



Ministry of
JUSTICE



Department
for Education

Response to consultation on changes to the rate of appeal to the Special Educational Needs and Disability (SEND) Tribunal

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1. Introduction

Existing appeal rates

The Tribunals and Gender Recognition Certificate Statistics Quarterly bulletin¹ publishes data annually in December on rates of appeal to the SEND tribunal, within the annual SEND tribunal tables. The number of appeals to the SEND tribunal is also published quarterly.

The current rate of appeals is calculated as:

$$\frac{\text{Number of appeals registered with SEND tribunal}}{\text{School population}}$$

and is presented for each Local Authority as a rate based on the overall number of children in schools, i.e. 'per 10,000 of the school population'.

In the academic year 2016/17, 4,700 appeals were registered with the SEND tribunal, and the rate of appeals was 5.5 per 10,000-school population.

Policy change and expected impact on appeal rates

The Special Educational Needs and Disability (SEND) reforms set out in the Children and Families Act 2014 (the 2014 Act), include the replacement of Statements of SEN and Learning Difficulty Assessments (LDAs) with person-centred Education, Health and Care (EHC) needs assessments and plans. This extended the coverage of support, across education, health and social care to ensure that each of the services were organised with the needs and preferences of the child and their family firmly at the centre, from birth up to the age of 25. EHC plans are legal documents that set out the education, health and social care support a child or young person with SEND requires when their needs cannot be met by resources available to mainstream early years providers, schools and post-16 institutions. They are focused on the outcomes the child or young person wants to achieve and set out how the services will work together to support those outcomes.

The number of families who can register an appeal with the SEND tribunal has increased as a result of the extension of EHC plans to those aged 0-25 (with certain additional criteria attached to the upper age group) where previously statements of SEN covered only school aged children and those in the early years; the granting of appeal rights to young people themselves and those in custody; and because the transfer process from SEN statements and Learning

¹ <https://www.gov.uk/government/collections/tribunals-statistics>

Difficulty Assessments (LDAs) to EHC plans has opened up new opportunities to appeal.

The SEND reforms are specifically designed to make the support system less adversarial. A review was undertaken to assess how well the disagreement resolution arrangements established under the Children and Families Act 2014 were working for children and young people with SEND and their families. The outcome of the review was published² on 29 March 2017 and suggested we amend the appeal rate.

As mentioned above, the rate of appeal currently is calculated from the number of appeals registered with the SEND tribunal per year and shown as a rate per 10,000 of the school population. The extension of the age range covered under the new policy is likely to increase the number of appeals made – however, the current methodology of using the school population as the denominator within the calculation does not reflect the eligible population and has no corresponding increase.

Even with an appeal rate that reflects the eligible age range, this still does not reflect those who are actually eligible to appeal – parents or young people can only make an appeal regarding certain local authority decisions about EHC plans. One of our suggested measures takes a different approach to considering the appeal rate and looks at the rate based on the eligible opportunities to appeal, rather than age.

The consultation process

From 14 December 2017 to 9 February 2018, the Ministry of Justice ran a consultation on changes to the methodology for calculating the rate of SEND appeals as set out above. The consultation document is available to view online³ and set out four options considered for the appeal rate:

1. **No change** – keep rate expressed as per 10,000 of school population
2. **Extension** – extend current school population figures with early years and further education figures
3. **ONS Estimates** – use population estimates from ONS mid-year estimates

² <https://www.gov.uk/government/publications/send-disagreement-resolution-arrangements-in-england-review>

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/667445/SEND-appeal-rate-consultation.pdf

4. **New rate** – new rate based on all appealable decisions

The recommendation proposed by the Ministry of Justice was to present **a new rate based on all appealable decisions** (option 4). Due to the timing of appealable decision data, released annually each June, the consultation also sought feedback on a potential change to the timing of the publication of annual SEND Tribunal data. Table 3 of the consultation document summarised the impact on timing and data coverage of each of the four options.

Users' views were invited on the proposed changes and **20** responses to the consultation were received, although it should be noted that some of these responses were not complete (i.e. not all questions in the survey were answered).

This document provides a summary of the feedback received via the consultation responses and announces the changes to the content and timing of future editions of the Tribunal and Gender Recognition Certificate Statistics Quarterly bulletins that are planned in response to the consultation.

If you have any feedback, questions or requests for further information about this statistical consultation response, please direct them to statistics.enquiries@justice.gsi.gov.uk.

2. Summary of the proposals and changes

The key change proposed in the consultation was to change the existing appeal rate calculation for the SEND Tribunal, as well as the timing for publication of the annual SEND tribunal statistics. Options considered included no change, amendments to the existing appeal rate population, or a new rate of appeal. The below table summarises the proposals set out in greater detail in the consultation document.

	Proposal	Effect on Timing
1	No change Continue with existing appeal rate based on school age population.	December publication
2	Extend school population Continue to use school population for the appeal rate, but add Early Years and Further Education populations.	March publication
3	Change to ONS population Use ONS population estimates for ages between 0-18 as the denominator for the appeal rate.	December publication
4	Change to appealable decisions Use annual SEN2 data as the denominator for the appeal rate, representing the total number of 'appealable decisions' in each period. This rate was the recommended option proposed by the MoJ and DfE.	June publication

3. Summary of responses

20 responses were received in response to the consultation, with a wide range of respondents including parent advice organisations, affected parents and the general public.

19 of the respondents to the consultation submitted their feedback electronically via the online survey. One response was received by email. Of those that responded to the consultation, a majority agreed with the need to change the appeal rate currently used, whilst expressing reservations and amendments to some specific aspects of the proposed course of action.

It should be noted that a number of respondents chose to answer only part of the questionnaire (for example, specific questions) and as such the overall number of respondents is not equivalent to the number of responses received for each question below.

Below is a summary of the responses received to each question

Q1: Do users agree that there is need to change and/or augment existing appeal rates to the SEND tribunal due to recent policy changes?

[19 responses]

All responders agreed that there is a need to change or adapt the existing SEND tribunal appeal rate.

Q2: Do users agree with the recommendation that we discontinue the existing rates and publish a new rate based on all appealable decisions (Option 4)?

[15 responses]

Of the responses received, the majority (11) agreed with the consultation's recommendation to pursue Option Four - creating a new appeal rate using annual SEN2 data on appealable decisions as the denominator in the calculation.

Three respondents did not agree. Of these, one suggested using ONS population estimates (Option Three) as the appeal rate denominator and one suggested continuing with the existing rates. One respondent did not offer a proposed alternative appeal rate.

One response received partially agreed with the proposal set out in the consultation, however proposed publishing two separate appeal rates - both SEN 2 appealable decisions data (Option Four) and ONS population estimate data (in

particular the 0-18 age range, Option Three). Whilst the respondent agreed that a rate based on appealable decisions gives a clearer view of where appeals are occurring, it was considered that awareness of assessment rights varies between Local Authorities and that not all Authorities enable parents to access appealable decisions at the same rate.

Q3: Moving to a new rate based on all appealable decisions will impact on the coverage of and publication timetable for rates of appeal. Do you have any feedback on the required changes to reporting i.e. moving to calendar year basis and publishing in June each year, rather than the preceding December?

[9 responses]

Of the responses received, five individuals were not sure about the effect of a change in publication timetable. Two respondents expressed a preference for publishing annual SEND Tribunal data in June each year.

One respondent expressed a preference for publication as early as feasible (i.e. retaining a December publication date) and another did not have a preference for publication date, as long as the appeal rate continues to be comparable year on year.

Q4: Do you think that this change to reporting should also be applied to the annual SEND tribunals statistics or should we continue to publish these in December each year as currently listed with the statistical release calendar to ensure timely and orderly release?

[11 responses]

Of the responses received, a majority (seven respondents) believed that SEND Tribunal statistics should continue to be published in December each year.

Two respondents expressed a preference for the timing change to reporting to also be applied to annual SEND statistics, i.e. that the annual statistics should be published in June each year. Two respondents did not express a preference.

Q5: Do users have an alternative option not covered by this consultation?

[3 responses]

One respondent expressed a preference for the use of ONS population estimates (Option Three) as the denominator for the appeal rate. A further respondent suggested using Academic year data when calculating the appeal rate, as is currently the case.

One response considered that two separate appeal rates should be published, using SEN 2 appealable decisions data and ONS population estimate data (in particular the 0-18 age range) respectively. See question two above for greater detail. The respondent also suggested a change in the way the calculation is set out.

Q6: Are there any additional comments you would like to make in relation to this consultation or on the SEND Tribunal publication chapter in general?

[4 responses]

Three responses were focused on policy-related considerations and did not give any substantive comments on SEND Tribunal statistics, and therefore are out of scope for this consultation response. These comments have been passed to the Department for Education for consideration.

One respondent suggested that the existing calculation method for the appeal rate should continue to be published in parallel with any new rate, in order to compare the impact of the SEND reforms.

4. Changes to appeal rate calculation

Existing recommendation

The recommendation set forward by the Ministry of Justice and Department for Education in the consultation document was to change the SEND Tribunal appeal rate to use total appealable decisions as the denominator in the rate calculation (Option Four). The appeal rate for each calendar year would be published in the following June. No recommendation was made as to the timing of annual SEND Tribunal statistics, which the consultation also asked for views on.

Changes to published SEND tribunal statistics

Following consultation, the SEND Tribunal appeal rate will be **amended to use total appealable decisions** as the denominator, using annual SEN 2 data. The new appeal rate calculation will be as follows:

$$\frac{\text{Number of appeals registered with the SEND Tribunal}}{\text{Number of 'appealable decisions'}}$$

The number of '**appealable decisions**' will be calculated as the sum total of the following data:

- Number of initial requests for EHC assessments refused
- Number of assessments completed and decision made not to issue an EHC plan
- Number with an EHC plan as at January each year
- Number of EHC plans ceased because the special educational needs of the child or young person are being met without an EHC plan

This data will cover all those who would be able to appeal to the SEND Tribunal based on appealable decisions. This includes appeals against LA decisions regarding refusal to carry out an EHC needs assessment or reassessment; refusal to issue, maintain or amend an EHC plan; the description of a child or young person's SEN in an EHC plan; the special educational provision specified in the plan; the school or other institution named; or that no school or other institution has been specified. Where appeals relate to Statements of SEN, the equivalent data has been included in the calculation.

For the rate of appeal calculation, the number of appeals registered with the SEND Tribunal will be calculated based on the number of appeals received in the calendar year, to align with the denominator.

This appeal rate will be published as part of the Tribunals and Gender Recognition Statistics publication in the June. Therefore the first appeal rate will be published in the June 2018 Tribunals and Gender Recognition Certificate

Response to consultation on SEND Tribunal Appeal statistics

Statistics Quarterly publication, covering the calendar year 2017. Historic appeal rates using this calculation methodology will also be published.

Annual SEND Tribunal statistics based on the number of appeals received in the academic year will continue to be published each December following the end of the academic year. The next publication is due in December 2018 and will cover the academic year 2017/18. Please note that the existing appeal rate (expressing SEND Tribunal appeals per 10,000 of the school population) will no longer be published. Historic appeal rates will remain available online for periods prior to the academic year 2017/18.

Contact

Press enquiries should be directed to the Ministry of Justice press office:

Tel: 020 3334 3536

Email: newsdesk@justice.gsi.gov.uk

Other enquiries about this consultation response should be directed to:

Bridgette Miles

Ministry of Justice
Justice Statistics Analytical Services
7th Floor
102 Petty France
London
SW1H 9AJ
Email: cajs@justice.gsi.gov.uk

General enquiries about the statistical work of the Ministry of Justice can be emailed to: statistics.enquiries@justice.gsi.gov.uk

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