

## **Accountability in the education system (England)**

There is a lack of accountability in the education system in England. The [SEND Tribunal](#) and the Local Government Social Care Ombudsman (LGSCO) are dealing with record numbers of cases, leading to long delays.

Most of the current mechanisms for accountability are reliant on proactive parents to seek redress and complain following wrongful decisions. Many parents say they don't have the time, energy or confidence to challenge decision.

In a focus group held by Contact, parent carers identified the root cause of the failure of the education system as the government's refusal to hold local authorities to account. When asked if they had to identify one issue for the government to prioritise and act on, they said accountability. They described the current accountability system as purposefully complex, convoluted and adversarial.<sup>1</sup>

## **The current accountability mechanisms**

### **The SEND Tribunal**

The SEND Tribunal holds local authorities to account when they do not follow the law around EHCPs and Disability Discrimination. These cases are brought by parents who appeal to the tribunal. The SEND Tribunal can only make legally binding judgements on educational provision in [Education, Health and Care Plan \(EHCP\)](#) and only non-binding recommendations on Health and social care provision in these plans. Local authorities lose 98% of SEND Tribunal appeals.<sup>2</sup> The tribunal has no powers to ensure [SEN Support](#) is being provided by the school.

### **Mediation before appeal**

There is also the accountability mechanism of mediation before cases hit tribunal. However, in practice LA's often do not abide by mediation standards and fail to bring a decision maker to the mediation or fail to attend mediation all together. Again, mediation is triggered by parents.

### **Complaints to schools**

All schools have a [formal complaints procedure](#) which can be followed when a child is not in receipt of the correct support or has been treated contrary to law. For example, when a school is failing to put SEN Support in place for a child's special educational needs or when a child has been informally excluded without the correct procedures being followed. You can also complain to the Department for Education about a particular school.

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<sup>1</sup> Focus group held on 23.07.24 by Imogen Steele

<sup>2</sup> <https://disabledchildrenspartnership.org.uk/news/wasting-money-wasting-potential-our-new-report/>



### **Complaints to the local authority (LA)**

There are different ways that to hold the local authority to account. If you have an EHCP or are in the process of requesting an EHC needs assessment, you can appeal to the SEND Tribunal. For other complaints all LA's have a formal complaints procedure. There are often multiple stages of this process all of which must be completed before a parent can complain to the Local Government and Social Care Ombudsman (LGSCO) or go to judicial review.

### **Complaints to the Local Government and Social Care Ombudsman (LGSCO)**

The LGSCO is independent and deals with claims of 'maladministration leading to injustice'. This provides an avenue to challenge a LA's decision without having to go to court.

Examples of situations in which a parent might complain to the LGSCO are:

- Where the local authority does not provide home-to-school transport that a child is legally entitled to, resulting in parents having to pay for transport or the child missing school.
- Where the LA fails to comply with legal deadlines to carry out an EHC needs assessment or issue an EHC Plan, resulting in the child or young person missing out on provision or schooling.

The LGSCO currently does not deal with cases where schools fail to provide SEN support.

The LGSCO aims to complete all investigations within 26 weeks. After the investigation they will issue a decision and can make recommendations to LAs to put right the injustice. These are not legally binding but it is very rare for a LA to ignore a recommendation.

The LGSCO can also award financial remedy such as recommending that the council take action to address any loss of provision by providing extra help for a child. 84% of complaints to the LGSO are upheld, yet it can take well over a year for a case to wind its way through the LA complaints system and on to the LGSCO. Moreover, the LGSCO is now limiting the cases it investigates because of the pressure it's under.<sup>3</sup>

### **Judicial review**

If the issue is urgent or cannot be solved otherwise, the LA's decision or actions can be challenged through judicial review. Judicial review is asking a court to look at the decision of a public body and to decide whether it was made in a lawful, fair and reasonable manner. Parents must instruct a lawyer if they want to go to judicial review, this can present a barrier if they cannot get legal aid.

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<sup>3</sup> [SNJ's 7-point open letter to Bridget Phillipson, new Secretary of State for Education - Special Needs Jungle](#)



To successfully appeal for judicial review parents must show either that the LA or other public body<sup>4</sup>:

- does not have the legal power to make the decision or to take the action which they object to; or
- is under a legal duty to act or make a decision in a certain way and is refusing or failing to do so.

If judicial reviews finds in favour of the parent, the court can:

- overturn a decision and require the public body to make it again properly.
- tell the public body not to perform an action or make an unlawful decision.
- make a mandatory order requiring a public body to perform an action, for example to provide support stipulated in an EHCP.
- order an injunction telling the public body not to perform an action or make an unlawful decision.
- order a declaration to be made that says a decision or act is unlawful.
- award damages (this is rare).

### **SEND Area Inspections**

The SEND area inspections look at the 'local area partnership'. That's the local authority's SEND education services, the services provided by the NHS Integrated Care Boards (ICBs) and also aspects of LA social care. The new framework also looks at alternative provision. Only a few of these inspections have taken place and there seems to be a feeling that it's too easy to get a positive outcome even when the system is failing

### **Ofsted inspections**

Ofsted inspections inspect schools including how they support pupils with SEN. While this is supposed to be factored into Ofsted's overall judgement, schools who are failing in their SEN support can still receive a good result as it is only one factor.

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<sup>4</sup> 'Public bodies' in education include local authorities, school governing bodies, governors of maintained nurseries and further education institutions, independent review panels for permanent exclusions, admission appeal panels, government ministers and government departments.



## **Contact's vision for a stronger accountability system**

### **1. Systematic changes**

#### **Quick wins**

- The publication of the outcomes of tribunal cases, anonymised, to enable everyone to see and learn from decisions and spot patterns of breaches in law. Councils that are frequent offenders could be flagged for further investigation.
- Schools should be required to report all complaints to the Department for Education.
- There must be stronger intervention from government in cases of failure. This intervention should be triggered by key data, including but not limited to, failings in Ofsted/CQC inspections, poor Tribunal statistics, failures to meet legal timescales and high levels of parental complaints. We suggest that these government interventions should be overseen by the Minister for Schools as SEND is now within their remit.

#### **Policies that will require investment or statutory change**

- A legislative change to make health, social care and education jointly responsible for special educational provision, so that the SEND Tribunal can make legally binding decisions regarding health and social care provision rather than just for educational provision.
- The establishment of a national board of representatives from health, social care and education overseen by an independent panel to hold each other accountable for complying with their SEN duties, so that the SEN system can work without the need for parents to assert their child's rights through appeals or complaints,
- LGSCO to be given a wider remit so it can investigate how schools deliver provision to all children with SEND, including those on SEN Support without an EHCP.

### **2. Increasing the capacity of and easy access to existing accountability mechanisms**

#### **Quick wins**

- There must be greater clarity and transparency in decision making (particularly when it comes to the use of panels) - so parents can see how decisions are made and by whom and then can make a more informed decision as to whether and how to complain
- Mediation to be available at an earlier stage and all mediation to be meaningful and lawful mediation where a decisionmaker is present.



- Simplified complaint routes for parents must be established including for when statutory timescales are ignored or when provision in an EHCP is not implemented. In these circumstances it should not be necessary for parents to go through the 3 stage complaints process of the LA and it should be possible to fast track a resolution.

### **Policies that will require investment or statutory change**

- Increase the resources of the LGSCO so that it can manage the complaints it receives.
- Increase access to legal aid for Judicial review cases.
- Increase the capacity of the SEND Tribunal to ensure that cases can be heard without delay. Currently most cases are taking about year to reach a hearing. There is a concerning trend of LAs conceding the day before a hearing as they know they will lose but are happy to lengthen the process as they save thousands in not having to provide support while awaiting the tribunal date . There must be consequences for this practice.

### **3. Ensuring that inspections are robust allowing for increased accountability**

#### **Quick wins**

- Require local area SEND inspection process to consider how effectively LAs are following the legal framework: how many Tribunal appeals, judicial reviews or LGSCO complaints are upheld – and make this information public.
- All Ofsted and CQC reports, as well as local area SEND inspections, should take into account legal compliance with SEND legal duties. They should not be able to allow organisations to pass the inspection criteria if they do not comply with the law.
- Public hearings for elected councilors and more publicity of report findings following local area SEND inspections where failings are found.

#### **Polices that will require Investment**

- There needs to be more training for SEND and Ofsted inspectors on law and accountability.

Please get in touch with [imogen.steele@contact.org.uk](mailto:imogen.steele@contact.org.uk) to arrange a meeting or ask any questions you may have.