

ESRC Research: Resolving and Avoiding Disputes Concerning Special Educational Needs

Working Paper 6

A SURVEY OF LOCAL AUTHORITIES AND PARENT PARTNERSHIP SERVICES IN ENGLAND

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This paper sets out the findings from the survey of all 150 local authorities (LAs) and all parent partnership services (PPSs) in England as part of ESRC research into the avoidance and resolution of disputes in respect of special educational needs. The aim of the survey was to find out about the attitudes, views and experiences of LAs and PPSs to dispute resolution mechanisms, in particular local level resolution (involving just the LA or through the PPS), formal mediation and appeal to the Special Educational Needs and Disability Tribunal (SENDIST) (which ceased to exist from 3 November 2008 and whose jurisdiction is now held by the Health, Education and Social Care Chamber of the First-tier Tribunal established under the Tribunals, Courts and Enforcement Act 2007). The survey also aimed to discover what has been happening within LAs in relation to these dispute resolution mechanisms over the past few years.

Summary

- Questionnaires were sent to all 150 LAs in England and all PPSs. Sixty LAs responded as did 85 PPSs, meaning a response rate of 40% and 57% respectively. The majority of questionnaires were completed by senior staff/managers.
- Background questions asked of the PPSs showed the wide variety of PPSs in England in terms of:
 - staffing levels (ranging from 0.5 to 13.5 staff),
 - the number of parents to whom they provide a service each year (varying from 80 to 3021 parents),
 - where they sit in relation to the local authority (most were sited in the LA, usually within Children and Young People's Services or the SEN team, but 21% were run by voluntary organisations) and
 - communication levels with the LA.
- The majority of PPSs felt the LA did inform parents about their services but they were less sure that parents found out about them from other sources; concern was especially expressed over schools not informing parents about them.

Trends in disagreements/ disputes

- Both LAs and PPSs tended to think that the number of disagreements/ disputes concerning SEN had increased over the past two to three years. However, PPS respondents seemed more certain of this.
- The reasons most commonly given by PPSs for this increase related to the LA and changes in policy and practice (for example delegation of funding to schools and policies to reduce the number of statements). LAs, on the other

hand, tended to put the increase in disputes down to parental factors such as parents' awareness of their rights or greater willingness to appeal.

- For both the LAs and PPSs the majority of disputes brought to their attention tended to be about school placement, refusal to assess or problems at the school level.

Avoiding and resolving disputes

- The measures most commonly mentioned by LAs that are used to avoid and resolve disputes were
 - involvement of PPS
 - engagement with parents, and
 - (formal) SEN mediation.
- PPSs see their main role as being to open up the channels of communication between parties to any disagreement and to give information about what dispute resolution mechanisms are available to parents so they can make informed choices, but not to tell them which route to take.
- The majority of the PPSs also felt their role was to 'mediate' disputes and this involved setting up meetings between the parents and other relevant parties and supporting parents before, during and after the meeting.
- PPSs clearly felt that the majority of disputes that come to them are resolved with their input.

Mediation

- The majority of LAs are still using the mediation service that provided their mediation when contracts were set up through Regional Partnerships.
- While there is the odd LA with very high numbers of mediations (up to 30 per year), individual LAs tend to have very low numbers of mediations per year (none, one or two) and the data suggests that the number of mediations LAs have is actually falling slightly.
- The main way that mediations appear to be funded is on a case inclusive basis, where the LA pays for administrative costs and a set number of mediations up front.
- The majority of LAs felt it was likely that parents would know that the option of independent mediation was open to them. LAs made parents aware of mediation through correspondence from LA to parent, however they noted that information about mediation is not regularly given to parents of SEN pupils at School Action or School Action Plus.
- Mediations tend to be attended by someone from the LA with authority to settle.
- The main advantages of mediation, as seen by LAs, is that it:
 - Is less stressful to the parties than the tribunal,
 - increases the parties' understanding of the situation,
 - keeps communication open, and
 - Preserves relationships.
- LAs thought the main disadvantages of mediation were that it is not binding on either party and it is used by parents as a rehearsal for SENDIST.
- Few LAs had ever refused to mediate and those that had did so because there was no room for negotiation.

- Concern was expressed by some LAs they were paying for the mediation service while in practice the same job was being done by the PPS or by the LA itself.
- The majority of both LAs and PPSs felt that mediation was an equally fair process for parents and the LA, although a fairly high proportion of LAs felt that parents were advantaged by it and on the other hand a fairly high proportion of PPSs felt that the parents were disadvantaged by it.

The Special Educational Needs and Disability Tribunal (SENDIST)

- LAs considered that SENDIST was detrimental to the resolution of disputes but nevertheless conceded that the right of appeal was one that parents should have. The problem, as LAs saw it, was that this right encouraged parents to challenge decisions.
- The main advantage of SENDIST in the opinion of the LAs is the fact that it provides a legally binding outcome. The main disadvantages are that in addition to being stressful it is costly and time consuming to both parties and its decisions, as LAs see it, are often biased against the LA.
- Conversely to their view of mediation, the majority of LAs felt that SENDIST was fairer for parents, because it tends to disfavour LAs, as reflected in the high success rates parents enjoy. However, some LAs felt that SENDIST only advantaged *some* parents, namely those that had money and the skills to afford legal representation and cope with the complexities of SENDIST.
- PPSs, on the other hand, tended to think that SENDIST disadvantages the parent/carer. The main reasons PPSs gave for this were that it constitutes a challenging process for the emotionally involved parents, it is too legalistic, formal and complex and many parents have difficulties with preparing their case.

Mediation versus SENDIST

- 49% of LAs answered that mediation and the SENDIST equally were likely to lead to an outcome favourable to them, but quite a large minority (36%) felt mediation led to a more favourable outcome for themselves.
- The majority of LAs (67%) thought mediation was satisfactory, but rather fewer (46%) thought that of the SENDIST.
- Both LAs and PPSs agreed that on the whole parents did not accept less in mediation than they could have possibly secured by appealing to SENDIST.
- LAs and PPSs considered mediation to have no impact on the numbers of appeals to SENDIST; however, PPSs thought that their own work or 'informal mediation' often led to a decrease in the number of appeals to SENDIST.
- The LAs felt that mediation generally does not lead to a withdrawal of an appeal.
- LAs considered that SENDIST appeals take up a lot more LA staff time than mediations.
- LAs also felt that the SENDIST appeals route means disputes take a long time to reach an outcome.

Suitability of mediation and the SENDIST for certain types of dispute

- Both the LAs and PPSs thought that disputes at the school level were the least suitable for SENDIST and that these and school placement disputes were the least suitable for mediation.

- LA and PPS respondents felt that disputes between schools and parents should only warrant local resolution and not need to escalate to external intervention. A few thought that SENDIST might damage relationships between schools and parents.
- School placements were seen as unsuitable for mediation because there is little room for negotiation in such disputes.

Parents/ Carers

- A quarter of LAs and the majority of PPSs felt that there were certain groups of parents that were likely to be disadvantaged by mediation, but more so by SENDIST. In particular, parents who might not understand the processes or lack the resources (monetary and emotionally), ethnic minorities with language or cultural issues and parents with mental or physical health problems, were felt to be at a disadvantage. Access to the processes was felt to require a certain level of education and certain characteristics such as confidence to avoid feelings of intimidation by the processes.
- PPSs were more likely to deal with the mothers/female carer in relation to disputes.
- Among PPSs, 45% felt that there was a difference between males and females in approach and attitudes towards disputes. In relation to fathers, views were quite diverse: some PPSs felt that fathers were more aggressive and confrontational while others felt that fathers had a positive influence, for example, were calming. Some PPSs felt fathers were unlikely to negotiate and wanted to appeal, whereas other PPSs felt fathers wanted immediate solutions. Mothers were generally regarded as more emotional, more involved in the case and in the day to day life of the child.

Child participation

- PPSs saw the views of the child as being important in all circumstances, although contingent on the child's age and capacity. The prevalent view was that as the outcome will affect the child it is best that he or she feels comfortable with it. Also, the child's views may differ from those of the parent.
- The majority of PPSs sought to elicit the views of the child, usually by talking to him or her, although there was no direct or formal procedure, and it happened only when the PPOs visited the parents.
- If the child was not present the PPSs asked others for the child's view (such as parents, school staff and other interested parties). Some PPSs mentioned getting the child to complete a form or write down their views in another format, or even through drawings.
- Where the PPS did not gain the child's views (and a few said they did not because they regarded the *parent* as their client) they still encouraged the parents, or others, to speak to the child and listen to what the child wants.

Methodology

The questionnaires were initially piloted with two LAs and three PPSs and the consultees' suggestions influenced the final version of the questionnaire. For the survey, questionnaires were sent by post to the 150 LAs in England and 150 PPSs in June 2008. These were followed up with reminder letters after six weeks. In the case of PPSs the National Parent Partnership Network (NPPN) put details of the research and the questionnaire onto their e-forum and encouraged PPSs to complete it, which

no doubt contributed to the high response rate. Follow-up phone calls were made to LAs with a view to eliciting additional completed questionnaires and thus a higher response rate. On request electronic versions of the questionnaire were emailed out. Questionnaires were completed between June and November 2008.

The LA questionnaire asked about the strategies used to avoid SEN disputes; the range of approaches to dispute resolution employed in the authority; trends in disputes; views and experiences of the various dispute resolution mechanisms, including judgments as to their suitability. This questionnaire also asked about any particular categories of parents who might be disadvantaged by mediation or the SENDIST. The PPS questionnaire asked for similar information but also included questions about child participation, gender differences in approaches to disputes, and about their role generally.

Findings

1. Background information

As can be seen in table 1, a total of 60 LAs completed the questionnaire, meaning a response rate of 40%. The total number of PPSs responding was 85, but this covered 87 local authorities, a disparity which arises from the fact that some LAs share a PPS between them (so only three PPSs provide six of the LAs), and one LA has two PPSs (both of which replied). Therefore, there are, as far as we are aware from the responses, 148 PPSs in operation across England. The response rate for the PPS survey is therefore 57% of all such services (85 out of 148) or 58% of local authorities (87 out of 150).¹ Replies were received from both the LA and the PPS in the same authority in 35 instances.

Table 1: Questionnaire Response Rates

	Number returned	Response rate (%)
Local Authority	60	40
Parent Partnership Service	85	57

The LA questionnaires tended to be completed by SEN Managers/Heads of the SEN department (68%), but 13% were completed by education officers. Similarly, the PPS questionnaires tended to be completed by senior staff (38% by co-ordinators and 26% by managers), but almost one-third (32%) were completed by parent partnership officers (PPOs).

As we also discovered from our key informant interviews,² PPSs vary considerably in terms of their staffing levels, funding etc, this was shown very clearly in the questionnaire responses. Table 2 shows that while the majority of PPSs sit within the local authority, a number are provided by voluntary organisations. Also there is much variance with regard to where in the LA the PPS is located: while the majority are in Children and Young People's Services or the SEN team (or other such inclusion/ family services), a small number are based in customer relations, the

¹ For the remainder of the analysis the figures use the numbers relating to PPSs rather than LAs, therefore the response totals will be 85.

² See Working Paper 4.

quality assurance and performance division, and the strategy and commissioning directorate.

Table 2: Location of PPS

Where PPS sits in relation to LA	No. of respondents	% of respondents
Within the LA	62	73
Voluntary Organisation	18	21
Private Provider	1	1
Other	4	5

From table 3 below the diversity in personnel numbers across the PPSs can be seen. Staffing levels in respondent PPSs ranged from having one part-time member of staff to the equivalent of 10 full-time staff. The majority seemed to have between the equivalent of 1 and 3 full-time staff. The highest number any responding PPS had was 13.5 members of staff (made up of 8 full-time and 11 part-time staff). The highest number of *full-time* staff in a PPS was 10.

Table 3: Total number of staff

Number of staff*	No.	% (n=84)
0 – 0.5	2	2
1 – 1.5	31	37
2 – 2.5	18	21
3 – 3.5	18	21
4 – 7	11	13
8 +	4	5

* 1 = full time member of staff, ½ = part time member of staff

The vast majority of PPS respondents felt that the staffing levels of their PPS were not high enough: see table 4 below.

Table 4: Description of staffing levels

Staffing levels	No.	% (n=83)
Not high enough	62	75
Appropriate amount	21*	25
Over staffed	0	0

* Interestingly, a fair number of those that said they had the appropriate amount of staff had less than 2.5 members of staff.

PPSs provided their services to various numbers of parents. The client numbers ranged from 80 to 3021 parents per year. Of those who replied to the question the majority (48%) dealt with 250 or less parents per year, 40% dealt with between 251 and 1000 parents, and 12% provided their services to over 1000 parents. There are instances of PPSs with few staff serving large numbers of parents (for example 3 staff dealing with 3000 parents per year).

All but two of the PPSs commented on communication between themselves and their LA. The majority of respondents were positive about communication, however most of these also said that communication was often affected by staff changes/shortages; the quality of relationships; the IT infrastructure; the subject-matter in hand; time/ budget restraints; or the seniority of staff. Some, 16% of those who

responded, commented that the PPS was not always involved at a strategic level. The following are examples of comments on communication:

“Generally quite good, this has been achieved through building up a relationship with LA staff, when/ if staff change we have to start from scratch again” (PPS 79)

“Ok - we do miss out on some information because we are maintaining our arm's length role” (PPS 104)

“effectiveness is patchy, overall consultation is poor, one-to-one communication is very much dependent upon which officer is involved” (PPS 109)

“Communication is excellent between the SEN caseworkers and PPS but strategically I do not feel we are consulted on broader issues.” (PPS 117)

“At a strategic level, the communication can be facilitating of the aims and objectives of the service. At operational level there are more issues. Not all staff in teams have an effective understanding of the role of the Parent Partnership Service, and the importance of key issues of impartiality, confidentiality etc” (PPS 54)

The PPSs were asked whether they thought parents received enough information about the PPS from the LA and other sources. As can be seen in table 5, the majority thought that the LA informed parents about the PPS (71%). PPSs were less sure that parents found out about them from other sources: 44% thought not.

Table 5: Do parents receive enough information about the PPS from the LA and other sources?

	Parents receive enough information about PPS from the LA		Parents receive enough information about PPS from other sources	
	No.	%	No.	%
Yes	60	71	32	26
No	21	25	37	44
Don't know	4	5	16	19

PPSs were invited to remark on the issue of informing parents about their services and 69 of them did so. The majority of comments (54% of those made) centred on the inconsistent approach by schools in advertising the PPS's services to parents, 5 respondents acknowledged health professionals as being good at advertising the PPS. Some respondents (8 altogether) commented that if the PPS was better advertised they would not have the resources to meet any increase in demand. There were a fair number of comments generally saying that the PPS is not well publicised, or the LA does not provide information to parents about it, or that parents only discover about the PPS from other parents:

“Staff limitations mean that we currently work at full capacity, more publicity could damage effectiveness of service without more staff” (PPS 7)

“Health are good at promoting us. We send our info to all schools however parents don't tend to get our information from schools” (PPS 72)

“I find that many parents still are not aware of the service, we do rely on schools to let parents know about us, regular mail shots etc, and while some schools do this very well, others do not - perhaps we are seen as a threat” (PPS 90)

2. Trends in disagreements/ disputes

Table 6 shows that both LAs and PPSs clearly considered that the number of disagreements/disputes had increased over the past two to three years. However, PPS respondents seemed more certain of this (with 53% of PPSs thinking number had increased compared with 39% of LAs). We asked the LAs and PPSs to state whether their answer was based on actual evidence or general supposition ('No evidence').

Table 6: Trends in disagreements/ disputes according to LAs and PPSs

		Local Authority			Parent Partnership Service		
		No. of responses	% of respondents to the question (n=59)		No. of responses	% of respondents to the question (n=82)	
Number increased	No evidence	6	10	39	20	24	53
	Evidence	17	29		24	29	
Number stayed the same		19	32		18	22	
Number decreased	No evidence	3	5	24	6	7	9
	Evidence	11	19		2	2	
Don't know		3	5		11	13	

These results are interesting when we compare them with the number of mediations, since the latter have certainly not been increasing over the past few years and the numbers of tribunals have also reduced (by 9% between 2005-06 and 2006-07). This suggests that the increased number of disagreements are being settled at the local level, with input from the LA or PPS, rather than progressing to mediation or the tribunal.

The questionnaires went on to ask respondents what the known or probable reasons for the trends in disagreements had been. Many commented on this (43 LAs and 58 PPSs), often suggesting multiple reasons. The most common reasons are shown in table 7. It is noteworthy that for the PPSs the most commonly mentioned reasons for an increase in disputes are to do with the LA and changes in practices. For example, 31% of PPS who responded mentioned delegation of funding to schools and 40% mentioned policies to reduce the number of statements. The LAs, on the other hand, tended to attribute increases in disputes to the parents; 30% mentioned parents being more aware of their rights or more willing to appeal. They also mentioned other people encouraging parents to be adversarial; one LA mentioned advice from voluntary organisations, four mentioned solicitors and three mentioned lobby groups. One in five (21%) of PPSs who commented mentioned their involvement as having an impact on the number of disputes, however some thought their involvement had led to an increase whilst others thought it had had the opposite effect.

Table 7: Reasons given for trends in disagreements

Reason for increase in number of disputes	Local Authority		Parent Partnership Service	
	No.	% (n=43)	No.	% (n=58)
Changes in LA policies inc. policies to reduce the number of statements and SEN inclusion policies	0	0	23	40
Delegation of funding to schools	5	12	18	31
Demand for independent special schools/ parents not happy with what is provided locally	4	9	11	19
Parents are more aware of their rights, including right to dispute resolution	7	16	9	16
Parents are more willing to appeal	6	14	0	0
Solicitor involvement/ solicitors encouraging parents to be adversarial	4	9	1	2
Ineffective PPS	3	7	0	0
Schools – more disputes are at school level	3	7	3	5
Changes in the SEN of children – more complex needs/ more complex cases	3	7	4	7
Parental lobby groups/ local advocacy groups	3	7	0	0
Reason for decrease in number of disputes				
Better communication between LA and parents	7	16	3	5
Closer working between LA and PPS and schools	3	7	1	2
Consistent approach by LA	4	9	0	0

Comments elaborating these reasons included:

“[there is a] greater emphasis on meeting with parents/ schools to resolve issues early on” (LA 15)

“parents more aware of their rights and prepared to pursue complaints, context of a growing complaints culture more generally - facilitated by complaints procedures and technology e.g. email, an increasing number of complaints reaching the LA about actions or failings of schools, referrals to PPS show fewer complaints about the authority” (LA 31)

“We have a significant number of parents who adopt a consumerist/ I know my rights attitude, they approach the LA expecting conflict and it is very difficult to communicate with them” (LA 89)

“Parents are more aware of options open to them; there is constant pressure on special school placements; parental willingness to resort to litigation; solicitors actively advise parents against disagreement resolution” (LA 114)

“Since the authority has devolved money directly to schools for all children with SEN and decreased the number of statutory assessments undertaken, the schools advise

parents they do not have funding to support their child's needs. This causes a great deal of conflict" (PPS 55)

"The LA have introduced a policy to reduce statements, this is based on giving additional funds to schools at SAP, whilst in theory a good idea in practice it is not working, there is still wide variations re provision in schools" (PPS 77)

LAs and PPSs were also asked to identify the most common type of disagreements and disputes in their area. Among both, the top three most common disputes were school placement (44%³ and 43% for LAs and PPSs respectively), refusal to assess (22 and 36% respectively) and school level disputes (34 and 59% respectively). The school level disputes were thought by the LA respondents to concern mainly the level of support in mainstream schools or communication between schools and parents. The PPS respondents thought the school level disputes were mainly about the level of provision, exclusions, disability discrimination cases or behavioural issues.

With regard to the kinds of SEN that are mostly likely to be at the centre of disputes, few responded, but of those that did the majority mentioned autistic spectrum disorder (ASD). This is in line with SENDIST annual report data.

3. Avoiding and resolving disputes

LAs were asked what measures they had taken to *avoid* and *resolve* disputes between themselves and parents. Many LAs identified multiple measures regarding both objectives, but the most common answers given were similar in respect of both: see table 8, below.

Table 8: Measures taken to avoid and resolve disputes

Measures taken		Avoid disputes		Resolve disputes	
		No.	% (n=58)	No.	% (n=56)
Involvement of PPS		30	52	19	34
Disagreement Resolution Service/ independent mediation		19	33	48	86
Engagement with parents	Discussions/ meetings/work with parents	26	45	19	34
	Parental involvement in decisions	8	14	2	4
	Informal mediation/ negotiation between LA and parents	8	14	7	13
	Clear explanation of decisions to parents	4	7	0	0
	Early contact/easy access between LA and parent	5	9	2	4
	Ensuring parents are informed/ briefing sessions for parents	6	10	2	4
	Parental consultation/ parents on strategic groups	3	5	1	2
	TOTAL	57	98	34	61
LA involve schools/ encourage schools to engage with parents		8	14	3	5
Whole service training on conciliation skills		3	5		
Experienced/ skilled LA officers		8	14	5	9

³ Of those who answered the question.

The PPSs were seen by many LAs as having a key role in disputes, especially in avoiding them. Formal mediation was seen as crucial in resolving disputes, which is interesting as many of the LAs had not been involved in mediations in the last few years. LAs had realised the importance of engaging with parents, especially with regard to avoiding disputes.

Comments on avoiding and resolving disputes included:

“our authority is extremely proactive about working with parents prior to a statement being issued, before a statement is issued we visit parents at least twice to ensure their views, wherever possible, are taken into account” (LA 51)

“All officers are trained in dispute resolution/ mediation, we try to talk to parents at the earliest opportunity to defuse difficulties before they escalate” (LA 89)

“There is a Named Case Officer for each case who will meet with parents and schools at an early stage to resolve concerns. Full contact details are provided on all correspondence. The SEN Team attempts to resolve all concerns/differences before a more formal stage. There is a Parent Partnership Service which provides free and independent support to parents, and has a liaison role with the SEN Team/ schools. Parents are also given information about Dispute resolution” (LA 90)

“The LA officers always offer to meet with parents to discuss issues and encourage schools to do the same, we also have a good relationship with the PPS” (LA 130)

“Parents are always invited to contact me if they have any concerns. I always offer a face -to- face meeting in which I note their concerns and feed them back to senior management before offering possible solutions. These might include gathering further evidence to support a request the parent is making, or liaising with schools/ PCT, or suggesting formal mediation” (LA 14)

Many LAs (48 in total) commented on further measures that could be taken by the LA to avoid disputes. Remarks emphasising the importance of ensuring there are good, and improving, relationships between parents, the LA, schools, PPSs, and advocacy groups were common. Also recommended was *proactive* communication and engagement with parents. Some LAs noted that they needed to increase parental confidence in the LA and in the provision for the child, and improve parental knowledge to ensure better understanding of the statutory framework. A couple of LAs also suggested training for schools, especially so that a consistent message is given to parents.

As can be seen above, the work of the PPS is regarded by LAs as being critical for both the avoidance and resolution of SEN disagreements or disputes. Interviews with key informants revealed a similar perception. Therefore it was important to look at how PPSs perceive their role. The PPSs were asked to indicate which of various roles they felt they carried out: the responses are summarised in table 9 below.

Table 9: PPS perceptions of their role(s)

Roles	Yes	
	No.	%
Role of PPS in DR is to give information to parents about available dispute resolution options	82	96
Role of PPS in DR is to advise parents about which dispute resolution option to take	29	34
Role of PPS in DR is to open up channels of communication between the parties	77	91
Role of PPS in DR is to try to settle the dispute through informal PPS mediation	69	81
Role of PPS in DR is to assist parents with DR mediation	57	67
PPS provide information about SEN DR med – who provides it	79	93
PPS provide information about SEN DR med – what it is	82	96
PPS provide advice about whether to go to SEN DR med	35	41
PPS provide advice about disability discrimination conciliation	52	61
PPS provide information about what a SENDIST case entails	84	99
PPS provide information about whether they can appeal the particular decision	79	93
PPS provide advice about likely success at appeal	38	45
PPS provide DR mediation for other LA	6	7
PPS role in DR med is the provision of information and guidance on mediation	83	98
PPS role in DR med is attendance at meetings to advise and support parents if parents ask for this	65	76
PPS role in DR med is attendance and participation in meetings if parents ask for this	50	59
PPS role in appeals is to help parents prepare for the SENDIST appeal hearing	80	95
PPS role in appeals is attendance at SENDIST hearings as adviser/ moral supporter	42	50
PPS role in appeals is representation of parents in the appeal hearing	10	12
PPS role in appeals is participation in appeal hearings as a witness for the parent	7	7

As can be seen from table 9, the main role of PPSs is seen to be the opening up of channels of communication between parties to any disagreement, and the provision of information dispute resolution mechanisms available to parents.

PPSs were also invited to describe other roles that they fulfilled and other types of information or advice they provided which were not on the list. The majority of those who commented said that they *do not* give advice to parents about which course of action to take but instead seek to make sure that parents have all the information about the dispute resolution mechanisms to be able to make an informed decision. For example:

“We do not give advice we give factual information on process to empower parents to make their own decisions.”

Others mentioned that their role is to facilitate and be present at discussions between parents and the LA but not necessarily to mediate.

With regard to other roles relating to SENDIST, a number of PPSs made it clear that they cannot attend the hearing as witnesses (or sometimes at all) unless they are subpoenaed, mainly because their employer is the respondent to the appeal. Another role mentioned by PPSs was that they refer parents to organisations such as IPSEA that can offer more support in relation to a tribunal appeal. Some also said that their role in relation to SENDIST was to support attempts by the parties to reach an agreed solution in the lead up to the hearing.

As table 9 also shows, many PPSs (81% of respondents) felt that part of their role was actually to mediate. When PPSs were asked to explain 'PPS mediation', they said that they set up meetings between the parents and other relevant parties and supported them before, during, and after this meeting. Many PPS said that prior to the meeting they speak to all parties, get all points of view and check there have been no misunderstandings. At this stage they also help parents prepare for the meeting, by helping them write a list of concerns and to prioritise particular concerns, and make them think about possible outcomes. During the meeting they provide support to the parent if needed, but some PPSs acknowledged that they preferred to empower the parents to act for themselves. PPSs reported that after meetings they may act as a soundboard for parents while they are deciding what to do, and ensure that any actions agreed at the meetings are carried out. Some PPSs said that they acted as a go between if communication had broken down rather than arrange meetings, and may in any event help parents put their views in writing:

"[We] act as intermediary between e.g. parent and school or parent and LA, attend meetings with parents - plan and prepare beforehand to enable parents to put their case across, explain to parents the other sides 'perspective' and what suggestions are reasonable or unreasonable, explain to parents their rights and responsibilities" (PPS 103)

"We contact the parents and understand what they are trying to achieve. With their permission, we may contact other professionals. We follow this same process with L.A. We identify common ground and areas of disagreement. We bring them together in a meeting at a suitable point. We ensure all the issues are fully explored. We look for creative, alternative solutions and child's interests" (PPS 54)

"almost every case worked on by PPS involves informal mediation, part of the PPS role in helping communication and partnership involves us bringing both parties together and helping them to explore possible resolution" (PPS 65)

"often disputes occur through lack of effective communication, we can spend time with parents in order to get down to the real concerns and then liaise with school or LA or arrange a meeting where the parent is prepared properly, hopefully an honest and safe process will lead to more open communication with both sides being less judgemental" (PPS 108)

PPSs were asked what proportion of disputes that are handled by the PPS are resolved with their input without recourse to formal mediation or the SENDIST. The responses clearly show that PPSs consider that they resolve the majority of disputes with which they get involved: see table 10. **Therefore, the work of the PPS plays a crucial part in disagreement resolution.** The majority (55%) felt that this proportion had stayed the same over the past two to three years, 12% thought the proportion had increased and 6% felt it had decreased over the past two to three years.

Table 10: Proportion of disputes handled by the PPS resolved with their input only

Proportion	No.	%
A minority	4	5
About half	10	12
A majority	54	64
All	5	6
Don't know	12	14

Nearly all of the PPSs who responded to the questionnaire do not provide any training on mediation. They may, however, talk to parents about mediation on a one-to-one basis or include something on mediation (or skills akin to those needed in mediation) in other training that they do.

PPSs do not view their role in relation to looked after children to be very different from that in relation to other children. However, some PPSs suggested they went further and worked closely with, and provided training to, social services. Others noted that cases involving looked after children were rare, if not non-existent. Likewise, PPSs said that their role in relation to disability discrimination (DD) cases was similar to SEN cases: advising parents about the law and how to take a case forward, as well as negotiating with schools and the LA to find a solution.

4. Mediation

The majority of LAs who sent back the questionnaire were still using the same mediation service that provided their mediation during the first two years after SENDA 2001 when contracts were set up through Regional Partnerships (65%). Few of the responding LAs used a PPS to provide their mediation (only 5%). See table 11 (below) as to the mediation providers that are used.

Table 11: The independent mediation services used by the local authorities

Name of mediation provider	Number of LAs using this provider	% of LA respondents
Mediation works*	11	18
LondonSENmediation*	9	15
Global Mediation*	8	10
Wessex Mediation Service*	7	9
Lancashire Disagreement resolution service	4	5
PPS from other authority	4	5
Together Trust*	3	4
Fletcher Mediation Service	2	3
Elsie Hampton Consultancy	1	1
Ed. Psych	1	1
ConSENSus*	1	1
Elfrida Rathbone Advocates	1	1
Unite mediation	1	1
Community Accord	1	1
Independent mediation service	2	3
Don't know/ no answer	4	5

* One of the original providers used in the regional partnership arrangements

LAs were asked about the number of mediations in their LA during the last three years. Table 12 and figure 1 below show that while there is the odd LA with very high numbers of mediations, most individual local authorities have had low numbers of mediations (none, one or two) per year. In 2005-06, 82% of LAs had 0-2 mediations, and in 2006-07 and 2007-08 this proportion rose to 86% and 93% respectively. This suggests that the number of mediations is actually falling slightly. When the data per

each LA is analysed there were only seven local authorities (out of 55 responding) who had experienced an increase in mediations over the last three years (and this was mostly by only one or two mediations). In 17 LAs the number of mediations remained the same over the last three years; however, in 11 of the 17, the number had remained at zero.

Table 12: Number of mediations per year per local authority

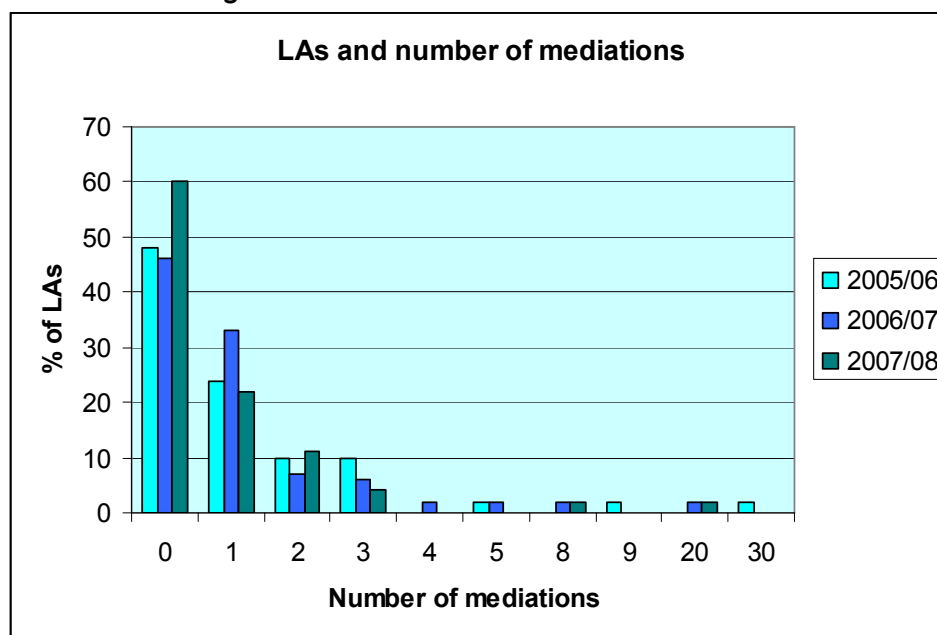
Number of mediations	05/06		06/07		07/08	
	Frequency	%*	Frequency	%**	Frequency	%***
0	24	48	25	46	33	60
1	12	24	18	33	12	22
2	5	10	4	7	6	11
3	5	10	3	6	2	4
4	0	0	1	2	0	0
5	1	2	1	2	0	0
8	0	0	1	2	1	2
9	1	2	0	0	0	0
20	0	0	1	2	1	2
30	1	2	0	0	0	0

* Of those who answered (n=50)

** Of those who answered (n=54)

*** Of those who answered (n=55)

Figure 1: LAs and number of mediations



The main way that mediations appear to be funded, according to the LA questionnaire responses, is on a case inclusive basis, where the LA pays for administrative costs and a number of mediations up front (48% of LAs). A further 25% of LAs have a case exclusive contract where they pay up front for administrative costs but pay for mediations on a case by case basis.

A large majority of LAs, 83% in all, thought it was likely that parents would know that the option of mediation was available to them when they had a dispute with them

over SEN. Some LAs (16% of those who commented) said that information about mediation is not regularly given to parents of pupils at the level of School Action or School Action Plus. LAs used a variety of methods to make the option of mediation known to parents. The one most commonly mentioned (by 87% of those who commented) is correspondence sent to parents: 54% of these LAs referred specifically to correspondence about the statutory process. Fifty per cent of LAs who responded to this question mentioned that the PPS made mediation known to parents, 18% mentioned schools (mainly that schools and SENCOs are briefed about mediation and they then pass this information on to parents), 20% said that parents found out through leaflets, eight % mentioned the website, and 7% referred to parent advice centres or support services. Interestingly, three LAs said that parents only find out about mediation because, and when, they, the LA, ask the parent to participate in it.

As the figures in table 13 (below) show, LAs were generally satisfied with their mediation provider:

Table 13: LA satisfaction with mediation provider

	No. of respondents	% of respondents (n=58)
Totally satisfied	15	26
Mostly satisfied	21	36
Neither satisfied not dissatisfied	15	26
Mostly dissatisfied	1	2
Totally dissatisfied	1	2
Never used it	5	9

One criticism of SEN mediation arising from the key informant interviews (especially from voluntary organisations) is that people with the appropriate authority to settle on behalf of the local authority tend not to attend the mediation meetings. However, the data in table 14 (below) seems to suggest that this is not a valid criticism, as 96% of LA respondents to the question said that the LA sent people with the authority to settle to mediation sessions.

Table 14: Attendance at mediation meetings

	Representative from LA attends meetings		LA rep has authority to settle		Representative from school attends meetings	
	No.	% (n=59)	No.	% (n=54)	No.	% (n=40)
Yes	58	98	52	96	27	67
No	1	2	1	2	6	15
Don't know/ unsure	0	0	1	2	7	18

The LA questionnaire contained a list of possible advantages and disadvantages of mediation for LAs or parents and LAs were asked to indicate the ones they thought were applicable, based on their experience: see table 15 below

Table 15: Advantages and disadvantages of mediation

Advantages of mediation	Advantage for Parents?		Advantage for Local Authority?	
	No.	%	No.	%
Mediation tends to resolve disputes quickly	22	37	21	35
Mediation is less stressful than tribunal	46	77	34	57
Mediation increases all parties understanding of each others' perspective	49	82	49	82
It is easier to take the views of children into account	9	15	8	13
Mediation is less costly in terms of time and resources	22	37	30	50
Mediation is fairer	14	23	16	27
Mediation is available for parents who do not meet the tribunal criteria	40	67	23	38
Disadvantages of mediation				
There may be less safeguarding of parents' legal rights	18	30	2	3
The outcome of a mediation is not binding on any party	28	47	29	48
The appropriate people may not attend the mediation	16	27	12	20

Other advantages of mediation that LAs perceived were that fact it keeps communication open and maintains relationships. It is also seen as helpful that it can run parallel to an appeal. Disadvantages given were that it is used by parents as a rehearsal for SENDIST, does not appear to prevent SENDIST appeals and is costly for LAs and parents.

Few LAs had ever refused to mediate (only 13%) and those that had did so because there was no room for negotiation, either because neither party was willing to concede, the LA was tied to a particular policy or set of criteria, or several (unsuccessful) meetings had already been held.

In a number of the LA responses comments about mediation were added and they were usually negative, saying such things as: “[it is] ridiculous that LAs are contracting with mediation services given the extent to which these services are used” (LA 33), and that the role is best carried out by the PPS or LA themselves –

“As we have not used SEN Mediation Service for over 5 years, it is difficult to comment on its usefulness. All I can surmise is that the negotiation skills of LA staff meets parents needs in dispute resolution - those parents who chose to appeal to the Tribunal declined the offer of independent mediation” (LA 101)

5. The Special Educational Needs and Disability Tribunal (SENDIST)

LAs were asked to say whether they agreed or disagreed with a number of statements about the SENDIST. The answers are shown in table 16 below.

Table 16: agreement with statements

	Strongly agree		Slightly agree		Neither agree nor disagree		Slightly disagree		Strongly disagree	
	No.	%	No.	%	No.	%	No.	%	No.	%
The existence of a right to appeal encourages parents to challenge decisions	31	52	19	32	9	15	0	0	1	2
The right to appeal is a right every parent should have	42	70	11	18	4	7	1	2	2	3
The appeal process makes a positive contribution to dispute resolution	9	15	11	18	11	18	17	28	12	20

It can be seen that there were more LAs who felt that the SENDIST does not make a positive contribution to dispute resolution than those that did. The majority thought that the right of appeal is a right parents should have, but at the same time thought that this right encourages parents to challenge decisions.

LAs were also asked to state their perceptions with regard to the possible advantages and disadvantages of SENDIST to parents and LAs: see table 17 below.

Table 17: Advantages and disadvantages of SENDIST

Advantages	Advantage for Parents?		Advantage for Local Authority?	
	No.	%	No.	%
Tribunal outcomes are intended to be legally binding	47	78	41	68
The qualification criteria are tightly specified	20	33	25	42
Whatever the outcome justice has been done	10	17	9	15
The existence of the tribunal acts as an incentive to ensure due process and encourage dispute resolution	16	27	16	27
Local authority decisions are subjected to legal scrutiny	32	53	26	43
Disadvantages				
Representation may be difficult to find for parents	29	48	7	12
It is stressful	57	95	48	80
It is costly in terms of time and resources	37	62	54	90
Tribunal outcomes may be difficult to enforce	10	17	Not asked	Not asked
It is a very lengthy process	47	78	39	65
The criteria for access are very strict	11	18	7	12

The results in table 17 clearly show that the LAs perceived the main advantage of SENDIST to both parties as being the fact that it provides a legally binding outcome. The main disadvantages were that it is stressful, costly and time consuming to both parties. LAs also commented that in the SENDIST parents can secure high level resources for their child; indeed, the allocation of resources may be skewed by allocating them disproportionately to the minority of parents who appeal. They also

said that SENDIST decisions are often inconsistent but in any event tend to be biased against LAs. LAs were also very critical of the time a SENDIST appeal takes and their legalistic nature.

6. Equity of dispute resolution mechanisms

One of the issues we have been keen to explore in this research is whether the general concern that mediation may place parents at a disadvantage because of the likely imbalance of power and 'private' nature of the process is justified. The majority of LAs (64%) thought that mediation does not give an inherent advantage to one party: however, there was still quite a high proportion (23%) who felt that parents tended to benefit most from mediation. When then asked who mediation was a fairer process for, most LAs (89%) felt that mediation was equally fair to parents and LAs: the most commonly cited reasons were that mediation allows both parties to express their opinion and be listened to and to explore the issues in a non-confrontational setting.

While a majority of PPSs (69%) thought that mediation does not give either party an inbuilt advantage, over a quarter of respondents (28%) felt that the parents/carers are at a disadvantage. The majority's viewpoint is based on parents' and LAs' equal right to participate, however some felt that, in the case of parents, this was contingent on their having supporters with them. They also cited the relative informality and lack of technicality of mediation compared to SENDIST cases and the fact that the mediator has a duty to ensure it operates fairly. The PPSs who felt that parents/ carers are disadvantaged in mediation thought that parents lack understanding of various matters, such as the processes and possible outcome options, and their lack of language skills. They also cited parents' emotional involvement and lack of experience in mediation. Comments included:

"Both have the opportunity to explore issues but the provision of an independent chair is useful for both, and ensures a fair hearing for the views of both parties" (LA 90)

"The ability to participate is about personal characteristics and skill, not education or position, support is available to help the parents express themselves if they need it" (PPS 32)

"Mediation is a carefully managed process that takes into account the needs of all parties. Lots of preparation by the mediator to put everyone at ease and make sure the views of all parties are communicated" (PPS 90)

"Unless supported by PPS (or similar) parents often do not know how to approach this and feel uncomfortable - they are also emotionally involved and feel the school/LA can explain them selves better" (PPS 97)

LAs' general view that mediation was fair to both parties was not mirrored in their view of the SENDIST: the majority considered that SENDIST gave parents an advantage (55%), although a fairly large proportion (30%) said that SENDIST was an equally fair process for both parents and the LA. Parents were considered to be assisted by SENDIST in various ways, especially the fact that the SENDIST is more flexible towards parents about time limits than it is with the LA. They also cited the high success rates parents enjoy at SENDIST. However, a large proportion of LAs

felt that SENDIST was only fairer to *some* parents, namely those that had a reasonable level of financial resources to afford legal representation and the skills to cope with the complexities of SENDIST. Comments included:

“Just look at how many cases LAs win” (LA 33)

“Per cent of cases won by parents means it is biased in favour of parents who can afford legal reps or ALL LAs must be getting it wrong” (LA 63)

“Tribunal can be variable, depending on the panel and the chairman, outcomes can be influenced by the ability and resources of the parents” (LA 124)

“It is not a fair process. It works to the advantage of articulate, able parents who can afford time/ legal representation, LAs are usually fair, tribunal decisions skew resources in the direction of pupils whose parents are articulate and engaged with the process” (LA 134)

“I believe that the presumption of the tribunal is that the parents are likely to be right, and this places a higher burden of proof on the LA” (LA 146)

A majority of PPSs (63%), on the other hand, thought that SENDIST is relatively disadvantageous from the parent or carer’s point of view. Almost one-third (32%) considered that SENDIST was equally advantageous to both parties.

Where PPSs felt that parents were at a disadvantage at SENDIST the reasons were inexperience of it on the part of emotionally involved parents, its legalistic, formal and complex character. Many parents were regarded as having difficulties with preparing their case. A full breakdown of these reasons is shown in table 18 (below).

Table 18: Reasons PPSs thought parents are disadvantaged in the SENDIST

Reason parent is disadvantaged in SENDIST	No of respondents	% of those who answered the question (n=55)
New process for parents, LA been before	15	27
Parents have difficulties with case preparation, witnesses etc	12	22
Too legalistic, formal, complex	11	20
Depends whether parent has support – if supported not disadvantaged	10	18
Parents emotionally involved	9	16
LA have access to legal reps	8	15
LA more knowledgeable/ experienced in SEN issues	6	11
Intimidating for parents	6	11
Parents lack knowledge of process	4	7
Depends on parent	3	5
Some panels stop disadvantages	2	4
Childcare difficulties/ lack of time	2	4
Parents feel pressured by panel	1	2
LA have large organisation for support	1	2

Comments included:

“Parents can struggle to get witnesses connected to LA to voluntarily act for them, also the writing of the case statement is key to a case and this requires a good grasp of literacy skills and ability” (PPS 3)

“The paperwork is difficult to understand, parents need help to state their views, they are emotionally involved, increasingly SENDIST hearings are held in large cities - 1 ½ hours from home with difficulties for cost/ childcare” (PPS 38)

“Parents' lack of experience of situation can make them overly anxious and stressed - although most panels very good at reassuring parents and making experience as informal as possible” (PPS 110)

We also wanted to know which dispute resolution mechanism LAs thought was more likely to lead to an outcome favourable to them as opposed to the parent. While a significant number (49%) of those who answered thought mediation and SENDIST were equally favourable to them, a high proportion (36%) felt mediation led to a more favourable outcome for themselves, but only 9% in the case of SENDIST appeals. The remaining few felt that neither SENDIST nor mediation was likely to lead to a desirable outcome for the LA.

LAs were also asked about their level of satisfaction with mediation and the SENDIST. Perhaps unsurprisingly, given the comments above, the majority of LAs thought mediation was satisfactory but many fewer thought that of the SENDIST: see table 19 (below).

Table 19: LAs satisfaction with mediation and the SENDIST

Satisfaction level	Mediation		SENDIST	
	No.	% of those who responded (n=54)	No.	% of those who responded (n=55)
Highly satisfactory	10	19	2	4
Satisfactory	26	48	23	42
No opinion	9	17	6	11
Unsatisfactory	5	9	15	27
Highly unsatisfactory	4	7	9	16

7. Link between mediation and the SENDIST

One question the questionnaire considered was whether mediation works to the disadvantage of parents as compared with LAs, in terms of the outcome. Both LAs and PPSs tended to think that parents did not accept less in mediation than they could have possibly obtained by appealing to SENDIST. However, a higher proportion of PPSs than LAs thought that parents probably did receive a less advantageous outcome by accepting a mediated agreement. See table 20 below.

Table 20: Cases where parents are believed to accept an outcome in mediation that is likely to be less advantageous to them than going to SENDIST

	Local Authority		Parent Partnership Service	
	No.	% of those who answered the question (n=58)	No.	% of those who answered the question (n=78)
Yes	4	7	17	22
No	33	57	29	37
Don't know	21	36	32	41

Arrangements under s 332B of the 1996 Act for dispute resolution provision such as mediation are intended to reduce the number of cases going through the formal appeal route. However, as Table 21 below shows, LAs and PPSs thought that mediation had no impact on the numbers of appeals to SENDIST. Nevertheless, PPSs thought that their own work or 'informal mediation' often led to a decrease in the number of such appeals.

Table 21: Views on impact of mediation on numbers of appeals to SENDIST

	Local Authority view (re: DR mediation)		Parent Partnership Service view (re: DR mediation)		Parent Partnership Service view (re: informal mediation)	
	No.	% of those who answered the question (n=51)	No.	% of those who answered the question (n=67)	No.	% of those who answered the question (n=63)
Increased number of appeals	4	8	0	0	2	3
No Change	37	73	53	79	30	48
Decreased number of appeals	10	20	14	21	31	49

As to the extent of this impact, over half of the PPSs who answered thought that their informal mediation led to a 50% reduction in SENDIST appeals.

The impact of mediation and the tribunal was also explored through questions of specific effects. The results, in table 22 below, show that a majority of LAs regard mediation as not likely to inhibit an appeal and taking up less time than SENDIST appeals. They also considered that the SENDIST appeals route means disputes take a longer time to reach an outcome.

Table 22: LAs views on specific effects of mediation and SENDIST appeals

	Agree		Disagree		Unsure/ NA	
	No.	%	No.	%	No.	%
Using mediation tends to resolve disputes quickly	17	28	24	40	19	32
Using mediation in a dispute reduces the likelihood of an appeal	18	30	29	48	13	22
On average a mediation case will take up more local authority staff time than an appeal	8	13	40	67	12	20
SENDIST appeals tend to take longer than desirable to reach resolution of the case	50	83	8	13	2	3

8. Suitability of mediation and the SENDIST for certain types of dispute

The questionnaires also explored with LAs and PPS whether the resolution of particular forms of dispute was better suited to mediation or an appeal to SENDIST. A summary of the results is in table 23.

Table 23: LA and PPS thoughts on the suitability of certain types of dispute to mediation and SENDIST

Subject of SEN dispute	Local Authority						Parent Partnership Service					
	Suitable for mediation only		Suitable for SENDIST only		Suitable for either/both		Suitable for mediation only		Suitable for SENDIST only		Suitable for either/both	
	No.	%*	No.	%*	No.	%*	No.	%*	No.	%*	No.	%*
Any matter, between schools and parents e.g. about IEPs	43	91	0	0	4	9	64	91	0	0	6	9
Decisions to assess	8	17	7	15	33	69	4	6	10	14	58	80
Decisions to make a statement	6	13	11	23	31	65	4	5	18	24	52	70
Contents of a statement, other than placement	8	16	6	12	35	71	5	7	11	15	57	78
School placement	1	2	18	36	31	62	1	1	22	29	52	70
Cessation of statement	4	8	8	16	37	76	6	8	13	18	55	74

* Out of those who answered the question

From 23 it can be concluded that the kinds of disputes which come within the jurisdiction of SENDIST are regarded by the LAs and the PPSs as being more suited to resolution by the SENDIST than by mediation.

Table 24 (below) shows which types of dispute LAs and PPSs thought the least suitable for these particular processes. (Note that some respondents gave more than one answer.)

Table 24: Least suitable disputes to be resolved by mediation and the SENDIST

Type of dispute	Local Authority				Parent Partnership Service			
	Least suitable for mediation		Least suitable for SENDIST		Least suitable for mediation		Least suitable for SENDIST	
	No.	% of those who answered (n=32)	No.	% of those who answered (n=41)	No.	% of those who answered (n=48)	No.	% of those who answered (n=55)
Disputes between schools and parents	4	13	35	85	14	29	43	78
School placement	20	63	2	5	15	31	0	0
Decision to assess	0	0	0	0	3	6	2	4
Decision to statement	2	6	0	0	1	2	1	2
Contents of statement	3	9	2	5	2	4	1	2
Statutory decisions in general	4	13	0	0	1	2	0	0
Cessation of statement	2	6	0	0	0	0	0	0
Provision of therapy	1	3	0	0	0	0	0	0
Non-statutory issues	0	0	1	2	0	0	0	0
All the above types	1	3	1	2	0	0	1	2
None of the above types	0	0	0	0	6	13	3	5
Other types	0	0	0	0	2	4	1	2
Every case is different	0	0	0	0	3	6	3	5

The LAs and PPSs both thought that disputes between schools and parents were the least suitable for SENDIST and that these and school placement disputes were the least suitable for mediation. LA and PPS respondents felt disputes between schools and parents should really be resolved locally and there was no need for these to escalate, as they are “trivial matters for local resolution” (LA 52), and a few thought that SENDIST might damage relationships between schools and parents. A small number explained that school level disputes do not come under the jurisdiction of SENDIST. School placements were seen as unsuitable for mediation by LAs and PPSs on the basis that there is little room for negotiation in such disputes: “views are often fixed and financial considerations are often strong for the LA” (PPS 88).

9. Parents/ carers

We also explored whether particular social/ethnic groups are likely to fare badly under mediation. The majority of those who answered this question were unsure (52%), but 23% felt not. However, 25% considered that there are certain groups for whom mediation is likely to be problematic. LAs felt those that could be disadvantaged by mediation are parents from minority ethnic backgrounds, those parents who are not articulate and cannot communicate their views and those who may find relatively formal processes such as this intimidating.

The same issue was explored in relation to the SENDIST. Here the majority of LAs (41%) were also unsure whether there were any particular social/ethnic groups for whom SENDIST was likely to be less successful, but slightly more than in the case of mediation felt that there were indeed certain groups for whom it was likely to be problematic (36%). For LAs, the parents considered likely to face particular difficulty were those who might not understand the processes or might lack the resources (monetary and emotional): these were usually the more socio-economically disadvantaged and ethnic minorities:

“it is only the articulate middle-class who can use the system, it is too off putting for others, in most cases disputes can be resolved on the ground with a bit of give and take, tribunals only suit people who are determined to have their own way” (LA 89)

“Some social/ethnic groups may be disadvantaged inadvertently. It is a very formal, traditional occasion, with heavy legal undertones throughout the hearing, particularly so through the tone and manner of the chair. Some groups may struggle/ be intimidated in such an arena” (LA 109)

“Parents who may not have the resources or background to give a clear, informed case” (LA 131)

“The families who have limited understanding of the educational systems are less likely to engage in any processes - it is the lack of engagement not the mediation or SENDIST process!” (LA 129)

We explored the same issue with PPSs. A majority of respondents (60% in the case of mediation and 72% in the case of SENDIST) considered that particular groups were at a disadvantage, namely less well educated parents, those with SEN themselves, those from ethnic minority backgrounds with language or cultural barriers, parents with mental or physical health problems and socially disadvantaged parents. It was generally acknowledged by respondents that for parents to appeal or agree to mediation then they needed a certain level of education and certain characteristics such as confidence to avoid intimidation by the processes, although if they have support from other people and if the panel or mediator can help them some of these disadvantages can be ameliorated. The level of literacy required in accessing mediation is, however, considered to be lower than for accessing SENDIST. Comments included:

“Most parents who access DR mediation and SENDIST are from middle class families and are articulate and able bodied. Other parents often feel too overwhelmed by the system and would avoid these meetings even with help” (PPS 134)

“paperwork difficult to understand, need help to state their views, hearings held a distance away - cost/ childcare, parents can be disadvantaged, it is imperative that they have impartial support for free” (PPS 38)

“Level of education can affect parents in presenting case, attending hearing, understanding proceedings and having confidence to speak. If English is additional language this may also cause difficulties” (PPS 65)

“mental health, literacy difficulties/ language difficulties resulting from having English as an additional language, many parents feel overwhelmed by the SENDIST procedures and feel it will be like going to court, parents with little confidence will not appeal” (PPS 104)

We also sought views on the impact of parent’s gender on the processes and how they were approached. An overwhelming majority of PPSs (94%) said they were more likely to deal with mothers or female carers than males. The remaining 6% said they dealt with mothers and fathers equally. With regard to whether there were differences in approaches and attitudes between male and female parents/ carers, 45% of PPSs felt there was, 37% felt there was no difference and the remaining few did not know.

We were also able to discover their views on how fathers and mothers were likely to react to and participate in the dispute. In relation to fathers, PPS respondents differed in their views: some felt that fathers were more aggressive and confrontational while others felt that fathers had a positive influence for example were a calming influence. Also while some PPSs felt fathers were unlikely to negotiate and wanted to pursue appeal in any event, others considered that other fathers sought more immediate solutions. Mothers, PPSs agreed, tended to be the emotional ones, who were more involved in the case and in the day to day life of the child. Comments included:

“Vast majority are mothers/females. Fathers tend to want and expect immediate, specific action and take a very firm sometimes hostile stand. Mothers take a more measured approach and are more prepared to be conciliatory to get what their child needs” (PPS 36)

“men/male carers tend to be more aggressive and less likely to agree to DRS/ mediation” (PPS 43)

“We often find that mothers may be the first and sometimes the only contact. However, when fathers do attend, they can be quite clear and incisive in their approach, and fathers are often the family response when the matter is a weighty matter and there has been no early resolution” (PPS 54)

“mums can be more 'pushy' in some cases where dads have a more consultative approach, dads sometimes have more of an acceptance issue about a diagnosis or condition” (PPS 67)

“female carers tend to be the ones who worry first and become quite emotional, male carers may be able to vocalise concerns more, both can be quite angry and aggressive if it gets to that point, female carers do tend to be more 'emotionally charged' - very few male carers refer” (PPS 87)

10. Participation of the child

As can be seen from table 25 below, on the whole PPSs saw the views of the children as being very important.

Table 25: The importance of the child's view in disputes

	Importance of child's views in SEN disagreements		Importance of child's views in mediation		Importance of child's views in DDA cases	
	No.	% (n=80)	No.	% (n=77)	No.	% (n=79)
Very important	58	73	57	74	64	81
Quite important	19	24	15	19	12	15
Neither important nor unimportant	2	3	3	4	2	3
Quite unimportant	1	1	1	1	1	1
Very unimportant	0	0	1	1	0	0

When asked to give reasons, the majority of PPSs pointed out that their view was dependent upon the child's age and capability, but that subject to this the child's views are important because: the outcome will affect them and therefore it should be an outcome that they are comfortable with and will respond to; and the child's views may not be the same as the parents' views:

"I believe it is a child's right to be included in decisions made about them and if they are older there is no point 'deciding' what is best as they need ownership of strategies etc" (PPS 23)

"In many cases of SEN DR if young people's views are not considered fully, there is only a small chance of success"(PPS 28)

"It is very important to listen to the child as it is their education and their barrier to learning. They know what reasonable adjustments they might need to reach their full potential and their voice and those of their carers must be heard" (PPS 81)

"Because the child has rights and is an individual. Because asking these questions is helpful to the parents and establishes individuality of the child. Because thinking about the child's views can point to a middle way or alternatives and help resolve things" (PPS 54)

"Children/young people are the ones most directly affected by arrangements being put in place for them so it is vital that they are involved in appropriate ways. Sometimes the child may have different views to their parents, for example, regarding how their needs are met in school, I am there to support parents but will remind parents how vital it is that their child's views are taken into account" (PPS 90)

"I feel that young people need to know that their difficulties have been acknowledged and are important. They need to feel that they have been actively listened to. If they are involved in the process it gives them ownership/responsibility towards the package of support offered and it's outcomes. Many young people know a range of solutions to help their difficulties" (PPS 123)

With regard to the ascertainment of the child's views, the responses indicated that a majority of PPSs (77% of those who answered) played a role in this, although a majority (57%) did so only sometimes and only a small minority (11%) did so always. Almost one-third (32%) did so only "rarely". The child's views were generally gained by PPSs by talking directly to them; however they did not have a formal route to do this, as generally direct discourse was possible only when the child was present when PPOs visited the parents. If the child was not present the PPS asked others for the child's view (the others ranged from parents, to school staff or other interested parties). Some PPSs in fact mentioned getting the child to complete a form or write down their views or even make drawings. Where the PPS did not gain the child's views (and a few said they did not, because they regard the parent as their client), they still encouraged the parents or others to speak and listen to what the child wanted. Comments included:

"If possible speak to child and always encourage parents to ask for children's views although conscious that this isn't impartial" (PPS 26)

"The service supports parent / carers acting on behalf and in the best interests of their children. Whilst the service actively encourages parent / carers to involve their children in decisions that affect them, it is not often practical or possible to routinely ascertain their views ourselves. Where ever possible we speak to the child / young person to try to ascertain their views at meetings, home visits etc but currently do not yet have a separate 'system' or 'pro forma' in place" (PPS 84)

"direct contact if child/ young person present at initial meeting, telephone conversation if child/ young person wants to explain something themselves, written views" (PPS 89)

"The PPS supports parents rather than the child. While I would point out that the child's views should be sought there are other professionals such as the EP and school staff who are responsible for seeking and recording the child's views. I would always highlight the need for those views to be evident" (PPS 36)

11. Conclusions

- The work of the PPS seems to be critical in resolving disputes; their role is often fairly similar to the work of independent SEN mediators but deals with much larger numbers of parents and therefore has more of an impact.
- LAs and PPSs generally both think mediation is a fair process but their views diverge over the SENDIST, with LAs thinking it benefits the parents and PPSs thinking it disadvantages parents.
- It is interesting that LAs have a positive view of mediation, and see it as having a crucial role in resolving and avoiding disputes, but they rarely use it.