SPECIAL EDUCATIONAL NEEDS AND DISABILITY: IMPROVING LOCAL AUTHORITY DECISION MAKING

Report of the Administrative Justice Council's Working Group on Special Educational Needs and Disability

July 2023

Executive summary

The Special Educational Needs and Disability Tribunal ('the Tribunal') upholds 96% of the appeals it hears (in favour of the appellant[1]). Between 2011 and 2022, the number of appeals registered has increased by over 210.7% and successful appeals has increased by 27.8%. The aim of this Working Group ('the Group') was to explore potential reasons for this extremely high success rate[2] and, with a focus on Local Authority ('LA') decision-making, suggest ways (within the scope of the Group) to address this. Parents and young people should not have to make an appeal to the Tribunal to secure appropriate educational provision; most decisions should be "right first time".

Remit of the Group

The remit of the Group was limited to examining "non-policy" solutions (without the need for a change in legislation) and aimed to formulate practical, cost-effective proposals to improve local authority decision-making in the short/medium term. The Group had the following specific objectives:

- Identify and understand the reasons for appellants' high success rate
- Increase transparency of decisions/judgments from LAs and the Tribunal
- Consider solutions that would reduce the high overturn rate by the Tribunal
- Assist the LA in understanding Tribunal outcomes
- Promote best practice in LA decision-making
- Ensure the user perspective/experience is the central focus of the project

Policy context

On 2 March 2023, the Department for Education published its Special Educational Needs and Disabilities (SEND) and Alternative Provision (AP) Improvement Plan ('the Improvement Plan'). This sets out actions in a number of areas that are relevant to the work of the Group including around the development of national standards, creating a skilled workforce, and improving redress and accountability. This report does not include a detailed analysis of the Improvement Plan; however, the Group's recommendations will be relevant to a number of aspects of its implementation. As such, this report is timely and there is a real opportunity for delivering some of the improvements suggested in this report.

Main findings

The Group's findings are reported in four broad areas:

- Learning from the Tribunal
- Learning from mediation
- Learning from the Local Government and Social Care Ombudsman
- Enhancing training

Learning from the Tribunal

The Group reviewed the Tribunal's published statistics and considered that research was required in order to fully understand the causes of increasing volumes of appeals and

[1] Partially and wholly successful appeals and those where the parties have reached agreement and an order is issued by consent.

[2] success rate refers to successful appeals

persistently high (and increasing) success rates. The Group also considered how mechanisms for sharing learning from the Tribunal's casework could be improved and noted that other institutions dealing with similar issues offered models for how the Tribunal could do this. The Group focused on examining decision-making around refusal to assess decisions, which account for just under a third of tribunal appeals. A key issue identified by the Group (which it felt could be addressed within its remit) related to divergence between the test for deciding whether to carry out an assessment set out in legislation, and the approach set out in statutory guidance. The Group also considered placement decisions and ways in which decision-making around provision could be made more effective.

Learning from mediation

The Group consulted with experienced Special Educational Needs and Disability (SEND) mediators. Legislation requires appellants to consider mediation before they appeal to the Tribunal. Therefore, mediations provide a rich source of learning about LA decision-making practice and about how these are experienced by parents and young people, as this is often the first point of contact for redress on SEND issues. Common issues identified in the course of mediations included: problems with evidence gathering and communication prior to a decision being reached by LAs; inadequate problem solving and partnership working; providing support to schools, colleges and families; limitations in the use of learning from mediation to improve decision-making and avoid disputes arising in the first place and LAs sending people to meditation who do not have the necessary decision-making power. In addition, the Group considered a range of wider issues identified in mediation, which were outside the LAs' control, such as improving the provision of mental health services for children and young people with SEND.

Learning from the Ombudsman

The Ombudsman's casework, much of which is published and includes both detailed investigation reports and thematic "focus reports", provides a further rich source of learning about how LA decision making can be improved. Three issues were identified in this area. The first related to ensuring effective complaint handling in order for issues to be dealt with quickly and effectively and to prevent problems escalating. The second was around making better use of feedback from complaints. The Ombudsman's uphold rate in the education area is 77% (compared with 66% for the Ombudsman's overall casework) and this consistently high uphold rate suggests that more could be done to learn from experience. Finally, the Ombudsman has started conducting joint investigations in relation to NHS SEND teams and this was identified as an important area where there is more potential for learning.

Enhancing training provision

The Group found that there was very good training on SEND law currently available to LAs; however, this could be costly and as a result take-up of training was patchy. The Group considered that, in addition to recommendations made throughout this report, training was a crucial, overarching way in which inconsistencies in LA decision making could be addressed. Such training would need to be based on a comprehensive framework of competencies for SEND decision-makers and would further need to be fully funded to ensure that it could be widely taken up by LAs. In addition, the mediation sub-group found that training is needed in 'softer skills' for conflict prevention as well as training on SEND law. The SEND mediators also recommended bringing back the conflict resolution skills training that LAs used to commission from mediation providers.

Contents

Foreword

I am delighted to present this timely report on work commissioned by the Administrative Justice Council (AJC). The AJC convened a working group of experts in the field of Special Educational Needs and Disability (SEND) who provided their knowledge, previous research and practical experience of the SEND system, to explore the reasons for the high number of appeals which result in the appellants favour. The working group looked at what factors contributed to the high level of appeals, why there is such a high appellant success rate at the tribunal and to what extent Local Authority decision-making contributed to these high numbers. Learning from the Local Government and Social Care Ombudsman and mediators provided valuable insight into where other parts of the redress process had encountered similar issues.

The AJC welcomes the findings and are very grateful to the working group for producing this important report. This report, provides well-founded, evidence-based short to medium term practical solutions to address some of the issues identified. We also recognise that there is more work to do, and support the recommendation on the commissioning of further research by the Department of Education to get a more in-depth understanding of the factors that contribute to a system that is failing a large proportion of children and young people with SEND.

We are grateful to the Department of Education and the Ministry of Justice for their support in this project and to individual decision-makers who shared their own experience of making decisions based on the information made available to them. We are also extremely grateful to Chris Gill for Chairing the working group and drafting the final report. We appreciate the contributions of each and every member of the working group whose knowledge, experience and insight, made the production of this report possible.

The report invites the Department for Education, the Ministry of Justice and individual Local Authorities to consider the next steps in improving the outcomes of children and young people who need extra support with SEND.

Rosemary Agnew
Deputy (non-judicial) Chair
Administrative Justice Council

Please note that that this report and its recommendations should not be seen as representing the views of the judiciary, including the Senior President of Tribunals. The judiciary thanks the AJC for the interesting report and will consider the recommendations carefully.

Introduction

This report examines potential improvements to Local Authority (LA) decision-making in relation to Special Educational Needs and Disability (SEND). As shown in Section 1.1 below, the number of appeals registered by the First-tier Tribunal (Special Educational Needs and Disability) Tribunal (the Tribunal) stood at 11,052 in 2022. There have been increases in the number of appeals registered every year since 2011 (with the exception of 2014 – 2015). Between 2011 and 2022, the volume of appeals registered has increased by over 210.7%.

These disputes have also become increasingly contested, with more appeals requiring a determination by the Tribunal. In 2011-12, 823 outcomes were determined by the Tribunal, 24% of the total outcomes in that year. By 2021-22, the Tribunal decided the outcomes in 5,600 appeals, 62% of all outcomes that year.

These data do not necessarily reflect problems in decision-making. However, the rate of successful appeals now stands at 96%. Why the appeal rate is so high cannot be specified in the absence of more research and data but the group was keen to understand whether LA decision-making could be one of the factors, amongst others. As with the volumes of decisions registered by the Tribunal, the direction of travel in relation to the success rate[3] is clear: it stood at 68.5% in 2011 and at 96.3% in 2022. This represents an increase of 27.8% in the success rate in the period 2011 to 2022.

The main reason this high success rate cannot be attributed directly to LAs is that new evidence can – and often does – come to light after the initial decision is made but before (or during) tribunal appeal proceedings. Research conducted by the pro bono panel of the AJC suggests, however, that LAs are responsible for a significant part of the problem. Using survey data provided by 12 salaried SEND tribunal judges over a period of six weeks, this research identified that, in the opinion of the judge, there were significant flaws with either the initial decision itself or the LA's subsequent participation in the appeal in 50% of cases.[4] Whilst this research was based on a small sample, it provides some helpful initial insights that chime with the experience of the Group.

The need to change and improve the delivery of SEND provision by LAs is highlighted in the SEND Review: Right Support, Right Place, Right Time (the Green Paper) published in March 2022 and the recently published Special Educational Needs and Disabilities (SEND) and Alternative Provision (AP) Improvement Plan (the Improvement Plan). The Improvement Plan covers a number of areas that are relevant to the analysis and recommendations in this report, particularly around the development of national standards, creating a skilled workforce, and improving redress and accountability.

It is in this context that the Administrative Justice Council set up a working group (the Group) to examine potential "non-policy" solutions and formulate practical, cost-effective proposals

[3] Partially and wholly successful appeals and those where the parties have reached agreement and an order is issued by consent. .

[4] In 19 of the 38 cases covered by this research, the judge in the case considered that at least one of the following criteria were met: (1) the respondent was barred from participating in the proceedings for failing to comply with the Tribunal's directions; (2) the decision to which this appeal relates was prima facie unlawful (eg the decision letter sets out the wrong legal test, ignores relevant evidence which was available, or takes into account irrelevant considerations); (3) the decision-maker failed to give adequate reasons for the appeal; and/or (4) the respondent did not produce relevant evidence tup support the defence of the appeal.

to improve LA decision-making in the short/medium term. The Group had the following specific objectives:

- Identify and understand the reasons for appellants' high success rate
- Increase transparency of decisions/judgments from LAs and tribunal
- Consider solutions that would reduce the high appellant success rate by the Tribunal
- Assist the LA in understanding tribunal outcomes
- Promote best practice in LA decision-making
- Ensure the user perspective/experience is the central focus of the project

The Group included a broad range of expertise in the area of SEND and administrative justice. This included representatives from government departments, LAs, charities, mediation experts, judicial office holders[5], ombudsman staff, and academics. A full list of the Group's members is included in the Annex to this report. The Group met on seven occasions between November 2022 and May 2023. Four sub-groups were created which examined particular areas of work:

- Guidance
- Training
- Mediation and the Local Government and Social Care Ombudsman (the Ombudsman)
- Collaboration with the NHS and Schools[6]

Sub-groups met between full meetings of the Group and produced papers for discussion. These papers, and the Minutes of the Group's discussions, form the basis of this report.

The report is structured in four sections:

- Section 1 considers what LAs can learn from First-tier Tribunal decisions and the mechanisms for doing so. It examines the Tribunal's statistics, reviews the mechanisms for feeding back from the Tribunal, and considers discrete areas of decision making such as refusal to assess decisions.

- Section 2 considers what can be learned from mediation. It examines problems in evidence gathering and communication prior to a decision being reached by LAs; inadequate problem solving and partnership working; providing support to schools, colleges and families; and limitations in the use of learning from mediation to improve decision making and avoid disputes arising in the first place.

- Section 3 considers learning from the Ombudsman. It examines the potential for improvements in effective complaint handling, making better use of feedback, and joint working with the Parliamentary and Health Services Ombudsman in relation to NHS SEND teams.

[5] Although there was judicial participation in the Group, the Group's final report and its recommendations should not be seen as representing the views of, or as having been endorsed by, judicial office holders. Judicial participation in the Group was restricted to informing the group's discussions.

[6] Despite significant efforts, the collaboration sub-group was not able to engage NHS and school stakeholders within the timescale and resources available to the Group. As a result, although collaboration was identified as an important area and is mentioned in the course of this report, the Group was not able to explore this issue as much as it would have liked.

- Section 4 considers ways in which training for LA decision-makers could be enhanced.

1. Learning from the tribunal

This section of the report considers what LA decision-makers can learn from the Tribunal. This section examines:

- What the Tribunal statistics can tell us about LA decision-making
- Mechanisms for feeding back from the Tribunal
- Refusal to assess decision-making
- Placement decisions
- Compliant provision

1.1 Tribunal Statistics

1.1.1 Weaknesses in current approach

Tribunal statistics show an increasing number of appeals being registered with the Tribunal and a consistently high success rate for appellants. Table 1 below shows the volume of appeals registered by the Tribunal between 2011 and 2022.

Table 1: Appeals registered 2011 - 2022

Period (Academic year: September to August)	Appeals registered
2011 – 2012	3,557
2012 – 2013	3,602
2013 – 2014	4,063
2014 – 2015	3,147
2015 – 2016	3,712
2016 – 2017	4,725
2017 – 2018	5,679
2018 – 2019	7,002
2019 – 2020	7,917
2020 – 2021	8,579
2021 – 2022	11,052

Source: Tribunal Quarterly Statistics 2021 – 2022 SEND Data Tables

An increase in the number of appeals being registered does not necessarily indicate that LA decision-making is getting worse. Increases in appeals could be due to positive factors such as greater awareness among parents and young people of their rights and how they can go about securing them. The increase in appeals could also at least in part to be due to the change by the Children's and Families Act 2014 whereby the SEND framework was extended to children and young people from birth to age 25. In addition, the National Trial extending the tribunals' power to appeals on health and social care.

There is not a straightforward relationship between volumes of appeals and the quality of decision-making. That said, parents and young people should not have to resort to the Tribunal to secure the educational provision to which children and young people are entitled. That they increasingly need to do so and that, when they do, their chances of success are extremely high, raises legitimate concerns about current approaches to decision-making in LAs.

In terms of the success rate for appellants, Table 2 shows the total number of cases decided between 2011 and 2022, the number of those cases decided in favour of the appellant, and the % success rate.

Table 2: Tribunal overturn rate 2011 – 2022

Period (Academic year: September to August)	Total cases decided	Cases decided in favour of the appellant	Successful appeals
2011 – 2012	823	564	68.5%[7]
2012 – 2013	808	682	84.4%
2013 – 2014	797	660	82.8%
2014 – 2015	788	680	86.3%
2015 – 2016	883	780	88.3%
2016 – 2017	1,599	1,418	88.7%
2017 – 2018	2,298	2,035	88.6%
2018 – 2019	2,614	2,416	92.4%
2019 – 2020	3,770	3,577	94.9%
2020 – 2021	4,825	4,651	96.4%
2021 – 2022	5,600	5,393	96.3%

Source: Tribunal Quarterly Statistics 2021 – 2022 SEND Data Tables

[7] Rounded to first decimal point.

As with the volume of cases being registered, there needs to be some caution in over-interpreting basic statistical data. The figures in Table 2 do not provide a full picture of what is going on in terms of LA decision-making. However, the data show clearly that LAs' chances of success at the Tribunal – never high – are now remote. One might expect that, if LAs were learning from their experiences, we would not see the increasing appellant success rates shown in Table 2.

While getting a full understanding of how to interpret the basic statistics in Tables 1 and Table 2 requires further empirical research, the Group's view was that there were indications that:

- LAs are not making strenuous enough efforts to reduce the number of appeals that are being registered with the Tribunal. This is not in the interests of children and young people, the LA, or the Tribunal in relation to time, cost, and unnecessary distress, anxiety, and uncertainty.

- Once appeals are registered, LAs are not undertaking a full reconsideration of the case and conceding cases appropriately, despite the almost certain knowledge that their decisions will be overturned. There are no figures available in relation to the number of cases conceded by LAs post registration of an appeal; however, the fact that the success rate on cases that go on to be decided is so high is suggestive of poor decision- making in relation to conceding/ contesting appeals.

- LAs are not routinely amending their approaches to first instance decision-making in order to bring them into line with the approach of the Tribunal. As we will explore in Section 1.3 below, in some cases the Tribunal is finding that LAs are not applying the law correctly. In other cases, it is likely that overturned decisions are driven by decisions on the facts of a case, including the provision of new or more detailed evidence to the Tribunal. Both in relation to legality and the thoroughness of evidence gathering, this suggests there is room for improvement in current approaches by LAs.

In addition to providing some initial insights into what is not working well in terms of LA decision-making, the Tribunal statistics are helpful in showing the skewed geographical prevalence of cases.[8] For the five calendar years from 2018 to 2022, the Group noted that:

- Two LAs – Kent and Surrey – each had over two thousand appeals. A further five areas – Birmingham, Essex, Hampshire, East Sussex and Hertfordshire – had over a thousand appeals during that period. Combined they accounted for over 11,000 (around 27%) of the 42,000 appeals during the period.

- Alongside a further seven LAs –Norfolk, Derbyshire, West Sussex, Somerset, Staffordshire, Leicestershire and Buckinghamshire – they accounted for nearly 17,000 appeals over that five-year period, 40% of all appeals.

- 22 LAs accounted for over half of all appeals during the period.

Whilst the reason for high appeal volumes could be seen as being related to the size of the local authority (i.e. larger population), the appeal rates for all the LAs listed above also show

[8] Tribunal Statistics Quarterly: January to March 2022, Ministry of Justice, 9 June 2022.

that they were above the national average of 1.9%, e.g. Kent 2.8%; Surrey 3.6%; Birmingham 3.3%, Essex 3.2%; East Sussex 5.5%.

The Group considered that the particularly high rates of appeals registered in some areas suggested that, in addition to national improvements in LA decision-making, there might be merit in developing targeted interventions to enhance decision-making in LAs that are most likely to have their decisions challenged. The Group also noted that these LAs had access to large banks of unpublished, reasoned decisions and that a lot more could be done internally to learn some lessons from these, as well as perhaps a sharing of these lessons with other LAs.

The Group also noted with concern that there appeared to be a strong correlation between areas where few appeals were being registered and high levels of deprivation (e.g. Blackpool, Middlesborough, Wolverhampton). This requires further investigation.

1.1.2 Options for improvement

As noted above, poor decision-making is not the only reason for high and increasing volumes of appeals. It is also clear that, while appeal numbers have been increasing, only a very small fraction of cases determined by LAs are appealed to the Tribunal. In 2021, for example, only 1.8% of the 498,416 appealable decisions taken by LAs in England were subject to appeal.[9] However, in 2022 this had increased to 2.3% of just under 550,000 appealable decisions.

The Group was also clear that, while it is in parents', children and young people's interests not to have to go to the Tribunal unless absolutely necessary, the goal should not be to reduce Tribunal appeals *per se*. Instead, the focus should be on identifying how LA decision-making can be improved, to achieve decisions which more frequently comply with the law - one benefit of which may be a decrease in the overall number of appeals registered.

Given the limited time and resources available to the Group, and the absence of existing data, identifying conclusively the causes of increases in appeal numbers and the persistently high success rate was not possible. A key finding of the Group here, therefore, was that the Department for Education should commission further research to examine what barriers Local Authorities face/encounter in seeking to improve the outcomes they achieve in proceedings before the Tribunal, and how these might be overcome.

This would require primary research, which should also look into the underlying causes for differential appeal rates between LA areas and explore the apparent correlation between low appeal rates and areas with high levels of deprivation. There would also be benefit in a collaborative working group being formed to review existing data, identify data gaps, and develop a research agenda around improving SEND decision-making.

1.1.3 Recommendations

a. The **Department for Education** to commission research examining:

- What barriers Local Authorities face/encounter in seeking to improve the outcomes they achieve in proceedings before the Tribunal, and how these might be overcome; and

[9] See footnote [4] above.

- The underlying causes for differential appeal rates between LA areas and exploring the apparent correlation between low appeal rates and areas featuring high level of deprivation.

b. The **Department for Education, the Ministry of Justice, and the Administrative Justice Council** should establish an additional collaborative working group focused on reviewing existing data, identifying data gaps, and developing a research agenda focussed on improving SEND decision-making.

1.2 Mechanisms for feeding back from the Tribunal

1.2.1 Weaknesses in current approaches

The Tribunal is an independent judicial dispute resolution mechanism and as such its role is not to provide "feedback" to the parties. That said, there are four mechanisms through which, in the course of its work, the Tribunal can be seen as providing such feedback:

- The Quarterly Tribunal Statistics (reviewed in Section 1.1 above) provide some information about trends in Tribunal casework;
- A section of the Senior President of Tribunal's Annual Report is dedicated to the work of the Tribunal;
- Detailed decisions are provided to the parties (but not published) in every case decided by the Tribunal; and
- The Tribunal holds regular Tribunal User Group Meetings, where discussions are conducted with stakeholders in relation to Tribunal caseload and procedure.

In addition, the Upper Tribunal publishes its judgments and issues "landmark" decisions which may provide guidance to LAs. For example, some of these are considered in Section 1.3 below, in relation to refusal to assess decisions.

A limitation of the Tribunal's current approach is that decisions in individual cases, unlike most courts and tribunals, are not routinely published. This is unhelpful as it prevents interested stakeholders from analysing problems identified in LA decision-making and limits the knowledge sharing that would be possible (at least in theory) among LAs throughout the country. The Tribunal does not currently publish its decisions as a result of both privacy concerns and/or resource concerns (anonymisation is potentially complex and reports might have to be written differently if they were for public consumption rather than only for the parties). In addition, the Tribunal does not have the capacity to systematically analyse its own cases in order to provide thematic feedback in a format that could easily be taken on board by LAs.

1.2.2 Options for improvement

Practice elsewhere, including the First Tier Additional Support Needs Tribunal in Scotland (the ASN Tribunal) and the Ombudsman, shows that the challenges posed by anonymisation are not insurmountable. The examples of the ASN Tribunal and the Ombudsman should be considered further in order to establish the feasibility of adopting such an approach in relation to the Tribunal in England.

In addition, the Ombudsman's approach, which involves "Focus Reports" exploring particular areas of decision-making for improvement appears to be a helpful one, as does the detailed feedback provided in the ASN Tribunal's Annual Reports.[10]

These approaches suggest that more could be done to share the learning from the Tribunal's casework. The statistics reviewed above suggest that there is limited learning from experience currently taking place in LAs. LAs who are respondents in the Tribunal already have access to a substantial bank of cases that they should be analysing in order to ensure that improvements are implemented.

Thus, in addition to exploring further models through which enhanced feedback from the Tribunal could be achieved, there is a need to explore with LA staff what mechanisms need to be in place for this feedback to be received, analysed, and acted upon.

1.2.3 Recommendations

c. **The Tribunal, His Majesty's Court and Tribunal Service, and the Ministry of Justice** should consider the feasibility of enhancing the sharing of learning from the Tribunal's casework, in particular the anonymisation and publication of Tribunal judgments, examining the approaches used by the Ombudsman and the ASN Tribunal as well as examining other examples of good practice in the administrative justice system. This work should also engage with LAs to understand how enhanced feedback can be acted upon.

1.3 Refusal to assess

In keeping with the Group's remit to recommend practical short-to-medium-term changes and, given the limited life span of the Group, the decision was taken to focus on refusal to assess decisions. In the year September 2021 to August 2022, 28% of SEND appeals to the Tribunal were against "refusal to secure an EHC assessment" (see Tribunal Statistics Quarterly: July to September 2022 - GOV.UK (www.gov.uk)). Whilst this is not the highest type of appeal, (57% being brought on the content of Education Health and Care Plans – EHCPs), refusal to assess was one of the areas where the Group felt that immediate improvements could be brought about in LA decision-making.

1.3.1 Weakness in current approaches

The Group was concerned that refusal to assess cases in part result from divergence between the Children and Families Act 2014 ("CFA"") and the SEND Code of Practice 0-25 Years 2015 ("the Code"). The Group's view was that the Tribunal was making decisions based on the statutory test set out in the Act, whilst it appeared that some LA decision-makers were relying on the guidance contained in the Code of Practice. This was based on the findings from thirteen LA websites that were examined - the group found that eleven only made reference to the Code and only two made reference to the primary need to consider the Act (whilst having regard to the Code). The following paragraphs explain the difference between the approach in the Act and the approach in the Code.

The approach in the Act

Sub-section 36(8) sets out when the LA must carry out an EHC needs assessment.

[10] Separate Annual Reports for the ASN Tribunal are not available after 2018.

*"The local authority **must** secure an EHC needs assessment for the child or young person if, after having regard to any views expressed and evidence submitted under subsection (7), the authority is of the opinion that—*

*(a) the child or young person has or **may** have special educational needs, and*

*(b) it **may** be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan."*

This test has been explained in cases on appeal from the First-tier Tribunal. The appellant succeeds if they show that:

- the support needed **may be** beyond resources normally available in school/post-16 institution in the area: *[2017] UKUT 0364 (AAC), DH & GH v Staffordshire CC [2018] UKUT 49 (AAC);* or

- the case is one where an assessment **may** be needed to shed light on a complex situation for the placement and the LA to understand what is needed and then provide it (Manchester CC vJW [2014] UKUT 168).

Where the 'needs' are clear, budgetary and cost considerations can therefore be relevant to whether the support needed may be beyond resources normally available. However, budget constraints cannot be relevant to whether an assessment is "necessary" to assess the needs themselves. The word "necessary" has been defined in *Buckinghamshire CC v HW [2013] UKUT 470 (AAC)* as: *"somewhere between indispensable and useful or reasonable".*

Whilst lawyers are familiar with the rules of statutory interpretation, and standards of proof, LA decision-makers might not be. The rules of statutory interpretation mean that words in Acts of Parliament have their common meaning unless that would lead to an absurdity or an ambiguity, in which case the purpose of the law can be looked at. So, words in the Act mean what everyone would usually think they mean: "may" would not include absurd or fanciful possibilities. The standard of proof, meanwhile, is the "balance of probabilities" which means more likely than not.

The approach in the Code

The Code supplements the statutory test. The Code does recite the statutory test (as set out above), but it also requires LAs to "**have regard to**" a number of factors:-

"9.14 In considering whether an EHC needs assessment is necessary, the local authority should consider whether there is evidence that despite the early years provider, school or post-16 institution having taken relevant and purposeful action to identify, assess and meet the special educational needs of the child or young person, the child or young person has not made expected progress. To inform their decision the local authority will need to take into account a wide range of evidence, and should pay particular attention to:

- *evidence of the child or young person's academic attainment (or developmental milestones in younger children) and rate of progress*

- *information about the nature, extent and context of the child or young person's SEN*

- *evidence of the action already being taken by the early years provider, school or post-16 institution to meet the child or young person's SEN*

- *evidence that where progress has been made, it has only been as the result of much additional intervention and support over and above that which is usually provided*

- *evidence of the child or young person's physical, emotional and social development and health needs, drawing on relevant evidence from clinicians and other health professionals and what has been done to meet these by other agencies, and*

- *where a young person is aged over 18, the local authority must consider whether the young person requires additional time, in comparison to the majority of others of the same age who do not have special educational needs, to complete their education or training. Remaining in formal education or training should help young people to achieve education and training outcomes, building on what they have learned before and preparing them for adult life."*[11]

The Code also contains other guidance including, at 9.3:

> *"In a very small minority of cases, children or young people may demonstrate such significant difficulties that a school or other provider may consider it impossible or inappropriate to carry out its full chosen assessment procedure"*[12]

The Group's observation was that the Code sets out a great deal of work for both the LA and school staff before a statutory assessment would be ordered. It is understandably treated by some LAs as meaning that as assessment cannot be carried out unless and until these additional criteria have been considered and met. In contrast, the simpler test in the Act requires only that an EHCP **may** be needed.

Insights from caselaw

Further evidence of LAs not applying the correct test can be seen in caselaw. For example, in the landmark ruling in *RB v Calderdale MBC (SEN)* *(Special educational needs - special educational provision - other) [2018] UKUT 390 (AAC)* [13] which states that:

*"This case highlights the importance of local authorities and tribunals applying the correct test for deciding whether an EHC needs assessment is required. Assuming that the child or young person in question has a disability or a learning difficulty, the correct question at this stage is whether it **may** be necessary for special educational provision to be made, not whether it **is** necessary for such provision to be made. The answer to the latter question can only be determined on the basis of the evidence generated by the EHC needs assessment itself. At the prior stage where conducting an EHC needs assessment is being considered, one only needs a provisional rather than definitive answer to the issue of necessity."*

In *Buckinghamshire CC v HW [2013] UKUT 470 (AAC)* the Upper Tribunal rejected Buckinghamshire County Council's argument that the First-tier Tribunal had been wrong to order an assessment without identifying the special education provision that the child required. The judge held that determining the provision was the job of the assessment (#12).

[11] Special educational needs and disability code of practice: 0 to 25 years January 2015 p145-146
[12] Ibid p142
[13] Approved in *Cambridgeshire County Council v FL-J [2016] UKUT 225 (AAC) Upper Tribunal.*

Further judicial commentary on divergence between the Act and the Code can be found in in *Devon CC v OH [2016] UKUT 0292 (AAC) #45*, *Staffordshire CC v JM [2016] UKUT 0246 (AAC):* the Code cannot override the Act *#40.*

Current approaches in LAs

The Tribunal statistics do not provide a detailed breakdown of case outcome by type of appeal; we do not therefore know the exact proportion of refusal to assess appeals that are upheld by the Tribunal. However, the overall tribunal uphold rate is 96% and in the Group's experience refusal to assess cases were among those that were most likely to be decided in favour of the appellant (although the majority don't make it to a hearing).

Despite it being clear that the approach in the Act is ultimately determinative in the Tribunal's decision-making, it appears that many LAs are basing their decision-making exclusively on other factors (for example, the guidance contained in the Code). As noted above, the Group reviewed the websites of a number of LAs and found a significant proportion do not correctly set out the test in the Act as applied by the Tribunal, but refer only to the requirements of the Code instead.

1.4 Placement decisions

Most placement decisions are made in accordance with the application of two separate Acts: The Children and Families Act 2014 ("**CFA**") (which governs the special educational provision) and also the Education Act 1996 **("EA")** (which governs general educational provision)[14]. LAs are required to follow the general principle that pupils are to be educated in accordance with the wishes of their parents (s9, Education Act), "so far as that is compatible with … the avoidance of unreasonable public expenditure"[15], which means LAs might have to go against what parents think is best for the child/young person, particularly if the choice is for a mainstream school/institution. By contrast, s.39 of the CFA provides that the LA **must** specify the school or institution requested by the parents or young person in the EHC plan unless (inter alia) it "would be incompatible with … the efficient use of resources"[16].

However, the age ranges and placement types covered by the two Acts are not the same, and the tests differ – see the table below on p17.

If both Acts are relevant to an appeal, the decision-maker is required to consider each test in turn. Courts have construed that the differences in language selected by Parliament are intended to set different tests.

For the EA the most recent case law can be found in the Court of Appeal case *WH v Warrington BC* [2014] EWCA Civ 398 #27. It states that LAs should be applying a holistic approach to assessing 'public expenditure' that considers savings that might be made

[14] see *O v Lewisham* [2007] EWHC 2130 #16.

[15] **Pupils to be educated in accordance with parents' wishes**
In exercising or performing all their respective powers and duties under the Education Acts, the Secretary of State, local education authorities and the funding authorities shall have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure. Education Act 1996 (legislation.gov.uk)

[16] Children and Families Act 2014 (legislation.gov.uk)

outside of the 'education budget' e.g. social care or health care budgets, and also a 'value for money' test (that the benefits of the parental preference may be worth extra cost).

In contrast, s39 of the CFA test is generally interpreted more narrowly than the EA when looking at which resources should be considered when assessing whether the preferred placement would be "incompatible with efficient use of resources". The appellant will also fail if the placement cannot meet needs, or the placement of the child/young person would be incompatible with the efficient education of others.

However, case law on the CFA has a surprise for LA officers looking at the words "incompatible with efficient use of resources": parental/young person's preference is presumed to be worth some additional cost, and their choice **must** be named unless the additional cost is "*disproportionate*" with the Act's purpose of giving Appellants their choice. The High Court, in Essex CC v SENDIST [2006] EWHC 1105 (Admin) #30 held:

"In my judgment, it would be a matter of fact and degree whether any proven increase in costs is so substantial as to be incompatible with the efficient use of resources"

If the appellant does not succeed on that first stage of the test - i.e. that the additional expense is justified solely because the appellant prefers that placement - then a second stage allows the appellant to evidence the benefits of their placement, e.g. a better matched peer group, or a lower sensory load. A value can also be given to those benefits to justify higher costs of the placement over the LA choice.

The table below briefly summarises how Tribunals deal with the application of the two separate Acts.

	CFA s39	**EA s9**
Which placements?	Anyone to age 25 except higher education and independents not opted into s41 scheme	Schools (not FE colleges) attended full time to age 19 including independent schools not opted into s41
Who makes the choice?	Parents or Young People i.e. those entitled to appeal	Parents
Which resources?	Not 100% clear but most likely the relevant education/LA budgets – question of fact for the expert Tribunal	Expenditure incurred by a public body – wider net than CFA test
Strength	"must" name preference unless exceptions apply	"shall have regard to" the principle children are to be educated in accordance with parental wishes
Test on finance	"incompatible with efficient use of resources"	"compatible with the avoidance of unreasonable public expenditure"
Does the test allow for the preference to cost more than other placements that can meet needs?	Yes, and regardless of differences between the two options. Additional benefits may justify a further additional cost.	Yes, and also allows for an overall saving to the tax-payer.

1.4.1 Weaknesses in current approaches

The Group accepted that this area of decision-making was made difficult by the application of two separate Acts. However, the Group expressed concern that some LAs continued to apply the incorrect Act/test on budgeting to decisions on placements. LAs need to ensure they are not applying the test of incompatibility with efficient use of resources if an unnamed mainstream placement is requested by a parent/young person.

1.5 Focusing on Compliant provision

The Group understands that there are two main causes for provision set out in Part F of the EHC plan to fall on the wrong side of the law:

- Failure to be detailed, specific and sufficiently quantified, and
- Failure to link "needs" to provision, and provision to outcomes.

The Group reported that LA SEND departments typically cut-and-paste from the expert reports that follow an assessment, so it is essential that experts are instructed at the outset to make their recommendations as precise as possible, and to relate their recommended provision to outcomes.

The law on the degree of clarity required is straightforward and set out in the Code of Practice in paragraph 9.69 Section F[17]. Yet there are many cases that appear in Tribunal using vague terminology.

In relation to outcomes, the law is provided in The Special Educational Needs and Disability Regulations 2014 and the COP. Regulation 6 sets out the information and advice to be obtained for EHC Needs Assessment:

"*(1) Where the local authority secures an EHC needs assessment for a child or young person, it must seek the following advice and information, on the needs of the child or young person, and what provision may be required to meet such needs* ***and the outcomes that are intended to be achieved*** *by the child or young person receiving that provision…"*[18]
This sets the "needs, provision, outcomes" formula that the Tribunal uses.

Similarly, Rule 11 underlines the importance of outcomes:-

"*When preparing a child or young person's EHC Plan a local authority must—*
(a) take into account the evidence received when securing the EHC needs assessment; and
(b) consider how best to achieve the outcomes to be sought for the child or young person."[19]
The COP at paragraph 9.68 expands on those regulations: "In all cases, EHC plans **must** specify the special educational provision required to meet each of the child or young person's special educational needs. The provision should enable the outcomes to be achieved"[20].

[17] Special Educational Needs and Disability Code of Practice 0 to 25 years, paragraph 9.69, p164

[18] The Special Educational Needs and Disability Regulations 2014 (legislation.gov.uk)
[19] The Special Educational Needs and Disability Regulations 2014 (legislation.gov.uk)
[20] ibid, p163-165 para 9.68

Many LAs would know that outcomes, in Part E, are not listed as appealable, in contrast to Parts B (the child or young person's special educational needs), F (provision) and I (placement). However, it may be the case that LAs are not aware of the Rules that allow the LAs and the Tribunal to make consequential amendments to the outcomes. This is very clearly described in *S v Worcestershire County Council* (SEN) [2017] UKUT 92 (AAC), in which the upper tribunal held that:

"84. …The outcomes are a function of the special educational provision. They describe what the provision is designed to achieve…

85. It would be ***absurd*** *if a Tribunal, having allowed an appeal and re-cast the specified special educational provision in an EHC plan, or the specified special educational needs, was unable to alter outcomes that no longer related to the provision or needs determined by the Tribunal.."*

There is understandable resistance from some experts to requests for a degree of precision and certainty that their opinion does not support. Whilst there may be a high degree of certainty about the predicted success of some interventions, the impact and amount of others may be harder to pre-judge. The law permits a degree of flexibility where it is needed and a Tribunal may use its expertise to decide on the proper balance between precision and flexibility.

The Group is concerned that the use of terminology such as "access to", "regular", "opportunities for", "would benefit from", or "contact with the therapist", is unhelpful and not specific enough. "Regular" includes weekly, monthly, termly, annually or at any other interval. "Contact" includes a direct one-to-one session with the child, a class observation, or an email exchange with a teaching assistant.

It is the Group's understanding that experts will have a view on what an individual child/young person needs, and what interventions should be tried out. Therefore, the Group recommends wording that will guarantee delivery of a service for that child/young person. LAs and the experts' professional bodies should be obliged to ensure these requirements are made of the experts in their reports. Where LAs diverge from the advice given by the experts, they should explain why, as required by the COP**.**

1.5.1 Weakness in current approaches

The Group finds the clarity of the wording in the COP to be at odds with the high levels of successful Tribunal appeals. Despite Part E not being listed as appealable at s51 CFA, the Tribunal can and will make consequential amendments if the appeal relates to Part B and F. This is because Regulation 43(f) gives the Tribunal power to:-

"*order the local authority to continue to maintain the EHC Plan with amendments where the appeal is made under section 51(2)(c) or (e) so far as that relates to either the assessment of special educational needs or the special educational provision and make any other consequential amendments as the First-tier Tribunal thinks fit;"*[21]

[21] Special Educational Needs and Disability Code of Practice 0 to 25 years, Regulation 43(f)

1.6 Options for improvement

The Group considered various solutions for helping ensure that LA decision-makers follow the correct legal approach. Cross cutting suggestions, applying to refusal to assess, placements, and ensuring compliant provisions include:

- Creating decision-making tools (such as checklists and flowcharts) to guide decision-makers through the tests in the statute and the case law. These could also highlight common points that arise in case law in relation to special education needs as well as guidance as to the proof or evidence that LAs may need in order to make these decisions.

- LAs could do more to analyse their experiences from appearing at the Tribunal and pay close attention to the decisions made against them. The Tribunal issues detailed judgments to the parties in every case, which provide a rich potential source of learning for LAs.

- As detailed in the training section below, major improvements could be brought about through training being made available to LA decision-makers in order to ensure lawful decision-making.

In relation to refusal to assess cases there would also be merit in considering the following:

- The Tribunal could issue a standard direction to LAs when a refusal to assess appeal is registered which would direct LAs to consider whether they have applied the correct test.

- Guidance could be enhanced and improved by LAs to ensure decision-makers apply the correct test. The Code of Practice could also be updated or supplemented to ensure that it reflects clearly the primacy of the statutory test in the Act.

1.1.2 Recommendation(s)

The Group therefore recommends that:

d. The **Department for Education** should:

- create a set of decision-making tools to assist decision-makers in applying a legally correct approach to decision-making in cases relating to refusal to assess, placements, and ensuring compliant provision.

- make changes to the Code of Practice so that it is consistent with the correct statutory test in relation to refusal to assess cases.

- issue guidance to LAs encouraging them to develop action plans to address tribunal findings decided in favour of the appellant.

e. The **Tribunal** should consider the feasibility of issuing a standard direction to LAs when a refusal to assess case is registered.

f. The **Department for Education** should consider the feasibility of issuing guidance to decision-makers on the test to be applied in refusal to assess cases, placement decisions and compliance provision.

g. **Local authorities** should routinely reflect on their experiences at Tribunal hearings and seek to share and disseminate the lessons from the Tribunal's written judgments.

h. As part of its Area Send Inspections, **Ofsted/CQC** should routinely analyse tribunal data and consider how data are being used by LAs to drive improvements in decision-making. This should be a routine part of the Area Send Inspections Framework and Handbook's Evaluation Schedule (Paragraph 32), which suggests that inspections should examine how "leaders evaluate services and makes improvements".

i. **Local authorities** should work together with experts and their professional bodies to ensure wording in reports is chosen to ensure the appropriate level of service will be allocated to the child/young person and outcomes for each need/provision identified. LAs should include *"the 'who, what, when and how long' details that are meant to spell out the Local Authority's duties"* to the pupil.

2. Learning from mediation

This section of the report, developed through consultation with a group of experienced SEND mediators, analyses the common issues in relation to LA decision-making that are identified in the course of mediations.

2.1 Evidence gathering and pre-decision communication

2.1.1 Weaknesses in current approaches

Common issues include LA panel decisions that rely on out-of-date and/or incomplete information and disputes that have arisen because key evidence that was available was not seen by the decision-makers. Mediators hear that LAs short on staff resource have told parents that meeting SEND staff to discuss their case cannot be offered outside of mediation – irrespective of whether their Local Offer says they provide it and they are offered it in the LA's own decision letter. Mediators hear that LA staff simply do not have the time to have those rich and meaningful discussions with families early on, so this can lead to less than satisfactory decision-making and distrust in decisions that are made.

Mediations reveal that, where a panel is involved in decision-making, families feel in the dark about how the LA panel made its decision, and there is no input at the decision-making stage from anyone who knows the pupil. LA representatives often see the benefits of conversations with parents and Special Educational Needs Coordinators (SENCos) at the time of requests for assessment, but no time is allowed for this. Often mediation, where it is undertaken, is the first time there is any sort of dialogue. Although LAs are committed to obtaining the views and voice of the child and young person, in practice it rarely happens.

The Group also undertook some engagement with judicial members of the Tribunal to gather their views on the main reasons for the high rate at which the Tribunal overturned LA decisions. Their views resonated with those of the mediators we spoke to. In particular, they told us that on too many appeals, the Tribunal procedure was the first time that parents, children and young people had been given an explanation of the reasons for the LA's decision in their case. In addition, the Group flagged the lack of transparency by decision-makers with no information provided on the reason for their decision in decision letters.

At first glance, this feedback may appear surprising. For example, both the Act (see sections 36(5) and (9)) and the Code of Practice (for example, paragraphs 9.17, 9.57) set out clearly the LAs' duties to provide reasons for a refusal to undertake an assessment, or, on assessment, not to prepare a plan. Nevertheless, the feedback provided to this Group suggests that too frequently it is not happening.

2.1.2 Options for improvement

Staff collating evidence for decision-makers should have the expertise, time and authority to ensure the evidence is up-to-date and complete, and caseworkers should have time to speak with families and young people about the evidence to go to panel.

It is essential that families and young people are clear what evidence is being considered and can contribute to decision-making. Mediations and appeals could be avoided if LA decision-makers could have these discussions earlier.

Personal testimony, e.g. from young people who attend or contribute to mediation, is a valuable form of evidence that often fills out the picture for LAs and fosters better understanding.

LAs previously held "way forward" meetings with families following a decision, to explain the reasons for the decision, answer questions, and agree on how best to proceed, especially in light of an adverse decision. These are invaluable. Mediators often see that the first time parties are speaking following a panel decision is in mediation. If these meetings were held earlier, there might be less need for mediation and, where there is still outstanding disagreement, parties will be better prepared for mediation.

In the Group's view, it is the most basic requirement of a good and functioning public service that those who engage with those services are given an explanation of how a decision has been reached. Without it, they cannot properly have any confidence that the correct tests have been properly applied, nor can they effectively engage in any activity, such as mediation, to seek to resolve any dispute.

2.1.3 Recommendations

j. **Local authorities** should:

- Invest resource early on in the evidence gathering stage and in communication with parents and schools before decision-making so that staff collating evidence for decision-makers have the expertise and authority to ensure the evidence is up-to-date and complete, and to ensure that caseworkers have time to speak with families and young people and placement settings in advance of a decision being made.

- Collaborate and communicate with parents, young people and schools/colleges to ensure that families, young people, and placement settings are clear what evidence is being considered and to allow for contributions from those people and settings affected by decisions.

- Make the voice of the child or young person the golden thread throughout decision-making as personal testimony is a valuable form of evidence that often

fills out the picture and leads to changed decisions on EHC needs assessments and on EHC Plans.

- Adopt a procedure of “way forward” meetings with families following a decision.

- Provide written feedback to those who have made an application in relation to an EHC plan setting out: (i) what they have been asked to decide; (ii) the evidence they have considered; (iii) their findings on the evidence they have been provided with; and (iv) the decision they have taken as a result.

k. **The Department for Education should**, in relation to the provision of written reasons:

- Ensure that the Code of Practice, or other guidance, is updated as appropriate, in accordance with this recommendation.

- Ensure that the content of training packages is updated in accordance with this recommendation.

- Consider developing in conjunction with Local Authorities standard templates for this purpose.

2.2 Problem solving and partnership working

2.2.1 Weaknesses in current approaches

Mediations reveal a number of issues in relation to problem solving and partnership working. High staff turnover in SEND departments means expertise and skills are lost and relationships with local schools are less effective.

The time it can take to carry out an assessment, prepare a plan and get support in place is detrimental to children and young people at a crucial stage in their development if they are left without support while decision-making takes place within the LA. Mediators see cases where pupils are left without a school or are unable to attend school without such support.

Mediators used to deliver training to SEND teams, not to train them as mediators, but to give them the skills and confidence to help prevent disputes arising. But LAs don’t have the capacity now – in terms of resource and in terms of retaining the skills within the team. High turnover of staff and lack of resources contribute to LA SEND staff no longer undertaking regular training in communication and conflict resolution skills, which hampers their ability to resolve problems at an early stage.

The ambition of holistic and collaborative working between education, social care, and health professionals is not being achieved in practice. In addition, schools and colleges need better support in delivering SEND Support and in preparing information for requests for assessments for an EHCP. Mediators see disputes arising because necessary input isn’t obtained from health and social care colleagues, and schools are often struggling to understand what is expected of them in terms of requests for assessments.

2.2.2 Options for improvement

It is crucial to develop and sustain a SEND culture that attracts and retains professional staff who have expertise, local connections, and commitment to supporting the placements and children and young people in their area.

While consistency and fairness are important values, it is also important that LAs can address recognised need in an appropriate and timely way. Mediators have noticed that a small minority of LAs have access to a 'contingency fund' to give extra support to children in the short- to medium-term, which either gets them through a tricky patch, or gives the placement and other agencies time to gather evidence for a more robust application. This often enables a helpful solution to be found that is pragmatic and prevents disputes escalating and appeals to the Tribunal.

SEND staff need excellent skills in communicating and addressing conflict in order to help avoid disputes, appeals, and complaints. This links also with the recommendations in section 3 below on improving how complaints are prevented and handled.

2.2.3 Recommendations

I. **Local authorities** should:

- Ensure there is a mechanism for providing support when there is likely to be a delay in agreeing or finalising an EHCP.

- Invest in training on good communication, conflict resolution, and mediation skills for decision-makers and case workers.

- Be proactive to achieve better partnership working with social care colleagues and health bodies.

2.3 Supporting schools/colleges and families

2.3.1 Weaknesses in current approaches

SEN Support is school based, and currently there is no right of appeal or right to complain to the Ombudsman about a decision related to SEN Support, as the Ombudsman has no jurisdiction over schools. This is despite the fact that the vast majority of pupils with SEND should have their needs met under SEN Support.

Mediators see that parental requests for EHC needs assessments often arise when parents lack confidence in, or don't understand, what the school is doing to provide SEN Support. This lack of confidence can lead to communication breakdown and distrust, which can then lead parents to the Tribunal.

The Special Educational Needs and Disabilities Information Advice and Support Services (SENDIASS) is under-resourced and not every family who needs support can access it. Mediators see parents who say they couldn't get access to SENDIASS and parents who say they've never heard of it. Mediators also hear of parents who requested SENDIASS support at mediation but this was not available for capacity reasons. Lack of staffing capacity further impacts on SENDIASS availability to attend mediation.

As set out in the COP, a Disagreement Resolution Service is available to help resolve disagreement or to prevent them escalating further. It states that "disagreements between parents and young people and early years providers, schools or post-16 institutions about the special educational provision made for a child or young person whether they have EHC

plans or not"[22] However, the Group were concerned that the Dispute Resolution Service was not widely known or used by parents or young people.

2.3.2 Options for improvement

Unlike LAs, schools do not have a requirement to make independent mediation available for school-based disputes. Some LAs agree to use their mediation provider to try to resolve school-based disputes about SEN Support. This can be useful when a request for assessment or an EHCP is made as a result of a family lacking confidence in the school in terms of provision of SEN support.

Investing in SENDIASS and in signposting to its services is crucial. Good SENDIASS advisers can help families and young people understand the SEND system and processes and can help sustain good working relationships between families and LAs.

2.3.3 Recommendations

m. **Local authorities** should

- Strengthen and make more disagreement resolution services available for dealing with disagreements between families and schools over school-based disputes,

- Ensure parents, children and young people have access to impartial support, from SENDIASS. They should include signposting to independent (non-statutory) information and advice services.

2.4 Commit to mediation and to using learning from mediation to improve decisions-making and prevent disputes

2.4.1 Weaknesses in current approaches

Currently there is no mechanism for providing feedback from individual mediations to LAs to improve decision-making. Mediation providers report regularly on issues arising in casework, but it is unclear how this reporting is used. Many of the points above are issues that have been highlighted in mediation that provide valuable learning for LAs.

LAs are not always effective at getting the most benefit from mediation. As the number of mediations has increased exponentially, and as most mediations are now held online rather than in-person, LA SEND staff are often not taking the time to prepare adequately for mediation, such as reviewing the paperwork, getting up-to-date information, and speaking with the mediator. This limits the effectiveness of the mediation session.

2.4.2 Options for improvement

Mediation is not right for every family, young person, or dispute, but where a family and/or young person wishes, or is at least prepared, to mediate, the LA must agree – even if an appeal has already been registered (mediation is available at any time, including after an appeal has been registered with the Tribunal). Committing to mediation requires not just agreeing to mediate, but preparing in advance, taking time to speak with the mediator before the mediation, reviewing all the paperwork ahead of time, and attending mediation with

[22] Special educational needs and disability code of practice: 0 to 25 years para 11.8, p249

authority to make a decision in mediation and not have to refer back to a panel to confirm that decision.

LAs should commit to getting feedback from mediations and using it to improve initial decision-making. There are two obstacles to this. Gathering feedback is a resource issue for mediators and mediation providers, who are under pressure to deliver an increasing number of mediations with insufficient resource. Funding would be required to enable mediation providers to gather and share feedback from mediations and to meet with LA SEND representatives to discuss how this can be used. In addition, the confidentiality of mediation meetings might limit the extent of feedback that can be given to anyone who was not in the meeting. One way around this is to gather learning points at the end of the mediation and obtain all parties' consent at that point to share the information within the LA.

2.4.3 Recommendations

n. **Local authorities** should:

- Engage with mediation and properly prepare for mediation sessions
- Invest in gathering and learning from feedback.

2.5 Issues outside of local authorities' powers

There are also issues outside of LAs' control that need to be addressed. Learning points arising from mediation for other bodies include:

- **Invest in good relationships between LAs and schools/placements**. The policy shift to academisation means the oversight LAs used to have over schools/placements in their areas is changing, as are close working relationships between schools/placements and LAs.

- **Invest resources in school inclusion**. In mediation, we see schools struggling with resource and training needs in order to provide appropriate SEN Support. In such cases, the only option that parents feel they have is to push for an EHCP. Better SEN Support is likely to reduce demand for EHCPs. This is not placing blame on 'overdemanding' parents; it is a view shared by *Special Needs Jungle*, which notes that the aspiration of reducing EHCP numbers requires resource invested early on.[23]

- **Invest in training for schools and other placements**. Many mediations and tribunals would be prevented if the quality of information provided by the schools was better in the initial application - itemized costed provision maps, cognitive data, details of graduated response etc. Some SENCOs are excellent at this, but others are inexperienced and have little support. Ongoing training is needed in schools.

- **Ensure Child and Adolescent Mental Health Services (CAMHS) are equipped to see children and young people promptly**. Pupils' struggles with mental health issues are a big and growing issue, but there is a lack of access to mental health support. Waiting lists for CAMHS are too long. We see in mediation where schools and other placements are expected to provide mental health services and where lack of access to CAMHS is delaying the ability of schools/placements and LAs to identify need and appropriate provision.

[23] See https://www.specialneedsjungle.com/why-the-dfes-send-adviser-tony-mcardle-is-wrong-wrong-wrong-matts-directors-cut/

3. Learning from the Ombudsman

3.1 Effective complaint handling

3.1.1 Weaknesses in current approaches

Many LAs do not currently invest sufficient resources in their complaint handling functions, resulting in missed opportunities to resolve problems at an early stage, avoid protracted conflict and escalation of cases, and learn from complaints to improve service provision. There can be limited democratic oversight of complaint arrangements. The Local Government and Social Care Ombudsman ("the Ombudsman"), handles complaints on SEND and provides complaint handling training. The feedback from the training is consistently very positive, but the LAs that would benefit most from training do not take it up.

3.1.2 Options for improvement

Robust and effective complaint handling, where issues are identified and resolved at the earliest opportunity reduces the potential for ongoing injustice to be caused. It also reduces the risk of relationships breaking down and becoming irretrievably damaged. Better complaint handling could result in systemic improvements in SEND service delivery and reduce the potential for disputes to escalate to the Tribunal or the Ombudsman.

There will be an increasing focus on complaint handling in the Ombudsman's work in the next 1-2 years when they issue a joint complaint handling code with the Housing Ombudsman. This will be a welcome development.

In the meantime, there is potential for LAs to improve their complaint handling. In Scotland, LAs are required to undertake refresher complaint handling training every two years as part of the Model Complaint Handling Procedures overseen by the Scottish Public Services Ombudsman.

It is also important that complaint handling arrangements, and the data arising from complaint handling by LAs, is subject to democratic oversight within LAs. Complaints data can be a key governance tool, but the potential for learning from complaints is not currently being realised in many LAs. Each LA also has a monitoring officer, who is under a statutory duty under s. 5 of the Local Government and Housing Act 1989 (as amended), to report to the LA proposals, decisions or omissions contravening any enactment or rule of law or amounting to maladministration. There is significant potential for the monitoring officer, given their responsibility for ensuring the legal conduct of LAs, to play a bigger role in overseeing how LAs respond to complaints.

3.1.3 Recommendations

o. **Local authorities** should:

- Invest in and adequately resource complaint handling functions
- Ensure there is proper, democratic oversight of complaint handling, through an appropriate committee, in order to drive improvements and increase accountability
- Ensure that the person designated as an LA's monitoring officer should provide some internal oversight of the way in which lessons are learned from complaints

p. The **Department for Education** should issue guidance to LAs in relation to undertaking complaint handling training, including regular refresher training. Complaint handling training should be included in the training framework recommended in recommendation (r) below.

3.2 Sharing and using the learning from complaints

3.2.1 Weaknesses in current approaches

The Ombudsman identifies a wide range of opportunities to improve LA decision-making and service provision through its complaint investigations. However, there is little evidence that LAs take account of the Ombudsman's reports and use them in practice. There are many recurring issues across the SEND sector and also a number of LAs that have complaints upheld on the same reoccurring issues over time. The Ombudsman's Annual Review of Complaints 2021-22 show the Ombudsman's overall upheld rate (across its whole jurisdiction): 66% across all subjects areas, 77% in Educations and Children's services overall and just under 90% for SEND (the highest uphold rate of any area of LA activity).

3.2.2 Options for improvement

The Ombudsman uses the collective learning from complaints in a number of ways and publishes the majority of SEND decisions on its website. The Ombudsman issues focus reports on subject specific cases. Three of these have been issued about SEND since 2014, the last one published in 2019, Not going to plan? Education, Health and Care Plans two years on.

The Ombudsman produces general guidance for practitioners including Principles of Good Administrative Practice. It also publishes detailed information on all LAs, Local Authority performance data. This includes details of service improvements recommended and compliance rates.

The Ombudsman shares annual statistics with Ofsted on the outcome of SEND investigations, broken down by subcategory and outcomes for every relevant LA, and also send Ofsted all upheld cases at point of issue.

Despite these excellent examples of sharing the learning from its work, the issues being identified and fed back do not currently appear to be addressed by LAs. There is room for improvement in this area and to identify clearly why recurring issues are not being fixed and how any barriers to effective learning can be overcome.

At the same time, the Ombudsman's approach to feeding back learning from its investigations provides an example of good practice from which other parts of the administrative justice system could learn. There is also the potential for better coordination of feedback and learning from the tribunal and the Ombudsman.[24]

3.2.3 Recommendations

In relation to LAs learning from the Ombudsman's reports and recommendations:

[24] See Gill, C. 2024 (Forthcoming). *Administrative Justice and the Control of Bureaucracy*. Oxford: Hart. There is potential for the ombudsman to take on a larger role in coordinating and communicating feedback not just from its own casework, but also from other administrative justice remedies.

q. **Ofsted** should ensure that it includes within its inspections how information from complaints is being used and how service improvement recommendations are monitored for impact in the longer term.

In relation to learning for the wider administrative justice system:

r. **The Department for Education and the Ministry of Justice** should work with the **Tribunal and the Ombudsman** to consider whether there is scope for jointly reporting key themes arising from their work in a form that can be easily accessed and understood by LA decision-makers.

3.3 Oversight of health and SEND issues

3.3.1 Weaknesses in current approaches

The role of the NHS in SEND decision-making is currently subject to limited accountability as a result of the Ombudsman's limited jurisdiction and its focus on holding LAs to account for failings in the SEND system. There is, however, significant potential for identifying improvements in relation to NHS inputs into the SEND decision-making process.

3.3.2 Options for improvement

More recently, the Ombudsman has been engaging with NHS England's SEND team and advisors to explore ways health bodies can be better held to account. In the last 12 months the Ombudsman has undertaken a pilot within their joint working team (jointly staffed with Parliamentary and Health Services Ombudsman investigators). A small number of cases have been selected where health and LA SEND issues are very closely linked and the combined issues have been investigated.

The Ombudsman has started to publish the outcomes of those investigations. Some examples of these cases can be found here: 21 010 968 - Local Government and Social Care Ombudsman and 21 010 289 - Local Government and Social Care Ombudsman. Initial feedback from NHS England has indicated the impact of these cases has been significant.

The Ombudsman's intention is to continue with the pilot for a further 12-month period and build a body of evidence (and potentially to issue a focus report to highlight the learning). The team is small and has limited resources so the number of cases the Ombudsman will be able to investigate will remain small and there is a need to ensure continued maximum impact when the decisions are published.

3.3.3 Recommendations

s. **The Ombudsman and NHS England** should liaise and deliver joint briefing events to Designated Clinical Officers.

4. Enhancing training

The Group examined training provided to LA decision-makers to assist them in making better decisions. Many of the deficiencies in current approaches to decision making identified in sections 1 to 3 could be addressed through better access to training.

Robust and in-depth training is available to LAs through organisations such as IPSEA. There are three course available to LAs:

- SEND Law for LAs;
- SEND Decision Making & the Law; and
- preparing a Legally Compliant Education, Health and Care Plan.

The national programme of workshops co-delivered by IPSEA and the Department for Education (DfE) on "decision making and the law" were generally well received. It was delivered for five consecutive years, and in 2021, the last year of its delivery, there were 8 regional workshops, with 265 attendees, comprised approximately of LA SEN teams (50%) , health teams (25%) and social care teams (25%). Feedback on a variety of measures were positive. In addition, the Group noted other resources available to decision-makers:

- Free resources (e.g., case law directories, case studies, online scenario-based learning) are available from various providers (e.g., Council for Disabled Children, IPSEA, National Autistic Society and many others)
- Internal training and development programmes covering the legal duties for decision-makers
- SEND Tribunal User Group meetings
- LAs regional forums to share good practice and development opportunities across LA borders

4.1 Weaknesses in current approaches

There is a lack of consistency between LAs (sometimes within LAs and between officers) on the training made available to decision-makers which in turn leads to inconsistent and unlawful decision-making.

Training programmes which are currently available through organisations such as IPSEA are too costly for some LAs in a context of increasingly pressured and diminished resources. In addition, there is a lack of national, shared expectation about the competencies or occupational standards of LA decision-makers leading to inconsistencies.

The training and development opportunities that are available, are not targeted appropriately. For example, they are targeted at strategic LA staff but not to decision-makers directly; or when they are targeted at frontline decision-makers, budget holders are not given the opportunity to understand their own, linked, responsibilities. The Group concluded that the LAs who are investing in more and better training programmes for their officers may not always be the ones whose officers are most in need of such training.

4.2 Options for improvement

Consideration should be given to the development and delivery of a fully-funded ongoing programme of SEND law training for LA staff. This should be developed in the context of a nationally agreed framework of competencies and occupational standards for LA decision-makers. The DfE should consider, in reviewing the engagement and impact of such, whether the training becomes compulsory for LAs in the medium to longer term.

This should be a programme of legal training which involves both e-learning and face-to-face (either in-person or via MS Teams/ Zoom). The model of compulsory training delivered by IPSEA to SENDIASS would be a good basis (this is a combination of 3 levels of e-learning and 3 levels of face-to-face training via MS Teams, all of which have to be completed, and access to a legal library).

The Information Advice and Support Service Network (IASSN) oversee the training and are able to ensure that, at any one time, 98% of SENDIASS in England have at least one member of staff that has completed all 3 levels. This has greatly improved the quality of the information, advice and support provided, contributes to the professional development of SENDIASS staff and increases consistency of service delivery across the country. The requirement for all staff to complete training and in a specific timeframe is set out in a set of Minimum Standards for all SENDIASS.

Some elements of co-development and co-delivery would be well received by LAs – e.g. IPSEA and a lead from LAs and DfE. The training should include scenarios, ideally based on real cases (anonymised First-tier Tribunal decisions would be helpful for this), including a focus on how LAs should apply the legal tests (e.g. for EHC needs assessments) to the nuances of individual situations.

The e-learning should be split into modules (with minimum pass marks) and completion of modules should be compulsory depending on the nature of the person's role. For example:

- Module 1: this could be pitched at an introductory/basic level to capture those who aren't decision-makers but do convey decisions and have day-to-day contact with parents/carers – e.g. back office/admin staff.

- Modules 2 and 3: must be completed by all LA staff who work within or make/are involved in making decisions or conveying decisions under the SEND legal framework.

- Modules 4 and 5: must be completed by all LA staff who make decisions about education health and care needs assessments and when to issue ECHPs.
- Modules 6 and 7: must be completed by all LA staff who make decisions about the contents of EHCPs.

- Module 8: a standalone module for LA staff who hold the purse strings (focused on legal responsibilities of education, health and social care – e.g. in the context of commissioning, delegating high needs budgets, use of panels).

- Module 9: a standalone module for people who sit on decision-making panels.

The training programme should be linked to CPD / a set of core competencies, perhaps linked to a set of minimum standards (so that standards can only be met if LA staff have completed and passed relevant modules). It would be necessary to identify which roles need to complete which modules – i.e. in order to meet x standard, must have completed modules a, b, c. In addition, there should be potential for "bolt-ons" focused on specific topics – e.g. if a particular issue arises in an area (such as use of part-time timetables).

The group proposes that training is funded so that it is free to LAs (funding must include venue costs for any face-to-face elements).

There should be DfE oversight of LAs' completion of the training programme. This role could be performed by regional SEND advisers in the first instance – i.e. checking progress at LA visits (who has completed which modules and how well). It would be expected that all relevant LA staff undertake the training, but the communications around this would need to be carefully thought through to avoid it being seen as a tick box exercise. The emphasis should be on it being a development programme for LA staff.

While there is need to be mindful of the time commitment involved, a one-off one-day training session is not sufficient. The programme could be spread over a number of years with CPD accreditation.

4.3 Recommendations

t. The **Department for Education**, working with existing providers and LAs, should lead the development and delivery of a fully-funded ongoing programme of SEND law training available to relevant for LA staff. This should be developed in the context of a nationally agreed framework of competencies and occupational standards for LA decision-makers. The DfE should consider, in reviewing the engagement and impact of such, whether the training becomes compulsory for LAs in the medium to longer term.

Conclusion

This report has highlighted a number of areas where short/ medium term improvements could be made to LA SEND decision making. Many of the recommendations in the report are aimed at LAs and it is ultimately LAs that will need to amend their current approaches in order to bring about change. The report has also, however, made recommendations to a range of stakeholders including the Department for Education, the Ministry of Justice, Ofsted, the Tribunal, and the Ombudsman. This recognises that LAs need to be supported to achieve improvements and that enhancements to decision-making and systemic learning from disputes are a shared responsibility.

Indeed, although this report has been critical of a number of areas of LA practice, the Group was sympathetic to the difficult situation that LAs find themselves in with regard to SEND provision. Limited public resources are at the root of many SEND disputes and LAs may feel, with some degree of justification, that there are limits to how far decision-making can change when budgets and the availability of educational resources are finite, and funding from central government is not directly linked to LA statutory obligations. While beyond the scope of this Group, we therefore welcome the review of the funding formula within DfE's SEND Review. Meanwhile, while this is undoubtedly the case, the Group considers that changes in practice and culture within LAs could prevent many issues escalating to the Tribunal or the Ombudsman, and ensure that parents, children and young people do not feel they have to "fight" for their needs to be met.

For example, investing more effort into communication and evidence gathering prior to making SEND decisions could lead to real improvements in the quality of subsequent decision-making and the degree to which parents and young people are willing to have confidence in the LA's judgments. Similarly, investing in effective complaint handling and having skills in conflict resolution would assist LAs in dealing, at an early stage, with potential areas of dispute and help show parents and young people that they are being responsive to their concerns and their needs. While LAs may feel unable to devote more resources to these areas while they are under such pressure to deliver basic services, it is likely that investing in these fundamentals could reduce later problems.

In addition to changes in approach and culture with LAs, there is a need for LAs to improve some of the hard legal skills required for effective SEND decision-making. The Group's discussion of the issues around refusal to assess cases and placement decisions shows that there is a clear divergence between the practice of the Tribunal, applying the law, and the

practice of many LAs. LAs need the skills to recognise this and to ensure that their decision making is correct. The training programme the Group has recommended is key in this respect and developing such a programme would be important in supporting LAs to achieve meaningful change. Comprehensive, fully funded training could make a significant difference both in up-skilling LA staff and in prompting the kind of wider changes in practice and culture discussed above.

The issue of training also highlights the key role of other stakeholders in improving LA decision-making. For example, the Group saw the Department for Education as having a key central role in relation to national developments such as training, improving guidance, identifying data and research gaps, and developing decision-making tools for LAs. The Tribunal and the Ombudsman could work together to improve the feedback that is provided to LAs and ensure better connections between the administrative justice system and the system of first instance decision-making. Ofsted and CQC can ensure that many of the areas highlighted in this report are subject to review in inspections, bolstering the extent to which they are prioritised by LAs in future.

The Group recognises the challenges around delivering many of these changes, but hopes that the report's analysis and recommendations will be of assistance in the incremental process of improving SEND decision making. The Administrative Justice Council should work with relevant stakeholders to follow up on the recommendations in the coming years.

Table of Recommendations

In order to enhance **learning from the Tribunal**, the Group made the following recommendations:

a. The **Department for Education** should commission research examining:

- What barriers Local Authorities face/encounter in seeking to improve the outcomes they achieve in proceedings before the tribunal, and how these might be overcome

- The underlying causes for differential appeal rates between LA areas and exploring the apparent correlation between low appeal rates and areas featuring high levels of deprivation and between high appeal rates and areas featuring low levels of deprivation.

b. The **Department for Education, the Ministry of Justice, and the Administrative Justice Council** should set up a collaborative working group focused on reviewing existing data, identifying data gaps, and developing a research agenda focussed on improving SEND decision making.

c. **The First-Tier SEND Tribunal, His Majesty's Court and Tribunal Service, and the Ministry of Justice** should consider the feasibility of enhancing the sharing of learning from the Tribunal's casework, examining the approaches used by the Ombudsman and the Additional Support Needs (ASN) Tribunal in Scotland as well as examining other examples of good practice in the administrative justice system. This work should also engage with LAs to understand how enhanced feedback can be acted upon.

d. The **Department for Education** should:

- create a set of decision-making tools to assist decision-makers apply the correct test in refusal to assess and placement cases.

- make changes to the Code of Practice to reflect the findings of this report in relation to its inconsistency with the tests specified in the Children and Families Act 2014.

- issue guidance to LAs encouraging them to develop action plans in response to tribunal decisions in favour of the appellant.

e. The **Tribunal** should consider the feasibility of issuing a standard direction to LAs to review whether the correct test has been applied when a refusal to assess case is registered.

f. The **Department for Education** should work with the **Ministry of Justice** and the **Tribunal** to review and update the guidance to Local Authorities on the test to be applied in refusal to assess and placements. The Ombudsman could contribute to guidance on timeliness.

g. **Local authorities** should routinely reflect on their experiences at tribunal hearings and seek to learn from the First-tier tribunal's written decisions.

h. As part of its Area Send Inspections, Ofsted/CQC should routinely analyse tribunal data and consider how data are being used by LAs to drive improvements in decision making. This should be a routine part of the Area Send Inspections Framework and handbook Evaluation Schedule (Paragraph 32), which suggests that inspections should examine how "leaders evaluate services and makes improvements

i. **Local authorities** should work together with experts and their professional bodies to ensure wording in reports is chosen to ensure the appropriate level of service will be allocated to the child/young person and outcomes for each need/provision identified. LAs should include *"the 'who, what, when and how long' details that are meant to spell out the Local Authority's duties"* to the pupil.

In order to enhance learning from mediation the Group made the following recommendations:

j. **Local authorities** should:

- Invest resource early on in the evidence gathering stage and in communication with parents and schools before decision-making so that staff collating evidence for decision-makers have the expertise and authority to ensure the evidence is up-to-date and complete, and to ensure that caseworkers have time to speak with families and young people and placement settings in advance of a decision being made.

- Collaborate and communicate with parents, young people and schools/colleges to ensure that families, young people, and placement settings are clear what evidence is being considered and to allow for contributions from those people and settings affected by decisions.

- Make the voice of the child or young person the golden thread throughout decision-making as personal testimony is a valuable form of evidence that often fills out the picture and leads to changed decisions on EHC needs assessments and on EHC Plans.

- Adopt a procedure of "Way Forward" meetings with families (including with schools and colleges where appropriate) following a panel decision

- Provide written feedback to those who have made an application in relation to an EHC plan setting out: (i) what they have been asked to decide; (ii) the evidence they have considered; (iii) their findings on the evidence they have been provided with; and (iv) the decision they have taken as a result.

k. **The Department for Education should**, in relation to the provision of written reasons:

- Ensure that the Code of Practice, or other guidance, is updated as appropriate, in accordance with this recommendation; and
- Ensure that the content of training packages are updated in accordance with this recommendation.
- Consider developing in conjunction with Local Authorities standard templates for this purpose.

l. Local authorities should:

- Ensure there is a mechanism for providing support to meet need when there is likely to be a delay in agreeing or finalising an EHC plan
- Be proactive to achieve better partnership working with social care colleagues and health bodies
- Support mediation that takes place between families and schools over school-based disputes
- Ensure parents, children and young people have access to impartial support, from SENDIASS. This should include signposting to independent (non-statutory) information and advice services.
- Commit to mediation and properly prepare for it
- Invest in gathering and learning from feedback

In order to enhance **learning from the Ombudsman**, the Group made the following recommendations:

m. **Local authorities** should:

- Invest in and adequately resource their complaint handling functions
- Ensure democratic oversight of complaint handling, through an appropriate committee, in order to drive improvements and increase accountability
- Ensure that the person designated as an LA's monitoring officer should provide some internal oversight of the way in which lessons are learned from complaints

n. The **Department for Education** should issue guidance to LAs in relation to undertaking complaint handling training, including regular refresher training. Complaint handling training should be included in the training framework recommended in recommendation (t) below.

o. **Ofsted** should ensure that it includes within its inspections how information from complaints and appeals is being used and how service improvement recommendations are monitored for impact in the longer term.

p. **The Department for Education and the Ministry of Justice** should work with the **Tribunal and the Ombudsman** to consider whether there is scope for jointly reporting key themes arising from their work in a form that can be easily accessed and understood by LA decision-makers.

q. **The LGSCO and NHS England** should continue to liaise and deliver joint briefing events to Designated Clinical Officers.

In order to enhance training provision, the Group made the following recommendations:

r. The **Department for Education**, working with existing providers and LAs, should lead the development and delivery of a fully-funded ongoing programme of training in SEND law, conflict resolution and communication skills for all relevant LA staff. This should be developed in the context of a nationally agreed framework of competencies and occupational standards for LA decision-makers. The DfE should consider, in reviewing the engagement and impact of such, whether the training becomes compulsory for LAs in the medium to longer term.

Annex I - List of working group members

Chris Gill (Chair)	Senior Lecturer in Public Law	University of Glasgow
Paul Yates	Counsel, Head of Pro Bono	Freshfields
Rachael Annear	Partner	Freshfields
Anne Musker	Counsel	Clifford Chance
Joe Tomlinson	Professor of Public Law	York University
Bill Dowse (observer)	Head of Administrative Justice Policy	MoJ
Jason Greenwood (observer)	SEND tribunals	HMCTS
Charles Smulian/ Sakthi Shanmugathasan (observer)	Analysts	MoJ
Claire Hughes (observer)	SEND policy	DfE
Louisa Armitage/Janet Collins (observers)	SEND policy	DfE
Maurice Sunkin	Professor of Public Law	Essex University
Andrew Sheridan	Head of Improvement, Standards and Engagement	Scottish PSO

Ali Fiddy	Chief Executive	IPSEA
Sharon Chappell	Assistant Ombudsman	LGSCO
Andre Imich	SEND professional advisor	DfE
Ben Allchin	Local authority representative	Leeds LA
Kodjo Ayebi-Kwakye	Local authority representative	East Sussex LA
Daisy Russell	Programme Lead	Council for Disabled Children
Margaret Doyle	Mediator/ Academic	University of Essex
Heidi Bancroft	Secretary to the AJC	JUSTICE
Sally Hunt (Secretariat)	AJC Co-ordinator	JUSTICE

- Thank you to Mick King, the then Local Government and Social Care Ombudsman for Chairing the first two meetings of the working group.
- In addition, we would like to thank Deputy Chamber President, Judge Meleri Tudur and Judge Jane McConnell for sharing their experience with the group.

Annex II - Abbreviations used in this report

Abbreviation	Full name
LA	Local Authority
SEND	Special Educational Needs and Disability
The Tribunal	First-tier Tribunal (Special Educational Needs and Disability)
The Green Paper	SEND Review: Right Support, Right Place, Right Time
The Improvement Plan	Special Educational Needs and Disabilities (SEND) and Alternative Provision (AP) Improvement Plan
The Group	The Administrative Justice Council Working Group
The Ombudsman	The Local Government and Social Care Ombudsman
The ASN Tribunal	The First Tier Tribunal for Scotland Additional Support Needs Tribunal
EHCP	Education, Health and Care Plan
The Act	Children and Families Act 2012 ("the Act")
The Code	The SEND Code of Practice 0-25 Years 2015
SENCos	Special Educational Needs Coordinators
SENDIASS	The Special Educational Needs and Disabilities Information Advice and Support Services
CAMHS	Child and Adolescent Mental Health Services
IPSEA	Independent Provider of Special Education Advice
IASSN	Information Advice and Support Service Network
DfE	Department for Education
EHCNAs	Education Health and Care Needs Assessments