# Action Card

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| Card number | 008 |
| Project | EHCP Processes |
| As a | Group of parent carers who are concerned about the amount of appeals to the 1st tier tribunal service as statistics show that 98% of tribunals at least in part go in the parents' favour.  There are a number of cases conceded at the very last minute demonstrating a need for early resolution.  The amount of stress and financial pressure that this puts on a family is significant, unnecessary and avoidable.  Stats -  Nationally, 98.3% of education tribunals were resolved in favour of parents in 2022/23. This is not a temporary aberration.    Surreys Numbers: From FOI, the number of cases that were not successfully defended were:  97% in 2020  97% in 2021  97% in 2022  98% in 2022/23 (financial year).    There were approximately 2000 appeals. Impacting approximately 2000 children and their families, schools, and communities.    Based on an estimated 2000 appeals over 4 years if (per FOI) 600 (30%) went all of the way to tribunal, Surrey decisions were corrected in about 582 of these by tribunal.  A 2016 report by the Early Intervention Foundation shows that every £1 spent on early help saves £3 late intervention. The lived experience of our members suggests this is true. It is a false economy. As the Early Intervention Foundation reported “If we are serious about tackling injustice and increasing social mobility for children and families, investment in effective early intervention should be targeted in particular on service areas where spending on late intervention is high.”  --  Key concerns -  1. We are concerned that the use of tribunals has become standard practice. Over a four year period there has been an impossibly high loss rate. Indeed in the latest figures Surrey show deterioration (98%) from a figure of 97% for the prior three years.  2. Panel decisions and panel procedures are not seen as transparent, detailed or communicated effectively.  3. When appealed, there is no visible reconsideration of appealed decisions and appears to be no desire for early resolution. We recognise that sometimes new evidence becomes available, and this explains why some decisions may need to be appealed, however this is often not the case and doesn’t explain why almost all decisions that Surrey take all the way to tribunal are found to be incorrect in part or in full by the tribunal.  4. We are concerned that the cost to Surrey is unnecessary, and the money spent on tribunals would be best spent in early resolution.  5. We are concerned that Surrey do not understand how much pressure a legal proceeding puts already vulnerable families under and is a very serious, very stressful ordeal for families often at times when they are most vulnerable.  6. We are concerned about the fact that the children who are impacted mostly have protected characteristics under Equality law and may not be receiving a suitable education for an extended period of time (with obvious cost in terms of their future life chances).  7. We are aware that there is a statistical link between deprivation (something that impacts families in this system disproportionately due to the obvious vulnerability of families who would be needing an EHCP for their children) and a family having the strength to feel able to challenge a local authority. The ACJ found this link, which is unsurprising but worrying.  8. We are concerned that there are threats of prosecution (or actual prosecution) ongoing whilst tribunal proceedings are active if children become unable to attend unsuitable schools, or schools are not able to understand how to make the right adjustments. This can cause bad decisions to be made, not only unfair threats of prosecution but also we have seen reports of parents sending children into inappropriate schools to avoid such threats - leading, for example, to permanent exclusion, mental health crisis and even suicidal ideation. All whilst an appeal is live. |
| We want | 1)We would like to know accurate statistical data of how many tribunals are:  - Found in favour of parent carers at tribunal  - Are conceded within a month of the hearing date  2) We would like to know what is the process for checking accuracy and quality of EHCP’S prior to them being sent out both after an initial EHC needs assessment and after a review?  4) We would like to know what steps are taken and at what point to look for early resolution? This should include times lines and accountability.  5) We would like a statement from Surrey recognising the problem and stating what they are going to do to resolve it. This should include an understanding and acknowledgement of the impact it has on children and families.  6) We would like to know what training the tribunal and SEN team receive when dealing with appeals, tribunals and early resolution.    7) We would like Surrey to review, analyse and collate statistics on a quarterly basis that could identify opportunities for improvement and root cause challenges that could be rectified. We would like the statistics to be published:   * + Number and percentage of last minutes concessions   + Number and percentage of mediation sessions that resulted in positive resolution   8) We would like Surrey to commit to holding regular meetings between senior policy makers and parents so they can understand the human cost, to be supported by FVS. This will foster trust as well as ensuring that senior policy makers have a full understanding of the importance of consigning this statistic to history.  9)We would like Surrey to undertake a review of historic, lost cases and to take some learnings out and establish root cause to avoid similar situations occurring. (This is also a recommendation from AJC.) |
| So that | Children and young people have their needs met at the earliest opportunity and families are not put under undue pressure and stress. |
| Allocated to | Rhianwen Fox |
| Accepted by | Rhianwen Fox |
| Outcome measure | * Freely available data to allow timely analysis. * More cases resolved through early resolution and a reduction in appeals to the 1st tier tribunals * Percentage of appeals (per appealable decision) to reduce. * Percentage of successfully defended cases at tribunal to increase (significantly). * Percentage of resolved cases (prior to tribunal date) that are resolved late to decrease. * A statement will be publicly available on the Local Offer website recognising the severity of the problem and determination to improve. * Regular meetings between senior policy makers and parent carers will be held. * Feedback from FVS members. |
| Date Received | 13/6/24 |
| Dates of updates | **Initial response received 15/7/24**  *Thank you for your email and the action card set previously and the work that would have gone into this.*    *I have considered and discussed the contents of the action card with colleagues. The data that you have asked for would usually be requested via an FOI and given the nature of the data being requested we would consider it more appropriate for data requests such as this to go via an FOI.*    *You may have seen FOI* **8317635** *where we outlined the reason why further data is not available at this time, and so I am afraid we do not hold data on numbers of cases resolved within 5 days of the tribunal, the database we have does not allow for the collection of this data.*    *I absolutely appreciate families desire for early resolution of appeals, this is why we introduced the pilot phase of the Mediation and Resolution team whose focus is on the early resolution of appeals. To date I am pleased to report that the team have been extremely successful and have a 56% success rate.*    *There are of course times when we are unfortunately unable to find early resolution, in those instances cases are allocated to Tribunal Officers. The Tribunal Officers are from a wide and varied background including some with case work experience, some come from a legal background and others from a SEND Advisory Service background. This does not of course cover the wide and varied experience of the tribunal team in its entirety, however, the recruitment process is robust and the requirements for the role are set out clearly within the job description. All Tribunal Officers have access to our regular team CPD sessions and are able to access ISPEA training. The same is available for the mediation and dispute resolution team.*    *As you know we have discussed previously tribunal outcomes, whilst I appreciate parental frustration around this area, it is the case that this is the national average for tribunal outcomes. More often than not where a tribunal case has progressed to hearing, the decision being made is based on entirely updated evidence from the original decision taken by the LA and so the two decisions are often not comparable.*    *I understand the desire to see a reduction in cases going to tribunal, this is why the mediation and dispute resolution team was set up, as mentioned above they are in their pilot phase and focussing on the early resolution of appeals so that we can quantify the impact clearly. Once the current pilot is completed we will be able to fully evaluate the impact and consider next steps moving forwards. We will of course keep FVS and parents and carers updated .*    *When appeals are registered with us they are triaged by a quality manager, we then hold weekly meetings with the area teams to discuss any new appeals. Once allocated each area has a fortnightly meeting with the area team which they are allocated to, this allows for muti-agency case discussion and to clarify instructions from the SEN teams as well as from other agencies. Tribunal Officers also have weekly support and challenge slots with management within the team. Should they consider that a case needs to reviewed, they complete the relevant paperwork which must be signed off by either the Senior Tribunal Officer or the Service Manager before it can be presented to EGB. Instructions regarding the defence of cases come from the SEND Teams.*    *All EHCP’s are signed off by senior case managers in the SEND teams prior to issue in all cases. As you know the Quality team carry out Bi-annual multi-agency audits as well as thematic deep dives. Area teams may also seek support from Quality managers if they feel the need.*    *Please be reassured that where there is learning to be taken from tribunal outcomes learning reviews are carried out and this is fed back to the relevant teams.*    *I hope this answers the majority of the points raised in the action card.* |
| FVS Action Card Working Group Comments/ Feedback to the LA initial response | We have now received the above response which we do not feel answers or addresses many of the points that we raised. We are grateful for the initial response but would like to collectively formulate some feedback to this response to encourage further consideration of these issues.  As our working group we would welcome your comments and feedback. Please do add this in this box and in September we will draw this feedback together and share it with Katherine Everrett when she attends our next meeting on the 9th September.  **Action Card Working Party Feedback:**   1. Statistics and feedback from FVS shows there is definitively a problem and this does not recognise that is the case. Do Surrey deny this? 2. If there is a problem, should Surrey not WANT to understand where it lies? The request for more information will help Surrey to understand the problem better. We feel that Surrey should be trying to understand the problem, not pretending it is not there. 3. Surreys appeal rate is a lot worse than the national average and is consistently so. This shows that the initial decisions are wrong. By statistics and reports – Surrey is using tribunal to delay, we would challenge Surrey to show that their initial decisions were rational, when FVS receive reports regularly saying they are not. 4. Being within the national average (of which there is some doubt), where the national average is that LAs lose, in part of full 98.3% of the time, is nothing to be proud of, and remains a problem significantly impacting on children and families. Denying there is a problem in Surrey is part of why there is a problem. |
| Date Closed |  |
| Publishable response |  |