

CABINET – 25 APRIL 2023**PROCEDURAL MATTERS**

4b

Public Questions:**Question (1): Anna Sutherland**

In 2021, Surrey Council had 'significantly more tribunals per appealable decision than the National average' (Rachael Wardell, 'What do we know about EHCP Appeals', 2022 FVS talk), with a cumulative total of 426 independent SEND tribunal hearings in 2021, up to end of October that year. As you know, at the vast majority of SEND cases which proceed to a hearing at Independent SEND Tribunal, the judiciary panel finds wholly or in part in favour of the families.

I fully accept that many parents of children with SEND do get the right educational support at the right time in Surrey, but for those of us whose children are being failed by the Council's SEND process, it can feel that we are being goaded towards Tribunal, a process which is usually incredibly stressful for the hundreds of families affected each year (families who already have stressful lives, due to having a child or children with SEND). Families submitting appeal applications today are having to wait 12 months for their hearing date, during which time the child at the heart of the process is receiving inadequate education, often in an unsuitable setting. This can have a hugely detrimental effect on the child and their family. I would very much like to know Surrey Council's SEND Tribunal statistics for 2022.

My question is this: 'How much money does Surrey County Council spend on compensation for SEND families, and also on defending SEND Tribunal cases each year, up to and including 2022?'

Reply:

Surrey County Council officers work hard to avoid parents and carers feeling they have to register an appeal with SENDIST to resolve disagreements about education health and care plans and provision for children with additional needs and disabilities. Where there is a disagreement there are a number of steps taken to try to resolve this. These include liaison with parents/carers, informal way-forward meetings as well as formal mediation, if requested.

The Tribunal system is part of a national system of resolution, and we acknowledge that bringing a Tribunal against the local authority and going to a hearing can be a stressful experience for parents, carers and/or young people.

The County Council also has a responsibility to use public resources effectively and to ensure that resources are distributed fairly and equally to ensure that all children with Special Educational Needs receive education they require.

We acknowledge that the current waiting time for a hearing date with SENDIST (tribunal service) will be causing distress to some parents who are registering appeals. Our understanding is that there can be a 12-month delay for a hearing date and that this is linked to the capacity of the national SENDIST Service following the increase in

tribunals nationally. We understand that the SENDIST are prioritising hearings for those cases that are directly related to Key Stage Transfer where children/young people are due to start transfer to a new setting in September 2023 and cases where children/young people are out of school and have no setting to attend.

In 2021, the percentage of tribunals in Surrey per appealable decision was 4.1%. In 2022 this was 4.6% with the mean national average in 2021 being 1.6% and the maximum percentage being 7%. There has been an annual increase in Educational and Health Care Plans being issued in Surrey and nationally, with a national increase of Education Health and Care Plans (EHCP) of 9.9% in 2021 and with the rate of initial requests for an EHCP needs assessment increasing nationally by 23%. With these statistics in mind, the number of Tribunals may continue to increase reflecting the increase of EHCPs and associated appealable decisions.

In 2022, 620 appeals were registered with SENDIST against Surrey. Detailed data analysis for 2022 is ongoing, we anticipate this will be available in May 2023. The data for 2021 shows a total of 511 appeals, 71% of these appeals were resolved prior to hearing, which means that only 29% of appeals needed to be heard by a Judge in comparison to the national average of 64%. The tribunal found in favour of the Local Authority in 3% of appeals and had partial agreement in another 3% of appeals.

Where an appeal was in relation to the school placement the Tribunal found in the local authority's favour 27% of the time and parties were able to agree an alternative placement 8.6% of the time.

Occasionally, symbolic financial remedies (sometimes referred to as compensation) to address injustice arising from procedural fault, such as delay in a process, is agreed through the statutory and corporate complaints processes. Information on complaints about Children's Social Care and Education Services, including financial remedy data, is included within the Annual Complaints Report that is shared with the Audit and Governance Committee each year.

The report for 2022/23 will be shared with the committee on 10 May 2023. Copies of reports for previous years can be found on the Council's Audit and Governance Committee webpage via this link: <https://mycouncil.surreycc.gov.uk/ieListMeetings.aspx?XXR=0&Year=2022&CId=168&MD=ielistmeetings>

For ease, here is a link to the Annual Complaints report for 2021/22: <https://mycouncil.surreycc.gov.uk/documents/s87984/07%20-%20complaints%20report%20September%202022.pdf>

For Children's & Education services in 2021/22, £42,217.50 remedy payments were directed by the Local Government and Social Care Ombudsman (LGSCO). Of these payments £37,417.50 were related to SEND. An additional £35,195.20 remedy payments were made at stage 1 and 2 of the complaint process, of which £25,945.20 related to Education services.

As of 16 March 2023, a total of £182,342.76 had been paid since the beginning of the financial year as complaint-related financial remedies regarding both Additional Needs

and Disabilities (SEND) Education and Mainstream Education provision. These include cases of alternative provision and non-school attendance.

£115,625.20 of the £182,342.76 relates to remedies directed by the Local Government and Social Care Ombudsman (LGSCO) following their investigation into the complaint.

£66,717.56 of the £182,342.76 relates to remedies paid at the first and second stage of the local complaint process. Tribunals are facilitated by a small team within the local authority, the total cost is £376k in 2022/23.

Clare Curran
Cabinet Member for Education and Learning
25 April 2023

Question (2): Louise Gannon

How much money have Surrey had to pay in compensation to parents/children that have gone through solicitors judicial reviews, ombudsman & surrey be heard from April 22 to date?

Reply:

When the Council receives a Pre-action letter from parents, we usually respond and endeavour to resolve the matter at that stage, so a Judicial Review is generally not issued.

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Due to the complaint process timeframes, the complaints and specifically the acknowledged errors or omissions that led to remedy payments will have occurred 12 to 18 months previously.

Clare Curran
Cabinet Member for Education and Learning
25 April 2023

Question (3): Malcolm Robertson

In the March meeting of the full Council, a County Councillor claimed that the 'gasifier at the Eco Park' had been "declared as operating at its full capacity". It needs to be pointed out that the Member concerned seems to have misread the Press article on which she based her remarks.

Suez, Surrey's contractor and operator of the 'Eco Park', recently published a letter to its neighbours in which it stated that last year it processed 44,035 tonnes of residual waste, which in reality is 80.6% of the gasifier's processing capacity. It is clear therefore that the plant was not operating at full capacity.

What is also of importance is to ask how much waste the gasifier actually burnt last year, and how much fossil fuel gasoil did it use to do so?

Reply:

We note your comments with regard to the County Councillor's statement at Full Council.

The gasifier at the Eco Park was awarded its Acceptance Test Certificate on 9 March 2022 and therefore is contractually in its first year of operations. The contract allows that, in the first full year of operations, the gasifier can operate at 93.75% of target processing tonnage (i.e., 52,016 tonnes). In the period 1 March 2022 to 28 February 2023, the gasifier treated 45,668 tonnes of residual waste. This gives a performance figure of 88%.

The amount of gas oil used in the period January to December 2022 was 1,302,246 litres.

Natalie Bramhall
Cabinet Member for Property and Waste
25 April 2023