

Summary: Intervention & Options

Department /Agency: Department for Children, Schools & Families	Title: Impact Assessment of the consultation on giving children and young people a right to appeal	
Stage: Consultation	Version: 1	Date: 20 April 2009
Related Publications:		

Available to view or download at:

<http://www.dcsf.gsi.gov.uk>

Contact for enquiries: Dominic Siwoku

Telephone: (0207) 925 5321

What is the problem under consideration? Why is government intervention necessary?

Following UN and Government concerns, the consultation explores empowering children and young people on issues impacting their lives by exploring extending them a right to appeal where there parent is unable or unwilling to do so, covering appeals against permanent exclusions (from age 16), SEN statements and assessments and making disability discrimination claims. The proposals aim to ensure equity, particularly vulnerable children, and to explore a closer alignment between children's rights on disability and those in other equality strands. Parents already have and will retain these rights.

What are the policy objectives and the intended effects?

To explore how best to offer the rights to young people and children and what support they may require in taking them forwards. The aim is to empower children to have more say in decisions affecting their lives, and to explore how best to support young people and children in vulnerable groups including children with Special Education Needs and Looked After Children.

What policy options have been considered? Please justify any preferred option.

The consultation invites views and comments on an approach. The consultation does not suggest replacing a parental right: it proposes extending them to young people and children to protect their interests where a parent or carer is unwilling or unable to proceed with an appeal on their behalf. The consultation does not explore providing rights to children prior to secondary school as it is assumed that their understanding prior to that age would not be sufficient for it to be appropriate for them to take forward an appeal on their own behalf.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The policy will be developed following consultation outcomes. It will be reviewed alongside any other associated policies and regulations as they are being reviewed.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Delyth Morgan

..... Date: 24 April 2009

Summary: Analysis & Evidence

Policy Option:
Exclusions

Description: Giving 16 and 17 year olds the right to appeal against permanent exclusions and provide support for their appeals

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Granting young people the right to appeal against permanent exclusions can produce a range of scenarios. A range of costs is supplied demonstrating the possibility of parents substituting appeals, the number of appeals increasing and a combination of the two.	
	One-off (Transition)	Yrs		
	£ 36,000	1		
	Average Annual Cost (excluding one-off)			
	£ 0- 2,100		Total Cost (PV)	£ 36k - 54.1k
Other key non-monetised costs by 'main affected groups' this might include costs to schools, LAs, other pupils and teachers depending on the outcomes of appeals and the number of vexatious appeals that arise from the intervention.				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Currently unable to quantify benefits at present due to lack of evidence available on reductions in costs of PRU or movement in pupils between schools.
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
	£		Total Benefit (PV)
Other key non-monetised benefits by 'main affected groups' benefits to pupils who were unfairly excluded. Potential that this intervention will improve the life chances of some pupils who otherwise would have been removed from school. A stable education may present wider benefits to society.			

Key Assumptions/Sensitivities/Risks Potential risks of larger number of appeals as parents have the incentive to substitute their appeal to an appeal from their child. May have risk of negative press as teachers may resist the change. May be an increase in nuisance appeals.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
-----------------	-------------------	---------------------------	-----------------------------------

What is the geographic coverage of the policy/option?		England		
On what date will the policy be implemented?		n/k		
Which organisation(s) will enforce the policy?		n/a		
What is the total annual cost of enforcement for these organisations?		£ n/a		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		Yes/No		
What is the value of the proposed offsetting measure per year?		£ n/a		
What is the value of changes in greenhouse gas emissions?		£ n/a		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium Large
Are any of these organisations exempt?		No	No	N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of £	Decrease of £	Net Impact	£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Summary: Analysis & Evidence

Policy Option: SEN appeals reform

Description: To give young people and children the right to appeal SEN statements and assessments and to make a claim of disability discrimination.

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Granting children and young people the right to appeal can produce a range of scenarios depending on how parents and children/yp respond. A range of costs is supplied demonstrating the possibility of parents substituting appeals, the number of appeals increasing and a combination of the two.
	One-off (Transition)	Yrs	
	£ 36,000	1	
	Average Annual Cost (excluding one-off)		
	£ 0- 634,785		
			Total Cost (PV)
Other key non-monetised costs by 'main affected groups' This might include costs to schools, LAs, other pupils and teachers depending on the outcomes of appeals/claims and the number of vexatious appeals/claims that may arise.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Currently unable to quantify benefits at present due to lack of evidence available on reductions in costs of PRU or movement in pupils between schools.
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
	£		
			Total Benefit (PV)
Other key non-monetised benefits by 'main affected groups' benefits to pupils who are appropriately educated. May improve the life chances of some pupils who otherwise would have been removed from school. A stable education may present wider benefits to society.			

Key Assumptions/Sensitivities/Risks Potential risks of larger number of appeals as parents have the incentive to substitute their appeal to an appeal from their child. May have risk of negative press as teachers may resist the change. May be an increase in nuisance appeals.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
-----------------	-------------------	---------------------------	-----------------------------------

What is the geographic coverage of the policy/option?		England		
On what date will the policy be implemented?		n/k		
Which organisation(s) will enforce the policy?		n/a		
What is the total annual cost of enforcement for these organisations?		£ n/a		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		Yes/No		
What is the value of the proposed offsetting measure per year?		£ n/a		
What is the value of changes in greenhouse gas emissions?		£ n/a		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium
Are any of these organisations exempt?		No	No	N/A
				N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase of £		Decrease of £		Net Impact £

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

I. Summary

The consultation on 'Extending to Children and Young People a Right to Appeal' seeks views on the principle and how best to give children and young people the right to appeal to an Independent Appeal Panel (IAP) against their permanent exclusion from school, to appeal to the First-tier Tribunal for Special Educational Needs and Disability (SEND) about SEN statements and assessments or to make a claim of disability discrimination. It also explores the support needed for these appeals, and the right for young people aged 16 & 17 to appeal admissions decisions given through the Education and Skills Act 2008. The consultation asks what best support can be offered Looked After Children to avoid and manage permanent exclusions.

These rights currently exist but only for parents, although pupils aged 18 or over also have the right to appeal their permanent exclusion. The consultation does not propose any amendments to the current rights of parents or carers.

The policy relates to children and young people in maintained schools or academies as well as those in independent and non maintained special schools. We are not exploring any options for children to appeal below secondary school age because we see secondary school age as the minimum reasonable age to expect a child or young person to have the skills and ability to take forward an appeal on their own behalf.

The consultation responds to the Government's commitment to give young people more say in processes and decisions that affect them. It will also respond to UN recommendations for the UK in relation to the United Nations Convention on the Rights of the Child (UNCRC). In addition, there are some parents/ carers who are unable or unwilling to take forward claims on behalf of children and young people in their care, where the child may be keen to appeal. The consultation explores how best to provide them with a route to do so.

The proposals around disability discrimination will explore bringing disability discrimination claims into line with other equality strands such as race and sex. This is the only strand where a claim in relation to a school pupil must be brought by a parent.

Our overall goal is to keep children and young people in stable education where possible; and to ensure that the special educational needs of children are correctly addressed to ensure they receive an appropriate education. This will give all young people the best opportunity to achieve and to contribute to society.

The proposals are not seeking to amend how decisions are made, or to add 'additional' appeal/claim stages into the areas being discussed. They purely seek to ensure the current appeal/claim stage is used where a child or young person wishes to appeal/claim but has no other route to do so because the parent or carer is unable or unwilling to do so. There are no proposals to change the current rights of parents in these areas.

Evidence from similar policies in Scotland show that very few children have taken up the right to take forward their own appeal or to make a disability discrimination claim, and in Wales, no child has appealed following their permanent exclusion from school despite this power being in force since 2004.

The RIA provides discounted costs/ benefits over a 10 year period. Where costs have been estimated, this is indicated in the text.

II. Background

1. Exclusion Appeals to an Independent Appeal Panel (IAP)

Currently only parents and pupils aged 18 or over can appeal their permanent exclusion from school. All appeals are heard by the independent appeal panel and the length of time taken depends on the case. Statutory guidance allows children to attend appeal hearings depending on their age and understanding of the proceedings. These hearings are informal and operate on the principles of independence from the excluding school, fairness and transparent proceedings. The panel's decision is final although parents can seek judicial review if they are dissatisfied with the panel's decision. Panels provide an alternative for parents who might otherwise go to court to challenge the school's decision.

2. SEN/ Disability and First-tier Tribunals

Currently only parents can appeal or make a claim to the First-tier Tribunal (Special Educational Needs and Disability) – formerly the Special Educational Needs and Disability Tribunal (SENDIST). This is set out in primary legislation – see, for example, sections 325, 326 and 329 of the Education Act 1996, and 28I of the Disability Discrimination Act 1995, as inserted by the SEN and Disability Act 2001. Parents can appeal/ claim to both the SEN and disability side of FtT(SEN). No child or young person of whatever age can appeal.

However, children do have the right to attend First-tier Tribunal appeal hearings, though they may be excluded from all, or part of a hearing, where their presence might make it difficult for a witness to give their evidence.

Local authorities have to submit to the Tribunal the views of the child or young person concerning the issues raised by an appeal and where a local authority does not do this, it is obliged to set out the reasons why it has failed to do so

On the SEN side parents can appeal:

- A local authority decision not to assess a child or young person's SEN;
- A refusal to re-assess a child or young person;
- Having assessed, a decision not to draw up a statement;
- The contents of and amendments to parts 2, 3 and 4 of a statement. Part 2 describes the child's SEN, part 3 describes the special educational provision required to meet the child or young person's needs and part 4 names of the school where the child will be educated or a decision not to name a school.
- A decision not to amend parts 2, 3 or 4 after reassessing the child;
- Following a request to do so, a decision not to replace the name of the school in part 3 with the name of maintained school, and of a similar type if one is already named;
- A decision to cease to maintain (withdraw) a statement.

On the disability side parents can make a claim/appeal on the grounds of disability discrimination in respect of:

- Admissions to independent and non-maintained schools;

- Permanent exclusions from independent and non-maintained schools;
- Fixed term exclusions from maintained, independent and non-maintained schools;

3. Admissions

Choice Adviser is an independent service provided by local authorities to support parents who are most likely to struggle with the admissions system. It is good practice for choice advisers to provide support during the appeals process, particularly to those parents who accessed Choice Adviser at the application stage. The Advisory Centre for Education (ACE) is an advisory body providing free advice to parents on admissions appeals and exclusions.

III. Rationale

The rationale for Government intervention is based on equity – ensuring a child or young persons opportunity to appeal/claim where they may wish to do so is not blocked by parents and carers who are unwilling or unable to proceed with an appeal or claim. Left to the market, some students may not get the opportunity to challenge these major decisions affecting them. The inability to challenge in some cases may mean that a child or young persons education is disrupted unnecessarily and their educational outcomes and societal benefits reduced.

This consultation explores interventions which will allow children and young people the right to appeal decisions or to make claims where their parent or carer is unable to do so. This is particularly important for Looked After Children and those with SEN or disabilities. Therefore the consultation also asks how Looked After Children can be best helped to avoid or manage permanent exclusions.

The proposals responds to the UN recommendations for the UK on the Convention on the Rights of the Child; and will explore a closer alignment between children's rights on disability and those in other equality strands where children and young people already have the right of appeal.

The policies will additionally impact when the statutory school leaving age rises from the current 16 to 18 years of age.

IV. Costs and Benefits

General

There is very little evidence to underpin a cost/ benefit assessment of the consultation areas. One of the reasons for the consultation is to invite more views and wider evidence to help underpin stronger cost and benefit estimates at the post consultation policy development stages should the consultation principles be supported. We will adhere to the new burdens procedures in relation to financial implications for Local Authorities and appropriate legal help costs will be explored with the Legal Services Commission.

The RIA makes assumptions across potential ranges of impact and often uses a high cost estimate to ensure the impacts identified err on the generous side. We therefore expect costs to be lower overall than the RIA reflects at this early stage.

1. Exclusions

The consultation explores giving young people rights to appeal permanent exclusions from age 16.

In Scotland, pupils have had the right to appeal their permanent exclusion from aged 12 since year 2000, but the majority of appeals are still from parents. In Wales, pupils have had the right from age 11, but in the last two years (2005/07) Wales report that none have been brought by children. We therefore expect very few appeals as a result of the proposed policy change.

There were 1050¹ appeals lodged in 2006/07, 970 were heard – some 11% of permanent exclusions, a rate which has been relatively stable in recent years. Of the 970 heard, parents won in 25% of the cases and in 40% of these the child or young person was re-instated at school. 70%² of exclusions are for children or young people with an SEN statement. Based on LA estimates, an Independent Appeal Panel costs between £1100 and £1800 per hearing. We have used a high average £1500.

We know from the SFR14/2008² that in 2006/07 under 1% of permanent exclusions related to children age 16 and 17. We have used this as the proxy for the number of appeals going to an Independent Appeal Panel for children ages 16 and 17.

In Scotland and Wales there has been no evidence of growth in the number of appeals overall. Indeed, evidence from the last few years show a fall in the overall number of appeals. No advocacy support is currently provided in Scotland or Wales. There were 264 permanent exclusions in Scotland in 1005/06 and 26 appeals; and 248 permanent exclusions with 18 appeals in 2006/07. The figures for Wales over the same period in 2005/06 and 2006/07 show there were some 450 permanent exclusions. Whilst Wales do not routinely collect appeals data they have indicated that that no appeal was brought by a child.

There is no legal help for parents appealing permanent exclusions via the Independent Appeal Panel. As young people aged 16 and 17 are generally deemed competent in law, these areas are excluded from the exclusions element of the RIA.

Costs

2006/2007 saw an average of 1050 appeals lodged, of which 970 were heard, of which under 1% (some 10 cases) may have been in relation to young people aged 16 and 17. If the intervention were to lead to an increase in the number of appeals lodged and heard, through an increase in the number of appeals lodged by children, then LAs will incur costs. These costs will come in a number of forms:

1. Information costs for the dissemination of the policy
2. Costs of an appeal hearing
3. Costs of support to assist young people with the appeals process.

1: Information Costs: It is likely that LAs will experience a cost for the the dissemination of the policy to schools and advisers. This is the cost of producing guidance and making schools and parents aware of the new legislation. It is assumed that producing and distributing the guidance takes one day of a clerical worker's time, one hour for a junior manager to check the accuracy of the literature and half an hour for a senior manager to sign off:

-clerical worker (£21.78 per hour)

-Junior Manager (£34.27 per hour)

-Senior Manager (£65.43per hour)

The total of this comes to $(21.78*8) + (34.27 *1) + (65.43*0.5) = £241.23$ per LA

With 150 LAs we can produce a total, one-off cost of $(£241.23*150) \sim \textbf{£36,000}$

¹ <http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000793/index.shtml> Table 11

² <http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000793/index.shtml>

There may be additional costs to add the amendments into training literature.

2. Costs of appeals to LAs: The estimated cost of an independent appeal panel based on the duration of 2 hours (average time) plus preparation time, copying, postage, refreshments, Panel Members' expenses and the attendance of a clerk and legal officer is estimated at a high average of £1500 (based on estimated costs from a sample of local authorities).

3. Costs to assist young people with the appeals process: There is no legal help for parents appealing to informal appeals panels such as the independent appeal panel for permanent exclusions. We are consulting on what help young people may need but at this stage we have assumed young people would be deemed competent to take their own case forwards. Advocacy services cost around £300. Whilst we do not anticipate all young people would require advocacy support, and indeed this is not currently provided in Scotland and Wales, we have included it at this stage for completeness.

Advocacy services range from being provided free through to a high cost end where a solicitor or other professional plays a role. We have assumed £50/hour labour costs for 6 hours (4 hours preparation time plus 2 hours to attend a panel or Tribunal). $£50 \times 6 = £300$.

The intervention on exclusions will only look into giving young people aged 16 and 17 the right to appeal against permanent exclusions. Given previous evidence from Scotland and Wales, we can estimate the potential range of increase in the number of appeals brought by young people to be very low: no more than 1 or 2%. However, we have costed the range between 0% and 5% as it is important to look at a range of potential situations and it is not expected that a 5% increase in the number of appeals would be reached. This gives us a number of likely cost scenarios:

- A. There is a 0% increase in caseload of appeals brought by young people.
- B. There is a 0% increase in the number of appeals brought by young people but 5% of parents substitute and have their children bring the appeal instead, for example they may think the young person has a better chance of winning, increasing the costs to LAs.
- C. There is a 5% increase in the number of appeals brought by young people and a 5% substitution rate by parents.

The 5% is a high estimate for Impact purposes. Evidence from Scotland and Wales would suggest that Scenario A is the most likely scenario.

Scenario A:

There may be a 0% increase in the number of appeals brought by young people (this may be a likely scenario given past Welsh experience). LAs will therefore only experience the one-off increase in costs of **£36,000**. DCSF will also amend its exclusions regulations and guidance.

Scenario B:

5% of parents substitute such that their children bring the appeal instead. Although this does not result in an increase in costs to LAs in processing the appeals, it may lead to advocacy support in some cases.

Estimating using 2006/07 figures, with a 5% substitution rate by parents, there will be:

$$970 \times 0.01 = 10 \text{ cases for young people aged 16 and 17}$$

$10 \times 0.05 = 1$ additional appeals brought by young people per year.

Higher costs may come from advocacy services to support a young person at the panel itself at £300 per case.

$$1 \times 300 = £300$$

This means, with information costs, this intervention would cost **£36,300 in Year 1 and £300 annually thereafter**

We would not expect any wider impact on Local Authority or Legal Services Commission budgets.

Scenario C:

Costs in scenario C may come from an increase in the number of young people bringing appeals and an increase in the number of parents substituting. This is likely to be the worst case (highest cost) scenario.

Estimating using 2006-07 figures to calculate a 5% increase in the number of appeals suggests:

$$970 \times 0.01 \times 0.05 \sim 1 \text{ (an increase of 1 appeal per year for young people age 16 \& 17).}$$

With an estimated cost of £1500 per Independent Appeal Panel, this leads to an increase in costs per case to a LA of:

$$1500 \times 1 = £1,500$$

$$\text{Plus £300 for advocacy support.} = £1,800$$

Then add the costs for literature and substitution of £36,300, to give a **total costs in Year 1 of £38,100 and £2,100 per annum thereafter.**

For exclusions, 10 year PV discounted costs as follows:

Scenario A:

One off: £36,000

Avg annual: £0

Total Cost (PV): £36,000

Scenario B:

One off: £36,000

Avg annual: £300

Total Cost (PV): £38,600 (nearest 100)

Scenario C:

One off: £36,000

Avg annual: £2,100

Total Cost (PV): £54,100 (nearest 100)

This intervention may produce costs in England in the range of £36,000 - £50,000 discounted over 10 years.

Other Non Monetised Costs

There may also be some additional costs that cannot be monetised including:

- Costs to LAs - LAs may experience an increase in administration costs as a result of the intervention. This could come about from an increase in the number of appeals, an increase in the number of vexatious appeals or an increase in workload if appeals brought by children require more consultation. There is no evidence of vexatious appeals in Scotland or Wales.
- Costs to schools - Non-monetised costs to schools including impacts on the schools' reputation, detrimental impacts on other pupils or teachers, or undermining impacts of other policies.

The low number of cases expected should mean these risks are very low.

Benefits

This intervention is likely to produce a number of benefits to LAs. These can come in the form of:

- reducing movement between schools - a reduction in costs from movement of pupils between different schools if there is a reduction in the number of permanent exclusions, if the young people have been expelled unfairly and are successful in their appeals;
- a potential reduction in the costs of Pupil Referral Units (PRUs) if the intervention leads to a reduction in the number of young people sent to PRU. A PRU costs £10k to 15k per pupil place per annum.
- Although there are broad estimates of costs to LAs through the movement of pupils, it is not possible to attribute these estimates explicitly to exclusions so we are not able to monetise these benefits.

There are likely to have some additional benefits which are not quantifiable at present:

- Benefits to young people who would be unfairly excluded - in the small number of cases where parents choose not to appeal, the child has a chance to be heard. These young people who would be unfairly excluded without the appeal process will benefit through increased educational outcomes if they are not forced to change school. They will also benefit from not having an expulsion on their school record. Increased stability and potentially higher results than would be achieved if they had been expelled. Benefits of stability are particularly applicable to Looked After Children.
- Benefits to young people through increased educational outcomes – whilst we know expected lifetime returns to individuals of obtaining various levels of educational outcome for example, A levels versus GCSE levels, as these proposals targeting significantly those with SEN and disabilities or vulnerable groups such as looked after children, we do not have data that would enable us to attribute these benefits to this particular audience.
- Benefits to wider society – if pupils are successful in their appeal and reinstated in their school it reduces the likelihood that these pupils will move on to anti-social behaviour or become NEETs (not in education, employment or training) as they will become re-engaged with education, thereby improving their outcomes and contribute to society.

2. Special Educational Needs and Disability Discrimination

The consultation asks at what age (within the secondary cohort) children and young people may be given the right to appeal against SEN statement and assessments and to make a claim of disability discrimination. The RIA has assumed the right for all children of secondary school age

(age 11 upwards) to again provide a maximum anticipated cost – however, this should not be read as a steer as to the Government's preference. We are asking what support children and young people may need to progress through an appeal themselves, and also whether the 'right' should additionally be based on 'competency' and how that should be measured and who should make such an assessment.

Currently there is legal help available for parents and carers, on an income assessed basis, to help prepare cases for tribunal but not for representation at the tribunal itself. The costs assume the majority of young people appealing would need some further help and support – but this will not be the case in all instances.

In 2007/08 First-tier Tribunal (SEND) data³ shows 3392 appeals were registered with some 1040 going through to a hearing and a decision issued. In 2007/08, 145 disability discrimination claims³ were registered with some 80 going through to a hearing with a decision being made. This makes 3437 cases in total – with 1120 going through to a full hearing.

In Scotland, 16 and 17 year olds have the right to make appeals and there have been only 7 appeals over 4 years. Although the cases are not directly comparable, we can take these statistics as indicative. We have calculated costs based on a range allowing for possible increases in cases ranging from 0 to 5 percent. We would not expect a 5% increase in cases on current evidence.

Costs

There are potentially 4 types of cost:

1. Information cost
2. Tribunal costs
3. Costs of support including advocacy
4. Costs of a competency assessment

1. Cost of information provision: Cost of change in legislation – This is the cost of producing guidance and advertising to make staff, schools and parents aware of the new legislation. This cost will be incurred by the Local Authority and Tribunal Services. The Local Authority cost is calculated in the section on exclusions information costs. The First-tier Tribunal Service will also incur this type of costs – we have assumed a similar overall cost level for the RIA.

2. Costs of Tribunal: Average Legal Services Commission costs for a full tribunal are **estimated** at £7,500. The **estimated** cost for a local authority to defend a case at a Tribunal hearing is £5000. In many disability discrimination cases the respondent is the school not the LA, although in a maintained school the LA will often help in representing the school. We have used £5000 as a typical cost to the respondent to defend their case at a First-tier Tribunal.

3. Costs of support: Children or young people may need more support to help them understand the appeal process as well as to go through the appeal itself such as advocacy support. Parents currently have the right to legal help to prepare for the Tribunal, but not for representation at the First-tier Tribunal hearing. We would expect young people to have a similar entitlement based on household income or a merit assessment. Young people may need more support at the Tribunal than a parent or carer and advocacy support may be helpful at an estimated cost of £300 per Tribunal.

4. Costs of competency: In addition, if a competency assessment were needed, in some or all cases, this would trigger additional costs. There is little evidence on competency measurement.

³ Sendist Annual Report 2007-08: <http://www.sendist.gov.uk/FormsGuidance/annualReports.htm>

Costs are based on an assumption of professional time taken to make an assessment and on the costs for a psychologist.

There are then three possible scenarios:

- A. There is no increase in caseload and no parents substitute from appealing themselves to letting their child appeal.
- B. There is no increase in the number of cases but 5 percent of parents substitute, making the number of cases that cost the LA more.
- C. There is a 5 percent increase in cases and a 5 percent substitution by parents.

The 5% is a high estimate for Impact purposes. Evidence from Scotland and Wales may suggest that Scenario A is the most likely scenario.

Scenario A – Legislation has no impact on caseload brought by children.

Total cost per LA is then the fixed cost of introducing new legislation = £240

The total cost is then $£240 \times 150 = \text{£}36,000$

However, similar activities will be required by the Legal Services Commission. Much of this is currently provided through the charitable and voluntary sector. Texts may also be required in formats suitable for SEN and disabled young people. This is not yet costed.

Scenario B - Some parents substitute

Assuming that the caseload from 2006/07 is a good indicator for the total number of cases at present, if 5 percent of parents substitute from appealing themselves by letting the child appeal, the number of cases led by children will be:

$$1120 \times 0.05 = 56$$

The higher costs for children will stem from possible legal help costs (although we would expect these to be limited by family income as currently for parental appeals or assessed on merit) and the cost of a specialist should the competency of a child need to be assessed.

Given the children and young people are substituting for parents and legal help is anticipated to be linked to parental income, then we would currently anticipate no additional legal help costs.

The cost of a specialist who is required to assess the child's competence level is assumed to be the same per hour as that of a psychologist which is £100 per hour. It is assumed that the time taken to assess a child, including the time spent with the child and writing up the assessment is going to be one full working day i.e. 8 hours. If the assessment were made by a different professional e.g. headteacher⁴, costs would reduce. The cost of competence assessment is:

$$£100 \times 8 = £800$$

The total increase in costs in scenario B = $£800 \times 56 = £44,800$ + literature costs of £36,000 = £80,800

So in Y1 costs would be £80,800 with annual costs thereafter of £44,800.

⁴ New Burden Unit Compliance Cost Tables 2008

Average cost per year for the next nine years at present value is £38,600

Possible cost over 10 years = £421,600 (PV)

Scenario C - Some parents substitute and some young people and children also make claims.

In this case it is assumed that there is a 5% increase in the number of cases as appeals which would previously not have been made are now possible as well as a 5% substitution by parents. So, in addition to the costs in scenario B, there may be costs for a further 5% of 'new' appeals or 56 cases. These are estimated using £7,500 as the cost per Tribunal and £5000 as the cost for the Local Authority to defend the case. Costs may be lower in most cases as the Local Authority only used legal representation at 17% of Tribunals. In 07/08 only some 22% of cases saw parents who were legally represented however, we do not know who paid the costs of representation so cannot reduce the costs accordingly. However, where legal representation or advocacy is not present at the Tribunal, then costs would potentially be less.

Cost to legal Services Commission of £7,500 + £500 legal aid per case (assuming all cases eligible) = £8,000 per case

So for 56 new cases: $£8,000 \times 56 = £448,000$

Maximum expected cost to respondents would be: $56 \times £5000 = £280,000$

Advocacy costs per child for representation and support at the Tribunal could add a further Local Authority cost of: $£300 \times 56 = £16,800$

Costs of a competency test: £44,800

Giving a cost of:

$448,000 \text{ (LSC)} + 280,000 \text{ (respondents)} + 16,800 \text{ (LSC)} + 44,800 = £789,600$

Plus substitution costs of: $£44,800 = £834,400$

Plus one off information costs £36,000 giving a maximum cost of £870,400 in Year 1 and £834,400 annually thereafter.

Average cost per year for the next nine years at present value = £634,785 PV

Possible cost over 10 years (PV) = £7,218,000

For SEN appeals and disability discriminations claims, 10 year PV discounted costs as follows:

Scenario A:

One off: £36,000

Avg annual: £0

Total Cost (PV): £36,000

Scenario B:

One off: £36,000

Avg annual (PV): £38,600

Total Cost (PV): £421,600

Scenario C:

One off: £36,000
Avg annual (PV): £634,800 (nearest 100)
Total Cost (PV): 7,218,000 (nearest 100)

Other non-Monetised Costs

As with the exclusions appeals, there are likely to be further expenses we cannot currently monetise: including costs through vexatious appeals, any damage to school reputation, negative impacts on other pupils and teachers. Given the low number of cases (less than one per LA) we would expect these to be minimal.

Benefits

The benefits of this policy are not quantifiable at present, but they will include:

- A child receives education appropriate to their need - in the small number of cases where parents choose not to appeal, the child has a chance to be heard. In some of these cases, it is possible that a child who would not otherwise have received an SEN statement may be granted one and thus be able to access resources that properly address his/her needs.
- In addition the benefits under exclusions will also be applicable here.

3. Support for Admissions Appeals

The consultation is seeking views on the support needed for young people aged 16 and 17 to take forward the right to appeal against admissions decision set out in the recent Education and Skills Act (2008).

In the academic year 2006/07, there were 39,230⁽⁵⁾ appeals against admissions decisions heard for secondary school admissions. There is no data split by age to show the number of appeals against admission decisions for pupils ages 16 & 17. (note 5: Statistical first release (SFR) on admissions appeals: <http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000789/index.shtml>)

As the right came into force on 10 February 2009, with young people making appeals from 2010, there is no evidence to date on the number of appeals led by children and young people. Given parents already have this right of appeal, we do not expect there will be an increase in appeals overall. No support is provided to parents to undertake an appeal and we are consulting on the support young people may require and the role of the Choice Adviser and other bodies e.g. ACE. An RIA will be developed should any policy proposals follow.

It is expected that support may include written and verbal information provision, and advice on how to complete forms and present facts and arguments. Other help, such as advocacy, is not currently anticipated given that the right is from age 16 – the age at which young people are generally regarded as competent and the target audience is not biased towards vulnerable groups. The consultation is seeking views on whether support may be needed and if so what the nature of the support may be.

Costs on literature to raise young peoples awareness of their rights is excluded here as it is a cost associated with delivering the previously established policy.

Risks

- Young people and children, particularly those in vulnerable groups (e.g. Looked After Children, disabled children and those with SEN), may not be able to manage an appeal or make a claim themselves, and may require support at independent appeal panel and Tribunals.
- If children and young people are perceived as having greater success by handling their own appeals/ claims, the number of cases with child-led appeals may rise, as parents substitute their appeals/ claims to their children and more pupils put forward an appeal, leading to higher costs to LAs.
- There is strong incentive for the parents to substitute their appeal and instead appeal through their child.
- There may initially be an increase in the number of cases immediately after the policy is introduced (novelty effect)
- There may be an increase in vexatious litigation or nuisance appeals
- Risk of negative reception to intervention from teachers
- Decisions taken by tribunals against children might receive more negative media attention or attract public outrage even if the Tribunal's decision is the correct one.
- It is also possible that in cases where parents are willing and able to appeal they will put in an appeal through the child instead, perhaps thinking that the child has a better chance of getting a result in their favour. This could mean that even if the total number of appeals doesn't rise, the costs of appeals will go up as there will be a higher number of higher cost appeals.
- There is a possibility that legal challenge may open unanticipated rights for children to legal help and aid not currently available to parents. This is only costed in a limited way on the basis of current arrangements to reflect that this is a consultation, rather than a policy development, document. Such considerations will be more fully reflected in RIAs associated with any specific fuller proposals that may be developed post consultation.
- There are risks if government does nothing: of young people not realising their potential because they have to change school or have a disrupted or inappropriate education where that may have been avoided.

The consultation is seeking views on how to mitigate a number of these potential risks.

The consultation is clear that outcomes will need to reflect the available budgets, and will seek to prevent substitute appeals (perhaps by merit or family income assessments) and vexatious claims. It is worth noting that neither Scotland nor Wales have reported evidence of concerns over vexatious appeals to date.

VI. Evaluation Plans

It is too early to propose specific evaluation plans. However, any policy proposals developed as a result of the consultation will include a proportionate evaluation plan.

Evidence from Scotland and Wales will continue to inform our policy development and cost/benefit assessments.

VII. Comments and Information to Support RIA

We would welcome any further cost/ benefits evidence partners can provide to help inform any policy development following the consultation. This can be provided via the consultation form on the consultation website.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	No	Yes/No
Small Firms Impact Test	No	Yes/No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes	Yes
Disability Equality	Yes	Yes
Gender Equality	Yes	Yes
Human Rights	Yes	Yes
Rural Proofing	Yes/No	Yes/No

Annexes

< Click once and paste, or double click to paste in this style.>

