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Evaluation of the national trial extension of Special Educational Needs and Disability (SEND) Tribunal powers

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1. Executive summary

This report presents findings from the evaluation of the trial extension of powers of the First-tier Special Educational Needs and Disability (SEND) Tribunal. The extended powers allow the Tribunal to make non-binding recommendations about health and social care elements of appeals alongside education aspects. This evaluation was commissioned by the Department for Education (DfE) and conducted by IFF Research, an independent research agency, working in partnership with Belmana, an economic consultancy.

1.1. Introduction

Education, Health and Care (EHC) plans detail the education, health and social care provision that is to be made for a child or young person aged up to 25 who requires special educational provision that is not normally available. EHC plans are issued by the local authority (LA) after an EHC needs assessment has determined that an EHC plan is necessary for the child or young person and include advice and information from relevant agencies. EHC plans were introduced by the Children and Families Act 2014, taking the place of statements of Special Educational Needs (SEN).

Where a child's parents or the young person themselves do not agree with a local authority decision regarding special educational needs, they have the right to appeal to the SEND Tribunal in specified circumstances. The Tribunal's remit was originally limited to disagreements over special educational matters such as the description of special educational needs, the provision specified, placement decisions, and the need for an EHC plan to be issued or maintained. In 2015, a pilot conducted in 17 LA areas explored the effect of expanding this to consider the health and social care aspects of EHC plans, and to make non-binding¹ recommendations on these. Following a review of SEND disagreement resolution arrangements that concluded the pilot was too small-scale to draw definitive conclusions about the costs and benefits of the extended remit, the government announced the pilot would be expanded to a two-year national trial.

The overarching aims of this evaluation in relation to this two-year national trial are to: assess whether the extended powers were implemented as intended; assess user-satisfaction; provide indicative evidence of the impacts on children and young people with SEND and on commissioners and services; assess any wider implications for the health and social care sectors and the broader SEND system; and review whether there are lessons for improving the SEND system to prevent and resolve disagreements.

¹ In practice, 'non-binding' means that LAs and CCGs are not required by legislation to implement the recommendations made, unlike the amendments ordered by the Tribunal in respect of educational elements of the EHC plan.

The evaluation involved preliminary in-depth interviews with national stakeholders; baseline and follow-up local area case study visits; a survey (conducted by telephone and online) of 122 appellants who submitted an appeal to the SEND Tribunal under the national trial; a follow-up telephone survey with 57 of those appellants 6 months later; analysis of LA and Clinical Commissioning Group (CCG) responses to recommendation letters; an LA and CCG cost survey; in-depth interviews with LAs and CCGs about provision costs related to the trial; and cost modelling in order to assess the value for money of the extended powers. The Tribunal's judicial office holders have not been engaged in the evaluation process; and the evaluation does not seek to comment on the Tribunal's decisions.

1.2. What was the impact of the trial on children and young people's health and social care outcomes² and needs?

There is evidence that appellants perceive the Tribunal, under the trial extended powers, as more able to resolve their issues than other routes of redress for health and social care issues.³ Around half (56%) of appellants with cases where an outcome had been reached⁴ felt that the issues they applied to the Tribunal about had been, or would be, resolved. This was made up of 45% who felt that the issues had already been resolved by the time of interview⁵, and 12% who felt that the issues would be resolved in the future. A fifth (21%) felt that the issues had not been resolved, and a similar proportion (23%) felt it was too early to say. These views were maintained 6 months later, with half (49%) of appellants who took part in the follow-up survey feeling that issues had been or would be resolved.

These appellants were also asked about whether the descriptions of health and social care needs and provision in their EHC plan had improved. Eight in ten (79%) appellants felt that at least one of these descriptions had improved as a result of the appeal. It was most common for appellants to feel the description of health needs had improved: 68% felt this way. Between five in ten and six in ten perceived that improvements had been made to the descriptions of health provision (61%), of social care needs (58%), or of social care provision (54%). Again, views were broadly consistent 6 months later, remaining at between half and six in ten (50-63%).

² The term 'outcomes' includes the provision set out in the EHC plan, including any provision that has arisen from recommendations for assessments; perceptions of whether this has led to the child or young person getting the help or support they need; and perceptions of whether this provision will help the child or young person achieve what they want to in life.

³ The term 'issues' in this context means things that appellants were able to appeal (rather than issues resulting from an individual's health or social care needs).

⁴ Either those where the LA conceded the health and social care aspects before going to a hearing (education aspects may or may not have also been conceded at the same time) or those whose health and social care issues had progressed to a hearing.

⁵ Interviews took place 6 months after the conclusion of the appeal.

In terms of improved outcomes in practice, overall, more appellants felt that their appeal had led to a positive impact than not. Almost seven in ten appellants (68%) agreed the health or social care needs or provision in the EHC plan was more appropriate as a result of their application to amend it, and six in ten (61%) agreed the appeal had led to them or their child getting the help and support they needed.

Appellants were also positive about their experience of the Tribunal compared to other routes of redress for health and social care issues. Six in ten (62%) of appellants that had used other routes of redress alongside the Tribunal felt that these routes were worse than the SEND Tribunal for *resolving their issues*, while 57% felt that these routes were 'worse' in terms of *securing appropriate health and social care provision*.

Analysis of LA and CCG response to recommendation letters showed that, in the vast majority of instances (89%), the LA or CCG had agreed to implement the Tribunal's recommendations in relation to health and/or social care.

Where LAs or CCGs declined to implement all or some of the recommendations, they most commonly stated that this was because they had felt circumstances had changed meaning the recommendations were no longer applicable, because they felt the provision was unnecessary or unfair in the context of what was available to other families with similar needs, or because they felt the recommendation fell outside of their remit.

Case study visits with LAs highlighted some concern from LA SEND teams that the resource-intensive process of appealing to the Tribunal may be undertaken without producing an outcome that must be upheld by health and social care services, which could potentially lead to feelings of resentment between different services.

1.3. What was the impact of the trial on the process for families?

Data provided by Her Majesty's Courts & Tribunals Service (HMCTS) indicates that eligible families have exercised extensively their right to appeal under the trial extended powers of the Tribunal, relative to the number of appeals expected at the trial outset. Of 2,561 appeals registered under the trial which had reached a final outcome (meaning the hearing had taken place, the LA had conceded, or the appellant had withdrawn the appeal) before January 2021. 1,381 related to both health and social care, 653 to health (but not social care) and 527 related to social care (but not health). This number of appeals represents greater usage of the single route of redress than had been

anticipated by DfE based on the experience of the earlier pilot in 17 LAs: six times the anticipated number of appeals had been registered.⁶

It was relatively common for appellants to feel they did not have enough information about how to appeal to the Tribunal on health and social care issues. Only 32% of appellants agreed that they had enough information about how to appeal on these issues, while 53% of appellants disagreed that they had enough information.

Appellants were more likely to agree than disagree that health and social care issues were carefully considered and dealt with fairly by the Tribunal, with between 48% and 64% agreeing, and between 18% and 31% disagreeing with a series of statements about this.

Appealing to the Tribunal under the national trial also compared favourably to using other routes of redress in order to try to resolve complaints. Six in ten surveyed appellants, who had also used other routes of redress, described them as being worse than the Tribunal in terms of their health and/or social care issues being carefully considered (61%) and dealt with fairly (60%).

Despite relatively positive perceptions of outcomes, appellant satisfaction with the overall process of appealing health and social care issues under the national trial was mixed, with appellants as likely to be dissatisfied (35%) as satisfied (40%). While there was some shift in opinion over time, appellants continued to be mixed in their views 6 months later, with similar proportions feeling more positive (35%) and less positive (28%) about the overall process than they had at the time. Dissatisfaction may be linked to finding the process challenging: 68% of appellants reported they found the process of appealing health and social care issues difficult.

Among appellants who utilised other routes of redress for health or social care issues, alongside appealing to the Tribunal under the national trial, there was a mixed picture in terms of whether they perceived the other routes to be better or worse in terms of preparation effort or time to attend meetings or hearings. 39% felt that other routes were better, while 32% felt that they were worse. However, appealing health or social care issues through the Tribunal did appear to take more hours on average than other routes: a third (32%) of those who reported using other routes said they spent 50 hours or more on preparation for them, compared to 80% that spent 50 hours preparing for their Tribunal appeal.

⁶ The trial period has been extended to 33 months from the original 24, but even without this extension, there had been a higher than expected number of appeals.

1.4. What was the impact of the trial on LAs and CCGs?

LAs and CCGs were slightly more positive than negative about the extent to which commissioning bodies in their area work together on SEND and felt that the trial extension of Tribunal powers had a positive or neutral effect on this. Those that felt the trial had a positive effect on joint working cited communication as a key area of observed improvements. Where respondents felt that agencies were not working well together, the key issue cited by LA SEND teams was a lack of engagement by CCGs and social care services.

While most LAs and CCGs felt that the trial itself had not greatly impacted on effectiveness of how commissioning bodies worked together (mainly because they felt they already worked well together or observed improvements were due to wider changes to collaborative working), some felt that it had a positive impact. None reported that effectiveness had decreased as a result of the trial.

The trial has had a positive, but limited, impact in further incentivising joint working between education, social care, and health services, through the need to respond jointly to single route of redress appeals. For social care services, the limitations cited were pressures on resources, while for health services the reasons cited included variety of services and therefore, staff involved made it difficult to share learning.

Multiple LAs and CCGs have set up processes and joint working committees to bring together representatives from the different service areas to deal with management of SEND cases. Evidence from the case study visits found that, in some LAs, there had been a determined effort across education, social care and health services to try to do everything possible to prevent issues from arising in the first instance and resolve cases before they get to appeal and/or a Tribunal hearing. This was done by an increased focus on improving EHC plans as they were developed, and early engagement with parents and young people after an EHC plan had been issued.

LAs reported that the use of other routes of redress has increased (although not as result of the trial) and that they are likely to be used alongside rather than as an alternative to the Tribunal process. LAs thought that reasons for this use of multiple channels included seeking different types of outcomes from different routes, and timeframes for lodging complaints or appeals necessitating the start of a new process before an earlier one had reached its conclusion.

1.5. What additional costs were associated with the trial?

The average total cost to LAs for preparing for the implementation of the national trial was around £11,138 per LA, ranging from £6,965 to £60,120.

The cost to LAs and CCGs for preparing for and attending a hearing for a trial case was on average £13,014. This was split evenly between staff time and additional external costs such as legal representation, travel costs, and costs for expert witnesses. The average cost for the same elements for a non-trial case was approximately half as much, at £6,573. While the cost of going through other routes of redress for LAs and CCGs was, on average, slightly lower than that of a Tribunal appeal under the national trial, at £9,168. That said, the average cost of taking health and social care issues to the Tribunal (£13,014) is slightly lower than the combined cost of taking education issues to the Tribunal and then dealing with health and social care issues separately via other routes (combined average of £15,741), meaning the extended powers have the potential to be cost neutral or to achieve modest savings, if appellants were not also appealing health and social care issues via other routes in addition to the Tribunal.

Three-quarters (74%) of appellants reported that they had incurred extra costs associated with their appeal. The average cost for an entire appeal process (including education elements as well as health and social care) on the appellant side was £3,880 (including estimated costs for external support, such as legal advice or independent expert reports, and personal costs including income lost for time taken off work, childcare costs, and travel costs), the majority of which were accrued in preparation for hearings.

1.6. What was the evidence that the extended powers represented good value for money considering any additional cost beyond that of the present system and any additional benefits?

This evaluation assessed the value for money of the trial extended powers by exploring the outcomes of a national trial appeal case in relation to a “no policy” counterfactual. This approach assumed that any increased provision is positive for the child or young person, as public resources are allocated to meet their needs, and takes the assumption that the process leads to the right type of provision for that child or young person. The value for money assessment therefore, centres on whether the overall resource used in the route to make this decision is appropriate, and whether an alternative redress route could deliver the same outcomes at a lower cost to appellants, LAs/CCGs and central government.

During the trial, a high proportion of appeals including health or social care elements have been found in favour of the appellants by the Tribunal. Therefore, that means the trial is leading to an outcome, changing the provision to meet a child or young person’s needs. Had only a small proportion of cases been found in favour of appellants, it would be difficult to justify any costs borne by appellants, LAs, CCGs and Tribunals in the trial, as the decision-making process would have led to an unaltered level of provision in many cases, and the costs would have been unjustified.

Before the introduction of the extended Tribunal powers, families seeking redress for health and/or social care issues as well as those related to special educational needs could use a range of pathways alongside making an (education only) appeal to the SEND Tribunal. The evaluation found that outcomes of the trial and 'education only' appeal routes differ: the cost of implementing decisions arising from trial cases is higher.

The total costs to appellants, LAs, CCGs and Tribunals of the process leading to these decisions under the trial is £19,573, averaging across cases in terms of the needs that are appealed and whether a hearing is held. The data has then been analysed to identify the 'education only' appeal costs for the appellant: when adjusted to remove costs associated with health or social care elements of the appeal, the average costs of the education elements alone are estimated to total £12,461.

In terms of assessing value for money, while the costs of the national trial appeals were higher than those of education only appeals, this cost increase is consistent with the increase in the scale of the outcomes being determined.

To consider this another way, following a non-trial (that is, education only) appeal in cases where the child has social care or health needs, further redress is needed to attain the same outcome – i.e., once educational issues are appealed successfully in a non-trial appeal, any health or social care issues would remain. Evidence indicates that the process costs of this further redress are high. The evidence only measures costs for a part of the further redress, but these are high enough to make it unlikely that the non-trial appeal could achieve the same outcome as the trial route for a lower cost than the trial route.

1.7. Was the trial implemented as intended and are there any wider lessons for improving the system?

Most LAs worked hard to increase awareness, both internally and externally, of what the national trial would entail, but the degree to which they felt prepared for the changes depended on contextual factors such as the resource available or the number of non-trial appeals they were involved in.

LA case study visits showed that the degree to which education, health and social care services felt prepared for the trial varied. There seemed to be a greater level of variation in the level of preparedness felt by health and social care services, and this depended at least partly on the level of integration between these services prior to the national trial. Those who heard about the trial second-hand tended to understand its overall aims but not how their day-to-day work would change in practice.

There were a handful of examples where staff reported that processes were not always being followed. These examples included LAs failing to notify parents and young people

of the Tribunal's extended powers when sending decisions relating to EHC plans or needs assessments, or the completed or amended plans.

Individuals from education services and parent representatives expressed concerns that parents and young people were aware of the Tribunal trial powers but not of what the process of appealing involves and the time and effort that goes into submitting an appeal. They felt that LAs could do more to ensure that potential appellants were fully informed about what the process would involve from a practical point of view (such as the steps that would need to be taken and likely timeframes).

Regarding the requirement to provide evidence within the specified timeframe, the case study visits revealed that LA SEND teams often found it difficult to obtain this from health and/or social care services, particularly the latter. The child or young person not already being known to the service appeared to be the main barrier to some social care services engaging with requests.

There was no evidence from the case study visits to suggest that the LA and parents or young people experienced any major issues receiving decision letters from the Tribunal. However, health services reported difficulties obtaining the outcomes of several cases that had health elements, despite requesting them from the LA.

Of the sample of LA and CCG response to recommendation letters submitted to the evaluation, the majority included the required details of how they would follow the recommendations they had agreed to implement (64%), and reasons why they had declined to implement recommendations (96%). However, half (52%) of appellants whose cases resulted in recommendations from the Tribunal did not recall receiving a letter from the LA or CCG explaining their response to the recommendations.

One of the key lessons learnt from the trial, that LAs cited, related to the importance of holding meetings between all parties as early in the appeal process as possible and establishing a clear pathway for those involved in terms of next steps and how the appeal would progress. This was believed to avoid miscommunications between education, health, and social care and to contribute to resolving issues with parents and young people more quickly.

1.8. Conclusions

In summary, the main conclusions that can be drawn from the evaluation are:

- Families are exercising their rights to bring health and social care issues to the Tribunal under the trial powers in greater numbers than expected, but there may be further to go in raising awareness of what the process of appealing involves.

- There is evidence that appellants perceive the Tribunal, under the trial extended powers, to be more able to resolve their issues than other routes of redress for health and social care issues.
- Appellants also compare the Tribunal, under the trial extended powers, favourably with other routes of redress in terms of giving their health and social care issues a fair hearing.
- There is evidence that LAs and CCGs are for the most part agreeing to implement Tribunal health and/or social care recommendations.
- Set against these relatively positive perceptions of outcomes, appellants report that taking their health and social care issues to the Tribunal is more difficult, time-consuming⁷ and expensive than other routes of redress for health and social care issues.
- Taking health and social care issues to the Tribunal adds costs for LAs and CCGs, but costs less on average than education, health and social care issues being taken to Tribunal and other routes of redress separately.
- Taking health and social care issues to the Tribunal also adds to overall levels of provision and consequently provision costs. It could be argued that the health and/or social care needs of children and young people with SEND are being better met as a result of Tribunal decisions. The evidence available for the costs of pursuing other routes of redress indicates it is unlikely that a non-trial appeal could achieve the same outcome as the trial route for a lower cost than the trial route.
- There may be opportunities to improve the extent to which resolution is reached before the Tribunal hearing.
- LAs and CCGs are more positive than negative about the extent to which local education, health and social care services work together on SEND, although they tend to feel they were already doing so as a result of the Children and Families Act 2014 rather than due to the trial extension of Tribunal powers.
- There is a mixed picture of how well education, health and social care services felt prepared for the trial extension of powers.
- There appear to be difficulties in obtaining sufficiently complete evidence within the specified timeframes for health and social care issues.

⁷ That said, findings suggest that the time spent specifically on the health and/or social care elements was significantly lower than the total and therefore closer to the average time taken for the other routes.

2. Introduction

This report presents findings from the evaluation of the national trial extension of powers to the First-tier Special Educational Needs and Disability (SEND) Tribunal. The extended powers allow the Tribunal to make non-binding recommendations about health and social care elements of appeals alongside binding education aspects. The research was commissioned by the Department for Education and conducted by IFF Research, an independent research agency, working in partnership with Belmana, an economic consultancy.

2.1. Background and context

Education, Health and Care (EHC) plans identify the education, health and social care needs of children and young people aged up to 25 who require special educational provision that is not normally available and set out the provision required to meet these needs. EHC plans are issued by local authorities (LAs) and were introduced following the Children and Families Act 2014, taking the place of statements of SEN. The Act made important changes to the system of support for children and young people with SEND and implemented a new approach which seeks to join up support across education, health and social care.

Where a child's parents or the young person themselves do not agree with a local authority decision regarding special educational needs, they can appeal to the SEND Tribunal in specified circumstances. The Tribunal currently hears appeals about EHC needs assessments and plans on the following grounds:

- LA refusal to carry out an EHC needs assessment or reassessment;
- refusal to issue, maintain or amend an EHC plan;
- the description of a child/young person's special educational needs in an EHC plan;
- the special educational provision specified in a plan (including the school/institution specified, or the lack of named school/institution).

Before the trial, the Tribunal's remit was limited to disagreements relating to special educational needs and provision, while health and social care concerns could only be raised using other routes of redress such as:

- Disagreement Resolution Services;
- Mediation services;

- Local authority complaints procedures;
- NHS Complaints;
- Ofsted and the Care Quality Commission;
- Local Government and Social Care Ombudsman (LGSCO);
- Parliamentary and Health Services Ombudsman (PHSO);
- the Secretary of State;
- Judicial review.

In 2015, a pilot conducted in 17 LA areas explored the effect of expanding the Tribunal's powers to consider the health and social care aspects of EHC plans, and to make non-binding⁸ recommendations on these⁹. These extended powers encompassed specifying health and/or social care needs and/or provision to be included in a plan, or amending these in existing plans. The policy aims of the extended powers were to create a more holistic and person-centred view of the child or young person's needs; bring the appeal remit in line with that of EHC plans; encourage joint working between education, health and social care services; and bring positive benefits to children, young people and parents.

A review of the system of SEND disagreement resolution arrangements in England¹⁰ found that the changes the pilot brought were broadly welcomed but concluded that the pilot was too small-scale to draw definitive conclusions about the costs and benefits of the expanded remit.

As part of its response to the review, the government announced that the pilot would be extended to a two-year national trial, covering all LAs in England. Originally, the trial was set to take place from 3rd April 2018 to the start of April 2020. It has since been extended to continue until August 2021. Under the national trial, the Tribunal is able to make a non-binding 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;

⁸ In practice, 'non-binding' means that LAs and CCGs are not required by legislation to implement the recommendations made, unlike the amendments ordered by the Tribunal in respect of educational elements of the EHC plan.

⁹ <https://www.gov.uk/government/publications/send-disagreement-resolution-arrangements-in-england-review>

¹⁰ [Ibid](#)

- a decision by the LA not to amend an EHC plan following a review or reassessment;
- 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.

For appeals against a refusal to issue an EHC plan in which 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 description of needs or provision specified should be amended.

2.2. Aims and objectives of the evaluation

The overarching aims of the evaluation are to assess whether the extended powers were implemented as intended; assess user satisfaction with the extended powers; provide indicative evidence on the impact on children and young people with SEND, their parents/carers and on commissioners and services; assess any wider implications for the health and social care sectors and the broader SEND system; and review whether there are any lessons for improving the SEND system to prevent and resolve disagreements.

To meet these aims, the following research questions were set out for the evaluation to answer:

- 1. What was the impact of the trial on children and young people's health and social care outcomes¹¹ and needs?**
 - 1.1. To what extent did appellants feel their issues¹² were resolved as a result of appealing to the Tribunal?
 - 1.2. To what extent did appellants feel provision for the child/young person has been improved as a result of appealing to the Tribunal?
 - 1.3. To what extent were appellants satisfied with the Tribunal's recommendations in relation to health and social care?
 - 1.4. To what extent were the Tribunal's recommendations implemented?

¹¹ The term 'outcomes' includes the provision set out in the EHC plan, including any provision that has arisen from recommendations for assessments; perceptions of whether this has led to the child or young person getting the help or support they need; and perceptions of whether this provision will help the child or young person achieve what they want to in life.

¹² The term 'issues' in this context means things that appellants were able to appeal (rather than issues resulting from an individual's health or social care needs).

1.5. How did these impacts compare to those offered by other routes of redress?

2. What was the impact of the trial on the process of appealing for families and commissioners?

- 2.1. To what extent did eligible families make use of appealing under the extended powers?
- 2.2. To what extent did appellants feel they were dealt with fairly and justly?
- 2.3. To what extent were appellants satisfied with the overall process?
- 2.4. How much time was involved for appellants?
- 2.5. To what extent did appellants, local authorities and health commissioners use legal representation?
- 2.6. Where possible, how did these impacts compare to other routes of redress?

3. What was the impact of the trial on services and commissioners in terms of the broader SEND system?

- 3.1. What impact did the trial have on how education, health and social care providers and commissioners work together?
- 3.2. What impact did the trial have on health and social care commissioners' understanding and fulfilling of their duties in relation to the Children and Families Act 2014?

4. What additional costs were associated with the trial?

- 4.1. What was the additional cost to local authorities, health commissioners and the Tribunal for organising and running the trial?
- 4.2. What was the additional cost to local authorities, health commissioners and appellants for preparing for and attending hearings?
- 4.3. What was the additional cost to the local education, health and social care services for service provision that has arisen from implementing recommendations that would not otherwise have arisen?

5. What was the evidence that the extended powers represented good value for money considering any additional cost beyond that of the present system and any additional benefits?

6. Was the trial implemented as intended and are there any wider lessons for improving the system?

- 6.1. To what extent did local authorities, health commissioners and the Tribunal carry out their duties?
- 6.2. What lessons can be drawn from the experience of implementing and using the trial Tribunal powers?
- 6.3. Were there any good practice examples that could be captured and shared to improve the wider system?

2.3. About this report

To ensure clarity of findings in relation to the overall aims of the evaluation, this report has been structured in line with these research questions.

This report is organised into 8 chapters of findings:

- **Chapter 4** looks at the impacts of the trial on children and young people's health and social care outcomes and needs;
- **Chapter 5** looks at the impacts of the trial on the process for families;
- **Chapter 6** looks at the impacts of the trial on LAs and CCGs;
- **Chapter 7** looks at the additional costs associated with the trial;
- **Chapter 8** looks at evidence of value for money;
- **Chapter 9** looks at whether the trial was implemented as intended;
- **Chapter 10** looks at wider lessons for improving the system;
- **Chapter 11** draws conclusions from the evaluation.

3. Methodology

The evaluation involved the following components:

- Preliminary in-depth interviews with national stakeholders;
- Baseline and follow-up case study visits;
- A baseline survey of trial appellants;
- A follow-up survey with appellants 6 months after the first survey;
- Analysis of response to recommendation letters;
- An LA and CCG cost survey;
- In-depth interviews with LAs and CCGs to further understand costs of provision arising from the trial; and
- Cost estimates.

3.1. Preliminary in-depth interviews with national stakeholders

At the inception of the evaluation, in early 2018, nine in-depth interviews were conducted with national stakeholders including representatives of the SEND Tribunal, Department of Health and Social Care, NHS England, National Network of Parent Carer Forums (NNPCF), Special Educational Consortium (SEC), Independent Provider of Special Education Advice (IPSEA), Local Government Association (LGA) and Association of Directors of Children's Services (ADCS).

These interviews were carried out by telephone and involved informal conversations around the extended powers. In particular, they covered the following areas:

- Experiences of, and lessons learned from, the 2015 trial of the extended powers in 17 local areas;
- Understanding the anticipated impacts of the upcoming two-year national trial;
- Views on the extent to which LAs and CCGs were perceived to be prepared for the upcoming trial;
- Views on the DfE and local area communication strategy and support package to help LAs, CCGs and families understand and work with the extended powers.

The findings from these interviews were used to inform the development of subsequent topic guides and questionnaires, and interpretation of results.

3.2. Baseline and follow-up local area case study visits

Case study visits with twelve local areas were conducted to gather evidence on local areas' experiences of the national trial. Initial visits with all twelve case study areas took place between April and September 2018 and explored readiness for the trial, followed by ten further visits which took place in the latter half of 2019 to examine experience of the trial up to that point. The local areas were purposively chosen to ensure a range of characteristics, taking into account the number of pre-trial appeals, geographical location, and urban-rural split.

In addition to the baseline visits, in 2018 a further 36 LAs participated in a survey covering similar topics in brief. These LAs provided a back-up in case LAs that had participated in the original twelve visits were not able to participate in the second visits. This means that findings from this survey were only used in the evaluation for LAs where a case study visit subsequently took place.

A researcher visited each local area in person and interviewed between five and twenty individuals (averaging around ten per case study) from the LA, CCG, SEND Information, Advice and Support Service (SENDIASS) and Parent Carer Forum (PCF). Examples of specific job roles and titles of those interviewed are outlined in Table 1.

Table 1: Examples of job roles and titles of individuals interviewed during LA and CCG case study visits

LA SEND team/Education services	(Senior) SEN Officers, SEN Casework Officers SEN Manager, Senior Commissioning Manager for Children's Services, Team Manager for SEN Assessment and Review Team, Children's Therapy Services Lead, EHC plan Assessment and Review, Strategic Lead for SEND, SEND Service Manager, Commissioning Officer for SEND, Tribunal Manager, Tribunal Officer, SEN Operational Lead, Inclusion Locality Manager
Social care services	Social workers, Service Manager, Director of Social Care, Educational Psychologist, Resources Team Manager
CCG/Health services	Head of Commissioning and Strategy for CCG, (Assistant) Designated Clinical Officer (DCO) for SEN, Professional Practice Lead, Head of Integrated Commissioning, Senior Practitioner, Clinical Lead for Children's Occupational Therapy, Director for Children and Maternity Services
SENDIASS and parent groups	Manager for SENDIASS, Advice and Support Officer, Parent Carer Forum Representatives, Chair of Parent Carer Group
Legal	Solicitor, Senior Governance Lawyer

The interviews were semi-structured, meaning that while there was a discussion guide listing the questions intended to be asked, the conversation was conducted in a free-flowing format allowing for follow-up questions where relevant. Most interviews lasted approximately one hour, aside from the SEND lead interviews which lasted around ninety minutes as the discussion guide for these individuals covered a wider range of questions.

The range of topics covered included:

- How well prepared for the trial organisations felt;
- Understanding of the trial intentions and the extent to which these intentions were met;
- The costs to LAs and health commissioners of preparing for and administering the trial;
- The use of legal representation;
- The effects of the trial on how LAs and commissioners work together and their ability to fulfil their duties;
- The extent to which recommendations have been implemented;
- Any trends observed in the use of other routes of redress since the trial began;
- Lessons learned from experience of the trial to date.

Findings from each interview were written up into a thematic framework, organised according to research objectives and topics covered in the interviews. This allowed analysis to establish key themes that emerged across multiple interviews.

3.3. A baseline survey of trial appellants

The evaluation included a survey of individuals who have appealed to the SEND Tribunal since 2018 under the national trial. These were appeals that had been concluded (either because they had been taken to hearing, withdrawn by the appellant or conceded by the LA) between April 2019 and March 2020 (for appeals for which the conclusion date was provided) or any appeal that had been issued after October 2018 (for appeals for which the date of the appeal was concluded was unknown).

The original intention of this survey was that all individuals who made an appeal to the national trial would be invited, with this data provided to the evaluation by Her Majesty's Courts and Tribunals Service (HMCTS). However, delays to the establishment of a data-sharing agreement to allow this to take place led to a decision being taken to only invite those whose appeals had concluded within six months from the time of interview. The purpose of this was to ensure that interviewees would have recent recall of the full experience of making an appeal to the SEND Tribunal under the extended powers, and

to eliminate possible bias or inaccuracies introduced by interviewing too long after the appeal had concluded. This approach affected the size of the overall sampling frame for the survey, but not the numbers of interviews that took place/completed surveys.

In total, 122 appellants completed the survey, representing 5% of all appeals under the national trial. All appellants were given the choice of completing the survey online or by telephone: 111 appellants chose to take part by telephone, with the remaining 11 completing the survey online. Where appellants chose to complete the survey by phone, this took an average of one hour and ten minutes (the shortest interview being 37 minutes long and the longest 1 hour and 30 minutes).

The issues explored in the survey included:

- The extent to which appellants were satisfied with the trial process;
- The extent to which appellants felt they were dealt with justly and fairly;
- The use of legal representation by appellants;
- The time and costs to appellants of preparing for and attending hearings.

The survey also explored preliminary views on:

- The extent to which appellants were satisfied with the recommendations;
- The extent to which appellants felt the issues were resolved;
- The extent to which they felt provision had improved.

3.4. A follow-up survey with appellants 6 months after the first survey

The same appellants who completed the baseline survey were invited to take part in a follow-up survey 6 months later. This survey was designed to examine whether appellants' views had changed and to explore the outcomes of the appeal, for example the implementation of any recommendations.

In total, 57 appellants completed the follow-up survey. Again, all appellants were given the choice of completing the survey online or by telephone, but all 57 chose to complete via telephone. On average, the interviews took 30 minutes to complete although length varied depending on what had happened since completion of the first survey (the shortest interview was 10 minutes long and the longest 1 hour and 27 minutes).

The issues explored in the survey included:

- What recommendations had been made by the Tribunal, if any;

- To what extent LAs and CCGs had informed appellants about implementation of recommendations;
- Costs to appellants of any help or support paid-for while waiting for the response from the LA or CCG;
- Whether other routes of redress were used (since the time of the first survey) and the outcomes of these.

The survey also revisited views on:

- The extent to which appellants were satisfied with the recommendations;
- The extent to which appellants felt the issues were resolved;
- The extent to which they felt provision had improved.

3.5. Analysis of response to recommendation letters

The DfE requested that LAs and CCGs provide the evaluation with the letters they had sent to appellants that detailed whether they would implement recommendations and, if not, why. A total of 146 letters were received. According to HMCTS data, there were 529 cases where recommendations had been made (up to 433 about health and 436 about social care) meaning that the letters analysed represent just over a quarter of the total letters.

Analysis of these letters involved categorising and coding both the recommendations (if restated in the letter) and the LA/CCG response to them into an excel-based framework, to examine patterns in the types of recommendations that are implemented or not implemented and the ways in which LAs and health commissioners propose.

3.6. LA and CCG cost survey

This consisted of an online survey of LAs and CCGs about the impact of the trial, with a particular focus on staffing and costs. Invitations to complete the survey were disseminated by email on 8th November 2019 to the SEND lead in each local area, and phone contact was then made following this to encourage recipients to complete it. SEND leads were asked to forward the invitation to the most appropriate individuals in the education, health and social care departments involved in preparing cases referred to the SEND Tribunal.

In total, 30 individuals from LAs or CCGs completed the survey, including 20 from education services, 5 from health services, 3 from social care services and 2 from parent support services. These individuals represented 23 LAs and 4 CCGs. Examples of specific job roles and titles of those who participated are outlined in Table 2.

Table 2: Examples of job roles and titles of individuals who participated in LA and CCG cost survey

SEND team/Education services	Assistant Director for SEND, Head of Service – Education Health and Planning, Tribunals Officer, Tribunals/Tribunals and Mediation Manager, SEND Legal Compliance Lead Officer, Statutory Assessment and Provision Manager, Manager - Assessment and Placement Team, Children and Young Adults with Disabilities, Lead for Statutory Assessment
Social care services	Head of Disabled Children and Therapy Service, Group Manager
CCG/Health services	DCO for SEND, Commissioning Manger, Occupational Therapist, Senior Nurse Children and Young People/SEND Lead
Other	Lead lawyer – Education, Regional Manager

The topics examined in the survey included:

- Estimations of and views on the time and monetary costs to LAs and CCGs of preparing for the trial;
- Estimations of and views on the time and monetary costs to LAs and CCGs of preparing for cases within the trial and for implementing recommendations;
- How the time and monetary costs associated with the trial compare to those of non-trial Tribunal cases and cases involving health and/or social care issues dealt with through other routes of redress;
- The use of legal representation within the trial;
- The effects of the trial on how LAs (including within the LA) and CCGs work together.

3.7. In-depth interviews with LAs and CCGs to further understand costs of provision arising from the trial

Following the LA and CCG cost survey, it was determined that more information was required to refine understanding of the costs of provision resulting from the trial and understand why in some cases they can be significantly higher than others. A total of 12 interviews with staff from 11 LAs and 1 CCG participated in these interviews. Examples of specific job roles and titles of those who participated are outlined in Table 3.

Table 3: Examples of job roles and titles of individuals who participated in in-depth LA and CCG cost interviews

SEND team/Education services	Head of SEND, SEND Family Services manager, Tribunals and Mediation Manager, SEND (Strategic) Manager, Senior SEN Officer
CCG/Health services	DCO

The interviews explored costs of provision resulting from the trial more holistically, including:

- Comparison of costs for common additional provision in trial and non-trial cases, and reasons behind any differences;
- Views on the total costs of additional provision resulting from trial cases, and the context for these costs;
- Whether and how additional provision recommended by the Tribunal factors into LA and CCG budgeting and resourcing.

Two of the interviews also focused on understanding ‘outlier’ costs provided in the cost survey to understand more about what was included in such high costs.

3.8. Cost estimates and assessing value for money

A cost-based model was used to compare the route of a case involving health and/or social care issues under the trial Tribunal powers with other routes of redress that a similar case might take prior to the extended powers being introduced. These routes were populated with cost estimates drawn from the baseline survey of appellants and LA/CCG cost surveys described above, complemented by evidence from management information.

As cost models are developed it is useful to have multiple sources of evidence to compare with any estimates from the collected data. Desk-based research focused on:

- Cost evidence from the bodies involved in remedies for SEND cases, including the Ombudsmen and voluntary bodies that are involved in cases.
- Past evaluations, specifically relevant recent studies considering the costs and impacts of decision-making processes around special educational needs; and studies on advisory support for families.
- Cost studies, especially estimates of the costs associated with the provision for a child or young person’s special needs.

Each strand of evidence gathering involved tailored approaches. For the bodies involved in remedies for SEND cases, the recent studies of the Local Government and Social Care Ombudsman and the annual reports of IPSEA¹³ were reviewed, with this informing follow-up discussions with officials in each. In addition, a random sample of recent LGSCO cases published online were systematically summarised to explore the nature of complaints, and remedies recommended.

The process of identifying evaluative and cost studies involved identifying and prioritising the studies most relevant to this evaluation. Search strategies focused on organisations known to conduct UK studies, and followed up citations of these studies. In addition, citations of key cost datasets, such as the annual Unit Costs of Health and Care¹⁴, contributed to search strategies, in recognition that many researchers would use these data.

The surveys of appellants and LAs/CCGs included questions about costs. These questions were designed to support this analysis and the questions were structured around the different stages along the appeal route. This allowed an aggregation of data on the costs by the stages (e.g., preparation for an appeal, attending a Tribunal hearing) for the different participants.

The surveys had enough detail to allow some flexibility in defining stages of the appeal and this was used to align survey results to other sources of evidence. The main additional source of data was the administrative data as cases progressed through the Tribunal. The detail in the surveys allowed integration with administrative and other data sources where these other data sources had pre-defined structures.

Costs provided by the surveys were for 2019, and other costs were adjusted to the 2019 price level using the Health and Care Services Consumer Price Index (CPI)¹⁵. The cost estimates have been used to assess value for money. A picture based entirely on costs is inevitably incomplete, but the method was to consider some of the costs to be due to the processes appellants used to seek a remedy (in evaluation terms the 'input' costs) and then other costs to be related to meeting the outcome.

The process added together the costs to appellants, LAs, CCGs and Tribunals for the stages of the process up to making recommendations. For the outcome, the costs of meeting recommendations were used as an indicator. This is the recommended change in the provision for the child or young person's needs that is then agreed by LAs/CCGs.

¹³ <https://www.ipsea.org.uk/annual-report>, at the time of analysis the 2019 report was the latest published report

¹⁴ <https://www.pssru.ac.uk/project-pages/unit-costs/>

¹⁵ The Personal Social Services Research Unit publication "Unit Costs of Health and Social Care 2018" explains the choice of this index, reviewing this option with three alternatives.

In addition, some other characteristics of the outcome were assessed, such as the time taken.

Estimates of the costs of different paths were then made. A path was defined by two decision points at which an appeal could go down different routes: whether the appellant challenges the three needs descriptions in the EHC plan or only two; and whether the appeal involved a hearing. The appellant and LA/CCG surveys collected data at a level of detail that enabled cost estimates for different pathways to be based on responses to questions or – to a relatively modest degree – modelled or imputed.

The value for money assessment then focuses on what would have happened without the trial, using the alternative pathways to estimate a counterfactual. Ideally, the assessment would estimate the cost of reaching the same changes in provision that was reached in trial cases, for the counterfactual. Discussions with the DfE and stakeholders and a review of the other evidence from this study were used to inform the broad parameters of value for money. So, the study estimates as much of the process (input) costs and the costs associated with the additional provision (the outcome indicator) as possible for the counterfactual.

3.9. A note on analysis

Please note that parts of this report contain qualitative analysis. This is intended to understand individuals' views in depth and detail, rather than to be 'representative' or measure the incidence of these views.

With regards to the quantitative findings, differences between sub-groups have been tested for statistical significance and only those that are significant are reported on here (unless specifically indicated otherwise). Figures in charts may not sum to 100% due to rounding, or because survey participants were able to select more than one answer in response to a question (i.e., in these cases, responses may sum to more than 100%). The appellant survey covers the views and opinions of parents and young people – the data collected therefore reflects their perceptions of what took place rather than facts. Where the base size of quantitative findings was less than 30, these findings have been reported 'qualitatively' i.e., using terms such as 'many' instead of percentages. Where the base size is at least 30 but less than 50, percentages have been reported but caveats have been added to say that such findings should be treated as indicative only.

The Tribunal's judicial office holders have not been engaged in the evaluation process; and the evaluation does not seek to comment on the Tribunal's decisions.

4. Impacts of the trial on children and young people's health and social care outcomes and needs

This chapter focuses on the extent to which children and young people's health and social care outcomes¹⁶ have been impacted by the national trial. It does this by examining the appellant viewpoint on whether issues had been resolved and their perception of the improvement (or otherwise) to provision in the EHC plan. It also considers LA and CCG responses to Tribunal recommendations regarding health and social care. Where relevant, findings from case study visits have also been included to provide a wider context.

4.1. To what extent did appellants feel the issues were resolved?

4.1.1. Appellant perception of Tribunal outcomes

Appellants with cases where an outcome had been reached¹⁷ were asked whether they felt that overall, their issues¹⁸ had been resolved as a result of having made the appeal to the Tribunal. As they were asked about their overall view, this covers their perceptions of the resolution of *all* issues, including those relating to special educational needs or provision about which they were appealing as well as those which were introduced under the extended powers. Those who withdrew their appeal, either as a whole or the health and social care aspects (meaning their appeal was no longer applicable to the national trial), were not asked about this (leaving a base size of 112 that answered this question).

Around half (56%) of these appellants felt that the issues they appealed had been or would be resolved (Figure 1). This was made up of 45% who felt that the issues had already been resolved by the time of interview, and 12% who felt that the issues would be resolved in the future.

Most appellants who reported feeling this way stated that it was because they were reassured that they or their child, as a result of the appeal, would be receiving the support that they felt was needed. Examples of reasons appellants gave for feeling this way included:

¹⁶ The term 'outcomes' includes the provision set out in the EHC plan, including any provision that has arisen from recommendations for assessments; perceptions of whether this has led to the child or young person getting the help or support they need; and perceptions of whether this provision will help the child or young person achieve what they want to in life.

¹⁷ Either those where the LA conceded the health and social care aspects before going to a hearing (education aspects may or may not have also been conceded at the same time) or those whose health and social care issues had progressed to a hearing.

¹⁸ The term 'issues' in this context means things that appellants were able to appeal (rather than issues resulting from an individual's health or social care needs).

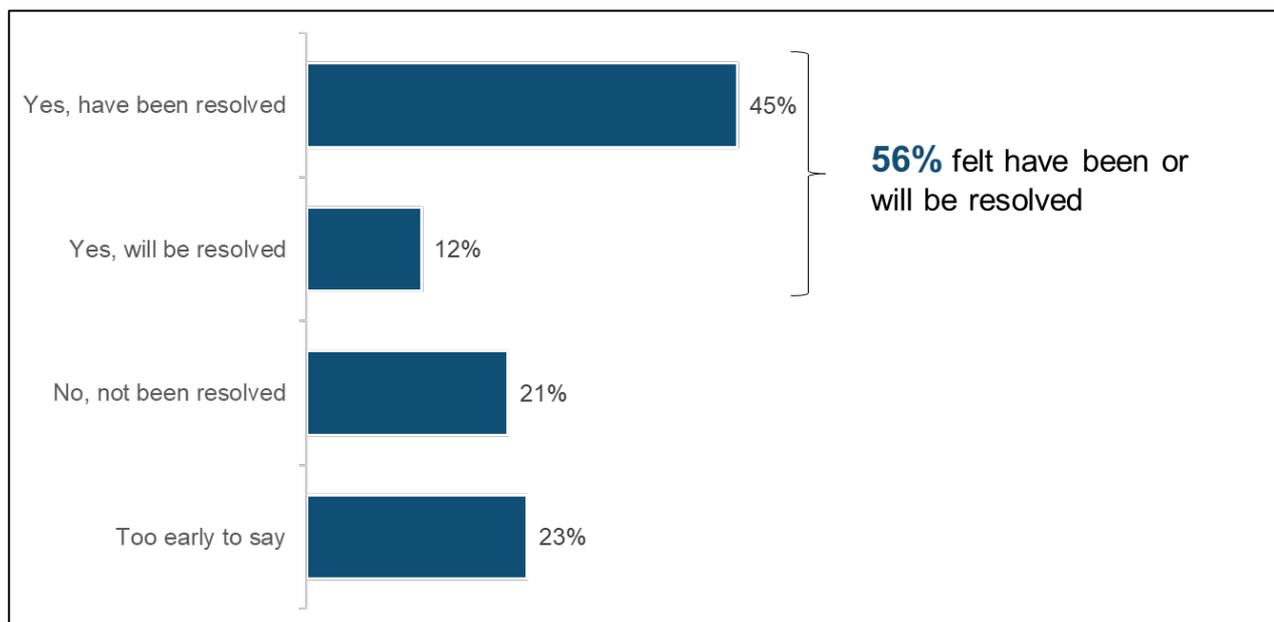
- The wording of their EHC plan being updated to give a more accurate description of needs and provision;
- Funding being put in place for the provision that had been agreed;
- The child or young person being placed in a new educational setting that was better suited to them.

One appellant explained:

[We felt the issues were resolved] Because we got what we wanted. They listened to us, took it into consideration and they gave us the provision our child needs - I'm happy. - *Appellant whose appeal included social care issues*

Only 39% of appellants whose health and/or social care issues had been taken to a hearing (n=57) felt that their issues had or will be resolved. This was statistically significantly lower than appellants for whom the LA conceded the case prior to the hearing (74% of n=46).

Figure 1: Whether appellants felt that overall, the issues they appealed to the Tribunal had been resolved as a result of the appeal



Base: Appellants whose health and social care aspects of appeal were conceded by LA prior to hearing, or whose case went to hearing (n=112)

A fifth (21%) of appellants felt that their issues had not been resolved. For many¹⁹, this was because the appeal to the Tribunal had not led to the outcome that they would have liked. For example, the Tribunal did not recommend some or all of the specific provision

¹⁹ Base size too small to report quantitatively.

they had requested. Some of these appellants felt that the Tribunal had left out or ignored some evidence.

[The Tribunal] ignored the evidence from the expert witness so we got no respite support. - *Appellant, whose appeal included health and social care issues*

There were also a few appellants who felt there were issues with the clarity of the recommendations made. One appellant gave the example of a recommendation for health provision over the course of a year, and were unhappy that the LA had interpreted that as a school year (i.e., not including school holidays) whereas the appellant felt the support was needed full-time for a calendar year. While issues of clarity could occur in non-trial cases, extending the remit of the recommendations may increase the chance of these occurring and it is important that this is addressed in both trial and non-trial instances.

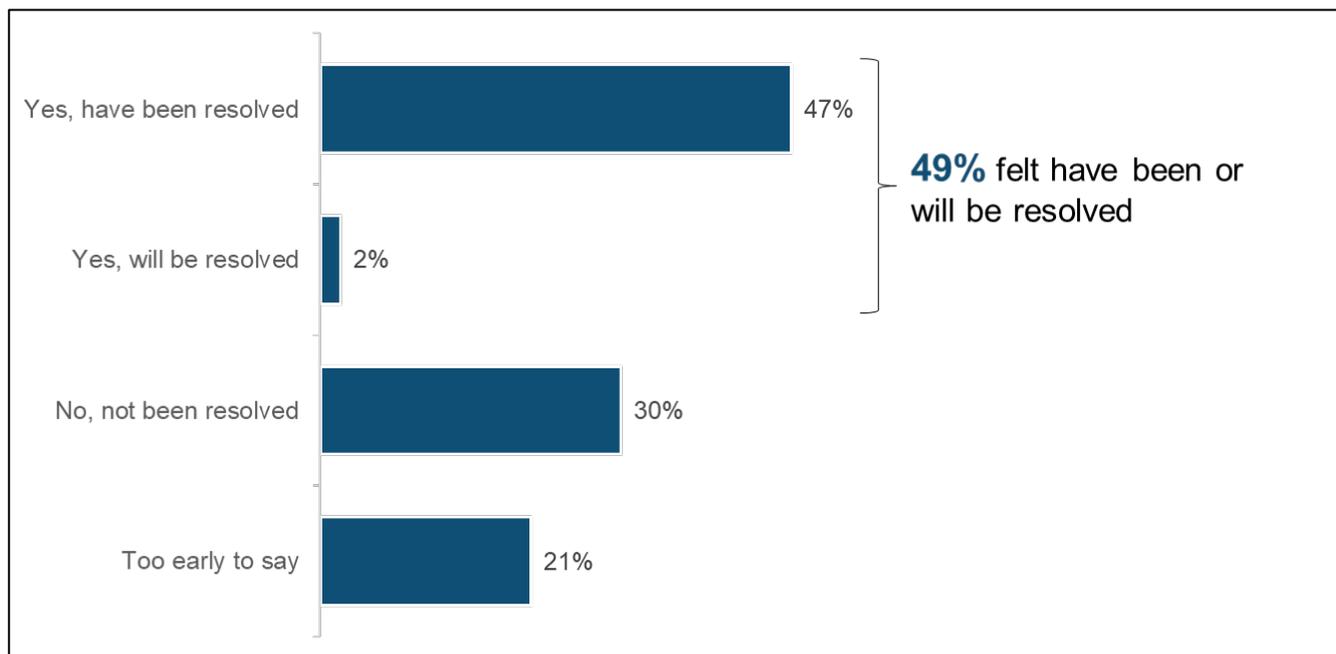
One in five appellants (23%) felt that, at the time of interview, it was too early to say whether the issues had been resolved. Some appellants (15%) felt that, while issues had been resolved on paper, the LA had not yet made the necessary changes to the EHC plan or to the provision being delivered, or that assessments recommended by the Tribunal had not yet taken place. Others felt that more time was needed to see if new provision was suitable.

Appellants who participated in the follow-up survey 6 months later were asked again about their views on whether the issues they appealed had been resolved, to see if this view had changed over that time (Figure 2). Overall, 49% felt that their issues had been or would be resolved and 30% felt the issues had not been resolved – with the latter being a statistically significant increase. Some appellants who felt this way after 6 months reported they perceived a lack of commitment from LAs and/or CCGs to put the recommended provision in place.

More positively, among those who felt the issues had not been resolved,²⁰ a majority of them either felt the issues were close to being completely resolved or felt they had been mostly resolved.

²⁰ Base size too small to report quantitatively.

Figure 2: Whether appellants felt that overall, the issues they appealed to the Tribunal had been resolved as a result of the appeal 6 months later



Base: Appellants who took part in the 6 month follow up survey (n=57)

4.1.2. Comparison to other routes of redress

At the time of the first interview, around half (54%) of the appellants surveyed reported also using other routes of redress²¹ regarding health or social care issues before or after submitting their appeal to the Tribunal. Appellants who took part in the follow-up survey 6 months later were asked again about whether they had used any other routes of redress, this time also including after they had received recommendations and the response to those recommendations from the LA and/or CCG. The proportion using these other routes of redress remained broadly consistent, with around half (47%) of these respondents having used other routes of redress at any point.

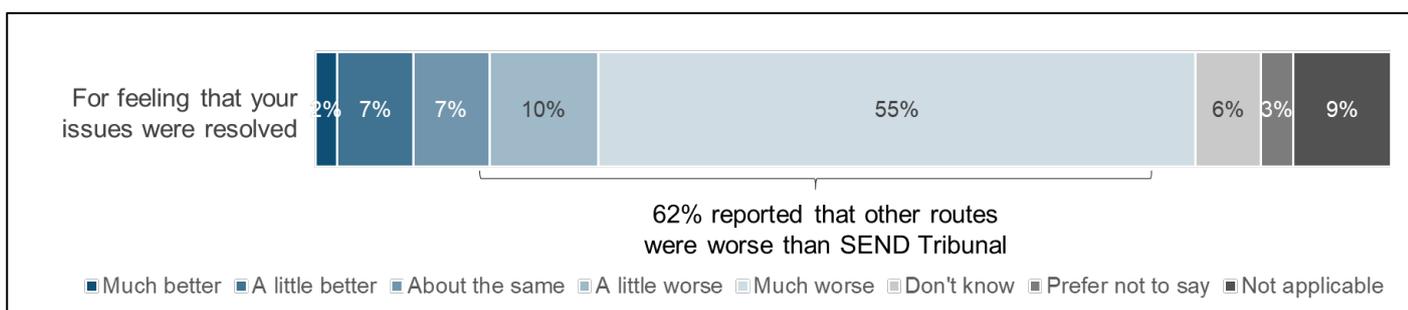
These appellants were asked how those other routes of redress compared to the Tribunal in terms of feeling that their issues had been resolved (Figure 3). Most of these appellants felt that the SEND Tribunal was better at resolving their issues, with six in ten (62%) reporting that the other routes of redress they had used were worse than the Tribunal in terms of feeling that their issues were resolved. This was most notable for local authority complaints procedures, which 82% felt were worse than the SEND Tribunal in terms of feeling that their issues were resolved. Local authority complaints

²¹ The other routes of redress appellants asked about were as follows: Disagreement Resolution Services; Early education providers' (e.g. nurseries) and schools' complaints procedures; FE College complaints procedures; Local authority complaints procedures; NHS Complaints; Ofsted and the Care Quality Commission; Local Government and Social Care Ombudsman (LGSCO); Parliamentary and Health Services Ombudsman (PHSO); the Secretary of State; Judicial review. Appellants were also given the option to identify another organisation or body themselves.

procedures were also the most commonly used other route of redress, for both health and social care issues, (46% of all appellants at the time of the first interview and 16% in the follow-up survey 6 months later).

The perception amongst appellants who had used other routes of redress is that the Tribunal is better than other routes of redress for resolving their issues suggests that the extension of powers delivered resolutions to appellants that they would not be able to achieve elsewhere.

Figure 3: Appellants’ view on whether other routes of redress were better or worse than the SEND Tribunal appeal for feeling their issues had been resolved



Base: Appellants who complained about health or social care issues elsewhere before or since making their appeal to the Tribunal (n=87)

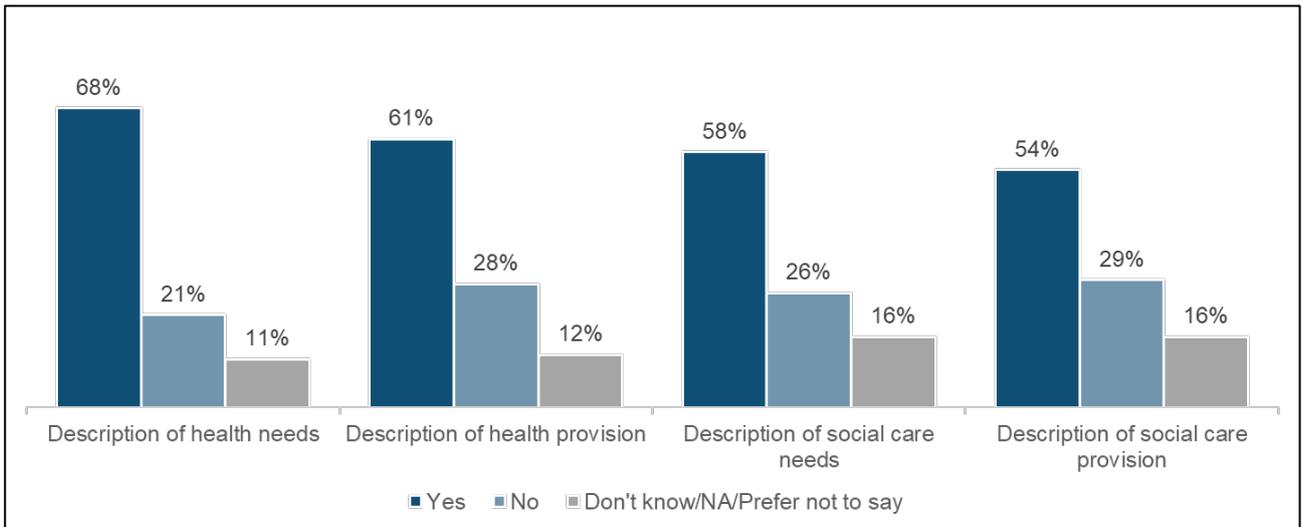
4.2. To what extent did appellants feel the health and social care provision for the child/young person had been improved?

4.2.1. Outcomes delivered via Tribunal decisions

Appellants with cases where an outcome had been reached were asked about whether the descriptions of health and social care needs and provision in the EHC plan had improved (unless there was no EHC plan at the time of making the appeal). Eight in ten (79%) of these appellants felt that at least one of these descriptions had improved as a result of the appeal.

The most frequent perceived improvement was to the *description of health needs*, which almost seven in ten (68%) of appellants felt had been improved (Figure 4). Between five in ten and six in ten perceived that improvements had been made to the other elements: 61% felt that the *description of health provision* had been improved, 58% that the *description of social care needs* had been improved, and 54% that the *description of social care provision* had been improved.

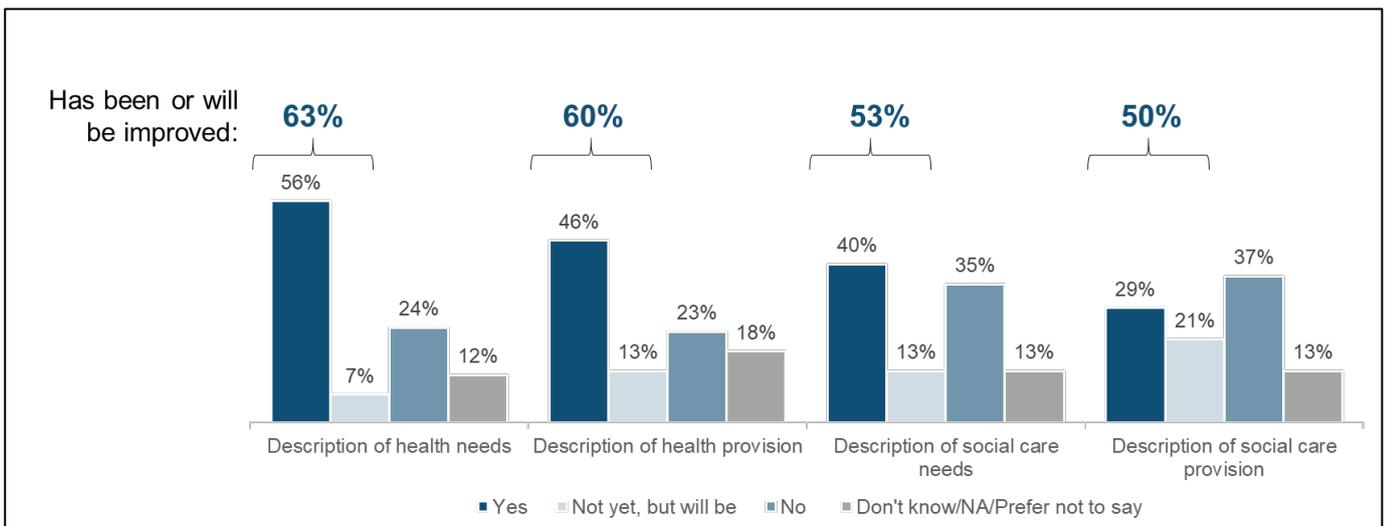
Figure 4: Whether appellants felt that elements of the EHC plan had improved as a result of the appeal



Base: Appellants whose health and social care aspects of appeal were conceded by LA prior to hearing, or whose case went to hearing (n=112)

Appellants that took part in the follow-up survey 6 months later were asked their views on this again, although this time they were given the additional option to report that they felt that elements would improve in the future (Figure 5). Overall, views after 6 months were broadly consistent: around six in ten felt the descriptions of health needs (63%) and provision (60%) had or would be improved and half that the descriptions of social care needs (53%) and provision (50%) had or would be improved.

Figure 5: Whether appellants felt that elements of the EHC plan had improved as a result of the appeal

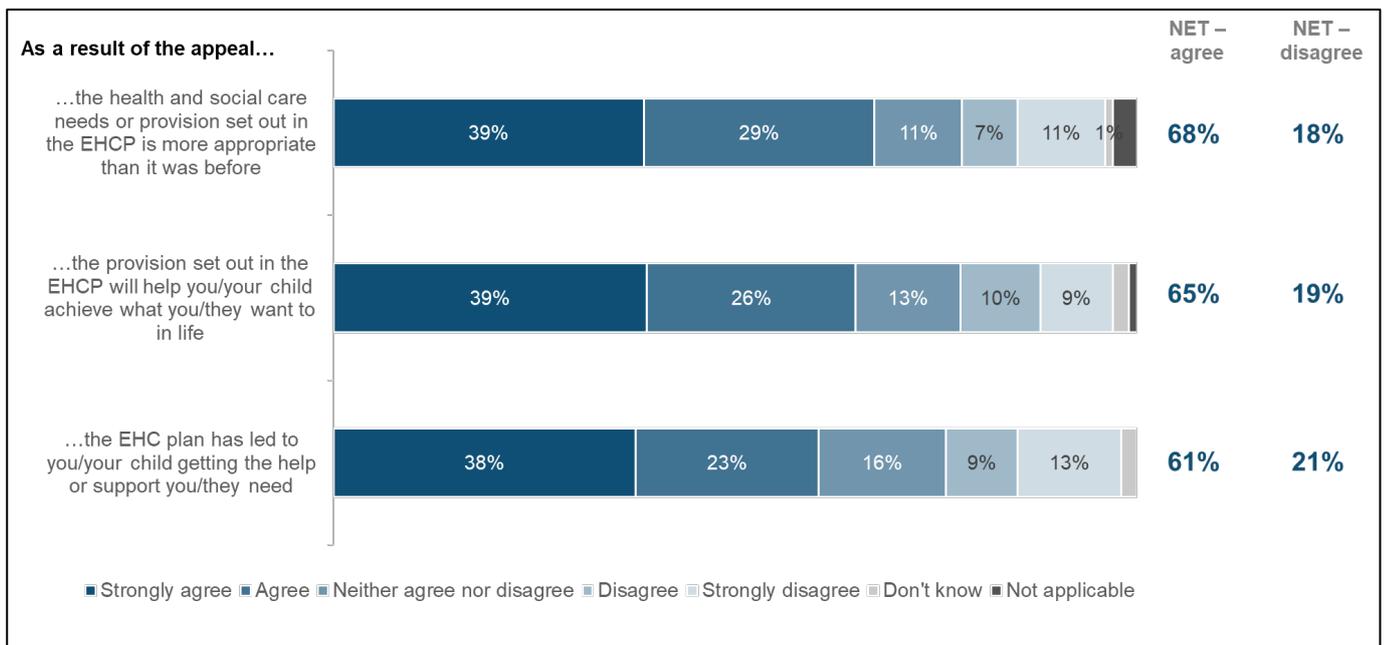


Base: Appellants who took part in the 6 month follow up survey (n=57)

Appellants were also asked to take a broader view and consider whether they felt the appeal had led to improved outcomes in practice (Figure 6).²² Overall, more appellants felt a positive impact had been made on outcomes as a result of the appeal than had not. Almost seven in ten (68%) agreed that the health and social care needs or provision set out in the EHC plan was more appropriate than it had been before the appeal was made, while only a fifth disagreed with this (18%). Six in ten (61%) agreed that the appeal had led to them, or their child, getting the help and support they needed, while a fifth (21%) disagreed with this.

Appellants for whom the LA had conceded the whole case before it progressed to hearing were significantly more likely to agree the necessary help and support was being received: four fifths (80%) of these appellants agreed that this was the case. This is likely to be linked to the earlier finding that these appellants were more likely to feel that issues had been resolved.

Figure 6: Extent to which appellants agree with statements about the outcomes of their appeal



Base: Appellants whose health and social care aspects of appeal were conceded by LA prior to hearing, or whose case went to hearing (n=112)

Taking a longer-term view, appellants were asked whether they felt that the provision agreed as a result of the appeal would help the young person or child in question achieve

²² The outcomes appellants were asked to consider include whether the EHC plan was more appropriate, whether the provision set out in the EHC plan will help them/their child achieve what they want in life, and whether the EHC plan has led to them/their child getting the help or support they need.

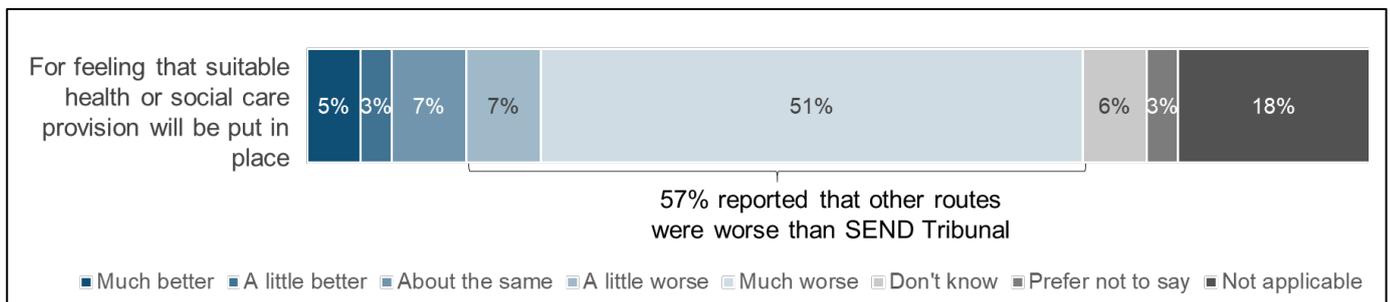
what they want in life. Two thirds (65%) of appellants agreed with this, while 19% disagreed.

Appellants were also asked to reflect on the original elements of their appeal and whether any of those had happened as a result of the appeal. Overall, four-fifths (85%) of appellants reported at least one element of their appeal had an associated outcome,²³ and three in ten (29%) had outcomes associated with all aspects of their appeal.²⁴

Comparison to other routes of redress

Appellants who had also used other routes of redress were asked how those routes compared to the Tribunal in terms of the health and social care provision that would be put in place as a result (Figure 7). Most appellants felt that the Tribunal delivered better results, with 51% feeling that the other route of redress used was ‘much worse’ and a total of 57% feeling that the other route of redress used was ‘worse’ or ‘much worse’. This could be due to the powers of the Tribunal to make specific recommendations about provision, which is not true for many of the other routes of redress used.

Figure 7: Appellants’ view on whether other routes of redress led to better or worse results than the SEND Tribunal appeal for feeling that suitable health or social care provision will be put in place



Base: Appellants who complained about health or social care issues elsewhere before or since making their appeal to the Tribunal (n=87)

²³ The ‘associated outcome’ varied depending on what had been appealed, for example if they had appealed the LA’s refusal to conduct an assessment the outcome would be that the LA had agreed to/the Tribunal recommended they conduct the assessment, while if they had appealed a specific section of the plan the outcome would be the plan had been amended (and the introduction of additional provision, if relevant).

²⁴ These views did not change in the follow-up survey 6 months later, where a similar proportion (88%) reported at least one element of their appeal had an associated outcome.

4.3. To what extent were appellants satisfied with the health and social care recommendations?

Appellants who had received the Tribunal's recommendations by the time of interview were asked how satisfied they felt with the health and social care recommendations received. Due to the low base of appellants who were able to answer (34 received health recommendations, 39 received social care recommendations), these findings should be treated as indicative only.

Of 34 appellants who had received recommendations relating to health, seven in ten (71%) were satisfied with them. A similar proportion of those that received social care recommendations were satisfied (72% of the 39 appellants who had received recommendations).

The most common reason appellants gave for feeling satisfied with the health or social care recommendations was that those recommendations would provide them with the outcome that they had wanted to achieve. A few appellants mentioned their satisfaction was in part due to feeling that the process had helped them feel listened to. There were also a few appellants who were only partially satisfied with the health and social care recommendations because there was some additional provision that they had been hoping to secure.

Around a fifth of appellants who had received recommendations were dissatisfied with them: 21% of those that received health recommendations were dissatisfied, and the same proportion were dissatisfied with the social care recommendations received. Among the 21 appellants who received recommendations relating to *both* health and social care, around a quarter of them (five individuals) were dissatisfied with these.

The reasons for feeling dissatisfied mirrored the reasons for feeling satisfied. The most common reason given for feeling dissatisfied was that the Tribunal had not agreed to all of their requests, but a small number also felt that their views had not been sufficiently listened to.

Around one in ten appellants (9% about health and 8% about social care) reported being neither satisfied nor dissatisfied with the recommendations.

4.3.1. Comparison to other routes of redress

In the follow-up survey 6 months later, appellants who used other routes of redress relating to health or social care were asked about the outcomes of those routes. Due to the low base of appellants that were able to answer (n=37), these findings should also be treated as indicative only. Only 8% reported that these other routes of redress resulted in

recommendations for any additional provision,²⁵ and none of these were satisfied with those recommendations.

4.4. To what extent were the health and social care recommendations implemented?

We reviewed the letters sent to appellants that outlined the LA and CCG responses to Tribunal recommendations. This was done to gain an understanding of the extent to which recommendations had been implemented, and the types of recommendations that had and had not been implemented. These letters detailed whether or not the LA or CCG would implement recommendations or, if not implementing the recommendations, explained to the appellant why this was.

4.4.1. Recommendations that were implemented

Nine out of ten (89%) letters reviewed stated that the LA or CCG had agreed to implement the recommendations (10% partially and 79% in their entirety) as recommended by the Tribunal²⁶. These recommendations fell into four main categories (listed in order of frequency):

- **Amendments to EHC plan sections that detailed health or social care needs (38%);**
- **Assessments or referrals and subsequent delivery of any provision identified (33%),** most commonly social care assessments, Occupational Therapy (OT) assessments, CAMHS assessments, carer's assessments, Child in Need (CiN) referrals, and Disability Service assessments;
- **Social care support (17%)** including direct payments and respite care;
- **Additional support from health or social care professionals (10%).** Usually the Tribunal had specified the frequency and number of sessions to be provided. Examples of professionals included Occupational Therapist, Youth Work Mentor, Psychologist, nurse and Wellbeing Support Officer;

In many cases, the LA or CCG specified that the support would be provided until the child or young person's next annual review, when, as with all provision in an EHC plan, it would be subject to review and possible change.

²⁵ It should be noted that not all of the routes of redress had the power to make recommendations for additional provision.

²⁶ There were four letters where it was unclear whether the recommendations had been followed (in whole or in part) because detail of the original Tribunal recommendations were not included.

4.4.2. Recommendations that were not implemented

17% of the letters explained that the recommendations would only be partially followed (10%) or not followed at all (8%)²⁷. The reasons that LAs and CCGs gave for declining to implement recommendations included the following. Please note that these reasons have not been included to suggest that the evaluation either agrees or disagrees with them, but simply to report on the content of the letters:

- **Circumstances had changed, meaning the recommendations were no longer applicable or possible (24%).** This was sometimes because other things had happened in the meantime that meant the recommendation had, in effect, been followed. For example, in one case a referral to a clinical psychologist regarding gender dysphoria was no longer necessary because the child's GP had referred them to a Gender Identity Service. In other cases, it was a case of altering the provision, due to the time that had passed since the start of the appeal, rather than a refusal to follow recommendation – for example where the specified service was no longer available (in which case the LA was looking into the most suitable replacement). Finally, it could also be because the appellant or the child had declined the service. For example, one child declined the offer of art therapy because they felt their mental health had improved and no longer needed it;
- **The recommended provision was unnecessary in their view (24%).** For example, one LA argued that the child had already received the specified provision in the past and had achieved the outcomes sought from this, so would not benefit further from additional provision. In another example, a CCG declined to provide sessions from a physiotherapist, but instead stated they would continue the sessions from a nurse they had previously provided as they believed this met the child's needs;
- **The recommendation requested a level of provision above and beyond what was available to other families (20%).** This would sometimes but not always be referred to in terms of formally defined criteria (for example, the child did not meet the eligibility criteria to receive the support). In these instances, the services had noted that they believed that, if they were to provide the provision it would be 'unfair' to other families with similar or greater need that were not receiving the same level of support or provision;
- **The recommendation fell outside the LA's or CCG's remit (20%).** This was usually because the recommendations fell outside of the LA or CCG's control, for example, relating to staffing of a private provider;

²⁷ In 3% of the letters it was unclear whether the recommendations had been followed in whole or in part because detail of the original Tribunal recommendations were not included.

- **The LA or CCG offered similar services that they felt could meet the child or young person's needs equally well (12%).** For example, one LA declined to implement a recommendation for sessions with a private counselling service because the LA had their own internal counselling service, which they offered to the appellant instead;
- **The LA or CCG did not think it was in the best interests of the child or young person to follow the recommendation (12%).** In these cases, the LA or CCG felt that following the recommendation would cause more harm. An example of this was where the Tribunal had recommended an assessment be re-conducted, but the CCG argued that would risk harm to the child. The CCG reported the child had found participating in the original assessment was distressing, and as that assessment had not resulted in a diagnosis they felt it was unfair to repeat it. In their view, it was not likely the second assessment would result in a diagnosis and therefore be of no benefit but could cause harm.

In the case study visits, some members of the LA SEND team reported concerns that other services, particularly social care, were not always actioning the recommendations relevant to them. They reported that, as there were no legal consequences if social care services did not deliver on the recommendations, they remained largely disengaged. LA SEND teams also noted that they could find it hard to follow up on implementation (again, particularly in social care) given the recommendations were non-binding. There were concerns from members of the LA SEND teams that the resource-intensive process of a Tribunal may be undertaken without producing an outcome that must be upheld by health and social care services.

The perceived reluctance of social care services to implement recommendations could be explained by the concern reported from some staff that Tribunal recommendations do not take funding restrictions or service availability into account. For example, they felt hesitant implementing recommendations which would mean provision being given despite the child not meeting the normal local eligibility criteria (as in the example above) or when the Tribunal had recommended an action they viewed as outside the scope of the appeal. During the local area case study visits, several health and social care representatives flagged that they were not always aware of the outcomes or recommendations resulting from national trial cases. This left them unclear about how to respond to subsequent requests for input, as they were not aware of whether these were as a result of a Tribunal decision.

4.4.3. The LA and CCG perspective

It is worth considering appellant views on improvements in the context of the findings from the local area case study visits.

During the case study visits, some LAs raised some concerns about the resourcing of some provision resulting from appeals under the trial. Some LA staff reported that in some cases appellants also sought private advice on health needs (e.g., from private speech and language therapists), and the recommendations for provision given by these private experts were sometimes felt by their public sector equivalents to be difficult to resource in the context of available funding and the needs of other children.

In these situations, the child concerned received provision which was improved in the eyes of the appellant, although sometimes NHS health professionals (and school staff) were concerned about how this provision would be funded.

They believed the solution to this should be to better manage parents' and young people's expectations around the level of support that is appropriate to fund, mostly through better communication on the part of the LA themselves of what is available.

4.4.4. Outcomes delivered through steps taken by LAs to avoid appeals

LAs reported that they aim to avoid appeals to the SEND Tribunal and suggested that the trial extension of Tribunal powers to include health and social care supported this aim. The reasons cited were because the extension had both provided further motivation to avoid issues reaching appeal because of the increased workload for a wider range of staff of these broader appeals, and made health and social care services more accountable, enabling lessons to be learned more holistically. There were two main ways that LAs sought to avoid appeals, both of which could result in improved provision for children and young people:

- **Encouraging families to have informal discussions with LA staff about any issues or concerns around EHC plans.** The intention of these discussions was to reach solutions to these concerns quickly, thereby avoiding families feeling the need to make an appeal. Although these discussions do sometimes result in amended or additional provision, sometimes the end result is that families are more satisfied with the original provision after the LA has fully explained their rationale. However, in some LAs with higher appeal numbers, it was reported that this type of work has sometimes been cut due to funding;

Talk to the parents... If something needs to be changed, change it.
Don't be defensive, confront the issue with them. - *SEND Lead*

- **Learning from Tribunal cases to improve future EHC plans.** Many LAs expressed the hope that the extended powers would provide them with more opportunities to learn about how they could improve health and social care sections of EHC plans (in addition to education) in future, with the intention that more of these could be developed in a way that all parties are satisfied with. However, the trial appears to have limited impact on the EHC plan annual review

process in some LAs, with several interviewees raising concerns about the quality, timeliness, attendance, and way in which these were conducted.

5. Impacts of the trial on the process of appealing for families

This chapter considers the impacts on children, young people and their families who appeal to the SEND Tribunal under the extended powers. It does so by examining the extent to which families have utilised the extended powers and their feelings about the appeal process, including how well prepared they felt for the appeal process. It also considers how much time was required of appellants when appealing under the national trial, which sources of support were used during the appeal process and what the outcomes of this support were. It does so primarily by considering responses to the survey of appellants, management information provided by HMCTS and, where relevant, through exploration of findings from the LA and CCG case study visits.

5.1. To what extent did eligible families make use of appealing under the extended powers?

Based on analysis of management information provided by HMCTS, it is apparent that eligible families have exercised extensively their right to appeal under the trial extended powers of the Tribunal, relative to the number of appeals expected at the outset. Excluding appeals that have been delayed as the Tribunal was not ready to proceed, there have been 2,549 appeals registered that have reached a final outcome (meaning either the hearing had taken place, or the LA had conceded, or a consent order had been agreed, or the appellant had withdrawn the appeal) before January 2021.²⁸ Among these 2,549 appeals, 1,372 have related to both health and social care, while 651 related to health (but not social care) and 526 related to social care (but not health).

This number of appeals represents greater usage of the single route of redress than had been anticipated by the DfE at the start of the trial extension of powers. Initial estimates, based upon the rate of appeal during a previous pilot of the extension of powers, had anticipated around 430 appeals during the trial, although this was acknowledged to be a potentially cautious estimate. At the time of reporting, however, the 2,549 appeals registered under the national trial to date represent six times the number of appeals that the DfE estimated at the beginning.²⁹

There was strong regional variation in numbers of appeals registered under the national trial, with some LAs receiving many more appeals than others. This ranged from 127

²⁸ It is unfortunately not possible to incorporate appeals that have been delayed because the Tribunal was not ready to proceed into our secondary analysis of HMCTS management information. This is because it is not possible to identify historic instances of these appeals in the dataset, and so we did not have a complete historic record of all appeals that had been delayed at any point in time. Consequently, they are excluded from this analysis.

²⁹ The trial period has been extended to 33 months from the original 24, but even without this extension, there had been a higher than expected number of appeals

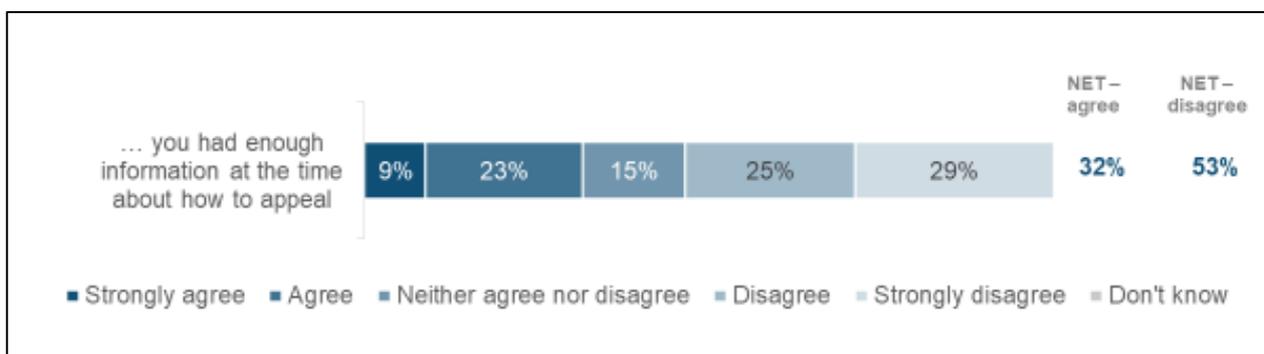
appeals registered to date in one local authority through to five local authorities in which no appeals had been registered (full breakdown of number of appeals per LA can be found in Table 14 in the Appendices).

Qualitative discussions during the case study visits also reinforced the idea that families were utilising the new extended powers of the Tribunal. However, LA SEND team staff typically saw this as a small change in the context of broader trends around appeals to the Tribunal outside of the trial because increases in appeals to the Tribunal as a whole outnumbered those directly resulting from the trial.

5.2. To what extent did appellants feel they had enough information about the process?

Appellants were more likely to say that they disagreed (53%) than that they agreed (32%) that they had enough information about how to appeal to the Tribunal on health and social care issues, suggesting that half of all appellants did not feel they were fully equipped to handle the appeals process at the point that they submitted the appeal.

Figure 8: Extent of agreement that appellants had enough information at the time about how to appeal



Base: All appellants (n=122).

One potential reason that appellants felt that they did not have enough information about the process of appealing may relate to levels of awareness of the DfE's guide to the Tribunal's new powers. Just two-fifths (39%) of appellants reported that they were aware of this guide while preparing their appeal. Amongst appellants who were aware of the guide, levels of engagement and opinion about its usefulness were relatively positive; 64% of appellants who were aware of the guide used it, and around two thirds of those who used it found it useful (67%). However, given the relatively low awareness levels, these numbers translate to small proportions of all appellants: just one quarter of appellants under the national trial used the guide (25%), and less than one in five of all appellants both used the guide and found it to be useful (16%).

5.3. To what extent did the appellants feel they were dealt with fairly and justly?

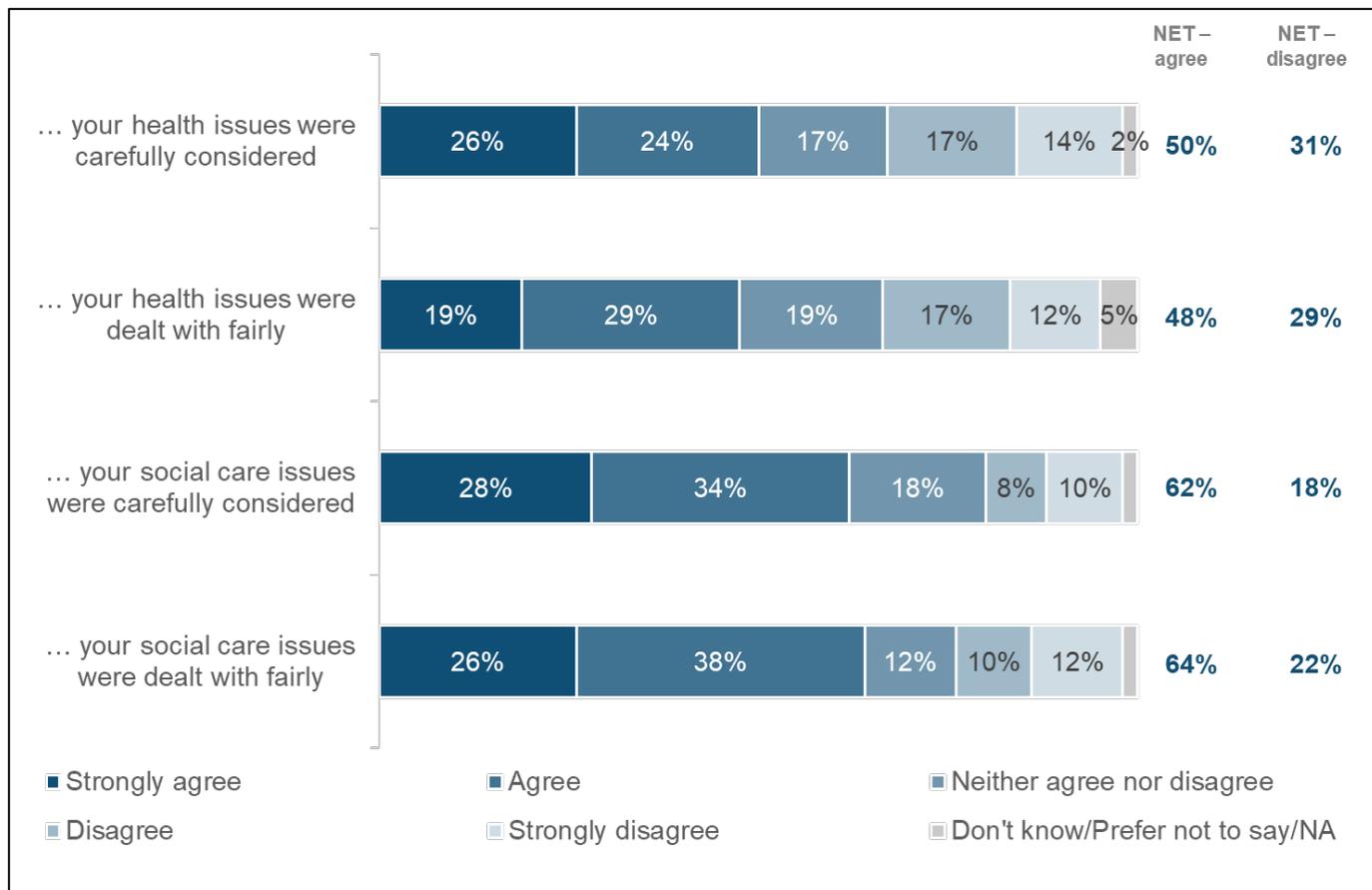
Appellants whose cases went to hearing presented a mixed picture in terms of how fairly and justly they felt that their health and social care issues³⁰ were dealt with by the Tribunal under the extended powers of the trial. When asked the extent to which they felt that their health issues were 'carefully considered' by the Tribunal,³¹ levels of agreement were relatively modest: with half (50%) agreeing. A similar picture was presented when considering whether appellants felt that their health issues were 'dealt with fairly' by the Tribunal: just under half agreed that they were (48%). That said, appellants were more likely to agree than disagree with each of these aspects: 31% disagreed that health issues were 'carefully considered' and 29% disagreed that health issues were 'dealt with fairly' (Figure 9).

When asked the same questions about social care issues, the responses were similar to, although slightly more positive than, the findings for health issues. Around three in five (62%) agreed their social care issues were 'carefully considered' and that their social care issues were 'dealt with fairly' (64%). Again, appellants were more likely to agree than disagree for each of these aspects: 18% disagreed their social care issues were 'carefully considered' and 22% that they were 'dealt with fairly'.

³⁰ The term 'issues' in this context means things that appellants were able to appeal (rather than issues resulting from an individual's health or social care needs).

³¹ Due to low base (n=42) these findings should be treated as indicative only.

Figure 9: Extent of agreement that appellants had enough information at the time about how to appeal and that their health and social care issues were carefully considered and dealt with fairly



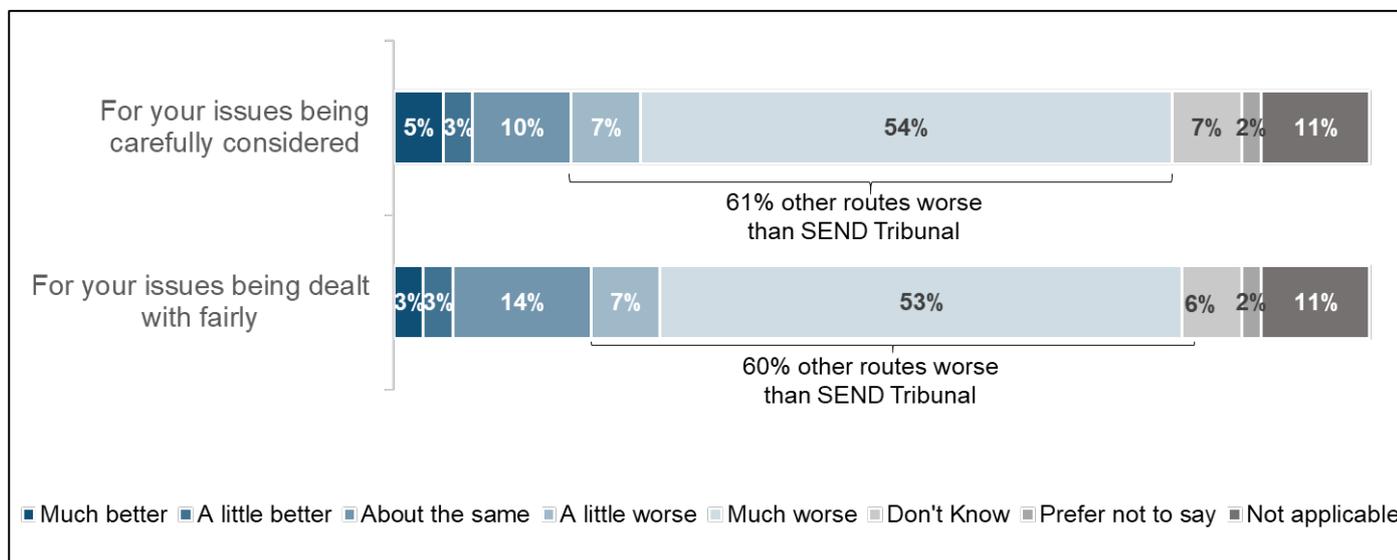
Base: Appellants whose case included health (n=42) or social care (n=50) issues, and their case went to hearing

Despite this relatively modest picture, appealing to the Tribunal under the national trial was compared favourably to using other routes of redress in order to try to resolve complaints. Three fifths of appellants (61%) who had used other routes of redress described these routes as being worse than appealing under the national trial for their issues being carefully considered, and a similar proportion (60%) of appellants stated that other routes of redress were worse than the national trial in terms of feeling that their issues were dealt with fairly.

In each of these cases, just over half (54% and 53% respectively) of appellants stated that other routes of redress were much worse in these regards. This compared to just 7% and 8% of appellants feeling that other routes of redress were better than appealing under the national trial in terms of their issues being carefully considered and dealt with fairly. Appellants therefore felt that their issues were more carefully considered and dealt

with more fairly through the Tribunal under the national trial than through other potential routes of redress.

Figure 10: Appellants’ views on whether other routes of redress were better or worse than the Tribunal appeal for their health or social care issues being carefully considered and being dealt with fairly



Base: Appellants who complained about health or social care issues elsewhere before or since making their appeal to the Tribunal (n=87)

5.4. To what extent were appellants satisfied with the overall process?

Appellant satisfaction with the overall process of appealing under the national trial was mixed, with appellants as likely to be dissatisfied as satisfied. Around two in five of all appellants reported being satisfied with the process of appealing about the health and/or social care aspects of their or their child’s EHC plan (40%) while just over a third expressed dissatisfaction with the process (35%).

Appellants who were appealing health or social care issues relating to EHC plans that included moderate learning difficulties diagnoses were less likely to be satisfied (20%) and more likely to be dissatisfied (53%) with the overall process than appellants appealing about EHC plans that did not include these diagnoses.

Respondents gave a variety of reasons for being satisfied or dissatisfied with the process, although a more consistent set of reasons was provided regarding dissatisfaction. Most commonly, appellants were dissatisfied because they felt that the process took a long time. Other common reasons for dissatisfaction included finding the process stressful and frustrating, feeling that the Tribunal’s recommendations were

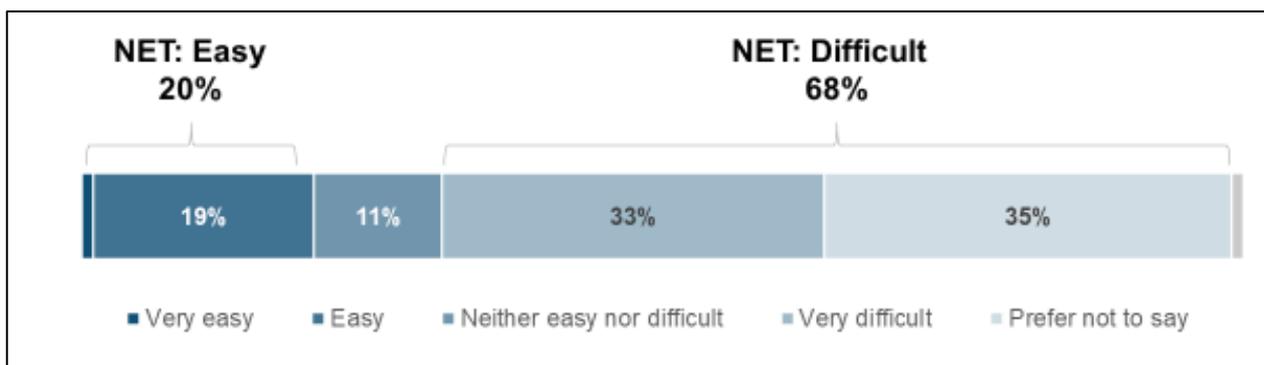
ignored by the LA, feeling that appealing was a difficult and complicated process; and having a negative experience of dealing with the LA. It is worth noting that it is unlikely that these sorts of concerns were unique to trial cases, as they could also come up in relation to non-trial Tribunal appeals.

A range of reasons for satisfaction were expressed by appellants, although the only commonly expressed reason – which was expressed by a handful of appellants – was that the outcome was satisfactory as the Tribunal had found in favour of everything they wanted.

When asked in the follow-up survey 6 months later, 35% of appellants said they felt more positive than they did immediately after the hearing, and 28% reported feeling less positive. Among those who had changed their perception after 6 months, some attributed their changed perception (whether good or bad) to the response to recommendation letters from the local authority or CCG, while others attributed it to the fact that the Tribunal does not have the power to enforce their recommendation (possibly because in these cases the recommendations were not followed by the LA or CCG).

Appellants were also asked to rate the ease or difficulty of the process of appealing the health and social care aspects of their EHC plan. Over two thirds (68%) of appellants found appealing the health and social care aspects of the EHC plan difficult, while just 20% found it easy. Over a third (35%), moreover, found appealing to be “very difficult”: this compared to just 1% of appellants describing it as “very easy”.

Figure 11: How easy or difficult respondents found the whole process of appealing the health and social care aspects of the EHC plan to the Tribunal



Base: All appellants (n=122)

When appellants were asked what worked well during their experience of appealing to the Tribunal under the trial powers, they offered a wide variety of responses. While there were few consistent themes, appellants did identify the following factors as working well:

- Finding documentation clear and easy to understand (18%);

- Finding staff helpful and knowledgeable (14%);
- Having legal support or representation (11%); and
- Feeling satisfied with the outcome and final resolution as a whole (including the specific health and social care outcomes, but not limited to those alone) (13%).

Regarding what did not work well during the experience of appealing to the Tribunal, around half of appellants felt that there were inefficiencies in the process and/or that appealing took too long, while appellants also consistently raised several other issues:

- Poor communication, including it being difficult to contact the relevant people (mostly in reference to trying to contact the LA, but also other organisations involved in the process) about the appeal (26%);
- It being a stressful and frustrating process (23%);
- A lack of information, support or help throughout the process of appealing (21%);
- The amount of work that was required (16%);
- The cost or financial burden of appealing (11%); and
- Poor collaboration or co-operation between parties that were involved (9%).

In the follow-up survey 6 months later, when asked the same questions, the most common positive aspects identified tended to be more general:

- The whole process going well (21%);
- The fact that everything was centred around the child and their needs (12%);
- The process being timely and efficient (11%); and
- Staff being helpful and knowledgeable (11%).

The aspects identified in the follow-up survey 6 months later as not having worked well were slightly more similar to the initial views, although a perceived lack of accountability on the part of the organisations involved was a notable new recurring theme:

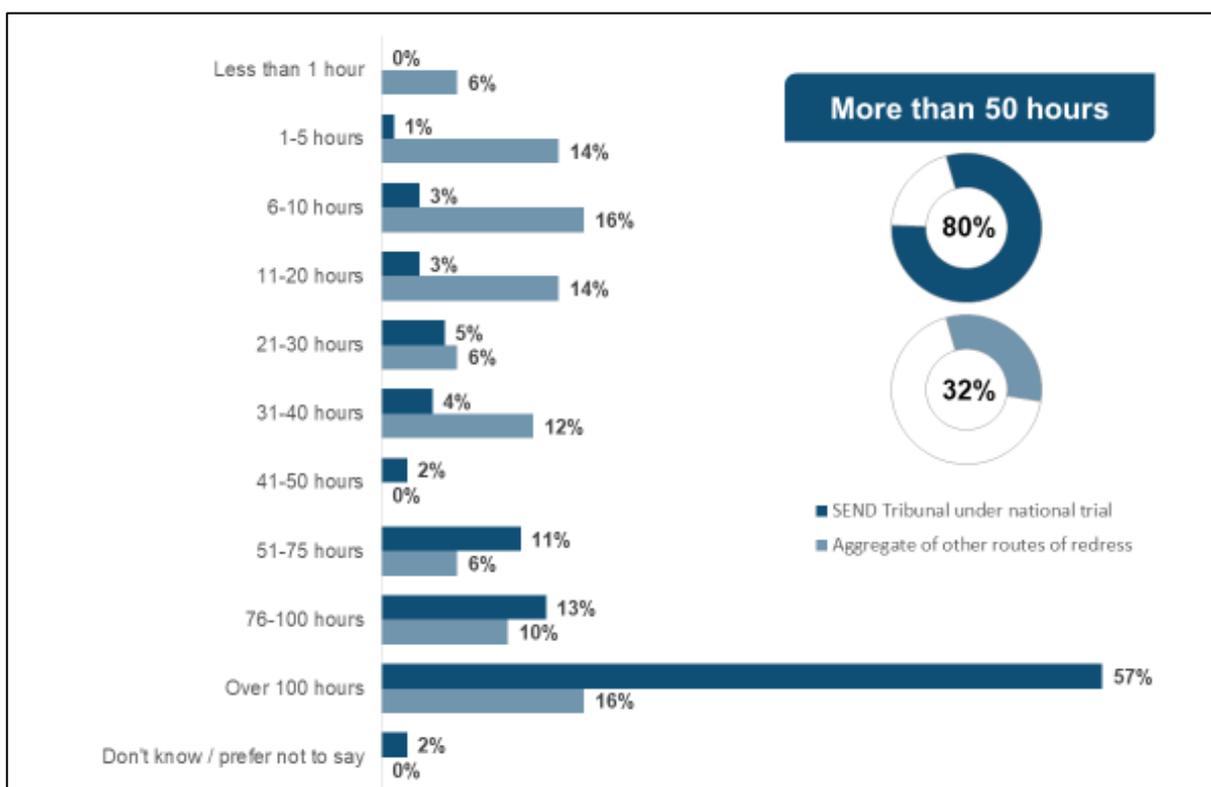
- Perceived inefficiencies in the process and/or it taking too long (33%);
- Lack of accountability of the organisations involved (30%);
- The amount of work that was required (25%);
- A lack of information, support or help (21%);
- It being a stressful and frustrating process (18%);

- The cost or financial burden of appealing (16%); and
- Not feeling like they were listened to or their views taken into consideration (16%).

5.5. How much time was involved for appellants?

Appellants reported spending a considerable amount of time preparing for the Tribunal under the trial powers, and were much more likely to report spending more than 50 hours in preparing for the Tribunal than they were when considering an aggregate of other routes of redress.³² When combining the time spent by the appellant or members of their family, more than half of all Tribunal appeals under the trial powers involved spending more than 100 preparation hours (57%), while 80% reported spending over 50 hours.

Figure 12: Amount of time spent preparing for the SEND Tribunal and other routes of redress by appellants or members of the family of the child or young person³³



Base: National trial: All appellants (n=122); Other routes of redress: If complained using other potential route of redress (n=50)

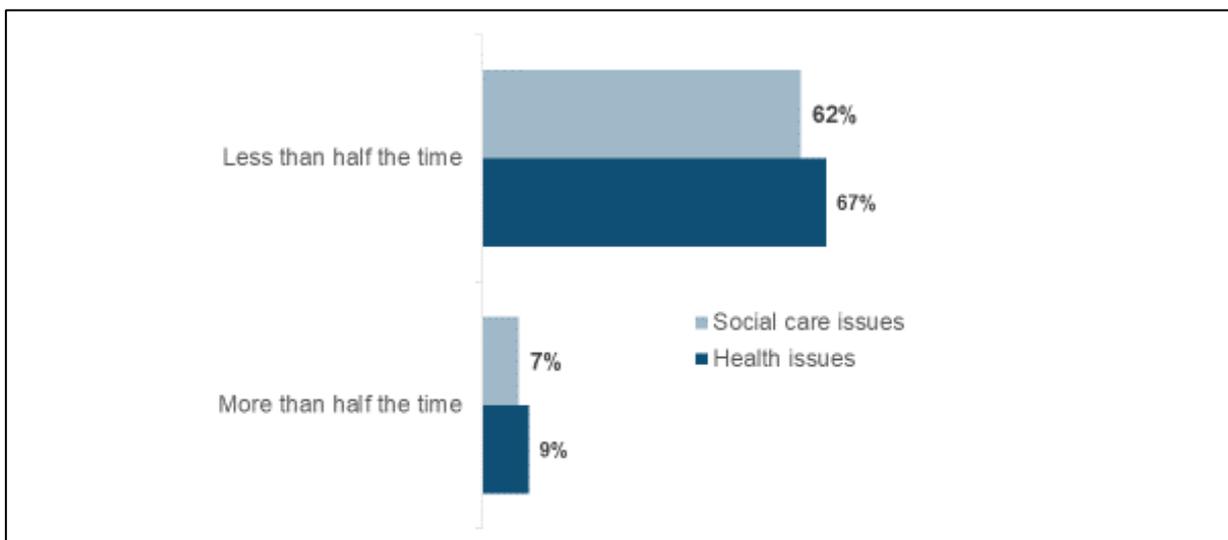
³² It could be the case that there was variance in the amount of time taken for appellants to prepare a case when complaining to other routes of redress based upon whether they pursued this before or after submitting their appeal to the Tribunal under the national trial. However, base sizes do not permit analysis to this level.

³³ The number of hours reported in this chart refers to the total number of hours spent preparing all aspects of the appeal to the SEND Tribunal or other routes of redress, not exclusively the health and/or social care aspects.

Among appellants who brought issues³⁴ relating to health to the Tribunal (n=90), two thirds (67%) said that less than half of their time was spent on the health aspects of their appeal, with only one in ten (9%) stating that they spent more than half of their time on it. A similar picture emerged among appellants who brought social care issues (n=90), with 62% stating that they spent less than half of the time preparing their appeal on social care elements and only 7% stating that they spent more than half of their time on these elements.

Taking this into account, it suggests that the time spent by appellants specifically for preparing for the health and/or social care elements will have been significantly lower on average than the total time spent for the appeal as a whole.

Figure 13: Appellant estimations of how much of time spent preparing for the SEND Tribunal was spent preparing for health and social care elements of appeal



Base: Appellants who brought health issues and knew how much time they had spent (n=90); Appellants who brought social care issues and knew how much time they had spent (n=90)

In almost half (47%) of cases, appellants stated that they or another member of their family had taken time off work to prepare for the Tribunal appeal. When considering the amount of time that was taken off work, around three quarters stated that they or members of their family took 5 days or more off (74%), while for just over a third (37%) of those taking time off work this involved 10 days or more being taken.

In addition to time off work to prepare for the hearing, three quarters (74%) of appellants whose appeal went to a hearing stated that they or a member of their family had to take time off work to attend the Tribunal hearing. Among this group, nearly half stated that

³⁴ The term 'issues' in this context means things that appellants were able to appeal (rather than issues resulting from an individual's health or social care needs).

they or another member of their family had lost earnings through taking time off work to attend the hearing (48%).³⁵

Among appellants who utilised other routes of redress for health or social care issues alongside appealing to the Tribunal under the national trial, there was a mixed picture in terms of whether they perceived the other routes of redress to be better or worse in terms of preparation effort or time to attend meetings or hearings. Despite this, preparing for the Tribunal under the national trial did appear to be perceived to take more hours on average.

Around two in five appellants (39%) stated that other routes of redress were better in terms of the amount of effort required to prepare these appeals, while around a third (32%) stated that these other routes of redress were worse. Almost a quarter of appellants who used other routes stated that other routes of redress were better in terms of the time required to attend meetings or hearings³⁶ (23%), while a similar proportion stated that they were worse (23%). These findings suggest that there is no consistent perception among appellants as to whether appealing to the Tribunal under the national trial requires more or less preparation effort or attendance time than other potential routes of redress.

However, when considering the hours reported by appellants as being spent preparing to appeal issues through other routes of redress, it does seem that appealing to the Tribunal under the national trial required more time from appellants to prepare their appeal. Around a third of appellants (32%) who utilised other routes of redress stated that they or members of their family spent 50 or more hours preparing for these other routes of redress, considerably lower than the 80% of appellants or family members who spent more than 50 hours preparing for their appeal to the Tribunal under the national trial.³⁷ It is important to note, however, that the hours for the national trial Tribunal cases includes preparation for the education elements in addition to the health and social care. As Figure 13 suggests, the time spent on the health and/or social care elements will have been significantly lower than the total, and therefore closer to the time needed for the other routes.

³⁵ The associated costs of these lost earnings are included in the analysis of costs to appellants in Chapters 7 and 8

³⁶ Not all of the other routes include the possibility of a hearing within the process

³⁷ Figure 12 above, and discussed earlier, outlines the full breakdown of time spent by appellants while preparing for appeals through other routes of redress, presented alongside the time spent by appellants appealing under the national trial.

5.6. To what extent did appellants use legal representation or other paid for support?

Just over half of appellants (52%) paid for support in the process of preparing their appeal. The most common form of support that appellants paid for was legal advice, with just under two thirds (63%) of those paying for support saying that they paid for this. This equated to a third (33%) of all appellants reporting that they paid for legal advice.

Appellants who utilised legal advice tended to use it for a mixture of elements, with 55% using advice regarding all three aspects of the EHC plan and eight in ten (83%) using it regarding at least one element of the EHC plan. In total, 80% of appellants who used legal representation received advice about educational elements of the EHC plan, while 63% received advice about the health elements and the same proportion for social care elements.

The cost to appellants of utilising legal representation is discussed in Chapter 7.

Appellants also paid for other forms of support. Just over half of appellants who paid for additional support paid for reports from independent education experts (52%) and just under half paid for reports from independent health experts (47%). It was less common for appellants who paid for additional support to have paid for reports from independent social care experts (22%). Other forms of paid for support were also reported to be utilised, albeit infrequently.

5.7. To what extent was mediation used and what was the outcome of this?

Prior to registering an appeal with the Tribunal, parents and young people must contact a mediation adviser within two months of the LA's decision in order to consider whether mediation may be one potential route to resolving disagreement with the LA. If parents or young people decide not to take up mediation, they are issued with a certificate by the mediator that allows them to register an appeal with the Tribunal. Official statistics indicate that there were 7,325 mediation cases in the 2018 and 2019 calendar years, of which 1,835 cases (25%) were followed by appeals to the Tribunal.³⁸

According to management information provided by HMCTS, around one in ten appellants (11%) to the Tribunal under the national trial pursued mediation as part of their appeal. Of the appellants surveyed as part of this evaluation, one in four reported utilising mediation (25%) as part of their appeal or before their appeal. Among this group that reported utilising mediation, around one quarter (23%) of appellants stated that their mediation experience helped to resolve either the education, health or social care issues

³⁸ [Statements of SEN and EHC plans: England, 2019](#)

that their appeal related to. This translated to just 6% of all appellants surveyed reporting that mediation helped to resolve any aspect of their appeal. This suggests that there may be scope for a greater utilisation of mediation among appellants under the national trial, which may result in quicker and more efficient dispute resolution in some appeal cases.

5.8. To what extent did appellants have continued contact with the Tribunal or local authority and what was the outcome of this?

After appellants to the Tribunal have registered their appeal, the Tribunal has considerable discretion to conduct case management, including reviewing appeals and potentially clarifying the recommendations being sought. These case management directions are built into the twelve-week process from the appeal being registered to the hearing being expected to take place. In addition to this Tribunal-directed case management, in many appeal cases appellant contact with the LA continues: both processes function as potential routes for resolving issues prior to any prospective hearing.

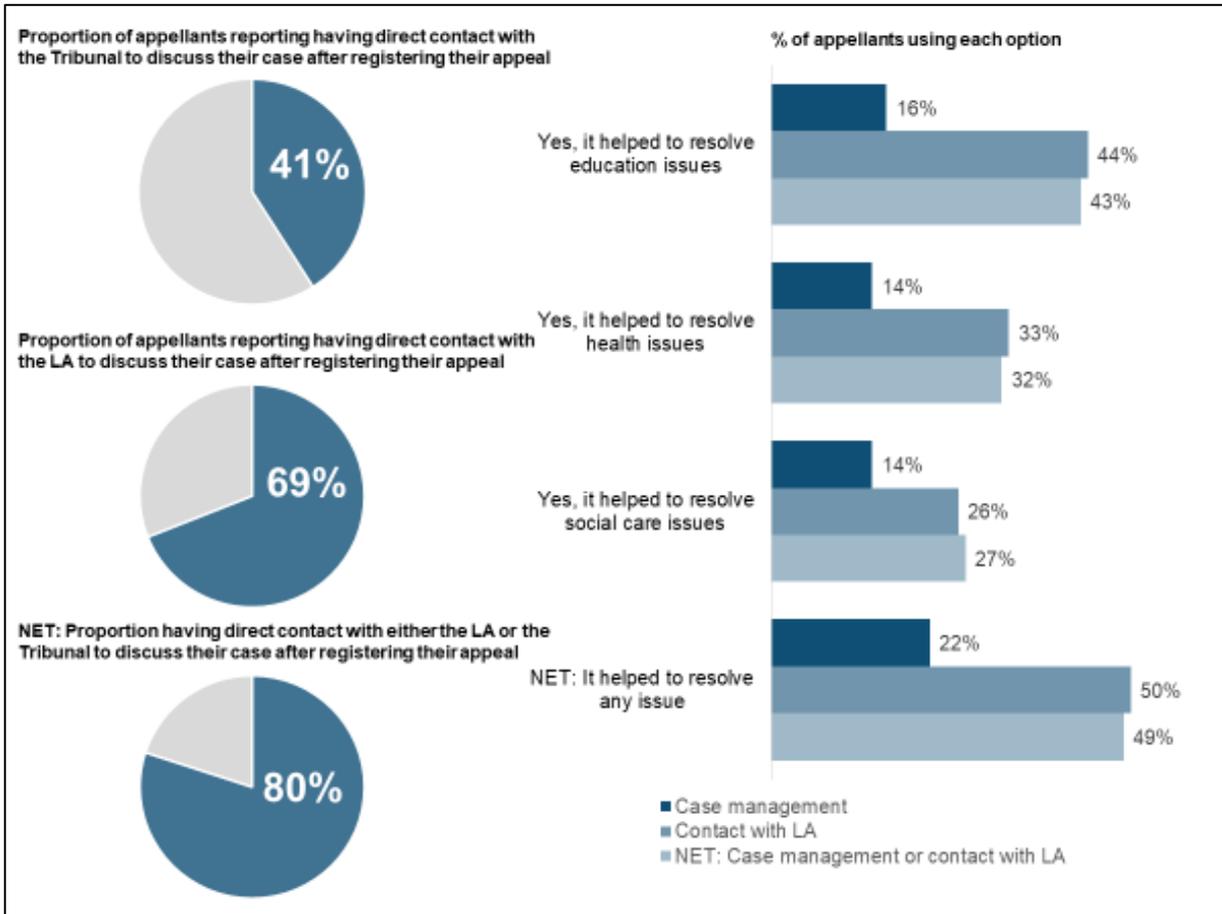
Overall, as demonstrated in Figure 14, 80% of appellants were engaged in either Tribunal-directed case management or contact with their LA after submitting their appeal. Around half (49%) of all appellants resolved an aspect of their appeal through case management or through contact with the LA. Appellants were more likely to resolve educational (43%) elements of their appeal than health (32%) or social care ones (27%).

Appellants were more likely to have direct contact with the LA to discuss their case (69%) than they were to have contact with the Tribunal (41%). They were also more likely to resolve at least some aspects of their case via the LA (34% of appellants) than via the Tribunal (9% of appellants).³⁹

Appellants who stated that they had continued contact with their LA after submitting their appeal were more likely to resolve educational issues (44%) than they were to resolve health (33%) or social care (26%) issues through this contact with their LA.

³⁹ These findings are based on all appellants, not just those who had case management or continued contact with the LA.

Figure 14: Proportion of appellants to the SEND Tribunal under the national trial who had engaged in Tribunal-directed case management or had contact with the LA to discuss their case, and the consequences of these processes



Base: All appellants (n=122); All who had contact with LA after submitting appeal (84); All who had case management from Tribunal (n=50); All who had direct contact with either Tribunal or LA after submitting appeal (n=98)

6. Impact of the trial on Local Authorities and Clinical Commissioning Groups

This chapter focuses on the impact of the national trial on LAs and CCGs. It focuses specifically on how the different services – education, social care and health (through the CCG) – work together to address SEND appeal cases. It looks at what impact the trial has had on how practitioners working in this field fulfil their duties in relation to the Children and Families Act 2014, and considers the impact that the trial has had on when and how decisions are reached, the use of legal representation and other routes of redress. The findings draw on evidence from the LA and CCG cost survey, as well as the wider case study visits. As the LA and CCG cost survey results come from a relatively small sample of respondents, results will be reported qualitatively.⁴⁰

6.1. What impact did the trial have on how education, health and social care providers work together?

LAs and CCGs were slightly more positive than negative about the extent to which commissioning bodies in their area work together on SEND and felt that the trial of extended Tribunal powers had had a positive or, at the least, a neutral effect on this. Many respondents to the LA and CCG cost survey agreed that the agencies are working well together (17 out of 30), while others disagreed (7 out of 30) or were neutral (5 out of 30).⁴¹ Given the small base sizes these findings should be treated indicatively.

When asked to explain why they agreed or disagreed, those respondents who were most in agreement focused on the ways in which the different agencies are working well together, with communication emerging as a key theme.

Open lines of communications as a small authority; commitment from all partners to joint/integrated working. DCO [Designated Clinical Officer] sitting with SEN team 2 days per week, DMO [Designated Medical Officer] 1/2 day a week is a paediatrician who is available for any medical input, assessment, advice. Attendance and active participation at decision making panels from all partners. - *LA and CCG cost survey, CCG*

Some respondents from both the case study visits and the LA and CCG cost survey argued that good relations and communications can help to compensate for

⁴⁰ We received 30 responses to the LA and CCG cost survey. A small number of questions were added after fieldwork had begun and we have a smaller base of 16 responses for these.

⁴¹ One respondent selected 'Prefer not to say'.

shortcomings where there is a lack of formalised structures and processes in place (or these are still developing).

Relationships are good. CCG & LA are co terminus. The provider landscape is not fragmented, and we have a very strong PaCC [Parent and Carer Council]. Although little progress on structure and governance across CCG & LA. - *LA and CCG cost survey, CCG*

Some respondents cited feedback from local area SEND inspections as independent evidence of effective joined up working in their local area.

Where respondents felt that agencies were not working well together with respect to SEND, the key issue cited by the LA SEND team was the lack of engagement by the CCG and social care services. Specific challenges were raised around lack of knowledge and understanding of the Tribunal process, lack of joint funding agreements, health care professionals not being paid to attend Tribunal hearings and added complications when private healthcare providers were involved.

The LA and CCG cost survey asked what impact, if any, the trial specifically has had on how agencies work together. Some respondents reported that the trial had improved the way in which commissioning bodies are working together, though most said 'stayed the same' – that is, that the trial itself has not impacted on effectiveness of working. No-one responded that the agencies were working together less effectively as a result of the trial. Of those who cited improvements, one explained that as a result of the trial:

The knowledge and involvement of senior leaders had increased and had resulted in a better understanding of SEND. - *LA and CCG cost survey, Education*

Another cited improvement despite a lack of single route of redress cases:

Although we have not been involved in any single route of redress cases the training has raised awareness and promoted discussion amongst colleagues from Health, Social Care, CCG and Education leading to some changes in practice. More clarity in Social Care and Health sections of the EHCPs. - *LA and CCG cost survey, Education*

Two main themes emerged as to why most of these respondents felt that there had been no great impact on the effectiveness of working together. Firstly, respondents felt they were already working well together and/ or working towards better collaborative working practices. For example, one individual from social care services cited the Children and Families Act 2014 specifically, stating that the introduction of the Act saw them begin to participate more in SEN panels. The second reason respondents gave for the limited

impact of the trial on effective working between agencies was the limited number of single route of redress cases. In one case, although the respondent replied 'stayed the same' to this question, there was an acknowledgement that learning from this process had highlighted a need to work together more closely in the future.

We work well together already. As stated, the impact has mainly been on social care re: the need to complete an assessment for other reasons than safeguarding. The number has however been small so not embedded in practice. I do think it has highlighted an issue around SALT [speech and language therapy] and OT [occupational therapy] and the need for education to work closely with health with regards to future commissioning. - *LA and CCG cost survey, Education*

LA and CCG case study visits also provided evidence of where agencies are working well together and areas where they are working less well together and the reasons why. Some interviewees highlighted how differences in criteria for assessment across agencies cause challenges in trying to bring different services to work together in a holistic way, citing the eligibility criteria used by social care services compared with education.

6.2. What impact has the trial had on health and social care commissioners understanding and fulfilling their duties in relation to the Children and Families Act?

LAs and CCGs have had to work more closely together since the introduction of EHC needs assessments and plans (through the Children and Families Act 2014) in order to respond to the requirement to assess and provide for health and/ or social care needs alongside education when considering the needs of a child or young person where SEND is a consideration. In this section we consider what impact, if any, the trial extension of SEND Tribunal powers has had on health and social care commissioners with respect to the duties placed on them as a result of the Children and Families Act 2014.

6.2.1. Social Care

The trial has had a positive, albeit limited, impact on social care services by encouraging joint working with education services through the need to respond jointly to single route of redress appeals. In most local areas, this impact was limited for two main reasons. Firstly, education and social care services in many areas reported they were already establishing joint ways of working together since the introduction of the Children and Families Act 2014; and secondly, the relatively small number of appeal cases involving both education and social care that any one LA has had to respond to. Data from

HMCTS shows that 18% of all LAs had just one case involving education and social care only, while the average number of this type of case across LAs is five.⁴² In terms of appeals involving education, social care and health the average number of cases across LAs was 10, with 7% of all LAs having experienced just one case, 14% two cases and 13% three cases. Despite education and social care colleagues being employed by the same LA, there was reported tension around the involvement of social care services in EHC needs assessment and plan processes. Within the case study visits, social care workers noted that they recognised the importance of joint working with SEND and health teams on SEND issues and specifically contributing to EHC plans and responding to subsequent appeals. However, with resources stretched and other statutory needs to meet safeguarding commitments they reported finding it difficult to prioritise responding to information for EHC plans over, for example, getting a child into emergency shelter.

One SEND lead set out clearly the competing pressures on social care, but also talked about the difference in culture around SEND issues.

But EHCP is not a priority, they [social care services] are focussed on safeguarding, abuse, fostering, 'the big stuff'. They are under pressure, and [have] not adapted their ways of working as Education has had to after Acts in 1981, 1996, 2014 – [there is] not a culture that social care is a 'big player' in [the] SEN / EHCP world...[there needs to be] more recognition that these are often children in need, this work is not an add on, but contributing to what they're doing already. - *Interim SEND Operational Lead*

Consequently, it was reported that while social care officers will respond, it may not be within the necessary timeframe or indeed to an adequate level – several interviewees commented that they may get a response simply stating 'not known to this service'. Despite these pressures, there was a positive story from one LA on how they are addressing the challenge of involving social care. They are undertaking a 12-month trial whereby a dedicated officer screens children and young people for social care needs before a full assessment is carried out. While this move was not in response to the trial itself, the head of service reported that what had become clear following the introduction of the Children and Families Act 2014 was the issue of 'not knowing until you assess'.

6.2.2. Health

As with social care, several respondents were interviewed for the LA and CCG case studies. They reported greater collaboration between education and health care services since the introduction of the Children and Families Act 2014, to meet joint responsibilities

⁴² The average is based on the median which is more resilient against outliers; that said, the mean score is two, so outliers have not greatly impacted on the average measures.

on SEND. Again, the trial has had a positive impact by encouraging further collaboration through the joint response to single route cases where there is both an education and health care dimension.

This impact appears to be limited by three factors. First, the move towards greater joint working pre-dates the trial, going back to the introduction of the Children and Families Act 2014. Second, as for social care, is the relatively small number of single route of redress cases any one CCG have had to respond to. On average there have been five appeals on the grounds of education and health per LA; 23% of LAs experienced just one case and a further 19% experienced two. The third factor is related to the size and scope of health care services, which brings both advantages and challenges: this is addressed in more detail below.

Many health representatives interviewed for the LA and CCG case studies reported that agencies are working together more effectively now than they once did, though it has usually been a long and ongoing process to put in place the appropriate structures to achieve that effective joint working.

Now [we] have weekly meetings with clinical officer, at need assessment panel. [We] can talk to health colleagues about alternatives to the often requested sensory inspiration therapy. [It's a] good relationship, working well now with [the] health side – but [this] has taken several years [since the 2014 Act, not due to the trial]. [It's been] motivational that health engaged so well. - *Education, Inclusion Locality Manager*

It was reported that a key challenge for the involvement of health care services in SEND issues is simply the size of the organisation and variety of services that make-up health care. For example, of any three appeals that involve health care, one may involve occupational therapy, one speech and language therapy and a third specialising in, for example, eating disorders or epilepsy. This has the effect of distributing the demands made on health care staff, which could be seen as positive; it can also, however, hamper the sharing of expertise and learnings from the process.

It has encouraged co-working. Health is such a big organisation, you could have health challenged and it might not impact across all the teams so not as much shared learning across health. More cascading of information will happen over time. -*Education, SEN and Engagement Service Manager*

The view of one Parent Carer Forum representative was that, in their experience, none of the agencies are sufficiently knowledgeable about the Children and Families Act 2014:

My view is that health education and social care are not up to speed on the Families Act and what their duties are. Government brought this thing in in 2014, gave no extra resource to it and health and social care don't understand it. - *Parent Carer Forum representative*

6.3. What impact did the trial have on decisions the health and social care commissioners reached and when?

Many LAs and CCGs have set up processes and joint working committees to bring together representatives from the different service areas to deal with management of SEND cases. Evidence from the case study visits found that, in some LAs, there has been a determined effort to try to do everything possible to resolve cases before they get to appeal and/or the Tribunal. This usually involves early engagement between the SEND team, the different service areas and parents and young people. Aligned with this has been a greater focus on what goes into an EHC plan with a view to minimising the chances of an appeal going to a hearing under single route of redress. There is also evidence to show that the trial has been a positive driver of efforts for some LAs.. This section also looks at evidence from the LA and CCG cost survey on the impact of the trial on time taken to respond to requests and the clarity and overall quality of information provided to parents, families, and young people, and considers what impact the trial has had on the involvement of senior leaders in dealing with SEND cases.

In some of the case studies, there was a reported focus on what is written into plans in terms of the quality of the recommendations and the level of detail provided in order to reduce the likelihood of an appeal needing to go before the Tribunal. One example of the positive effect of the trial on outcomes and decision making was given by a Senior Designated Clinical Officer who talked about how the trial has encouraged people to think more carefully about what they might write into a plan, as there is now the potential to have recommendations in plans called into question:

Clinicians understanding that their advice might be called into the Tribunal arena there has been an added thought of "oh, well we're involved in this now." So I think people have woken up a bit more that this isn't just about writing a bit of advice for a local process but they need to think "where could this end up?" Seen as a good outcome of the trial so far. - *Senior Designated Clinical Officer*

There are also examples from social care services about how the trial has resulted in a changed approach to plans, given the knowledge that what is being written could later be challenged at a Tribunal.

Before the trial it was possibly easier for SC [social care] to do something very cursory around an assessment (a desktop assessment), but they are now more mindful of the decision making around that, and we agreed that there'd be a process...in which parents can contact them directly if they believe there is a need for assessment but SC don't. And I don't think we would have considered it as quickly if we hadn't had the Tribunal. - *SEN Service Manager*

As a result of this added focus on the earlier part of the process to try and minimise the chances of Tribunal appeals under single route of redress, some respondents talked about the need for and provision of additional training to help health and social care teams understand how best to approach plans.

Respondents to the LA and CCG cost survey were asked about the impact of the trial on various aspects of the appeal process. On the time taken to respond to requests for evidence, respondents were divided between those who said there had been a decline and those who said there had been no change. A minority said that performance had improved. In terms of completeness of responses to requests for evidence, the trial had little impact with more than half of respondents saying that there had been no difference compared with pre-trial; a few said that there had been a decline in completeness.

With regards to the time taken to communicate with parents, families and young people, around half said that there was no difference; of the remainder, more said that the time taken had declined than improved.

While most respondents felt that the trial had had no impact on (a) the clarity of information and (b) the overall quality of communication provided to parents, families and young people, more respondents reported improvements on these measures while a smaller minority reported a decline.

The LA and CCG cost survey also asked about the role of senior leaders and whether the extent to which they get involved with cases has changed. Most said that their involvement had 'stayed the same'. A few said that senior leaders now spent more time monitoring and analysing trends in appeal cases and were more involved with decision-making for individual single route of redress cases. No respondents said that senior leaders now spend less time on the resolution of cases. One respondent explained their view that the trial has had limited effect:

I am a senior leader. My LA has a secure process in place for dispute resolution across the partnership which is effective. The trial has had no impact on systems, procedures or case management. Agencies have always worked well together and continue to do so.

This cannot evidentially be attributed to the trial. - *LA and CCG cost survey, Education*

6.4. To what extent did local authorities and health commissioners use legal representation?

There is some evidence from the LA and CCG cost survey on the use of legal representation. The survey did not define legal representation, but LAs reported in the case studies that, where appellants are accompanied by a legal representative to the Tribunal, LAs will also have engaged a legal representative to attend or vice versa (i.e., in cases where one of appellants or LAs feel it will be necessary or useful, it is likely the other will too). Where an LA had made preparations for an appeal case under the national trial, respondents were asked whether their LA had incurred any costs in addition to regular, internal staff time and costs, such as legal services at any point in the process. Most respondents to this question said that they had used legal representation (for advice, preparation and/or representation), likely in comparable frequency to the proportion of appellants that used legal representation.⁴³

The LA and CCG case studies included interviews with legal representatives. These interviewees reported a range in the level of involvement of legal representatives in appeal cases but did highlight some commonalities in the types of cases in which legal representation was likely to be involved. These tended to be more complex cases or those which were going to the Upper Tribunal.

The SEND team have no legal qualifications. There are budget cuts so they keep as many of the Tribunals to themselves as they can but if the parents have representation, they'll come to me. – *Solicitor*

Speaking to legal representatives who have experience of the SEND Tribunal during the case studies gave some indication of how the use of lawyers can change the dynamics of a case. One gave an example of how a Tribunal case was settled at a hearing over a relatively small matter: when the parents were asked afterwards why they had not simply come to that agreement with the LA during case management before the case got to Tribunal, the parents explained that they were discouraged by their solicitor from engaging with the LA.

The legal representatives interviewed made some suggestions about how the process could be improved to the benefit of all parties involved. The first of these was around the specificity of the basis for the appeal. It was felt that the basis of an appeal can currently be constructed in very vague terms and more clarity from the outset can help the LA or

⁴³ 33% of appellants paid for legal representation (see Chapter 5)

CCG focus their efforts in trying to resolve the case pre-Tribunal and/or in preparing the case for Tribunal should the parties fail to reach an agreement.

A second suggestion was about the use of collaborative expert reports rather than having competing witness statements commissioned separately by appellants and the LA. Some LAs perceive that the Tribunal currently gives more weight to the evidence of experts commissioned privately by appellants rather than the expert statements offered by an LA. These LAs also felt that where appellants and LAs can agree to a single expert assessment this would help to encourage trust and transparency between the two sides and this should, therefore, be encouraged by Tribunals.

6.5. How did these impacts compare to other routes of redress?

There are a number of ways in which parents and young people may seek redress from an authority if they are unhappy with a particular outcome. These might include complaints to a local authority, an ombudsman, MP or Ofsted or making an application for judicial review.⁴⁴ The way that the time and cost associated with appealing to the SEND Tribunal compares to other routes of redress varies given the range of options available, for example, complaining to the LA might be less costly and quicker than appealing to the Tribunal, but making an application for judicial review is likely to be more costly and time consuming.

Many interviewees in the case study visits noted that they felt parents and young people are not using the Tribunal route as an alternative to other complaint channels but are instead likely to pursue the Tribunal alongside other channels. LAs felt that there were a number of drivers of the use of multiple channels. Different channels will have different outcomes, for example a decision being overturned versus financial compensation. Another factor that LAs believed was driving the use of multiple channels are the various timeframes within which a complaint or appeal needs to be lodged, which might mean beginning additional processes before another process has reached a conclusion.

Very often, you're talking to parents, they're perfectly sensible and they'll say, 'Oh by the way, I've launched an appeal.' Okay, but we are talking about it, we are almost at the resolution here. But they're

⁴⁴ The other routes of redress participants across the evaluation were specifically prompted on were as follows: Disagreement Resolution Services; Mediation services; Early education providers' (e.g. nurseries) and schools' complaints procedures; FE College complaints procedures; Local authority complaints procedures; NHS Complaints; Ofsted and the Care Quality Commission; Local Government and Social Care Ombudsman (LGSCO); Parliamentary and Health Services Ombudsman (PHSO); the Secretary of State; Judicial review. Appellants were also given the option to identify another organisation or body themselves.

saying, 'Well, yes, it's belt and braces, because if it doesn't work out, I've got my appeal. - *Interim SEN operational lead*

The amount of time other routes of redress require varies according to the specific route and the complexity of the case. One solicitor we spoke with during the case study visits mentioned concerns around further redress being sought in the future where LAs do not take on board Tribunal recommendations around health and/ or social care:

The findings of single route are supposed to be indicative, not prescriptive, but we'll do that [treat them as indicative] and end up being 'JR'd' [taken to judicial review]. - *Solicitor*

As for overall impact, the total number of complaints lodged needs to be taken into account. One interviewee pointed out that other routes of redress may be quicker to respond to than going to a Tribunal, but that the number of complaints needing a response is considerably higher than the number of single route of redress cases for Tribunal.

These alternative routes are not as time consuming as preparing for a Tribunal. You do tend to get more of them though. A couple a week at the moment [April 2019]. - *SEN and Engagement Service Manager*

7. Additional costs associated with the trial

7.1. What was the cost to local authorities and CCGs of organising and running the trial?

The online survey of LAs and CCGs sought to understand the costs incurred by these bodies in preparing for the implementation of the national trial by asking respondents to break down the total time spent by their staff on different activities related to the implementation of the trial. The staff were divided into four bands according to seniority⁴⁵, expressed via salary ranges, and the time spent was expressed in days.⁴⁶

Respondents reported delivering and attending training as the most time-consuming activities in preparation for the trial (Table 4). The least time-consuming activities on average were: including information about the trial in local offers, ensuring IASS provide all necessary information to parents, and seeking legal advice about SEND law. On average, preparation for the trial took 17 staff days in total, ranging from 9 to 230 days.

Table 5 shows the same breakdown expressed as monetary costs. They were calculated using the midpoint of each of the 4 salary bands to estimate a “day rate” for each band, rounded to the nearest £5. For Band 1 and Band 4, a minimum salary of £18,000 per year and a maximum of £80,000 per year were used.

The average total cost for implementing the national trial was around £11,138 per LA, ranging from £6,965 to £60,120. Expressed in monetary values, ‘delivering training and disseminating information about the single route of redress process’ and ‘attending training sessions’ (costing approximately £1,900 each per commissioning team) remained the most resource intensive tasks. Notably, ‘seeking legal advice on SEND law’ was on average the 3rd most costly activity undertaken in preparation for the trial (£1,790), despite being one of the least time-consuming activities.

⁴⁵ Band 1 up to £23,499 – grade G001 on the LGA pay scale; up to grade 4 on the NHS pay band scale
Band 2 - £23,500-£36,499 – grades G002, G003 on the LGA pay scale; grades 5 and 6 on the NHS scale
Band 3 - £36,500-£49,999 – grades G004, G005 on the LGA pay scale; grades 7 and 8a on the NHS scale
Band 4 - £50,000+ - grades G006+ on the LGA pay scale; grades 8b+ on the NHS pay band scale

⁴⁶ It is important to note that because of the small base size of the survey, it is unfortunately not possible to split them into SEND, social care, and CCG teams. The same small base informed the decision to use the median, rather than the mean, throughout, as the two values were for the most part very similar, but the median provided a more robust average value of the responses collected, being less susceptible to outliers.

Table 4: Number of days of staff time spent preparing for the trial

	Band 1 - days			Band 2 - days			Band 3 - days			Band 4 - days			Total days per area		
	Median	Min	Max	Median	Min	Max	Median	Min	Max	Median	Min	Max	Median	Min	Max
Delivering training and disseminating key information and guidance to those involved in the process	3	1	5	6	5	7	2	1	10	3	1	10	3	1	10
Attending training sessions	3	1	25	4	1	100	3	1	40	3	1	10	3	1	100
Notifying parents and young people about the single route of redress national trial in decision letters	2	1	20	2	1	25	1	1	5	1	1	5	2	1	25
Including information about the single route of redress national trial in local offers	1	1	2	2	1	6	1	1	1	1	1	1	1	1	6
Ensuring local CCGs and children and adult social care leaders are aware of the trial and the implications	3	1	5	4	2	5	2	1	5	1	1	10	2	1	15
Updating local systems, policies and procedures to be ready for the introduction of the trial	1	1	8	2	1	10	2	1	6	2	1	5	2	1	21
Ensuring IASS provide parents and young people with information, advice and support about the new rights	2	1	5	2	1	5	1	1	6	2	1	5	1	1	15
Seeking legal advice on SEND law to be ready for the introduction of the trial	3	1	5	10	10	10	1	1	7	1	1	6	1	1	10
Any other preparation tasks	2	1	10	2	1	20	2	1	28	1	1	6	2	1	28
Total:	20	9	85	33	23	188	15	9	108	15	9	58	17	9	230

Base: All respondents to LA and CCG costs survey (n=30)

Table 5: Costs of staff time spent preparing for the trial (£s)

	Band 1 – cost (£)			Band 2 – cost (£)			Band 3 – cost (£)			Band 4 – cost (£)			Total cost (£) per area		
	Median	Min	Max	Median	Min	Max	Median	Min	Max	Median	Min	Max	Median	Min	Max
Delivering training and disseminating key information and guidance to those involved in the process	240	80	400	633	575	805	340	170	1,700	690	230	2,300	1,903	1,055	5,205
Attending training sessions	240	80	2,000	460	115	11,500	510	170	6,800	690	230	2,300	1,900	595	22,600
Notifying parents and young people about the single route of redress national trial in decision letters	160	80	1,600	230	115	2,875	170	170	850	230	230	1,150	790	595	6,475
Including information about the single route of redress national trial in local offers	80	80	160	173	115	690	170	170	170	230	230	230	653	595	1,250
Ensuring local CCGs and children and adult social care leaders are aware of the trial and the implications	240	80	400	403	230	575	340	170	850	230	230	2,300	1,213	710	4,125
Updating local systems, policies and procedures to be ready for the introduction of the trial	80	80	640	230	115	1,150	340	170	1,020	460	230	1,150	1,110	595	3,960
Ensuring IASS provide parents and young people with information, advice and support about the new rights	160	80	400	230	115	575	170	170	1,020	345	230	1,150	905	595	3,145
Seeking legal advice on SEND law to be ready for the introduction of the trial	240	80	400	1,150	1,150	1,150	170	170	1,190	230	230	1,380	1,790	1,630	4,120
Any other preparation tasks	120	80	800	230	115	2,300	340	170	4,760	230	230	1,380	920	595	9,240
Total	1,560	720	6,800	3,738	2,645	21,620	2,550	1,530	18,360	3,335	2,070	13,340	11,183	6,965	60,120

Base: All respondents to LA and CCG costs survey (n=30)

7.2. What was the additional cost to local authorities, CCGs and appellants of preparing for and attending hearings?

The overall average of the costs of a typical case were calculated by summing the median averages of costs for each individual activity, to allow respondents to build up to an overall figure more accurately. LAs and CCGs were asked to consider a 'typical case'. This was done because, where they had experience of several trial cases, considering a typical trial case would allow them to even out unusually low or high costs. However, some LAs and CCGs may only have experience of a small number of trial cases (respondents reported experience of between 1-20 trial cases, with an average of 6 cases per respondent). Appellants were likely to have only experienced one SEND Tribunal case under the trial powers, and so reported the costs of their recent specific case.

For LAs and CCGs, case studies revealed that the most common impact of the national trial was an increase in staff workloads without additional pay for the extra hours. Because of this, the same approach as for costs of trial implementation was adopted – that of expressing relative costs of trial cases as time (in days) spent across all staff pay bands on each task. These extra hours sometimes meant staff worked beyond their contracted hours, and sometimes that staff had to reduce time spent on other duties (and sometimes a combination of the two).

7.2.1. LAs and CCGs

Respondents to the LA and CCG cost survey had prepared for between 1 and 14 trial Tribunal hearings since the beginning of the trial, with an average of four appeals across all of them, many of which (57%) had gone on to a hearing.

As shown in Table 6, the cost for LAs and CCGs of preparing for and attending a hearing for a trial case was on average £13,014. This was split evenly between staff time and additional external costs such as legal representation, travel costs, and costs for expert witnesses. The costs for preparing for and attending a non-trial SEND Tribunal hearing are about half of that, at £6,573 on average per case.

To calculate the costs of other routes of redress, LAs and CCGs were asked which the most common route of redress (other than Tribunal) was to help resolve disputes. For the route identified, the same approach as for Tribunal costs was employed, of splitting the process into activities and time spent (in days) on each by staff members in different salary bands. The average cost for the process of going through other routes of redress for LAs and CCGs was slightly higher than this, at £9,168. This average cost is representative of more involved routes of redress such as LGSCO (rather than a

response to a letter to the MP or a complaint to the LA or CCG), but not as extensive as a judicial review.⁴⁷

That said, the average cost of taking health and social care issues to the Tribunal (£13,014) is slightly lower than the combined cost of taking education issues to the Tribunal and then dealing with health and social care issues separately via other routes (combined average of £15,741). Dealing with health and social care issues via the Tribunal might therefore have potential to be cost neutral or to achieve modest savings, if appellants were not also appealing health and social care issues via other routes in addition to the Tribunal. However, evidence suggests that appellants appealing to the Tribunal and also pursuing other redress routes is relatively common.

For LAs and CCGs, the biggest costs incurred were for legal services, averaging £5,000 per case, and 65% of the LAs and CCGs surveyed said that their LA or CCG had incurred legal costs as a result of the national trial. At the opposite end of the spectrum, travel incurred the least amount of costs within the trial.⁴⁸

⁴⁷ To calculate the costs of other routes of redress, LAs and CCGs were asked which was the most common route of redress (other than Tribunal) to help resolve disputes. For this route, the same approach as for Tribunal costs was employed, of splitting the process into activities and time spent (in days) on each by staff members in different salary bands.

⁴⁸ These findings are based on data collected prior to the Covid-19 pandemic.

Table 6: Comparison between the average costs to LAs and CCGs for attending trial and non-trial Tribunals, and for other routes of redress.

		National trial cost (£)			Non-national trial cost (£)			Other routes of redress cost (£)		
		Median	Min ⁴⁹	Max	Median	Min	Max	Median	Min	Max
Internal costs	Preparing – gathering evidence, conducting social care or health assessments, organising legal representation, or other preparations	1,995	595	14,750	1,345	595	23,700	1,453	755	3,950
	Liaising with appellants – conducting case management, participating in mediation prior to the hearing	1,475	825	8,765	1,283	595	15,775	1,350	595	3,375
	Preparing additional health or social care reports requested by the Tribunal	1,688	710	6,180	-	-	-	-	-	-
	Attending the Tribunal hearing / Attending formal meetings & following up	1,340	710	3,170	595	595	4,195	1,665	1,270	5,865
	Internal costs subtotal of median	6,498	-	-	3,223	-	-	4,468	-	-
External Costs	Legal services – total charges for advice, preparation and representation	5,000	1,800	20,000	2,500	900	40,000	4,000	2,000	40,000
	Travel costs for staff	116	40	3,600	100	28	1,150	50	15	500
	Costs paid to other individuals attending the Tribunal hearing or other meetings, for example expert witnesses	1,400	500	3,600	750	1	1,800	650	300	1,800
	External costs subtotal of median	6,516	-	-	3,350	-	-	4,700	-	-
	Total of median	13,014	-	-	6,573	-	-	9,168	-	-

Base: LAs and CCGs which have prepared for a Tribunal under the national trial (n=27);
 All respondents to LA and CCG costs survey (n=30);
 LAs and CCGs which have experience of other routes of redress (n=22)

⁴⁹ These are minimum and maximum estimates of the average per 'typical case'.

Table 7 shows the time spent across all salary bands across all tasks. The tasks that took the most time on average were preparing for hearings and preparing additional health or social care reports. Interestingly, however, although preparing additional health or social care reports requested by the Tribunal were reported as taking roughly the same amount of time in total as preparing for hearings, the difference in costs between the two can be attributed to the fact that the former is mostly undertaken by staff in the lower salary band, whereas preparation for hearings requires similar time involvement from staff across all salary bands, including senior staff.

Table 7: Number of staff days spent on preparing for and attending a hearing and implementing decisions under the trial

	Band 1 - days			Band 2 - days			Band 3 - days			Band 4 - days			Total days		
	Median	Min	Max	Median	Min	Max									
Preparing for hearing	3.5	1	20	3	1	10	4	1	30	3	1	30	13.5	4	90
Liaising with appellants	2	1	25	3	3	7	3	1	8	2	1	20	10	6	60
Preparing additional health or social care reports requested by the Tribunal	5	1	20	3.5	2	8	2.5	1	8	2	1	10	13	5	46
Attending the Tribunal hearing	1	1	1	2	2	2	2	1	6	3	1	8	8	5	17
Preparing and attending subtotal of median	11.5	-	-	11.5	-	-	11.5	-	-	10	-	-	44.5	-	-
Responding to recommendation letters - for education and health cases	0	0	0	6	1	11	1.5	1	11	1	1	6	8.5	3	28
Responding to recommendation letters - for education and social care cases	0	0	0	6.5	2	11	1.5	1	9	1	1	6	9	4	26
Responding to recommendation letters - education, health and social care cases	1.5	1	2	6	1	11	1.5	1	8	1	1	6	10	4	27
Implementing health recommendations	2	1	3	1	1	5	2	1	2	1	1	3	6	4	13
Implementing social care recommendations	3	1	5	5.5	1	11	3	1	8	1	1	5	12.5	4	29
Implementing education recommendations	2	1	10	7	1	14	4	1	11	2	1	10	15	4	45
Decision implementation subtotal	8.5	-	-	32	-	-	13.5	-	-	7	-	-	61	-	-
Total	20	-	-	43.5	-	-	25	-	-	17	-	-	105.5	-	-

Base: All respondents to LA and CCG costs survey (n=30)

7.2.2. Appellants and families

Three-quarters (74%) of appellants reported incurring costs associated with their appeal. As shown in Table 8, the average cost⁵⁰ for an entire appeal process on the appellant side was £3,880, the majority of which was accrued in preparation for the hearing. The biggest drivers behind these costs were paying for legal advice and representation, obtaining independent reports from education, health, and, to a lesser extent, social care experts, and for income lost through time off work taken to prepare. In comparison, the average costs for other routes of redress are about a third of this, at £1,290 (Table 10).

Over half (52%) of appellants said they paid for support in the process of preparing for the appeal. Among those, the most often used paid support was legal advice (33%) and reports from independent education experts (27%) and health experts (25%). Only 11% reported having sought independent social care reports.

Half (47%) of appellants reported that at least one person in the family needed to take time off when *preparing* for the trial, and for three in ten of all appellants (30%) this resulted in lost earnings at an average value £3,477 in lost earnings per case. The majority of appellants (74%) also reported that someone in their family needed to take time off for *attending* the Tribunal hearing, and for the one in six of all appellants (16%) that lost earnings as result of that time off, this cost them an average of £312 in earnings.

⁵⁰ The base size for the appellant's survey was larger than that for LAs and CCGs. For ease of approximation, the costs were given not in absolute numbers, but in banded values. For these two reasons, unlike the commissioners' survey where the median average was used, the mean average was taken as the most representative average for the appellants. It was calculated by taking the mid-value from each of the cost bands provided.

Table 8: Average cost of a national trial appeal for appellants⁵¹

Average total cost per appellant : £3,880

		% cases incurring it	Mean cost if incurred (£)			% cases using it	Mean cost if incurred (£)
Appeal preparation	Average total costs per external appeal support	52%	4,183	Legal advice	33%	2,773	
	Income lost for taking time off for appeal prep	30%	3,477	Reports from independent education experts	27%	2,564	
Hearing attendance	Average spent on people accompanying or representing them at the hearing	19%	3,058	Reports from independent health experts	25%	1,780	
	Income lost for taking time off for attending hearing	16%	312	Reports from independent social care experts	11%	1,875	
	Childcare to cover time in hearing	10%	133	Independent SEND legal advice	2%	92	
	Travel costs	38%	45	SEN information helplines	2%	133	
				Other sources of support	7%	666	
				Professional legal representation	9%	4,000	
			Other legal representation	3%	1,106		
			A witness for the child's education needs	8%	1,436		
			A witness for the child's health needs	2%	1,250		
			A witness for the child's social care needs	2%	400		
			Other people's presence at the hearing	3%	2,106		

Base: All appellants (n=122)

Furthermore, 22% of appellants stated in the follow-up survey that they paid for help or support while waiting for the response from the LA or CCG (after the case had gone to hearing or the LA had conceded). Of those, three-quarters (75%) paid for specialist healthcare and one-quarter for additional resource to support home schooling (25%) or additional support at home given to school pupils (25%). Appellants who paid for specialist healthcare incurred the highest mean cost (£1,381).

Table 9 shows the average costs paid for different types of help or support while appellants were waiting for a response from the LA or CCG. The mean cost paid per appellant was £342.

⁵¹ The costs cover the appeal as a whole, as it would not be possible for appellants to separate the costs for the health and/or social care elements.

Table 9: Average costs for additional help or support while waiting for response from LA or CCG

Average total cost (across all appellants):		£342
	% cases incurring it (of all appellants)	Mean cost (£)
Additional resource to support home schooling (e.g. specialist equipment)	5%	242
Support at home	5%	750
Respite service (e.g. short breaks for the child / parent or carer)	2%	625
Specialist health care (e.g. community nurse, physiotherapy, occupational therapy)	16%	1,381
Other	4%	1,275

Base: Appellants who took part in the 6 month follow up survey (n=57)

The two tables below show the average costs of other routes of redress for appellants. Firstly, for complaints that were made via other routes before appellants went to the Tribunal and secondly, for complaints that were made during or after the Tribunal. The base sizes are relatively small, particularly for complaints that were made during or after the Tribunal, so the findings should be treated as indicative. They show that costs for complaints through other routes of redress were significantly diminished once the Tribunal appeal began, except for costs incurred through taking time off work which increased.

Table 10: Average costs of other routes of redress for appellants – before Tribunal

Average total cost (across all appellants that used other routes):			£1,290
		% cases incurring it	Mean cost (£)
Preparing for meetings	Reports from independent experts	56%	528
	Legal advice	47%	257
	Any other support	48%	262
	Taking time off work	44%	374
Attending meetings and hearings	Paid for legal representation	45%	304
	Witnesses	38%	270
	Taking time off work	45%	666
	Childcare	55%	53
	Travel	56%	17

Base: Appellants who used other routes of redress (n=66)

Table 11: Average costs of other routes of redress for appellants – during or after Tribunal

Average total cost (across all appellants that used other routes):			£459
		% cases incurring it	Mean cost (£)
Preparing for meetings	Reports from independent experts	62%	1
	Legal advice	48%	47
	Any other support	48%	1
	Taking time off work	43%	1,000
Attending meetings and hearings	Paid for legal representation	81%	1
	Witnesses	86%	1
	Taking time off work	90%	1
	Childcare	100%	1
	Travel ⁵²	100%	3

Base: Appellants who used other routes of redress (n=21)

⁵² These findings are based on data collected prior to the Covid-19 pandemic.

7.3. What was the cost to the local education, health and social care services for service provision that has arisen from implementing recommendations?

The staff time needed for responding to and implementing recommendations was higher on average for trial cases than for non-trial, due to the additional time needed for health and social care elements. The median national trial cost ranged between £1,175 and £1,295 for responding to recommendation letters, compared with a median non-trial cost of £765; while the median national trial cost ranged between £845 and £2,105 for implementing recommendations, compared with a median non-trial cost of £825 (Table 12). In the qualitative interviews to explore the costs of provision resulting from Tribunal decisions within the national trial, a couple of LAs mentioned that the costs of responding to recommendation letters and implementing recommendations for trial Tribunal cases potentially looked slightly higher than expected, but they felt these could be plausible if either senior managers were involved or there was a lot of negotiation between different teams involved. Others, however, felt these costs accurately reflected a resource-intensive task.

The majority of staff time was spent on implementing education and social care recommendations (15 days and 12.5 days respectively), whereas only 6 days were spent (on average) implementing health recommendations. In the qualitative interviews, LA education staff explained this difference was not only because of the need for more individuals to feed into this process (i.e., health and social care in addition to education staff), but also because more time was needed from education staff as responsibility for the organisation and collation fell to them.

Although it can be assumed the costs for education provision recommended in trial cases would also have applied without the existence of the trial, these were also investigated to ensure a full picture of the costs of trial cases was gained. While the costs of additional education provision as a result of Tribunal decisions falls within the same minimum and maximum range for trial and non-trial cases (between £1,000-£42,000) the average costs were higher within the trial (£10,000 compared to £6,500 in non-trial cases). In the qualitative interviews, participants suggested that, while in theory there should be no difference in non-trial and within trial education provision costs, in practice, the types of cases reaching Tribunal within the trial would tend to involve more complex (and therefore more costly) needs. A few participants also reported feeling that education provision costs resulting from Tribunal decisions might be slightly higher within the trial than non-trial, because Occupational Therapy was more commonly recommended within trial decisions. There was also felt to be some risk of double-counting as Occupational Therapy can sit within the health recommendations but is paid for by the LA in many cases, while Speech and Language Therapy sits within the education recommendations but can be delivered by the NHS.

Social care services reported increasing their provision costs as a direct result of Tribunal decisions on average by £32,500 per case per year of provision. This is significantly higher than the costs reported by CCGs under the same circumstances, of only £5,000 per case per year. In the qualitative interviews, a few participants felt that the social care provision costs may be higher than the health provision costs due to them including respite or overnight care: or a social care-based integrated team sometimes covering both health and social care provision. They explained that social care provision can vary widely depending on the complexity of a child or young person’s needs, hence the high maximum cost provided (£130,000).

Table 12: Average costs of provision as a direct result of a Tribunal decision

		National trial cost (£)			Non-national trial cost (£)		
		Median	Min ⁵³	Max	Median	Min	Max
Internal costs (staff time)	Responding to recommendation letters - for education and health cases	1,175	515	4,515			
	Responding to recommendation letters - for education and social care cases	1,233	630	4,175	765	595	1,600
	Responding to recommendation letters - education, health and social care cases	1,295	595	4,165			
	Implementing health recommendations	845	595	1,845	-	-	-
	Implementing social care recommendations	1,613	595	4,175	-	-	-
	Implementing education recommendations	2,105	595	6,580	825	595	2,975
Provision Costs	Additional special educational provision, over a full one-year period	10,000	1,000	42,000	6,500	1,000	42,000
	Additional health provision, over a full one-year period	5,000	500	40,000	-	-	-
	Additional social care provision, over a full one-year period	32,500	750	130,000	-	-	-

Base: All respondents to LA and CCG costs survey (n=30)

⁵³ These are minimum and maximum estimates of the average per ‘typical case’.

LAs were also asked about costs of placements arising from Tribunals. Total costs of placements varied considerably depending on the type of school involved, from around £10,000 on average (ranging from £2,000 to £19,000) for a mainstream school (although this also varies by the banded level of top-up funding involved); to around £18,000 on average (ranging from £7,000 to £35,000) for a state special school; to around £60,000 on average (ranging from £11,000 to £100,000+) for an independent special school. The involvement of a residential placement further increased costs – in some instances, upwards of £120,000.

LAs tended to say that a Tribunal decision led to the child or young person's placement 'going up a level'; therefore, the change in placement costs as a result of the Tribunal varied considerably according to whether this was a change of band within mainstream school top-up funding; or a move from mainstream to state special school or from state special school to independent special school. The increases in costs varied accordingly. For instance, increases of £2,000 to £3,000 for a change of band within mainstream school top-up funding; or of c.£8,000 for a move from mainstream to state special school; or of c.£40,000 for a move from state special school to independent special school.

In the qualitative interviews, participants gave mixed views on whether increases in placement costs as a result of Tribunal decisions were any higher within the trial, compared with non-trial. In theory, there should be no difference in costs between trial and non-trial Tribunal decisions, and some participants did feel that the increases in placement costs within the trial were no different to non-trial. Others felt that the cost increases within the trial might be slightly higher. One reason for this was because direct support costs were included within the cost of the placement; and these direct support costs within the trial would be expanded to include those relating to health and/or social care as well as education (and education would pay a share of the costs for these and thus might take on some of the costs of the health and social care provision included within the cost of the placement).

The next chapter draws on this evidence to assess whether the national trial represents value for money. This includes a consideration of indicative evidence of the costs of provision resulting from other routes of redress.

8. Evidence of value for money

This chapter assesses the costs and outcomes of the redress pathway used by parents or young people appealing education, health and social care issues via the extended powers of the SEND Tribunal in comparison to the costs and impacts of other routes of redress and, in particular, the non-trial routes through the education-only Tribunal.

This analysis assumes that any increased provision resulting from an appeal to the Tribunal or from recourse to another route of redress improves wellbeing, as public resources are allocated to meet the child or young person's needs. Evidence about value for money centres on whether the overall resources used in the decision-making process are appropriate, and whether an alternative redress route could deliver the same change in wellbeing at a lower cost to appellants and government.

The final section of the previous chapter provides a starting point for this analysis. It estimates the annual cost of provision resulting from a national trial appeal where the Tribunal found in favour of the appellant. It also gives estimates for an appeal regarding special educational issues only (as was the remit of the Tribunal prior to the trial introduction of extended powers).

The analysis in this chapter develops this, exploring the costs of the processes for making decisions on provision, – that is, the resources used in decision-making processes. It looks at the costs borne in these processes by appellants, LAs, CCGs and the Tribunal; both those associated with the trial appeal pathway and alternative redress routes. It asks whether these resources are justified, in terms of whether they lead to commensurate changes in provision for the child or young person.

8.1. What are the outcomes sought through the trial?

The assessment of value for money in this chapter explores the outcomes of a national trial appeal case in relation to a “no policy” counterfactual. The counterfactual is used to estimate what would have happened without the policy, in order to attribute additional outcomes and additional costs to the policy – in this case, the single route of redress national trial.

To develop a counterfactual, it is first necessary to define the problem that the policy in question aims to address. This sheds light on the extent to which an alternative could address the same problem.

The Green Book⁵⁴ defines the value for money of a policy as “a judgment about the optional use of public resources to achieve stated objectives”.⁵⁵ In simple terms, the trial extension of SEND Tribunal powers was introduced to strengthen decision making about provision for a child or young person with special educational needs. The outcome of decisions are the changes in the provision recommended by the Tribunal as a result of the appeal. There will be costs associated with improving the decision-making process (from appeal through to any agreed provision), such as preparing for and attending a hearing.

Both trial and non-trial cases could lead to a change in provision for a child or young person, but the non-trial decisions would cover education provision only. Before the introduction of the extended Tribunal powers, families seeking redress for health and/or social care issues as well as for special educational needs could use a range of pathways alongside an appeal to the SEND Tribunal.

Assessing value for money then focuses on a comparative analysis. It asks whether the relative increase in costs from the non-trial to the trial processes is leading to changes in provision that are consistent with the additional resources used in making decisions. This consistency is explored in terms of the change in decision-making costs and the change in provision being broadly proportionate, so that a doubling in the costs of deciding about the additional provision required leads to a doubling of provision.

8.2. Are trial decisions changing the provision of services?

Analysis starts at the final stages in the redress route, where a decision is made about the provision (or assessments or referrals needed to identify that provision) for the child or young person. The Tribunal’s function is to recommend, within the legal parameters, this provision based on the needs of the appellant and whether existing provision meets the needs. A first issue is whether Tribunals are finding for the appellant and so deciding that resources need to be redirected to the child or young person.

During the trial, a high proportion of appeals that included health or social care elements were found in favour of the appellants or were withdrawn or conceded by the LA. The survey covered 122 cases and in these there were 10 cases where the appeal did not progress to a hearing. The rest of the cases recommended changes in provision (including cases that recommended assessments, and any provision arising as a result of those assessments). The responses to recommendation letters then provide evidence indicating that, within the sample, LAs and CCGs agree to a high proportion of the Tribunal’s recommendations on health and social care (which are not binding on the LAs

⁵⁴ the government’s guidance on how to appraise policies and programmes

⁵⁵ Pg 50, HMT (2020). The Green Book: Central Government Guidance on Appraisal and Evaluation. London: HM Treasury.

and CCGs). In the majority of cases (79% of letters), the LA or CCG had agreed to implement the health and/or social care recommendations fully (see earlier section 4.4.1); a further 10% were partially implemented.

If the Tribunal routinely found against appellants or if recommendations were not accepted, the costs of appealing to the Tribunal would be less justified. Chapter 7 indicates that costs for an appeal within the trial are significant (see Table 6). If few changes were recommended in education, health or social care provision, the use of the appeal route is less likely to represent value for money, as outcomes would be unaffected by the trial route, and the additional costs incurred would be unnecessary. This is not the case here. The changes in provision due the trial's decisions are considered below and demonstrate that the added costs of Tribunal appeals within the national trial are proportionate to these changes in provision.

8.3. What kind of recommendations does the Tribunal make?

Surveys collected evidence about the costs to LAs and CCGs of implementing the trial recommendations, asking respondents to estimate the costs associated with provision made as an outcome of a 'typical appeal case' under the national trial. LAs and CCGs were also asked to estimate the costs of provision in non-trial appeals taking place outside the national trial.

Table 12 in the previous chapter shows the average costs associated with implementing recommendations for trial and non-trial appeals. The provision costs in trial cases are higher, with a median annual cost of additional special educational provision being £10,000 compared to £6,500 for non-trial appeal cases. Further the provision costs associated with national trial appeal cases will include health and social care provision accounting for £5,000 and £32,500 of additional provision respectively. The changes seen in placement costs have also been tested in interviews conducted with LAs, highlighting that a placement involving a higher and costlier level of provision can be an outcome, as the Tribunal considers the placement within the context of social care and health provision.

This gives an indication of the outcome of trial cases compared to non-trial. Trial cases have resulted in provision for the child or young person changing to meet otherwise unmet needs. These are the annual changes in provision, with the change potentially then securing resources for a number of years.

The resources reallocated are in line with other evidence about provision costs. For example, Lemmi et al (2016)⁵⁶ review the annual cost of various care packages for people with learning difficulties and behaviour that challenges. The review finds annual provision costs ranging from £46,794 to £88,453 (at 2019 prices) for children with SEN who necessitate social care and/or healthcare support. This is in line with the LA and CCG cost surveys, which gives a median annual cost of £32,500 for implementing social care recommendations and £5,000 for health recommendations for national trial cases. The in-depth cost interviews with LAs and CCGs found that annual costs for placements vary widely, from £10,000 at the lower end to upwards of £120,000 for those that include a residential element. Lemmi et al, meanwhile, find that some provision, such as residential school placements, can cost several thousand pounds a week, so the LA and CCG estimates are consistent with other studies.⁵⁷

However, determining what part of these changes are additional benefits in the societal sense is a more complex matter. This is a reallocation of resources in welfare terms; in a counterfactual, the resources would have been used elsewhere. Any change in provision made are welfare enhancing in terms of them being better allocations of provision overall rather than viewing the level of provision in itself as the change in welfare. This makes it difficult to judge the change in social value using the evidence on provision changes in absolute terms.

However, the comparison of the average costs of provision due to a national trial appeal with those of special educational provision decided by a non-trial appeal does indicate the trial's higher provision in a relative sense. The extended Tribunal powers – on a per case basis – lead to provision changes on average higher by as much as half compared to those resulting from non-trial appeals in additional special educational provision and in the cost of placements; there is then additional health and social care provision (Table 12).

Undoubtedly, a key driver for this is the remit of the trial cases, as these look at needs beyond special educational needs. This means the counterfactual needs to examine whether the non-trial appeals prior to the trial, complemented by other routes of redress for non-educational aspects, could cost-effectively have reached comparable provision decisions.

⁵⁶ Lemmi, V., Knapp, M., Gore, N., Cooper, V., Brown, F., Reid, Reid, C. and Saville, M. (2016). *What is standard care for people with learning disabilities and behaviour that challenges and what does it cost?* British Journal of Learning Disabilities.

⁵⁷ For the study, the summaries of Tribunal decisions were also reviewed. The Tribunal generally recommends amendments to EHC plans as well as accompanying changes in provision. The summary of decisions issued by the SEND Tribunal in national trial cases for 2018-2019 refers to unpublished attachments, so the additional provisions themselves are often difficult to quantify.

8.4. What are the costs of the other redress routes to reach provision recommendations?

This section looks at the costs of the redress routes used by those involved in appealing to the Tribunal. Most of the evidence collected from appellants and the LAs/CCGs focuses on the national trial route, but data collection also covered questions about the costs of other routes of redress.

Costs have been compiled into two “decision points,” chosen as they affect the costs and duration of an appeal and because they provide a common structure across survey and non-survey (mainly administrative) data. These decision points are:

- Whether the case included all three areas (education, health and social care);
- Whether an appeal leads to a hearing or not.

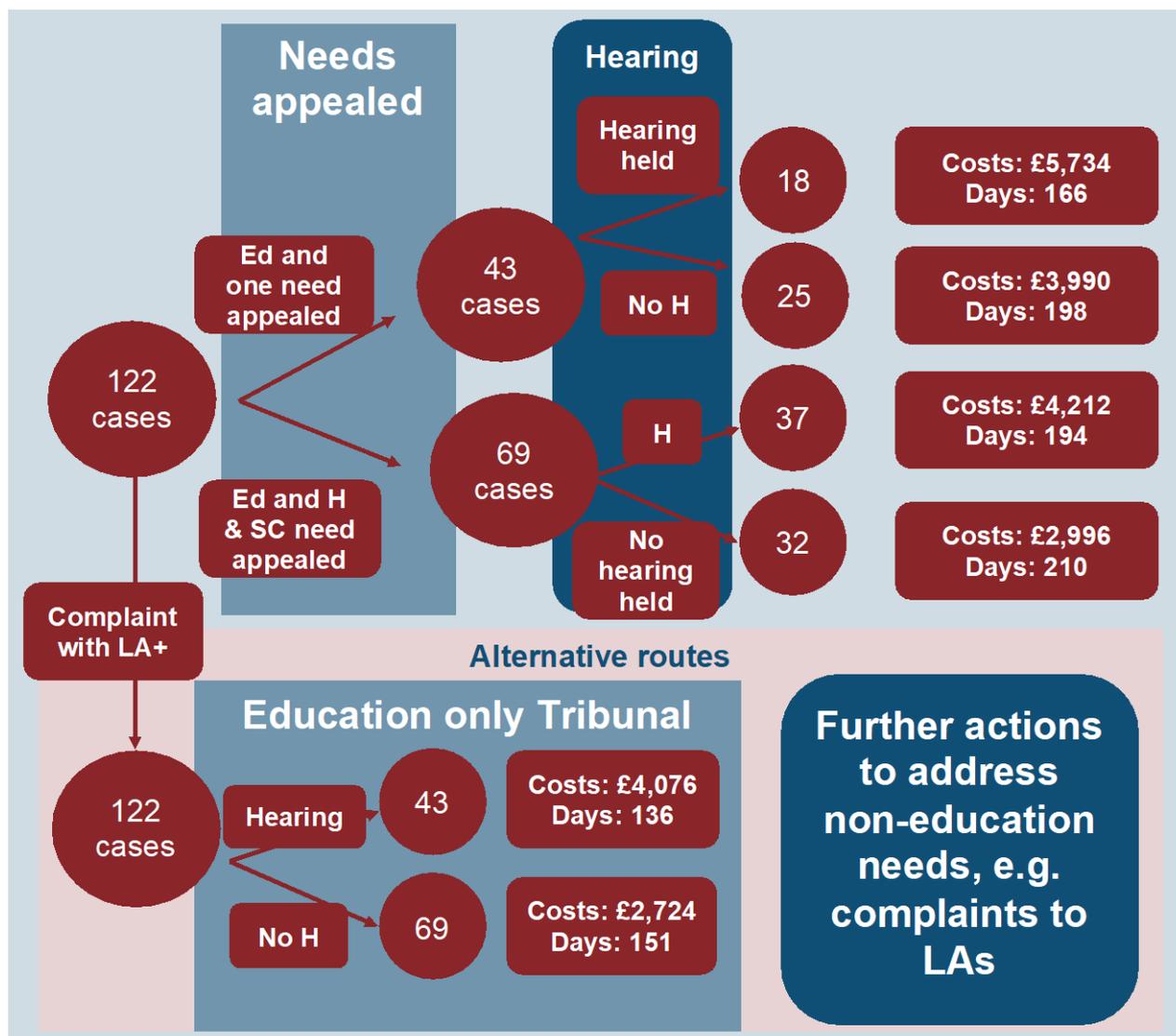
For appellants, the survey only covered the costs of a trial appeal and the cost to appellants of using other routes of redress. It did not cover any non-trial cases. Here, the analysis has used data from the appellant survey to then estimate the likely cost of a non-trial appeal. Survey questions on costs were asked in sufficient detail to allow for some assumptions to be applied. So, expenditures on experts or assessments could be differentiated in terms of whether their focus was educational or on social care or health. An estimate of what a non-trial appeal would cost could then be estimated. Surveys of CCGs and LAs did ask about the cost of non-trial appeals, so survey responses here could be directly used without any modelling.

The appellant survey charts the journey of an appeal through the Tribunal, which the top half of Figure 15 represents. The analysis maps the reported costs to the corresponding stages in this journey, for the appellant and others involved in the appeal. At the various points, the figure indicates the number of appellants who took a particular pathway, such as the 69 cases that involved an appeal of the description of needs for health *and* social care.

The lower panel focuses on appellant costs in non-trial appeals, for which appellants would use other redress routes to address health and/or social care issues.

Costs are on a per case basis, averaging across the cases that take a particular route. The number of cases taking the routes is indicated also, with the non-trial cases assumed to go to a hearing at the same rate as cases brought under the trial. Administrative data associated with cases was integrated, providing the duration of a case from the appeal being registered to the end of the appeal. The trial route takes about 200 days.

Figure 15: Average cost and period for single cases by pathway for appellants



Base: Appellants who indicated the reason for the appeal as being one of (or both) health and social care aspects (n=122) of which 10 subsequently withdrew.

The previous chapter estimated appeal costs for appellants and for LAs and CCGs. For appellants, Table 8 presents average costs for cost lines and how often a particular cost is incurred. The average cost for an entire appeal process on the appellant side was £11,208 if an appellant’s case involved all cost items. However, many appellants report incurring a cost on only a portion of the cost items so overall costs are about a third of this figure (£3,880 on average). At the right of Figure 15 (above) are the costs incurred by appellants along a given route. As is expected, the cases that involve a hearing are – on a per case basis – more costly to appellants.

Evidence from the LA and CCG cost survey is added into the appellant cost estimates in Table 13. For this survey, the costs are estimated as a per case average, and the

estimates split between costs preparing for an appeal and the costs of attending an appeal. Full costs are reported in Table 6 where the detail is provided about internal LA/CCG costs and those costs incurred in cases where LAs/CCGs bought external support for a case.

Table 13: Costs for appellants, the Tribunal, LAs and CCGs at stages in the appeal

		National trial cost (£)	Non-national trial cost (£)
Appellant mean cost ⁵⁸	Preparation	3,377	2,725
	Of which, reports from independent social care and health experts	643	-
	Proportion that go to hearing	49%	49%
	Hearing	682	664
	Of which witnesses for social care and health needs	29	-
Appellant costs total		4,059	3,388
LA/CCG median cost	Preparation⁵⁹	7,658	3,878
	Of which: Gathering evidence, conducting social care or health assessments, organising legal representation, or other preparations	1,995	-
	Preparing additional health or social care reports requested by the Tribunal	1,688	-
	Hearing⁶⁰	5,356	2,695
LA/CCG cost total		13,014	6,573
Tribunal costs		2,500	2,500
Total Appellant, LA, CCG, Tribunal costs		19,573	12,461

Base: Appellants who indicated the reason for the appeal as being one of (or both) health and social care aspects (n=122)

Tribunal costs are included in Table 13. The costs of an appeal to the Tribunal were assessed in DfE/MoJ (2017) and these have been used for this analysis. The study undertook desk-based research and analysis to arrive at a range of estimates of the cost of operating a SEND Tribunal. The labour costs associated with Tribunal preparation and attendance were estimated, as well as the administrative costs incurred by HMCTS. It combined different labour costs associated with preparation and attendance (judicial

⁵⁸ The appellant survey does not provide data for non-trial cases. Non-trial costs were estimated by subtracting social care and health elements from trial appeal cases.

⁵⁹ Preparation for LA/CCGs includes gathering evidence and preparing reports regarding health and social care, liaising with appellants, as well as half of the median spend on legal services of an LA through an appeal process.

⁶⁰ Hearing for LA/CCGs includes attending the Tribunal hearing, travel costs for staff, costs paid to other individuals attending the hearing or other meetings, as well as half of the median spend on legal services of an LA through an appeal process.

members, expert members and Tribunal clerks). The bottom-up analysis was then compared to alternative estimates, such as inter-government assessments of costs used for policy purposes. The 2017 estimate was £2,380, as the cost of Tribunal operation and administration. These costs have been inflated to 2019 values using the ONS Health Services Consumer Price Index (CPI) to be £2,500 in 2019 prices. A limitation of this estimate of the Tribunal costs is that it assumes that trial cases and those heard before the trial require the same level of resources for the Tribunal.

The average total cost (for appellants, LAs and CCGs) of the appeal process under the trial is £19,573.

8.5. What are the estimated costs for a non-trial appeal?

The lower half of Figure 15 focuses on alternative pathways. In the non-trial counterfactual, the alternative pathway is to seek redress for educational issues in the Tribunal and solve issues relating to health and social care in another way, usually through complaint resolution. Table 13 then – in the right-hand column – presents costs for appellants, LAs, CCGs and Tribunals for this pathway.

The LA/CCG cost survey asked for costs for this route. Respondents were asked specifically about non-trial appeals. Table 13 shows that the overall costs for these were lower, at £6,573. In addition, the survey asked about costs to LAs and CCGs as other redress routes are pursued following a non-trial Tribunal appeal. These estimated to be £9,168 (Table 6)⁶¹.

Complementing the LA and CCG costs, adjustments have also been made to the appellant costs, primarily by using the detail of the survey responses to recast costs for a non-trial case. Table 13 indicates the estimates used:

- Survey results indicate that where a case involves special educational issues plus issues relating to one of health or social care, costs are lower than cases where both social care and health are covered. This is used to infer an estimate of non-trial cases.
- The appellant survey asks for the amounts spent on health and social care experts and reports. These estimates have also been deducted in the costs estimates for the lower panel.

Similar adjustments were made to estimate the time the appeal takes in the alternative path. The duration of an appeal was correlated with whether or not both health and social

⁶¹ However, care has to be taken as these costs may overlap with other estimates, as the survey could not ask whether and where any of the resources used in preparing for other redress routes would be used for the non-trial Tribunal appeal stage.

care were included. It was also correlated with the hearing taking place. Overall, the modelled alternative route would be progressed more quickly, by about 50 days.

The average total cost (for appellants, LAs and CCGs) of the appeal process estimated for a non-trial appeal is £12,461.

8.6. What is the evidence of value for money?

This chapter has so far focused on appeals with health and social care aspects. It has considered the costs of reaching a recommendation for additional provision and the scale of the provision. Prior to the national trial, appealing to the Tribunal would only be a possible route of redress for issues related to special educational needs. This section explores what, in the previous system, would remain to be resolved for the appellant. It discusses the potential further actions in the counterfactual, non-trial position.

By the end of the trial and non-trial pathways, the costs to determine a different level and/or type of provision for the child or young person are £19,573 and £12,461 respectively (Table 13). The output of these costs would be the provision required by a child or young person: the average (median) annual expenditure on this provision for national trial appeal cases is proportionally higher compared to non-trial cases in all aspects of provision (Table 12). This quantifies the extent to which the route prior to the trial would have provided a partial remedy.

In terms of assessing value for money, this leads to a finding that costs for trial appeal (inputs) are higher than for non-trial appeals, but the cost rise is consistent with the rise in the scale of the outcomes being determined. To consider this another way, when following a non-trial appeal where a child has social care and health needs, about £32,500 of annual provision would still be required to meet all the child or young person's social care needs; a further £5,000 for health needs; and £3,500 for the special educational needs. In reaching this lower level of provision, fewer resources have been used in the redress route, with a lower cost of around £7,000.

For the evaluation's counterfactual, a question is whether – while the process differs – the complaints processes could, having compiled evidence appropriately and reviewed it, come to the same provision decision as the appeal to the Tribunal during the trial. Testing this needs evidence that is difficult to gather. Redress routes prior to the trial are not necessarily analogous to appeals made to the SEND Tribunal. Complaints processes are numerous across the large number of bodies involved – for example, each CCG will have its own processes. A further complication is that the complaints processes will cover a wide range of services.

However, some indicative evidence about these other routes is gained through the complaints pursued in local level resolution and, if this is insufficient, appeals to the

Ombudsman. There are two Ombudsmen that may consider complaints in this context (the Local Government and Social Care Ombudsman, LGSCO) and CCGs (Parliamentary and Health Service Ombudsman, PHSO). The LGSCO has published reports focused on SEND and routinely summarises the cases it has made decisions on.

On costs of the decision-making process, Table 10 indicates costs reported in the survey by parents using other routes of £1,290. Local authority and CCG costs for the alternative redress routes are estimated at £9,168 but this covers more than just the Ombudsman route. The LGSCO estimates the costs of investigating a complaint in its annual accounts. The LGSCO incurs a cost per complaint of £911 (LGSCO 2019a⁶²). This indicates that one of the steps in the alternative redress routes – a complaint to the LGSCO – has costs that are lower than a Tribunal appeal but not insignificant.

The jurisdiction of the LGSCO differs from that of the SEND Tribunal. The Ombudsman can investigate a complaint that an LA has failed to provide for a child or young person's agreed special educational needs in social care and education. This includes a delay in assessing a child or young person and issuing an EHC plan, failing to implement a plan or failing to carry out an annual review. Complainants should have exhausted the LAs complaints procedure, including allowing sufficient time for a response, before bringing a complaint to the LGSCO⁶³. Figure 16 provides an overview of the LGSCO role, including powers and remedies.

The LGSCO and the Tribunal are distinct. If a Tribunal appeal right is engaged and has been exercised, the LGSCO will generally want to know the outcome of the appeal before deciding on a complaint. This means that pathways are not pursued in parallel. While the SEND Tribunal can decide on the type and amount of provision a child requires, the LGSCO cannot make decisions regarding a child's or young person's needs or required provision: rather, it determines whether the specified provision is being made, and whether the LA has acted in accordance with statutory requirements in developing a plan. Many complaints to the LGSCO are about a delay in issuing an EHC plan, meaning that a family experienced delay in having appeal rights to the Tribunal⁶⁴.

The LGSCO can recommend that the LA provides the SEND provision described in an EHC plan and can state a financial remedy for provision not made. The LGSCO makes financial recommendations to remedy injustice for the family: in a sample of cases, these recommendations required the LA to pay to the claimant £940 on average (£1,288 if cases without financial recommendations are excluded). These cover the costs to parents, the young person or child deemed by LGSCO to be caused by delays in LA

⁶² LGSCO (2019a). *Sharing the learning*. Annual Report and Accounts 2018-2019.

⁶³ This is the first of four stages in LGSCO guidance, [lgo.org.uk/make-a-complaint](https://www.lgo.org.uk/make-a-complaint)

⁶⁴ See Stoke-on-Trent City Council (17 000 700). (2018). Report by the Local Government and Social Care Ombudsman. Available at <https://www.lgo.org.uk/decisions/education/special-educational-needs/17-000-700> [Accessed 23 January 2020].

actions or in making a complaint. These are separate to the costs incurred by the LA to implement the LGSCO's decision, but indicative of provision changes needed to meet the needs of the child or young person.

Figure 16: Overview of the LGSCO role

- Powers: The LGSCO cannot investigate the content of an EHC plan. However, they might investigate whether there has been a delay in the process leading to the Tribunal. In the case of Norfolk County Council (18 011 533), there was a 35-week (8 month) delay in issuing the plan.
- Remedies: The LGSCO can ask the council to apologise, pay a financial remedy, and improve its procedures so that similar problems do not occur again (Dudley Metropolitan Borough Council [17 016 386]).
- Example of link between SEND Tribunal and LGSCO proceedings: Cheshire East Council (18 002 801) had taken too long (22 weeks and 4 days) to issue the final EHC plan. It should not have taken longer than 20 weeks to do so. This means that the appeal rights to the Tribunal were delayed by two weeks and four days.
- Costs: The average cost per complaint is of £911 for the LGSCO (LGSCO 2019a).
- Uphold rate: In 2018-2019, the LGSCO upheld nearly 9 out of 10 of SEND investigations last year (LGSCO 2019b).

The number of LGSCO cases focusing on SEND has increased significantly (though still representing a small proportion of the total EHC plans). In 2018-19, the LGSCO received 45% more SEND complaints than in 2016-17 (a total of 315 cases, up from 217 in 2017). Similar to the Tribunal, which finds for the appellant on a high proportion of cases, the uphold rate was 87% in 2018-2019 LGSCO SEND cases, as opposed to 57% of cases about all other complaints not related to SEND⁶⁵.

To look at outcomes, a review of 54 cases randomly sampled from the special educational needs archive 2018-2019 was conducted⁶⁶. Within upheld cases, some require a payment from the LA to the claimant, mention the length of delays suffered, or both. As with the Tribunal, recourse to the LGSCO does affect timeliness and whether provision of services is put in place for a child or young person, with almost all cases

⁶⁵ LGSCO (2019b). *Not Going to Plan? Education, Health and Care plans two years on*. Focus report.

⁶⁶ The LGSCO website contains a record of the special educational decisions, including descriptions of delays suffered and final decisions by the Ombudsman. The analysis of a random selection of cases computed a total number of weeks of delay as well as a total financial remedy for each case, where the information was available. In some cases, the decision contains a financial remedy for the child or young person as well as a financial remedy for a parent, in which case both figures were added up. The same process was followed if the complaint contained two unrelated delays.

resulting in identified provision being made. The sampled LGSCO cases involved an average delay of 93 days in terms of the number of days an LA failed to act after a given deadline (144 days if only the cases mentioning a delay are included, since not all complaints relate to delays), for example in putting in place provision specified in an EHC plan or in issuing the EHC plan. While the LGSCO does not assess needs or recommend provision for a child or young person with special needs, it recommends the steps towards that outcome.

One further aspect of this partial nature is that the LGSCO will not consider health aspects. The LGSCO will work in parallel with other Ombudsmen, so that cases that contain related health and social care elements will be reviewed by a joint working team with the Parliamentary and Health Service Ombudsman. Further, where LGSCO views issues in individual cases as systemic in a local authority, it has the ability to extend its recommendations to those cases without a direct complaint from the families involved. The LGSCO also has an information sharing protocol with Ofsted to help inform inspection priorities and flag up issues.

8.7. What do we learn from assessing value for money?

This section has sought to draw some implications from the cost analysis. The findings are relative, comparing the trial appeal route with alternatives:

- Trial appeal costs (inputs) are higher than for non-trial appeals, but the cost rise is consistent with rise in the scale of the outcomes being determined.
- After a non-trial appeal, other redress is needed to attain the same outcome, i.e. once educational needs are appealed successfully in a non-trial appeal, any health or social care needs would remain. Evidence indicates that the process costs of this further redress are high. The evidence only measures costs for a part of the further redress, and these are high enough to make it unlikely that the non-trial appeal could achieve the same outcome as the trial route for a lower cost than the trial route.

There are some caveats to this approach. A first is that the national trial spans over three years only, and the evaluation has been carried out before the end of the trial period, limiting the analysis to short- and medium-term outcomes. The approach analyses the paths taken by families as they appeal to the SEND Tribunal under the national trial and focuses on those families who have concluded their appeal. The surveys collected data on completed cases only. Although there already is a wide variation in costs within the completed cases, there is a potential bias if the lengthiest cases are under-represented and case length correlates with costs, or with specific case characteristics. The cases still in the appeal process may then differ from those analysed.

Secondly, the Tribunal process is likely to change its ways of working over time and to modify other processes that determine provision in the first place. The extended powers represent a new process, and changes are likely to materialise only as the system becomes more embedded, resulting in cost reductions associated with new ways of working.

9. Whether the trial was implemented as intended

9.1. To what extent did LAs, CCGs and the Tribunal carry out their duties?

This chapter will focus on implementation of the national trial and whether LAs, CCGs and the SEND Tribunal carried out their duties as intended. Unless otherwise specified, the findings discussed here are taken from discussions with LAs and CCGs during case study visits. Where relevant, findings from the survey of appellants and analysis of response to recommendation letters have also been included.

9.1.1. Preparation for the trial

As context, it is worth noting the extent to which LAs and CCGs felt prepared for the introduction of the extended powers. Most LAs reported that they worked hard to increase awareness, both internally and externally, of what the trial would entail but the degree to which they felt prepared for the changes depended on certain extenuating circumstances, such as the resource available or the number of non-trial appeals they were involved in. For example, one LA was going through a particularly large restructure at the time and had a high staff turnover rate which hindered their ability to dedicate significant time or resource to trial preparations.

In general, the case study visits showed that the degree to which education, health and social care services felt prepared for the trial varied. Those who had attended trial-specific training events, such as those run by the DfE, generally found them useful and reported feeling well informed about the upcoming changes. Most of those who attended these types of events were senior members of staff who then disseminated their learning to the wider team afterwards. Some staff who did not attend any trial-specific training, but rather learnt about the trial mainly through these internal discussions, said they lacked perspective on how their roles would change in practice despite having good knowledge of the aims and intentions of the extended powers overall.

There seemed to be a greater level of variation in the level of preparedness felt by health and social care services than for education services, with this depending at least partly on the level of integration between these services beforehand. It was also generally the case that social care services felt less well prepared than health services, as they struggled to understand how the process would fit within their legal frameworks. Multi-agency forums and working groups (e.g., a SEND strategic planning group) proved to be useful opportunities for individuals from health and social care services to talk about the introduction of the single route of redress and to learn about the potential benefits and challenges they could expect.

In some cases, it was evident that frontline staff from health or social care services were the least well prepared for the trial. They reported a lack of trial-specific training and reported having heard of the extended powers through newsletters but lacking any substantial knowledge on their implementation. They did not feel confident that they fully understood the potential impact of the extended powers. Some respondents stated that user groups and case study examples would have proved useful resources for learning about the trial. Individuals from other departments and organisations⁶⁷ confirmed that health and social care services required more trial-specific training.

So, I think you need to see it to understand it and I think opportunities for that would be really helpful. - *SENDIASS*

9.1.2. Implementation of the trial

There were a handful of areas of the trial for which staff reported that processes were not always being followed. For example, the case study visits revealed that the process can easily take longer than the aimed-for twelve weeks from the point of appeal through to hearing. This is likely due to difficulties clarifying the recommendations being sought or coordinating the collection of information and evidence from those involved, as will be discussed in more detail.

One key requirement of LAs was to notify parents and young people of the Tribunal's extended powers when sending them decisions related to EHC plans or needs assessments, as well as when delivering final or amended EHC plans. The survey of appellants revealed the majority of respondents (75%) were informed by the LA about the complaints and appeals procedures they could use if they were unhappy with any part of the process of getting an EHC plan. However, less than half of respondents reported they were informed specifically that they could appeal to the SEND Tribunal for health and social care issues (43%).

In support of this, the case study visits also suggested that parents and young people were not always being made aware of the Tribunal's extended powers. Some individuals, including LA SEND teams and parent representatives, reported that parents often had a limited understanding of the trial's intentions. For example, in one instance the parents appealed through the single route of redress in order to receive a social care assessment for their child before withdrawing the appeal once they obtained that assessment. The parents lacked awareness of the most appropriate route to follow in relation to their child's situation. Similarly, it was often highlighted that there was a lack of clarity around the requests being submitted to the Tribunal due to issues with parents appealing when they did not necessarily need to use the single route of redress.

⁶⁷ Other departments in the case studies refers to SENDIASS, parent groups and legal representatives.

[I wonder] whether there needs to be a little bit more clarity... for the parents when making or submitting an appeal, what might be the most relevant pathway to follow. - *SEND Manager*

Individuals from education services and parent representatives also expressed concerns that parents and young people were aware of the Tribunal trial powers but not of what appealing to the Tribunal requires, or the time and effort involved in submitting an appeal. They mentioned that some parents saw it as comparable with registering a complaint and that there was a limited understanding of the roles of education, health and social care services in terms of the appeal and what is within their remit. They felt that LAs could do more to ensure that parents and young people are made fully aware of the trial, especially of its purpose and what is involved for appellants.

There is some confusion as to what specifically comes under health and social care as well as what specifically are the powers of the Tribunal in terms of directing health or social care to do this or that. - *SEND Manager*

Regarding the requirement to provide evidence within the specified timeframe, the case study visits revealed that LAs often found it difficult to obtain this from health and/or social care services. This was particularly the case for social care services. In some instances, education services experienced difficulties obtaining information on the young person's social care needs, and they suggested that social care services were reluctant to provide feedback unless the young person was already known to the service. They noted that medical reports were more easily obtainable in comparison, although there were instances of delays in both health and social care services providing information.

On the other hand, health and social care services highlighted challenges associated with providing information within the Tribunal's timeframe. For example, in some areas social care services still felt that the emphasis of the Tribunal was on education, which may explain their perceived lack of engagement. Meanwhile, health services pointed out that certain assessments were difficult to conduct within the required timeframe, particularly when the NHS was involved. Other types of respondents agreed that it was difficult to obtain information within the timeframe.

My experience in a sense has just confirmed the fact that you do have to get cracking on this right from the outset, as soon as you get the appeal in. - *LA Lawyer*

Related to this was the requirement for the evidence provided to specify the child or young person's needs, recommended provision and expected outcomes related to that provision. Health services emphasised that it is not always obvious whether the child or

young person's needs were predominantly relevant to education or health. For example, speech and language provision is usually classed as provision to meet special educational needs but may be delivered by a health service, which can be challenging for health services when writing reports, as they are required to spend time unravelling exactly what is their responsibility versus what falls under the SEND team's remit.

Under the extended powers, health and social care services were also required to send a representative to hearings to provide oral evidence where relevant. Although data on hearing attendance is not available, an LA lawyer reported attending a court user group where they heard that staff shortages had affected hearing attendance in some LAs. As well as this, comments made by social care services show that they found it difficult to understand why it was necessary for them to attend hearings for the full duration of the Tribunal hearing.

I do feel that [it would help us] if we have the time slots, so we know this is the time that social care needs to be in. - *Social Worker*

The Tribunal is required to send their decisions, including recommendations, to the LA, parent or young person and health services where relevant. There was no evidence from the case study visits to suggest that the LA and parents or young people experienced any major issues receiving decision letters. However, health services reported difficulties obtaining the outcomes of several cases that had health needs, despite requesting them.

I kept going back to the local authority, saying, 'I've sent all this stuff through now, but I don't know what's happened as a result.' - *Designated Clinical Officer*

Following the issuing of decision letters, health and social care services are required to respond in writing to recommendations within five weeks to the LA and parent or young person, including details on the steps they would take or why they chose not to follow the recommendations. Analysis of a sample of response to recommendation letters (n=146) revealed that the majority (89%) of health and social care recommendations were either completely or partially followed, with a minority being those which were partially followed (10%). Nearly two thirds (64%) of letters which confirmed recommendations would be followed also included details on how the recommendations would be followed and. When they were not followed, reasons why were provided in nearly all (96%) instances.

In the follow-up survey of appellants however, it was shown that these letters were not always received. Around half (52%) of appellants whose cases resulted in recommendations from the Tribunal did not recall receiving a response to recommendation letter from the LA or CCG.

Furthermore, appellants who said they did not receive a letter were unlikely to have been told about the response to recommendations in another way; 76% said this was the case. A minority did hear another way though, with 12% reporting that they were informed via the EHC plan, 4% that the LA said the CCG were looking into it, 4% by a healthcare professional and 4% a solicitor.

For appellants who received a letter or were informed about the response to recommendations another way, the time it took to hear varied extensively. Most often, it took more than a month but less than two (29%) or two months or more (29%). A further 18% heard in more than two weeks but less than a month and the same proportion (18%) did not know.

The *content* of these communications was generally felt to be clear, however. The majority (82%) felt they had been told whether the recommendations would be followed; and most appellants agreed that it was clear *which* recommendations were going to be followed (special education 59%; health 70%; social care 67%).

Finally, there was a degree of uncertainty among appellants as to whether or not they were told that the recommendations were non-binding. One-quarter (24%) of those who received recommendations did not know if they were told that they were non-binding, with 45% saying they had not been told this and 31% that they had. All appellants who reported being told about this felt confident they had understood what was meant by the recommendations being non-binding.

10. Wider lessons for improving the system

During the case study visits, respondents were asked what lessons they had learnt from their involvement in the trial so far that might be useful to other services or local areas in how they would approach using the SEND Tribunal's extended powers going forward. As will be discussed throughout this chapter, areas of learning identified by respondents covered the whole Tribunal timeline, from planning and gathering evidence through to issuing recommendations.

10.1. What lessons can be drawn from the experience of implementing and using the trial Tribunal powers?

One of the key lessons learnt related to the importance of holding meetings as early on in the appeals process as possible and establishing a clear pathway for those involved in terms of next steps and how the appeal will progress. LAs suggested that doing this at the earliest opportunity would help to provide clarity on what needs to happen going forward and avoid miscommunications between education, health and social care services. A handful of education, health or social care services suggested utilising simple project management techniques e.g., drawing up a timetable, while others emphasised that face-to face and/or multi-agency meetings were key to ensuring the process runs smoothly, particularly while health and social care services settle in and adjust to their trial-related roles and responsibilities. For education, health and social care services and parents or young people, the extent to which simply talking with one another about the case can help to resolve issues was also highlighted, although it was acknowledged that this is easier said than done, implying a need for processes to be put in place to ensure it happens in future.

So, an annual review in June, we all get together but there's all the rest of the year, so I think it's that joined up working day-to-day that might benefit from a little bit more involvement from all the services, because that can be tough. - *Tribunal Officer*

Another learning from the trial to date related to the need for increased clarity around the roles and responsibilities of those involved in the appeal. In particular, health and social care services expressed concerns that they lacked understanding of how their day-to-day roles had changed and what was expected of them when dealing with national trial cases, in comparison to non-trial cases. Where LAs had received no or very few health or social care appeals, individuals from health and social care services reported that they did not feel their roles had changed at all; and even in areas with a higher number of trial appeals, the importance of educating health and social care services on how their roles would fit into the trial process remained apparent. Individuals from other services also

highlighted this learning, and a handful of them said that sharing real life examples of appeals under the extended powers or allowing shadowing would be useful for this purpose.

I think definitely across social care and health there needs to be a better understanding of the process, because then they understand how they feed into it and what's going to be asked of them if it was to go to the appeal... and so a lot of preventative work could be done, as a result. - *SENDIASS*

During the case study visits, some individuals from LAs emphasised the importance of clarity in their communications with parents and young people around the intentions of the extended powers and what they can deliver. There was a general impression that the adversarial nature of the process of submitting an appeal creates a slight barrier between LAs and parents, making them less likely to deal with any issues through direct communication as a first port of call. This led to misunderstandings amongst parents around what the single route of redress was able to offer and under which circumstances it should be used. It was evident that most staff felt the need for improvements in this area, through clear and frequent communication with parents and young people to ensure they feel comfortable approaching the LA to obtain clarity when it is needed.

It's trying to get that message out that you can keep talking to us. -
SEND Lead

Related to this, another key learning from the trial so far concerned improving the clarity of the language used in written communications, for the benefit of both parents and young people and the LA. Firstly, LAs mentioned that, in their view, the language used in letters to parents and young people from LAs and the Tribunal was often too bureaucratic or vague which can lead to confusion around what is being stated. As well as this, health services acknowledged that the language used in health reports can be overly medicalised and difficult for non-medically trained individuals to understand, whether this be education services, LA frontline staff or parents. For example, medical reports that have a list of conditions are difficult to interpret in terms of the potential impacts on attending school. In general, the importance of striking an appropriate balance between the inclusion of legal and/or technical terminology and clearer, more accessible language was emphasised.

In some local areas, the importance of reviewing legal processes was emphasised as a key learning from the trial. In some instances, LA legal services struggled to clearly understand the nature of the issues being brought to the Tribunal and consequently they encountered difficulties securing appropriate information from health and social care services. They highlighted the need for robust legal processes to ensure agreements are

put in place at the very start with those who will be required to produce information, in order to allow the LA enough time to unpick exactly what is being requested in each case. In general, LA legal services also felt that clearer information was needed on the types of decisions and recommendations the Tribunal is allowed to make.

We really had an issue about trying to really nail down what it was they were saying was required. - *LA Lawyer*

The final theme that emerged from the case study visits related to concern about the resources required to implement the health and social care provision recommended by the Tribunal, in the context of working with finite resources and aiming for fairness not just within appealed cases, but for everyone. Some LA SEND teams felt that concerns about resourcing trial Tribunal recommendations might be contributing to social care services sometimes being less engaged with the trial Tribunal recommendations, leading to some social care recommendations not being implemented in practice.

10.2. What good practice examples could be captured and shared to improve the wider system?

Although the case study visits suggested some areas of improvement in implementing the extended powers, there were also a number of examples of good practice and aspects that respondents felt worked well, which will be discussed in this section.

In one local area, the LA provided an example to demonstrate the importance of effective communication with parents. When social care services were delayed in carrying out their assessment, the LA contacted the parents to explain the reason for the delay which prevented the situation from escalating and the parents becoming frustrated. As mentioned earlier, respondents felt that improvements in communication between all parties involved would pay dividends, and this example illustrates the positive impact that small actions can have.

In another LA, the strength of the LA's relationship with health services was highlighted. The SEND lead stressed that health services fully understood their role and responsibilities, were always clear about available services and supportive about a child or young person's health needs. It was noted that having a dedicated point of contact within the health service helped the LA to communicate with them and work together effectively. The result is that all of the health appeals in this local area ran smoothly, in comparison to social care appeals, and it was also credited as a possible reason why this LA had received fewer health than social care appeals under the extended powers.

Some LAs found that having a dedicated person in place to deal with Tribunal cases worked well as it enabled that individual to become fully immersed in the appeals process

and confident about dealing with different types of cases. A number of LAs had put plans in place to introduce this role in their local area or had arranged for an existing member of staff to transition to the role full-time. This could be particularly useful in national trial cases for helping to focus efforts and bring teams together. However, LAs introducing this job role had experienced significant increases in SEND cases and workload anyway, suggesting the role would have been created irrespective of the introduction of the trial powers.

Some individuals from LAs and health services also noted that the possibility of cases being appealed to the Tribunal and presented at hearing had helped to make health and social care services more accountable. This in turn had led to crucial changes in the writing of health and social care advice and EHC plans to begin with, improving their quality overall. For example, in one local area Child and Adolescent Mental Health Services (CAMHS) were called to give evidence to the Tribunal which led them to rework the way that they write advice, as opposed to just changing the content of it. Other LAs agreed that the systems and processes in place for writing advice should be reviewed for CAMHS in relation to the extended powers e.g., through holding more forward-planning meetings or drawing up agreements on deadlines for submitting reports.

There was discussion about the fact that the advice could be brought before Tribunal, so we definitely have used it sort of as a carrot as well a stick. - *Designated Clinical Officer*

I think the fact that their advice was called in to the Tribunal was actually quite powerful. - *Designated Clinical Officer*

In one instance, the Tribunal helped to resolve a disagreement between health and social care services which the LA were unable to resolve themselves. They identified who held responsibility for the matter in hand and therefore who needed to contribute in terms of providing evidence. Intervention by the Tribunal at this stage in the process prevented significant delays in reaching a decision that could have had a negative impact for the young person, by helping to establish who held ultimate accountability. While the trial has sometimes exposed weaknesses in LA decision making across education and social care, LAs ultimately felt that sharing success stories could be powerful in encouraging education, health, and social care services to work together.

It's not just about looking at what can we do to make changes but it's also about sharing positive outcomes as well and what good practice might look like, and if that's commented on by an independent body then I think it's good that we share that. - *SEND Casework Manager*

11. Conclusions

This chapter briefly summarises the main conclusions that can be drawn from the evaluation.

Families are exercising their rights to bring health and social care cases to Tribunal under the trial powers in greater numbers than predicted, but more may need to be done to raise awareness of the extended powers. The number of appeals within the trial has been far in excess of initial Department for Education (DfE) estimates; six times the estimated volumes, at the point where 8 months of the initial 24 months of the trial still remaining. That said, while the majority of appellants recalled being informed by the LA of the complaints and appeals procedure to use if they were unhappy with the process of getting an EHC plan, less than half (43%) recalled being told about the right to appeal about health and social care issues specifically and only a third (32%) felt they had enough information about how to do so.

There is evidence that appellants have confidence in the Tribunal, under the trial extended powers, being able to resolve their health and social care issues, more so than other routes of redress for health and social care issues.⁶⁸ Appellants with cases where an outcome had been reached⁶⁹ were more likely than not to feel that the issues they had taken to the Tribunal under the extended powers had been or would be resolved – typically because they felt that they or their child would receive the support they needed as a result. Eight in ten (79%) felt that at least one of the descriptors of health and/or social care needs or provision in their EHC plan had improved as a result; and six in ten (61%) felt that, as a result of the appeal, the provision set out in their EHC plan had led to them or their child receiving the support they needed. These positive views were sustained over time, remaining consistent after 6 months. Seven in ten of those who had received health and/or social care recommendations were satisfied with them (72% for social care and 71% for health). Most appellants who had used other routes of redress also felt that the Tribunal, under the extended powers, was better at resolving their health or social care issues than these other routes were (62% for resolution of issues; 57% for suitable provision being put in place).

Appellants also compare the Tribunal, under the trial extended powers, favourably with other routes of redress for giving their health and social care issues a fair hearing. Appellants were more likely to agree than disagree that their health and social care issues had been carefully considered and dealt with fairly by the Tribunal (agreement ranged from 48% to 64%, while disagreement ranged from 18% to 31%) and around six in ten of those who had used other routes of redress felt the Tribunal did this

⁶⁸ The term 'issues' in this context means things that appellants were able to appeal (rather than issues resulting from an individual's health or social care needs).

⁶⁹ Either those where the LA conceded the health and social care aspects before going to a hearing, or those whose health and social care issues had progressed to a hearing.

better than these other routes (61% for careful consideration and 60% for being dealt with fairly).

There is evidence that LAs and CCGs are for the most part agreeing to implement Tribunal health and/or social care recommendations. LA and CCG letters setting out their response to Tribunal recommendations under the trial suggest that, in the majority of the sample of letters analysed (89%), the LA or CCG had agreed to implement the health and/or social care recommendations.

Set against these relatively positive perceptions of outcomes, appellants report that taking their health and social care issues to the Tribunal is difficult, time-consuming and expensive. The majority of appellants found the whole process of taking their health and social care issues to the Tribunal difficult (although, there is no evidence to suggest this was more or less difficult than a non-trial appeal). They were much more likely to report spending more than 50 hours preparing for their Tribunal appeal (80%), than they were for other routes of redress for health and social care issues (32%)⁷⁰. The average costs of preparing for and attending a trial Tribunal hearing (including education elements as well as health and social care) were around three times higher than those for using another route of redress for health and social care issues.

Taking health and social care issues to the Tribunal adds costs for LAs and CCGs, but costs less on average than education, health and social care issues being taken to Tribunal and other routes of redress separately. On average, the cost reported by LAs and CCGs for taking health and social care issues to the Tribunal (£13,014) is nearly double that of taking non-trial issues to Tribunal (£6,573) and nearly a third higher than dealing with health and social care issues via other common routes of redress (£9,168). That said, the average cost of taking health and social care issues to the Tribunal is slightly lower than the combined cost of taking education issues to the Tribunal and then dealing with health and social care issues separately via other routes (combined average of £15,741). Addressing health and social care issues via the Tribunal might therefore have potential to be cost neutral or to achieve modest savings, if appellants were not also appealing health and social care issues via other routes in addition to the Tribunal. Currently, evidence suggests that appellants appealing to the trial and also pursuing other redress routes is relatively common.

Taking health and social care issues to the Tribunal also adds to provision costs, but this arguably indicates that the health and/or social care needs of children and young people with SEND are being better met as a result of Tribunal decisions.

Appeals to the Tribunal (whether within the trial or not) are notably more likely to result in additional provision than other routes of redress (only 8% of appellants who also used other routes reported that this resulted in recommendations for additional provision), therefore resulting in higher costs for LAs and CCGs. However, this increase in provision

⁷⁰ That said, findings suggest that the time spent specifically on the health and/or social care elements was significantly lower than the total and therefore closer to the average time taken for the other routes.

is an indication that the health and/or social care needs of children and young people with SEND are being better met as a result of Tribunal decisions, and therefore that a single route of redress represents better value for money. The evidence available for the costs of pursuing other routes of redress indicates it is unlikely that a non-trial appeal could achieve the same outcome as the trial route for a lower cost than the trial route.

There may be opportunities to improve the extent to which resolution is reached before the Tribunal hearing. Of appellants whose appeal regarding health and social care issues had reached a conclusion, those whose case was resolved prior to hearing were more likely to feel that their issues had been or would be resolved (74%) than those who had gone to hearing (39%). Ongoing contact with the local authority was more prevalent (69%) than engaging in Tribunal-directed case management (41%) and was reported to be more successful in resolving at least some aspects of the case. In the case study visits, parent support groups (such as SENDIASS and Parent Carer Forums) raised concerns that the involvement of lawyers could make the appeal process more adversarial and reduce the chances of resolution being reached pre-hearing (a potential concern, given that a third of appellants (33%) reported paying for legal advice; and that legal services were the single biggest area of trial costs for LAs and CCGs). All of this points towards the benefits of increasing emphasis on informal resolution.

LAs and CCGs are more positive than negative about the extent to which local education, health and social care services work together on SEND, although they tend to feel they were already doing so as a result of the Children and Families Act 2014, rather than due to the trial extended Tribunal powers. LAs and CCGs tended to have dealt with small numbers of trial cases in their area, and so saw the impacts of the trial in terms of altering their wider approach rather than in shaping how they responded to trial cases specifically. The trial was felt to have provided an additional incentive to work in a joined-up way – for instance, by further incentivising LAs to encourage families to discuss their health and social care issues informally to avoid these reaching the Tribunal. The possibility of health and social care issues going to Tribunal, or the experience of them doing so, was also reported to encourage collaborative working to improve the quality of EHC plan content.

There is a mixed picture of how well education, health and social care services felt prepared for the trial. LAs reported that they had worked hard to raise awareness internally and externally of what the trial extension of powers would involve, but the degree to which staff within education, health and social care services felt prepared for the trial varied considerably. Those who heard about the trial second-hand tended to understand its overall aims but not how their day-to-day work would change in practice.

There appear to be difficulties in obtaining sufficiently complete evidence within the specified timeframes for health and social care issues. LAs and CCGs surveyed noted a decline, within the trial, in speed and completeness when responding to requests for evidence, while LA SEND teams interviewed within the case study visits noted that

they found evidence difficult to obtain from health or social care services. The child or young person not already being known to the service appeared to be barrier to some social care services engaging with requests.

There are some concerns reported from LAs about the resources required to implement trial Tribunal recommendations. LAs reported concerns about implementing the health and social care provision recommended by the Tribunal, in the context of working with finite resources and aiming for fairness not just within appealed cases, but for everyone. These concerns were also reflected in the few instances in which the LA or CCG had, in their letter responding to the trial Tribunal decision, declined to implement the health and/or social care recommendations. Within the case study visits, some LA SEND teams felt that concerns about resourcing trial Tribunal recommendations might be contributing to social care services sometimes being less engaged with the trial Tribunal recommendations, leading to some social care recommendations not being implemented in practice.

12. Appendices

Table 14: Number of appeals submitted under the national trial per LA between April 2018 and January 2021 (the numbers have been redacted for LAs with 5 or fewer appeals to protect anonymity)

LA name	No. of		No. of	LA name	No. of
Barking and Dagenham	11	Cornwall	12	Havering	REDACTED
Barnet	19	Coventry	13	Herefordshire	REDACTED
Barnsley	17	Croydon	31	Hertfordshire	74
Bath and North East Somerset	7	Cumbria	12	Hillingdon	17
BCP Council	14*	Darlington	REDACTED	Hounslow	17
Bedford	REDACTED	Derby	12	Isle of Wight	15
Bexley	20	Derbyshire	61	Isles of Scilly	REDACTED
Birmingham	44	Devon	52	Islington	6
Blackburn with Darwen	REDACTED	Doncaster	REDACTED	Kensington and Chelsea	12
Blackpool	REDACTED	Dorset	15	Kent	127
Bolton	REDACTED	Dudley	20	Kingston upon Thames	18
Bracknell Forest	REDACTED	Durham	10	Kirklees	10
Bradford	8	Ealing	21	Knowsley	REDACTED
Brent	7	East Riding of Yorkshire	12	Lambeth	12
Brighton and Hove	19	East Sussex	68	Lancashire	59
Bristol City of	13	Enfield	10	Leeds	12
Bromley	15	Essex	65	Leicester	8
Buckinghamshire County Council	62	Gateshead	REDACTED	Leicestershire	42
Bury	11	Gloucestershire	21	Lewisham	13
Calderdale	REDACTED	Greenwich	31	Lincolnshire	23
Cambridgeshire	24	Hackney	16	Liverpool	13
Camden	10	Halton	REDACTED	Luton	REDACTED
Central Bedfordshire Council	8	Hammersmith and Fulham	REDACTED	Manchester	9
Cheshire East	14	Hampshire County Council	108	Medway	15
Cheshire West and Chester	16	Haringey	17	Merton	7
City of Kingston upon Hull	REDACTED	Harrow	REDACTED	Middlesbrough	2
City of London	REDACTED	Hartlepool	REDACTED	Milton Keynes	10

LA name	No. of appeals	LA name	No. of appeals	LA name	No. of appeals
Newcastle upon Tyne	REDACTED	Rutland	REDACTED	Swindon	12
Newham	33	Salford	7	Tameside	REDACTED
Norfolk	53	Sandwell	8	Telford and Wrekin	11
North East Lincolnshire	REDACTED	Sefton	10	Thurrock	8
North Lincolnshire	REDACTED	Sheffield	40	Torbay	REDACTED
North Somerset	7	Shropshire	REDACTED	Tower Hamlets	REDACTED
North Tyneside	6	Slough	REDACTED	Trafford	10
North Yorkshire	23	Solihull	20	Wakefield	6
Northamptonshire	33	Somerset	50	Walsall	12
Northumberland	9	South Gloucestershire	21	Waltham Forest	7
Nottingham	6	South Tyneside	REDACTED	Wandsworth	20
Nottinghamshire	35	Southampton	9	Warrington	REDACTED
Oldham	6	Southend-on-Sea	REDACTED	Warwickshire	14
Oxfordshire	23	Southwark	16	West Berkshire	REDACTED
Peterborough	6	St. Helens	7	West Sussex	24
Plymouth	REDACTED	Staffordshire	32	Westminster	14
Portsmouth	11	Stockport	REDACTED	Wigan	REDACTED
Reading	7	Stockton-on-Tees	REDACTED	Wiltshire	14
Redbridge	15	Stoke-on-Trent	9	Windsor and Maidenhead	11
Redcar and Cleveland	REDACTED	Suffolk	47	Wirral	23
Richmond upon Thames	18	Sunderland	REDACTED	Wokingham	8
Rochdale	6	Surrey	111	Wolverhampton	REDACTED
Rotherham	13	Sutton	27	Worcestershire	52
				York	REDACTED

*Also includes the appeals registered in Poole and Bournemouth individually before merging into Bournemouth, Christchurch and Poole (BCP) in 2019.



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