



# Young people's right to appeal to the English First-tier Tribunal (SEND)

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# Outline

- ▶ Introduction – about the context, about the research
- ▶ Four themes:
  - **A**ppetite to take-up new right to appeal
  - **B**arriers encountered
  - **C**hallenges and **d**ilemmas raised for parents and professionals
  - **E**xamples of **f**acilitative practice
- ▶ Discussion - the future ...?



# Introduction

- ▶ **Context:** Children and Families Act 2014 (England)
  - New rights for children and young people
  - New rights specifically for young people
- ▶ **The research:** Review of all disagreement resolution routes around SEND, 2015-17 ([report](#))
  - Commissioned by English Dept. for Education
- ▶ **This presentation:**
  - Focused on young people's new right to appeal to the Tribunal
  - Not covering the other rights or resolution routes



# Appetite to take-up new right to appeal

- ▶ Tribunal reps (N=3)
  - “Young people’s right of appeal is working. The volume of appeals from young people shows the appetite & need” (TR2)
- ▶ LA focus groups (N=13)
  - Number of appeals increasing because young people were taking up the new right, esp. 19 -25 year olds
- ▶ Parent interviews (N=79), 20 were about young people
  - Of these 20, 17 included use of right to appeal
    - **Age bands:** 10 aged 16-18; 7 aged 19-25
    - **Gender:** 11 males; 6 females
    - In range of **settings** at time of interview
    - **Focus:** placement; provision; shows desire for education

# Barriers to using new right to appeal

## ▶ Adults setting limits on aspirations

- E.g. “Parent blocking” - seeking to prevent young person’s views being heard (FG4); parents not wanting “to let go of” young person e.g. to live independently (FG9) ;
- E.g. SEN officers – acceptance of low grades as enough – “prejudice” (P11); no need to continue in education, “why waste money on your daughter?” (P48);

## ▶ Daunted by prospect of Tribunal hearing

- “[My son] was stressed to death” about attending, feared it would be his fault if case was lost (P20)

## ▶ Adult concerns around mental capacity of young person

- In early days; realisation that by that age, parents & young person know capabilities – acceptance of parent support & representation on behalf of young person

## ▶ Lack of information about the new right

- “LAs don’t have the resources to deliver the policy intention” (TR2)

# Challenges & dilemmas for parents and professionals (i)

## ▶ Piggy-in-the-middle

- “Sometimes we end up almost mediating between the child and the parents’ views” (FG9)
- “Sometimes we have to go to legal levels to obtain views of the young person [rather than the parents].” (FG4)
- What happens if YP wants to appeal and parent does not? Will LA oppose YP? (IS20)

## ▶ LAs that knew what needed to be done but hadn’t yet done it

- E.g. LA Self-evaluation: recognised need to improve parent and young people involvement in decision-making – but LA SEN “moral assumptions” at odds with some parent/YP wishes e.g. out of area placements (FG5);
- “empowered feeling shows through with parents, not so much with children and young people” - had plans to address this (FG1)
- “the will is there but resources are lacking” (FG7 – and others) ; e.g. due to budget cuts , LA7 lost 14 of 16 IASS staff, including young people’s advocacy staff

# Challenges & dilemmas for parents and professionals (ii)

- ▶ Extension of age range to 25 (“the elephant in the room”)
  - “[...] has raised expectations [...] It’s not fair on families. The infrastructure is not there [to deliver this].” (FG4);
  - Raised expectations of an entitlement to education up to age 25 – but LAs don’t have the resources to fund these EHCPs (FG7)
  - Resulted in increased number of appeals (multiple FG LAs)
  - Has raised issues about what is deemed education vs. social care vs lifelong learning – “what is ‘ordinary’ and what is ‘special’ education after school?” (FG7)
- ▶ Querying why only young people with SEND get new rights
  - e.g. to request an independent post-16/post-19 school or college [one person in one LA group raised this – but it seemed important that it was raised at all]
- ▶ Extent of support needed by YP to take up right
  - Still need support from parents – is it really parents’ agenda? (IS15)
  - Relatively few independent advocates for young people with SEND? [our sense]

# Experiences of appealing – two young people

## ▶ Young man at school

- “It’s quite a difficult situation to be put in [...] having to fight for my own needs and to get what I need to become successful. What a lot of people don’t understand is it’s not just in school hours that this will effect: it’s very much a case of 24/7 because it applies an awful lot of stress on individuals who have to do the jobs, especially my Mum. And the stress and upset that’s caused [...]. I was not part of the Tribunal process itself because my education, health and care plan got sorted.” (YP24 - LA settled before hearing)

## ▶ Young woman at college

- “I wanted the information [i.e. the decision] to come quickly. We couldn’t plan anything.” (YP10) (6 month wait from registering to hearing date)
- Attended her hearing; Judge was welcoming and gave her permission to call her ‘Judge [First Name]’, appreciated that a lot - but still was overwhelmed and had to leave after a while; felt proud afterwards.
- Appeal was upheld – and LA agreed to fund to age 26 due to time lost



# Examples facilitating young people's right to appeal

- ▶ **Government** – Legal Aid to support appeal for young people over 18 years
- ▶ **LA practices**
  - Funding independent advocate/s for young people
  - IASS staff with experience of working with young people - enabling their voice
  - Working to create ethos of listening to children and young people with SEND
    - decreases need for YP appeals: increases involvement in decisions affecting them
- ▶ **Tribunal practices**
  - Pilot [now national trial] of extended powers “enables the Tribunal to focus on preparing them properly for independent adult lives”, usually involving health and social care too (TR1); can challenge “chronically poor provision post-16”; can make recommendations re health or social care even if young person is unaware of their entitlements (TR3)
  - Welcoming young person, putting them at ease – asking for their views first
  - Can request paper hearing if young person is very anxious [parent said this]
  - Using less formal local venues for hearings
- ▶ **Parent practices** - Support young person's aspirations through helping with the appeal

# Future ...?

- ▶ **Government action after CEDAR Review report**
  - Included improved information for parents and young people on their new rights (e.g. new [booklet](#)) – has/will this increase YP's voice and appeals?
- ▶ **National trial of extended powers of the Tribunal**
  - Education plus health and/or social care issues can be taken to Tribunal
  - Early indications of young people appealing using this power
  - Evaluation report due this year should reveal more
- ▶ **National statistics on young people's appeals not published**
  - Shouldn't that information be public?
- ▶ **Local Offer**
  - Will YP's appeals lead to LAs developing improved Local Offer of post-16 and post-19 education options, including combined education & health &/or care options?

