

## CABINET – 17 DECEMBER 2024

## PROCEDURAL MATTERS

**Public Questions:****Question (1): Deborah Fitzgerald**

What reasons does the council think that over 95% of SEN cases that are brought to tribunal are upheld?

**Reply:**

Nationally appeals to the Special Educational Needs and Disability Tribunal (SENDIST) have increased each year since the Children and Families Act was introduced in 2014. SENDIST are reporting an increase in the total number of appeals registered from 18,000 in 2014 to 24,000 in the year 2023-24. The numbers in Surrey very much reflect this national picture.

Where an appeal is upheld by the tribunal, it is not the case that the decision originally made by the Local Authority was incorrect or unlawful. It is often the case that decision made by SENDIST are made using a different set of evidence that the original decision.

Section 39 (4) of The Children and Families Act allows local authorities to defend appeals should they feel that the placement of a child or young person in a particular setting would amount to unreasonable public expenditure; this is not always considered at a tribunal hearing.

Of the total number of appeals registered from Surrey residents in 2023-4 which was 1068, the rate of resolution prior to hearing is 39%. This is a significant number when factoring in that 35% of appeals registered against Surrey CC in 2023-24 are still to be heard.

Not all cases that are registered against the council's decisions progress to a hearing, as evidenced by the high levels of resolution. Where the council feels that a case is best determined through consideration by a tribunal, it has been successful in its defence of appeals 10% of the time in 2023-4. If appeals that are partially upheld in favour of the council, that figure rises to 10.5%.

Whilst these statistics provide an overview of appeals in Surrey during the year 2023-4, it is helpful to consider the breakdown of individual types of appeal as different parts of the legislation apply to different types of appeal

Type of appeal (heard)	% upheld	% dismissed	Upheld in part
• Refusal to assess a child or young person's educational, health and care (EHC) needs	97%	3%	0

• Refusal to issue an EHC plan	80%	20%	0
• Refusal to change what's in a child or young person's EHC plan - sections (B&F)	0%	33%	67%
• Refusal to change what's in a child or young person's EHC plan (BFI)	30%	70%	0
• Refusal to maintain the EHC plan	0	0	0

Live appeals to the tribunal are continuously monitored and reviewed at all points throughout the stages of the appeal. Should Tribunal Officers need to, they can refer the case back for further reconsideration by the SEN teams.

Tribunal Officers act on instruction from the service and as part of their role they liaise with the area SEN teams and other LA professionals, as necessary, regarding the LA's position in accordance with case law and the relevant legislation.

The council is piloting the use of a Mediation and Dispute Resolution Office (MADRO) team which is evidencing some successful outcomes for families and children. Since the pilot began in December 2023, MADROs have been able to resolve 53% of all potential appeals where they have worked with families, which has been 127 cases to date. 5% of the potential appeals have gone back into the Tribunal team. The remaining cases are still ongoing with a view to resolving them before a hearing, wherever possible.

**Clare Curran**  
**Cabinet Member for Children, Families and Lifelong Learning**  
**17 December 2024**