3	1.3	3.5	0.0	17.1	1.4	0.6	1.8	0.2	5.1
<b>Education &amp; Health issues</b>	0.0	0.0	0.1	0.0	0.5	0.7	0.0	2.0	0.0	5.9
<b>Education &amp; Social care issues</b>	0.1	0.0	0.2	0.0	0.9	0.0	0.0	0.1	0.0	0.1
<b>Education, Health &amp; Social care issues</b>	1.1	0.0	2.1	0.0	7.4	0.3	0.0	1.1	0.0	3.3
<b>How many cases resulted in:</b>										
<b>mediation is continuing</b>	0.4	0.1	0.8	0.0	3.1	0.3	0.0	0.5	0.0	1.4

	Non-pilot					Pilot				
	Mean rate	Median	SD	Min	Max	Mean rate	Median	SD	Min	Max
resolution without appeal to Tribunal	1.8	0.8	2.9	0.0	15.2	1.5	0.4	2.9	0.0	9.3
registered Tribunal appeal	0.5	0.4	0.5	0.0	1.9	0.4	0.2	0.4	0.0	1.2
<b>Of those not taking up mediation</b>										
<b>How many cases were about:</b>										
Education issue/s	2.6	1.0	5.7	0.0	29.3	1.8	1.3	1.8	0.0	6.1
Education & Health issues	0.1	0.0	0.1	0.0	0.4	0.2	0.0	0.5	0.0	1.4
Education & Social care issues	0.0	0.0	0.1	0.0	0.2	0.0	0.0	0.0	0.0	0.0
Education, Health & Social care issues	1.0	0.0	3.0	0.0	14.7	0.1	0.0	0.2	0.0	0.7
<b>How many cases resulted in:</b>										
registered Tribunal appeal	0.9	0.4	1.8	0.0	9.6	0.7	0.5	0.8	0.0	2.7

**Analysis 5b.** Comparison between the rate of cases making contact about mediation in the pilot and non-pilot LAs was significant  $z=6.35$ ,  $p<.001$ , showing that there was a higher proportion of cases where contact about mediation was made in the non-pilot LAs compared to the pilot LAs.

### A3.2.4. Disagreement Resolution Service

Table 28 presents the mean rate of cases using DRS, per 10,000 of school population for the pilot and non-pilot LAs, along with the mean, median, standard deviation and range.

Table 28 Disagreement Resolution Service

	Non-pilot					Pilot				
	Mean rate	Median	SD	Min	Max	Mean rate	Median	SD	Min	Max
<b>Total cases using DRS</b>	2.2	0.3	7.4	0.0	36.2	0.3	0.1	0.4	0.0	1.3
<b>Of all cases using DRS (a) how many were for disagreements about:</b>										
how duties towards children and young people with SEN are carried out by LA or education setting	0.4	0.0	0.8	0.0	2.5	0.2	0.1	0.3	0.0	0.7
the special educational provision made by an educational setting for a child or young person, with or without an EHC plan	0.6	0.3	0.9	0.0	2.8	0.1	0.1	0.2	0.0	0.4
health or social care provision made by the LA or CCG in relation to EHC needs assessments and plans	0.1	0.0	0.1	0.0	0.3	0.0	0.0	0.0	0.0	0.0
disagreements between LAs and health commissioning bodies about EHC needs assessments and plans	0.1	0.0	0.1	0.0	0.3	0.1	0.0	0.1	0.0	0.3
<b>Of all cases using DRS (b) how many also used:</b>										
formal mediation (for more than certificate)	0.2	0.0	0.5	0.0	1.7	0.0	0.0	0.1	0.0	0.2
a formal complaints process re SEND	0.1	0.0	0.1	0.0	0.4	0.0	0.0	0.0	0.0	0.0
appeal to the Tribunal	0.3	0.0	0.6	0.0	1.8	0.0	0.0	0.0	0.0	0.0

**Analysis 5c.** Comparison between the rate of cases using DRS in the pilot and non-pilot LAs was significant  $z=2.47$ ,  $p=.013$ , showing that there was a higher proportion of cases using DRS in the non-pilot LAs compared to the pilot LAs

## A3.2.5 Appeals

Table 29 presents the mean rate of appeals, per 10,000 of school population for the pilot and non-pilot LAs, along with the mean, median, standard deviation, and range.

Table 29 Appeals under 2014 Act

	Non-pilot					Pilot				
	Mean rate	Median	SD	Min	Max	Mean rate	Median	SD	Min	Max
<b>TOTAL NUMBER</b>	2.1	1.8	1.8	0.0	7.3	1.8	1.7	1.3	0.2	4.4
refusal to assess	0.7	0.5	0.7	0.0	2.4	0.5	0.4	0.4	0.0	1.2
refusal to re-assess	0.1	0.0	0.1	0.0	0.5	0.1	0.0	0.1	0.0	0.3
refusal to issue an EHC plan	0.2	0.1	0.3	0.0	1.0	0.2	0.1	0.2	0.0	0.6
<b>a) Reasons for Appeal</b>										
description of child's SEN	0.3	0.1	0.4	0.0	1.8	0.2	0.1	0.4	0.0	1.3
special educational provision specified	0.4	0.3	0.5	0.0	1.9	0.4	0.2	0.5	0.0	1.5
school/institution (or type) named	0.5	0.3	0.5	0.0	2.1	0.5	0.4	0.5	0.0	1.8
school/institution (or type) is not named	0.1	0.0	0.2	0.0	0.7	0.1	0.0	0.1	0.0	0.4
against amendment/s made	0.1	0.0	0.2	0.0	0.6	0.0	0.0	0.1	0.0	0.2
refusal to amend plan after re-assessment	0.0	0.0	0.1	0.0	0.2	0.0	0.0	0.0	0.0	0.1
refusal to amend plan after review	0.0	0.0	0.0	0.0	0.1	0.0	0.0	0.0	0.0	0.0
decision to cease to maintain EHC plan	0.1	0.0	0.1	0.0	0.3	0.0	0.0	0.1	0.0	0.2

	Non-pilot					Pilot				
	Mean rate	Median	SD	Min	Max	Mean rate	Median	SD	Min	Max
<b>b) Status of Appeals</b>										
pending	0.9	0.8	0.9	0.0	4.4	0.6	0.6	0.4	0.0	1.1
conceded or withdrawn	1.0	0.9	0.8	0.0	2.8	0.9	0.6	0.8	0.0	2.2
decided by Tribunal panel	0.4	0.1	0.4	0.0	1.6	0.3	0.1	0.5	0.0	1.7
not known	0.1	0.0	0.3	0.0	1.1	0.1	0.0	0.1	0.0	0.2
<b>c) Outcome of Appeal</b>										
decided without a hearing	0.2	0.1	0.5	0.0	2.5	0.0	0.0	0.1	0.0	0.2
decided in favour of appellant	0.5	0.2	0.6	0.0	2.2	0.3	0.2	0.3	0.0	1.0
<b>d) Nature of SEN</b>										
Autism spectrum disorder (ASD)	0.8	0.4	0.7	0.0	2.6	0.4	0.1	0.5	0.0	1.3
Social, emotional and mental health difficulties (SEMHD)	0.2	0.1	0.2	0.0	0.6	0.2	0.2	0.2	0.0	0.6
Hearing impairment (HI)	0.1	0.0	0.1	0.0	0.4	0.1	0.0	0.2	0.0	0.5
Moderate learning difficulties (MLD)	0.1	0.0	0.1	0.0	0.3	0.2	0.1	0.2	0.0	0.7
Multi-sensory impairment (MSI)	0.1	0.0	0.1	0.0	0.2	0.0	0.0	0.0	0.0	0.0
Physical difficulties (PD)	0.1	0.0	0.1	0.0	0.5	0.0	0.0	0.1	0.0	0.2
Profound and multiple learning difficulties (PMLD)	0.0	0.0	0.1	0.0	0.2	0.0	0.0	0.1	0.0	0.2
Severe learning difficulties (SLD)	0.1	0.0	0.2	0.0	0.7	0.1	0.1	0.1	0.0	0.4
Specific learning difficulties (SpLD)	0.1	0.1	0.2	0.0	0.6	0.1	0.1	0.1	0.0	0.3
Speech, language and communication needs (SLCN)	0.1	0.1	0.1	0.0	0.7	0.1	0.0	0.1	0.0	0.3
Visual impairment (VI)	0.1	0.0	0.1	0.0	0.6	0.0	0.0	0.1	0.0	0.1
Unknown or Other difficulty/disability	1.6	1.4	1.4	0.0	5.1	1.5	1.1	1.1	0.2	4.0

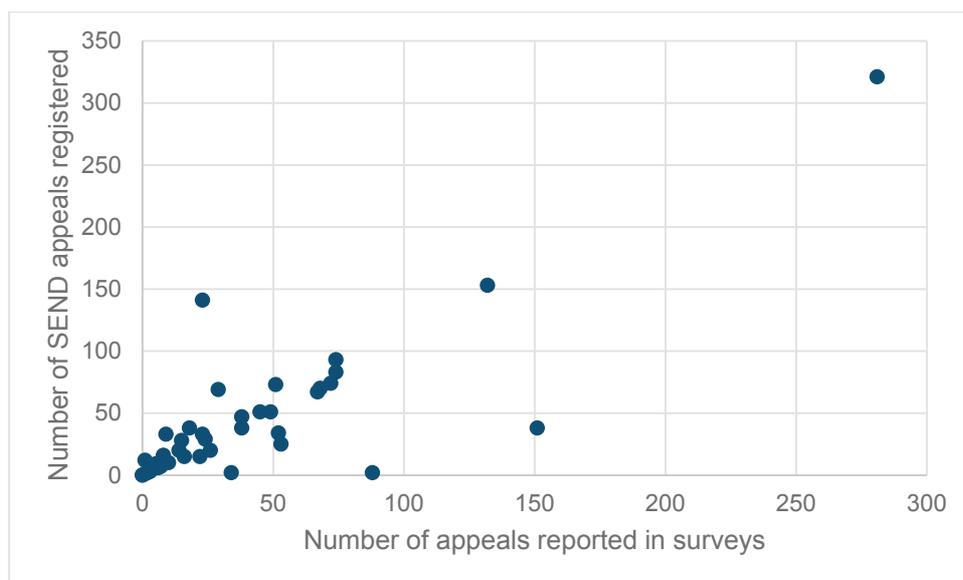
Comparison between the rate of appeals in the pilot and non-pilot LAs was not significant  $z=1.48$ ,  $p=.14$ .

## A3.3 The association of our survey data on appeals with national data on Tribunal appeals

### A3.3.1 The 42 LAs that completed all three surveys

We compared the number of appeals across the 42 LAs that completed all three of our surveys to the number of appeals registered with the Tribunal nationally<sup>97</sup> in order to examine the comparability of the data from the 42 LAs in our sample with the national data on appeals. Figure 71 shows that there was **a strong association between the two**, showing that LAs that had a high number of appeals registered, also reported a high number of appeals in the current survey (each point on the graph represents an LA). This was a very large correlation of .83 ( $p < .001$ , See Analysis 4g in Appendix 3), suggesting that **the appeals data collected in our surveys reflect the data collected nationally**.

**Figure 71: Association between registered appeals and appeals reported in the surveys (summed across 1996 act and 2014 act<sup>98</sup>)**



### A3.3.2 The 109 LAs that completed any of our surveys

We also looked at the national statistics on the reasons for appeal, and the status of appeals<sup>99</sup>, across LAs and compared these statistics to those obtained from our total sample of 109 LAs (see Table 13)

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<sup>97</sup> Source: LA and Regional Tables in SFR20/2016, [Schools, pupils and their characteristics](#) and GAPS2

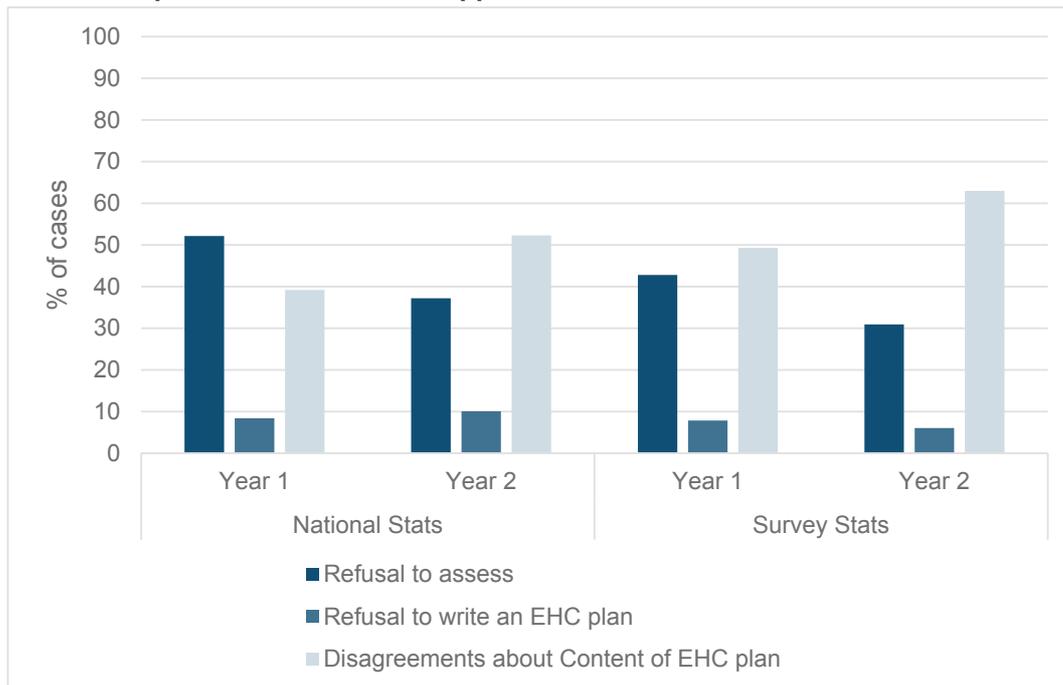
<sup>98</sup> Appeals from the 1996 Act and the 2014 Act were summed because the national statistics on appeals did not differentiate which Act the appeals were registered under.

**Table 11 Comparison of reasons for appeal and status of appeals between National Statistics and current survey statistics**

	National Statistics		Survey Statistics	
	Year 1	Year 2	Year 1	Year 2
<b>Reasons for Appeal</b>				
Refusal to assess	603	1185	283	590
Refusal to write an EHC plan	97	321	52	116
Disagreements about Content of EHC plan	453	1665	326	1202
<b>Status of Appeals</b>				
Decided	60	589	93	195
Withdrawn / Conceded	166	1816	407	906

Figure 72 shows the percentage of appeals resulting from refusal to assess, refusal to write an EHC plan and disagreements about the content of the EHC plan, for the national statistics and the current survey statistics.

**Figure 72: Comparison of reasons for appeal between national statistics and current survey**



Source: 109 LAs

This shows that the proportion of appeals due to each reason was similar between the national statistics and the current survey findings. For the national statistics, 52% appeals in Year 1 and 37% appeals in Year 2 were due to refusal to assess, while for

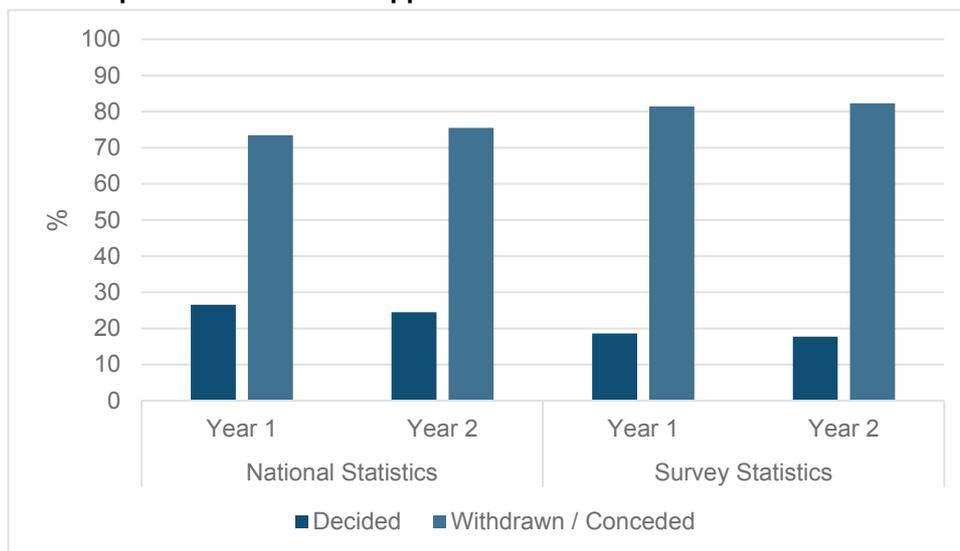
<sup>99</sup> Under the 2014 Act only

the current survey 43% of appeals in Year 1 and 31% of cases in Year 2 were due to refusal to assess. Similarly, 39% in Year 1 and 52% in Year 2 of appeals were due to disagreements about content of EHC plan in the national statistics, while 49% and 63% (Year 1 and Year 2 respectively) for the current survey, were due to disagreements about content of EHC plan.

Finally, for the national statistics, 8% in Year 1 and 10% in Year 2 of appeals were due to refusal to write an EHC plan, compared to, 8% and 6% (Year 1 and Year 2 respectively) for the current survey.

Figure 73 shows the status of appeals. A greater percentage of cases were identified as conceded or withdrawn in the current survey: 81% in Year 1 and 82% in Year 2, compared to 73% in Year 1 and 76% in Year 2 for the national statistics. For the national statistics, 27% in Year 1 and 24% in Year 2 of cases were decided by Tribunal appeal, compared to 19% in Year 1 and 18% in Year 2 for the current survey.

**Figure 73: Comparison of status of appeal between national statistics and current survey**



Source: 109 LAs

## Appendix 4: Data on assessments and appeals under 1996 Act

As well as data on assessments and appeals under the 2014 Act (see Appendix 3), the 42 LAs that responded to all three online surveys also provided information on the numbers of assessment and appeals under the 1996 Act. Here, we present, for information, the **overall number** of assessments and appeals over each year, along with **the mean, median, range, percentage of LAs reporting zero assessments**, and **percentage of LAs reporting Not Known/Not Applicable answers**.

### A4.1 Assessments of SEND under the 1996 Act

Table 30 shows assessments processed under the 1996 Act.

**Table 30 Assessments processed under 1996 Act**

	Year 1							Year 2						
	Total	Mean	Median	Min	Max	% of zeros	% NK/NA	Total	Mean	Median	Min	Max	% of zeros	% NK/NA
<b>Assessments refused</b>	121	3.0	0.0	0	19	61.9	4.8	57	1.4	0.0	0	46	95.2	0.0
<b>re-assessments requested</b>	27	0.7	0.0	0	13	81.0	4.8	37	0.9	0.0	0	32	92.9	0.0
<b>re-assessments refused</b>	5	0.1	0.0	0	2	88.1	4.8	17	0.4	0.0	0	15	95.2	0.0
<b>assessments completed (total)</b>	1741	43.5	13.0	0	284	35.7	4.8	151	3.6	0.0	0	121	81.0	0.0
<b>Of 1996 Act assessments completed: for how many was the decision</b>														
<b>(a) agreed to write a Statement</b>	1367	52.6	49.0	0	212	4.8	38.1	28	3.5	1.5	0	17	4.8	81.0
<b>(b) refused to write a Statement</b>	28	1.1	0.0	0	14	42.9	38.1	1	0.1	0.0	0	1	14.3	83.3

## A4.2 Appeals under 1996 Act

Table 31 Appeals under 1996 Act

	Year 1							Year 2						
	total	mean	median	min	max	% of zeros	% NK/NA	total	mean	median	min	max	% of zeros	% NK/NA
<b>TOTAL NUMBER</b>	480	11.7	5.0	0	128	16.7	0.0	125	3.0	1.0	0	27	35.7	0.0
<b>a) Reasons for Appeal</b>														
refusal to assess	79	2.8	1.5	0	15	23.8	31.0	17	1.1	0.0	0	9	26.2	61.9
refusal to re-assess	3	0.1	0.0	0	1	57.1	33.3	1	0.1	0.0	0	1	31.0	64.3
refusal to issue a statement	27	1.0	0.0	0	10	40.5	33.3	5	0.4	0.0	0	2	26.2	64.3
description of child's SEN	92	3.3	1.0	0	33	28.6	31.0	32	1.9	1.0	0	12	19.0	57.1
special educational provision specified	122	4.1	1.5	0	33	21.4	26.2	32	1.7	1.0	0	12	11.9	52.4
school/institution (or type) named	154	5.0	2.0	0	50	9.5	23.8	55	2.5	1.0	0	11	11.9	45.2
school/institution (or type) is not named	70	2.6	0.0	0	63	52.4	33.3	6	0.4	0.0	0	4	28.6	61.9
against amendment/s made	27	1.0	0.0	0	23	52.4	35.7	9	0.6	0.0	0	8	28.6	64.3
refusal to amend statement after re-assessment	17	0.7	0.0	0	8	54.8	35.7	5	0.4	0.0	0	5	31.0	64.3
refusal to amend statement after review	39	1.5	0.0	0	22	42.9	35.7	6	0.4	0.0	0	4	31.0	59.5

	Year 1							Year 2						
	total	mean	median	min	max	% of zeros	% NK/NA	total	mean	median	min	max	% of zeros	% NK/NA
<b>decision to cease to maintain statement</b>	4	0.2	0.0	0	2	54.8	35.7	3	0.2	0.0	0	2	31.0	61.9
<b>b) Status of Appeals</b>														
<b>pending</b>	64	2.5	0.5	0	38	31.0	35.7	41	2.0	1.0	0	7	11.9	47.6
<b>conceded or withdrawn</b>	318	9.4	5.0	0	75	2.4	16.7	67	3.0	1.0	0	22	9.5	45.2
<b>decided by Tribunal panel</b>	110	4.1	2.0	0	43	16.7	33.3	18	0.9	1.0	0	5	21.4	52.4
<b>not known</b>	38	1.7	0.0	0	36	45.2	45.2	0	0.0	0.0	0	0	35.7	61.9
<b>c) Outcome of Appeal</b>														
<b>decided without a hearing</b>	79	2.9	1.0	0	24	23.8	33.3	1	0.1	0.0	0	1	45.2	50.0
<b>decided in favour of appellant</b>	44	1.7	1.0	0	9	21.4	35.7	12	0.6	0.0	0	4	31.0	50.0
<b>d) Nature of SEN</b>														
<b>Autism spectrum disorder (ASD)</b>	152	4.9	3.0	0	25	7.1	23.8	46	2.0	1.0	0	12	11.9	42.9
<b>Behaviour, emotional and social difficulties (BESD)</b>	48	1.6	1.0	0	6	19.0	26.2	10	0.6	0.0	0	2	23.8	54.8
<b>Hearing impairment (HI)</b>	16	0.6	0.0	0	5	38.1	38.1	1	0.1	0.0	0	1	33.3	61.9
<b>Moderate learning difficulties (MLD)</b>	46	1.8	1.0	0	14	23.8	38.1	6	0.4	0.0	0	1	23.8	59.5
<b>Multi-sensory impairment (MSI)</b>	5	0.2	0.0	0	1	50.0	35.7	0	0.0	0.0	0	0	35.7	61.9

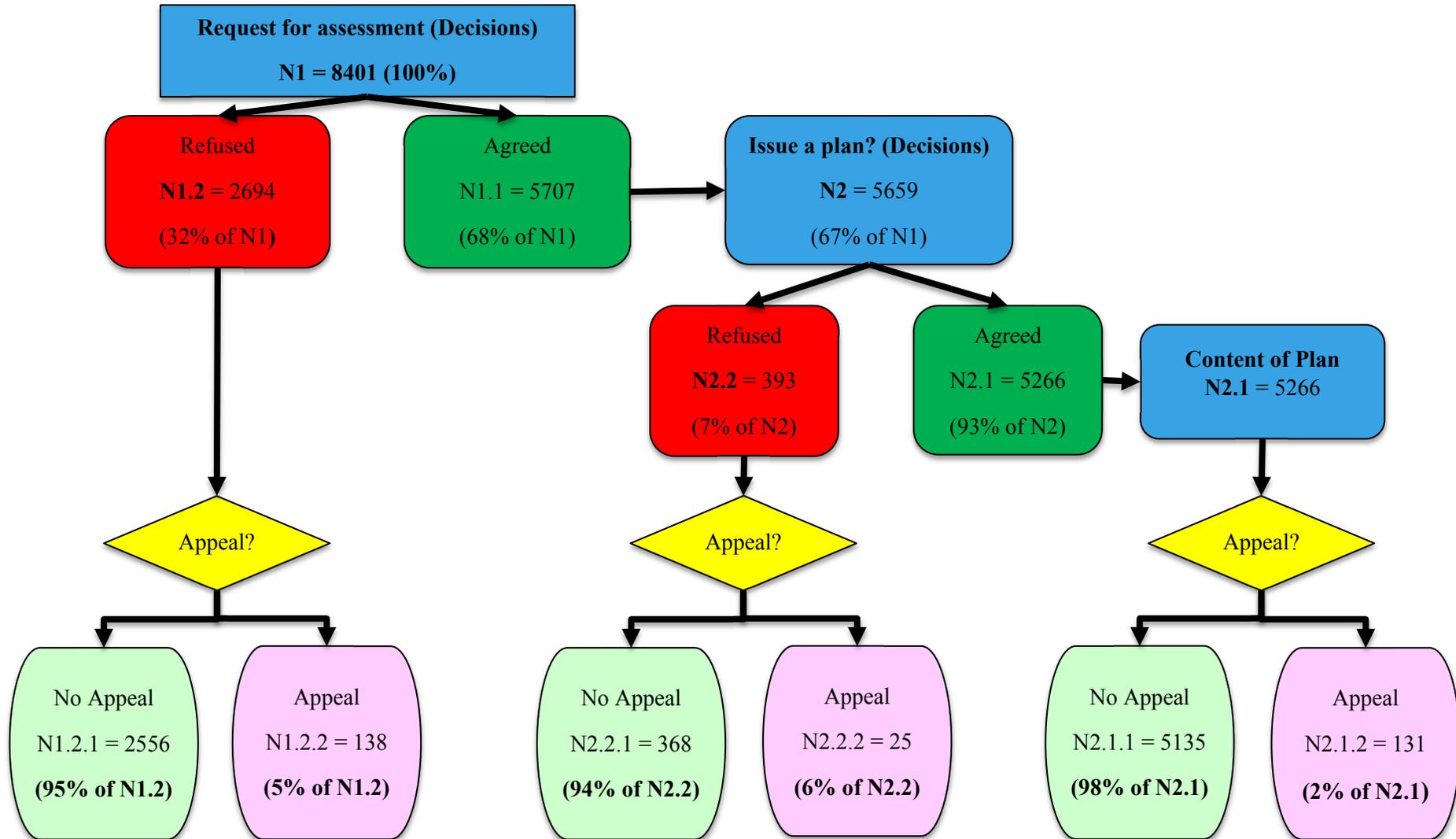
	Year 1							Year 2						
	total	mean	median	min	max	% of zeros	% NK/NA	total	mean	median	min	max	% of zeros	% NK/NA
<b>Physical difficulties (PD)</b>	24	1.0	1.0	0	4	23.8	38.1	6	0.4	0.0	0	2	28.6	57.1
<b>Profound and multiple learning difficulties (PMLD)</b>	1	0.0	0.0	0	1	52.4	42.9	2	0.1	0.0	0	1	31.0	61.9
<b>Severe learning difficulties (SLD)</b>	22	0.9	1.0	0	5	28.6	38.1	4	0.2	0.0	0	1	33.3	54.8
<b>Specific learning difficulties (SpLD)</b>	20	0.8	0.0	0	8	38.1	38.1	6	0.4	0.0	0	4	33.3	57.1
<b>Speech, language and communication needs (SLCN)</b>	47	2.0	1.0	0	24	26.2	40.5	7	0.4	0.0	0	2	28.6	54.8
<b>Visual impairment (VI)</b>	8	0.3	0.0	0	2	38.1	42.9	1	0.1	0.0	0	1	35.7	59.5
<b>Unknown or Other difficulty/disability</b>	51	2.2	0.0	0	37	45.2	42.9	5	0.3	0.0	0	3	31.0	61.9

## **Appendix 5: Two annual flow charts (decisions in 42 LAs)**

Figure 74 and Figure 75 are flow charts for 2014-15 and 2015-16 respectively. They are based only on data from the 42 LAs that completed all three of our surveys. They show data only in relation to decisions made (i.e. they exclude all pending activity at time of each survey).

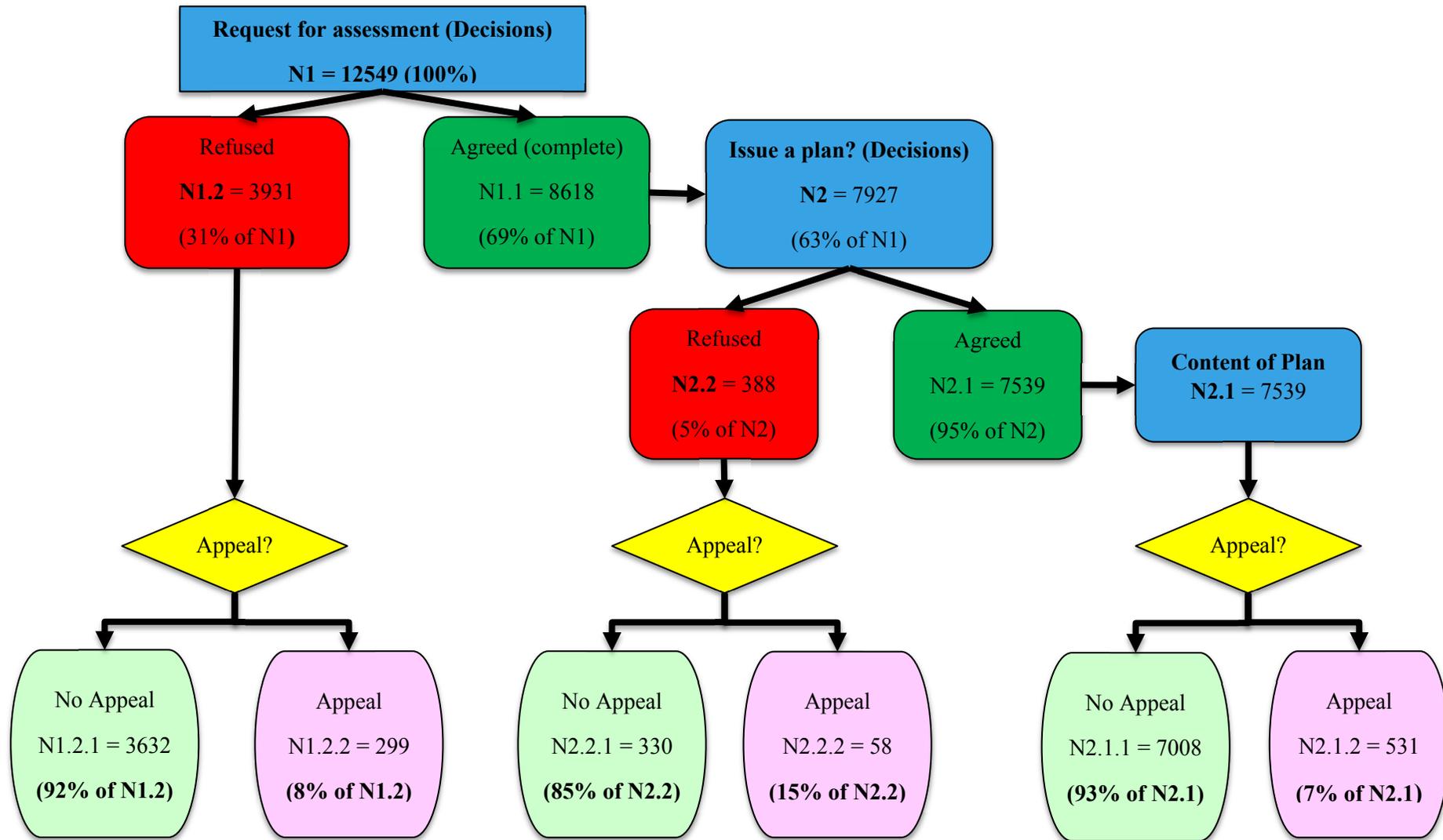
These flow charts are discussed in Chapter 2 Section 2.2.1.2. We used them to compare the volume of appeals compared to the relevant appealable decision in Year 1 versus Year 2.

Figure 74: Flow chart showing First-tier Tribunal SEND appeals in relation to key LA decisions in 42 LAs (2014-15)



Source: 42 LAs that completed all three surveys

Figure 75: Flow chart showing First-tier Tribunal SEND appeals in relation to key LA decisions in 42 LAs (2015-16)



Source: 42 LAs that completed all three surveys

## Appendix 6: Key findings from Survey 1 Section B

### A6.1 Introduction

The second section (B.) of Survey 1 was used as an **exploratory tool** to understand **which factors most affect costs** of disagreement resolution and mediation services and Tribunal preparation and attendance. The assessment of costs explored within the survey related to SEND disagreements that can be broadly composed of two aspects:

- The procurement costs of mediation and disagreement resolution services for LAs
- The time costs of First-tier Tribunal SEND appeals for LAs

The first component was evaluated in terms of **monetary costs** and was primarily focused on the procurement costs incurred by the LAs, while the second component was evaluated in terms of **time costs** in connection to preparation for appeals and attendance at hearings.

In addition to the description of the survey responses, one of the key objectives of the analysis involved understanding the extent to which either of these categories of costs might **vary**, and what the potential **determinants of this variation** were. We used the findings from this data collection exercise to inform the design of questions relating to procurement costs and opportunity costs (time) in Survey 2. In this section, all percentages are of the total number of responses, including 'Not Known' and 'Not applicable'.

### A6.2 Survey and response rates

This part of the survey consisted of a combination of closed and open-ended questions. The questions concerned:

- a) the start date of provision of disagreement resolution and mediation services
- b) how LAs purchase and manage disagreement resolution and mediation services
- c) which factors ('drivers') most affect the cost of provision of disagreement resolution and mediation
- d) whether there are drivers that significantly affect the time required for preparation for Tribunal appeals, and
- e) whether there are significant changes in the costs related to Tribunal appeals since the introduction of the early resolution services.

For topics b), c) and d), the survey instrument included both multiple choice and open-ended questions. As such, LAs were able to clarify exactly which factors drive the variation in provision of disagreement resolution and mediation services and associated costs. The survey also allowed LAs to comment freely on all of these aspects.

The questionnaire was answered by a total of 80 LAs as of 1 September 2015. LAs responded to this section of the survey in its entirety, with the exception of two cases which had a large incidence of missing data.

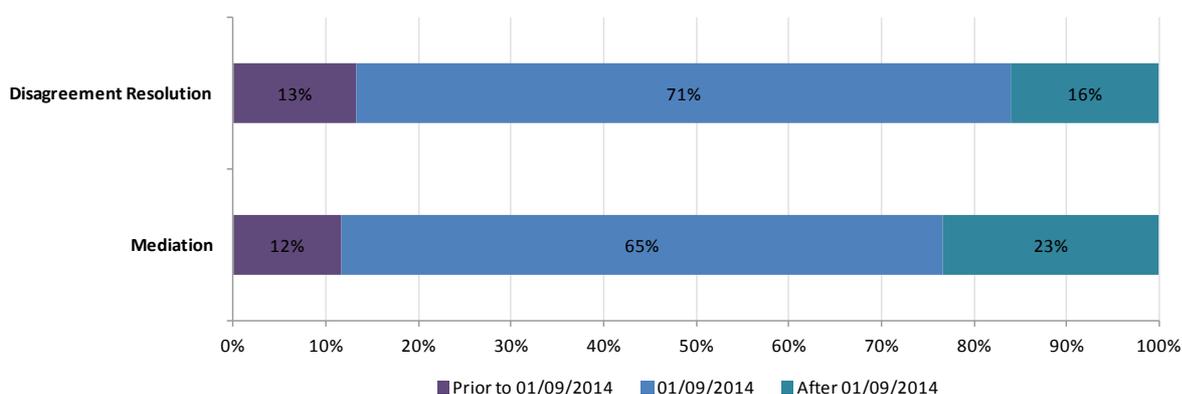
## A6.3 Current arrangements for disagreement resolution and mediation services

### A6.3.1 Start of provision of services

Mediation services have been in place in some LAs under different forms and degrees of formality long before the focus on early disagreement resolution of the new SEND system.

Approximately 12% of the LAs had been providing these services before September 2014 (Figure 76). The majority of respondents indicated that disagreement resolution (71%) and mediation (65%) services were formally introduced in September 2014. In 16% of the LAs, disagreement resolution services were introduced after September 2014. This share increases to 23% for mediation services. However, reflecting the long-standing commitment within some LAs to achieve resolution and agreed outcomes with parents, some respondents to the survey stressed the fact that they had been providing informal mediation services since at least 2007.

**Figure 76: Start of provision of Disagreement Resolution and Mediation services**



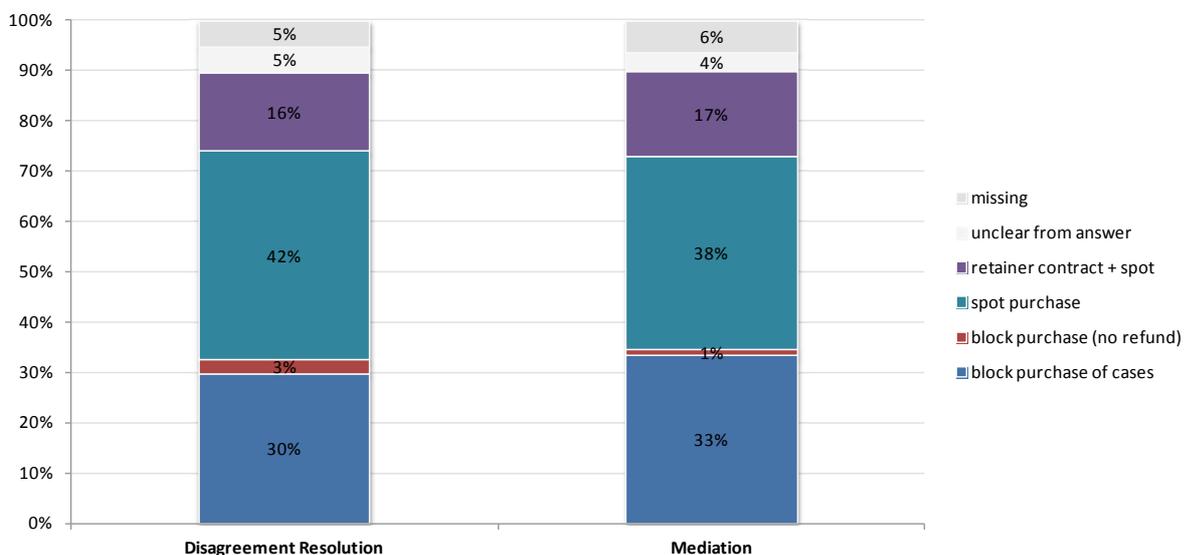
Source: London Economics' analysis of 'Survey 1' responses received by September 1<sup>st</sup> 2015 (Sample size 80)

### A6.3.2 Current procurement of disagreement resolution and mediation services

The results of the survey show that there was significant variation in the way disagreement resolution and mediation services had been set up at the local level.

In roughly a third of the LAs that took part in the survey, disagreement resolution and mediation services (33% and 34% respectively) were purchased on an annual block purchase basis, with a pre-defined number of cases procured (Figure 42). In the remaining three quarters of cases, the most frequent forms of use were retainer agreements and spot purchases (with or without contractual arrangements with specific providers). In the case of disagreement resolution services, approximately 42% of LAs procured through simple spot purchases (denominated in terms of full-days, half-days or hours), while a further 16% of LAs indicated that the spot purchase arrangement also involved an annual retainer/fixed fee. The corresponding estimates in relation to Mediation services were 38% and 17% respectively.

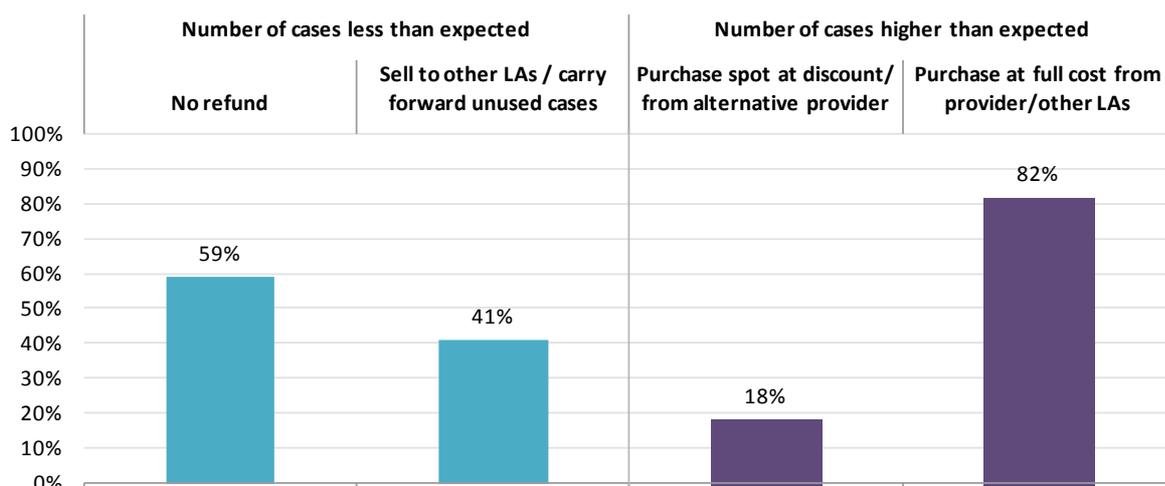
**Figure 77: Purchase arrangements for disagreement resolution and mediation services purchased by LAs**



Source: London Economics' analysis 'Survey 1' responses received by September 1st 2015 (Sample size 80)

For those LAs that purchase disagreement resolution and mediation services in blocks (33% and 34% respectively, Figure 77), the procurement arrangements had different degrees of flexibility. More than half of the LAs did not receive a refund if the number of cases turned out to be lower than the number purchased from the provider (Figure 78). The remaining 40% had the option to re-sell the unused cases within local secondary markets consisting of neighbouring LAs or to carry them forward. If the number of required cases was higher than forecast, LAs could purchase more services (per case or per hour) from their current provider, through alternative providers, or purchase unused services from other LAs.

**Figure 78: Resale and repurchase options for LAs**

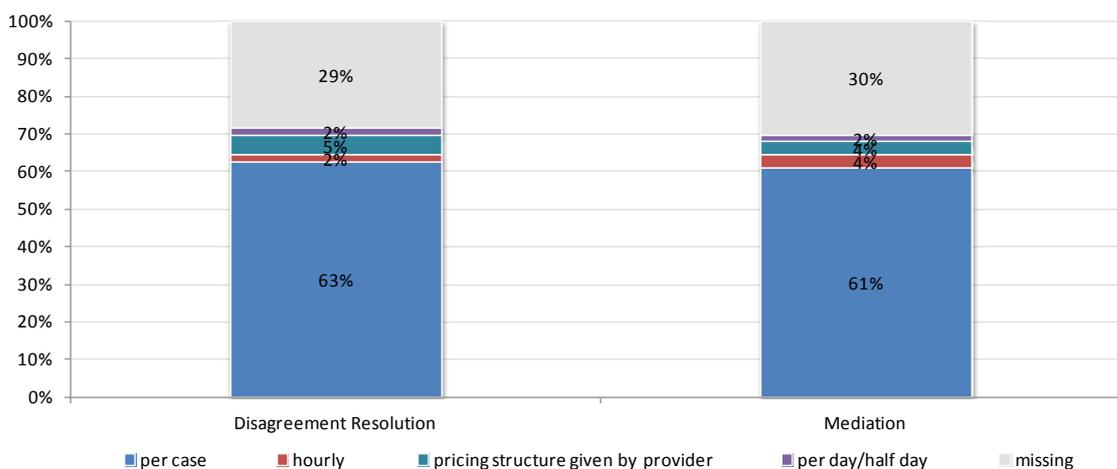


Source: London Economics' analysis 'Survey 1' responses received by September 1st 2015 (Sample size 22)

From an economic perspective, the existence of a secondary market, and the fact that these services can be purchased in such relatively standardised 'units' (i.e. half-day, full-day etc.) suggests that there is likely to be little real variation in the cost of these services. In other words, the costs incurred by the LA will predominantly be associated with the volume of cases referred to resolution or mediation rather than the complexity of the particular cases. However, this does not imply either that there is a 'standard' price for these services (either regionally or nationally), or that there is any relationship between the price charged and the quality of the resolution and mediation services provided.

For LAs that do not block purchase a fixed number of cases, the fee structure (Figure 85) can either be on a fixed per-case basis (63% of responses in respect of disagreement resolution and 61% in respect of mediation services), quoted on an hourly/half-day or daily basis (4% and 6% respectively), or quoted on a case by case basis by the provider (5% and 4% respectively).

**Figure 79: Fee structure for disagreement resolution and mediation services purchased by LAs**



Source: London Economics’ analysis ‘Survey 1’ responses received by September 1st 2015 (Sample size 56)

### A6.3.3 Drivers of costs of disagreement resolution and mediation services

The survey also asked LAs whether the costs of the services varied by a number of aspects, such as the nature of the primary special education need or the type of disagreement.

The options provided were:

- the primary SEN of the child/young person
- the complexity of need (e.g. education only versus education, health and social care)
- the type<sup>100</sup> of disagreement

<sup>100</sup> The disagreement resolution service is to help resolve four types of disagreement or to prevent them from escalating further:

The **first** disagreement is between parents or young people and Local Authorities, the governing bodies of maintained schools and maintained nursery schools, early years providers, Further Education institutions or the proprietors of academies (including Free schools), about **how** these authorities, bodies or proprietors are carrying out their education, health and care duties for children and young people with SEN, whether they have EHC plans or not. These include duties on the Local Authority to keep their education and care provision under review; the duties to assess needs and draw up EHC plans; and the duty on governing bodies and proprietors to use their best endeavours to meet children and young people’s SEN

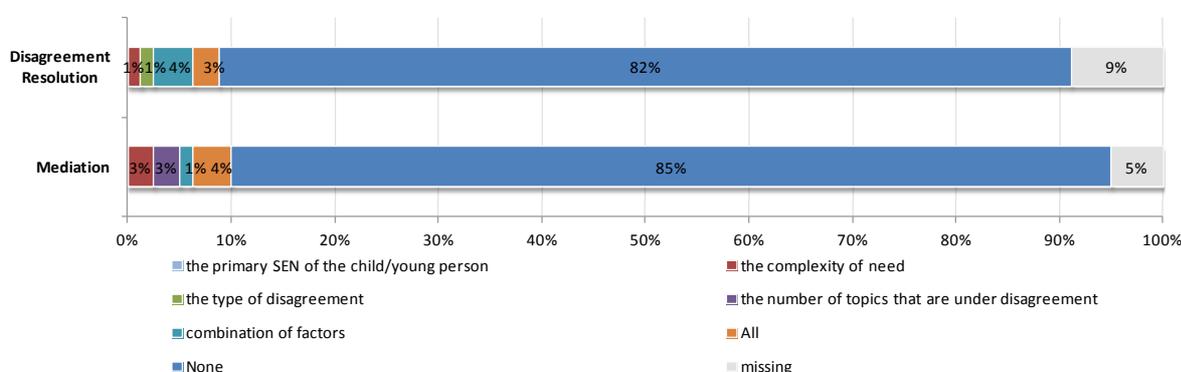
The second is disagreements between parents or young people and early years providers, schools or post-16 institutions about the special educational provision made for a child or young person, whether they have EHC plans or not

The third is disagreements between parents or young people and CCGs or local authorities about health or social care provision during EHC needs assessments, while EHC plans are being drawn up, reviewed or when children or young people are being reassessed. Disagreement resolution services can also be used to resolve disagreements

- the number of the topics that are under disagreement

The majority of respondents considered none of the options presented as a driver of costs in the procurement of Mediation services (85% of respondents) or disagreement resolution services (82%) (Figure 80). The primary SEN (in isolation) was not considered to be a significant cost driver of either disagreement resolution or mediation services according to LAs. For the minority of respondents who considered any of the presented options as a driver of costs, in the case of mediation services, both the ‘complexity of need’ and the ‘number of topics under disagreement’ were the most commonly chosen factors (3%). A small number of respondents indicated that a combination of the above factors (4% for disagreement resolution and 1% for mediation) determined costs of provision.

**Figure 80: Drivers of costs of disagreement resolution and mediation services**



Source: London Economics’ analysis ‘Survey 1’ responses received by September 1st 2015 (Sample size 80)

Given these results, it appears as though there may be other factors driving the variation in the costs of mediation and disagreement resolution services. The opportunity to add open comments on this topic was taken up. A large number of these open responses raised the issue of length and number of sessions required. According to some respondents, such length could be explained by an overall sense of ‘complexity’ of the case. However, these responses are in many ways at odds with the options selected in the closed-response questions. More fundamentally, some LAs may have been suggesting that their own costs associated with preparation ahead of disagreement resolution and meditation services were increasing with the complexity of the case under consideration, which although clearly correct, does not directly relate to

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over special educational provision throughout assessments, the drawing up of EHC plans, while waiting for Tribunal appeals and at review or during re-assessments  
 The fourth is disagreements between Local Authorities and health commissioning bodies during EHC needs assessments or re-assessments, the drawing up of EHC plans or reviews of those plans for children and young people with SEN. In relation to EHC plans, this includes the description of the child or young person’s education, health and care needs and any education, health and care provision set out in the plan. These disagreements do not involve parents and young people.

the procurement of disagreement and mediation services. (That is, procurement costs were independent of opportunity (time) costs.)

In the open answers, a number of more general issues about disagreement and mediation services were raised.

- **Procurement costs versus level of service activity:** Some respondents indicated that the costs of procuring disagreement and mediation services did not vary by any of the characteristics presented. However, although the costs were fixed, the level of activity undertaken by service providers varied considerably depending on the tasks involved. For instance, one LA mentioned that, although some parents accessed the services with potentially legitimate concerns requiring significant mediation effort, other parents simply accessed the service to obtain the required certificates to register an appeal.
- **Variation in procurement costs apparently independent of quality of service provided:** The open-ended responses underscored the significant variation in fees charged by the local providers of disagreement resolution and mediation services, with no apparent connection to the quality/thoroughness of the services provided. Examples cited in open responses indicated that prices could vary from a minimum of £350 (an approximation of an 8-hour day at an hourly fee of £43 per hour) to £1,900 per case. LAs also indicated that competing providers in the same area could offer drastically different pricing (as in the case of one LA where one provider charged double or even four times the other).
- **Unintended consequences and perverse incentives:** Some LAs that had been providing less formal disagreement resolution and mediation services for a period of time indicated that the new arrangements had removed the flexibility that previously existed in the system, and that disagreement resolution and mediation services required significantly more time and effort than previously the case. Furthermore, more than one LA suggested that disagreement resolution and mediation service providers had an incentive to encourage parents to take-up full-scale mediation services, where this was unnecessary.

## **A6.4 Drivers of (time) costs of First-tier Tribunal SEND appeals**

Mediation and disagreement resolution services are designed to offer an alternative redress mechanism to First-tier Tribunal SEND appeals. Therefore, a full cost analysis should encompass the current costs (and potential savings) faced by LAs preparing and attending Tribunal hearings in the baseline scenario without early resolution mechanisms. However, cost information is often difficult to collect (and burdensome), so an element of this survey analysis involved assessing the extent to which there might be a 'representative' or average cost for preparing and attending a Tribunal or whether the variation in Tribunal costs was too great to make this assumption. If this were the

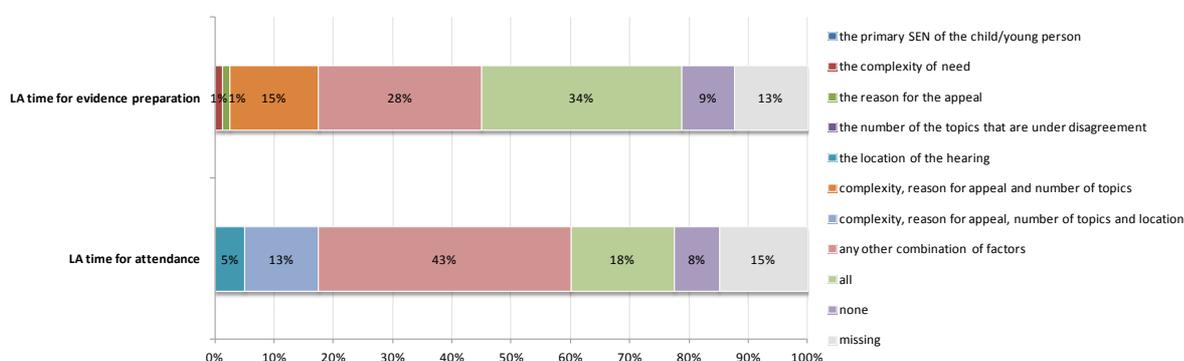
case, then it is key to understand the drivers of cost, and assess whether there may be any means of collecting this information without undue burden to LAs.

LAs were asked which factors affected the time required for preparation of evidence for Tribunal appeals. The options provided were:

- a) the primary SEN of the child/young person
- b) the complexity of need (e.g. education only versus education & health & social care)
- c) the reason<sup>101</sup> for the appeal
- d) the number of the topics that are under disagreement

Respondents were also asked which of these factors affect witnesses' attendance time, and in this question, 'location of the hearing' was also included among the options (Figure 81).

**Figure 81: Drivers of SEND tribunal appeal preparation time**



Source: London Economics' analysis 'Survey 1' responses received by September 1st 2015 (Sample size 80)

Figure 81 shows that, for 34% of respondents, all of the listed factors were considered to affect the time required for preparation for an appeal. In the vast majority of cases, respondents selected a combination of these factors. Looking at the responses concerning the LAs' preparation for Tribunals, the most frequent combination of factors was 'the complexity of the need', 'reason for appeal', and the 'number of topics of disagreement'. Interestingly, the primary SEN of the child or young person was never selected as sole factor.

These patterns also broadly apply to the attendance time for LA witnesses at a Tribunal hearing: 18% of Local Authority respondents selected all of the factors; 13% selected the combination of 'complexity, reason for appeal, number of topics and location', and

<sup>101</sup> The reason for appeal refers to: a decision by a local authority not to carry out an EHC needs assessment; a decision by a local authority that it is not necessary to issue an EHC plan following an assessment; the school or other institution or type of school or other institution (such as mainstream school/college) specified in the plan as appropriate for the detained person on their release from custody or that no school or other institution is specified

43% of respondents selected any other combination of the 5 factors. Again, primary SEN of the child or young person was never selected as sole factor.

Overall, in terms of Tribunal preparation and attendance, the 'complexity' of the case seems to be the most salient factor explaining the amount of time spent by LAs. Respondents made extensive use of the open-ended questions for this part of the survey. In the vast majority of cases, 'complexity' was defined as a combination of aspects including:

- the time required to gather the evidence, and the submission of the 'bundle' (the evidence papers)
- the number of areas of disagreement (Education, Health and Social care), and, as a consequence,
  - the number of professionals involved.
  - the coordination of professional evidence and review of other professional assessments when they are outside of the area of expertise (e.g.. clinical information requiring a second review)
  - the different parts of the statement/EHC plan (with particular emphasis on the nature of the help the child/young person should receive and the role played by the school, and less emphasis on 'Refusal to Assess')

In relation to other factors determining the costs of preparation and attendance

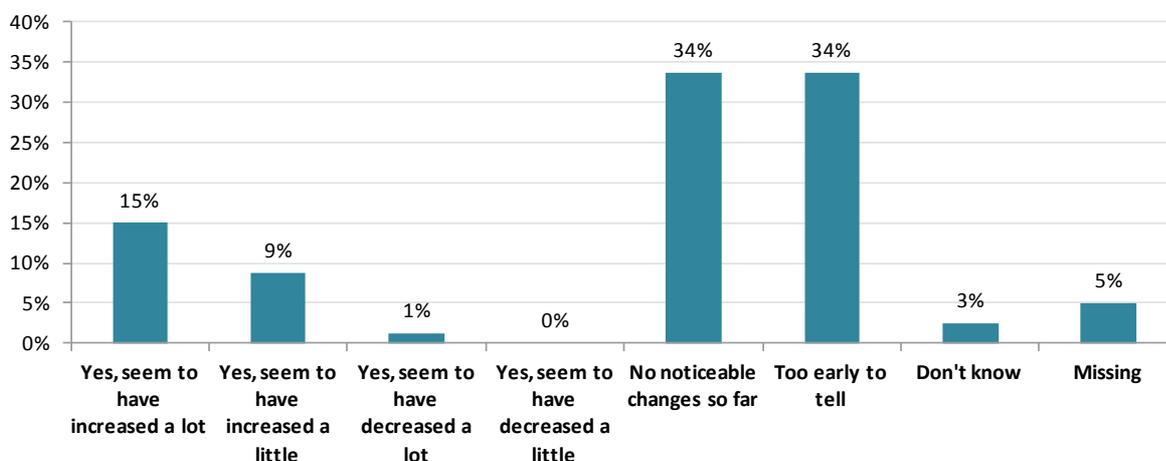
- Several LAs also mentioned the nature of the 'independent' advice and recommendations presented by parents, and the belief that significant time and effort was required to address inaccurate expectations
- Travel costs were also very often mentioned.
- Time spent was raised: some respondents state that the LAs officers can devote up to 3 days to a case (though sometimes significantly more). Hearings can go from half a day (Refusal to Assess) to a full day (naming of a school and SEND provisions).
- The involvement of the legal profession was often seen as both delaying the entire process, and as extending the entire process. A number of LAs suggested that advocates for families encouraged appeals to the Tribunal (as there was no downside), thereby increasing the LAs' preparation and attendance time.

## **A6.5 Perceptions over changes in costs of Tribunal preparation and attendance**

LAs were also asked to assess whether the overall costs of preparation of evidence for, and attendance at, Tribunals had changed since the introduction of the new requirements (Figure 82). 34% of respondents answered that there were no noticeable changes; another 34% of LAs answered that it was too early to evaluate changes in costs. Approximately a quarter of the respondents perceived a change in costs: 15% of

LAs respond that costs seemed to have increased to a large extent, and 9% answered that costs had increased a little.

**Figure 82: LAs' perception of changes in costs of Tribunal preparation and attendance**



Source: London Economics' elaboration on Survey 1 responses received as of September 1st 2015

One particular response was that the preparation time that used to take place for Tribunal attendance had now been frontloaded in the sense that part of the previous preparation time for Tribunals was now undertaken as part of the disagreement resolution and mediation activities. Furthermore, the same respondent suggested that disagreement resolution and mediation services had had little impact in reducing the number of Tribunal appeals, and this combination of factors had significantly increased that LA's costs.

## A6.6 Summary of key findings from Survey 1 Section B and implications for subsequent survey design

- The majority of disagreement resolution (71%) and mediation (65%) services were introduced in September 2014.
  - There was variation in the way these services had been procured (e.g. annual block purchase, retainer agreements, spot purchase)
  - Block purchase arrangements could be more or less flexible around the possibility of refunds or opportunities to resell unused cases
- The procurement costs of disagreement resolution and mediation services appear relatively fixed. Given the nature of how these services are procured, cost information should be readily available when requested in Survey 2.
- Opportunity costs (LA preparation and attendance costs) are directly affected by the complexity of the case (both in relation to Tribunals and disagreement and mediation services). This implies that questions on this topic in Survey 2 will need to capture the variation in potential costs of preparation and attendance.

- To ensure that this data collection exercise remains feasible (and not overly burdensome), we need to limit the potential options (for example to 'low', 'medium', and 'high' complexity – and therefore cost), but also try and understand what characteristics might determine each 'low', 'medium' and 'high' complexity (and cost) classification (i.e. the number of issues under discussion; the particular SEN (or combination); any particular reason for appeal etc.; or more likely the nature of the combination of these factors).

## Appendix 7: Detailed information from Survey 2 Section B

**Table 32 Costs of preparation under mediation route – baseline case (with appeal) and reduced cost case (no appeal)**

Preparation	Full case <i>including</i> appeal		Successful mediation (no appeal)	
	per hypothetical 'medium' case	time (days per person)	per hypothetical 'medium' case	time (days per person)
Labour (time/opportunity costs)				
Local Authority SEN officer	£1,314	8.3	£533	3.3
Local Authority SEN team manager/ SEN Manager/ Senior officer/ Head of SEN	£35	0.3	£14	0.1
Local Authority SEN case work officer	£24	0.3	£10	0.1
Educational Psychologist	£560	2.9	£227	1.2
Legal representation	£575	2.5	£233	1.0
Administrative support	£432	3.9	£175	1.6
Occupational therapist	£28	0.3	£11	0.1
Speech and language therapist	£40	0.3	£16	0.1
SEN Coordinator	£42	0.3	£17	0.1
Local Authority head of SEN	£38	0.3	£16	0.1
Head teacher	£36	0.3	£14	0.1
Health care representative	£29	0.3	£12	0.1
Social care representative	£30	0.3	£12	0.1
Social worker	£20	0.3	£8	0.1
School representative	£96	0.3	£83	0.1
Sub-total labour costs (incl. 25% on costs)	£4,122	20.3	£1,727	8.2
Additional financial costs				
Disagreement resolution/mediation service	£904		£904	
Legal fees	£258		£143	
Overhead	£5		£3	
<b>Total</b>	<b>£5,289</b>		<b>£2,777</b>	

Note: the 'cost per case' estimates are obtained by: multiplying the number of days per person times the number of individuals involved times the Labour Force Salary average per day salary, for an 8hr day.

Source: London Economics - Survey 2 analysis; Labour Force Survey data

**Table 33 Costs of preparation under NO mediation route – baseline case (with appeal) and reduced cost case (no appeal)**

Preparation	Full case including appeal		Successful (informal) mediation (no appeal)	
	Costs	per hypothetical 'medium' case	time (days per person)	per hypothetical 'medium' case
<b>Labour (time/opportunity costs)</b>				
Local Authority SEN officer	£1,314	8.3	£533	3.3
Local Authority SEN team manager/ SEN Manager/ Senior officer/ Head of SEN	£35	0.3	£14	0.1
Local Authority SEN case work officer	£24	0.3	£10	0.1
Educational Psychologist	£560	2.9	£227	1.2
Legal representation	£575	2.5	£233	1.0
Administrative support	£432	3.9	£175	1.6
Occupational therapist	£28	0.3	£11	0.1
Speech and language therapist	£40	0.3	£16	0.1
SEN Coordinator	£42	0.3	£17	0.1
Local Authority head of SEN	£38	0.3	£16	0.1
Head teacher	£36	0.3	£14	0.1
Health care representative	£29	0.3	£12	0.1
Social care representative	£30	0.3	£12	0.1
Social worker	£20	0.3	£8	0.1
School representative	£96	0.3	£83	0.1
<b>Sub-total labour costs (incl. 25% on costs)</b>	<b>£4,122</b>	<b>20.3</b>	<b>£1,727</b>	<b>8.2</b>
<b>Additional financial costs</b>				
Disagreement resolution/mediation service	£0		£0	
Legal fees	£258		£143	
Overhead	£5		£3	
<b>Total</b>	<b>£4,385</b>		<b>£1,872</b>	

Note: the 'cost per case' estimates are obtained by: multiplying the number of days per person times the number of individuals involved times the Labour Force Salary average per day salary, for an 8hr day.

Source: London Economics - Survey 2 analysis; Labour Force Survey data

**Table 34 Costs of attendance under mediation and non-mediation route – baseline case (with appeal) and reduced cost case (no appeal)**

Attendance	Full case including appeal		Successful mediation (no appeal)	
	per hypothetical 'medium' case	time (days per person)	per hypothetical 'medium' case	time (days per person)
Labour (time/opportunity costs)				
Local Authority SEN officer	£161	1.5	£0	0.0
Educational Psychologist	£282	1.6	£0	0.0
Legal representation	£278	1.4	£0	0.0
Occupational therapist	£33	0.3	£0	0.0
Speech and language therapist	£36	0.3	£0	0.0
SEN Coordinator	£174	1.3	£0	0.0
Head teacher	£41	0.3	£0	0.0
Head teacher of proposed school	£41	0.3	£0	0.0
Head of Autism unit	£12	0.3	£0	0.0
Health care representative	£29	0.3	£0	0.0
Social care representative	£30	0.3	£0	0.0
Social worker	£33	0.3	£0	0.0
School representative	£41	0.3	£0	0.0
Professional/expert witnesses	£45	0.3	£0	0.0
ASD specialist/specialist teacher	£12	0.3	£0	0.0
Sub-total labour costs (incl. 25% on-costs)	£1,356	7.0	£0	0.0
Additional financial costs				
Additional legal fees	£303		£111	
Travel and subsistence costs	£49		£18	
<b>Total</b>	<b>£1,709</b>		<b>£129</b>	

Note: the 'cost per case' estimates are obtained by: multiplying the number of days per person times the number of individuals involved times the Labour Force Salary average per day salary, for an 8hr day.

Source: London Economics - Survey 2 analysis; Labour Force Survey data

**Table 35 Descriptive statistics of survey questions**

<b>Question</b>	<b>Mean</b>	<b>Median</b>	<b>Min</b>	<b>Max</b>	<b>Range</b>	<b>N</b>
LA SEN officer - number of people (prep time)	1.68	1	1	6	5	44
LA SEN officer - number of days (prep time)	17.8	5	1	400	399	43
Educational Psychologist - number of people (prep time)	1.07	1	1	4	3	43
Educational Psychologist - number of days (prep time)	3.60	2	1	40	39	42
Legal representation - number of people (prep time)	1.25	1	0	3	3	28
Legal representation - number of days (prep time)	3.11	2	0	20	20	27
Admin support - number of people (prep time)	1.17	1	1	3	2	36
Admin support - number of days (prep time)	4.00	1	1	83	82	36
% reduction in total prep time	59.47	60	0	100	100	43
% reduction in other financial costs	44.48	30	0	100	100	31
LA SEN officer - number of people (attendance)	1.11	1	1	2	1	38
LA SEN officer - number of days (attendance)	1.63	1	1	12	11	38
Educational Psychologist - number of people (attendance)	1.00	1	1	1	0	40
Educational Psychologist - number of days (attendance)	1.55	1	1	12	11	40
Legal representation - number of people (attendance)	1.04	1	1	2	1	23
Legal representation - number of days (attendance)	1.48	1	1	6	5	23
% Increase in cost for high complexity	60.32	50	0	100	100	38
% Decrease in cost for low complexity	28.14	25	0	98	98	37
% Monetary costs of attendance saved	63.5	99.5	0	100	100	36
% of low complexity cases	24.31	20	0	60	60	32
% of medium complexity cases	44.55	39	0	100	100	38
% of high complexity cases	24.62	20	0	90	90	34
% terminating in hearing - low	9.38	1	0	60	60	32
% terminating in hearing - medium	31.62	25	0	100	100	37
% terminating in hearing - high	42.84	41	0	100	100	32

Note: open-ended questions are not reported due to low sample size; number of days refer to the total number of individuals involved. In the model, the calculations convert the data in days per person. Source: London Economics - Survey 2 analysis; Labour Force Survey data

**Table 36 Response rates by question**

	<b>Responses</b>	<b>Missing</b>	<b>Total</b>	<b>% Responses</b>
No SEND Tribunal appeals from LA during period	25	42	67	37%
LA SEN officer (yes / no)	45	22	67	67%
LA SEN officer - number of people (prep time)	44	23	67	66%
LA SEN officer - number of days (prep time)	43	24	67	64%
Educational Psychologist (yes/no)	45	22	67	67%
Educational Psychologist - number of people (prep time)	43	24	67	64%
Educational Psychologist number of days (prep time)	42	25	67	63%
Legal representation (yes /no)	42	25	67	63%
Legal representation - number of people (prep time)	28	39	67	42%
Legal representation - number of days (prep time)	27	40	67	40%
Admin support (yes/no)	44	23	67	66%
Admin support - number of people (prep time)	36	31	67	54%
Admin support - number of days (prep time)	36	31	67	54%
Any additional time spent (yes/no)	41	26	67	61%
Other - 1 - please specify	24	43	67	36%
Other - 2 - please specify	8	59	67	12%
% reduction of total prep time	43	24	67	64%
Other additional financial costs	39	28	67	58%
Other - 1 - yes no	11	56	67	16%
Other - 2 - yes no	5	62	67	7%
Other - 3 - yes no	5	62	67	7%
Other - 4 - yes no	4	63	67	6%
% reduction of preparation financial costs	31	36	67	46%
LA SEN officer (yes / no)	45	22	67	67%
LA SEN officer - number of people (attendance)	38	29	67	57%
LA SEN officer - number of days (attendance)	38	29	67	57%
Educational Psychologist (yes/no)	45	22	67	67%
Educational Psychologist - number of people (attendance)	40	27	67	60%
Educational Psychologist number of days (attendance)	40	27	67	60%
Legal representation (yes /no)	42	25	67	63%
Legal representation - number of people (attendance)	23	44	67	34%
Legal representation - number of days (attendance)	23	44	67	34%
Other - yes/no	43	24	67	64%
% of total monetary costs saved	36	31	67	54%
Increase in cost for high complexity	38	29	67	57%
Decrease in cost for low complexity	37	30	67	55%
% of low complexity cases	32	35	67	48%
% of medium complexity cases	38	29	67	57%
% of high complexity cases	34	33	67	51%
% terminating in hearing low	32	35	67	48%
% terminating in hearing medium	37	30	67	55%
% terminating in hearing high	32	35	67	48%
Have costs increased/decreased	46	21	67	69%

Source: London Economics

# Appendix 8: Economic analysis of mediation versus no mediation prior to appeals to the First-tier Tribunal SEND<sup>102</sup>

## A8.1 Introduction

This Appendix is a longer version of Chapter 8. **It is for those who are interested in further details of the methodology used for the economic analysis.** The dataset used in this chapter is an earlier version to that used in Chapter 8. Chapter 8 in the report is the final version.

The **research objectives** addressed in this chapter are:

- To examine how successful **mediation** is in resolving issues without need for recourse to the Tribunal
- To **assess** the cost **savings of early (pre-Tribunal) disagreement resolution**

To understand the financial impact of mediation services, the fundamental aim was to assess the cost avoided associated with the alternative (mediation) pathway – by Local Authorities, HM Courts and Tribunal Services, and most importantly, the parents involved in the process.

Specifically, the collection of data from LAs through three surveys and qualitative interviews with parents, supported by desk-based research and modelling, allowed us to assess both the outcomes along the alternative mediation and disagreement resolution pathways, but also the costs associated with each outcome under the different pathways. The combination of analyses relating to outcomes and costs allows for an assessment of the costs avoided.

However, it is important to note that the data collected, although offering a reasonable assessment of the costs incurred by the various key stakeholders involved, is derived from a subset of all those potentially involved in SEN appeals and mediation activities, and we have no real way of assessing the extent to which the samples upon which the analysis is based are representative of every LA or every parent. As such the costs information (in particular, the information from parents) should be considered **indicative**. Despite this, the analysis does provide a reasonable indication of the relative costs associated with the two routes of disagreement resolution. The analysis is

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<sup>102</sup> This Appendix is a longer version of Chapter 8, providing **more details of the methodology**. It uses an earlier dataset than that in Chapter 8 so the numbers are different but the message is the same.

driven by the differences in the outcomes (**the reduced incidence of appeals under the mediation route**). It is this outcome that should be most concentrated upon.

The analysis presented in this chapter of the report is as follows:

- In section A8.1, we outline the **key elements of the analysis** relating to the 1<sup>st</sup> survey of Local Authorities, and in particular the rationale for our approach to collecting cost information in the 2<sup>nd</sup> and 3<sup>rd</sup> LA surveys in terms of the complexity of the cases being reviewed by LAs.
- In section A8.2, we present the **costs** associated with the different routes of dispute resolution from the perspective of **LAs** (only) – depending on the complexity and incidence of the cases, as well as the incidence of cases along each pathway.
- Following this, in section A8.3 we provide additional information on the representative **costs** associated with the operation of **Tribunals** (based on information from HM Courts and Tribunal Service and desk based research).
- In Section A8.4, we also estimate the representative **costs** incurred by **parents** (both direct costs and opportunity costs) using information from the qualitative interviews undertaken by CEDAR colleagues.
- In section A8.5, we **aggregate the costs** associated with the different outcomes along each of the alternative dispute resolution pathways, as well as the incidence of these outcomes along the different pathways, to arrive at an estimate of the total costs avoided with the mediation and dispute resolution pathway compared to the pathway where mediation services are not adopted.
- In section A8.6, we provide **further views of the LAs** surveyed in Surveys 1 to 3, for example on how the costs of preparation and attendance for SEN cases have changed over time.
- In section A8.7 we provide **our assessment** of the costs and benefits associated with early resolution of disagreements and the mediation policy in respect of the research objective addressed.

### **A8.1.1 Survey 1**

The cost section (Section B) of Survey 1 was used as an exploratory tool to understand which factors most affect the costs of disagreement resolution and mediation services, as well as Tribunal preparation and attendance. The assessment of costs relating to SEND disagreements that were identified within Survey 1 was broadly driven by two aspects:

- The **procurement costs** of mediation and disagreement resolution services for LAs, and
- The **time costs** associated with preparation and attendance at First-tier Tribunal SEND appeals for LAs.

In understanding the nature of LA procurement of mediation services, the first component was evaluated in terms of monetary costs (presented in detail in previous interim reports). The second component was evaluated in terms of time (opportunity) costs in connection to preparation for Tribunal appeals and attendance at Tribunal hearings.

One of the key objectives of the analysis of Survey 1 involved understanding the extent to which either of these costs might vary, and what the potential determinants of this variation were. Essentially, LAs stated that the costs incurred (and hence the costs that might be avoided) were driven by the **complexity** of the case under consideration. However, LAs had a subjective view on how complexity was defined. Given this, we then used the findings from Survey 1 to inform the design of questions relating to procurement costs and opportunity costs (time) in the subsequent two surveys. Some of the key results from Survey 1 were used to undertake the cost-effectiveness analysis, as will be discussed in the following sections of this report. Further information and additional results from Survey 1 (Section B) are presented in **Appendix 6**.

### **A8.1.2 Surveys 2 and 3**

Surveys 2 and 3 addressed in greater detail the incidence and costs associated with early disagreement resolution, including formal mediation services. Following *HM Treasury Green Book* guidance, to undertake a cost benefit or cost effectiveness analysis, it is necessary to compare the (present value of) the additional costs associated with the provision of the formal mediation services (the 'proposed' scenario) with the benefits (or costs savings) that result from the avoidance of full scale appeals to the Tribunal service.

In the following sections, we set out the two alternative disagreement resolution 'pathways' in relation to the process of engagement with formal mediation services, followed by a discussion of the numbers of cases associated with each pathway. We then provide a brief description of the data under consideration, as well as an outline of the methodology used to calculate the costs under the two alternative pathways. Finally, we present the results of the analysis and conclude.

## **A8.2 Economic analysis and findings**

### **A8.2.1 What are the alternative routes (and costs) associated with the alternative disagreement resolution pathways?**

Reaching a final resolution of a special educational needs case can be a potentially complex process. This can involve various routes and aspects, each associated with a

different cost burden for **LAs**, as displayed in Figure 83 (costs incurred by parents and the Tribunal service are considered later).

Figure 83 shows that once an initial contact is made with the formal mediation service offered by the Local Authority, a family will first choose whether or not to pursue formal mediation.

#### **If the formal mediation route is followed:**

- Should formal mediation leave disagreements unresolved, the family are likely to opt for a Tribunal appeal. In this case, the LA will incur mediation costs (identified as 'A' in Figure 83 below) and the full costs related to the preparation for a Tribunal appeal (cost component 'B'). Subsequently, depending on whether there is a Tribunal hearing or not<sup>103</sup>, there will be additional costs related to attending the Tribunal (costs 'D').
- Under formal mediation that resolves the case without recourse to the Tribunal, the LA will incur the mediation cost 'A', reduced preparation costs (cost component 'C'), and reduced attendance costs (cost E).

It should be noted that while mediation services would be expected to reduce the preparation and attendance costs compared to full Tribunal appeal, successful mediation would only be expected to result in a partial reduction in the LA costs incurred. This conclusion was reached after carefully analysing LA responses. In particular, responses from Survey 1 suggested that it was often the case that preparation time and effort that would have taken place in relation to a Tribunal appeal had now been 'frontloaded' - in the sense that part of the previous Tribunal preparation time was now undertaken *ahead* of the mediation activities.

The responses contained within Surveys 2 and 3 also supported these earlier findings. On average, LAs estimated the avoidance in cost associated with preparation time following a successful mediation to be approximately 41% of the full costs associated with preparation for a Tribunal appeal<sup>104</sup>.

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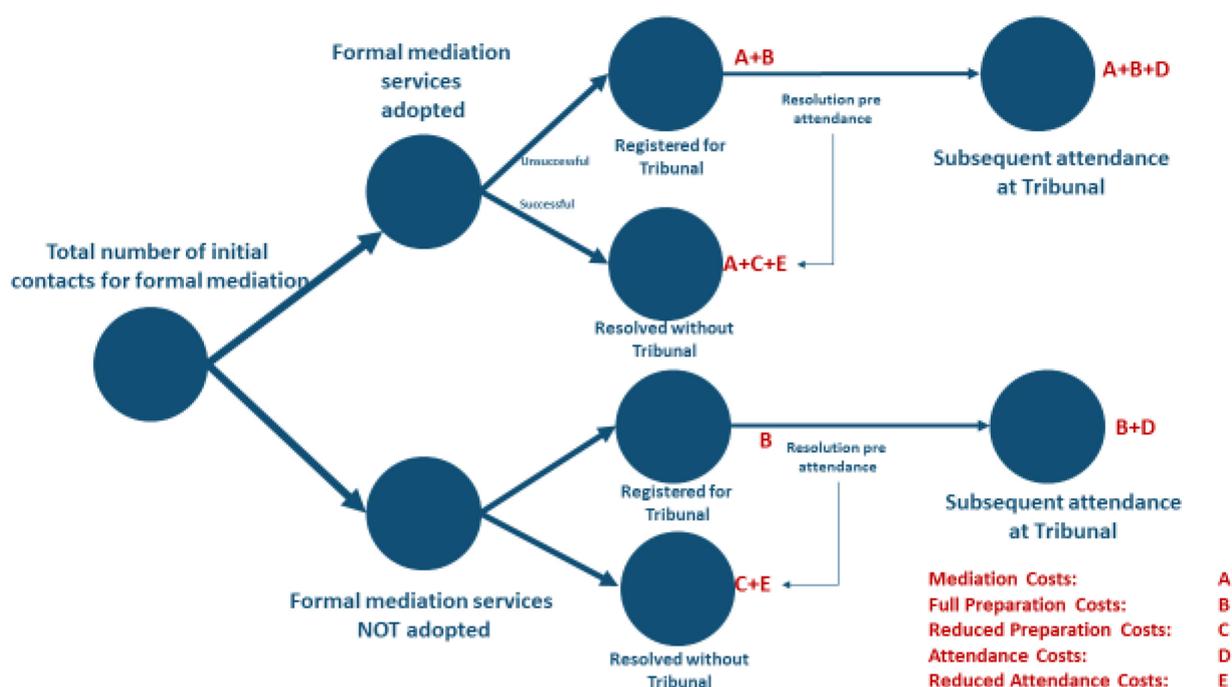
<sup>103</sup> The data are scaled by the proportion of cases actually terminating with and without a face-to-face hearing.

<sup>104</sup> In more detail, only between 4-5% of respondents indicated this reduction to be 100%, while a similar proportion answered that **no reduction** in costs was associated with successful mediation avoiding a Tribunal appeal. The median estimate of preparation costs avoided was 60% in Survey 2 and 33% in Survey 3. As such, the evidence suggests that only some activities (and associated costs) related to Tribunal preparation might be avoided following successful mediation.

## If the family chooses not to use formal mediation:

- If a Tribunal appeal is registered, the LA will have to prepare for the case and attend the hearing (costs 'B') and, as before, if the hearing takes place, the additional costs associated with attendance ('D').
- If no appeal is registered<sup>105</sup>, and the case is resolved without the full recourse to a Tribunal hearing, the LA incurs only the reduced preparation costs ('C') and reduced attendance costs (cost E).

Figure 83: Formal mediation pathways and associated cost component



Source: London Economics

## A8.2.2 What has been the incidence of alternative disagreement resolution pathways?

Using information from the two surveys administered to Local Authorities covering the first six terms of the operation of the policy, the data on initial contact with the formal mediation services (Table 37) illustrated that out of 3,003<sup>106</sup> initial contacts made between September 2014 and August 2016, 1,275 chose to take up formal mediation,

<sup>105</sup> Where mediation was not taken up, the data collected was whether or not an appeal was registered.

<sup>106</sup> This number refers to the sum of all cases registered under Survey 1 for September 2014 to March 2015, Survey 2 for April 2015 to December 2015 and Survey 3 for January 2016 to August 2016.

while 1,728 chose not to pursue it. Hence, the rate of recourse to formal mediation for the period of interest was just above 42%.

**Table 37 Overview of cases by route**

	Total making initial contact	Chose to take-up mediation	Chose not to take-up mediation
<b>Total number</b>	<b>3,003</b>	<b>1,275 (42.5%)</b>	<b>1,728 (57.5%)</b>
<b>Of which:</b>			
<b>Mediation is continuing</b>	<b>222</b>	222	-
<b>Resolution without appeal to Tribunal</b>	<b>1,923</b>	817	1,106 <sup>107</sup>
<b>Registered Tribunal appeal</b>	<b>858</b>	236	622

Source: London Economics - Survey 1 to Survey 3 analysis

Out of the entire 1,275 families who chose to engage with the formal mediation, 18.5% (236) subsequently registered a Tribunal appeal. However, the analysis also indicates that 222 (17.4%) of these cases participating in formal mediation were still engaged in the process. This implies that, of those cases that have been ‘fully’ resolved (with or without recourse to a Tribunal appeal), approximately 22.4% resulted in a Tribunal appeal<sup>108</sup>.

In contrast, of those families that did not engage with the formal mediation process offered, approximately 36% (622 of 1,728) decided to register an appeal. This initially suggests that engagement with formal mediation was associated with 13.6-17.5 percentage point lower likelihood of registering a Tribunal appeal compared to those that did not engage in formal mediation (i.e. 18.5%-22.4% versus 36%). **This difference was statistically significant**<sup>109</sup>, and as we will see, is both a key finding of the analysis, but also a determinant of the differential costs between the two dispute resolution pathways.

The relative incidence of Tribunal appeals illustrates that there may be some clear economic benefits associated with the provision of mediation services. However, the reduced incidence of Tribunal appeals depending on whether or not mediation is taken

<sup>107</sup> This number is based on data for ‘no appeal registered’.

<sup>108</sup> i.e. 236 out of 1,053 (1,275 choosing to take up mediation minus 222 continuing in mediation)

<sup>109</sup> Statistical tests of difference between proportions show that there is a statistically significant difference between the share of families registering an appeal after mediation and those registering an appeal without recourse to mediation (i.e. the 18.5% and the 36%). This significance remains once those currently in mediation are taken into account (i.e. 22.4% is found to be significantly different from 36%).

up (and the associated costs), still need to be weighed against the costs of procuring mediation services.

### A8.2.3 Local Authority cost information

Given the importance of ‘complexity’ in determining LA Tribunal appeal preparation costs, further cost data were collected from Section B of Survey 2 and Survey 3. The answers to this part of the survey were essential in understanding the time (in terms of opportunity cost of labour) and resources (in terms of additional expenses) devoted by LAs in dealing with SEN cases culminating in a potential Tribunal appeal.

Characterising the costs associated with a representative Tribunal appeal in a meaningful way was an exceptionally difficult task, in part because of the number of factors that might play a role in determining preparation and attendance costs (for instance the nature of the SEN under consideration). As such, following the analysis of Survey 1, it was concluded that case ‘**complexity**’<sup>110</sup> (however defined by LAs) was the key determinant of the costs associated with Tribunal appeals – but that this varied by LA. As such, we asked respondents in Surveys 2 and 3 to provide indicative costs associated with a Tribunal appeal that was of *medium complexity*. We then asked respondents for scaling factors to determine the costs associated with a low and high complexity case.

To achieve this in practice, for *each stage* (i.e. *preparation and attendance*) outlined in Figure 20, we asked LAs to provide an estimate of the total time devoted by each professional grade involved (e.g. Educational Psychologist, SEN officer, etc.) and to list the monetary expenses incurred by LAs in a medium complexity case. The average of these responses was then used in the cost estimation.

Responding to some of the key research objectives of the evaluation, the survey also asked respondents to provide an assessment of the reductions in these costs under the scenario in which the Tribunal appeal is avoided, as well as to estimate both the distribution of cases that might be considered low, medium or highly complex, as well as

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<sup>110</sup> Survey 1 asked LAs whether the costs of the services varied depending on a number of aspects, such as the nature of the primary special education need or the type of disagreement. The options provided were:

- the primary SEN of the child/young person
- the complexity of need (e.g. education only versus education, health and social care)
- the type of disagreement, and
- the number of the topics that are under disagreement

The majority of respondents considered none of the options presented as a driver of costs in the procurement of Mediation services (85% of respondents) or Disagreement resolution services (82%). However, more fundamentally, LAs suggested that their own costs associated with preparation ahead of disagreement resolution and mediation services were increasing with the ‘complexity’ of the case under consideration, which does not directly relate to the procurement of disagreement and mediation services. In other words, procurement costs were independent of opportunity (time) costs.

the proportion of (low, medium or highly complex) cases culminating in a hearing following a Tribunal appeal.

These data were then combined with the information on the number of cases by pathway (i.e. formal mediation versus no mediation) shown above, as well as information on earnings from external secondary sources by occupation (Labour Force Survey). The methodology used to estimate the cost effectiveness of formal mediation will be described in detail in the next section.

## **A8.2.4 What approach was used to assess the different elements of costs?**

### **A8.2.4.1 Identifying main cost components**

Responses from Survey 1 demonstrated that the procurement costs of mediation services were relatively fixed within each LA (although there was some variation across LAs). As previously mentioned, LAs also highlighted that the costs of preparation for Tribunal appeals and attendance at Tribunal hearings were directly linked to the complexity of the cases under consideration.

According to survey respondents, complexity does not have a specific driver – rather the determinants of case ‘complexity’ are multifaceted but generally have resource consequences in terms of: time (i.e. opportunity costs for all professionals involved), and the financial resources devoted to a case.

Therefore, to assess costs, both **time** and **resources** were the primary areas of focus. In addition, LA respondents were asked to assess these two dimensions separately in terms of:

- preparation for a Tribunal appeal
- attendance at the Tribunal hearing
- the preparation costs avoided if pre-Tribunal resolution occurs
- the incidence of low, medium and highly complex cases
- the relative costs associated with low and high complexity cases, and
- the likelihood of each type of case progressing to a full Tribunal hearing

### **A8.2.4.2 Key aspects of LA labour costs**

While monetary costs (such as travel, legal and printing/photocopying/overheads) are relatively easy to obtain, the calculation of labour costs is more complex.

For a medium complexity case, LA respondents provided an estimate of the number of days required for each type of professional in relation to both preparation for and attendance at a potential Tribunal hearing. They also indicated how many people from

each staffing category were involved (e.g. there could be more than one SEN officer dealing with a case). An average of the responses was calculated for these categories.

The costs of labour associated with each profession was estimated using information from the ONS Labour Force Survey on earnings by occupational code. Specifically, for the various categories of occupation identified (i.e. 'Teacher' or 'Speech and Language Therapist' etc.), we identified the closest title/occupation match in the ONS Labour Force Survey (of which there are approximately 369 occupational codes). For each of the relevant occupations, average gross hourly wages were obtained for all the categories of professionals involved (to which an additional 25% in employer on-costs (i.e. reflecting additional National Insurance and pension contributions etc.) was added to provide an indicative full economic cost. The aggregate costs associated with each stage of the alternative disagreement resolution pathways for a medium complexity case were thus obtained by multiplying labour costs by the average number of days<sup>111</sup> of involvement of each grade of staff, times the number of staff.

A few categories were assumed to be always present in each case: 'LA SEN officer', 'Educational Psychologist', 'Administrative support' and a 'Legal representative' for the preparation phase, and 'LA SEN officer', 'Educational Psychologist', and a 'Legal representative' for Tribunal hearing attendance. Respondents to the survey gave an estimate of the number of individuals and time involvement for each of these categories. The descriptive statistics from Survey 3 for these categories are displayed in Table 38.

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<sup>111</sup> Measured as 8 hour days

**Table 38 Descriptive statistics of labour time for key professionals in preparation for and attendance at a Tribunal hearing (Survey 3)**

Preparation	Number of people			Time (days) per person		
	mean (CI)	median	range	mean (CI)	median	range
Local Authority SEN officer	2.0 (1.4, 2.5)	2	5	10.1 (0.0, 23.7)	3	175
Educational Psychologist	1.0 (0.9, 1.0)	1	1	2.4 (1.7, 3.0)	2	4
Legal representation	1.3 (1.0, 1.5)	1	1	3.0 (1.4, 4.5)	2	9
Administrative support	1.1 (0.9, 1.3)	1	2	1.2 (1.0, 1.5)	1	2
<b>Attendance</b>						
Local Authority SEN officer	1.2 (1.0, 1.3)	1	1	1.7 (0.8, 2.6)	1	9.5
Educational Psychologist	0.9 (0.8, 1.1)	1	1	1.1 (1.0, 1.3)	1	1
Legal representation	1.1 (0.9, 1.3)	1	1	1.3 (0.9, 1.6)	1	1.5

Note: numbers in brackets are confidence intervals at 95%

Source: London Economics - Survey 3 analysis

As mentioned, 'Local Authority SEN officer', 'Educational Psychologist', and a 'Legal representative' were assumed to be always present in each case. The use of the mean for these first 'compulsory' categories was considered reliable, as the response rate for these questions was relatively high.

On the other hand, some professional categories (e.g. Speech and Language Therapist) did not appear under all (open) responses given by LAs. For these categories, given the relatively low and varied number of responses, the use of an average would not be statistically representative. In this case, the time involvement for these categories was *averaged over the total number* of LA respondents<sup>112</sup> to reflect the fact that some professionals were not present under all types of SEN cases. Table 39 below lists all categories and cost items mentioned by respondents.

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<sup>112</sup> This was 46, the maximum number of actual responses obtained in the cost section of the survey.

**Table 39 Cost items for preparation and attendance stage, inclusive of mediation services (Survey 2 and Survey 3)**

<b>Preparation</b>	<b>Attendance</b>
<b>Labour costs</b>	<b>Labour costs</b>
Local Authority SEN officer	Local Authority SEN officer
Local Authority SEN team manager/ SEN Manager/ Senior officer/ Head of SEN	Educational Psychologist
Local Authority SEN case work officer	Legal representation
Educational Psychologist	Occupational therapist
Legal representation	Speech and language therapist
Administrative support	SEN Coordinator
Occupational therapist	Head teacher
Speech and language therapist	Head teacher of proposed school
SEN Coordinator	Head of Autism unit
Head teacher	Health care representative
Health care representative	Social care representative
Social care representative	Social worker
Social worker	School representative
School representative	Professional/expert witnesses
Sensory Support Service	ASD specialist/specialist teacher
	Sensory Support Service
<b>Financial costs</b>	<b>Financial costs</b>
Disagreement resolution/mediation service	Additional legal fees
Legal fees	Travel and subsistence costs
Overheads	

Source: London Economics - Survey 2 and 3 analysis

### **A8.2.5 Estimating costs for different levels of complexity of cases**

As shown by the results of Survey 1, the more complex a case, the more time and financial resources will be incurred. In order to obtain a representative cost assessment, LAs were asked to estimate costs for a medium complexity Tribunal appeal, inclusive of mediation and disagreement resolution services. Respondents were then asked to attribute the additional cost burden associated with a highly complex case and the reduced cost burden associated with a low complexity case in comparison. The survey responses suggest that the cost increase associated with a high-complexity case was

approximately 59%, while the cost reduction for a low-complexity case was 31% (compared to a medium complexity case)<sup>113</sup>.

In addition, LAs also provided an estimate of the proportion of cases, by each level of complexity, that culminate in a Tribunal appeal and hearing. LAs responded that on average, 44% of cases could be classified as medium complexity, while the low and high complexity shares were estimated to be approximately equal (30% and 26% respectively)<sup>114</sup>. Unsurprisingly, only a small proportion of low-complexity cases required a Tribunal hearing (12%). About two-fifths of medium complexity cases (38%) concluded with a hearing, while approximately 49% of high complexity cases concluded with a hearing<sup>115</sup>.

**Table 40 Overview of cases by complexity, cost impact, and incidence of Tribunal hearing**

	<b>Low (CI)</b>	<b>Medium (CI)</b>	<b>High (CI)</b>
<b>Distribution of cases</b>	30% (23.5, 36.5)	44% (35.5, 52.8)	26% (20.0, 31.8)
<b>Change in costs</b>	-31% (25.5, 36.9)	Baseline cost	+59% (50.2, 67.9)
<b>Terminating in a hearing</b>	12% (6.2, 17.0)	38% (28.3, 46.7)	49% (37.0, 60.5)

Note: Numbers are averages of the numbers in Survey 2 and 3. Numbers in brackets are confidence intervals at 95%.

Source: London Economics - Survey 2 and 3 analysis

Finally, attempting to answer one of the main research objectives of the evaluation, LA respondents also provided an estimate about the savings or potential cost reductions achieved if the appeal to the Tribunal was avoided thanks to a successful mediation<sup>116</sup> process. The estimates (in terms of percentage reduction) that were made from the survey responses were:

- 62%<sup>117</sup> reduction in preparation time,
- 41%<sup>118</sup> reduction in expenses for preparation, and

<sup>113</sup> The numbers in Survey 2 were 28% and 60% and in Survey 3 34% and 58% for the decrease / increase associated with a low / high complexity case respectively.

<sup>114</sup> The numbers in Survey 2 were 48% for a medium, 26% for a low and 26% for a high complexity case. In Survey 3 the numbers were 41% for a medium, 34% for a low and 25% for a high complexity case.

<sup>115</sup> 32% medium, 9% low, 43% high (Survey 2) and 43% medium, 14% low, 55% high (Survey 3).

<sup>116</sup> Note that using the phrasing 'successful' in relation to formal mediation can have a wide number of interpretations. In this section of the analysis, 'successful' refers (narrowly) to those cases that have been fully resolved without a subsequent Tribunal appeal and/or hearing. Again numbers are averages across surveys 2 and 3.

<sup>117</sup> 60% (Survey 2) and 64% (Survey 3)

<sup>118</sup> 45% (Survey 2) and 36% (Survey 3)

- 60%<sup>119</sup> reduction in expenses for attendance<sup>120 121</sup>

The main estimates of costs (in monetary terms) for a typical medium case under the different disagreement resolution pathways are presented in Table 41 below.

**Table 41 Costs per typical hypothetical medium complexity case, by route**

<b>Costs per hypothetical 'medium' complexity case</b>	<b>Full case including mediation, appeal, and hearing (A+B+D)</b>	<b>Successful mediation (no appeal) (A+C+E)</b>	<b>Full case with no mediation, appeal, and hearing (B+D)</b>	<b>Successful informal resolution (no appeal) (C+E)</b>
<b>Preparation, of which:</b>	<b>£5,183</b>	<b>£2,574</b>	<b>£4,331</b>	<b>£1,721</b>
Mediation services	£853	£853	£0	£0
Labour (time/opportunity costs)	£4,123	£1,600	£4,123	£1,600
Additional financial costs	£208	£122	£208	£122
<b>Attendance, of which:</b>	<b>£1,725</b>	<b>£180</b>	<b>£1,725</b>	<b>£180</b>
Labour (time/opportunity costs)	£1,287	£0	£1,287	£0
Additional financial costs	£438	£180	£438	£180
<b>Total (preparation + attendance)</b>	<b>£6,908</b>	<b>£2,754</b>	<b>£6,056</b>	<b>£1,901</b>

Note: Numbers are averages of the numbers in Survey 2 and 3.

Source: London Economics – Survey 2 and Survey 3 analysis

In more detail, Table 41 shows that a medium complexity case that is fully resolved following formal mediation, Tribunal appeal and subsequent hearing has an estimated monetary cost (to the LA) of £6,908 (A+B+D). Note that the average cost of formal mediation was estimated to be £853 across LA Survey 2 and Survey 3 respondents. It should be noted that for a case resolved following an appeal to the Tribunal but *without* a full hearing, we have assumed that the cost of such case is equivalent to the cost of

<sup>119</sup> 64% (Survey 2) and 56% (Survey 3)

<sup>120</sup> It should be noted that the distribution of responses for this question was effectively bimodal, with a large number of respondents answering 100%, and another group of respondents answering 0. Although the median of this question was 99% in Survey 2 and 80% in Survey 3, the resulting average was 63.5% in Survey 2 and 55.9% in Survey 3, implying that, although there is significance dispersion in the responses, there are instances in which travel and legal expenses incurred for the attendance of the appeal cannot be fully recouped even after successful mediation.

<sup>121</sup> These three percentage estimates have the following 95% confidence intervals: 54.7% to 69.0% in preparation time, 29.3% to 51.7% in expenses for preparation, and 47.7% to 71.8% in attendance expenses.

formal mediation, as well as the *full* preparation cost, but not the costs associated with attendance (i.e. £5,183 (A+B)).

The analysis indicates that if mediation is successful in preventing the Tribunal appeal in the first instance, the monetary cost for a medium complexity case includes the cost of mediation (£853), the reduced costs associated with preparation (£1,600), the reduced financial costs relating to legal costs, overheads etc. (£122), and reduced other expenses (£180). Combining all these elements, the total costs associated with successful formal mediation stands at £2,754 (A+C+E), which represents a £4,155 reduction on the Tribunal appeal and hearing outcome.

Alternatively, under the no formal mediation route, if the Tribunal appeal is pursued and a hearing is attended, the cost estimated for this type of case resolution is £6,056 (B+D). Intuitively, the estimate is lower than the corresponding figure for the formal mediation route, because the sum excludes the costs of performing mediation. If resolution is reached following a Tribunal appeal but without a hearing, the cost was estimated to be £4,331 (B). Finally, if resolution is reached informally, i.e. without formal mediation, or a Tribunal appeal/hearing, the cost for a medium complexity case was estimated to be £1,901 (C+E).

### **A8.2.6 Scaling costs to reflect different complexity cases**

Using this information on the costs associated with a medium complexity case, the various cost components were then scaled upwards by 59% for typical high complexity cases and downwards by 31% for typical low complexity cases under each alternative pathway. The relevant costs associated with the three types of case shown below (Table 42).

**Table 42 Cost estimates for cases by scenario and complexity level**

	<b>Low complexity case (31% less than medium)</b>	<b>Medium complexity case</b>	<b>High complexity case (59% more than medium)</b>
<b>Mediation and full appeal (incl. hearing)</b>	£4,752	£6,908	£10,988
<b>Mediation and appeal (no hearing)</b>	£3,565	£5,183	£8,244
<b>Mediation and no appeal (successful mediation)</b>	£1,894	£2,754	£4,380
<b>No mediation and full appeal (incl. hearing)</b>	£4,166	£6,056	£9,632
<b>No mediation and appeal (no hearing)</b>	£2,979	£4,331	£6,888
<b>No mediation and no appeal (successful informal resolution)</b>	£1,308	£1,901	£3,024

Source: London Economics - Survey 2 and Survey 3 analysis

Specifically, the analysis (Table 42) suggests that, for a highly complex case, if a Tribunal appeal and hearing is avoided as a result of formal mediation, the costs avoided stand at approximately £6,608 (i.e. £10,988 minus £4,380).

In order to obtain average costs incurred by the LAs, these cost estimates need to be weighted by the distribution of cases under each scenario. However, before weighting by case complexity, we first consider the additional costs associated with HM Courts and Tribunal Service and the costs incurred by parents engaged in the process.

### **A8.3 Assessing the costs of First-tier Tribunals SEND**

In the first instance, we undertook desk-based research and analysis to arrive at a range of estimates of the cost of operating a First-tier Tribunal SEND. We asked HM Courts and Tribunal Service (HMCTS) to provide an indication of the composition of the Tribunal panel (in terms of the number and role), an indication of the time associated with both preparation in advance of the Tribunal, as well as the attendance time associated with the Tribunal.

In relation to attendance, feedback from HMCTS suggests in the majority of cases, there is one member of the judiciary in attendance, while in addition, there is also one 'Expert' in attendance (who might be a senior LA individual or a head teacher for instance).

In relation to the length of time that might be assumed to cover attendance, HMCTS suggested that one working day would be sufficient to estimate these costs. In addition, we also asked about preparation, and despite the fact that there is often a very large volume of paperwork associated with each hearing, a reasonable assumption relating to preparation time would be approximately half a working day (we believe this to be a marginal underestimate, and have undertaken calculations based on one full day of preparation time).

As with the analysis of LA costs, we used information from the Labour Force Survey to estimate the hourly costs by main occupation. With the average hourly wage of 'judges and barristers' standing at approximately £48 per hour, after the inclusion of on-costs (of 25%), the analysis indicates that the costs associated with judicial preparation and attendance stand at approximately £960. A similar approach has been adopted in relation to the preparation and attendance of the non-judicial Education Panel Experts (based on the £237 daily fee advertised by the Judicial Appointments Committee), with the result that the estimated costs associated with the non-judicial expert stood at £592 per Tribunal. The final labour costs associated with the operation of Tribunals that was considered related to the Tribunal clerk. Again using information from the Labour Force Survey this was estimated to be approximately £265 per day (based on an hourly cost of approximately £33 including on-costs). Combining these different costs results in an estimate of the **labour costs** associated with Tribunal preparation and attendance of £1,817. Note however, there are a number of other costs that might be associated with the operation of the Tribunal that have not been considered here – such as translation costs – and as such this should be considered an underestimate.

In addition to the £1,817 attendance and preparation costs, we have also assessed the administrative costs incurred by HMCTS. From the 2014-15 HMCTS Annual Report and Accounts, we have considered the total expenditure incurred by HMCTS (net of judiciary costs), which was estimated to be approximately £648 million in 2014-15, and divided this by the total number of cases (approximately 3 million in 2014-15). The result is that there a further administrative cost of approximately £214 per Tribunal. There are clearly issues with this estimate, as there are a number of very large and costly cases incorporated into this estimate; however, as a working assumption, it is reasonable. Combining these estimates, the 'bottom-up' analysis suggests that the average cost of conducting a Tribunal is in the region of £2,031<sup>122</sup>.

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<sup>122</sup> Note that considering the HMCTS Annual Report and accounts in 2013/14 and 2014/15, the estimate of the total costs of HMCTS Tribunal activity divided by an estimate of the total number of cases heard in the respective year was estimated to be between approximately £1650 and £1850.

In addition to these bottom-up analyses, which are likely to underestimate the true costs of delivery (because of the entire absence of some categories of costs), a recent Memorandum of Understanding between HMCTS and the Department for Education essentially allows the HMCTS to 'bill' the Department for appeals received as a consequence of new appeal rights being introduced. Where the case is heard by a two-person panel (i.e. a Tribunal judge and a non-legal member), the cost is £2,380 per appeal and where the case proceeds to a hearing with a three member panel (a judge and two members) – as is the case where an application for a recommendation is being considered under the pilot extension of Tribunal powers – the cost stands at £2,699 per appeal.

Based on the 'bottom-up' estimates using the activity based costing approach, we believe that the costs incurred by HMCTS and billed to the Department are entirely reasonable. As such, we incorporate a cost of **£2,380** as the cost of Tribunal operation and administration (from the perspective of the public purse).

## A8.4 Assessing the costs to parents

### A8.4.1 Direct costs

In total, there was information provided on 25<sup>123</sup> cases in relation to the direct and indirect costs associated with Tribunal appeals and hearings. For 22<sup>124</sup> of these, the final outcome involved a Tribunal appeal. Although a relatively small sample (with some of the costs identified in a very qualitative sense), the direct costs were identified where respondents provided an indication of the costs incurred as a result of the following reasons:

- Cost to parents of education while child out of school/waiting for agreement
- Total cost to parent of private reports (for instance, from therapists or educational psychologists)
- Total cost to parent of third party support (for instance, through SEN advocates, legal representation etc.), and
- Total cost to parents of other costs (e.g. postage, paper and printing)

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<sup>123</sup> We received data from 29 parents, including two cases where we received data from two parents (in the same family). As such, there was information gathered from a total of 27 discrete cases. However, for two cases no cost data was provided. Because of this they had to be excluded from the analysis.

<sup>124</sup> Of the 25 individual cases on which we had data, 22 cases had undergone or were in the process of going through an appeal. A further two cases indicated that they had already incurred some costs even though an appeal had not, or not yet, been lodged. However, because of the small sample size associated with these cases we did not estimate the costs incurred if no appeal was lodged. For a further one case we did not receive data on whether an appeal had been lodged or not. One further parent had gone through the appeals process with three different children. We treated this as three separate cases.

In relation to the first category (the cost to parents of education while child out of school/waiting for agreement), the findings indicated that seven of the 22 parents incurred costs in this respect, ranging from £4,100 to £16,000, with the average standing at approximately £7,800 per family affected<sup>125</sup>.

In relation to the costs incurred associated with the acquisition of private assessment reports (from educational psychologists and occupational therapists for instance), 12 of the 22 cases for whom we have information identified costs, which averaged approximately £1,800 per family affected (ranging from £350 to £6,000).

In respect of the costs associated with third party support (predominantly solicitors, lawyers, and witnesses at the Tribunal hearing), the analysis of parents indicated that the average cost incurred per respondent was approximately £3,800 (across the respondents mentioning a cost in this category), which ranged between £280 and £9,630 at the upper end.

Finally, in respect of other direct administration costs, the 5 respondents offering a response suggested that the average cost incurred was approximately 1,200 (ranging between £10 and £3,000<sup>126</sup>).

In total, across all 25 cases, only 6 had not incurred any quantifiable costs, for example because they received legal aid (although clearly this would be a cost incurred by the public purse), while 19 indicated that they had incurred some direct costs. Across those respondents where the eventual outcome was a Tribunal appeal, the average direct costs (across both pathways of dispute resolution) incurred by parents was £4,779.

#### **A8.4.2 Opportunity Costs**

In addition to the direct costs incurred by parents, we also tried to understand the indirect or opportunity costs associated with a Tribunal appeal and hearings. Again, it is inherently difficult to identify (and measure) the time costs associated with Tribunal appeals, in part because respondents found it sometimes difficult to assess these costs, For instance, a number of respondents indicate that the preparation time was 'all the

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<sup>125</sup> Note that in many cases it was not possible to estimate the foregone earnings that a number of parents incurred throughout the process (at least seven respondents answered that they had to cease working to look after their son/daughter) while they were not in school. Furthermore, a number of respondents mentioned the impact of the Appeal on their own health, the functioning of the family unit, as well as the extent to which they became socially isolated (from family and friends). We were only able to monetise the cost of lost earnings in two instances, while none of the costs associated with impacts on health or family and social life were monetised in the analysis.

<sup>126</sup> There is a question mark over whether some of these costs should have been included elsewhere, however this does not impact the results of the analysis.

hours I had' or 'every evening and weekend for a year'. Respondents were pressed on exactly the amount of time involved in preparation associated with a Tribunal appeal and hearing, with the responses ranging between 20 and 52 weeks (the average being 25.6 weeks)<sup>127</sup>.

The average of the total number of hours spent in relation to the appeal for the period in question was 13.5 hours per week. However, this excludes some very large outliers (for instance 75 hours per week), and is a very conservative estimate of the opportunity costs incurred by parents. To generate a monetary value associated with the opportunity cost, (a fraction of) the relevant hourly wage associated with the specific *occupation* of the parent from the Labour Force Survey<sup>128</sup> was estimated. Combining this information on the hours incurred and the associated time-cost, we estimated the total opportunity cost per respondent to be £1,299 (ranging between zero and £3,374). Note again, that we believe these estimates of the opportunity costs associated with Tribunal appeals to be conservative estimate of the 'true' opportunity costs.

Combining the average direct cost (£4,779) with the average opportunity cost (£1,299) provides an estimate of the total costs associated with a Tribunal appeal of £6,078 per family (across both routes of mediation and dispute resolution). Although the costs in some cases were zero, the combination of the direct and indirect costs incurred by some families (3) were in excess of £20,000.

Note also that although these average costs might appear very high, we have excluded a number of cases where either the direct or opportunity costs were even higher. As such, despite the relatively small sample size, the estimation of the costs should be considered an underestimate of both the 'reported' costs and the 'true' costs that families might incur as part of the appeals process. Note also that these costs in no way incorporate the impact in families as a result of the health related impacts that families might have suffered.

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<sup>127</sup> Note however, there was one responses that indicated that the time involved was significantly greater than this (104 weeks). In order to provide a cautious estimate of the opportunity costs incurred, this outlier response has been excluded from the analysis.

<sup>128</sup> Note that the standard wage rate is not generally taken to represent the opportunity cost of leisure. In practice, most studies estimate time cost as a proportion of the individual's wage in some way. Cesario and Knetsch (1976) first suggested approximating the opportunity cost (value) of time as some proportion of the wage rate. In relation with this approach, ad key question is which proportion of the wage rate should be used as a proxy for the opportunity cost of time. 33% has probably been the most often chosen fraction. For instance, Hellerstein (1993); Englin and Cameron (1996); Coupal *et al* (2001); Bin *et al* (2005); and Hagerty and Moeltner (2005) use 33%. Parsons *et al.* (2003) observe that the literature has more or less accepted 25% as the lower bound and the full wage as the upper bound, although neither value enjoys full support (Hynes *et al.*, 2004).

## A8.5 Costs for different complexity cases including Tribunal operating costs and costs to parents

Using the estimate costs incurred by LAs (by complexity), and the additional costs incurred by parents and HMCTS, we finally weight the aggregate costs by the distribution of cases (according to their complexity). The result (presented in Table 43) is that associated with the mediation route, a representative full appeal and hearing is associated with a cost of £16,713, while mediation that is associated with no appeal has an estimated cost of £2,917.

**Table 43 Total cost estimates for cases by scenario and complexity level – including Local Authority, family and Tribunal operating costs**

	Weighted Average by Distribution of Cases
<b>Mediation and full appeal (incl. hearing)</b>	£16,713
<b>Mediation and appeal (no hearing)</b>	£11,227
<b>Mediation and no appeal (successful mediation)</b>	£2,917
<b>No mediation and full appeal (incl. hearing)</b>	£15,694
<b>No mediation and appeal (no hearing)</b>	£10,380
<b>No mediation and no appeal (successful informal resolution)</b>	£2,014

Source: London Economics - Survey 2 and Survey 3 analysis

### A8.5.1 Distribution of cases

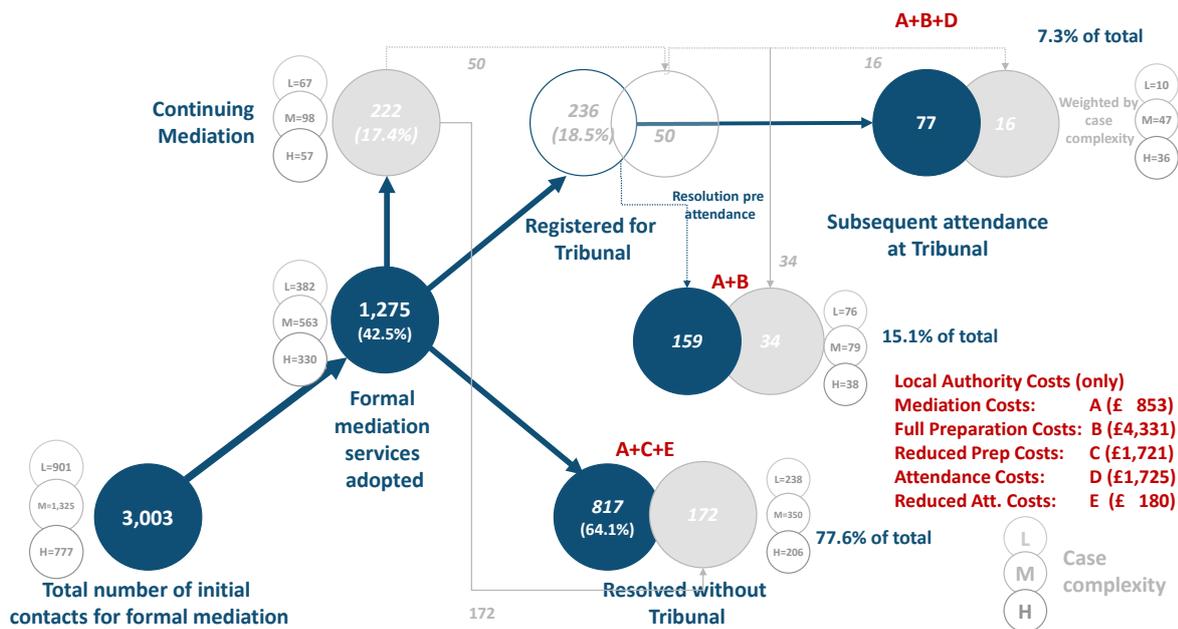
#### A8.5.1.1 Distribution of cases along the mediation route

In this section, we use the information gathered from the LAs to assess the number of cases along each route of the alternative dispute resolution pathways.

Figure 84 and Figure 85 provide information on the number of cases following each route, including a breakdown by complexity level.

Given the initial 3,003 cases (Figure 84), 43% followed the formal mediation pathway. We also know from the responses to the LA surveys that 817 cases (64%) were resolved successfully without recourse to the Tribunal. 236 cases (19%) were dealt with by registering an appeal. Of these, information from the LA questionnaires indicates that 159 were resolved without a hearing, and 77 with a hearing.

**Figure 84: Allocation of cases by route and complexity level - mediation scenario**



Note: Numbers of low, medium and high complexity cases may not perfectly add up due to rounding.

Source: London Economics - Survey1 to Survey 3 analysis

222 cases (17%) were still under mediation at the time of the survey. We applied a comparable 'recourse to Tribunal' rate of 22% (i.e.  $236 / (1,275 - 222)$ ) – equivalent to the Tribunal incidence of those cases that were no longer under consideration. This approach suggests that of the 222 continuing cases, approximately 50 would be expected to result in an appeal to the Tribunal, while 172 would be successfully resolved without the Tribunal appeal. Of the 50 cases filed for Tribunal appeal, we estimated that 16 would be resolved following a Tribunal hearing, while 34 would be resolved without a hearing. This estimate is produced by applying the percentage of Tribunal appeals that would be expected to conclude with a full Tribunal hearing using the information provided by LA respondents for each type of case, as shown in Table 40.

Therefore, combining the various elements of data, the analysis suggests that, overall, under the formal mediation pathway:

- 7.3% of cases that were under mediation end up with a Tribunal appeal and hearing
- 15.1% of cases proceeding to formal mediation were resolved by a Tribunal without hearing
- 77.6% were resolved without a Tribunal appeal

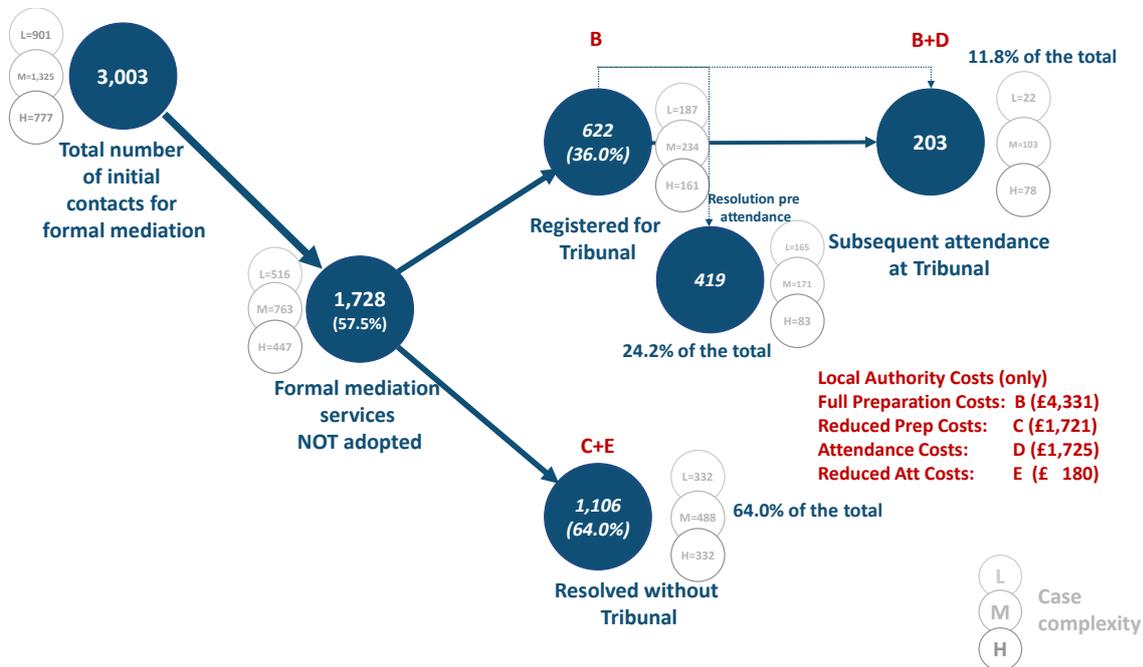
In Figure 84 the incidence of low, medium and highly complex cases is also provided along each pathway.

### A8.5.1.2 Distribution of cases along the 'No mediation' route

In a similar manner, we estimated the number of cases by route and complexity type<sup>129</sup> under the no- formal mediation scenario (Figure 85). In this case, out of a total of 911 cases:

- Approximately 11.8% of cases were concluded with a Tribunal hearing
- 24.2% were resolved after a Tribunal appeal without a subsequent hearing
- 64.0% were resolved without a Tribunal appeal

**Figure 85: Allocation of cases by route and complexity level - no mediation scenario**



Note: Numbers of low, medium and high complexity cases may not perfectly add up due to rounding.

Source: London Economics - Survey1 - Survey 3 analysis

<sup>129</sup> It should also be noted that the estimations are performed assuming that the same distribution of 'case complexity' applies to both routes. Significant data collection efforts would be required to understand whether there are selection effects at play, i.e. whether there are significant differences in the type of cases going down each route.

## A8.5.2 Overall average costs: formal mediation versus no formal mediation

Combining information on the incidence and distribution of low, medium and highly complex cases across the alternative disagreement resolution pathways, it is possible to generate an overall estimate of the cost of a case following the formal mediation pathway compared to a case without recourse to formal mediation (Table 44).

On average, the estimation shows that the cost of a case that follows the mediation pathway stands at £5,181 while the average cost of a case without formal mediation stands at £5,650 – a difference of £469.

**Table 44 Average cost by resolution route - weighted by case complexity (including Tribunal costs and costs to parents)**

	<b>Mediation</b>	<b>No mediation</b>
Weighted average cost full appeal (including hearing)	£16,713	£15,694
Weighted average cost appeal (no hearing)	£11,227	£10,380
Weighted average cost no appeal (early disagreement resolution)	£2,917	£2,014
Overall average cost	£5,181	£5,650

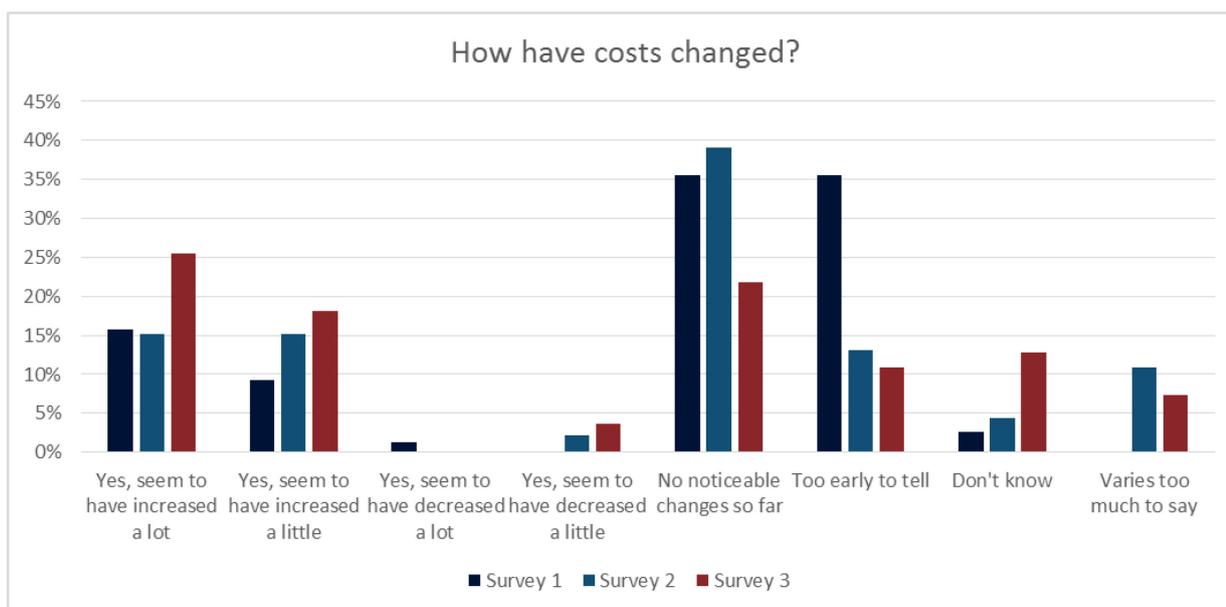
Source: London Economics - Survey1 to Survey 3 analysis

The analysis suggests that combining the differential costs with the relative incidence of cases along the two dispute resolution pathways result in a cost saving of £469 per case. In aggregate, across all cases, this represents a £598,000 saving associated with the mediation and dispute resolution pathway.

## A8.6 Additional views of the Local Authorities

All three surveys that have been undertaken have asked LAs to comment on whether the costs of preparation and attendance for SEN cases have changed over time. In both Surveys 1 and 2, the majority of LA respondents stated that it was either too early to tell whether costs had changed, or that there were no noticeable changes so far (**Figure 86**). The corresponding figure for Survey 3 stands at 33% of respondents.

**Figure 86 LAs' perception of changes in costs**



Source: London Economics - Survey1 to Survey 3 analysis

More generally, Figure 86 shows that across surveys 1 and 2 there remained a relatively constant proportion of LAs (25%) who report that costs have increased by either a little or a lot (compared to less than 5% who indicate that costs have decreased), which might reflect the evidence presented in the previous section illustrating that there may have been a short term marginal increase in costs related to the new disagreement resolution pathway. In Survey 3 the proportion of LAs indicating that costs have increased by either a little or a lot increased to 44%, compared to 4% who indicated that costs had decreased either a little or a lot.

## A8.7 What has been learned about costs and benefits of disagreement resolution and the Recommendations pilot

This section provides our assessment of the costs and benefits associated with early disagreement resolution and mediation policy in respect of the two research objectives addressed:

- **Objective 1:** To examine how successful **mediation** is in resolving issues without need for recourse to the Tribunal
- **Objective 6:** To assess the **cost savings** of early (pre-Tribunal) disagreement resolution

Addressing Research Objective 1, the analysis of the LA responses contained in Surveys 2 and 3 suggests that engagement with formal mediation was associated with a statistically significant 13.6 percentage point **lower likelihood of registering a Tribunal appeal** compared to those that did not engage with formal mediation (i.e. 22.4% versus 36.0%).

- This reduction in the incidence of Tribunal appeals and subsequent hearings is the fundamental measure of impact and is a key determinant of the differential costs across the two 'routes' of disagreement resolution.

Addressing Research Objective 6, the analysis identified **cost savings associated with of early (pre-Tribunal) disagreement resolution**. In particular, the reduced incidence of Tribunal appeals and hearing associated with the mediation pathway resulted in a lower aggregate cost associated with the mediation pathway compared to the non-mediation pathway (£5,181 compared to £5,650). Although there are some uncertainties associated with the costs data collected (and in particular the direct and indirect costs incurred by parents), the analysis suggests that the aggregate cost savings associated with the 1,275 cases that engaged in the mediation pathway was approximately £600,000. Although these cost savings appear relatively small, it is important to re-iterate that:

- Because of the cautious methodological approach adopted, the estimate of cost savings is likely to be a significant underestimate of the true cost savings.
- The approach towards mediation and disagreement resolution is relatively 'new', and as such we might see a greater impact over time as it embeds. In particular, whereas the difference in the incidence of Tribunal appeals across the two paths of mediation and disagreement resolution was approximately 4 percentage points by the end of the period covered in Survey 2 (i.e. 31 December 2015), the **deterrence effect had increased** to almost 14 percentage points by the end of the period covered in Survey 3 (i.e. 31 August 2016).
- The cost savings identified were in the region of £600,000. This corresponds to 1,275 cases adopting the mediation route. Aggregating the potential saving

resulting from the costs avoided from all LAs (not responding to our survey) would likely increase the total extent of the benefits generated.

- From the analysis presented, there were a further 1,728 cases that did not go down the mediation route. We are not suggesting or recommending that mediation is made compulsory (as this might result in a distortion in the marketplace). However, the provision of additional information to parents on the nature of the relative success associated with formal mediation and early, informal disagreement resolution might increase the incidence of parents adopting this pathway. If so, this would further reduce the costs incurred by parents, LAs and the Tribunal Service.

## Appendix 9: Survey of LA lead officers for SEND assessment

Statements	Response options	2014-15 N=60 Number (Percentage)	2015-16 N=62 Number (Percentage)
(a) Our Local Offer proved to be easily accessible for local parents	Strongly disagree	1 (2%)	1 (2%)
	Disagree	5 (8%)	7 (11%)
	Neutral	12 (20%)	12 (19%)
	Agree	33 (55%)	35 (57%)
	Strongly agree	9 (15%)	7 (11%)
(b) Our Local Offer proved to be easily accessible for local children and young people	Strongly disagree	1 (1.7%)	1 (2%)
	Disagree	11 (18%)	14 (23%)
	Neutral	25 (42%)	22 (36%)
	Agree	20 (33%)	22 (36%)
	Strongly agree	3 (5%)	3 (5%)
(c) Parents were very involved in the development of our Local Offer*/***	Strongly disagree	1 (2%)	
	Disagree	4 (7%)	1 (2%)
	Neutral	14 (23%)	8 (13%)
	Agree	19 (32%)	32 (52%)
	Strongly agree	21 (35%)	20 (32%)
(d) Children and young people were very involved in the development of our Local Offer*	Disagree	16 (27%)	11 (18%)
	Neutral	24 (40%)	24 (39%)
	Agree	18 (30%)	23 (37%)
	Strongly agree	1 (2%)	4 (7%)
(e) The Children and Families Act 2014 reforms to the disagreement resolution process for SEND have enhanced early disagreement resolution in this LA.	Strongly disagree	2 (3%)	5 (8%)
	Disagree	16 (27%)	12 (19%)
	Neutral	22 (37%)	21 (34%)
	Agree	19 (32%)	22 (36%)
	Strongly agree	1 (2%)	2 (3%)
(f) I am satisfied with the cost in relation to the quality of service provided by our: i. Information, advice and support service	Strongly disagree	2 (3%)	
	Disagree	5 (8%)	5 (8%)
	Neutral	19 (32%)	15 (24%)
	Agree	26 (43%)	31 (50%)
	Strongly agree	8 (13%)	11 (18%)
ii. Independent disagreement resolution service**	Strongly disagree	4 (7%)	3 (5%)
	Disagree	10 (17%)	7 (11%)
	Neutral	27 (45%)	25 (40%)
	Agree	16 (27%)	24 (39%)
	Strongly agree	1 (2%)	3 (5%)
iii. Independent mediation service*/***	Strongly disagree	3 (5%)	3 (5%)
	Disagree	14 (23%)	10 (16%)
	Neutral	18 (30%)	15 (24%)
	Agree	22 (37%)	30 (48%)
	Strongly agree	2 (3%)	g (5%)
(g) I am satisfied there is a focus on working towards early disagreement resolution by our: i. Independent disagreement resolution service**	Strongly disagree	2 (3%)	
	Disagree	5 (8%)	4 (7%)
	Neutral	23 (38%)	23 (37%)
	Agree	25 (42%)	30 (48%)
	Strongly agree	3 (5%)	5 (8%)
ii. Independent mediation service*	Strongly disagree	1 (2%)	
	Disagree	3 (5%)	2 (3%)
	Neutral	18 (30%)	13 (21%)
	Agree	32 (53%)	42 (68%)
	Strongly agree	5 (8%)	5 (8%)

\*2014-15 N=59, \*\*2014-15 N=58, \*\*\*2015-16 N=61

## **Appendix 10: Who did we interview?**

### **A10.1 The parents/young people**

#### **A10.1.1 How did we find our sample?**

We sought parents and young people through a number of different routes. Our starting points were the 17 LAs who took part in the Recommendations pilot. These LAs also agreed to be case study LAs for the review. We provided all 17 LAs with leaflets for parents/young people who appealed to the First-tier tribunal SEND, seeking their permission for their contact details to be shared with the research team, once the appeal had reached its conclusion. This was an opt-out process. In all other routes, we used an opt-in process, based on wide circulation of an invitation leaflet and information sheet to parents/young people with experience of one or more disagreement resolution routes since 1 September 2014. These were distributed in the 17 LAs through the respective parent/carer forums, information, advice and support services and mediation services.

After one firm of solicitors used by a number of LAs to represent them at First-tier tribunals (SEND) released tweets that caused a 'twitter storm' in June 2016, we were requested by the Department for Education to open up the review to parents and young people beyond the 17 pilot LAs. This was done by creating a webpage about the research, and using the link to that page in a tweet released by the Council for Disabled Children. This tweet was passed on by a number of SEND support groups and resulted in parents/young people from a further 17 LAs taking part in the research (34 LAs in total).

Finally, in order to reach the small number of parents/young people who had taken part in the Recommendations pilot, as well as trying through the relevant LAs, we also sent out a letter inviting participation through the administrative system of the First-tier Tribunal SEND.

We are very grateful to all the LAs and organisations that supported us to reach parents and young people with experience of disagreement resolution.

#### **A10.1.2 Demographics of the parent sample**

We completed 79 interviews with parents by 26.01.17. One of these was a joint interview with a parent and young person. We conducted one telephone interview with a young man. Two other young men provided their views in other ways (a letter, videos with power point presentation).

Of those parents who were asked demographic data the following was found:

- 69 were female and 7 were male
- The age-range was 20s to 60s with 39 in their 40s
- 53 described themselves as white British, with 10 other ethnicities represented
- 30 were not in paid work (often carers for their child or doing voluntary work), 21 were working full-time and 19 were working part-time.
- Highest educational qualifications ranged from GCSEs (5) to PhD (2) with 22 having a degree, nine a Master's degree, and nine with a post-graduate qualification

### **A10.1.3 Who were the children and young people spoken about?**

Of the children spoken about, 19 were female and 57 were male. The age-range was 3 to 23, with the following breakdown:

- 0-4 (3)
- 5-11 (27)
- 12-19 (40)
- 19-25 (4)

SEND – 63 out of the 76 children (83%) where needs were recorded had multiple needs (that included health needs). The most common special need was Autism Spectrum Disorder (37, 49%) with speech, language and communication difficulties (16, 21%), sensory processing issues (14, 18%), ADHD (14, 18%), dyslexia (10, 13%) and dyspraxia (10, 13%) being the next most common. Anxiety was the most common health need (19, 25%).

## **A10.2 The mediation services**

### **A10.2.1 How did we choose the mediation services?**

Our starting point was to contact each mediation service used by the 17 LAs acting as our case study LAs (the LAs involved in the Recommendations pilot). We sent information about the review and the research to these organisations, requesting one mediator to take part from each service (we asked the bigger organisations to put forward two mediators). All but two of these mediation services contacted agreed to take part. This meant that we had eight mediators from eight services. We then searched Local Offer websites to find additional mediation services and contacted every one, inviting them to participate. Each one that had had experience of SEND mediation provided contact details of a mediator willing to be interviewed. We also recontacted the

two services that had refused first time around – one was no longer providing mediation and the other again decided not to take part.

### **A10.2.2 About the mediation services**

The services varied in size from having one mediator to 30 mediators. Organisations also varied in how they employed mediators: some employed mediator's full time, others part-time, some worked on a sessional basis as part of a panel of mediators, some worked on a voluntary basis. A mix of these options was also possible – for example, an organisation that employed full-time and part-time mediators also used volunteer mediators.

Each service worked with different numbers of LAs: from one LA to over 30 LAs. Contractual arrangements varied. There were four main types:

- as sole provider to a single LA
- as sole provider to a group of LAs that had jointly commissioned the service
- as one of a number of providers on a framework agreement to one or more LAs
- as a subscription service to LA subscribers.

The quality assurance arrangements varied within each organisation with differences in training, supervision, professional development activities, and use of feedback from participants to drive improvements. Requirements around reporting regularly to commissioners also varied. Almost all these services were contracted to provide **mediation advice** (but not all of the mediators were involved in this aspect of the service). Some LAs had contracted separate mediation organisations to provide mediation advice and mediation respectively.

### **The mediators**

The nineteen mediators interviewed were all accredited mediators. Across the nineteen, training and accreditation had been received respectively from the College of Mediators, the Centre for Effective Dispute Resolution (CEDR), Applied Mediation, Chartered Institute of Arbitrators and Mediators (CIARB) Mediation UK, Steve Hindmarsh Ltd (accredited at Level 3 by the National Open College Network), ADR Group, and Regents College School of Psychotherapy and Counselling.

Between them, the nineteen mediators had 188 years of mediation experience, although not all of that was in SEND mediation. The range was from one year's experience as a mediator to 29 years. In terms of SEND mediation, they had each moved in to that field either because of the 2001 SEN Code of Practice or because of the 2014 Children and Families Act. The nineteen included people coming into SEND mediation from a wide range of backgrounds: a dispute lawyer, a civil mediator, two community mediators, three family mediators, three teachers, three commercial

mediators, a former SEN Manager, two former DfE employees, a former parent partnership worker, and one with experience in contentious litigation in banking and other businesses. Eleven had experience of SEND mediation both before and after the Children and Families Act 2014 became operative on 1 September 2014. Experience of SEND mediations since September 2014 varied from eight cases to around 200. Experience of mediations across local authorities varied from working for one LA to working across more than 30 different LAs. In sum, this was a very experienced and knowledgeable group of interviewees.

The nineteen mediators interviewed represented eleven mediation services. (Two worked simultaneously for two services and others worked for different sections of the same organisation.)

## **A10.3 Representatives of organisations supporting parents**

### **A10.3.1 How did we choose the organisations?**

We contacted all the organisations that had been well spoken of by the parents we interviewed as having supported them at mediation and/or through a Tribunal appeal. We also included types of organisations that supported parents to resolve disagreements at earlier stages (for example, Independent Supporter organisations and IASS). Some organisations were mentioned multiple times by parents in our sample as having been helpful at mediation and/or through appeal to the Tribunal.

Some of the organisations had only two members of staff, where others were national charities with a large number of staff members and volunteers. Seven of the organisations were national, eight get involved at any stage of the process, three solely supported parents through the EHC plan process. Four charged parents for services, with one organisation offering a capped rate and another providing means tested charges. For those who didn't charge, and were not the local SENDIASS, they relied on fundraising, grants and donations

We asked each of these organisations to put forward a representative for interview. In all, we spoke to 15 representatives for 14 different organisations that supported parents.

## Appendix 11: Local Offer feedback

In October 2016 the websites for all 152 LAs were researched for feedback regarding their Local Offer. Each LA's name was entered into a search engine alongside the words "local offer". The top search was chosen each time with one exception where the second choice was the actual local offer site. **124 (82%) published feedback.**

However, 5 of these documents were inaccessible (broken links, error messages etc.). Two local authorities (Knowsley Metropolitan Borough Council and Thurrock Council) had no facilities for providing feedback at the time of investigation. Two LAs (City of London and St Helens Metropolitan Borough Council) haven't published their feedback, stating that this is due to only receiving two comments each. Other LAs have also had minimal feedback but they still published. **25 LAs (16%)** had feedback directly relevant to disagreement resolution arrangements, as detailed below in Table 45.

In addition, **28 LAs (18%)** had feedback relevant to EHC plans and improving communication with parents regarding SEND (see Table 46).

The **recurrent themes** from the feedback comments in Table 45 are:

- unclear information
- difficulties in locating the information needed
- what support is available for parents
- people enquiring about the complaints process
- comments regarding eligibility criteria for services.

**Table 45 Feedback directly relevant to disagreement resolution arrangements**

Local Authority	Comments and Responses
<b>Bedford Borough Council</b>	<p><b>Comment:</b> Unclear of what families can do if they have a complaint or concern about provision.</p> <p><b>Response:</b> Regarding any concerns or complaints, we have a section where comments and concerns can be noted about provision and support. We are monitoring and responding to these questions or concerns accordingly</p>
<b>Buckinghamshire County Council</b>	<p><b>Comment:</b> (In response to a Facebook post): "Are you are a professional or parent carer looking for template letters for annual reviews and EHC needs assessments? There are many downloadable documents on the Bucks Local Offer Education pages, along with a wealth of information about conversions of statements and EHC Plans."</p> <p>I'm sorry but the information isn't really relevant! We had a review for my son's statement and conversion back in January and have been</p>

Local Authority	Comments and Responses
	<p>told that it will be done now by next January yet I read on here that it has to be finalised within fourteen weeks!</p> <p><b>Response:</b> Responded to the post with an offer to pass on their details to the SEN Officer.</p>
<p><b>Cambridgeshire County Council</b></p>	<p><b>Comment:</b> The information should be presented clearly and include eligibility, referrals, roles and responsibilities of professionals and contact information if more help is needed.</p> <p><b>Response:</b> We added a glossary, developed through parental feedback, explaining technical terms and jargon. We made the contents clearer. We included clear information on eligibility, referral routes and responsibilities and relevant contact details in the Local Offer directory. Most web pages now include contact information.</p>
<p><b>Camden London Borough</b></p>	<p><b>Comment:</b> Where to get money and legal advice</p> <p><b>Response:</b> Information about money and legal advice has been added to the 'Support for Parents and Young People' page as well as on the 'Money matters' page; There is information about general advice, legal advice and money advice on the Support for parents and young people page. This was added in January 2016 following feedback from parents during the month of review in November 2015. Would welcome further feedback from parents/carers if this information is difficult to find.</p>
<p><b>Cheshire West and Chester Council</b></p>	<p><b>Comment:</b> "Are mediation and tribunal numbers recorded?"</p> <p><b>Response:</b> Both contact numbers for mediation and tribunal are recorded on our Local Offer. If you would like further information or support you may like to contact Information, Advice and Support Service on 0300 123 7001.</p> <p>There is no intention to publicise the number of cases where Cheshire West and Chester has attended mediation or tribunal. Due to numbers being low this could mean individuals could be identified.</p> <p><b>Comment:</b> IASS, SEN Team - would like to see a more obvious link. Want a 'making a referral', 'EHC process', 'SEN assessments', 'how to get help for specific disabilities link behind the Families, Parents and Children category</p> <p><b>Response:</b> We have reviewed all your comments and will continue to work in partnership with you to develop our categories within the Local Offer.</p>
<p><b>City of York</b></p>	<p><b>Feedback session</b></p>

Local Authority	Comments and Responses
Council	<p><b>Comment:</b> Before he had a My Support Plan, he didn't have any help. Having everyone all together made a difference. 'We had a big meeting and we put it all in place. Now if anyone asks, it is all in one place. Having everyone together they all know things. Everyone knows what is going on.</p> <p>Before this started, it used to get on top of me, having to tell everyone.' 'Because it's all their (sic) on paper, it is concrete. Before there was nothing to see You have to explain the background again. Now it is all on one place.' 'My son was different with different people, this gives the whole picture'. 'It has reduced the stress. The kids feel it from us. If it's all in there you don't worry any more (sic).'</p> <p><b>Feedback session</b></p> <p><b>Comment:</b> 'Having the professionals listening to me. It can be difficult to persuade people. Now with all in one room, we can all share. You don't feel like you are fighting for people to understand.'</p>
Hampshire County Council	<p><b>Comment:</b> I was wondering if you could please help me, I have received a letter outlining my sons EHC plan will not be going forward and that I need to attend mediation with the local authority. Could you please let me know how I would go about it please?</p> <p><b>Response:</b> The details should be in the letter but links to information that will hopefully help, are listed below:</p> <ul style="list-style-type: none"> <li>· Further information about mediation can be found on Hampshire's Local Offer here:  <a href="http://www.hantslocaloffer.info/en/Support_with_resolving_differences_-_Disagreement_Resolution_and_Mediation">http://www.hantslocaloffer.info/en/Support_with_resolving_differences_-_Disagreement_Resolution_and_Mediation</a></li> <li>· This also includes a useful flowchart that illustrates the process:  <a href="http://www.hantslocaloffer.info/images/0/0a/Disagreement_resolution_and_mediation_v2.pdf">http://www.hantslocaloffer.info/images/0/0a/Disagreement_resolution_and_mediation_v2.pdf</a></li> <li>· If you would like to speak to someone further about this, there is a free impartial service for all parent carers of children with special educational needs in Hampshire, called Support4SEND. The details for this (including email and phone number) can be found <a href="#">here</a>.</li> </ul>
Harrow London Borough	<p><b>Briefing sessions and Forums</b></p> <p><b>Response:</b> Mediation – The Council has for several years commissioned access to high quality mediation from an organisation called KIDS. It is now mandatory that families and young people obtain a certificate to evidence they have contacted the mediation service before making an appeal to the SEN and Disability Tribunal.</p>

Local Authority	Comments and Responses
<b>Kensington and Chelsea Royal Borough</b>	<p><b>Comment:</b> I would like to see details of who to complain to and the process</p> <p><b>Response:</b> All new services we add to the Local Offer will now be asked for more detailed contact information including: how to complain, who to complain to and when the contacts are available to speak to. We will also be updating existing information and adding this extra information as we obtain it.</p>
<b>Lancashire County Council</b>	<p><b>Comment:</b> You would like to know details for the complaints procedure</p> <p><b>Response:</b> Lancashire County Council is committed to providing the best possible services and we welcome all your feedback, whether it is a complaint, comment or compliment. You can find information on the council website about how to submit a complaint and how we handle your compliments, comments and complaints. If your complaint is about a health service Healthwatch Lancashire (external link) provide advice on how to take forward a complaint, or resolve an issue. Links to this information are available on the local offer site. You can also type 'complaints' into the search bar to find this information.</p>
<b>Leicestershire County Council</b>	<p><b>Comment:</b> Core assets are very good. Core assets are great with supporting parents but can't deal with real problems. You end up being passed over to SENDIASS. Independent supporters are helpful just not able to advise you as they don't want to get involved legally but they are helpful in other ways. My opinion, so far, is that the independent supporters are helping but it seems that all schools have a lack of knowledge. I also think parents have been bombarded with info which they struggle to understand. I do think though that until the professionals are trained and know what they are doing then the parents will continue to be confused. Basically you need to make sure everyone is singing from the same hymn sheet.</p> <p><b>Response:</b> We are working with SENDIAS and Core Assets to understand how we can better support families through the new Education, Health and Social Care (EHC) plan process. Based on feedback received from both families and professionals we have developed a job description and person specification for a new job role that we hope will help professionals in developing person centred principles as part of the Education Health and Care (EHC) planning, assessment and review process.</p>

Local Authority	Comments and Responses
Merton London Borough	<p><b>Comment:</b> Parents would like the following to be covered in the eligibility criteria for a service: · Do you need a social services referral? · Do you need a GP referral? · Age range – including for Challenging Behaviour · Do parents/ carers need to accompany the child? · Who is funding the service? · EHCP bandings</p> <p><b>Response:</b> In our provider template, we have a clear question about referral and what form that takes. It will be clear whether criteria apply e.g. your child needs to have an EHCP, or a referral from a GP or social services etc. We have added cost details so that parents know how services are funded including, for example, personal budget/direct payment, self-funding If there is any other restriction on the service, we will ensure that this is covered in the website link or in the notes describing the service EHCP bandings will be added to the SEN Local Offer for 2016 / 17</p> <p><b>Comment:</b> Legislation parents want to see are: Disability Discrimination Act; Children and Families Act; SEN Code of Practice; Information on ombudsman services and how to complain; Post 16 legal duties and provision; SEN support protocol for schools and post 16 providers; eligibility for EHCP + how to apply, appeal and the statutory deadlines. The above should be tagged on the LO under 'legal framework', 'duties', 'obligations', 'legal', 'statutory'.</p> <p><b>Response:</b> All are on or being added.</p> <p><b>Comment:</b> Guidance, protocols, legislation they expect to see are: Complaints and mediation (Stakeholders meeting, SENDIS team)</p> <p><b>Response:</b> We have added these to the action plan and intend to consult health services in the Autumn Term 2016 as our next key stakeholder.</p>
Norfolk County Council	<p><b>Comments summary</b></p> <p>Information, support and advice – these were either responded to directly or forwarded on to the appropriate manager/SEND IASS Partnership as appropriate (8)</p>
North Lincolnshire Council	<p><b>Comment:</b> Not been made aware from school. My experience with school is you have to fight for anything you want for your child if they fall into the SEN. I don't have any questions as X @ parent partnership has been fantastic in helping me with things that school have failed to do'; 'The mainstream school X was attending treated my son very differently to all other kids even those with greater needs than my son. Yet my son is kicked out and now at X.</p>

Local Authority	Comments and Responses
	<p><b>Response:</b> Both positive feedback and as well as individual cases where experiences have not been so positive are being fed back to the particular educational setting and the relevant service.</p>
<p><b>Oxfordshire County Council</b></p>	<p><b>Comment:</b> SENDIASS made some suggestions about what should be included. Added or updated parent guides/leaflets:          Choosing a school          How is my child doing at school          Permanent exclusions leaflet          SEN Support in Further Education Colleges          Removed leaflet – ED Speak: what jargon means.          FAQs          Question 7 corrected, and link inserted to the Choosing a school leaflet added to question 3.          SENDIASS Impartial Support          Under - Who are our volunteers? there is a link to the 'Wanted' poster replaced the words 'Wanted' Poster with a thumbprint image of the actual poster          SENDIASS Useful websites for parents of children with SEN          Replaced the link for - <a href="http://www.nas.org.uk/signpost">www.nas.org.uk/signpost</a> with new link - <a href="http://www.autism.org.uk/directory.aspx">http://www.autism.org.uk/directory.aspx</a>          Replaced the link for - <a href="http://www.oxnet.org.uk/">www.oxnet.org.uk/</a> - Oxfordshire ME Group for Action (Omega) with the current link.  <b>Response:</b> Completed</p>
<p><b>Rotherham Metropolitan Borough Council</b></p>	<p><b>Comment:</b> The Local Offer site should advise that even though your child may not meet the local criteria for the disability team that they are still entitled to a social care assessment  <b>Response:</b> Information to be reviewed and included in graduated response animation. Information to be shared with Social Care colleagues.</p>
<p><b>Solihull Metropolitan Borough Council</b></p>	<p><b>Comment:</b> Parents knowing their rights &amp; feeling confident enough to challenge; More support for parents to challenge school (work with parents) &amp; an awareness of support available  <b>Response:</b> We will work with SENDIAS and the Parent/Carer Forum to improve the level of information, training and support for families. We will also train staff so that they appreciate how things feel from a parent's perspective. We will use this feedback as the starting point</p>

Local Authority	Comments and Responses
	<p>for our planning, actions for checking how far we get. We will ask parents if we are getting it right.</p> <p><b>Comment:</b> Greater transparency: Appeal &amp; challenge process  <b>Response:</b> Appeal and challenge – there is information on the local offer website – if this doesn't answer your question, please let us know – there is a way to do this on the local offer website (Have your say)</p> <p><b>Comment:</b> Empowering people to challenge and be heard i.e. family conversation  <b>Response:</b> We understand that this can be very difficult – it's particularly difficult when your child is vulnerable and you are already worried about them. SENDIAS are an excellent resource. We can arrange training for parents and professionals to develop a shared understanding. There is training that equips parents to be 'positive partners' in decision making (staff are trained, why not parents?) – If you think this would be a good idea please let us know through 'Have your say'.</p> <p><b>Comment:</b> The system for EHCP does not work and is based more on fear and stress for parents and children  <b>Response:</b> We are not clear what is meant by this contribution. We think this means that fear and stress are a result of the process not working. We are concerned if this is the case – we try to resolve problems as quickly as we can and the process is improving. The numbers of parents who have a good experience are high and improving – but every single poor experience is a concern – we want to get things back on track and put things right.</p>
<p><b>Somerset County Council</b></p>	<p><b>Comment:</b> No information on how to speak directly to a member of the casework team, no address to send applications to; No one answers the numbers I can find, it wastes so much time  <b>Response:</b> An increase in casework team staff. Telephone numbers checked and renewed</p>
<p><b>South Gloucestershire Council</b></p>	<p><b>Comment:</b> Hi, please can you update our service description from "Providing independent parental support to parents of children with special educational needs" to "A charity providing the information, advice and support service (IASS) to parents, children &amp; young people with any type of special educational need or disability (SEND) from 0-25 years in South Gloucestershire. The service is independent, free, confidential and impartial to any parent who has a concern about their child's education or any young person with</p>

Local Authority	Comments and Responses
	<p>SEND. “ So it is accurate at this link.  <b>Response:</b> This has now been updated and available on our Local Offer.</p> <p><b>Comment:</b>  Hi this information (link to LA’s information on mediation) is not correct and is not clear how families access the service. Please can it be updated ASAP.  <b>Response:</b> We reviewed with SG parents and Carers the information held on this page. The information was then amended and refreshed. Global mediation leaflet added also.</p> <p><b>Comment:</b> In South Gloucestershire's case the Disagreement Resolution search produced a link to Supportive Parents, while the mediation and mediation advice searches produced some very brief information about SEN mediation, but did not include any details of the provider or how to contact Global Mediation. Of course there may be information on your site that these search terms did not throw up; in which case I will have missed it.  If you want to add to the information on your Local Offer site you are welcome to use either of the model formats for wording that I circulated at the beginning of term - these are attached for ease of reference.  - Global Mediation  <b>Response:</b> Reviewed and refreshed page content to ensure accuracy. Global mediation leaflet now added to webpage</p>
<b>Staffordshire County Council</b>	<p><b>Comment:</b> How do I know clearly the complaints concern route?  <b>Response:</b> We have redefined the front page so the link to our corporate system is clear to all site users. We have included a compliments and complaints section to sit within ‘You said, we did’.</p>
<b>Suffolk County Council</b>	<p><b>Comment:</b> Unclear what families can do if they have a complaint or concern about provision  <b>Response:</b> Please see <a href="#">this page</a> which explains how parents/carers can raise concerns about education settings.</p>
<b>Warwickshire County Council</b>	<p><b>Comment:</b> Travel claim was disallowed due to procedures not being followed. Made a formal complaint which was only partly answered; “Refused assessments for EHC before a Transition meeting was held”; “Over a year of asking to get someone from Adult social care</p>

<b>Local Authority</b>	<b>Comments and Responses</b>
	<p>involved, made contact two weeks before 17th Birthday”.</p> <p><b>Response provided by the FIS Officer:</b>  Thank you for your feedback. If you would like to make a formal complaint about your experience, please visit:  Warwickshire County Council Compliments, Comments and Complaints page  or Log a formal complaint</p> <hr/> <p><b>Comment:</b> Why should a parent have to appeal in order to get a powered base for an existing wheelchair seat? Why is it no longer policy to provide two bases, which is essential if one base fails?; Complaints are raised, and issues are fixed, but there is no acknowledgement that the chair is not fit for purpose and has put further limits on certain activities and getting out and about; The parent has decided to log a formal complaint about the poor service received from the wheelchair service.</p> <p><b>Response provided by the FIS Officer:</b>  Thank you for your feedback. If you would like to make a formal complaint about your experience, please visit:  Warwickshire County Council Compliments, Comments and Complaints page  or· Log a formal complaint</p>
<b>Westminster City Council</b>	<p><b>Comment:</b> "I would like to see details of who to complain to and the process." "Emphasise the contact available to speak to (and when)."</p> <p><b>Response:</b> All new services we add to the Local Offer will now be asked for more detailed contact information including: how to complain, who to complain to and when the contacts are available to speak to. We will also be updating existing information and adding this extra information as we obtain it.  (Identical to Kensington and Chelsea Royal Borough)</p>
<b>Wokingham Borough Council</b>	<p><b>Comment:</b> "The Law the rights of the child to accurate assessment and for the parent for valid accurate signposting of support"</p> <p><b>Response:</b> Added the link to the Council for disabled children website which has compiled (sic) a legal rights handbook for disabled children and their families. This link can be found on the following council webpages:  Unhappy with the decision or need further help?  Preparing for adulthood  Preparing for adulthood: Health</p>

Local Authority	Comments and Responses
	<p>Preparing for adulthood: Social care Education, Health and Care needs assessment</p> <p>Also included a link to the legal handbook on the Council for disabled children's directory listing. Improved the search ability of the listing by adding additional searchable keywords. Linked the listing to additional categories within the directory.</p> <p>Included a link to the Cerebra website legal help section of their website from our information page Unhappy with the decision or need further help? This has useful information on the law and finding legal help.</p> <p>Included a link on the Education, Health and Care Assessment page, What are Special Educational Needs (SEN)? and the Support for preschool children to the Independent Parental Special Advice (IPSEA) information webpage on asking for an EHC assessment.</p> <p>Service and organisations that are already listed in the Local Offer directory which provide legal advice:</p> <ul style="list-style-type: none"> <li>Disability Law Service (DLS)</li> <li>Coram Children's Legal Centre</li> <li>In Brief</li> <li>Direct Legal Service</li> <li>The Bar Pro Bono Unit</li> <li>Advice Now</li> <li>Cerebra - positive different</li> <li>Council for disabled children</li> </ul>

### Other relevant feedback and comments

Some of the comments and feedback were not directly related to Disagreement Resolution but did show that the LAs were trying to improve communication, especially regarding EHC plans. These are presented in Table 46.

**Table 46 Feedback from LAs relating to supporting parents with information regarding SEND and EHC plans**

<b>Local Authority</b>	<b>Comments and Responses</b>
<b>Barking and Dagenham London Borough</b>	<p><b>Feedback regarding the nature of queries</b></p> <p>Parents, carers and young people are generally looking for information about housing support and benefits. They are also looking for information about Education Health and Care plans and therapy services.</p> <p>Queries from professionals are usually asking for clarification of processes (many from schools) specifically relating to time scales for Education Health and Care Plans and for up to date paperwork especially around the Annual Review processes.</p>
<b>Barnet London Borough</b>	<p><b>Comment:</b> Professionals within the SEN services in Barnet are very committed to providing quality services for children with SEN.</p> <p><b>Response:</b> Thank you for your feedback. We have passed the information to senior leaders.</p> <p><b>Comment:</b> Information on YP with EHCP are not easily available/or clear. I mean over 18 year olds. EHCP – what is it?</p> <p><b>Response:</b> We are reviewing the way we present information and checking for gaps in provision. In particular we are looking at transition to adulthood and improving the signposting. Please look again soon.</p>
<b>Blackpool Council</b>	<p><b>Comment:</b> Appropriate support in mainstream schools in order for students to not feel different</p> <p><b>Response:</b> We need to explore how schools could do this better</p>
<b>Bournemouth Borough Council</b>	<p><b>Comment:</b> More information about the processes and stages people go through when they have SEN. Not just for adults but for children and young people too.</p> <p><b>Response:</b> We've added a section called 'what happens when...' where you can find out about what happens in a range of different scenarios, from changing school to getting a diagnosis.</p>
<b>Bradford Metropolitan District Council</b>	<p><b>Comment:</b> Include appropriate local and national organisations to improve accessibility and knowledge on services and support available. You suggested including this information within the 'want to find out more section'.</p> <p><b>Response:</b> We have been contacted by various organisations and key stakeholders. After discussion with stakeholders we have decided to include those that are not for profit (charity / voluntary organisation groups) and organisations that are relevant and appropriate to our stakeholders (see appendix A for more</p>

Local Authority	Comments and Responses
	<p>information).</p> <p><b>Comment:</b> More information about each schools Special Education Needs provision, responsibilities and their Local Offer</p> <p><b>Response:</b> It is statutory for all schools to publish a SEND Information Report/ School Local Offer. We have updated the list of schools on the website and added links to their individual websites. Those schools that are not on the list will be contacted in September and invited to provide a link to their Local Offer.</p> <p><b>Comment:</b> More support required for children with behavioural, emotional and social difficulties.</p> <p><b>Response:</b> Some initial scoping work is currently underway to look at funding and developing early intervention strategies that will help families and carers to support children and young people with challenging behaviour. We will be adding a link to the homepage of the Local Offer website for the Child &amp; Adolescents Mental Health Service.</p>
<p><b>Bracknell Forest Council</b></p>	<p><b>Comment:</b> Headings for Advice &amp; Guidance pages are not clear – Need to be bolder and maybe underlined.</p> <p><b>Response:</b> Headings are now bold, underlined and have increased in font size.</p> <p><b>Comment:</b> Clearer routes to respite options, info about eligibility &amp; how to access them is needed.</p> <p><b>Response:</b> Added a “for further information” link to the BF SEN webpage</p>
<p><b>Bradford Metropolitan District Council</b></p>	<p><b>Comment:</b> Teachers require knowledge, skills and experience to identify children with SEN and how to support them.</p> <p><b>Response:</b> All schools have a Special Educational Needs Co-ordinator (SENCO), who can identify and support children and young people with SEND. They work closely with all staff in the school. The Local Authority has published guidance for schools and professionals on the range of special educational needs and the educational provision they require. This sits alongside the agreed funding model for schools. This is published on the Local Offer website.</p>
<p><b>Bromley London Borough</b></p>	<p><b>Comment:</b> There should be a link about the assessment processes on the childcare pages</p> <p><b>Response:</b> We agree – we have added a new link onto the Childcare page.</p> <p><b>Comment:</b> The ‘Education &amp; learning’ page should have clearer contact information &amp; a description for the IASS &amp; Independent</p>

Local Authority	Comments and Responses
	<p>Support Programme</p> <p><b>Response:</b> We agree – it is there, but it is not clear enough. We have added more details about the IASS &amp; ISP on <a href="#">this page</a></p>
<p><b>Bury Metropolitan Borough Council</b></p>	<p><b>Comment:</b> Need to see summary information on a school so that if they have a particular specialism I can see it rather than just a link to their SEN report, even if they're not a special school.</p> <p><b>Response:</b> We have reviewed the entries for all schools and added summary information where appropriate.</p>
<p><b>Calderdale Metropolitan Borough Council</b></p>	<p><b>You said:</b> It's taken me ages to find EHC Plans.</p> <p><b>We did...</b> speak with our Webteam who are currently updating the whole of the CMBC website. We plan on running 'user testing' sessions later this year when our new pages go live to check ease of use and change where possible.</p>
<p><b>Cambridgeshire County Council</b></p>	<p><b>Feedback from a parent network meeting</b></p> <p><b>Response:</b> Made sure that the eligibility criteria for services is clear and as comprehensive as possible including that for short breaks and disability services. Changed the wording on the link to SEND Information, Advice and Support Service to include Parent Partnership Service as providing the service.</p> <p><b>Comment:</b> You asked about waiting lists for Children and Adolescent Mental Health Service (CAMHS) and access to assessments for autism for children aged 11+ years when there are no additional mental health needs.</p> <p><b>Response:</b> We are in discussions with a broad range of stakeholders, including providers of services; local authority representatives; parent and carer representatives, Healthwatch; and commissioners of services to address these issues within the limits of the financial resources available.</p> <p>Our intention is to continue to:</p> <ul style="list-style-type: none"> <li>· reduce waiting times</li> <li>· develop a single point of referral that is multi-agency and can prevent difficulties from escalating</li> <li>· improve the pathways to services for Autism and Attention Deficit Hyperactivity Disorder (ADHD)</li> <li>· develop Emergency Assessments and intensive supports services for children and young people in mental health crisis</li> </ul> <p><b>Comment:</b> You asked about availability of Applied Behavioural Analysis (ABA) for children with autism.</p> <p><b>Response:</b> We met with parents to discuss and have referenced</p>

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	ABA in our information about interventions. The local authority looks at the needs of each child individually when considering ABA provision.
<b>Cheshire West and Chester Council</b>	<p><b>Comment:</b> Comment from a group of SENCOs: Parents presume if a child has SEND they are entitled to a 1:1 – some info about criteria for 1:1, Element 2 funding etc.</p> <p><b>Response:</b> All the information is available on the Local Offer but sometimes maybe difficult to find. This feedback will be considered by the Local Offer workstream. For workstream members roles please see appendix 1.</p>
<b>City of York</b>	<p>My son had a statement, it's what everyone else put down. We didn't have much part in it. Everything seems better. It is definitely better than before. Before we came home with a piece of paper with targets on.</p> <p>Since the plans everyone has listened, definitely</p>
<b>Croydon London Borough</b>	<p><b>Focus groups and questionnaire responses</b></p> <p><b>Response:</b> Training on SEND reform and the Education Health and Care Plan process was provided to parents and professionals. It was well-received, as was training on autism awareness.</p>
	<p><b>Response:</b> There was concern about the new Education Health and Care Plan process and the Transfer from Statements. A timetable was published for transfers and the SEND team worked collaboratively with parents to improve the Education Health and Care Plan documents listed on the Local Offer site as they reported that the original documents were ambiguous and unhelpful. There was positive feedback received from schools that the documentation was much clearer and easy to use. Sources of support – such as the local SENDIAS and the parents' forum – were highlighted on the Local Offer site and in the Local Offer leaflets. A series of short training sessions for parents and professionals were held on SEND reform generally and the Education Health and Care Plan process.</p>
<b>Cumbria County Council</b>	<p><b>Comment:</b> Parent unable to find information on EHCPs.</p> <p><b>Response:</b> EHCPs are located with a link behind the '<a href="#">Getting Help</a>' jig.</p> <p><b>What you asked for:</b> Cumbria Parent Partnership Service</p> <p><b>What we did:</b> This includes information about the information, support and guidance that PPS provide.</p> <p><b>Where to find it:</b> Under the Getting Help Jig</p>
<b>Dorset County</b>	<b>Comment:</b> Feedback from a questionnaire

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<b>Council</b>	<b>Response:</b> Most parents get information from their friends, Dorsetforyou.com or professionals working with their families. The least used sources were SENDIASS, Dorset Local Offer and The Xchange.
<b>Enfield London Borough</b>	<b>Comment:</b> It is not obvious how to get in touch with Independent Supporters/how to get help filling in the EHCP <b>Response:</b> There is now a separate tab for Independent Support under Education, Health & Care Plans
<b>Hackney London Borough</b>	<b>Comment:</b> We need more information on the Education Health and Care Plan process <b>Response:</b> We have broken this information down into steps and linked the pages to each other. We have included the documents and guides to this process in the articles on EHC plans.
	<b>Comment:</b> We need more information on what to do if a child with SEN(D) is excluded. <b>Response:</b> We have linked together existing information so that more services come up when you use the word "exclusion" in a search. We have added local and national services that can help support parents and young people and promoted these at an event with the parents' forum HiP. We printed hard copies of this information for parents attending this event. We added more information after the event based on what we heard.
<b>Hertfordshire County Council</b>	<b>Comment:</b> Documents relating to EHCPs, e.g. transfer guidance at a glance etc, are outdated, and incorrectly state 14 weeks for transfer /conversation. Updated documents and info regarding the new 'early' approach to Family Conversation has been available since August but not yet available to parents. Please raise this with whomever. <b>Response:</b> The incorrect websites have been updated with this information. We have now nominated a member of the central SEN team as an editor for these pages, to ensure this information is kept up to date from now on.
	<b>Comment:</b> I searched under "education" and "enhanced provision", leaving 'location' blank. I wanted to find primary schools (mainstream) which have enhanced provision places. The result showed a voluntary sector support organisation and 2 residential schools in the north of England. Does Herts not have any enhanced provision in mainstream schools in the county? <b>Response:</b> We worked with our Integrated Services for Learning team to create the best way to display this information. This is now

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	available.
<b>Islington London Borough</b>	<p><b>Comment:</b> We want access to information, advice and guidance for parents from someone that understands the challenges of dealing with SEND including access to counselling.</p> <p><b>Response:</b> Education, Health and Care jointly commission the Islington SEND Community Support Service, to provide information, advice and guidance to parents of children with SEND, and to young people with disabilities. The further development of counselling is a priority within our joint commissioning intentions for 2015-16.</p>
<b>Kingston Upon Thames Royal Borough</b>	<p><b>You said</b> that the pages containing the EHCP templates could be made clearer so that it was easier to know which templates should be used</p> <p><b>We did:</b> We have updated the pages and added clear information and explanation. This section has also now been revised with the new simpler set EHCP templates and the “Golden Binder” guidance.</p>
<b>Leicestershire County Council</b>	<p><b>Comments:</b></p> <p>Schools are saying they have not got enough info on EHC plans. The SENCO at my child's school is still going by the old rules as she says she doesn't know much about the EHC rules.</p> <p>Parents are having to find the information themselves and then go back to SENCO with info, this is madness.SENCOs need training.</p> <p><b>Response:</b> We have provided information, guidance and training opportunities for professionals on the importance of “person centred principals” and how these should be fed into an individual child or young person’s one page profile and SEND Support Plan; both of which feed into information used on the Education, Health and Social Care (EHC) Plan. We hope to instil champions across Leicestershire to support professionals to develop the knowledge and skills required as part of the SEND reforms. We are working with Leicestershire Family Voice to understand the issues being faced by families in relation to workforce development.</p> <p><b>Update November 2015</b></p> <p>Since October 2015 we have employed 3 EHC Plan facilitators. They have started working more closely with Education Health and Social Care providers to ensure they better understand the process and their need to be involved – in particular to person centred planning and reviewing progress.</p>

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	<p><b>Comment:</b> I have not seen any improvement and don't know why we couldn't have stayed as we were. The statement worked and now the EHC is supposed to have social care and health but that is a joke.</p> <p><b>Response:</b> We are keen to receive updates from families with regards to their views as to how the Special Educational Needs and/or Disabilities (SEND) reforms have been received and impacted on themselves and their family. We would value your comments on specific issues which can be provided via the Give feedback on the Local Offer page. We have asked Leicestershire Family Voice to gather your views on the Education, Health and Care (EHC) plan process and how this can be improved. We are working with core assets to find ways of informing families that independent support is available and can help them with the new Education, Health and Care (EHC) plan process. In addition to the above, we are also working with special educational needs and/or disabilities information and advice service (SENDIAS) to see how we can better inform parents about the support that they can provide to families.</p> <p><b>Comment:</b> It all seems random some get EHC plan and others with the same problems and genetic disorder can't get them?</p> <p><b>Response:</b> You can find out more about the criteria used to inform whether a young person is eligible for statutory assessment of Special Educational Needs and placement in specialist provision in Education, Health and Care plan</p>
Luton Borough Council	<p><b>Request to add blank Education, Health &amp; Care Plan template to the Local Offer, 23/11/2015</b></p> <p><b>Response:</b> Blank copy of template added to EHC eligibility record. Response sent to customer 24/11/2015.</p>
Newcastle Upon Tyne City Council	<p><b>General comment:</b> I'm finding that translating and printing the Education, Health and Care Plan guidance is really helping some families.</p>
North Lincolnshire Council	<p><b>Feedback from 'You said, we did'</b></p> <p><b>Response:</b> Enhancing the section on 'Where can I find Independent Support, Help and Support?' in to three subsections. This has enabled considerable improvements to be made so that SENDIASS now has its own section with a considerable amount of information now held centrally and available to download, including easy read versions.</p>
North Tyneside	<p><b>Comment:</b> Can you tell me how support in further education is affected by the changes?</p>

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<b>Council</b>	<p>For example if a young person was receiving help from a support worker last year, would this continue or would they need an EHC assessment?</p> <p><b>Response:</b> In the first instance this should be discussed with the key people who are working with your young person and yourself e.g. Connexions. They will be able to advise you in relation to your personal circumstances.</p>
<b>Nottinghamshire County Council</b>	<p><b>Comment:</b> You didn't understand the EHC process even after visiting the site.</p> <p><b>Response:</b> Added the Education, Health and Care Plan Pathway to the Local Offer homepage. Each of the stages from 1 to 7 can be clicked on and this will take you through to another page, which provides more information about that particular stage in the pathway. (Additional Feedback including screenshots is on the downloadable document)</p>
<b>Peterborough City Council</b>	<p><b>Comment:</b> There isn't a simple page that tells you what to do if your child has special educational needs or disabilities.</p> <p><b>Response:</b> A new page called <i>What to do if you think your child has SEN or Disabilities</i> has been created.</p>
<b>Rochdale Metropolitan Borough Council</b>	<p><b>Face-to-face consultation day</b></p> <p><b>Response:</b> A key message we have heard is about the lack of information and advice for parents. While we have the Family Information Service this is a generic information service. To increase the capacity for the team from 12 September 2016 we will have a full-time SEND Parent &amp; Carer Engagement and Information Officer. This post was appointed jointly with the Parent Carer Voice (Forum) as the Officer will work closely with them and Rochdale's Family Information Service with a lead responsibility being the Local Offer.</p>
<b>Royal Borough of Windsor and Maidenhead</b>	<p><b>Feedback from review:</b> Added information about the EHC Annual Review process and the decision making process for EHC Needs Assessments.</p> <p><b>Comment regarding what needs further development:</b> Make the EHC Needs Assessment request form easier to find.</p>
<b>Salford City Council</b>	<p><b>Comment:</b> Support for parents/carers</p> <p><b>Response:</b> Included</p>
<b>Southampton City Council</b>	<p><b>Comment:</b> Can I have an EHCP application form?</p> <p><b>Response:</b> Emailed the link to our EHCP assessment form from our Local Offer webpage. The information on our front page links directly to the referral forms and lots of information about EHC's and the</p>

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	<p>process involved.</p> <p><b>Next steps</b>  <b>Response:</b> Further advertise the Local Offer to ensure we are reaching more people that require information and support at the earliest possible stage with the Local Offer Website acting as the first point of contact for SEND families and service's in Southampton.</p>
<p><b>Sutton London Borough</b></p>	<p><b>Comment:</b> I didn't know about The Local Offer  <b>Response:</b> We have written to all parents who had a child with a statement or EHC plan (on 31/12/2015) and young people themselves to advertise the Local Offer. All schools, colleges and libraries in the borough have been sent posters and information about The Local Offer to display. SENCo's have been regularly updated on the Local Offer. We have also held focus groups with parents and young people and plan to hold more in the next academic year.</p>
<p><b>Swindon Borough Council</b></p>	<p><b>Comment:</b> Parents asked us to add information on the EHC Plan pathway so that they could easily understand the process in Swindon.  <b>Response:</b> We commissioned and co-produced with parents and professionals, a video animation demonstrating the Swindon EHC Plan process in a way that is clear and easy to follow. The animation went live in August 2016.</p>
<p><b>Telford &amp; Wrekin Council</b></p>	<p><b>Comment:</b> The local offer is not doing what I had hoped. The Ican2 activities on their website are out of date. No one in early years to discuss my request / questions about EHC plans. In health I feel the Children's community nursing is missing. Leisure and fun – no way my child could use a tandem, sit through a cinema screening. Cycle lessons would be great when he is 3yrs. The Jungle land offer in my view is not suitable for under 5s due to the time as bedtime routines should be happening 6pm – 8pm. Tots on ice is not safe for my child – thus I can't find any information to support my child.  <b>Response:</b> There were many aspects in response to this feedback: Ican2 activities out of date on their <b>website</b> - Immediate email to Telford &amp; Wrekin Council's Web team to get this information removed and updated.  No one in Early Years to discuss requests/questions - A discussion at team leaders meeting about ensuring there is always someone at the other end of the phone to try and support in that <b>locality</b>.  Children's Community Nursing - There is no information at the time on the <b>0-5 health page</b>. We have now loaded this information.</p>

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	Leisure and Fun: an email has been sent to our Commissioning Specialist informing them that parents/ carers feel there is a gap in 0-5yr provision. They are currently working with our <b>parent carer forum</b> on short break provision in Telford and Wrekin.
Wakefield Metropolitan District Council	<p><b>Improvements based upon feedback:</b> Three animation videos have been created to help people understand the SEN Support and Education, Health and Care Plans process.</p> <p>On sections such as Education, Health &amp; Care Plans and Personal Budgets information has been broken down using tabs and drop down boxes which makes information easier to read. Also, this allows the user to find information they are looking for quicker.</p> <p><b>Your comment:</b> The care element of an EHC plan</p> <p><b>Our answer:</b> You should be able to find all the information you need on <a href="#">Education, Health and Care Plans</a> in the relevant section.</p> <p><b>Your comment:</b> Pathway information from pre-diagnosis, i.e. where to get help</p> <p><b>Our answer:</b> This is an element of the Local Offer which needs improvement. Work is already underway to include more information on pathways, process walkthrough etc.</p>
Wandsworth Borough Council	<p><b>Comment:</b> “Independent Support” (for families having an EHC Plan) is not mentioned on the “Advice and Support” landing page.</p> <p><b>Response:</b> We added a reference and a link to this.</p>
Wiltshire County Council	<p><b>Comment:</b> The SEN Banding system merits careful consideration if children’s interests are to be protected. It is important, in order to retain independence of outlook, that the consequences and legality of changes is properly understood. There are major legal problems with some LA’s banding policies. It might be helpful to check that Wiltshire’s SEN Banding policy is lawful, otherwise you could potentially be spending time advising parents on practices which are actually legally challengeable.</p> <p><b>Response:</b></p> <ul style="list-style-type: none"> <li>• The WPCCC emailed the parent to thank her for her feedback.</li> <li>• Information sessions have been organised and promoted to explain how SEN Banding will enable more defined, appropriate and specific support to be identified in EHC Plans; and to give parent carers an opportunity to ask questions to help their understanding of the changes.</li> <li>• Discussed the concern raised by the parent with the LA.</li> <li>• The LA confirms that: In the past, Wiltshire Council has had several</li> </ul>

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	<p>different funded banding systems which have been merged to form one system. This won't make any direct difference to the support that children and young people receive from schools, as this is about making the "behind the scenes" processes smoother. EHC Plans will continue to clearly identify the child or young person's needs and provision, as required by legislation. Section F of an EHC plan identifies the provision a child or young person must receive; Section F of EHC plans in Wiltshire will continue to be detailed and specific in terms of the type of support required. The banding system will focus settings on specific provision and how this will help to achieve the stated outcomes in the EHC plan.</p> <p><b>Comment:</b> My husband and I have some serious concerns about Wiltshire County Council's local offer which we would like to make the WPCC aware of. Our son started secondary school in September and has an EHCP, we understood he was transitioning from Year 6 to Year 7 with 30 hours of TA but we don't think this may now be the case.  We don't understand the two ELP levels.  We don't understand why hours are being put into EHCPs.  We understand that LAs must look at each child's needs and treat them as individuals.  Concern was expressed about clarity as to which parts of an EHCP are statutory and which are not. It was suggested by the parent carer that the parts of the EHCP that are statutory be highlighted in some way.</p> <p><b>Response:</b> The WPCC clarified the points raised with the SEN inclusion Support Manager and supplied the enquirer with an appropriate response. The enquirer required further clarification and the WPCC spoke to them on the phone to discuss their ongoing concerns at length. The enquirer required further reassurance and clarification, particularly around banding arrangements. The WPCC spoke to the Lead Commissioner for SEN and having been given the parent carer's consent to share details with the LA, the Lead Commissioner for SEN had a further conversation with the parent carer.</p> <p>The comments about the clarity of statutory and non-statutory elements of the EHCP in Wiltshire were shared with the SEND Locality Manager (North and East). The WPCC asked that if anything happened to EHCP plans in Wiltshire as result of this feedback, that</p>

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	<p>this be shared with the WPCCC so that we can share the information with parent carers and update the published Local Offer feedback.</p> <p><b>Comment:</b> Hi there I am writing to you as I find it interesting that on the information relating to further education colleges you make no reference to Specialist Colleges that are approved on the National data base? I appreciate that local colleges need to be explored first however there is still a need for a specialist type provision, given the complexities of some young adults that have the right to an appropriate education. "A Right not a Fight" is the NATSPEC Campaign, The campaign calls for students with a learning difficulty or disability to have the same choices that most young people take for granted, such as choosing a further education college that best meets their learning and support needs. Section 41 Secretary of State approved List; Section 41 of the Act allows the Secretary of State, by order, to publish a list of approved independent special institutions (Independent Special Schools – England and Wales and Special Post-16 institutions) for the purposes of satisfying Section 38 (Preparation of an Education, Health and Care plan by local authorities) of the Act. Institutions can only be included on the list with their consent. Perhaps I have just missed this and you have the information for the public domain, or perhaps you don't? Luckily I am a parent that is informed of matters relating to options for young adults that deserve to be given ALL their options?! Especially in the context of impartial advice and information, or is it IMPARTIAL, given the absence of this crucial information. Perhaps you could speak to the rest of the SEND Team as I am concerned that under the C&amp;F Act 2014 you are not giving parents/guardians and advocates ALL the information on your new Local Offer web site, helping them to explore ALL their options. Hopefully you will make amendments to your site. Look forward to hearing from you</p> <p><b>Response:</b> Thank you for your interest in the Wiltshire Local Offer and we welcome your feedback. The Wiltshire Local Offer is continuously developing and we strive to ensure that we meet the statutory requirements as well as working alongside other local authorities nationally to share practice and key developments. At the heart of our Local Offer is co-production which values contribution and involvement from parents, carers, children, young people and professionals. Your views have been shared with colleagues, as requested, and I will try and address the points you have raised.</p>

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	<p>The Wiltshire Local Offer contains information about support and services Wiltshire Council offers directly, commissions or works in partnership with. We have included links to schools and colleges in our '<a href="#">Education</a>' section on the website. We also include a list of the Section 41 approved providers on our website (please see section number 4 of the link page, '4. Approved independent providers'). We continually review our content to ensure the information is relevant and up-to-date and we are currently working on further website development. We welcome any future feedback and your contribution is valued. I hope this has addressed your concerns and reassured you that we do indeed meet the requirements to publish the approved providers (Section 41) information.</p> <p><b>Our actions:</b></p> <ul style="list-style-type: none"> <li>• Shared comments with relevant colleagues, as requested.</li> <li>• Further clarified access path to information with provider of initial feedback (follow up email).</li> <li>• Reviewed the links and information provided against statutory requirements to consolidate adherence.</li> <li>• Discussed presentation of similar information with Local Offer network (range of local authorities) to establish best practice.</li> </ul>



Department  
for Education



Ministry  
of Justice

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