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**ADCS response to amendments to the Health Education and Social Care Chamber  
Rules 2008**

The Association of Directors of Children's Services Ltd. (ADCS) is the national leadership organisation in England for directors of children's services (DCSs). Under the provisions of the *Children Act (2004)*, the DCS acts as a single point of leadership and accountability for services for children and young people in a local area, including children's social care and education. ADCS welcomes the opportunity to respond to this consultation.

Context

The 2014 special educational needs and disabilities (SEND) reforms caused a series of unintended consequences which have resulted with a system universally considered "broken", with huge growth in demand, poorer outcomes for children, and high needs block deficits threatening the financial sustainability of local authorities. This is a problem of national scale caused by central government policy and funding decisions, resulting in a cumulative high needs deficit currently estimated to be £3.16bn. Fundamental reform is both essential and unavoidable, both to improve outcomes for children with SEND, and to protect local government from mass insolvency over the next three years ([ISOS, 2024](#)).

A more detailed explanation of the failings of the SEND system can be found in the outcome of an independent review and the then-government's response to this review in the form of a Green Paper ([Send Review: Right support, right time right place, 2022](#)). The previous government's attempts to solve some these issues through intervention programmes (the Safety Valve Programme and Delivering Better Value) have failed to make sufficient savings against the backdrop of increasing need. The SEND Improvement Plan is widely considered to have not addressed the fundamental challenges in the system. It is vital that central government departments work together to understand the scale of the issue that we are facing and the expected impact on the wider economy, and redesign an effective and sustainable system which improves life chances for children and young people with SEND.

The importance of a joined-up approach

To date, the policy direction that DfE have taken rests on the premise of test and refine in order to guard against unintended consequences, a lesson which has been well learnt from the 2014 SEND reforms. The Change Programme was designed to build a strong evidence base in order to inform future funding and legislation. The Tribunal Procedure Committee's choice to amend the SEND tribunal appeals process is at odds with this approach, confusing central government's existing communications with the sector, likely causing further anxiety as well as conflict in an already highly adversarial system, and risking damage to the new government's plans for whole-scale reform which appear to still be in their infancy.

The increase in SEND Tribunal refusal appeals

There has been disproportionate national growth in the number of children with SEND, and therefore applications for an education, health and care plan (EHCP). The number of children with EHCPs has increased 140% over the last ten years, outstripping both population growth and the number of children with SEN support in mainstream schools without a statutory EHCP, as well as in other large European countries. The increase is directly attributable to the ambiguity in the legislation. The 2014 SEND reforms have created a culture where EHCPs are now considered to be the only route to receiving funding and therefore support to meet the child's needs. A lack of clarity in the Children and Families Act 2014 has resulted in an extremely low threshold for deciding whether to undertake an assessment, which has led to unprecedented demand for assessments, therefore leading to an increase in refusal appeals. The significant backlog is not directly attributable to LAs as the consultation document suggests. Undertaking an assessment and developing a personalised EHCP is not simply an administrative task, it involves multi-agency assessments and LAs, schools and the NHS are all under growing pressures.

## The mismatch between legislation and the SEND Code of Practice

LAs do not incorrectly apply the relevant statutory test for determining whether an assessment should be granted. The Children and Families Act 2014 states that LAs must secure an education, health and care (EHC) needs assessment for a child who "has or may have special educational needs" and "it may be necessary for special educational provision to be made in accordance with an educational, health and care plan (EHCP)". The SEND Code of Practice statutory guidance provides further clarification on how LAs should carry out their statutory responsibilities. It states that a more graduated approach should be taken: "in considering whether an EHC needs assessment is necessary, the local authority should consider whether there is evidence that despite the early years provider, school or post-16 institution having taken relevant and purposeful action to identify, assess and meet the special educational needs of the child or young person, the child or young person has not made expected progress". LAs should not carry out an EHC assessment without evidence from the child's education setting that ordinarily available provision is unable to meet the child's needs. To do so would be both unfair to the child and an inefficient use of public finances.

## The purpose of SEND Tribunal hearings

When both parties agree for the SEND Tribunal decision to be made on the papers, it removes their opportunity to provide additional evidence to support their cases. For LAs, this puts them at a disadvantage because they are unable to share additional information about their decision making process and means they are less likely to be successful. Rather than LAs causing a purposeful delay, as was insinuated in the consultation document, holding a hearing in person ensures that the SEND Tribunal panel can take all of the relevant information into account. If the LA is successful, the child and their family will not have to endure unnecessary, lengthy assessment processes, and that their education setting can focus on providing more effective support to meet their needs as part of ordinarily available provision.

## The impact of holding SEND Tribunal refusal appeals exclusively on papers

ADCS members do not agree with either proposal. Both are undesirable and inappropriate and we strongly recommend that the process remains as it is. Removing both parties' rights for an in-person hearing removes the opportunity to provide additional evidence to support their case, while removing this only for the LA sends a provocative message to an already adversarial, broken system about the rights and intentions of the LA. This is likely to only cause further distrust, making it harder for central government to reform the system into one which is effective and sustainable, where all partners are confident that decisions are being made with children's best interests at heart.

If hearings were to only be held on papers, it would make a difficult appeals system even more difficult to navigate and would make the first stage of decision making effectively unnecessary if almost all cases were to proceed to assessment. A more effective way to tackle the backlog in the short to medium term while long term reform gets underway would be to remove requests to assess from the appealable decisions list.

In summary, ADCS members have shared significant concerns about a blanket move to hearing appeals on papers only, this is a complex area of work. Previous and current governments have recognised the very significant challenges in the SEND system and the need for reform. Any changes to the tribunals and appeals process should be part of this wider set of reforms to avoid further unintended consequences.

ADCS would welcome the opportunity to discuss this response further. Please contact Sarah Wilson via [sarah.wilson@adcs.org.uk](mailto:sarah.wilson@adcs.org.uk) in the first instance.