

# SEND Single Route of Redress National Trial

Stakeholder Briefing Events  
March 2020

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# Aims of the event

- Reminder of purpose, duties and support
- To share statistics and key learning since the trial launch
- To highlight and discuss common issues
- To allow local areas to discuss share experiences and to give feedback
- To enable a Q&A session with a Lead Judge at the SEND Tribunal
- To provide a networking opportunity
- To encourage you to disseminate this information to colleagues and networks

# Warm up quiz?

1. What is the legal test that a LA must use when deciding whether to agree a request for an EHC needs assessment?
2. Should “cognitive behavioural therapy to teach a child to deal with anxiety” be recorded under Section F, or G, or H1 or H2 on an EHC plan?
3. Under what circumstances is it permissible for the LA not to obtain advice and information in relation to social care when undertaking a new EHC needs assessment?
4. Can a local authority name an independent school in Section I which is not on the Section 41 list?
5. What legal reasons are there for a local authority to say ‘no’ when a parent requests a place in a named special school in response to the draft EHC plan?

# DfE Policy Update - The SEND Review

Announced in September 2019. Focus on:

- How the SEND system has evolved since 2014;
- How the system can be made to work best for all families and ensure quality of provision is the same across the country;
- The role of health and social care in SEND in collaboration with the Department of Health and Social Care, recognising the importance of joined-up support

# Review is considering:

- The provision of the highest quality support to enable CYP with SEND to thrive and prepare for adulthood
- Improved clarity for parents and carers
- Ensuring support in different local areas is consistent, joined up across health, care and education services;
- How we strike the right balance of state-funded provision across inclusive mainstream and specialist places;
- How to align incentives and accountability for schools, colleges and LAs to provide the best possible support for CYP with SEND;
- Understanding what is behind the rise in EHC plans; and
- Ensuring that public money is spent in an efficient, effective and sustainable manner.

# The review process

- A DfE-led cross-government review
- Support from 3 independent advisers:
  - Tony McArdle (Chair SEND System Leadership Board);
  - Kevan Collins (Chair of Ed. Endowment Foundation), and
  - Anne Heavey (Whole School SEND).
- Engagement with internal and external stakeholders
- Initial paper expected to be published by Easter

# Aim of National Trial

- Create a more holistic, person-centred view of the child or young person's needs
- Bring appeal rights in line with wider remit of EHC plans
- Encourage joint working
- Bring about positive benefits to families



# Key features of redress national trial

- Prior to April 2018, the only rights of appeal to the tribunal were about the education aspects of EHC plans (Section B, F and I)
- Separate routes of complaint were required for health and social care issues
- Under the trial, Tribunal has powers to make **non-binding recommendations** about the health and social care aspects of LA decisions concerning EHC plans as part of an education appeal

# Roles and Responsibilities – LAs (I)

- Must notify parents and young people of the Tribunal's extended powers when LA sends them:
  - a decision not to issue an EHC plan
  - a final version of an EHC plan
  - an amended EHC plan
  - a decision not to carry out a re-assessment of an existing EHC plan
  - a decision not to amend an EHC plan following a review or re-assessment
  - a decision to cease to maintain an EHC plan

# Roles and Responsibilities – LAs (II)

- Must include detail about the extended right to appeal in local offers
- If required, must provide evidence to the Tribunal from the health and/or social care bodies in response to the issues raised, within the timeframe specified by the Tribunal
- As necessary, can seek permission to bring additional witnesses to the hearing
- Must send the health and social care commissioners' response to the recommendation to the evaluator at [SENDletters@IFFResearch.com](mailto:SENDletters@IFFResearch.com) within one week.

# Roles and Responsibilities: Health and social care commissioners

- **Must** respond to any request for information and evidence within the timeframe set by the Tribunal
- **Must** send a representative to attend the hearing to give oral evidence if required
- **Must** respond in writing within 5 weeks following a recommendation to the parent or young person and the LA setting out the steps they will take or why they will not follow the recommendation
- Includes ALL Health Commissioning Bodies - a need for CCGs to work together with specialised commissioning colleagues.

# Progress since the national trial launched

- **Ongoing support:** Briefing events. Helpdesk. Newsletters, webinars, template wording and FAQs - all available on the national trial toolkit.
- **Extension of the national trial to August 2020:** Michelle Donelan, Minister of State, announcement in November 2019.
- **Evaluation:** which, along with feedback from the national trial steering group, will inform recommendations to ministers.
- **Expenses:** local areas now have 3 months from the appeal hearing date to submit their claim (up to 4k per appeal).
- **Next steps:** Ministers to make a decision whether any, all or some of the provisions in the Trial should be made mandatory for all local areas.

# Funding – Local Area Expenses

- LAs and CCGs can be reimbursed for reasonable costs incurred during the trial
- A grant can be awarded to LAs, up to £4,000 per case, and can include:
  - Informing social care and health commissioners of the appeal
  - Collecting evidence from social care and health commissioners for the Tribunal
  - Possible attendance at a Tribunal hearing
  - Payment to social care and health commissioners re: gathering of evidence; creating an outline argument; responding to Tribunal recommendations
- LA responsibility to transfer funding claimed by health commissioners
- **46 expense claims have been received since the trial launched**

# Evaluation

- **Preliminary in-depth interviews:** with national stakeholders.
- **Case study visits:** twelve areas visited to explore the local area experience of the National Trial.
- **Survey of appellants:** a survey of individuals who have appealed to the SEND Tribunal about the health and/ or social care aspects of EHC plan.
- **Analysis of response to recommendation letters:** a review of response to recommendation letters issued by LAs and health commissioners.
- **An online survey:** to collect costs data from LAs and CCGs.
- **Cost case studies:** comparing the 'journey' of a case involving health or social care issues within the National Trial.
- **Follow up appellant surveys and LA / CCG cost survey to take place.**

# The focus of the evaluation report is:

- The impact on children and young people's health and social care outcomes
- The impact of the process for families
- How the trial has impacted on LAs and CCGs
- Additional costs associated with the trial, and value for money
- Whether the trial was implemented as intended, and any wider learning



# Guidance and toolkit

- [Guidance document](#) for education, health and social care professionals and parents and young people
- [Toolkit](#) for LAs with templates and FAQs Ongoing support through a helpdesk, newsletters, webinars, DfE SEND advisers and NHS England
- IASS and VCS organisations provide support to families by: disseminating information; supporting the preparation of cases and at hearings; signposting to mediation and further support

# Judge Jane McConnell

## SEND Tribunal





JUDICIAL  
COLLEGE

# National Trial update

Spring 2020

# The Facts – so far

NT started in April 2018 for 2 years

Extended powers given to the FtT to consider:

- ✓ Social Care
- ✓ Health

Decide education issue then make a recommendation (not an order)

# The Facts – so far

All rights of appeal except Refusal to Assess decisions

Original DfE estimate would be 350 appeals over the course of the NT

Extended to end of August 2020

# The Statistics – so far to end of January 2020

<b>1566</b>	<b>Applications to date</b>
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1174	Child
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383	Young Person
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838 Health & Social Care

354 Health

310 Social Care

88 EH only

# Case outcomes

367	Decision issued
79	Withdraw
44	Concede
391	Consent Orders
3	Refused Registration
25	Struck Out
88	Became EH only



## Other stats ...

- 84 Joined NT once registered
- 13 Change of LA during the life of the appeal
- 309 Stood down – 10 were stood down twice!
- 45 Paper hearings
- 130 Adjourned

# It is not slowing down ...

Average 70 NT appeals registered  
per month

# Process for dealing with a NT appeal - differences

- Bespoke registration directions - identify the issues across the appeal
- Urgent requests are dealt with by a Registrar or Judge promptly
- Case Management Review after final evidence deadline

# Social Care – Top Issues

- Request for a Social Care Assessment
- Carers Assessment
- Direct payment for SC provision
- Respite support
- PA/Keyworker/Mentor to access community activity
- Planning required for transition to adult SC including personal budgets
- Social workers to contribute to EHC Plan review & planning meetings

## **Social Care – residential placement**

Questions to consider:

1. Residential school/ college – “waking day” curriculum to meet educational needs
2. Residential school/ college – educational + social care needs

# Health – Top Issues

- CAMHS Assessment – Cognitive Behaviour Therapy
- OT assessment
- Include health needs/provision which is not in dispute
- Nursing support – diabetes or tracheostomy care
- Physiotherapy sessions for health needs not educational provision
- Toileting & personal hygiene

# The Tribunal's decisions

Summaries of decisions made between September 2018 – March 2019 are available on the SEND Pathfinder website:

<https://www.sendpathfinder.co.uk/summary-of-national-trial-decisions>

# Lessons learnt - process

- Identifying the issues at registration improves the LA's response to the appeal – requires earlier engagement
- Case management before hearing – after final evidence deadline - reduces the number of adjournments in NT appeals
- Telephone case management results in higher rate of settlement



# Observations

# Strengths – top 4

1. Holistically consider/decide the needs of the child/YP – “complete picture”
2. Change practice in LA – collaborative working between education & social care teams
3. Brings child/YP to the attention of social care
4. Access to justice – parent/YP can challenge SC & health decisions at a “one-stop-shop”

# Weaknesses – Top 3

1. Lack of resources – Tribunal, LAs & very little Legal Aid and free parent/YP support
2. Continued lack of co-ordinated working in LA & between LAs & CCGs
3. Can only challenge SC or health if there is an appeal regarding an educational issue

# The Future

# Future

Should the jurisdiction of the Tribunal be further extended ?

- ✓ Power to order or recommend on Social Care issues
- ✓ Power to order or recommend on Health issues

# Evaluation – Phase 1

- Preliminary in-depth interviews with national stakeholders
- Baseline and follow-up case study visits with LA's
- A baseline survey of National Trial appellants
- Analysis of response to recommendation letters
- An online survey to collect costs data from local authorities and CCG's
- Cost case studies

# Evaluation – Phase 2

Likely to include:

- A follow-up survey of National Trial appellants, six months on, to revisit aspects such as the extent to which they were satisfied with recommendations; the extent to which they felt issues were resolved; and the extent to which they feel provision has been improved.
- Phase 2 evaluation report looking at the LA/CCG cost surveys, to collect updated costs data from local authorities and CCGs.

# What next?

March 2020:	First Evaluation Report completed
After Easter 2020:	Government response to the continuation of extended powers
31 August 2020:	NT finishes





An opportunity for final  
questions  
relating to all issues covered  
today

# Group Discussion



Department  
for Education



Department  
of Health



Ministry  
of Justice



# Group Discussion

- What are the biggest challenges for your local area in regard to SEND appeals?
- What further support would you find helpful re SEND appeals within your local area? E.g. resources, information.
- Is there any good practice in your local area or teams you can share with the group?

# Round Up



Department  
for Education



Department  
of Health



Ministry  
of Justice

