

To all Local Authorities in England

3 April 2018

Dear Local Authority,

**Subject:** Re: Grant Offer Letter – National trial to extend the powers of the First-tier Tribunal SEND to make non-binding recommendations on health and social care needs and provision as specified in Education, Health and Care plans.

This correspondence constitutes a Grant Offer Letter. This letter and relevant annexes will form an integral part of the Grant Funding Agreement and confirms that a grant will be available for SEND Tribunal trial activity up to the value of £4,000 per case for expenses incurred as part of trial appeals. Funding will be available for trial appeals against local authority decisions or EHC plans issued or amended between **3 April 2018 and 31 March 2020.** 

This Grant Offer Letter and relevant annexes, including the tailored DfE Grant Terms and Conditions (T&Cs) for expenses claims relating to the single route of redress trial, make up the entire Grant Funding Agreement (GFA). The offer is subject to the provisions, limitations and conditions set out below. You should read all annexes and T&Cs carefully before claiming expenses from this offer of funding. Failure to observe and comply with these terms and conditions may result in the funding not being paid.

#### **Reports**

The local authority should fill in the attached grant claim form at annex B to claim costs incurred with each appeal that is part of the single route of redress national trial. Local authorities should email the completed grant claim form at annex B to Mott MacDonald at <a href="mailto:SENDDeliverySupport@mottmac.com">SENDDeliverySupport@mottmac.com</a> once the appeal has been concluded.

Details of the costs incurred against the trial activity must be set out in annex B, including relevant costs incurred by the SEND and social care teams at the local authority and the health commissioning body. Claims must be made in accordance with all parts of the GFA with particular reference to the DfE's Grant Terms and Conditions set out in annex C.

The local authority must provide available and appropriate evidence to explain the costs raised against the activities that are supported by the grant as set out in annex D. The local authority should gather sufficient additional evidence

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from the health commissioning body and/or the social care team in order to provide the required information.

# **Cost Restrictions - Value for Money**

The local authority must implement procedures so that activities associated with this grant are undertaken in a manner that supports the principle of achieving value for money.

The Department for Education will fund the additional costs of each case that is part of the trial up to a maximum of £4,000 per case. The Department will not pay more than a maximum of £4,000 per case; however if the actual costs do exceed £4,000, then the local authority should record this when completing annex B. This information will inform the evaluation of the trial and is purely for the purpose of providing information to the Department and not for reclaiming any costs in excess of the £4,000 cap.

# **Payment**

Any grant paid by the Secretary of State will be paid pursuant to Section 14 of the Education Act 2002 and will accordingly be paid only in respect of approved expenditure incurred by the local authority and health commissioning body for the purpose of the funded activities as set out in annex D.

The Department for Education will process the claims monthly and will pay the claims in arrears to the local authority within 30 days from the date the claim has been approved. It is the responsibility of the local authority to transfer the relevant funding to the health commissioning body.

# **Complying with new Government policies**

The grant funding is provided on the strict understanding that none of this funding is to be used for advertising, marketing, communications and consultancy, or for any costs associated with the maintenance, technical development or updating of existing websites or for the development/creation of new websites.

#### **Sharing of information**

The Department for Education will share information in the claim form (annex B) with IFF Research and Belmana, who have been contracted by the Department to evaluate the trial, for the purpose of understanding the cost implications of the trial on local areas. The Department's contract with IFF Research and Belmana contains the Department's standard confidentiality and data protection clauses for such contracts. No individual LA will be identified publicly or named in reporting in the use of the claim form information. Claim form information may be linked to other data sources, including but not limited to Tribunal management information, for the purposes of the evaluation.

#### **Acceptance of Offer**

If the local authority wishes to accept this offer of a grant, they must complete and sign the grant acceptance form at annex A and send this when they

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submit their first initial claim for expenses (using annex B). Subsequent claims will not require annex A to be submitted again.

# The DfE Grant reference number is SEND NT LA expenses 01 and should be quoted in all correspondence relating to this grant.

This Grant Funding Agreement is made between:

- (1) The Secretary of State for Education and
- (2) All local authorities in England

This Agreement comprises the Grant Offer Letter and the annexes to this letter, including the DfE tailored Grant Terms and Conditions set out in annex C.

This letter must be read in conjunction with the following annexes:

Annex A - Acceptance of Grant Offer and effective date

Annex B - Claiming Grant in Arrears

Annex C - DfE Grant Terms and Conditions

Annex D - Details of Grant Allocations

Annex E - List of Objectives for which the grant is being paid

**Annex F** – Statement of Grant Usage (Statement prepared by Local Authority)

Yours sincerely,

Low

Margaret Brandon

SEND, Alternative Provision and Attendance Unit

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# Annex A Acceptance of Grant Offer and effective date

National trial to extend the powers of the First-tier Tribunal SEND to make non-binding recommendations on health and social care needs and provision as specified in Education, Health and Care plans – for appeals against local authority decisions or EHC plans issued or amended between 3 April 2018 and 31 March 2020.

# The DfE Grant reference number is SEND NT LA expenses 01

This Grant Funding Agreement is effective from 3 April 2018.

Signed by person authorised to sign on behalf of the Secretary of State [DfE to complete]				

As representative of [insert name of the local authority]:

I have read and understood both the Grant Offer Letter and the associated annexes including the DfE's Grant Terms and Conditions for this grant as set out in annex C. I agree to comply with the notified conditions of the grant on which the offer is made.

Signed by person authorised to sign on behalf of [insert name of local authority]:				
Date				
Signature				
Name (please print)				
Position in organisation				
Address/email details and telephone number				

The local authority must sign this annex and send it with the first initial claim submitted (form at annex B) in order to receive the grant funding.

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# Annex B - Grant claim form for Local authorities claiming grant in arrears

Please see separate excel document for Annex B which can be found attached at <a href="http://www.sendpathfinder.co.uk/send-single-route-of-redress-national-trial">http://www.sendpathfinder.co.uk/send-single-route-of-redress-national-trial</a>.

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# **Annex C-** DfE Grant Terms and Conditions

National trial to extend the powers of the First-tier Tribunal SEND to make non-binding recommendations on health and social care needs and provision as specified in Education, Health and Care plans – for appeals against local authority decisions or EHC plans issued or amended between 3 April 2018 to 31 March 2020.

# The DfE Grant reference number is SEND NT LA expenses 01

1. These customised / personalised DfE's Grant Terms and Conditions for the national trial - single route of redress (payment of expenses) set out the tailored Terms and Conditions of the Grant Funding Agreement (the "GFA") and should be read in conjunction with the Grant Offer Letter and all annexes. The GFA does not give rise to contractual relations. In these DfE's Grant Terms and Conditions:

"the Project" is defined in annex E of the Grant Offer Letter;

"the Department" means the Department for Education;

"the authority" means the local authority in England claiming expenses on behalf of both the local authority and the clinical commissioning group up to the value of £4,000 per case for the period of the trial (for appeals against local authority decisions or EHC plans issued or amended between 3 April 2018 and 31 March 2020) in accordance with the GFA dated 3 April 2018;

"the Secretary of State" means the Secretary of State for Education

2. Grant will only be paid to the authority to support eligible expenditure.

# Eligible expenditure

- 3. Eligible expenditure means payments made by the authority or any person acting on behalf of the authority, for the purposes of the Project and for an appeal against a local authority decision or EHC plan issued or amended between 3 April 2018 and 31 March 2020.
- 4. If the authority incurs any of the following costs, they must be excluded from eligible expenditure:
  - a) contributions in kind
  - b) payments for activities of a political or exclusively religious nature
  - c) depreciation, amortisation or impairment of fixed assets owned by the authority
  - d) input VAT reclaimable by the authority from HM Revenue & Customs
  - e) interest payments or service charge payments for finance leases
  - f) gifts, other than promotional items with a value of no more than £10 in a year to any one person

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- g) entertaining (Entertaining for this purpose means anything that would be a taxable benefit to the person being entertained, according to current UK tax regulations)
- h) statutory fines, criminal fines or penalties
- 5. The authority must not deliberately incur liabilities for eligible expenditure before there is an operational need for it to do so.
- 6. For the purpose of defining the time of payments, a payment is made by the authority when money passes out of its control (or out of the control of any person acting on behalf of the authority). Money will be assumed to have passed out of such control at the moment when legal tender is passed to a supplier (or, if wages, to an employee), when a letter is posted to a supplier or employee containing a cheque, or an electronic instruction is sent to a bank to make a payment to a supplier or employee by direct credit or bank transfer.

# **Payment arrangements**

- 7. Grant will be paid in arrears to the local authority within 30 days from the date the claim has been approved no more often than monthly in accordance with all parts of the GFA.
- 8. If at any time the authority becomes aware that the above profile no longer reflects the pattern of eligible expenditure during the year, the authority must inform the Department as soon as possible. The Secretary of State reserves the right to alter the timing or amount of grants payments accordingly.

# **Statement of Grant Usage**

- 9. The authority must prepare a Statement of Grant Usage for the period of the trial (appeals regarding local authority decisions and EHC plans issued or amended between 3 April 2018 and 31 March 2020) in accordance with annex F of the Grant Offer Letter. The Statement of Grant Usage must provide details of eligible expenditure in the period of the trial. The Statement of Grant Usage must be certified by the authority's chief executive that, to the best of his or her knowledge, the amounts shown on the Statement are all eligible expenditure and that the grant has been used for the purposes intended.
- 10. The Statement of Grant Usage submitted to the Department must be accompanied by a report from the authority's chief executive or chief finance officer setting out whether he or she has received an audit opinion from the authority's chief internal auditor that he can provide reasonable assurance that the Statement of Grant Usage, in all material respects, fairly presents the eligible expenditure in the period of the trial (appeals regarding local authority decisions and EHC plans issued or amended between 3 April 2018 and 31 March 2020) in accordance with the definitions and conditions in the GFA. If requested by DfE a final financial statement of expenditure for the grant must be prepared and submitted as part of the Statement of Grant Usage.

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- 11. The authority must inform the Department promptly of any significant financial control issues raised by its internal auditors.
- 12. If the Statement of Grant Usage identifies any overpayment of grant, the authority must repay this amount within 30 days of being asked by the Department.
- 13. The Secretary of State may at any time require a further external validation to be carried out by an appropriately qualified independent accountant or auditor, on the use of the grant.

# **Financial Management**

- 14. The authority must maintain a sound system of internal financial controls.
- 15. If the authority has any grounds for suspecting financial irregularity in the use of any grant paid under the GFA, it must notify the Department immediately, explain what steps are being taken to investigate the suspicion and keep the Department informed about the progress of the investigation. For these purposes "financial irregularity" includes fraud or other impropriety, mismanagement, and the use of grant for purposes other than those for which it was provided.

# Records to be kept

- 16. The authority must maintain reliable, accessible and up to date accounting records with an adequate audit trail for all expenditure funded by grant monies under the GFA.
- 17. The authority and any person acting on behalf of the authority must allow:
  - a) the Comptroller and Auditor General or appointed representatives; and
  - b) the Secretary of State or appointed representatives;

free access at all reasonable times to all documents (including computerised documents and data) and other information as are connected to the grant payable under the GFA, or to the purposes for which grant was used, subject to the provisions in paragraph 18.

18. The documents, data and information referred to in paragraph 16 are such which the Secretary of State or the Comptroller and Auditor General may reasonably require for the purposes of his financial audit or any department or other public body or for carrying out examinations into the economy, efficiency and effectiveness with which any department or other public body has used its resources. The authority must provide such further explanations as are reasonably required for these purposes.

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19. Paragraphs 16 and 17 do not constitute a requirement for the examination, certification or inspection of the accounts of the authority by the Comptroller and Auditor General under section 6(3) of the National Audit Act 1983. The Comptroller and Auditor General will seek access in a measured manner to minimise any burden on the authority and will avoid duplication of effort by seeking and sharing information with the Audit Commission.

# **Breach of Conditions and Recovery of Grant**

20. If the authority fails to comply with any of these conditions, or if any overpayment is made under this grant or any amount is paid in error, or if any of the events set out in paragraph 21 occurs, the Secretary of State may reduce, suspend or withhold grant payments or require the repayment of the whole or any part of the grant monies paid, as may be determined by the Secretary of State and notified in writing to the authority. Such sum as has been notified will immediately become repayable to the Secretary of State who may set off the sum against any future amount due to the authority from central government.

#### 21. The events referred to in paragraph 20 are:

- a) the authority purports to transfer or assign any rights, interests or obligations arising under the GFA without the prior agreement of the Secretary of State;
- b) any information provided in any application for grant monies payable under the GFA, or in any subsequent supporting correspondence is found to be significantly incorrect or incomplete in the opinion of the Secretary of State;
- c) it appears to the Secretary of State that other circumstances have arisen or events have occurred that are likely to significantly affect the authority's ability to achieve the objectives and activities set out in the GFA;
- d) the authority's chief internal auditor is unable to provide reasonable assurance that the Statement of Grant Usage, in all material respects, fairly presents the eligible expenditure in the period of the trial (appeals regarding local authority decisions or EHC plans issued or amended between 1 April 2018 and 31 March 2020) in accordance with the definitions and conditions in the GFA.

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# Annex D- Details of Grant Allocations

National trial to enable the First-tier Tribunal SEND to make non-binding recommendations on health and social care needs and provision as specified in Education, Health and Care plans – for expenses incurred with appeals against local authority decisions and EHC plans issued or amended between 3 April 2018 and 31 March 2020.

#### The DfE Grant reference number is SEND NT LA expenses 01

Local authorities and health commissioning bodies will be reimbursed for reasonable costs incurred while taking part in the trial. A grant will be awarded for SEND Tribunal trial activity up to the value of £4,000 per case for the period of the trial. It is expected this would include:

#### LA SEND team

- Informing the social care team and health commissioning body of the appeal and request for recommendations and collecting evidence from the social care team and health commissioning body to contribute to the bundle of evidence for the Tribunal
- The additional costs related to attending an extended trial hearing
- Forwarding response to recommendation letters to the DfE evaluation team at SENDletters@IFFResearch.com

#### Social care and health commissioners

- Gathering evidence, creating an outline argument, sending evidence to the LA and any case management activity relating to the trial
- Sending a witness to a trial hearing
- Responding to parents (and the LA) about recommendations from the Tribunal

#### **Travel and subsistence**

Travelling and subsistence expenses will be reimbursed at cost strictly subject to the additional conditions below:

- The local authority shall have firm regard to the need for economy in all travel and subsistence expenditure.
- Where any travel and subsistence expenditure claimed, in the DfE's reasonable opinion, is excessive - having due regard to the purpose for

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which it was incurred - DfE shall only be liable to reimburse so much (if any) of the expenditure as, in DfE's reasonable opinion, would reasonably have been required for that purpose.

- Claims for travelling and subsistence must be directly and exclusively related to the performance of this Grant Funding Agreement and be certified as such.
- No travel and subsistence expenditure for visits abroad, travel by aircraft or travel by private cars is allowed; travel by taxi is allowed strictly subject to all the other bullet points in this section and the overall conditions in this GFA.

# What is not applicable for claims:

Local areas will not be permitted to claim expenses for work in the list below – and this list is not exhaustive. See also Clause 4 of the DfE's Grant Terms and Conditions set out in annex C for further exclusions.

- The ordinary costs of a SEND appeal funding will only be provided to cover the additional costs of trial appeal cases
- Notifying parents and young people about the single route of redress national trial in decision letters
- Including information about the single route of redress in local offers
- Updating local systems, policies and procedures to comply
- Ensuring IASS provide parents and young people with information, advice and support about their new rights
- Issuing information about the evaluation of the trial
- Training staff and disseminating key information and guidance to those involved in the process
- Identifying lead contacts in SEND, social care and health
- Ensuring SEND, local CCGs and children and adult social care leaders are aware of the trial and the implications
- Amendments to local processes to ensure that there is a clear communication system and understanding of any previous learning around complaints/tribunals
- Costs of assessments

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- Costs of provision, including provision related to recommendations/agreements through case management
- The gathering of parent/young person's evidence but where health bodies or social care are reviewing this evidence then that can be claimed as part of their preparation time
- Cost of providing mediation
- Seeking legal advice on SEND law
- Instructing Counsel and legal fees

# Annex E – List of objectives for which the grant is being paid

National trial to extend the powers of the First-tier Tribunal SEND to make non-binding recommendations on health and social care needs and provision as specified in Education, Health and Care plans – for expenses incurred with appeals against local authority decisions and EHC plans issued or amended between 3 April 2018 to 31 March 2020.

# The DfE Grant reference number is SEND NT LA expenses 01

# 1 Background

- 1.1 A two year national trial will extend the powers of the First-tier Tribunal SEND to make non-binding recommendations on health and social care needs and provision as specified in Education, Health and Care (EHC) plans. Parents and young people will be able to request the Tribunal make recommendations on the health and social care aspects of an EHC plan as part of a SEN appeal. Before the trial they were able to appeal about the educational aspects of plans.
- 1.2 The policy aims of the national trial are to:
  - create a more holistic, person-centred view of the child or young person's needs at the Tribunal
  - bring appeal rights in line with the wider remit of EHC plans
  - encourage joint working between education, health and social care commissioners
  - bring about positive benefits to children, young people and parents
- 1.3 An evaluation will run alongside the trial and the evaluators (IFF Research and Belmana) will gather information from LAs, health commissioning bodies, parents and young people in England about their experiences of the trial. They will analyse the information from expense forms to inform an understanding of the costs of the trial, in addition to using local area case studies, parent and young people interviews and an annual commissioner survey.
- 1.4 For further information about the national trial and what support is available, including template wording, please see the <u>national trial guidance</u> and <u>toolkit</u>.
- 1.5 The <u>Special Educational Needs and Disability (First-tier Tribunal Recommendations Power) Regulations 2017</u> ('the Regulations') set out

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the new powers conferred on the Tribunal and the new duties on local authorities and health commissioning bodies and apply to appeals against certain decisions by a local authority made on or after 3<sup>rd</sup> April 2018 or appeals relating to EHC plans issued or amended after 3<sup>rd</sup> April 2018.

- 1.6 The Regulations explain that the Tribunal can make non-binding recommendations on:
  - the health and social care needs specified in EHC plans
  - the health and social care provision specified in EHC plans related to the learning difficulties or disabilities that result in the child or young person having SEN
  - the social care provision specified in EHC plans that is made under Section 2 of the Chronically Sick and Disabled Persons Act 1970
- 1.7 The Regulations enable the Tribunal to make a recommendation about health and social care needs or provision as part of an appeal by a parent or young person relating to:
  - a decision by the LA not to issue an EHC plan
  - a decision by the LA not to carry out a re-assessment for a child/young person who has an EHC plan
  - a decision by the LA not to amend an EHC plan following a review or re-assessment
  - a decision by the LA to cease to maintain an EHC plan
  - the description of the child/young person's special educational needs in an EHC plan
  - the special educational provision specified in an EHC plan
  - the school or other educational institution named in an EHC plan
- 1.8 The Regulations give the following powers to the Tribunal:
  - For an appeal against a refusal to issue an EHC plan, if the Tribunal orders a plan to be made, it has the power to recommend that health and social care needs and provision be specified when the plan is drawn up.
  - Where health and social care needs and/or provision are not included in the plan, the Tribunal has the power to recommend they be specified in the plan.
  - Where health and social care needs and/or provision are included in the plan, the Tribunal has the power to recommend that the need or provision be amended.
- 1.9 The following outlines the requirements LA SEND teams must follow to support the trial:

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- LAs must notify parents and young people of the Tribunal's power to make non-binding recommendations on the health and social care needs or provision specified in EHC plans (see Regulation 8 of the Regulations), when they:
  - notify a parent/young person of a decision not to issue an EHC plan
  - o send a final version of an EHC plan to a parent/young person
  - send an amended version of an EHC plan to a parent/young person
  - notify a parent/young person of a decision not to carry out a re-assessment where an EHC plan already exists
  - notify a parent/young person of a decision not to amend an EHC plan following a review or re-assessment
  - notify a parent/young person of a decision to cease to maintain an EHC plan
- LAs must include information on the extended right to appeal in their Local Offers (see <u>Schedule 2 of the Special Educational Needs</u> and <u>Disability Regulations 2014</u>).
- If requested by the Tribunal, LAs must provide evidence from the health and social care bodies in response to the issues raised, within the timeframe specified, and as necessary can seek permission to bring additional witnesses to the hearing (see the Tribunal Procedure Rules).
- LAs must send the health and social care commissioners' responses to the recommendation to the evaluator at <u>SENDletters@IFFResearch.com</u> within one week of receiving it (see Regulations 6 and 7 of the Regulations).
- 1.10 The following outlines the requirements health and LA social care commissioners must follow to support the trial:
  - Health and LA social care commissioners must respond to any request for information and evidence from the Tribunal within the timeframe specified (see the Tribunal Procedure Rules).
  - If required, health and LA social care commissioners must send a
    witness from the health and/or social care bodies to attend the
    hearing to give oral evidence (see the Tribunal Procedure Rules).
  - Following the health and social care recommendations, the
    responsible health commissioning body and LA social care team
    must respond in writing, within 5 weeks from the date of the
    recommendation (or the date specified by the Tribunal, if different),
    to the parent or young person, and for health commissioners to the
    LA, to state what steps they have decided to take or to give reasons
    for any decision not to follow the recommendation(s).

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#### 2 Aim

2.1 The local authority and health commissioning body shall use all reasonable endeavours to carry out their duties under the <a href="Special Educational Needs and Disability (First-tier Tribunal Recommendations Power)">Power)</a> Regulations 2017 (as set out above).

# 3 Objectives

- 3.1 The local authority (SEND team) shall use all reasonable endeavours to achieve the following objectives for a trial appeal:
  - i. Inform the social care team and health commissioning body of the appeal and request for recommendations
  - ii. Collect evidence from the social care team and health commissioning body to contribute to the bundle of evidence for the Tribunal
  - iii. Attend an extended trial hearing as necessary
  - iv. Forward response to recommendation letters to the DfE evaluation team at SENDletters@IFFResearch.com.
  - v. Make payment to social care teams and health commissioning bodies for costs incurred in relation to:
    - Gathering evidence, creating an outline argument, sending evidence to the LA and any case management activity relating to the trial
    - b. Sending a witness to a trial hearing
    - c. Responding to parents (and the LA) about recommendations from the Tribunal

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# Annex F - Statement of Grant Usage

National trial to enable the First-tier Tribunal SEND to make non-binding recommendations on health and social care needs and provision as specified in Education, Health and Care plans – for expenses incurred with appeals against local authority decisions and EHC plans issued or amended between 3 April 2018 and 31 March 2020.

The DfE Grant reference number is SEND NT LA expenses 01

\* [The letter is to be reproduced on headed paper of the local authority]

# Notes for completion:

- 1. The Grant Recipient shall prepare a Certification of Grant Usage for the Grant Period (trial appeals against local authority decisions and EHC plans issued or amended between 3 April 2018 and 31 March 2020).
- 2. This comprises three parts:
  - a) Certificate of Grant Usage
  - b) Report confirming delivery; and
  - c) If requested by DfE a final financial statement of expenditure
- 3. The Grant Recipient shall submit the forms to the Department for Education, SAPAU, 2<sup>nd</sup> Floor, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, no later than **twenty eight days from the end of the Grant Period**.

#### a) Certificate of Grant Usage

Name of organisation

**Insert Name of local authority** 

Approved Project title

National trial to extend the powers of the First-tier Tribunal SEND to make non-binding recommendations on health and social care needs and provision as specified in Education, Health and Care plans

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- The total Grant amount of £insert figure was exclusively used for the purposes set out in the agreement between the Grant Recipient and the Department, dated 3 April 2018.
- A report on the activities funded by the Grant Funding will be submitted to the Department, confirming that the grant objectives have been delivered to a satisfactory standard and the expected benefits that have accrued or will accrue. The report will be provided within 28 days after the completion of the funding of the single route of redress national trial.
- If requested by DfE, a final financial statement detailing the use of the Grant Funding will be provided in section c – Statement of Expenditure. This is a summary statement of all receipts and expenditures connected with the above Project. The organisation's financial systems that recorded the income and expenditure of this Grant have provided sufficient internal control for the purposes of this certification.

Signature				
Name			Date	
Position				
Organisatio address	n			
				Postcode
Initialled by Organisation's Chief Financial Officer/ Auditor				

# b) Report confirming Delivery

(setting out how the funding has been applied detailing all relevant objectives.)

# c) Statement of Expenditure

		1
Name of Local Authority	Insert Name of local auti	nority
Name of Approved Project	National trial to extend the powers of the First-tier Tribunal SEND to make non-binding recommendations on health and social care needs and provision as specified in Education, Health and Care plans	
DfE Grant reference number	SEND NT LA expenses 01	
Expenditure Type		(£)
TOTAL EXPENDITURE		

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