



Department  
for Education



Ministry  
of Justice

# **Special Educational Needs and Disabilities: Disagreement Resolution Arrangements in England**

**Government report on the outcome of the  
review conducted by the Centre for  
Educational Development, Appraisal and  
Research (CEDAR)**

**29 March 2017**

**Report presented to Parliament pursuant to Section 79 (3) of the Children and  
Families Act 2014**

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## Foreword

### From the Minister of State for Vulnerable Children and Families and the Minister of State for Justice

Our vision for children with special educational needs and disabilities (SEND) is simple: that their aspirations are as high as any other young person's, that they achieve well at school and college, and lead fulfilling, happy lives.

The reforms to the SEND system under the Children and Families Act 2014 introduced a more collaborative and holistic approach to supporting children and young people with SEND, putting them and their families at the centre of the Education, Health and Care (EHC) needs assessment and plan development process.

We designed the system to be less confrontational so that any disagreements about how a child or young person with SEND should be supported could be resolved at an early stage, ensuring that support is put in place with minimum delay. However, there will always be a small proportion of cases where agreement cannot be reached between the parents or young person and the LA or health agencies, and for these there are statutory routes to resolve the disagreement.

In drawing up legislation, we listened to the concerns of families who had experienced sometimes protracted and stressful journeys to obtain the right support for their children. We therefore included a commitment in the 2014 Act to review arrangements for disagreement resolution to see how they are working for children, young people and their families.

We also listened to families and stakeholders who told us they wanted a single route to raise concerns about education, health and social care in relation to EHC plans. We therefore ran, in parallel with the review, a pilot in the First-tier Tribunal SEND, whereby judges had the power to make non-binding recommendations about health and social care aspects of EHC plans, at the same time as making orders on the educational aspects.

The independent review and the Tribunal pilot have identified good practice, and areas for development. In response, this government report sets out steps to highlight effective practice and to support the workforce, while at the same time looking at ways in which the government might further improve the SEND system.

We have already made the biggest reforms to the SEND support system in a generation by placing children and their families at the heart of the system. Improvements set out in this report seek to embed our reforms further and ensure that families are well supported if disagreements do occur.

**Edward Timpson MP**

Minister of State for Vulnerable Children  
and Families

**The Rt Hon Sir Oliver Heald QC MP**

Minister of State for Justice

# 1 Executive summary

## Purpose of the review

The Special Educational Needs and Disability (SEND) reforms set out in the Children and Families Act 2014 (the 2014 Act) were designed to make the SEND support system less adversarial for parents and young people and to promote better involvement of families. These reforms included:

- the replacement of Statements of SEN and Learning Difficulty Assessments (LDAs) with person-centred Education, Health and Care (EHC) needs assessments and plans that should be prepared with the full involvement of children, young people and parents;
- the requirement for parents and young people to consult a mediation adviser to see if mediation might be a suitable way to resolve a disagreement about an EHC needs assessment or plan before registering an appeal with the First-tier Tribunal SEND; and
- a requirement for local authorities (LAs) to make disagreement resolution services available to parents and young people for disagreements about any aspect of SEND provision.

Section 79 of the 2014 Act stipulates that the Secretary of State for Education and the Lord Chancellor must review how effectively disagreements about the exercise of functions under Part 3 of the 2014 Act (ie those relating to the SEND reforms) are being resolved. They must also report to Parliament before the end of the period of three years beginning with the earliest date on which any provision of Part 3 of the 2014 Act comes into force.

To inform the report, the Department for Education (DfE) commissioned the Centre for Educational Development, Appraisal and Research (CEDAR) at the University of Warwick to carry out an independent review of the whole system of disagreement resolution and to evaluate its effectiveness for parents, carers and young people. At the same time, government piloted a single route of redress for parents, carers and young people, giving the First-tier Tribunal SEND extended powers to make non-binding recommendations on health and social care aspects of EHC plans.

The aim of the review was to assess how well new and existing routes for redress are working for children, young people and families when there is a disagreement about identifying and/or meeting SEN. It focuses on the relatively small number of cases that

result in disagreements with the LA and/or health commissioning bodies: only 5% of parents of children and young people who have EHC plans used a complaints procedure<sup>1</sup>.

CEDAR's review does not seek to cover the SEND reforms overall, which are at an early stage of implementation. Other recent large-scale independent research undertaken with over 13,000 families with EHC plans issued in 2015<sup>2</sup> suggests families agree the reforms relating to EHC plans have been effective in including the wishes of parents (80%), delivering plans that are easy to understand (74%), achieving agreed outcomes for children and young people (62%) and resulting in most parents and young people being satisfied with the process overall (66%).

## Review objectives

The CEDAR review had six objectives:

- to examine whether the process of EHC needs assessment and plan development is successful in resolving and preventing disagreements at an early stage, including perspectives on the experience of appealing to the First-tier Tribunal SEND;
- to examine whether information, advice and support services and disagreement resolution services are helping to resolve issues at an early stage;
- to examine how successful mediation is in resolving issues without the need for recourse to the First-tier Tribunal SEND and to assess the cost savings of mediation;
- to examine whether education, health and social care complaint arrangements are working for children and young people with SEND and their parents; and
- to understand the experiences and learning from 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.

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<sup>1</sup> Adams, L. et al. (2017) Experiences of Education, Health and Care plans: a survey of parents and young people. Department for Education [link forthcoming]. Henceforward Adams, 'Experiences of Education, Health and Care plans'.

<sup>2</sup> Adams, 'Experiences of Education, Health and Care plans'

## Findings from the review

In their review, CEDAR make a number of positive findings and have also identified some areas where further development is needed.

Evidence suggests that where local areas have a person-centred approach and a strong Information, Advice and Support Service (IASS), this helps to reduce the number of disagreements and resolve them early. Evidence also suggests that mediation is effective in reducing the number of appeals to the First-tier Tribunal SEND and generates overall cost savings, especially to families. Evidence on the pilot enabling the First-tier Tribunal SEND to consider health and social care issues and make non-binding recommendations is limited, but early findings suggest that a Tribunal power of this kind improves joint working between education, health and social care partners.

The review also highlights issues with varied LA implementation of the SEND reforms, variation in IASS accessibility, low usage of Disagreement Resolution Services (DRS), variation in the quality of SEND mediation and, in some cases, ineffective local complaints procedures.

## Government response

We are already providing considerable financial and practical help to local areas to implement the SEND reforms. In addition to these, this report sets out new steps we intend to take, including:

- publishing good practice guidance developed as part of CEDAR's review and sharing this with local areas through regional networks and delivery support partnerships;
- supporting continuous professional development for LA staff at leader, middle manager and caseworker level;
- considering how best to channel government support for families from April 2018 (when transition to EHC plans will be complete) to encourage constructive early dialogue and to ensure effective signposting and support for disagreement resolution;
- supporting the mediation sector to introduce voluntary standards and accreditation of training programmes for SEND mediation;
- producing accessible guidance for families on the available routes for complaint and disagreement resolution; and
- introducing a two-year national trial of the expansion of the First-tier Tribunal SEND powers to make non-binding recommendations on the health and social care elements of EHC plans.

## **2 The Education, Health and Care needs assessment and plan development processes**

Preventing disagreements and resolving them quickly are crucial aspects of making the system less adversarial for families.

### **Summary of findings from CEDAR's review**

Most families do not challenge the decisions made by LAs – in CEDAR's sample of 40,952 decisions made across 109 LAs, only 7% of refusals to carry out an EHC needs assessment resulted in an appeal. Figures for appeals on refusals to issue an EHC plan and on decisions around the content of EHC plans were 12% and 6% respectively.

CEDAR's review highlights good practice in this area, especially where there is strong leadership. A joined-up, systemic, person-centred approach that includes face-to-face meetings at key points is successful in fostering agreement and supporting the early resolution of any disagreements that do arise.

CEDAR have highlighted good practice that appears to be reducing the number of appeals, for example early involvement of SEND team caseworkers and close working with families, schools and Special Educational Needs Co-ordinators (SENCOs). Other routes to reduce appeals include meetings with parents to discuss decisions to refuse to assess or to issue a plan, to explore what support can be offered through other means.

CEDAR report that, although there is some excellent practice, there is variation across the country in LA implementation of the SEND reforms. Some draft plans are not written to an appropriate standard and some timescales are not being adhered to. They report that a person-centred approach to decision-making is not always happening, early disagreement resolution is not always a priority and ineffective communication between SEND assessment caseworkers and parents sometimes contributes to adversarial disagreements.

CEDAR report that there is a lack of consistent standards for the quality and training of case officers and more senior staff. They highlight that there is variation in what is offered at SEN Support level in schools, and how this is communicated to parents.



## Government response

We are still in the transition period from the previous SEND system to the new SEND system, so it is still relatively early days for the new arrangements. It will take time for the culture we want to see to become embedded. To date, overall progress has been good, though we agree that variation in LA performance is too wide.

Despite challenges in implementing a large change programme, we are seeing positive results in wider feedback from parents and young people from the large-scale survey of families<sup>3</sup>. The survey interviewed over 13,000 families with EHC plans issued in 2015 and found that 62% agreed that the help and support described in their plan will achieve outcomes agreed for the child or young person. In addition, almost eight in ten respondents (78%) reported that the nursery, school or college named in the EHC plan was the one they first asked for.

## Local area implementation support

To ensure successful implementation, government has invested in a significant package of support, both to support parents directly but also to support the system to reform and undergo large-scale change.

On the former, between April 2014 and March 2018, government has invested £60m to recruit and train Independent Supporters. These have provided independent one-to-one engagement to over 75,000 families to help them navigate the EHC needs assessment and plan development process. Independent Supporters sit alongside information, advice and support services described in the next chapter.

On the latter, we help local areas in a range of ways, including through direct support from our SEND adviser team, through promoting the sharing of good practice through LA regional networks, through new burdens funding and through a range of other organisations commissioned to support implementation.

Most recently, our strategic reform partner, the Council for Disabled Children (CDC) has published a [guide for health and social care professionals](#) on producing good evidence for EHC plans as well as self assessment tools to support LAs and Clinical Commissioning Groups (CCGs) with their implementation. It has also produced [guidance on the content of EHC plans](#), with good practice examples for each section of a plan. We

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<sup>3</sup> Adams, 'Experiences of Education, Health and Care plans'. The survey was commissioned to inform the 2015 SEND Accountability Framework and is part of a programme of DfE research supporting implementation of 2014 SEN reforms. Parents and young people with EHC plans provided in 2015 were asked to complete the survey between July to November 2016. Overall, 13,643 responses were received.

have published a [web resource](#), based on research, that supports local areas in making the EHC plan process a positive experience for families.

Strategic engagement of parents through Parent Carer Forums (PCFs), and their national network (NNPCF), which DfE has funded since 2008, is having a significant impact on developing local SEND arrangements, including improving local commissioning, development of EHC plans and Local Offers. Membership of PCFs has increased significantly from around 55,000 in 2013-14 to nearly 80,000 in 2015-16. We are also supporting the work of the CDC and KIDS to increase young people's participation.

NHS provider contracts will, for the first time, from 2017-18, require health professionals to provide input into EHC plans within 6 weeks and DfE is a member of the Children and Young People's Group of the Transforming Care Programme, which aims to improve services for children, young people and adults.

DfE's recent [consultation on high needs funding reform](#) encouraged LAs to ensure the services and provision they offer best meets the needs of children and young people in their area. DfE has committed £23m of additional funding to support strategic planning of high needs provision. DfE is also allocating capital funding of over £200 million (over and above basic need funding) to help build new places at mainstream and special schools, and to improve existing places to benefit current and future pupils. LAs, through consultation with local stakeholders, should decide how best to spend their allocation to meet local needs.

From May 2016, Ofsted and CQC began inspecting local areas on their effectiveness in fulfilling their new duties for children and young people with SEND. All 152 local areas in England will be inspected over a period of five years and, as at 27 March, 23 inspection reports have been published. The inspections have identified a range of effective practice and areas for improvement across education, health and care. Seven local areas have been identified as needing to produce written statements of action and DfE, working with NHS England, will support these and will monitor implementation of the improvements. Ofsted included a summary of findings from the first eight local area SEND inspections in their [2015/16 annual report](#) in December 2016, and will report on findings from the first year of inspections later in 2017.

CEDAR have gathered good practice case studies whilst carrying out their review and we will publish good practice guidance for local areas. In order to promote it widely we will share this through our networks and delivery support programmes.

## Continuous Professional Development (CPD)

To embed reforms further and support better recruitment and retention of LA SEND staff, the workforce – from SEND leaders, through middle management, to caseworkers – needs to be well equipped with a range of high quality skills, abilities and knowledge. We want to ensure there is good engagement between LA staff and parents on individual EHC plans, that plans are legally compliant with clearly written outcomes and that the LA SEND workforce is confident and well supported with career development.

It is important that all LA SEND staff understand the law, make good-quality legally-compliant plans and decisions, set a person-centred ethos that involves families in decisions and provide good information to families on the available support. Senior leaders need strong strategic oversight in planning school places and local support. We ran a number of training events for senior managers in January and February 2017, led by the DfE SEND Adviser team and IPSEA (Independent Parental Special Education Advice), to assist LAs in interpreting and applying the legal requirements of the 2014 Act at key decision points. The training covered the decision whether to assess, the EHC needs assessment process, the decision whether to issue an EHC plan, the format and content of a plan and naming an education provider. All [training materials](#) used are publicly available so that parents and support organisations can use them.

We will work with LAs in the continuous professional development of their SEND officers (leaders, middle managers and caseworkers) as part of our future delivery support arrangements.

## Supporting good quality teaching and classroom support

The quality of teaching is central to ensuring that pupils with SEND, both those at SEN Support and those with EHC plans, are given the best possible opportunity to achieve positive outcomes. Every teacher is a teacher of children with SEN and disabilities, so it is important to ensure that this is mainstreamed within our National Professional Qualifications, training and best practice. We are supporting the school and post-16 workforce to improve their skills in meeting the needs of those with SEND, through initial teacher training (ITT) and continuous professional development (CPD).

All ITT programmes train teachers to teach all pupils and students effectively, including those with SEND. In order to be awarded qualified teacher status, trainees must satisfy the [Teachers' Standards](#), which include a requirement that they have a clear understanding of the needs of all pupils, including those with SEND, and are able to use and evaluate distinctive teaching approaches to engage and support them. We have funded 10 Teaching Schools and their ITT partnerships to initiate, develop and implement innovative additions to their training programmes. We have also developed specialist resources for ITT through the National College for Teaching and Leadership

(NCTL) and advanced-level online modules on areas including autism and speech and language needs to enhance teachers' knowledge, understanding and skills.

DfE has funded the National Association for Special Educational Needs' SEND Gateway and continues to support CPD which is published on the online portal, which offers education professionals free, easy access to high-quality information, resources and training. Their 'Focus On SEND' is a package of free online CPD for all mainstream education settings, covering children and young people from 0 to 25 years, across England. We have contractors working with professionals in schools and post-16 provision, supporting the workforce, including leaders and SENCOs, to recognise the specific needs of the children in their settings and to work with them to identify the best support and interventions.

We have separately commissioned researchers to review published evidence, survey mainstream schools and colleges and carry out case studies with a view to identifying effective SEN support. We intend to publish the findings of this research later in 2017 in the form of an online 'what works' resource designed to support teachers in school and colleges with practical, evidence-based advice.

We have taken a range of actions to improve the capacity of the further education sector in meeting the needs of young people with SEND. This includes funding the Education Training Foundation (ETF) to support a consortium of partners to develop and deliver an evaluation and needs analysis, teacher training and CPD modules, a self-assessment tool, guidance, collaborative practice events and development for organisations, leaders and practitioners.

### **3 Information, Advice and Support Services**

LAs are required to have local information, advice and support services (IASS) available for children and young people with SEND, and for parents. IASS cover all aspects of SEND, including health and social care support. They signpost to other organisations that can offer more specialist support as necessary, including mediation and disagreement resolution services.

IASS provide information and advice on the LA's processes for resolving disagreements, complaints procedures and means of redress. They also provide help when things go wrong, including making families aware of LA services for resolving disagreements, supporting families in arranging or attending early disagreement resolution meetings and supporting families in managing mediation, appeals to the First-tier Tribunal SEND and SEND complaints.

Government provides support to IASS in two ways:

- by funding a national support organisation – the IASS Network (based at the Council for Disabled Children) – that provides training, networking and good practice sharing; and
- since April 2014, providing each IASS with £25,000 per year.

#### **Summary of findings from CEDAR's review**

CEDAR found that when IASS work well (including when they have good local knowledge and when they offer practical support), it helps inform and support parents, reduces disagreements and supports solutions. In many cases IASS were often valued by parents who used them and by LAs who worked with them.

However, CEDAR highlight issues on accessibility, how various roles supporting parents fit together and the impartiality of IASS.

## Government response

IASS are part of a wider package of family support. In addition to the funding and support for IASS, we have also resourced other elements that are important in ensuring that families are informed and supported, and that strategic decision makers take account of their views. These include Independent Supporters, PCFs (and the NNPCF), a project to improve young people's participation in local and national decision-making, and a free national helpline and online support, run by Contact a Family, for parents and young people with SEND.

The IASS Network, funded by DfE and run by the CDC, has published national quality standards for IASS, including on the provision of information and advice, supporting individuals and for professional development and training. Feedback from IASS users<sup>4</sup> is overwhelmingly positive with 94% reporting their local service to be 'helpful', 'very neutral, fair and unbiased' (96%), effective in making a difference (90%) and that they would recommend it to others (95%).

The large-scale survey of families<sup>5</sup> with EHC plans in 2015 sets out that two thirds of parents and young people (66%) said they had been informed about the information, advice and support available generally during the EHC plan process. The majority of those informed (81%) had gone on to use this.

Building on the funding and programmes we have put in place to date, we are currently considering how best to channel government support for families from April 2018, working with voluntary and community sector partners, parents and young people and organisations which represent them. We will set out our plans for April 2018 (when transition to EHC plans will be complete) and beyond by autumn 2017.

To support access to clear information for families on disagreement resolution processes we will continue to provide support and challenge to LAs on their Local Offers, and also provide further accessible guidance on the routes available for raising disagreements and complaints.

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<sup>4</sup> The [IASS national outcomes data pilot](#) published user feedback from 20 services and 940 users.

<sup>5</sup> Adams, 'Experiences of Education, Health and Care plans'

## 4 Mediation

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 about LA decisions relating to an EHC needs assessment or plan, parents and young people must (unless the appeal is only about the school or educational institution named) 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 and young people. Mediation can also be used by parents and young people seeking to resolve disagreements about the health and/or social care elements of an EHC plan, which cannot currently be heard by the First-tier Tribunal SEND.

### Summary of findings from CEDAR’s review

Reasons given for take-up of mediation included the speed of resolution and the mediator being properly trained, independent and impartial. Factors increasing the likelihood of successful mediation included good preparation beforehand, open engagement by both parties and independent support for parents and for children and young people.

CEDAR’s report shows that mediation reduced the likelihood of disagreements escalating to an appeal to the First-tier Tribunal SEND by 14 percentage points. Of the 3,003 parents in the 109 LAs that CEDAR surveyed, 42% of those that contacted mediation for mediation advice made a decision to take up mediation. Only 22% of those who took up mediation following mediation advice went on to appeal, compared with 36% who did not take up mediation. This positive association between mediation and reduced appeals significantly increased over time suggesting we might see a greater impact as mediation is embedded in the system. Improved relationships between the parties was also seen as a positive outcome of mediation.

In addition, mediation generates overall cost savings, when LA, First-tier Tribunal SEND and parental costs are taken into consideration. Average costs avoided are £499 per case, aggregated to £636,462 for the 1,275 cases identified in the review where mediation was taken up, which is likely to be a significant underestimate due to the cautious methodological approach adopted.

There is potential for a reduction in the number of appeals if mediation is well-employed by mediators who understand SEND. While some SEND mediators had received training in SEND law, others had not. Concerns were expressed about the lack of nationally-recognised accreditation and/or national standards for becoming a SEND mediator.

While recognising it was not absolutely necessary for mediators to be experts in SEND, many considered that some knowledge of SEND legislation and processes is essential to ensure the confidence of parents and to resolve issues at this stage.

CEDAR received good feedback about the information on mediation in LA decision letters. However, the quality of LA implementation of mediation varied with respect to contracts, promotion in the Local Offer, responses to parental requests for mediation and occasionally compliance with agreements made at mediation.

Some parents commented that mediation could be stressful, time-consuming and potentially added an additional hurdle on the route to obtaining the right support for their child, especially where a positive outcome was not achieved. Evidence suggested that mediation is not being used routinely for health and social care issues and that there are local variations in the engagement of health and social care professionals in mediation meetings.

## Government response

We want to ensure families and LAs have confidence in mediation and are reassured during the process that the mediator understands the context and how children or young people with SEND should be supported. The introduction of standards and accreditation for SEND mediators would set a minimum expectation of quality and provide a means by which both families and LAs could judge the expertise and competence of mediation organisations.

It is a requirement under the SEND Regulations 2014 for SEND mediators to have sufficient knowledge of SEND and legislation relating to SEND, health and social care to be able to conduct mediation, but there are no defined standards. Mediators should be able to question the feasibility of what is being agreed in a mediation meeting, and their knowledge of SEND can be used to help frame the right questions, rather than establish them as legal experts. We want to ensure families and LAs continue to attend mediation without additional legal support and introducing standards and accreditation should help inspire confidence.

We will therefore support development of a light-touch, voluntary system of standards and accreditation, overseen by one or more of the existing mediation bodies. We will do this by supporting a working group of representatives from the mediation sector to develop, establish and informally consult on:

- a common set of quality standards for SEND mediation, based on those already used by mediation bodies and organisations;



- a light-touch system of accreditation for training and continuous professional development based on existing models; and
- a mechanism for oversight of the process.

We are considering revising the SEND Code of Practice later this Parliament. As part of this revision, we will consider making the requirements in the Code for mediator accreditation stronger and clearer.

Evidence from the review suggests that, when families take up mediation, they are less likely to proceed to a First-tier Tribunal SEND appeal. It also suggests that mediation is less used for health and social care disagreements. We therefore want to make sure that all families are aware of LA mediation services and how they can use them to resolve disagreements at an early stage.

As part of government's consideration of family support services, set out in Chapter 3, we will look at how we can ensure families are signposted effectively to mediation services and supported through the process, including on making a decision about whether mediation is the right approach for them. We will also provide further accessible guidance on the different routes for complaint.

## 5 Disagreement Resolution Services

Disagreement Resolution Services (DRS) cover all children and young people with SEND, not only those with EHC plans. The services are similar in nature to mediation, but there is no requirement to use them. DRS focus on resolving four types of disagreement that are not eligible to be taken to the First-tier Tribunal SEND:

- how SEN duties are carried out by the LA or education setting;
- the SEN provision made by an educational setting;
- health or social care provision in relation to EHC needs assessments and plans; and
- disagreements between LAs and CCGs about EHC needs assessments and plans.

### Summary of findings from CEDAR's review

CEDAR indicate that DRS have the potential to be useful, but are not being used to the extent that mediation services are – over half of the 42 LAs responding to CEDAR's surveys reported no use of DRS during 2014-15 or 2015-16.

Although DRS can be used for a number of reasons, they have been used mainly to seek to resolve disagreements about the special educational provision being made in an educational setting (73% of cases in Year 1 and 57% in Year 2). LAs interviewed suggested that DRS may be of particular use in disagreements about health provision or helping schools resolve difficult cases. Where DRS were used, it was reported that the issues were resolved and communication improved.

The process is the same as for mediation meetings, however there was a perception that the distinction between 'mediation' and 'disagreement resolution' was unhelpful and confusing for parents. Some LA staff, IASS staff and most parents did not know what DRS are and how they could be used. Some LA representatives felt that there was no need for DRS as they were already holding meetings focused on resolving disagreements.

## Government response

DRS provide an important service to families, with the potential to resolve a range of disagreements before, or while seeking, redress through local complaint routes and/or with the Local Government Ombudsman (LGO) or Parliamentary and Health Service Ombudsman (PHSO). Often, pursuing complaints through these routes can take time and prolong the stress to families. DRS could help to resolve issues early and to build or maintain relationships between families, commissioners and education providers. They could arguably also have benefits for the system if used to resolve disagreements between LAs and CCGs.

It is clear that DRS are not fully understood or used by families. We will investigate further whether DRS are being packaged or promoted as a way of resolving disagreements early and how much demand there is for them. This work will feed into the consideration of government support services for families, as set out in Chapter 3.

We are considering revising the SEND Code of Practice later in this Parliament. As part of this revision, we will consider the role of DRS and how they could operate within a 'single front door' approach alongside mediation services.

We want to ensure that information about DRS is provided widely, not just for those with EHC plans, so that DRS are used when they could be of most benefit. It is not always clear to families what the different complaint routes available are and how they fit together. We will develop accessible guidance setting out the routes of complaint available to parents and this will include information on DRS.

## 6 Local complaints procedures

Disagreements about SEND that are not directly related to those parts of an EHC plan that can be appealed to the First-tier Tribunal SEND can be resolved via a number of local complaints procedures. Complaints about the way an LA or CCG has carried out its statutory duties can be made using the LA's or CCG's own complaints procedure, and escalated to the LGO or PHSO if necessary. There is also a range of other avenues for complaint in the NHS, depending on which part of the service the complaint refers to.

Complaints about how a school has supported a child with SEND are first dealt with through the school's own complaints procedure. If this does not resolve the complaint and the child has an EHC plan, the parent can take the matter up with the LA, which has responsibility for ensuring that the provision in a plan is delivered. If the child does not have an EHC plan, parents can complain to the DfE School Complaints Unit (for maintained schools) or the Education Funding Agency (for academies and free schools).

### Summary of findings from CEDAR's review

CEDAR found varied practice in dealing with complaints. Good practice involved a parent-centred approach with joint responses to SEND complaints from education, health and social care, meetings with parents and clear written responses setting out the actions that would be taken as a result of the complaint. This approach led to early resolution, satisfied parents and improved practice.

Where complaints processes were treated as an administrative burden, they often did not resolve disagreements. In such cases, parents sought other avenues of redress, sometimes using multiple complaint routes in parallel. Parents were dissatisfied 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 the issue right.

Information about how to make a complaint was not always easy for parents to find and there are no published statistics on SEND-related complaints other than rates of appeal to the First-tier Tribunal SEND.

## Government response

Local complaints procedures, when they work well, are an important form of local accountability. They can ensure effective support, resolve disagreements and contribute to the continuous improvement of services. CEDAR highlight some excellent local practice in handling complaints. Through our forthcoming good practice guide we will share this with local areas.

It is important that families understand the different routes of complaint available to them, are provided with clear information about how to make complaints and are supported throughout the process. When considering family support services from April 2018, as set out in Chapter 3, we will look into strengthening the support available to families through the complaint process.

We will provide accessible guidance to families on the routes available for raising disagreements and complaints.

The LGO currently publishes decision statements, shares upheld decisions with Ofsted and sends annual letters to Chief Executives of LAs, giving them a useful insight to help identify weaknesses or areas that require review, and sometimes also recommends staff training or new procedures. The LGO is publishing a SEND thematic report later this year and produces annual reviews of local government complaints (the [latest report](#) covers 2015/16). If the LGO spots that other children or young people may be affected by the issues raised, then they are also able to investigate further. We will continue to ensure our team of SEND advisers challenge local areas around complaints raised via the Ombudsmen.

The government is looking to integrate and modernise complaint processes. The Cabinet Office has published a draft Bill to create a new Public Service Ombudsman that covers the remit of the LGO and PSHO, and that will have strengthened governance and accountability. The new body will be more accessible to individuals who want to raise a complaint and will ensure lessons learned from across government are used to improve services for everyone.

## 7 Appeals to the First-tier Tribunal SEND

The First-tier Tribunal SEND decides appeals against LA decisions regarding EHC needs assessments and plans. This includes decisions regarding refusal to carry out an EHC needs assessment or reassessment, refusal to issue, maintain or amend an EHC plan, the description of a child or young person's SEN in an EHC plan, the special educational provision specified in the plan, the school or other institution named or that no school or other institution has been specified.

### Summary of findings from CEDAR's review

Most families do not challenge the decisions made by LAs – in CEDAR's sample of 40,952 decisions made across 109 LAs, only 7% of refusals to carry out an EHC needs assessment resulted in an appeal. Figures for appeals on refusals to issue an EHC plan and on decisions around the content of EHC plans were 12% and 6% respectively.

The majority of appeals were either conceded by the LA or withdrawn by the appellant before the hearing (72% in 2015-16), and of those appeals decided by the First-tier Tribunal SEND the majority were decided at least in part in favour of the appellant (88% in 2015-16). The surveys highlighted that rates of appeal vary between LAs.

Qualitative research into the experience of parents and young people appealing to the First-tier Tribunal SEND showed that almost all valued the existence of the First-tier Tribunal SEND because it allowed for independent examination of the evidence and decisions based on the law.

Many parents and young people found the period spent preparing for a hearing the most difficult, with some finding the hearings themselves daunting and stressful. Issues were raised about the length of time spent waiting for a hearing, the difficulties of putting together a legally watertight case, and the cost to parents. Direct costs in preparing their case, attending a hearing and, when they chose to do so, to obtain private assessment reports and legal representation were on average approximately £6,300 per family. CEDAR also identified indirect costs to the emotional, mental and physical wellbeing of the parents, children and young people.

The review reported that the majority of parents found that, following an appeal, their child's educational situation improved. Some, however, needed to work closely with the LA to make sure that the support specified was put into place.

## Government response

We want to ensure that appealing an LA decision to the First-tier Tribunal SEND is as quick and easy for families as possible. The Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals recently issued a joint statement outlining a £1 billion investment programme to transform the Courts and Tribunals system to help make it more just, proportionate and accessible<sup>6</sup>. This includes removing unnecessary restrictions on how cases are determined. This means that simple cases could be resolved by simple methods, based on the specific needs of the disagreement and the individual, and delegating some routine tasks from judges to Tribunal Registrars. This would enable judges to focus on matters where their legal expertise is needed. In addition, the statement set out plans to enable the composition of Tribunal panels to be tailored to the needs of the case. The programme will also involve digitising the claims process, enabling electronic communication between individuals and the Tribunal and determining cases on the basis of evidence submitted online, at a telephone hearing, by way of a video link or face to face.

These measures will speed up the resolution of disagreements and make the system simpler and more accessible. The reforms will be introduced over a number of years but, as part of this work, the First-tier Tribunal SEND has already moved to paper hearings for refusal to assess cases, has introduced a reduced timescale for SEND appeal hearing dates from 20 to 12 weeks, has two-person panels in the majority of hearings and is considering a stronger role for case management.

Some families choose to use legal representation and the cost of this can be high. The First-tier Tribunal SEND aims to be accessible, so that it should not be necessary to employ legal support when making or defending an appeal. There is no cost to a parent/young person for registering a case at the First-tier Tribunal SEND and the First-tier Tribunal SEND can also make a contribution to parents, young people and representatives towards out-of-pocket expenses, such as travel costs, when attending a hearing. No additional weight is given to evidence because it is presented by a lawyer. Tribunals are characterised by an approach which is deliberately less formal than generally found in the courts and First-tier Tribunal SEND panel members are trained to assist unrepresented parties by helping them to frame questions where necessary. The majority of parents successfully pursue their case without legal representation<sup>7</sup>. There are also a number of organisations that offer families free support to help them through the appeal process.

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<sup>6</sup> See [‘Transforming our justice system’](#)

<sup>7</sup> See table SEND.5 of [‘Tribunal Statistics \(quarterly\) - July to September 2013’](#)

We will consider with the First-tier Tribunal SEND whether it is possible to collect and publish information on the use of legal representation. We will also review the presentation of the SEND appeal figures, taking into account CEDAR's analyses showing alternative ways to calculate the rate of appeal, in light of the 2014 Act's extension of the age range covered by the SEND system to 0 to 25 years.

As part of our delivery support arrangements we will seek to improve the confidence of LA staff in taking an appeal to the First-tier Tribunal SEND without legal representation. As part of our consideration of family support services, as set out in Chapter 3, we will support services to signpost families to information on SEND law, to ensure they feel confident and able to represent themselves at the First-tier Tribunal SEND.

Bringing an appeal to the First-tier Tribunal SEND can be daunting for families. To help families navigate their way through the process, the First-tier Tribunal SEND runs a telephone helpline and has produced a video for parents on the appeal process, which can be found on the [MoJ's You Tube Channel](#). Families can access information, advice and support through their local IASS. There are also voluntary and community sector organisations that support First-tier Tribunal SEND cases. We will develop accessible guidance on the different complaint routes available to families.

The First-tier Tribunal SEND communicates to LAs through their regular administrative newsletter and user groups and sends letters to LAs and the DfE where there has been a breach of statutory duties. The First-tier Tribunal SEND will be issuing judicial guidance, later in 2017, for professional witnesses coming to the First-tier Tribunal SEND, setting out what questions the professional witnesses need to answer to provide the best evidence for the First-tier Tribunal SEND in an appeal.



## **8 The Recommendations Pilot: extension of the powers of the First-tier Tribunal SEND**

Currently the First-tier Tribunal SEND decides appeals against LA decisions regarding only the educational aspects of EHC needs assessments and plans.

A pilot was undertaken in 17 areas over 15 months. It gave the First-tier Tribunal SEND extended powers so that when an appeal was made about the SEN aspects of a plan, the First-tier Tribunal SEND could also make non-binding recommendations on the health and social care aspects.

If the First-tier Tribunal SEND ordered that an EHC plan should be issued, the First-tier Tribunal SEND could make a recommendation that, when drawing up a plan, health and/or social care needs of a particular kind which relate to the child or young person's SEN could be specified. Where a health and/or social care need or provision was not included in an EHC plan, the First-tier Tribunal SEND could recommend that it should be specified in the plan, and where it was already included, the First-tier Tribunal SEND could recommend that the need or provision should be amended.

The pilot recommendations were non-binding, which meant there was no duty on health and/or social care partners to carry out First-tier Tribunal SEND recommendations. However, when a recommendation was made by the First-tier Tribunal SEND, regulations required health and social care commissioners to respond in writing, within 5 weeks from the date of the recommendation (or the date specified by the First-tier Tribunal SEND, if different), to the family and the LA (health commissioners only) to state what steps they had decided to take or to give reasons for any decision not to follow the recommendation(s).

The First-tier Tribunal SEND appointed nine members with relevant expertise from other jurisdictions within the Health, Education and Social Care Chamber who were required to attend specialist training around SEN law and practice and the arrangements for the pilot appeals. Panels at hearings consisted of three members: a judge, a SEND expert and a social care or health expert.

In pilot areas, LAs were required to notify parents of the extended powers in decision letters and, where an appeal with a request for recommendations was registered, were expected to provide evidence to the First-tier Tribunal SEND about the health and/or social care partner's response to the issues raised and, if necessary, to seek permission to bring additional witnesses to the hearing. Health and social care commissioners were expected to respond to any request for information and, where necessary, attend the hearing.

## Summary of findings from CEDAR’s review

The following table sets out the cases that were part of the pilot.

| <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 (this reflects the wide variation nationally) | 10 (1 LA had 15 appeals and 7 LAs had no appeals) |                            |
| <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  |                            |
| Considered as non-pilot appeal  | 6   |                            |
| Still ongoing (at 20.3.17)  | 4   |                            |
| Recommendations made  | 6   |                            |
| <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                          |

Health issues were about the description of health needs, lack of specificity in terms of the health provision and/or the 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.

CEDAR’s review found that most parents, LA representatives, mediators and parent organisation representatives supported the principle of having a single route of redress for all the elements of an EHC plan. Parents were particularly in support of a process that provides them with the opportunity to talk about the health and social care elements as well as the educational aspects of the EHC plan.

The review tells us that, in many cases, the pilot stimulated more joint working on SEND issues across education, health and social care; increased the knowledge and overall understanding of the system and each sector's relevant legal frameworks and practices, and acted as a 'lever' to promote reaching a resolution prior to the First-tier Tribunal SEND hearing.

All of the pilot cases received telephone case management by the nominated judge and 11 of the 30 cases were withdrawn or conceded before the hearing. The number settled prior to a hearing was similar to the ratio of non-pilot cases which are settled before hearing, which tells us that, despite the additional issues in pilot cases, they did not make it any more difficult for the appeals to be resolved without a hearing. The review tells us that case management proved successful in joining up services, getting key partners engaged and resolving some of the issues sooner than if parents had chosen other local complaint processes. For example, where there had been missing reports from health and/or social care partners, case management by the judge ensured that the evidence was obtained and included in the relevant sections of the EHC plan. In several cases, this provided sufficient information for the decision being appealed against to be changed and the appeal conceded.

The review tells us that the pilot resolved the health and social care issues presented, particularly through case management. At the time of publishing, CEDAR's report tells us that of the six non-binding recommendations made regarding health and social care, three had been implemented, one had been refused and two were pending.

The relatively small number of cases meant CEDAR's findings on the pilot were tentative. This was exacerbated by the fact that, while 56 interviews were undertaken with relevant professionals, only nine of the potential thirty appellants wished to be involved in the review. There is not sufficient evidence from the 30 pilot appeal cases to enable assessment of the impact of the pilot with regard to health and social care responsiveness to recommendations, or any wider implications for health and social care sectors. Parents, LAs and family support organisations did not always know about the pilot.

While there was some confidence that non-binding recommendations on health and social care issues would be actioned, and evidence that most had been actioned for the cases in the pilot, some parents, mediators and LAs raised concerns about compliance with non-binding recommendations.

The pilot required a third panel member for appeal hearings and the report highlights concerns from parents and some LA focus groups about the credibility of that panel member and whether their knowledge and expertise were matched to the cases they were hearing.

## Government response

Evidence from CEDAR shows that disagreements about health and/or social care brought to the First-tier Tribunal SEND, as part of the pilot, have been resolved and that it has encouraged joint working. However, CEDAR make clear that there is not enough evidence to tell us whether the single route of redress is effective in making the system less adversarial for families.

We know from the large scale survey of 13,000 families with EHC plans issued in 2015<sup>8</sup> that, alongside education needs, 47% perceived their EHC plan covered health needs and 48% perceived their EHC plan covered social care needs. This suggests that take-up of the single route of redress could potentially be larger nationally, however the proportion of issued EHC plans appealed is small and those involving health and/or social care even smaller.

We plan to introduce a two-year national trial, in early 2018, of the expansion of the First-tier Tribunal SEND powers to make non-binding recommendations on the health and social care elements of EHC plans.

This will enable us to gather further evidence of its effectiveness in making the system less adversarial for families and to learn more about the opportunities, scale of demand and wider implications on the education, health and social care sectors. As with the pilot, panel members will continue to be required to have a health and/or social care background and be trained in SEND law. The First-tier Tribunal SEND is confident that the panel members selected have the breadth of experience and skills to hear such appeals and make recommendations.

Our intention is to carry out an evaluation to collect robust evidence that will include clear success measures, the impact on health and social care services, and information on local area compliance with the First-tier Tribunal SEND recommendations and decisions. This will help us to identify the effectiveness of the power to make non-binding recommendations and any areas of concern, and to adapt processes as necessary. We will establish a steering group to oversee delivery and evaluation. We will consider next steps following this evaluation, including whether evidence supports a broader national roll-out.

While the First-tier Tribunal SEND's recommendations are non-binding for health and social care partners, we would generally expect that recommendations are followed. If recommendations are not followed, families would be able to complain to an

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<sup>8</sup> Adams, 'Experiences of Education, Health and Care plans'

Ombudsman or, in exceptional circumstances, seek to have the decision judicially reviewed.

We understand the need to have better communication with parents, children and young people about the extended powers of the First-tier Tribunal SEND. We will work with family support organisations, local government, health organisations and the First-tier Tribunal SEND to develop clear communications on the process. We will ensure local IASS staff understand the new arrangements in order to be able to offer families advice and support.



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