



SEND: Wider Disagreement Resolution Advisory Group meeting

11 November 2015

Summary

DfE reported on key developments that included:

- Brief update on the SEND implementation context.
- Disagreement resolution developments, including latest quarterly Tribunal appeals data.
- Wider review update; with initial findings from Cedar's first online survey of LAs.
- Tribunal pilot update; including progress on plans to increase the number of pilot LAs. There had only been one request for recommendations on health and social care since the pilot started on 01 June 2015. DfE was working with its SEND professional advisers to engage more LAs to join the pilot to promote a robust evidence base. The reasons for the lack of requests were not clear; it is likely that many of the appeals in pilot areas did not lend themselves to requests for recommendations.
- DfE planned to have a second wave of LAs ready to join the pilot by January 2016.

The group agreed it was important to check that parents and young people in the pilot areas were aware of the pilot and understood how they could be involved. DfE was working with organisations which work with parents to this end (NNPCF, IASS network and Contact a Family) and Mott Macdonald, the pilot facilitator was to contact all pilot LAs to reinforce the importance of this.

The point was made that pilot LAs were likely to be looking carefully at appeals registered and the fact of close early scrutiny and engagement with parents would hopefully reduce the rate of appeals going to hearings.

Judge Meleri Tudur updated the group on the Tribunal's perspective on the Pilot. Issues covered were:

- that pilot network meetings should be utilised as much as possible to promote LA understanding of the pilot. Health engagement was crucial. DfE agreed to take forward ways of engaging health.
- concern that recommendations cases might re-open what had been sorted through case-law, such as whether speech and language therapy is education or health provision and where it should sit in a statement/EHC plan.

- recent appeal trends - there was a general downward trend from 2014 (by about 25%) which was not unexpected and reflects a fall to 2013 levels.
- about 50% of EHC appeals registered were about the refusal to assess, which was not unexpected. It was important however to be aware when comparing rates of refusal to assess pre and post reforms that EHC plans resulting from transfers from statements would not attract refusal to assess appeals.
- from the total appeals, about 60% of appeals were about statements and 40% about EHC plans. There were still more statements in existence than EHC plans, but the proportion of EHC related appeals was rising.
- update on numbers of appeals so far in the pilot areas: all pilot areas had appeals registered though numbers were higher in some LAs than others. The numbers alone did not provide information on whether there was a social care or health dimension to the cases.
- reflections on how the pilot was progressing; progress was slow but it was recognised that we must allow for a time lag for changes to bed in; slow uptake is not a cause for concern at this stage. It was emphasised that overall numbers may be less important than the quality of information collected from the cases.
- some members raised the issue of extending the pilot to increase the amount of evidence. Tribunal advised that the pilot should not be extended too far, so as not to delay the report to Parliament, which must take place in spring 2017.
- the chair emphasised that the first priority was to secure more LAs to join the pilot. Regard should also be had to the Tribunal's discretion to make recommendations of its own volition.

Professor Geoff Lindsay of CEDAR from the University of Warwick, updated the group on the research project to gather evidence for the Review, and to evaluate the Tribunal pilot.

Outline of the overall trends and main findings:

- a good response rate to Survey 1 (68%).
- the number of appeals with Autism Spectrum Disorder as primary need had increased substantially, Meleri pointed out it was part of a long-term pattern.
- costs - it was observed that mediation costs would vary according to how the services were set up, with a potential perverse incentive for mediators to encourage full use of mediation. Settling late could be costly for families. It was vital to start informal discussions early. Comment was that many families do go to the Tribunal without paying for legal representation and many 'win' their cases.
- subsequent surveys will be reduced from four to three to reduce the burden on LAs and sustain take up rates.

On mediation the issue of quality was raised and whether the research could record whether cases where mediation was apparently successful at the time, but which still resulted in appeals being registered and did mediation providers cover the full remit of the mediation reforms. This was not in the scope of the study.

Scott Boyd from Mott McDonald updated the group on how the pilot facilitator was working with waves one and two of the pilot LAs.

The next meeting is to be held on 27 July 2016 to discuss the interim report by CEDAR and review pilot progress.

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