

NORTH YORKSHIRE COUNTY COUNCIL
CHILDREN AND YOUNG PEOPLE'S SERVICE
CORPORATE DIRECTOR'S MEETING WITH EXECUTIVE MEMBERS

29 May 2012

**FIRST-TIER TRIBUNAL SPECIAL EDUCATIONAL NEEDS AND DISABILITY:
MONITORING REPORT**

1.0 PURPOSE OF REPORT

1.1 To monitor appeals to the First-Tier Tribunal, Special Educational Needs and Disability (SEND) in the 2010/11 academic year.

1.2 EXECUTIVE SUMMARY

- The number of parental appeals to the SEND has reduced slightly from 22 in the 2009/10 school year to 18 in 2010/11.
- Following an investigation of the cost to the authority of the placement of young people in independent/non maintained special schools as the result of a tribunal ruling, we have recently procured the services of a legal representative for these types of hearings. The input so far has been very positive; however it is too early to assess the cost effectiveness.
- North Yorkshire remains below the national average and below the average of our statistical neighbours in the number of appeals lodged.
- Most appeals lodged are against the LA's refusal to carry out a statutory assessment.
- The outcomes of the government's Green Paper, Support and Aspiration: A new approach to special educational needs and disability is recommending changes to the tribunal regulations.

2.0 BACKGROUND

2.1 SEND is an independent tribunal established to hear and decide parents' appeals against the decisions of Local Authorities relating to children's special educational needs, when parents cannot reach agreement with the Local Authority.

2.3 The Tribunal publishes an annual report on its work. The report for the 2010/11 academic year was issued in March 2012. Information from the annual report 2009/10 has also been used for comparative purposes in this monitoring report.

2.4 The detailed SEND monitoring data and comparison with national figures is set out in the Appendices. The comments below summarize the key points.

3.0 ISSUES

3.1 SEN casework is often, by its nature, complex and demanding of schools and Local Authority staff, especially the SEN Officer team. Making an appeal to SEND can be very stressful for parents. The preparation of cases to be heard at SEND is detailed and time-consuming and presentations are challenging, especially when legally trained representatives attend to represent parents. In order to meet this challenge, the SEN Assessment & Review Team have undertaken SEND training, negotiation training and attend conferences with updates on SEN legislation.

Some of the most complex cases to defend are those where parents request places in independent/non maintained special schools when the LA believes that a young person's special educational needs can be met in one of our own special schools. These are the cases for which parents most often seek legal representation. They are also the most costly for the LA, as placements in this type of provision can cost between £60k and £250 k pa.

We have recently procured the services of specialist solicitors who are able to advise us on the legal issues concerning tribunal appeals, prepare case statements for us and present some of the more complex cases at the hearings. The tribunal process is a lengthy procedure, taking on average around 6 months from an appeal being lodged. It is therefore too early to be able to report on the cost effectiveness of this input. The solicitors are currently working with us on (*fewer than 5*) active appeals. The SEN Team are monitoring the outcomes of this input and will be able to report more fully on this in next year's report.

3.2 The SEN team regularly monitors the number of appeals lodged and discusses issues arising with members of A&I Networks, Parent Partnership Service and colleagues in the Q&I service, as appropriate.

3.3 The number of appeals registered is dependent upon a number of inter-related factors. These include how schools manage SEN funding and parents' confidence in their meeting pupils' needs; parents' and schools' confidence in the Local Authority decision making processes and the effectiveness of the Parent Partnership Service, the Mediation Service and A&I Networks.

3.4 Trend in Appeals to SEND (appendix 1)

The total number of appeals to SEND has reduced slightly from 22 in 2009/10 to 18 in 2010/11.

3.5 Appeals Registered in 2008/9 and 2009/10 (appendix 2 a/b)

3.5.1. *Appeals against Refusal to Assess or Make a Statement*

Nationally, most appeals registered were against a refusal to assess, or a refusal to make a statement. In North Yorkshire this was also the case with 72% of the appeals registered being of this nature:

- The SEN Assessment and Review Team work to ensure effective and consistent decision making. The high level of SEN funding delegation has meant that there is often a fine line between the decisions whether or not to assess. Decision making is to some extent dependent upon the quality of the information presented by the school and or other professionals. Inadequate documentation relating to requests for statutory assessment, as submitted by schools or LA support services, can contribute to LA decisions which, when challenged are found to be unsustainable and this can lead to us not contesting appeals which have been lodged. The specialist solicitors are currently advising the LA in this area. We have already held a training day on report writing and the Head of Assessment & Commissioning is working with the advisors, educational psychologists, the network co-ordinators and health to review the report writing proforma and guidance which asks for information for statutory assessment. This should enable us to receive more detailed & relevant information. We are planning a launch event in September. We intend that not only will this provide better evidence for presentation at tribunal hearings, but will lead to all LA reports being of high quality, thus increasing the confidence of both parents and schools in being able to meet a young persons special educational needs and hopefully fewer appeals being lodged.
- The number of appeals conceded by the Local Authority has reduced slightly (from 13 in 2009/10 to 11 in 2010/11). We are however concerned at the number of appeals we do concede. This is a national issue and as a member of the SEN Northern Users Group, the Head of Assessment & Commissioning is working with SEND to look at reasons for and solutions to this. In our situation, where the Local Authority has conceded, it has usually been when further information has become available following the appeal being lodged. This information is usually in the form of independent reports commissioned by parents. The improvement of our own report writing should help in this area.

3.5.2 *Appeals against the description of the child's needs, and the provision (i.e. parts 2, 3 & 4 of the Statement of SEN)*

North Yorkshire is below the national average with respect to appeals of this nature, they are however the appeals which in our authority most frequently go forward to an actual hearing, as appeals against Part 4 of a statement are requests for a change in provision.

- The SEN Assessment and Review Team remain aware of the potential for further improvement in this area. There is a system in place for the monitoring and moderation of the provision on statements. This involves the SENOs, at a team meeting, looking closely at a random selection of statements from throughout the County in order to ensure standardisation and to look at areas for improvement
- Some parents appeal to SEND for non maintained/independent special school placement when they feel that local maintained provision is unable to meet need. In order to ensure best value and equity of provision, the Local Authority ensures, through discussion at the Alternative Provision Panel, that this type of placement is only made when all avenues of local

provision have been exhausted. When attempts at mediation fail, any inappropriate requests for placement will continue to need to be challenged through SEND. It is these cases which we anticipate will now have legal representation at SEND hearings.

3.6 Number of Appeals Registered 2009/10 in Comparison with Statistical Neighbours (appendix 4)

North Yorkshire has a low number of registered appeals. In 2010/11 the number of appeals registered per 10,000 school population in North Yorkshire was 2.15, only one of our ten nearest statistical neighbours has a lower level of appeals.

3.7 Trends in appeals withdrawn (appendix 5)

Nationally, the trend is for the majority of appeals registered to be withdrawn. In 2010/11 of the 18 appeals registered in North Yorkshire, (*redacted*) were withdrawn by parents before going to a hearing. The majority of these appeals were withdrawn because the parents accepted the Local Authority decision after further discussion and negotiation. This reflects positively on the negotiation skills of SEN Officers, and the support offered by the Parent Partnership Service in working with parents and schools to reach satisfactory resolutions.

3.8 Arrangements for dispute resolution (mediation)

There is a duty on Local Authorities to make arrangements with a view to avoiding and resolving disagreements between parents of children with SEN, the Local Authority and/or the school or setting.

Since 2008 North Yorkshire has had a contract with Community Accord (based in Bradford) to provide independent mediation for parents. The Local Authority has only been averaging one case per year going to the independent mediation service. We have therefore opted to pay for this service on a case by case basis, rather than to pre purchase a number of cases per annum.

The positive involvement of the Parent Partnership Service in a large percentage of cases going forward to tribunal hearings has reduced the requirement for independent mediation, although this option is always offered to parents.

Parent Partnership Officers and SEN Officers work together to meet with the parent when a request for Statutory Assessment has been turned down. The informal conciliation provided, in particular, by SEN Officers and Parent Partnership Co-ordinators led to (*redacted*) out of 18 of SEN tribunal appeals being resolved prior to a hearing.

3.10 The implications of the SEN Green Paper on the tribunal system:

The document "Progress and Next Steps" was published on 15th May 2012. This discussed three possible changes to the SEN tribunal system:

- That Parents & LAs try independent mediation before a parent can register an appeal with the tribunal.
- To pilot giving children the right of appeal to tribunal.
- To explore with the Ministry of Justice giving the right of appeal to young people up to 25 and their parents.

4.0 FINANCIAL IMPLICATIONS

Although North Yorkshire remains an authority with a relatively low number of SEND appeals per head of population, the SEN Assessment Review team recognise that there will always be a need to challenge a number of what we feel are inappropriate appeals to tribunal in order to provide equity of provision made for young people with SEN and to ensure best value for money. This is particularly the case when parents request independent non maintained special school which can be very expensive especially over several years of a pupil's education placements. We need to ensure that this type of very specialist provision is only provided when no alternative is available.

5.0 LEGAL IMPLICATIONS

Appeals to SEND arise when parents appeal against Local Authority decisions made under the statutory processes concerning the assessment and review of pupils with SEN. It is essential that cases where mediation has not proved effective are resolved through this process in order to prevent costly appeals to the High Court.

6.0 RECOMMENDATION

That the report be noted.

Cynthia Welbourn - Corporate Director Children and Young People's Service

Report prepared by Lynda Dyson, Head of Assessment & Commissioning (Education), Access & Inclusion.

Appendix1– Trend in Appeals to SENDIST

2010/2011

Number of Appeals Registered	Number heard	Number withdrawn	LA conceded	Struck Out
18	Redacted	Redacted	11	0

2009/2010

Number of Appeals Registered	Number heard	Number withdrawn	LA conceded	Struck Out
22	Redacted	Redacted	13	0

**Appendix 2a – Appeals Registered 2010/2011-
2010/2011**

Type Of Appeal	Total	% of total	National Total	%of total	Number Heard	Number Withdrawn	LA Conceded	Struck Out
Against refusal to assess	7	39	1200	33	0	Redacted	Redacted	0
Against refusal to make a statement	6	33	260	7	0	Redacted	Redacted	0
Against refusal to re-assess	0	0.0	0	0	0	0	0	0
Against refusal to change name of school	0	0.0	9	0	0	0	0	0
Against decision to cease to maintain statement	0	0.0	69	2	0	0	0	0
Against refusal to amend s/ment following review	0	0.0	180	5				
Against school named in s/ment	0	0.0	0	0				
Against failure to name a school	0	0.0	0	0	0	0	0	0
Against contents of the statement - parts 2 & 3	Redacted	Redacted	330	9	0	Redacted	0	0
Against contents of the statement - parts 2, 3 & 4	Redacted	Redacted	1100	31	Redacted	Redacted	0	0
Against contents of the statement - part 4	Redacted	Redacted	430	12	0	0	Redacted	0
TOTAL	18		3578		Redacted	Redacted	11	0

2010/2011

Nature Of Appeal	Total	% of total	National Total	%of total	Number Heard	Number Withdrawn	LA Conceded	Struck Out
Autistic Spectrum Disorder	Redacted	5.5	1100	31	0	Redacted	0	0
Behaviour, Emotional & Social Difficulties	5	27.8	600	17	0	0	5	0
Hearing Impairment	Redacted	5.5	82	2	Redacted	0	0	0
Moderate Learning Difficulties	Redacted	22.2	200	5	0	Redacted	Redacted	0
Multi Sensory Impairment	0	0	0	0	0	0	0	0
Other	0	0	8	0				
Physical Difficulties	Redacted	5.5	250	7	Redacted	0	0	0
Profound & Multiple Learning Difficulties	0	0	39	1	0	0	0	0
Severe Learning Difficulties	0	0	67	2	0	0	0	0
Specific Learning Difficulties	0	0	500	14	0	0	0	0
Speech, language & Communication Needs	Redacted	22.2	430	12	0	Redacted	Redacted	0
Unknown	Redacted	11.1	250	7	0	Redacted	Redacted	0
Visual Impairment	0	0	48	1	0	0	0	0
TOTAL	18		3574		Redacted	Redacted	11	0

Appendix 2b – Appeals Registered 2009/2010
2009/2010

Type Of Appeal	Total	% of total	National Total	%of total	Number Heard	Number Withdrawn	LA Conceded	Struck Out
Against refusal to assess	8	36.4	1159	35	0	0	8	0
Against refusal to make a statement	Redacted	Redacted	216	7	0	Redacted	Redacted	0
Against refusal to re-assess	Redacted	Redacted	43	1	0	0	Redacted	0
Against refusal to change name of school	0	0	14	0	0	0	0	0
Against decision to cease to maintain statement	0	0	57	2	0	0	0	0
Against failure to name a school	0	0	1	0	0	0	0	0
Against contents of the statement - parts 2 & 3	Redacted	Redacted	382	12	0	Redacted	0	0
Against contents of the statement - parts 2, 3 & 4	Redacted	Redacted	1018	31	Redacted	Redacted	0	0
Against contents of the statement - part 4	0	0	390	12	0	0	0	0
TOTAL	22		3280		Redacted	Redacted	13	0

2009/2010

Nature Of Appeal	Total	% of total	National Total	%of total	Number Heard	Number Withdrawn	LA Conceded	Struck Out
Autistic Spectrum Disorder	Redacted	Redacted	1019	31	Redacted	Redacted	Redacted	0
Behaviour, Emotional & Social Difficulties	Redacted	Redacted	491	15	Redacted	Redacted	Redacted	0
Hearing Impairment	Redacted	Redacted	80	2	Redacted	0	0	0
Moderate Learning Difficulties	Redacted	Redacted	309	9	0	0	Redacted	0
Multi-Sensory Impairment	0	0.0	8	0	0	0	0	0
Physical Difficulties	Redacted	Redacted	231	7	0	Redacted	Redacted	0
Profound & Multiple Learning Difficulties	0	0.0	61	2	0	0	0	0
Severe Learning Difficulties	Redacted	Redacted	60	2	0	0	Redacted	0
Specific Learning Difficulties	Redacted	Redacted	535	16	0	Redacted	Redacted	0
Speech, language & Communication Needs	Redacted	Redacted	333	10	0	Redacted	Redacted	0
Unknown	0	0.0	115	4	0	0	0	0
Visual Impairment	0	0.0	38	1	0	0	0	0
TOTAL	22	100	3280		Redacted	Redacted	13	0

Appendix 3a – Appeals Heard 2010/2011

Results of Tribunal - North Yorkshire Totals 2010/2011					
Type Of Appeal	Upheld	% of total	Dismissed	% of total	Total
Against refusal to assess	0	0	0	0	0
Against refusal to make a statement	0	0	0	0	0
Against refusal to re-assess	0	0	0	0	0
Against refusal to change name of school	0	0	0	0	0
Against decision to cease to maintain statement	0	0	0	0	0
Against failure to name a school	0	0	0	0	0
Against contents of the statement - parts 2 & 3	0	0	0	0	0
Against contents of the statement - parts 2, 3 & 4	Redacted	100	0	0	Redacted
Against contents of the statement - part 4	0	0	0	0	0
TOTAL	Redacted	100	0	0	Redacted

Appendix 3b – Appeals Heard 2009/2010

Results of Tribunal - North Yorkshire Totals 2009/2010					
Type Of Appeal	Upheld	% of total	Dismissed	% of total	Total
Against refusal to assess	0	0	0	0	0
Against refusal to make a statement	0	0	0	0	0
Against refusal to re-assess	0	0	0	0	0
Against refusal to change name of school	0	0	0	0	0
Against decision to cease to maintain statement	0	0	0	0	0
Against failure to name a school	0	0	0	0	0
Against contents of the statement - parts 2 & 3	0	0	0	0	0
Against contents of the statement - parts 2, 3 & 4	Redacted	Redacted	Redacted	Redacted	Redacted
Against contents of the statement - part 4	0	0	0	0	0
TOTAL	Redacted	Redacted	Redacted	Redacted	Redacted

Appendix 4 – Number of appeals Registered in 2010/2011 in Comparison with Statistical Neighbours

Number of Appeals Registered in Comparison with our Statistical Neighbours 2010/2011	Number of appeals	Number of appeals per 10,000 school population
Cambridgeshire	36	4.60
Somerset	37	5.66
East Riding	5	1.26
Lincolnshire	33	3.54
North Yorkshire	18	2.15
Herefordshire	8	3.53
Norfolk	89	8.48
Shropshire	17	5.22
Devon	38	4.19
Dorset	13	2.39
Cornwall	18	2.58

Appendix 4 – Number of appeals Registered in 2009/2010 in Comparison with Statistical Neighbours

Number of Appeals Registered in Comparison with our Statistical Neighbours 2009/2010	Number of appeals	Number of appeals per 10,000 school population
Cambridgeshire	59	6.78
Somerset	36	4.71
East Riding	7	1.40
Lincolnshire	68	6.44
North Yorkshire	22	2.43
Herefordshire	9	3.68
Norfolk	74	6.38
Shropshire	12	2.77
Devon	35	3.37
Dorset	16	2.67
Cornwall	22	3.03

Appendix 5 – Trends in Appeals Withdrawn

2010/2011

Type Of Appeal	Total
Against refusal to assess	Redacted
Against refusal to make a statement	Redacted
Against refusal to re-assess	0
Against refusal to change name of school	0
Against decision to cease to maintain statement	0
Against failure to name a school	0
Against contents of the statement - parts 2 & 3	Redacted
Against contents of the statement - parts 2, 3 & 4	Redacted
Against contents of the statement - part 4	0
TOTAL	Redacted

2009/2010

Type Of Appeal	Total
Against refusal to assess	0
Against refusal to make a statement	Redacted
Against refusal to re-assess	0
Against refusal to change name of school	0
Against decision to cease to maintain statement	0
Against failure to name a school	0
Against contents of the statement - parts 2 & 3	Redacted
Against contents of the statement - parts 2, 3 & 4	Redacted
Against contents of the statement - part 4	0
TOTAL	Redacted